UNCOMMON GROUND: CULTURE AND OTHERING IN THE HUMAN RIGHTS PROJECT

Kathleen Cavanaugh*

INTRODUCTION 279
THE UNIVERSALITY OF OTHERING 281
"DISRUPTING" THE DISCOURSE 284
GENDER JUSTICE 286
WHAT NEXT? 292

INTRODUCTION

In reconstructing the notion of feminism and the centering of whiteness within the feminist movement, Rafia Zakaria's Against White Feminism: Notes on Disruption foregrounds several questions that have long plagued the international human rights movement.[1] Are there, as Harris has argued, "universally valid moral beliefs and right and wrong rules and modes of conduct?"[2] or "is universalism barely disguised ethnocentrism, a cultural imperialism?"[3] Zakaria's work wonderfully captures feminism's global, long-standing affinity with colonial, patriarchal, and white-centered/saviour ideals, and finds amity with Matua Mateo's "saviours and savages"[4]

* Kathleen Cavanaugh is Director of the Pozen Center for Human Rights and Faculty in the College at the University of Chicago.

critique of human rights. Saving the non-Western, non-White, subaltern Other from "oppressive"[5] cultures and "traditional harmful practices"[6] is part of both projects—universalizing and civilizing missions that provide "a single formulation" of how to understand the world, thus reinforcing the power of elites "to produce and reproduce worlds familiar to white privilege."[7] As this article will detail, in pursuit of eradicating difference, the law—both domestic and international—has become an important ally.

There has been substantive and conflicting scholarly debate that is preoccupied with the question of women's rights as human rights, specifically asking: to what extent "should and can law, with its attribution of right and wrong, exoneration and punishment, be used to eradicate a cultural practice?"[8] There are distinct approaches that endeavor to answer this question. On one end of the continuum, human rights law is read as "impeccable with everything else being adjusted to maintain that assumption."[9] Yet, as Isabelle Gunning reminds us, international law itself

D3 eids l rbo(he)31.6 Z rng i iunnntsae e

rights regime—both camps read it from its colonial roots to its current day manifestations as both an instrument of oppression and emancipation.[13] To read law, particularly international human rights law, from this point of departure is not to scarecrow the debates, ignore the historical context within which the international human rights machinery sprung, or disregard the slow (but steady) evolution of the human rights corpus from its paradigmatic Western orientation. Rather it is to argue that foregrounding the colonial/imperial roots of the law has pried open a space allowing for a radical reconceptualization of the universalizing imaginary of human rights within feminist theory and human rights discourse, as well as in the rhetoric within UN documents. Whilst progress in language and discourse has happened, Zakaria's argument, which this article supports, is that in practice, these changes are not fully realized for the majority of women.

This article will take forward some of the critiques raised in Against White Feminism by exploring the ways in which "gender justice" has manifested within human rights discourse and practice. Section 1 will examine the well-worn but still unresolved universality versus cultural relativity debate. Section 2 will focus on feminism, gender, and women's rights and specifically look at the ways in which the "equality versus difference" debate in feminism is reproduced within the human rights discourse. Section 3 will look at the ways in which anti-imperialist critiques of rights play out within the international (and regional) human rights law arenas. The final section will

in exerting hegemonic control over the historical social formation of the international legal system, the key instruments of international human rights law "reflect a liberal individualism prevalent in the West, and ignore the importance of group membership, of duties, and of respect for nature prevalent in many non-western cultures."[15] In contrast, universalists reject this particular reading of the development of the human rights machinery, printir nst hup(.7

bellum) and international humanitarian law (

women's experiences. Joan Scott has noted, "[t]he only alternative, it seems to me, is to refuse to oppose equality to difference and to insist continually on differences—differences as the condition of individual and collective identities, differences as the constant challenge to the fixing of those identities, history as the repeated illustration of the play of differences, differences as the very meaning of equality itself."[26] The second assumption is that there are "genuinely 'non-violative' relations between the Self (the 'West') and its Other(s)."[27] If what is required for entry into the respective epistemologies of feminism and human rights is a language and knowledge production based on a set of assumptions and behaviours, how do we rethink (and, indeed, emancipate) their respective vocabularies?

"DISRUPTING" THE DISCOURSE

The work of Judith Butler is a useful starting point in rethinking (and disrupting) the language associated with feminism and human rights and the

freedom to make their own decisions,"[33] whereas the "Other" (read as non-Western women often formerly referred to as "third world" women) are victim-subject, lack agency and are often idealized and gendered images of, "the veiled woman, the powerful mother, the chaste virgin, the obedient wife."[34] From this positionality, "modernization" or "Westernization" increases gender justice.

Such an essentialist reading has three effects. It creates, as Joan Scott has argued, a binary opposition that offers a choice to feminists of either endorsing "equality" or its presumed antithesis, "difference."[35] Secondly, this particular understanding of gender justice "others" women's feminist organizing when it is not structured around familiar values, such as anti-traditionalism, independence from men, and the elimination of gender roles. Lastly, as Gunning has argued, crossing these epistemological borders and entering into spaces and unfamiliar practices creates a distance between 'me' and 'the other.' The 'other' is unlike me. The other has no

Enlightenment liberalism and, as such, are neither universal nor neutral.[46] As these ideals are foundational to the framing (and reading) of international human rights law, the very vehicles used to promote and protect human rights in the international fora are, as Ratna Kapur has argued, part of the teleological narrative of Western Enlightenment.[47] While there are credible debates that suggest that the historical origins of human rights are far more inclusive (and emphasize the possibilities contained within its evolutiveness), what is c 092.7 (c)3.49 (092.7 (c)TlNa c)TlNogic1s 092.7 .3 (s)2

within UN forums and in UN documents, focus on the elimination of male control over a women's body and sexuality through separatism, matriarchy, or lesbian politics; fighting against pornography and prostitution and later, by drawing a link between gender and class oppression.[51] This was, as Third World/ Post-Colonial Feminists[52] would argue, a race and class blind "white feminism" that failed to take account of the complexity of women's lives[53] and that created an unequal partnership that preferenced the needs of "white women" over women of color who continued to be subject to systems of racial and international oppression. These unequal power relationships between (predominately) white and brown feminists are integral to the story of the "white savior industrial complex."[54] And while UN bodies (and other international actors) have responded to theoretical developments in feminist discourse by adopting the feminist concept of "intersectionality," this may be more of a normative than substantive change. Empirical studies of UN treaty bodies and other UN initiatives suggest that the way in which key indicators of gender equality progress (such as patriarchy and empowerment) are measured continue to be informed by liberal "whit.6 /s6 (t)-4.6 (ud)1026 -1.1 8 5 /P <</MCID 20 >>BDC2 0 Tw 6.0 0 11.04

rightly notes, sites of cultural and moral conflict.[86] Gender justice advocates argue that these are patriarchial practices that cannot be reconciled with

practices. Critics have argued that Article 5's underlying message is that "traditional" practices or beliefs (read as harmful or barbaric) be replaced

were necessary.[68] This was even more compelling in an educational setting, where students may be more easily influenced and "religious peace" must

Switzerland, and the United Kingdom. When measured against restrictions on religious dress for men, the Sahin case also reveals a marked difference in the Court's approach. In Arslan v. Turkey, a case involving the wearing of religious dress at a religious procession in Ankara by members of the Muslim sect Tarikat Aczmendi, the Court found that the state's conviction of the men violated Article 9.[78] Despite both cases involving the wearing of religious dress in public, the Court drew a "fallacious"[79] distinction between public educational institutions in Sahin and the public square in Arslan.[80] As Bronwyn Roantree has compellingly argued, if the purpose of this differentiated treatment is the promotion of gender equality, then,

> […] as Arslan demonstrates, far from promoting gender equality, by upholding the prohibition on the headscarf the Court is entrenching gender discrimination with its willingness to accept men's self-ascriptions of their intentions, even when there is significant evidence contradicting their claims, yet rejecting the same self-ascriptions from women. By rejecting women's own statements of their intentions, the Court is effectively erasing women's agency, an erasure made even more problematic because it is done in the name of gender equality.[81]

As Susanna Mancini has rightly argued, "the ban on the veil suggests that women have only one way to exercise their rights correctly, and it regulates them accordingly. That is, it makes a political use of women's bodies."[82]

WHAT NEXT?

Centering feminism on gender alone has sidelined the impact of whiteness, class, culture, imperialism, and religion on gender parity. Zakaria's stealth critique, and that of other anti-imperialist feminists, demonstrates that this white-centered feminism has served as the voice of gender equality without reconciling it with its dimensionality. This is not just an academic or conceptual problem. As this article has detailed, it has manifested in the ways in which the human rights discourse and its advocates understand and agitate for gender equality. In moving the feminist discourse on women's rights forward, the challenge is,

78. See Ahmet Arslan & Others v. Turkey, App. No. 41135/98, ¶¶ 6-7, 52 (Apr. 10, 2010), https://hudoc.echr.coe.int/eng?i=001-97380

79. Bronwyn Roantree, Gender and Religious Dress at the European Court of Human *Rights: A Comparison of Şahin v. Turkey and Arslan v. Turkey*, 87 FORDHAM L. REV. 101, 110 (2018).

80. Id. at 110 (referring to Aslan v. Turkey, App. No. 41135/98, Eur. Ct. H.R. 49 (2009)).

81. Id. at 111-12.

82. Mancini, supra note 64, at 422.

> […]to think of ways in which to express their politics without subjugating other subjectivities through claims to the idea of a "true self" or a singular truth about all women. The re-envisioning of the subject of women's rights discourse leads to a reformulation of the notions of agency and choice. It is an agency that is neither situated exclusively in the individual nor denied because of some overarching oppression. It is situated in the structures of social relationships, the location of the subject, and the shape-shifting of culture. It is located in the recognition that the post-colonial subject can and does dance, across the shaky edifice of gender and culture, bringing to this project the possibility of imagining a more transformative and inclusive politics.[83]

There are a number of ways that feminists are re-envisioning this space, in both language and practice. Ayelet Shachar's work, for example, moves beyond a "religious particularist"[84] and "secular absolutist"[85] construct. She proposes an "intersectionist or joint-governance framework"[86] that provides an alternative to "a clear rejection of the simplistic either-your-culture-or-your-rights approach."[87] This "transformative accommodation"[88] of "privatised diversity,"[89] is an intersectional approach that provides "a more context-sensitive analysis that sees women's freedom and equality as partly promoted (rather than

Ogove Gh., 9