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Prospects for International Gender Norms

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The Symposium, provocatively entitled *After Gender?: Examining International Justice Enterprises*, held at Pace University Law School, White Plains, New York, on November 12, 2010, was organized around four "conversations" between selected participants and finished with a keynote presentation by Janet Halley (Harvard).[1] Prior to the Symposium, telephone hook-ups were organized so that those involved in each of the four conversations could identify some key questions that they would discuss. I was one of the participants in Conversation 4, *Prospects for International Gender Norms*, along with Ali Miller (Berkeley) and Arminu Gamawa (Harvard SJD). With help from Darren Rosenblum (Pace), Jillian Petrera (Pace student), and Janet Halley, our panel identified three questions that provided a framework for our discussions at the Symposium. These questions are used here to provide a structure for my reflections.

What do you consider utopia for international gender law, and what stands in the way of its realization?

In my early days as a critical/feminist scholar of international law, an eminent professor, for whom I have great admiration, blithely dismissed my research as "utopian." The implication was that it lacked practical applicability and/or that I had flouted disciplinary conventions and boundaries—or worse,

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1. For further information, see *After Gender? Examining International Justice Enterprises*, PACE L. SCH., http://web.pace.edu/page.cfm?doc_id=35978 (last visited Aug. 2, 2011).

that I did not understand them—which left me out of touch with everyday reality and outside the bounds of academic credibility. While I take the criticism that my work lacks applicability to real-life everyday problems very seriously, I want to vigorously resist the frame of thinking that enables such casual dismissal of critical legal scholarship. Not only do I think that critique is an important component of (practical) struggle in everyday life, but I also reject the implied distinction being drawn between mainstream academic inquiry as legitimate, and efforts to think outside the box as somehow illegitimate. Why does critical thinking so often attract the smear of "utopian" impracticality and muddled thinking, rather than convey a sense of excitement about what new ways of thinking might offer to familiar conversations and discoveries? We need to think about what this reveals about the relationship between contemporary forms of global power and academic commitments to "rigor" and "objectivity."[2]

My own starting point is to associate utopianism with hopefulness; with creating frames of thinking that make it possible to imagine futures that are better than the present—less oppressive, more equal, less militaristic, and more free. The hopefulness that I would associate with feminist utopian thinking in international law includes remapping political and legal discursive spaces so that peace becomes not only thinkable, but realizable; resituating grass roots, anti-war, women's, and other people's movements so they are no longer marginalized and dismissed as anachronistic, but embraced as the voice of the people (like the protesters in Tahrir Square); and reconstituting "gender" so that it is no longer a binary or a hierarchy, but hybrid and multiplicitous. Thus, initially, the challenge to articulate a vision of gender utopia in international law for this conversation felt very attractive. I especially relished the opportunity to think against the grain of the contemporary hostility to critical/feminist thinking in international law that is asserted in the name of

2. This is a question that has inspired a great deal of feminist and critical scholarship in the discipline of international law. For an early feminist example see Hilary Charlesworth, *Alienating Oscar? Feminist Analysis of International Law*, *in* RECONCEIVING REALITY: WOMEN AND INTERNATIONAL LAW 1, 1-18 (Dorinda G. Dallmeyer ed., 1993).

maintaining unity in the face of the continuing crisis of terrorism (you are either for us or against us).[3] The conversations made possible by this Symposium promised a much-needed break from the hegemony of crisis-driven thinking as well as from the self-referential conventions of the discipline.

Yet, once I sat down to put my "utopian" thoughts on paper, I realized this task was as dangerous as any other project aimed at radical change. My gender utopia was emerging as a curious mixture of freedom and regulation/law. I want freedom, while I also want systems that ensure the equitable distribution of resources and wealth. I want peace, while I also want to engage the violence of the law to oppose brutal and corrupt regimes. I want gender egalitarianism, while I also want to enjoy the pleasures of desire's hierarchies. I asked around to see how others thought of utopia. My Swedish PhD student wanted a world in which consensus is not the preferred method of decision-making (decidedly post-Swedish). My ninety-year-old poet friend, who sheds tears of despondency every day about the state of the world, told me this was a question that no longer interested her. In answer to my next question about what questions were of interest, she replied that they concerned how she could leave life when she chose.

So I have come to think that utopian visions are much more about our discontents with the present than about the "perfect" world of the future.

Taking the lead from my student and poet friend, I found I could be much more specific: in my present, I am concerned that there is no frame for imagining what comes after the enterprise of addressing sexual violence. I am concerned that the institutionalization of feminist ideas, in international law and politics, has divested them of their radical potential. I am also concerned that the urge to think "after gender," as much as the idea excites me, may destroy the categories that so many of us rely upon as springboards to our critiques of the present and our

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3. *See* Dianne Otto, *Remapping Crisis through a Feminist Lens*, *in* BETWEEN RESISTANCE AND COMPLIANCE? FEMINIST PERSPECTIVES ON INTERNATIONAL LAW IN AN AGE OF TERROR AND ANXIETY (Sari Kouvo & Zoe Pearson eds., forthcoming 2011).

imaginings of better futures.

Therefore my utopian vision is very much a response to the immediate problems of the present as I see it, and the barriers that stand in the way of addressing these problems include academic isolation and myopia, the contemporary hegemony of crisis law-making and global governance, the stubborn tenacity of naturalized gender dualisms and the limits of my own thinking.

What is the most promising (recent) development in international law?

Sadly, when reflecting on recent developments in international law, I can find no evidence that peace has become more thinkable, that anti-war and feminist movements have been more widely embraced, or that the binary of gender has been seriously disrupted. However, in my (constant) search for "promising" signs of change, an endeavor in which I also try to engage all my students, I find reassurance in Michel Foucault's observation, that "nothing is in itself evil, but everything is dangerous,"[4] by which I take him to mean that there is no guarantee that any emancipatory strategy or action will be entirely, or even partially, successful. And the same goes for strategies aimed at repression and domination. Foucault's idea of "danger" here is comprised of both hopefulness and caution. It is a reminder that, while pursuing opportunities is always risky, there is no reason to assume that they cannot be turned to progressive ends. This reassurance releases me from the responsibility of finding the perfect (utopian) strategy for change. Accepting that everything is liable to "go wrong," while everything may also in some way be amenable to progressive change, encourages not only activism in the present but its continuation into the future. It gives me confidence to work with what is at hand; with what we know about the present and with whatever our activism produces in the future. There is no ultimate utopia, although there may indeed be "victories" to

4. Colin Gordon, *Governmental Rationality: An Introduction*, *in* THE FOUCAULT EFFECT: STUDIES IN GOVERNMENTALITY 1, 46-47 (Graham Burchell, Colin Gordon & Peter Miller eds., 1991).

cautiously celebrate along the way, just as there is no complete failure. Dangerousness is a call to action, a challenge, rather than an obstacle.

My interest in the dangerousness of feminist strategies in international law has led me to examine the Security Council's flirtation with feminist ideas over the last decade.[5] By the close of 2010, the Council had adopted five thematic resolutions on "women, peace and security," largely as a consequence of concerted lobbying by feminist and human rights NGOs,[6] although I have argued elsewhere that the quid pro quo has been enabling the Council to claim a "gender legitimacy" which has helped to arrest its flagging international authority.[7]

The first of these resolutions, Resolution 1325 (R1325), adopted in 2000,[8] took a very broad view of women's issues in armed conflict and post-conflict settings, including emphasizing the importance of their participation in brokering peace and in post-conflict reconstruction. This representation of women with political agency marked a welcome departure from the Council's previous preoccupation with women as victims of sexual abuse, although the notion of women as peace-makers, while pregnant with possibilities, also draws on traditional naturalized gender scripts. Eight years later, in 2008, the second resolution (R1820)[9] focused solely on addressing sexual violence, and the document's single fleeting reference to women's participation is buried in the middle of its provisions.[10] The resolution even suggests that the Council may invoke its powers of collective use of force to address widespread or systematic sexual violence,[11] adopting the increasingly familiar tactic of coopting feminist concerns to justify

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5. Dianne Otto, *A Sign of "Weakness"? Disrupting Gender Certainties in the Implementation of Security Council Resolution 1325*, 13 MICH. J. GENDER & L. 113 (2006).

6. *See* NGO WORKING GROUP ON WOMEN, PEACE & SECURITY, http://womenpeacesecurity.org/ (last visited Aug. 2, 2011).

7. Dianne Otto, *The Security Council's Alliance of Gender Legitimacy: The Symbolic Capital of Resolution 1325*, *in* FAULT LINES OF INTERNATIONAL LEGITIMACY 239 (Hilary Charlesworth & Jean-Marc Coicaud eds., 2010).

8. S.C. Res. 1325, U.N. Doc. S/RES/1325 (Oct. 31, 2000).

9. S.C. Res. 1820, U.N. Doc. S/RES/1820 (June 19, 2008).

10. *Id.* ¶ 12, at 2.

11. *Id.* ¶ 1, at 1.

changing the law, in this case the laws of war (*jus in bello*) which have, at least since 1945, limited the legal triggers for international armed conflict to cases of self-defense. The R1820 also suggests that women and girls may be evacuated to safety if they are facing an imminent threat of sexual violence,[12] elevating sexual violence victims to the position of "most deserving" or "most vulnerable" victims of armed conflict. Who is not injured enough to be included in the evacuation queue? Men and boys who are facing imminent sexual violence; women facing an imminent, but non-sexual, threat to their lives; children needing urgent evacuation for medical care.

Even so, hidden away in paragraph three of R1820 is a promising development. The paragraph lists steps that parties to armed conflict must take to protect civilians from all forms of sexual violence, including "debunking myths that fuel sexual violence." This is definitely a productive moment of feminist possibility, bursting with opportunities for activism. The provision acknowledges that sexual violence is not a natural expression of masculinity—not even in the context of armed conflict. It recognizes that sexual violence is made possible by discursive social and cultural norms and practices that can be debunked. So R1820 is a classic example of the dangerousness of feminist engagement with international law—on the one hand, gender is taken up as a totalizing dichotomy that operates so that women and girls are always in the most disadvantaged position, which invites and justifies protective responses, while on the other hand it presents the opportunity to actively dismantle gendered mythologies about sexual violence.

Resolution 1888 (R1888),[13] the third in the series of thematic resolutions on women, peace, and security, also focuses solely on sexual violence. However, a close reading reveals that the resolution embraces a wider selection of feminist ideas than R1820, notably making no reference to evacuating sexual violence victims, although it retains the suggestion that armed force can be employed as a response to sexual violence. The R1888 retains the language of "debunking myths" and establishes several

12. *Id.* ¶ 3, at 1.
13. S.C. Res. 1888, U.N. Doc. S/RES/1888 (Sept. 30, 2009).

accountability mechanisms[14] which, in terms of promise, are of course dangerous. They threaten to reinforce the idea that the feminist agenda in international law is concerned primarily or even solely with sexual violence, while they also open the possibility that sexual violence may yet function as a stepping stone to a broader feminist/gender agenda.

The fourth resolution, Resolution 1889 (R1889),[15] adopted just five days after R1888, reinvigorates the wider agenda of R1325. It reiterates the importance of women's participation at all stages of peace processes and in post-conflict peace-building. While the danger remains that this may end up simply reinforcing stereotyped notions of women's inherent predisposition to pacifism, the language also enables a more fluid reading with its call for "supporting women's organizations and countering negative social attitudes about women's capacity to participate equally."[16] Significantly, R1889 also recognizes the need to improve women's socio-economic conditions in post-conflict situations[17] and ensure that girls have equal access to education.[18] There is even a hint of "sexual positivity" with the inclusion of the need to ensure women's access to health services "including sexual and reproductive health and reproductive rights."[19]

While my earlier assessment, following the adoption of R1820 (the second resolution), was that these resolutions were indicative of a broader trend in international law, wherein the feminist project was losing ground even as many were celebrating its victories,[20] the third and fourth resolutions have served as a reminder of Foucault's caution that nothing is ever completely "good" or "bad." The fifth and most recent addition to this series

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14. These mechanisms include the appointment of a Special Representative of the Secretary-General on Sexual Violence in Armed Conflict and a team of experts to be deployed rapidly to situations of particular concern in order to help national authorities respond to sexual violence.

15. S.C. Res 1889, U.N. Doc. S/RES/1889 (Oct. 5, 2009).

16. *Id.* ¶ 1, at 3.

17. *Id.* ¶ 10, at 4.

18. *Id.* ¶ 11, at 4.

19. *Id.* ¶ 10, at 4.

20. Dianne Otto, *The Exile of Inclusion: Reflections on Gender Issues in International Law over the Last Decade*, 10 MELBOURNE J. INT'L L. 11, 15 (2009).

of thematic resolution, Resolution 1960 (R1960),[21] has been adopted since the Pace Symposium concluded, and is again preoccupied with sexual violence, which has made me wonder whether these reflections are perhaps too optimistic and to contemplate again the idea that the feminist enterprise is losing ground. Yet it remains the case that the genealogy of these resolutions shows that international legal texts do not freeze ideas in time or completely contain them—not even resolutions of the super-power dominated Security Council. Instead, they create dangerous spaces that enable progressive interpretations and applications of the text, and open further possibilities for feminist engagement with power. The genealogy also shows how crucial both activism and scholarly critique (utopian thinking?) are to seeing these opportunities in order to take them up in a practical way.

What is the relationship between the conceptual goals discussed in response to questions one and two and pragmatism and incrementalism?

It is interesting to note, in retrospect, that the questions we asked of ourselves also assumed a gap between utopian thinking and practical application, like my eminent colleague. Although, in our defense, we were also assuming that a relationship can be forged. It is safe to say that there was little doubt in the minds of those of us at the Symposium that genders are multiple and that unsettling the naturalized duality of gender can create new relational contexts and possibilities. However, Foucault reminds us that we can never be sure that such troubling will lead to progressive social change. This reminder is not meant to deter, but to emphasize the symbiotic relationship between activism and critique, between imagination and practice. We need to find ways to open deep spaces for the expression of ideas and the exercise of freedoms, and utopian thinking can help. As legal scholars, our particular challenge is how to create and utilize these spaces in the hegemonic languages and practices of international law and nation states.

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21. S.C. Res 1960, U.N. Doc. S/RES/1960 (Dec. 16, 2010).

These reflections lead me finally to be able to articulate the question at the heart of my vision of "utopia" in international gender law, which is: what kind of gendered and sexed world can give life to the most people? By "life" I mean a life that is fully recognized by law and politically engaged—not the "bare life" that Agamben so compellingly warns is becoming normative.[22] We need to consider how far feminist analysis—including sex positive/queer feminism—can take us towards this goal, be alert to blind spots and dystopian tendencies, and remain open to the possibilities of thinking "after gender." We could start by moving the feminist project in international law beyond sexual violence.

Just as I refused the professor's dismissal of feminist visions of international law as impractical many years ago, it is perhaps even more important today to make connections between utopian conjectures and the realities of the present. Those conjectures can form a window of very practical hope in a time of walled protectionism and heavily policed thinking.

22. GIORGIO AGAMBEN, HOMO SACER: SOVEREIGN POWER AND BARE LIFE (Daniel Heller-Roazen trans., Stanford University Press 1998).