

**@Social Research Center/IGWS Project:
"What is Gender and Women's Studies in the 21
Century in the Global South?"**

Discussion Notes

Theme: Performance of Law

Date: March 6, 2007

Intellectual Organizer: Mulki Al-Sharmani (SRC)

Attendees: Hania Sholkamy (SRC), Martina Rieker (IGWS), Helen Rizzo (Sociology), Hanan Sabea (Anthropology) Barbara Ibrahim (Gerhart Center), Ayesha Nawaz (Student, Arabic Studies)), Ali Atef (Student, Anthropology)

The aim of this meeting was to have a discussion about the study of law using feminist and anthropological approaches. Two texts from legal feminist scholarship were chosen as a lead- in to the discussion. The texts were: Carol Smart's "The Woman of Legal Discourse," and Joanne Conaghan's "Reassessing Legal Feminist Scholarship."¹ The main questions that are raised by this scholarship can be summarized as follows: 1) What is the nature of the process through which gender categories are formed and endowed with meaning in law? 2) As performative discourse, how does law operate as mechanism of control, appropriation, and change? 3) Is woman a useful analytical category when studying and critiquing law as gendered and gendering knowledge and practices? Is there a unitary female subject? 4) Does a feminist approach to studying law silence some female voices? Does it overstate the extent to which gender matters in some contexts?

Legal feminist scholarship critiques the assumption of law as a coherent and privileged form of knowledge that has claims to rationality and objective truth. The literature argues that this notion of law assumes that it is located outside its social and cultural contexts. However, legal feminism writings have shown, for example, that legal methods are not gender-neutral, and that they often fail to capture women's realities. In addition, law is not simply a set of rules and regulations but it is enacted in court rooms. It is this performing aspect of law with its tensions, contradictions, and ambiguity that is appropriated by different actors who access the legal system. Legal feminist scholarship

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See Smart, Carol. "The Woman of Legal Discourse." In: *Social Legal Studies*, 1, 29, 1992:29-44, and Conaghan, Joanne. "Reassessing the Feminist Theoretical Project in Law." In: *Journal of Law and Society*, 27, 3, 2000: 351-386

has also argued that law as a discourse creates gendered categories; moreover, law as a productive form of knowledge has been used both for social control and change.

Most of the work in the legal feminist scholarship can be divided into two kinds: writings that are based on epistemological critiques of law as gendered and gendering form of knowledge, and empirical studies that highlight the gender-based inequalities that arise from laws governing family relations, employment, and other aspects of the lives of women and men. The main contribution of the first kind of writings is that it interrogates law as body of knowledge and as a reform mechanism; it shows how legal concepts are gendered in their meaning and application. Also, the implication of law as gendered knowledge is carrying out contextualized assessment of this form of knowledge through focused study of its performance. However, the theoretical writings in legal feminist scholarship have been critiqued for their excessive focus on theory at the expense of the specificities of the realities of different groups of women. Empirical studies, on the other hand, shed light on specific experiences of inequities that women suffer (e.g. in the family and workplace domains) because of the gendered nature and practices of law. However, these studies have also been critiqued for their lack of well-developed theoretical approach. A new approach that is emerging in the scholarship is one that studies law as a process; this process can subvert and be subverted. In other words, law does not always exploit women and serve men, but it produces gender identities.

Anthropological studies of law have long highlighted the social and cultural embeddedness of law. Whereas the old ethnographies of law focused on comparative studies of different legal systems (western and non-western) and their social roles, recent anthropological studies shifted attention to the direct and indirect functions of law as a tool of conformity and change. Most of all, modern ethnographies shed light on courts as space where law is performed, appropriated, or subverted; where social norms and categories are affirmed and challenged.

The IGWS reading group discussed the convergence and divergence between the approaches of legal anthropology and feminist legal scholarship. On the one hand both seek and promote contextual understandings of the concepts and practices of law. On the other hand, could it be argued that anthropological studies of law better capture (than legal feminist scholarship) the contingent and dynamic nature of law as it reflects and impacts social reality through its performative discourse? Could the limitation of feminist legal scholarship in this aspect be tied to its implicit notion of law as totalizing productive knowledge? Some of the epistemological writings in the feminist legal scholarship, in particular, seem to present a picture of law that is more powerful than society and is mirrored in the latter's norms and practices.

The reading group's discussion of feminist and anthropological approaches to the study of law was then linked to family law in Egypt. The convener gave a brief introduction about an ethnographic study that she has recently started about family courts in Egypt.

The objectives of this study are: 1) to examine the recent reforms in some of the substantive and procedural laws of Egypt's Personal Status Code, and to study the impact of these reforms on women's rights and empowerment within the domain of the family, 2) to study the categories of gender identities and roles that are embedded in the law, and 3) to examine how these gendered notions are enacted and subverted by different actors in the litigation process. Adopting a feminist anthropological approach to the study of family law in Egypt entails: deconstructing the notion of *sharia* as a transcendental, ahistorical, and coherent form of knowledge that governs family relations; historicizing the process of the codification and use of the Personal Status Law; and examining the performance of this law in the lives of women. In the case of the convener's study, examining the recent legal reforms through the process of pre-litigation mediation sessions between disputants and subsequent court procedures will allow the researcher to examine the accessibility and fairness of the legal systems to women (which was one of the main incentives for the establishment of family courts), and the nature and effect of the perspectives and actions of judges, mediation specialists, other court personnel, and plaintiffs on the litigation process. In addition, the impact of the new controversial article in the law regarding women's right to initiate no-fault repudiation or divorce (*khul*) was discussed as an example of the tensions that arise from the multiple functions of law, i.e. as a tool that engineers social change in gender roles and relations as well as a prism that reflects and affirms gendered norms and identities.

To sum up, focusing on the performance of law enables us to highlight not only the dynamic and complex nature of law but also the agency of marginal actors such as poor women who access the legal system to overcome gender-based inequities and to negotiate more rights. This is exemplified in ethnographies such as Ziba Mir-Hosseini's *Marriage on Trial: A Study of Islamic Family Law: Iran and Morocco Compared*, and Anna Griffiths' *Pronouncing and Preserving: Gender and the Discourses of Disputing in an African Islamic Court*. However, one can raise the question: To what extent do individual appropriations and subversions of gendered legal concepts and practices on the part of marginalized women reflect the role that law can play as a tool of resistance and social change? In other words, does women's creative use of legal knowledge and language have a transformative role? Regardless of the answer to this question, we can still conclude that the task of assessing legal discourse and practices as spaces for either the subordination or empowerment of women needs to be based on historicized and contextualized understandings.