

# Feminist and Third World Approaches to International Law

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# Feminist Approaches to International Law- Karen Knopp

- An ethic of care should apply to relations between State
- The international legal principle of non-intervention in the internal affairs of States leaves women vulnerable to discrimination and abuse
- Structural Bias of PIL
- Seeks personalize and personify PIL normative constructs
- PIL should address oppression and inequality of women



# Time Line- Engle

- 1985-90 Add women to human rights protection in international law
- 1987-95 Critique of human rights as structurally biased
- 1992- present Third World Feminism- seek culturally sensitive universalism



# Knopp

- A State's international status (e.g. membership in UN) should be conditional on gender-conscious ideas of representation and democracy
- Look at representation of women in foreign service and international organisations/institutions



# ILO Constitution Article 3

- Each delegate may be accompanied by advisers, who shall not exceed two in number for each item on the agenda of the meeting. *When questions specially affecting women are to be considered by the Conference, one at least of the advisers should be a woman.*



# Gunning

- Examine cooperation in international relations, instead of conflict
- Accept NGOs (including Women's NGOs) as creators of international law, given consent of states to their participation



# Public/Private Divide- Responsibility to Protect

- International law regulates relations between States, which take place in the public sphere, whereas a State's treatment of its nationals occurs in the State's private sphere. Violation of territorial integrity depicted as “rape” of a country.
- Emergence of Humanitarian Intervention- protection of the vulnerable, identification of mass rapes as war crimes, CAH, and possible genocide



# Feminist International Law Knopp- Different Perspectives

- Women participate in international law in ways that reflect their identity as part of an ethnic, linguistic, or religious group, rather than the united front of gender.
- Women's voices should be equally represented because all voices should be represented and women are half of humankind.
- Women's experience is ethically superior and can therefore provide a standard for judging the world.





# Conferences

- 1994 Cairo Conference on Population and Development (Autonomy & Health)
- 1995 Beijing Conference on Women (Sexual and Reproductive Rights)
- Drafting of Declaration of Elimination of Violence Against Women
- ICTY & ICTR Rape as War Crime
- UNSC Resolution 1820 on sexual violence in conflict



# Feminist Legal Theory

- The Use of Force- Orford
- State Sovereignty and Non-Interference- Knop
- Self-Determination- Chinkin & Wright
- Humanitarian Law- Gardam
- Nationality-Knop & Chinkin
- Human Rights- Romany, Engle, MacKinnon
- International Criminal Law- Askin
- International Economic Law- Pahuja



# Feminist Legal Theory

- **Structural bias critics-**
- Charlesworth, Chinkin, & Wright- analyse international law for deployment of literal and metaphorical distinctions between male and female
- Knopp- Use progressive critique of international law to assist women- e.g. decentralization of the state- look at indigenous self-determination
- Romany- Economic and Social Rights, Development



# Feminist Legal Theory

- Use Feminist Theory to assist other disadvantaged groups
- Orford- Globalisation and Economic Exploitation- Use Techniques and Organisation of Feminist Activists to Resist
- Engle- Take advantage of structural bias- use private space to liberate women




# Engle

- Need to separate culture from economics
- Look at gendered and cultural dimensions of the global distribution of wealth and to the economic dimensions of politics and policies about gender and culture



# McConnell

 The international law concept of global or environmental stewardship is most likely to embody the feminist morality, as it “embraces a notion of caretaking and accountability to ourselves and future generations.

Examine diminishing global natural resources and power imbalances among states- sustainable development



# Culture- The Exotic Other Female

- Women who participate in oppression of other women
- Pro- clitoridectomy
- Pro-Breast Augmentation
- Pro- "Family Values" anti-state intervention



# Third World Feminism

- Liberal inclusion- PIL has ignored third world women and should assimilate them
- Structural Bias- PIL is so structurally biased against third world women that it has to be significantly restructured to accomodate them.  
Gana: Right to Development based on group focus, will not help women
- Nyamu- Deference to culture combines with formal (colonial) legal structures to disempower women
- Manjii- structural adjustment policies of IMF exploit women workers
- Western feminism seen as collaborating with imperialist hegemonies of the North- seek to enlighten non-Western women





# Third World Perspectives on PIL

- Colonial History has a formative doctrinal and institutional impact on PIL
- Legalisation of diplomatic and economic relations. Euro-centric PIL
- Westphalian PIL is ideological and hegemonic- Sovereignty and the War on Terror (as dominance of North over South)
- Power relations are solidified in structural frameworks that result in exploitation and oppression of the most disadvantaged peoples and countries in the world
- Emergence of Non-Aligned Movement, G-77, G- 21
- View that the Third World needs development is ideological-examine climate change and human rights
- Interventionist diplomacy is guised as humanitarianism



# Third World Perspectives on PIL

- Falk- Strengthen civil society in development of PIL
- Stevens- Dismantle Nation- State, keep State
- Shalakany- Examine interplay of law and religion-
- An-Na'im grounds Sharia in international human rights law, but see critiques
- Examine historical and cultural context of law
- Law often juxtaposed to religion as "modern"
- UN supported anti-colonial and anti-apartheid movements, and supported Third World claims to natural resources
- Global Civil Society uses PIL to seek equity, democratisation and accountability



# Challenges

- Deterritorialized nature of North/South in international economic relations
- WTO, International Financial Markets
- Third World states cannot rule effectively over economy, people or territory-
- Globalization biased towards market forces and neoliberal ideology- supports link between the rich and disenfranchises the poor in the third world
- ICC did not address the crime of aggression
- Need counter-hegemonic interpretation of human rights, ecological sustainability, and the global rule of law (prohibition on the use of force)
- Regionalism, Global Civic Activism



# Baxi

- Governance- Problems with Postcolonial corrupt regimes
- Rights- Self-Determination, Social and Economic Rights, But consider Regime repression
- Development- Permanent Sovereignty over natural resources
- Justice
- Outlaw Divine Right of Empire



# Falk- Trends

- Global human rights movement
- Empowerment of Global Civil Society
- ICC
- Accountability of leaders for CAH
- Support for humanitarian intervention in the event of genocide
- Collective response to climate change
- Recognition of dysfunction of war as basis of global security
- Regional and global law replaces international law



# Rajagopal

- Hegemony- world internalises the necessity and legitimacy of domination through law- Prevent institutionalisation and consolidation of hegemony via reform of multilateral institutions
- Economic power
- Cultural power
- Military power
- Future depends on politics of the multitude (Hardt & Negri)- coalitions of social movements and small states



# Boaventura de Sousa Santos

- Hegemonic Neoliberal Globalization- property rights, contract
- Economic, social, political, cultural apartheid-
- **Savage zones** have no social contract, no rule of law, (Uncivil society, excluded from rights)
- **Civilized zones** have social contract, state provides protection (intimate society- state guarantees rights)
- **Post- Contractualism-exclusion** of citizens in ghettos, sweatshops, prisons, trafficking, prostitution, child labour, under-employment, unemployment- work ceases to sustain citizenship or autonomy of person (Strange civil society enjoys C& P rights but not socio-economic rights)
- **Pre-Contractualism-** block access to citizenship of refugees and migrants
- **Abyssal Legal Thinking-** divide human from sub-human- Guantanamo, Palestine, Darfur
- Counter-hegemonic emancipatory movements from below- indigenous, migrants, environmentalists



# Mutua Metaphor: “Savages-Victims-Saviours”

- Mainstream human rights lawyers tend to characterize their mission in the following sort of way:
- There are savages from the South violating the fundamental human rights of victims from the South; it is the moral and legal duty of the North to use the international human rights structure, which is the saviour, to save these victims and bring the savages to justice.
- Mutua argues that the human rights structure, far from being a saviour, is “ultimately a set of culturally based norms and practices that inhere in liberal thought and philosophy.”
- Thus, the human rights corpus, regardless of whether it saves the victim from the savage, seeks to impose European notions of morality, civility, and progress.
- The human rights movement “falls within the historical continuum of the Eurocentric colonial project, in which actors are cast into superior and subordinate positions.”





# Sunter- Third World Approaches to International Law

- Makau Mutua: International law is a “regime and discourse of domination and subordination, not resistance and liberation.”
- TWAIL:
  - 1) engaging in an interdisciplinary examination of the extralegal effects of international law on the South;
  - 2) using historical evidence from the colonial and post-colonial periods to demonstrate the contingent nature of international law doctrines; and
  - 3) using localized cultural evidence to challenge the universality of the theoretical underpinnings of international law.
- At a broader normative level, the Twailian project is to foster reforms to the international law regime that will promote equity and justice for the South.



# David Kennedy

- Why do property rights travel so securely when the extraterritorial reach of labor law or employment discrimination or environmental protection law continues to seem unreasonable?
- How do we decide whether a low wage development strategy is an unfair subsidy or the extraterritorial application of labor law a non-tariff barrier to trade?
- We will need to ask for whom we govern, for what form of political, social and economic life do we propose a constitution.



# Fourth World

Global justice demands of indigenous people, migrants, displaced persons, environmentalists

Lack of central authority for implementation and enforcement

Legal Pluralism- indigenous customary norms, national law, international law

New subjects of PIL

Law of peoples

Technical dimension of law v. Politics- dispute resolution, arbitration, IP, trade, commerce, cyber,

Singer- Seek Global Justice and Global Democracy as alternative to Empire- Need to abide by Global Ethics in order to achieve Security – One World

