

COMMENTS OF RACHAEL N. PINE*

In theory, most intrusions into the reproductive autonomy of women can be conceptualized as violations of rights guaranteed under the International Covenant on Civil and Political Rights (Civil and Political Covenant)—rights to security of the person, rights to marry and form a family, or rights to equality and nondiscrimination. Yet, full protection of reproductive rights under the Civil and Political Covenant is hampered by the fact that reproductive coercion and inequity often appears *de facto*, rather than resulting from a *de jure* act of the State, and in a subtle or invidious form. In many instances, social, economic, and cultural factors, and generally the acts of private parties, are the more pervasive and intractable violators of women's rights.

With this in mind, I have thought about the range of violations of women's reproductive rights and have tried to sketch a continuum as follows:

We see government-imposed physical force—the specter of women in China being handcuffed and forcibly placed on the operating table for an abortion or sterilization, Turkish women in government jails being subjected to virginity exams, and women being raped and impregnated by the civilian police or an enemy army in war. We also see the same sorts of very *physical* forms of violations of women's bodily integrity perpetrated by nongovernmental actors such as sterilizations done while a woman is under anaesthesia for a different surgical purpose or rape by a spouse or other private party.

We also see government laws banning reproductive health care options (such as abortion, contraception for minors, and sterilization (body mutilation laws)) and health providers failing to offer a variety of contraceptive options (e.g., offering long-term provider-controlled methods only).

We see a range of coercive government incentive programs including discriminatory subsidies (e.g., paying for childbirth but not

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abortion), pay-offs for choosing permanent or long-term methods rather than user-controlled ones, and long-range government benefits (e.g., taxes, housing, pension, etc.) that are given, taken away, or altered based on the number of children an individual has. Similarly, providers of health care, including those that are nongovernmental, have offered coercive choices (e.g., offering abortion only if a woman agrees to be sterilized) and patriarchal social and family structures offer incentives to women to have children, particularly male children.

Moving further along the continuum, we see government failure to protect women against violations of their reproductive rights (e.g., failure to prosecute rape in general or marital rape in particular) and private failure to support reproductive choice (e.g., men exercising a spousal veto over abortion, contraception, etc.).

Loosely speaking, these examples illustrate two spectrums of culpability: from the acts of government to the acts of purely private actors and from the physical violations of bodily integrity to the more indirect methods of coercion. Generally, where there is both a high level of government involvement *and* a more physical sort of coercion of reproductive choice the violation of reproductive rights will be more readily assailable under any international or national system of rights and remedies and particularly under a civil and political rights theory. This is partly because such violations resemble more traditional civil and political rights violations. Similarly, where there is a low level of involvement or responsibility by government and a very subtle form of coercion of reproductive choice, it is the hardest for women to obtain redress or even a fair hearing within the discourse or system of rights.

But in between these two extremes (such as where *either* government responsibility *or* the physicalness of the coercion is high), there are a variety of special challenges faced by human rights advocates. In these challenging scenarios, there may be a more ready legal hook or simply a greater degree of political will to find a remedy than when both factors are low. Either way, with a mixture of legal rigor, political savvy, extensive documentation, and creativity of approach, justice may be obtained for women.

But, where both government involvement and the degree of force are low, women face their greatest obstacles. In this domain, socioeconomic, cultural, and religious factors, over which government may have less direct or exclusive control, operate to deprive women of reproductive health and choice through the workings of the entire social, economic, and political fabric of society. Some of these issues are more readily addressed under the International Covenant on

Economic, Social and Cultural Rights. Others simply illustrate the limits of rights-based approaches for dealing with the subjugation of women, particularly with regard to their reproductive health and choices.

In addition to highlighting these limits, the papers in this panel also point to a number of positive strategies. These include: the importance of social and educational programs to address the violations of women's rights; the importance of conferences like the ICPD to mobilize international consensus on the applicability of human rights discourse to barriers to reproductive health and choice for women; the importance of creative approaches to locating state culpability, for example, through the interrelationship of various state laws, policies, or systems; the need to work the politics of human rights at the global and national levels such as by bootstrapping on to pro-democracy movements or laws that are passed in new democracies; and the need to build strategically towards the hard cases.

