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Democracy, Gender, and Governance: Introduction

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DEMOCRACY, GENDER, AND GOVERNANCE

The panel was convened at 2:45 p.m., Friday, March 30, by its moderator, Darren Rosenblum of Pace University School of Law, who introduced the panelists: Sonia E. Alvarez of the University of Massachusetts-Amherst; Janie Chuang of Washington College of Law, American University; Janet Halley of Harvard Law School; and the commentator, Kerry Rittich of the University of Toronto Law School.

INTRODUCTION

*By Darren Rosenblum**

Since at least the mid 1990s and the Fourth World Conference for Women in Beijing, gender as an analytic category and as a programmatic concern has become a mainstream part of international law. While feminists have traditionally understood their relation to international law in critical terms and from their position as outsiders, this turn toward gender equality places at least some feminists and some of their projects within the governance structure of international law itself. This crucial shift from exclusion to partial inclusion merits examination.

The form of this inclusion goes beyond the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW) to reach a broad swath of international law. Recent efforts to eliminate human trafficking follow prior feminist work establishing rape as a war crime in international criminal law. These and similar efforts drew feminists into debates about the scope of international law and the proper agency for national efforts. In this process, feminists have had to engage diverse groups with different political commitments and goals. Now that feminists exercise some power in global governance we can interrogate the form of this governance and its relationship to feminists' goals. Do the products of these efforts reflect their original purpose?

My own work has examined French and Brazilian laws for women's political representation, interrogating the role of both feminist theory and international law in such movements. In those contexts, the interaction between international law and domestic legislation reflected both the power of international norms to inspire compliance and the challenges in doing so given the variation of the construction of gender identity across national lines.

The complex interaction between feminism and governance, between international law and domestic realities, will undoubtedly provoke an insightful set of reflections from our panel. Preparing this panel has been an amazing, delightful conversation among the panelists about gender and democracy in international law. The panel will proceed with brief presentations, a series of questions for the panel, and audience response.

These questions are:

- (1) What are the implications of understanding gender activism as a part of global governance?
- (2) What should we make of the moving trajectory and fragmentation of international women's rights concerns that you all have described?
- (3) What has gender mainstreaming, to the extent that it has occurred, changed, and how has it changed feminist internationalism itself?
- (4) What issues does this changed and fragmented feminist internationalism still exclude and why?

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- (5) How have gender activists used international law such as CEDAW or the Beijing platform in local and national struggles?
- (6) What do global economic institutions hope to gain from embracing it?

REMARKS BY SONIA E. ALVAREZ[†]

My role in this panel is to dialogue with international law from the perspective of Latin American social movements, especially feminist movements. I am going to talk today about a set of policies, discourses, and practices that constitute what I am calling the global gender agenda and its implications for feminist advocacy, especially from the perspective of Latin America.

The global gender agenda, as I understand it, is rather different from what some international scholars call the international gender regime or international gender regimes. It is the composite of practices and discourses that states on the one hand, and activists in civil society organizations on the other, feel compelled to enact if they are to succeed in securing vital resources. For states adopting this agenda, at least on paper, it has been increasingly necessary to succeed in winning assistance in international financial institutions, as well as multilateral and bilateral aid agencies.

For feminist activists and rights advocates, implementing that agenda is also seen as essential to success in what we could call the global gender projects market. Since at least the mid- to late 1990s, in the post-Beijing period, these discourses and practices have centered on a set of programmatic imperatives that are by now quite familiar: “women’s empowerment,” leadership training, micro-credit, job training projects for poor and indigent women, targeted cash transfer programs, numerous programs aimed at combating women’s poverty, especially aimed at female-headed households, gender mainstreaming of government institutions and women’s political participation and representation through electoral quotas, to name just a few of the most pervasive elements of this agenda. It is a “globally-grown” set of remedies or recipes for dealing with women’s disadvantages in market-led development.

Forged from the confluence of transnational feminist advocacy and the new-found interest in gender by international institutions, the global gender agenda at once enables and disciplines feminist activism locally, nationally, and transnationally.¹ It facilitates the adoption of gender-related policy while at the same time sharply circumscribing its substantive parameters and thereby limiting its transformative potential. The global gender agenda both constitutes newly opened political space and disciplines those who occupy that space. That agenda undoubtedly has enabled feminist work that has had many, many positive consequences for women. Beyond the broader enabling effects in the world, international engagement in Latin America has offered up new political grammars that facilitate local, national, and global rights advocacy. But the global gender agenda—I think this is the most important point I want to make—also has disciplinary dimensions in that it demands the twin identities of citizen and individual. It’s about an idea of women pulling themselves up by their own bootstraps: “The neo-liberal rules for the new woman citizen were quite clear: improve your household’s economic condition, participate in local community development, and if you have the time, help build

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¹ Charles Hale, *Does Multiculturalism Menace? Governance, Cultural Rights, and the Politics of Identity in Guatemala*, 34 *J. LATIN AM. STUD.* 485–524. (2002).

and run local apolitical institutions like the self-help group. By then you should have no political or physical energy to challenge this paradigm.”²

Many people who previously sought to influence international policy circles—especially through feminist advocates’ and NGOs’ involvement in the UN social summits of the 1990s—are now pulling back from those arenas. Acknowledging their complicity, however inadvertent, in administering the global gender agenda and recognizing the limitations of neoliberal development discourse and practice, the folks I call “the orphans of the UN” are re-engaging in movement-centered international contexts, such as the World Social Forum process, and more critically engaging international institutions.

REMARKS BY JANIE CHUANG*

My interest in the topic of this panel stems from my research and advocacy work on human trafficking issues. In watching this field—human trafficking—grow over the last decade, I’ve been struck by the tremendous influence that feminist advocacy projects have had on the development of anti-trafficking laws and policies. I’ve also been deeply disturbed by the effect of some of these movements: specifically, by the way in which deeply divisive feminist debates over prostitution reform have come to dominate anti-trafficking discourse in law and policy making.

Just to give you some background on that debate, on one side of it are feminists who identify themselves as abolitionists, or could be described as structural feminists, who believe that all prostitution is inherently violence against women and that states should accordingly engage in legal reform to abolish all forms of prostitution. In the trafficking context, what this translates to is an advocacy project designed to encourage states to adopt a legal definition of trafficking that would encompass all migration for prostitution including “voluntary” prostitution.

On the other side of the debate are those who oppose this structuralist view on a diverse range of grounds. Some view prostitution, or rather “sex work,” as potentially liberatory for women. Others are perhaps not entirely comfortable with the concept of sex as work, yet are reluctant to deny the possibility of individual choice. And then there are those who believe that as a pragmatic matter—irrespective of one’s moral view of prostitution/sex work—an abolitionist reform strategy would either be unproductive or harmful to women on the ground.

The prostitution reform debates reflect a troubling fragmentation of feminist advocacy projects, with a negative impact on the implementation of both the international law on trafficking, the UN Trafficking Protocol, and the arguably more influential U.S. law on trafficking. The U.S. law has proven highly effective in shaping how other governments address trafficking, using the threat of economic sanctions to encourage other governments to comply with U.S. minimum standards on trafficking.

The structuralists ultimately were unsuccessful in their efforts to abolish prostitution as a matter of international law. They have been highly successful, however, at pushing the abolitionist reform agenda internationally and bringing their influence to bear on “U.S.

² Srilatha Batliwala & Deepa Dhanraj, *Gender Myths that Instrumentalize Women: A View from the Indian Frontline*, in *FEMINISMS IN DEVELOPMENT: CONTRADICTIONS, CONTESTATIONS, AND CHALLENGES* 25 (Andrea Cornwall, Elizabeth Harrison, & Ann Whitehead eds., 2007).

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minimum standards'' that the United States encourages other countries to adopt under the threat of economic sanctions.

I see drawbacks of both the fragmentation and also specifically the structuralist project itself. The fragmentation of feminists has enabled the anti-trafficking agenda to be co-opted by a crime and social control perspective on this issue. Energy that could have been spent securing stronger victim protections in the law was instead diverted to fighting these prostitution wars. We see the effect of this diversion in the text of the UN Trafficking Protocol, which imposes hard obligations on states to take aggressive prosecutorial measures. Victim protection measures, by contrast, are framed in the best of UN aspirational language, that is, what states shall endeavor to do. This reductive framing of trafficking as primarily a crime and moral issue undermines efforts to promote a more nuanced or complicated understanding of this problem as not just about crime and border control, but also about labor, migration, poverty, and public health.

This fragmentation also raises questions as to whose agenda is being promoted at the international level. The prostitution reform debates are carried out largely among U.S. feminists, with Third World feminist perspectives conspicuously absent from discussion of reforms affecting Third World women. Their absence enables, in Ratna Kapur's terms, an "imperialist gaze" upon Third World women (victims) as destitute, ignorant, and incapable of choice—imagery that feeds the reductive view of the problem of trafficking as one that can be solved by catching the traffickers and rescuing their hapless victims. This criminalization paradigm masks the complex interaction of globalizing trends and gender-based discrimination that cause women to undertake risky labor migration projects in the first place.

But it's not just a question of who or what is being left out of the picture, but also who or what is getting in. What is the cost of structuralist gains? The price of admission into the realm of influence vis-a-vis U.S. policy appears to include strategic alliances with traditionally non-feminist agendas, particularly with respect to sexual and reproductive rights. What are the distributional consequences of these reform projects for their target populations? What is the cost of focusing advocacy efforts on U.S. counter-trafficking sanctions policy as the preferred vehicle for influencing global counter-trafficking policies? Does this signify an embrace of U.S. unilateralism and a rejection of international law and international institutions? These are the sorts of questions we ought to be asking, as we—as Janet advises—seek a more critical engagement with the power wielded by feminists in the trafficking context.

REMARKS BY JANET HALLEY*

I thought I would summarize the paper that I participated in writing with Chantal Thomas, Prabha Kotiswaran (now teaching at LSE), and Hila Shamir, a graduate student at Harvard Law School.¹ We decided it was appropriate to describe the feminist activism in some international contexts as "governance feminism." We drew on the sense of the word "governance" in the work of Foucault: a kind of diffuse and network-like arrangement of power, rather than a sovereigntist kind of top-down model of power. We noticed that feminists were

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¹ Janet Halley, Prabha Kotiswaran, Chantal Thomas, & Hila Shamir, *From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work and Sex Trafficking: Four Studies in Contemporary Governance Feminism*, 29 HARV. J. L. & GENDER 335 (2006).

extremely good at using the new governance and all the other institutional mechanisms that travel with that name.

One blind spot has been the reluctance to acknowledge these efforts as a form of power-wielding. The literature reflects an inability to keep ahead with feminism's own power, to understand that it is in fact producing effects. The criminalize-or-liberate model occludes law as management, law as bureaucracy, law as a series of disparate consequences—and blocks out or defers a more consequentialist vision of what law is all about.

We were concerned about backgrounding national and nationalist effects. Here I am going to note an overlap between Chantal's part and my part. Chantal (and Janie today) have noticed the way in which the repatriation of trafficked women as the remedy for their victimization was the kind of fallout of feminist absorption in the debate, almost as if it did not matter. But those women are going to be repatriated—that is, as if there was a right place on the globe for them to be, and that was back home—the place that they had left. This coincides with something on the rape/sexual violence/sexual slavery reforms, where we discover that the international humanitarian law regime now has an idea of the proper-sidedness of women's sex during war. Women belong to some men, men on one side, and those are the men with whom they should have sex.

The most interesting moment methodologically arose when we compared the very different effects of non-enforcement in India and in Israel, seeing non-enforcement as an intrinsic part of the regime, but with radically different effects on the different stakeholders in the sex markets.

Feminism now has the status of an expertise or of a knowledge—you can have a job doing it and there are things that, as a feminist, you *know*. Here, there was an overlap again between Chantal's part and my part in which we saw the victories of some feminists over other feminists.² In the rape part, one of the things that fascinates me is the dropping out of official feminism of an anti-criminalization agenda that was big in the United States feminism in the 70s and early 1980's; now feminism as knowledge wants criminalization. That's a victory of some feminists over other feminists, which you could either like or not like.

REMARKS BY COMMENTATOR KERRY RITTICH*

As Sonia referenced, there is a script that gender activists now feel literally compelled to enact in order to materialize on the international stage. This raises a tremendously interesting question, which is: who's influencing the script and what's driving the shift in the script over time? The mainstreaming of gender equality within international institutions is paradoxically producing a fragmentation of the gender equality project at the international level. We can see the emergence of competing agendas concerning gender equality and a transformation over time in what gender equality means on a conceptual level, as well as the kinds of strategies it entails in terms of programmatic shifts or regulatory shifts.

There is a real transformation in the subject underway. At the heart of it, as Sonia described really well, is a kind of "Cinderella goes to market"¹ idea in which pursuit of gender equality turns into a boot-strapping operation that freights an enormous amount onto the individual

² Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386.

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¹ This is also the title of a collection of essays analyzing gender equality in the context of the transition to market economies in Central and Eastern Europe. See *CINDERELLA GOES TO MARKET: CITIZENSHIP, GENDER AND WOMEN'S MOVEMENTS IN EAST CENTRAL EUROPE* (Barbara Einhorn, ed., 1993).

woman at the local level, perhaps with a little boost of micro-credit to get her going. One of the major actors here has been the World Bank, which has developed and promoted a strikingly new idea about what gender equality actually means and how we might get there. The Bank has been assiduously promoting a market-centered concept of gender equality, one that quite explicitly rejects things like substantive equality as between men and women that are central to other international approaches to gender equality.

One way to understand the emergence of competing ideas about gender equality is that if gender equality has become the one thing that everyone now has to support, that means that every institution has to figure out its relationship to gender equality and how to stabilize it or recalibrate that commitment in light of the other projects that it is also pursuing. I think that this can be a productive way to understand the emergence of competing agendas and the interesting turns that debates about gender equality can take on the international plane. Let's take the Bank for a moment as the exemplar of an institution that must now accept gender equality because there was a full-frontal assault during the 1990s, part of which was launched by mainstream feminist internationalists, against the activities that the Bank funded and its general approach to market reforms. If gender equality has become the thing that the Bank must now embrace, what is the form and manner in which the Bank embraces it?

I think you can understand this in two ways; that is, the Bank has taken a Janus-faced approach to gender equality. It has made a "market" intervention in the debates about gender equality in the international order, and it has also made a "gender" intervention in debates about economic development. Here, the Bank has tried to persuade feminists that they should take economic growth through the market more seriously as a mechanism to promote gender equality. But the Bank has also made the "business case" for gender equality. It has simultaneously tried to persuade institutions, policy makers, and states that have no independent interest in gender equality or feminism as a social justice project to tolerate a measure of gender equality in the name of things that they *do* care about—for example, more economic growth. There is a deradicalizing impulse here; a kind of anodyne gender-equality project is emerging that no sane state would oppose. Why? Because it's a win-win proposition that in the end requires relatively little. It turns out that gender is a brilliant allocative principle if you're thinking about what to do with your development resources. Investing in women is cost-effective and efficient as well as "right." This is a wonderful transformation of what began as a critical project.

DARREN ROSENBLUM:

Below is a short summary of the comments and questions posed by the audience and some of the panel's responses.

LAMA ABU-ODEH:*

I don't think that governance feminism has depoliticized gender. I think what it did was deradicalize gender because most of the feminists up until the end of the 1980s were part of communist, socialist, or radical left movements who lost funding after the end of the Cold War. Leftist women activists found a way of surviving as activists by incorporating themselves in the emerging international global structure. This is not depoliticalization but deradicalization, in which the death of the left led women to shift opportunistically.

* Georgetown Law School.

RALPH WILDE:[†]

In of the area of peace operations, and in particular, international territorial administration, issues of gender and feminists'—certain feminists'—considerations have gone into the mainstream in international public policy. These missions have a gender unit, and Kosovo's political quotas for women are heralded as a great achievement. What has troubled me about these developments is the way that activists have been willing to become involved in these projects but unwilling to question some of the underlying issues, such as the more fundamental question as to the legitimacy of the United Nations going into a country and taking over control of its government from the local people. This feeds into long-standing debates about what's been termed by some as "feminist imperialism." Is it more effective to apply post-colonial theory to feminism and perhaps as a result "take a break" from feminism? The other way of looking at these critiques is to see them as more radical feminist critiques, as critiques of intervention itself, of militarism itself. How should these concerns be approached methodologically, and what kind of issues are at stake in understanding them in feminist terms as opposed to in terms of post-colonial critique?

JOSÉ GABILONDO:[‡]

Why do we say gender when we mean sex? The sex equality movement has gained nothing by using the word gender. I would like to invite people who use the word gender constantly to wonder why and when did we start using gender instead of sex, because the adoption of gender excluded more basic considerations about the nature of masculinity, one reason why gender means woman. One problem with the turn to gender is that it's a concept that internally has the seeds of its own destruction because gender starts with the idea that it has no logical correlate with chromosomal status. And if you admit that, then gender is a transitional concept that must eventually dissolve.

DIANE OTTO:^{†‡}

I am struck and horrified by the extent to which "bad sex" feminism has gone everywhere, so that linking criminal law with feminist agendas is certainly not confined to trafficking and international humanitarian law, but extends to the human rights agenda as well. I don't know how one avoids being complicit in these agendas. How do these agendas mobilize people at the grass roots?

LAURA DICKINSON:^{‡‡}

Janet's argument resonates with critiques of human rights discourse more broadly. I'm thinking of Balakrishnan Rajagopal's argument that rights discourse can squeeze out a vision of economic injustice as a mode for dealing with global problems. Are you arguing that rape should not be criminalized as a war crime and is it possible to have the criminalizing discourse with other things to mitigate its impact? If you're going that far, what would be the implications?

[†] University College, London.

[‡] Florida International University.

^{†‡} University of Melbourne.

^{‡‡} University of Connecticut, School of Law.

ANSWERS FROM THE PANEL**KERRY RITTICH:**

With regard to Ralph's extremely interesting and complex question, which had to do with what might be at stake in feminist participation in post-conflict governance, I want to flag a relationship between emerging styles of analyzing and promoting gender equality, and what I'm going to call various "new governance" techniques in the international order generally. What most marks the approach to gender equality that I am attributing to the World Bank is a managerial attitude to the task of gender equality. Here, many, many critical policy and regulatory issues are styled as technical matters, matters of expertise—and once they're characterized in this way they can be safely consigned to the technocracy. They're no longer questions of democratic deliberation, no longer questions about which there will be and should be deep political contestation and difference.

JANET HALLEY:

To answer your questions, Ralph and Laura, I'm doing a close reading of the ICTY, ICTR, and Rome Statute activism of feminists around the sexual violence, rape, and sexual slavery pieces of war. What I'm noticing is a consensus view: all the feminists thought that it was important to get the sex crimes specified at the highest level of generality possible in the various instruments of international humanitarian law and in almost every domain. A consensus to put in as many *per se* rules as possible to make it so that the trials did not require victim testimony; to make coercive circumstances substitute for coercion; and again and again to make the rape conviction go in as automatically as possible. It came with feminist discourse in the law reviews about how this would lead to best practices in war. This is a technocratic vision of what sexual violence in war was about and how it could be addressed that seemed to me to be worth questioning.

One thing you don't see in the activism or the debate, for instance, is an interest in downstream consequences. What if, in making sure that international humanitarian law ratified the idea that rape was the worst thing that could happen to a woman in war—while helping eliminate some rapes—the reforms ended up weaponizing rape and making it a more valuable tool of war?

With regard to rape during war, would I say, don't criminalize it? You're going to be criminalizing it inevitably—rape is always a crime. It's really a question of what legal regime you're using and in what context, to what end. I'm trying to get a more consequentialist focus: what will those technical changes in the Rome Statute really *do*?

JANIE CHUANG:

To respond to Ralph's question, I do think it's helpful to view the problem of trafficking through the lens of post-colonial feminist critique. I think Ratna Kapur's work has been particularly instructive, providing an important counter-narrative to popular conceptions of trafficking as involving ignorant, destitute women who are incapable of choice. The reality is that if you were to question people who were trafficked, they would more likely characterize what happened to them as a labor migration gone wrong, rather than subscribing to imagery of women being kidnapped in the middle of the night by the shadowy figures of the criminal underground. By capturing the ways in which women exercise agency in the course of these

risky migration projects, post-colonial feminist depictions of trafficking destabilize essentialist portrayals about the populations these laws are intended to help. In so doing, they create space for a more contextualized understanding of trafficking from which to craft more effective law and policy reforms—for example, looking beyond the criminalization paradigm to focus on strengthening labor and migration frameworks.

SONIA ALVAREZ:

I want to try and end on a positive note since our panel has been highly critical of various kinds of feminist engagements with the global. There is the emergence and growing consolidation of a kind of anti-capitalist, anti-imperialist, anti-racist, anti-war feminist agenda that's much, much broader. One of the things that has been really enriching in that move has been the growth of South-South dialogue among feminists. I think that this is a very promising development, especially from the Latin American vantage point. When folks went to Mumbai, it was like a radical lesson in post-coloniality in so far as it demonstrated the ways in which Latin America is simultaneously pre-modern, non-modern, modern and post-modern— but certainly much more “western” than the rest of the so-called global South. It was a real object lesson about the ways in which they (Latin American feminists) themselves might be carriers of an imperial project without realizing it. This strand of global feminism could really use the work of critical legal scholars in addition to feminist economists who've been very much involved in this process.

DARREN ROSENBLUM:

Queer theory does bring a great deal to international law and to the discussion of a critical understanding of gender's role in international law. Many of the issues that were discussed at the Queering International Law panel come in to play here in a very fundamental sense. We need to rethink what gender mainstreaming means; part of that process includes lessons from queer theory.

