

WHY DECLARING SAFETY A RIGHT MIGHT NOT (AND SHOULD NOT) MAKE IT RIGHT: A Gender and Rights Analysis of the Montreal Declaration

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Feminists are deeply skeptical of any notion that the “making of rights” is a closed gate, narrowly patrolled by inner-sanctum experts. Thus, I embark on this critique of the newly declared Montreal Declaration: People’s Right to Safety with great care.¹ Many important rights achievements of the last decade are owed to women’s-rights activists who challenged the established tradition of human rights, the practice of which had made, as Celina Romany writes “. . . women the paradigmatic alien subjects of international law . . . outsiders . . .”² In the context of this critique of the Montreal Declaration, I consider the specific purposes of feminist advocacy in human rights: harnessing human rights to end the invisibility of abuses directed toward women and compelling state accountability to end those abuses. Advocates have illuminated the nature of gender-specific barriers in women’s human rights so that human rights become a more useful doctrine and practice for girls and women.

As Charlotte Bunch notes, “the concept of human rights is one of the few moral visions ascribed to internationally. . . . It . . . speaks to the need for transnational concern and the lives of people globally.”³ Thus, persons concerned about safety across a broad range of sectors (work-

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place, environment, armed conflict) seem to have come to human rights—and the need to declare a new right—as a powerful claim. But this new moment of “declaring” may have in it the seeds of its own failure. I will focus here on two barriers to the Declaration’s usefulness that arise in its genesis.

The first is in regard to the power of human rights to build an effective web of accountability. Rights principles and practice seek to construct a net that compels state action to end an abuse (the obligation to respect), to ensure others do not violate or limit rights (the obligation to protect), and to create the conditions within which rights can be enjoyed by diverse people (the obligation to fulfill).⁴ The sheer diversity of goals of the Declaration militates against clearly understanding how and where to build accountability for the “complex process where humans interact with their environment . . .” in armed conflict, in workplace safety, in environmental hazards.⁵

Declaring a right does, however, create the expectation that it will be “sufficiently precise as to give rise to identifiable rights and obligations.”⁶ In regard to safety, accountability might be better served by re-affirming existing rights that contribute to “the complex of safety.” A wide range of specific, existing rights can be “bundled” both to serve the interest of safety and to demonstrate that “safety” is indeed a global desiderata.⁷ Women’s-rights activists have learned that careful, situated gender analysis can help harness existing rights to key aspects of human life, such as the work currently being done on sexual and reproductive rights.⁸ Thus a “Declaration on the Rights Essential to Ensure the Safety of all People” that analyzes how and to what effect different aspects of safety could be enhanced to meet specific rights obligations would give states concrete guidance on what to do.

This leads to a second barrier that is an equally problematic aspect of the Montreal Declaration from a women’s human rights and gender-analysis perspective. Almost 15 years of work by gender analysts has demonstrated that a gender lens may require us to rethink how a right is conceived, not just how the right may apply differently to

women. Although the Declaration's preambular paragraphs mention social forces that shape experiences of safety and risk, in its operative sections, it proceeds on the notion that "safety rights" are gender neutral, and "women" may have particular problems vis-à-vis those rights, as captured by notion in Article 3 of "particular discrimination" faced by women. A gendered (and not "women as a vulnerable group") safety analysis would separate gender from age (women and children in Article 3[2]); it notes that gender often determines how both women and men interact with their environment, and that gender intersects in its operation with other aspects of identity, such as race, age, sexual orientation, ethnicity, and the like.⁹ How women and men are gendered does matter, whether we are concerned with environmental toxins or criminal laws on sexual violence.

For example, in most societies, the belief that a woman's chastity is the most important aspect of her identity leads to "safety measures" that limit her freedom of movement in the name of protecting her from sexual violence. She is "safe," but she is not free, and certainly not equal. "Safety" and protection are often the guises used to deprive women of other rights: movement, information, participation, work, choice of partners.¹⁰

Finally, the assumption that "safety" is unproblematically "safe" for all is belied by the dangerous invocation of "public health and safety" measures to unfairly and ineffectively limit the rights of stigmatized persons in the context of the HIV/AIDS pandemic. The current language of Article 7 does not militate against this abuse: "All data and information" on potentially hazardous activities shall be in the public domain? Is the HIV status of persons who are held to be engaged in hazardous activities—sexual activity? health care?—to be in the public domain? With what protections? Thus, from a gender and sexuality perspective, the definition of safety would be more helpful to gender equality and diversity if it contained in its framework a principle on the importance of not limiting human rights in the interest of controlling hazards without scrutinizing the possible risk that regulation pays to gender equality, especially through the unexamined invocation of dominant cultural norms.

References

1. Montreal Declaration: People's Right to Safety, available in its entirety at the end of this section and at www.iitd.ac.in/tripp/righttosafety/Montreal.
2. C. Romany, "State Responsibility Goes Private: A Feminist Critique of the Public/Private Distinction in International Law," in: R. Cook (ed.), *Human Rights of Women: National and International Perspectives* (Philadelphia: University of Pennsylvania Press, 1994), p. 85.
3. C. Bunch, "Women's Rights as Human Rights: Toward a Re-Vision of Human Rights," *Human Rights Quarterly* 12 (1990): 486–498.
4. For a use of this tripartite system of state obligations in a health context, see, A. Miller, "Uneasy Promises: Health and Sexual Rights as Human Rights," *American Journal of Public Health* 91/6 (June 2001): 861–864.
5. Montreal Declaration, art. 2.
6. P. Alston, "Conjuring Up New Human Rights: A Proposal For Quality Control," *American Journal of International Law* 78 (1984): 607–621.
7. Such rights include those contributing to bodily integrity, freedom of information, rights that serve to ensure the effective participation of persons affected in making policies that will govern their lives, in public and private spheres and rights of nondiscrimination and substantive equality.
8. S. Correa and R. Petchesky, "Reproductive and Sexual Rights: A Feminist Perspective," in: G. Sen, A. Germain, and L. Chen (eds.), *Population Policies Reconsidered: Health, Empowerment and Rights* (Cambridge, MA: Harvard University Press, 1994), pp. 110–125.
9. Gender refers to the systems founding every society by which different roles are ascribed to women and men, based on a particular meaning assigned to physiological sex distinctions. For the UN's use of the term, see Report by the Secretary General, *Integrating the gender perspective into the work of United Nations human rights treaty bodies*, UN Doc. HIR/MC/1998/6.
10. R. Kapur, "The Tragedy of Victimization Rhetoric: Resurrecting the 'Native' Subject in International/Post-Colonial Feminist Legal Politics," *Harvard Human Rights Journal* 15 (2002): 1–38.