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Feminists Critiques of International Law and Their Critics

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FEMINIST CRITIQUES OF INTERNATIONAL LAW AND THEIR CRITICS*

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The papers in this special edition of *Third World Legal Studies* focus on the relationship of women to the body of international human rights law. In this paper I want to consider what feminist critiques of international law, and the critiques of the critiques, might contribute to this subject.

I. Feminist Criticism of International Law

Feminist critiques of international law are at a very early stage. Most international lawyers, even those with a critical bent, have typically regarded their discipline as gender-free, long after feminist critiques of other areas of law have underlined the pervasiveness of gendered assumptions in national legal systems. International lawyers often see themselves as outsiders, crusaders of principle, of unfashionable virtue, and they have generally found it hard to accept that their tools and concepts may be open to challenge on the basis that they create another class of outsiders—women.

At the most general level, feminist analysis of international law involves searching for the silences of the discipline. It means examining the structures and the substance of the international legal system to see how women are incorporated into it. It offers a challenge to the implicit liberalism of the dominant theories about

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international law—the idea that international law simply sets a structure by which the actors within it can pursue their vision of the good life[1]—by asserting that international law has a gender, a fundamental, if sometimes subtly manifested, bias in favour of men.[2]

There are other "outsider" discourses in international law that have unsettled its calm surface, but feminist analysis is fundamentally different from these. Feminist analyses of international law have sometimes been seen as having conceptual links with the longstanding critique of the traditional canon of international law by nations of the "South" as western and imperial.[3] But although these critiques may share a questioning of western "scientific" objectivity as reflected in international law, the critiques of the "South" tend to be much less radical: they generally preserve the basic concepts of the international legal order, such as statehood, and argue for recognition of economic disparity.[4] They do not address the exclusion of half the world's population from international law making. A similar silence is evident in critiques of international law that derive from the critical legal studies movement. The so-called "New Stream" of international law scholars[5] have investigated the way international law achieves its authority precisely by denying its true nature.[6] They have not, however, been concerned with the fundamentally male cast of the international legal order.[7]

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1. See MARTTI KOSKENNIEMI, FROM APOLOGY TO UTOPIA: THE STRUCTURE OF INTERNATIONAL LEGAL ARGUMENT 66-7 (1989).

2. *See generally* Hilary Charlesworth, Christine Chinkin & Shelley Wright, *Feminist Approaches to International Law*, 85 AM. J. INT'L L. 613 (1991); *Symposium: Feminist Inquiries into International Law*, 3 TRANSNAT'L L. & CONTEMP. PROBS 293-479 (1993) (a useful bibliography is found at 581); RECONCEIVING REALITY: WOMEN AND INTERNATIONAL LAW (Dorinda Dallmeyer ed. 1993).

3. *See, e.g.*, Isabelle Gunning, *Modernizing Customary International Law: The Challenge of Human Rights*, 31 VA. J. INT'L L. 211, 217-8 (1991).

4. *See, e.g.*, Mohammed Bedjaoui, *General Introduction* in INTERNATIONAL LAW: ACHIEVEMENTS AND PROSPECTS (Mohammed Bedjaoui ed. 1991).

5. *See* David Kennedy, *A New Stream of International Law Scholarship*, 7 WIS. INT'L L. J. 1 (1988). A useful bibliography of "New Stream" writing, which includes feminist writings, is at 35 HARV. INT'L L. J. 417 (1994).

6. *E.g.*, MARTTI KOSKENNIEMI, *supra* note 2, at 485; Nigel Purvis, *Critical Legal Studies in Public International Law*, 32 HARV. INT'L L. J. 81 (1991).

7. *See* Hilary Charlesworth, *Subversive Trends in the Jurisprudence of International Law* in PROC. ANN. MEETING ASIL (1992).

Feminist analysis of international law has two major roles, one deconstuctive, the other reconstructive.[8] *Deconstruction* of the explicit and implicit values of the international legal system means challenging their claim to objectivity and rationality because of the limited base on which they are built. All tools and categories of international legal analysis become problematic when we understand the exclusion of women from their construction. For example, the notion of statehood that is crucial in international law is no longer unquestioningly accepted as a neutral institution that could be persuaded to accommodate women's interests. Thus Catharine MacKinnon has argued in a national context that the state and its major institution, the legal system, are a direct expression of men's interests.[9] Others have developed a more complex view of the state, for example as a social process rather than as a legal category or set of institutions.[10] On this analysis the state is not an expression of a single set of interests, but has its own complex set of power relations and issues that include gender.

What relevance have these analyses in the international legal order? If states sustain gendered hierarchies in national contexts, this is reinforced on the international plane. Martti Koskenniemi has pointed out that the international legal notion of statehood operates to permanently privilege particular voices, and to silence others.[11] Although he does not specifically identify women as being muzzled by statehood, women in fact form the largest group whose interests remain unacknowledged in the structure of the state and its sovereignty. As international relations theorists Ann Sisson Runyan and V. Spike Peterson argue, "It is simply not possible to understand how power works in the world without explaining *women's exclusion* from the top of *all* economic, religious, political, and military systems of power. ...[C]ontemporary power relations *depend upon* sustaining certain notions of masculinity and femininity, notions of what is

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8. *See* Hilary Charlesworth, *Alienating Oscar? Feminist Analysis of International Law* in RECONCEIVING REALITY: WOMEN AND INTERNATIONAL LAW (Dorinda Dallmeyer ed. 1993).

9. CATHARINE MACKINNON, FEMINISM UNMODIFIED (1989).

10. *E.g.*, S. FRANZWAY, D. COURT & R. CONNELL, STAKING A CLAIM (1989).

11. MARTTI KOSKENNIEMI, *supra* note 2, at 499.

expected in regard to men's and women's lives."[12] I do not want to suggest that the institution of the state is inherently oppressive for women. Indeed, in some contexts, the state may offer women great support. However, in its current manifestations the state is a problematic institution that needs to be much more fully investigated from an international feminist perspective.

A more difficult project is that of *reconstruction* of a truly human system of international law. How do we change the conceptual foundations of international law? How do we make gender a fundamental category of analysis? Such a task seems easier in areas such as history and anthropology that deal directly with individuals in society. International law, like international relations theory, is at one remove, premised on a separation of the domestic and the international.[13] The tentative and partial nature of feminist reconstruction is inevitable. We are still seeking to understand the pervasiveness of the gendered aspects of our world. We are still developing new ways of theorizing. We have no historical experience of power on which to draw in our reconstruction. At this stage in feminist analysis of international law, then, deconstruction and reconstruction are difficult to separate. Deconstruction has transformative potential because it reduces the imaginative grip of the traditional theories. In this sense, all feminist theories are subversive strategies. They are "forms of guerrilla warfare, striking out at points of patriarchy's greatest weakness, its blindspots.[14] They reveal the "partial and partisan instead of the universal or representative position" of patriarchal discourse.[15]

But, as Elizabeth Grosz observes, feminist theory inevitably involves an intricate balancing between conceptually inimical forces that usually goes unarticulated.[16] Feminist analysis, says Grosz, is

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12. Ann Sisson Runyan and V. Spike Peterson, *The Radical Future of Realism: Feminist Subversions of IR Theory*, 16 ALTERNATIVES 67, 87 (1991).

13. Rebecca Grant, *The Sources of Gender Bias in International Relations Theory* in GENDER AND INTERNATIONAL RELATIONS 8, 22 (Rebecca Grant and Kathleen Newland eds. 1991).

14. Elizabeth Gross, *What is Feminist Theory?* in FEMINIST CHALLENGES: SOCIAL AND POLITICAL THEORY 197 (Carole Pateman & Elizabeth Gross eds. 1986).

15. *Id.*

16. Elizabeth Grosz, *A Note on Essentialism and Difference* in FEMINIST KNOWLEDGE: CRITIQUE AND CONSTRUCT 332 (Sneja Gunew ed. 1990).

both a reaction to "the overwhelming masculinity of privileged and historically dominant knowledges, acting as a kind of counterweight to the imbalances resulting from the male monopoly of the production and reception of knowledges" and at the same time a response to the political goals of feminist struggles.[17] The dual commitments of feminist theory co-exist uneasily: the first requires intellectual rigour, in male terms, investigating the hidden gender of disciplines; the second calls for dedication to political change. Thus, feminist theorists are often criticized from both sides: by some feminist activists for their cooption by patriarchal forces through participation in privileged, male-structured debates; and by the masculine academy for lack of "disinterested" scholarship and "objective" analysis.[18] The tension between the two goals of feminist theory is nicely illustrated by the two critiques I now discuss.

II. The Incoherence Critique

Fernando Teson is one of the few international lawyers who has directly engaged with feminist critiques of international law. His article, *Feminism and International Law: A Reply*[19] responds to an article, *Feminist Approaches to International Law*, written by Christine Chinkin, Shelley Wright and me.[20] Teson's critique is a good example of the male conception of theory evaluation identified by Elizabeth Grosz. He sees our work as lacking objectivity, failing to adhere to scientific method, simply confirming, rather than demonstrating, bias in the international legal system. In his article we are charged with producing a conceptually confused thesis, full of "anti-Western bias" with occasional lapses into total hypocrisy. Teson's demand is for an intellectual purity of position, "untainted by social and political factors which militate against or interfere with the goals of scholarly research."[21] He criticizes the charting of feminist

17. *Id.*
18. *Id.*
19. 33 VA. J. INT'L L. 647 (1994).
20. *Supra*, note 2.
21. Elizabeth Grosz, *supra* note 16, at 332.

ambivalences, the explication of a range of positions, most particularly in our discussion of feminist critique of rights.

Fernando Teson describes his "main difficulty" with our article as the conflation of "divergent arguments from very different (and often irreconcilable) camps within feminist theory.[22] His article has the laudable goal of "disentangl[ing]...separating, analyzing, and ultimately evaluating these interwoven but uncongenial threads of feminist thought."[23] The theory mismatch identified by Teson is the use of both "liberal" and "radical" feminist analysis. He points out, quite accurately, that we draw from a range of feminist writers in our work, not all of whom agree with one another. I do not see this as a problem. In our paper, we attempted to introduce a range of techniques to the analysis of international law. In this sense, the feminist project is less a series of rival interpretations than a sort of archaeological dig where different methods are appropriate at the different levels of the excavation.[24] A pure, complete, self-contained account of the position of women in the international legal system is not possible without sacrificing reality for theory. There are many women's experiences that would be lost entirely in a streamlined theoretical construct. The labels "liberal" feminist or "radical" feminist are not particularly meaningful in the international context. I prefer the image of a feminist explorer or (borrowing from Maria Lugones,[25] a world traveller, using different modes of transport according to the terrain. As Elizabeth Grosz observes, "[f]eminists are not faced with pure and impure options. All options are in their various ways bound by the constraints of patriarchal power. The crucial political question is which commitments remain, in spite of their patriarchal alignments, of use to feminists in their political struggles? What kind of feminist strategy do they make possible or hinder?[26]

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22. Fernando Teson, *supra* note 19, at 648.
23. *Id.*
24. NGAIRE NAFFINE, LAW AND THE SEXES 2 (1990).
25. Maria Lugones, *Playfulness, World-Travelling and Loving Perception*, 2 HYPATIA No. 2 (1987).
26. Elizabeth Grosz, *supra* note 16, at 342-3.

Teson is happy to concede that liberal feminism has "important things to say about international law and relations.[27] It is radical feminism that is "inconsistent both with the facts and with a view of international law rooted in human rights and respect for persons.[28] I accept that liberal feminism is a valuable tool in these early days of feminist critique of international law, exposing the way in which the international legal system does not deliver on its promise of equal respect for all persons. I would argue, however, both that Teson's translation of liberalism to the international plane is very limited and, more fundamentally, that liberal feminism does not go far enough in responding to the subordination of women.

Teson's discussion of the absence of women from decision-making structures in the international legal system illustrates the very limited notion of equality he envisages. The well-documented absence of women from the decision making structures of international law is presented as a "statistical underrepresentation"[29] but not necessarily an injustice. Teson first makes the curious point that we cannot criticize an undemocratic government for its failure to appoint women to posts of influence: this would be, he asserts, a category mistake (the issue of lack of democracy being in a much more serious category than sex discrimination) and in any event all appointments of an illegitimate government are morally invalid.[30] We must focus, says Teson, on getting rid of tyrants before we consider issues of gender discrimination.[31] Would he say the same thing about racial discrimination? Teson's assertion begs the important issue of what constitutes a democracy in the first place: is it a body politic run along completely majoritarian lines? must it provide protection for minorities? As Dianne Otto has pointed out, the much heralded human right to democracy does not necessarily promise much to women who have been historically excluded from full participation.

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27. Fernando Teson, *supra* note 19, at 648.
28. *Id.*
29. *Id.* at 651.
30. *Id.*
31. *Id.*

The position of women is not necessarily improved by transition to certain forms of democracy.[32]

In the case of "full members of the liberal alliance"[33] Teson acknowledges an injustice in the underrepresentation of women in public life only if this phenomenon is the result of states preventing women from exercising their right to political participation.[34] He dismisses the notion that the great imbalance in political participation between women and men is in itself a human rights issue.[35] This is a very narrow view of existing international human rights law. For example, the definition of discrimination in Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women covers indirect discrimination and mandates equality of result. Article 7 requires that state parties ensure that women have the right on equal terms with men to participate in the formulation of government policy and to hold public office. In other words, these obligations are not limited to the provision of formal equality—equality on paper—that Teson assumes is the international legal limit.[36] They could certainly include the devising of quotas for women's participation, a proposition Teson apparently regards as preposterous.

The problem with the formal equality endorsed by Teson is that it offers equality when women and men are in the same position, but it fails to address the underlying causes of sex discrimination. The principle of equal opportunity, says Nicola Lacey, is "inadequate to criticise and transform a world in which the distribution of goods is structured along gender lines.[37] It assumes "a world of autonomous individuals starting a race or making free choices [that] has no cutting edge against the fact that men and women are simply running different

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32. *See* Dianne Otto, *Challenging the 'New World Order': International Law, Global Democracy and the Possibilities for Women*, 3 TRANSNAT'L L. & CONTEMP. PROBS. 371 (1993).

33. Fernando Teson, *supra* note 19, at 652.

34. *Id.*

35. *Id.* at 653.

36. See especially *id.* at 653, note 29 where Teson reflects on the criticism of the 98% male composition of the US Senate during the Clarence Thomas confirmation hearings. "[T]his criticism is misguided. Each participating senator had perfectly democratic credentials, having been elected to the Senate by a free democratic choice of the electorate. I cannot, therefore, see any real injustice, unless feminists are suggesting that women are being prevented from voting."

37. Nicola Lacey, *Legislation Against Sex Discrimination: Questions from a Feminist Perspective*, 14 J.L. & SOC'Y 411, 415 (1987).

races.[38] The failure of the "liberal" international legal system in responding to the global phenomenon of oppression of women should indeed make us questions its foundations. Patriarchy is not a temporary imperfection in an otherwise adequate system; it is part of the structure of the system and is constantly reinforced by it.

III. The Essentialism Critique

The issue of essentialism has been a major debate within feminist theory. Do women have a fixed essence? Patriarchal discourses are usually essentialist in the sense that they attribute to women fixed qualities on the basis of biological functions such as reproduction, or on other "natural" or psychological characteristics. These approaches are used to justify women's subordination to men. The problem of an essentialist approach is that it limits the possibilities of restructuring social and political life:

> in claiming that women's current social roles and positions are the effect of their essence, nature, biology, or universal social position, these theories are guilty of providing them with a powerful political justification. They rationalize and neutralize the prevailing sexual division of social roles by assuming that these are the only, or the best, possibilities, given the confines of the nature, essence, or biology of the two sexes.[39]

Essentialism is also problematic because it is ahistorical, and confuses social relations with immutable attributes. Moreover, from an international perspective, essentialism does not account for the historical and social differences between women of different cultures.[40] As Chandra Mohanty says, "Women are constituted as women through the complex interaction between class, culture, religion and other ideological institutions and frameworks. They are not 'women'—a coherent group—solely on the basis of a particular

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38. *Id.*
39. Elizabeth Grosz, *supra* note 16, at 335.
40. *Id.*

economic system or policy.[41] For all these reasons, the term "essentialism," or its cognates, biologism, naturalism and universalism, have become, in Elizabeth Grosz' words, "labels for danger zones or theoretical pitfalls" in feminist theory both from an intellectual and political perspective.[42]

Is the project of feminist analysis of international law inevitably essentialist? To a white, western woman international lawyer (like me), this is a particularly troubling issue. The traditional claim of my discipline is to a universal system of justice, applying to all nations. Will a feminist reconstruction of the discipline produce a universally applicable system? Should it? Are feminist critiques capable of analyzing international legal principles in all contexts, or are they somehow limited to particular societies? How can feminist critiques accommodate the widely different perspectives of women worldwide?

One international feminist strategy to overcome the bog of essentialism is to focus on common problems women face whatever their cultural background. The issue of violence against women, for example, is truly universal, prevalent in all cultures and has been extensively documented.[43] But the tactic of identifying universal issues for women is not without complexity: for example, there may be disagreement about whether particular practices constitute violence against women, and there may be deep division over the appropriate tactics to deal with a problem. Moreover, the search for universal women's predicaments may homogenize women's experiences and obscure the position of women who suffer from multiple forms of discrimination, for example, because of their race, class and sexual orientation.

Does avoiding the Scylla of essentialism risk the Charybdis of relativism? If all cultures are seen as special, resting on idiosyncratic values that cannot be investigated in a general way, it is difficult to make any assessment from an international perspective of the significance of particular concepts and practices for women.

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41. Chandra Mohanty, *Under Western Eyes: Feminist Scholarship and Colonial Discourses* 30 FEMINIST REV. 61, 74 (1989).

42. Elizabeth Grosz, *supra* note 16, at 335.

43. *E.g.*, FREEDOM FROM VIOLENCE: WOMEN'S STRUGGLES FROM AROUND THE WORLD (Margaret Schuler ed. 1992).

Moreover, we need to investigate the gender of the "cultures" that relativism privileges. Relativism is typically concerned with dominant cultures in particular regions and these are, among other things, usually constructed from male histories, traditions and experiences. Arati Rao has argued that:

> the notion of culture favoured by international actors must be unmasked for what it is: a falsely rigid, ahistorical, selectively chosen set of self-justificatory texts and practices whose patent partiality raises the question of exactly whose interests are being served and who comes out on top.[44]

For the term feminism to have any meaning, it must extend beyond local concerns. In this sense, as Vicki Kirby has written, "essentialism is the condition of possibility of any political axiology: the minimal consensual stuff that political action fastens onto is already essentialism's effect. There is no outside this entanglement. ...[O]ur fundamental complicity with [essentialism] is, strangely, its enabling moment."[45]

Is a feminist international lawyer, then, obliged to avoid all universal, global analysis of the position of women? I think we can identify women as an underclass in the international legal arena, as long as the identification rests on, in Maria Lugones words, a "loving perception" of other women. In some contexts, "women" is the appropriate category in the struggle against domination by men. Feminists use the universal category of "women" for very different ends than patriarchal theorists, and resistance to this feminist form of universalism undermines its powerful theoretical and political potential: theoretical in the sense that it is using a patriarchal tool against patriarchy and political in its mobilizing force.[46] A strategic

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44. Arati Rao, *The Politics of Gender and Culture in International Human Rights Discourse* in WOMEN'S RIGHTS, HUMAN RIGHTS: INTERNATIONAL FEMINIST PERSPECTIVES 167, 174 (Julie Peters & Andrea Wolper eds. 1995).

45. Vicki Kirby, *Corpus Delicti: The Body at the Scene of Writing* in CARTOGRAPHIES: POSTSTRUCTURALISM AND THE MAPPING OF BODIES AND SPACES 88, 93 (Rosalyn Diprose & Robyn Ferrell eds. 1991).

46. Annie Bunting refers to this as "asymmetrical anti-essentialism." Annie Bunting, *Theorizing Women's Cultural Diversity in Feminist International Human Rights Strategies* in FEMINIST THEORY AND LEGAL STRATEGY 6, 11 (Anne Bottomley and Joanne Conaghan eds. 1993).

path between theoretical purity and political principle must be negotiated.[47] Gayatri Spivak puts this well:

> You pick up the universal that will give you the power to fight against the other side and what you are throwing away by doing that is your theoretical purity. Whereas the great custodians of the anti-universal are obliged therefore simply to act in the interest of a great narrative, the narrative of exploitation, while they keep themselves clean by not committing themselves to anything.[48]

Feminist analysis of international law involves recognition of the tension between universal theories and local experience. The language of international law is itself universalized, acknowledging cultural differences only in the most general and attenuated form. At the beginning of the excavation of the gendered layers of the discipline, the gender of its "universal" concepts and principles can be most effectively seen when countered with contrary "universal" models. At the same time, we need to develop "situated perspectives"[49] that encourage awareness of the differences between women while also recognizing our commonalities. Women have tremendously different life experiences, but we also have "a collective social history of disempowerment, exploitation and subordination extending to the present.[50] Whatever its cultural context, feminist analysis rests on a commitment to challenge male dominance and to allow women true autonomy. This political commitment provides an intellectual basis for feminist approaches to international law.[51]

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47. Elizabeth Grosz, *supra* note 16, at 342.

48. Gayatri Spivak, *Criticism, Feminism and the Institution*, Thesis Eleven 10/11 at 184 *quoted in* Elizabeth Grosz, *supra* note 16, at 342.

49. Rosi Braidotti, *The Exile, the Nomad, and the Migrant Reflections on International Feminism*, 15 WOMEN'S STUDIES INT'L FORUM 7, 9 (1992).

50. Catharine MacKinnon, *From Practice to Theory, or What is a White Woman Anyway?*, 4 YALE J.L. & FEMINISM 13, 15 (1991).

51. Katharine Bartlett has proposed a notion of feminist "positionality" that I think is useful in this context. Positionality means the obligations "to make commitments based on the current truths and values that have emerged from methods of feminism, and to be open to previously unseen perspectives that might alter these commitments." *Feminist Legal Methods*, 103 HARV. L. REV. 829, 883 (1990).

IV. Feminist Critiques of International Human Rights Law

How do the feminist critiques of international law outlined above apply to international human rights law? Traditional human rights law has offered a blunt cutting edge against the massive violations of human rights that women suffer around the world. From the denial of the right to vote or to hold public office, to epidemic levels of sexual violence, to denial of reproductive freedom, to inequality in access to education, employment, health care, housing and financial services, "women's freedom, dignity and equality are persistently compromised by law and by custom in ways that men's are not."[52] Unlike men, many women face persecution simply because they are women.

Deconstructive feminist techniques challenge the universality of the international human rights canon. They draw attention to the significance of the fact that almost all human rights law is created by men. Although there are more women in the international human rights system than in other areas of international law, women are marginal participants. For example, few women have been elected to the specialized United Nations human rights treaty monitoring bodies[53] except for the Committee on the Elimination of Discrimination against Women, of which all twenty-three current members are women (and which is the only treaty monitoring body that has been criticized by the Economic and Social Council for its gender imbalance.[54] The absence of women is more than a simple "statistical underrepresentation," as Teson argues. A result of this imbalanced participation has been the development of a lop-sided canon of human rights law that rests on, and reinforces, a gendered distinction between public and private worlds.[55] Most human rights

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52, Julie Peters & Andrea Wolper, *Introduction* in WOMEN'S RIGHTS, HUMAN RIGHTS: INTERNATIONAL FEMINIST PERSPECTIVES 1, 2 (Julie Peters & Andrea Wolper eds. 1995).

53. In 1995, there were no women on the ten member Committee against Torture, six women on the 18 member Committee on Economic, Social and Cultural Rights, one woman on the 18 member Committee on the Elimination of Racial Discrimination, six women on the ten member Committee on the Rights of the Child, and three women on the 18-member Human Rights Committee.

54. *See* Hilary Charlesworth, et al., *Feminist Approaches to International Law, supra* note 2, at 624.

55. For a more detailed version of this argument see Hilary Charlesworth, *What are "Women's International Human Rights"?* in HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES 58, 68-71 (Rebecca Cook ed. 1994). *See also* Donna Sullivan, *The Public/Private*

defined in international instruments operate in the "public" sphere, which is historically the sphere inhabited by men: the state is obliged to protect individuals from harms either perpetrated directly by the state itself, or within areas traditionally regulated by it, such as political and economic life. Human rights law does not generally extend to the "private" sphere of the home and family where most women live out their lives. Thus it has been difficult to persuade the international community of nation states to agree that violence against women occurring outside the 'public' sphere constitutes a violation of the human rights of women. For example, the Declaration on the Elimination of All Forms of Violence against Women, adopted by the United Nations General Assembly in 1993, takes an ambiguous position on whether violence against women amounts to a human rights issue.[56]

A feminist reconstruction of international human rights law would not necessarily mean a simple collapse of any public/private distinctions in its definition. A feminized international legal system would transcend gendered public/private dichotomies, incorporating and responding to women and their concerns. This is not to say that distinctions between public and private are inherently problematic for women in an international context. A feminist revision of international law may well exclude certain areas from direct international legal regulation. A crucial feminist concern is simply that any distinction be drawn in a way that does not devalue or marginalize women's experiences.

What force does the critique of essentialism have in the context of feminist reshaping of international human rights law? Radhika Coomaraswamy has pointed out that the very notion of rights has little resonance in many cultures, particularly the countries of South Asia.[57] She argues that the discourse of women's rights assumes a

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Distinction in International Human Rights Law in WOMEN'S RIGHTS, HUMAN RIGHTS: INTERNATIONAL FEMINIST PERSPECTIVES 126 (Julie Peters & Andrea Wolper eds. 1995).

56. *See further* Hilary Charlesworth, *Worlds Apart: Public/Private Distinctions in International Law* in PUBLIC AND PRIVATE: FEMINIST LEGAL DEBATES 243, 256-9 (Margaret Thornton ed. 1995).

57. Radhika Coomaraswamy, *To Bellow like a Cow: Women, Ethnicity, and the Discourse of Rights* in HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES 39, 39-40 (Rebecca Cook ed. 1994).

free, independent, individual woman, an image that is less powerful in protecting women's rights than other ideologies, such as women as mothers. Implementation of the international human rights of women must therefore respond to local and regional circumstances.

A favoured context for discussion of essentialist approaches to women's human rights has been the practices of female genital mutilation. While many feminists have urged strong national and international action against these practices, often through the elaboration of the right to health, others have cautioned against absolutist positions that sensationalize the issue and present "us versus them" positions. Isabelle Gunning has made an interesting contribution to this debate by arguing that "culturally challenging" practices such as genital mutilation (or "female genital surgeries" as Gunning refers to them) require the critic to engage in "world travelling," which means "multicultural dialogue and a shared search for areas of overlap, shared concerns and values."[58] Isabelle Gunning develops a tripartite approach to discussion of human rights issues in other cultures: first being clear about your own historical context; second, understanding how other women might see you; and third, recognizing the complexities of the context of the other women.[59] She sees the structures of international human rights law as capable of responding flexibly to culturally challenging practices because they are non-coercive and emphasize education. In a similar vein, Rosi Braidotti suggests the image of "multiple literacies" to visualise the global range of feminisms. This entails "being able to engage in conversation in a variety of styles, from a variety of disciplinary angles, if possible in different languages.[60] Unlike Gunning, however, who contemplates the possibility of creating universally shared values, Braidotti insists that feminists must "relinquish the dream of a common language" and resign ourselves to simply "temporary political consensus on specific issues.[61]

The Vienna Conference on Human Rights in 1993 endorsed the importance of ensuring that the international human rights system

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58. Isabelle Gunning, *Arrogant Perception, World-Travelling and Multicultural Feminism: The Case of Female Genital Surgeries*, 23 COL. HUM. RTS L. REV. 189, 191 (1991-2).

59. A similar approach is suggested, albeit less explicitly, by Annie Bunting.

60. Rosi Braidotti, *supra* note 48, at 10.

61. *Id.*

responded to the concerns of women as well as men. This theme will be elaborated in the Platform for Action at the Fourth World Conference on Women in Beijing in September 1995 (although, at the time of writing, most references to women's rights as human rights, and the need for gender analysis of traditional human rights law in the draft Platform are placed in square brackets, making uncertain their final acceptance).[62] The rhetoric for a feminist transformation of human rights law is apparently in place. It now needs to be put into action. This process must start within the law-making fora of the international community, supported and monitored by human rights and women's organizations.

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62. UN Doc. E/CN.6/1995/2/WG/Revs.