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Crossing Borderlands of Inequality with International Legal Methodologies - The Promise of Multiple Feminisms

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Crossing Borderlands of Inequality with International Legal Methodologies – The Promise of Multiple Feminisms

By Berta Esperanza Hernández-Truyol

I can not say that I think you very generous to the Ladies, for while you are proclaiming peace and good will to Men, Emancipating all Nations, you insist upon retaining absolute power over Wives.

All human beings are born free and equal in dignity and rights and ... everyone is entitled to all ... rights and freedoms ... without distinction of any kind including distinction based on sex.

In no society do women enjoy the same opportunities as men.

1 Levin, Mabie & Levin Professor of Law, University of Florida Levin College of Law. Many thanks to Professor Dr. iur. Anne Peters, University of Basle (formerly Walther-Schücking-Institute of International Law, University of Kiel) for inviting me to write an essay for this exciting volume of the German Yearbook of International Law. In addition, many thanks are due to Cindy Kirkconnell (UF '00) for her spectacular research assistance and to Cindy Zimmerman for her editorial and computer wizardry.

2 Letter from Abigail Adams to her husband, John Adams (7 May 1776) in: John A. Maxwell/James J. Friedberg (eds.), Human Rights in Western Civilization 1600-Present, 1994, 34.


A. Introduction

Throughout history and across national and international borderlands, women have existed in the shadows of the law. Recently, however, there has emerged an invigorated movement urging the recognition and acknowledgment of women's presence in the international imagination. The catalysts at the core of this global initiative to recognize and promote women's rights and participation in the international existence are the correlative desires to eradicate the institutionalized invisibility of women in the global sphere; to craft a means to implement existing rights to benefit women's lives; and to develop, expand and transform the content and meaning of such rights to reflect women's realities and to compel women's equality.

This disjuncture between the real and unequal locations of women in the global sphere and their legal, supposedly equal, status is due in part to the private/public divide which has placed women at the margins of the legal universe. Women were not considered to be the objects of public life. Rather, women existed in the ambit of the private realm where family and church dictated their proper behavior and roles. Such dichotomy located women in a separate sphere from men.

In the separate spheres worldview, laws were made by men, for men, about male things – public matters such as government and governance. Women, on the other hand, were objects to be cared for and protected by men. There was no pretense that equality constituted a desirable societal goal. Rather, there was an acceptance of gendered inequality. In those days – and as this essay will suggest, even still today – both natural law and positive law were deemed to confirm the propriety of the separate spheres' outcome. Women properly belong in the home, taking care of family; men belong in the world, where their position as economic actors permits their care of their family.

Seldom do the courts provide the rich confirmation of the acceptance of inequality as the Supreme Court of the United States did in its opinion in Bradwell v. Illinois in 1873. In Bradwell, the Court, wholeheartedly embracing the separate spheres model, ruled that women could be refused admission to the practice of law. The Court provided an honest, albeit disturbing, attribution of the proper location for women. Quoting at length from the state court, the Supreme Court observed the background context for the action:

That God designed the sexes to occupy different spheres of action, and that it belonged to men to make, apply and execute the laws, was regarded as an axiomatic truth. ... In view of these facts, we are certainly warranted in saying, that when the legislature gave to this court

5 83 U.S. (16 Wall.) 130 (1873).
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The power of granting licenses to practice law, it was with not the slightest expectation that this privilege would be extended equally to men and women. The Supreme Court then provides its own analysis embracing the separate spheres ideology:

[T]he civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman. Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood. The harmony, not to say identity, of interest and views which belong, or should belong, to the family institution is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband. So firmly fixed was this sentiment in the founders of the common law that it became a maxim of that system of jurisprudence that a woman had no legal existence separate from her husband, who was regarded as her head and representative in the social state ... a married woman is incapable, without her husband's consent, of making contracts which shall be binding on her or him. ... The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator.

To be sure, at this stage of jurisprudential development, the Fourteenth Amendment to the United States Constitution had already been adopted. However, the Fourteenth Amendment, on which sex/gender equality rights are now grounded, was intended to eliminate race, not sex, discrimination, so it did not provide women full equality rights. Similarly, in the international arena, women live in the midst of established gendered "social and cultural patterns of conduct." CEDAW expressly seeks "[t]o modify the social and cultural patterns of conduct of men and women[,] with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women." Interestingly, CEDAW seems to explicitly address the public/private divides in both the domestic and international realms by mandating States Parties to "take appropriate measures to eliminate discrimination against women in the political and public life of the country"...

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6 In re Bradwell, 55 Ill. 535, 539 (Ill. Sep Term 1869).
7 Bradwell (note 5), 141 (Bradley, J., concurring).
8 See, e.g., Minor v. Happersett, 88 U.S. (21 Wall.) 162 (1874) (holding that the Fourteenth Amendment did not grant women the right to vote).
9 See CEDAW (note 3), Art. 5.
10 Id.
11 CEDAW (note 3), Art. 7.
ensure to women on equal terms with men, and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.”

Although, as CEDAW’s provisions mandate, the public/private dichotomy is slowly being eviscerated, evidence of its impact is plain in the gendered legacy of universal human rights development. The sacrosanct distinctions between public and private spheres have greatly contributed to the subordination of women. The private realm, that venue into which the government ought not to intrude, is an arena exacerbating women’s vulnerability. Probably the quintessential disempowerment of women based on the public/private dichotomy can be seen in the areas of violence. At the World Conference on Human Rights in Vienna, women met with unprecedented success by speaking with one voice in a strategy of making violence against women a focal point of the demands for inclusion of women in the Vienna agenda. Because violence against women is so prevalent worldwide and a common concern for all women from every place and status in the world, this strategy permitted articulation without opposition. Indeed, “the legal concept of privacy can and has shielded the place of battery, marital rape, and women’s exploited labor; has preserved the central institutions whereby women are deprived of identity, autonomy, control and self-definition; and has protected the primary activity through which male supremacy is expressed and enforced.”

These observations are significant because they signal the different relationship women have had, as compared to men, to the development of the international legal system. Until recently, the international discourse on rights excluded women in both process and substance. Women, because of their sex, did not participate in the creation or early development of international law. Women also were excluded from representative capacities both in positions as representatives of States in their

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12 CEDAW (note 3), Art. 8.

13 For example, it is only now, at the end of the twentieth century, that one of the atrocities of war overwhelmingly perpetuated against women throughout history, namely rape, is being recognized as a wrong in se, rather than as merely a regrettable but unavoidable consequence of war. See Rhonda Copelon, Women and War Crimes, St. John’s Law Review (St. John’s L. R.), vol. 69, 1995, 61 (focusing on war crimes against women); Jordan J. Paust, Applicability of International Criminal Laws to Events in the Former Yugoslavia, American University Journal of International Law & Policy, vol. 9, 1994, 499 (discussing rape as an international war crime).


domestic structures and in international legal institutions – the latter reaching into not only the United Nations system but also intergovernmental organizations and, until recently, even non-governmental organizations.

Women’s absence from the legal process also resulted in their voices not being heard. Thus, concerns of women, expressed by women, for women, were simply not part of international discourses. The initial explications for such voids were grounded in the traditional mantra that international matters were concerns of the state, not individuals. This reality both followed and flowed from women’s absence from the public sphere. Yet, notwithstanding the emergence and development of human rights law which rendered individuals subjects, not only objects, of international law, women’s location has not changed. It was as if the category of individual (or of human) did not include women – at least not until years later when in 1979 the United Nations General Assembly adopted CEDAW. This marked the first time in history that a broad-based, comprehensive document placed women’s rights at the center of international legal discourse. To be sure, this treaty has been the subject of much criticism, especially its aspiration of advocating women’s equality on the basis of their equality to men.

Through a feminist lens, the inclusion of women in the international realm began with CEDAW and continues into the present. A significant span of time in this development is the four-year period during which six United Nations conferences were convened on topics ranging from the environment to population, from human rights to social development, from women to housing – all of which recognized the central role of women in the international agenda.

During this period, the international community witnessed the firm inclusion and participation of women at the nucleus of the international human rights discourse. Thus, it was primarily the Women’s Convention, followed some fourteen

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years later by the Vienna World Conference on Human Rights, which sparked the women's human rights revolution, started by women for women, with the goal of inclusion and representation in the global sphere.

These United Nations conferences also were the platform from which the North/West domination of the international arena began to cede to global participation. In the last decade of the twentieth century, States that did not exist when the visionary human rights construct was conceived and articulated, added their voices to the consensus documents. These documents reiterate some existing norms, as well as expand, develop, and transform those norms to suit a diverse, global society. The expanded norms incorporate the rights to non-discrimination, education, health, welfare, voting, democratic participation, employment, travel, freedom of religion, cultural integrity, economic/social development, political representation, bodily integrity, and free choice on family matters, to name a few.

The consensus documents comprise an inclusive blueprint for furthering developments in international law in the twenty-first century. These documents address broad-ranging issues and concerns, from the environment to education; from universality of rights to respect for cultural traditions; from population to sustained economic growth and sustainable development; from gender equity and equality to the empowerment of women; from the role of the family to the role of the government; from health to migration; from equity among generations to the placing of people at the center of development; from the recognition that social development is both a national and international concern to the recognition of the need to integrate economic, cultural, and social policies to achieve desired ends; from education to employment; from respect for women to the need for affordable housing. There is a recognition that only with a vision of the indivisibility and interdependence of rights can the health, education, and welfare goals of individuals, families, governments, and the global community be met. Significantly, women have played a critical role in the drafting, acceptance, and implementation of all of these instruments. Notwithstanding the changes reflected in the consensus documents, much remains unchanged with women still experiencing prevailing inequalities and existing in subordinated positions around the globe.

This work provides insights into the gendered developments of international law. It explores the roles played by the gendered rule of law and by the conflation of economic, social, political, religious, cultural, and historic realities in the marginalization of women in the international, regional, and domestic spheres worldwide. The first section presents the myriad locations of women’s persistent inequality. The next sets forth feminist theory that has been the basis of both the celebration of women’s progress and the denunciation of women’s subordination. The last part makes suggestions for the articulation of a methodology that follows the complex paths of policy orientation, legitimacy, and multiple feminisms and makes possible a women-centered jurisprudence.
B. The Persistence of Women's Inequality

Notwithstanding obstacles in law and life, women not only have refused to accept, but have fought strongly to eradicate, their social, economic, political, and cultural subordination which has led to their invisibility and silence in international matters. In the recent past, women have organized to articulate their separate realities and have insisted that their needs and concerns be placed at the center of legal discourses. A feminist critique of international law — as well as of domestic law — is necessary in order to unveil the sources of and to end women's inequality and gender subordination world-wide.

The traditional exclusion of women from the articulation, development, implementation, and enforcement of international norms has rendered gender issues invisible, and consequently has shielded gender-based abuses and exclusions from much needed scrutiny. For example, the flawed public/private dichotomy historically interfered with the recognition of wrongs inflicted on women because of their sex, such as domestic violence, which now is acknowledged as a violation of domestic, regional, and international rights, including, among others, the right to security of the person. This false public/private dichotomy, in the name of the 'rule of law,' has ghettoized women’s interests and conspired to deny equal status to women.


22 Human rights violations against women frequently go unacknowledged and unpunished simply because private persons, rather than state agents, are the actors. The right to security of the person is one such right often breached, particularly in instances of domestic violence. For documents recognizing the right to security of the person, see Universal Declaration (note 3), Art. 3; ICCPR (note 3), Art. 9 (1); European Convention (note 3), Art. 5 (1); ICPD (note 16), ch. II, princ. 1; Report of the World Summit for Social Development, Principles and Goals (hereinafter: CDPOA), UN Doc. A/CONF. 166/9 (1995), Art. 26 (1); Beijing Platform (note 19), 14.
Given the overarching gendered exclusion that traditional international legal developments caused, it is noteworthy that the formal notion of sex-equality as a core international tenet dates to 1945 when the U.N. Charter was created with the stated intention of "reaffirm[ing] ... the equal rights of men and women."23 The U.N. Charter further states that one of its purposes is to achieve international cooperation "in promoting and encouraging respect human rights for fundamental freedoms for all without distinction as to ... sex ..."24 Following the U.N. Charter's lead, the Universal Declaration of Human Rights, the ICCPR,25 and the ICESCR26 all expressly include the right to equality based on "sex." These documents insist that "[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."27

Moreover, the thematic and regional human rights instruments that have expanded and strengthened the human rights regime also expressly provide for sex/gender equality. The three regional instruments aimed at the protection of human rights (the European Convention,28 the American Convention,29 and the Banjul Charter30) all explicitly incorporate sex equality, as do other international human rights instruments. In addition, the conference documents discussed above strengthens the litany of rights to which women are entitled. In sum, these documents afford an impressive array of rights pertinent and central to the protection of women's full personhood: rights to privacy,31 health,32 equality, non-discrimination,33 education,34 religion,35 travel,36

23 UN Charter (note 3), preamble.
24 Id., Art 1 (3).
25 ICCPR (note 3).
26 ICESCR (note 3).
27 Universal Declaration (note 3), Art. 2 (emphasis added). Similarly, the ICCPR provides that "[e]ach State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." ICCPR (note 3), Art. 2 (1) (emphasis added). In addition, in Article 26, the ICCPR provides that, with respect to the nondiscrimination provisions, "the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as ... sex ..." Id., Art. 26 (emphasis added). Finally, the ICESCR also provides for non-discrimination on the part of the basis of sex. ICESCR (note 3), Art. 2 (2). In addition, the ICESCR provides that parties will "ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights" that are articulated in that treaty. Id., Art. 3.
29 American Convention (note 3), Art. 1.
30 Banjul Charter (note 3).
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31 See, e.g., Universal Declaration (note 3), Art. 12 ("No one shall be subjected to arbitrary interference with [her] privacy ... "); ICCPR (note 3), Art. 17(1) ("No one shall be subjected to arbitrary or unlawful interference with [her] privacy ... "). The Beijing Declaration and Programme of Action reinforces the right of privacy by noting that women often do not fully enjoy it, particularly with respect to matters of health. See, e.g., Beijing Platform (note 19), para. 104 ("Women are frequently not treated with respect, nor are they guaranteed privacy and confidentiality ... "); id., para. 95, 108 (recognizing lack of privacy in health matters for young girls and adolescents).

32 See, e.g., CEDAW (note 3), Art. 11 (1) (f) ("State Parties shall take all appropriate measures to eliminate discrimination against women ... to ensure ... [t]he right to protection of health and to safety in working conditions ... "); id., Art. 12 (1) ("State Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services ... "); Banjul Charter (note 3), Art. 16 (1) ("Every individual shall have the right to enjoy the best attainable state of physical and mental health."). The Beijing Platform states that

[w]omen have the right to the enjoyment of the highest attainable standard of physical and mental health. The enjoyment of this right is vital to their life and well-being and their ability to participate in all areas of public and private life. Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. Women's health involves their emotional, social and physical well-being and is determined by the social, political and economic context of their lives, as well as by biology. However, health and well-being elude the majority of women. [The major] barrier for women to the achievement of the highest attainable standard of health is inequality, both between men and women and [among women]. In national and international forums, women have emphasized that to attain optimal health throughout the life cycle, equality, including the sharing of family responsibilities, development and peace are necessary conditions. Beijing Platform (note 19), para. 91; id., ch. IV., sec. C (on women's health).

33 See, e.g., Universal Declaration (note 3), Art. 1 ("All human beings are born free and equal in dignity and rights."); id., Art. 2 ("Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind ... "); ICESCR (note 3), Art. 2 (2) ("The States Parties to the present Covenant undertake to guarantee that the rights enunciated ... will be exercised without discrimination of any kind ... "); International Convention on the Elimination of All Forms of Racial Discrimination, 4 January 1966, Art. 2 (1), UNTS, vol. 5, 216–219 ("States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms ... "). The Beijing Platform clearly incorporates the attainment of equality for women as its primary purpose. See, e.g., Beijing Platform (note 19), para. 13 ("Women’s empowerment and their full participation on the basis of equality in all spheres of society, including participation in the decision-making process and access to power, are fundamental for the achievement of equality, development and peace ... ").

34 See, e.g., Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, UNTS, vol. 213, 262, Art. 2 ("No person shall be denied the right to education."); ICESCR (note 3), 8 ("The States Parties to the present Covenant recognize the right of everyone to education."); the Beijing Platform states that:
family life,\textsuperscript{37} decision-making regarding the number of children and their spacing,\textsuperscript{38} information,\textsuperscript{39} life, liberty, security of the person, integrity of the person,\textsuperscript{40} freedom from torture,\textsuperscript{41} freedom from slavery,\textsuperscript{42} political participation,\textsuperscript{43} free assembly and

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Education is a human right and an essential tool for achieving the goals of equality, development and peace. Non-discriminatory education benefits both girls and boys, and thus ultimately contributes to more equal relationships between women and men. Equality of access to and attainment of educational qualifications is necessary if more women are to become agents of change. Literacy of women is an important key to improving health, nutrition and education in the family and to empowering women to participate in decision-making in society.

Beijing Platform (note 19), para. 71; \textit{id.}, ch. IV, sec. B (on women's education).

\textsuperscript{35} See, \textit{e.g.}, Universal Declaration (note 3), Art. 18 ("Everyone has the right to freedom of thought, conscience and religion ... "); European Convention (note 3), Art. 9 (1) ("Everyone has the right to freedom of ... religion; this right includes freedom to change h[er] religion .... "). The Beijing Platform states that:

Religion, spirituality and belief play a central role in the lives of millions of women and men, in the way they live and in the aspirations they have for the future. The right to freedom of thought, conscience and religion is inalienable and must be universally enjoyed. This right includes the freedom to have or to adopt the religion or belief of their choice either individually or in community with others, in public or in private, and to manifest their religion or belief in worship, observance, practice and teaching. In order to realize equality, development and peace, there is a need to fully respect these rights and freedoms. Religion, thought, conscience and belief may, and can, contribute to fulfilling women's and men's moral, ethical and spiritual needs and to realizing their full potential in society. However, it is acknowledged that any form of extremism may have a negative impact on women and can lead to violence and discrimination.

Beijing Platform (note 19), para. 25; \textit{id.}, para. 12.

\textsuperscript{36} See, \textit{e.g.}, ICCPR (note 3), Art. 12 (1) ("Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose h[er] residence."); Universal Declaration (note 3), Art. 13 ("Everyone has the right to freedom of movement and residence within the borders of each State ... [and] the right to leave any country, including h[er] own, and to return to h[er] country.").

\textsuperscript{37} See, \textit{e.g.}, ICPD (note 16), princ. 9 ("The family is the basic unit of society and as such should be strengthened. It is entitled to receive comprehensive protection and support."); CDPOA (note 22), commitment 4 (k) ("At the national [level, we will] ... [s]trengthen institutions that enhance social integration, recognizing the central role of the family and providing it with an environment that assures its protection and support.").

The Beijing Platform states that:

Women play a critical role in the family. The family is the basic unit of society and as such should be strengthened. It is entitled to receive comprehensive protection and support. In different cultural, political and social systems, various forms of the family exist. The rights, capabilities and responsibilities of family members must be respected. Women make a great contribution to the welfare of the family and to the development of society, which is still
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not recognized or considered in its full importance. The social significance of maternity, motherhood and the role of parents in the family and in the upbringing of children should be acknowledged. The upbringing of children requires shared responsibility of parents, women and men and society as a whole. Maternity, motherhood, parenting and the role of women in procreation must not be a basis for discrimination nor restrict the full participation of women in society. Recognition should also be given to the important role often played by women in many countries in caring for other members of their family.

Beijing Platform (note 19), para. 30.

38 See id., para. 98 ("The ability of women to control their own fertility forms an important basis for the enjoyment of other rights."); see also ICPD (note 16), para. 7.3 ("[A]ll couples and individuals [have the right] to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so ... ."); CEDAW (note 3), Art. 16 (1) (e) ("Women have the same rights to decide freely and responsibly on the number and spacing of their children"); Report of the World Conference of the International Women's Year, UN Doc. E/CONF. 66/34 (1976), Art. 12 ("Every couple and every individual has the right to decide freely and responsibly whether or not to have children as well as to determine the number and spacing, and to have information, education and the means to do so."); Nairobi Forward-Looking Strategies for the Advancement of Women, UN Doc. A/CONF. 116/28/Rev.1 (1986), para. 156 ("All couples and individuals have the basic human right to decide freely and informally the number and spacing of their children."). See generally Rhonda Copelon et al. (eds.), The Human Rights Framework of the Beijing Platform of Action, 1995.

39 Beijing Platform (note 19), para. 35 ("[e]nsure women’s equal access to economic resources including land, credit, science and technology, vocational training, information ... "); id., para. 57 ("Particularly in developing countries, the productive capacity of women should be increased through access to ... information ....").

40 See Banjul Charter (note 3), Art. 4 (right to life and integrity of the person); American Convention (note 3), Arts. 4, 5 (right to life, right to "physical, mental and moral integrity"); ICPD (note 16), princ. 1; Vienna Declaration and Programme of Action (note 17), passim.

The Beijing Platform states that:

Acts or threats of violence, whether occurring within the home or in the community, or perpetrated or condoned by the State, instill fear and insecurity in women's lives and are obstacles to the achievement of equality and for development and peace. The fear of violence, including harassment, is a permanent constraint on the mobility of women and limits their access to resources and basic activities.

Beijing Platform (note 19), para. 118; id., ch. IV, sec. D, passim (on violence and women).

41 See, e.g., American Convention (note 3), Art. 5 (2) ("No one shall be subjected to torture ... "); Banjul Charter (note 3), Art. 5 ("All forms of exploitation and degradation of [h]uman[s] particularly ... torture ... shall be prohibited."); ICCPR (note 3), Art. 7 ("No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."); Beijing Platform (note 19), para. 13 ("Grave violations of the human rights of women occur, particularly in times of armed conflict, and include murder, torture, systematic rape, forced pregnancy and forced abortion, in particular under policies of 'ethnic cleansing'.").
association, enjoyment of the benefits of scientific progress, development, environment, peace, democracy, self-determination, and solidarity, to name a few.

42 See, e.g., Banjul Charter (note 3), Art. 5 ("All forms of exploitation and degradation of [hu]man[s] particularly slavery ... shall be prohibited."); Beijing Platform (note 19), para. 131 (a) (actions to be taken by governments include consideration of ratifying and enforcing international conventions on trafficking and slavery).

43 See, e.g., Universal Declaration (note 3), Art. 21 (1) ("Everyone has the right to take part in the government of her country, directly or through chosen representatives."); ICCPR (note 3), Art. 25 (a) ("Every citizen shall have the right ... [t]o take part in the conduct of public affairs ... "); Beijing Platform (note 19), para. 135 ("If women are to play an equal part in securing and maintaining peace, they must be empowered politically and economically and represented adequately at all levels of decision-making."). Paragraph 183 states that "Women's equal participation in decision-making is not only a demand for simple justice or democracy but can also be seen as a necessary condition for women's interests to be taken into account. Without the active participation of women and the incorporation of women's perspective at all levels of decision-making, the goals of equality, development and peace cannot be achieved."

44 See, e.g., Universal Declaration (note 3), Art. 20 (1) ("Everyone has the right to freedom of peaceful assembly and association."); ICCPR (note 3), Art. 21 ("The right of peaceful assembly shall be recognized."); Beijing Platform (note 19), para. 192 (c) (governments should take actions to "[p]rotect and promote the equal rights of women and men to engage in political activities and to freedom of association").

45 See, e.g., Universal Declaration (note 3), Art. 23 (1) ("Everyone has the right to work ... "); CEDAW (note 3), Art. 11 (1) (a) ("The right to work is an inalienable right of all human beings ... "); Beijing Platform (note 19), ch. IV, sec. A, passim (on women and poverty).

46 See, e.g., Banjul Charter (note 3), Art. 22 (1) ("All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of [hu]mankind."); CDPOA (note 22), commitment 4 (c) ("At the national level, we will ... [p]romote access for all to education, information, technology and know-how as essential means for enhancing communication and participation in civil, political, economic, social and cultural life ... "); ICESCR (note 3), Art. 15 (1) (b) ("The States Parties to the present Covenant recognize the right of everyone ... to enjoy the benefits of scientific progress and its applications ... "); Beijing Platform (note 19), para. 57 ("Particularly in developing countries, the productive capacity of women should be increased through access to ... technology ... ").

47 See, e.g., ICPD (note 16), princ. 3 ("The right to development is a universal and inalienable right ... "); CDPOA (note 22), commitment (1) (m) ("At the national level, we will ... [r]eaffirm and promote all human rights, which are universal, indivisible, interdependent and interrelated, including the right to development ... "); ICESCR (note 3), Art. 1 (1) ("All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."); CEDAW (note 3), preamble; Declaration on the Right to Development, UN Doc. A/41/53 (1986), Arts. 1, 2, 6–8; Vienna Declaration and Programme of Action (note 17), para. 10; Beijing Platform (note 19), para. 220 ("Every person should be entitled to participate in, contribute to and enjoy
cultural, economic, political and social development. In many cases women and girls suffer discrimination in the allocation of economic and social resources. This directly violates their economic, social and cultural rights.

48 See, e.g., The Rio Declaration on Environment and Development, UN Doc. A/CONF.151/Rev. 1 (1992), princ. 1 ("Human beings are at the center of concerns for sustainable development."); Banjul Charter (note 3), Art. 24 ("All peoples shall have the right to a general satisfactory environment favorable to their development."); Beijing Platform (note 19), ch. IV, sec. K, passim (on women and the environment).

49 See Banjul Charter (note 3), Art. 23 (1) ("All peoples shall have the right to national and international peace and security."); Beijing Platform (note 19), para. 13 ("Women’s empowerment and their full participation on the basis of equality in all spheres of society, including participation in the decision-making process and access to power, are fundamental for the achievement of equality, development and peace."); id., ch. IV, sec. E, passim (on women and armed conflict).

50 See Thomas Franck, The Power of Legitimacy Among Nations, 1990; Thomas Franck, The Emerging Right to Democratic Governance, American Journal of International Law (AJIL), vol. 86, 1992, 46; see also Claudio Grossman, The Inter-American System: Opportunities For Women’s Rights, American University Law Review (Am. U. L. Rev.), vol. 44, 1995, 1305; Beijing Platform (note 19), para. 15 ("Equal rights, opportunities and access to resources, equal sharing of responsibilities for the family by men and women, and a harmonious partnership between them are critical to their well-being and that of their families as well as to the consolidation of democracy."); id., para. 183 ("Achieving the goal of equal participation of women and men in decision-making will provide a balance that more accurately reflects the composition of society and is needed in order to strengthen democracy and promote its proper functioning.").

51 See Banjul Charter (note 3), Art. 20 (1) ("All peoples ... shall have the unquestionable and inalienable right to self-determination."); CEDAW (note 3), preamble; ICCPR (note 3), preamble, Art. 1; ICESCR (note 3), Art. 1; Beijing Platform (note 19), para. 147 (a) (actions to be taken by governments include reaffirming “the right of self-determination of all peoples, in particular of peoples under colonial or other forms of alien domination or foreign occupation, and the importance of the effective realization of this right”).

52 See UN Charter (note 3), Arts. 55 (b), 56 (taking joint action to solve problems); Universal Declaration (note 3), Art. 22 (entitlement to national and international cooperation); CEDAW (note 3), preamble (affirming duty of cooperation); ICESCR (note 3), Art. 11 (importance of international cooperation); American Convention (note 3), Art. 26 (adopt measures for international cooperation); DEVAW (note 21), Art. 5 (a) (foster international and regional cooperation); Vienna Declaration and Programme of Action (note 17), paras. 1, 8, 11, 18, 21 (international cooperation to attain various goals); ICPD (note 16), princ. 15, paras. 8.9, 14.16 (international cooperation and universal solidarity to attain goals); CDPOA (note 22), commitments 1–3, 5–6, 9–10, para. 26 (a), 82, 94 (international cooperation to attain goals); Beijing Platform (note 19), para. 16 ("Hence, it is indispensable to search for new alternatives ... based on a holistic approach to all aspects of development: growth, equality between men and women, ... sustainability, solidarity, participation, peace and respect for human rights."); id., para. 196(a) (women’s and non-governmental organizations should “[b]uild and strengthen solidarity among women through information, education and sensitization activities.”).
Notwithstanding these broad-based protections and the international prohibition against sex-based discrimination, women are far from enjoying equality. Rather, as this short history of the human rights jurisprudence has shown, women have been excluded from the ‘rights of man revolution.’ During this time, all women, regardless of race, were property, and non-white men and women could be slaves. The true rightsholders were the male elite. The notion of human rights that emerged, rather than being universal, was normative; the norm was the white, Anglo-Western/European, Judeo-Christian, educated, propertied, heterosexual able-bodied male.

Sociologist Rhoda Howard observes that “[t]he easiest and clearest social distinction to make is between men and women: in many societies, as our own language reflects, the male is the standard of humanness and the female is the deviation.” As Simone de Beauvoir put it in her classic feminist chef œuvre,

to be female is to be the existential ‘Other.’... The female possessed of knowledge threatens the orderly acquisition and delimitation of society’s cognitive symbols created – in most cultures – by her male status superiors; thus from Eve to medieval wise-woman and beyond, Judeo-Christian culture has punished the woman who exercises the human capacity for self-reflection with its attendant threat of making claims upon society.

In reviewing the realities of women’s lives worldwide, two distressing facts surface. First, the rules are, at best, imperfect and, at worst, venal in effecting women’s exclusion – silencing women’s voices and rendering them invisible. This is due, at least in part, to the male nature of the international legal system.

Second, as far as universally enjoying human rights is concerned, women simply do not. This is as true in the West as it is in the East, and in the North as it is in the South.

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55 Simone de Beauvoir, The Second Sex, 1953, xix.


57 See generally, The World’s Women 2000: Trends and Statistics, UN Doc. ST/ESA/Stat/Ser.K/16 (2000) (noting that there is a persistent gender gap in education; that women’s lives are formed by reproductive capacity and choices; that women remain underrepresented in international and local governance, remaining a minuscule number of public representatives; that women’s form of work is unpaid, underpaid, and unrecognized; and that women continue to be victims of physical and sexual abuse and violence which is underreported, a reality exacerbated in the refugee population, a group of which women and girls comprise 50%). See also UNHDR 1995 (note 4).
The condition of women, as evidenced by the tragedies in Bosnia, Haiti, and Rwanda — where women have been pillaged and raped as instruments or prizes of war — and Afghanistan, where women have been erased from public life, illustrates

58 See Letter from the International Women's Human Rights Law Clinic at City University of New York School of Law to the Secretary-General, Organization of American States, The Member States and the General Assembly (hereinafter: IWHRLC), 1994, 1 (on file with author) ("On March 23, the UN/OAS Observer Mission reported ... that 12 women and girls had been raped in Port-au-Prince and concluded that it appeared that rape was being used as an instrument of terror against the female population of Haiti who were suspected or designated as opponents of the illegal regime."). IWHRLC demanded effective investigation, publicization and prosecution of crimes. Id., 2. See also Karen Knaap, Re/Statements: Feminism and State Sovereignty in International Law, Transnational Law & Contemporary Problems, vol. 3, 1993, 293, 294, n. 4 (citing Donna E. Arzt, Genocidal Rape in Bosnia-Hercegovina and Croatia and the Role of International Law, paper presented at Rape as Genocide in Bosnia-Hercegovina and Croatia: A Symposium on War Crimes, Rights, and International Law, Syracuse University College of Law (April 1993) (unpublished manuscript); Rhonda Copelon, Gendered War Crimes: Reconceptualizing Rape in Time of War, in: Peters/Wolper (note 21), 197 (commenting on mass rape of women in former Yugoslavia); Jasmine Kuzmanovic, Legacies of Invisibility: Past Silence, Present Violence Against Women in the Former Yugoslavia, in: Peters/Wolper (note 21), 57 (for accounts of rape in Bosnia).

59 See IWHRLC (note 58).


61 See Copelon (note 58), 204 (discussing rape of women as “booty” of war). Rape was not treated as a crime for which the Japanese Commander would be separately charged at the Judgment of the Military Tribunal in Tokyo. Id., 197. There existed systematic rapes in both World Wars, including the “rape of German women by the conquering Russian army and the enslavement on the battlefields of 200,000–400,000 ‘comfort women’ by the Japanese army.” Id. See Vienna Declaration and Programme of Action (note 17), which coincided with the revelation of the mass rapes in Bosnia-Herzegovina, including a general condemnation of gender violence as well as making specific mention of “systemic rape, sexual slavery and forced pregnancy” in armed conflict.” Copelon (note 58), 198 (citing Report of the Drafting Committee, Addendum, Final Outcome of the World Conference on Human Rights, 24 June 1993, UN Doc. A/CONF. 157/PC/Add. 1); see also Julie Peters/Andrea Wolper, Introduction, in: Peters/Wolper (note 21), 1 (noting that rape by soldiers is among gendered crimes suffered by women).

The rape of women in war is not limited to global wars. For example, as part of an investigatory mission in Peru, members of Amnesty International questioned a military commander whether his soldiers ever raped women: “Yes, of course.” That was followed up with the statement that when you have men who are headquartered away from their homes for a long time ... they need to have their needs met somehow. There was not even the sense that this person should take care and deny (this). When they raised the question of torture, of course that was denied. But there wasn’t even the sense that [rape] was something that should be looked at askance.” Elisabeth Friedman, Women’s Human Rights: The Emergence of a Movement, in: Peters/Wolper (note 21), 18, 26 (citation omitted); see also Kadic v. Karadzic, No. 93 Civ. 1163, 1993 WL 385757 (S.D.N.Y. 1993); Doe v. Karadzic, 866 F. Supp. 734 (S.D.N.Y. 1994).
that women are a long way from being full citizens who are universally respected or heard, let alone safe.

Significantly, this is not a woman's reality solely in times of war. One need not travel to Bosnia or Rwanda or even contemplate a state of war to find evidence of women's inequality. One need only look at the realities of everyday life. The United Nations, no bastion of gender equality, confirms the persistent and prevailing gender disparities in its description of women as the "largest excluded group in the world." The United Nation's 1993 Human Development Report labeled women as a "non-participating majority" because despite the fact that women constitute a majority of the world's population, they "receive only a small share of developmental opportunities." The sad truth of women's subordinate status is borne out regardless of which statistics are considered: employment, economics, personal autonomy, education, political participation, health, or personal security (i.e., freedom from violence) — all matters that are critical to women's enjoyment of their international rights and freedoms. Notwithstanding the existing 'paper rights,' the universal fact is that women, simply because of their sex, are routinely subjected to torture, starvation, terrorism, humiliation — all matters that are critical to women's enjoyment of their international rights and freedoms.


See UNHDR 1993 (note 62), 25 (highlighting routine exclusion of women from "educational [opportunities] or from better jobs, from political systems or from adequate health care"); United Nations Human Development Programme, Human Development Report 1994 (hereinafter: UNHDR 1994), 1994, 96 (conceding that "men generally fare better than women on almost every socio-economic indicator"); see also UNHDR 1993 (note 62), 29 (expressing the existence of a "widespread pattern of inequality between men and women ... in their access to education, health and nutrition, and even more in their participation in the economic and political spheres"); Hernández (note 63), 30–31 (detailing analogous situation women confront in Cuba notwithstanding paper commitments to equality). Moreover, Charlotte Bunch has observed that:

The importance of control over women can be seen in the intensity of resistance to laws and social changes that put control of women's bodies in women's hands: reproductive rights; freedom of sexuality whether, heterosexual or lesbian; laws that criminalize rape in marriage and so on. Abusing women physically maintains this territorial domination and is sometimes accompanied by other forms of human rights abuse such as slavery [forced prostitution], sexual terrorism [rape], or imprisonment [confinement to the home].


See Country Reports 1994 (note 60), 557 ("There are credible reports that some women detainees in Tibet have been tortured ...."); Bunch (note 64), 16 ("Rape has been recognized by
mutilation, rape, multiple birth and other maternity-related health risks, economic duress, and sexual exploitation.

the rapporteur of the United Nations on torture as a form of torture when it is performed by police or by other agents of the government .... ").

66 See UNHDR 1994 (note 64), 27 ("[I]n South Asia, 30% of babies born are underweight ... a sad indication of inadequate access to food, particularly for women, who are often the last to eat in the household."); Rebecca J. Cook, Women's Health and Human Rights: The Promotion and Protection of Women's Health Through International Human Rights Law, 1994, 16, 22–23 (discussing that malnutrition often results in women and girls because males are often fed first when food is scarce); Bunch (note 64), 16 (malnutrition of girls as form of genocide); Indira Jaising, Violence Against Women: The Indian Perspective, in: Peters/Wolper (note 21), 51 ("Girl[s]... are fed less and for shorter periods and are not given foods like butter or milk, which are reserved for boys.").

67 See Bunch (note 64), 16 ("Women face terrorism in the form of sexual assault on the streets and in jobs where sexual harassment is a condition for receiving a paycheck.").

68 Human Rights Watch World Report 1994 (hereinafter: HRWWR 1994), 1993, 361 (describing forced virginity control exams on Turkish women); id., 359 (noting Peruvian practice of questioning rape victims at judicial proceedings about their "honor" and sexual past).


70 See Country Reports 1994 (note 60), 360 (describing systematic rapes of women in former Yugoslavia); id., 359 (noting that "[s]oldiers and police routinely raped women"); UNHDR 1995 (note 4) 105 (noting "intolerable ... use of mass violence against women as weapons of war" and that "[m]ass rape and torture" of women have been documented in recent conflict situations); see also Bunch (note 64), 16 (noting that rape is human rights violation even when committed by private actors); Jaising (note 66), 52–53 (sexual abuse of women and girls in Indian families is common and rape of women in police custody is rampant).


72 See UNHDR 1995 (note 4), 4 ("Women receive a disproportionately small share of credit .... "); Id., 87 ("Much of women's work remains unrecognized and unvalued.... Women's work is greatly undervalued in economic terms."); see Mary Becker et al., Feminist Jurisprudence: Taking Women Seriously, Cases and Materials, 1994, 511, n. 3. A United States census report comparing
Recurrently, many inflictions on women because of their sex are justified or explained by culture and tradition: genital mutilation; female infanticide; bride burning; foot-binding; slavery; veiling; wife-beating; honor-killing; forced pregnancy; forced abortion; and multiple, early and closely spaced, child-

the incidence of poverty across gender and racial lines indicated that "only 4% of elderly white married women are poor, whereas 24% of elderly white women living alone are poor. Of African American women, 22% of older married women are poor, whereas 60% of older Black women living alone are poor." Id. Further, in exploring the socioeconomic basis for this discrepancy, the authors note that women are typically paid less for their services and are less likely to remain in the labor market where pension benefits are often tied to lifetime earnings. Id. Moreover, the gender inequity evident in poverty rates provide "the strongest evidence that safety nets protect men better than women [and children]. In the United States, ‘two out of three adults in poverty are women; three-quarters of the nation’s poor are women and children; 50% of female-headed households – and 75% of homes headed by black women – live below the poverty line; three-quarters of the elderly poor are women." Id., 889 (citing Diane Balsom, Sisterhood & Solidarity: Feminism And Labor In Modern Times, 1987, 17). See also Gwendolyn Mikell, African Structural Adjustment: Women and Legal Changes, St. John’s L. R., vol. 69, 1995, 7 (noting disproportionate adverse effects on women of economic and structural adjustment); CDPOA (note 22), commitment 2(b); UNHDR 1995 (note 4) (women represent 70% of all persons in poverty).

73 See HRW WR 1994 (note 68), 364 (describing trafficking of Bangladesh women in Pakistan and their subsequent arrests); Id., 361 (noting that Turkish "police and other state actors were forcing women and girls to undergo gynecological exams to determine whether they were virgins"); Peters/Wolper (note 61), 1 (listing sale of girls as one of many gender-based human rights violations suffered by women). For story of young girl enslaved in Thai sex industry, see Hnin Hnin Pyne, AIDS and Gender Violence: The Enslavement of Burmese Women in the Thai Sex Industry, in: Peters/Wolper (note 21), 215, 215–223 ("Most Burmese girls/women working in Thai brothels were tricked and sold into slavery with brothel owners paying agents the equivalent of $120–$200 [U.S.] per girl/woman. These girls/women are only released after paying that amount back to the owner, in whose hands the calculations are done. Their movements are restricted and they are prohibited from refusing sexual services to any number of clients [in some cases, 20 per day]. Since few customers use condoms, the girls/women are at high risk for contracting HIV/AIDS and few have knowledge of how the disease is actually spread."); see also Jaising (note 66), 53 (discussing practice in some parts of India where teenage girls are dedicated to Hindu gods and goddesses and then are sexually exploited); Zhu Hong, The Testimony of Women Writers: The Situation of Women in China Today, in: Peters/ Wolper (note 21), 96, 97 (widespread practice of abduction and sale of women as sex slaves).

74 See, supra, note 69.

75 See Country Reports 1994 (note 60), 561 ("[B]ecause of the traditional [Chinese] preference for male children ... some families have used ultrasound to identify and abort female fetuses."); Id., 562 ("Female infanticide may also be a factor in some areas of China."); see also Sharon K. Hom, Female Infanticide in China: The Human Rights Specter and Thoughts Towards (An)other Vision, Columbia Human Rights Law Review (Col. Hum. Rts. L. Rev.), vol. 23, 1991, 249; Bunch (note 64), 16 (female infanticide as form of genocide); Jaising (note 66) (noting that many women choose to abort fetuses detected to be female).
76 See Country Reports on Human Rights Practices for 1993 (hereinafter: Country Reports 1993), Department of State, 103d Congress, 2d Session, 1994, 1230 ("In the typical dowry dispute [in India], a groom's family will harass a woman they believe has not provided sufficient dowry. This harassment sometimes end in the woman's death, which family members often try to portray as a suicide or kitchen accident .... Government figures show a total of 5,377 dowry deaths in 1993 .... Nonetheless, convictions in dowry death cases are rare."); compare UNHDR 1994 (note 64), 31 (women's groups in India put the number of dowry deaths at 9,000); see also Jaising (note 66), 53, 55 (notes that when dowry is not met, if psychological and physical abuse does not drive the women to suicide, they are often victims of bride burning; she further reveals in some parts of India the custom of sati still exists where a widow will be burned or buried alive along with the body of her deceased husband).

77 See Anna Y. Park, The Marriage Fraud Act Revised: The Continuing Subordination of Asian and Pacific Islander Women, Asian American Pacific Island Law Journal, vol. 1, 1993, 29, 47 (noting that in the past, Chinese women were forced to bind their feet which in many cases resulted in gangrene); Hong (note 73), 96 (noting that gender images such as foot-binding have been used as symbols of China's "backwardness").

78 The Human Rights Watch World Report 1994 noted that:

[a]n estimated 20,000 to 30,000 Burmese women and girls were believed to be held in Thai brothels .... Expecting to work in restaurants and factories, most of them became trapped in brothels instead, under deplorable conditions that amounted to a modern form of slavery. The Burmese were being held in debt bondage and compelled to have sex with as many as ten to fifteen customers a day in order to pay off their recruitment, transportation and living expenses.

HRWWR 1994 (note 68), 360; see also Akram Mirhosseini, After the Revolution: Violations of Women's Human Rights in Iran, in: Peters/Wolper (note 21), 72, 73 (noting a form of sexual slavery in Iran, in that a married woman "must be at all times willing to meet her husband's sexual needs, and if she refuses, she loses her right to shelter, food, and clothing").

79 Country Reports 1993 (note 76), 1281 ("In public, Muslim women are required to wear the abaya, headscarf and face veil. ... Saudi authorities have repeatedly said that non-Muslim women need not wear the abaya and headscarf. However, the Mutawwa'in [volunteer religious police] have increasingly tried to force all foreign women to wear the abaya and cover their hair."); see also Mirhosseini (note 78), 74-75. To be sure, very recently a Turkish mother and daughter were killed by male relatives for not observing the Islamic dress code, and an Islamic gunman in Gumushane assassinated the leader of a legal association who would not let female lawyers wear head scarves in court. Islamic Dress Code Deaths, New York Times, Aug. 3, 1995, A8.

80 See Country Reports 1994 (note 60), 567 (according to survey of 2,100 Chinese families, "one-fifth of all wives had been abused by their spouses").

81 See Mirhosseini (note 78), 73 ("A husband, father, or brother has the right to kill his wife, daughter, or sister – and go unpunished – if he finds her committing an 'immoral' or 'unchaste' act [such as having sex with a man not her husband]."); see also Mertus (note 21), 140 (in Brazil, wife killings, called "honor killings" often went unpunished, and in one year almost eight hundred husbands killed their wives); James Brooke, 'Honor' Killings of Wives Is Outlawed in Brazil, N.Y. Times, 29 March 1991, B16.
bearing and birthing, to name but a few. It is inconceivable that these practices, that some accept without protest because they are based on sex, would be considered justified if they were instead predicated upon another protected classification, such as race (although until recently, culture and tradition were used to justify racial discrimination, including apartheid and slavery). Yet, all these practices, individually and collectively, interfere with women's general well-being and perpetuate women's second-class status and conditions.

In fact, the United States Department of State (another institution whose crowning glory is certainly not gender equality) recognizes "the problem of rampant

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82 The Human Rights Watch World Report 1994 noted that:
Women victims of rape reported being threatened with forcible impregnation. A number of women recounted that, as they were being assaulted, rapists taunted them with ethnic slurs or stated their intentions to impregnate the victims. J., a thirty-nine-year-old Croatian woman who was raped by a reserve captain of the self-proclaimed "Serbian Republic" in the Omarska detention camp, told us, "They said I was an Ustasa and that I needed to give birth to a Serb – that I would then be different."

HRWWR 1994 (note 68), 360; see also Bunch (note 64), 16 ("Compulsory pregnancy both kills women and forces them into involuntary labor ... ").

83 Reproductive freedom includes the right to have or to refrain from having an abortion. The latter, albeit not the usual perspective, is an important consideration because large, populous countries, notably India and China, in an attempt to curb tremendous populations, not only encourage but also often apply coercive pressure on women to have abortions – even when women would rather carry the child. For a discussion of China's coercive population control policies, see E. Tobin Shiers, Coercive Population Control Policies: An Illustration of The Need For a Conscientious Objector Provision for Asylum Seekers, Vir. J. Int'l L., vol. 30, 1990, 1007, 1010-1016; Country Reports 1994 (note 60), 561 ("Chinese officials acknowledge privately that there are instances of forced abortions and sterilizations"); Hernández (note 71), passim; Jaising (note 66), 51 (noting that, in India, many women are forced to abort if the fetus is detected as female); Hong (note 73), 97 (discussing recent Chinese government plan for forced sterilization and abortion).

84 See Cook (note 66), 30-32 (noting that a woman's right to found a family includes right to "plan, time and space the births of children so as to maximize their health and her own"). For the origins of these rights, see Department of International Economic and Social Affairs, Population and Human Rights: Proceedings of the Expert Group Meeting on Population and Human Rights (hereinafter: United Nations 1990); Hernández (note 71), 310, n. 9 (noting documents which recognize right to freely and responsibly determine number and spacing of children); Rebecca J. Cook, Abortion Laws and Policies: Challenges and Opportunities, International Journal of Gynecology & Obstetrics, Supp. 3, 1989, 61, 67 (noting that pregnancies that come too early or too late in reproductive lives, too close to another pregnancy, or too frequently raise rates of maternal mortality).

85 See, e.g., Charles R. Lawrence III, Forward: Race, Multiculturalism and the Jurisprudence of Transformation, Stanford Law Review (Stan. L. Rev.), vol. 47, 1995, 819 (noting system of apartheid was based on race). Interestingly, the United States once utilized a similar cultural justification to sanction the institution and maintenance of slavery. See Mikell (note 72).
discrimination against women" and the resulting myriad human rights violations women suffer simply because of their sex. Women worldwide are rendered invisible and silenced by being killed, physically abused into submission, and even starved.

86 See Country Reports 1993 (note 76), xvi.

87 Basically, the Department of State agrees with and confirms the UN's evaluation concerning the status of women worldwide. The State Department reports that there exists: the problem of rampant discrimination against women. Physical abuse is the most obvious example. In many African countries, the practice of female genital mutilation continued. In Pakistan, many women in police custody are subjected to sexual or physical violence. On several continents, women and girls are sold into prostitution. In many Gulf countries, domestic servants from Southeast Asia are forced to work excessively long hours and are sometimes physically and sexually abused. In Bangladesh and India, dowry deaths continue. Marital rape in many countries is not recognized as a crime, and women raped or beaten at home often have no recourse. That female life is not valued as much as male life is apparent in countries such as China where it is reported that more female fetuses than male are aborted.


88 For example, the Shining Path insurgency in Peru "often murdered [women], either to punish, intimidate, or coerce particular female victims or as part of their efforts to achieve broader political ends." HRWWR 1994 (note 68), 359. The greater value placed on males is sometimes evidenced before birth. In some countries, pre-natal testing is used to ascertain the sex of the fetus which may then be aborted if it proves to be female. UNHDR 1995 (note 4), 7. Such sex-based feticide is arguably a violation of human rights. See, e.g., ICPD (note 16), 4.23 ("Governments are urged to take the necessary measures to prevent infanticide, prenatal sex selection, trafficking in girl children and use of girls in prostitution and pornography."). Similarly, the phenomenon of "missing women" - a shortfall of the expected male to female ratio in population - estimated at over 100 million women is attributed to the lack of value in female life ranging from feticide to less adequate nutrition being provided to girls than boys. UNHDR 1995 (note 4), 7, 35.

89 See, supra, note 75; see also UNHDR 1994 (note 64), 31 ("In no society are women secure or treated equally to men .... And from childhood through adulthood, they are abused because of their gender .... It was recently estimated that one-third of wives in developing countries are physically battered. One woman in 2,000 in the world is reported to have been raped."); UNHDR 1995 (note 4), 7 (studies in various countries show sexual abuse of females during childhood or adolescence; a million children in Asia, mostly girls, are forced into prostitution; approximately 100 million girls experience female genital mutilation; high percentage of married women experience domestic violence; high percentage of women are raped in their lifetimes; high percentage of women are murdered by present or former partners; and marital violence is a leading cause of female suicide).

90 See, supra, note 66; UNHDR 1995 (note 4), 35 ("[P]erception is widespread that infant boys are fed more adequately than infant girls .... [A]dult women suffer more than men from malnutrition .... ").
In addition to such direct physical abuses, women's rights and freedoms are further imperiled by the systematic denial of their political, economic, social, and other legal rights which purportedly ensure women's full participation in the cultural and political life of the state. Even as we enter the 21st century, there are still women worldwide who are silenced by exclusion from such basic activities as voting, traveling, and testifying in court. In addition, women are shut out of the right to political participation is guaranteed by, *inter alia*, Universal Declaration (note 3), Art. 21; ICCPR (note 3), Art. 25; CEDAW (note 3), Arts. 7–8; European Convention (note 3), Arts. 10–11; American Convention (note 3), Arts. 16, 23; Banjul Charter (note 3), Art. 13.

See, e.g., ICESCR (note 3), specifically, Art. 11 (2) (a)-(b) requires equitable distribution of resources. In addition, the CEDAW (note 3), Art. 13 (b), seeks specifically to ensure equal access to economic resources to women. The recently-concluded conference documents also focus on the need for women's economic empowerment. See, e.g., ICPD (note 6), princl. 3, 3.16 (right to development), princl. 10, 4.2, 4.4, 4.12, 4.18, 4.29, 11.1, 11.16 (education), 3.18 (employment), 3.22, 4.1 (economic resources); CDPOA (note 22), commitment 1, 15 (right to development), commitment 5 (education), commitments 3(c), (f), 5(g), 45, 51(d), 73(d), 82 (employment), 26, commitments 1, 2, 3, 6, 9, 26(e), (g), 56(c) (economic resources). Much of the discourse in Beijing addressed women's much-needed access to economic resources including the issue of women's non-remunerated employment. Beijing Platform (note 19), 62, 158, 167, 209, 212 (access to resources), 60, 163, 180 (access to employment in terms of eliminating gender differences in salary and available jobs); see also Nadia H. Youssef, Women's Access to Productive Resources: The Need for Legal Instruments to Protect Women's Development Rights, in: Peters/Wolper (note 21), 279, 279–284 (noting that land reform laws and resettlement programs in particular discriminate against women who also experience discrimination in access to livestock and credit). Nadia Youssef explained that:

Excluding women from the bases of rural productivity has been achieved by: (1) denying women rights to land ownership; (2) stipulating 'exceptions' for women in cases where full ownership of land is granted irrespective of sex; and, most important, (3) 'masculinizing' the head of household concept on the premise that all families contain an adult male economically responsible for maintaining women and children.

*Id.* at 281.

See, e.g., ICESCR (note 3), *passim*; CEDAW (note 3), *passim* (economic, social and cultural rights of persons).

See, e.g., ICCPR (note 3), *passim*; CEDAW (note 3), *passim* (for recognized civil rights of persons).

See, e.g., ICCPR (note 3); ICESCR (note 3); CEDAW (note 3), *passim*.

See Country Reports 1993 (note 76), xvi (noting that women throughout the world are denied the right to vote); id., 1231 (Kuwaiti women are denied right to vote).

UNHDR 1995 (note 4), 43 ("In some Arab countries, a husband's consent is necessary for a wife to obtain a passport, but not vice versa."). In Iran, married women may not travel abroad without written permission from their husbands or fathers. See *id.* ("Women cannot leave the country without their husband's permission in Iran."); Mirhosseini (note 78), 72. This is also
from economic discourse by being forbidden to inherit and own property, and routinely are denied access to education, remunerated employment, and health care. Girls and women have their nutritional needs and food denied because of

the case in Saudi Arabia, and in Nigeria, where a married woman cannot obtain a passport without her husband’s permission. See generally Marsha A. Freeman, The Human Rights of Women in the Family: Issues and Recommendations for Implementation of the Women’s Convention, in: Peters/Wolper (note 21), 149, 151.

Under Islamic inheritance laws in Kuwait, a Muslim woman may receive only half of what male heirs receive, and “[u]nder customary law in Africa ... where [there] is communal or clan [real] property, a woman has no right to exercise ownership rights over it.” Mertus (note 21), 142. Also, in many countries law and/or tradition dictates that the husband has exclusive control over marital property. Freeman (note 97), 149, 151, 158-159. For example, “[m]arried women are under the permanent guardianship of their husbands and have no right to manage property in Botswana, Chile, Lesotho, Namibia and Swaziland.” UNHDR 1995 (note 4), 43.

Moreover, Rebecca Cook has noted that:

[w]omen suffer additional discrimination, however, because roles identified with female gender are not valued in social and economic terms. Those who perform domestic and child care work in their own homes are frequently regarded as “unemployed” and ineligible for non-monetary benefits related to paid employment .... Service roles associated with females ... have almost invariably been low paid.

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[w]omen suffer additional discrimination, however, because roles identified with female gender are not valued in social and economic terms. Those who perform domestic and child care work in their own homes are frequently regarded as “unemployed” and ineligible for non-monetary benefits related to paid employment .... Service roles associated with females ... have almost invariably been low paid.

Cook (note 66), 6; see also, UNHDR 1995 (note 4), 43 (“Husbands can restrict a wife’s employment outside the home in Bolivia, Guatemala and Syria.”).

See Cook (note 71), 256 (noting historical lack of protection of women’s reproductive health rights); Cook (note 66); United Nations, Women: Challenges to the Year 2000 (hereinafter: Challenges), 1991, 23 (women’s health needs “are almost everywhere inadequately addressed”).
their sex. Moreover, in a cruel twist, simply because of their sex women even are denied custody of the children they have borne.

All of these practices and policies constitute physical, economic, and mental roadblocks to women’s abilities to achieve equality and enjoy full personhood. Yet, considering that the rules of law formally mandate gender equality, these facts of life demonstrate that there is a serious void between the rules of law and the realities of women’s lives, with both conspiring to marginalize and subordinate women.

One significant aspect of women’s exclusion from the legal discourse is the structural exclusion of women from representation. All studies indicate that women are “vastly under-represented in political parties,” their parliamentary representation remains very low, and they are “largely excluded from executive branches of government.” Although some gains are apparent within the United Nations’ professional staff, the “goal of 50/50 gender distribution by the year 2000 in all categories of posts within the United System ... is still far from being met. Women represented 39 per cent of professional staff on geographical appointments as of November 1999, an increase from 34 per cent in 1995.” However, at higher levels, the representation is lower. While women comprised “48 per cent of the junior professionals [, they comprised] only 21 per cent of senior management in 1999. Of 21 Under-Secretary-Generals, two were women.” Women’s representation in spe-

103 See, supra, note 66. In Bangladesh, girls have a 70% higher mortality rate than boys. Girls are likely to receive less access to health care than boys in many countries, and in the developing world girls are more than four times as likely as boys to be malnourished. See Challenges (note 102), 23. A shocking example of discriminatory health practices is revealed in a picture of a Pakistani woman holding her two small twins. The boy, who was breast fed, is plump and healthy-looking. The girl, who was bottle fed, is less than half her brother’s size and obviously near death from malnourishment. The woman’s mother-in-law told her that she did not have enough breast milk for both children, so only the boy was breast fed. The twin sister died the day after the photo was taken. Id.; see also UNHDR 1995 (note 4), 35.

104 For example, Qatari women rarely retain custody of children after a divorce, and non-Muslim women never do. See Country Reports 1994 (note 60), 1163. In Iran, women only retain custody of children if both the father and grandfather of the children are dead. See Mirhosseini (note 78), 73; see also Mertus (note 21), 135, 141 (noting that under Shar’ia, women lose custody of their children when boys are seven (or reach puberty) and girls are nine (or of marriageable age)).

105 The World’s Women 2000 (note 57), 164.

106 Id.

107 Id., 165.

108 Id., 167.

109 Id. “Although the rate of progress is slow, the representation of women at the senior professional level has improved “from 25 percent to 33 per cent in 1999.”
cialized agencies is somewhat better, including at UNICEF (48% of staff and 39% of senior managers), UNFPA (47% of staff and 39% of senior managers), WFP (40% of staff and 22% of senior managers), UNHCR (38% of staff and 14% of senior managers), UNDP (38% of staff and 21% of senior managers), and UNESCO (39% of staff and 20% of senior managers). 110

In the end, the stark reality is that

[w]omen still constitute 70% of the world's poor and two thirds of the world's illiterates. They occupy only 14% of managerial and administrative jobs, 10% of parliamentary seats and 6% of cabinet positions. In many legal systems, they are still unequal. They often work longer hours than men, but much of their work remains unvalued, unrecognized and unappreciated. And the threat of violence stalks their lives from cradle to grave. 111

These disparities in the condition of women can now be underscored because women's activism insisted that investigators gather statistical data disaggregated by sex. This is one of the results of the feminist intervention into global issues.

C. Feminist Critiques – The Woman Question 112

This section explores the interrogations of norms, social and legal, urged by feminism. Here, the essay will not generalize about feminist writing but rather will expose feminist thought with the aspiration of understanding and assessing the benefits to be gained by embracing a feminist approach to international law. With this end in mind, this section first provides a general historical context setting out the emergence of feminism. It then reviews the major branches of and primary themes in feminist thought that have served to shape feminist legal perspectives and surveys feminist approaches to feminist legal theory, including feminist thought in international law.

110 Id., 168.


I. Historical Background

1. The Emergence of Feminist Movements

Feminism has been defined as the "ideology of women's liberation," and as "an analysis of women's subordination for the purpose of figuring out how to change it." Feminism embraces the unique idea that women are human too. It is the revolutionary concept that women are autonomous beings entitled to rights and community members entitled to consideration. It includes the radical vision that women are full citizens, part of a polity entitled to have their voices heard, their goals met, their desires fulfilled, their participation accepted, their contributions acknowledged, and their presence respected. Feminism crosses boundaries of race, ethnicity, class, religion, nationality, language, and ability with the goal of a world in which women enjoy full personhood.

There are three identified 'waves' of feminism which correspond to the progressions in the feminist movement over time. The first wave took place in the nineteenth and early twentieth centuries. Its goal was to obtain equal rights for women, such as the right to vote which most women in Europe obtained after World War I and women in the United States did not obtain until 1919.

Three “streams of thought” influenced this first wave. One was liberal political philosophy which focused on equality and the ‘rights of man.’ The rights propounded by liberal ideology, intimately connected with the seventeenth and eighteenth century liberal philosophers whose works were foundational to the ideals of the French and American revolutions, included the concepts of autonomous individualism, private property rights, and citizens’ rights to participate in government. Indeed, “[t]his was the period of the great ‘liberal thinkers’ and the develop-

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113 Maggie Humm, The Dictionary of Feminist Theory, 1989, 74 (noting that “feminism incorporates in all its approaches ... the belief that women suffer injustice because of [their] sex” and that feminism’s goals are generally “equal rights for women” and creating “a world for women beyond simple social equality”).


116 Lorber (note 115), 2; see US Constitution, Amendment XIX. But French women did not obtain this right until after World War II. Lorber (note 115), 2.

117 Eisenstein (note 115), xv.

118 Id.; Lorber (note 115), 1; see also Hernández-Truyol (note 115) (noting international human rights foundation in liberalism, and the meanings of liberal ideology); Berta E. Hernández-
The Promise of Multiple Feminisms

opment of social contract theories. Philosophers such as Rousseau argued for the rationality of man, holding that all mankind had the capacity to reason but that women, by nature, should be confined to domestic education and tasks. Significantly, these 'rights' and the concept of equality evolved with white men being the only rights holders, as women, slaves and indentured men servants were specifically excluded.

The second stream of thought that influenced the first wave of feminism was socialist theory. This construct added an element of economic rights to the rights discourse, as evidenced in the post socialist revolution constitutions of Mexico and Russia as well as in the Constitution of the International Labour Organization.

The third stream of influence was the late nineteenth- and early twentieth century examination of sexuality and sexual behavior in their social and political contexts. This stream focused on "a woman's right to 'own' her body and to plan her pregnancies" and was the foundation for the twentieth century "fight for legal means for contraception that could be controlled by the woman." These three streams reflected feminism's "explorations of three areas of freedom: political, economic, and sexual."

Whereas the first wave of feminism focused on equality of men and women, the second wave interrogated the differences between men and women. Historically, women's subordinated status has been justified by women's difference from men in a society, politics, and culture that have been crafted in terms of men's outlooks,


Lorber (note 115), 1-2.

Eisenstein (note 115), xv; Lorber (note 115), 2.


Eisenstein (note 115), xv. The author explains that "[i]n the first instance this tradition grew from the work of Havelock Ellis and Freud and his students. It was extended by writers such as Wilhelm Reich, Margaret Mead, and Erik Erikson, and by the members of the Frankfurt school including Herbert Marcuse. This was the strand of social theory that examined the relationship of sexuality to society, of repression to civilization, and of the individual psychic formation to the creation and reproduction (or transformation) of the social order." Id., xv-xvi (citation omitted).

Lorber (note 115), 3. Thus, the question was whether men and women should be treated equally because they are the same or equitably because they are different.

Eisenstein (note 115), xvi.

Lorber (note 115), 3.
needs and desires. The underpinnings of the difference are variously attributed to women’s location in the private, and correlative exclusion from the public, sphere; to their role in reproduction, rather than production; and to ascribed social, legal and political roles.

Simone de Beauvoir’s “The Second Sex,” which described women as the “other,” provided a comprehensive account of the location of women in society in the western world and sparked this wave – a post World War II movement. In 1953, she powerfully described this otherness:

Thus humanity is male and man defines woman not in herself but as relative to him; she is not regarded as an autonomous being. ... She is defined and differentiated with reference to man and not he with reference to her; she is the incidental, the inessential as opposed to the essential. He is the Subject, he is the Absolute – She is the Other.

De Beauvoir's social critique unveiled norms and values as being far from neutral, but rather as being male-defined. Men's dominance and women's subordination became understood as social constructions and not results of biological determinism.

The political movement that advanced this wave in the industrial world did not take hold until the 1960s when feminism provided the momentum for large-scale social change that ultimately resulted in women’s presence in the academy, government, and the fields of law and medicine.

The third wave challenged traditional knowledge “about sex, sexuality, and gender – the duality and oppositeness of female and male, homosexual and heterosexual, women and men. ... These feminist theories ... argue that there are many sexes, sexualities and genders.”

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127 De Beauvoir (note 55), xix.

128 De Beauvoir (note 55), xviii–xix. Octavia Paz, the 1990 winner of the Nobel Prize in Literature, presenting the Mexican man’s conception of “woman,” provides a similar sentiment: “the Mexican considers woman as an instrument of male desires and of the ends assigned to her by morality, society, and the law ... . In a world made in man’s image, woman is only a reflection of masculine will and desire. ... Womanhood, unlike manhood, is never an end in itself.” Octavia Paz, El Laberinto de la Soledad y Otros Obras, 1993, 57 (author’s translation).

129 Lorber (note 115), 3; see de Beauvoir (note 55).

130 Lorber (note 115), 4. Post colonial societies in the south, as well as middle eastern and Asian states, also engaged in struggles for the well-being of women and girls. Although such initiatives might not be labeled feminist, they are in the spirit of feminism and thus are intended to better the position and condition of women in society.

131 Id.
2. Feminist Legal Perspectives

Feminist theory asks the 'woman question' concerning structures and norms in society to interrogate how gender has affected the development of those structures and norms and what impact the gendered nature of those developments have had on women. Feminist legal theory engages in similar explorations with the particular concern of how gender bias has affected the development of the law and legal structures and what differential impact these developments have had on men and women. In the international context, feminist legal theory is utilized to analyze the structures that exist in the international realm – both substantive and procedural norms as well as institutional – and how those have effected the marginalization of women vis-à-vis the international legal system.

Feminist legal inquiry has resulted in the realization that gender bias is not an accident in the law, but rather a central force in its development. Significantly, feminist legal theory is a very young discipline, dating only to the early 1970s. In the international realm the feminist critique did not emerge until 1991 with the Charlesworth, Chinkin, and Wright article “Feminist Approaches to International Law.” Thus, its promises and possibilities are yet to come.

Although feminist legal theory, like feminist theory, embraces varying approaches and focal points, it underscores the deep schism that exists between law and the reality of women's lives. Domestically and internationally this disconnect serves to explain why women – regardless of race, class, ethnicity, nationality, religion, marital status, color, ability, and social origin – exist at the margins of society. In the twenty-first century, women are still viewed primarily in their reproductive roles, as second class citizens, as victims, and as in need of protection in both times of war and peace.

Because of this divide between legal rules and women's realities, feminist legal theory analyzes how the law is complicit in women's subordination. In engaging in such analysis, feminist legal theory not only recognizes but also values women's experiences. It understands that, because of the different experiences the sexes have in society and within law, the sex of legal actors – counsel, judges and other representatives such as legislators – may well be relevant to the outcome of a legal analysis.

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132 Martha Chamallas, Introduction to Feminist Legal Theory, 1999, 2 (“Gender bias constitutes a pervasive feature of our law, rather than merely representing isolated instances of abuse of law ... hav[ing] dissected legal doctrines and the language of court opinions and statutes to find hidden mechanisms of discrimination and uncover the implicit hierarchies that are contained within a body of law.”).

Like their counterparts (and precursors) in the social sciences, feminist legal scholars seek to effect social change. Their focus, however, is on the reformation of law and legal structures. Feminist legal scholars focus on unearthing the locations that effect or preserve women’s subordinated status, ask why they are persistent across time and cultures, and then seek to change these manifestations in the law and legal systems.134

To be sure, the latter function is broad and far-reaching. In the domestic sphere, it reaches substantive areas that range from economics (considering women as homemakers (unpaid labor) as well as generally underpaid wage laborers) to sex (including sexual exploitation such as prostitution, rape, sexual harassment and domestic violence, as well as sexuality); from motherhood and reproduction to welfare reform, abortion and single motherhood.135

In the international sphere, the considerations range from the absence of women in international institutions, to their absence in the “vocabulary of international law.”136 As Charlesworth and Chinkin noted

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[...]

[...]

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[...]

Martha Chamallas has described five ‘moves’ or theoretical tools used by feminists to engage in critical analysis of the law. First is the significance of the experience of women in the context of the law so as to expose the locations of its subordination or exclusion of women.138 Second is the asking of the ‘woman question’ in order to

134 See e.g., Clare Dalton, Where We Stand: Observations on the Situation of Feminist Legal Thought, Berkeley’s Women’s Law Journal, vol. 3, 1988–1989, 1, 2 (defining feminism as “the range of committed inquiry and activity dedicated first, to describing women’s subordination – exploring its nature and extent; dedicated second, to asking both how – through what mechanisms, and why – for what complex and interwoven reasons – women continue to occupy that position; and dedicated third, to change”).

135 See Chamallas (note 132), 7, chapters 7–9.

136 Charlesworth/Chinkin (note 56), 49.

137 Id.

138 Chamallas (note 132), 13 (“The emphasis on women’s experience is especially useful to identify exclusions in the law, particularly injuries that have not been recognized by courts or legislatures or have been minimized because women’s experience is not adequately expressed in the law.”).
identify gender bias in ostensibly neutral rules, theories, and concepts. The third move is the recognition of a “double bind” or “catch 22,” including the dilemma of difference which is grounded on the pervasiveness of gender bias in the law. The fourth move – “reproducing patterns of male domination” – is the recognition “that change is not inherently progressive and that even substantial shifts in rhetoric and rules may not bring about major improvements in women’s lives.” Finally, the fifth move, “unpacking women’s choice,” deals with the substitution of the old myth that women did not have the intellect or the moral force to be public actors with a new myth: the idea that women are in subordinated spaces because they choose that location, an idea that ignores the persistent structural reasons behind women’s subordination.

Just like feminist theory experienced three waves, so did feminist legal theory. The first wave also was an ‘equality’ stage (identified with liberal feminism) in which women were said to be the same as men. This phase emphasized similarities between men and women in order to assert that as similarly situated persons they should be treated similarly.

The second wave, like the second feminist wave, focused on differences between men and women. As de Beauvoir had done three decades earlier, Catharine MacKinnon powerfully articulated the idea behind difference legal feminism – the maleness of norms that pose as neutral. MacKinnon observed that virtually every quality that distinguishes men from women is already affirmatively compensated in this society. Men’s physiology defines most sports, their needs define auto and health insurance coverage, their socially designed biographies define workplace expectations and successful career patterns, their perspectives and concerns.
define quality in scholarship, their experiences and obsessions define merit, their objectification of life defines art, their military service defines citizenship, their presence defines family, their inability to get along with each other – their wars and rulerships – defines history, their image defines god, and their genitals define sex.\(^{147}\)

Interestingly, difference feminist analysis became a necessity when the shortcomings of sameness feminism became patent. In some respects, women and men are not similarly situated, most notably in their reproductive functions. Given the male normativity of rules and standards, a pregnant woman could never be equally positioned to a nonexistent pregnant man. Thus, a pregnant woman could be denied rights unless a difference standard could be articulated.\(^{148}\) Beyond reproductive capacity, the discussions on women’s real differences within the legal system centered on “the feminization of poverty, the gender gap in politics, the ‘glass ceiling,’ and other phenomena which made it clear that, in many ways that mattered, men and women were different.”\(^{149}\)

The third wave – called “postmodernism” by Patricia Cain\(^{150}\) and “diversity stage” by Martha Chamallas\(^{151}\) – centrally critiqued essentialism and rejected general and universal categorizations of women as falsely and inappropriately homogenizing. One focus was on the diversity – of race, ethnicity, class, and sexuality – of women. In addition, these feminisms considered the multidimensional nature of women and the multiple oppressions from which diversity results.

As the analysis below shows, the waves of feminism are reflected in the various feminist models. Significantly, various systems of categorizing feminisms exist,\(^{152}\) but the definitional borders are not static. In reality, the borders are quite porous.\(^{153}\)

\(^{147}\) MacKinnon (note 15), 36 (citation omitted).

\(^{148}\) Cain (note 144), 360 (“Once women began to be treated like men, people began to notice that women really are not like men. Women are most noticeably not like men when they are pregnant.”).

\(^{149}\) Chamallas (note 132), 25.

\(^{150}\) Cain (note 144), 362–63.

\(^{151}\) Chamallas (note 132), 23, 85–112.

\(^{152}\) See, e.g., Gayle Graham Yates, What Women Want: The Ideas of the Movement, 1975 (labeling the strands of feminism as “feminist,” “women’s liberationist,” and “androgynous”).

\(^{153}\) See, e.g., Eisenstein (note 115), xx (“[T]he lines between these definitions have begun to blur somewhat, as feminist practice outstrips feminist theory: in the current women’s movement there are probably more subcategories and variations than these definitions can encompass.”) citing Alix Shulman, Dancing in the Revolution: Emma Goldman’s Feminism, Socialist Review, No. 62, (March–April) 1982, 31–44 (listing “bourgeois, socialist, conservative, radical, lesbian-separatist, the feminism of women’s culture ‘(called in France ‘neo-femininity’), the woman’s studies movement, the woman’s health movement, the reproductive rights movement, and many more” as various feminist movements).
models, however, have one thing in common: they are centered on the idea of women's full personhood.

II. Major Branches of Feminism

1. Liberal Feminism

Liberal feminism, the prevalent form of feminism in the 1960s and 1970s, focused on women as individuals and on equality. The liberal-feminist tradition dates to 1779 when Mary Wollstonecraft published "A Vindication of Rights of Women" positing, contrary to the prevailing (male) liberal philosophers, "that women also have the capacity to reason and, therefore, should have equal rights with men." Liberal feminism, also known as egalitarian or bourgeois feminism, "is grounded in the claims of the classical liberal philosophy developed by Locke, Rousseau, Bentham and Mill for equal rights, individualism, liberty and justice." In this approach, the roots of women's second-class citizenship are their lack of opportunity and education. Consequently, the goals of liberal feminism is to obtain equality for women by seeking equal treatment in the professions and politics. This approach, however, suggests that women's equality can be achieved in the context of already existing social, economic, and political structures of democratic societies without any need to reform or reconstitute those structures.

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154 Ollenburger/Moore (note 119), 17.


156 Sonya Andermahr et al., A Concise Glossary of Feminist Theory, 1997, 123; see also Ollenburger/Moore (note 119), 17 (“The social groundwork for this theory arose during the French Revolution and the Enlightenment in Western Europe. These massive social changes provided both political and moral arguments for the ideas of ‘progress, contract, nature, and reason’ that broke traditional social ties and norms [citation omitted]. The assumption is that if women are allowed equal access to compete, they will succeed.”).

157 Id. (observing that "the cause of women's oppression is rooted in individual or group lack of opportunity and education").

158 Lorber (note 115), 19; see also Ollenburger/Moore (note 119), 17 (“[T]he solution for change is for women to gain opportunities primarily through the institutions of education and economics ... ”).

159 Eisenstein (note 115), xx (suggesting a flaw in the idea “that women's liberation can be fully achieved without any major alterations to the economic and political structures of contemporary capitalist democracies”).
Liberal feminism, however, does not unveil the gendered nature of the structures themselves. It exposes, rather, the gender inequality that arises out of the stereotyping and devaluing of women. It also calls attention to the prevalent sex discrimination and sex-role stereotyping that exists in the public sphere— at work and at school. An example of the inequalities that liberal feminism unearths is sex-based job stratification in which women's jobs are less compensated, and in which women's achievements are limited by a glass ceiling. Liberal feminism also underscores the subordinated position of women in the private sphere, where women's only locations are as wife and homemaker, and considers women's limitations when their sole function is reproductive without any supporting services, such as childcare.  

Like liberal feminist theory, liberal feminist jurisprudence focuses on the autonomy of the individual and insists that women like men are entitled to the freedoms at the core of liberal theory such as “[r]ationality, individual choice, equal rights and equal opportunity.” Rather than challenge existing rules and structures, liberal feminists argue that women, just like men, ought to have access to the protection of the rules and to membership in the structures. The principal aspiration of legal liberal feminists is to obtain equality of men and women in the public sphere. This includes equal opportunity to participate in, be represented in, and be a representative in politics as well as equal market access to jobs, services, and education.

One limitation of liberal feminist legal theory is the ‘similarly situated’ caveat: women will only be deemed to be entitled to rights if they are similarly situated to men. Thus, it requires women “to conform to a male-defined world” if they want

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160 Lorber (note 115), 19.

161 Mary Becker, Patriarchy and Inequality: Towards a Substantive Feminism, University of Chicago Legal Forum (UCLF), 1999, 21, and text accompanying footnote 66.

162 Patricia A. Cain, Feminism and the Limits of Equality, in: Weisberg (note 144), 237; Patricia Smith, Feminist Jurisprudence and the Nature of Law, in: Patricia Smith (ed.), Feminist Jurisprudence, 1993, 4–5 (“The view of liberal feminists, whether classical or modern, is still that the solution to the oppression of women is to provide equal opportunity for all.”); Charlesworth/Chinkin (note 56), 38–39.

163 Chamallas (note 132), 25; Charlesworth/Chinkin (note 56), 38–39.

164 Charlesworth/Chinkin (note 56), 39 (noting, about legal liberal feminists, that “[t]heir primary goal is to achieve equality of treatment between women and men in public areas such as political participation and representation and equal access to and equality within paid employment, market services and education”).

165 Cain (note 162), 238 (“If members of the dominant gender [men] enjoy rights that members of the nondominant gender [women] want, then the only way for women to obtain these rights under existing equal protection doctrine is to argue that, as to the right in question, women are similarly situated to men.”); Mary Becker, Strength in Diversity: Feminist Theoretical Approaches to Child Custody and Same-Sex Relationships, Stetson L. Rev., vol. 23, 1994, 701, 704.
to obtain rights. Notwithstanding this limitation, the equality model is the one that courts in the United States and Europe have embraced in their analyses of sex discrimination claims. In contrast, Canada has taken an approach that considers inequality, and South Africa's new constitution also appears to take gender inequalities into consideration, focusing on unfairness rather than sameness. This recognition of women's inequality is the centerpiece of radical feminism.

On the other hand, notwithstanding its limitations, liberal feminism has been useful in both the domestic and international spheres in addressing areas of concern in which men and women can be similarly situated. Thus, both domestically and internationally, women have made advances when their location — educationally or experientially — has allowed them to be favorably compared to men.

2. Radical Feminism

Radical feminism emerged in the 1970s and "holds that gender oppression is the oldest and most profound form of exploitation, which predates and underlies all other forms including those of race and class" and sexuality as well as other oppressions. Some explain this primacy because women were historically the first oppressed group. Women's oppression is ubiquitous. Women's oppression is the hardest form of oppression to eradicate, and it will not be eliminated by other social changes such as the abolition of a class society. Women's oppression causes the most suffering to its victims; however, this suffering may go unrecognized. Women's oppression provides a conceptual model for understanding all other forms of oppression.

This feminist outlook, which is based not on equality but on differences between men and women, addresses "a system of men's oppression of women (patriarchy) that goes beyond discrimination [and includes] men's violence and control of women..."
through rape, battering and murder." Radical feminism emphasizes structural forms of oppression such as the "legitimation of women's oppression in law, medicine, religion, and other social institutions; the objectification of women's bodies in advertisements, mass media, and cultural productions; and their sexual exploitation in pornography and prostitution." It explains that the gendered ordering in all these structures is socially constructed and not naturally or biologically preordained. Thus, one of its principal objectives was to debunk sex roles and gendered assumptions.

Sociologist Judith Lorber made the following observation:

Radical feminism is not only critical of men's violence and sexuality, it turns male-dominated culture on its head. It takes all the characteristics that are valued by men in Western societies - objectivity, distance, control, coolness, aggressiveness, and competitiveness - and blames them for wars, poverty, rape, battering, child abuse, and incest. It praises what women do - feed and nurture, cooperate and reciprocate, and attend to bodies, minds and psyches. The important values, radical feminism argues, are intimacy, persuasion, warmth, caring and sharing - the characteristics that women develop in their hands-on, everyday experiences with their own and their children's bodies and with the work of daily living.

Radical feminists believe that if women's presence is substantial, women can effect change, based on women's different experiences and on women's different societal, personal, and communitarian values and behaviors. As such, radical feminism directly confronts the gendered social order.

Legal radical feminism, viewed as a more radical form of feminism than liberal feminism, takes many forms, with dominance feminism being one of them. Legal radical feminists of all strands share a basic viewpoint: they are critical of the formal equality approach, particularly its centeredness on sameness - the 'similarly situated' paradigm. In this regard, they observe that while "formal equality may look gender-neutral, ... in application it is androcentric, centered on male needs and male-defined standards because it only applies when women look like men (thus similarly situated)
and even then only entitles [those] women to the rules and practices worked out by men for men."

Moreover, whereas the emphasis of liberal feminists is the individual, radical feminists focus on women as a group—a group that is subordinated to men. Contrary to formal equality, and because of its perceived weaknesses, radical feminist legal theorists, rather than emphasize sameness between men and women, emphasize the differences between men and women. They critique liberal feminism because equality in existing biased norms and institutions simply would serve to perpetuate the existing inequalities.

Indeed, dominance feminists "believe that neither the classical nor the modern liberal view adequately explains women's oppression or provides effective solutions to it. Changing economic structures, eliminating political and educational barriers, and even socializing children will not abolish the subjugation of women so long as society is organized in a patriarchal system." Because patriarchy is pervasive in society, "[t]he only way to change the position of women is to change the way we think about gender itself, to reexamine our assumptions about our nature and relations to others." It is male power that has defined and constructed "woman," a definition and construction that are assumed in all legal structures while giving the appearance of being natural.

As Catharine MacKinnon stated,

\[G\]ender is socially constructed as difference epistemologically; sex discrimination law bounds gender equality by difference doctrinally. A built-in tension exists between this concept of equality, which presupposes sameness, and this concept of sex, which presupposes difference. Sex equality thus becomes a contradiction in terms, something of an oxymoron, which may suggest why we are having such a difficult time getting it. Unlike liberal feminism which does not engage in a challenge of existing social and political structures, radical feminism poses a frontal challenge to such structures. In unveiling their gendered nature, radical feminism opens another avenue for women's progress in local and global societies. This avenue requires a radical reconstruction of the structures and values in society, politics and economics so that women's


182 Chamallas (note 132), 26-27 (noting that dominance feminists seek to "eradicate the domination of women as a class").

183 Cain (note 162), 239.

184 Id.

185 Smith (note 162), 5.

186 Id.

187 Charlesworth/Chinkin (note 56), 43.

188 MacKinnon (note 15), 32-33.
contributions and attributes are valued as hitherto only men's contributions and attributes have been. Both domestically and internationally, that analysis translates to valuing communitarian as well as individual values; family as well as wage work; reproduction as well as production.

3. Cultural Feminism

Cultural feminism developed out of radical feminism; its focus "is that femininity is the most desirable form of human behavior."189 "Cultural feminism is concerned with the identification and rehabilitation of qualities and perspectives identified as particular to women."190 Like radical feminism, it turns patriarchy on its head by reclaiming the devalued feminine traits as positive and desirable.191

The theoretical outlook of cultural feminists "eschew[s] an explicit political or economic program altogether and concentrate[s] on the development of a separate women's culture."192 Like radical feminism, cultural feminism is classified by some as a feminism of difference as it focuses on the distinctive attributes of womanhood.193 Because of this focus on a natural essence of womanness, cultural feminism has been the object of criticism as essentialist.194

One of the most well-known cultural feminists is Carol Gilligan whose research focused on the different ways women and men perceive and navigate the world. Gilligan particularly concentrated on the variable moral development and decision-making processes of men and women. She found that while men reach decisions in a linear manner, with individual autonomy as a foremost consideration, women form their decisions in the context of the social institutions that affect them, including school and family.195

189 Ollenburger/Moore (note 119), 24.
190 Charlesworth/Chinkin (note 56), 40.
191 Andermahr et al. (note 156), 38 (explaining that this desirable women's culture includes "mothering; ... spirituality; ... language; ... lesbianism and 'woman-relatedness'; ... moral reasoning; ... the Greenham Common women's peace movement; ... male violence against women; ... pornography; ... [and] utopian literature").
192 Eisenstein (note 115), xx.
193 Andermahr et al. (note 156), 39.
194 Id.; see id., 67 (defining essentialism as "...the indispensable and necessary attributes of a thing as opposed to those which it may have or not") quoting Teresa de Laurentis, The Essence of the Triangle, or Taking the Risk of Essentialism Seriously: Feminist Theory, in Italy, the U.S. and Britain, in: Naomi Schor/Elizabeth Weed (eds.), Differences: A Journal of Feminist Cultural Studies, 1989, 1, 2, 3-37.
195 Ollenburger/Moore (note 119), 24 ("[M]ost women [and some men] construct knowledge and decisions by integrating 'separate' [e.g., linear, authority-based] ways of knowing with
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In the legal realm, it is considered that “[t]he starting point for this branch of difference feminism [is] to articulate the ways women often [tend] to approach problems, view the world, and construct their identity.” Using equality rhetoric, cultural feminists argue for material changes in present conditions that would support woman-valued relationships. ... A properly constructed feminist jurisprudence would reflect the reality of women’s lives – their essential connectedness.

Cultural legal feminism posits that law privileges a male view of the universe and that law is part of the structure of male domination. The hierarchical organisation of law, its adversarial format and its aim of the abstract resolution of competing rights, makes the law an intensely patriarchal institution. Law thus represents a very limited aspect of human experience. The language and imagery of the law underscore its maleness; it lays claim to rationality, objectivity and abstractness, characteristics traditionally associated with men, and is defined in contrast to emotion, subjectivity and contextualised thinking – the province of women.

Mary Becker has written about a version of cultural feminism that she calls “relational feminism.” Relational feminism focuses on the premise that men and women should have equal opportunities for human happiness and fulfillment, what I call here the goal of full personhood. The “targeted inequalities” of her thesis are structural:

1. Cultural overvaluation of masculine qualities and undervaluation of feminine qualities.
2. Cultural focus on men and male needs with the tendency not to see women as fully human and to be oblivious to women’s needs.
3. Insistence that men and women are essentially different and that men play masculine roles and women play feminine roles.

Becker posited that valuable traits ought to be valued regardless of being denominated male or female and regardless of who displays the traits. Ultimately, she urged that “community, relationships, and traditionally feminine qualities should be valued more and traditionally male qualities should be valued less.”

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196 Chamallas (note 132), 27; Cain (note 162), 241. Interestingly, in legal theory, as contrasted to the social sciences, cultural feminists ignore the lesbian experience. Cain (note 144), 361.

197 Cain (note 162), 241 (“Martha Fineman, for example, has argued for a concept of equality that recognizes and values the special relationship between mother and child. Similarly, Robin West has charged that all modern legal theory is ‘masculine’ because it is based on a view of human beings as primarily distinct and unconnected to each other.”).

198 Charlesworth/Chinkin (note 56), 40–41.

199 Becker (note 161), table A.

200 Id.

201 Id.
challenges cultural values that generate inequalities.” Thus, like radical feminism, cultural or relational feminism seeks to tear down the patriarchal valuation of inherently male structures in order for women’s values and approaches to be accepted and valued in public life and civil society.

4. Third World Feminism/Feminism of Women of Color

Although third world feminism and feminism of women of color could be addressed separately, this work will describe them in one section while indicating their separate concerns. The reason for this single section is to underscore one additional reality: given their lower incomes, educational attainment, health profiles, and political representation, women of color in industrialized states effectively constitute a third world within a first world.

Third world or development feminism focuses on the impact on women of economic development in post-colonial societies. “Development feminism uses theories of colonial underdevelopment and post-colonial development, as well as Marxist and socialist feminist theories, to analyze the position of women in the global economy, with particular emphasis on newly industrializing countries.” It shows that economic exploitation of women in developing states, such as Latin American, Caribbean, and African states, is “greater than in developed economies” as they are “paid less than men workers, whether they work in factories or do piece work at home. To survive in rural communities, women grow food, keep house, and earn money any way they can ...” The impact of globalization on women in developing economies is harsh. Women are paid less than men, continuing the gendered division of labor that was evident during colonization, and are still expected to care for their families and homes.
Finally, development feminism engages the conflict between women’s rights and cultural traditions, such as child marriage, female genital cutting, dowry, and bride killing. This conflict raises the issue of relativism versus universalism—interrogating whether eliminating cultural practices that are harmful to women is an imperialistic Western move that eviscerates minority cultural practices. These issues are often discussed in a communitarian rather than individualistic context and are engaged by the women of the community to find solutions to the ostensible conflicts.

Women of color feminism, or multiracial feminism, on the other hand focuses on the multidimensional nature of discrimination. The concept is that multiple otherness, that is being not only a woman but also being an ethnic, sexual, racial, gender, and/or class minority can, and does have, a combined consequence that effects and exacerbates the marginalization and subordination of women of color. In the United States, for example, where the norm is the white, educated, male model, women, because of their sex, are the other, a condition that is magnified by other deviations from the norm. Moreover, across groups, women are always more disadvantaged than the men. Women of color feminism insists that it is important not to homogenize, essentialize, or seek to universalize experiences of women of color. To be sure, the feminisms emergent from women of color are varied, reflecting the diverse political, cultural, intellectual, and economic struggles that the different groups and individuals within those groups experience. Thus, feminisms of women of color are multiple and speak in different voices. Nonetheless, there are certain distinguishing characteristics of multiracial feminism:

First, multiracial feminism asserts that gender is constructed by a range of interlocking inequalities, what Patricia Hill Collins calls a ‘matrix of domination.’ ... Second, multiracial feminism emphasizes the intersectional nature of hierarchies at all levels of social life. Class, race, gender, and sexuality are components of both social structure and social interaction. ... Third, multiracial feminism highlights the relational nature of dominance and subordination. Power is the cornerstone of women’s differences. ... Fourth, multiracial feminism explores the interplay of social structure and women’s agency. Within the constraints of race, or sex work as a prostitute, then the fact that she has a job does not give her a very high social status, especially if much of the money she earns is sent back home to her family.”).
class, and gender oppression, women create viable lives for themselves, their families, and their communities. ... Fifth, multiracial feminism encompasses wide-ranging methodological approaches, and like other branches of feminist thought, relies on varied theoretical tools as well. ... Sixth, multiracial feminism brings together understandings drawn from the lived experiences of diverse and continuously changing groups of women. Among Asian Americans, Native Americans, Latinas, and Blacks are many different national cultural and ethnic groups. Each one is engaged in the process of testing, refining, and reshaping these broader categories in its own image.213

Thus multiracial feminism focuses on the interlocking multiple systems of domination that render the categories of “man” and “woman” insufficient to evaluate the condition of women of color who are multiple ‘others.’ In this feminism it is imperative also to consider issues of class, race, and ethnicity in order to engage in analysis of women’s subordination.

Like the third world/women of color feminism in the social sciences, the legal perspective focuses on the various and varied systems of oppression endured by southern women, women from developing economies, and women of color within industrial states.214 Legally, the emphasis is not only on the male nature of law, but its intrinsic class, race, and cultural biases. Thus like radical feminism and cultural feminism it recognizes differences between men and women, but goes beyond those feminisms by also acknowledging differences between and among women. The focus of these discourses include cultural differences, eradication of poverty, globalization, and, in the international context, the differential concerns between poor and rich nations.

Like postmodern feminism (discussed below), third world feminism and feminism of women of color incorporate a rejection of essentialism — “the idea that there is some common, underlying attribute or experience shared by all women, independent of race, class, sexual orientation, or other aspects of their particular situation.”215 Gender essentialism has been identified as more than one thing, as

a grab bag of different, sometimes overlapping problems. One is the problem of false universalism, in which the unstated sometimes unconscious assumption that for purposes of feminism “women” are white, middle-class, heterosexual, able-bodied, and otherwise privileged. A second ... problem ... has to do with the applicability of Western feminism to other cultures.216

213 Id., 138–139 (excerpt from Zinn/Dill (note 212)).
214 Wing (note 210); Wing (note 212).
215 Chamallas (note 132), 86.
216 Katharine T. Bartlett/Angela P. Harris, Gender and the Law: Theory, Doctrine, Commentary, 1998, 1007; see id., 1008–1009 (listing other essentialisms including “reductionism by which the world is viewed through a single lens that reduces social relations to those aspects that support one ‘grand’ theory ... (i) selecting out only one possible source of a woman’s identity – such as her gender, race, class, or sexual preference – and treating it as severable from the rest of her being ... (i) the ‘naturalist’ error [that] assume[s] the existence of certain inherent
Moreover, in domestic spheres, the experiences of women of color within predominantly white societies and of lesbians within predominantly heterosexual societies expose the flaw of essentialism: the impossible task of separating integral parts of identity, to wit, race and sex; gender and sexuality. Hence, they propose a both/and rather than either/or approach. These critiques are translatable to the international realm when considering the various and varied cultures, economics, and experiences of oppression that women around the globe may experience.

In these translations, however, particular care must be taken when evaluating matters of culture. To be sure, neither imperialism nor colonialism—past and present in the form of globalization—should be used as a sword to eviscerate cultural norms, practices, and traditions. Neither should culture be used as a shield against critique or reform of cultural norms, practices, and traditions that effect or perpetuate the subordination of women.

5. Postmodern Feminism

Postmodern feminism contests the existence of any objective reality. Rather, it links all truths to a person’s experience in the world, an experience that in turn is wholly dependent upon one’s position in the world. However, while admitting that there are no absolute truths, postmodern feminism also warns against seeking to construct a ‘new truth’ to replace old ones. Because of the centrality of one’s experience and world-location in world-perception and understanding, there can be or ‘natural’ facts, rather than socially constructed ones, on which the law is or should be based...

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no such thing as an essential woman; no woman voice that is universal; no single theoretical construct that will ensure equality for all women. Thus while it is inappropriate and useless to ask a unitary ‘woman question,’ it is imperative the woman question be asked by contextualizing a particularized inquiry, and not answered provisionally, in a universalized or essentialized manner.

Postmodern feminism sites gender inequality in the existing hierarchy with respect to gender categories. It also looks for gender inequality in the recreation of the categories in all social structures. It unveils “the gender and sexual symbolism in mass culture that supports beliefs about what is normal and natural.” It challenges the normativity of heterosexuality and seeks a voice for and representation of alternative sexual expressions in the social sphere.

Postmodern feminism and queer theory go the furthest in challenging gender categories as dual, oppositional, and fixed. They argue that sexuality and gender are shifting, fluid, multiple categories. Equality will come, they say, when there are so many recognized sexes, sexualities, and genders that one cannot be played against the other.

Postmodern theorists study how cultural texts – in the form of art, literature, the mass media, newspapers, politics, and religion – produce beliefs and images about gender and gender roles. They then deconstruct the texts to show how we are ‘trained’ by the messages to be a certain way. Once the sources of gendered expectations are unveiled, postmodernism allows persons ultimately to make their own individual choices.

Postmodern legal feminism is associated with critical legal studies, and rejects that “categorical, abstract theories derived through reason and assumptions about the essence of human nature can serve as the foundation of knowledge.” One author explained that

[t]he postmodern view of the individual or the ‘legal subject’ opposes the Enlightenment view of the stable, coherent, and rational self with a more complicated view of the individual as ‘constituted’ from multiple institutional and ideological forces that, in various ways, overlap, intersect and even contradict each other. Although these forces join to produce a reality that

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220 Id.
221 Hernández-Truyol (note 204); Hernández-Truyol (note 217); Berta E. Hernández-Truyol, Latinas, Culture and Human Rights: A Model for Making Change, Saving Soul, Women's Rights Law Reporter (forthcoming); see also Cain (note 162), 243.
222 Lorber (note 115), 173.
223 See Lorber (note 115), 173 (noting that postmodern feminism argues for “making a place for homosexuality, bisexuality, transvestism, and transsexuality to be openly part of Western culture”).
224 Id., 174.
225 Id., 188.
226 Smith (note 162), 6.
the individual subject experiences as real or true, it is in fact a reality or truth that is 'con-
structed'.

This viewpoint posits that it is a male approach that suggests there can be one answer
to a question or one truth that can explain all questions. “For postmodern feminists
there is no single solution and no single oppression of women, but only solutions
tailored to the concrete experience of actual people.”

Significantly, for the postmodern feminist inquiry, unlike the liberal and radical feminist inquiries,
respectively, the issues of sameness or difference are irrelevant as the dichotomies “are
illusions caused by the flawed structural frameworks that generate them.”

The postmodern perspective of asking the complex woman question in a non-
universalized and non-essentialized manner – a philosophy that it shares with the
third world feminism and feminism of women of color – recognizes the reality that
law ... does not operate in a monolithic way to oppress women and advantage men. There
are many different voices and experiences and realities unreflected in the law .... Post-modern
feminism is concerned with the specific operation of the law and the particular contexts of
women. This approach emphasises the utility of action at the micro-political level rather than
the uncertain path of law reform.

As such, postmodern feminism, like radical feminism (including cultural feminism)
and feminisms of third world women and women of color, confronts structural as-
sumptions and gendered inequalities. Beyond those, however, it suggests that no one
system can be constructed that will address all structural gender deficiencies in the
existing systems. Thus, it requires a more complex analytical construct that can
accommodate different women's lived realities.

6. Two Other Feminisms

There are two other expressions of feminism that do not focus on developing a
feminist jurisprudence. However, because they do form some part of the general ideas
of difference feminisms – including radical, cultural, multicultural, third world, and
postmodern feminisms, they will be briefly explained.

228 Smith (note 162), 5.
229 Charlesworth/Chinkin (note 56), 45; see generally Wing (note 210); Wing (note 212).
a) Marxist\textsuperscript{230}/Socialist\textsuperscript{231} Feminism

In analyzing the condition of women in society, Marxist feminism reviews the changes in economic structures and reveals how changes in production affected changes in the social organizations of work and family.\textsuperscript{232} With the industrial revolution, which shifted production from agricultural to wage labor, the role of women changed from working the land alongside the men, to staying at home, reproducing, and taking care of household matters in an unremunerated position. At the same time, men left the home and were paid for productive work outside the home.\textsuperscript{233} "The means of production [thus] were no longer owned by the worker but by capitalists, who hired workers at wages low enough to make a profit."\textsuperscript{234} However, while Marxist philosophy recognizes that women's domestic labor is exploitative, it is only the Marxist feminists who make this exploitation the center of their critique of capitalism.

Socialist feminism, unlike Marxist feminism, does not give one form of oppression primacy over another. Rather, "both patriarchy and class are regarded as primary

\textsuperscript{230}See Andermahr et al. (note 156), 125–127 ("[While] Marxism has a long history of commitment to the emancipation of women ... it brings women into the frame principally in the discussion of the family in its relationship to capitalist productions ... . Marxism has no adequate conceptual tools for the understanding of specifically sexual oppression, of gender differentiation, or sexuality. Marxist feminism therefore has necessarily been revisionist, attempting to achieve some kind of synthesis between Marxist theory and feminist accounts of sex/gender systems and sexuality.").

\textsuperscript{231}Andermahr et al. (note 156), 206–207 ("Socialism – the term and the movement – came into existence in the early decades of the nineteenth century in France and Britain, in the form which was dismissed later in the century by Marx as 'Utopian'. It was a theory that emphasized community over individualism; equality; and a commitment to the common collective good. ... Marxism is of course a socialism ... . The attraction of socialist over Marxist feminism for those who made this choice was not least the record of utopian socialist writings and social experiments in placing the issue of women, of relations between the sexes, sexuality, and domestic life, high on the agenda.").

\textsuperscript{232}Ollenburger/Moore (note 119), 19–20 ("Marxist feminists trace the oppression of women to the beginnings of private property. The cause of women's oppression is linked to social organization of the economic order ... . The component that distinguishes Marxist feminism from other feminist theories is that capitalism or class oppression is the primary oppression. Class oppression is specifically related to the way in which capitalism works to hold women in degraded positions. Within capitalist systems, women are used as a cheap pool of reserve labor that deflates overall wages and establishes a sex-segregated workforce with differential pay scales. ... Marxist feminists presume that only after economic oppression is resolved can patriarchal oppression be eradicated.").

\textsuperscript{233}Lorber (note 115), 32.

\textsuperscript{234}Id.
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Socialist feminism argues that class, race, and gender oppression[s] interact in a complex way, that class oppression stems from capitalism, and that capitalism must be eliminated for women to be liberated. Like liberal feminism it focuses on equality between men and women. But unlike liberal feminism it sources gender inequality in the “exploitation of women in unwaged work for the family [; the] use of women workers as a reserve army of labor – hired when the economy needs workers, fired when it does not [; and on] low pay for women’s jobs.”

Socialist feminism sets forth a “dual systems” theory which considers “patriarchy and capitalism as twin systems of men’s domination of women.” Thus feminists with this theoretical framework in mind, analyze the ways in which the dual systems of “the economy (capitalism) and the family (patriarchy)” affect the lives of women and men differently. While capitalism exploits man in the public sphere, when one looks at his home life, he has myriad services – cooking, cleaning, washing, raising children – for free. Indeed, this strand of feminism proposes that women should be paid for housework and childcare. Women’s work at the home is both productive and reproductive, and outside the home it is often underpaid. Hence, women’s working conditions are exploitative. Based on the structural disadvantages of women’s work because of the job segregation and the underpaid nature of women’s work, socialist feminists support the concept of comparable worth.

Socialist feminists, unlike Marxist feminists, do not believe that “equal access or economic revolution or productive control alone will eliminate women’s oppression.” While patriarchy is held to blame for the ubiquitous gendered labor segregation, it is viewed as different from economics and “[b]oth forms of oppression must be eradicated to liberate women.”

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235 Ollenburger/Moore (note 119), 23 (explaining that “the introduction of private property was associated with both class oppression [control of property and production resources by the bourgeoisie] and the oppression of women [patriarchal laws that grant men control of women’s property through marriage]”).

236 Eisenstein (note 115), xx.

237 Lorber (note 115), 31.

238 Id., 34.

239 Id., 33.

240 Id., 36.

241 Id., 43.

242 Id., 37.

243 Ollenburger/Moore (note 119), 23.

244 Id.

245 Id.
Although women have not engaged and developed legal socialist/Marxist feminism, Catharine MacKinnon wrote a book that uses Marxist and Socialist analyses in seeking to craft “a feminist theory of the state.” Moreover, given the evidence of the gendered impact on globalization that is emerging, socialist and Marxist feminisms may well be very valuable tools in the analyses of these newly materializing forms of gendered inequalities. For example, it may be a good location from which to explore the impact on families of women’s migration from rural to urban centers to engage in underpaid wage work generated by Western capitalist expansion and investments — such as the Maquiladoras on the United States/Mexico border.

b) Lesbian Feminism

Lesbian feminism, like radical feminism, holds that women’s oppression is the primary and deepest form of oppression. Lesbian feminism views the sources of gender inequality as lying in oppressive heterosexuality and men’s domination of women’s social spaces. Thus it seeks to empower women-identified women by way of creating women-only workplaces, cultural events, and political organizations.

Lesbian feminism emerged in the late 1960s and early 1970s. It involves the ideology that arose out of a political and ideological grouping within the women’s movement. It revealed lesbians’ status as semi-outsiders in both the feminist movement which prioritized heterosexuality and the gay liberation movement which had a predominantly male (and white) agenda.

Although lesbians were a central and active force in the Women’s Movement in the 1960s and 1970s, there was great aversion to recognizing their presence for fear that the label “lesbian” would be imputed to all participants. This reality evidenced


247 Ollenburger/Moore (note 119), 23 (“Women who share their lives and their emotions with their oppressors [inherent within heterosexual lifestyles] are unable to confront their oppressors” because of their economic and social vulnerability.).

248 Lorber (note 115), 85.

249 Id. Lorber suggests that the contributions of lesbian feminism are to provide a critical analysis of heterosexual romantic love and sexual relationships, a location for the exploration of women’s sexuality, the expansion of the concept of lesbianism to include community and culture, and the recognition of the existence of dual battles for women’s rights and homosexual rights.

250 Eisenstein (note 115), 49 (quoting “statements read at a press conference, 17 December 1971, in response to an article on women’s liberation in Time magazine maligning Kate Millet for being bisexual, and dismissing ‘all liberationists as Lesbians’ [quotes from statement by Aileen Hernández, then national president of N.O.W. and Kate Millet, cited in: Abbott/Love (eds.), Sappho Was a Right-On Woman].”) Id., 156, n. 4 (“[At that time, many argued that the impact of this ‘sexual McCarthyism’ was to lose sight of what the women’s movement shared..."
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lesbians' subordinate location in varied parts of society. The reality of the negative impact of the attribution of lesbianism resulted in isolating and silencing women against whom the label was used. Many viewed this "lesbian-baiting" strategy as one of "divide and conquer" for the purpose of weakening the entire movement. Significantly, the strategy was potentially effective because of the societal opprobrium against same-sex relationships.

Lesbian feminism affirms the "primacy of women [as] the source of a new sense of female validity" – an idea that was considered to be at the heart of feminism. Beyond this basic feminist principle, however, lesbian feminism exposes the linkage between heterosexuality and male dominance. In this context, heterosexuality is the idea that man is the norm and woman is defined in relationship to a man who is entitled to her goods and services.

Lesbian feminism transforms love between women into an identity, a community, and a culture. Lesbian feminism praises women's sexuality and bodies, mother-daughter love, and the culture of women, thus expanding sexual and emotional relationships between women into a wholly engaged life. Politically, lesbian feminists fight on two fronts – for all women's betterment and for the civil rights and social worth of lesbians.

Significantly, in the legal discourse there has not been a movement one could label as legal lesbian feminism. This could be in large part because around the world most countries still accept discrimination against individuals because of their sexuality.

To be sure, the Queer Theory Movement has engaged in the legal theoretical critique of the heterosexuality of legal structures, and women are included in the list of critics. In addition, lesbian identity is part of the consideration of women's otherness in women of color and third world feminisms as well as in postmodern with the movement for gay liberation. Both had a common goal: 'a society free from defining and categorizing people by virtue of gender and/or sexual preference. ... A woman is called a Lesbian when she functions autonomously. Women's autonomy is what Women's Liberation is all about'.

251 Eisenstein (note 115), 48.
252 Id., 50.
253 Id., 53.
254 Id., 54 (quoting Charlotte Bunch, Not for Lesbians Only, in: Charlotte Bunch et al. (eds.), Building Feminist Theory, 1975, 68). Charlotte Bunch succinctly stated that "Lesbian feminist politics is a political critique of the institution and ideology of heterosexuality as a cornerstone of male supremacy. It is an extension of the analysis of sexual politics to an analysis of sexuality itself as an institution." Her position was that feminist theory "needed to incorporate the insights into women's oppression afforded by lesbian experience; in particular, it required an understanding of the way in which heterosexuality supported male domination." Id.
feminism. However, as with socialist/Marxist feminism, lesbian feminism may be of utility in the domestic and international arenas in the analysis of, for example, some cultures' forced reproduction roles, or in the progressive development of prohibited forms of discrimination.

D. The Coherence of Feminism in International Law

This final section presents the compatibility of international legal theory with feminist jurisprudence and urges that the theoretical constructs be deployed in tandem with each other so as to create a woman-centered international jurisprudence that can work to enhance the condition of women world-wide. To be sure, as this work has shown, there are multiple feminisms and they all have great utility in the analysis and critique of how international norms, systems, and structures have worked to marginalize women so that they have been absent from international representation and discourse. Similarly, there are many theoretical approaches to international law. Here to show the compatibility of feminist aspirations and approaches with other international methodologies, I look at communications theory and legitimacy theory to show how, together with multiple feminisms, these ideas can present approaches to eradicate persistent inequality of women around the world.

This approach is useful because we all—men and women alike, from most cultures, of all races and abilities, colors and sexual orientations—exist in a world in which our various and varied societies have fashioned images of what is gender-appropriate behavior. Also, as Part B showed, we live in a world in no corner of which women enjoy the same status, prospects, or possibilities as men. This part sets out to craft a methodology that can assist in the goal of full personhood for women, a status that has long eluded us. I ground this substantive concept in international human rights notions of fundamental rights—rights that we have or ought to have because we are human beings. To develop that methodology, as noted above, I will draw from two theoretical models about international law-making—the communications theory and legitimacy theory. Thus my project draws from international law for both process and substance.

First, regarding what I want to borrow from human rights. It is significant that the 'rights concepts' includes both what we might call social, economic and cultural rights as well as civil and political rights and solidarity rights—all rights necessary for women to attain full citizenship. This is significant because as such the human rights model affords us a broad and complex spectrum of what is appropriate and necessary for thriving as human beings; trappings necessary for fulfillment of the human spirit. In addition to protecting particular rights, such as non-discrimination on the basis of race, sex, and color, it also protects other rights of importance to women's full personhood ranging from language to social origin, from political beliefs to culture, from the individual to the family, from the right to work to the right to health.
The basic premise of human rights ideology is that the plethora of rights recognized as fundamental to our thriving as persons, necessary for our human dignity, are deemed to be indivisible, interdependent, and inviolable. In this regard, like both women of color/third world and postmodern feminisms and even cultural feminism, we move beyond the 'either/or' zero sum game approach to rights that so drives the liberal model, to a more communitarian, pluralistic approach that embraces equality and equity in difference.

The human rights model includes economic rights in the rights complex. Thus in looking at whether women are enjoying full personhood we must consider women's economic location - a location that globally is inferior to men's. An economic analysis of women's condition would recognize the violence of economic deprivation, and its disabling, devastating consequences on women. So the first step is to change our box - much like all feminisms have urged, or better even, break out of it, and eschew the adversarial zero-sum conceptualization of rights that has decimated women. Instead, with an approach that embraces the indivisibility and interdependence of rights there is the possibility of addressing all the spaces that are keeping women down - ranging from societies that do not allow women to vote, to those that kill girl children; from those that underpay women to those that do not let them work at all.

The next stage is to at least try to expose the structural gendered inequalities in international law. The communications theory, also known as the New Haven School, and the legitimacy theory are of great utility for such a program. This work uses these theories about international law-making to urge a reconceptualization of law for women. I posit that the principles in law-making, law changing, law interpreting, and law reconceptualizing are fluid parts of a process of law.

The communications theory gives us an insight that once articulated seems quite simple and logical: law-making is a process of communications, it is a discursive endeavor. The New Haven School in essence provides a 'policy-oriented' perspective to law that recognizes that international law - as any legal discipline - is not, and cannot be, a static process. Rather, it "is a continuing process through which the common interest[s] of the members of the world community are clarified and secured. ... The ultimate goal should be the establishment of a world community of human dignity."

This policy perspective approach was developed because the crafters recognized the weaknesses of rule-orientation - weaknesses, I might add, plainly revealed in the various feminist approaches to law. Significantly, among the changes the policy approach suggests, like feminist approaches have urged, is that one contextualizes prob-


lems. It advocates that rather than focus on a rule to solve problems, one ought to focus on the various stages and layers of processes in problem solving. Like the various feminisms discussed, it asks that we relate norms to the social and political values that provide context for the rules, that we expressly consider and evaluate the role of power in normativity, and that we accept the fluid and changing nature of rules and institutions.

This analytical framework, particularly its acknowledgment of the importance and significance of context, is a useful tool for an international feminist jurisprudence project. Such an approach facilitates the deconstruction of the laws to expose their male biases—the unearthing and debunking of the male perspective, masked as neutral, that has stalled women's gains. The discursive approach utilizes social and political constructs in the analysis, including the role of power. Moreover, the contextualization mandate advises that women be participants in the discursive encounters.

The communications theory thus recognizes that decision making involves consideration of more than black letter law, but it also includes consideration of the policies and purposes behind the rules. With respect to women, it forces the recognition of their exclusion in the making of the law itself, thus unearthing a flawed grounding. In short, communications theory scholars urge an epistemological stance, much like feminist jurisprudence urges an epistemological stance—the asking of the woman question. In McDougal's own words:

The most useful conception of law is as a process of decision that is both authoritative and controlling. The function of the responsible jurist, advisor or decisionmaker, who is a part of that process, is to develop an appropriate observational standpoint, clarify community goals, identify and then perform the intellectual tasks that will enable him or her to assist those who seek legal or policy advice in clarifying goals, and [to implement] them in ways compatible with the common interests of the most inclusive community.259

To make a decision, alternatives must be considered; various and varied sets of values must be investigated, taken into account and weighed. "Divorced from policy and context, rules are skeletons without body and soul."260 A feminist articulation of this point is that rules with an inherent and intrinsic male bias and epistemology presented as neutral are faux articulations of law. Such a staid interpretive model, that often functions on the premise of the validity of precedent or stare decisis, hinders creativity in searching for solutions to new and complex problems, such as the persistent problem of women's inequality.261


260 Chen (note 258), 12.

261 Id., 13 (observing that "inherent in ... preoccupation with past decisions is the assumption, conscious or unconscious, that what has been done in the past will, and should be, repeated in the future").
As a contemporary New Haven theorist puts it, "The Copernican Revolution in McDougal's jurisprudence was in unseating rules as the mechanism of decision and installing the human being – all human beings, to varying degrees – as deciders ... McDougal committed himself to developing a theory about law that could establish and sustain a free society ..."\(^\text{262}\)

To be sure, such a vision must embrace the feminist vision of women's liberation.\(^\text{263}\) The discursive approach, which includes the consideration of norms, the recognition of the complexity in society, and the goal of a free society, is what I want to borrow from the communications theory because this approach is compatible with the feminist project of caring about women's positions in societies. Indeed, it furthers the realization of the inappropriateness of women's subordinated and excluded status.

The legitimacy theory, on the other hand, was developed in the context of rule legitimacy in the community of states. That is, legitimacy is the analytical structure that Thomas Franck crafted to analyze why, in a community in which there is no coercive power, states nevertheless obey laws. The thesis was that "in a community organized around rules, compliance is secured – to whatever degree it is – at least in part by the perception of a rule as legitimate by those to whom it is addressed."\(^\text{264}\) The idea of "[l]egitimacy is used ... to mean that quality of a rule which derives from a perception on the part of those to whom it is addressed that it has come into being in accordance with right process. Right process includes the notion of valid sources but also encompasses literary, socio-anthropological and philosophical insights."\(^\text{265}\) This too is an approach that makes context relevant and thus furthers the feminist project.

Franck has identified four elements as "indicators of rule legitimacy in the community of states:[... determinacy, symbolic validation, coherence and adherence (to a normative hierarchy)."\(^\text{266}\) He found that when "rules exhibit these properties, they appear to exert a strong pull on states to comply with their commands."\(^\text{267}\) I suggest


\(^{263}\) Chen (note 258), 14–15 ("[This] policy oriented approach identifies international law as an ongoing process of authoritative decision in which many decision makers continually formulate and reformulate policy .... It projects and relates international law to the living context of the contemporary world rather than to the inner or unreal world of autonomous rules and logical exercises .... In sum, this policy oriented approach is contextual, problem-solving, and multimethod in nature.").

\(^{264}\) Thomas M. Franck, Legitimacy in the International System, AJIL, vol. 82, 1988, 705.

\(^{265}\) Id, 706.

\(^{266}\) Id., 712.

\(^{267}\) Id.
these factors also assist in unearthing the reasons for the failure of equality norms to end women’s subordination. In other words, legitimacy theory assists in the deconstructive phase of feminist analysis and leads to the classification of gendered norms and structures as illegitimate.

Legitimacy theory assists in my undertaking to develop a methodology to identify, expose, and eradicate the locations at which the law and legal systems operate to perpetuate and entrench women’s subordinated, disadvantaged, unequal status—socially, economically, professionally at home and at work, in society, and in government. Rather than focus on ‘state’ compliance, though, I use the concept of legitimacy to evaluate whether laws, norms, structures, and institutions can be legitimate if they have sorely and severely failed to achieve the anticipated outcome of equality. As I structure it, the utility of the legitimacy theory in the women’s context is in the identification of the failures of long-standing rules, norms, structures, and processes to enable women’s full citizenship and personhood when the articulated purpose—legally mandated—of those rules, norms and processes is to achieve women’s equality. That is, I go to the reality and move backwards to see the location of failure and hence the illegitimacy of the norm.

As an example of the value of legitimacy theory in unveiling the illegitimacy of the evolution of rules, norms, structures, and processes in the context of the complex patchwork of women’s condition, I will examine the element of determinacy.

Franck defined textual determinacy as “the ability of a text to convey a clear message, to appear transparent in the sense that one can see through the language to the meaning.” Determinacy is “the most self-evident of all characteristics making for legitimacy . . . . [It] is the linguistic or literary-structural component of legitimacy.” While indeterminacy may allow for flexibility, it has costs because “[i]ndeterminate normative standards not only make it harder to know what conformity is expected, but also make it easier to justify noncompliance.” While “no ‘course of action could be determined by a rule because every course of action can be made out to accord with the rule’ some rules are less malleable, less open to manipulation. ... To be legitimate, a rule must communicate what conduct is permitted and what conduct is out of bounds.”

However, “‘clarity’ is far from identical with simplicity.” A rule that is simple will nonetheless not satisfy the legitimacy standard if “it does not send a clear

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268 Id., 713.
269 Id., 713 and 725.
270 Id., 714.
272 Id., 721.
message as to its meaning in such a way as to promote compliance."\textsuperscript{273} The balance
between "simplicity of text [which] is an invitation to redactio ad absurdum, which
undermines the determinacy of a rule, and ... complexity [which] imposes an
elasticity that deprives it of determinate meaning" is attained by "attention to detail
and, in particular, to content."\textsuperscript{274} Thus a simple rule will have a high degree of
determinacy if it is guiding behavior that is properly judged in an either/or
context.\textsuperscript{275}

However, when the judgment requires a decision between more than two options,
that is, when the question constitutes a complex problematic – as is the case of the
woman question as the varied feminisms have shown – such simple rules can not
satisfy the textual legitimacy standard. On the other hand,

[a] rule finely calibrated to reflect complex considerations, embodying a textured system of
regulatory and exculpatory principles, may suffer legitimacy costs because it invites disputes
as to its applicability in any particular case. These costs however, can be reduced by intro-
ducing a forum in which ambiguity can be resolved case by case.\textsuperscript{276}

That is precisely what feminisms demand so that women can attain the goal of full
personhood: insist on a complex inquiry, a 'textured system of principles.'

For example, in looking at the equality/non-discrimination norm, it is easy to
suggest why it can be said to have a low degree of legitimacy. Not that equality is not
a desired and desirable goal. It is that the notion of equality, conveyed by that
'simple' word standing alone, does not provide the necessary clarity nor the neces-
sary guidance to the creation of norms or to the application of an equality concept –
it has a low level of determinacy. For example, there is no clearly articulated set of
guidelines to influence the meaning of equality. If equality were sameness, say in the
reproductive function context or in average physical characteristics context (such as
height, weight), then equality for men and women may well be an unattainable idea.
On the other hand, if equality means equal opportunity, full citizenship, equal access
to rights and benefits, or full personhood, then the term equality, standing alone,
fails to provide sufficient guidance to its signification. Thus, the indeterminacy of the
idea of legal equality permits the rule-maker or the decision-maker to ensure equality
when s/he sees it, leaving the door open to inequality based on the perceptions, and
internal biases of the one making the judgment.

\textsuperscript{273} Id.
\textsuperscript{274} Id., 722.
\textsuperscript{275} Id.
\textsuperscript{276} Id., 724 (emphasis added).
E. Conclusion: Towards a Woman-Centered International Jurisprudence

The challenges faced by feminist legal community to determine the 'right' theoretical construct to attain equality is evidence of the indeterminacy of the equality norm. Should equality be sameness? Should it be difference? Should it be relations? Should it be culture? Should it be power? The reality is that depending on context, as the embrace of multiple feminisms proposed in this essay reveals, the proper approach could ask for a difference standard, a sameness standard, a relationalism standard, a cultural standard, or a differential analysis standard. Therefore, it is plain that an appropriate rule to achieve equality requires more than just the statement or goal of equality. There is a need to articulate, in more detail, what equality means. Equality, as it is presently understood, is too indeterminate a concept to be legitimate.

Thus, as both the communications and legitimacy theories suggest, in order to develop a methodology to fit the complex location of women, the word equality is insufficient and the policy of equality needs to be embraced. In order to evaluate what an adequate policy of equality might be, it is necessary to engage the multiple feminisms and their various and varied interrogations about the normative standards and structures that work to exclude or marginalize women. In engaging these questions, of course, women need to participate in the process. It is not sufficient to have the answer pot all ready and then simply add sex and stir. The various feminist questions pave the path for legitimate norms—norms that are determinate because they let people know what to expect and because they have input from and thus consent of those governed by the rules. Such a process will result in adherence to the norms which, in turn, allows women, as well as men, to benefit from those norms. More importantly, the norms themselves will have considered women's voices, their locations, their needs, their strengths and their weaknesses.

For example, liberal feminism may well be the appropriate model to ascertain the experience and credentials necessary for the performance of a particular job—from ambassadorships to general assembly representation. Here, the individualist approach will inure to the benefit of women who are similarly located to men.

However, liberal feminism loses its utility when men and women are not similarly situated, when characteristics of women—the group—differ from those of men. In such instances, other feminisms assist in locating the source of gendered inequalities. Radical feminism forces the analysis of socially constructed sex-roles which result in women's exclusions from the exercise of rights, public participation, and enjoyment of benefits.

Cultural feminism, a form of radical feminism, unearths the value-ladenness of masculinity and femininity. Law, both domestic and international, having been crafted by men and for male locations (the public sphere), is fully in a male image. Female traits—particularly those exhibited in the private location of home and
family: care, nurturing, emotion – have been at best devalued and at worst obliter-
ated from the international imagination. To be sure, care, nurturing, and emotion
are attributes that would well serve this conflicted world of ours. Moreover, were
these to be valued, women’s work around the globe would be recognized.

Finally, the feminisms of women of color, of third world women, and of
postmodernists all work separately and together to expose the varied locations of
diverse women. These feminisms note that women, the group, are not monolithic
nor homogeneous. A male norm cannot be superimposed on women and lead to
justice and fairness, or even meet women’s needs. Similarly, a Northern-Western
women’s norm cannot be superimposed on all women, including women from the
South and the East, and result in fairness and justice or meet all women’s needs.

Feminism’s promise is of a methodology that will ensure women dignity and full
personhood. Thus, particularly in light of the diverse inequalities women experi-
ence around the world – from lack of representation to poverty, from lack of voice
to lack of education, from lack of freedoms and rights to lack of basic respect – a
multiple feminisms approach is needed to make women’s paper rights to equality a
lifetime reality.