§ Law in Context

ANN STEWART

Gender, Law and Justice in a Global Market

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Gender, Law and Justice in a Global Market

Theories of gender justice in the twenty-first century must engage with global economic and social processes. Using concepts from economic analysis associated with global commodity chains and feminist ethics of care, Ann Stewart considers the way in which 'gender contracts' relating to work and care contribute to gender inequalities worldwide. She explores how economies in the Global North stimulate desires and create deficits in care and belonging, which are met through transnational movements, and traces the way in which transnational economic processes and discourses of rights and care create relationships between Global South and North. She focuses on African women who produce fruit and flowers for European consumption; body workers who migrate to meet deficits in 'affect' through provision of care and sex; and British-Asian families who seek belonging through transnational marriages.

Ann Stewart is a reader in Law and Associate Professor in the School of Law, at the University of Warwick, where she specialises in the area of gender and the law, particularly in the context of international development.

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Abbreviations

ABA	American Bar Association
ACP	African, Caribbean and Pacific countries
ADB	Asian Development Bank
AIDS	acquired immunodeficiency syndrome
AOA	Agreement on Agriculture
APWLD	Asia Pacific Forum on Women, Law and Development
ASBO	Anti-social behaviour order
ASEAN	Association of Southeast Asian Nations
BIS	Department for Business, Innovation and Skills
BMA	Bilateral migration agreement
BrAsian	British Asian
CAP	European Common Agricultural Policy
CEDAW	Convention on Elimination of All Forms of Discrimination Against Women
CIPD	Chartered Institute of Personnel and Development
CIS	Commonwealth of Independent States
CRE	Commission for Racial Equality
CrPC	Criminal Procedure Code
DFID	Department of International Development
DTI	Department of Trade and Industry
DH	Department of Health
DIR	Domestic Incident Report
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
EEA	European Economic Area
EIC	East India Company
EOC	Equal Opportunities Commission
EPA	Economic Partnership Agreement
ETI	Ethical Trading Initiative
ETLR	Evolutionary theory of land rights
EU	European Union
FAO	Food and Agriculture Organization
FCO	Foreign and Commonwealth Office

FDI	foreign direct investment
FFV	fresh fruits and vegetables
FMU	Forced Marriage Unit
FSC	Federal Shariat Court
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GCC	Global commodity chain
GDP	Gross domestic product
GHS	Ghana Health Service
GVC	Global value chain
HIV	human immunodeficiency virus
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IFIs	International Financial Institutions
ILO	International Labour Organization
IMF	International Monetary Fund
IOM	International Organization for Migration
IPC	Indian Penal Code
LDCs	Least Developed Countries
MDGs	Millennium Development Goals
MFLO	Muslim Family Law Ordinance
MFN	Most Favoured Nation
MNC	Multinational Corporation
MPL	Muslim Personal Law
NCW	National Commission for Women
NGO	Non-governmental organisation
NHS	National Health Service
NRI	Non-resident Indian
NTAE	non-traditional agricultural exports
OECD	Organisation for Economic Co-operation and Development
OFW	Overseas Foreign Workers
OSCE	Organization for Security and Co-operation in Europe
OWWA	Overseas Workers Welfare Association
PPC	Pakistan Penal Code
POEA	Philippines Overseas Employment Administration
PO	Protection Officer
PSI	private standards initiative
SAP	Structural Adjustment Programmes
TNC	Transnational corporation
TNF	Transnational family
TNM	Transnational marriage
UDHR	Universal Declaration of Human Rights
UN	United Nations

UNCTAD	United Nations Conference on Trade and Development
UNICEF	United Nations Children's Fund
UNIFEM	United Nations Development Fund for Women
UNRISD	United Nations Research Institute for Social Development
VAW	Violence against women
WHO	World Health Organization
WILDAF	Women in Law and Development in Africa
WLSA	Women and Law in Southern Africa
WTO	World Trade Organization

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Introduction

Living in a Global North consumer society: a contextual vignette

I live in an inner city neighbourhood in the United Kingdom (UK). When I visit the well women's clinic, at a surgery where all the doctors are practising Christians, I sit next to a middle-aged Somalian Muslim woman. We live on the same street, share a lawn mower, and struggle to grow plants under large trees. I know that she will probably be circumcised because I am familiar with the statistics – a 95 per cent prevalence rate for women in Somalia (UNICEF 2004). She laughs, and expresses incomprehension, when, as a middle-aged woman, I run along the street, sweating profusely and clad in very little.

Behind my house, a group of boys aged between seven and fifteen regularly play football. They argue vociferously about the rules in fluent 'street' English. Many are Somalis by origin although there are white and African Caribbean boys as well. Their sisters emerge to congregate around the public bench to chat and occasionally to play ball games but always on the margins of the 'pitch'. On Saturday mornings I see the boys returning from their classes in the Koran while one white young man delivers newspapers to my door. His father used to clean our windows until he had a bad accident. He now works for a landscape garden firm but the work is precarious and does not provide an adequate income, so his wife has started to work part time as a social carer for a local disabled adult. His daughter and her female partner look through household items in my cellar which used to belong to my parents to see whether anything would be useful for their flat because they are setting up home together.

Behind me lives an African Caribbean woman with young twin boys. For many years she worked at the end of our street, selling sex, but is now involved with a voluntary organisation which offers support to street sex workers. She chats regularly to her friend and neighbour, another African Caribbean woman, who has recently retired as a probation officer and knows a number of the local young men well. At the end of my street there are two residential care homes for the vulnerable elderly. Black women care workers, who look after the white residents, walk past to catch buses at the start or finish of their shifts. The Malawian woman who cared for my parents in our house until they died recently tells me that a number are, like herself, recent migrants from southern Africa. Around the corner is the local shop and post office run by a couple

originally from the Punjab in India. The woman, who is the holder of the post office licence, and I discuss the weather in North India, because we are both going there soon, she for the first time in fifteen years, me for the third time in a year. She tells me about the difficulties she is facing in obtaining an entry visa for her husband's brother who wishes to attend a family wedding.

From my house I walk for 500 metres, past newly erected, luxury flats, to my local supermarket, Waitrose, which used to be Safeway. The local property paper tells me its presence will increase the price of my house because the change in ownership is an indication that there are significant numbers of affluent consumers within the vicinity. When I shop there, I see an overwhelmingly working-age, white clientele (including friends and acquaintances but never neighbours), choosing between a huge range of imported food products, which are presented and packaged in ways designed for the convenience of 'money rich/time poor' consumers.

This vignette of life and work raises a number of issues, which will be explored in this book. The first of these relates to the plurality and diversity of a multicultural consumer society that is located in the Global North. While there are many ways of telling a story of urban life at the beginning of the twenty-first century, this narrative is told primarily through particular identities, which are ascribed to individuals. This discourse of difference and individuality tends to be dominant within feminist narratives. It describes a white middle-aged professional woman; a Somalian refugee woman; a black African care worker; a Punjabi small businesswoman; an African Caribbean sex worker; a young working-class lesbian and so on. Some of the women are also mothers and citizens; all are family members and consumers. These identities are rooted in communities some of which seem more 'solid' than others. The Somali, Punjabi and African Caribbean communities, albeit in different ways, are identified according to group membership while Waitrose customers are identified via patterns of consumption and lifestyle and lesbian women via their sexuality. The only thing that women seem to share collectively, and not through their status as women, is a neighbourhood. Even then, their use and perceptions of this space, including how safe it is, probably differs substantially (Massey 1994).

It is unlikely that there is much consensus among the local residents on values, for instance in relation to the expression of individual sexual identities. One can presume that the dominant view of the practising Muslim and Christian communities would be that sexual intercourse should be contained within heterosexual marriages and that public expressions of diverse sexual identities are to be actively discouraged. Views on the extent to which women's sexuality is a matter for regulation by family members or through state institutions, or available in the market place for purchase, would vary considerably. Many residents do not like the public transactions relating to the purchase of sex that take place nearby, although there are regular supplies of (male) customers. Yet a wide range of sexual identities and family forms are in evidence in

the neighbourhood. The tensions within particular ascribed communities, when values are not shared between individual members, or between communities and state institutions, when these values differ, are not immediately obvious or seemingly of concern to close neighbours if they are not members of the constituent community. Physical proximity does not produce connectedness.

A second, alternative way of seeing this neighbourhood is through the wider economic and social processes that have contributed to its creation and which continue to shape social and economic relations (Massey 1994: chapters 6 and 7). This narrative would chart the contribution of imperialism and colonialism to the development of the steel industry and the economic prosperity built upon this legacy. It would see the effects on local wages and social relations of the defeat of the once-dominant white male industrial working class, which had secured relatively high 'family wages' through unionisation. It would focus on the shift in mass production to developing countries in the restructuring of the steel industries, which led to a huge loss of male jobs and their replacement by more precarious and poorly paid service jobs and the commensurate increase in women's paid employment. The African Caribbean and South Asian communities would be explained as a product of labour market policies, based on former colonial relationships, which initially brought workers to Britain to work in specific manufacturing and service sectors.

The neighbourhood is also shaped by present forms of globalisation which have contributed to the development of the UK as a consumer-based market economy. The huge range of food products available in Waitrose and other supermarkets is the result of these global processes. Those who grow and process these products are largely invisible to consumers, who do not come into contact with farm workers, many of whom are now seasonal workers from the newer member states of the European Union (EU), in the UK, let alone those working on farms or plantations in Chile, Kenya or the Windward Islands.

The battle for a favourable position within the global market place leads to domestic UK economic and social policies which encourage women to enter and remain within the labour market but also seek to limit the social welfare responsibilities of the state. The care workers who look after the young or the elderly in the local private homes or public institutions are part of the wider service economy, taking over or supplementing activities which until relatively recently have been seen as the unpaid responsibility of female family members. Migrant women, along with local working-class women and some men, are filling the 'care gap'. These care service workers earn very little and do not shop at Waitrose.

Immigration policies based on the colonial legacy have enabled women migrant workers to fill these gaps in health and care services. Now immigration policy does not grant access based on membership of the Commonwealth and relies on the regional labour market of the EU to meet unskilled labour requirements. Because they work with the bodies of their clients or service users and

therefore share a proximity, such workers, including migrants, may be thought to be less invisible than those who produce our food and other consumer goods. However the workers' insecure status as non-citizens or as undocumented migrants, working often in informal employment contexts, ensures a precarious and socially invisible existence. The African care workers will soon not be seen in the neighbourhood either because they have been replaced by EU citizens or because they have been absorbed into less public spaces due to the loss of rights to work legally. The migrant women who work in the most exploited sectors of the commercial sex industry are almost totally invisible.

Introducing the framework

This book introduces a number of specific contexts, albeit not so local as the one described above, which provide similar narratives around constructions of identities and the impact of wider economic and social processes. The villages in the Punjab in India, Mirpur in Pakistan and Sylhet in Bangladesh, border towns in Moldova, the outskirts of Nairobi and farms in Naivasha in Kenya are not chosen at random or as discrete case studies but because they are shaped by, and themselves shape, identities within contemporary Britain. They are all affected by social and economic processes that have created and continue to create inequalities, not only within their neighbourhoods, but also within wider society. These processes, which create relationships of power between people living in the neighbourhoods, also create profound disparities in life chances between citizens of Global North and Global South states. They distribute many of the benefits of globalisation to the Global North.

Figure 1 provides the basic conceptual structure for this book. It seeks to capture the importance of the network of relationships that spans jurisdictions and affects gender relations within jurisdictions. The gender pyramids are adapted from Barrientos et al. (2001) and represent state jurisdictions in the Global North and Global South. Overall, the figure seeks to capture two networks of relationships. The first considers the way in which gender relations within a state are constructed through the institutions of the market, state and family/community (the vertical). The vertical 'up' and 'down' arrows represent the relationships between the three institutions of market, state and community/family, leading to the distribution of activities. Whereas identity was traditionally moulded by relationships in families and communities, it is increasingly conferred by sophisticated and segmented market choices (represented by the 'up' arrows). Consumers now buy an affective service, an interpersonal relationship, which was once associated with caring within families and community. The vertical 'down' arrows represent the expansion of market values into the domain of state and family. The final decades of the twentieth century were characterised by neoliberal policies, which either shrunk the state or introduced market relations into the provision of state services. The extent and impact of these developments varies according to the location of a particular jurisdiction.