Feminist and Third World Approaches to International Law

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An ethic of care should apply to relations between State

The international legal principle of non-intervention in the internal affairs of States leaves women vulnerable to discrimination and abuse

Structural Bias of PIL

Seeks personalize and personify PIL normative constructs

PIL should address oppression and inequality of women
Time Line - Engle

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

A State’s international status (e.g. membership in UN) should be conditional on gender-conscious ideas of representation and democracy

Look at representation of women in foreign service and international organisations/institutions
Each delegate may be accompanied by advisers, who shall not exceed two in number for each item on the agenda of the meeting. When questions specially affecting women are to be considered by the Conference, one of the advisers should be a woman.
Gunning

- Examine cooperation in international relations, instead of conflict
- Accept NGOs (including Women’s NGOs) as creators of international law, given consent of states to their participation
Public/Private Divide - Responsibility to Protect

- International law regulates relations between States, which take place in the public sphere, whereas a State's treatment of its nationals occurs in the State's private sphere. Violation of territorial integrity depicted as “rape” of a country.

- Emergence of Humanitarian Intervention - protection of the vulnerable, identification of mass rapes as war crimes, CAH, and possible genocide
Feminist International Law Knopp-Different Perspectives

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

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

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

**Structural bias critics**

Charlesworth, Chinkin, & Wright- analyse international law for deployment of literal and metaphorical distinctions between male and female

Knopp- Use progressive critique of international law to assist women- e.g. decentralization of the state- look at indigenous self-determination

Romany- Economic and Social Rights, Development
Use Feminist Theory to assist other disadvantaged groups

Orford - Globalisation and Economic Exploitation - Use Techniques and Organisation of Feminist Activists to Resist

Engle - Take advantage of structural bias - use private space to liberate women
Need to separate culture from economics

Look at gendered and cultural dimensions of the global distribution of wealth and to the economic dimensions of politics and policies about gender and culture
The international law concept of global or environmental stewardship is most likely to embody the feminist morality, as it "embraces a notion of caretaking and accountability to ourselves and future generations.

Examine diminishing global natural resources and power imbalances among states- sustainable development.
Women who participate in oppression of other women
Pro- clitoridectomy
Pro-Breast Augmentation
Pro- ”Family Values” anti-state intervention
“Striving toward gender equality is not only a goal in itself but also a precondition for achieving our wider foreign, development, and security-policy objectives.”
It appears that human (and women’s rights) always lose to other political and strategic goals. . .

Sadly, the western democratic regimes have sent the opposite message through their lack of interest for the Wallstrom Affair – that geo-political and business interests trump the protection of human (and women’s) rights. Or, “nous ne sommes pas Margot.”
GQUAL Global Campaign for gender parity in Intl Courts

To promote transparency and adoption of rules in the selection, nomination, evaluation, and election of candidates to international tribunals and monitoring bodies to promote gender parity, as well as to pursue research and monitor processes in order to identify best practices and standards.
Third World Feminism

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

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

TWAIL can be linked to the post structural branch of feminism as well as post-colonial theory

Post structural feminism is grounded in the concept that the binary structure in which the world has been built- male:female is discriminatory and destructive.

The binary of male: female further reverberates into world divisions such as strong: weak, violent: non-violent, global north: global south, civilized: barbarian, us:other

Post structural thought believes there are no universal categories of the genders male: female, and that no such binary should exist. It aims to deconstruct this false dichotomy of gendered realities, and thereby deconstruct all dichotomies, as one side is always deemed the lesser.

Post structural feminism places intersectionality at its center: the belief that overlapping and interdependent forms of discrimination exist- for example race, class and gender combine in different ways to disadvantage

This binary, and this discrimination is structural, the same way TWAIL scholars believe international law is structurally built to oppress and subordinate the third world

Post structural thinkers; Caron Gentry, Cynthia Enloe, Laura Sjoberg, Linda Alcoff
Third World Perspectives on PIL

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

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

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

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

Hegemony - world internalises the necessity and legitimacy of domination through law - Prevent institutionalisation and consolidation of hegemony via reform of multilateral institutions

- Economic power
- Cultural power
- Military power

Future depends on politics of the multitude (Hardt & Negri) - coalitions of social movements and small states
Nuclear Weapons

Read ICJ Advisory Opinion on Nuclear Weapons
Read ICJ Marshall Islands v. UK
Nuclear Free Zones
Hegemonic Neoliberal Globalization - property rights, contract

Economic, social, political, cultural apartheid -

Savage zones have no social contract, no rule of law, (Uncivil society, excluded from rights)

Civilized zones have social contract, state provides protection (intimate society - state guarantees rights)

Post-Contractualism-exclusion of citizens in ghettos, sweatshops, prisons, trafficking, prostitution, child labour, under-employment, unemployment - work ceases to sustain citizenship or autonomy of person (Strange civil society enjoys C& P rights but not socio-economic rights)

Pre-Contractualism - block access to citizenship of refugees and migrants

Abyssal Legal Thinking - divide human from sub-human - Guantanamo, Palestine, Darfur

Counter-hegemonic emancipatory movements from below - indigenous, migrants, environmentalists
Mutua Metaphor: “Savages-Victims-Saviours”

Mainstream human rights lawyers tend to characterize their mission in the following sort of way:

There are savages from the South violating the fundamental human rights of victims from the South; it is the moral and legal duty of the North to use the international human rights structure, which is the saviour, to save these victims and bring the savages to justice.

Mutua argues that the human rights structure, far from being a saviour, is “ultimately a set of culturally based norms and practices that inhere in liberal thought and philosophy.”

Thus, the human rights corpus, regardless of whether it saves the victim from the savage, seeks to impose European notions of morality, civility, and progress.

The human rights movement “falls within the historical continuum of the Eurocentric colonial project, in which actors are cast into superior and subordinate positions.”
Makau Mutua: International law is a “regime and discourse of domination and subordination, not resistance and liberation.”

TWAIL:

1) engaging in an interdisciplinary examination of the extralegal effects of international law on the South;

2) using historical evidence from the colonial and post-colonial periods to demonstrate the contingent nature of international law doctrines; and

3) using localized cultural evidence to challenge the universality of the theoretical underpinnings of international law.

At a broader normative level, the Twailian project is to foster reforms to the international law regime that will promote equity and justice for the South.
Why do property rights travel so securely when the extraterritorial reach of labor law or employment discrimination or environmental protection law continues to seem unreasonable?

How do we decide whether a low wage development strategy is an unfair subsidy or the extraterritorial application of labor law a non-tariff barrier to trade?

We will need to ask for whom we govern, for what form of political, social and economic life do we propose a constitution.
Fourth World

Global justice demands of indigenous people, migrants, displaced persons, environmentalists
Lack of central authority for implementation and enforcement
Legal Pluralism - indigenous customary norms, national law, international law
New subjects of PIL
Law of peoples
Technical dimension of law v. Politics - dispute resolution, arbitration, IP, trade, commerce, cyber,
Singer - Seek Global Justice and Global Democracy as alternative to Empire - Need to abide by Global Ethics in order to achieve Security – One World
Group of 77

It is the largest intergovernmental organization of developing countries in the United Nations, which provides the means for the countries of the South to articulate and promote their collective economic interests and enhance their joint negotiating capacity on all major international economic issues within the United Nations system, and promote South-South cooperation for development.
Ministerial Declaration 2015

Please read and analyze the Ministerial Declaration of the Group of 77 and China issued in 2015.

What are the primary issues of concern and how do we address them institutionally?