

# **Gender Justice and Law in a Global Market**

**Ann Stewart**

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**Ann Stewart** is Associate Professor and Reader in Law at the Warwick School of Law University of Warwick, UK. She held the position of Ford Visiting Professorial Fellow at the Centre for Law and Governance Studies at Jawaharlal Nehru University, New Delhi in 2009–2010. At the Centre, she co-taught an optional course on gender and law. She also pursued her research on gender and judging in India by undertaking extensive interviews with senior judges, and the impact of gender training on Indian judges. Between 1996 and 2000, Ann Stewart was the UK Director of the Indo British gender and law project for the Indian judiciary. This involved working with the National Judicial Academy in India to develop a curriculum for judicial training and then assisting with implementation. Professor Stewart's research interests relate to gender justice, postcolonialism, care, body, multiculturalism and feminist theory. Her book, *Gender, Law and Justice in a Global Market* was published by the Cambridge University Press in 2011. She can be reached at [Ann.Stewart@warwick.ac.uk](mailto:Ann.Stewart@warwick.ac.uk)

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## INTRODUCTION

The first half of this paper traces key issues relating to gender and international development. Recognition of women's human rights has been a focus for international activism for over thirty years. The campaigns, such as those to confront tolerance of myriad forms of violence against women, have been successful in forcing the position of women on to the international stage. These battles were hard fought and fraught with tensions but nonetheless, the 'culturally sensitive' universalism (Engle 2005) that emerged laid the cornerstones for creative use of rights by women's activist groups throughout the world. The positive momentum of this movement was reflected in the UN conferences of the 1990s, a period of optimism. However the rights framework emerged against the backdrop of the profound economic, social and political changes associated with the collapse of the Soviet system and the triumph of neoliberal economic development which has resulted in the contemporary forms of globalisation of the 21<sup>st</sup> century.

Until recently, feminist engagement with the theories and practices of development has followed a different path. Rooted in the wider discourse of development, practitioners have tackled the gender blind nature of much economic development theory and practice

and highlighted the consequent impact of the unequal distribution of economic and social resources within Global South communities and states. Gender and development campaigners succeeded in ensuring that gender concerns have been 'mainstreamed' into normative frameworks and multilateral and state based development policies. Does this represent another success story?

Until the late 1990s these were separate stories to a large extent. However since then a rights approach to development, involving advocacy and empowerment strategies, has permeated development discourse and policy, resulting in a seeming merger of the two. Arguably the importation of rights into development provides a powerful new 'tool' for gender activists because of the normative centrality of equality and non discrimination to the concept of rights. Equally the engagement of human rights activists with those who work with the effects of economic and social processes has the capacity to enrich the jurisprudence of rights. In a separate but related context the intense debates relating to the nature and culture of rights within feminist legal analysis have produced new understandings of the subject of rights which are less abstract and more embodied.

However the guarded optimism of the 1990s has been replaced in the 21<sup>st</sup> century with a growing realisation that feminism has lost its emancipatory edge in an era of globalisation. It is of course important not to forget that for the many whose everyday lives are not conducted within states and communities in which rights have any resonance, the power of its language can hold out some hope. However it is clear that the language of rights has been accommodated within neo liberal economic policies and that a concept which has been influenced by feminist analysis can, however unwittingly, underpin these developments. Rights may have addressed some deficits in recognition but they have not delivered a more equal world or significant benefits to women. Rights based approaches to development are not used as a means by which to implement the distribution of resources from the Global North to the South but as

a top down bureaucratic prescription for Global South governments or 'failing states' which need aid or arms.

It concludes by arguing that in contrast to the debates relating to the relationship between rights and 'culture', there has been insufficient attention paid to the culture of economics. The second half of the paper develops this theme. It considers, in particular, the implications for feminist legal analysis of the rapidly changing relations of production and social reproduction worldwide associated with the development of global consumer based market economies. It concentrates on the contemporary challenges for feminist analysis in what seems to be a period of relatively uncontained global crisis. What is needed is a 'structural turn' in feminist analysis which is not reductionist, but which places it more firmly within political economy. It draws upon the feminist analysis associated with the ethics of care to explore these changes and to argue that this form of analysis offers a basis for a politics of redistribution in an era of globalisation. However it highlights the way in which the concept of care is also increasingly being resignified within market discourses in the context of the rise of service economies. The challenge therefore is to ensure that care continues to be a feminist concept which does not 'go rogue'. The recent revival of interest in the work of Karl Polanyi and in particular in the feminist rewriting of his approach by Nancy Fraser provides a point of reference. This section assesses the extent to which such an approach can be put to work to address some contemporary issues relating to women's involvement in global markets and the related depletion in socially reproductive capital and can re align feminism with global gender justice.

## **INTERNATIONAL DEVELOPMENT**

Development as a concept, although rooted in a long history of colonialism and imperialism, came into being to mark out the West from the 'underdeveloped' other in the immediate aftermath of the Second World War. The knowledge underpinning the scientific

advances and industrialisation that formed the foundations for progress in the West was to be transferred to underdeveloped areas to tackle the misery in which half the world was living. It was set within ‘two overlapping contexts’: first the ‘deepening ideological fissures between the socialist and the capitalist world orders’ and the ‘consolidation of post-war hierarchies of power in the international system’; and secondly nationalist struggles and the processes by which post-colonial states approached modernisation and development. The Cold War structured the possibilities open to post colonial states. The Third World, signified through comparative size of GDP and post coloniality, emerged in contradistinction to the Western First World and Soviet Bloc Second World despite the attempts of the non aligned countries to carve out their own approaches to development. Despite differences of position and ideology, members of all three Worlds (with the exception of China in this period) considered that economic growth was linked to industrialization and urbanization and with the mechanization of agriculture. These forms of modernisation both built on and recast gender hierarchies (Rai 2011a: 14–18).

The dominant discourse of development is still economic as indicated by the way in which development is measured in the World Bank’s annual reports (the key multilateral development agency). The more recent influence of a ‘human development’ approach, based upon an assessment of the capabilities an individual has in any society and championed by United Nations Development Programme, has stretched the boundaries of the ‘economic’ to include indices on education and health and a gender equality index.

Nonetheless post World War 2, geo-politics clearly structured understandings of the relationship between the economy and society and the appropriate role of the state. Political development has always played a part in international development policies although such assistance is generally understood to be ‘technical’. The failure of development assistance to produce ‘lift off’ in ‘underdeveloped’ countries led some to focus on the need for democratisation which it

was assumed would lead to greater efficiency and accountability but led others to recharacterise the relationship between First and Third Worlds as one of maintaining dependency within peripheral states to advantage those at the core. For the Bretton Woods institutions in the first camp, the answer was better and smaller government, for some Global South states in the second camp, the answer was reduced dependence on the capitalist world order. The debt crises which resulted in the economic rescue of Third World states by the Bretton Woods institutions in the 1980s put an end to delinkage for many while reinforcing a sense of dependency. The solution to these crises, Structural Adjustment Policies, required states to implement neo liberal policies which involved its withdrawal from economic activity to enable markets to develop and national growth to be stimulated by reduction in state debt. The impact of these policies which included privatisation of services and payment for others, such as health and schooling, on vulnerable groups in society, particularly women, whose responsibilities revolve around caring was not an initial policy consideration.

However the hardships inflicted on citizens by what were clearly seen as external agencies coupled with their failure to produce the goods,—to stimulate sustainable growth, produced a rethink in the 1990s. Structural Adjustment Programmes (SAPs) were replaced by Poverty Reduction Strategy Papers (PRSPs) which recognised a role for the state to support good governance and poverty alleviation. The economic orthodoxy of liberalisation remained but was now to be owned by countries. PRSPs also stressed the need for citizen participation, although as we shall see, this participation tended to become consultation conducted by external agents.

The context in which such top down development strategies function has changed significantly. Globalisation, based upon neo liberalism, coupled with the rise of the economics of ‘emerging markets’ particularly associated with the ‘BRICS’ states (Brazil, Russia, India, China, South Africa) has destabilised an already shaky concept of international development. Other types of states ‘failed

and post conflict' states have also emerged associated with the politics of security and the rise of the ideology of terrorism. The policies themselves have failed to produce significant improvement in the well being of vast numbers of people across the globe at a time when the ideological base of First, Second and Third Worlds is increasingly meaningless. India is described as an 'economic superpower' with markets to which First World states and entrepreneurs are desperate to gain access, while still receiving development aid from the same states to support, in theory, the third of its massive population which lives in abject poverty. DFID, the UK's development agency, describes three Indias: 'global' involving those whose integration within the global market benefit directly and substantially; 'developing' (small farmers, micro enterprises with some links to 'modern' India; and 'poorest' (marginal farmers, landless agricultural labours and urban slum dwellers)' who experience the negative and exclusionary effects of marketisation (2007: 2–4). Development assistance is increasingly tied, although with dismal evidence of impact, to international security agendas rather than on indices directly associated with GDP or well being.

It is therefore not surprising that there are critiques from a number of different ideologically placed constituencies which argue for an end to development ranging from causing more harm than good, stifling entrepreneurial agency and dependency, a monumental waste of tax payers money due to corruption, inefficiency and failures to deliver, to anti-democratic unaccountable top down state led interventions stifling counter hegemonic social movements.

### **Moving to Gender and Development**

Feminists have contributed to critiques of the increasingly amorphous concept of development with encompasses supporting 'economic growth, meeting basic needs, fulfilling human welfare, putting in place sustainable environmental development, keeping the peace, and redistributing wealth among rich and poor countries' (Harcourt

2009: 26). The wide range of different institutions which include 'the Bretton Woods institutions, UN agencies, governments, communication academic and policy institutes, those working ... with grassroots organizations' (such as Non Governmental Organisations) and civil society actors including the business community dominated by Multi National Enterprises are associated with different approaches to these issues (Harcourt 2009:27). While location within the global market and geopolitics (Global North, East or South states for instance) affects understandings within such institutions.

Rai (2011b) identifies the now familiar strands of feminist analysis that have contributed to critiques of dominant development discourses. The critique from liberal feminists which underpinned the 'women in development' approach focuses on the inefficiency as well as lack of equality when women are marginalised from the economy. In contemporary contexts it is the 'business case' for women's inclusion. Development experts have focused on improving or reforming those elements of the local economy which are likely to be most 'productive'. So feminists have exposed the gendered nature of policies such as those relating to the mechanisation of agricultural production and now to securitisation of land as an economic asset while not considering the impact on women who produce food using minimal technology for family security (Williams, 2003; Manji, 2006). WID argued powerfully that women must benefit equally from modernisation but did not question the modernisation agenda.

The Basic Needs approach challenges trickle down growth which links success to income, the measure for which tended to be the household unit. Championed by the International Labour Office, the specialist UN agency concerned primarily with (paid) employment, this approach argued that the goal of development should be the 'satisfaction of an absolute level of basic needs' (ILO 1977: 31). The understanding of needs encompassed not only tangible essentials such as food but also political essentials such as participation and community life. Its association with the International Labour Organization (ILO) however meant that while the needs of all

humans are covered, little attention was paid to the marginality of women's paid work and the centrality of family relations to women's well being.

The more recent human capabilities approach is rooted in the same soil although much more aware of the relationship between the world of the family and work. Sen (1999) argues that human beings require entitlements in order to realise the capabilities that constitute the basis of a life worth living. Labour remains a core capability for the vast majority of people so 'the conditions of labour should be central to any analysis of entitlements' (Rai 2011b: 30). It is therefore essential that human beings are free to maximise these entitlements. Freedom supported by rights is a development goal in itself. Nussbaum (1999a and b) has torn through the ideological public/private divide to insist that women (as well as men) are entitled to choose to be emotional, playful, desiring, fun loving individuals and that power relationships within families cannot deny access to choice on these and other entitlements. Both Sen and Nussbaum challenge the concept of the altruistic family and recognise intra familial relations of power.

Perhaps the most trenchant criticism of modernism came from the eco feminist movement and its understanding of sustainable development. Highlighting the assumed relationship between women and nature this movement has linked women's position with the degradation of the environment associated with the relentless (and patriarchal) pursuit of economic growth. While the essentialism of eco feminism does not command widespread support, the debate over how to meet needs sustainably is now centre stage.

Materialist feminisms, some associated with state socialist development, exemplified by Cuba or China, others with critiques of the post colonial state and yet more inspired by broadly based, context specific, class struggles provided critiques of liberal approaches. They highlighted the similarities between the position of women and that of the Third World in international and national capital accumulation and pointed to the way in which women's labour is devalued and

therefore exploited both by men and by capital through its association with their role in the social reproductive sphere of the family.

By 1990, feminist engagements had shifted their focus from 'women' to analyses of the 'gender contract' based up the division of labour within the home and in waged work and to assessments of the power relations that control access to resources. The discursive power of gender and development discourse is generally acknowledged. 'Gender' has been foundational, both as an organizing principle and a rallying call, for [a wide range] of discourse coalitions (Cornwall et al 2007: 5). It became a political force in the transnational civil society arena provided by a number of UN conferences of the 1990s. As a result, it found its way into international discourse on environment, rights, population, social development, human habitat, women, food, trade and finance (Cornwall et al 2007: 5) at a time when the focus was moving to 'politicized concerns with delivering human rights and more holistic concepts of development' (Harcourt 2009: 27). Accordingly gender was 'mainstreamed' into a wide variety of development institutions including those responsible for international human rights implementation (Charlesworth 2005). The optimism (or hubris) generated by the west 'winning' the cold war produced talk of peace dividends, human global security and sustainable development (Harcourt 2009: 27).

While the 'landslide' of Gender and Development (GAD) discourse might have been celebrated as a success story (Cornwall et al 2007: 5), subsequent lack of progress, epitomised by the contrast between the Beijing Platform for Action (with all its limitations) and the Millenium Development Goals with their anaemic gender objectives, has provoked a reassessment. Mainstreaming has not led to visible effects on institutional policies and practices (Charlesworth, 2005) despite enormous efforts to develop frameworks, tools and mechanisms to implement gender sensitive policies. Women have undoubtedly become subjects of development. However 'poor women with an expertly understood set of needs and rights' who were once victims 'in need of aid' have along the way been

transformed into ‘working subjects with productive potential, willing and useful agents for development’ but they are still poor (Harcourt 2009: 28). When such gender mainstreaming is imposed externally upon states it can become the stick with which to beat recipient government bureaucrats leading to inertia at best and backlashes at worst. It can privilege the voices of funded ‘gender compliant’ NGOs over women’s social movements (Jad, 2007) or over approaches to tackling trafficking (O’Connell Davidson and Anderson, 2006). GAD’s emancipatory potential has been almost completely dissipated leading to another widely held view that ‘gender’ has ‘fallen from favour and has a jaded, dated feel to it’ (Cornwall et al, 2007: 5).

While the struggles within institutions to transform GAD discourse into recognisable shifts in gender power relations and redistribution of resources towards women was being lost, postmodernists were challenging its foundations to reveal development as a mechanism through which the Third World and Third World Women had been constituted and marginalised. Post development feminists rejected meta-narratives of liberalism and socialism and the forms of political action associated with them. Instead they focused on deconstructing multiple and diffuse power relations in local settings to reveal localised acts of resistance. Such nuanced understandings of power and hierarchies contributed to understanding constructions of differences but not to strategies to address social and economic injustice.

### **From Legal to Rights Based Approaches to Development?**

Law has its own history within development theory and practice (Tamanaha 2008) and legal feminists have engaged in similar struggles to shape content and implementation (Stewart 2011). The early law and development movement was rooted in an emancipatory project. Although disillusion with the limits to this project soon set in, lawyers sought to use law as a tool to assist newly emerged postcolonial states in achieving social justice (Trubeck and Galanter, 1974). Thereafter law’s contribution to development became the subject of academic

critiques which revealed the complex nature of law in post colonial states and the ways in which law supported hierarchies of power both within states but also between the Global North and South (Ghai et al., 1987; Shivji, 1993). Analysis focused upon the ideology of the rule of law and of rights, constitutionalism, and the plurality of law in post colonial societies, influenced by the work of anthropologists, sociologists and historians (Griffiths, 1986; Chanock, 1985).

Not surprisingly, given the marginal position of women within the legal academy in the Global North and even more so in the Global South, much of this work was gender blind. However since the 1980s scholarship on gender within law in development has emerged which has reshaped understandings through its focus on the impact of family, community and religious institutions on distribution of assets (Armstrong, 1992; Griffiths, 1997; Nyamu-Musembi, 2002; Patel, 2007); analysis of the impact of legal pluralism on women's lives (Griffiths, 2002; Hellum et al., 2007; Manji, 2006); on violence against women in public and private spheres (Merry, 2006; Kannibaran, 2005); women's access to justice (Tsanga, 2004 and 2007; Mehra, 2007; and more recently sexual identities (Kapur, 2005; Tamale, 2008 and 2011). There is a close relationship with women's organisations both locally and through regional and transnational activist networks (such as Asia Pacific Forum on Women, Law and Development; Women, Law and Development in Africa; Women Living Under Muslim Laws; International Women's Rights Watch; *Comitê Latino-americano e do Caribe para a Defesa dos Direitos da Mulher* CLADEM) where the discourse of rights, rather than development, tends to feature more prominently.

This gender and law theoretical practice had less impact on the institutional development context partly because law itself has been marginalised. The role for law within neoliberal development policies of the 80s and early 90s was limited to providing the necessary infrastructure to support markets through the provision of all forms of security for investors. This discourse of good governance and the rule of law involved the reduction of state regulation to a

minimum (Faundez, 1997; Faundez et al., 2000) but involved no role in facilitating social or redistributive justice. The destabilising effects of these policies, including the sheer misery imposed on sections of populations, led to a certain rehabilitation of the state to provide the necessary social safety nets. Thereafter, there has been an expanded role for the state and law in tackling issues relating security and terrorism in post conflict and failed states. Newly defined ‘rule of law’ projects have proliferated (Trubeck, 2006) but seemingly learned little from critical law in development analyses (Trubeck, 2009; Hammergren, 2010). The projects have mainstreamed a limited gender analysis resulting in a generally similar lack of practical impact on women’s lives. In particular, feminist analyses of the impact of plurality of institutions, customary, religious and familial, which structure women’s lives, although incorporated into development discourse as ‘non state institutions’, (ICHRP, 2009) have little resonance with the good governance, democratisation and formal women’s rights described by Kandiyoti as the ‘trinity’ of international development policy. These are deployed in a context of ‘armed “democratization” and regime change’ (Kandiyoti 2007:191) and in ‘failing and failed states ‘which are war torn, lacking almost any governance institutions and ‘whose political economies are based on illegal trade in drugs, arms and high value commodities’ (Kandiyoti 2007:191).

Since the last decade of the 20<sup>th</sup> century, the struggle for discursive power within the various development institutions has centred on the now dominant ‘rights based approach’ which seeks to connect the power of a legally constructed concept of rights to development theory and practice. Given the range of meanings attached to the term, it is more appropriate to describe these in the plural—as approaches (RBAs) (Tsikata 2007; IDS 2). They all share a common legal basis in the normative framework of international and regional human rights instruments and therefore place a greater accountability on states and international actors to ensure the implementation of policies, which uphold the human rights of vulnerable groups. They

all seek empowerment, participation and non-discrimination and are directed at redressing injustice rather than relieving suffering. They champion agency by individuals rather than victimhood. Some RBAs seek to tackle the 'roots of structural injustices rather than their effects' (Tsikata 2007: 215).

It could be argued that what we are seeing here is the success of the international human rights movement, including that associated with women's rights, to deploy its discursive power in support of more emancipatory forms of development. The central importance of equality and non discrimination therefore should benefit women. But how emancipatory are these approaches? Few acknowledge any link to the Declaration on the Right to Development 1986 (Cornwall and Nyamu-Musembi, 2005). This Declaration, instigated by Global South states, heralded as a collective solidarity right, requires *inter alia* 'sustained action to promote more rapid development of developing countries' and 'effective international co-operation [to provide] countries with appropriate means and facilities to foster their comprehensive development' [Article 4 (2)]. Proponents use the Declaration to argue for regulation of the global economy to ensure greater equality between states, for state duties to provide aid and assistance and as a means by which the human rights of all can be realised (Marks 2008). There is considerable resistance to the realisation of these aims. In particular Global North states do not accept that they are under any duty to provide resources.

In general, those implementing RBAs ignore analyses of the complex relationship between women, state and law (described briefly above). They fail to understand that rights are not easily attached to the activities of many international actors such as the IFIs and MNEs but can be used by dominant development agencies to transfer responsibilities to Global South states. Southern governments are expected to guarantee more rights to citizens while transnational economic policies oblige them to restrict access to services. They are also 'empowerment lite': 'processes of self realization, self actualization and mobilisation to demand change [have been reduced]

to a simple act of transformation bestowed by a transfer of money and/or information' (Cornwall et al 2007: 7). An effective right to participation would require both a radical rethink of the practices of democracy (Benhabib, 1996; An-Naim and Hammond, 2002; Santos and Rodriguez-Gavarito, 2005) and require substantial investment to facilitate. Its processes would reveal uncomfortable power imbalances and produce messy and unpalatable outcomes for international development policy makers.

### **Women's Human Rights and Culturally Sensitive Universalism**

This disillusionment with rights will not surprise feminist legal theorists. Other chapters in this collection address the issue of rights and international law so the discussion here will not rehearse the many conceptual reasons why rights may disappoint (see Lacey 2004 for a discussion). This section confines itself to a consideration of the way in which the international women's rights discourse has emerged to reflect briefly on the consequences of the engagement between rights and development. Engle in her review of feminist critiques of international human rights law identifies three approaches associated roughly with three time periods: in order they are liberal inclusion, structural bias and third world (Engle 2005). The first, liberal inclusion, sought to add women to the existing human rights protections; the second critiqued this approach to argue that international law and institutions permitted, even required women's subordination; and the third critiqued both approaches for their 'exclusion or false representation of third world women' (2005:49). Engle, echoing the earlier discussion on development, argues that liberal inclusion has secured a place in mainstream discourse and that proponents of structural bias critiques, who argue that 'women's bodies constitute the locus of women's oppression' have 'compromised' with third world feminists to champion a new discourse—'culturally sensitive universalism'. In the process the cultural has become separated from the economic, unlike third world

approaches, and the discourse thereby loses its ability to address issues of global injustice and to support redistributive strategies (Engle 2005:50; Stewart 2011).

The international practice of ‘women’s human rights’ is heavily associated with the UN system and its language (Merry 2006). This ‘talk’ is translated by women’s legal activists into state based demands to tackle: many forms of violence against women; discrimination within customary, personal and religious laws relating to marriage and inheritance; access to land and to political representation. However it often fails to translate because it ignores the alternative discourses and power relationships operating within such contexts. Rights talk tends to support identity based struggles which are undoubtedly essential particularly in the context of intense battles being waged over the right to sexuality. Despite many examples to the contrary, it is associated with individualism and elite concerns. It is also donor driven and therefore externally imposed. There has been much less focus on the core concerns of gender and development which address the social and economic injustices that flow from the neo-liberal macro-economic development paradigm.

While gender has been absorbed into the discourses of development and rights and mainstreamed into their institutions, its power in relation to the legal discourse associated with the global market is much weaker. Gender based legal critiques of any sort relating to trade and finance have been resisted, despite growing scholarship in the area, (Beveridge, 2005; Kelsey, 2006; Rittich, 2002; Bedford, 2011) and there has been no equivalent mainstreaming into such

### **Confronting Injustice: A Return to the Structural?**

The seemingly powerful combination of an institutionally supported gendered rights based approach to development has not resulted in significant improvements in women’s lives (UNRISD, 2005; UNWomen, 2011). Gender concerns have become the soft issues

of development: 'the micros level adjuncts to the hard macro development issues of war, failed states, internal conflict, economic crisis, the restructuring and liberalizing of markets, security and trade agreements' (Harcourt 2009:29).

The translation of the gender critique which links social, economic and gender justice into institutional practice has been decoupled. The concepts drawn from feminism and from rights are those which can be translated into the dominant neoliberal economic framework and which support global consumer markets. Feminists have indeed argued that involvement in the 'productive' sphere of the economy can support values of independence, autonomy and choice. The opportunities for women to engage in the market have increased significantly: 60% of women in developing countries are now involved in forms of paid labour (ILO undated) whether in local markets or through migrating to improve opportunities. Feminists have also critiqued oppressive developmental and bureaucratic welfare states as reinforcing existing familial and community patriarchal assumptions. Markets enable women to define their own identities through the exercise of consumer choice. They free women from existing forms of oppression within the family and community which have assumed that women will be responsible for socially reproductive, caring activities. The development of a market in caring services and products frees women from this unvalued labour while providing paid work.

Undoubtedly, the struggle for the recognition of women's rights has forced institutions to take account of the injustices that women face. When translated into constitutional guarantees of equality and non discrimination which can be enforced in courts and used as the basis for state based gender policies, they can, albeit through this 'top down' method, be used to improve women's lives (Stewart 2004) such as in the widespread adoption of legislation relating to violence against women (Merry 2006). However the outcome of feminist critiques of the liberal underpinning of the international human rights framework has accommodated concerns relating to

culturally constructed differences, associated with what men do to women, but not economically determined disadvantages, associated with what the economic processes does to women and men. Thus states are obliged to tackle culturally based oppression—within families and communities—which is bad for women and for market based development.

In these processes however the crucial theoretical insights gained from feminism have been lost in particular the relationship between productive and reproductive spheres of activity, the discourse of rights and that of care—between embodied and abstract subjects—(I have argued elsewhere that these engagements are producing enriched feminist legal understandings of rights which accommodate a less abstract, more embodied concept of the subject (Stewart 2011), the politics of recognition and the economics of redistribution and the relationship between markets and communities and their relationships with the state.

Is the ultimate aim then that all of us should be free to engage with a global market which is itself presently, from a Global North perspective, in a paroxysm of crisis? The relationship between social reproduction and production is being profoundly affected by contemporary globalisation. Although differently constituted socially constructed gender contracts (reflecting the gender division of labour) are under pressure across the globe as women are drawn in global markets while expected to maintain socially reproductive activities with limited and often shrinking social systems of support. Women's engagement with this market at present results in triple burdens; undertaking paid work, family labour and compensating for the lack of social provision. Women (and men) are increasingly involved in survival migration and working in precarious conditions. At the same time, bodies have become a 'war zone' with women raped in armed conflict, denied sexual and reproductive rights and subjected to ageism which leads to the exploitation of young and neglect of old bodies (Harcourt 2009: 32). As Pearson points out 'being exploited by capital is the fate of virtually all women in today's

global economy' (2007: 211). She argues that increasing wages will not on their own make women less poor or more powerful. Like others with roots in socialist feminism, she argues that it is essential to combine a guaranteed minimum income with labour regulation and supportive social policy. The depletion in social reproductive capital which results has profound effects not only for women but also for communities and societies (Pearson 2007; Hoskyns and Rai, 2007). For instance care 'deficits' in the Global North, in part produced by the unavailability of women's labour and the lack of a socially provided alternative, are met by commodification of care which is provided by the commodified labour of migrant women body workers whose legitimacy as an 'immigrant' is increasingly challenged politically. The depletion in such capital and the replacement of provision based upon solidarity with that of the market sparks not only the 'othering' of some women but also intergeneration tensions.

There is clearly a need to repoliticize radical feminist engagement (Cornwall et al 2007:15) and reunite the cultural with the economic. It will involve drawing on the insights from the materialist tradition of feminism which brings the gendered relationship between production and social reproduction to the forefront. It is not about 'empowering' economic female or male subjects of global capitalism but creat[ing] conditions that allow lived bodies with diverse social, cultural and political expressions to flourish' (Harcourt 2009:32). However, is it possible to recognise the impact of global processes without essentialism and reductionism and to combine both structure and agency to address global gender inequalities in the contemporary context of globalisation?

I have argued elsewhere that this involves recognising the contribution of ethical care analyses which focus upon the way in which identities are moulded through relationships and which privileges the values associated with caring—responsibility, attentiveness, responsiveness (Stewart 2011). It involves asking, in a global market, who do we care about? Only the proximate few (family, friends, fellow members of clans or those sharing ascribed

identities)? Or wider cohorts (fellow citizens or non citizens living alongside us, global citizens)? Does care extend to those upon whom we rely or who are linked with us in often invisible ways? To ask who benefits, in what ways and to what extent by the social and economic processes of globalisation. These questions combine global commodity/value chain analyses within those drawn from development and feminist ethics of care. These questions are in contrast to but do not preclude such rights focused questions as: do others have the same rights as me? Or what are the barriers to realising these rights?

### AN INTEGRATED GLOBAL FEMINIST ANALYSIS

Here however I would like to consider the insights provided by the revival of interest in the work of Karl Polanyi in the *Great Transformation* first published in 1944 (2001) and in particular Nancy Fraser's feminist re-reading<sup>1</sup> which she uses to tackle the 'fellow travelling' of feminism and neo-liberalism, discussed above (Fraser 2009). The bare bones of Polanyi's argument are as follows. Historically, the economy was embedded in society (reliant upon social relationships) but developments in 19<sup>th</sup> century Britain led to attempts to dis-embed the economy (divorced from social relationships) so that it functions as a self regulating market. However, Polanyi stresses that the state is a constitutive element of a self regulating market because it is required by those seeking to dis-embed the economy to provide the framework through which entrenched interests can be overcome. These moves provoked a counter movement (landed interests, workers, local/small business) for social protection which sought to use the state to re-embed the

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<sup>1</sup> Three lectures given at The Centre for Research in the Arts, Social Sciences and Humanities (CRASSH) University of Cambridge on 'A Polanyian Feminism? Re-reading The *Great Transformation* in the 21st Century' Tuesday, 8, 9 and 16 March 2011; <http://www.crassh.cam.ac.uk/events/1534/>

economy. This protection could be at both international and state level. He points therefore to a double movement; the first seeks to create the market which provokes the second demanding social protection although this is not necessarily progressive in form. It resulted in fascism in the 1930s. This double movement is the 'actor' element in his analysis. The 'system' element revolves around his concept of fictitious commodities. Polanyi argued that the process of creating a self regulating market involves the incorporation of land, labour and money as commodities, which in his view, is a conceptual impossibility because they are not created through a market. The commodification of land, labour and money (the last of which he viewed as a social construct) destroys the very basis upon which the market depends—the social foundations of society—thereby setting the seeds of its own destruction.

The contemporary attraction of Polanyi is that he combines structure and agency and his concept of fictitious commodities can easily be transposed into three obvious areas of crisis—ecological, financial and that pertaining to reproductive labour. There are also movements associated with each demanding social protection at national and international level. Fraser however argues that Polanyi needs a feminist makeover. She introduces a third movement, associated with emancipatory struggles associated with feminism and anti imperialism (overlooked by Polanyi) to add to those associated with the struggle for a self regulating market and for social protection. Their interest is, she argues, in non domination. These movements are not wholly located within the spheres of activity of the other two—economy or society. Indeed both offer a critique of the market while recognising its role in freeing up those who have been enslaved or confined within family and community institutions and a critique of the role played by developmental and welfare state protectionism which can replicate such hierarchies of power. She sees the value of the fictitious commodity concept but argues that in contemporary contexts it is essential to integrate the

three rather than treat them as separate. She is wary of the potential to essentialise—to consider the non commodification of land, labour and money as the basis for a sustainable and progressive society. Feminism has revealed the extent to which the social construction of economic relations is gendered—how ‘non-commodified’ work of women in community and home is unvalued economically and takes place in conditions of unequal power relations. Fraser rightly argues it is not possible to return to or create non commodified forms given the degree to which in contemporary capitalism the concepts have been commodified (for example, body parts or genes). We need therefore to resist a communitarian, essentialist response in the movements for social protection to avoid ‘doxa’ or commonsense based responses which can reproduce women’s lack of emancipation. She suggests that what is needed is a political process which is not statist—top down and bureaucratic but one which involves bottom up democratic, participatory processes—identified as the space of civil society—to provide the basis for social protection designed to re-embed the market.

The strength of Fraser’s approach is that she uses the triple movement concept to facilitate an assessment of the role of the market and social protection from the perspective of emancipation and an interest in non domination. The market might not be all bad and social protection not all good. The latter can re-entrench hierarchies and mis-frame protection. This mis-framing can involve non recognition of those upon whom citizens rely—undocumented workers for example. At the same time she is able to use the framework to interrogate emancipation from the perspective of social protection and the movement for self regulating markets. It becomes possible to assess the extent to which emancipation take a form which reinforces the claims of the self regulating market—individualism, autonomy and the destruction of social solidarity or aligns itself with those of social protection which seek to re-embed (regulate) economies to achieve an egalitarian gender and socially just world.

### **Applying Polanyian Feminism**

I intend to apply this approach to one example which distributes the benefits of globalisation to the Global North in part by its ability to exploit both women's productive and reproductive labour in the Global South. By necessity this discussion will be somewhat schematic (see Stewart 2011 for more detailed discussion of this and other examples).

*Regulating Global Commodity Chains Associated with the Domain of Trade*  
Fruit and flowers are produced in Kenya to supply supermarkets in the UK to meet consumer demands for exotic or luxury items. This process takes place with a global value chain. The retailers determine every aspect of the product through detailed specifications which are passed down the supply chain. These specifications are designed to meet the exacting price and quality standards demanded by global north consumers while minimising the suppliers' exposure to risk. Suppliers seek maximum flexibility through just in time ordering. These measures retain as large a slice of the total value of the product as possible for retailers. Other actors in the supply chain play their parts and take their slice of the value. Large commercial farmers in Kenya employ predominately women workers to pick, prepare and pack these products on farms and in packing houses near the airport. Farmers must absorb the risks associated with the ordering. There is every incentive to minimise these through 'flexibility' of labour, in other words to use casual and seasonal labour, which is women's work, due to culturally ascribed divisions of labour. The formal labour market is very small. Jobs in agribusiness are therefore sought after although women maintain their heavy responsibilities for social reproduction within the families and communities. Significant numbers of women provision their families through semi subsistence agriculture and/or informal activities in Kenya. The state provides minimal levels of social protection. Labour laws have recently been updated to provide rudimentary protections to casual workers but

bestow greatest entitlements upon full time employees who are entitled to more work related support.

Polanyi's first movement would be to create a self regulating market in food. A global dis-embedded market in food, built through the power of the giant retailers, has developed. The market in agricultural commodities has itself been subsumed within a speculative market in food futures. The incorporation of agriculture into the world trading system through the Agreement on Agriculture came relatively late but has led to reductions in trade barriers although the European Union (EU) can resist in ways that Kenya cannot. The Kenyan state has been required to support the commodification of land, labour and finance to facilitate this market. Dominant neo liberal development policies have dismantled state marketing boards in Kenya, as elsewhere, to facilitate the development of a private market assisted by the wider fiscal measures associated with SAPs. Land reform policies, which have encouraged privatisation and securitisation of land, challenge community held land systems. Kenya has established Export Processing Zones which offer wide ranging fiscal benefits for those located within them. Labour laws until recently were rudimentary and union activity curtailed.

The attempts to establish a self regulating dis-embedded food market has provoked moves for social protection. Within the world trading system organised labour in association with other human rights activists have sought to introduce a social clause which would take account of workers' rights. This has been resisted by Southern states. Labour organisations have sought more rights for workers using international labour standards. The Kenyan state has modernised its labour laws to increase social protections including extending maternity rights and benefits under pressure from the ILO but also to facilitate the development of a regional economic market—via the East African Economic Partnership Agreement. It has introduced a new constitution which offers more formal rights to women. EU and British farmers lobby for measures to protect them against cheap imports and many have resisted reductions in European subsidies.

They support the enforcement of internationally developed phyto sanitary standards which require substantial investment to meet.

Labour based and work related social protection laws have been mis-framed and have not reflected the principle of non domination. They have incorporated the 'doxa' of the male wage hierarchy based on the full time employee model which does not adapt well to Global South economic contexts, agricultural production or female patterns of work. They are also territorially limited. Anti-imperialist, feminist inspired measures would consider the provision of equal protections for all workers involved in the global value chain and extend social protections to support women (and men) who undertake socially reproductive responsibilities. This would involve recognising the challenges involved in the development of appropriately framed social protections in a 'non welfarist' post colonial state—that is a where rights are state provided but the costs of their implementation are not socialised so that, for instance, individual local employers bear the full cost of maternity rights. Thus if women exercise these rights they are too costly.

Kenyan agribusiness incorporates very clearly the three fictitious commodities. Land is commodified to produce food crops that are alienated from their local social and economic context. The production places unsustainable pressures on the environment. Women's farming labour when transformed into commodified employment remains undervalued while their socially reproductive time is not replaced leading to a depletion in socially reproductive capital (children cannot be cared for; community cohesion is eroded). However if non domination/emancipation is 'tested' against the need for social protection and for market access, it could be argued that what women small farm producers need is access to markets and to be able to protect values of social solidarity within local land systems which themselves must reflect non domination principles. What they need is an ability to negotiate in civil space to ensure that they can shape land and environmental policies, labour rights and collective progressive social measures which resist social capital depletion.

The counter movement to re-embed the market must be more directly organised around care thinking. Coalitions of NGOs, worker organisations and northern consumers, within the space of civil society have used market forms of intervention based upon concepts of corporate social responsibility to develop 'soft law' or private standards in relation to ethical trading. Although supported by development agencies associated with the state, these measures have proven in some instances more open to recognising principles of non domination and therefore better gender framed protections. However the far stronger progressive movement is that associated with fair trade. Here consumers in coalition with Global South producers and civil society organisations, care about the social effects of production. They recognise to some extent that Global South production is built on the fictitious commodity of socially reproductive labour as well as land. They seek to identify who loses out and to pay a social premium that contributes toward social solidarity. A Polanyian feminist approach would therefore involve supporting the development of co-operatively based fair trade movements which maximise the civil space for negotiation for the full recognition of schemes based upon principles of non domination rather than encouraging schemes which involve the branding of Fair Trade production by multinational enterprises.

## CONCLUSION

The paper reviewed the way in which approaches to gender and law have been tackled within the discourse of international development and identified the convergence between those associated with development and those with international women's rights. Both gender and rights approaches have permeated institutional development discourse since the 1990s. This is undoubtedly a reflection of the success of the women's movement in forcing the position of women on to the international stage and the influence of feminism within the academy. The 1990s were not only a period

of optimism for this movement but also for neo liberalism in the Global North prompted by the ending of the Cold War even though the effects of such approaches, delivered in the form of SAPs, had failed to produce the expected economic growth in the Global South states who adopted these measures. The reduction in the role of the developmental state deeply affected the position of women in particular because of their roles both within the productive and reproductive spheres.

A rights based approach to development offered possibilities to a number of differently positioned constituencies holding varying understandings of freedom. The international women's rights movement, closely associated with the UN institutional framework, has an understanding of rights which has taken some account of Southern critiques but in the process decoupled the cultural identities of women from their economic positioning within a global economy. The tendency therefore has been to make demands of Southern states to deliver a framework for the empowerment for women to free them from oppressive family and community based institutions. The marginalisation of the devastating impact of SAPs on Southern populations within the measurement of progress led to a reassessment of the goals of development. The capabilities approach place the empowerment of the individual at its core: development as freedom to live a fully human life of one's choosing. This approach expects all those involved in development, including Southern states to provide the necessary conditions to enable these capabilities. Rights have a significant role to play to enable women to flourish as individuals, unfettered by family and community restrictions. The reassessment of the effectiveness of SAPs within the dominant discourse led to a view that good governance and the ability to deliver a rule of law were important. In order to take 'ownership' of policies a state needs the legitimacy gained through participatory processes. A rights framework offers a way of framing these processes.

The shifts in geopolitics in the 21<sup>st</sup> associated with the spectre of terrorism subsumed much of the RBAs into its concerns. Armed

democratisation, interventions in conflict and post conflict states, often defined as failed or failing states provided the new 'hard' security discourse into which the earlier 'softer' RBAs must now fit. Women's rights formed an important element in the justification as well as the goal of these security discourses which focus on formal constitutionalism and formal institution building to replace the exercise of power by warring clans, tribes, religious groups or other factions.

The radical analysis shared by gender and development and many Global South feminists that economic and social processes construct gender relationships and profoundly disadvantage many women has been drowned out in the contemporary context of globalisation. Meanwhile global capitalism thrives through its use of gendered identities to sell products and services, enthusiastically using rights and care concepts in the process. It increasingly draws on women's embodied labour to produce commodities and services which undoubtedly offer women opportunities to access monetised resources. Women's labour is increasingly used as a factor of production. At the same time, the ability of organised labour to win back some protection for workers is undermined by the same processes of globalisation. Efforts to maintain or gain more social provision through states to support women in their continuing socially reproductive roles as mothers and carers with wider community based obligations are undermined by lack of resources and capacity within states. While Global South states are the site for rights discourse, the capacity to deliver or to facilitate delivery is severely curtailed.

The paper assesses the salience of Fraser's reinterpretation of Polanyi's analysis in this context. Can it be used to wrest the discourse of feminism and care back from the domain of the market, not for the purpose of retreating into the traditional spheres of authority such as the family, but to harness some of the power it has achieved outside feminism to move forward? An example of the way in which they may be done has been provided here. Certainly a materialist

analysis which combines structure and agency and takes full account of feminist contribution to this form of analysis offers possibilities for future developments in integrated feminist approaches to gender justice.

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