Pace Law Review

Volume 31
Issue 3 *After Gender?: Examining International Justice Enterprises*

Article 8

2-1-2012

After Gender: An Overview

Ralph Wilde
University College London

Follow this and additional works at: http://digitalcommons.pace.edu/plr

Recommended Citation
Ralph Wilde, *After Gender: An Overview*, 31 Pace L. Rev. 882 (2011)
Available at: http://digitalcommons.pace.edu/plr/vol31/iss3/8

This Article is brought to you for free and open access by the School of Law at DigitalCommons@Pace. It has been accepted for inclusion in Pace Law Review by an authorized administrator of DigitalCommons@Pace. For more information, please contact cpittson@law.pace.edu.

After Gender: An Overview

Ralph Wilde*

I. Introduction

This piece offers a brief set of observations on the presentations that were made at the *After Gender* Symposium. It is based on remarks that were prepared over the course of and delivered at the end of the conference, and intended to be short and impressionistic, identifying some common themes. Necessarily, it is highly reductive, essentialist, impressionistic, and selective, not at all reflecting the richness and complexity of what was said, both generally, and in relation to each individual contribution. Moreover, it is based only on the remarks delivered orally at the conference, not also on the published versions of these remarks.

What follows are observations on two matters. In the first place, I consider some problems with the existing international normative framework associated with gender policy: how such problems have been diagnosed, and what proposals for alternative approaches have been made, including through a consideration of the pragmatics of working within the existing framework to put it to more interesting and different uses than are currently prevalent. In the second place, I consider two broader background factors that need to be reckoned with, which are not particular to the present subject-matter, but which most agree are crucial to it. These are, on the one hand, the relevance of the insights from practice and, on the other hand, the particular "international" context of our discussions and what is distinctive about that context compared to the parochial, the national, the local.

* University College London, www.ucl.ac.uk/laws/wilde.

II. Problems with the Existing Normative Framework

Beginning with the problems with existing ideas concerned with gender in international law and public policy, it was clear that there was general anxiety expressed by most of the presenters at the Symposium. Some sought to diagnose and map out the problems. Lara Stemple identified some of the blind spots of current gender policy in human rights law, for example the trend of equating femaleness with victimhood. Carole Vance foregrounded the problem of having a single vector of oppression, which has led to the "gender establishment" where other vectors of oppression are missed as groups become silo-ed within single issues. Aminu Hassan Gamawa emphasized problems caused when too much emphasis is placed on law, sometimes leading to resistance to the underlying political project that law is being used to capture.

Others in the room explored alternative visions to the prevailing normative frameworks. Alice Miller wanted us to think about gender as something other than a grant. We heard Dianne Otto's idea of "utopia" as a world conceived more broadly than in terms of an exclusive or predominant focus on the problems of today. In this regard, Otto invoked our host Darren Rosenblum's very important piece on CEDAW, seeking to "unsex" that instrument. Lara Stemple called upon us to focus on pleasure rather than harm, although Alice Miller questioned the wisdom of seeking to extend the scope of law and the language of rights into the arena of pleasure.

Alongside proposals such as these, which sought to move, to a certain extent, outside the existing framework, there was also an expression of unease about embracing ideas that were entirely sex-neutral and erased gender altogether. This leads onto what predominated within the discussion, the expression of an ambivalence about that which had been identified as problematic, and a questioning of whether there is nonetheless a space for a pragmatic use of identitarian policy. Ed Stein focused on this ambivalence, discussing the way in which the current framework can potentially oppress but also be emancipatory. Teemu Ruskola similarly referenced his own

ambivalence in relation to queer theory. And Dianne Otto reminded us of Michel Foucault's maxim that "everything is dangerous."[1]

Several commentators drew inspiration from the pictoral backdrop to our discussions in the auditorium at Pace Law School, surrounded as we were with various representations of Lady Justice. Scott Long pointed out that, of course, within each image is the same combination of the sword and the scales. Surveying the different images, Suzanne Goldberg asked whether the existing framework can actually sustain being used in all sorts of different and transformatory ways, in some cases uses that transcend the limits that have been identified within it. And if we think about the ambivalences within current ideas around gender and international law and public policy, is this a clever ambivalence that somehow may have pragmatic utility, or is such an approach ultimately trying to be all things to all people, and contradictory?

This led into discussions of pragmatic uses of the existing framework in particular contexts. We had Alice Miller's very interesting example of groups who are seeking to use UN Security Council Resolution 1324 somehow to achieve its opposite, or at least something very different from how it is currently regarded. Is this clever and imaginative, or are such groups, in Miller's words, "fools" for trying use the Resolution in this manner? Adrienne Davis proposed replacing the moral with the material, seeking to look at the way in which there may be something meaningfully distinct about the experience of those who are involved in sex trafficking, and that there should be a way being able to capture that distinctiveness outside of problematic notions of sex.

Mary Anne Case proposed the idea of at least a "thin" notion of legal designations. It was suggested that we should try and focus, for example, on ideas of sex discrimination, rather than a more "thick" notion of gender, which would be problematic. Some in the room, including Bob Chang, were less sanguine about the possibilities in this regard. One can try and

1. GARY GUTTING, MICHAEL FOUCAULT'S ARCHAEOLOGY OF SCIENTIFIC REASON 288 (1989) ("'My point is not,' [Foucault] once said, 'that everything is bad, but that everything is dangerous.'").

use the language of gender in a "thin" way, but it can be a difficult process to control, and may end up nonetheless rendering the identitarian category stronger.

Janet Halley reminded us of the need to account for other societal dynamics that may be in play, whose purchase may necessitate a continuing focus on issues understood in gender terms. Halley recalled the erotic pleasure that many people in the world take in their association with particular gender roles.

III. Broader Contexts—Practice, and the International

Halley's move to consider factors external to international gender policy leads on to two of the broader trends that were present in the room throughout our discussions. The first concerns the age-old question of how things work in practice and how insights from that arena can be drawn into theoretical discussions and vice versa. Helen Kinsella reminded us of the existence of members of the trans community who do have notions of a "real" gender identity. Kinsella argued that the reality of trans experiences and the claims that trans people make need to be given respect when gender policy is theorized. Suzanne Goldberg reminded us of the pragmatics of practice: how sometimes there may be pragmatic utility in destabilizing existing categories, but then in other instances such efforts may be very dangerous to the case at issue.

The second general theme is the "international" context: how to grapple with the particularly distinctive nature of the international system within which gender law and policy plays out. Three sub-themes presented themselves here.

The first concerns the structural processes that are distinctive to the international system, which mediate developments in the area of gender policy in that particular context. Dianne Otto mentioned the way in which, in the negotiations at many of the international instruments that we were discussing, it was deemed necessary to frame things in the language that states understood. We also heard Sally Engle Merry's notion of the "conservative lag": it is sometimes easier if that which is put forward builds on something states agreed to previously. This indicates a dynamic of conservatism which

in some respects may be distinctive to the international arena. That said, Alice Miller observed that the international context might be perhaps a space which is more open to play than other contexts. But of course this is a play of many actors, including, notably, an actor that was mentioned throughout the day: the Vatican.

The second of the three distinctive features of the international would be the shifts in the broader geopolitical debates about international public policy, and how these shifts have mediated the way in which international law has addressed issues of gender and sexuality. Here, Karen Engle identified how the development agenda from the 1960s had a particular role in determining the way in which gender and sex were understood. So for example, we might think about the adoption of CEDAW, whose provisions address economic social and cultural rights, and how geopolitical trends, and trends in relation to sex and gender, changed after that period, for example the post-cold war turn towards criminalization.

The third point about the particular international focus concerns the profound global imbalances in power that can be identified on the international level, and the way in which those imbalances are laid out in the formulation and politics of gender policy internationally. So Ratna Kapur made the important point about the way in which many of these initiatives can be understood in terms of the civilizing mission and, in particular, how the notion of saving women in the developing world is explained in cultural and racialized terms. Finally, Aminu Hassan Gamawa foregrounded the dissonance between where, on the one hand, the law is formulated, and, on the other hand, it is taught, reinforcing the association of the global human rights movement with the civilizing mission.