Transitional Justice Institute – University of Ulster

Transitional Justice Institute Research Paper No. 09-05
Minnesota Legal Studies Research Paper No. 09-18

LEARNING THE LESSONS: WHAT FEMINIST LEGAL THEORY TEACHES INTERNATIONAL HUMAN RIGHTS LAW AND PRACTICE

FIONNUALA NI AOLAIN

Learning the Lessons: What Feminist Legal Theory Teaches International Human Rights Law and Practice

Fionnuala Ní Aoláin

In the contemporary international moment, as the long-term impact of 9/11 and the wars in Iraq and Afghanistan continue to shape and redefine international legal and political rules, this chapter pauses to reflect on the gendered elements which ground international legal norms. As an international legal scholar I focus on how feminist legal theory can be applied to the present, and how insights gleaned in domestic legal contexts (significantly though not exclusively within western states) are relevant to the experiences of women in multiple jurisdictional and cultural environments. My concluding observations are specifically drawn from societies emerging from war and repression, and ruminate on the experiences of women in those contexts. The chapter starts from the reflection that the export of western legal norms and ideas has often failed to engage with and address deeply entrenched gender discrimination, inequality and violence as experienced in multiple societies. Equally, as non-Western feminist scholars have cogently articulated there has been considerable tension between the universalism expounded by western feminists and its reception within southern gender discourses(Gunning 1992),[1]. Universalism's tendency to over-inclusivity which is unresponsive to the local particularity of women's lives co-exists with the under-inclusion of a gender perspective in contexts where western states and international

institutions find themselves deeply embroiled. Such legal and political engagement ranges from sites of conflict and transition, development and trade to multilateralism and bilateralism. There is often no easy co-existence between these two poles, nor is negotiating a middle ground between them a trouble free task. Unsurprisingly, in either frame women usually bear unequal social, economic, or care burdens and remain marginalised by structural discriminations, inequality and pervasive violence.

Part I of the chapter starts with an exploration of feminist theory's relevance by examining the gendered nature of the international human rights regime itself. The lens for this analysis is a close examination of the history, drafting and effect of the Universal Declaration on Human Rights. As a foundational document the Declaration has had substantial effect on the development of a broader set of international human rights norms. Its gendered blind-spots created the nuts and bolts framework grounding the validation of dominant masculine strands within the international human rights regime. These masculinities continue to control despite the agreement of a specific international convention on women's rights, the Convention on the Elimination of All Forms of Discrimination Against Women in 1979 and other specific treaty agreements targeting issues predominantly affecting women (Otto, 2005). As Rifkin has observed "[t]he power of law is that by framing the issues as questions of law, claims of right, precedents and problems of constitutional interpretation, the effect is to divert potential public consciousness from an awareness of the deeper roots of the expressed

dissatisfaction and anger ...".[2] Her analysis of suffragist protectors demonstrates the weaknesses for women of "operating within the male-dominant paradigm" (Rifkin: 413), and my analysis of the international human rights norms is grounded in a complimentary approach.

While the reflections in this chapter have a general relevance to the international rule corpus as a whole, they also hold particular import for the unique moments of change in societies moving towards democratization (or greater political liberty) as well as those societies moving from violent conflict to more peaceful kinds of co-existence. Human rights norms have been central to shaping and traversing conversations concerning gender as well as framing the way in which the transitional landscape, the moving from "war to peace" paradigm has been articulated (Bell 2000).[3] These norms shape the terms of the rhetorical space that gives birth to international legal and political action. These transformative moments for societies are significant as they open up the possibility of a paradigm shift where the resolution of broader societal struggles can also fundamentally challenge rather than reify male paradigms of law and politics. I identify some specific fault-lines that constrict the ability of human rights' norms to fully engage with gender disparities, and then move to explore how insights from feminist legal theory may enable us to move beyond these inherited limitations.

---

[2] Janet Rifkin, (1993) *Towards a Theory of Law and Patriarchy, in* Feminist Legal Theory Foundations 412, 414 (D. Kelley Weisberg ed.)

In Part II the chapter, drawing again on the language contained in the Universal Declaration, subsequently explores how ideas of dependency and autonomy are equally deeply entrenched in the international legal order. The genealogy of these constructs also finds home in the historical pedigree of international human rights law. In turn, the long-term influence of foundational documents and structures plays out practically in the inter-relationship of the national and international in a transitional setting. Two evident phenomena are departure points for this foray: first, is evidence of a sustained pattern of retrenchment or limitation on women's rights and equality in many post-conflict/ post-repressive societies. The restrictions are all the more contradictory in places where the abrogation of women's rights has constituted one of the texts (or pretexts) for intervention or political change (e.g. contemporary Afghanistan). Second, a pattern of post-modern colonialism in which domestic/ native practices which are more communal or group in nature are relegated to the side-lines as western autonomy based models of legal and social responsibility are introduced by the change process. Specific examples of this are evidenced in contexts such as gender and reparation, institutional reforms, and constitution-making in transitional societies (Rubio-Marin 2006). These examples point to new forms of contemporary neo-colonialism, which come with significant disadvantages and limitations for women, and operate to shore-up rather than to dislodge patriarchal structures.

HISTORY AND WHY IT MATTERS

As the introduction suggests, despite a lofty rhetoric of universality and equality, international human rights law requires close reading to assess whether in fact, it lives

up to its own stated ambition. Illustratively this chapter will focus on the impact of gender inclusions and exclusions in the drafting of the Universal Declaration on Human Rights as a means to demonstrate a core position, namely the foundational bias of the body of law which is offered up *prima facie* as an important means to redress gender inequality across multiple jurisdictions. Examining the Declaration's drafting history reveals the character and form of gender as it is included in the document and the long-term effects on the normative character of human rights law by its presence. Following in the footsteps of other feminist international scholars,[4] the chapter suggests that foundational documents matter to the construction of gender relations in ways that are difficult to dislodge and create conceptual pathways that can substantially limit theoretically open-ended visions of international human rights law. Thus, advancements typified as achievements in their time may carry greater long-term baggage with them than we perceive. I suggest that a more quizzical view of the gains made for women in the Universal Declaration might contribute to the broader project of defining gender dignity, violation, and accountability in ways that consistently reflect and respond to the experiences and needs of women, rather than to an accommodationalist model which tries to "fit" the experiences of women into an existing and constrained framework. This starts from first feminist principles by asking the "woman" question, specifically questioning the absence of women in contexts that are sold as gender neutral but characterized by the dearth or silence of women. While focused on the Universal Declaration, I maintain that engagement and systematic analysis of other international human rights' treaties would yield evidence of the same kinds of fault lines

and would give a more critical edge to analyses of the interface of international human rights norms with the advancement of human rights for women. A broader model of critical engagement draw from a wider set of feminist insights into the character and operation of the legal. It also illustrates the broader theme of this chapter namely, that by engaging feminist method in our analysis of international legal norms, we will be able to elucidate that the same kinds of patterns and pitfalls demonstrated in domestic legal contexts are equally present in the international realm.

In the opening paragraph of the United Nations Charter, states say they are determined to "reaffirm [their] faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women." This is further supported by a specific reference to the prohibition of discrimination on the basis of sex.[i] In institutional terms, structural commitments followed when the Economic and Social Council established a Sub-Commission on the Status of Women to "submit proposals, recommendations, and reports to the Commission on Human Rights . . . ." (Humphrey 1983).[5] Both Commissions played a pivotal role in the adoption of the Universal Declaration in the post-war period (Morsink 1991).[6] The early creation of this specialized United Nations body was an institutional embodiment of a broader tension in advancing gender parity, namely that between the reformist approaches of specialization contrasted with the more general approach of gender mainstreaming. Both methods have been applied in parallel and in tandem within the United Nations system, and contestation remains as to their relative success for women.

5

Some assessments of the Universal Declaration laud its lack of sexism, manifested in the repetition of specific phrases such as “all,” “everyone,” and “no-one” (Morsink 2000).[7]Others are more circumspect. Adamantia Pollis has argued that the Declaration is informed by “[t]he notion of man as an autonomous, rational, calculated being . . . a notion of man but not of woman, and not even of all men but only of some” (182: 7)[8] If we take seriously the claim that “[t]he structure of the international legal order reflects a male perspective and ensures its continued dominance” (Charlesworth et al 1991: 621) [9] then paying close attention to the words that implicate social structures is particularly important. In this view, a nod to non-discrimination may not be sufficient to name and fully reveal the multiple ways in which women experience discrimination and exclusion. Moreover, as Irigaray and others have cogently articulated, the language of sex and difference absolutely matters to the construction of social and legal realities (Irigaray 1987). What the drafters may have understood to constitute impermissible discrimination arguably left intact (and endorsed) a social and political ordering that de facto functions to entrench the discriminations experienced by women. Three particular sections are notably illustrative of this implicit adoption of sex-based ordering—they include first, the Preamble and Article 1; second, Article 16; and finally, Articles 23 and 25 (NíAoláin, 2009i).[10] Feminist method reminds us of the importance of translating our understandings about the importance of text in the domestic legal context to our interpretation and assessment of international legal norms.

Specifically, in the drafting debates as to whether the term “human beings” should be substituted for “men”,[11] Begtrup, the Chair of the UN Commission on the Status of Women, sought an addition to the Declaration’s Preamble stating that “when a word indicating the masculine sex was used in the following Bill of Rights, the provision is to be considered as applying without distinction to women” (Morsink 1999: 118).[12] The proposal was not taken up, and it meant the CSW in its role of advancing women’s rights and interests through the inter-state drafting process had no choice but to seek to protect the status of women in the Declaration article by article. Micro analysis of each textual invocation of gender specific or gender neutral descriptors in the Declaration confirm that differences in articulation matter, and that the presumed benefits and/or neutrality of the language do not stand to close scrutiny.

Articles 23 and 25 are notable in their emphasis on the male breadwinner and his right to seek remuneration “for himself and his family”, as well as on affirming the male right to “a standard of living adequate . . . for himself and his family”. In Article 25, motherhood is singled out for “special care and assistance”. As I have explored at greater length elsewhere, the inclusion of this language reflected the understanding of social role and social ordering at the time the Declaration was drafted (Ní Aoláin 2009i).[13] The language confirms the legal validation of the public/private divide and its assumed normality within the framework of the key post-war international human rights

declaration. That may not be surprising per se in that the post-War human rights' treaties were conceived in a context of evident and multiple social and political inequities. However, we tend to forget that with the passage of time and the increased status of these foundational documents that their fundamental formulae continue to have traction and shape social realities even as they promise transformation.

So, what do this drafting history and its consequences tell us? In thinking about the significance and signifier of its terms, it is important to pay attention to the manner in which the term "woman" or "women" can be mentioned in policy-making contexts without actually bringing the concept of gender into play. As feminists have long argued, we need to be cautious about whether or not the use of the gendered terms actually does real "work" for women in legal contexts. We also need to be aware of the entrenchment that the use of such terms can have, and their real effect of undermining rather than advancing the needs, priorities, and rights of women. Equally, when the term woman is entirely absent, we should not assume, as many of the Universal Declaration's drafters did, that "neutral" phrases deliver gender-friendly outcomes. In fact, the opposite is likely to be true. In this regard, the Declaration is not simply important on its own terms, but should be understood as having had (and continuing to have) wide influence on the inclusion of human rights norms within domestic legal systems, and framing the manner in which subsequent and more specific rights-based international treaties were and are agreed[14]. Feminist legal method cautions us to be

---

[14] See e.g. Eric Stein, *International Law in Internal Law: Towards Internationalization of Central-Eastern European Constitution?* 88 A.J.I.L. 427 (1994)[discussing several constitutions that require constitutional

attentive to both presence and absence (Bartlett 1989) and this in the context of the Universal Declaration would compel assessment of its post World War II genealogy, particularly in its influence upon domestic legal systems.

FOUNDATIONAL DOCUMENTS AND FEMINISM

Though passed by General Assembly resolution in 1948 with eight abstentions, there is broad agreement that the Universal Declaration constitutes a foundational document for the modern international human rights regime. Foundational documents are relatively new phenomena for the international human rights movement. The reason is obvious as the regime itself is largely a product of the post World War II renewal, though many domestic legal systems have similar status documents (usually national constitutions or bills of rights). Foundational documents are an important conceptual category for legal systems. They provide security and a sense of longitude to the norms they validate. They perform important symbolic functions by giving rise to myths (and realities) of universal buy-in, validation by the body politic as a whole and long-term legitimacy to the values they contain. The legitimacy factor allows for repeat play of the document without the need for repetitious justification;a process that continually affirms the validity of the starting point and the values it encapsulates. In this context, feminist legal theory has established that legal instruments are particularly pernicious in their capacity to convey and entrench subordination, creating concealed obstacles to social transformation (Taub & Schneider 1993).

---

provisions on human rights be interpreted in conformity with the Universal Declaration and other international human rights instruments).

There are pitfalls of course. Foundational documents, whether domestic bills of rights or international declarations, are indisputably accompanied by gender snares as feminist scholars have long demonstrated in the domestic context.[15] Some do better than others. The Universal Declaration makes evident attempts to engage with the pernicious effects of gender inequality. Nonetheless, I suggest that the Declaration (among other international norms) validates not only deeply problematic gender distinctions in the arena of the private (family) and the public (work), but its neutrality cloaks a deeply gendered vision of the world. Precisely because the foundational document contains and elevates these damaging gender dimensions an odd paradox arises. As the political worth of the document has risen, and its symbolic significance has grown, it becomes difficult to "knock down" the Universal Declaration on the grounds of its gendered failings because of the broader political and legal investment held by the document for multiple constituencies. This investment is seen by the invocation of the Declaration in multiple political contexts as a touchstone on fundamental principles, including by women's advocates and in its import into the domestic realm as it affirms the validity of rights protecting systems in the domestic contexts (whether in constitution writing, adding Bills of Rights, or the broader field of judicial interpretation).[16]

Feminists find themselves reluctant to criticize the Universal Declaration, wary of the costs that such adversarial engagement would result in, but cornered by a chorus of

---

[15] *See e.g.,* Robin West, *Constitutional Skepticism* 72 B.U.L. Rev. 765 (1992); Sylvia A. Law, *Rethinking Sex and the Constitution* U. Pa. L. Rev. 955 (1984); Catherine MacKinnon, *Freedom From Unreal Loyalties* 65 Fordham L. Rev 1773 (1997)

validation. Conceptually, the fact of foundational and touchstone status makes the argument a difficult one because, in many ways, the Universal Declaration presents a simple way to make a broader human rights argument. It requires much greater dissection of the Declaration to reveal its gender limitations. These “picky” arguments do better retail than wholesale, one consequence being that critics of the Declaration (or other human rights documents) may experience de-legitimization or being marked out as hostile and out of the mainstream view of human rights when they offer a gendered critique. As a result, feminist criticism of the Universal Declaration has been subdued. This parallels (albeit imperfectly) the arguments of equality feminisms that seek to augment the gender equality gains for by women by utilizing imperfect constitutional instruments as a “means to the end”. Here, again the compromises and implicit upholding of the status quo, are a high price for the utilitarian gains made in such contexts, as Martha Fineman has consistently documented in parallel conceptual and policy arenas over the decades (Fineman 1995).[17] The overall quietness by feminists in both circumstances, I suggest, results from the particular confluence of the silencing that a foundational document can produce with the difficulty in articulating that a gender-neutral vision fails to deliver transformational outcomes when it comes to addressing the conceptual, political and social perniciousness of gender discrimination. While there have been strong feminist voices in the international legal arena articulating and asserting such structural biases, the knock-on and insidious effect that these deeply seated imported divisions have at the domestic level have been less well traced.

PUBLIC AND PRIVATE

A persistent dimension of the international human rights regime is that it has functioned to buttress rather than dismantle the public/private divide. International law scholars of the feminist hue have long articulated a notion of the way in which the "public/private" divide manifests itself in international law. As Hilary Charlesworth has noted:

> Historically, the formation of the state depended on a sexual division of labour and the regulation of women to a private, domestic, devalued sphere. Men dominated in the public sphere of citizenship and political and economic life. The state institutionalized the patriarchal family both as the qualification for citizenship and public life and also the base socio-economic group. The functions of the state were identified with men [18]…
>
> (Charlesworth 1993:9-10)

These characteristics include strong validation of the family as the heart of the societal contract;[19] of the articulation of work and wage as a male domain to which specific kinds of guarantees are offered, and of the special status offered to motherhood. Similar kinds of fault-lines are found in the norms of international humanitarian law affirming the point that gender bias runs deep and cross-cuts sub-fields of international legal regulation. The migration of gender-biased norms between systems is an equally important and relevant phenomenon.

This clear-cut distinction between public and private sphere, which is at the heart of the traditional notion of the state, has had a defining influence on international law and tenacity in international legal doctrine. Thus both the United Nations Charter and the Universal Declaration make the (public) province of international law distant from the (private) sphere of domestic jurisdiction. The International Covenant on Civil and Political Rights Article 19 affirms the masculine right to non-interference in "privacy, family, home". Article 23 regulating the family and marriage bears uncanny resemblance to the language of the Universal Declaration. The public/private distinction maintains its contemporary hold even in the CEDAW Convention, as illustrated by the practice of states with regard to reservations, particularly in respect of Articles 2 and 16 of the Convention.[20] The Preamble to the CEDAW Convention makes explicit and multiple references to "the family". Article 16, understood by many to be at the core of the regulatory scope of the Convention, is premised on a highly compromised notion of marriage and family life, which even as portends to be transformative has facilitated a network of collusive state practices in the private sphere, absolutely designed to maintain systems of gender inequality and discrimination. The rub of course is the implied validation of the human rights regime in the ordination of the state's "native" position.

The public/private distinction sustains and confirms women's oppression on a global level. As feminist theorists have long articulated, the most pervasive harms to women tend to occur within the inner sanctum of the private realm, within the family (Balos

2004). As the private realm has stayed effectively off regulatory limits for international law, the message that emanates from this protection of the private legitimates state self-regulation. This ultimately translates into the securing of patriarchy, but through the prism of supposedly transformative norms. I now turn to some of those legacies as they appear in the transitional justice context.

COMPLIMENTARY NATIONAL AND INTERNATIONAL PATRIARCHIES

The absence of a gender dimension in the establishment, revision and operation of new legal and political institutions in transitional societies has been acknowledged (Bell et al 2004).[21] The genealogy of institutional gaps for women traces to omissions from peace-making and transitionary "deal-making", compounding the normative legal gaps that facilitate further exclusions down the line. This final part of the chapter explores why women remain structurally excluded, and in particular why they remain excluded as the processes of transition become increasingly internationalized.[22] Such internationalization, at least in theory, leads us to presuppose that the outcomes will be better for women (Ní Aoláin 2009ii). Practice to date suggests otherwise, and this chapter explores part of that terrain. Optimism among feminist scholars working in the context of domestic legal systems as to the positives of international law in general and international human rights law in particular is problematized in this analysis. This is not to suggest that feminists should disregard or underplay the value of comparative and international influences on shaping the local, but rather encourages the same kinds of

---

[22] These exclusions remain despite UN Security Council Resolutions 1325 (2000) & 1820 (2008).

critical engagement with the norms at play in both settings so to as to maximize transformative effect.

A key element in the perceived success of many transitional accountability mechanisms is the support of international organizations and other states in their establishment.[23] International legal norms, particularly human rights norms play a formative framing and legitimizing narrative. The "transitional moment" is usually only one point on the continuum of a protracted legal and political engagement between the transitional state and the international community. The transitional state is captured between the multiple interests of other states, their willingness to articulate views about a regime or conflict, and the moments of their formal or informal interaction with key actors at key change moments. While much could be said about this complex interaction in general, this part of my analysis will focus on two particular aspects: first, the relationship between the international communities' previously articulated views on human rights compliance during a conflict or a period of authoritarian rule (e.g. public criticism, and/or punitive measures pursued through international organizations) ; and second, the complex role that the international community can play in compounding gender inequality and unaccountability once entangled with a transitional society (Ní Aoláin 2009(ii).

First, many transitional societies have been the subject of substantial international scrutiny prior to any formally endorsed international or bilateral political settlement. Such societies have been repressive or violent (or both), and international oversight

---

23 High Commissioner's Office in Bosnia; IFOR and the SFOR in Bosnia; Interim Authority in Kosova; UNTAC in Cambodia.

may have “named and shamed” systematic and significant human rights violations in the pre-transition phase. It is the language of the Universal Declaration, the International Covenant on Civil and Political Rights supplemented by regional human rights treaty norms that dominate these exchanges. Equally, international non-governmental organizations such as Amnesty International, Human Rights First, and Human Rights Watch may have been active, sending investigative missions, produci/ng numerous reports, and providing a large range of supports for their domestic NGO counterparts all premised on the commonality and applicability of the core human rights treaty norms. Notably, treaty norms here are aimed at condemning violence perpetrated by the state or state actors in sufficient control of territory to exercise state-like functions and not intimate (private) violence. Little attention is given to the porous relationship between public and private violence for women in such societies, nor is the continuity of violence before, during and after conflict given substantial consideration. Human rights norms in such contexts are firmly applied to defining and addressing violent harms which are public (and relevant to political transformation) and are not directed at private gendered violence (deemed irrelevant to political change).

When it comes to the settlement phase of a conflict or a regime handover, these prior interventions are critical to framing the way in which accountability is sought, articulated, and constructed. This construction comes from intact western conceptions of human rights hierarchies imbued with their inability to consider their own patriarchy and unwilling to recognize it at work in an export form (Rees 2002).[24] Equally it emanates

from an intact patriarchy that has been translated and validated into the international human rights regime via the foundational documents discussed above. The specific culturally exported patriarchies and an overarching legal patriarchy compliment and reinforce one another in this context. As a result, it is important to recognize that the narrative constructed about the nature and form of violations in transitional societies has as much to do with the demands for accountability at the transitional moment as it have with the prior narrative of violence and causality (Russell 2006). This narrative is loaded with the gender pitfalls clearly identified in the first part of this essay, and moreover generally fails to acknowledge its own limitations.

International interface and influence is further compounded by the role of such key international actors as the United Nations. So, where the UN has paid particular attention to a conflicted or authoritarian society in the form of resolutions, mandated Special Rapporteurs, Special Representatives, and inclusion in thematic oversight in addition to review by Treaty bodies, a substantive narrative already exists in the international/national context about the form and nature of violations that have taken place. This narrative evidences a fundamental structural problem, namely that certain kinds of bodily harms are elevated over others in terms of their perceived seriousness. This categorization process follows from the norm bias identified above. As a result, violence to women often fails to "fit" the narrow legal categories that dominate general understanding of serious human rights violations (Radacic 2008; Ní Aoláin et al 2007),[25] and "normal" pervasive sexual and physical violence against women is simply not

counted in the overall narrative of conflict or regime change. Equally relevant is the importation of the public/private divide as part of the legal solutions offered by western states and international organizations to defunct and dysfunctional legal systems in post-repressive and post-conflict societies (Ní Aoláin et al., 2009).[26]

Such "neutral" devices have the quality of taking us "back to the future" in transitioning societies. Despite being discredited or at least under considerable legal stress in the dominant legal cultures which export them, public/private disjunctions and a legal myopia to cultural claims and a return to "tradition" advance through divided societies with little or no attention to their gendered effects. Despite an array of cultural differences between locals and internationals, what is frequently overlooked is the fundamentally similar patriarchal views that internal and external elites share, which operate in tandem to exclude, silence, or nullify women's needs from the transitional space. As feminist scholars of war and conflict have identified, the loosening of rigid gender roles from the social flux that conflict inevitably creates is not necessarily sealed off at conflict's end or transition by national male leadership. Rather this role is taken up by the male international development community, "whose own sense of patriarchy-as-normal is quite intact" (Bennett et al 1995).[27] This intact patriarchy has demonstrated itself as distinctly capable of reproducing the legal strictures in transitional societies that would bear significant (and likely hostile) scrutiny in home states. In these scenarios the language of human rights has limited functionality for women. Problematically, its invocation may encourage presumptions of transformation (ranging from accountability

for gender based violence to equality in public and private spheres), while in fact failing to deliver on either front.

CONCLUSION

The discussion above illustrates how the shape of transition for women is tremendously influenced by the role and stance of the international community and the international norms it brings with it. It also highlights the extent to which human rights violations experienced by women can remain a continuous experience despite the claims of transition to the public political spaces in society in post-conflict and post repression societies. The continuity of gender exclusion, violence, and oppression should trigger deeper questions about the quality of the transitional experience for women and the meaningfulness of accountability measures that may only scratch the surface of women's needs. It should also spark off multifaceted questions about the shortcomings and inadequacies of the international legal instruments that are lauded as the means to address the harms and injustices which women experience. Finally, it should encourage us to understand that despite considerable inroads on the patriarchal meta-structure in many Western states, its success or failure to survive and thrive is not jurisdiction dependent. Rather, globalization also works to the benefit of patriarchy as it reproduces itself and assists in the entrenchment of patriarchal norms in societies where legal transformation is promised, frequently in the terms of liberal western guarantees. For women, it turns out that the transformation is partial and exclusionary. It may frequently operate to cloak women's ongoing repression and inequality with the

blessing of the rule of law and the embrace of international legal instruments. The watchword may well be to be cautious and wary of the promises change will bring.

Bibliography

Balos, B.(2004), ‘A Man’s Home is His Castle: How the Law Shelters Domestic Violence and Sexual Harassment’, *St Louis U . Pub. L. Rev.* 23:2004

Bell, C. (2000), *Peace Agreements and Human Rights*, Oxford: Oxford UP

Bell, C., Campbell, C., and Ní Aoláin, F. (2004), Justice Discourses in Transition’, *Journal of Social and Legal Studies*, 13:305

Bartlett, Katharine T. (1990), ‘Feminist Legal Methods’, *Harvard Law Review,* 103: 829

Bennett, O., Bexley, J., and Warnock, K. (1995), *Arms to Fight, Arms to Protect: Women Speak Out About Conflict*, London: Panos.

Charlesworth, H. (1993), ‘Alienating Oscar? Feminist Analysis of International Law’, in D. Dallmeyer (ed) *Reconceiving Reality: Women in International Law*, 9

Charlesworth, H., Chinkin, C., and Wright, S. (1991), ‘Feminist Approaches to International Law’, *American Journal of International Law*, 85: 613

Fineman, M.A. (1995), *The Neutered Mother, the Sexual Family and Other Twentieth Century Tragedies*, New York: Routledge.

Gunning, I. (1992), ‘Arrogant Perception, World-Travelling and Multicultural Feminism: The Case of Female Genital Surgeries’, *Columbia Human Rights Law Review*, 23:189

Humphrey, J. (1983), ‘The Memoirs of John P. Humphrey, The First Director of the United Nation’s Division of Human Rights’, *Human Rights Quarterly*, 5:392

Irigaray, L. (1987), ‘Sexual Difference’ in T. Moril (ed) *French Feminist Thought: A Reader* 118-132

Morskink, J. (1991), ‘Women’s Rights in the Universal Declaration of Human Rights’, *Human Rights Quarterly*, 13:229

-- , (2000) *The Universal Declaration of Human Rights: Origins, Drafting, and Intent*, Philadelphia: University of Pennsylvania Press.

Ní Aoláin, F. (2009), ‘Gendering the Declaration’, *Maryland Journal of International Law*, forthcoming (i).

Ní Aoláin, F (2009),’Women, Security and the Patriarchy of Internationalized Transitional Justice’, *Human Rights Quarterly* forthcoming (ii)

Ní Aoláin, F. and Hamilton, M. (2009), ‘Gender and the Rule of Law in Transitional Societies’, *Minnesota International Law Review*, forthcoming.

Otto, D. (2005), ‘Disconcerting Masculinities’:Reinventing the Gendered Subject(s) of International Law in D. Buss & A. Ambreena (eds) *International Law: Modern Feminist Approaches*, Oxford: Hart Publishing, 105-

Pollis, A. (1982), ‘Liberal, Socialist and Third World Perspectives of Human Rights’, in P. Schwab and A. Pollis (eds) *Towards a Human Rights Framework*, New York: Peager, 1.

Rees, M. (2002), ‘International Intervention in Bosnia-Herzegovina: The Cost of Ignoring Gender’, in C. Cockburn and D. Zarkov (eds) *The Post-War Moment: Militaries, Masculinities and International Peacekeeping*, London: Lawrence and Wishart, 51-57.

Rubio-Marin, R. (2006) *What Happened to the Women? Gender and Reparations for Human Rights Violations*, Social Science Research Council

Russell, Barbara (2006), Women Who Kept Silent: Remembering and Reconciliation in South *in* Susanna Scarparo and Sarah McDonald (eds) *Violent Depictions: Representing Violence Across Cultures*

Taub, N, & Schneider, E. (1993) 'Women's Subordination and the Role of Law in D. Kelly Weisberg (ed) *Feminist Legal Theory Foundations* 3rd ed Temple University Press

---

i