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## September 2016: Opportunities, Limits, Activism and Hope

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I have approached this moment as an opportunity to share some of my reflections on my life in the law and as an *opening* to my future life, largely outside the law – though how much outside remains to be seen – and our collective future in critical feminist, postcolonial and queer engagement with life and international law.

I have tried to impose some organisation by dividing my thoughts into five parts: starting with my ‘quest’ in law, followed by some reflections on opportunities, limits, activism, and hope.

### My Quest

Prior to my life in law, I had been a community worker for about 15 years, starting as the first paid worker in the Women’s Liberation Halfway House Collective in 1975, which established the first women’s refuge in Melbourne. Thereafter I was a youth outreach worker for several years, working with troubled and often homeless young people, which led eventually being coordinator of the Youth Accommodation Coalition of Victoria, the state-wide peak body of youth homelessness organizations. Later, I also worked for a mental health advocacy organization run by mental health ‘consumers’. Through all these encounters with people whose lives were much more precarious than my own, *the law* was a problem. From police failures to take domestic violence seriously to the over-policing of homeless and unemployed young people; magistrates courts that were completely incomprehensible to everyone I knew who appeared before them (and often to me as well); a legal system that treated young people who had suffered lives of neglect and abuse as criminals; and juvenile detention centres that failed to treat those held within them with humanity.

My quest, in this context, was, as a socialist-feminist, to work with marginalized people to build their empowerment and sense of self-worth. This included bringing an end to the humiliations they suffered before the law by, amongst other things, improving their legal literacy, promoting law reform, re-educating police, promoting juvenile justice de-institutionalisation and so on. This was the mid-1970s, an extremely hopeful time in Australia – hopefulness about the possibility of dismantling its entrenched hierarchies of class, race, gender and sexuality, and its deeply-rooted conservatism. Even after the Whitlam Government was dismissed by the Governor-General in 1975, this hopefulness continued, and governments funded the community groups I worked for to develop community based solutions to local problems.

But by the end of the 1980s all this had changed. Economic rationalism had won the day, and increasingly community groups lost their independence and local identities as they were required to amalgamate into larger consortiums, which made it easier for governments to manage them. The social justice goals of the earlier years were replaced with performance indicators that

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measured worth in terms of the *number* of people who had sought assistance or had been provided with a bed for the night, rather than in terms of social change.

This disheartening state of affairs led me to studying law, beginning in 1990, when I was 38 years old. Despite my experience of law as part of the problem, I hoped, for some still unfathomable reason, that law might provide me with new, perhaps more effective, tools that would strengthen my capacity to challenge inequalities and work for social justice (the language of ‘rights’ – ‘human rights’ – had not yet entered my vocabulary).

While I loved every moment of my law degree, not least because I was part of a very active and supportive Women’s Law Collective of students, and there were also many very supportive faculty, it was not until my international law class – and then my international human rights law class - that things began to fall into place, and I started to see how my community-based activism fitted into the discipline of law. In these classes, it was recognized that politics and law were clearly intertwined and interrelated, whereas in my other classes law had been treated as a relatively autonomous regime of power – shaped by reason and objectivity rather than politics and experience.

It was in these classes too, that my hopefulness about law’s role in social change found sustenance – not just in the idea of universal human rights, but also in the aspirations for peace and friendly relations between nations, international cooperation and assistance towards everyone’s economic and social well-being and international legal justice. At the same time, because of my experience as a community worker and a feminist, I was acutely aware that using law for these ends was going to present many challenges and that community organizing remained crucial to liberatory change.

As you know, this led eventually to a job in the legal academy, where I have worked for almost 23 years now. In this new context, my quest became one of critical engagement with law, of trying to understand law’s power to shape our lives, and how this might be contested. I have drawn on a wide range of critical legal theories on this journey, including postcolonial, feminist and queer thinking, in an effort to understand how, despite their worthy aspirations, international law, and human rights law in particular, can frustrate social justice goals, rather than promote them. My hope, in my research and my teaching, has been to foster new theoretical insights that can inform practical strategies, which are able to counter such tendencies. By utilising such a broad critical lens (though not always as well as I could have) I have aimed to promote more reflexive and politically astute methods for thinking about and addressing grounded international law and human rights violations.

Instead of focusing on one major project, this quest has taken my research in many directions, although one common thread is that I have always tried to write in a way that ‘speaks’ to activists, as well as to legal scholars, practitioners and students, despite the academic style of writing not easily lending itself to this broader audience. My research has examined the role of NGOs and people’s movements in the development and ‘enforcement’ of international law and the compelling critiques of formal law presented by people’s tribunals. I have been obsessed with trying to understand better how international human rights law limits its apparent potential

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to address gender, sexuality and race inequalities, especially in the context of economic and social rights. Once the UN Security Council was persuaded by activists to adopt its Women, Peace and Security agenda in 2000, I became intensely interested in what uses it would put this agenda to, worried that feminist goals would be used to support militarism and the endless war on terror. Relatedly, I have explored the technologies of global ‘crisis governance’, and the role that crises – including gender and sexual panics - play in legitimating the use of executive and military power to erode human rights and freedoms, and demonise certain ‘others’ – specifically the Muslim.

I have consistently tried to take a ‘sex positive’ approach to my work, trying to counter the dominance of the view that sexuality is always ‘dangerous’ for women and young people. And in the last few years, I have focused more attention on bringing the insights of queer theory to understanding the assumptions that underlie the conceptual framework of international law – much as feminists and postcolonial scholars have revealed its masculinist and imperial underpinnings.

### **Opportunities**

It should be clear already that my life in law has presented me with opportunities that I never dreamed would come my way. I grew up in conservative suburban Adelaide during the 1950s and 60s and, for most of that time, I did not aspire to much more than being a wife and mother. This changed dramatically as my life as a student at Adelaide University intertwined with the anti-Vietnam moratoriums, the counter-culture, women’s, gay and indigenous movements, and many other social justice campaigns, and I became a fierce advocate for radical change. But it wasn’t until I became a legal academic that the *world* opened to me. I have been presented with the opportunity to be constantly challenged, to think again and again about how systems of inequality and marginalization work, and about what part the law plays in this. I have had time to think and reflect, after so many years of stumbling from one crisis to the next in my work in the community sector.

The biggest break provided to me by my life in law was the opportunity to find my life partner – Joan Nestle – who I met in 1998 while I was studying at Columbia University in New York. She has accompanied me through most of my life in law, always ready with a critical reminder of law’s failures. I have so many things to thank her for, but they fit more aptly into the ‘limits’ part of this reflection so I will return to her later.

As a result of the opportunities presented to me as a legal academic, I now have an international network of friends and colleagues, and I carry with me knowledges imparted by so many people about how they have experienced life, what sense they have made of it and how law has variously helped and thwarted that life. I also have had the pleasure of teaching, and learning from students from Australia and around the world – mostly at Melbourne Law School, but also at SOAS, Oxford, Albany Law School in New York, Columbia, Yale, UBC and many other places. I have been involved in ground-breaking research collaborations concerning feminist perspectives on international law; women’s human right to social security; impunity and human rights; gender justice in post-conflict settings; peoples tribunals and international law; agency,

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sexuality and law; conflicting sources of International legitimacy; governance feminism; and, most recently, queering international law. I have had endless opportunities to develop and express my views – to classrooms of students and conference halls of colleagues – as well as through academic journals, edited collections, key-note addresses, public panels and so on. I have travelled to far-flung parts of the world, including to remote Xinjiang Province in China, Malaysia, Fiji, Cuba, and India, as well as trodden the well-worn paths to some of the elite academies of the west. I have sat in on Security Council meetings, listened to testimony at the ICTY and ECCC, helped draft General Comments for the CEDAW and ICESCR Committees, assisted the Special Rapporteur on the Right to Housing in his Pacific consultations, and provided ‘technical assistance’ to Chinese officials in relation to the Concluding Observations of the CESCR, and SOAS has been a special place in my journey, welcoming me often - appointing me as a Professorial Research Associate to the Centre for Gender Studies in 2014 and as a visitor to the Centre for the Study of Colonialism, Empire and International Law – giving me access to all sorts of like-minded colleagues.

### **Limits**

But where did this leave my community-based activism? My socialist-feminist-lesbian politics? My commitment to life outside or against the law – as part of an alternative community of sexual and gender outlaws – that refused the ‘normality’ of monogamy, heterosexuality, nuclear families, top-down decision-making, class and race hierarchies and all manner of other dictates of respectability.

Admittedly, at first, I was so worried about ‘measuring up’ that I put this part of myself aside. I failed the first law exam that I sat, which luckily only accounted for about 30% of my final mark. It made me realize that I needed to put more effort into understanding the ‘lingo’ and the way that lawyers were meant to think – that I couldn’t rely on the way I already thought. So I shifted, and by the end of the first year I realized – with a shock – that I had read a case about whether or not a court should authorize the sterilization of a severely disabled young woman by weighing the arguments for and against, but without thinking about HER and what it might mean from her point of view. All those years as a community worker, where the experiences and perspectives of the young person, the DV survivor, or the ‘consumer’ of mental health services had been the starting point for my understanding of a problem – and here I was relegating their personal experiences to the peripheries of consideration, if at all.

So, after I had put in this effort, and passed my first year of law, ultimately with good marks, I got out the henna and ‘went red’ as a sign and reminder to myself, and I hoped to others, that I was not going to be *completely* compliant. When Hilary Charlesworth – one of the teachers who encountered me in my second year of law with this red band of colour – admitted many years later that for her, the red hair marked me as a bohemian artist type who was likely dabbling in law as a side interest – that is, not to be taken seriously – I was forced to admit that the ‘sign’ was not as fail-safe as I had thought.

I also had Joan, who always brought me back to earth. She was horrified that the law regulating armed conflict could be called ‘humanitarian’ and that the UN was so impotent in the face of so

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many armed conflicts. Whenever my thinking got too abstract or too technically legal she would pull me up – and she railed against footnotes on the grounds that they cluttered thinking. While these pearls of wisdom were not always received graciously by me, they made my survival in law possible, and I cannot thank her enough for her persistence.

There is a formality that academic teaching and research demands, including conventions of argument and reasoning that are incomprehensible or alienating to those outside the discipline. Those who get too ‘political’ or too ‘personal’ or too ‘passionate’ or too ‘blunt’ or don’t have enough footnotes, can be dismissed or marginalized.

In addition to Joan’s input, I have found feminist methods to be particularly important for survival. They give me a framework for encouraging students to reflect on how their own experiences of life influence how they receive the law, for acknowledging my own political commitments in my teaching and research and encouraging others to do the same, and for never vesting too much power in law, as against other means of achieving social change.

### **Activism (resistance)**

Newly appointed to the academy in 1994, I had not given much thought to how my earlier activism was going to survive the transition into academic life. I was really fortunate, in the second year of this new life, to be able to attend the Fourth World Conference on Women in Beijing. The NGOs at the conference organized themselves into caucuses, and I joined several of them, including the women’s rights, lesbian and Asia-Pacific caucuses. Happily, it dawned on me at some point during the conference that I could combine activism and scholarly research, and I wrote an article on my return called ‘Holding up Half the Sky – But For Whose benefit?’<sup>1</sup> which I still consider to be one of my best pieces of academic writing.

Later, while studying at Columbia, I was active in a number of New York based NGOs, including the Caucus for Gender Justice in the ICC and the International Women’s Tribune Centre (IWTC). And on my return to Australia, I got involved in shadow-report writing for CEDAW and ICESCR, and contributed to Women’s Rights Action Watch Asia-Pacific based in Malaysia, and the Women’s Economic Equality Project based in Canada. Later, and into the present, it was my connections with NGOs involved with the Security Council’s Women, Peace and Security agenda that helped to inform my analysis of what was going on. As a result of these and many other connections with activism, I was invited to serve as a ‘Judge’ for two Peoples Tribunals examining women’s experiences of armed conflict that had been ignored by state-based justice mechanisms, one in Phnom Penh in 2012 and the other in Sarajevo in 2015.

I drew on all these experiences in my research and teaching. In my research, I have tried to engage with some of the many conundrums that face activists, hoping to throw some useful light on their genealogies and how they might be thought through. In teaching, I have always encouraged students not to forget their activist aspirations, and many have stayed in touch over the years because of this.

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<sup>1</sup> (1996) 6 *Australian Feminist Law Journal* 7-28.

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I am planning to be more of an activist in the years ahead.

### **Hope (not regrets)**

And finally to *hope*. I had earlier thought that *regret* might be one of the categories that I would speak to today – regret about not making better use of the opportunities presented to me, about not challenging the limits of legal education and research more robustly, and about not being as activist as I might have.

But I decided to finish instead with hope.

It is not always easy to keep hope alive in this discipline of international law. Despite now decades of feminist and postcolonial activism and critique, enriched more recently by queer perspectives, there is so much to despair about. In today's crisis-ridden world, we are desperately in need of new ways of framing, understanding and applying international law. We need an international legal framework that can build solidarity rather than foster division, promote redistributive values rather than private enrichment, challenge the entrenched inequalities of the quotidian rather than normalizing and exploiting them, advance positive peace rather than militarism, and ensure environmental sustainability rather than degradation.

For me, hope comes from keeping these visions of a better world alive, in community with friends, colleagues, students, activists, artists, novelists, musicians, neighbours and others. And they are alive, in the back corridors of the American Society of International Law's annual meetings, in the aspirations of so many of our students, among those who organize as NGO activists, and here in this room. You have all given me a wonderfully hopeful gift today of reflecting so positively on my life in law. I hope you too have been sustained by the time we have spent together.

It is so important that we find ways to keep each other going in the face of despair, which is today so common. This is what I plan to do more of, in my retirement.