

Transnational Legal Feminisms: Challenges and Opportunities

Sital Kalantry†

Introduction

The Cornell International Law Journal's annual symposium held in March 2018 was entitled "Transnational Legal Feminisms: Challenges and Opportunities." In this essay, I reflect on what "Transnational Legal Feminisms" means and what potential challenges and opportunities it presents. Feminist legal scholars and lawyers are operating in an increasingly interconnected world today, where popular feminist perspectives and scholarly theories, capital, people, and information move rapidly from country to country.

The #MeToo movement is an example of the transnationalization of feminist ideas and legal solutions. Gaining momentum through social media in the United States, the movement against sexual assault and sexual harassment migrated around the world.¹ This transnational movement of legal solutions is not without its problems. For example, a group of prominent French feminists objected to the French version of the #MeToo movement, claiming it is based on a puritanical understanding of relations between men and women.² According to those feminists, more overt male sexual behavior and flirtation is more acceptable in French society than in American society.³ What may be considered sexual harassment or assault by American definitions, the French feminists argue, is not the same by

† Clinical Professor of Law, Cornell Law School. I would like to thank the participants in the Cornell International Law Journal Symposium in March 2018. I appreciate the hard work of the symposium editors in organizing this innovative conference and for Gianni Pizzitola for his patience and editing assistance in this essay. I am grateful to Sumridhi Kaur for her research assistance.

1. The social media movement #MeToo has migrated to countries such as Brazil, Canada, India, England, Germany, South Africa, Pakistan, and Russia. Other countries have experienced analogous movements, such as #YoTambien in Colombia and Mexico, and #BalanceTonPorc in France. See Kara Fox & Jan Diehm, *#MeToo's Global Moment: the Anatomy of a Viral Campaign*, CNN (Nov. 9, 2017), <https://www.cnn.com/2017/11/09/world/metoo-hashtag-global-movement/index.html> [<https://perma.cc/TEQ7-77KE>].

2. See *Nous défendons une liberté d'importuner, indispensable à la liberté sexuelle*, LE MONDE (Jan. 9, 2018), www.lemonde.fr/idees/article/2018/01/09/nous-defendons-une-liberte-d-importuner-indispensable-a-la-liberte-sexuelle_5239134_3232.html [<https://perma.cc/SZ5D-UMDL>]. See also Aurelien Breeden & Elian Peltier, *Response to French Letter Denouncing #MeToo Shows a Sharp Divide*, N.Y. TIMES (Jan. 12, 2018), <https://www.nytimes.com/2018/01/12/world/europe/france-sexual-harassment.html> [<https://perma.cc/E7FF-NEYJ>].

3. See Alissa J. Rubin, 'Revolt' in France Against Sexual Harassment Hits Cultural Resistance, N.Y. TIMES (Nov. 19, 2017), <https://www.nytimes.com/2017/11/19/world/europe/france-sexual-harassment.html> [<https://perma.cc/2HDZ-WY4M>] (quoting Pro-52 CORNELL INT'L L.J. 171 (2019)

French standards.⁴ Therefore, they argued, it is unfair to hold men in France to the same legal standards as the American #MeToo movement proposes. Not all French feminists agreed to their position.⁵ Below, I give content to the term “transnational legal feminisms” drawing from gender studies and legal scholarship.

Towards a Definition of Transnational Legal Feminisms

A rich literature in both law and gender studies examines the impact of a transnational world. I draw on the transnational feminism literature in gender studies and transnational law literature in legal scholarship to give meaning to the term “Transnational Legal Feminisms.”

Transnational feminism is concerned with how globalization and capitalism impact people across borders.⁶ Scholars of transnational feminism emphasize differences among women across the world and the impact of post-colonial legacies.⁷ Feminist scholars have also used “transnational feminism” to signify the need to build bridges among feminist groups and movements across countries.⁸ Transnational feminists de-emphasize the nation-state.⁹ While transnational feminist scholarship focuses on the movement of feminist ideas and capital, the emphasis of transnational legal feminisms is the migration of legal solutions and theories across multiple jurisdictions.

A vast literature under the rubric of “transnational law” has developed since Philip Jessup conceptualized the term in 1956.¹⁰ Carrie Menkel-Meadow describes “transnational law” as the study of legal phenomena, including lawmaking, rules, and legal institutions that affect or have the power to affect behaviors beyond a single border.¹¹ Transnational law is sometimes described as the interaction between domestic laws in the increasingly global web of connections among people, corporations, goods, services, and knowledge.¹² Harold Koh’s definition of transnational law stresses the migration of laws. First, he posits that law moves from the

fessor Joan Scott as saying “[For the French] Seduction is the alternative to thinking about it as sexual harassment”).

4. See *id.*

5. Evie Burrows-Taylor, ‘Revolting’: French Feminists Hit Back at Actress Deneuve over Defense of Sleazy Men, LOCAL (Jan. 10, 2018), <https://www.thelocal.fr/20180110/french-feminists-hit-back-at-actress-catherine-deneuve-over-defense-of-sleazy-men> [<https://perma.cc/ZW6J-UMFA>].

6. Maylei Blackwell et al., *Transnational Feminisms Roundtable*, 36 FRONTIERS 1, 3, 5-7, 21 (2015).

7. See generally Scattered Hegemonies: Postmodernity and Transnational Feminist Practices, (Inderpal Grewal & Caren Kaplan eds., 1994).

8. See generally Blackwell et al., *supra* note 6, at 1.

9. LEEA FERNANDES, TRANSNATIONAL FEMINISM IN THE UNITED STATES: KNOWLEDGE, ETHICS, POWER 6 (2013).

10. See generally Peer Zumbansen, *Transnational Law*, in ELGAR ENCYCLOPEDIA COMPARATIVE LAW 738-54 (Jan Smits ed., 2006).

11. Carrie Menkel-Meadow, *Why and How to Study “Transnational” Law*, 1 U.C. IRVINE L. REV. 97, 104 (2011).

12. SITAL KALANTRY, WOMEN’S HUMAN RIGHTS AND MIGRATION: SEX-SELECTIVE ABORTION LAWS IN THE UNITED STATES AND INDIA 42 (2017).

international realm to the domestic sphere. Second, he argues that law can move from the domestic level to the international level. Third, he notes that laws are sometimes borrowed horizontally from one country to another.¹³

The typology developed by Koh also describes the way legal feminisms migrate around the world. Sally Merry's seminal work observed how international legal norms on violence against women were vernacularized at the domestic level.¹⁴ Chantal Thomas tracks how perspectives of feminists from the United States impacted the negotiation of an international treaty against trafficking.¹⁵ The example of the MeToo# movement demonstrates how legal feminist norms travel from one country to another.

Transnational legal feminism, like transnational law, involves non-state actors. Ann-Marie Slaughter also observes the proliferation of non-state actors globally. She argues that legal norms increasingly migrate as a result of the work of non-state actors like non-governmental organizations, transnational network of experts, and transnational corporations.¹⁶ Julie Mertus points out that much of this transplantation of legal norms is carried out by transnational civil society and non-governmental organizations.¹⁷ Valerie Hans argues that legal norms are increasingly spread and exchanged through a network of scholars.¹⁸

Today women's rights advocates are actively working across borders or at the international level. Other women's rights advocates are proposing domestic policies and legislation based on ideas and legal solutions borrowed from other countries. People increasingly engage in private transactions, such as surrogacy across borders, that raise concerns for women's equality.

Challenges

While there are opportunities, there are a number of potential challenges that arise when feminisms and feminist legal solutions migrate from

13. Harold Hongju Koh, *Why Transnational Law Matters*, 24 PENN. ST. INT'L L. REV. 745, 745-748 (2006). But Peer Zumbansen, a leading figure in the field, has recently described transnational law as a "methodology." See Peer Zumbansen, *Defining the Space of Transnational Law: Legal Theory, Global Governance, and Legal Pluralism*, 21 TRANSNAT'L L. & CONTEMP. PROBS. 305, 308 (2012).

14. SALLY MERRY, *HUMAN RIGHTS AND GENDER VIOLENCE: TRANSLATING INTERNATIONAL LAW INTO LOCAL JUSTICE* (2006).

15. Janet Halley, Chantal Thomas, Hila Shamir, & Prabha Kotiswaran, *From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism*, 29 HARV. J.L. & GENDER 335, 352-56 (2006).

16. Anne-Marie Slaughter, *Breaking Out: The Proliferation of Actors in the International System*, in *GLOBAL PRESCRIPTIONS: THE PRODUCTION, EXPORTATION AND IMPORTATION OF A NEW LEGAL ORTHODOXY* 12-36 (Yves Dezalay & Bryant G. Garth eds., 2002).

17. Julie Mertus, *From Legal Transplants to Transformative Justice: Human Rights and the Promise of Transnational Civil Society*, 14 AM. U. INT'L L. REV. 1335, 1365-88 (2011) (Mertus argues that "transnational civil society" has a substantial impact on the development of international human rights norms around the world).

18. Valerie P. Hans, *Trial by Jury: Story of a Legal Transplant*, 51 LAW & SOC'Y REV. 471, 473 (2017).

one context to another. In her keynote address in a symposium on global feminism by the Center for Applied Feminism, Toni Morrison wondered “[w]ould applying feminism globally mean . . . advocating for an exporting of United States values and political theory to other countries and people?”¹⁹ Her fear has proven true in some respects.

Human rights organizations and lawyers often assume that practices that arise in multiple places have the same harms and consequences for women’s equality and rights. Despite the lessons about the acontextual migration of laws witnessed during the law and development studies movement in the 1960s and 1970s,²⁰ the critics of governance feminism have observed how legal feminism from the United States migrates around the world. A certain feminist approach that prioritizes criminalization and state intervention is advanced at the international level and such approach is potentially ill-fitted for the countries to which it is later transplanted. Halley explains why it is problematic to use radical feminist understandings of rape, which were developed in a non-war context, in war situations.²¹ She gives the example of the *Kunarac* case before the International Criminal Tribunal for the former Yugoslavia, in which the defendant was convicted of rape of a woman he transported out of detention.²² In that case, the court assumed that the woman did not consent to sexual activity because it occurred in a war-like setting.²³ Halley argues that the court’s perspective reflects a radical feminist view that could lead to over-enforcement, because sex (presumably even consensual sex) in a war setting would be considered rape.²⁴ This example reveals the risk of deploying feminist ideas developed in and which may be relevant for one setting into another context.

Another risk with transnational legal feminism is that, traveling through through the 24/7 media, information is often packaged in sound bites that lack nuance and are sometimes filtered through stereotypes of non-white women as victims.²⁵ For example, women who abort female fetuses in India are thought to be coerced rather than recognizing that they are making choices within their social and economic context.²⁶ In some cases, movements with other agendas are co-opting feminist ideas from around the world, and feminists sometimes find it difficult to articulate coherent ways to challenge them. Pro-life groups have successfully passed limitations on sex-selective abortion in the United States drawing from

19. Margaret E. Johnson, *Foreword: Applying Feminism Globally*, 41 U. BALT. L. REV. 217, 217 (2012).

20. Trubek and Galanter identified several reasons why the law and development movement failed. See David M. Trubek & Marc Galanter, *Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States*, 1974 WISC. L. REV. 1062, 1063-64 (1974).

21. Halley et al., *supra* note 15, at 380-81.

22. See *id.*

23. See *id.*

24. See *id.*

25. Ratna Kapur, *The Tragedy of Victimization Rhetoric: Resurrecting the “Native” Subject in International/Post-Colonial Feminist Legal Politics*, 15 HARV. HUM. RTS. J. 1 (2002).

26. KALANTRY, *supra* note 12, at 136-139.

laws in India and China and references to the wide-spread practice in those countries.²⁷

Opportunities

The interchange of feminist legal theories and ideas among transnational civil society, lawyers, judges and legislative representatives can be very fruitful. Judges borrow solutions that were successful in achieving women's equality from other countries. Feminist lawyers in one country can seek information from other countries in addressing domestic legal concerns. In doing all of this, it is important to keep in mind the importance of evaluating practices and legal solutions within the social, historical, and economic context where they emerge.

Another opportunity for transnational legal feminism is to "turn the gaze back" as Brenda Cossman proposes.²⁸ She notes that "[i]nstead of understanding the flow of the comparative analysis as unidirectional, the hegemonic discourses of the West might begin to be displaced if we insist that the flow of comparative analysis be multidirectional."²⁹ And this reframing of perspective can "help make explicit the seemingly inescapable risk of ethnocentrism in the comparative project, while at the same time, deploying the comparison to challenge that ethnocentrism."³⁰ In other words, actors in Global North countries should be open to learning and understanding feminist legal solutions from Global South countries and how those can be relevant to the Global North.

Conclusion

Transnational legal feminism reflects the interconnection and interchange of feminist legal theories and feminist legal solutions across multiple jurisdictions. Some advocates who work across jurisdictions transpose feminist ideas and framings developed in one country to another country often without reflection. Often women's rights advocates and scholars draw from feminist ideas, theories, and legal solutions developed in different temporal, historical, and social, and other contexts. There are number of opportunities this interchange creates but also a number of challenges. Feminists in the transnational world should recognize that practices can (but do not always) vary in meaning across different global contexts. Transnational legal feminism and feminists should be (but are often not) cautious about universalizing interpretations of practices as having the same women's rights implications around the world and should contextualize those practices before drawing conclusions about them.

27. *Id.* at 125-126.

28. Brenda Cossman, *Turning the Gaze Back on Itself: Comparative Law, Feminist Legal Studies, and the Postcolonial Project*, 1997 UTAH L. REV. 525, 527 (1997).

29. *Id.* at 536.

30. *Id.* at 537.

