



On reading the logics of gender justice

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On Reading *The Logics of Gender Justice*

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Abstract:

This ambitious and remarkable book provides us with a new, creative, and critical site for feminist scholarship and leads the way in producing historically and contextually specific empirical datasets and analysis of the deeply complex area of global women's rights. As is often the case with important work, the book engenders a supplementary set of hard questions to be asked both of itself and of the wider literature. In particular, the book enables us to raise two sets of further questions: first, about the links between law, policy making, women's rights, and social transformation, and second, to raise methodological and conceptual questions to do with empirically operationalizing intersectionality on a global scale.

‘When and why do government’s promote women’s rights?’ Mala Htun and Lauren Weldon open their admirable book with this question. By asking this question, the book speaks evocatively to the contemporary present, and is therefore, a book both for and of its time. Our time, we are often reminded, is one characterised by the ascendance of global human rights. Human rights have emerged as the leading normative framework of global real politik; invoked as the key indicators for evaluating the quality of national sovereignty (Puar 2007) but also of development interventions, operating both as ‘powerless companions’ (Moyn 2014) but also as enabling ‘interruptions’ to neoliberal economic interventions (Goodale and Postero). Critical scholarship on human rights has shown that this ascendance of human rights on the global stage is a relatively recent phenomena (Moyn 2010), and that the

routinely expressed self-evidence of human rights is, in effect, a fraught, exclusivist and a contested claim, one that is unsupported by neither historical evidence (James 1989; Trouillot 1995) nor philosophical argument (Wynter 2003). If anything, human rights have been thought “unthinkable” (Trouillot 1995) for those belonging to the “darker nations”, shown to be nothing but “mockery” in the absence of citizenship rights (Arendt 1951), and regarded by some as a governmentalized technique of freedom. The historical declaration of the human rights of all people in 1948 while big on inspiration has seen much less traction on the ground. In particular, the universalist claim of the declaration continues to hold low resonance for those who do not inhabit the normative subject of human rights, necessitating not the rejection of human rights, but their re-iteration in terms of specific recognition for specific groups. Unsurprisingly, the enunciation of ‘women’s rights are human rights’ is one such separate and necessary articulation borne out of an acute realisation that rights of women continue to lag behind. The experience of rights and human rights is not one of exclusion alone but one also riddled with paradoxes. As is now very well known, a key paradox of global human rights is that they depend on national states to enforce human rights, thus making human rights dependent on citizenship rights (Arendt 1973). In effect, this means that analyses of the actual deployment, practices and experiences of rights/human rights are examinations of the ways that nation states authorise, legislate on, regulate and police the rights and entitlements of citizens. By asking when and why government’s promote women’s rights, the book sidesteps the often rehearsed question of why women’s rights have been slow to gain traction around the globe, to instead investigate and identify the complex entanglements of different and contextually aligned dynamic configuration of different actors, institutions and politics that interact to produce particular gender policy outcomes. The book’s empirically led focus on accounting for the reasons for the slow and variegated progress on women’s rights opens up new ground in empirical scholarship on ‘women’s rights are human rights’, and firmly positions the empirical investigation and theorisation of the differential progress on women rights around the globe at the centre of rights talk.

This is a book of immense scale and ambition. Operating on global scale, the book roots itself firmly in the rich landscape of feminist scholarship, not least in its insistence on location and historical specificity, and through referencing and

acknowledging thereby, the difficult questions that feminist scholars have raised over the years, including persisting dilemmas around engaging the state to uphold gender justice or indeed those of complex and intersecting inequalities. In order to seek answers to their opening question, the authors scrutinise the equality promoting policies of 70 countries, which together comprise 85 percent of the globe's population, in order to produce a 'a typology of state action on women's rights'. In particular, they examine 'policies formally adopted by governments, including constitutions, supreme court decisions, and policy documents' (255) to explain the 'variation and trends' in the institutionalisation of gender equality laws within and across countries. Broadly, the remarkable empirical dataset that the book puts together enables it to do three things: To produce a typology of equality-promoting policies that are explicitly to do with women's rights; secondly, to develop a set of indices to 'measure' the degree to which states 'promote equality and autonomy in each area' (23) , and thirdly, to put together an 'original dataset' comprising 'the strength' of the policies that have been put in place and the kinds of autonomy for women they are able to foster. Each of these are undoubtedly significant interventions and open up a range of exciting and important domain of different experiences, legal constraints and also different actors. By uncovering policy behaviour by states along these four categories, the book identifies the key actors and ideas responsible for adoption of gender equality policies. The typology of women's rights advanced in the book, the authors argue, intervenes to complicate existing analyses of the global trends in the progress of gender equality by scholars of comparative politics and those of gender and politics. As the authors note, while it is the case that global movements towards gender equality have been progressing, this 'progress' is uneven and variegated—a phenomenon that has left comparative political theories together with the more traditional gender and politics analyses struggling to provide explanations for the differences characterising the 'relationship between various areas of government action and various explanatory variables'. There is a tendency in these analyses, the authors point out, to account for this phenomena in broad, non-variant and non-disaggregated terms. For instance, comparative political theories, are usually keen to credit the growth of global trends in gender equality policies to increasing secularisation, economic development, while more 'traditional' analyses of gender and politics, are left wanting due to their 'traditional' focus on women in parliament, feminist movements, or on how to create more 'women friendly' states. Crucially, however, both are less able to explain the

variation in the progress over women's rights within countries and also over the actual nature and content of rights pursued in social policies.

Importantly, the authors argue that understanding the possibilities for gender justice requires that we unpack the institutions of gender and the different ways that the state upholds these gender orders. Through the typology of women's rights, a key objective of the book is to demonstrate that 'different types of women's rights challenge different aspects of social and political relations, in different ways and to different degrees' (3). In this regard, the authors rightly point out that not all historical legacies, institutions, background conditions or social and political actors are equally relevant for all areas of women's rights, and therefore, 'identifying which ones matter for which issues, and in which ways, allows us to identify and explain patterns of continuity and change' (3). Consequently, the typology of women's rights presented in the book identifies four different types of women's rights issues, which are classed as *status*, *class*, *doctrinal* and *non-doctrinal*. And, for each of these four types of rights, the authors identify 'actors and institutions' and offer 'theoretical accounts of why it should be those actors and institutions that matter for that specific issue type'. So, for instance, for status based policies, the women's rights that are significant are those that enable access to areas of life, liberty and property that have been denied to women due to their low status. Or those that are classified as class based policies are in effect those policies that make possible access to resources and into existing economic arrangements. Doctrinal as opposed to the non-doctrinal policies are those seen to incite religious sentiments and are often controversial in that regard; chief among these are policies seeking to govern/provide the right to abortion. In keeping with the firm grip of location and attention to specificity of context, the book is careful in its analyses and makes it a point to note and empirically demonstrate is that all doctrinal policies on women's rights do not generate the same degree of controversy everywhere. If anything, the strength of doctrinal opposition to these depends on the location and on the configuration of the relationship between states and particular religious orders. Through this empirical data set the book is able to advance a number of important findings, namely, that religious factors relate to discriminatory family laws but not to class policies such as parental leave or childcare; that left politics are the main force behind cross national politics on family leave, and that a combination of 'feminist movements, international influences, left parties and religious groups were

significantly associated with variation in policy patterns, due to their historical roles supporting and opposing the legality and accessibility of reproductive rights' (248).

However, the most exciting, important and striking finding of their cross national policy analysis is this: in countries which have legislations on violence against women in place, the single most important factor for instituting government policy on violence against women is the presence of vibrant 'autonomous feminist movements'. In other words, the most significant factor propelling legislation on VAW has come from autonomous feminist movements on the ground, who have helped to 'consolidate international norms, which they leveraged to pressure for greater change in domestic contexts' (Htun and Weldon 2018:247). This is an extraordinarily significant finding and one that will have far reaching implications, especially for feminist theorising on rights and human rights and feminist movements, but also on the mainstream scholarship and reception of feminist struggles in different parts of the globe.

The book's title 'the logics of gender justice' alludes to women's rights corresponding to four different logics of gender justice, which in turn correspond to the four categories in the rights typology. The authors note that even though justice is a broad concept and women's rights are only a subset of gender justice, the latter are, however, a crucial barometer of the nature and forms of gender justice in operation. Recognizing the expansive meanings of justice, the authors further circumscribe their exploration of the "logics of gender justice" by clarifying that their focus is on women's rights rather than on the more expansive category of gender, and that they are uncoupling the analysis of the take up of rights within state policy from their outcomes. However, these circumscriptions do raise questions over the particular conceptual, methodological and ethical questions that rights *do* as specific logics of gender justice. In particular, there are two questions that need asking: Firstly, it raises the question of the general relationship between deployment of concepts, and in particular, that of elevating gender as the primary axis of power in large scale collection of empirical data projects. And, secondly, the delinking of rights policies from their outcomes, raises a question mark over the relationship between women's rights and social transformation. Now given the explicit links between empirical and theoretical goals of the book, and between the legal adoption of policies and the state of women's rights in those contexts, it is worth asking, for instance, as to how the book enables us to

think about the general relationship between theory building and empirical data? To put it differently, the book is avowedly feminist and also highly reflexive on a range of hugely important feminist interventions on the big questions of our time, including on intersectional gender relations. However, it is also interesting to note that despite these acknowledgements, the authors clarify that even though they are of the view that gender identities are intersectional, however, for the purposes of their typology, they would only be looking at 'women's rights'. The authors are reflexive on this dilemma and their choice; however, this does highlight the serious issues to do with the constraints of centring intersectionality in large scale empirical driven projects and of the difficulties and limitations of empirically operationalising the differential experiences of rights of differently located groups. The methodological considerations that intersectionality drives forward (McCall 2005) are important because they enable context specific enquiries into public policies focusing on complex inequalities with a view to address the intersecting inequalities, forms of discrimination and vulnerabilities they erase or indeed produce. And, therefore, the question that refuses to go unanswered is this: does intersectionality necessarily have to be sacrificed in large scale empirical projects? And, what might be the gains and losses of such an omission for empirical, theoretical and conceptual projects but also in terms of thinking carefully about social transformation?

Conceptually, intersectional thinking intervened to debunk the myth of gender as a single axial category (The Combahee River Collective 1977, Crenshaw 1989). In broader terms, this meant that gender identity was a result of an intersection of various markers of hierarchy and differentiation, and therefore, to speak of gender relations was to acknowledge the multiplicity of oppressions but also as a site of multiple power relations. The acknowledgment of intersectional gender relations has resulted in a well-entrenched understanding that women across the globe are variously and differently intersectionally positioned women and are consequently, impacted and affected differently by global power relations. Thinking intersectionally has enabled critiques of the overwhelming tendency to invoke a 'universal woman' or womanhood within academic, activist and practitioner contexts where calls for a 'global sisterhood', albeit many well intentioned and in good faith, have only resulted in the erasure of differential power relations (Mohanty 1995) and of reproducing the hegemonic power of white liberal feminist thinking and activism in the global north.

Now, it is not hard to see that intersectional data is indeed hard to find and assemble. State policies legal statutes and large public institutions are infamous in their refusal to acknowledge intersectional identities and oppressions. And, therefore, in the face of little or next to no existing collected data on the intersectional differences, what are feminist scholars to do? How does one acknowledge and institute fissures within empirical data to mark, flag and account for these exclusions? And, how to negotiate the dilemma of empirical datasets only able to identify a single axial category of woman/women? What does such a non-intersectional understanding mean for how we think about global 'progress' on women's rights? In an insightful article, Shreya Atrey (2018) notes that global statistics on women's rights point to the progress on women's rights around the globe in two ways: in relation to the rights enjoyed by men and secondly, in a 'temporal sense' or in relative terms to the rights women possessed at earlier points in time. However, these statistics do not, Atrey writes, 'tell us whether women have made progress in an intersectional sense, i.e. across women and as a whole. This begs the question whether all women have progressed? Who made progress and who was left out? Disaggregating women's statistics helps understand progress further' (Atrey 2018:867). But there is also another separate point here. Feminist scholars have alerted us to the ways in which the global rights discourse, especially women's rights, operates on and reproduces stable, fixed, normative meanings of gender and sexuality. The disruptions to these fixed and hegemonic constructions of the normative subject and politics of women's rights have been invariably instigated by 'resistive subaltern subjects' (Kapur 2018: 8). And, therefore, it becomes important to disaggregate which rights have been claimed and by which subjects so that we are able to produce an analysis of why only some rights claims are allowed to be forcefully articulated, heard and go on to achieve legislative and policy successes and those which face epistemic refusal by the normative order of rights.

Questions of possible existing exclusions within empirical datasets are important not least because the fact of exclusion is the one historical consistent that has continued to haunt the meanings, practices and experiences of rights and human rights and consequently, vast swathes of women around the globe continue to be excluded from rights protections. And, therefore, while the book is tremendously important in enabling us to see the progress on women's rights in large parts of the globe, without

an adequate explanation of how to produce an analysis of exclusions or blind spots within empirical data, which in effect have led to an erasure of the experiences of rights or lack thereof of a large proportion of women across the globe, one is left with a palpable sense of something of an opportunity missed here; of interrogating the data and of reading the data against its own grain as it were in order to identify its blind spots and occlusions.

Linked to questions of intersectional exclusions are those of nature of law and of the link between formal documentation of legal policies and the actual operation of law in practice. This relationship between legal statutes and actual law in practice is often expressed in the calls for substantive equality and not formal legal equality alone (Kapur and Cossman 1995) or for an insistence on an equality of outcome as opposed to a formal equality of opportunity (Phillips 2004). Laws are living doctrines that institute different meanings and effects that produce differential impact and regulations of differently gendered subjects over time, not least via their different iterations in the hands of different actors¹. Underpinning these calls for equal outcomes for all and an exhortation to see legal rights in actual practice lies the hard question of social transformation. And while the book very rightly argues that the question of justice is intricately linked to a commitment to women's rights, the question that this in turn begs is, rights and justice for which women?

Researching rights/human rights through an analysis of the nature of freedom, justice, and social transformation these engineer becomes important as not only because ideas of freedom and social transformation have standardly accompanied rights and human rights discourses but also because these are also the very ideas that rights and human rights have systematically failed to uphold. And, so, the link between policy in law/in practice matters, as does an analysis of the kinds of law in place, its beneficiaries and those it excludes. Therefore, squaring the circle on rights, gender justice, and social transformation matter precisely because it provides crucial insights into the nature of existing power relations and into how rights might disrupt these, if at all. So, for instance, as I pointed out earlier, the most significant and exciting finding of the book

¹ A case in point is how some feminist efforts to abolish sex work and trafficking through the Nordic model has had the effect of criminalising, policing and incarcerating of disproportionate numbers of migrant and women of colour .

is the direct causal link between domestic laws on VAW and the presence of autonomous feminist movements in those countries—this is a very heartening finding on several key fronts. Firstly, because it shows the transformational effect of location of feminist movements in different parts of the world have on policy making. And, secondly, crucially, through the empirical evidence of the lively presence of feminist movements in different locations enables us to move away from the orientalist/imperialist feminist framework of saving women from their oppression through diffusing/exporting global human rights discourses to them either through the market or through military intervention or through epistemic erasure of the rights movements on the ground. Having said this, perhaps, it is also not altogether surprising that it is on the question of VAW that feminist movements across the globe have achieved policy success. Here, one cannot help but be reminded of the power wielded by the international (and US) led feminist movements, which have propelled the focus on VAW as the chief demand of feminist movements (Grewal 2005) and orchestrated a shift away from broader concerns with structural economic and political inequalities and discriminations that produce violence. It is worth pausing to consider the particular kinds of work that the global mobilising around VAW does on the ground and the kinds of domestic legal policies it puts in place. As Ratna Kapur (2018) notes, ‘the strong focus on sexual violence and victimization has invited the state’s selective engagement with feminist ideas...gender is addressed mainly through carceral measures and the criminal law’. Consider, for instance, the flurry of new rape laws brought in by the Indian government in the aftermath of the bestial brutality of the ‘Delhi rape case’ of 2012, which saw a significant expansion of the law machinery including the institution of the death penalty in some instances of sexual assault. In the same breath, however, the state refused to disallow the legal prevalence of marital rape or indeed rescind the existing patriarchal language of the law on sexual assault. Significantly, though, there was an explicit refusal to bring the acts of sexual violence and torture committed by soldiers in India’s zones of exception or those under military laws, namely, Manipur and Kashmir (Madhok 2018) under the newly framed criminal law process.

I am, of course, aware that the questions I pose are difficult and probably irresolvable questions but they do require constant articulation, negotiation and vigilance. Having said this, the remarkable intervention by this book and its rich and productive

engagement with many critical feminist insights have opened up a new, creative and critical site for feminist scholarship. By leading the way in producing historically and contextually specific empirical data sets and analysis of the deeply complex area of global women's rights, the book provides us with theoretical, policy and empirical clarity and intellectual resources that will influence and frame important discussions on women's rights around the globe in years to come.

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