

PECANS Workshop 2009: Abstracts

PANEL 1

An Intersectional Analysis of Wartime Sexual Violence Cases in the ICTY

Daniela Nadj, PhD Candidate, University of Westminster

This paper will explore gender interpretations through an intersectional analysis of wartime sexual violence cases adjudicated in the International Criminal Tribunal for the Former Yugoslavia (ICTY).¹ Specifically, the extent to which institutional attitudes, the media and international feminist discourses contributed to representations of gender will be explored.

It is alleged that ICTY gender jurisprudence has chosen to interpret women as victims based on their ethnicity, thereby overemphasising essentialist stereotypes based on gender and ethnicity. Was disproportionate visibility, for instance, given to Bosnian Muslim women who were serially raped by Bosnian Serbian forces? If so, was this linked to an inherently political bias within which the tribunal operated? Did the portrayal of gender-based violence prosecutions as “success stories” serve to deflect from questions about the tribunal's legitimacy?

In spite of the perceived advances made in international criminal law to redress wartime sexual violence against women, predominant gender narratives inherent in the international legal framework have been reinforced in ICTY jurisprudence. This has created a problematic space for the status of women in international law.

The paper suggests that international criminal proceedings can only be of substantive value, if armed conflict is understood as consequence of deep-seated structural problems in pre-conflict societies and not as a consequence of “ethnic divisions.”

What is Sexual Integrity? Exploring the Limit of Sexual Offences

Linnéa Wegerstad, LL.M, Doctoral Candidate at the Faculty of Law, Lund University

Abstract

In 2003 four boys were prosecuted for trying to penetrate the victim's anus with a clothes-hanger during a football camp. The court held that none of the boys had performed the act in purpose to arouse or satisfy neither the victims, nor their own sexual drive. Hence, the boys were not found guilty to any sexual offence.

This case highlights the legal difficulties in deciding what acts should be recognized as *sexual* crimes. The guiding line is the primary good of sexual offences, stated in the Swedish legislation as the absolute right of every individual to sexual integrity and sexual self-determination. Thus, sexual offences are

¹ The ICTY was established by U.N. Security Council Resolutions 808 and 827 in 1993 “for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory for the former Yugoslavia since 1991”. S.C. Res. 808, U.N. SCOR, 48th Session., 3119th mtg. at 28, U.N., Doc. SW/808/1993 (1993). S.C. Res. 808 endorsed the principle of establishing a tribunal.

distinguished from other offences by their purpose to protect the *sexual* integrity. But what is sexual integrity? Who has sexual integrity and in what situations?

In this paper I explore the issue of sexual integrity by analysing the law and cases of *sexual molestation* in the Swedish Penal Code ch 6 s 10. I aim to investigate the boundary between sexual and non sexual acts in criminal law by asking where and how the limit is drawn: When is an act, behaviour or orientation sexual in a legal sense? How is the field of sexual offences constructed in relation to, for example, body and identity, private and public, gender and age?

This paper is part of my doctoral project which, in a wider perspective, is concerned with the legal construction of sexuality and the law's capability to deal with the subject of sexuality.

PANEL 2

"Now that I can I cannot!" Breast cancer patients and information on sexual health: A question of social justice

Ana Porroche Escudero, PhD Candidate, Department of Anthropology, University of Sussex

The discourses on breast cancer have been dominated by the impact that mastectomy has mainly on women's psychosexual functioning, whilst leaving the sexual "mechanical" functioning scarcely addressed. This article is based on the in-depth ethnographic fieldwork with 38 women diagnosed with breast cancer in Spain, and it reveals their post-treatment sexuality concerns. Contrary to common cultural and biomedical assumptions about breast cancer patients, in many cases it is not the actual loss of a breast, but the treatment itself, which affects women's libido. Findings demonstrate that women report lack of information regarding the sexual side effects of hormone therapy, radiation and chemotherapy. In addition, patients assert that their concerns about their sexual function are often minimised, ignored, infantilised, and usually attributed to poor psychological adjustment to breast loss. I argue that the lack of attention to the sexuality of breast cancer patients mirrors the patriarchal social construction of women's sexuality, which ignore enjoy and perform sex in multiple ways, sensuality and pleasure. This is parallel to how the sexuality of breast cancer patients is positioned as unimportant or secondary to, for example, prostate cancer patients, pointing to a question of social justice in sexuality rights.

A Feminist Response to the Law and Practice of Abortion in China

Wei-Wei Cao, PhD Candidate, Keele University

Abortion, as one of the most controversial topic in the world, always involves various ethical and legal debates in different countries. Especially in China, the relevant moral and legal problems about abortion have triggered furious disputations and strong criticism. This paper aims to critically discuss Chinese abortion law and practice by a feminist perspective. After 1979, China has been carrying out 'the most rigorous, comprehensive and ambitious birth control program in the world' (Rigdon, 1996, pp. 545). Accordingly, the government removes those administrative and legal restrictions of access to abortion which were set in Mao era. Consequently, the official statistics shows that the number of artificial abortion, including coerced abortions, has sharply increased since 1980s. As the mainstream liberal criticism shows, the law causes a great number of coerced abortions which seriously violate personal

right to be bodily integrity. However, this mainstream analytics appears to be very thin. By a women-centred approach, people can have a richer understanding. One the one side, Chinese women, as a whole, have benefited from this law. For example, firstly, the reproductive burden has been largely lifted from Chinese women's shoulders; secondly, girls in the low-fertility families or one child families receive better care, education and more parental attention than before. On the dark side, although Chinese abortion law does not set any unjustified restrictions of access to abortion, it fails to protect women's reproductive autonomy, as a capacity to freely make abortion decisions according to their preference. Through the analysis, this paper tried to show that a thorough legal reform basing upon a women-centred method is urgently needed in China in order to foster and also protect women's capacity to make autonomous decisions according to their own preference.

PANEL 3:

Misrecognition and Discrimination

Karla Perez Portilla, PhD Candidate, UCL Laws

The paper aims at providing the political and philosophical underpinnings that justify the need to consider discriminatory speech as an issue of injustice and discrimination. This is achieved through an analysis of the scope of social justice together with the introduction to the legal agenda of the political and philosophical claims for recognition as a matter of justice.

The paper explores the limitations that some of the dominant theories of justice and equality have with regard to redressing discrimination. Most significant of these is the fact that, on the one hand, it has not been deemed sufficiently important for these theories to have considered the causes of inequality or the structural and institutional arrangements that sustain injustice; and on the other, that the redresses they seek against injustice and inequality are merely through redistribution. This is to say that for at least the past 150 years the theories of justice and equality that are most influential in legislation and policy have been overwhelmingly focused on redistribution; especially of goods and services whilst ignoring non-economic and/or non-material aspects of justice, such as status subordination. The latter would not only require redistribution but also a revaluing of disrespected identities and the transformation of the societal patterns of representation, interpretation and communication that lead to discrimination.

Faith schools, 'values' and social capital in New Labour's social justice agenda.

Suhraiya Jivraj, Research Student, University of Kent

In 2001 the Labour government, upholding its 1997 manifesto commitment, published a Green Paper (*Schools: Building on Success*, DfEE, 2001) outlining plans for the expansion of a range of state-funded faith schools. These plans (later enacted) elicited heavy criticism from various quarters, particularly as they were announced in the wake of the 9/11 events and the 'race-riots' in Oldham, Bradford and Burnley. Rather than taking on board the wave of criticism citing 'religion' as the key catalyst for this violence, the government maintained its position supporting the expansion of faith schools and indeed attributing their success to having religious ethos and values (*Faith in the System* (DCSF, 2007)).

In this paper I sidestep the debate on whether faith schools should be state funded or not or whether they contribute to divisiveness within society or not. Rather, I examine the socio-political work of religion in New Labour's citizenship and communities (cohesion) agendas. I argue that the NL reification of faith schools' ethos and values is not just due to their academic success. Drawing on social capital theory I explore how faith schools are viewed as engendering values, norms and community (religious networks) that are vital for nurturing children to be responsible and productive citizens. I further argue that despite these values being posited by the government as universal and shared by the diverse communities of Britain, they actually stem from Christianity and reflect the influence of Christian socialist thinking on New Labour's social justice agenda.

ROUNDTABLE DISCUSSION:

With: Featuring: **Ozlem Cholak** (Keele), **Stacy Douglas** (Kent), **Sarah Keenan** (Kent), **Forough Ramezankhah** (Keele)

Consideration of the day conference themes,

- How can we understand the relationship between equality and social justice?
- How do social situations and identities (e.g., sexuality, disability, race, religion, class and gender) work to confound, support, challenge, frustrate or reinforce experiences of social (in)justice?
- How do people experience and/or challenge social injustice?
- How do legal spaces accommodate (or not) people's experiences of social injustice?
- In what ways do transgressive, subversive and resistant practices work towards and/or confound social justice aims?
- How can existing practices and structures be reconceptualised to take forward the aims of social justice?
- In what ways can academic research further social justice aims (or not!)?