Book Reviews

Frontiers of Gender Equality: Transnational Legal Perspectives. Edited by Rebecca J. Cook. Philadelphia: University of Penn Press, 2023. Pp. ix, 558. Index.
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Curated collections of essays are only as good as the curation and the curator. Such books are worth reading when the subject of solicited contributions is well conceived, the contributors well selected, the essays well edited, and especially, the underlying contributors are encouraged to interact and their respective contributions are not merely gathered and published under a single cover as soon as the last one arrives. Thanks largely to its curator/editor/contributor, Rebecca J. Cook, professor emeritus at the University of Toronto, this collection of twenty-two essays (including an introductory chapter and conclusions) hits all these marks. It tackles the evergreen topic of gender equality with three clear goals in mind: to canvas the vast scholarship on point (with a focus on international and regional international treaty regimes); to assess the successes and failures of relevant regimes; and to envision what the continuing struggle to "build a more gender equal world" requires (pp. 1–2). The twenty-five authors invited to address the topic reflect different disciplinary and geographic perspectives as well as distinct generations. They have been accorded time to luxuriate in each other's company, to comment and reflect on their respective contributions, and emerge sometime later with rewritten essays that complement each other without undue repetition.

The result is a highly readable volume, largely devoid of academic jargon, the product of three workshops whose outputs have been efficiently organized into three sections: six chapters that seek to understand what gender equality means from a theoretical perspective, eight that describe and critique international human rights regimes, and an additional six that comment on all that comes before to suggest, by way of prescription, what more inclusive gender equality will require in the future. The three parts of the book do not occupy separate silos. Thanks to the respective contributors' efforts to engage with one another, a short but illuminating foreword (by Cecilia Medina Quiroga), and synthesizing introduction (by Rebecca J. Cook) and conclusion (by Francisca Pou Giménez), overarching themes emerge to provide illuminating connections among what in other hands might have been a motley collection of essays. Three of these thematic conclusions loom large. First, the book convincingly argues that there is a consensus that "gender discrimination" embraces substantive, and not only formal, equality; reaches direct and indirect violations by both state and private actors; and increasingly differentiates among those subjected to it to recognize many other axes of subordination beyond gender, such as race, ethnicity, caste, indigeneity, religious affinity, migrant or marginalized socioeconomic status. Second, it sees an emerging consensus that progress on achieving gender equality requires taking the discriminatee's point of view and not, for example, the standpoint of the discriminator or what it intended. Third, that the struggle to achieve gender equality—like all human rights efforts—requires special exertions to overcome international law's various binaries, sexual or other, and patriarchal and Western biases.

Three of the chapters in Section One, repeatedly referenced by other contributors, are worth special attention. Sophia Moreau, a moral and legal philosopher, provides a threefold explanation for why gender discrimination is a "status-based" wrong. Her chapter, describing the "Faces of Gender Inequality," argues that gender discrimination generates three types of harms and is therefore "pluralistic," namely because (1) it

socially subordinates women by perpetuating a social order in which women systematically have less power and authority than men, attract less deference, and marginalize women's needs; (2) it infringes on women's deliberative freedoms to shape their lives or make fundamental choices; and/or (3) it denies them access to basic goods (that is, goods that are necessary to be, or to be seen by others, as a full and equal participant in their particular societies) (pp. 19–28). Some discriminatory acts produce only one of these harms, some all three. Whether Moreau's framework is only a more precise distillation of how discrimination is most commonly described—as harming "human dignity"—or an attempt to displace that account is not addressed in this chapter but her description of discrimination's pluralist harms seems ideally suited to the diverse societies that are the subject of international human rights. Human rights advocates have, after all, struggled to convince those outside the Western tradition that "human dignity" has a single definition. Sandra Fredman, whose chapter focuses on women at work, articulates four ways that substantive equality responds to discrimination: (1) through redistribution to address disadvantage; (2) by redressing stigma, stereotyping, prejudice, and violence; (3) by furthering participation to facilitate voice; and (4) by redesigning structures and accommodating difference (pp. 40–43). Shreya Atrey, more controversially, advances what she calls a "prioritarian" approach to the application of intersectional discrimination. She argues that the best way to transform structures that lead to subordinating hierarchies among women is, paradoxically, to embrace a different form of hierarchy: that is to accord priority attention to those who are most vulnerable. She argues those subject to nondiscrimination obligations should focus on the individuals or groups in particular societies who are at the greatest disadvantage, like those subjected to intersectional discrimination because of their race and low socioeconomic status (p. 56). She draws support for this view from some of the outputs generated under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and urges the CEDAW Committee to pursue prioritization more explicitly with respect to addressing the gender dimensions of climate change (pp. 56–67).

A number of the book's chapters reflect on or apply Moreau's, Fredman's, and Atrey's respective insights. Moreau herself argues that her pluralist account of why discrimination is wrong complements the views of Fredman and Atrey. She contends that her trifold list of discrimination's harms describes the present state of affairs while Fredman's and Atrey's approaches are more oriented to how, in the future, we can dismantle those harms (pp. 35–37). Daniel Del Gobbo, Loveday Hodson, and Stéphanie Hennette Vauchez all cite to Atrey's account of what intersectionality is (or ought to be) by way of explaining the concept's complexity or its inadequacy (pp. 83, 178, 212). Meghan Campbell compares the International Covenant on Economic, Social and Cultural Rights' (ICESCR) conception of discrimination to Moreau's pluralist theory (p. 156). Verónica Undurraga draws on Atrey and Fredman to suggest rationales that in her view are missing from the jurisprudence generated under the Inter-American human rights system (pp. 254–55). Mervat Rishmawi draws inspiration from Moreau, Atrey, and Fredman for how gender equality might be advanced under the Arab Charter and the national laws of its state parties (p. 283). At the same time, even these path-breaking contributions do not escape critical scrutiny. Francisca Pou Giménez, in her conclusion, is more critical: she questions the impact that Arey's "prioritization" of rights might have if applied to write out discrimination claims by the relatively well off (p. 440).

Many chapters push the frontiers of gender equality by advancing its comparative study. Del Gobbo, addressing LGBTQ+ rights, contributes the most provocative chapter of comparative analysis. His starting point is CEDAW "which retains a binary focus on biological sex, excludes gay and bisexual men from its scope, and fails to adequately capture the experiences of trans, intersex, and other gender-nonconforming people" (p. 69). Drawing on a body of critical work by, among others, Janet Halley, Diane Otto, Vasuki Nesiah, and Darren Rosenblum, Del

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Gobbo points out that rights claims, even those advanced under the vision for "gay governance" advanced by the Yogyakarta Principles on the Application of International Human Rights Law in Relations to Sexual Orientation and Gender, may be simultaneously "tools of liberation" for "in-groups" and binary-affirming structures that relegate LGTBQ+ persons to the "outgroup" (p. 70). Del Gobbo does not stop there. Citing critics like Chandra Mohanty and Sylvia Tamale, he argues that campaigns to "universalize" LGTBQ+ rights—as by claiming that "gay rights are human rights"—under a number of human rights regimes can be framed a yet another form of imperialistic "progress narrative" to "shore up the purported civilizational dominance of Anglo-American states at the expense of "homophobic" others (p. 77). Borrowing a page from those who criticize the indeterminacy of international human rights, he contends that the "formality, hollowness, and abstraction" of rights claims allows them to be wielded by those who oppose LGBTQ+ rights—as to protect "cultural" rights (p. 80; also Table 4.1 (p. 81) outlining opposing "minoritizing" and "universalizing" discourses either in favor or opposing LGBTQ+ rights). In the end, however, Del Gobbo does not endorse the complete abandonment of rights talk since that is a "luxury" that only privileged groups can afford (p. 83). He ultimately defends the constitutive incoherence and contradictions of instruments like the Yogyakarta Principles insofar as these qualities are fundamental to the "praxis" of rights claims and need to be strategically used—as by deploying intersectionality to promote gender and sexual diversity (*id.*).

Some readers might be surprised by the sheer diversity of venues addressed in this book in which gender equality is either advanced or hindered. These include, as outlined in a useful table of authorities and instruments (pp. 574–82), non-judicial initiatives like the UN's Sustainable Development Goals (particularly SDG 5 on gender equality) described and critiqued in a chapter by Marieme S. Lo; national courts (addressed in chapters on the Vishaka case in the Supreme Court of India by Naina Kapur and the Supreme Court of Zimbabwe by Charles G. Ngwena and Rebecca Cook); regional human rights tribunals (chapters on the Inter-American Court of Human Rights by Verónica Undurraga and the European Court of Human Rights by Stéphanie Hennette Vauchez); other regional institutions (chapters by Fareda Banda discussing the outputs of the African Commission and African Court on Human and People's Rights, the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), and the Court established by the Economic Community of West African States (ECOWAS Court), by Mervat Rishmawi on the Arab Human Rights Committee (AHRC) under the Arab Charter on Human Rights), and by Karin Lukas and Colm Ó Cinnéide on the European Social Charter; and, as would be expected, descriptions and critiques of global human rights regimes (chapters on the International Covenant on Civil and Political Rights (ICCPR) and ICESCR treaty regimes by Shreya Atrey and Meghan Campbell respectively, and three chapters addressing CEDAW and the outputs of its Committee (by Siobhán Mullally, Loveday Hodson, and Joanna N. Erdman and Mariana Prandini Assis respectively).

These chapters, often blending description, critical analysis, and prescription, provide multiple examples of the merits of studying comparative gender equality law. Undurraga's descriptions of the Inter-American Court of Human Rights' innovative approach to reparations for violations of the prohibition of discrimination, for example, should be of keen interest to anyone interested in the due diligence obligations owed by states to individual *and collective* victims of discrimination. To the extent that, as this reviewer has suggested elsewhere, the CEDAW, ICCPR, and ICESCR regimes have much work to do to refine the law of remedies in response to intersectional gender discrimination,[1] Undurraga's descriptions of the Inter-American Court's application of the concepts of "integral" or "transformative" reparation

[1] *See* José E. Alvarez & Judith Bauder, Women's Property Rights Under CEDAW, Ch. 6 (forthcoming 2024).

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(see pp. 250–51) might be worthy of emulation elsewhere. There would appear to be potential for bridges to be built between remedies that specifically respond to the distinct intersectional harms imposed on particular women and those directed not at rectifying past harm but at preventing future acts of discrimination for groups of women (as is the case for some remedies seeking to prevent international crimes and promote transitional justice).[2]

Three of these chapters contain feminist rewritings of either a CEDAW General Recommendation (by Joanna N. Erdman and Mariana Pradini Assis), a view issued by the Human Rights Committee (by Cheryl Suzack), or a national supreme court decision (by Charles G. Ngwena and Rebecca J. Cook). All three are worthy exemplars of what Hilary Charlesworth, in her introduction to a collection of comparable rewritten judgments called "prefigurative politics" (p. 451, quoting Hilary Charlesworth, "Prefiguring Feminist Judgment in International Law," in *Feminist Judgments in International Law* (Loveday Hodson & Troy Lavers eds., 2019)). These re-envisioned judicial or other outputs model what the "frontiers" of gender equality should look like—not only for the individuals who are subjected to discrimination but for the institutions that are delegated to respond. The Erdman/Assis rewriting of CEDAW General Recommendation 24 dealing with Article 12 of CEDAW requiring the elimination of discrimination against women with respect to access to health care, for example, does not merely expand states' obligations beyond the "health care sector" as traditionally defined, it intentionally reconceives what CEDAW General Recommendations are for. As those authors put it, their version of GR 24 centers on rights-bearers rather than states as the primary audience by seeking "to empower people to claim their rights and to make demands of States parties and other public and private actors" (p. 328). Rather than offering top-down expert advice on what CEDAW Article 12 means, their rewritten GR 24 seeks to politically mobilize grassroots actors in an ongoing "democratic form of governance" (*id.*).

Close examination of this book reveals that the "frontiers" of this subject owe much to long-standing feminist critiques of the leading treaty designed to advance women's equality, namely CEDAW. Even the second generation feminist contributors to this book continue to wrestle with charges that CEDAW conflates biological sex with socially constructed gender; marginalizes women's rights by leaving it to one specialized, widely depreciated human rights regime conceived as an afterthought; considers the treatment of men as the standard of measurement; accords primacy to "universality" such that the complex identities and roles of women are subsumed by an undifferentiated, binary, and essentialist "woman" whose ambitions coincide with those of liberal Western women; ignores particular manifestations of inequality (such as gender-based violence) or their structurally patriarchal drivers embedded in economics, culture, or social or religious norms.[3] Much of this book is written in response to the underlying concern that CEDAW—along with other international and regional systems of human rights protections—are simply incapable of generating the societal transformations needed to produce genuine gender equality.

The essays in this book focusing on the evolving interpretations of CEDAW by its expert committee suggest that many of the old criticisms require nuance or are simply outdated. A number of the contributors acknowledge that the CEDAW Committee has not limited itself to examining the formal equality of men and women under national law, has accepted that the Convention governs gender and not merely sexual discrimination, demands that its state

[2] *See generally* Pablo de Grieff, *The Vernacularization of Transitional Justice: Is Transitional Justice Useful in Pre-Conflict Settings?*, *in* THE COMPLEXITY OF HUMAN RIGHTS: FROM VERNACULARIZATION TO QUANTIFICATION (Philip Alston ed., forthcoming 2024); Ruth Rubio-Marín & Clara Sandoval, *Engendering the Reparations Jurisprudence of the Inter-American Court of Human Rights: The Promise of the Cotton Field Judgment*, 33 HUM. RTS. Q. 1062 (2011).

[3] *See, e.g.*, HILARY CHARLESWORTH & CHRISTINE CHINKIN, THE BOUNDARIES OF INTERNATIONAL LAW: A FEMINIST ANALYSIS (2000).

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parties address the cultural, economic, religious, and other social determinants of women's subordination and the feminization of poverty, and has developed an increasingly sophisticated jurisprudence on "intersectional discrimination" that recognizes the diversity of women's lives around the world as well as within nations. The institutionalization of CEDAW, we now realize, has led to a considerable evolution of its text. Evolutive interpretations by the CEDAW Committee and even by some national courts, has largely overcome that treaty's failure to include gender violence as a form of gender discrimination or its silence, apart from the recognition in its Article 14 of the special needs of rural women, on women's many identities or roles. Such interpretations, over time, have solidified the broader visions of gender equality only hinted at in the Convention's text and preamble.

In her chapter, Loveday Hodson argues that the CEDAW Committee has sought to advance substantive and not just formal equality, imposes an obligation of result on its state parties, implicitly incorporates gender into its conception of discrimination, and generally treats the Convention as a "dynamic instrument" capable of advancing transformative equality (pp. 175–79). At the same time, Hodson suggests the enduring relevance of some of the older critiques of CEDAW, even to those at the "frontier." Hodson argues that the Committee's commendable response to the reality that there is "no single, universal experience of discrimination" corresponding to an essentialist woman, namely its application of intersectional discrimination, is still under development and needs to go beyond a merely additive conception to one that accepts the "intersectional nature of disadvantage and discrimination" (pp. 179–84, praising the Committee's more recent General Recommendations on education, climate change, and trafficking). She also contends that the Committee's ostensible commitment to intersectionality in its General Recommendations is unevenly applied in the Committee's responses to individual communications dealing with domestic violence or *non-refoulement*. She points to Views issued by the Committee that fail to address the ways the particular intersectional identities of individual communicants contributed to their vulnerabilities in both types of cases (pp. 184–95).

Siobhán Mullaly's engagement with an old problem—the number and gravity of state reservations to CEDAW—is another attempt to draw lessons from over four decades of CEDAW practice. Mullaly revisits two of the reasons often given for CEDAW's failures to fulfill its promise of transformational change: namely that many sovereigns (and bearers of traditional cultural/religious norms within them) continue to contest the value of gender equality through their reservations to CEDAW and the treaty's failure to include "hard" judicialized enforcement that would force the removal of reservations that violate CEDAW's object and purpose. Mullaly goes beyond those familiar complaints to point out that in fact some states have indeed removed their reservations after criticisms by and engagement with the CEDAW Committee and civil society. More significantly, Mullaly challenges the premise that hard judicial enforcement is the solution to reservations that, on close examination, reveal an essentialist take on certain group rights or a "defense of culture" no less objectionable than essentialist reliance on "universal" rights. Relying on Dianne Otto's conception of "anti-essentialist feminism," Mullaly defends the CEDAW Committee's moral/political constructive dialogic approach to the problem of reservations. She argues that harder forms of enforcement would be counterproductive and defends the softer existing mechanisms that "open a process of dialogue around domestic laws and, in particular, around the requirements of the Shari'ah" (pp. 100–05).

A number of the other essays suggest that the fundamental shortcomings in understanding, much less applying, gender equality identified by first generation gender equality scholars like Charlesworth and Chinkin endure—at least within international regimes other than CEDAW and (particularly) within national laws and practices. Mervat Rishmawi's chapter on "Advancing Gender Equality Through the Arab Charter on Human Rights" is a largely

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aspirational account of how legislation, practices, and judicial decisions in the sixteen states that are parties to the problematic Arab Charter on Human Rights (along with CEDAW, the ICCPR and the ICESCR) need to change to conform to those treaties' demands for non-discrimination. While not intended as such, that chapter could be read as a case study of the ineffectiveness of top-down treaties to change conditions on the ground—because of their textual concessions to sovereignty, powerless forms of implementation or enforcement, or the indeterminacy of the obligations imposed. That chapter and to a certain extent Fareda Banda's on "African Gender Equalities" continue to confront cultural relativists' insistence the gender equality pursued via treaty naively seeks to export to non-Western countries an unfamiliar and alien concept.[4]

Other chapters address broader but familiar criticisms that resort to the legalisms of international human rights depoliticizes (and defangs) what ought to be political[5] or that the conscious or unconscious gaps in human rights protections turn these regimes into neoliberalism's "fellow travelers" or even "enablers."[6] Naima Kapur's first person account of her involvement in the historic Vishaka litigation in India's Supreme Court—which marked a historic shift in workplace sexual harassment in that country—and the resulting sixteen-year effort to translate that judicial outcome into reality refutes the charge that reliance on rights talk depoliticizes what ought to remain within the realm of political struggle. But her chapter also demonstrates how hard it is—and how long it takes—to use legal tools to transform political realities. Meghan Campbell, in her survey of the Committee on Economic, Social and Cultural Rights' (CESCR) jurisprudence at the intersection of gender and socioeconomic rights, raises the old specter that the establishment of CEDAW has marginalized both women's rights as a whole and particularly the need to redress gendered economic realities. While she praises the CESCR's outputs dealing with women's equal rights with respect to working conditions, freedom from violence, and sexual and reproductive work, she contends that all too often that Committee is content to merely parrot the CEDAW Committee's analysis of such rights while failing to a apply a substantive equality lens attentive to gender with respect to all the other rights in the ICESCR that she argues are not included in CEDAW, such as rights to food, housing, and an adequate standard of living (pp. 169–74). Her implicit conclusion is that neither the ICESCR nor CEDAW regimes threatens the economic struts that underlie the feminization of poverty.

Shreya Atrey's Chapter 7 on the Human Rights Committee (HRC) under the ICCPR is a withering critique of the many missed opportunities to address and remedy intersectional claims of discrimination under that Committee's unduly terse discrimination jurisprudence (which crucially relies on determinations of whether state measures are "reasonable" instead of proportionate). While Atrey's essay, originally published elsewhere, covered only the HRC's jurisprudence through 2016, she has added a postscript for this book which covers the HRC's individual communications relating to discrimination from 2017 through April 1, 2021 (p. 149). That postscript concludes that with the exception of *Sonia Yaker v. France*, which successfully challenged a French law prohibiting full-face veils in public, the HRC continues to fail to engage in fully considered analysis of intersectional discrimination and that, even when it recognizes the reality of such discrimination, is inconsistent in responding to it (pp. 149–52).

Not all readers will agree with all the normative conclusions reached by the book's individual contributors. This reviewer would question Mullaly's rather sanguine defense of the CEDAW Committee's engagement with states' reports and its concluding observations, particularly when it comes to states that, every four years, continue to rely on blatantly illegal blanket

[4] *See, e.g.*, Sylvia Tamale, Decolonization and Afro-Feminism 131 (2020).

[5] *See, e.g.*, David Kennedy, The Dark Sides of Virtue: Reassessing International Humanitarianism 19 (2004).

[6] *See, e.g.*, Jessica Whyte, *Powerless Companions or Fellow Travellers? Human Rights and the Neoliberal Assault on Post-colonial Economic Justice*, 2 Radical Phil. 13 (2018).

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reservations or repeatedly defy the Committee's prior recommendations for change. On the other hand, Campbell appears to underestimate the CEDAW Committee's engagement with women's socioeconomic rights and wrongly assumes that the equal rights to social security, adequate living conditions, and housing contained in Article 14 of CEDAW continue to be confined to rural women.[7] And there is room to question the contention—suggested by both Atrey and Hodson—that human rights treaty bodies need to be perfectly consistent in the ways that they advance gender equality throughout their various outputs, from responses to individual complaints to concluding observations on states reports to general comments or recommendations. These outpoints may serve different purposes for different audiences. The Committee's Views in response to individual complaints, the equivalent of human rights "case law," may seek principally to provide individuals or groups of communicants with specific remedies that are both attentive to local context and respond to particularized harms. Concluding observations reacting to state's periodic reports (and a state's prior record of compliance or defiance) are widely regarded as attempts to persuade governments to comply through proactive and generally applicable recommended changes to a state's laws or practices. General comments/recommendations are best suited to the progressive development of the interpretation of the treaty for the guidance of a variety of human rights stakeholders, including NGOs and other human rights activists. There is also room to question whether consistent gender equality jurisprudence across the many international and regional venues is either realistic or desirable. One lesson of comparative gender equality jurisprudence may be that the proliferation of outputs and forums—and even the potential for forum-shopping—has its virtues. As we are all learning, "gender" is a complicated and evolving concept, as is "equality" and its opposite. The combination of the two is all the more so and fluid experimentation may be normatively desirable. This may be so not only for pragmatic reasons but also because a certain fluidity or flexibility in understanding what human rights treaties demand is desirable given the ever-evolving human rights challenges posed by, for example, new technologies.

This book recognizes that the frontiers of its subject will never be settled. Even feminist rewriting efforts will need to be rewritten over time in light of new challenges (from climate change to artificial intelligence) to equality. At the same time, this book's contributors are united by a common normative commitment "to facilitate learning across disciplinary, national and ethnic boundaries to achieve more inclusive gender equalities" (p. 1) and to the use of international human rights law to secure that worthy goal. They are also united by a common methodology. Fredman's description of her approach to her chapter—"to put theory in conversation with a very detailed understanding of the reality and then to adjust both theory and the perspective on the reality to achieve new insights" (p. 39)—is an apt description of what all its contributors do.

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[7] *See, e.g.*, Alvarez & Bauder, *supra* note 1.

Talking International Law: Legal Argumentation Outside the Courtroom. Ian Johnstone and Steven Ratner, eds. Oxford, UK: Oxford University Press, 2021. Pp. xii, 362. Index.

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How, why, and with what consequences is international legal argumentation used beyond the courtroom? These and related questions lie at the heart of *Talking International Law*, edited by Ian Johnstone, Professor of International Law at Tufts University, and Steven Ratner, Bruno Simma Collegiate Professor of Law, University of Michigan. Johnstone and Ratner seek to draw attention to legal argumentation outside of the formal, judicial settings of (international) courtrooms, where actors typically have clear expectations on the form and content legal