

Book Review

***Human Rights and Gender Violence: Translating International Law into Local Justice*, by Sally Engle Merry. Chicago: University of Chicago Press, 2006, ISBN: 9780226520742, 264 pages, \$27.50**

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This volume focuses on the human rights norm of gender discrimination and violence as embodied in the CEDAW, processes of building and international negotiation which produced the final CEDAW text, process of and problems associated with transferring CEDAW principles into local legal structures and national setting. There are two core arguments central to the author's larger theme of law and gender violence: namely international gender norms of human rights are considered universal but in order to transcend abstraction, IHRL must be adopted and given localized frames which can become understandable to populaces and a tool for social change. Second is that international human rights norms face a myriad of obstacles when coming into contact with national/local culture, politics of power/aid/funding/trade and must be contextualized without sacrificing its universal normative legitimacy to be effective in triggering changing conceptions of social justice locally.

Merry uses a transactional framework to justify her thesis that international human rights norms, embedded in treaties are meta level frameworks that run into problems when transposed into localized settings. She considers three interconnected ways in which gender based human rights interact with culture thus negotiating the global to local dichotomy:

transnational consensus building associated with international legal instruments wording, issue inculcation and adoption, transnational program transplants of how human rights programming and/or initiatives are planned and undertaken and localization of cultural knowledge associated with how actors bring international experience to local environments (pp. 19-20). To substantiate her thesis the author draws on legal text analysis of four human rights documents; 1993 Vienna Declaration, CEDAW, 1995 4th World Conference on Women and Beijing +5, ethnographic analysis of global dispersion and understanding of gender based human rights, positivist participant observation and interviews. The authors' primary research question is: how do international gender based legal texts get translated and given effectiveness in localized settings to stop violence and change cultural norms via reform to international understandings of social justice?

The author narrates international negotiations surrounding CEDAW showing contentious issues surrounding religious interpretations of sexual orientation (pp. 44), power politics and the innate power of international legitimacy embedded in HR documents brought by consensus decision-making and how this works as a dual mechanism of compliance and reform due to widespread support and civilizational prestige surrounding HR document ratification (pp. 47). Critical to the question of why states sign constraining legal documents may be found in rationalist calculations of international political economy where low cost-high opportunity calculations dictate engagement. Specifically, entering into HR treaties has low sovereignty cost in that there are no supranational compliance mechanisms while opportunities gained by being part of 'civilized' international society is high concerning aid, trade, investment and stature. The UN itself is shown to be contradictory in its treatment of NGO's, a venue for power politics and central focus point for transnational international society. The author surmises that non-state actors access international power and gain influence discursively by exploiting the political space associated with human rights by using opportunity voice as epistemic communities (pp. 60).

The authors' conception of modernity is said to be key in understanding HR documents as being both a sign of modernity subject to post-coloniality and a point of conjecture where criticizing traditional practice is often construed as being critical of national culture, hence identity (pp. 99). Within this understanding culture is used as a tool of evading responsibility (pp. 88) and an excuse for failure to comply by states (pp. 99). As such modernity acts as a method to differentiate at the national level—the traditional—backward rural with a modern transnational urbanized elite culture. Transnational modernity is seen as a hypocritical dichotomy that frames an internal 'other' as well as national identity as sacrosanct creating dissonance and distance of culpability in poor performance. This can best be described as a socio-political semiotics of portrayal and acts surrounding post-coloniality and modernity presented at the UN especially with reference to the semiotic value and political veneer of HR accords. Violence is said to be 'attributed to customary practices' while law is said to be objective and in opposition to violence (pp. 93) but with culture itself dynamic and non-static (pp. 91) a distinct problem arises; HR regime is a global meta regime which doesn't differentiate nor particularize for privilege but seeks to transplant norms to be instituted locally without distinction, stimulating reform and change in social justice. These norms are seen as neoliberal in nature which supports generalized individual choice but must come into contact with local contexts of history, nationalism and politics that often support communal or socialist bases for social justice. How can the generalized universal norms of HR treaties not be sacrificed for particularistic application? These problems are described clearly in the context of India and its personal laws relating to marriage which have a colonial lineage linked to customary law which provides a critical source of identity formation and point of nationalist/religious political contestation (pp. 106-107) which presaged communalist values that underpinned patriarchal systems. But when framed in nationalist political context changed the dynamics of even staunch women led gender based rights groups (pp. 105). Culture in the broadest sense is but practices and discrimination towards women is seen by the legal regime as detrimental, rigid, static and

in need of abolishment with a one size fits all universal claim to justice. But social justice of the national and people are not always as stereotyped and when fluidly intermeshed with identity formation, communal maintenance, nationalism and politics becomes incompatible with the rights regime as practiced in theory. Thus, fundamental universality must lay claim to something which is why non-compliance is unpunishable.

In answering the aforementioned conundrum the author uses a poststructuralist interpretation of multiple subjectivities of the individual as being a site of contradictions and multiple identity formations (pp. 184) as well as a layered conceptualization of rights and identity which lead to new subjectivities of the agent (pp. 179). The author sees this as a critical point of inflection where external agents of law enforcement, judicial actors, bureaucrats, advocates and social workers all play roles in mitigating or aggravating the shifting nature of identity with relationship to the law and its empowerment and/or subversion of the power of international legal processes to provided active subjectivity to women (pp. 182). It is stated that these factors affect both the woman and man in gendered relationships of power but it's the of law that creates subjects which shift and change thus setting new norms and standards of conduct for regulating gender based violence providing law with power from a postmodern Foucaultian perspective (pp. 186). The localization of knowledge and translation of the international into an understandable form in law provides the words and expression needed to assist those most vulnerable to abuse and violence (pp. 219).

The strength of the volume lies in the author's ability to articulate very intricate details surrounding the construction of an international meta regime and the very real problems of "culture" that inhibit instituting and realizing gains for individuals. The author could have benefited by paying more attention to exactly how issues of framing explain how and why states pick and choose ideas, concepts and practices to institute nationally. The author suggest wholesale importation of legal regimes thus a zero-sum approach to social justice and change triggering reform but this cannot be the case as every circumstance was not taken into account during drafting of CEDAW.

Hesitancy and partial implementation and success of norm entrepreneurs would have benefited by reference to Finnemore and Sikkink (1998), Sikkink (1998) 'norm cascades' which rest on resource appropriation, voice opportunity, rejection of the welfare state and politics of aid. In terms of the discursive application the author would have provided the reader with greater insight if wider sociological application was provided. The notion of power and discursive logic is felt by the writer to be key to understanding agenda setting, relationships of power through voice opportunity and how networks come together to provide stimulus and power to their ideas getting adopted. Closer to Merrys' work is Hemming and Piper (2004) study of Human Trafficking and Prostitution and CEDAW which demonstrates how transnational NGOs altered agenda's and legislation of the Trafficking Victims Protection Reauthorization which had huge impacts on public policy in countries such as Thailand due to foreign aid and criminalization of prostitution.

The opinion of this writer is that human rights are indeed subject to discursive logics and it is also subject to law and its application which is in and of itself an extension of power. What came to mind while reading this text is that law emanates from centers with inputs from afar as the author states, correct, but if law is supposed to proscribe behavior according to prescriptive logic then shouldn't it be based on descriptive logic to give it traction? Could this come from the fact that the norms embodied in CEDAW deviate from descriptive history, hence, logic thus in some respects nullifying its universal applicability of principled norm valuation?

References

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