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Human Rights Protection, Democratic Deliberation, and Prevention of Violence against Women*

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Abstract

Implementations of human rights into enforceable laws generally involve this move: provide the protections embodied by internationally recognized human rights principles in a way that shows sensitivities to local contexts and customs. This move has come to structure major human rights approaches, including those addressing the phenomenon of violence against women.

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In this article, I argue that these approaches are largely ineffective because of this move. Moreover, in spite of combining with democratic deliberation, in a real-life case, what ends up being implemented is the kind of protection that preserves polygyny, which is a form of customary marriage that maintains the dependency of women. In practice, then, such protection is severely limited. While not rejecting the major approaches altogether, I attempt a rescue move by reconsidering what specifically is involved in the implementations of protections for women in terms of women's rights as human rights. I uncover that the *enforcement* component has been overlooked. Furthering this finding, I draw attention to a different and neglected strategy for addressing violence against women: the policing approach. By being closer to the ground, I argue, this alternative approach can help to achieve what the major approaches have thus far fallen short. As emergent from the best legal practices of preemption, deterrence, and predictive analysis of this phenomenon, I suggest that this approach has the greatest potential to make a genuine difference in the prevention of violence against women.

Key Words: women's rights as human rights, protection, deliberation, prevention, police

Since the adoption of the Vienna *Declaration* in 1993, the phenomenon of violence against women (VAW) has been received in general as falling within the system of international human rights and in particular as a violation of women's rights as human rights. Extensively studied,[1] VAW has been declared to be "a manifestation of historically unequal power relations between men and women," and "one of the crucial social mechanisms by which women are forced into a subordinate position."[2] VAW takes many forms: physical, psychological, sexual, and economic.[3] It has multiple causes (Chalk & King, 1998; Crowell & Burgess, 1996; Heise, 1994; Heise, Ellsberg, & Gottemoeller, 1999; World Health Organization, 2010)—cutting across lines of class, ethnicity, geography, race, religion, and other social divide. Not surprisingly, in global terms, "up to seventy percent of women" experience in

[1] The journal *Violence against Women* was established in 1995. For accounts of the long and complex history of women's rights, international law and institutions prior to and following the conceptual and political breakthrough that transformed women's rights as human rights, among others, see Ackerly (2008); Ackerly and Okin (1999); Agosin (2001); Bell, Nathan, and Peleg (2001); Cook (1994); Gaer (2009); Lockwood (2006); Molyneux and Razavi (2002); Peters and Wolper (1995).

[2] Sixth paragraph of the preamble of the 1993 *Declaration on the Elimination of Violence against Women* (United Nations). Violence against women refers to acts that target women, specifically because they are women. These gender-based acts impair or nullify women's ability to exercise their rights and freedoms as citizens; these include "threats of such acts, coercion or arbitrary deprivation of liberty" that "result in, or are likely to result in, physical, sexual or psychological harm or suffering to women" whether such acts occur "in public or private life" (Article One of the *Declaration*). In addition to this *Declaration*, principal documents detailing the multi-faceted features of VAW have emerged out of the Beijing Conference in 1995, the Platform for Action following the Beijing Conference, and the Beijing Plus Five Conference in 2000.

[3] The dynamics of this phenomenon are not exhausted by these four forms. In particular, as rendered by the United States Supreme Court in the case United States v. Castleman, 572 US (2014), what constitutes domestic violence in the American society has now been expanded to include "seemingly minor acts," such as, pushing, grabbing, shoving, hair pulling, "a squeeze of the arm that causes a bruise" (Liptak, 2014).

their lifetime some form of violence from men, the majority at the hands of husbands, intimate partners or someone they know.[4] In Asia and the Pacific "thirty to fifty-seven percent of men" acknowledge having "perpetrated physical and/or sexual intimate partner violence in their lifetime" (Fulu, et. al., 2013: 2). In the European Union, "one in three women" of age fifteen and above has experienced some form of physical and/or sexual violence.[5] Notably, in France "118 women were killed by their (ex-) partners" in 2014.[6] In the United Kingdom "one in four women" will suffer some kind of domestic abuse during their lifetime (Boggan, 2013); in 2014 alone, official statistics show "a possible forced marriage in 1267 cases" (Home Office, 2014). Across the Atlantic, the situations in the two largest countries of North America are: in Canada, female constitutes "eighty-five percent" of the victims of intimate partner violence (Beaupré, 2015: 3); in the United States "nearly one in five women say they have been sexually assaulted" (Rabin, 2011).

Behind the statistics, how might this problem be addressed? That is, while the statistics do not present VAW in terms of massive violations of women's rights as human rights, much less suggest a solution, it does speak well of the global campaign to eradicate VAW that few would deny that connection, and many have often arrived at this question: how might the former be addressed in terms of the latter? The answer—undoubtedly—is very complex.[7] I

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[4] "Violence Against Women: The Situation," press material from United Nations Secretary-General's Campaign to End Violence against Women (UN Department of Public Information, 2011).

[5] "Zero tolerance of violence against women," (European Commission, 2015).

[6] "Les chiffres de référence," (Ministère des Affairs Sociales, de la Santé, et des Droits des Femmes, 2015). Translation mine.

[7] Given the multi-faceted nature of VAW, the growing consensus is on systematic and comprehensive approach involving a wide array of policies and measures in assorted combinations that include, but are not limited to, constitutional reform and robust legislation, shelter service, gender mainstreaming, broad-based social movement, cosmopolitan feminist project, education and publicity campaigns. Notably, see Carrillo, Connor, Fried, Sandler, & Waldorf (2003); Davies (1994);

plainly cannot aspire here to a complete account of all the issues, but I hope to be able to say enough to capture what ought to be most relevant for any attempt at addressing violence against women by implementing human rights protection. In so doing, I will discuss the features relating to the implementations of protections for women from abuse and violence in terms of women's rights as human rights. I seek to shine light on the practical limitations and difficulties involved in this process of implementation. Specifically, I will argue that the major theoretical approaches within the human rights literature[8] have generated ineffective policy recommendations. In fact, the status quo is maintained because of this move: implementations of the protections embodied by internationally recognized human rights principles into enforceable (state) laws have to be couched in a way that shows sensitivities to local contexts and customs. This move, as I will demonstrate, in spite of combining with democratic deliberations, has complicated what is meant by protection and diluted the content of protection. While the existing approaches do specify protections in terms of women's rights as human rights, how these protections are put into effect, namely implemented, remains under-specified. As I will argue, even the most sophisticated version of the existing approaches has fallen short: it has endorsed protection that preserves, notably, the customary marriage institution of polygyny which maintains the dependency of women and impairs their autonomy. Thus, protection of this sort does not promote the eradication of VAW. It tends to be self-defeating.

As a rescue move, I argue that the way in which the

Gillespie and Melching (2010); Htun and Weldon (2012); Hudson, Ballif-Spanvill, Caprioli, & Emmett (2012); Kelly (2005); Merry (2006); Montoya (2013); Reilly (2007); True (2012); United Nations (2013); Weldon (2006).

[8] Major interventions include Beitz (2009, 2013); Buchanan (2010); Gilabert (2011); Griffin (2008); Nickel (2007); Rawls (1999). For the past 15 or so years, the literature on human rights has merged with the literature on international justice. In political philosophy, interests in human rights and international justice have been stimulated in large part by the interventions of Rawls and Nickel.

protections for women are concretely enforced, namely the enforcement of protections within the implementation process, has been obscured. By shining light on this component, call it the *enforcement* component, I suggest that the concept of protection need not be comprehensively written off, but rather transformed. The outcome will be a conception of protection geared toward prevention.[9] This alternative, unlike the growing consensus on multi-pronged approaches, is piecemeal in nature. Based upon some of the most innovative police strategies and exemplary legal mandates that have effectively put into force the protections of women, it might be called the policing approach.

Although I shift the unit of analysis to prevention, I cannot discuss every aspect of it. So as a matter of clarification, let me spell out my three assumptions. I assume that the monopoly of violence by the modern state (Weber, 1970: 78) justifies in whole or in part the prevention of violence which includes VAW. I assume further that preventing violence forms a component of the state's role of protecting individual autonomy (Raz, 1986: 367-429). I assume

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[9] Some may think we already have a cogent argument of prevention, but that is empirically false. In spite of having been adopted by the 1993 Vienna *Declaration* and other international instruments, the due diligence standard has "largely neglect[ed] the obligation to prevent" VAW (Ertürk, 2006: 2). (The reason has to do with state-centric implementations of international human rights standards, as will be spelled out in Section II. In Section V, the due diligence standard's failings will be made clear.) In the same vein, in spite of going to great length to specify legal mandates and procedures, as it turns out, the "mandatory proceedings *do not* necessarily prevent abusers from retaliating against victims" (Friedman, 2003: 148, emphasis added). Similarly, there are practical difficulties with the argument of prohibition, which defends that the "state should prohibit those [social] practices which cause significant harms" to the individuals choosing them (Chambers, 2008: 201). For example, it is unclear who has the political mandates, the legitimate authorities to prohibit the harmful (unjust, unequal, and sexist) practices. One might ask, what sorts of powers, and what is the nature of these powers, that are applied to bring about prohibition? Without spelling out some of the details, the usual worries about the paternalistic state cannot be dismissed out of hand. This article is in part a response to these concerns and in part an attempt at preventing VAW with a piecemeal approach that may be effectively applied.

finally that prevention is a fundamental step toward addressing VAW. Now in everyday language, the relationship between prevention and protection seems mutually reinforcing. For example, we can prevent by protecting and we can protect by preventing. So it is important that I draw out the basic distinction. As I will spell out, timely and early interventions by the law and the police that protect victims of VAW before acts of violence occur are *preventions*. But as I will argue in this article the term protection has been over-applied and lends itself to abuse, to the extent that it has come to refer to the decision made on pragmatic considerations, which have emerged from democratic deliberations that show sensitivities to local contexts and customs.

In the traditional way of doing political science, political theory tends to be normative rather than empirical. However, much of political theory in contemporary setting is in fact empirical, evidence-based analyses of specific phenomena, cases, patterns, and possibilities. While not disavowing the traditional way of understanding political theory, this article situates itself within the contemporary sense. Thus, as will become clear, some arguments are drawn from proposals and advances that are mostly empirical.

I begin in Section I with a brief discussion of the campaign that coalesced around VAW. I will attempt to capture what ought to be most significant in our concerns about how to address it. Then, I will examine in Sections II and III the human rights and the contextually wise, democratic-deliberative approaches, respectively, and identify their weaknesses and limitations. By way of supplying an alternative, I will make my intervention in Section IV. My argument will be that strategic measures closer to the ground, which are in fact enforced by the police, have the greatest potential to make a genuine difference in preventing VAW. I will explore two further issues in Section V, especially the due diligence standard that has emerged from within the global campaign to eradicate VAW. Finally, bringing this article to close, I will add mention of the usual caveats that apply to any attempt at addressing VAW. The

point of making clear the implementation process and the basic elements of the enforcement component is, I hope, to help achieve the goal of preventing VAW in actualized terms.

I. VAW as Focal Point around which to Rally Supports for Women's Rights as Human Rights

The recognition of VAW in the early 1990s within the then emergent framework of women's rights as human rights occurred only after decades of campaigning. Known as the women's rights as human rights movement, a synopsis of this campaign is this: launched in the mid-1970s as a broad-based movement, during the 1980s, this movement sought to win recognition for issues that are of central importance in women's lives as human rights. Then, bringing forward during the 1995 Fourth World Women's Conference at Beijing "a substantial and varied list of rights of sufficient significance to be considered human rights of all women, everywhere" (Okin, 2005b: 87), this movement promotes women's rights as human rights and more broadly gender equality. A top priority is to eradicate VAW. To achieve this goal, efforts have been targeted at implementations of the Platform for Action that had emerged from the 1995 Beijing Conference,[10] followed by regular five-year reviews and follow-up strategic objectives.

Yet during the period between late 1980s and early 1990s, when activists rallied around the phenomenon of VAW in order to gain recognition of women's rights as human rights, this development was overshadowed by the turn to culture. A body of knowledge falling under the broad description of multiculturalism came to the fore. The burgeoning of this literature and implementations of multicultural policies further marginalized gender studies[11] and the promotion of

[10] Below I discuss the implementations of the Platform for Action in relation to gender mainstreaming.

[11] Presenting gender "both as a mode of analysis and as a basis for envisioning the emancipatory transformation of society," it has been suggested that "gender" may

women's rights as human rights. To be sure, multiculturalism in the theoretical literature and public policies on the ground were criticized. Prominent critics often include Brian Barry and Susan Moller Okin. Where Barry's and Okin's arguments overlap, I think, suggests that multicultural theorists had underestimated the unintended consequences, e.g., the perils,[12] of accommodating minority cultures and the steadfast commitments to liberal principles, especially to equalitarianism (the same treatment for all), which underpin Barry's call to re-universalize human rights and Okin's defense of women's rights as human rights.[13] Granted, we should leave behind the polemics of Barry's and Okin's controversial critiques of multiculturalism. We might nonetheless wish to take cue from their endorsements of the basic protections embodied by international human rights principles, which retain value for any serious attempt at addressing the phenomenon of VAW. To this end, let me spell out at some length what is actually involved in applying the fundamental protections embodied by international human rights principles to everyone, especially to the vulnerable and the dependent, e.g., victims of VAW. Thus, with an eye on implementation, I examine the major approaches to international human rights theory and practices,[14]

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not have a future, in spite of the hopeful, if misleading, title of *The Future of Gender* (Browne, 2007: 1). This view notwithstanding, scholars continue to do gender studies, e.g., research on gender violence, gender's relationships to sexuality, the state, the law, and class. Notably, two special issues of *Perspectives on Politics* (March 2010 and March 2014) are focused on gender in politics.

12 Prior to and near the times of Barry's and Okin's interventions, criticisms were raised, including Greene (1995); Shachar (1998, 2000, 2001); Spinner-Halev (2000). But Barry's and Okin's interventions generated more attentions and controversies. I have examined Barry's major interventions, see On (2006).

13 Underlying the two overlaps is a qualified defense of essentialism. Barry (2001: 32-50, 64, 104, 136, 262-263, 279-284, 302; 2002: 206-221); Okin (1994: 9-18; 1995a: 512, 515; 1995b: 275; 1998a: 663-665; 1998b: 42-46; 1999: 11, 18, 22-23; 2005a: 72-75; 2005b: 95-102).

14 The argument that the international human rights discourse should be regarded as a post-World War II normative practice, to be grasped *sui generis*, has been defended by Beitz (2009). A notable contrast to Beitz's practice-based account is Amartya Sen's, which deploys a two-level analysis that bifurcates human rights

leading to my alternative (policing) approach.

II. Major Approaches from within Human Rights Theory and Practices

A plausible way to discuss international human rights principles might proceed as follows. Enshrined within major United Nations documents such as the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966) is a simple but significant idea: everyone as member of the human family has certain entitlements, freedoms, immunities, and protections which should not be violated by their government or by others. In addition, the resources, rights, and opportunities expressed by these United Nations documents have come to form most of the content of international human rights principles. Finally, member-states of the United Nations generally show their commitments to these principles by codifying their content into local (state) laws, whose officers are responsible for enforcement.

Theorizing human rights in this way, we see there are two central features: first, the idea of human rights; second, the institutionalizations by local laws (and regional bodies, notably the European Court of Human Rights)[15] of this idea. As will become clear, these two dimensions are featured in major statements. Take, for instance, Jack Donnelly's[16] relative universalism thesis which is

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into ethical claims and positive laws where the former "does not have any direct bearing on the obvious *legal* status" of the latter (2004: 318, 320-328). In this article, I turn to statements that combine both theory and practices. My focus dovetails with empirical studies on one-to-one assistance, transnational advocacy, and activism by Jaggar (2005); Merry (2006: chaps. 5-6); and Phillips (2005), respectively.

15 In the European context, Montoya (2013) has examined the roles of transnational, non-state actors.

16 Donnelly is considered to be "the leading theorist of human rights today" (Goodhart, 2008: 183). I have examined Donnelly's thesis, see On (2005).

basically captured within the two dimensions of (1) universalism in theory and (2) relativism in practice. Donnelly (2003: 78, 97; 2006: 612) observes: "modern markets and states" created the "social structure, not culture," that engendered the theory and practices of international human rights. Yet Donnelly's social-structure explanation allows for "legitimate" variations in implementations. Now why we should understand "universal" human rights theory and practices in this fashion is: "the essential insight of human rights is that the worlds we make for ourselves, intentionally and unintentionally, must conform to relatively universal requirements that [1] rest on *our humanity* and [2] seek to guarantee each person equal concern and respect from *the state*" (Donnelly, 2003: 123; emphasis added).

If one comes to understand human rights in this way, then the state will have a powerful argument for why the compliance with and enforcement of international human rights protections ought to be matters best left to the state, and its police and security apparatus. That is, one implication of Donnelly's two-dimensional account is a state-centric view that makes the state the primary, if not exclusive, judge and enforcer of what falls under the purview of human rights considerations.[17] Given the history of states, and the conflicts among states, we know that how states interpret and implement international norms and standards[18] varies from context to context—driven to varying degrees by what is in the state's best interest. Taken to the logical conclusion, the implication is that a state-led approach like Donnelly's breaks down in failed states and in a stateless environment. For those in need of the protections, notably, victims of VAW and gender-based assaults in conflict zones

[17] As a matter of division of labor, states have the primary role of enforcing human rights laws, while courts including the European Court of Human Rights are tasked with interpreting and determining the breadth and content of human rights laws.

[18] For the present purposes, the most relevant international standard is the due diligence standard. In section V, further below, I shall discuss it.

where the state has collapsed, and stateless persons who are victimized, this approach becomes inapplicable. By entirely neglecting those who find themselves in these types of situations, where VAW and gender-based crimes have been reported,[19] a state-centric account like Donnelly's provides no help at all.

Donnelly might retort that most people do not live outside of the state, nor in environments where the state has for all practical purposes disintegrated. No doubt the injustices of stateless persons and refugees require redress; however, their situations do not point to the failings of state-based approach. People who find themselves in a collapsed state or in a stateless environment ought to be given protections.[20] That functioning states have often turned a blind eye to these disasters and lent a tin ear to the desperate voices of stateless persons is more symptomatic of the selfish behavior of states than any (supposed) break-down in the system of international human rights theory and practices.

Yet even within the framework of a functioning state, where Donnelly accepts variations in the implementation of state protections, victims of VAW can fall through the cracks—in three ways. First, variations in implementation have created loopholes. Euphemistically called "understandings," "clarifications," "explanations," and "interpretative statements" that serve to make international human rights principles consistent with local laws, e.g., contexts and customs, these reservations have in effect become

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19 UN Secretary-General Ban Ki-moon commented that VAW in conflict zones had "reached unspeakable and pandemic proportions in some societies" (Worsnip, 2008). The UN reported "27,000 sexual assaults" in the South Kivu Province of Eastern Congo in 2006 (Gettleman, 2007); "U.N. aided 38,000 victims of Syrian gender-based violence in 2013" (Miles, 2014). Concerning sexual and other abuse of female refugees, such as those making their ways into Europe, there are "no reliable statistics" (Bennhold, 2016).

20 "The United Nations Convention relating to the Status of Stateless Persons" (United Nations, 1954). To my knowledge, none of Donnelly's writing discusses the phenomenon of stateless persons, for example, the stateless Rohingya in Burma.

loopholes for member-states to weaken their commitments to the United Nations human rights protection.[21] In practice, many local laws do not measure up to international standards and are essentially toothless. Second, a state can be functioning in name only. Under such circumstance, local authorities often lack the resources to provide protection; generally, what rushes to fill in the vacuum are patriarchal strongmen who do not support women's rights as human rights in the way that one might wish, say, on a par with "universal" human rights.[22] Finally, when functioning states do take actions, these actions have largely failed to prioritize the protections of women. "For example, in Bangladesh, violent crimes against women—rape, dowry death, domestic violence, acid burning, and suicide—go under-reported; when reported, women are discouraged from filing their cases; when filed, cases are pursued slowly. Although these crimes are illegal, the police's willingness and ability to enforce these laws, and the judiciary's uneven record at carrying out the law, mean that women live in a context of insecurity" (Ackerly, 2008: 4).

In this light, let me turn to Martha C. Nussbaum's rival approach, i.e., the capabilities approach that advances "a single clear line of feminist argument" (2000a: xiv).[23] By focusing on the

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[21] According to Merry's anthropological account (2006: 80), there are "123 reservations" to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (United Nations, 1979). It is not surprising, then, Okin (2005b: 100-101) reached this conclusion, "for countries to sign and ratify the CEDAW, but to express reservations about equality within marriage, is *not very different* from their not signing or ratifying it at all" (emphasis added).

[22] Protections afforded by the so-called "universal" human rights cover public-sphere violations, such as persecutions of political dissidents, for example, Liu Xiaobo, see On (2012). By privileging the public sphere, private-sphere violations are often neglected. See Okin (1989a; 1989b: 41-45; 1999; 2005b) and Landes (1998).

[23] Capabilities are "what people are actually able to do and be" (Nussbaum, 2000a: 51). Nussbaum regards her capabilities approach as "one species of a human rights view" (2004: 196). The distinctions between Amartya Sen's and Nussbaum's capabilities approaches have been drawn out by Dowding (2006: 323-326).

development and vulnerabilities of women (1, 7, 13), Nussbaum's account appears to be more promising than Donnelly's. But the impression is not the reality. The reality is: the implications of Nussbaum's theory track those of Donnelly's. Donnelly accepts variations in implementations consistent with local contexts; Nussbaum calls on state governments to promote capabilities in context-specific manners (2011: 97-100). Moreover, by supplying an account that "focuses appropriately on *women's lives*," which entails "examin[ing] real lives in their *material and social* settings" (2000a: 71; emphasis added), the reader might expect Nussbaum to give some concrete solutions to women's concerns, including VAW, which often come across as after-thought in Donnelly's Whiggish-triumphalist account. But this expectation is not borne out. In fact, the vaunted strength of Nussbaum's capabilities approach that rests on bringing to fore the material and social issues, which "women face because of their sex in more or less every nation in the world" (4), is weak. The reason is this: what Nussbaum considers to be marginalized in mainstream human rights accounts, such as gender poverty and women's illiteracy and their correlation to gender-based violence, and the material and social resources required for addressing these issues, have already been incorporated into Donnelly's account. In Donnelly's unitary view (2003: 23), "universal" human rights are treated as an indivisible whole (civil and political rights *and* social, economic, and cultural rights), not as a menu from which the state may freely select.

Now it would be wrong to suggest that Nussbaum cannot deflect this criticism. She may argue that her rival approach provides a better understanding of what enables women's development, which includes the state allocating resources to address VAW. Unlike the familiar human rights approach that does not in the main bring to fore the pre-requisites for women's development, Nussbaum's does. Yet Nussbaum hardly delivers on her promise of advancing a clear line of feminist argument (Ackerly,

2008: 118-123; Jaggar, 2006: 301-322). There is little serious engagement with scholars within her liberal-feminist tradition[24] and no engagement at all with those from the radical-feminist tradition.[25] Finally, given Nussbaum's reliance upon Aristotle, Marx, and John Stuart Mill as intellectual allies in her theory of development in spite of long-standing feminist criticisms of these thinkers (di Stefano, 1991: 147; Okin, 1979: 92, 147), Nussbaum's "feminist" line of argument appears to be mostly nominal.

If the critique is that Nussbaum has not sufficiently taken into account the insights of gender studies, then an alternative ought to be attempted. To this end, let me mention the approach that is centered on gender: gender mainstreaming.[26] Paradoxically, requiring analyses of United Nations treaties', instruments', and programs' impact on men and women has been showed to backfire: "gender mainstreaming has stripped the feminist concept of 'gender' of any radical or political potential"; once accepted by the mainstream, gender has become "defanged" (Charlesworth, 2005: 16). Thus, without attention to differences of context, by applying the transformative and radical potential of gender to "all" the paragraphs of the *Platform for Action* from the 1995 Beijing conference dealing with education, health, victims of violence,

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[24] In her reply to Okin, Nussbaum responded to Okin's criticism, but has since rejected Okin's "characterization" for being "inaccurate in a number of ways." Nussbaum has not specified what these inaccuracies are (2011: 205).

[25] Nussbaum has responded to the work of Jonathan Wolff and Avner De-Shalit, and to the comments of Louise Antony, Richard Arneson, Hilary Charlesworth, and Richard Mulgan (2000b; 2011: 42-45). To my knowledge, these scholars are not radical feminists.

[26] Gender and gender mainstreaming do not lend themselves to a precise definition. By my count, gender mainstreaming informs at least four areas of inquiry: (1) feminist theory and practices, (2) as a practice within public policy and public administration, (3) as analysis underpinning by a theory of the state, the political, democracy, globalization, and (4) beyond the state, as gendered interests in and against the state, which are articulated within epistemic communities that combine expertise and advocacy across states such as the European Union and the United Nations. My focus is mostly on (4).

armed conflict, the economy, decision-making, and human rights, this strategy has been demonstrated to be "ineffective" (Peach, 2001: 184; see also Kelly, 2005: 476; Merry, 2006: 237, n. 1; Moser, 2005: 585; Moser & Moser, 2005: 15; Walby, 2005: 463).[27]

III. Contextually Wise, Democratic-Deliberative Approaches

Since neither the context-full approaches of human rights and human capabilities, nor the context-less approach of gender mainstreaming is altogether satisfactory, an alternative approach is needed, one that can navigate between the two discussed so far. For that, let me examine the "contextually wise" approaches (Okin, 2005a: 86), which form part of the multiculturalism literature. Largely refraining from the liberal solution, scholars, including Okin, have turned to a complex version of context-sensitive solution, one that is combined with democratic deliberation.[28] In addition, by way of making democratic deliberation truly inclusive, scholars have endorsed the normative principles of non-domination, political equality or inclusiveness, and revisability (Deveaux, 2006:

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[27] Evidence from the first decade (1995-2005) suggests, at best, the outcomes of gender mainstreaming to be inconclusive (The Advocates for Human Rights, 2008).

[28] Following her controversial intervention in the multiculturalism literature, the later Okin (2003: 297; 2005a: 87; 2005b: 102) endorsed a non-essentialist view of culture. Okin might have further developed her non-essentialist view, but this is not certain given her death. In accounts of democratic deliberation addressing contentious cultural and religious practices, within which some cases of VAW are embedded, the non-essentialist views are defended. Among others, see Deveaux (2006: chaps. 1, 4, 8); Phillips (2007: chaps. 1, 2, 3); Song (2007: chap. 2). The liberal solution has not disappeared. In this article, for reasons of scope, I deliberately set it aside. For an account that "situates itself squarely within the liberal tradition," see Weinstock (2007: 244). Accounts that combine to varying degrees the democratic-deliberative solution with the liberal solution include Mookherjee (2009: chaps. 1, 2, 5) and Song (2007: chap. 3).

113-118; Mookherjee, 2009: 49-50; Okin, 2005a: 80; Phillips, 2007: 170-179; Song, 2007: 9, 43-46, 69). It is revisability that carries the most weight;[29] democratic deliberations cannot be regarded as one-shot affairs, one-time experiments. What justifies periodic negotiations in which the participants treat each other on equal moral footing is the secure knowledge that the compromise forged at the present can be revisited in the future. The possibility of changing not only the outcome of compromise, when warranted by new circumstances, but also the normative principles that govern and produce the compromise is one of the strengths of deliberation. By probing, uncovering, and broadening what we hold deeply, e.g., customary practices, traditional views and fundamental truth-claims, democratic deliberation can lead to a revision and/or rejection of these.

But there is a downside: the strength of deliberation hides its weakness. Given the shadow of tomorrow, i.e., the knowledge that a compromise today may very well be revisited in the future, participants will have to take into account, which may include the need to kowtow to, the views of the powers-that-be who are usually conservative elders and very often they insist on preserving traditional practices and time-honored institutions that benefit them mostly, i.e., the status quo. Furthermore, democratic deliberation involves conducting negotiations in good faith, which in practice often include trials and errors, false starts and missteps, and overcoming these. As a result, the final compromise tends to be narrow in scope. In fact, decades of scholarship have showed that democratic deliberation leaves the wider authority structures intact because the primary interest of the participants lies in the process of deliberation within deliberative forums (Pateman, 1970: 13, 26, 42-44; 2012: 10). Hence, the purview is very often delimited.

Now, defenders of the existing approaches might argue that

[29] The principles of non-domination and political equality have been shown to be impractical. See, for example, the criticisms recently summed up by Hayward (2011: 476-477).

the focus so far has been on mishaps and failures. Given how the critic is fixated upon loopholes and misapplications, as opposed to the proper working of these approaches, the criticism is skewed. That is, the critic has all but ignored the successful cases and the best practices.

Two issues are brought forward. The first is that by attending to the specificities of local contexts democratic deliberations can successfully resolve cases of multicultural accommodation, including some cases of VAW. In response, it will be argued that success on this front does not add value, because context-sensitive solutions worked up from democratic deliberation do not mark an appreciable improvement upon context-insensitive solutions. The second issue concerns the best practices. It will be specified that the policy implications of these approaches may in principle neglect, and have indeed neglected in one case, the interest of personal autonomy. What ends up being promoted in this case, and possible future cases, is the opposite: the effect of temporary protection of a life of dependency might result in the corrosion and, if left unchecked, the permanent loss of individual agency. This is a major weakness; an alternative ought to be attempted.

First, concentrating on the oft-cited cases, let us review the solutions to the cases of honor killing, forced marriage, female genital mutilation, and the wearing of headscarf, sometimes called veiling.[30] Consistent with the line of inquiry that Okin initiates, the question is: whether, and *under what context*, would women—especially young women—from ethnic cultural backgrounds be willing to express their views about these cases (2005a: 85)? At minimum, a condition under

[30] These are some of the "twelve practices" that "have aroused different degrees of public concern in recent years," as catalogued by Bhikhu Parekh (2006: 264-265). For a discussion of other practices that include those found in the first nations of Canada, ethnic groups in Britain, and tribal peoples of South Africa, see Deveaux (2006: chaps. 5-7). For a discussion of the practice of sati, the divorce case of Shah Bano, and arranged and forced marriages in Britain, see Mookherjee (2009: chaps. 1-3). For a discussion of the "cultural defense" cases, the Santa Clara Pueblo case, and the Mormon polygamy cases, see Song (2007: chaps. 4-6).

which young women from ethnic groups and representatives of liberal-democratic states should deliberate is the condition of being free from manipulation and/or coercion, physical or psychological. Under such condition, what emerges from democratic deliberations will most likely be the genuine views of the participants. Setting aside for the moment the imposed practice of veiling,[31] with regard to honor killing, forced marriage, and female genital mutilation, once released from the clutch of their group and social, familial, and moral pressure of elderly women and men, it is hard to imagine that young women would consent to honor killing, forced marriage, and female genital mutilation. Now there might be a few exceptions (Shweder, 2002), but it is nigh impossible that young women *en masse* would want to maintain the practices of honor killing, forced marriage, and female genital mutilation when these social practices will most certainly mean death, thwarted desires, and unfulfilled lives, respectively. And if by—some—chance should some young women have positive views about these practices, virtually no liberal-democratic state would sanction them, say, by codifying these practices as legally permissible. In short, there appears to be little to no work done by attending to local contexts in these cases such that the outcomes of context-sensitive and context-insensitive solutions are basically indistinguishable.

With regard to veiling, the controversy has largely been surrounding the ban, most notably, by the French state in public

[31] I have examined the 2004 French ban (On, 2006: 185-190). Below I shall discuss the involuntary (imposed) practice of veiling, or wearing the headscarf, in France only. Now in and outside of France, veiling may or may not entail coercion. If it does, the question becomes whether the sort of coercion applied qualifies as VAW. Sometimes, "coercion" may take the form of peer pressures or obedience to family members, very often the husband, which may be less than an entirely free choice, but not necessarily qualified as a form of VAW. It is impossible to know *a priori* since some Muslim women have testified that they themselves choose to wear the *hijab*, or the *burqa*, or the *niqab* in keeping with their conceptions of a requirement of their faith.

schools system.[32] The French ban, let us recall, was enacted after consultations with many personalities during which sensitivities were shown to different traditions and religions. "Significantly," as Anne Phillips recounts, "the [Stasi] commission [in charge of listening to the many voices on this issue] did not recommend a similar ban for universities" (2007: 118). So what was put forth as policy prescriptions did not cover the wearing of headscarves, large Christian crosses, the Jewish yarmulkes, or the Sikh turbans beyond the confines of public schools. This difference of treatment "reflects the view that adults should be assumed to know their own minds" (118). University students, but not school children, are perfectly entitled to wear headscarves and other religious dress. From one perspective, then, in terms of context-sensitive solutions, what was proposed before the ban is consistent with what is actually enacted by the ban, namely, that children and adults be treated differently. Thus, for this contentious case, working out a solution that is contextually wise and deliberative-democratic has not yielded an appreciable improvement upon the known and common legal practice of most liberal democracies. It has only reinforced the status quo.

Second, regarding the best practices, democratic deliberation's most attractive feature seems to be that it confers the mantle of legitimacy[33] on the solution generated by all-inclusive discussions that attend to the specific details on the ground. Yet, for scholars like Okin who prefer "democracy over liberalism" (2005a: 87),[34] this feature

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32 For a particularly thorough examination of this case, see Laborde (2008).

33 Two specific arguments are advanced. First, deliberation serves to ensure that women's interests are "fully represented" (Okin, 1999: 24). Second, by attending to women's voices, the state shows "respect" to some of the most vulnerable members of society and it encourages democratic, sensitive, and less dogmatic solutions (Okin, 2005a: 86). On how legitimacy is sustained, see Deveaux (2006: 209). But legitimacy is played down in the alternative approaches of domination minimization (Lovett, 2010); exit option (Kukathas, 2003: 93-103); autonomy-enhancing education (Laborde, 2008: 116-124, 157-161). For reasons of scope, I set these alternatives aside.

34 Okin's account is based upon Monique Deveaux's preliminary account. For my discussion of this traditional practice of polygyny, I draw upon Deveaux's

has in fact wound up giving sustenance to a traditional practice, an age-old institution that preserves the subordination of women. In particular, Okin endorses polygyny for "the women of various South African peoples" (88); polygyny is showed to be supported by participants of democratic deliberations for "pragmatic, largely economic reasons" (88), which turn out to be financial "protection" for vulnerable women and dependent children.[35] But this solution ends up perpetuating rather than mitigating dependency. In so doing, this sort of protection can corrode and truncate individual agency once we realize that the continuation of this tradition of polygyny holds out little more than frustrated ambitions and unfulfilled lives for young, ambitious women (wives) whose interests in life might include, and for some probably do include, living independently and pursuing interests other than supporting husbands and raising children. Let us recall that these interests form the cornerstone of the personal autonomy argument that Okin herself once defended: some women might "choose to live independently of men, to be celibate or lesbian, or to decide not to have children" (1999: 14).

The riposte from defenders of the contextually complex and democratic-deliberative approaches might be along this line: "One should not lament solutions that reinforce the status quo. Deliberative-democratic solutions are by nature emergent from imperfect but viable compromise. Successful resolutions of some of the most contentious cases of the multicultural dilemma, which overlap with some cases of VAW, stand in contrast to dogmatic, even doctrinaire, application of equal rights. A single-minded defense of autonomy, as if it were the only value worth defending, speaks ill of liberalism, e.g., its impoverishment. Some of our most important and enriching relationships such as friendship, romantic love, and family relations put us at risk of painful loss, personal

completed study of the outcome of the reform of customary marriage in South Africa.

35 The President of South Africa Jacob Zuma is a polygynist; "South African President Zuma Marries for Sixth Time" (Herskovitz, 2012).

sacrifice and sometimes even grief and anguish. But the possibility of such an outcome does not mean we ought to abstain from cultivating social bond and instead live in isolation. To write off comprehensively these forms of human relationships is a fantasy, so too is maximal autonomy. As Kwame Anthony Appiah has recently argued, autonomy can also be exercised by assuming a role of servility and submission (2005).

> With regard to the specific case of the institution of polygyny, the compromise of granting it protection is 'temporary.' Protection in this form, which is worked up from democratic consultations with group members, especially young women, is revisable and 'insisted upon only for the purpose of discovering the views/positions of the more vulnerable, normally less empowered, members of the group' (Okin, 2005a: 87). This democratic solution stands in contrast to the 'liberal solution' in which the state imposes equal rights on everyone, 'even for those who would abjure the rights for themselves.' The liberal solution has troubling implications; by mandating the same treatment for all, the state shows neither sensitivity nor sympathy to the claims of individuals who value their memberships in ethno-cultural and religious groups.[36] And here we have come to what ought to be the distinct advantage of the contextually wise and deliberative-

[36] United Nations documents routinely condemn the justifications of VAW in the name of culture and religion, see Women's UN Report Network (2006). Notwithstanding these documents, let me draw out some connections between certain practices, including forced marriage and polygyny, and their justifications which are often said to be found in elements of religious traditions and ethno-cultural norms. First, I know of no religion that gives justification for forced marriage. Although not condoned, forced marriage still characterizes some "cultures" in that its rationale(s) could be found in patriarchal and fundamentalist interpretations of ethno-cultural group's societal norms. Thus, forced marriage cannot be dismissed as an act that reflects nothing more than the eccentric wishes of particular fathers or parents. In forced marriage, consent is not possible at all, unlike potential partners in an *arranged* marriage where each partner can always walk away (Phillips & Dustin, 2004: 534, 537-541). With regard to polygyny, Islam allows it; its acceptance and incidence vary across Muslim societies.

> democratic solution: it draws 'attention to the context and specifics [on the ground] that the liberal solution might *neglect*.' (Okin, 2005a: 88; emphasis added)

Naturally, the state has to supply protection, especially to the most vulnerable. But what is meant and entailed by protection has been complicated by the turn to context-sensitive, democratic deliberations. It seems that this conception of protection is a bit trapped in its own conceit. Let me explain: once its conceit is examined, its limitations will be shown. The argument about context-sensitive, deliberative- democratic protection being revisable and temporary is, while attractive, less effective than it appears. This feature may be an advantage, but the downside is that one follow-up can lead to another, and another, and so on. All the while, the status quo is maintained, at least temporarily, which is exactly what transpired in the case of polygyny, the essence of which was maintained over the objections of certain feminist groups.[37] The possibility of deliberations without end, a tactic that masquerades as a principle for doing nothing, except acquiescing in "temporary" compromise, is real enough.[38]

Moreover, in this case, and possibly in future cases, the protection for vulnerable women and dependent children re-entrenches, as opposed to removes, the obstacles to a life of independence. This is something that has been obscured by the compromise agreed to by "most" participants who saw it as "a fair outcome of deliberation and negotiation" (Deveaux, 2006: 209). Financial protection maintains ties of dependency between members, i.e., wives and children, and the male head of the

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[37] Deveaux states: "[t]his case also shows that deliberation may yield outcomes with *nonliberal* features—in this case, the preservation of African customs of polygyny and bride-wealth payment" (2006: 209; emphasis original). For reason of space, I do not discuss the bride-wealth payment known as *lobolo*.

[38] Deveaux states: "[t]he outcome of this particular policy challenge was legislation that reflected an imperfect but viable compromise, one that can and *probably should be renegotiated in the future*" (2006: 211; emphasis added).

polygynous family in this way: the former knows their livelihoods and fortunes are dependent upon the goodwill of the latter. Dependency, as Quentin Skinner explains, need not be trafficked under the guise of protection, but the mere knowledge that we are at someone's mercy is enough: "Knowing that we are free to do or forbear only because someone else has chosen not to stop us is what reduces us to *servitude*" (2002: 248; emphasis added).

Furthermore, completely obscured by the democratic deliberations is the phenomenon of adaptive preferences: rationalization and internalization of the destructive norms and the injustices of patriarchal family system.[39] It is one thing for women as wives to submit to the husband and acquiesce in the material and epistemic[40] barriers designed to maintain polygyny. It is quite another to do this when the individuals in question are children. In spite of the all-inclusive nature of democratic deliberation, the outcome tends to be biased toward the claims and desires of the present generation: the welfare of the next generation is largely neglected. However short-lived the protection for polygyny turns out to be, the effect looms large over the children's "right to an open future" (Feinberg, 1992). Cumulatively, then, tallying up the limitations and weaknesses discussed thus far, the picture that comes into focus suggests that polygyny might be a form of VAW—perhaps the most insidious yet! The reason is: the mantle of legitimacy is conferred upon the protection for it, as emergent from democratic deliberations that attend to the embedded details of the case. All this makes the practice of polygyny even more intractable.

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[39] "Overrid[ing] the voluntary preferences of many actual women and men" may be justified (Levey, 2005: 141). See also Chambers (2008: chap. 5); Friedman (2003: chap. 7).

[40] Epistemic barrier may include "false consciousness" in which people, for example, members of a polygynous family lack awareness of their own dignity. "People can be manipulated, controlled, or conditioned softly and subtly, or even invisibly . . . [to the point where] they may even find pleasure or numerous benefits in their situation, and feel grateful to those who rule them paternalistically" (Kateb, 2011: 19).

Instead of working to uncover, and possibly prevent, forms of VAW, especially those deeply embedded in systems of kinship and traditional practices, the legitimacy of democratic deliberation has been co-opted by the powers-that-be. Thus, it is argumentatively sound that some women did in fact reject protection for polygyny (Deveaux, 2006: 209)—and ought to reject it, again, in the future.

IV. An Alternative: The Policing Approach

As prelude, let me summarize the shortcomings of the existing approaches. Seeing these and where they are located should point to the direction in which an alternative approach ought to advance. Especially germane to an alternative approach are these three issues: (1) special protections that can often give, and in practice have given, sustenance to patriarchal institutions, such as polygyny, (2) implementations in terms of legal enforcements of these special protections that tend to marginalize the protections for women, and (3) police enforcement of domestic laws. Defenders of the existing approaches like Okin have captured the first two elements, but not the third. Okin's interventions and like-minded scholars' are mainly concerned with illuminating and arguing for the abolishment of unjust power structures and related social and political institutionalizations. In this regard, patriarchal ideations, practices, and traditions are roundly criticized. The argument about how institutions of patriarchy can often be given sustenance by the enforcement of special protections is—at root—based upon empirical findings that suggested the commitment to enforcement of the special protections for groups had weakened the commitment to enforcement of protections for women. This occurred, for instance, when more resources were given to the former such that the latter became for all practical purposes undervalued (Consider, again, the Bangladeshi example cited earlier). Clearly, this is a powerful argument, one that has recently catalyzed some of the research on feminism, multiculturalism, and

cultural justice and sexual justice. But researchers within this overlapping, specialized area have tended to gravitate toward a type of all-inclusive framework within which the special (embedded) protections might be properly configured, i.e., with legitimacy and varying degrees of sensitivity to local contexts by relying on democratic deliberations. Now little has been said about the law[41] and police work, especially the exemplary cases, where police enforcements of the special protections within circumscribed remit do *not* necessarily undermine the enforcements of protections for women.

To be sure, the ways in which the contextual protections served to give sustenance to institutions of patriarchy, such as polygyny, applied within a number of contexts only, not across the board. However, the thrust of the argument is that in many situations that had been documented, if not sensationalized, enforcements of these protections had vitiated enforcements of protections for women. Taking this point at face value, it seems to me, Okin's and later scholars' range of considerations is too narrow, delimited to a relatively small number of oft-cited cases;[42] in so doing, it has obscured situations that may not fall within that specific purview, for example, local contexts where enforcements of special protections do not erode enforcements of the protections for women but the other way around: public safety, awareness of and sensitivity toward women's rights as human rights have fostered innovations in police enforcement of protections for women, especially from VAW. Moreover, for the moment, let us assume the worst-case scenario where *in every context* the police enforcement of special protections is always translated into lack of police enforcement of the protections for women. Even in such circumstance, that sort of situation does not capture the concept of police enforcement in its entirety. That is, the idea doing most of

[41] Notable exceptions include Eisenberg (2003); Merry (2006: chap. 6), where the emphasis is mostly placed on the process of mobilizing the victim's consciousness.
[42] See footnote 30 above.

the work in the argument about how special protections could serve, and indeed had served, in a number of contexts to maintain institutions of patriarchy, and the idea doing the work in the counter-factual scenario, is to equate the concept of police enforcement with gross misconduct, widespread corruption, and structural failure that are typically found in the worst practices of policing. But nothing has been said about the best practices. And here, I gather, is the direction toward which the remedy for the weaknesses and the limitations discussed thus far should aim, i.e., in the direction of preventing VAW with the finest innovations, the most exemplary cases of police *enforcement* and the law. As will soon become clear, the kind of policing strategies and legal measures being commended here need not be specific to any country or society. In fact, they are generic. Should they be put into effect, namely, become enforceable, they must be open to (further) innovations by, notably, the police. Now, needless to say, those innovations ought to be consonant with the country's constitutional structure and legal system.

That said, I now discuss cases from France, England and Wales, the United States, Scotland, and the United Kingdom. Then, further below, I shall propose what ought to be a preliminary account, an emergent approach toward prevention of VAW that ought to be standardized by and shared with police forces everywhere as a concrete step to enforce women's rights as human rights. First of all, preemption has to be a component, if not the concept, of prevention. In this regard, the measures put into effect by the government in France and the governments in England and Wales are especially significant: potential victims have recourse to early police intervention and the information necessary to escape an abusive situation *before* the phenomenon of VAW occurs. In so doing, these laws and practices have given teeth to preemption.

The 2010 French law has made "psychological violence,"

namely, "repeated" verbal abuse that degrades a partner's dignity[43] or undermines a partner's physical or mental health an offense punishable by up to three years of jail time. As a result, this law has created what might be considered a tripwire that can trigger police intervention. The goal is to preempt acts of physical violence by having police intervention in a timely fashion to stop them before they occur. In particular, this law targets psychological violence in the household that is often manifested in terms of abusive words and gestures. Debated and enacted within the context of "a general campaign," this law is the outcome of considering the phenomenon of VAW to be "the great national cause."[44] The logic behind the French law posits that "psychological violence always precedes [physical] blows" (Davies, 2010). Thus, before physical strikes are landed, victims have recourse to early intervention.

Along the same line of taking preemptive actions, governments in England and Wales have implemented a scheme that would disclose people's history of domestic violence.[45] The English and Welsh law provides information to people *proactively* so they may make informed decisions about a partner and escape if necessary. Two rights are created. The first is the right-to-ask, which can be triggered when people apply to police for information on a partner's history of abuse and violence against women. The second is the right-to-know, which can be triggered when police take the initiative to tell would-be victims the information in prescribed circumstances. Naturally, before any disclosure is made, strict precautions must be taken in order to safeguard all the parties' civil rights. A panel of police, probation services and other agencies

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43 A discussion of the individual's dignity and equal status is found in Kateb (2011: chap. 1).

44 Nadine Morano, then minister for family affairs (Rotman, 2010). Translation mine. According to the official data on domestic violence, in 2009, on average one woman dies every two and a half days in France (Conseil National des Femmes Françaises, 2010).

45 Officially known as the Domestic Violence Disclosure Scheme, it has been rolled out across England and Wales on International Women's Day (Topping, 2014).

will check every request to ensure it is necessary. Then, trained police officers and advisors would provide support. Like the French law that enables people to receive timely police intervention so as to preempt the occurrence of VAW, the purpose of this English and Welsh is to ensure that the police are "doing all they could to protect victims and the public from dangerous people who had repeatedly shown violent tendencies" (Travis, 2009), such as going from relationship to relationship and serially perpetrating abuse and violence against women.

Barring co-habitation in the victim's place of residence, which would be contrary to standard police practices, as well as unconstitutional in liberal-democratic states, the next best strategy seems to be deterrence, i.e., measures that send consistent signals to the perpetrator with the clear intention of averting the phenomenon of VAW. In this, then, deterrence should be the second component of prevention. As implemented by the police department of New York City, officers tasked with handling domestic violence cases carry out these assignments: make patrol visits in the guise of home visits to households with past episodes, check to see if the perpetrator has returned to the victim's home, which would violate restraining (barring) order, and continue with home visits long after the conclusion of criminal case. The desired effect of these strategic visits is to make the perpetrators wary of violating their restraining orders. Upon achieving this outcome, it seems to me, the police will have brought about deterrence, but should the home visits prove inadequate as means of deterrence, a more robust response can be triggered. So far the outcomes are largely favorable; indeed, the home visits constitute "the cornerstone of [the police's] response to domestic violence."[46]

Now one might ask, how do the police determine which households to patrol?[47] Behind the precautionary home visits is the

[46] Chief Kathleen M. O'Reilly, head of the New York Police Department's domestic violence unit, cited by Goldstein (2013).

[47] This paragraph is based on the information reported by Goldstein (2013).

"high propensity" list. It indicates which households the police believe are most at risk of further abuse and violence. This list is generated by three sets of input: (1) a computer program scans complaints for worrisome terms like "kill," "suicide" and "alcohol." Then, it helps the officers to prioritize the more combustible cases. (2) Each time a domestic violence case is opened, all previous reports relating to that victim are automatically forwarded to the assigned officer. (3) "The officers' gut instincts and the fear levels of the victim" are factored into the decision of whom to place on the high-propensity list.

It appears that the New York City police department lacks a coordinated system of analysis capable of determining which perpetrators are likely to strike again. If this is so, then the police force in Strathclyde, Scotland may have the answer. By bringing together local housing authorities, non-police agencies to gather community-led intelligence about the perpetrators, and the police force's own surveillance team, the Strathclyde force has been able to check (rein in) and stay ahead of some episodes of VAW. In particular, the Strathclyde domestic abuse unit has devised "predictive analysis" that includes: identifying events like football matches during which incidents of domestic violence have been known to peak, identifying individuals who are likely to commit acts of violence during the matches, and then showing up at their homes. The results are promising; within the police force's area, the domestic abuse unit has "halved the domestic violence rate" from eleven homicides to six (Hirsch, 2010). Thus, predictive analysis as developed by the Strathclyde police force is an important tool.[48] Indeed, as an element of the best of policing, it ought to be a component of prevention of VAW. Let us make it the third, and last, component.

[48] Predictive analysis dovetails with "predictive policing," which has been experimented with by dozens of police departments across the U.S.A. (Eligon & Williams, 2015). For an in-depth report of New Haven's sexual-assault unit that deploys "better, more responsive policing," see Dobie (2016).

A question that suggests itself is: does this policing approach *work*? All the arguments about the components of prevention remain abstract if no actual implication follows. This account is a thought-experiment, and nothing more, if the components do not cohere in any way. To answer this question, let me turn to a case in which the nuts-and-bolts of prevention come and work together; this case demonstrates the effectiveness of taking proactive measures consistent with preemption, deterrence, and predictive analysis. In the United Kingdom, the Forced Marriage Unit has the special remit to rescue girl-children and young women who are forced into marriage.[49] The unit's responses include: "confiscate the passports of potential victims," in essence, to preempt forced marriage by withholding the means that permits it, and "compel family relatives of the victim to tell authorities where the young women and girl-children have been taken if they are no longer in Britain," which draws upon the right-to-ask and the right-to-know, in addition to acting upon the results of predictive analysis. These are extraordinary orders, given for the purpose of addressing the problematic of forced marriage which the girl-children with some as young as nine have been confirmed by United Kingdom's Ministry of Justice to have had received civil safeguards. By tailoring the remit of this unit to providing civil safeguards to children and young women who self-identify as having been coerced into marriage, the law has given special authority to this special unit, so that it is permitted to deploy unconventional practices. The results of the forced marriage unit are noteworthy: in the first year after the Forced Marriage Act of 2007 came into effect, eighty-six victims have received civil safeguards, namely, police interventions, which represent "twice the number of the [British] Government had expected to seek help."

A fair amount of empirical evidence has been provided. Let me see if it may be worked up to serve as the basis of a prototype

[49] All the information and quotes are drawn from the report by Gledhill (2010).

theory toward prevention of VAW. A basic rationale for moving from protection to prevention is this: for addressing VAW, scholarly attention has been largely centered on providing protections of one kind or another, but these arguments have important limitations, as discussed earlier, not because of the inapplicability of this concept but because of the myriad demands placed on it. By servicing multiple and competing needs of the existing arguments, which do not always have a consistent conception of protection, this concept has become a protean concept. As a result, this concept is largely ineffective and has in one case become self-defeating. Notably, protection emergent from within contextually wise, deliberative-democratic approaches aims to provide relief from economic hardship for dependent women and children. But financial protection deepens the sense of dependency that women and children have on the male head of the family. In so doing, at least temporarily, this sort of protection sustains the patriarchal institution of polygyny that ends up undermining personal autonomy. This is a limitation. Furthermore, economic protection does not provide means of escape, should dependent women and children become victimized by the male head of the family, which is an occurrence with high statistical probability as indicated in this article's introduction. This is another limitation. Most importantly, economic protection does not advance the autonomy interest of some ambitious young women who may not find polygynous marriage an attractive option but are exposed to it—thus, under some pressure to consider it as an equal, or at least alternative, option to autonomous life. Clearly, interest in polygyny runs counter to interest in autonomy; protection for the former runs counter to protection for the latter. In this light, it seems to me, the concept of protection has been over-applied, so much that the existing approaches are beset by significant limitations.

It would be wrong to suggest that we should throw out the (protection) baby with the bathwater. The concept of protection

may be overused, but what the best laws and the exemplary practices provide, after all, is protection of a certain kind. Naturally, this sort of protection aims at making timely and early interventions so as to prevent the phenomenon of VAW. Putting things this way, and the work toward which this concept of protection is directed, it has in all but name transformed into the concept of *prevention*. Thus, drawing on the empirical evidence cited, I propose this preliminary account as alternative approach toward prevention of VAW. In piecemeal, it runs as follows:

(1) A function of the law is to protect personal autonomy. Consistent with this function, everyone may have an interest in protection that intervenes before the occurrence of VAW, which undermines personal autonomy. Protection that preempts the phenomenon of VAW, namely, protection that prevents VAW, has a legal basis. In this regard, if laws criminalizing hostile gestures and abusive speeches typically considered to be symptomatic of psychological violence, the precursors to physical violence, are not already enshrined in the state's legal code, then efforts in this direction ought to be advanced.
(2) Another way in which the occurrence of VAW might be prevented is under prescribed conditions the government should provide people with the relevant information about their partner's history of violence, so that they can leave a relationship before the phenomenon of VAW occurs. The right-to-ask and the right-to-know information about a person's past history of violence ought to be recognized, implemented, and enforced by all police departments.
(3) While the concept of prevention advanced here assigns special tasks to the police, it does not imply that all the work of deterring occurrence of VAW has to be, will be, or is indeed capable of being performed by the police. Due to finite resources and circumscribed remit, the special units have to ally with the relevant service providers, for example, non-profit, quasi-non-governmental

organizations and others. Accordingly, the police have to work with non-police agencies, such as housing authorities, to conduct reconnaissance on convicted perpetrators, and to make predictive analysis, which will generate a list of households to patrol.

(4) Along the lines of preemption, deterrence, and predictive analysis, governments and police forces everywhere now have some precise details of the (prototype) legal measures and police strategies to model after in order to combat VAW. Singly, or collectively, these proactive measures aim at preventing this phenomenon.

V. Further Issues

With these basic details in place, it might be said the cornerstone of the policing approach has been set. If so, then let me venture further and explore a couple of issues. First, a worry might be that this alternative approach has exaggerated its claims of originality by downplaying the existing multi-pronged approaches, notably, the due diligence standard, which already subsume prevention. Second, and the opposite of over-claiming, another worry might be that this alternative approach is unduly narrow in scope. Mainly confined to police-centric strategies, a wide array of concerns relating to VAW has been excluded. This is problematic, especially in regard to co-nationals with ambiguous immigrant status, for it is well-known that involving the police can often do more harm than good. Thus, in spite of making a noble effort, the police-led approach is limited.

Let's start with the first issue. I should immediately acknowledge that notions of reforming the law and the police from a want of protections for victims of "personal violence" can be traced to at least as early as the classic treatise by John Stuart Mill (1988: 33, 36-37, 86), with Harriet Taylor, whose co-authored thesis most assuredly, and most anxiously, cast a long shadow over all considerations of the oppression of women and related issues, including VAW. Seen in this light, one might argue, the originality

claims of the multi-dimensional and multi-pronged approaches may appear unintentionally or intentionally overstated—to varying degrees. Be that as it may, here is not the place to discuss the anxiety of influence (Bloom, 1997). Instead, by way of engaging in a dialogue, let me discuss the due diligence standard.[50]

In spite of having emerged from the 1993 Vienna *Declaration*, and having been adopted by other international instruments, the potential of the due diligence standard has yet to be realized. Under the obligations of this international standard, progress by the state toward the goal of eradication of VAW has been "uneven" (Ertürk, 2006: 23). The lion's share of the blame lies in the state-centric implementations of international standards: the manners in which the state fulfills the obligations of due diligence "necessarily vary according to the domestic context" (23).[51] In this light, and it is noteworthy to point out, states' efforts have been "limited to responding to violence *when it occurs*," not before the occurrence of VAW (2006: 2; emphasis added). This boils down to a failure to prevent: although prevention is the first constitutive concept of due diligence, it is one thing to incorporate this concept, but something else entirely to bring it about. Moreover, nowhere in the reports[52] on due diligence are specific details given, for example, on the sorts of concrete and practical strategies that can lead to prevention in enforceable and actualized terms.[53] In whole or in part, the reason

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[50] Comprising the four components of prevention, protection, punishment, and reparation, the due diligence standard as presented by the United Nations special rapporteur on violence against women, its causes and consequences, is "a tool for the elimination of violence against women" (Ertürk, 2006: paras. 38-55).

[51] This argument has been laid bare in section II above on major human rights approaches.

[52] The June 2015 report by Rashida Manjoo is cited below.

[53] The passage with the richest content on prevention is: "*Training and awareness-raising* programs directed at different professional groups have been developed by many States, including the development of *training materials for police*, prosecutors and members of the judiciary. States have also developed specific *training materials* on the prevention of violence against women *for health care professionals* including: doctors, nurses and social workers" (Ertürk, 2006:

is: within the framework of due diligence as international standard, not public policy, this concept of prevention has been blurred by and lumped together with other concepts, e.g., empowerment of women and victims of VAW (18-19). Such amalgamation of disparate concepts has obscured the due diligence standard's indeterminate details, lack of specificities on what (bold) policies, what (innovative) strategies, and what (best) practices may bring about prevention with the greatest potential, i.e., in genuinely enforceable terms. Finally, and most importantly, a basic assumption underlying this due diligence standard, and other multi-pronged approaches, has not been borne out by the evidence. This assumption is: by encompassing multiple concepts, these approaches suggest themselves to be theoretically rich, and theoretical richness presumes practical robustness in addressing VAW. But there are gaps between theoretical richness and practical robustness. As the latest report shows (Manjoo, 2015: 19), there are "*normative gaps* within the existing international binding legal frameworks" and "more specifically [there are] the *legal gaps* in protection, prevention and accountability with respect to violence against women" that need to be addressed (emphasis added). By advancing the policing approach based on real-life strategies, I hope, a remedy for these gaps has been presented, in particular, in the form of an approach capable of being adopted as empirically tested and sound public policy.

Let's turn now to the second issue. I have skipped over a

11, emphasis added). Based on this passage, and others whose content is less specific, it is nigh impossible to suggest (embryonic) public policy along the lines of preemption, deterrence, and predictive analysis. Another passage, under *Article I. Protection*, is: "States are required to develop *appropriate* legislative framework, *policing systems* and judicial procedures to provide adequate protection for all women, including a safe and conducive environment for women to report acts of violence against them and *measures such as restraining or expulsion orders and victim protection procedures*" (18; emphasis added). Nothing in this passage, and others, hints at an enforceable approach, such as the policing approach, for preventing VAW.

number of problems, including, but not limited to, how to subvert patriarchal institutions, empower women and victims of VAW, overcome affective dependency and victim's sense of shame and self-blame, provide aids and assistances to co-nationals with ambiguous immigrant status who are among those suffering sexual and physical violence in the hands of (ex-)boyfriends and (ex-)husbands, come to terms with the often non-coerced nature of veiling in contrast to the imposed practice that has been officially banned in France, and promote a "zero tolerance" approach to VAW. How then should these issues be addressed? There are, I gather, no easy answers.[54] But one needs to keep in mind that the policing approach, as I have presented it, is a remedy for notable gaps in the current campaign to eradicate VAW. As such, its aim is to supplement, not to supplant, the existing approaches. It does that by shining light, and building, on the innovative police-led strategies and the exemplary legal measures that the theoretical literature and the empirical findings, such as the United Nations experts,' have largely overlooked. Thus, I do not propose a be-all and end-all alternative seeking to topple the global approach; rather, I want to *couple* the policing approach *with* other governmental organizations and actors (Edwards, 2013; Hellum & Aasen, 2013), as well as civil society organizations and actors (Klein, 2012), who are certainly the best equipped to tackle all the non-police-enforcement issues.

That the policing approach is narrow in scope and piecemeal in nature should not point to its limitation but the most attractive feature: its greatest potential for success at genuinely preventing VAW. As the European Court of Human Rights has noted,[55] in

[54] Here is not the place to propose glib answer(s) to these questions; their solutions are best attempted in separate occasion(s), where the issues may be treated thoroughly. Within the scope of this article, and due to limitation of space, it is impossible to examine these subject-matters fairly.

[55] "The [European] Court [of Human Rights] does not usually refer to the term due diligence in respect of cases involving violence against women" (Manjoo, 2015: 13).

order for the state to uphold its positive obligations toward prevention of VAW, the scope of those obligations has to be specified in a way "that does not impose an impossible or disproportionate burden on the authorities and that it does not apply to every alleged risk of life" (Manjoo, 2015: 13). How fitting these injunctions are, and how neatly fitted within them, it appears, is the policing approach.

VI. Conclusion

The policing approach presented here spells out the legal measures and strategic police practices with the greatest potential to make a genuine difference in bringing about the prevention of VAW. It does not blindly follow the consensus on multi-pronged approaches, large-scale interventions, or both. It does serve as a reminder, though, that seemingly intractable global problems, including VAW, can easily divert our attention from the less grand but no less important nuts-and-bolts dynamics by which they might begin to be dealt with.

Naturally, certain caveats apply. As with all solutions, the pre-requisite political will to take seriously the phenomenon of gender violence that includes VAW must obtain.[56] That involves, for example, not playing politics with legislations that mandate and provide funding for preventative instruments such as special task forces to preempt violence against women. Outside the political sphere and the legal enforcement of political will, at the level of society-at-large, civic associations and advocacy groups of liberal democracies have the moral duty to promote and help establish the equal respect and the equal consideration of women and girl-children as society-wide norms. Notably, a constitutional equal

[56] Efforts by the newly created political party "Women's Equality," which has recruited more than 30,000 supporters since March 2015, should inspire some optimism about the British civil society's capacities to promote equality, especially gender equality (Cocozza, 2015; Smith, 2015).

rights amendment that enshrines fundamental commitment to providing proper supports to women and girl-children ought to be enacted. Beyond these broad-base societal supports, at the individual level of private citizens, a widespread view seems to be that everyone ought to have sufficient room to develop him- or herself without interference from governments or others, including having time off for personal friendship and romantic love which can serve to reduce mutual suspicion, distrust, and tendency toward violence.

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人權保障、民主審議與婦女暴力之防止

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摘　要

以強制法律來落實人權基本上涉及此一對策：透過敏銳回應在地脈絡與習俗的方式，來提供受到國際承認之人權原則所具體蘊含的保障。此一對策已然建構出主要的人權理論途徑，包括那些論及婦女暴力現象的理論途徑在內。在本文中，我試著表明：正因為採取此一對策之故，這些理論途徑大致上是無效的。尤有進者，縱使結合民主審議，如某一真實生活案例所顯示的，最後獲得落實的保障，竟是維護一夫多妻制這種固守婦女依存地位的習俗婚姻形式；在實踐上，如此的保障，因此是相當有限的。誠然我並不全盤拒絕主流途徑，但仍嘗試提出一個挽救對策，其要點是，根據作為人權的婦女權利，來重新思索婦女保障之落實所明確涉及的議論。我將揭露「執行」層面所受到的忽視。順此而進，我將把關注焦點導向一個不同的、卻時常受到漠視的婦女暴力研究策略：政策途徑。藉著逼近問題的底層，我嘗試表明，這一取代性途徑有助於達成主流途徑遠遠無法企及的目標。正如法律之先發制人與威嚇作用的最佳實踐效果，以及對此現象的預測分析所顯露的，我的提議是：前述的政策途徑存有最大潛能來對婦女暴力防止的現況，做出真正的改變。

關鍵詞：作為人權的婦女權利、保障、審議、防止、政策