

A CRITICAL INSPECTION INTO THE CHAUVINISM OF THE FEMINISM OF INTERNATIONAL LAW

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This paper will analyze two articles and highlight how in spite of their attempts at voicing the silence of women in the International Legal world, it continued to retain a certain amount of chauvinism.

In the first part of this paper I will study the article titled, 'Feminists Critiques of International Law and Their Critics' by Hilary Charlesworth. Three major arguments shall be seen here. The first one will be about how feminism is looked at as a "response" or a "reaction" to opposing forces, the second argument shall critique the public-private divide and lastly, the third argument shall show how a hierarchy is enforced where the violence of not being a democracy is ranked higher than the violence of being a woman.

The second part of this paper I will study the article titled, 'Feminism and International Law: An Opportunity for Transformation' by Rosa Ehrenreich Brooks. In this there will be two strands of arguments. The first argument shall be about how monism and this separation of international from domestic proliferates oppression of women. The second argument shall be about how Brooks ends up creating a body of knowledge which further works to inscribe the subordination of women.

Hilary Charlesworth in her essay, points to two Major Goals of Feminist Analysis. The first one being what she calls, "deconstruction." This involves a certain unpacking the explicit and implicit values of International Law because the rational claim they build themselves on is made up of the exclusion of women

She gives the example of Catharine MacKinnon's statehood where according to MacKinnon 'state' is an institution that forwards male interests. Martti Koskenniemi is also quoted to make the point that international legal notion works to enhance some voices and silence the others. As a matter of fact, it is the voices of women that are excluded mostly. Ann Sisson Runyan and V. Spike Peterson also find resonance when it is said that to be able to understand how power works it is essential to understand how systematically women find themselves excluded from religious, economic, political and military systems.

The second major goal of feminist analysis is what she calls "reconstruction."

She feels that it is a difficult project to reconstruct a truly human system of international law and struggles with the question of how do we include 'gender' as a category of analysis in International Law. Let us now move on to make our arguments.

Firstly, Hilary Charlesworth uses Elizabeth Grosz to make a point where Grosz portrays feminism as both a "reaction" and a "response" to the overwhelming masculinity around. While such a claim might warrant for some merit, the problem is that the issue of not including a certain type of human being within the pale of humanity, especially when this certain type of human being is almost half the population of the world, is not a "response" or a "reaction." It is the voice of a collective of oppressed experiences- different or alike but oppression nonetheless, which could not find a voice through the masculinity around. And so, there is not the absence of a voice, but only its inability to reach our ears because of the masculinity around. The text uses the phrase,

"feminist analysis is both a "reaction" and a "response" to "the overwhelming masculinity of privileged and historically dominant knowledges... counterweight... imbalance... from male monopoly." "response to the political goals of feminist struggles."

Half of the human population cannot exist as a response to the other half. This notion seems to presuppose that in the absence of men, there would be no women as the very assertion of women's voices is contingent on the weight of the "male monopoly."

Secondly, in Partha Chatterjee's book, 'The Nationalist Resolution of the Women's Question,' he argues that colonization had led to the creation of two spheres- the world sphere which comprised of science, technology, economics and statecraft and the home sphere where questions of how men treat their women, how they handle the household etc. were dealt with. He goes onto say that there was a strict distinction between these two worlds. The home sphere had to remain unaffected, untouched and uncorrupted by the profane material or male world.¹ The Article also assumes such a divide where international and human rights law, or the political questions of casting a vote are strictly questions of the "public" sphere. The "public" sphere is the sphere of men. However, home and family is the "private" sphere. It is in the private sphere where most questions of feminism arise. The text emphasizes this divide when it says,

"injustice in underrepresentation of women in public life only if this phenomenon is the result of states preventing women from exercising their right to political participation."

"dismisses the notion that the great imbalance in political participation between women and men in itself a human rights issue."

"Most human rights defined international instruments operate in the "public" sphere, which is historically inhabited by men"

"Human rights law does not generally extend to the "private" sphere of the home and family where most women live out their lives."

¹ Chatterjee, Partha. The Nationalist Resolution of the Women's Question. Centre for Studies in Social Sciences. Calcutta, 1987.

According to Paula Rust, “the personal reflects the political status quo (with the implication that the personal should be examined to provide insight into the political); the personal serves the political status quo; one can make personal choices in response to or protest against the political status quo; ... one's personal choices reveal or reflect one's personal politics; one should make personal choices that are consistent with one's personal politics; personal life and personal politics are indistinguishable.”² This statement clearly shows how such a divide is inconsistent with our actual lives. Although the wife falls within the personal sphere, a female boss may be subjected to the same stereotypes even though she is strictly part of the public sphere- as a result of which such neat compartmentalisation where the judgments of one sphere do not spill over into the other sphere are not only difficult but impossible.

Thirdly, this text also quotes Fernando Teson who makes a hierarchy where the issue of not being a democracy ranks higher than sex discrimination. This claim finds substance in the following extracts from the text.

“(the issue of lack of democracy being in a much more serious category than sex discrimination)”

“must focus on getting rid of tyrants before we consider issues of gender discrimination”

This is complex because it tends to presume that “tyrants” in the form of undemocratic governments are more harmful than “tyrants” in the form of husbands. What is worthy to note is that in opposition to a government one still is part of a collective, is part of a people, is a fraction of a population, however, when pitted against a husband, the wife has no collective to shield herself from his violence. As a result of this particular presumption where the issue of not being a democracy is prioritized above not treating the women around you as equal becomes problematic. In fact, radical feminism might just point out

² Rust, Paula C. *Bisexuality and the Challenge to Lesbian Politics: Sex, Loyalty and Revolution*. New York University Press. New York, 1995.

how the man of the house is frightened to experience the tyrant who does to him in office what the man of the house does to his wife at “home” or to his female boss at work.

Rosa Ehrenreich Brooks in her Article, ‘Feminism and International Law: An Opportunity for Transformation’ speaks of the exclusion of women from International Law and feels that due to this exclusion, women must all the more make an initiative to be included. She says, “this is an opportunity we cannot pass up.” To make her point she analyzes the 9/11 attacks, the universal problem of violence against women, Belgium’s invasion of Germany, the “maleness” of the norms of International Law, The Convention on the Elimination of All Forms of Discrimination Against Women etc.

Firstly, to make her point, Brooks seems to advocate a certain kind of Dualism where she attempts to keep the worlds of International and Domestic separate where she distinguishes the liability of a state from the liability of the world. The problem between this type of a division is emphasized by Wendy Brown in her book where she makes the point that “Marx discerned in his critique of Hegel, the universality of the state is ideologically achieved by turning away from and thus depoliticizing, yet at the same time presupposing, our collective particulars- not by embracing them, let alone emancipating us from them.”³ This finds resonance in the text where she says,

“In this traditional understanding of human rights law, if thousands of men systematically beat or rape thousands of women, this is not a human rights abuse, unless the men are state agents acting on the orders of the state.”

The problem here is that Brooks ends up saying that women are oppressed only in the domestic sphere. And it is not enough that women are human beings that their oppression is looked at by International Organizations.

³ Brown Wendy. States of Injury: Power and Freedom in Late Modernity. Princeton University Press. New Jersey, 1995.

Connected to the first argument against Rosa Ehrenreich Brooks is the fact that she produces a body of knowledge by means of this article to propagate this faulty notion that the problem of ill-treating women is a problem of the state and not of the world. This is emphasized in her Article when she says,

“To the minimal extent that women have entered the male domain of international law and policy, they are often to be found clustered in its “softer” corners, where you find the more “feminine,” “human interest” subjects such as refugee law and human rights law.”

She seems to try and reinforce a public-private divide where she advocates that even the advances of women into the so-called “public” sphere have been limited to issues of the “private” sphere- that are “softer.” This superimposition of notions of which subject constitutes “soft” or not hard enough is also extremely controversial.

Disciplines shaped in the language of a hegemonic masculinity will continue to reek of a male dominance. Whenever justice is attempted within such disciplines, a problem of “differend”⁴ shall occur, where even though “the other” side may have a winning chance based on merits, however due to a lack of development of the linguistics around doing justice for “the other,” the most dominant shall automatically be construed as the most just. Therefore it is a restructuring of disciplines altogether , which is the need of the hour.

⁴ A differend is a a dispute which cannot be equitably resolved because the parties involved can agree on a rule of judgement. In a differend, the victim’s wrong cannot be presented. A victim, for Jean François Lyotard, is not just someone who has been wronged, but someone who has also lost the power to present this wrong. This disempowerment can occur in several ways: it may quite literally be a silencing; the victim may be threatened into silence or in some other way disallowed to speak. Alternatively, the victim may be able to speak, but that speech is unable to present the wrong done in the discourse of the rule of judgement. The victim may not be believed, may be thought to be mad, or not be understood. The discourse of the rule of judgement may be such that the victim's wrong cannot be translated into its terms; the wrong may not be presentable as a wrong. Source: <https://www.iep.utm.edu/lyotard/#SH4c>