

## FEMINIST APPROACHES TO INTERNATIONAL LAW

## MULTI-DIRECTIONALITY AND UNIVERSALITY: GLOBAL FEMINISMS AND INTERNATIONAL LAW IN THE TWENTY-FIRST CENTURY

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Advancing the goals of feminist international law in the twenty-first century requires renewed commitment to universality, and a deft multi-directionality. The iconic 1989 demonstration organized by British Asian women in support of the writer Salman Rushdie, condemned to death by a fatwa from Ayatollah Khomeini, provides a helpful metaphor. Campaigners from Southall Black Sisters and Women Against Fundamentalism led the protest carrying signs proclaiming: “A Women’s Place Is in the World,” and “Our Tradition Is Struggle, Not Submission.”<sup>1</sup> The women stood between two groups of men: a phalanx of British Muslim fundamentalist demonstrators denouncing Rushdie and calling for blasphemy laws, and white far right National Front protestors who opposed those fundamentalists with racist rhetoric. The women human rights defenders (WHRDs) challenged both groups of men, were threatened by both. Though encircled, they were determined to create their own space for multi-directional resistance.

Today, any meaningful feminist international legal analysis must recognize and navigate such complex dynamics. It should be infused with Mari Matsuda’s foundational reminder that “multiple consciousness . . . is . . . a deliberate choice to see the world from the standpoint of the oppressed.”<sup>2</sup> But, it also must take seriously the problem that people may suffer different kinds of oppression along different axes at the same time. The same people may be oppressed and oppressors. Hence, multi-directionality is a *sine qua non* for defending women’s human rights in the twenty-first century. It also remains vital to avoid undercutting dissident feminist voices around the world, including through fashionable flirting with selective cultural relativism.

*The Roots of Feminist International Law*

Scholars and advocates in the early 1990s made tremendous, revolutionary achievements that laid the foundations for feminist approaches to international law in this century.<sup>3</sup> Today’s diverse feminist international lawyers owe them a debt of gratitude. Recognizing that “silence strengthens inequality and injustice,”<sup>4</sup> these 1990s

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<sup>1</sup> Salil Tripathi, *Women Who Fought for Salman Rushdie*, MINT (Feb. 21, 2019). Many of these women issued a statement condemning the August 2022 attack on Rushdie, a declaration exemplifying their multi-directional approach. They were “equally committed to anti-racist politics that opposed the demonisation of all Muslims as fanatical, as . . . to challenging fundamentalism in all religions. . . .” *Rushdie’s Right to Write*, FEMINIST DISSENT (Aug. 12, 2022).

<sup>2</sup> Mari Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 2 WOMEN’S RTS. L. REP. 9 (1989).

<sup>3</sup> José Alvarez, *Book Review, The Boundaries of International Law: A Feminist Analysis*, 95 AJIL 460 (2001).

<sup>4</sup> TOVE STANG DAHL, *WOMEN’S LAW: AN INTRODUCTION TO FEMINIST JURISPRUDENCE* 12 (1987).

pathfinders broke the discipline's silences about women/sex/gender. They built on earlier work by feminist scholars in other disciplines, and by advocates from every corner of the globe who fought to ensure that early international instruments guaranteed women's equality. The latter included Hansa Mehta of India, without whom the Universal Declaration of Human Rights would have confirmed the equal rights of "all men" rather than "all human beings."<sup>5</sup> The 1990s work "opened the eyes of most English-speaking international lawyers to the gendered boundaries of international law."<sup>6</sup> However, there remains a long way to go to achieve women's equality in and with international law. Progress has been made on many issues in many contexts since, but discrimination against women remains one of the most pervasive human rights violations around the world. As a 2017 statement by UN human rights experts asserted: "Women's rights are facing an alarming backlash in many parts of the world . . . We need more than ever to protect the fundamental principle that all rights are universal."<sup>7</sup>

### *Denial of Women's Everyday Struggles*

Meanwhile, within the academic field of feminist international law there is an increasing problem of ideological gatekeeping. The growing predominance of what are called "critical" perspectives, especially in elite academic settings, limits whose voices can be heard and which concerns may be raised. One feminist scholar from the Global South recently stressed to me the difficulty of being published if one takes a different view. This is paradoxical since predominant critical perspectives seek to challenge the discipline, *inter alia*, for being insufficiently inclusive.<sup>8</sup> This essay offers a counter-critical critique that should be understood as a (partially) friendly amendment since I share some of the underlying concerns that motivate some of what are called critical views.

However, some of the critical literature is in some ways problematic. Feminism is often cast as "Western" and "white" in ways that are meant to deconstruct power, but instead risk disappearing the struggles of women elsewhere and become a back-handed assertion of power and patriarchal norms. As Farida and Ayesha Shaheed note, there is

a misconception that the contemporary women's movement is exclusively rooted in European and North American concepts and women's struggles in these locations. . . . [T]he myth can . . . impede women's assertions for their rights and for justice. The truth is that women have taken steps to assert their rights and have intervened to bring about a more just society in every era and in every location.<sup>9</sup>

Reflecting upon diversities and inequalities among women has added essential layers to feminist international law, but those differences may now be over-inscribed, diminishing the strategic sense of commonalities among many women. Numerous global women's movements have continued to emphasize the latter,<sup>10</sup> understanding that diverse women may be differently situated, but everywhere face inequalities with many men. In this regard, twenty-first century feminist international law needs a balanced approach, taking on board the insights of Jamaican-British cultural theorist Stuart Hall, who wrote about "the extraordinary diversity of subjective positions,

<sup>5</sup> Gita Sahgal, *Who Wrote the Universal Declaration of Human Rights?*, OPEN DEMOCRACY (2012).

<sup>6</sup> Alvarez, *supra* note 3, at 459.

<sup>7</sup> OHCHR Press Release, [UN Experts Call for Resistance as Battle for Women's Rights Intensifies](#) (June 28, 2017).

<sup>8</sup> What is called critical theory in international law includes a range of perspectives difficult to adequately reference in this short essay, from critical legal theory informed by post-modernism to critical race feminism. Fleur Johns, *Critical International Legal Theory*, in [INTERNATIONAL LEGAL THEORY: FOUNDATIONS AND FRONTIERS](#) 133 (Jeffrey L. Dunoff & Mark A. Pollack eds., 2022).

<sup>9</sup> FARIDA SHAHEED WITH AISHA L.F. SHAHEED, [GREAT ANCESTORS: WOMEN ASSERTING RIGHTS IN MUSLIM CONTEXTS](#) (2004).

<sup>10</sup> See, e.g., The Mediterranean Women's Fund, [Our Vision](#).

social experiences and cultural identities” within any group,<sup>11</sup> but also suggested exploring the construction of a politics “through and with difference which is able to build those forms of solidarity and identification which make common struggle and resistance possible.”<sup>12</sup>

Such strategies are needed in view of the complex, interlocking violations and multiple opponents that WHRDs face today. Consider the perspective of anti-racist feminist human rights lawyer Pragna Patel, former director of Southall Black Sisters in the UK. The organization responds to multiple forms of discriminatory treatment of migrant and minority women in a context infused with xenophobia and constriction of the welfare state, as well as the rise of multiple forms of extremism exacerbated by “reciprocal radicalization.”<sup>13</sup> Patel notes that, “the needs and demands of these women compelled us to challenge state laws and community norms that have perpetuated inequality and powerlessness amongst minority women.”<sup>14</sup>

The daughter of an immigrant airport worker, Patel assesses the most significant challenges she and colleagues faced. They involve a complex intermingling of factors:

The most difficult aspect of this work has concerned the patriarchal contract that emerged post-Rushdie between the British state and minority communities which depends on gate keeping by (increasingly fundamentalist and ultra-conservative) religious leaders. That contract resulted in enactment of policies which reinforce the idea of women as subjects of religious leaderships rather than autonomous actors with rights as citizens. In the face of a consequent growth in gender segregation in schools, the imposition of discriminatory religious personal laws, and strict dress codes, it has become increasingly difficult and risky to engage in internal critiques of minority culture and religion.<sup>15</sup>

Yet, even as WHRDs like Southall Black Sisters attempt to locate effective responses, their work is undercut by increasingly dominant analyses that highlight only one set of factors.

Much of so-called progressive and feminist academic analysis (and activism) today is dominated by a simplistic, one dimensional view which—in the name of anti-racism, anti-imperialism and post-colonialism—legitimizes a focus on state-generated terror and authoritarianism from above, but allows little or no room to critique cultural relativism and authoritarianism from below.<sup>16</sup>

For a frontline WHRD like Patel, these thin analyses have had a range of deleterious consequences: “[s]uch a denial of women’s everyday struggles for freedom, secularism and human rights—rooted in their material realities—spells profound danger, not only for the lives of individual women, but for the survival of feminism itself.”<sup>17</sup>

### *The Multi-directional Stance of Global Feminisms*

Western theorists often overlook the growing critiques of some critical approaches by feminists in and descended from the Global South—those critiques are often reactions to failures to reflect precisely such multi-directionality. Feminist writers and scholars from a variety of disciplines like Sadia Abbas,<sup>18</sup> Fatiha

<sup>11</sup> Stuart Hall, *New Ethnicities*, in [BLACK FILM, BRITISH CINEMA](#) (Kobena Mercer ed., 1989).

<sup>12</sup> *Id.*

<sup>13</sup> See Julia Ebner, [How Far Right and Islamist Extremists Amplify Each Other’s Rhetoric](#) (TEDx Vienna Talk, Oct. 2016).

<sup>14</sup> E-mail Interview with Pragna Patel (May 5, 2022) (on file with the author).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> SADIA ABBAS, [AT FREEDOM’S LIMIT: ISLAM AND THE POSTCOLONIAL PREDICAMENT](#) (2014).

Agag-Boudjahlat,<sup>19</sup> Marieme Hélie-Lucas,<sup>20</sup> Mariz Tadros,<sup>21</sup> and Afiya Zia,<sup>22</sup> and the journal *Feminist Dissent*, argue against paradigms that they view as distorting the complex realities and minimizing the suffering of women in the contexts they are from, and study or advocate about. Their work deserves wide consideration among feminist international lawyers. One version of a decolonial perspective is increasingly seen to cover the field. Yet, there are many writing from stances deeply critical of colonialism and its legacies who occupy different positionalities, including universalist, modernist, and secular anti-racist feminists, who are being erased in elite academic discourse.

Yemeni-Egyptian-Swiss scholar Elham Manea has written about this in *Women and Sharia Law: The Impact of Legal Pluralism*, arguing that “a paradigm of thinking that has become characteristic of Western academic post-colonial and post-modernist discourse . . . insists on treating people as ‘homogeneous groups,’ essentialising their cultures and religions . . . [and] underestimating the human rights consequences of their academic discourse.”<sup>23</sup>

Though faced by diverse constituencies, these problems are particularly intense for those from or working on Muslim-majority contexts or diasporas. Concepts like Orientalism and Islamophobia, originally responding to realities of past and present subordination, are now sometimes used by Western critical intellectuals to discipline those who exercise their equal right to be critical of their own contexts, while deeply committed to those contexts. Iranian WHRD Masih Alinejad, who campaigns against the imposition of the hijab in Iran, and who experienced imprisonment and corporal punishment before being forced into exile, recounts that, “in the West I am told that if I share my stories then I will cause Islamophobia. I am a woman from the Middle East and I am scared of Islamic laws. . . . Phobia is an irrational fear but my fear . . . is rational, so let us talk.”<sup>24</sup>

In a similar vein, Cherifa Kheddar, president of the Algerian Observatory on Violence Against Women explains that

what is shocking is all the resistance to accepting freedom of expression related to the right of a Muslim woman to protect her physical and psychological well-being using the universal means available. What shocks me are attempts to prevent Muslim women from enjoying their universal human rights so as to defend themselves.<sup>25</sup>

She notes that she speaks as “a victim from Algeria from the 1990s who suffered violence at the hands of other Muslims, a victim who could not count on the support of Western intellectuals who were busy defending religious and cultural specificities.”<sup>26</sup> There is indeed a strange dynamic afoot across disciplines in the English-speaking academy when Lila Abu-Lughod, leading light of Middle East Studies in the United States, criticizes male Palestinian rap artists who seek to challenge honor crimes, on the grounds that this is a Western, UN-funded agenda.<sup>27</sup>

<sup>19</sup> FATIHA AGAG-BOUDJAHLAT, *LE GRAND DÉTOURNEMENT: FÉMINISME, TOLÉRANCE, RACISME, CULTURE* (2017).

<sup>20</sup> Marieme Hélie-Lucas, *What Is Your Tribe? Women's Struggles and the Construction of Muslimness*, in [WOMEN LIVING UNDER MUSLIM LAWS, DOSSIER 23/24](#), at 21–22 (Harsh Kapoor ed., 2001).

<sup>21</sup> Mariz Tadros & Ayesha Khan, [Challenging Binaries to Promote Women's Equality](#), 3 FEMINIST DISSENT 1, 4 (2018).

<sup>22</sup> AFIYA ZIA, [FAITH AND FEMINISM IN PAKISTAN: RELIGIOUS AGENCY OR SECULAR AUTONOMY](#) (2018).

<sup>23</sup> ELHAM MANEA, [WOMEN AND SHARI'A LAW: THE IMPACT OF LEGAL PLURALISM IN THE UK](#) 2 (2016).

<sup>24</sup> [Masih Alinejad, @AlinejadMasih, TWITTER](#) (Jan. 18, 2022, 8:32 a.m.).

<sup>25</sup> E-mail Interview with Cherifa Kheddar (May 13, 2022) (on file with and translated by the author).

<sup>26</sup> *Id.*

<sup>27</sup> Tamer Nafar, Suhell Nafar & Mahmood Jrery, [DAM Responds: On Tradition and the Anti-politics of the Machine](#), JADALIYYA (Dec. 26, 2012). The musicians riposted: “We are . . . secure enough to take on occupation and domestic violence, racism and sexism. . . . We believe we can, and we must, tackle these issues with openness, bravery, and honesty.” *Id.*

It is misguided to suggest that because of the history of colonialism and its sequelae, people in and descended from the Global South must not ask hard questions about their own societies or collectives today. Why are only certain people deemed to have the right to be critical of their own contexts, in which they are deeply invested? Being of Algerian descent, this is a very personal question for me.<sup>28</sup> Will the suffering of earlier generations of my family at the hands of colonial forces be allowed to justify or minimize the challenges faced by those in younger generations in the country?

*Demanding “The Privilege of a Sponge”*

The right to dissent is a basic human right. There is no Global South exception. During the 1990s, my Algerian father’s life was at risk from fundamentalist armed groups that targeted the intelligentsia<sup>29</sup> and WHRDs like Kheddar—all in the name of an extremist interpretation of religion. My father turned for succor to the writing of twelfth century Arab-Andalusian philosopher Ibn Rushd that described a synthesis of faith and reason, and simultaneously to the U.S. play “Inherit the Wind.”<sup>30</sup> The latter is an all-too-timely depiction of the U.S. *Scopes Monkey* trial—a 1925 prosecution for teaching evolution. In the play, the defense lawyer representing the teacher gets the prosecution to concede that, “[i]f the Lord wishes a sponge to think, it thinks.”<sup>31</sup> In response, the defense lawyer asserts of his client: “[t]hen this man wishes to have the same privilege of a sponge, he wishes to think!”<sup>32</sup>

Dissident feminist voices from many regions also demand the “privilege of a sponge.” Yet, in some theoretical approaches, including in some versions of feminist international law, formerly colonized people have no internal politics of their own, becoming tropes in ideological battles elsewhere. It is, after all, all about the West. The overwriting of the colonial past onto the complex present in simplistic ways disappears the reality of contemporary challenges. According to Senegalese feminist sociologist Fatou Sow, “we need to think about the impact of colonialism and neo-colonialism, but there are times when I want to get out of this box . . . to recognize that I have all the rights in the world to have critical definitions of who I am myself.”<sup>33</sup>

Today in the Western academy, including in certain feminist circles in international law, if you are principled in taking seriously threats to women’s human rights and lives in the Global South or in minority contexts, just as you would such threats anywhere else, and if you call for effective solutions in accordance with international law that might be taken for granted elsewhere, you risk your work being labeled as “carceral feminism,” “victim feminism,” or “governance feminism,” usually by elite academics far removed from the rights struggles in question.<sup>34</sup> You may also be accused of being a militarist or of having a savior complex. Perhaps it is time to create a few terms to respond to this labeling that may silence dissident feminist voices, including those from and descended from the Global South. Here are some possibilities:

<sup>28</sup> KARIMA BENNOUNE, [YOUR FATWA DOES NOT APPLY HERE: UNTOLD STORIES FROM THE FIGHT AGAINST MUSLIM FUNDAMENTALISM](#) (2013).

<sup>29</sup> Karima Bennoune, [Algeria Twenty Years on: Words Do Not Die](#), OPEN DEMOCRACY (June 24, 2013).

<sup>30</sup> JEROME LAWRENCE & ROBERT E. LEE, [INHERIT THE WIND: THE POWERFUL DRAMA OF THE GREATEST COURTROOM CLASH OF THE CENTURY](#) (1955).

<sup>31</sup> *Id.* at 94.

<sup>32</sup> *Id.*

<sup>33</sup> Quoted in [Cultural Mixing and Cultural Rights – Report of the Special Rapporteur in the Field of Cultural Rights, Karima Bennoune](#), UN Doc. A/76/178, Annex, para. 36 (July 19, 2021).

<sup>34</sup> See, e.g., [GOVERNANCE FEMINISM: NOTES FROM THE FIELD](#) (Janet Halley, Prabha Kotiswaran, Rachel Rebouché & Hila Shamir eds., 2018).

- (1) “Minimization feminism.” This applies to work which contextualizes away the horrors of extreme forms of persecution of women because there is violence against women everywhere.
- (2) “Apologist feminism.” This describes theorizing that questions the authenticity of WHRDs in or descended from the Global South who make similar claims to WHRDs elsewhere, the apotheosis being the purported defense of “their culture” from their own feminist critiques by Western feminist theorists.
- (3) “Selective cultural relativist feminism.” This characterizes the willingness to relativize the rights of women in other contexts in the name of various academic theories, while never countenancing the same approaches being applied to one’s own rights.

I am in a category of people with anti-colonialist convictions, one generation away from victims of systematic imperialist repression, who should be deeply sympathetic to post-colonial theory. I share its outrage at the near total impunity for colonial abuses. There is much wisdom in some earlier iterations of post-coloniality, which recognize the hybridity, and complexity of all regions.<sup>35</sup> However, I often do not recognize the women’s worlds I work on as portrayed in some of today’s decolonial and critical approaches. Just as what is called feminist international law is not the only way of talking about women’s human rights, post-colonial and decolonial theories are not the only way of talking about the diverse situations and struggles of women in and descended from the Global South.

#### *Toward Global Feminist International Law*

Today, the task before feminist international lawyers, in my view, is to respond to complex contemporary challenges by building on diverse global feminist traditions and listening to their advocates around the world. It is vital to find multi-directional stances, recognize a multiplicity of concerns and axes of power, challenge local and global power-holders, and reconstruct an unwavering commitment to the universality of women’s human rights everywhere.

<sup>35</sup> See, e.g., [THE POST-COLONIAL STUDIES READER](#) (Bill Ashcroft, Gareth Griffiths & Helen Tiffin eds., 2d ed. 2006).