



Osgoode Hall Law School of York University
Osgoode Digital Commons

Articles & Book Chapters

Faculty Scholarship

1997

Turning the Gaze Back on Itself: Comparative Law, Feminist Legal Studies, and the Postcolonial Project

Brenda Cossman

Osgoode Hall Law School of York University

Source Publication:

Utah Law Review. Volume 1997, Number 2 (1997), p. 525-544.

Follow this and additional works at: https://digitalcommons.osgoode.yorku.ca/scholarly_works



This work is licensed under a [Creative Commons Attribution-Noncommercial-No Derivative Works 4.0 License](https://creativecommons.org/licenses/by-nc-nd/4.0/).

Recommended Citation

Cossman, Brenda. "Turning the Gaze Back on Itself: Comparative Law, Feminist Legal Studies, and the Postcolonial Project." *Utah Law Review* 1997.2 (1997): 525-544.

This Article is brought to you for free and open access by the Faculty Scholarship at Osgoode Digital Commons. It has been accepted for inclusion in Articles & Book Chapters by an authorized administrator of Osgoode Digital Commons.

Turning the Gaze Back on Itself: Comparative Law, Feminist Legal Studies, and the Postcolonial Project

Brenda Cossman*

Canadian filmmaker Atom Egoyan has described his recent production of Richard Strauss's operatic libretto *Salome* with the Canadian Opera Company as an exploration of "the danger of looking when the gaze is not returned."¹ The exotic young woman Salome desires the gaze of others. John the Baptist, who refuses to give Salome the gaze that she so desires, pays with his life. Her stepfather, Harod, who cannot stop looking at Salome, and who makes her dance the Dance of the Seven Veils, must pay by fulfilling Salome's wish of revenge: he must order the prophet killed and his head delivered to Salome on a silver platter. And ultimately, Salome's obsession with being looked at, John the Baptist's refusal to look, and Harod's inability to stop looking, lead to Salome's own death.

The gaze in Egoyan's *Salome* is not a simple one. Salome is not passively objectified, but seemingly empowered through the gaze of others. She, too, is obsessed with gaze—of others looking at her, valuing her, and desiring her. But this too has a price. In the end, the power she apparently acquires from the gaze of others cannot save her from her own act of transgression—she desires too much and ultimately brings about her own death. In *Salome*, the power of the gaze is ambivalent. Is it objectifying or empowering? Is the recipient of the gaze a desiring subject or a passive object? And what is the danger of looking when the gaze is not returned? Is it simply that we will not see all there is to see? Is it that we assume that the other is observable, knowable in an objective and

* Associate Professor, Osgoode Hall Law School. My special thanks to Ratna Kapur for allowing me to cite freely from our collaborative work and helping me reflect on the nature of our collaborative project—past, present, and future. Thanks also to Karen Engle for encouraging me down the comparative road, to Stella Rozanski and the participants in the Feminist Project at Harvard Law School, to Allan Hutchinson and Zoe Newman for their helpful comments, and to Cherie Robertson for her research assistance.

1. *Interview with Atom Egoyan* (CBC Arts Report radio broadcast, Oct. 1996).

quantifiable way? Is it that we force the other to pay for our desire to look? Or is it that we will pay for our voyeurism? Egoyan provides no simple answers, but tells us only that our voyeuristic desires can lead us to dangerous places.

Comparative law can be seen to be haunted by the ghosts of *Salome*. The danger of looking when the gaze is not returned is indeed a real danger for comparative law. To state the obvious, comparative law invariably involves comparison—something is always being compared to something else. It therefore invariably encounters all the dilemmas of comparison—of unstated norms against which difference is viewed and judged. Within the context of comparative law, the geopolitical location of the author becomes the unstated norm against which the exotic “other” is viewed. It is a project that is perhaps inherently ethnocentric—there is no way to escape or transcend the ethnocentric gaze. If this gaze *is* inescapable, some might be tempted to abandon it altogether. After all, in *Salome*, the ultimate act of resistance was to *refuse* to look—to deny Salome the gaze that she so desired. And so, in comparative law, would the ultimate act of resistance be the refusal to look, to compare? It is an act of resistance, however, which comes with an extraordinary price: comparative law, like John the Baptist, would pay with its life.

But, if, as *Salome* also suggests, the power of the gaze is ambivalent, then perhaps we need not demand that comparative law sacrifice itself so completely. There may be different ways of negotiating the ethnocentric gaze of comparative law without falling into a cultural relativism that would abandon the very project of looking beyond. Such a refusal to look outside of ourselves and our culture would after all undermine one of the most basic objectives of the postcolonial project, that is, of exploring the transnational flows of culture and the ways in which the colonial binaries—of us/them, here/there, west/non-west, colonizer/colonized—have long been mutually constituting.

In this Essay, I explore some of the ways in which the ethnocentric gaze of comparative law might be negotiated within the specific context of comparative law's encounter with feminism. The challenge of ethnocentrism is a familiar one within the feminist project in recent years. On the one hand, the unstated norms of feminist theory and practice have become the site of intensive contestation from within—women whose lives do not accord with these norms have demanded that the partiality of feminism's vision be recognized and then be radically transformed. On the other hand, feminism has also been a site of contestation from without—from those who endeavor not to expand its embrace, but to radically

curtail it. It has been denounced as quintessentially Western and therefore utterly devoid of cultural legitimacy in non-Western contexts.

The feminist project in recent years has become increasingly adept at negotiating this hazardous terrain somewhere in between un-self critical ethnocentrism and hyper-self critical cultural relativism. While not always avoiding the pitfalls, feminist theory in general and feminist theorizing about law in particular have become increasingly self-conscious of the dangers of either extreme, and have attempted to create new paths somewhere in between. Feminist theory may thus provide a rich resource from which new approaches to comparative law can draw in their efforts to renegotiate the comparative gaze.²

In the remarks that follow, I consider not how the ethnocentric gaze of comparison might be transcended, but rather how it might be differently inhabited. If the danger lies in a gaze that is not returned, then we might try to find ways of returning it. I explore the potential of a strategy of turning the gaze back on itself. I argue that this strategic intervention may help in the project of negotiating the challenge of comparison without falling into the traps of either ethnocentrism on one side or cultural relativism on the other.

In order to do so, I use some of my recent collaborative work—ambivalently related to the comparative project—to explore the general dilemmas of feminism's encounter with the comparative project. I use my collaborative work *Subversive Sites: Feminist Engagement with Law in India*³ as a text to explore some of these dilemmas and the way in which this strategic intervention of turn-

2. The unstated norms of comparative law's methodology—of an us/here against which them/there are measured and judged—is an area where feminist legal scholarship can make an important contribution to new approaches to comparative law. Feminist legal studies has developed considerable expertise in deconstructing these kinds of comparative exercises, specifically within the context of the legal relevance of gender difference. After years of debating the relative merits of sameness versus difference, contemporary work has begun to deconstruct the very terms on which the understanding of difference has been based. For example, Martha Minow's groundbreaking work on difference insists on the relational nature of difference and on revealing the unstated norms against which difference has been judged. See MARTHA MINOW, *MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION, AND AMERICAN LAW* (1990) (analyzing how law does and could treat differences between people). This methodology of deconstructing difference and recognizing its relational nature could be applied to the methodology of comparative law as a way to begin to challenge its unstated norms and displace its ethnocentrism.

3. RATNA KAPUR & BRENDA COSSMAN, *SUBVERSIVE SITES: FEMINIST ENGAGEMENT WITH LAW IN INDIA* (1996) (exploring ideological assumptions which inform legal regulation of women in India and ways in which law subordinates women).

ing the gaze back on itself may help negotiate those dilemmas. I begin with a general reflection on our ambivalent relationship with comparativism, at the same time as I reflect on some of the ways in which our project could be seen as comparative and might contribute to a comparative methodology. While the purpose of the Essay, in keeping with the symposium, is to locate this work within new approaches to comparative law, I would more broadly frame the process as one of situating the work within the project of postcolonialism—or more specifically, about feminism and law in a postcolonial context. It is part of a larger project on scattering feminist legal studies,⁴ that is, on the possibilities of renegotiating the Anglo-American moorings of feminist legal studies,⁵ by displacing the unstated norms and center in favor of multiple norms and frames of reference.

I. TO BE OR NOT TO BE A COMPARATIVIST

I begin with considerable trepidation about my own relationship to the comparative project. While others claim that I am a comparativist, and locate my work within comparative law, I am somewhat skeptical. My work is about women and law in India. I work and write with an Indian feminist lawyer and researcher, Ratna Kapur. And we write primarily, but not exclusively, for an Indian audience. The work is not comparative in any traditional sense. We are not comparing Indian law and legal discourse to any

4. I have borrowed the concept of scattering from the work of Inderpal Grewal and Caren Kaplan. See Inderpal Grewal & Caren Kaplan, *Introduction: Transnational Feminist Practices and Questions of Postmodernity* (using the term “scattered hegemonies” to refer to “the effects of mobile capital as well as the multiple subjectivities that replace the European unitary subject”), in *SCATTERED HEGEMONIES: POST MODERNITY AND TRANSNATIONAL FEMINIST PRACTICES* 1, 7 (Inderpal Grewal & Caren Kaplan eds., 1994). I am using the term to refer to the process of displacing a vast array of unstated Western norms in favor of multiple norms and frames of reference.

5. The term “feminist legal studies” corresponds to the term more commonly used in American literature on feminism and law, that is, “feminist legal theory.” “Feminist legal studies,” although hardly a term of art, has gained in popularity in British, Canadian, and Australian circles, as witnessed by the emergence of journals, conferences, and institutes under its general rubric. In my view, the term “studies” is better suited to describe the area of inquiry than “theory,” insofar as it can begin to displace the idea that there is a single theoretical narrative to tell about feminism and law. Carol Smart makes a similar observation about the concept of “feminist jurisprudence.” See CAROL SMART, *FEMINISM AND THE POWER OF LAW* 66, 66–89 (1989) (stating concept of “feminist jurisprudence” needs to be problematized as it suggests general, total, and homogeneous theory of law which simply replaces traditional legal abstractions about law). The term “studies” better captures the multiplicity of perspectives and frameworks that characterize contemporary theorizing around feminism and law.

other legal system. While some might cast our work under the umbrella of "foreign law," when I hesitantly put this suggestion to my co-author she sarcastically retorted: "Why, because you're a foreigner?" As someone who lives and works in India, for her the only thing remotely foreign about our work is me. Her response underscores the extent to which the very category of "foreign law," alongside that of comparative law, begins from a very particular geopolitical location. It begins from an unstated norm of "us/here" against which others—"them/there"—are to be measured. It is an unstated norm that my colleague wants no part of.

I say this not to belabor the point of comparative law's ethnocentrism,⁶ but to emphasize our own unease with being cast as comparative or foreign lawyers. And I say it to raise questions about what it is about our work that makes others say, with such apparent certainty, that we are comparativists. Is it no more than my identity that makes it comparative? Was my colleague right in saying that it is only because I am a foreigner to the subject of our study? It strikes me as odd that in these days of post identity politics that my identity alone could make or break "us" as comparativists.⁷ Yet, much of it does seem to revolve around who you are, who you write about, and who your audience is. Perhaps, the issue should be recast not as one of identity, but rather of location. A politics of location or positionality insists on the historical, geographic, and cultural specificity of political definition and the production of knowledge.⁸ It is location—defined not as a fixed and

6. I do believe, however, that this is a point well worth belaboring.

7. Günter Frankenberg's essay, *Stranger than Paradise: Identity & Politics in Comparative Law*, suggests that comparative law is still a relative newcomer to the realm of identity politics and that questions of identity, along with a host of other critical theoretical interrogations, have only very recently arrived on the stage of the comparative project. See Günter Frankenberg, *Stranger than Paradise: Identity & Politics in Comparative Law*, 1997 UTAH L. REV. 259. But, as the essays in this volume also indicate, these new approaches to comparative law are located within a broad range of theoretical narratives that have shattered the essentialism of traditional identity politics. These new approaches to comparative law, although interrogating notions of identity, are doing so within a range of anti-essentialist or post-essentialist narratives. On essentialism and anti-essentialism, see generally DIANA FUSS, *ESSENTIALLY SPEAKING* (1989) (deconstructing opposition between essentialism and constructionism) and Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 381 (1990) (using racial critique to attack gender essentialism in feminist legal theory). This post-essentialist exploration of identity in comparative law is perhaps another example of what Nathaniel Berman has described as "aftershocks." Nathaniel Berman, *Aftershocks: Exoticization, Normalization, and the Hermeneutic Compulsion*, 1997 UTAH L. REV. 281.

8. See Chandra Talpade Mohanty, *Feminist Encounters: Locating the Politics of Experience* (calling for politics of location that includes "historical, geographical, cul-

static point but a “temporality of struggle”—that shapes our knowledge of the world. As Chandra Mohanty argues: “My location forces and enables specific modes of reading and knowing the dominant. The struggles I choose to engage in are then the intensification of these modes of knowing.”⁹ It is our location that shapes not only our modes of understanding the world and the work we produce, but also, as Lata Mani has argued, the way in which that work will be received. She describes this as “the politics of simultaneously negotiating not multiple but discrepant audiences, different ‘temporalities of struggle.’”¹⁰ A politics of location could allow us to situate our work in different temporalities of struggle, such that in some locations it could be understood within a comparative project, whereas in others it could be framed otherwise. Indeed, a politics of location, and its insistence on the temporality of modes of knowledge and cultural production, might simultaneously vindicate my co-author’s disavowal of the comparative project, at the same time as it could situate my authorship within it.

Having asked these somewhat existential questions about whether to be or not to be a comparativist, and expressed my own sense of ambivalence, let me turn to a way in which I think that our text can perhaps be cast as comparative. It is perhaps appropriate to cast our work within the emerging project of comparative legal feminism(s), or comparative feminist legal studies. In our study, we borrow heavily from the methodologies and theoretical frameworks of Anglo-American feminist legal studies. This process of borrowing presents a number of theoretical and methodological challenges, which warrant further reflection, and which may reveal some insight for others engaged in similar comparative projects—feminist or otherwise.

tural, psychic and imaginative boundaries which provide the ground for political definition and self-definition”), in *DESTABILIZING THEORY: CONTEMPORARY FEMINIST DEBATES* 74, 74 (Michèle Barrett & Anne Phillips eds., 1992); see also Lata Mani, *Multiple Meditations: Feminist Scholarship in the Age of Multinational Reception* (stating feminist theory on politics of location now calls for revised politics of location “because, unlike its initial articulation, the relationship between experience and knowledge is now seen to be one not of correspondence, but fraught with history, contingency and struggle”), in *KNOWING WOMEN: FEMINISM AND KNOWLEDGE* 306, 308 (Helen Crowley & Susan Himmelweit eds., 1992).

9. Mohanty, *supra* note 8, at 74.

10. Mani, *supra* note 8, at 309 (citation omitted); see also Caren Kaplan, *The Politics of Location as Transnational Feminist Critical Practice* (emphasizing importance of focusing on both “the production and reception of feminist theories in transnational cultures of exchange”), in *SCATTERED HEGEMONIES: POST MODERNITY AND TRANSNATIONAL FEMINIST PRACTICES* 137, 138 (Inderpal Grewal & Caren Kaplan eds., 1994).

II. SUBVERSIVE SITES AS COMPARATIVE METHODOLOGY

Our book *Subversive Sites* explores the ideological assumptions that inform the legal regulation of women in India and the ways in which law subordinates women. It examines the complex and subtle forms in which law constitutes and reinforces deeply gendered assumptions, relations, and roles. It explores the multiple ways in which legal discourse is constitutive of women's subjectivities as wives and mothers, as passive and weak, as subordinate and in need of protection. And it explores the way in which law is, at the same time, a site where these roles and identities have been challenged—where social reformers and feminist activists have sought to displace previously dominant understandings of women's appropriate roles and identities and sought to reconstruct women's identities as more full and equal citizens. We argue that law is a site of discursive struggle where competing visions of the world, and women's place therein, are fought out.

We focus on the extent to which the legal regulation of women is informed by and serves to reinforce familial ideology. By familial ideology, we refer to a set of norms, values, and assumptions about the way in which family life is and should be organized. It is a set of ideas that has been so naturalized and universalized that it has come to dominate commonsense thinking about the family.¹¹ In the Anglo-American context, familial ideology refers to the way in which the nuclear, heterosexual, patriarchal family—with very particular roles for women as wives, mothers, economic dependents—is naturalized and comes to represent commonsense thinking about the

11. See KAPUR & COSSMAN, *supra* note 3, at 88–99. For a discussion of familial ideology in Anglo-American feminism and feminist legal studies, see generally MICHÈLE BARRETT & MARY MACINTOSH, *THE ANTI-SOCIAL FAMILY* (1982) (analyzing British understanding of “the family” as both a social and economic institution and an ideology); CAROL SMART, *THE TIES THAT BIND: LAW, MARRIAGE AND THE REPRODUCTION OF PATRIARCHAL RELATIONS* (1984) (analyzing way in which law of marriage sustains and perpetuates women's economic dependence within family); Shelley A.M. Gavigan, *Law, Gender and Ideology* (arguing courts are not neutral fora but rather exert ideological influence in that they legitimate and perpetuate dominant social ideas and beliefs), in *LEGAL THEORY MEETS LEGAL PRACTICE* 283, 283–94 (Anne Bayefsky ed., 1988); and Shelley A.M. Gavigan, *Paradise Lost, Paradox Revisited: The Implications of Familial Ideology for Feminist, Lesbian, and Gay Engagement with Law*, 31 *OSGOODE HALL L.J.* 589 (1993) (addressing theoretical and political challenges issued to feminists and feminist scholarship by recent debates and litigation concerning “family” and “family-based” benefits). For a discussion of the relationship between familial ideology and discourse theory which is not explicitly addressed in our book, see, for example, Brenda Cossman, *Family Inside/Out*, 44 *U. TORONTO L.J.* 1 (1993) (deconstructing polarized family status debate within gay and lesbian legal strategies).

family. In our work, we try to show the multiple ways in which ideas about the Indian family shape and inform the legal regulation of women, the ways in which these ideas appear throughout legal discourse as self-evident, and the ways in which this legal regulation operates to reinforce these assumptions about the family and women's roles therein. We examine a broad range of legal regulation—from family law to criminal law to employment law—and attempt to reveal the multiple and often contradictory ways in which familial ideology shapes legal discourse. We consider, for example, some of the ways in which assumptions about women's "natural" roles as wives and mothers are the measure against which courts judge women: women whose lives most closely conform to these assumptions are more likely to have their claims vindicated than are women whose lives have deviated from these ascribed roles.¹² We also examine some of the ways in which these assumptions about women's natural roles in the family have operated to undermine women's equality claims.¹³

But as mentioned, this concept of familial ideology is an idea taken from Anglo-American feminist legal studies. Some critics would reject the validity of the study on this basis alone, that is, on the outright rejection of the cultural legitimacy of feminism. This is not a position that we take very seriously insofar as it denies the historical legacy of feminist struggle in India,¹⁴ renders invisible

12. For example, we consider divorce petitions where husbands have alleged cruelty on the grounds that their wives did not discharge their marital duties. Women who are able to demonstrate that they have lived up to the ideal of the good wife may be able to defeat their husband's claim. *Compare* *Vimlesh v. Prakash Chand Sharma*, A 1992 All 260 (holding wife's letters to her husband were sufficient evidence that she was "totally devoted Hindu wife") *with* *Santana Banerjee v. Sachindra Nath Banerjee*, A 1990 Cal 367 (holding wife failed to establish she led life of traditional Bengali married woman); *see also* KAPUR & COSSMAN, *supra* note 3, at 105–12 (examining common ground of cruelty for divorce in India).

13. In chapter 3, *Constitutional Challenges and Contesting Discourses: Equality and Family*, we examine the ways in which familial ideology has informed the judiciary's approach to gender difference and the ways in which this ideology has often operated to limit the attempts to use constitutional equality rights to challenge laws that discriminate against women. We attempt to reveal the role of familial ideology in the way in which legal discourse constitutes women as "different," and thus, as effectively disqualified from equal treatment. *See* KAPUR & COSSMAN, *supra* note 3, at 173–222.

14. *See generally* RADHA KUMAR, *THE HISTORY OF DOING: AN ILLUSTRATED ACCOUNT OF MOVEMENTS FOR WOMEN'S RIGHTS AND FEMINISM IN INDIA 1800-1990* (1993) (discussing in detail the history of women's rights movements in India); JANAKI NAIR, *WOMEN AND LAW IN COLONIAL INDIA: A SOCIAL HISTORY* (1996) (examining impulses behind and effects of legislation passed in colonial period aimed at ameliorating legal position of women in India).

the vibrant feminist scholarship that is being produced by Indian women, both inside and outside of India,¹⁵ and is premised on the very notions of cultural authenticity that we reject. Other somewhat more sympathetic critics might be less concerned with universal claims to feminism's cultural illegitimacy, but would nevertheless raise objections to the Anglo-American bias of the feminist analysis. We share this concern and take as axiomatic that the concepts of Anglo-American feminism cannot simply be mechanically applied to other contexts. As Chandra Mohanty's work has persuasively argued, concepts like the sexual division of labor and economic dependency cannot be used "without their specification in local and historical contexts."¹⁶ Throughout our work, we have thus attempted to interrogate the explanatory nature of the concepts in the historically and materially specific context of the legal regulation of women in India. It is a process that requires that theoretical concepts like familial ideology be adapted to this context.

But, lest we be mistaken for what Günter Frankenberg describes as a fragile and tragic self, fearful of treading into the uncharted terrain of the other, afraid of going native and, simultaneously, of not going native—suffice it to say for the moment that we are not.¹⁷ Although we believe that we need to tread cautiously on this journey, we do forge ahead. Moreover, the journey is one that has much to offer those courageous enough to set off on it. The process of adaptation is, I will argue, simultaneously a process that can transform the very nature of the concepts themselves.

To illustrate the transformative nature of this process, I return to the concept of familial ideology. It is a simple observation that familial ideology in the context of Anglo-American feminist legal studies developed in relation to the nuclear family that is said to be

15. See, e.g., BINA AGARWAL, *A FIELD OF ONE'S OWN: GENDER AND LAND RIGHTS IN SOUTH ASIA* (1994) (examining link between property and gender relations in South Asia); RATNA KAPUR, *FEMINIST TERRAINS IN LEGAL DOMAINS: INTERDISCIPLINARY ESSAYS ON WOMEN AND LAW IN INDIA* (1996) (providing collection of interdisciplinary essays on women and law in India); ARCHANA PARASHAR, *WOMEN AND FAMILY LAW REFORM IN INDIA: UNIFORM CIVIL CODE AND GENDER EQUALITY* (1992) (analyzing governmental conduct with regard to reform of religious personal laws in India); RAJESWARI SUNDER RAJAN, *REAL AND IMAGINED WOMEN: GENDER, CULTURE AND POSTCOLONIALISM* (1993) (providing collection of feminist critical essays attempting to map space of postcolonial female); *RECASTING WOMEN: ESSAYS IN INDIAN COLONIAL HISTORY* (Kumkum Sangari & Sudesh Vaid eds., 1989) (providing collection of essays analyzing reconstitution of patriarchies in colonial period).

16. Chandra Talpade Mohanty, *Under Western Eyes: Feminist Scholarship and Colonial Discourses*, in *THIRD WORLD WOMEN AND THE POLITICS OF FEMINISM* 67 (Chandra Talpade Mohanty et al. eds., 1991).

17. See Frankenberg, *supra* note 7, at 266–70.

the dominant household arrangement in industrialized, capitalist societies.¹⁸ But in India, the nuclear family is not the dominant ideological form. The joint family is the household structure that is commonly believed to be the dominant form. The tragic self might at this simply abandon ship, fearful of applying a concept that is so clearly foreign to Indian culture.¹⁹ But if we cautiously forge ahead and consider whether the concept of familial ideology might nevertheless have some explanatory potential, we begin an interesting and transformative process.

On one hand, if familial ideology is to have any explanatory value at all, it must be reconstructed around this concept of the joint family, and the gendered roles and identities therein. However, further investigation into the nature of the joint family is illuminating. The joint family—the idea that represents the essence of Indian family culture—was a term first coined by Sir Henry Maine in 1863. Maine, the Law Member of the Government of India from 1862 to 1869, believed that he had discovered “a living example of the patriarchal family in ancient times.”²⁰ As a result of his influential position as Law Member, his view of the joint family came to be accepted by the colonial government as an accurate representation of the most common Hindu family form—a form that was then used in government census.²¹ The joint family is thus illustrative of how the colonial past is always indelibly present in ostensibly pure Indian cultural forms. The example of the joint family reveals how the assumption by the tragic self of the purity of Indian cultural and legal forms obscures the already ever present West, and its deep influences on the very construction of tradition. As postcolonial theory has insisted, there is no place of pure Indianness, no place that exists in a pure form prior to the moment of colonial intervention.²² This strategy of historicization begins to reveal the extent to

18. See BARRETT & MACINTOSH, *supra* note 11, at 8 (“The stereotypical nuclear family accounts, roughly, for only a third of households in Britain today. Yet the media gives the impression that the entire population is securely bound up in it.”).

19. See Frankenberg, *supra* note 7.

20. PATRICIA UBEROI, *FAMILY, KINSHIP AND MARRIAGE IN INDIA* 31 (1993).

21. See N.J. Uash Rao, *Gaps in Definitions and Analysis: A Sociological Perspective* (“[T]he Indological views regarding the concept of the Hindu family were popularized by the British administrators and are reflected in many of the definitions of ‘joint family’ formulated by anthropologists and sociologists.”), in *FINDING THE HOUSEHOLD: CONCEPTUAL AND METHODOLOGICAL ISSUES* 49, 56 (K. Saradmoni ed., 1992).

22. The hybridity of Indian cultural forms is made particularly evident in our work in relation to the family, which became an intensely contested terrain within the Hindu revivalist movement and the nationalism struggle. The family was claimed by revivalists as precisely this space of pure culture, uncontaminated by the public

which Indian culture is very much a hybrid cultural form—produced in and through the colonial encounter. It helps refute the idea of cultural authenticity, displacing it with an insistence on cultural hybridity.²³

Moreover, as Indian sociologists have revealed, while the idea of the joint family dominates popular thinking about the family, the majority of Indians do not live in joint families.²⁴ The joint family is neither purely Indian nor descriptive of how millions of Indians live in families. Nevertheless, the joint family and its very particularized roles for women as wives, mothers, daughters, and daughters-in-law, continues to operate as a dominant normative ideal of family—a dominant normative ideal that continues to inform judicial discourse. We try to illustrate, throughout the work, the extent to which this dominant ideology about the family operates in law: the way in which this ideology is partially constitutive of women's identities and the way in which this ideology operates to limit efforts to destabilize these identities.

This idea of the joint family is but one of the most obvious ways in which the concept of familial ideology needs to be reframed and recast in the context of the legal regulation of women in India.²⁵ It

nature of colonialism. During the late nineteenth century, political nationalists sought to redefine the domestic realm as a pure space of Hindu culture and tradition, untouched by colonial oppression. See generally KAPUR & COSSMAN, *supra* note 3, at 45–52 (discussing first wave of social reform in nineteenth-century colonial administration); Tanika Sarkar, *Rhetoric Against Age of Consent: Resisting Colonial Reason and Death of a Child-Wife*, ECONOMIC AND POLITICAL WEEKLY, Sept. 4, 1993, at 1869, 1869 (contending colonial power structures retained considerable hegemony even when faced with indigenous patriarchy and caste systems).

23. On hybridity, see HOMI K. BHABHA, *THE LOCATION OF CULTURE* (1994), particularly his essay *Signs Taken for Wonders: Questions of Ambivalence and Authority Under a Tree Outside Delhi, May 1817*.

24. See A.M. SHAH, *THE HOUSEHOLD DIMENSION OF THE FAMILY IN INDIA* (1974) (stating that even after a century of British surveys and census reports showing otherwise, most Indians believe that joint families are the norm). See generally PAULINE KOLENDA, *REGIONAL DIFFERENCES IN FAMILY STRUCTURES IN INDIA* (1987) (providing collection of papers attempting to understand causes, correlates, or conditions of joint-family living in India).

25. There are numerous ways in which the concept is historicized and localized throughout the study. For example, in chapter 1 we provide an overview of the history of the movements for women's rights as a history of engaging with law as discursive struggle. See KAPUR & COSSMAN, *supra* note 3, at 19–75. And in so doing, we attempt to highlight some of the different challenges to the familial sphere and women's identities therein through this feminist legal history. See *id.* at 43–75. In chapter 4, we attempt to illustrate the ways in which familial ideology is being deployed and reconstituted by the Hindu Right in furtherance of its agenda of appropriating women's rights issues. See *id.* at 232–75. We attempt to reveal the extent to which the new identity of “modern but not western” for women calls upon a notion

is this process of interrogating, reframing, and recasting that is particularly interesting from the point of view of comparative legal feminism. The process is one that begins to transform the concept itself. Familial ideology looks very different in the Indian context than in the Anglo-American context. And this difference can begin to tell us something interesting about the concept itself. This is where the direction of the flow of analysis and comparison can begin to shift. Instead of understanding the flow of the comparative analysis as unidirectional, the hegemonic discourses of the West might begin to be displaced if we insist that the flow of comparative analysis be multidirectional. Recent cultural studies and postcolonialism have emphasized and examined the transnational and multidirectional flow of culture, traveling theory, and the syncretism and hybridity in contemporary mass culture.²⁶ Borrowing these insights, we might be able to begin to deconstruct the monolithic categories of Anglo-American legal feminism by turning the gaze of comparison back on itself. We can move from the question of what is culturally specific about familial ideology in India (which retains the West as the unstated norm) to the question of what is culturally specific about familial ideology in Anglo-American legal systems—a question within which non-Anglo-American contexts can become a stated norm. We can begin to shift in subtle ways what is being compared to what and begin to displace unstated and monolithic

of tradition that is thoroughly contemporary, and in so doing disrupt the tradition/modernity opposition. See *id.* at 265–73. These strategies of historicization and disrupting the tradition/modernity opposition—although here deployed specifically in relation to familial ideology—are important postcolonial strategic interventions in their own right.

26. See generally BHABHA, *supra* note 22; Grewal & Kaplan, *supra* note 4 (emphasizing importance of postmodernity and transnational flow of culture in feminist practices); Catherine Hall, *Histories, Empires and the Postcolonial Moment* (rethinking history of British empire in postcolonial framework), in THE POST-COLONIAL QUESTION: COMMON SKIES, DIVIDED HORIZONS (Iain Chambers & Lidia Curti eds., 1996); Stuart Hall, *When Was the Post Colonial? Thinking at the Limit* (exploring “the interrogation marks which have begun to cluster thick and fast around the question of ‘the post-colonial’ and the notion of post-colonial time”), in THE POST-COLONIAL QUESTION: COMMON SKIES, DIVIDED HORIZONS, *supra* [hereinafter Hall, *When Was the Post Colonial?*]. On traveling theory, see EDWARD SAID, TRAVELING THEORY, THE WORLD, THE TEXT AND THE CRITIC (1983) (mapping theory’s location and displacement—its travels—through space and time) and James Clifford, *Notes on Travel and Theory*, 5 INSCRIPTIONS 177, 184 (1989) (critiquing Said’s four stages of travel “on origin, a distance traversed, a set of conditions for acceptance or rejection, and finally a transformed idea occupying ‘a new position in a new time and place’ (Said (1983) at 227)” as “a linear path [that] cannot do justice to the feedback loops, the ambivalent appropriations and resistances that characterize the travels of theories, and theorists, between places in the ‘First’ and ‘Third’ Worlds”).

norms in favor of stated and multiple ones.

When we turn the gaze back upon itself, we are not so much escaping the colonial or imperial gaze, as finding different ways to inhabit the space of that gaze. When we turn the gaze back upon the unstated norm, and reveal its own specificity, we might begin to find and inhabit, in the words of Homi Bhabha, “the *in-between* space” between West and non-West, an in-between space “through which the meanings of cultural and political authority can be negotiated.”²⁷ It is an in-between space that can recognize and nurture cultural hybridity. In turning the gaze back upon itself, the gaze might thus become something other than what it was; it is reconfigured in a way that it might become the “beyond” or the “in-between” that the “post” in the postcolonial signifies. As a comparative methodology, turning the gaze back upon itself can help make explicit the seemingly inescapable risk of ethnocentrism in the comparative project, while at the same time, deploying the comparison to challenge that ethnocentrism. It can assist in what Günter Frankenberg has described as the challenge of seeing ourselves as exotically as we see the “other.”²⁸

The risk, and there are always risks, is that in turning the gaze back upon itself, we (the us/here comparativists located in the West) simply end up back where we started—focusing on ourselves. Ruth Frankenberg and Lata Mani have astutely made this point in critiquing the work of Robert Young on the impact of the Algerian War of Independence on French political theory and philosophy.²⁹ They have argued that although Young’s work, on one hand, constitutes “a powerful critique of ethnocentrism,” it is, on the other hand, undermined by “his general tendency to read anti-colonial movements as primarily engaging the logic of Western philosophy.”³⁰ They observe, “One is tempted to wonder whether we have merely taken a detour to return to the position of the Other as resource for rethinking the Western Self, only this time, it is not the Other as ‘ourselves undressed’ so much as ‘ourselves disassembled.’”³¹ We need then, to be attentive to the risk of reducing the comparative analysis to an analysis that is “primarily and funda-

27. Homi K. Bhabha, *Introduction: Narrating the Nation*, in *NATION AND NARRATION* 1, 4 (Homi K. Bhabha ed., 1990).

28. Frankenberg, *supra* note 7.

29. See generally ROBERT YOUNG, *WHITE MYTHOLOGIES: WRITING HISTORY AND THE WEST* (1990) (examining relation of history to theory and of politics to knowledge).

30. Ruth Frankenberg & Lata Mani, *Crosscurrents, Crosstalk: Race, “Postcoloniality” and the Politics of Location*, 7 *CULTURAL STUD.* 292, 300 (1993).

31. *Id.* at 301 (citation omitted).

mentally a critique of the West."³² In turning the comparative gaze back upon itself, it will be important to remain committed to finding the space in between West/non-West, colonizer/colonized, us/them, here/there, and not simply refocusing our attention back onto ourselves. We must, in other words, not simply gaze into a mirror but retain a keen focus on the kaleidoscope that a postcolonial lens of comparison can provide.

Further, it is in this kind of strategic intervention that comparative feminist legal studies can begin to become part of the postcolonial project and assist in what I describe as *scattering* feminist legal studies, that is, in displacing the Anglo-American center of feminist legal studies. First, turning the gaze back upon itself, alongside other postcolonial strategic interventions, can help defend the feminist emancipatory project against those who would deny its cultural legitimacy and authenticity. In breaking the here/there, us/them cultural binaries and revealing the hybridity of Indian culture, we can begin to disrupt the very assumptions on which claims of feminism's cultural inauthenticity are based. And in its place, we can defend not feminism's authenticity (for that would be to reinvoke the very binaries we have tried to displace), but simply its *political* legitimacy and relevance in the analysis of contemporary gender relations.

Secondly, turning the gaze back on itself can help multiply the norms, perspectives, and frames of reference in and through which feminist legal studies is constructed. For example, in the context of our work, the analysis of the historically and materially specific context of feminist engagement with law in India can become a stated norm against which the assumptions of Anglo-American feminist legal studies are viewed, judged, and potentially, rethought. Moreover, the strategy can be seen to move beyond the mere call for a recognition of difference. Caren Kaplan writes of the problem of Western feminist theorists simply "calling for inclusion of 'difference' by 'making room' or 'creating space'" rather than paying attention to the politics of "the production and reception of feminist theories in transnational cultural exchanges."³³ As Kaplan argues, this politics of location

in the production and reception of theory can turn the terms of inquiry from desiring, inviting, and granting space to others to becoming accountable for one's own investments in cultural metaphors and values. Such accountability can begin to shift the ground

32. *Id.*

33. Kaplan, *supra* note 10, at 138–39.

of feminist practice from magisterial relativism (as if diversified cultural production simply occurs in a social vacuum) to the complex interpretive practices that acknowledge the historical roles of mediation, betrayal, and alliance in the relationships between women in diverse locations.³⁴

The strategy of turning the gaze back on itself can help shift attention to this politics of location in feminist legal studies. Instead of simply calling for an attention to difference within a preordained theoretical framework, the strategic intervention is one in which the theoretical concepts themselves are subject to interrogation and renegotiation and then redeployed against the initial framework. It is an intervention that can help bring the issue of accountability into sharper relief. Not only does it require that the Anglo-American feminist legal scholar recognize the partiality of her perspective, but it also directs her attention to the way in which that partial perspective shapes how the comparative knowledge is received and interpreted. Not only can a multiplicity of stated perspectives be brought to the center of the project, but the relationship between these perspectives and the construction of knowledge can be recognized as one that is indeed "fraught with history, contingency and struggle."³⁵ "Difference" thus arrives on stage not simply as the empirical raw material to be theorized or as its own theoretical perspective or epistemological claim, but as simultaneously shaping the very interpretive terrain of the feminist project.

Turning the gaze back upon itself can assist in bringing a politics of location to feminist legal studies, which as a project can in turn begin to be freed from its Anglo-American moorings. Feminist legal studies can be rendered more complex, more global, more local, more transnational. It is a project in which the unstated norms and frames of reference of Anglo-American feminist legal studies must be stated and revealed on the one hand and challenged as contingent, temporal, and partial on the other. It is a project that refuses the simple binaries of here/there, us/them (alongside a host of other binaries that the postcolonial project refutes: past/present, modern/tradition, global/local) by insisting on the hybridity of culture, on theory's travels, and on the transnational flow of theory/culture. It is a project that attempts to locate feminist legal studies within postcolonial projects in which Western hegemony is displaced by scattered hegemonies and in which feminist legal studies is itself located within the transnational flow of culture. It is neither

34. *Id.* at 139.

35. Mani, *supra* note 8, at 308.

here nor there, but caught up, in Stuart Hall's words, in the dizzying "two way cultural traffic"³⁶ located in the postcolonial space somewhere in between.

It is perhaps prudent to conclude this discussion by noting that the strategic intervention of turning the gaze back on itself can hardly be expected to accomplish the task of scattering feminist legal studies on its own. A host of other postcolonial strategic interventions will have to be deployed to move this project forward. For example, the strategies of both historicization and disrupting the tradition/modernity opposition can assist in revealing cultural hybridity, refuting assertions of cultural authenticity, and revealing the extent to which discursive struggles over women's rights in India (and elsewhere) have been located within the colonial encounter, and continue to be constituted in and through the postcolonial moment. Historicizing the struggle for women's rights helps locate the feminist project within Indian history,³⁷ and thus as partially located *within* the culture rather than as transposed at the end of the twentieth century. At the same time, disrupting the tradition/modernity binary and historicizing cultural nationalism as a product of the colonial and postcolonial encounter³⁸ simultaneously

36. Hall, *When Was the Post Colonial?*, *supra* note 26, at 251.

37. Our overview of the history of the struggles for women's rights in India, from the nineteenth century to the present, highlights the major interventions in this long and rich history, and chapter 1 of *Subversive Sites* can be read as just such a strategic engagement. See KAPUR & COSSMAN, *supra* note 3, at 19-75. We attempt to locate the history of women's rights struggles firmly within the colonial context and thereby repudiate notions of authenticity in Indian cultural identity, which cultural nationalists have attempted to deploy. See *id.* at 43-72. We attempt to reveal, for example, the extent to which the efforts of the cultural nationalists to defend Indian tradition and culture as "pure space" uncontaminated by the colonial encounter was entirely a product of the colonial encounter. See *id.* at 68-72. The strategy of historicization thus further helps refute the idea of cultural authenticity, by insisting that the colonial gaze was always indelibly present in cultural contests over tradition from the colonial encounter forward.

38. Our analysis of the discursive strategies of the Hindu Right in chapter 4 of *Subversive Sites*, particularly in relation to their "women's rights" agenda, can be partially read as a strategy of denaturalizing the contrast between the traditional and the modern. See *id.* at 232-75. For example, in exploring the new identity of "modern, but not western" that the Hindu Right is advancing for women, we attempt to reveal the way in which women's identities are being reconstituted in response to the social, political, and economic demands of the late twentieth century, while at the same time, ensuring that this new more public identity is negotiated within the discursive constraints of "tradition," that is, of ensuring that women's increasingly public role is without compromise to their identities as wives and mothers within the private sphere and as the guardians and purveyors of Indian tradition and culture. See *id.* at 234-62. We attempt to reveal how this discourse of tradition is being reconstituted by the very conditions of postcoloniality, in which claims to tradition

helps undermine the claims of cultural authenticity, by partially locating "tradition" as emanating from *outside* the culture. And in so doing, the very binaries of inside/out are themselves disrupted, further revealing the hybridity of culture, including the constructions of gender relations, the efforts to subvert these gender relations, and the resistance that such efforts have encountered. Scattering feminist legal studies will require that a multiplicity of these postcolonial strategic interventions be deployed. Turning the gaze back on itself, although perhaps particularly well suited to the development of new approaches to comparative law, can be but one of the many strategies that will need to be pursued if feminist legal studies is indeed to be relocated within the postcolonial project.

III. COLLABORATION, POLITICS, AND OTHER STORIES

The collaborative nature of our work has been an important methodological component of the project of scattering feminist legal studies. This process of collaborative work has been one that parallels, in at least some ways, the insights of postcolonial theory that disrupts the here/there, us/them, colonizer/colonized binaries, and insists on the mutual and multidirectional flow of knowledge and analysis; that is, on the "two way cultural traffic."³⁹ Our collaboration has very much been one of two way cultural traffic. It has helped us in displacing the unidirectionality of the perspective and the flow of analysis, as well as in breaking the "us 'n them" framework. The collaborative nature of our work instantiates, with a certain materiality, the postcolonial insight that theories, and theorists, travel.⁴⁰ As authors, we travel back and forth, to and from each of our respective worlds in a manner that begins to complicate any simple effort to locate us as here or there.⁴¹ But, more significantly, it is our ideas and our texts that really rack up frequent

and cultural authenticity are being reasserted and reconstituted in response to thoroughly modern conditions. *See id.* at 262–75.

39. Hall, *When Was the Post Colonial?*, *supra* note 26, at 251.

40. *See* Clifford, *supra* note 26.

41. Without going into excruciating biographical detail, a few words about location may be appropriate. Although I live in Canada, and Ratna lives in India, we have each lived for extended periods in each other's context. I have spent several years in India, and Ratna has both studied and worked in North America and England. She, more than I, in many ways represents the postcolonial intellectual—a transient in many diasporic spaces, while reversing the more common diasporic path, in moving from "there" to "here" at a young age, and then choosing to move from "here" to "there" as a young adult. Our histories only further refuse the notion of authentic and separate identities/locations and underline the extent to which these identities/locations are inescapably mutual and multidirectional.

flyer points. Our ideas travel back and forth, often with a speed that is dizzying, to the point that they no longer belong to either one of us. They are neither here nor there.⁴² But, having said this, it is important to add that we make no claims to have actually accomplished the project of inhabiting the postcolonial space in between in our work. Our claim is rather more modest—to contribute to the development of feminist legal studies in India and to do so in a way that we hope begins to displace the Anglo-American moorings.

Finally, I would add a word about politics. I very much appreciated Fran Olsen's words, putting the question of political agendas onto the agenda of comparative law.⁴³ We do have a political agenda, but we have only thought of it as a domestic agenda for one of us. It is, as our title suggests, an agenda of subversion. We are attempting to contribute to the debate about how law can be used, if at all, in women's struggle for social change—to debates about how law can be used to begin to destabilize hierarchical gender identities in India. We make no claims to neutrality in our work, but rather begin from an explicitly and unapologetically political location. And we have made no claims to a political agenda outside of the Indian context. It is this insistence on a domestic political location that has complicated our relationship with the traditional comparative project, a project that (mis)cast itself as transcendent, that is, as without either a political agenda or a geopolitical location. But, as new critical approaches to comparative law begin to shatter these myths of geopolitical neutrality, our political commitments need no longer exclude us from the comparative project.

Moreover, we will need to think harder about the postcolonial implication of our politics of location for the location of our politics. If we take seriously the idea of the dizzying exchange of ideas, then we can hardly confine our political agendas to a single location—to a "here" not "there," or depending on your perspective, a "there, not

42. We do not mean to suggest that collaboration is essential to the project of scattering feminist legal studies (for that would be far too essentialist a claim, and indeed would be an exclusionary move that would preclude scholars without transnational collaborators), but simply, that it is a methodology that seems particularly well suited to the task at hand. Feminist legal scholars engaged in the project of scattering have already begun, and will no doubt continue, to develop other methodologies that will help displace the Anglo-American moorings of feminist legal studies. See, e.g., Vasuki Nesiiah, *Towards a Feminist Internationality: A Critique of U.S. Feminist Legal Scholarship*, 16 HARV. WOMEN'S L.J. 189 (1993) (referring to struggles of female factory workers in Sri Lanka as example of failure of American feminist legal analysis to theorize international contradictions).

43. Frances Olsen, *The Drama of Comparative Law*, 1997 UTAH L. REV. 275.

“here.” If we take seriously the postcolonial refutation of these cultural binaries, then we need to complicate our own understanding of the location of our politics. There are multiple and subtle ways in which my own political visions, struggles, and contingencies have been shaped and transformed by this work. My own cultural and intellectual terrain has been reconfigured in ways that may be difficult to quantify, but that need to be subjected to the same postcolonial interrogation of transnational cultural flows.⁴⁴ The imperative of turning the gaze back on itself after all, one born of political commitments. And to suggest that one’s political agenda could somehow be cut off from one’s intellectual project is to fall back into the very dichotomous thinking that “new approaches” scholarship categorically rejects.

IV. CONCLUSION

Turning the gaze back on itself may be a way of renegotiating the dangers of the ethnocentric gaze of comparative law. In the spirit of Egoyan’s *Salome*, we might renegotiate the dangers of obsessive voyeurism by reimagining the project of looking. Turning the gaze back on itself may help the new comparativist inhabit the gaze differently, by recognizing that in looking at others we are always also looking at ourselves. And as in *Salome*, the gaze may be dangerous, but it is not unambivalently so; it is multiple and contradictory and complicated. The gaze of comparative law is dangerous, but it too can be rendered multiple, contradictory, complicated. Turning the gaze back on itself is but one of a range of postcolonial strategic interventions that may assist the new comparativist to locate the project of new approaches to comparative law as a site of transnational discursivity, as a site of contradiction, contestation, grafting, and subversion.

But the methodological intervention of turning the gaze back on itself will not allow us to escape all of comparative law’s perils. The ghosts of *Salome* will continue to haunt even the “new” comparative lawyer, and we should take heed of its cautionary tale. Voyeurism is indeed seductive, and the new comparativist must remain vigilant to the dangers that may lie hidden within this contradictory practice. The desire to know the other, to possess the other without disrupting its purity, and to do so without being seen, may be irresistibly intoxicating to voyeur and comparativist alike. And as in *Salome*, neither resistance nor transgression come without peril and

44. I am indebted to Fran Olsen, who has encouraged me to think harder about the potential implications of our work for feminist politics in North America.

sacrifice. Turning the gaze back on itself may help reimagine the act of looking beyond ourselves and back at ourselves, but it will not allow us to escape all of the dangerous seductions of doing so.