

one-sidedly imposed on one ethnic group by another, as it was when inflicted on Muslim and Croat women in Bosnia-Herzegovina and Croatia and on Tutsi women in Rwanda. Such collective realities of group-based destruction expose the instrumentalization for acts that are part of it through which victim consent is rendered practically, hence properly legally, irrelevant.

The *Akayesu* definition is clearly well suited to addressing rapes that are part of mass group-based atrocities. Its focus on real world external rather than subjective realities also makes it more susceptible to standard forms of legal proof. For the same reasons, it is adaptable to situations of inequality outside conventionally recognized conflicts. *Akayesu* has legs, having already been incorporated into legislation in two states in the United States.⁷² Since rape can be a crime against humanity under the International Criminal Court's (ICC) Rome Statute,⁷³ targeted on the basis of sex, might the highest rape rate in the world, that in South Africa,⁷⁴ qualify? That rape becomes banal does not disqualify it as a crime against humanity—to the contrary. In light of the realism and administrability of the *Akayesu* definition, it is regrettable that the ICC codified rape for its international purposes in the chronological middle of the tribunals' process described here, taking one page from *Akayesu*'s invasion of a sexual nature under coercive circumstances and one from *Furundzija*'s body parts without consent,⁷⁵ straddling the definitional difference rather than resolving it. Although the ICC's elements lean toward force and coercion in defining sexual assault crimes, the door that *Akayesu* shut so decisively and appropriately was left once more ajar by its evidentiary code,⁷⁶ through which rapists might walk away following rapes in international conflicts that show no sign of stopping.⁷⁷

Pornography as Trafficking

In material reality, pornography is one way women and children are trafficked for sex. To make visual pornography, the bulk of the industry's products,¹ real women and children, and some men, are rented out for use in commercial sex acts. In the resulting materials, these people are then conveyed and sold for a buyer's sexual use. Obscenity laws, the traditional legal approach to the problem, do not care about these realities at all. The morality of what is said and shown remains their focus and concern. The injuries inflicted on real people to make the materials, or because they are used,² are irrelevant to what is illegal about obscenity.³ Accordingly, the trafficking constituted by the exhibition, distribution, sale, and purchase of materials that do these harms is ignored. Laws against sex trafficking, international and domestic, criminal and human rights laws—specifically their concept of commercial sexual exploitation, around which international consensus is growing⁴—recognize the realities of the global sex industry increasingly well. These provisions are more promising for addressing pornography than has been recognized.

Realities and Concepts

Pimps are typically paid for the sexual use of the real people who are bought and sold to engage in the sex acts for money that are what most pornography is made of. The pornographers then are paid to repimp these people in the pornography itself, producing sexual pleasure for the con-

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sumers and immense profits for the pornographers, which both seek to repeat. From the standpoint of the person used to make the materials, the image of the person is still that person. And the sexual use of the person in the materials by the consumer is a real, actual, sexual act for the user. When Linda Boreman said, "every time someone watches that film, they are watching me being raped,"⁵ she did not say they are watching the rape of "an image of me" or "a representation of me" being raped. If these were anything but sex pictures, the rights of the people in them over the materials made by their use would be legally recognized.⁶ Defamatory lies about them in pornography, for example, destroying their reputations, would be actionable.⁷ Knowing the pornography of you is always out there is a particular kind of trauma.⁸

Although legitimate corporations increasingly traffic the materials, the pornography industry, like other means of human trafficking, remains at base an organized crime industry built on force, some physical, some not.⁹ As with all prostitution, the women and children in pornography are, in the main, not there by choice but because of a lack of choices. They usually "consent" to the acts only in the degraded and demented sense of the word (common also to the law of rape) in which a person who despairs at stopping what is happening, sees no escape, has no real alternative, was often sexually abused before as a child, may be addicted to drugs, is homeless, hopeless, is often trying to avoid being beaten or killed, and is almost always economically desperate, acquiesces in being sexually abused for payment even if in most instances it is payment to someone else. Many are children; most enter the industry as children.¹⁰ Most pornography is, in pure John Millerese, "made by slaves."¹¹

Need it be said (it still seems to), the individuals so used say they usually feel nothing sexually.¹² Most of the time, the sex they are shown having is with someone they have no sexual interest in, doing things that do nothing for them sexually. The pleasure is routinely faked. They certainly never meaningfully consent to be intimately accessible to the thousands or millions of men they are then sold to, for money to others, over years and miles, as and for sex. Consent to sex is intimate, not transitive. Yet every step in the making and use of these materials is what is defended as sexual freedom, referring to the people in it. Women must be the only group, and sex the only means, in which a form of oppression is openly defended, not to mention sold as pleasure and even accepted by some of the oppressed, as a means of their liberation.

The force it took to make the pornography is shown or not, depending on the taste of the consumer. *Deep Throat* and *Playboy*¹³ do not show it,

Extreme Productions does.¹⁴ Whether the material itself shows less aggression or more, from the vulnerability of sexual body parts in the glossy men's entertainment magazines through the sexual servicing in the "fuck and suck" genre to the torture of sadomasochism and the murder of snuff, just as throwing money at victims of sexual abuse does not make it a job, taking pictures of it does not make it freely chosen or desired.¹⁵ It makes it pictures of paid rape—rape in the real, if regrettably seldom in the legal, sense.¹⁶

No amount of fancy footwork built into one phony distinction after another in the law and public discourse on this subject can alter these realities of the pornography industry. But these distinctions do seem to confuse many people who cling to bright-line binaries that lack correlates in life. To distinguish pornography from prostitution, for example, California courts notwithstanding,¹⁷ is to deny the obvious: when you make pornography of a woman, you make a prostitute out of her. In the immortal words of one trick, "Yes, the woman in pornography is a prostitute. They're prostituting right before the cameras. They're getting money from a film company rather than individuals."¹⁸ It is also to deny the plain fact that pornographers are pimps, third-party sex profiteers, buying and selling human beings to johns, who are consuming them as and for sex. In some instances, women are directed to perform sex acts by a john from a computer terminal in real time.¹⁹ So what is it, prostitution or pornography? That the sexually used are transported on paper or celluloid or digitally may make the transaction seem more distanced, but it is no less real a commercial act of sex in which sex from one person is exchanged for money from another for any of the people involved. As a report of the UN Secretary-General on victims of crime, discussing exploitation of prostitution and trafficking in women, put it in 1985, "It is hard to make distinctions (if any should be made) between prostitution and other sexual services, including those of the pornographic media."²⁰ Sex from one person is exchanged for money from another, the media being the go-between, the trafficker.

Although the degree of force applied varies from one situation to the next, the distinction between forced prostitution and "voluntary" prostitution²¹ has similar dimensions of unreality. The point of the distinction is to hive off a narrow definition of force in order to define as voluntary the conditions of sex inequality, abuse, and destitution that put most women in the sex industry and keep them there. By the same token, to analyze so-called voluntary prostitution as "work" and trafficking/forced prostitution as "crime"²² is, among other things, to decide that there is a class

of women to whom human rights laws against sexual harassment at work—and other laws inconsistent with the realities of force inherent in being prostituted²³—will not apply. If this is work, what can it mean to prohibit sexual harassment at work when the sexual harassment is the work? This is a form of sex/violence distinction, two things that industry of sexual violation makes into one thing.²⁴

To distinguish between children and adults—on the assumption or with the effect of suggesting that child pornography is a serious problem while pornography of adult women is not or is less so—lacks foundation in the real world as well. The majority of adults enter the industry as children and are exploited in ways that do not disappear when they reach the age of majority, including through materials in which children are used as women and women infantilized as children. To purport to address child sexual exploitation while doing nothing effective for adult women is to suppose that an age line is enforceable on, or respected by, an industry that is organized to exploit the powerless, and to accept the false notion that women become equal at age eighteen. For example, a law that invents scienter requirements²⁵ to regulate an industry that traffics fake IDs along with its children blinkers the fact that in this world, children and women are not two distinct groups of people. They are the same people at two increasingly indistinguishable points in time. Requiring that a john *know* that the person he uses is a child in order to be convicted also effectively drops the age of consent for use in pornography to puberty. Children will never be protected until adult women have rights that are respected.

Finally, building on these distinctions, to distinguish trafficking from prostitution, as if trafficking by definition is forced and prostitution by definition is free, is to obscure that both use money to compel sexual use, that the whole point of sex trafficking is to deliver women and children into prostitution, and that not crossing a jurisdictional line does not make the unequal equal or the forced free. Jurisdictional lines are drawn according to men's politics with other men. Being taken far away can make exit from a condition of prostitution more difficult, but being used for sex is being used for sex. Trafficked or local, the buyers of prostituted women do not much care, making this distinction irrelevant from a demand standpoint except for the exotics market. It is also irrelevant from the supply standpoint. Women can be enslaved without ever leaving home.

Thus the pornography industry, in production, creates demand for prostitution, hence for trafficking, because it is itself a form of prostitution and trafficking. As a form of prostitution, pornography creates demand for women and children to be supplied for sexual use to make it, many of

whom are trafficked to fill that demand. The pornographers, then traffic these same people, in turn in various mediated forms.

Pornography then further creates demand for prostitution, hence for trafficking, through its consumption. Consuming pornography is an experience of bought sex, of sexually using a woman or a girl or a boy as an object who has been purchased. As such, it stimulates demand for buying women and girls and boys as sexual objects in the flesh in the same way it stimulates the viewer to act out on other live women and girls and boys the specific acts that are sexualized and consumed in the pornography. Social science evidence, converging with testimonial evidence of real people, has long shown the latter.²⁶ As observed by T. S. in the hearings on the antipornography civil rights ordinance that Andrea Dworkin and I organized for the Minneapolis City Council at their request: "Men witness the abuse of women in pornography constantly, and if they can't engage in that behavior with their wives, girlfriends, or children, they force a whore to do it."²⁷ On the basis of the experiences of a group of women survivors of prostitution and pornography, she told how pornography was used to train and season young girls in prostitution and how men would bring photographs of women in pornography being abused, say, in effect, "I want you to do this," and demand that the acts being inflicted on the women in the materials be specifically duplicated.²⁸ Research by Mimi Silbert and Ayala Pines on prostituted women in San Francisco also reported that the women spontaneously mentioned being raped by johns who said, essentially, "I [have] seen it in all the movies . . . You know you love it," referring to a specific pornography "flick."²⁹ Melissa Farley and her colleagues found that 47 percent of prostituted women in nine countries were upset by someone asking them to perform a sex act that had been seen in pornography.³⁰ Forty-nine percent reported that pornography was made of them in prostitution.³¹ Mary Sullivan's research in Victoria, Australia, where prostitution has been legalized for a decade, reports women describing pornography videos running constantly in brothels—to set the tone and mood, apparently—making safe sex more difficult.³² Pornography is documented to create demand for specific acts, including dangerous and demeaning ones inflicted on prostituted people, as well as for bought sex in general. If this is right—and Melissa Farley's preliminary results show that it is—the more men use pornography, the more they use prostitutes.³³

Most denials of the role of pornography in these dynamics come down to some version of a mind-body distinction—as though people, especially people who can get away with it, don't do what they want to do, and as though sexuality is neither body nor mind when it is both. This denial

runs under the rubric of "fantasy."³⁴ It plays out in distinctions especially ubiquitous in the United States between pictures and words, thoughts, attitudes, and speech, on the one hand, and acts, practices, policies, and crimes, on the other. None of what I have described here is limited to the mind of the consumer. It takes acts to make the pictures and words; the so-called thoughts in pornography are predicated on practices and reproduce those practices through its consumers; the attitudes the pornography generates are lived out on women, including by being institutionalized in laws and policies; and the so-called speech, the materials themselves, is actually a product of crimes against women and children, produces crimes against women and children, and is in itself one way that sex-based discrimination is socially practiced.

One distinction in these dynamics does make some sense. Pornography, I think, is supply-driven. Men do not want it until they see it. The more they use it, the more they want to use it. The desensitization and addiction so well documented in its users³⁵ puts their sexuality under the control of pimps. (One waits for them to resent this. It severely limits their autonomy even if it builds their power.) Using pornography is like drinking salt water. It looks like the real thing but isn't; the more you drink, the thirstier you become. Pornography creates demand for itself and for prostitution (of which it is one form). In a real sense, men don't use it because they want it, they want it because they use it; the more it is there, the more of it they get, the more of it they want. This makes pornographers pushers.

Prostitution, on the other hand, I think is meaningfully demand-driven. Women are in prostitution because men want to use them that way, pure, in this part of the sexual economy in which women and men are already otherwise socially organized. If men want pornography because it is there, prostitution is there because men want it. Pornography helps create that desire. So the relation between the two is ultimately circular: pornography supplies the objectified sexuality of male dominance, both creating and filling the demand for the trafficking that is prostitution, providing a pleasure motive for johns and a profit motive for pimps for paid rape.

Pornography Under Criminal Antitrafficking Laws

Under existing law, these realities are better reflected in antitrafficking laws, and in some human rights laws, than elsewhere. The 1949 Convention (which the United States has not ratified),³⁶ binds states parties to punish "any person who, to gratify the passions of another . . . (2) exploits the

prostitution of another person, even with consent of that person."³⁷ To make and sell pornography is virtually always to exploit the prostitution of another person. Pornographers are almost all third-party sellers of the prostitution of other people; few sell pornography of themselves. Under the 1949 law, "consent," usually being paid or someone else being paid (query again if either is what consent to sex means in real human language),³⁸ expressly does not mean that the person is not being exploited.

The 1949 Convention was intended to cover the gap in existing law on "the traffic in women of full age," as remarks by the Secretary-General put it at the time, "with their consent, even if the victims were not taken abroad."³⁹ No mystification about age, consent, or jurisdictional lines here. This treaty came into force before pornography was as overwhelmingly the traffic in persons that it is today, with the ascendancy of visual technologies, requiring new women and children daily, dominating cognitively and culturally as well as sexually and economically. Yet even then UNESCO glimpsed pornography's role in trafficking in persons. The travaux préparatoires show UNESCO's regret at pornography's omission from the Convention. Using the language of the time, UNESCO proposed restricting, for purposes of prevention, "the circulation of obscene publications or the public display of obscene works through the medium, more particularly, of the cinema, the radio or television."⁴⁰ In the context of prevention, UNESCO grasped the pornographer's role in creating demand for prostitution: "Suppress the demand, and you suppress the supply and the part played in that supply by the intermediary, who is a corrupted corrupter."⁴¹

The abolitionist rather than prohibitionist framework of the 1949 Convention provides a highly congenial approach to the elimination of pornography understood as a form of sexual exploitation. Prohibition criminalizes everyone involved. Abolitionists saw that this could be counterproductive as well as unjust, even discriminatory against the victims.⁴² The travaux of the 1949 Act disclose a telling decades-long dispute over whether the term "for gain" should be included in the definition of trafficking. Those opposed to including this term opposed prosecuting the victims, the prostituted people, and sought instead to reach the entire range of their exploiters.⁴³ With "for gain" not being included, a space for criminalizing demand—both that of pornography pimps, who demand women and children from lesser pimps, and the ultimate demand by the johns who consume women and children in pornography, providing the profit motive for their sexual exploitation—was opened under international law.

Advances in the international laws against trafficking have built on this foundation.⁴⁴ Most important is the Palermo Protocol's 2000 definition of trafficking in persons:

"Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include . . . the exploitation of the prostitution of others or other forms of sexual exploitation . . .⁴⁵

Pornography is clearly covered as sex trafficking under this definition. For pornography, women and children are recruited, transported, provided and obtained for sex acts on account of which, typically, money is given to pornography pimps and received by lesser pimps. Then, each time the pornography is commercially exchanged, the trafficking continues as the women and children in it are transported and provided for sex, sold and bought again. Doing all these things for the purpose of exploiting the prostitution of others—which pornography intrinsically does—makes it trafficking in persons.

Along similar lines, the U.S. Protect Act 2000 defines sex trafficking simply as "the recruitment, harboring, transportation, provision or obtaining of a person for the purpose of a commercial sex act."⁴⁶ Pornographers participate in the commercial flow of these acts to make pornography. Often they do them directly themselves, then again when they sell the products. A "commercial sex act" is defined simply as "any sex act, on account of which anything of value is given to or received by any person."⁴⁷ That is, it is prostitution, through which commercial pornography is customarily made. When a john buys pornography, it is for sex.

The U.S. Department of State's model law includes a definition of trafficking for purposes of exploitation that defines exploitation to include "commercial exploitation, including but not limited to pimping, pandering, procuring, profiting from prostitution, maintaining a brothel, [and] child pornography."⁴⁸ It does not explain why only child pornography, but it is only an "including," so adult pornography is not precluded. It does include the Palermo Protocol's definition of sex trafficking, encompassing not only force, coercion, abduction, fraud, and deception, but "abuse of power or of a position of vulnerability, or by the giving and receiving of payments or benefits to achieve the consent of a person having control over another

person."⁴⁹ The latter is not limited to children, nor is pornography made by these means limited to children. This law squarely describes how most pornography is made, defining pornography as a form of sex trafficking. The U.S. Presidential Directive on the subject mentions pornography explicitly, saying that "trafficking in persons refers to actions, often including use of force, fraud or coercion, to compel someone into a situation in which he or she will be exploited for sexual purposes, which could include prostitution or pornography."⁵⁰

Pornography is most expressly recognized as a form of sexual exploitation in the trafficking context by the European Union. Pursuant to the Palermo Protocol and other developments, the European Council Framework Decision of July 2002 on combating trafficking in human beings enacted a definition covering recruitment, transport, transfer, harboring, including exchange or transfer of control over the person where coercion, force, threat, deceit, or fraud is used, or authority or position of vulnerability is abused, "such that the person has no real and acceptable alternative but to submit to the abuse involved."⁵¹ The Framework Decision also covers payments made to one person to get consent by another "for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation *including in pornography*."⁵² Laws of members of the EU are to conform to this decision.

Pornography Under Human Rights Laws Against Trafficking

The UN's Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002) direct that "strategies aimed at preventing trafficking shall address demand as a root cause of trafficking."⁵³ Since pornography both creates and fills demand for trafficked persons, it should be a part of these demand-focused strategies. The flow of sex for money (supply side) and money for sex (demand side) is a mass market in human flesh, one technological level of mediation removed from skin-on-skin or, with the Internet, two. But it is a form of sexual trafficking in human beings nonetheless. The UN High Commission for Human Rights Sub-Commission on Human Rights Resolution 2002/51 effectively recognized this when it "[u]rge[d] Governments to take appropriate measures to address the root factors . . . that encourage trafficking in women and children, in particular girls, for prostitution and other forms of commercialized sex."⁵⁴

In its interpretation and application of the Convention on the Elimination of All Forms of Discrimination Against Women, the CEDAW Committee is increasingly moving in the direction of this recognition as well,

as are some countries that report to it. Article 6 of CEDAW directly prohibits "all forms of traffic in women and exploitation of the prostitution of others" as a form of discrimination against women, which states must "take all appropriate measures, including legislation, to suppress."⁵⁵ Exploitation of prostitution, of course, is not "prostitution." But the distinction is the same as that between prohibition and abolition in the 1949 Convention: the exploited, the prostituted women, are victims of crime and sex discrimination, not criminals or sex discriminators. Who is exploiting the poverty and discrimination and sexual abuse in childhood that put women in prostitution if not the buyers who use them, whose demand for their use is the reason the industry exists? What greater inducement or incitement to prostitution is there than being paid for sex when no one will pay you for anything else? In other words, criminalizing the buyers of prostitutes promotes sex equality: voilà, the Swedish model. Sweden's law criminalizing buying people in prostitution has, in fact, been reported by Sweden to CEDAW as evidence of its compliance with its article 6 obligations.⁵⁶ The CEDAW Committee itself has read article 6 consistent with this interpretation from the beginning, asking question after question about "clients," "customers," "sex tourists," and "men" (now that we say "demand," we do not need to say "men"), and many about "eradicating" prostitution per se.⁵⁷ The CEDAW Committee has taken the view that the demand for prostitution is covered by the Convention against discrimination against women.

The demand for pornography, as a form of the exploitation of prostitution, is encompassed under the same principles. Pornography is occasionally mentioned in CEDAW reporting under article 6⁵⁸ and sometimes under article 5, where it is referred to as a "harmful relic and custom" of the (one wishes) past. Neither prostitution nor pornography is treated as an institution of sex equality just waiting to be legalized for its discriminatory harm to women to be eliminated. CEDAW's General Recommendation 19, recognizing violence against women as a violation of CEDAW's prohibition on discrimination against women, expressly sees pornography as a product of sex inequality. It also observes that gender-based violence is produced by pornography, in part because it promotes subordinate roles and constricted options for women, which in turn "contribute to the propagation of pornography and the depiction and other commercial exploitation of women as sexual objects, rather than as individuals."⁵⁹ The circular causality of reality registers here. When it undertook to adapt the commands of CEDAW and other world standards for the treatment of women, the African Union's protocol on women's rights required states

parties to "take effective legislative and administrative measures to prevent the exploitation and abuse of women in advertising and pornography."⁶⁰

Long before, the Beijing Platform for Action (1995), setting standards that countries agreed to achieve, recognized that "the use of women and girls as sex objects, including pornography,"⁶¹ is a "factor[] contributing to the continued prevalence of violence" against women.⁶² The Beijing platform directs governments to "take appropriate measures to address the root factors . . . that encourage trafficking in women and girls for prostitution and other forms of commercialized sex" and to protect their rights through both criminal and civil measures.⁶³ A strategic objective on violence against women finds pornography "incompatible with the dignity and worth of the human person" along with racism, xenophobia, ethnic cleansing, and terrorism.⁶⁴ At Beijing, states committed themselves to "take effective measures including appropriate legislation against pornography" and to "establish, consistent with freedom of expression, professional guidelines and codes of conduct that address violent, degrading or pornographic materials concerning women in the media."⁶⁵ Like most everything else to which governments committed themselves in the Beijing Platform for Action, this has yet to be done.⁶⁶

One of the most insightful developments in the international system on the subject of pornography can be found in the Human Rights Committee's General Comment 28 on Equality of Rights Between Men and Women under the International Covenant on Civil and Political Rights (which the United States has ratified).⁶⁷ Article 19 guarantees freedom of expression; the Human Rights Committee took the view that all states should inform it of laws or other factors that impede women in exercising these rights: "As the publication and dissemination of obscene and pornographic material which portrays women and girls as objects of violence or degrading or inhuman treatment is likely to promote these kinds of treatment of women and girls, States Parties should provide information about legal measures to restrict the publication or dissemination of such material."⁶⁸ Dissemination, precisely trafficking, is recognized here to silence women's speech! The United States did not reserve to article 19, only to article 20, which provides that advocacy of national, racial, or religious hatred that constitutes incitement to discrimination shall be prohibited.⁶⁹ That reservation seeks to reduce the ICCPR's obligations to the size of existing U.S. First Amendment law. If article 20 does not mention sex-based or sexual hatred that constitutes incitement to sex discrimination, as pornography arguably does, neither does the U.S. reservation on the point. Sometimes invisibility works to your advantage. The point is,

there is no “speech” barrier in international law of human rights to proceeding against pornography. On the contrary, there is more like an invitation to address it, based on the realization that pornography silences speech.⁷⁰

The one legal provision that squarely recognizes pornography as trafficking is the trafficking provision of the civil rights antipornography ordinances conceived and drafted by Andrea Dworkin and me. Trafficking is defined there as the production, sale, exhibition, or distribution of pornography, which is defined in turn as graphic sexually explicit subordination of women through pictures and words that also include a list of specific presentations.⁷¹ *American Booksellers Association v. Hudnut* found this ordinance unconstitutional by holding that while pornography is sex discrimination, its effectiveness in doing the harm it does makes it constitutionally protectable.⁷² This holding was summarily affirmed by the U.S. Supreme Court.⁷³ Although the Committee’s interpretation is permissive, the United States is clearly out of step with its understanding of the meaning of the ICCPR’s guarantee of freedom of speech. Accession to the ICCPR could become one of several intervening developments in the reassessment of the constitutionality of the antipornography ordinance in the United States. Passage of the ordinance, federally authorized under the commerce power—pornography being nothing if not commerce, its trafficking taking place in national as well as global markets—would put the United States back in conformity with the direction of international law.

The United States could also ratify the 1949 Convention, although it has no obligatory cause of action. Both the 1949 Convention and the Swedish model, for all their crucial advances against demand, leave out the people in the materials: the trafficked. These approaches get the criminal law off their backs but give them no positive rights against their abusers or the materials produced through their abuse. Empowering the industry’s first victims is the most direct and effective route to its abolition; it cannot survive paying the cost of operation if it has to pay its victims for what it does to them. This the antipornography civil rights ordinance would do, simultaneously addressing pornography’s contribution to demand for prostitution and its role in and as trafficking, upon an awareness of which international law is increasingly converging.

Women’s September 11th Rethinking the International Law of Conflict

The configuration of acts and actors of September 11, 2001 is not one that international law, centered on states, has been primarily structured to address.¹ Neither was most of men’s violence against women in view when the laws of war, international humanitarian law,² and international human rights guarantees were framed.³ The formal and substantive parallels between the two—prominently their horizontal legal architecture, large victim numbers, and masculine ideology⁴—make both patterns of violence resemble dispersed armed conflict, but the world’s response to them has been inconsistent.

Since September 11th, the international order has been newly willing to

These thoughts benefited greatly from exchanges surrounding their delivery in prior forms at the Northwestern University Law School (April 17, 2002); the Law and Terrorism Conference, Hofstra Law School, Nice, France (July 17, 2002); the Barbara Aronstein Black Lecture, Columbia University Law School (September 17, 2002); Hofstra Law School (December 5, 2002); the Mellon Lecture, University of Pittsburgh Law School (April 14, 2003); the Ralph Spielman Lecture, Bucknell University (September 25, 2003); Kalamazoo College (October 4, 2004); the Dewey Lecture, University of Chicago Law School (October 9, 2003); University of Denver Sturm College of Law (March 10, 2005); Stanford Law School (April 14, 2005); the University of Paris X (Nanterre) (Golden Gate Law School) (June 29, 2005); the New Scholarship in International Law Workshop, Harvard Law School (October 6, 2005); the University of San Francisco (November 3, 2005); and memorably, Hebrew University (January 11, 2006). I thank all these audiences for their engagement. Some parts appeared in “State of Emergency: Who Will Declare War on Terrorism against Women?” *19/6 Women’s Review of Books* 7–8 (2002). José Alvarez, Tal Becker, Tom Bender, Karima Bennoune, Christine Chinkin, George Fletcher, Linda Gardner, Jack Goldsmith, Ryan Goodman, Jack Greenberg, Kent Harvey, Laura Beth Nielsen, Jessica Neuwirth, Michael Reisman, Diane Rosenfeld, Abe Sofaer, Eric Stein, and Mary Ellen O’Connell generously contended with, and made suggestions on, prior drafts. Comments from three anonymous reviewers were also exceptionally useful. The University of Michigan Law Library, Melanie Markowitz, and especially Ron Levy provided research assistance. Emma Cheuse and Anna Baldwin contributed superb technical help. I am deeply grateful for all of their support. The Center for Advanced Study in the Behavioral Sciences (CASBS) provided a supportive setting for its final revision, which was first published in *47 Harvard Journal of International Law* (forthcoming, 2006).