

The Beginning of a New Era? Thinking about Feminism, Law and Being Left Alone

Sari Kouvo*

A few years ago, the Afghan Ulama Council, an informal, but powerful religious body, adopted a statement about reconciliation with the Taliban and women's rights. According to the statement women were worth less than men and some violence against women was to be tolerated. The statement was published on the website of the President of Afghanistan and, thus, viewed as enjoying his endorsement. By that time, the Afghan Constitution had had an equal rights clause for more than a decade and Afghanistan had also adopted many more laws, policies and practical steps for women's participation and rights. However, the statement was adopted at a time when Afghanistan's key international allies were planning their exit and looking for solutions to the Afghan conflict at any cost. Consequently, there were next to no public diplomatic reactions to the statement. Afghan women's rights activists who had viewed the international community as a partner in their cause for participation and rights, felt betrayed. During the decade that I have worked in and on issues relating to Afghanistan, this was the only time that I was not able to get the meetings that I wanted with women's rights activists: they were fed up talking to foreigners, and getting nothing in return.

The incident has been replaying in my mind over the past year, when crumbling democracies, extreme opinions and conflict are no longer confined to countries far away, but are very much part of the challenges that we face in Europe as well. It is a stark reminder of where we are with the feminist agenda in international politics and law today: That is, we may be somewhere if we remain constantly alert and keep pushing; we risk being nowhere and quite alone if we miss a moment.

The world has always been a troubling and dangerous place, and (international) law and politics has seldom been there to celebrate the world's moments of beauty and serenity. Over the past years, the world has seemingly taken a turn to the worse: with a rise in conflict, risk of ecological collapse and the coming into power of new, ruthless leaders with little commitment to multilateral politics or playing by the rules. For those of us whose adult years have been spent in post-Cold War Europe, the changes may feel particularly troubling, as many of us have taken absence of conflict (on our doorstep), the stability of our democratic state systems and their underlying values, including equality and non-discrimination for granted. As feminist legal scholars, we have challenged the legal definitions of equality for failure to bring substantial equality. We have done so presuming that governance and law hold the potential of moving

* Department of Law, Gothenburg University, Sweden. sari.kouvo@law.gu.se

towards greater equality – and without pondering the option of a move away from equality. As feminist international law scholars, we have challenged the international human rights framework for its failure to address women-specific violations or for the UN Security Council’s women, peace and security resolutions being based on essentialist notions of ‘women’ and ‘women’s needs’. We have done so presuming that key governments – including the US – would continue to view the UN as an important platform for international politics and law-making. Our premises may need to change.

As my introductory example shows, for many parts of the world conflict and struggles about the basic principle of equality are not new. Feminists and women’s rights activists have had to adjust to living with security threats and to constant backlashes to their struggles. In this paper written for the celebration of Dianne Otto’s work, I will, first, present some thoughts on the lessons that working on gender in Afghanistan has taught me, and, second, present some thoughts on why Otto’s scholarship is so relevant for us today. In my conclusion I will bring the two together, focusing on the importance of detail, generosity and optimism.

Activism, Law and Change in Afghanistan

The conflict in Afghanistan is one of the most protracted and complex of the contemporary world. Since the Communist Coup in 1978 followed by Soviet invasion in 1979, armed conflict has been ongoing on Afghan territory. The type, the parties and the intensity of the conflict have shifted over the years, and there have been a few lulls, such as the period following the UN brokered peace deal following the Soviet withdrawal in 1979 and the UN brokered power-sharing agreement subsequent to the US and its allies’ toppling of the Taliban regime in 2001.

Afghanistan was in many ways a conservative country before the conflicts, but the pre-war Constitution did recognise women’s and men’s equal rights. Many older Afghan women who come from educated and progressive families grew up and went to school and university in an Afghanistan where women could choose what they wear and choose their education and employment. The opposition to both the pre-war and the Communist governance was partly fueled by a sense that Afghan traditional values were being challenged: traditional values that included clear roles for women and men, and that in their harshest forms meant the total seclusion of girls and women from the public space (except when accompanied by a male relative).

The 1990s Taliban regime became known to the world for its extreme and discriminatory edicts refusing girls and women access to education, health care and employment. The US and its allies’ intervention into Afghanistan, although in military and legal terms defined as an act of self-defence, was publicly justified also as an intervention to liberate the Afghan people and especially Afghan women. Equal rights and women’s representation became important components of the post-2001 state-building process. Much – international and Afghan – effort was put into ensuring that the Afghan Constitution recognised equal rights of women and men, that there was a quota for women in the parliament, that a Ministry of Women’s Affairs was established and that girls returned to school and women were again ensured health care and access to economic opportunities.

As noted above, the Taliban did not invent discrimination against women, they rather turned into law customs and practices already existing in Afghan society. The tensions between proponents for women's rights and those who saw 'gender equality' as an invention of the foreigners, a threat to Islam and Afghan culture continued into the post-2001 period. Over the years, I have in different publications sought to unpack and analyse the practical consequences of these tensions, including with a focus on the establishment of the Ministry of Women's Affairs, the work of women's shelters, the adoption of the law on the elimination of violence against women and prospects for peace negotiations with the Taliban.¹ Between 2011-2013, together with colleagues I interviewed around sixty Afghan women 'change makers' – parliamentarians, government officials, judges, journalists, academics and activists – about what had made it possible for them to pursue their dreams in public life in Afghanistan.²

Some of the main findings from the research about the formal institutions and laws, as well as the interviews with Afghan women change makers, show that institutions and laws are but a thin layer rolled over the political and ideological struggles within Afghan society. The findings also demonstrated that proponents for women's rights within the international community and the Afghan government have seldom been as committed and passionate about women's rights as their opponents are. As a result, Afghan women's rights activists are left quite alone defending their access to education, politics and employment.

The most cited examples of the struggles between women's rights defenders and those who view 'gender equality' as a foreign invention and a threat to Afghan culture, are the debates over the Afghan law on violence against women and women's shelters. The law on violence against women was passed by Presidential decree. Later, the Head of the Women's Rights Committee pursued a process whereby the law was to be approved by the parliament. However, the parliamentary debate derailed, and the law was almost abolished. At the same time, university students organised demonstrations calling for an end to the foreign invasion, the end to democracy and the abolition of the law. The law is still being used by Afghan courts, but it has not been reintroduced for parliamentary approval.

¹ Kouvo, Sari and Levine, Corey, 'Gender and Conflict in Afghanistan' in *Oxford Companion on Women, Peace and Security* (Oxford University Press, forthcoming 2017); Kouvo, Sari and Levine, Corey, 'Calling a Spade a Spade – Tackling the Women and Peace Orthodoxy', *Feminist Legal Studies* 16 (2008), pp. 363-7; Kouvo, Sari, 'A "Quick and Dirty" Approach to Women's Rights – A Case Study of Afghanistan', *Feminist Legal Studies* 16 (2008), pp. 37-46; Kouvo, Sari, 'A War with no End in Sight: The Backlashes Regarding Afghan Women's Rights (amended)', Afghanistan Analysts Network Dispatch (Kabul, 2014); Kouvo, Sari and Roehrs, Christine, 'On a Knife's Edge: The Looming Parliamentary Debate about the Elimination of Violence against Women Law', Afghanistan Analysts Network Dispatch (Kabul, 2013); Kouvo, Sari, 'The Mud Might Stick: Women's Shelters Again', Afghanistan Analysts Network Dispatch (Kabul, 2012); and Kouvo, Sari, 'Women's Day in Afghanistan: Where the "Personal is still Political"', Afghanistan Analysts Network (Kabul, 2012).

² Kouvo, Sari and Levine, Corey, 'Law as a Placeholder for Change? Women's Rights and Realities in Afghanistan' in Rubenstein, Kim and Young, Katharine G (eds.), *The Public Law of Gender: from the Local to the Global* (Cambridge University Press, 2016).

Over the past decade, a few women's shelters (many enjoying international funding) have been set up across Afghanistan. Shelters are the last option for Afghan women, as a girl and a woman who has left her family is unlikely to be able to go back to her home. This said, when mediation efforts by family or community members fail, moving to a shelter may be the only option. Those running Afghan women's shelters and the women in them do, however, live precariously: public political attacks on the shelters, calling them brothels have been fairly regular, and each such public attack worsened the security of shelters.

The interviews with Afghan women change makers showed how precarious the changes have been. Most of the women interviewed had in one way or the other benefited from the international presence in Afghanistan or from the public focus on women's rights: they had received scholarships, training, funding and support. However, none of the women mentioned the international presence or legal and policy changes as important for their possibilities to educate themselves, work and advocate. Instead most of them mentioned male family members who had played a role through supporting them or shifting the family's opinion and work. For example, several of the women activists who had grown up as refugees in Pakistan, noted that the change in their lives had come when their fathers were confronted with different ideas in the refugee community in Pakistan.

The progress that the women had made in their own lives or for women's rights also seemed to be constantly balancing on a knife's edge. For example, when speaking about security challenges faced by women journalists and activists, it was evident that even if security infrastructure exists – telephone hotlines and police protection – weak governance and impunity result in women needing to be ready to risk their lives when taking certain standpoints and being left alone to fend for their and their families' security. For example, a woman judge noted that she feared for her life daily, as she was dealing with cases where the perpetrators had ties to powerful criminal networks of warlords. She took this risk with a shrug though: it's Afghanistan. A woman academic who was often in the media, noted that if she had been quoted in the media in ways that her husband did not like, she would get a beating at home. While not happy with the situation, she remained convinced of the necessity of speaking out – and being a role model for her daughters.

What was striking in the interviews was the ease with which the Afghan women spoke about the security challenges and violence they faced, and the battles they had lost. While they would certainly have wanted the situation to be different, they accepted that it was not and struggled on. Many of the older activists voiced different versions of 'I have been killed many times, so why should the next time scare me?'

Reading Otto at Different Times and in Different Places

I started reading Dianne Otto's work in the late 1990s when I was starting my PhD about women's human rights and equality strategies in international law. My PhD project sought to map how women's human rights and equality had been promoted within the United Nations from the late 1940s till the early 2000s with a special focus on the 'gender turn' in the 1990s; that is,

the period when the term gender went from having been mainly an analytic concept for feminist theorists seeking to distinguish biological sex from socially constructed gender to becoming the operational component in the, still today, preferred equality strategy: gender mainstreaming. Otto's writing, literally, opened new worlds to me: she made the politics around the Fourth World Conference on Women (Beijing, 1995) alive to me and she opened the world of postmodern and postcolonial feminist criticisms to me.

After my PhD, I left academia. I ended up, as is described above, working for almost a decade in and on issues relating to the post-conflict state-building process in Afghanistan, moving between jobs in inter-governmental and non-governmental organisations. Getting out of academia was a good choice for me, as it forced me to move from a position of analysis and critique to a position of doing and operationalising. I realised that very few of the feminist scholars that had influenced me during my PhD period remained useful for me as a practitioner. This is not a criticism against them, but I was no longer their audience. Otto's scholarship (and a few others) continued to speak to me. In a way, Otto had done the opposite journey from mine, she went from being a practitioner to becoming an academic, and throughout she seems to have remained an activist. I think that her background as a social worker and activist has helped her to always strive to keep her writing, even her complex theoretical writing, concrete and change oriented. She never hides behind theory, but uses it to explain to readers issues we need to understand.

I have met Otto a number of times over the years: I spoke to her as PhD student, she contributed to an edited volume that Zoe Pearson and I put together³ and she worked simultaneously on a comprehensive overview of gender and international human rights law,⁴ as Pearson and I worked on a four volume edited collection on gender and international law for Routledge's Critical Perspectives on Law series.⁵ From the interactions with her it is obvious that her commitment to feminism is not a theoretical one, but it is a political stance that she has integrated into how she works as an academic and what sort of academic learning environment she wants to promote. When I stumbled into her office as a PhD student travelling through Melbourne, she spent over two hours speaking to me about her and my research. When we worked on the overviews of the two studies of gender and human rights/ international law, she sent Pearson and me the list of all the material that she had collected. She is generous with both her time and knowledge.

³ Otto, Dianne, 'Remapping Crisis Through a Feminist Lens' in Kouvo, Sari and Pearson, Zoe (eds.), *Feminist Perspectives on Contemporary International Law: Between Resistance and Compliance?* (Hart Publishing, 2014).

⁴ Otto, Dianne (ed.), *Gender Issues and Human Rights* (Edward Elgar, 3 vols, 2013).

⁵ Kouvo, Sari and Pearson, Zoe (eds.), *Gender and International Law, Volume I – Adding, Stirring and Inventing: Making Women Matter in International Law; Gender and International Law, Volume II – Doing Gender and International Law: Human Rights; Gender and International Law, Volume III – Doing Gender and International Law: Insecurity and Violence; Gender and International Law, Volume IV – Mobility, Borders and Global Markets* (Routledge, 2014).

Now, being ready to question one's assumptions and building bridges between academic scholarship and activism have often been described as basic aspects of feminist scholarship. Kindness and generosity are again often described as basic approaches to feminist activism, as challenges to self-centered, liberal approaches. Not all of us manage to be consistent, though. Given the current world situation, we may need to pursue greater consistency, and then it is great to know that there is some scholarly guidance to dig into.

Conclusions

In an earlier article based on the interviews with Afghan women, I argued that laws in countries with ongoing conflict and weak governance, are the best placeholders for change.⁶ That is, laws do not constitute change, but they can be used as a platform for activists and others to promote change. The adoption of laws can also be a blunt tool for social change, as forcing social change through law rather than by step-by-step political and social maneuvering, may lead to equally blunt resistance and a backlash. The attempt to get the violence against women law approved by the Afghan parliament is an example of this. While it might have been possible to build common ground across political and ideological camps on issues relating to violence against women, putting all violence against women issues into one law hardened the resistance. Now, proponents of the violence against women law in Afghanistan would probably argue that given the extreme nature of this violence in Afghanistan, step-by-step approaches are not an option. I would not argue against them, and I am not saying that adopting the law or trying to get it passed through the parliament was a bad strategy, I am simply saying that blunt strategies lead to hardening resistance.

Re-reading Otto's articles on the Fourth World Conference on Women and looking at my own work on the 'gender turn' in international politics and law, I ponder if we are not seeing the same thing happening at the international level? Women's rights and gender equality activists have in the post-Cold War era carved out space for themselves on the international arena and this has led to important policy changes and also to important re-interpretations of international law. While none of this has been easy, the development of terms such as 'gender governance' and 'governance feminism' does show that feminist international law scholars and women's rights and gender equality activists, have started to view their presence and 'gender mainstreaming' as self-evident, if not accepted. And just like the Afghan women activists learnt when their President showed support for a statement that negated their rights, we might also be learning that we are on a slippery slope and risk sliding backwards at the very moment we stop struggling forward.

However, are we or will we be alone?

⁶ Above n 2.

Borrowing some of Otto's optimism, I would say no. We are only alone if we choose to be alone or if we fail to build the necessary bridges. Drawing on Otto's work possible strategies for feminist scholarship in international law could be to:

- Re-establish the link between feminist scholarship and activism. Feminist scholarship builds on the idea that women and men are equal, and that discrimination on the grounds of sex should be prohibited. If this idea, or the settings that promote it, are under threat, well, then this is an issue for scholarship – and analysing current trends is a service for activism.
- Focus on the changes in the margins. Feminist scholarship, especially feminist scholarship drawing on postcolonial and critical race theories, has been key to developing alternative narratives around and approaches to law, politics and institutions. The gradual growth and normalisation of nationalist politics and radicalisation of not the least religiously based groups across the globe, is also a movement from margin to center. It will be important for feminist scholarship to continue to document and analyse the different struggles and their counter struggles, and for feminist legal scholars to be especially attentive to when these struggles creep into the legal arena.
- Build networks and alliances through inclusion, kindness and generosity. I am personally finding myself increasingly attracted by the early-20th century women's peace movement. While I have little patience with essentialist ideas, I do believe that we need to embody the ideas of inclusion, kindness and generosity if we want to see them realised. We don't need to do this as women, simply doing it as human beings will do.