

Boundaries and Binaries of Women's Human Rights: On the Limits of Identity Categories

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Paris 1789. The French Revolutionaries were not radical or, at least, not enough to question prevailing ideas about sexual difference and gender roles. Women were inscribed into the oxymoronic category of 'passive citizens'. Olympe de Gouges courageously challenged such definition not only with her extensive public debate on rights to include those of women, but perhaps most importantly, with her performance. Olympe's public appearance and writing constituted in itself the exercise of the rights she vindicated for her sex or, in other words, by taking part in public life she performed the role of the active citizen that had been denied to her. However, in challenging the sexual difference deployed to justify her exclusion from citizenship, Olympe necessarily and paradoxically reinscribed it, though on different grounds, through the construction of 'women' as bearers of rights. (Scott 1997)

Mexico 1975. Domitila Barrios, a woman from the Bolivian mines, was invited by the UN to participate in the World Conference of the International Women's Year. There, she struggled to navigate a space where men were portrayed as enemies and the dominant discourses distinguished between women's issues/needs and all the rest (anti-imperialist struggles, socio-economic problems, genocide of indigenous peoples, colonial legacy). Articulating from her lived experience, Domitila was interested in talking about her unpaid domestic work as well as her husband's exploitation in the mine, indigenous people's access to natural resources, and the unjust economic system that deprived them of a good life. For her, these were women's concerns, much more than the calls for global peace articulated, at that same space, by feminists such as Betty Friedan. (Viezzler 2014)

China 1995. It was the Fourth World Conference on Women, in Beijing. Diane Otto, as a representative of the Lesbian Caucus, attended a meeting of the African Caucus with the aim of convincing its participants "to lobby their state's representative to support the recognition of 'sexual orientation' as an unacceptable ground of discrimination in the Platform for Action of the UN's Fourth World Conference on Women." (Otto 2007, 346) As she sat there and listened to various accounts of how poverty, armed conflicts and the IMF structural adjustments programs impacted women's lives in the African continent, she looked for words

that would make the quest for self-determination in sexual matters meaningful in that context. She felt overwhelmed by the limits of the identification as women, and feminists, she shared with the others who were sitting in the same room.

Brazil 2005. Participants gathered for the final plenary of the *X Encuentro Feminista Latinoamericano y del Caribe*, in São Paulo. For the first time in the history of the *Encuentro*, an issue was not decided by consensus and counting votes was necessary: should transwomen be allowed to participate in that space? The majority agreed that it was not one's biological features but rather one's feeling and identity that should determine her acceptance into the *Encuentro*. (Adrião and Toneli 2008) The final (and controversial) decision was received with much outcry in feminist circles in the region, as I experienced at a feminist conference in Salvador a month later. I heard a historical feminist figure remark: "Next year, 'it will rain men' in the *Encuentro Feminista*". Since that year, transwomen have entered the space of the *Encuentro*, actively participating in the construction of feminism in the region, and the inclusion of transmen as well is on the agenda for discussion in the next meeting.¹

The reason why I opened this paper with these four different events, which took place in various parts of the world and in quite distinct historical contexts is because they all bring to light the thorny issue that lies at the center of feminism: dealing with difference, exclusion and articulation of subjects – both from within and without. That is to say, historically, feminism has struggled, as the example of Olympe de Gouges demonstrates, for the inclusion of women into spaces and frameworks (of rights, production, knowledge) that had previously excluded them, mostly on the basis of (naturalized) sexual difference. Moreover, in the articulation of these demands for inclusion, feminism had to construct the subject of its politics, hitting the grounds of essentialism. As Moya Lloyd has rightly indicated, "historically and politically, the injunction to think essentially has been unavoidable; it was imperative if feminist political claims were to be treated as rightful." (Lloyd 2005, 58) Nonetheless, the process of constituting this political subject produced its own exclusions and differences as well.²

I argue that recognizing this paradox and confronting it is constitutive of feminism as a political and scholarly project, and thus strictly necessary for a critical engagement with the

¹ Available at: <http://13eflac.org/index.php/noticias/19-portada/153-se-debatira-incorporacion-de-todas-las-corporalidades-en-el-proximo-eflac>. Accessed May 10, 2015.

² As Joan Scott explains, this is a context dependent process: "the terms of exclusion are also variable and contradictory, based in different epistemologies, and this variability and contradiction result in fundamentally different conceptions of the 'women' whose rights are being claimed". (Scott 1997, 14)

category of 'women's human rights'. In mobilizing for the inclusion of women and gender issues into the mainstream of human rights discourse and institutions, feminist activists/scholars had to grapple with the question of what (and consequently who) to put in, and what to leave out. As my two other instances above – Mexico 1975 and Beijing 1995 show – the presupposition that the identity category of 'women' would lead to an agenda of shared and common interests was notably wrong. As the struggle evolved, many of the issues which had been part of the larger debate in the early years of mobilization – as Domitila's testimony exemplifies – ended up marginalized as a specific concern made its way through transnational feminist circles and into mainstream human rights institutions and laws: violence and, particularly, sexual harm. The essentialized female subject coming out of this process is someone devoid of agency, who can only be recognized in her vulnerability to rape.

In what follows, and pursuing Butler's admonition that "it is the presupposition of the category of woman itself that requires a critical genealogy of the complex institutional and discursive means by which it is constituted" (Butler 1988, 530), I aim to examine how this category has been constructed and its meaning has evolved within the field of international and human rights law. I take as a given that the category is a problematic one, in the sense that it is founded on the paradox mentioned above – in challenging exclusions based on sexual difference it reinstates the very difference it aimed to question in the first place, creating new exclusions of its own. Therefore, I am interested in examining if the problem lies in the boundaries of the category within (the differences amongst women that it tends to negate, evade or make invisible) or in the boundaries of the category without (the subjects that cannot be confined under the label, but still are or, should be, of feminist concern). Put in these terms, examining the construction of the category 'women' as the subject of human rights also begs the question of what feminist project is behind its articulation.

Feminism meets international and human rights law

As Dianne Otto chronicles, international law has historically operated under the assumption of a male/female dichotomy, understood as a synonymy for sex/gender, and according to which women were categorized, along with colonized people, as dependent subjects in need of protection. (Otto 2013) It was during the era of the League of Nations (1920-1946) that some feminists started moving away from this protective scheme and

demanding women's equality and rights. While there was certainly an important feminist intervention in the international legal domain throughout the next few decades – even a Commission on the Status of Women was established – it was in fact in the 1990s that human rights-based feminism boomed.

Transnational feminist activists and women's rights advocates entered the spaces of mainstream human rights with the difficult task of making women's issues, including but not limited to violence, a priority on the international agenda. In an effort that can be traced as far back as the 1980s, they continuously struggled for this recognition. The problem they had to grapple with was a seemingly simple one. If the human rights discourse had emerged as gender neutral, a view that dominated the field until the 1990s, feminists engaged in a dispute over a new framing inclusive of women and their specific grievances. Advocates gathered on different occasions in 1992 and 1993 “to prepare sections as well as intermittent phrases for inclusion in the draft of the Declaration and Programme of Action to be adopted at the Vienna World Conference on Human Rights”. (Ashworth 1999, 263) In 1994, the Inter-American Convention on the Elimination of Violence Against Women was adopted and, in 1995, the fourth World Conference on Women took place in Beijing.

In this sense, the 1990s was marked as a turning point in feminist mobilization within the human rights system. If there had been some earlier achievements, such as the adoption of the International Convention on the Elimination of All Forms of Discrimination against Women by the United Nations General Assembly in 1979, and the 1985 World Conference on Women in Nairobi, the 1990s constituted the moment when women human rights were seen as providing “for the ‘mainstreaming of feminism’”.³ But this mainstreaming, which could have taken many different directions, not only remained trapped in “dualistic conceptions of sex/gender”, but also led feminists to carry “a brief only for women”, as Otto (2013) has persuasively demonstrated.

While there was a variety of issues, articulated under the language of human rights, around which feminist activists had mobilized during the 1970s and 1980s, as Domitila's testimony shows for the case of Latin America and Anne Orford demonstrates with her analysis of transnational feminist engagement with economic globalization (Orford 1998), such diversity faded away in the 1990s. It was replaced by a single focus on violence against women

³ Remark made by Canadian feminist Ariane Brunet at the Vienna World Conference, cited in Miller 2004, 20.

and, particularly, sexual harm, which acquired a centrality in women's human rights campaign. But how did very diverse perspectives and issues, advanced by equally varied advocates pursuing multiple feminist projects, converged into one single frame?

It seems to me useful to combine Otto's genealogy with the one offered by Alice Miller in order to understand how this shift took place, before moving onto the consequences it had in terms of articulating a progressive feminist agenda for human rights. Miller shows that there were two different entry points in the struggle for women's human rights: equality and non-discrimination, or violence. While the latter had not been a salient issue on the UN agenda for many decades, it later became the main focus. And the reason why this happened was because women's issues adopted "the form of the mainstream human rights paradigm of the time: a focus on the body suffering from acts committed by the state." (Miller 2004, 23)

Three different histories intersected allowing for violence against women to become visible to key human rights actors and bodies, and producing a problematic rights frame. They are: "[...] the various streams within both human rights doctrine and practice and traditional women's human rights that combined to produce a hyper-visibility of sexual harm without producing an equal attention to remedies and enabling conditions. [...] the history of mainstream human rights' failure to take on economic and social rights until recently. [...] and] the history of health and human rights, as well as an older, troubled history of sexuality and health." (Miller 2004, 19)

Along these lines, sexual harm provided the gender-specific version of violence, an issue already relevant for human rights bodies and practitioners. Particularly important for building up the emerging frame around sexual violence was the campaign to include sexual assault as an element of genocide and crimes against humanity in the international criminal law framework.⁴ Second, the visibility of this particular harm to bodily integrity did not challenge the mainstream avoidance to deal with socio-economic questions, which were a vital part of some strands of feminist activism at that juncture, and that may lie beneath contexts of violence but are not as easily made visible. Finally, the increase of an already existent attention to public health allowed violence against women to be described as a serious medical issue,

⁴ As a result of this large international campaign, "many new mechanisms and norms came into being [...], including: the incorporation of gender crimes in the statutes/practice of the ad hoc War Crime Tribunals, the creation of a UN Special Rapporteur on Violence against Women, a UN Declaration on the Elimination of Violence against Women, and the integration of gender into the definition of crimes and expertise of the judges for the International Criminal Court (ICC)." (Miller 2004, 23)

deserving particular health services, and enabling the creation of a highly individualized and pathologizing structure of attention to the victim.⁵

I claim that this campaign generated a janus-faced frame. If, on the one hand, it succeeded in putting women's issues at the center of human rights concerns, thus enlarging the previous existing human rights frame to allow for the recognition of violence against women as a form of violence, on the other hand it carried its own problematic assumptions. While the "hyper-attention' to sex perversely operated to exclude attention to other aspects of harm," (Miller 2004, 18–19), it also produced a particular (and problematic) portrayal of the female bearer of rights, a victim, about and for whom feminist activists speak.

Moreover, bringing back Otto's genealogy (Otto 2013) to the analysis, the discourse on sexual harm and violence against women could not be pursued without recourse to the male/female dichotomy. Indeed, feminists continue to operate with the same ontology that underlined international law since its inception. Framed along these lines, such discourse not only produced a rather reductive account of women's rights violations but also, once circulated in the transnational legal space, encountered old colonial and racial stereotypes to which it was attached. If Moya Lloyd is right in asserting that "to accrue legitimacy for feminist political demands these demands had to be couched in terms of the needs of a distinct constituency, women" (Lloyd 2005, 59), the acknowledgment of such political constraint does not disavow the critical scrutiny of what needs are prioritized and what identity is constructed or, in other words, the political effects enabled by essentialism.

The female victim of human rights' violations: Speaking for and about Others

As Ratna Kapur (Kapur 2002) has shown, the victim subject is a transnational phenomenon and occurs in the legal discourse springing from both the West and the Third World. In this sense, while one could claim that the figure of the Third World woman as a helpless victim of human rights violation first emerged in Western scholarship and advocacy, Kapur's argument is that it traveled throughout the globe along with feminist legal politics in its struggle against violence. And ultimately, it came to be characterized by both cultural and gender essentialism. Failing to acknowledge some locations of resistance, making invisible

⁵ For an insightful account of how the medicalization and consequent pathologization of VAW took place in the United States, as well as its dreadful consequences, see Bumiller 2008.

multiple sites of power besides the state and relying on a universal subject that does not accommodate the multi-layered and diverse experiences of women, this frame is deemed to fuel the civilizing mission of international law (Koskenniemi 2001). Addressing the specific problematic of culture, which is frequently conceived as an obstacle to the incorporation and enforcement of human rights,⁶ Kapur shows how “some cultural practices have come to occupy our imaginations in ways that are totalizing of a culture and its treatment of women, and are nearly always overly simplistic or a misrepresentation of the practice”. (Kapur 2002, 12) Among such practices that have ignited a heated and still ongoing debate within feminist circles is the so-called “female genital mutilation” (FGM).

In her review of the Western literature advocating women's rights as international human rights, Engle (1991) identifies three different approaches and some of the ways in which each of them confront clitoridectomy. While each of the positions, labeled as doctrinalist, institutionalist and external critique, develop a particular assessment of the current human rights system and the mechanisms necessary for accommodating women's specific grievances within its frame, all of them presuppose the existence of the “Exotic Other Female (as something 'out there’)”. (Engle 1991, 1512) And as much as each of these approaches differ from one another, they all fail to actively engage this Other whose rights they advocate and whose culture they criticize or aim to dismantle. Nonetheless, she remains at the margins, below the surface or just around the corner, since resorting to her, either as the object of paternalistic policy or someone who has false consciousness, is strictly necessary for the development of each of the approaches' critiques and proposals. (Engle 1991)

Karen Engle (2005a) continued and extended her critique of feminist intervention in the field of international criminal law by examining the campaign for criminalizing wartime rape in Bosnia and Herzegovina, with particular attention to its unintended consequences. She underscored the ethnic components of the discourses that favored criminalization as well as the ways in which they helped to entrench reified understandings of ethnic difference. Moreover, she called attention to the disastrous consequences of constructing women's identity in wartime as simply “victims of rape”, which curtailed their sexual, military and political agency, replacing a focus on gender with a focus on sex. Sherene Razack provides a similar critique that combines racial/ethnic and gender analysis in her assessment of the use of

⁶ For an illuminating account on how the cultural domain is constructed as backwards and in opposition to modern understandings of gender equality entailed by human rights discourse, see Merry 2005.

the concept of gender persecution in the case of female asylum seekers in Canada. Razack argues that these women are more likely to be successful in their plea if they are able to present themselves as helpless “victims of dysfunctional and exceptionally patriarchal cultures and states”. (Razack 1995, 46)

Adding to this critical literature and examining the cases of the international tribunals for Rwanda and Sierra Leone, Chiseche Mibenge (2013, 7) has demonstrated that the dominant narrative emerging from the legal and justice process following civil wars “represent[s] African women not only as victims of armed conflict but as rape victims of a militarized African masculinity”. Such a narrative is precarious inasmuch as it “essentializes women as a monolithic victim group and gender as a unitary ground of discrimination”. (Mibenge 2013, 7) In doing so, it conceals the variance of women's experiences as well as the different effects of gender-based violence on women and men. Moreover, it reduces the harm done to women to the sole experience of sexual violence, producing thus a female subject who is only recognized in her sexual identity and vulnerability to being raped. Finally, by encapsulating the experience of sexual violence within the female subject, it overshadows the various ways in which men are also victim of this injury, thus contributing to the perpetuation of a problematic dichotomy: women's bodies are bearers of sexual rights and men are the offenders of their bodily integrity.

While one may claim that this stereotyped, and most of the time, racialized representation of the female victim was an unintended consequence of women's human rights campaign, Alice Miller points to the contrary. Through the analysis of rights reports in the 1980s, she shows how a particular victim devoid of agency and in need of protection was in fact very much produced, leading to the depoliticization of the issue of violence against women: “the style of 1980s rights reporting – its individual story/case focus, with limited and consciously styled ‘non-political’ (i.e., neither for nor against specific forms of government) claims – meant that the over-riding spectacle was deliberately inflicted pain to an individual, a spectacle obliterating any analysis of the politics that led to it.” (Miller 2004, 28)

In this sense, a particular frame was explicitly adopted, one that placed focus on “bodies, pathology, and suffering”, rather than simultaneously stressing other dimensions of rights claim, such as democratic participation and individual agency. (Miller 2004, 29) This not only produced the somewhat simplistic portrayal of the victim who needs protection and care, unable to speak for herself, but also placed feminists in the difficult position of dealing with

existing sexual hierarchies⁷ that deemed some victims more legitimate than others. In this sense, many activists struggled to assert the respectability of the victims they were representing and, in doing so they eventually contributed to strengthen those mentioned hierarchies that deemed some women respectable – therefore, protectable; while others were charged as deviant. (Miller 2004)

The problem is not only that this docile victim in need of protection does not represent the reality of the women who are spoken for, leaving many of them without recourse to this frame. In addition, such representation ended up serving strategic interests in the domain of international relations. As Lila Abu-Lughod, (Abu-Lughod 2002) Kevin J. Ayotte and Mary E. Husain, (Ayotte and Husain 2005) and Karen Engle (Engle 2005b) have demonstrated for the case of the so-called “War on Terror”, the same discourse considered above was deployed as a justification for the American intervention in Afghanistan. The rescue and liberation of Muslim women (from aggressive and brutalized Muslim men), buttressed by the values of equality, freedom and democracy, provided the gendered narrative that would allow “might” to have the appearance of “right”.

As Miller has already admonished, the frame of sexual harm is a narrow one, inasmuch as it is “a frame that tends to reduce women to suffering bodies in need of protection by the law and the state, rather than as bodies and minds in need not only of protection, but participation and equality.” (Miller 2004, 27) It is in its essentialization of the victim, which disavows an engagement with the complexities of each personal history, that the transnational frame of violence against women meets the logic of humanitarianism – a politics of life that distinguishes “between those who are subjects (the witness who testify to the misfortunes of the world) and those who can exist only as objects (the unfortunate whose suffering is testified to in front of the world)”. (Fassin 2007, 517)

When vindicated under this logic, human rights lose their critical, subversive potential of questioning the very basic notion of who counts as human. As Judith Butler has articulated, “when we struggle for rights, we are not simply struggling for rights that attach to my person, but we are struggling to be conceived as persons. [...] we are struggling not only to be conceived as persons, but to create a social transformation of the very meaning of personhood,

⁷ Drawing from Gayle Rubin, Alice Miller defines sexual hierarchies as “systems of legitimacy both tacit (shaming) and explicit (legal) that arise in various contexts (country, culture, whatever the unit of imagination) and that prioritize certain forms of reproductive, marital, and heterosexual activity above other sexual behaviors and identities, eventually forcing these marginalized behaviors outside the pale of rights claiming.” (Miller 2004, 36)

[...] the assertion of rights becomes a way of intervening into the social and political process by which the human is articulated.” (Butler 2004, 32) Because the human grounds a set of rights and obligations that are global in reach, it is such a relevant category, and must always be open to critical interrogation. The problem with humanitarianism and consequently with the discourse of women’s human rights that follows its logic, is that it reduces the human to a suffering body, who needs to be protected, hence creating a hierarchical relationship between the victim and her spokesperson.

Obviously, my aim is not deny that violence and, especially, sexual harm is indeed an abuse, which many women are victims of. Rather, I want to underscore the problem of encapsulating women as subjects of rights in the reductive framework of the (negative) right to a life free of violence. Consequently, also reducing the scope of the whole of ‘women’s human rights’ to ‘protection from violence’. The problem here is thus circular: in face of the necessity to break the barriers offered by hegemonic human rights institutions and frames, feminist activists focused on a single experience, among many others, which mark women’s lives. In doing so, they produced an essential female victim. The spectacular attention given to this female victim legitimated a narrow approach to women’s human rights, something that feminists had been arguing against in the first place. It is important here to recall that “narratives of experience are seen to *produce* rather than to reveal reality” (Lloyd 2005, 60), that is to say, it is the feminist discourse that produces the concept of sexual harm, of rape as a weapon of war, of sexual violation as the worst thing that can happen to a woman. And because these narratives produce reality, they require “a double move: the theorization of the ‘essentialist spaces from which we speak’ (as women, say) and the opening up to scrutiny of the *historical processes and practices that shape these narratives spaces into particular scripts.*” (Lloyd 2005, 60)

Essentialism is not ahistorical: identity categories, such as women, are produced and mobilized within a historical and political context, as all the events described in the opening paragraphs of this paper show. The instance of the *Encuentro Feminista* is particularly telling in this sense. In dispute, there were questions such as, who can be a feminist? What makes someone part of that group based upon a shared specific identity? Moreover, on what grounds is that identity constituted?

Examining the historical development of the encounter I briefly summarized above, between women and human rights, is strictly necessary to assess if the category women’s

human rights should still be vindicated. What follows from the acknowledgment of the critiques articulated above is indeed a rather difficult question. Is the problem with the discourse of women's human rights located in the particular historical frame it acquired, therefore redeemable through the recognition of both women's diversity and the relationships of power that operate within feminism itself? Or is this problem located on a deeper level, that of women as a category for rights claims, which "does not simply report a pre-linguistic experience, but constructs that experience as well as the limits of its analysis" (Butler 1988, 530), therefore excluding subjects who should also be of feminist concern? Alternatively, to use the terms with which I started out, is the problem located on the boundaries of the category within, or on the boundaries of the category without? In what follows, I offer some very sketchy ideas in an attempt to bring important elements for this debate, without having clear answers for those questions yet.

Feminism meets its (feminist) critique: What is to be done to women's human rights?

Moya Lloyd argues that the division between essentialism and constructivism, or constation and performativity, which runs through feminist thought, is a misleading one. For her, "every declaration of what woman is, is simultaneously a performative production of that being and every time that demands are made on behalf of women (as a whole or specific groups of them), there is a provisional reification of what it means to be a woman ('the victim of rape', 'a mother', and so forth)." (Lloyd 2005, 69) In making such claim, Lloyd is interested in pushing forward an agenda of agonistic politics for feminism, in which, by acknowledging that its (essentialized) subject is always a construction unavoidably partial and fallible, feminism needs to constantly interrogate and de-determine that identity.

While I understand that there it might be fruitful to think on those terms in a context in which making political claims require mobilizing an identity – such are the situations of vindicating rights for groups previously excluded – my problem with Lloyd's proposal lies somewhere else. Just as women, feminism is not unitary, but rather a highly contested political space, to the extent that it might be better to talk about feminisms. Along these lines, not only the identity of the feminist subject is a contested one, but, and perhaps even more importantly, the identity of feminism itself is in dispute. And the two, are in fact, intertwined. By that, I

mean that certain feminisms produce certain “feminist subjects” which are coherent with their feminist projects.

Bringing these abstract ideas down to the issue of women’s human rights, what seems clear to me is that there are certain feminisms which are happy with the results achieved and have no problem with the ‘female subject’ that ended up being constructed throughout the campaign for women’s human rights. In fact, if we follow the path from violence against women to the more contemporary campaign against trafficking and prostitution, the trope of victimization remains dominant, and perhaps has gone even into a deeper level.⁸

The question is then what those of us, who identify with the feminisms that are not happy with what has been done in the name of women’s human rights, should do. While I cannot elaborate all the implications of it yet, my claim is that we should drop the identity category of women (even if we had been using it strategically, as Spivak suggested). Not only such category has produced exclusions and new forms of domination within – think of all the critiques already articulated by Black and postcolonial feminists – but also without (the subjects and issues, of feminist concern, which cannot be placed within an agenda driven by an identity category). It seems to me that insisting in the very category (and necessarily, the binary male and female that follows from it), which has been mobilized to exclude and dominate, works more for its reification rather than its destabilization. It may be time to fully embrace gender in the realm of human rights, and not insist on a sexual difference approach that “become[s] a reification which unwittingly preserves a binary restriction on gender identity and implicitly heterosexual framework for the description of gender, gender identity, and sexuality.”

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⁸ For an in-depth discussion on this feminist project, see (Halley et al. 2006).

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