

AFFIRMATIONS AND AMBIGUITIES: SOME THOUGHTS ON WOMEN AND AGENCY

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I hope my remarks will essentially constitute an invitation to interrogate a certain incongruity between interventions to stimulate the wealth of nations and the avalanche of women into poverty. As the consciousness about the implications of globalized market-oriented and political apparatuses heighten,¹ the obligation that societies owe to their citizens as a matter of justice, and the arrangement of social institutions to fulfill those obligations, are resonant concerns.² Critical considerations of what constitutes justice and how governments attempt to secure it reveal that with ever-increasing urgency, this age has tied the fate of justice to the economy.³ By the same token, competing propositions to improve the efficiency of statecraft have come to exert considerable influence on the social policy agenda. Of particular interest for our immediate purposes is the triumph of initiatives for the revitalization of civil society, the private franchising of public goods, and emphasis on the individual as alternative sources of welfare.

The popular ideal of the Third Way articulates the value of human agency and its pivotal role in the enhancement of social welfare. Within its framework, individual agency appears to be the linchpin for human flourishing. However, a reexamination of this formulation and its concomitants suggests a failure to engage empirically verifiable substantive considerations about the contingency on social conditions. The abiding challenge is to do justice to the promise of the Third Way,⁴ while avoiding the

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¹ L. Amede Obiora, *Toward an Auspicious Reconciliation of International & Comparative Law*, 46 AM. J. COMP. L. 669, 669-81 (1998).

² See generally JOHN KENNETH GALBRAITH, *THE GOOD SOCIETY: THE HUMANE AGENDA* (1996).

³ See generally RICHARD DIEN WINFIELD, *THE JUST ECONOMY* (1988).

⁴ See generally *THE GLOBAL THIRD WAY DEBATE* (Anthony Giddens ed., 2001).

absurdities of its politicization.

I revisit the thrust of the debate about the Third Way as a backdrop to discuss a best practice that catalyzes the agency of women and signals the importance of what I consider the full belly quotient for the gender equity paradigm.⁵ This will provide a springboard for my critique of a perennial tension that inheres in the emerging trend as well as the significant dilemma that retreating state frontiers and shifting the onus for welfare poses from the perspective of women's agency. I will conclude by exploring the bare outline of a conversation about how a concept of law can be serviceable in the livelihood mobilization struggles of women.

My remarks in this essay are an installment in a broader conversation. The remarks are informed by an intriguing paradox which is that, while global markets and eruptions of technological genius generate material conditions and moral conundrums that transcend particular boundaries and belonging, the resources necessary to contain and respond to these forces remain reposed in particular practices, identities, and moralities.⁶ The take-off point for my remarks is that the minimum required to make the market economy more inclusive is to guarantee equal access to the opportunities it provides, and that this cannot be done where much of the population lacks the basic wherewithal to participate.⁷

This is not a radical premise considering that "empowering the poor" is well-worn territory in the development arena.⁸ However, there is ample ambiguity regarding what empowerment entails.⁹ I would argue that any serious attempt to humanize global capitalism is not just a matter of market reform, but that it requires tackling the interlocking structures of social, economic, and political power that exclude particular groups of people. By the same token, there is a risk that the rhetoric of inclusion is appropriated as a normalization strategy by vested interests—hence the need for care

⁵ L. Amede Obiora, *The Full Belly Quotient: Renegotiating a Rite of Passage*, in *FEMALE GENITAL CUTTING IN THE WORLD* (Ylva Herlund ed., Forthcoming).

⁶ See generally Anthony Giddens, *Living in a Post-traditional Society*, in *REFLEXIVE MODERNIZATION: POLITICS, TRADITION AND AESTHETICS IN THE MODERN SOCIAL ORDER* 56–109 (1994).

⁷ See generally AMARTYA SEN, *DEVELOPMENT AS FREEDOM* (1999).

⁸ See generally WORLD BANK, POVERTY REDUCTION GROUP, *A FRAMEWORK FOR EMPOWERMENT: SUMMARY* (May 2002), <http://www.worldbank.org/poverty/empowerment/summary.pdf> (last visited Feb. 3, 2004).

⁹ See generally Kerry Rittich, *Engendering Development: A new paradigm for international gender justice?* (unpublished manuscript, on file with the author).

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to guard against the disservice of normalization as a casualty of “inclusion”.

My remarks will draw on my experience managing the only stand-alone Gender and Law Program at the World Bank.¹⁰ The program emerged as part of a network of interventions to cushion the distributional consequences of the policy-based lending and macroeconomic stabilization programs of the Bank and the Fund.¹¹ My effort to address my core task prompted me to question assumptions that arrogate omnipotence to bureaucratic development apparatus rather than privilege the agency of individual women in everyday life. A corollary challenge was to model a project that would showcase the agency of women and its portfolio of marketable skills that are typically occluded by conventional policy analyses.

Against this light, it is important to underscore that to celebrate the agency of women is not to deny the significance of its embeddedness in specific material contexts. The Structural Adjustment Programs (“SAP”) implemented by the World Bank epitomized the intricate intertwining and rude incursions of the processes of political economy in the lives of women.¹² SAP dictated the downsizing of governments and the privatization of key state functions. The structural violence occasioned by this measure exacerbated gender disadvantages, placing disproportionate burdens on the role of women as care givers. The individualization of responsibility and agency took center-stage as a strategy to contain the fallouts of adjustment and the magnificence of women’s competencies in the face of austerity measures made them protagonists of quite a different narrative.

The popular image of “African Everywoman” is that of acquiescence in oppression, not agency and resistance. Increasingly, in more critical circles, African women’s capacity to leverage their agency is no longer in question. What remain elusive are strategies to translate this capacity into potent political capital, especially vis-à-vis the elimination of the structural determinants of gender asymmetry. It is in this context that it became most evident that focusing on the virtues of the sweat equity of women, especially

¹⁰ See The World Bank Group, Africa Region, Findings No. 126, *Gender and Law: Eastern Africa Speaks* (Jan. 1999), at <http://www.worldbank.org/afr/findings/english/find126.htm> (last visited Oct. 19, 2003).

¹¹ WORLD BANK, *ENGENDERING DEVELOPMENT* (2001).

¹² WORLD BANK, *SUB-SAHARAN AFRICA: FROM CRISIS TO SUSTAINABLE GROWTH* (1989).

in its hearth-sustaining implications, is not unproblematic. The logic of heroic counter-hegemonic livelihood strategies compelled by the circumstances of many women is all too often liable to co-optation by neoconservative political forces that are eager to abdicate state responsibility. In the West these echo in sound bites such as the ones that espouse family values and pulling up one's self by the bootstrap.

In the wake of institutional restructurings to meet the evolving challenges of globalization, much premium is being placed on the potentialities of the legal sector. With growing awareness of the nexus between growth and social equity, greater effort is being channeled to refurbishing the legal framework, not just for market purposes, but for issues such as gender balancing. To this end, local gender norms and practices have increasingly been required to justify themselves in dialogue with alternative modes of being. The World Bank Gender and Law Program was established to mobilize the instrumentality of law to enhance the global gender equity agenda. Once undertaking this assignment in the fall of 1999, it dawned on me that the only way to refresh my perspective and do justice to what was involved was to travel to the respective countries and conduct a needs assessment survey. In many places, I met with representatives of stakeholder groups.

My fundamental concern was how to implement an integrated agenda to address the substantive needs of women, while tackling symptoms that are more amendable to compartmentalization and stop-gap measures. A key consideration for me was exploring the prospects for shifting from episodic responses to a much more systematic paradigm for gender and law programming and identifying the minimum set of conditions necessary to enhance the responsiveness of gender and law initiatives to the needs of women. Ultimately, I reckoned that, to a significant extent, the profile of the cultural and structural variables that mediate the circumstances of an average legal aid client offers some clues on how extant legal intervention strategies can be invigorated for greater effectiveness. In a scenario where many women are relatively too impoverished to flirt with the luxury of formal legal recourse, the most viable avenue for legal empowerment implicates other sectors. In fact, there are grounds to argue that this avenue may well lie outside the legal sector, unless the operative conceptualization of law is more inclusive than the orthodox rendition.

At first glance, the prerequisites for preempting the vulnerability

of women and tempering the fetishization of normative abstractions appear extra-legal. Upon further examination, however, they reflect a coherent definition of law that restates human rights principles. What then would a comprehensive and integrated legal outreach model look like? I posit that rather than approaching law formalistically as if it were a brooding omnipresence in the sky, it would deal with law as part of an outcome-determinative context by speaking to the social, economic, cultural, civil, and political rights of the beneficiaries as articulated by the human rights agenda. Embraced in its totality, this agenda offers a critical point of entry for coherent policy commitment and for the strategic sequencing of complementary measures with which to address the many faces of gender-based discrimination.

For years, human rights advocates have warned that the protective enterprise is compromised if the interdependence of the rights it safeguards is not recognized. However, in a universe of finite resources, it is often argued that objective realities compel choices and prioritizations. This reasoning and ideological commitments typically translate into the hierarchization of the International Bill of Rights.¹³ However, it now seems to be beyond dispute that the impact of civil and political rights are undermined when they are pursued in isolation of safe-guarding the basic social and economic prerequisites for human dignity.

Amidst findings about the heightening feminization of poverty, it is instructive that international development practitioners typically wed to traditional concepts of economic growth now find it at the very least imperative to be seen as working toward the empowerment of women for effective citizenship. More and more, those entities seem favorably disposed to concede that advancing women's economic viability has causal and correlative ramifications for the prospects for meaningful political participation. For the World Bank, it is reasonable to say that the advantage of hindsight from more than half a century of being in the vanguard of the struggle against poverty is finally bringing home the business expedience or intersecting efficiency, equity, and anti-poverty rationales for integrating gender considerations in routine lending and non-lending operations. The expedience of "firing on all

¹³ See generally International Covenant on Civil and Political Rights, 999 U.N.T.S. 171 (1966); International Covenant on Economic, Social, and Cultural Rights, 993 U.N.T.S. 3 (1966).

cylinders” so to say, for the purposes of gender and law initiatives, becomes all the more compelling amidst the apparent preoccupation of extant national authorities with nominal allegiance or symbolic deference to gender equity as opposed to the implementation of specific projects to actualize the goal of improving women’s access to vital assets and public goods.

In summary, my analysis of the predicaments of gender and law programming located the bulk of the missing link in the legal culture which is what determines the extent to which the beneficiaries of a certain law take advantage of it. On an intuitive level, it is commonly known that law is not proactive, but quintessentially reactive; laws once enacted, do not grow limbs with which to run after and apprehend transgressors. It takes the initiative of relevant complainants to trigger the legal process into motion. Accordingly, the mindset of women and the material constraints on their ability to avail themselves of the apparatus of law becomes a key ingredient that must be addressed to ensure the viability of law reform. Owing to the crude and reactive nature of law, a critical dimension of substantive legal reform is ensuring that the beneficiaries of the pertinent rights are in a position to assert them. For women, the dynamics of gender conflicts demonstrate that the availability of fallback options has remarkable implications for their ability to assert their rights.

To bring this point home, consider for instance a situation where donors are laboring in tandem with governments and Non-Governmental Organizations to stimulate the passage and/or amendment of gender friendly laws. The needs are daunting, but they keep at it and actually register some success in terms of the promulgation of progressive laws. They complement these enactments with Information, Education and Communication outreaches to women. In the course of the process, however, a confluence of factors prompt some of the donors to perceive some of the women involved as apathetic and hopelessly culture-bound. Closer scrutiny of this scenario suggests that what is often mistaken for apathy might actually be the most poignant commentary on the limitations of the approach.

An illustration will suffice to amplify this claim. Picture a dilapidated market square in the outskirts of Kampala where women brave excruciating circumstances to eke out a living. Meanwhile, the development community has, for instance, come to the realization that domestic violence is a crisis which threatens the

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very foundation of the enterprise. So, they fund some NGOs to spear-head an awareness campaign and these work hard to come up with some culturally-appropriate posters for the campaign. They invite the market women to attend some training sessions and are appalled by the poor attendance rate. What is worse is that the preoccupied attendees are not sufficiently engaged and the NGOs eventually receive disheartening reports that their posters have been converted into groundnut wraps by the attendee-vendors. It is easy to dismiss the attendee's response as apathy. But perhaps a more productive approach would be to dissect the response for lessons about how to maximize the benefits of such well-meaning interventions. After all, the women in question are veterans of pertinent everyday struggles. Having seen many programs come and go, they are in a good position to make recommendations on how to strengthen emerging programs.

The tendency to discount the valid grievances and well-founded alienation of women subverts golden opportunities to mine enormous instructive insights from their views and experiences. History vindicates the versatility of women as autonomous agents whose relentless labor under-gird the wellbeing of their communities. In some respects, restatements of the imperative for gender inclusion acknowledge the exigencies of women's agency. However, grave discrepancies and contradictions abound in terms of the substantive implications of this understanding for concrete paradigms of inclusion and empowerment. If indeed what works is what counts, women's agency deserves ample prioritization in working out the best evidence of commitment to gender equity.