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Feminisms, Structural Violence and Transitional Justice (October 2014)

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JACK & MAE
NATHANSON CENTRE
ON TRANSNATIONAL HUMAN RIGHTS, CRIME AND SECURITY

Conference Agenda

A ONE DAY CONFERENCE: FEMINISMS, STRUCTURAL VIOLENCE AND TRANSITIONAL JUSTICE

ORGANIZERS:

JESSICA CHANDRASHEKAR, EMILY ROSSER

OCTOBER 31, 2014, 9AM-6PM

HELLIWELL CENTRE FOR INNOVATION IN DISPUTE RESOLUTION
(ROOM 1014) OSGOODE HALL LAW SCHOOL, YORK UNIVERSITY

SPONSORED BY:



FRIDAY, OCTOBER 31, 2014
OSGOODE HALL LAW SCHOOL, YORK UNIVERSITY

00

8:30 am - 9:00 am

Registration / Breakfast

01

9:00 am - 9:15 am

Welcome Remarks

François Tanguay-Renaud, Director, Nathanson Centre, Osgoode Hall Law School

02

9:30 am - 11:15 am **PANEL 1**

“Sexual Violence in International Law: Gains and Limitations at the International and Domestic Levels”

Panel Chair: Sonia Lawrence, Associate Professor, Director of the Institute for Feminist Legal Studies (IFLS), Osgoode Hall Law School, York University

“Feminist Struggles with Gender-Sensitive International Criminal Justice: The Special Court for Sierra Leone as Case Study”

Valerie Oosterveld, Associate Dean, Faculty of Law and Deputy Director, Centre for Transitional Justice and Post-Conflict Reconstruction, the University of Western Ontario

Abstract: Over the past twenty years, modern international criminal justice institutions have been subject to both feminist praise and critiques. This paper will examine feminist struggles with gender-sensitive international criminal justice through the lens of one court: the Special Court for Sierra Leone (SCSL). I have had the privilege of studying the SCSL through two lenses. First, when I served as a lawyer at the Department of Foreign Affairs, I was deeply involved in the creation of the court and its oversight through the state-led SCSL Management Committee. I saw, first-hand, how gender issues were, and were not, addressed as a result of early decisions about the court. Second, as an academic, I have studied the jurisprudence and practice of this court in detail. The SCSL has adopted some truly transformational reasoning, pushing the boundaries of international criminal law's understanding of gender as an influential factor in targeting decisions by warring parties. At the same time, it has also demonstrated shockingly gender-insensitive reasoning in certain decisions, leading to far-reaching negative effects. The experience of the SCSL therefore demonstrates two poles: the fragility of hard-won feminist gains on the one hand, and, on the other hand, the possibilities created by gender-sensitive application of international criminal law. This paper will end by linking these divergent experiences with the SCSL's impact to date on domestic

law and procedure in Sierra Leone.

“Talk to Her: Feminist Amici Curiae Submissions and Gender-related Discourse in International Criminal Tribunals”

Anna Dolidze, Assistant Professor, Faculty of Law, University of Western Ontario

Abstract: Much has been written about civil society’s role in creating and strengthening the international criminal tribunals and fostering a greater recognition of women under international criminal law. However, little is known about the specific nature of feminist legal strategies aimed at international law-making. Aiming at advancing the scholarship on feminism and international lawmaking, this paper examines the nature of feminist interventions as amici curiae in international criminal tribunals based on the first comprehensive empirical study of feminist amici curiae interventions in the International Tribunal for the Former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Court.

What are the issues in relation to which feminist groups request to be heard by the Tribunals and what is the proportion of feminist interventions relative to the overall number of amicus curiae briefs? How do we interpret the fact that the Coalition for Women’s Human Rights in Conflict Situations has requested an amicus curiae intervention in the ICTR in three cases and was denied the opportunity by the Tribunal in all three instances? Or what is the role of women academics in fostering a particular view of gender related issues, considering the fact that women academics are often heard in the capacity of amicus curiae by the international tribunals? The ICTY case of Furundžija (IT-95-17/1) "Lašva Valley", where eleven women academics, including Dr. Annie Bunting and Dr. Valerie Oosterveld took part is a pertinent example.

This paper will answer these and related questions with the aim to enrich our knowledge about the relationship between feminism and the formation of international law.

“Refugees as Transnational Peacebuilders: A Study of Refugee Organizations from the Sudan, Tibet and Myanmar”

Anna Snyder, Associate Professor, Department of Conflict Resolution Studies, Menno Simons College

Abstract: In 2010, the Canadian government introduced the National Action Plan for the Implementation of UN Security Council Resolutions on Women, Peace and Security. Approximately 46 countries have developed national action plans to evaluate and monitor the implementation of UNSCR 1325 which calls for the inclusion of all women in peacemaking, peacekeeping, and peacebuilding and the protection of women. Refugee women were not included in the Action Plan as partners in peacemaking, mentioned only in sections referring to protection and post-conflict reconstruction. As such, refugee women are not considered partners/ key players in plans to bring about peace despite evidence that refugee women’s organizations can participate in and even lead peace building efforts. This paper analyzes the activities of three refugee women’s organizations from Tibet, the Sudan, and Burma/Myanmar concluding that it is strategically important to support women’s transnational networks and facilitate contact between diaspora, refugee and local women’s organizations interested in conflict transformation. A gendered

analysis of refugee peacebuilding capacity reveals gaps in peacebuilding capacity approaches that become evident when female diasporas are the focus of the research. The women's refugee organizations show the capacity for transnational bridge building, that is, the capacity to build and sustain networks across geographical, social and political boundaries with the aim of bringing about nonviolent social change.

“Professionalized Justice: Challenges and Opportunities for Survivors”

Jamie Rowen, Assistant Professor, Centre for Criminology and Sociolegal Studies, University of Toronto

Abstract: My presentation focuses on the implications of the professionalization of international criminal justice, particularly its effects on efforts to criminalize sexual violence in armed conflict. The first part will focus on the ongoing push to prove sexual violence without testimonial evidence. This has led to new efforts to prove systematic sexual violence with statistical analyses. The dilemma with this evidence is, of course, the quality of the original data gathered. The second issue is changing theories of liability. In international criminal law, it is rarely possible to prove that an individual intended for all of the acts that he or she is held responsible for. As a result, international criminal courts have developed several theories to hold individuals responsible. Among these is joint criminal enterprise and command responsibility. The former theory, also known as JCE, was recently challenged in the International Criminal Tribunal for the former Yugoslavia. In the 2013 Gotovina case, the Appeals Chamber found that there wasn't sufficient evidence for joint criminal enterprise. This holding may have implications for future efforts to hold individuals liable for sexual violence as an international crime, particularly given the type of evidence that international criminal courts are looking to use.

11:15 am - 11:30 am

Morning Break

03

11:30 am - 1:15 pm

PANEL 2

“Transitioning to Peace? Grassroots Resistance to Colonial and Heteropatriarchal State Violence”

Panel Chair: Alice MacLachlan, Associate Professor, Department of Philosophy, York University and Co-Editor of *Feminist Philosophy Quarterly*

“Transitioning to Democracy in Colombia? An Analysis of the Supposed Post-Conflict Moment in Light of Ongoing Violence Against Trans-women and other Queers”

William Payne, Doctoral Candidate in Critical Human Geography, York University

Abstract: Dominant voices seek to frame Colombia as an emerging post-conflict society rooted in supposed democratic traditions. Nevertheless, reverberations of the violence that has rocked its social fabric for decades suggest that

characterizations of a transition towards a liberal democratic society are sometimes more aspirational than descriptive. A less-explored aspect of the long-standing armed conflict has been the use of violence against sexual and gender minorities as a weapon of war. A liberal human rights framework expects that this pattern would dissipate after the formal demobilization of right-wing paramilitary forces and the resumption of high-level talks with the FARC. However, evidence suggests that these long-entrenched patterns remain strong in parts of the country. This paper reviews the use of such violence as part of the war system and examines the evidence of ongoing violence, especially transphobic violence, perpetrated by the paramilitary successor groups and others in two regions of the country, Cali (Valle de Cauca) in the southwest and the Colombian Caribbean in the north. Particular attention is paid to the work of two civil society organizations, Santamaria Fundación and Caribe Afirmativo, considered through the lens of feminist analysis and politics that seeks to go beyond liberal human rights approaches to social change. This paper seeks to understand how violence against sexual and gender minorities in Colombia reflects longstanding patterns produced in the context of an armed conflict but is also part of an emergent post-conflict configuration in which active resistance by LGBT activists is also part of the story.

“Gendered Genocide: Sri Lanka’s War Against Tamils”

Tasha Manoranjan, LL.B Yale Law School, Founder and Director of People for Equality and Relief in Lanka (PEARL)

Abstract: Sri Lanka experienced a brutal ethnic conflict that culminated in a bloodbath on a northeastern beach in May 2009, with the slaughter of up to 70,000 Tamils in mere months. Security forces were professedly attempting to defeat the Liberation Tigers of Tamil Eelam (LTTE), an armed group fighting for a separate state of Tamil Eelam. The systematic crimes and killings that comprised Sri Lanka’s military campaign against Vanni Tamils – the Tamil population most ardently in support of Tamil Eelam and the LTTE – reflects the more accurately sinister motive behind the military assault: genocide. The Sri Lankan government had long wanted to destroy Tamil nationalism and its concomitant refusal to remain a subjugated nation within the Sri Lankan State. The government achieved unparalleled military success with the complete defeat of the LTTE in 2009, and Tamils now live under the thumb of their victor’s abject military occupation.

The military occupation is a plague over all Tamil society (with such Orwellian requirements as demanding the presence of a soldier at every social gathering, even girls’ coming-of-age celebrations), but the 3:1 civilian to soldier ratio disparately tyrannizes Tamil women. Tens of thousands of Tamil women were widowed in 2009, and now head households under threat or experience of sexual assault, forced prostitution, and poverty.

This is a sharp cry from many women’s experiences living with the LTTE. The LTTE made strides towards women’s empowerment when it conscientiously embraced a policy of gender equality, both in its armed movement and in its state-building apparatus. Between 2004 and 2007, I spent a year and a half in LTTE-controlled territory, documenting Sri Lanka’s human rights violations and interviewing female LTTE cadres. This paper will analyze women’s motivation for joining the LTTE pre-2009, and contextualize the gendered and racialized experience of transitioning from active warfare to today’s negative peace.

“Gender Violence in Mexico: The Imbalances Between Policies and Actions”

Cecibel Rodriguez, Doctoral Candidate in Rural Studies, University of Guelph;

Marta Mercado, Doctoral Candidate in Rural Studies, University of Guelph

Abstract: Although violence against women in Mexico has been an ongoing problem, it is not until recently that this situation has become more visible and as result more attention has been given in terms of public policy. Despite the claimed efforts to control the levels of violence in general, there have been many analyses which have criticized these public policies and conclude that the Mexican government has failed in its efforts to control and eradicate violence. Although gender violence has spread to all regions of the country, there some areas in which a problem is more acute. Figures from International Amnesty tell us that every day six women are killed by extreme violence in Mexico. Technically we cannot call this situation a state of war, however, the numbers of deaths and people disappeared make us believe that Mexico is living a state of war.

In this article we explore the imbalances between the enacted laws and protocols followed in order to reduce violence and the concrete actions carried out to reduce this violence in varying Mexican states. In order to explore the discrepancies that exist in the efforts to reduce violence, we present the case of the NGO Nuestras Hijas de Regreso a Casa. Using a feminist post-colonial framework, we demonstrate that the imbalances between law and concrete actions are the product of gendered processes that need far more analysis in order to produce more effective solutions.

“Seeking a Meaningful National Inquiry on MMIW”

Kim Stanton, Legal Director of the Women’s Legal Education and Action Fund (LEAF).

Abstract: Currently, the call has become much forceful for a national inquiry into the travesty of the missing and murdered indigenous women. This paper will examine the tension between those calling for a national inquiry and those that resist the call. Further, I will explore the importance of certain institutional design questions for an effective national inquiry to occur. I will suggest that there are key elements that are necessary in order for an inquiry to be a helpful tool in addressing the MMIW issue, and I will discuss in what way(s) an inquiry might be helpful in the Canadian context. I will draw upon my previous work on public inquiries and truth commissions, including the Missing Women Commission in British Columbia and the Canadian Truth and Reconciliation Commission.

1:15 pm – 2:00 pm

Lunch

04

2:00 pm - 3:00 pm

KEYNOTE

“De-colonizing Transitional Justice: A Feminist Analysis”

Pascha Bueno-Hansen, Assistant Professor, Women and Gender Studies, University of Delaware

3:00 pm – 3:15 pm

Break

05

3:15 pm - 4:45 pm

PANEL 3

“Disrupting Transitional Justice Progress Narratives in Theory and Practice”

Panel Chair: Janet Mosher, Associate Professor, Osgoode Hall Law School and the English language editor of the *Canadian Journal of Women and the Law*

“Transitional Justice Unbound-Critical Approaches from the Global South”

Nergis Canefe, Associate Professor, School of Public Policy and Administration (Law Stream), Department of Political Science, Graduate Program in Social and Political Thought, Graduate Program in Law and Society and Associate Director of the Centre for Refugee Studies

Abstract: Transitional justice has long been associated with advocacy movements and a special set of institutions that are expected to be mutually reinforcing or at least complementary in terms of moving forward in the aftermath of mass societal and political violence. Here, in a somewhat contrarian vein, our main tenet is to question this definition and its presumptions about socio-political and historical change from the point of view of the debates on transitional justice taking place across the Global South.

In an attempt to evaluate the long-term political significance and deep-seated socio-ethical dimensions of transitional justice movements, one has to look beyond transitional justice related policy measures and legal arrangements. Reform, reconciliation, restitution and reparation do not exit in a vacuum. Within this regard, right of return for the displaced, blanket amnesties, governmental and social uses of political amnesia, legal and pseudo-legal accountability measures, restorative justice schemes including compensation and redistribution programs, socio-cultural projects for recovery from societal trauma and calls for collective responsibility. The approach chosen is informed by the work of legal scholars and political theorists that have drawn attention to the dual role of law in relation to violence: protective of the status quo on the one hand and regenerative of a new socio-political order on the other.

While law can be a tool for responding to violence and exposing abuses of power, law is also utilized to obfuscate and legitimate abuses of political authority. As such, it is puzzling that for many decades, scholarship emanating from the Global North concentrated mainly on the ‘healing’ aspects of legal and semi-legal practices associated with transitional justice measures and movements. Rarely was enough attention paid to the challenges posed by a desire for a new form of justice in terms of questioning the legitimacy of prior political practices by confronting institutional and societal denial of mass violence. In contradistinction, transitional justice debates emanating from the Global South tend to focus on transforming the terms of the debate regarding past abuses of power while also acknowledging that governments often use transitional justice programs and

projects as a framework to re-establish their legitimacy. In this latter context, there is a major concern about the cooptation of the challenges and demands emanating from re-interpretations of a traumatic past.

“Moving Beyond Suffering: Mayan Women’s Struggles for Reparation in Post-Conflict Guatemala”

Alison Crosby, Associate Professor, School of Gender, Sexuality and Women’s Studies, Graduate Program in Gender, Feminist and Women’s Studies and Director of the Centre for Feminist Research.

Abstract: This paper uses an anti-racist anti-colonial feminist lens to examine the struggles for reparation of fifty-four Maya Q’eqchi’, Kaqchikel, Chuj and Mam women survivors of sexual violence during the Guatemalan armed conflict, through a decade of collaborative engagement within a ‘community of women’ situated at the boundary of their indigenous communities. In critically examining how this particular group of Mayan women survivors has engaged reparations processes, the paper highlights one approach to addressing sexual harm that may help inform subsequent anti-racist feminist struggles for gender justice. The paper uses data from a four-year participatory action research project, and in particular a series of workshops using creative techniques—including drawing, collage, dramatization and body sculptures—to elicit more complex and contestational stories than those emergent from a more linear narrative approach to understanding harm suffered. Mayan women survivors have situated their demand for reparations along three main axes: as an articulation of loss and harm; as a relationship to the Guatemalan state; and as a refraction of their own emerging agency as protagonists in justice-seeking processes that has become reparatory in and of itself. The paper concludes by arguing that ‘the everyday work of repair’ (Das 2007) that women survivors are engaged in requires attention to the deep-seated impoverishment that survivors highlight as the condition of ‘violence against women’ in their life worlds and thus a key focus of their protagonism.

“Gendering Justice: Prosecuting Communism in Post-Communist Bulgaria”

Lilia Topouzova, Postdoctoral Fellow in Gender Studies, Brown University and Documentary Film Maker

Abstract: In November 1989, shortly after the collapse of the Berlin Wall, it was revealed that communist Bulgaria had operated one of the most extensive and repressive forced-labor camp networks of the entire socialist bloc. News of the atrocities committed in the Bulgarian gulag, featured prominently in the leading press and NGO investigative reports, sparked a public outrage both locally and internationally and earned Bulgaria the rather sinister moniker, “Little Siberia.” In 1992, equipped with scattered evidence and pressed by outcries for justice the Bulgarian government embarked on a complicated political trial in search of accountability for human rights abuses perpetrated in the camps. However, a sentence was never passed, and ten years later in 2002, the trial was discontinued due to the expired statute of limitations. There were five defendants in the trial and the lowest ranking among them, a camp guard, also emerged as the most infamous perpetrator of the entire system. Julia Ruzhgeva was the only woman

charged with crimes committed in the camps. While never sentenced in court, she was convicted by the media, and public opinion, and came to embody the darkest years of socialist rule. My presentation will briefly consider the history of the trial and will largely focus on the court and personal testimony of Julia Ruzgheva, based on my original historical research and featuring scenes from my documentary film on the topic. With this case study, I will address larger questions that explore the intersection of transitional justice, gender representations, and the role of media.

06

4:45 pm - 5:00 pm

Concluding Remarks
