The Politics of Global Abortion Rights

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In the early 1970s, the first constitutional cases on abortion law in the United States and Western Europe emerged from the political agitations of a transnational women's liberation movement.[1] Whether or not these cases supported or resisted a woman's right to decide, they all engaged with abortion as an object of political struggle over the terms and future of women's citizenship. Women's movements advanced abortion rights through constitutional law in an effort to radically restructure the social and economic order.

The same was not true of abortion in international human rights law, which has been avowedly anti-political. The earliest cases in the European human rights system—men challenging newly liberalized laws for their effect on the "future of the nation"—were declared inadmissible precisely because they engaged the political stakes of abortion law.[2] To this day, the European Court of Human Rights refuses to engage in the abstract review of abortion laws and has never stated whether the European Convention on Human Rights guarantees a right to abortion.[3] At best, the Court admits that the regulation of abortion—and more broadly, the decision to become a parent or not—may engage an individual woman's right to "respect for [her] private and family life."[4] This right variably protects a woman's physical and mental integrity, as well as her personal autonomy and development. To the extent recognized under the European Convention, abortion rights are decidedly a matter of private—not public—life.

The UN system has also never formally recognized or denied a human

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right to abortion.[5] Rather, abortion has always sat uncomfortably within the reproductive rights recognized by international law. In the UN conferences of the 1990s, in particular the Cairo International Conference on Population and Development, governments recognized the human right to decide if, when, and how often to reproduce and to access means to exercise this right "which are not against the law."[6] This last phrase was understood as a reference to, and an exclusion of, abortion. Governments agreed to address the devastating public health impacts of unsafe abortion as a human rights concern, but to otherwise leave abortion to the democratic forces of the nation-state.[7] At the Fourth World Conference on Women in Beijing, governments agreed not to reform but to review punitive laws on abortion as an effort to address abortion-related mortality.[8] This public health framing profoundly shaped global abortion rights discourse. Unsafe abortion was a simple, descriptive cause of maternal mortality, and decriminalization was a pragmatic public health intervention available to reduce its harms. UN treaty bodies and Special Rapporteurs eventually adopted this logic for legal reform, calling on states to liberalize their criminal laws under the human rights to life and health as a technical policy measure to lower rates of unsafe abortion.[9]

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By adopting a moral stance to reduce death and suffering and by seeking refuge in the individualism of private life and the pragmatism of public health, international human rights law sought to avoid, or at least to stay, political conflict over abortion. These moral, pragmatic, and individualist turns of global abortion rights are its "anti-politics." Coined by Wendy Brown, the term *anti-politics* describes the way in which human rights claim to carry no political assumptions or aspirations, to neither prescribe nor proscribe any political outcome, and to not figure in any larger political project.[10] Human rights protect the individual against the indignity, suffering, and death inflicted by political power. Human rights are an anti-political antidote to political power.

Yet in their anti-politics, Brown suggests, human rights are politically powerful.[11] The purpose of this article is to show how global abortion rights do not escape politics, but rather become embedded in national democratic struggles over abortion and, more importantly, how they are used as political resources within these struggles to radically redistribute democratic power in the nation-state. Through a set of case studies on recent abortion decriminalization efforts in Northern Ireland and Sierra Leone, this article tracks the dif-

ferent ways in which the anti-politics of international human rights law shape political contestations over abortion in national legal orders. In both Northern Ireland and Sierra Leone, global abortion rights empower and weaken different constitutional branches of the state, generating power struggles among them. Global abortion rights serve as a source of both sovereign power and imperial threat, revealing a complicated relationship between the postcolonial state and international law. Global abortion rights are used by popular movements to constitute new forms of citizenship and new forms of solidarity in democratic challenges to the social and legal institutions of the state. Together, these case studies reveal the complex and contradictory ways in which the anti-politics of global abortion are themselves a powerful political force.

The European Human Rights System and the Abortion Politics of Northern Ireland

In much of the world, abortion is partially decriminalized: it is regulated by criminal law but not strictly prohibited. Abortion is allowed in certain prescribed circumstances, known as legal grounds or indications. The most common legal grounds are circumstances in which a woman's life or health is endangered, the pregnancy is the result of a criminal act, or the fetus is affected by serious or fatal impairment.[12] Based on the 1861 Offences Against the Persons Act, abortion in Northern Ireland is lawful only on one ground: preservation of the pregnant woman's life.[13] In 1938, however, an English judgment interpreted this ground to include circumstances where the continuation of pregnancy would render the woman a "physical or mental wreck," an interpretation upheld by Northern Irish courts.[14]

On 30 November 2015, the Northern Ireland judiciary again intervened in abortion politics by declaring the country's law incompatible with the European Convention on Human Rights.[15] The High Court deemed the law simply too restrictive because it failed to allow abortion in cases of fatal fetal abnormalities (at any time during pregnancy) or when the pregnancy resulted from sexual crime (until the time of fetal viability).[16]

The European Convention is an international human rights treaty, but the Human Rights Act 1998 gives it domestic effect in the United Kingdom.[17] This means that Northern Irish courts can assess legislation against the Convention and provide remedy for its breach, effectively domesticating European human rights law. One might therefore have expected the High Court to use the European Convention to rise above abortion politics in Northern Ireland,

calling on the moral authority of international law or relying on its pragmatic arguments. It did not. The Northern Irish Court used the European abortion case law not to escape politics, but instead to enter them. Moreover, it did so by invoking the most controversial, anti-political part of that case law: the margin of appreciation.

The margin of appreciation is a doctrine by which the European Court grants member states discretion or latitude in the form or degree of legal protection required by a Convention right.[18] The Court generally grants large margins of appreciation on issues characterized as morally contentious, on which no European consensus or universal moral truth can be claimed. These issues often involve laws that are declared necessary to protect public morals and that infringe on human rights of an open or contested nature. Both conditions apply in the case of abortion, and thus the European Court has generally granted nation-states a wide margin of appreciation in their regulation of abortion.

According to the Court, there is no European consensus on the relative importance of the human rights and public moral values at stake in abortion or on their required weighting in national law. Abortion regulation always touches upon the human right to respect for private life, a right variably interpreted to include interests in health and well-being, personal autonomy, and sexual freedom. The Court's articulation of these interests, however, is so vague, and its concept of private life so broad, that this right appears to capture almost everything and potentially nothing at all. On the other side of the ledger, restrictive criminal laws are often claimed necessary to protect prenatal life as a human right or public value. In an early set of cases under the Convention, putative fathers challenged liberal abortion laws of the United Kingdom, Norway, and Italy as a violation of the right to life of the unborn.[19] Rather than decide whether the Convention protected such a right, these cases were resolved on the reasoning that even if it did, this protection is not absolute.[20] The right to life of the unborn, for example, cannot justify restricting women's access to abortion as life-saving or therapeutic care.[21] What more cannot be justified, the Court left unsaid.

Within a broad margin of appreciation, criminal abortion laws must only strike a "fair balance" between the protection of prenatal life and the right of women to respect for their private life. Fair balance is thus the standard of human rights protection under European law. The Convention requires no particular substantive law on abortion. Rather, the state enjoys wide discretion in the design of its abortion law and the balance of human rights and public values therein. The European Court will correct egregious balancing errors that cause suffering, indignity, and death, but otherwise will not interfere with the democratic

pursuits of nation-states—an anti-political aspiration, pure and simple.

This fair balance standard proved especially controversial in the abortion case of *A., B., and C. v. Ireland*, decided by the European Court in 2010.[22] Abortion regulation in the Republic of Ireland is more restrictive than in Northern Ireland. The Protection of Life During Pregnancy Act allows for abortion only if there is a real and substantial risk to the life, as opposed to simply the health, of the pregnant woman.[23] This law is based on the same 1861 act that governs Northern Ireland, but given a fear that courts might interpret this statute broadly, as was precisely the case in the North, a 1983 Constitutional referendum blocked judicial liberalization in the Republic. By Article 40.3.3 of the Irish Constitution, also known as the Eighth Amendment, "the State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right."[24]

Before the European Court, Applicants A and B challenged the abortion law of the Republic of Ireland as unduly restrictive and sought to introduce new legal grounds for the protection of health and well-being. Under a broad margin of appreciation, the question was whether the Irish law struck a fair balance between the human rights of women and the profound moral values of the Irish people. The Court held that it did. Critical to this finding was that Irish law gives women a constitutional right to travel abroad for abortion services, which the Court reasoned provides sufficient protection of their interests. There are simply two different choices by which to strike a balance in the law: either to provide the abortion services in-country or to provide a right to travel abroad. The Irish state chose the latter, and while "it is with this choice that the…applicants take issue," the Court explained, "it is equally to this choice that the broad margin of appreciation centrally applies."[25] This deference to the Irish state was widely critiqued as an act of political avoidance and an effort to remain neutral on the political stakes of abortion rights.[26] The European Court, for example, only considered the health impact of exiling women from the Irish state, not its meaning for women's freedom and equality within the Irish state.

The European Court did not, however, completely spurn these democratic conflicts on abortion in the Republic of Ireland. In fact, it did quite the contrary. In granting a wide margin of appreciation, it cited not only the lack of a European consensus, but also the high public stakes on abortion in Ireland and the "lengthy, complex and sensitive debate" they have engendered.[27] It reviewed the many constitutional and legislative processes and consultations on law, arguably affording Ireland a wide margin of appreciation on the quality of

its democratic engagement.[28]

Democratic conflict over abortion runs deep in Ireland.[29] The 1983 constitutional amendment that affirmed the right to life of the unborn drew on Ireland's religious and cultural traditions—traditions that historically signaled its sovereignty from England.[30] Catholicism has long been regarded as a marker of Irish nationality, and the absolutist pro-life stance of the Constitution reconstructed this historical association between Catholicism and Irish nationalism. Abortion reform continues to be debated on these constitutional terms and therefore remains bound to the very definition of the nation-state.

To read the European Court's case law on abortion apart from this political context is to miss or misread critical features of it. Rather than avoiding the politics of abortion, the European Court relies on them and enlists the democratic forces of the state and its institutions into the European project of human rights protection. The Court shares its authority with these institutions—human rights commissions, constitutional courts, national legislatures—who, "by reason of their direct and continuous contact with the vital forces of their countries," are better situated to achieve the goals of human rights protection.[31] A few years before *A., B., and C. v. Ireland*, for example, the Court declared inadmissible a challenge to the Irish law for its lack of a legal ground on fetal impairment.[32] The Court refused the case, *D. v. Ireland*, because the applicant had failed to exhaust domestic remedies; in other words, she had not explored all domestic avenues of redress. The European Court reasoned "that in a legal system providing constitutional protection for fundamental rights, it is incumbent on the aggrieved individual to test the extent of that protection and…to allow the domestic courts to develop those rights by way of interpretation."[33] This is the empirical reality of all international human rights law: it is ultimately a national project. Read this way, the European Court uses its anti-political doctrines, such as the margin of appreciation, to embed abortion rights within the democratic institutions of the state and thus to generate democratic engagement on abortion, not quiet it.[34] The Court uses international human rights law to call on the Irish state to return to, reconsider, and deliberate on the reform of its abortion law.

This is precisely how the High Court of Northern Ireland read the European case law on abortion: as an invitation to, rather than as an indictment of, politics. Recalling the European Court's defection from politics almost verbatim, the High Court entered the political fray by announcing that "because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is in the public interest."[35] Even more interestingly, the High Court used this reasoning

to generate a claim about its own legitimacy in entering the democratic conflict on abortion in Northern Ireland and thus to shed the stigma of judicial decision-making as "undemocratic."[36] Every constitutional branch of the state, the High Court insisted, is entitled to strike that fair balance in abortion law, even against the views of the other branches. Generating this kind of institutional competition within the national order—fracturing the state—is one of the primary political effects of the anti-political margin of appreciation doctrine.[37]

Empowered by the doctrine, the High Court went on to defend the judiciary as even better qualified than the legislature to make decisions on contentious and divisive issues such as abortion because it is free from the constraints of institutionalized politics. "The history of the Northern Ireland Assembly suggests that when there are contentious religious and moral issues that divide the political classes," the Court observed, "there is little prospect of progress."[38] This inertia results not from political conflict per se, but from the moral righteousness of its adversaries who refuse to listen to and be persuaded by the arguments of others. The Ministries of Health and Justice had taken years to generate anything meaningful for public engagement, and, as such, there was every reason for the Court to believe that any legislative proposals for reform were "gloomy," if not "doomed."[39] These were no vital democratic forces. The National Human Rights Commission initiated this review of the abortion law after years of frustrated efforts to engage the government on law reform. In this democratic frustration, the Commission turned to the High Court, and the High Court answered.

While the European Court deferred to national authorities because of the vitality of democratic debate, the Northern Irish Court entered the fray because of the stagnancy of institutionalized politics. Moreover, once inside the political fray, the High Court used the moral norms of global abortion rights to neither avoid nor settle the democratic debate, but to enrich it. By making a plurality of moral norms audible in the national setting, the Court strove to break the moral righteousness of the abortion debate. This was most evident in how it explained the injustice of banning abortion in cases of sexual crime. The High Court took judicial notice of the strong authority in international human rights law for the decriminalization of abortion in circumstances of rape or incest.[40] It did not, however, use this authority as a legal or moral imperative for national reform. Instead, it acknowledged that as an exemption from criminal sanction, a legal ground requires normative deliberation, which it then offered in the case of sexual crime:

> The law [in Northern Ireland] makes no attempt in those particular circumstances to balance the rights of the woman…By imposing a blanket ban on abortion, reinforced with criminal sanctions, it effectively prevents any consideration of the interests of any woman whose personal autonomy in those circumstances has been so vilely and heinously invaded. A law so framed, can never be said to be proportionate.[41]

Once the fetus is viable, there is a sufficient counterweight in the protection of unborn life that prohibition can no longer be claimed disproportionate.

However limited in scope, the High Court recognized women as having personal autonomy in matters of sexuality and reproduction and thereby introduced moral norms into the regulation of abortion sufficient to change its tenor. The Court challenged the view of women as objects—rather than subjects—of law. Women are seen as "persons who exercise autonomy…[and] that exercise of autonomy is sufficiently respect-worthy."[42] This is a normative view associated with the most liberal of abortion regimes and suggests an increasing acceptance of abortion rights as claimed by local activists in Northern Ireland. To this end, the High Court observed:

> There can be no doubt that the [European] Convention…has [made] Northern Ireland a more tolerant and liberal society, one that is more pluralistic and broadminded. Whether this is a good thing is not a matter for the Court. But it is one of the Convention's objectives.[43]

The High Court did not change abortion law in Northern Ireland, but invited the Legislative Assembly to return, reconsider, and deliberate again.[44] On 11 February 2016, the assembly voted against liberalization.[45] This was an extraordinary moment: what the judiciary upheld as a human right, the legislature voted down as a criminal offence.[46] Imagine that a U.K. Parliament voted to violate the human rights of its citizens—without a word from the British government. The British state has long refused to extend the protections of its more liberal 1967 Abortion Act to, or to otherwise intervene on abortion in, Northern Ireland as an agreement of the peace process to end sectarian violence.[47] The legacy of British imperialism and Irish colonialism plays strongly in the abortion politics of Northern Ireland, most often in the conservative religious-cultural traditions said to unite the island of Ireland.[48] There is, however, a different postcolonial reading of abortion rights in Northern Ireland, especially in the context of newly devolved powers from the British state. In its judgment, the High Court referenced the 1998 Good Friday Agreement, a major development in the peace

process, which domesticated the European Convention in Northern Ireland.[49] This reference recognized international human rights law as part of the devolved power of Northern Ireland to define itself against both the United Kingdom and the Republic of Ireland. Once again, rather than having escaped politics, global abortion rights are embedded in the postcolonial struggle, a theme more pronounced in the dynamics of legal reform in Sierra Leone.

Whereas Northern Ireland shows the power of global abortion rights to strengthen the nation-state, Sierra Leone suggests the threat of global abortion rights to weaken the state and fetter its power. Postcolonialism is part of the historical backdrop of abortion politics in both cases, but the interactive effects of international law and colonial history differ. The contrasting ways in which global abortion rights have played out in the domestic politics of Northern Ireland and Sierra Leone show the particularity of each case, while acknowledging a relationship between them. Together they reveal a complicated, even contradictory, account of international human rights law in the nation-state.

The African Human Rights System and the Abortion Politics of Sierra Leone

The public health framing of abortion in the UN human rights system proved critical to the elaboration of abortion rights as a legal obligation of the state. First, it shifted attention away from entrenched political conflict over criminal abortion and toward unsafe abortion as a cause of suffering and death. Second, a causal analysis of why women suffer from unsafe abortion inevitably leads to the criminal law.[50] Public health research, endorsed by the World Health Organization, shows that criminal restrictions do not result in fewer abortions, but rather in higher rates of unsafe abortion and related mortality.[51] In places where safe abortion is available on broad grounds or at a woman's request, unsafe abortion is minimal.[52] Based on this evidence, UN treaty bodies and Special Rapporteurs now routinely call on states to decriminalize abortion as a human right and harm-reduction measure.[53]

The public health framing of abortion in the UN human rights system proved crucial to the elaboration of abortion rights as a legal obligation of the state.

Entered into force in 2005, the Maputo Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa was the first—and remains the only—international human rights treaty to explicitly

require the decriminalization of abortion in "cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the fetus."[54] The abortion right of the Maputo Protocol, however, is strictly interpreted within the pragmatic public health frame of international law, with strong associations drawn between criminalization and harm, as well as between legal access and therapeutic care.[55]

On 18 January 2016, based on the Maputo Protocol, the African Commission on Human and Peoples' Rights (ACHPR) launched a continental campaign for decriminalization "informed by the reality that unsafe abortion is a gross violation of human rights that constitutes a serious public health concern."[56] The Special Rapporteur for the Rights of Women in Africa further explained that the "gross nature of this violation" comes alive through statistics.[57] Citing the World Health Organization, she attributed the scourge of unsafe abortion to criminalization: "Why are our women and girls still dying due to unsafe abortion?" she asked. "The answer is mainly that most African states have maintained colonial and punitive domestic laws that criminalize the right to safe abortion."[58] The campaign calls on heads of state to comply with their human rights obligations and to decriminalize abortion on the grounds of the Maputo Protocol.

Roughly one month earlier, on 8 December 2015, the Parliament of Sierra Leone passed the Safe Abortion Act.[59] The law replaced the 1861 Offences Against the Persons Act, the very same law that governs Northern Ireland and that prohibits abortion except to save a woman's life. The 1861 law was left in situ in Sierra Leone after independence. The new Safe Abortion Act would have authorized abortion upon a woman's request in the first 12 weeks of pregnancy—and, in cases of incest, rape, fetal impairment, and risk to health, up to 24 weeks.[60] As described in its long title, the law was designed "to prevent maternal death and injury, safeguard reproductive rights and determine the circumstances under which pregnancies may be terminated."[61]

Sierra Leone's president, Ernest Bai Koroma, was to give final assent to the draft law, but on 6 January 2016, he delayed signing it after meeting with members of the Inter-Religious Council of Sierra Leone who opposed the law on grounds that abortion rights represent an ideology alien to the country.[62] This is not an isolated case. Many postcolonial African countries "seem to have found much to treasure in archaic and anachronistic abortion laws that were imposed on them," and seek to maintain "the law on abortion…as it was on the eve of independence."[63] When President Koroma returned the Safe Abortion Act to Parliament unsigned, the law became the subject of widespread public debate not only in Sierra Leone, but also globally. Sierra Leone had ratified the

Maputo Protocol only the year before, in 2015, after a marathon parliamentary debate concerned not only with the provision on abortion rights, but also with the protocol's colonial overtones and Western moral bias that could be used to pressure Sierra Leone to reform its law.[64] An anti-abortion state policy was argued necessary to protect Sierra Leonean national culture and sovereignty against a new imperial threat in international human rights law.

A "pro-life, pro-family, pro-woman, pro-motherhood and pro-Africa" political constellation reflects a larger countermovement on the continent.[65] Religious protest against abortion and other sexual rights in African nation-states, often with suspected U.S. intervention, engages in a highly complex discursive politics of "African culture and tradition, neocolonial influence and power, and struggles over national sovereignty and identity."[66] The colonial discourse on abortion law reform in Sierra Leone played out in complicated ways, used to discredit both the old 1861 British law and the new human rights law on safe abortion—reflecting on both sides a selective amnesia about the colonial origins of the criminal law and the imperialist threat of global abortion rights.[67] Once again, international law is intimately tied to postcolonial politics, whereby both the embrace and rejection of human rights provide the nation-state with resources to rework the conditions of its postcolonial sovereignty.

After refusing to sign the Safe Abortion Act, President Koroma urged Parliament to more fully engage in public consultation on the decriminalization of abortion. Hundreds of people joined religious leaders in marching to Parliament, where they called on members to withdraw their support.[68] National women's organizations and their global partners requested that Parliament retain the Act.[69] The lack of public consultation and political engagement on the Act's first passage was one of the main points of contention. When the Honorable Isata Kabia brought forward the private members' bill to introduce the Act, she cited the concluding observations of a UN human rights treaty body, the Committee on the Elimination of All Forms of Discrimination Against Women, which had noted concern with the country's high rates of maternal mortality and highly restrictive abortion law.[70] Before the vote, she said, "Mr. Speaker, Honorable Members…unsafe abortion is one of the main causes of maternal mortality that can be most easily addressed, through improved access to family planning, information and services, safe, legal abortion services and high-quality

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post-abortion care."[71]

Within the pragmatic discourse of global abortion rights, unsafe abortion is a public health problem, and its solution resides in the tools of this field: provision of information and services, training of providers, and equipping of facilities—a technical set of interventions with decriminalization in the mix. Consider the World Health Organization's *Safe Abortion: Technical and Policy Guidance for Health Systems*, which offers clinical, service delivery, and policy recommendations all in one document.[72] The guidance subjects criminal law to the same evidence-based standards as clinical medicine and service delivery design. The measure of the law's legitimacy is its health impact, to which the authority of international human rights law is then attached.

In this global discourse, political conflicts over abortion law are not so much denied as suggested to be almost beside the point, a mischaracterization of the issue. Such was strongly suggested in the Parliamentary presentation of a senior policy advisor of Ipas, an international organization that works to improve access to safe abortion care through advocacy and policy reform, as well as to strengthen health systems. The advisor "explained that they are now seeing a lot of misrepresentation on the issue at hand, which makes it difficult to have a straight discussion that is un-biased which is why they want to take the religious, moral, and social sentiments out of the argument as what is being portrayed is based on religious point of view."[73] Following the president's refusal to sign the bill, the executive director of the Open Society Initiative for West Africa similarly advised in an editorial that, "rather than arguing about the rationale for legalization, the real debate should shift to how we can reduce…the extremely high incidence of infant and maternal mortality rates. Decriminalizing abortion will make a difference and should definitely be the progressive way to go."[74]

Politics and citizens' voices complicate a simple, straightforward intervention. This is a political effect of the anti-politics of public health pragmatism. It places experts and expert authority at the core of the public debate, rendering it effectively no debate at all. The role of the U.S.-based Ipas in law reform efforts in Sierra Leone and across Africa was criticized as anti-democratic on this basis.[75] Ipas engaged for years in the health and justice sectors of the country with the support of the Ministers of Social Welfare and Justice to gather evidence about and identify solutions to address unsafe abortion, including law reform.[76] Yet after the president's refusal to sign, the Minister of Health disassociated himself from the Safe Abortion Act, noting that the bill had not originated from his Ministry. The Ipas Africa Alliance also assisted the ACHPR in its decriminalization campaign and in its interpretation of the Maputo Protocol abortion right.[77]

Such technical assistance is not unusual, as there are many nongovernmental organizations engaged in the ACHPR's activities.

Rather, the concern is the appropriate relationship between human rights and technical expertise—that is, the fear that human rights become mere handmaidens to expert authority, or even its moral strong arm, by giving legal imperative to do whatever the experts order. This is where the critique of the moral authority of global abortion rights enters. International human rights standards are invoked as a universal metric to assess government action, shutting down political contest, or even deliberation, over that action against the moral authority of law. This moral overtone is evident in the online letters and petitions that urged members of the global human rights community to "stand in solidarity" and express their support for the Parliament and president of Sierra Leone to do the right thing and bring the Safe Abortion Act into law.[78]

The effort to bring the Global South into a civilized discourse of abortion rights draws an uncomfortable line between colonial domination and human rights globalization.

A letter from the Ipas Africa Alliance, Solidarity for African Women's Rights Coalition, and the African Women's Development and Communication Network, for example, "commended," "applauded," "celebrated," and "congratulated" Parliament for its "courage to stand firm" and not "sit by while women die needlessly from unsafe abortion."[79] The organizations further stated that "we in Africa should be ashamed that our women…die of unsafe abortion when safe abortion is such a clear and attainable solution."[80] This language of moral respectability, and the effort to bring the Global South into a civilized discourse of abortion rights, draws an uncomfortable line between colonial domination and human rights globalization.[81] Letters from Amnesty International, Human Rights Watch, and the International Campaign for Women's Right to Safe Abortion, along with Sierra Leone human rights groups, similarly described abortion law reform as the "only moral stance" affirmed by the expert evidence of the World Health Organization and the expert standards of international human rights law.[82] On 28 January 2016, Special Rapporteurs from the UN and the African human rights system added their voice to the chorus calling on Sierra Leone's president to sign the Safe Abortion Act into law.[83]

These campaigners used global abortion rights to produce and to act through a post-national politics of citizenship—a universal citizenship—to leverage pressure on the Sierra Leonean state and to effectively fetter its sovereign

power. This tension between global legal imperatives and national sovereignty stands in contrast to Northern Ireland, which harnessed the power of international law to strengthen rather than weaken the nation-state and the vitality of its democratic forces.

Nonetheless, the political power of the anti-politics of global abortion rights is only fully revealed in context. The appeal of absolute moral standards in abortion rights, invoked to end rather than drive democratic deliberation, is understandable in contexts of systemic gender oppression, where women believe themselves to be entitled to very little and are too willing to accept whatever they receive, however inadequate for their needs. In their absolute moral standards, global abortion rights offer a formidable challenge to deeply entrenched gender ideologies that rationalize the harm of coerced motherhood in criminal abortion laws. The question is whether global abortion rights challenge these ideologies effectively. There is reason to think they do not. Global abortion rights, in their universal impulse, deny the complexity of deep structural conditions and local realities that sustain democratic support for criminal abortion laws, even in the face of tremendous suffering and gross dysfunction. In fact, the anti-politics of abortion rights are a very convenient political resource for the state to deflect and divert attention from these more complex socioeconomic issues. The real question is whether human rights would be more effective if they focused not on what states "should do," but on why states "do what they do."[84] What if global abortion rights engaged criminalization as something to be understood, not only condemned?

The language of solidarity in the campaign around the Sierra Leone Safe Abortion Act gestures in this direction. Campaigners invoked global abortion rights as a shared commitment—among public health and human rights experts, as well as women's and civil society organizations—to democratically challenge oppressive, gendered citizenship regimes that endanger and impoverish the lives of women. This global abortion rights discourse does not strive for any single political outcome but supports indigenous efforts to reduce death and suffering and to reform law and policy within local contexts of power and meaning.[85] The local discourse on the Safe Abortion Law in Sierra Leone, for example, focused as much on the liberalizing effects of the law as on its punitive effects, namely that it would sanction unsafe, or so-called quack, providers.[86] Those against the law voiced their concern in these same terms—

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that the law would be misused by quacks to exploit and harm women.[87] Thus, vulnerability and exploitation and the capacity of the legal regulation of markets to stem these harms were shared stakes of the local public debate. Global abortion rights cannot settle this debate, but they can support the engagement of women as full and equal citizens in shaping the legal institutions of the state, criminal law, and free markets among them. These are the abortion rights of the women's liberation movement of the 1970s. No mere health care rights to legal services, these abortion rights are political rights to be exercised collectively in the radical restructuring of the state.

Conclusion

When the president of Sierra Leone sent the abortion law back to Parliament for review, it was unanimously reaffirmed and returned to the president unaltered. On 12 March 2016, President Koroma again refused to sign the law and referred it instead to a Parliamentary Constitutional Review Committee, noting that the right to life is an entrenched clause in the Sierra Leone Constitution.[88]

The president defeated Parliament in Sierra Leone, much as Parliament had defeated the High Court in Northern Ireland. These are the constitutional politics of global abortion rights, the ways in which international law empowers and weakens constitutional branches of the state, generating political power struggles within the nation-state but also beyond it. In Northern Ireland, the High Court used international human rights law to break the moral righteousness of the domestic abortion debate and to introduce moral plurality into democratic deliberation. In Sierra Leone, global campaigners used the expert authority and universal morality of abortion rights to shut down democratic debate. Both engagements reveal a relationship of international law to political struggles over national identity and sovereignty in the postcolonial state. These are struggles that state institutions need not lead. Rather, global abortion rights have also proved powerful political resources for popular movements to democratically challenge and shape the social and legal institutions of the state, including criminal law.

Together, the decriminalization efforts in Northern Ireland and Sierra Leone show the complex and contradictory ways in which the anti-politics of global abortion rights—whether of universal morality, public health pragmatism, or private life individualism—shape democratic engagement at the national level. There are likely many more variations of this effect, the ways in which "jumping scale"—taking global abortion rights into the national sphere—can

open or close state institutions, empower or enslave a citizenry, and radically redistribute democratic power. The anti-politics of human rights are a politics that organize national political space, making global abortion rights ultimately a national project dependent on a commitment to deepening democratic institutions and practices.

Notes

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2. *X v. Norway*, Application No. 867/60, Eur. Comm'n H.R. (1961) (admissibility); See also: *X v. Austria*, Application No. 7045/75, Eur. Comm'n H.R. (1976) (admissibility).

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