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ADVANCING WOMEN'S RIGHTS INTERNATIONALLY

This panel was convened at 10:45 a.m., Saturday, March 27, by its moderator, Kamari Clarke of Yale University, who introduced the panelists: Cathy Albisa of the National Economic and Social Rights Initiative; Rebecca Cook of the University of Toronto Faculty of Law; Fionnuala D. Ní Aoláin of the University of Minnesota Law School; and Lisa Crooms of Howard University School of Law.*

CONSTITUTING TERMS FOR INTERNATIONAL CHANGE: REFLECTING ON STRATEGIES FOR WOMEN'S RIGHTS

By Kamari Clarke[†]

The theme of the 2010 meeting—"International Law in a Time of Change"—is central to the core theme around which the "Advancing Women's Rights Internationally" panel is centered. The presentations during this session are concerned with advancing women's rights internationally by focusing on the realities of change in the new world order—a world of global circulations and new institutional norms set alongside complex cultural practices. In this regard, the presentations explore the receptivity of international mechanisms to the claims of women, as well as the extent to which these mechanisms can be used to improve the status of women. In reflecting on how, in improving the status of women, new and emergent international law mechanisms may help constitute notions of justice—if at all—we also know that law has not always served as the key source of change for women. But what better time to reflect on significant changes in the world of international law than now, and to consider the presence and absence of women not only from the processes of international law and its enforcement, but also within substantive legal logic.

In this moment following 15-year review of the implementation of the Beijing Declaration ("Beijing +15"), these presentations also attempt to explore the way that feminism has influenced the contours of international law in practice. With the expansion of the significance of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the rise in various gender regulations of the Office of the UN High Commissioner for Refugees, and the work of committed advocates, jurists, nongovernmental organizations, and diplomats, gender violence has been included as a prosecutable offence against the physical and mental integrity of the victim. The Rome Statute for the International Criminal Court and the jurisprudence from the ad hoc criminal tribunals have produced the mechanisms for the prosecution of gender crimes as war crimes, crimes against humanity, torture, and the predicate acts of genocide. These shifts in transnational practices have been made possible by the work of women who have pushed for these developments. But obstacles remain in not only ensuring a robust system of gender justice in the face of continued violence, but also in the ways that scholars articulate what justice is, how it can be achieved among culturally different populations, and the limits of law as the basis for procuring justice.

Thinking through these questions pushes us to explore the ways in which feminist projects have been called into question, vernacularized, and at times incorporated into new justice-making institutions. The presentations during this panel examine economic rights, gender stereotyping, women and war, and the intersection of race and gender; all provide a prism

* Cathy Albisa and Lisa Crooms did not submit remarks for the *Proceedings*.

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into understanding both the dynamism of global change, as well as new forms and challenges in these spheres.

Over the past ten years, one of the leading questions to preoccupy studies of the rise in international justice institutions has been how to make sense of their different approaches to legal systems and their changing forms in many areas around the world. As I have written elsewhere in the quest to come up with solutions to violence, including violence against women, phrases such as “the spread of human rights” and “the globalization of the rule of law” have become central explanatory categories to describe the movement of international law and human rights in quite unrestricted ways. These terms suggest the existence of a morally superior domain, especially in relation to other cultural and religious practices that may be seen as running parallel to it. But if we are going to produce the possibility of receptivity of international mechanisms, we must deal with those presumptions about the superiority of particular “justice” models and recognize that they are not only empirically misleading, but are also not analytically useful as a starting place.

With the increasing analytical and scholarly work on the multiple domains of human rights and justice principles, today there are three popular models used to explain the deployment of various human rights universals in a range of geographies. One model, norm internalization, emerged in the late 1990s and early twenty-first century to explain the ways in which the emergence of human rights principles could be universalized through both voluntary and involuntary means. This norm internalization model, popularized by Harold Koh, Richard Rorty, Margaret Keck, and Kathryn Sikkink, adopted horizontal and vertical forms of circulation to address a mechanism to improve the universality—and thus enforcement—of human rights. According to their model, the circulation of human rights must work with the “top-down” dissemination of human rights norms through the horizontal importation of treaty norms from one state to the other. This is followed by the vertical incorporation of treaty norms through a “trickle-down” mechanism by which citizens would eventually internalize the human rights aspirations codified into international treaties. Carrying with it a presumed moral imperative through which the globalization of human rights represents a necessary intervention to rid the world of violence, discrimination, and other harms, this model requires the internalization of dominant norms by citizens along with various levels of mobilization. As outlined by Koh, who was at the time preoccupied with providing a mechanism for the widespread circulation of new liberatory norms, this model assumes that people will internalize human rights norms once states legislate their commitments to these principles.

In response to this top-down approach, the second model—the process of vernacularization, which was prominently articulated by Sally Merry and further clarified by Goodale and Merry—highlights the export of human rights norms globally and examines their interaction with local conceptions, what Merry refers to as “the vernacular.”¹ By interrogating the reshaping of a set of “core” meanings within “culturally resonant packaging,”² Merry and others engaged in this approach (e.g., Annelise Riles, Mark Goodale) are committed to exploring, through the intersections of connection, the ways in which international legal and human rights institutions are structured through fundamental dilemmas that lead to gaps between “global visions of justice and specific visions in

¹ SALLY ENGLE MERRY, *HUMAN RIGHTS AND GENDER VIOLENCE: TRANSLATING INTERNATIONAL LAW INTO LOCAL JUSTICE* 1 (2006).

² *Id.* at 137.

local contexts.”³ Through the vernacularization of dominant renditions of law, the encounter between international and more circumscribed discourses reflects the movement of ideas beyond the contexts from which they originally emerged.

The third model—the encounter model—is best articulated by Anna Tsing, using the concept of “friction,” a metaphor of globalization that presumes globality through connection: “the grip of worldly encounter.”⁴ It is further articulated through the conceptualization of cultural “encounters” in the work of Lieba Faier. In such frictional encounters, ideas embodying multiple conceptual approaches come together, and, through difference, misunderstanding, and negotiation, otherwise disparate formulations are re-worked and, at times, clarified.

These three models of the development or spread of practices taken to be (or that become) universal provide a window into different forms of global circulation in the midst of social complexity. In the first, a form of mobilization in which the force of change is buttressed by a moral hegemony aims to instill cultural change through top-down legislative change, eventually leading to the production of new norms. The second and third complicate the presumptions articulated by Koh about the internalization of norms. Although many of us draw on aspects of all three models in various contexts, my comments today insist that we move beyond the tendency to attribute processes related to internalization as the only way that justice is made real in people’s lives.

What do we do with situations in which notions of justice seem incommensurate with international universals? How do we interact? How do we make changes when a times some meanings of justice are so incommensurate that they cannot be understood in terms of each other because they are defined against (or in contradistinction to) each other? It is this politics of incommensurability that is one of the biggest problems with advancing women’s rights internationally, and it is with these cultural differences that we must come to terms with drastically different conceptualizations of personhood, rights, and even the understanding of justice itself. The problem is that in spaces of international domains of justice making, these other understandings of justice and power—such as those that emerge from various parts of sub-Saharan Africa—are often foreclosed before ever being brought to bear on international rule of law conceptualizations. For example, the recent implementation of the criminal Sharia law in twelve of Nigeria’s thirty-six states has raised the question of whether Sharia’s approach to criminal sentencing (amputation, lashing, death by stoning) should be taken as examples of cruel and unusual punishment or as culturally normative practices. In a nation-state deeply divided by its relatively equal numbers of Muslims and Christians, the Nigerian controversy over Sharia has led to philosophical and practical debates about justice more generally. What kinds of social acts should be criminalized? What are the appropriate analytical means by which one should assess practices as legitimate or illegitimate? How should people be punished in a complex nation of social and cultural differences? Who has the right to decide—local democratically elected or independently established judicial bodies? Divine prophets? Or impartial international activists?

The case of the pious Nigerian woman, famously known as Amina Lawal, who was convicted of adultery under Sharia law and initially acquiesced to her death sentence is a somber example of the consequences of local laws in Nigeria that have been erected

³ *Id.* at 103.

⁴ ANNA LOWENHAUPT TSING, *FRICTION: AN ETHNOGRAPHY OF GLOBAL CONNECTION* 1 (2004).

and have targeted women and the poor. But when set alongside the model of a human rights secularism that insists on the rights-bearing subject, there was no comparison. Lawal was willing to die within her cultural system rather than reject it and make a culturally inappropriate response.

The important point here is that there are analytic limits to which Lawal's conceptualizations of personhood can be simply in need of reform. Rather, what was needed and what happened in this case was the implementation of a strategic reconfiguring of cultural incommensurability in which Muslim Nigerian human rights lawyers worked strategically and used relevant evidentiary and procedural arguments at the core of Islamic thought.

The reality of the workings of these justice-producing domains is that they operate within different, although at times interconnected, regimes of truth. For example, popular liberalist human rights conceptualizations of subjectivity are often understood in relation to the temporal present. In some cases, conceptions of personhood may presume life after death as an extension of life itself. Such differences make it difficult to put these presumptions about life (and freedom) into conversation with other conceptions of life; they call into question the temporality, as well as the governability, of life beyond the reach of the state. However, divergent fields of conceptualization are not the difference that makes the difference; I am not going to defend relativism. Rather, it is important to make sense of the uneven spheres of power within which women live everyday and their attempts to rework power imbalances strategically in order to create the conditions for the good life. This involves being aware of the micro-practices related to the making of various truth regimes in different conceptual fields—even in the midst of global change.

The claims of religious advocates, or even the demands of rebel groups vying for the sovereign management of their resources in resource war contexts, being adjudicated by courts are examples of competing truth regimes. But the larger question is: how might we advance women's rights internationally while also addressing the realities of different patterns and conceptions of law and justice that take seriously the potential power of new international institutions while also affecting their life in culturally and politically meaningful ways?

One consideration involves being mindful of the ways that the language of the "victim to be saved by the international legal community" serves to undermine the very aspirations that justice is meant to address. In representative democracies, the "voice of the people," "human rights," and the "rule of law" are indeed important symbols for the expression of freedom. By participating not only in the voting process but also in the making of popular opinion, people believe they are working for the maintenance of fundamental rights that protect their individual and group interests. The tools of democracy, like the tools of international law, have been deployed to highlight the right to struggle over freedom. However, in the context of feminist human rights organizing, what sometimes happens is that various international norm-producing models end up erasing the very subjectivities that are being defended, for example, in Muslim women's names.⁵ The irony is that the "saving the Muslim woman" human rights cry does not necessarily

⁵ See, e.g., Veena Das, *Gender Studies, Cross-Cultural Comparison, and the Colonial Organization of Knowledge*, 21 *BERKSHIRE REV.* 58 (1986); Veena Das, *Sexual Violence, Discursive Formations and the State*, 31 *ECON. & POL. WKLY.* 2411 (1996); Veena Das & Renu Adlakha, *Disability and Domestic Citizenship: Voice, Gender, and the Making of the Subject*, 13 *PUB. CULTURE* 511 (2001); Lata Mani, *Multiple Mediations: Feminist Scholarship in the Age of Multinational Reception*, 35 *FEMINIST REV.* 24 (1990); Lata Mani, *Contentious Traditions: The Debate on Sati in Colonial India*, 7 *CULTURAL CRITIQUE* 119 (1997).

protect her. For example, activists engaged in protecting Amina Lawal in her case were actually using the idea of her to ground their arguments, while erasing her as a subject.⁶

The issues at play, then, are related to the epistemic boundaries on which to articulate that which constitutes “appropriate law” or “an appropriate defense.” When seen in relation to the modernity of international law, the issues at hand highlight the cultural logics that shape home-grown notions of justice within other domains of enacting law. Thus, to achieve justice in daily life is to return to the root causes that are instrumental in people’s everyday life. This appears to be the space of justice—the space for the return of the political, the space opened up for negotiating life-producing possibilities before the existence of an injury, infraction, or violence in the first place. This is the critical intervention that is desperately needed in achieving women’s rights internationally. In this regard, to make the good life viable for those who live in regions of poverty, postcolonial dismay, and institutional limitations, agents of international human rights and international law need to recast the goals of such a life to take seriously political and economic concerns, as well as a range of other institutional possibilities that address political and social disparities.

At issue are questions about how to develop legal certainty out of uncertainty, how to produce commensurability out of sometimes incommensurate relationships. In this regard, focusing on creative strategies of power and rethinking the cultural logic of intervention allow us to consider how notions of the rule of law, and notions of justice, look to those operating outside our cultural and political worlds.

LESSONS FROM THE COTTON FIELD CASE ABOUT GENDER JUSTICE

By Rebecca Cook*

In thinking about how international law has helped to constitute notions of gender justice, it is important to understand how the social practices of gender generate and perpetuate prejudice against women, and different subgroups of women. In a recently published book, *Gender Stereotyping: Transnational Legal Perspectives*, my co-author, Simone Cusack, and I explore how the stereotyping article of the Convention on the Elimination of All Forms of Discrimination Against Women might be used to address prejudices and harmful stereotyping practices.

In our book we apply the work of social psychologists to analyze how national, regional, and international tribunals hold states accountable for the harms of stereotyping men and women. In doing this, we suggest a further application of the feminist methodology of naming to raise consciousness about gender stereotyping, and to expose its harms. The naming methodology is an important way to expose gender stereotyping, which is often deeply ingrained in our subconscious minds, and often accepted as a normal part of our sexed and gendered lives.¹ It draws on the approach to diagnosing a disease, in that a disease cannot

⁶ See also Lila Abu-Lughod, *Do Muslim Women Really Need Saving? Anthropological Reflections on Cultural Relativism and Its Others*, 104 AM. ANTHROPOLOGIST 783 (2002); Inderpal Grewal, *Women's Rights as Human Rights: Feminist Practices, Global Feminism, and Human Rights Regimes in Transnationality*, 3 CITIZENSHIP STUD. 337 (1999); Inderpal Grewal, *Transnational America: Feminisms, Diasporas, Neoliberalisms* (2005); Ratna Kapur, *Communitising Gender/Engendering Community: Women, Discourse and Saffron Agenda*, 28 ECON & POL. WKLY., Apr. 24, 1993, at WS35–WS44.

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¹ REBECCA J. COOK & SIMONE CUSACK, *GENDER STEREOTYPING: TRANSNATIONAL LEGAL PERSPECTIVES* 41 (2010).