

Law, gender, and development

Bedford, Kate

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Kate Bedford*

Law, Gender, and Development: Potent Hauntings

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Abstract: This article excavates and analyses an early, feminist conversation about law that emerged from foundational texts on Gender and Development (GAD). Rather than starting from current, law-heavy GAD practices, it goes backwards to see what, if anything, some canonical texts published between 1970 and 1989 said about law. My aim is to offer an account of legally-relevant GAD theorising written before the current consensus about law reform as a tool had solidified, and – in so doing – to unsettle that consensus and identify some intellectual inheritances that might offer us an alternative way forward.

Keywords: gender, development, law

1 Introduction: Bumping into Legal Furniture

In 2014, after attending a World Bank Law and Development event in Washington D.C., I had one of those ‘I’m not in Kansas anymore’ moments that are becoming increasingly common to me in my middle age – moments where I realise that the policy priorities and conceptual debates that I took for granted in Gender and Development (GAD) studies have moved. I feel as if I am wandering around a bit lost, bumping into furniture that didn’t used to be there. The precipitating bump in 2014 was the realisation that lawyers were everywhere within GAD theories, policies, and practices. When I first started academically researching GAD in the late 1990s,¹ it was largely populated by economists, sociologists, geographers, and anthropologists: in this respect the subfield reflected the inter-disciplinary rag bag of interests that clustered, in the UK at least, under the heading ‘development studies.’ In recent years, however, lawyers, and law reform as a tool, have become much more prominent within GAD orbits. To give just a few examples, in 2009 the World Bank launched the *Women Business and the Law* database to identify laws

¹ Prior to this, I had been interested in gender and development in the context of work within NGOs.

***Corresponding author: Kate Bedford**, Birmingham Law School, University of Birmingham, Birmingham, UK, E-mail: k.bedford@bham.ac.uk

and regulations that discriminate against women and harm their ability to participate in development. In 2017, the focus of the Bank's annual *Law, Justice, and Development* week was on gender equality and women's empowerment. One of the opening plenary speakers for the week was Claudia Paz y Paz, the first female Attorney General in Guatemala; she spoke about Violence against Women as a key law and development concern. World Bank President Jim Yong Kim responded to her speech by pledging that law and justice would permeate every aspect of the Bank's development efforts.²

Other organisations have also increased the attention given to the nexus between law, gender, and development. For example, the International Development Law Organisation (IDLO) – an inter-governmental body that focuses on bolstering the rule of law as a development mechanism – has connected its work with concerns about gender equality, including via participating in a recent UN High Level Group on justice for women.³ It too identifies law as a key indicator of GAD progress. Specifically, according to the IDLO's senior gender team:

As we work towards the achievement of Agenda 2030, it is essential to recognize the mutually reinforcing nature of SDG 5 on gender equality and women's empowerment and SDG 16 on the rule of law. The rule of law plays a critical part in the recognition and implementation of women's rights. There has been a wave of domestic violence legislation, from only 1 in 1976 to 127 in 2016. In 2015, 125 sexual harassment and 52 marital rape laws were recorded to be in place (Rea Abada Chiongson, Senior Gender Adviser, and Nupur Prakash, Gender and Law Associate, writing on *Gender and the Rule of Law, Synergies Between Sustainable Development Goal 5 and 16*).⁴

Whereas in this extract the IDLO counts the presence or absence of laws as evidence of progress, elsewhere attention is given to questions of justiciability and access to justice, including via informal systems (IDLO 2013; see also UNDP, UNICEF and UN 2013). In short, law reform, and attention to implementation, are now understood – by a range of agencies – as necessary to overcome discrimination such that development delivers benefits to women.

² <<http://www.worldbank.org/en/events/2017/03/28/law-justice-and-development-week-2017>>, accessed August 23, 2019.

³ See *Justice for Women: High-level Group report* (2019), involving the IDLO alongside UN Women, the World Bank, and the Taskforce on Justice. The Taskforce comprises ministers from Argentina, the Netherlands, and Sierra Leone, and is part of the Pathfinders for Peaceful, Just and Inclusive Societies initiative, supported by 18 countries and 18 international organizations working on Sustainable Development Goal 16 (building more peaceful, just and inclusive societies). March 2019, available at: <<https://www.idlo.int/publications/justice-women-high-level-group-report>>, accessed August 23, 2019.

⁴ January 2017, available at: <<https://www.idlo.int/news/highlights/gender-and-rule-law-synergies-between-sdg-5-and-16>>, accessed August 23, 2019.

As a result, lawyers are increasingly central to GAD debates, as they are to development more generally.⁵

In this article I offer some critical distance on this present moment, by tracing and analysing an early, feminist conversation about law that emerged from foundational texts in the GAD subfield. Rather than starting from current, law-heavy GAD practices, I go backwards to see what, if anything, some canonical texts published between 1970 and 1989 said about law within GAD. Many internationally-oriented accounts of gender and law start in the early 1990s, as the turn to human rights rhetoric and instruments gathered pace,⁶ and as the gendered social was (re)discovered as developmental terrain in the post-Washington consensus (Rittich 2006; Pistor et al. 2010). Seeking to build on this work, I trace an earlier set of conversations. My aim is to offer an account of legally-relevant GAD theorising written before the current consensus about law reform as a tool had solidified, and – in so doing – to unsettle that consensus and identify some intellectual inheritances that might offer us an alternative way forward.

To this end, in Section 2 I outline the ambivalent hopes I place in a re-narration of GAD's less legalistic past, an approach borrowed from Clare Hemmings' work in telling feminist stories differently. I subsequently use this approach to revisit classic texts in the liberal, post-colonial, and Marxist GAD traditions (Section 3–5). I conclude by drawing together the key insights about law, gender, and development that emerge from this re-narration. These include, most notably, keen awareness of the limits and risk of state-centric legal reforms; of the role of law in (re)producing the gendered inequalities that are foundational to global capitalist development; of the importance of illegality in struggles for emancipation; and of the role of legal recognition in structuring, and suturing, economic and kinship relations. While explicating these contributions, I also use them to take forward a distinctive approach to engaging feminist thinkers from GAD's recent past, one that welcomes authors and their critical insights back without using them to feed blame narratives in the present.

5 Development theories and practices are littered with demands for rule of/by law, and lawyers are playing crucial roles in a range of development agencies. In a key critique of the limits that a legalistic lens places on reform horizons, for example, Ambreena Manji has argued that “land reform has come in practice to mean land *law* reform” (Manji 2005, 170 original emphasis). See also, inter alia, Falk et al. (2008), García et al. (2014), Humphreys (2010), Kennedy (2006), Lizarazo-Rodriguez (2017), Pahuya (2011), Perry-Kessaris (2010), Tamanaha (2011), Tan (2018), Trubeck and Santos (2006), Zumbansen and Buchanan (2013).

6 See e.g. the accounts of gender and international law offered by Buss and Manji (2005); Chinkin et al. (2005); Engle (2005); Rochette (2005). See also Manuh (1995), discussed below.

2 Ambivalent Inheritances and Potent Hauntings

Feminist scholars and activists have long critically analysed the effects of lawyers, and faith in state law reform, on campaigns for gender equality.⁷ Carol Smart presciently warned feminists against the ‘siren call of law’ (1989, 160), and the positioning of lawyers as ‘technocrats of an unfolding Utopia’ (161), and there has subsequently been extensive critical conversation about the role of international law within issue-based campaigns pursued by transnational women’s movements, especially violence against women.⁸ Likewise there has been a vibrant discussion about the potentials and pitfalls of legalistic framings of human rights for gender justice.⁹ In short, those of us interested in a critical conversation about gender, law, and development have an extensive transnational archive of insights about gender and the law upon which to draw, although not one explicitly organised under a development moniker.¹⁰

In parallel, although rarely in conversation, there has been sustained attention paid within law and development (LAD) orbits to the contested role of law in, or as, development.¹¹ In its more interdisciplinary and critical formulations, this work has moved beyond providing legal blueprints for economic growth to explore law’s complex role in facilitating, obfuscating, and – at times – contesting the dispossession, plunder, and violence that have been central to development (Humphrey 2010; Mattei and Nader 2008; Pahuja 2011). Authors have hereby highlighted law’s *co-constitutive* role in the social, economic, and political relations central to (mal)development, such that law

7 E.g. see, from very different perspectives, Charlesworth and Chinkin (2000), Conaghan (2014), Davies (2013), Engle Merry (2006), Musembi (2013), Manji (2010).

8 On trafficking see especially Bernstein (2012) and Kotisworan (2014); on violence see especially Ni Aoláin (2014) and Tapia Tapia (2018); on rape and international criminal law see Buss (2011), Halley (2008), Nikolic-Ristanovic (2005).

9 E.g. Engle (2005), Engle Merry (2006), Musembi (2013).

10 The closest one comes to such a moniker is in the *Women, Law and Development in Africa* (WILDAF) movement. As noted by Takyiwaah Manuh, WILDAF emerged in the early 1990s “as the legal counter-part to the ‘women in development’ approach of development agencies, governments and NGOs” (1995, 207). It involved local women lawyers working on “law reform, the popularization of the law, legal literacy and paralegal training for women as a means of “empowering” them to take control of their lives” (1995, 207). In an early critique the movement, Manuh questioned WILDAF’s optimism about the power of modern (state) law to improve women’s lives, and its related condemnation of customary law as the key site of women’s oppression. Although much of this critique remains pertinent, I focus in this article on an earlier, less lawyerly, set of feminist conversations about law within development.

11 See footnote 5.

becomes an interesting story in its own right rather than mere tool. As Sol Picciotto puts it: ‘To say that law mediates power does not mean that it is a mere fig leaf for the “real” relationships of power which occur somewhere else; on the contrary, it means that the exercise of power takes specific legalized forms’ (Picciotto 2011: 449).¹² In this light, several scholars have examined the implications of the legalistic claiming of dominion over social and human development, including by squeezing out broader framings of rights.¹³ As David Kennedy has argued (2006), there is widespread hope that using law – imagined as neutral or benevolent tool – might avoid confrontation with the political and economic choices involved in development. Yet this notion – that law can balance out political and economic interests – misunderstands law’s relationship to politics, and economics (2006, 163). By contrast, rule of law rhetoric is used to cement policy preferences, including privatization of public services, and other measures to serve the interests of transnational private firms and investors (Humphreys 2010).

While learning much from these accounts, I remain somewhat frustrated by their lack of engagement with the aforementioned feminist work on law. Although gender increasingly features as a topic within LAD conversation – one often associated with the recent turn to social or human rights approaches (e. g. Pahuja 2011, 175; Rittich 2006; Pistor et al. 2010) – few other critics of LAD cite feminist legal theory, or substantively engage GAD scholarship.¹⁴ I thus hope, via this piece, to prompt LAD thinkers into deeper engagement with extant *feminist* debates about law, and its role in (mal)development. It is my contention that feminist development thinkers have generated important insights about legalized forms of power – ones that have been thus far overlooked within LAD debates.

To make this argument, I intentionally sidestep the usual chronological framing of LAD debates, structured around waves, moments, or phases.¹⁵ While useful in certain ways, one of the limitations of the moments approach is that it restricts our analytic lens to the conversations being had *by lawyers about law as a tool within development*. It thus tends to focus on instrumental, pragmatist, top-down, policy-oriented, or technical debates about law, especially within US-based institutions. It tends to minimise more anthropological, critical, sociological work on

¹² See also Alessandrini (2017), Marks (2003).

¹³ E. g. Meckled-Garcia and Cali (2005), Garcia, Klare and Williams (2014).

¹⁴ For exceptions see, inter alia, Alessandrini (2017), Buchanan and Pahuja (2002), Manji (2010), Orford (2002), Pahuja (2000).

¹⁵ See e. g. Trubeck and Santos (2006), Kennedy (2006), Gupta (2017), Humphreys (2010).

law within development, including that on legal pluralism, on law and colonialism, and – as I suggest below – on GAD. This is by no means a new critique. In 1982, legal historian Martin Chanock noted that mainstream legal scholarship about Africa had been hampered by an “instrumental agenda” focused on using law to meet “the perceived needs of economic development” (53). Moreover, there was a tendency to think about law “as a cultural achievement,” making it “difficult to analyse its oppressive aspects and its use in gaining, defining and perpetuating positions of power and advantage for some over others” (55). For Chanock, “law ... is too important to be left to lawyers” (1982, 52).

Seeking to take this insight seriously, I draw inspiration from work using a more inter-disciplinary, multi-layered and co-constitutive lens on LAD (e. g. Tan 2018; Eslava 2015; Perry-Kessaris 2010). For example, in an exceptionally comprehensive and inter-disciplinary account of the LAD field, Liliana Lizarazo-Rodriguez chose not to follow a sequential stages or waves approach, instead emphasizing “simultaneity, cross-fertilization and dialogue, convergence and divergence, and hidden connections between approaches” (Lizarazo-Rodriguez 2017, 761). I share both the interest in hidden connections, and the hope for better dialogue, and I too find a US-centred notion of LAD waves of limited help in that journey. While I could identify moments in which lawyers working for development institutions addressed gender, they would be too limited a starting point. Instead, I offer an account of what was being said about gender, development and law *before* that address.

Another of my hopes is that legally-curious feminist development critics can move past what Fionnuala Ni Aoláin, in her account of the growing attention to international criminal law within campaigns to end Violence against Women, calls the “lost in translation” critique (Aoláin 2014). In this, rather than theorise or critically analyse the demand for more law within GAD, development scholars and/or practitioners end up noting the implementation gap between law and practice, and trying to reduce it, with ‘law plus’ measures that leave law itself, and its role within uneven development and gender inequality, uninterrogated. While law reform and associated ‘law plus’ measures may in certain cases be pragmatically necessary to secure substantive change in women’s lives, if our academic conversations are narrowly fixated on the implementation gap we tend to see law as instrument, albeit one that needs to be augmented with other tools to be most effective. Deeper understanding of law’s co-constitutive role in the gendered social, economic and political relations central to development threats to be pulled off course by the LAD policy audience (Sarat and Silbey 1988).¹⁶

¹⁶ Hence, to clarify, I do not intend to make an argument about the merits of turning to the state, tout court, for redress within feminist political economy. I am interested in better

To avoid that pull, the paper draws on the approach to narrating feminist pasts offered by Clare Hemmings (2011), of how we collectively learn, craft, and pass on stories about feminism, as social movement and intellectual canon. Hemmings understands her task as to intervene in dominant Western feminist stories of progress, loss, or return, to (re)align their political grammar so as to allow for different visions of feminist pasts, presents, and futures (2011, 1). Noting her own ambivalent impulse towards, on the one hand, offering corrective accounts that promise a truer feminist story, and, on the other, wanting to explore “how we might tell stories differently” (16; see also 23), she suggests that we force absent presences back into our stories of feminism, to bring the ‘half-forgotten’ back into conscious theoretical consideration (23). This process, one she terms recitation, involves revisiting material previously encountered, as part of an effort at ‘unforgetting’ (180), of making visible what is already there, of inquiring after the ‘obscured dimensions of the present’ (181).

Hemmings’ project has much in common with efforts to disrupt international law’s founding myths, including by re-narrating its colonial origins and founding violence (Anghie 2005; Pahuya 2011; Orford 2006; Buchanan and Johnson 2005; Tzouvala 2019), and critically interrogating its stories, or performances, of civilization and savagery, romance and tragedy, for what they enable in the present (Koskeniemi 2005; Marks 2012; Humphreys 2010).¹⁷ However, Hemmings’ approach to recitation is somewhat different to the methodology of misreading, or reading against the grain, which subjects texts to analyses that cut across the likely intentions of its authors (see, for example, Buchanan and Johnson 2005). The most powerful example, in my view, is her reading of Judith

understanding the overwhelmingly legalistic nature of that turn to redress within current GAD theory and practice. I thank Shirin Rai for prompting this clarification.

¹⁷ See, for example, Marks’ (2012) account of international law as romance, or tragedy – different ‘modes of emplotment’ (309) that shape international affairs. On gender, see Anne Orford’s blunt account of feminist legal theory’s niche role within mainstream international law: for Rich World women to gain access to the stories of victimised Third World Women, and design rules that protect or save them within the realm of international human rights or criminal law (2002, 278–81). Thérèse Murphy uses this framework to help explain the ‘burgeoning allure of the international’ in feminist legal scholarship and practice (2005, 79). Likewise see Buss and Manji’s account of the need to interrogate the stories that we tell about law, and that law tells about itself (2005, 15–16). Their collection contains several efforts at reinscription, especially Buchanan and Johnson’s (2005) attempt to intervene in the dominant gendered and racialized account of international law as saviour by reading the film ‘Unforgiven’ as a jurisprudential text, and Manji’s (2005) re-reading of Ayi Kwei Armah’s novel ‘The Beautiful Ones’ for the lessons it offers to law and development.

Butler's *Gender Trouble* through its association with Monique Wittig, rather than Michel Foucault. Wittig is engaged as substantively by Butler as Foucault is, yet feminist theorists commenting on *Gender Trouble* tend to reference Butler's association with him, not her. Wittig haunts our collective discussions of the text, obscured but unquestionably *there*, a 'potent haunting', not an 'arbitrary' author or one sidelined by Butler herself (182).¹⁸ Motivated by a desire to move beyond lamenting loss, Hemmings understands her mission as follows: "Instead of asking, 'where has Wittig gone?', instead of remaining frustrated by her absence, I want to ask what happens when we invite Wittig back, what joys and unremembered sorrows resurface when we bring her out of the shadows and into the spotlight?" (180).

In this article I ask that same question of feminist, critical approaches to law within GAD.¹⁹ Instead of lamenting where they went, or blaming current GAD practitioners for ignoring them, or advocating a return to them, here I simply invite them back, to reencounter the joys and sorrows of earlier encounters with law as a step on a path towards different, explicitly *feminist* conversations about LAD. To that end, in the remainder of this article I revisit three parts of the early canon of literature on GAD (the liberal approach of Ester Boserup, the DAWN manifesto for development alternatives that foregrounded the needs of poor women in the Third World, and the Marxist feminist approach of Marjorie Mbilinyi, Helen Safa, June Nash, Lourdes Benería, Jane Parpart, Kathleen Staudt, and others) to see what lessons they hold. Overall, I suggest that these texts reveal a shared understanding of law as deeply co-constitutive of gendered capitalist development, such that – with

18 In a similar vein, see Orford's discussion of how Western feminism is haunted by its complicity with colonialism (2002, 275), and her analysis of Gayatri Spivak's claim that efforts to start something, or do something, with law are haunted (292).

19 I do this in part because I am interested in GAD, but I also concur with Hemmings that gender and development is key to the (albeit circumscribed) legitimacy and power of gender studies in many countries. As she notes, writing of her experience at the London School of Economics, "In a UK context, gender studies is most likely to be institutionally supported where it is harnessed to globalization and seen as producing future gender mainstreaming or gender and development experts" (2011, 10–11). Because of this context – one from which GAD academics have benefited – stories told about gender and development are central to transnational feminist theory and practice. My hunch is that the place of law in those stories, potentially, can tell us a lot about the place of law within broader narratives of global feminism. See, further, Marjorie Mbilinyi's account of women's studies in the University of Dar es Salaam, which began in a second year undergraduate course on women in development (Mbilinyi 1985, 75).

all due respect to Jim Yong Kim – law has long been seen by feminists as permeating dominant development efforts, with overwhelmingly negative effects on gender equality.

Staying in that place – one that welcomes back critical insights about law without using them to feed blame narratives in the present – has been uncomfortable at times. Like Hemmings, I am ambivalently positioned. While I desire better, feminist stories about LAD, I also want very much for GAD academics to stop telling our development stories in the same way. That is, I want for us to stop pretending that we are innocent, that we were coopted, or betrayed. For Hemmings, this is a key limit to generational narratives of feminism (and, I'd suggest, of 'waves' approaches to LAD): that they "brin(g) together affect and temporality to imagine the subject free of the complicity others necessarily remain mired within" (2011, 83). Accountability and reflexivity diminish when return fantasies flourish. Our collective complicity for the current, law-heavy GAD landscape, as theorists, practitioners, and policy-makers, will thus potentially be evaded. The lawyers will get blamed, as they often do.

In a general sense, then, it behoves us all to be reflexive about our attachments to the re-iteration of stories of loss, and potential redemption, that haunt so much LAD theory, and that constitute one of the most significant risks in an article of this kind. Corrective stories, and excavation of hitherto under-appreciated critique, carry with them the promise that, thus corrected, law, and/or development, will deliver us; they emerge revitalised, affectively recharged. I want to interrupt that charge. In this regard, in the following pages I attempt to use this recitation to gesture towards a different approach to engaging feminist thinkers from GAD's recent past, one that stays as close as possible to their priorities and frameworks, and that injects an analytic pause before leaping to apportion blame for why the conversation about law, gender, and development has gone in other directions of late.

3 The Liberal Who Didn't Think Much of Law: Ester Boserup's Women's Role in Economic Development (1970)

For those unfamiliar with her book, Ester Boserup was an agricultural economist who worked at various points for the UN. Most notably, her 1970 book *Women's Role in Economic Development* helped galvanise attention that would in turn

help produce the first UN conference on women in Mexico City in 1975.²⁰ The book synthesised research – some from the UK's colonial archives – about the sexual division of labour in the developing world. The major claim was that women were being deprived of their productive functions, in large part because of the racialized and gendered stereotypes of Western development professionals. Women's status was being reduced as countries developed, and growth was being retarded.

Boserup is sometimes read as if she is stirring women into modernization theory, as a classic liberal thinker.²¹ Certainly she advocated that women integrate into work in the modern economy, by which she meant scientifically-guided agriculture, and participation in formal skilled trade. She lamented the prejudices, discrimination, and poor training that prevented women from entering skilled employment, and she concluded that they mostly end up as 'inferior' workers (1970, 220) who contribute little to national production (even though they work very hard). As I explicate in Section 5, she was thus soundly criticised by Marxist feminists for failing to consider structural determinants of women's poverty, and for misunderstanding the social reproduction labour crucial to capitalist development.

However by looking at what Boserup had to say about *law*, she doesn't seem so straightforwardly liberal after all. Firstly, she didn't have that much to say about law – that in itself isn't very liberal. The word law, and lawyers, don't appear as an index heading, for example, whereas the word 'anthropologists' appears five times, as does the word 'beer brewing.' When discussing polygamy, Boserup deprioritised formal family law and religious teachings that informed customary law, arguing that practices are explained by economic factors and the sexual division of labour (1970, 41).

That said, however, an in-depth reading of the book shows that Boserup did not so much overlook law as put it in its place. To draw on Hemmings, law is potent in the text: it was there, but it has been obscured. Specifically, Boserup suggested 1. that we need to explore lower levels of law, including via a focus on everyday manifestations of rights in practice, and 2. that the role of law in gendered dispossession is crucial, and ongoing.

Firstly, Boserup focused on what we would now characterise as pluralist and socio-legal analysis, focused on the grounded dimensions of multiple normative

²⁰ It is important not to overstate Boserup's role in this process. UN initiatives on women were also heavily influenced by the work of women representatives from newly independent countries, many of whom had been active in liberation struggles. See Snyder and Tadesse (1995).

²¹ See, for example, Bertolino (2006).

Table 1: Rights and duties of Yoruba women.

Wife receives from husband	Wife contributes to Household as				Total
	Self-employed, family aid, and housewife	Self-employed and housewife	Family aid and housewife	Housewife	
Nothing	8	11			19
Part of food	32	16			48
All food	15	11	1	1	28
Food, clothing and cash	1		3	1	5
Total	56	38	4	2	100

Percentage of Women with Rights and Duties.
Reproduced from Boserup 1970, 42.

orders in everyday life.²² Her table on ‘rights and duties of Yoruba women’ summarised what wives received from their husbands and what wives contributed to the household (Table 1): it did not centre rights as a lawyer would understand them. Her emphasis was on pluralist notions of social ordering, such that rights were understood non-legalistically, and formal state law was not assumed to be a key determinant of women’s status.

Moreover, unlike classic modernization thinkers, Boserup placed the responsibility for the prejudices and discrimination that hamper women’s equal participation largely on colonialism. For her,

European settlers, colonial administrators and technical advisors are largely responsible for the deterioration in the status of women in the agricultural sectors of developing countries. (1970, 53–4)

Legal restrictions played a key role in this status deterioration, such that trading women were prevented from trading, farming women lost control over their land, and brewing women were criminalised for offering their services. The gendered exclusions and violence of law, especially in its ‘lowly’ forms of licenses and permits, hereby emerged as a key priority. For example Boserup identified licensing and permit arrangements, wielded by men, as crucial ‘weapons’ against female market traders, citing examples from colonial-era Cameroon and Kenya of women – who dominated market trade – being less likely to be given permits than men, leading to a spike in

²² See extensive discussion of such approaches in, inter alia, Manuh (1995) and von BendaBeckmann et al. (2009).

prosecutions of women for illegal hawking (94). Moreover, crucially she extended beyond historical examples: she showed that modern agricultural methods were often offered only to men, with extension services ignoring women; some were “even ousted from their farms” (81). In this framing, development involved legally-facilitated gendered dispossession. While none of this will be news to historians of gender, law, and colonialism,²³ it is notable that such points were *also* made in what is widely regarded as the foundational liberal text on the need to include women in development.

In summary, Boserup’s analysis decentred law as solution for women’s subordination, while re-centring it as cause. Recitation of her book helps us excavate a potent, and I think interesting, story about women, development, and law, where even apparently liberal thinkers had a deeply materialist and pluralist analysis of rights, and where formalism ceded to more constitutive, critical, and socio-legal understandings that highlighted legally-facilitated violence, dispossession, and extraction. In this, Boserup had much in common with subsequent, much more critical GAD analysts.

4 Law in Alternative Visions of Development that Centred Poor Women’s Needs: DAWN and the Uneven Potency of Law

In 1978, the US-based feminist quarterly *Quest* published a special issue on International Feminism, including several reflections on the UN’s recent efforts – partly inspired by Boserup – to integrate women into development. One essay, on the 1976 International Tribunal on Crimes Against Women that was held in Brussels, and involved 2000 women from 40 countries, centred the limits of law in redressing violence against women. But it did not centre development (Russell 1978).²⁴ Another essay, by Nawal El Sadawi, Fatima

²³ See e. g. Mbilinyi (1989), Manah (1995).

²⁴ This early, feminist version of the people’s tribunal was an effort to gain recognition for crimes against women at the international scale, but it was explicitly not oriented to securing redress through law: it focused “on the crimes as personally experienced by women” (Russell 1978, 107) in order to raise awareness, between women, of their commonalities. For Diana Russell (one of the organisers), the Brussels tribunal helped increase international feminist solidarity, including by allowing women from the US to overcome their ‘rather parochial and chauvinistic’ assumptions that they had more to teach than to learn (108). The international feminist networks that were inspired and sustained by this sort of mobilising tended to focus on

Mernissi and Mallica Vajarathon, provided a critical analysis of the 1976 Wellesley conference on Women In Development. But it did not discuss law (critically or otherwise).²⁵ The challenge facing those of us interested in *what was being said about law by feminist development critics* is to bridge this bifurcation, between those who focused on law's role in facilitating and then obfuscating violence against women, outwith discussions of development and global capitalism, and those who centred development and capitalism but saw law as largely a side issue.

This challenge is brought into focus especially well by a key publication from the collective Development Alternatives with Women for a New Era, or DAWN (Sen and Grown 1987). The founding members of this collective were largely women's rights activists from developing countries. Academically speaking most were economists, sociologists, and anthropologists (see box 1). They were united by the conviction that development as currently practiced was harming poor people around the world, and that alternative economic approaches, focused on basic needs, greater equality between and within nations, and environmental sustainability, were required. Rather than work towards integrating women into "an otherwise benevolent process of growth and development" (Sen 1987, 15), transformative approaches were required to decentre growth, and to recentre poor women's needs. As they argued "equality with men who themselves suffered unemployment, low wages, poor working conditions and racism within the existing socioeconomic structures did not seem an adequate or worthy goal" (Sen 1987, 25). Their struggle "is not an effort to play 'catch up' with the competitive, aggressive 'dog-eat-dog' spirit of the dominant system" (Sen 1987, 79); it is an effort to replace that system.

violence against women (in some cases understood to include pornography – see Russell 1978). They did not centre the issue of development, or political economy; rather, global sisterhood was understood to be secured on the basis of shared experiences of male violence.

25 Attended by women from 30 countries, and intended as an opportunity to follow on from debates about women's role in development that emerged at the 1975 UN conference on women in Mexico City, the Wellesley conference was the site for intense disagreement about the unity and commonality of women. As El Sadawi, Mernissi and Vajarathon saw it, US academics who believed themselves freed from sexism, as well as from colonial and imperialist limitations, interpreted the condition of Third World Women, hereby echoing "the hardly-healed colonial experience wherein the detached outsiders define your world to you" (1978, 102). The conference offered no analysis of how US women were affected by uneven development processes, no central role for Third World Women as organisers, and no genuine dialogue.

Box 1: DAWN's founding members.

Zubeida Ahmad (Pakistan, ILO programme on rural women)
 Neuma Figueredo de Aguiar (Brazil, sociologist)
 Peggy Antrobus (Barbados, doctorate in education, and social work training at University of Birmingham)
 Lourdes Arizpe (Mexico, anthropologist)
 Nirmala Banerjee (India, economist)
 Carmen Barroso (Brazil, social psychology; focused on maternal health and reproductive rights)
 Ela Bhatt (India; trained as a lawyer; founder of Self-Employed Women's Association)
 Tone Bleie (Norway; anthropologist)
 Caren Grown (US; economist)
 Hameeda Hossain (Bangladesh; PhD in history; work in human rights/women's rights)
 Noleen Heyzer (Malaysia; social sciences)
 Devaki Jain (India; economist)
 Kumari Jayawardene (Sri Lanka; qualified as a barrister but PhD on labour history)
 Isabel Largaia (Argentinian who lived in Cuba; Marxist sociologist who later worked on abortion rights)
 Ragnhild Lund (Norway; development advisor)
 Geertje Lycklama (Netherlands; sociologist)
 Lucille Mair (Jamaica; historian)
 Katharine McKee (USA; economist)
 Fatima Mernissi (Morocco; political science/sociology)
 Achola Pala Okeyo (Kenya, anthropologist)
 Marie-Angelique Savane (Senegal; sociologist)
 Gita Sen (India, economist)
 Claire Slatyer (Fiji; political science)

Like Boserup, these scholars were clear that law played a key role as *cause* of women's subordination. Unlike Boserup, however, they positioned women's dispossession as part of a broader and on-going process of maldevelopment that harmed colonised people across the world. For example, DAWN noted that women had been stripped of their land rights under colonialism, but they located this observation within an account of global capitalism whereby private property

in land facilitated the extraction of resources and land revenues (Sen 1987, 30). The legacies of this legally-facilitated plunder²⁶ included a gendered and racialised structure of radically unequal land ownership, and on-going subordination in the world economy. As part of the structural adjustment processes being enacted across the Third World, leading development institutions were advising countries to continue to focus on primary exports, despite structurally unequal terms of trade, and to open their economies to foreign capital, permitting extraction by multi-national corporations. DAWN authors were clear that this approach to development had particularly harmed poor *women*. For example, their status had often declined with the introduction of cash crops, in part because women relied more on common land and water to meet survival needs. Hence the dispossession and enclosures that were part of the transition to a market economy had gendered and racialised impacts. Moreover, in their discussion of militarization and violence, the collective linked the rise in military-controlled governments suppressing internal dissent to the domestic unrest resulting from inequality, poverty, and exploitation bred by development (Sen 1987, 72). Law featured in their story firstly as dispossession, and then as repression.

DAWN was also sceptical about law as a solution to intersectional inequality. For example, in extensive discussions of land access and land reform,²⁷ well-intentioned legal changes premised on individual title were shown to further disempower poor women. The collective discussed the Kano River project in Northern Nigeria, which involved the registration of all land, and then its reallocation to owners after irrigation infrastructure had been put in place (42). The loss of communally-held land disproportionately affected women, since the registered ‘senior owners’ were more likely to be men (42). DAWN positioned the project as “a classic example of the argument that commercialization based on unequal access to land and resources can be quite detrimental to the living standards of the poor, especially women” (43).

Given this background, it is perhaps not surprising that law played a relatively small role in DAWN’s vision of development alternatives. The book foregrounded equality, justice, and dignity (20–1), but justice was framed in a broad, not legalistic way, and contributors were far more vocal on basic needs than on rights. The key place where rights appeared was in relation to reproductive health (46–9), where reference was made to women’s legal and social status, and to the importance of their individual autonomy (47): “Control over reproduction is a basic need and a

²⁶ The term plunder is used – to great effect – by Mattei and Nader (2008) to undercut mainstream claims that the role of law in development is beneficial.

²⁷ E.g. in forms as diverse as subsistence food production, cattle grazing rights, access to common land for fuel, water and food gathering.

basic right for all women” (49). However the crucial next steps prioritised international agencies and national health ministries establishing higher *standards* for testing contraceptive devices and techniques so that Third World women’s health was not put at risk (48). Law reform was not mentioned. In a similar vein, the collective’s proposed solutions to violence against women were not about law, but rather involved reducing inequality, and improving education (77).

Certainly, we can imagine a role for law as solution based on their other commitments. For example, had their insistence that poor women were harmed by commercialization in a context of structural inequality been heeded, legal reforms to facilitate individual land titling, or microcredit, might not have been regarded as such a widespread cure for gender inequality. Their emphasis on the limits of liberal, equal treatment anti-discrimination arguments would suggest an impatience with strategies privileging formal legal equality. This would inevitably lead them beyond not only formal equality initiatives but also ‘law plus’ measures that seek to ensure effective implementation of anti-discrimination, without tackling legally-enabled dispossession and repression.

However to pursue these themes would be to move beyond what DAWN said about law to what they might have said had they taken it to be a more central analytic category. We would need to venture past making visible what was already there, or forcing an absent presence back into the narrative, to pursue a fainter ghost of potentiality. Following that fainter ghost threatens to inflate law’s role in the story of GAD, and thus I’m cautious about doing so. Suffice to say that DAWN had a lot to say about law’s role as cause of women’s subordination, and relatively little interest in law reform as solution.

5 Marxist-Feminist Accounts

The DAWN conversation about GAD was enmeshed with another set of critical debates, stemming from a more explicitly Marxist feminist tradition. In fact some of the same people (notably Gita Sen and Noleen Heyzer) were leading figures in both conversations. To analytically separate them thus risks severing DAWN’s links to a Marxist feminist lineage, and implying that Marxist feminists were uninterested in racialised global capitalism. And yet I separate them here. I make this choice because I want to draw out some distinctive dimensions of the Marxist feminist approach to LAD, ones that are less evident in the DAWN book but that are elaborated in a number of other key collections. In particular, Marxist feminists writing on development – in relation to both Latin America, and Africa – not only echoed many of the claims found in the DAWN book about

the key role of law in (re)producing the gender inequalities that are foundational to capitalist development (Section 5.1), but they also highlighted distinctive themes of illegality (Section 5.2), and the role of family law in women's economic subordination (Section 5.3). In this final part of the article I draw these themes out, to foreground some insights about law's role within GAD that were, indisputably and potently, *there* in the 1970s and 1980s and that could arguably be welcomed back in to our current work.

5.1 Capitalist Development, Gender, and Law: Over-arching Lessons

As noted above, Boserup was soundly criticised by Marxist feminists for failing to consider structural determinants of women's poverty, and for misunderstanding the social reproduction labour crucial to capitalist development. As economist Lourdes Benería explained in a 1982 collection on *Women in Development: The Sexual Division Of Labour in Rural Societies*, while Boserup blamed gender-biased modernization, fuelled by stereotypes, for women's reduced status, authors in the Marxist GAD tradition instead targeted the capitalist development model. They foregrounded not prejudice, or the need to incorporate women into the modern economy, but rather women's structural subordination within global processes of uneven development. As Marjorie Mbilinyi put it:

the whole thrust of “integrating women into the economic and civic life of the country” (e. g. resolution 15, Declaration of Principles and Programme Action of the ILO Conference in 1976) is to deepen women's vulnerability to oppression, domination and exploitation. For women are already the most intensely exploited segment of the labour force in Africa, in agriculture as well as manufacturing and services ... The issue therefore is not one of integrating women more into such exploitative and oppressive relations (Mbilinyi 1985, 77).

Similarly, as June Nash and Helen Safa noted in a path-breaking collection of essays on development and women's status in Latin America, their analytic target was “the structure of the capitalist system” (1980, xi), and especially the way in which it *relied on* exploitation of women's labour in the household and informal economy (see also Jelin 1980; Parpart and Staudt 1989, 6).

In this respect, Benería's *Women in Development* collection included an essay by Maria Mies, on how female lace makers in Narsapur, working from their homes, were forced out of international trade networks through being denied access to credit and modern technologies: “Women are not simply ‘left behind’ while men monopolize the new and more profitable areas of the economy; they are deliberately ‘defined back’ into the role of housewives”

(1982, 26). A similar framing was provided by Benería and Roldan's account of women's industrial home-based work in Mexico City. They identified industrial homework as "a form of capitalist production at the household level that represents a disguised form of subproletarianization" (Benería and Roldan 1987, 165). Hence "it is not a question of two autonomous processes of labour incorporation, that of the men in the proletariat and women in the subproletariat" (103); rather the labour of wives and daughters facilitated the proletarianization of spouses, sons and fathers, while also providing the key link between the formal and informal sector of the economy. Similar accounts of the key role of rural women's labour in facilitating extractive development via mines and plantations were provided by feminists studying Tanzania (Mbilinyi 1972, 1986, 1988); Kenya (Hay 1982); and Rhodesia (Lovett 1989).

The key question for my current purposes is what role – if any – law played in this Marxist feminist reconceptualisation of GAD. On one level, many authors echoed Boserup and DAWN in de-centring the relevance of formal legal equality to most poor women's lives. Jane Parpart and Kathleen Staudt noted that African state discourse often limited feminist agendas "to manageable legal reforms" that affected limited social change (Parpart and Staudt 1989, 11). Law was generally de-emphasized in the Safa and Nash collection (1980) on Latin America, receiving significantly less attention as a causal driver of women's subordination than economic relations in general. Maria del Carmen Elu de Lenero's list of the variables affecting women's fertility did not include law. Gloria Gonzalez Salazar's analysis of Mexican women's labour force participation noted that "Mexico has practically achieved juridical equality for women" (1980, 184), in that civil, educational, social and political rights were formally assured. Yet discrimination persisted. Gita Sen's account of women's experiences within India's Green Revolution also de-emphasised formal law as an explanatory factor. Resting on faith in new technologies to increase yields, the Green Revolution increased concentration of land ownership, and drew farmers into the cash economy, with generally negative impacts on women's status. Many moved into seasonal casual labour – a highly exploited sector – to earn money (1982, 40). While on paper land reform in some regions seemed to result in increased levels of female ownership, in practice land title had been parcelled out to family members to evade limits on landholding intended to break the power of large landlords: women rarely had effective control of the land that was nominally held in their name (47).

While these scholars noted implementation gaps, for others access to the status afforded by formal legal recognition was a privilege enjoyed by elite women, such that the turn to law as a solution functioned as a marker of privilege. As Safa and Nash noted, the framed wedding picture is "a necessary

part of the furniture” in upper and middle class homes across Latin America, “a sign to distinguish the legally married women from those with lower status, who are more likely to be in common-law unions” (1980, 230). In Vivian Mota’s account of elite women allied to the Trujillo regime in the Dominican Republic, the focus on suffrage, access to higher levels of formal education, and legal reforms to grant formal equality was “a panacea” (Mota 1980, 273), distant and potentially distracting from the daily struggles of poor women. While arguing that early twentieth century colonial courts in Lagos provided a key avenue for women to bring marital disputes,²⁸ Kristen Mann emphasised that these fora were used by educated, Christian, elite women (1982, 151).

More typically, however, when law was found to be partly determinative of women’s status it was as a component of women’s subordination rather than a remedy for it. This is especially clear in African studies literature on the role of colonial and customary law in (re)structuring gender relations. A key 1982 collection on *African Women and the Law*, bringing together historians and legal anthropologists, included several essays that positioned ‘customary law’ (original punctuation) as “created by the political economy of colonial capitalism rather than as the essence of African local law which survived the colonial incursion” (Hay and Wright 1982, vii). For example, Martin Chanock claimed that, in a context of growing labour migration in Rhodesia, the declining authority of older men over younger men, and women, was expressed as concern about marital breakdown and sexual indiscipline that was then codified into ‘customary law.’ As he summarised:

law is a way of exercising power and the “customary law” was perhaps the most effective way by which African men could exert power in the colonial polity. It is, therefore, through the story of the penetration of the Western legal mode into African social systems that some of the difficulties of women in colonial society can be understood (52).

Margot Lovett’s account of law, gender, and class formation noted that colonial and ‘customary’ law in East Africa closed off avenues for women’s accumulation, including through measures to end the renting out of rooms, and beer brewing (Lovett 1989, 24; see also Mbilinyi, discussed below). Again lowly levels of law were important; new building regulations in Nairobi, requiring use of stone, made it harder for African women to own houses (24).

In an especially compelling feminist account of legally-facilitated dispossession, Noleen Heyzer (who would go on to serve as head of the United Nations Development Fund for Women – UNIFEM – and Under Secretary General for the UN) analysed the role of law in turning Malay women from subsistence farmers

28 See also Merry 1982, on pluralist forms of dispute settlement in colonial Zambia.

into heavily surveilled workers in Singapore's industrial periphery. With the civilian population forcibly resettled by the British military administration in Malaysia as part of the struggle against independence, residents were issued temporary occupational licenses that could be cancelled for any reason, turning people into illegal squatters on land that they had been forced onto in the first place. This key 'push' factor for migration met the 'pull' of the Singaporean economy's reliance on female migrants as a reserve army of labour. The accepting state subsequently imposed strict limits on these women to prevent permanent settlement: employers were required to conduct, and report, pregnancy tests on female migrant workers, and pay the repatriation expenses of pregnant workers. Work permit holders required Ministry of Labour approval to marry Singaporeans, and – in return for a marriage license – had to sign a bond that they would be sterilized after the birth of a second child: failure to sign meant refusal of the marriage license, withdrawal of the work permit, and loss of housing and medical benefits (1982, 186). Legislation also stopped women changing jobs in pursuit of better wages and conditions: permit holders were prevented from leaving a specified workplace for 3 years (1982, 191). In Heyzer's account, women's subordination is secured by – in fact, reliant on – law: her GAD story is one in which formal state rules, including in forms such as permits, licenses, and bonds, play a key role. While Boseup also noted the importance of registration and licensing as 'weapons' against women, from the Marxist-feminist collections we see a particularly in-depth focus on this dimension of GAD.

5.2 (Il)legality and Development: A Gendered Account

In addition, Marxist feminists writing on development foregrounded two further, and distinctive, themes. Firstly, they focused in considerable depth on the way that women were pushed into realms of illegality that i. rendered them disproportionately vulnerable to law's violence, ii. enabled gendered and racialized forms of capitalist accumulation, and iii. could – perhaps paradoxically – sustain resistance. This three-fold framing is particularly clear in Marjorie Mbilinyi's research on women in Dar es Salaam (e.g., 1985, 1988, 1989). Her work traced how legal measures, including administrative ones such as licensing and permits, created certain people (e.g. prostitutes, beer brewers, and hawkers) as illegal, and hence hyper-vulnerable. They were easy to exploit, including via low wages and bribes, and they faced forcible resettlement from urban areas in times of high unemployment (1989, 125). In a particularly trenchant analysis of the colonial production of gendered and racialised illegality, she identified an alliance between the colonial state and those it designated 'the responsible natives, the

educated men' (1989, 118) to dispossess women brewers in the 1930s. The state favoured a monopolistic authorised producer, and took over the market (previously run by women) within which native-brewed beer was sold.

While the above account was historical in nature, in other work Mbilinyi analysed the contemporary relevance of brewing to Tanzanian development debates. She noted that many liberal analysts blamed men "for boozing up cash proceeds from crops," overlooking

the power relations which sustain low prices for agricultural commodities, and the international division of labour that binds women and men to the soil. (1985, 78–9)

Moreover, "in many areas women booze along with men, to the consternation of middle class observers" (1985, 79). For the purposes of this article, her broader point goes to the heart of debates about the role of law in GAD. Mbilinyi insisted that illegal brewing was a key manifestation "of resistance and struggle among peasant women" (1985, 79–80). Their refusal to stop brewing beer was an attempt to avoid state, and male, control over a form of economic activity that had awarded them some autonomy.²⁹ This emphasis on resistance suggests that illegal realms may be a site for poor women's agency. Indeed the state effort to take over the beer market in Dar es Salaam failed: there was a widespread boycott of the authorised producer, and the colonial township authority was forced to revoke the relevant bylaw and return the industry to the women brewers (1989, 122).

Focusing on peasant responses to structural adjustment initiatives in Zaire, Catherine Newbury and Brooke Grundfest Schoepf offered another contemporary account of the gendered dynamics of illegality and legality in developing countries. Women were prominent in protests against state efforts to market, transport, and tax their products in the early 1980s (1989, 97). Centring 'off the books' activities, such as hawking, home brewing, digging gold, and smuggling, Newbury and Grundfest Schoepf argued that the turn to the irregular, and often illegal, economy was about both survival and resistance (101). Women engaging in these activities were trying to resist 'further pauperization' (100) by maintaining access to an independent income (1989, 102–3). While acknowledging the limits of the strategy – not least because women end up in the most vulnerable, most easily scapegoated, and least profitable end of the value chain – nonetheless they insist that off the books activities reflect efforts by women to direct labour into channels where they can have some control over what is produced (103).³⁰

²⁹ Processing crops such as maize and millet into homebrew beer increases their value, and women retain those proceeds. See Mbilinyi (1985).

³⁰ See also Tranberg Hansen's (1989) essay on the black market in Zambia, in the same collection on *Women and the State in Africa*.

These African-focused examples can be linked to similar debates in Latin America, where several Marxist feminist authors highlighted the risks run by street vendors and door to door pedlars, prostitutes, and rum brewers (e. g. Safa 1980). The final essay in Safa and Nash's collection, based on an interview with Llanquitray, a young Mapuche farmer and political leader, offers a particularly important account of the role of law, and legality, in dispossession and disenfranchisement. Llanquitray's grandfather had been defrauded by a wealthy landowner, and had wasted years "enmeshed in useless litigation" (Bunster 1980, 303), being tricked and lied to as he threw away family money in a fruitless quest to achieve restitution through the courts. According to his granddaughter, his:

obsession with justice led him to ignore the cultivation of the land. He spent his time and money on useless complaints before the Indian Tribunal, presenting demands that only gathered dust in the archives of dishonest judges and lawyers (Bunster 1980, 305).

In part due to this experience of dispossession, she went to boarding school to learn Spanish, to enable her to better defend her community, and she became involved in community politics. She never forgot the key lesson instilled by her grandfather's experience: that state law was a tool of dispossession, and that hopes invested in it would likely be dashed. Instead of turning to courts, she helped organise land invasions, in an attempt to accelerate the reforms promised under Allende's government and to secure the restitution of stolen land. The Mapuche used land invasions precisely because the law was 'useless' to securing justice: as Llanquitray put it, an indigenous person stripped of their land can spend decades pursuing their claim through the courts, and become destitute:

and he will never win his claim. Why? Because a poor person can not put himself before a rich one. Impossible! Not even worth dreaming of. He realises that the laws which exist are useless to him; they protect the powerful, because they were made by them to protect themselves (311).

Even the restitution laws put before Congress by leftist parties between 1967 and 1972 would not provide justice, because they required proof of title in formal legal terms.³¹ Mapuche knowledge about ownership, and dispossession, was discounted. Hence:

The celebrated law which presently rules the country serves us not at all. And why doesn't it serve us? Because it was made by the rich, the same rich who took away our land. That is the truth. (in Bunster 1980, 310)

³¹ See discussion of Allende's *Programa de la Unidad Popular* in Winn and Kay (1974). Note especially Allende's conflicted response to land seizures.

When Llanquitray became an advisor to the leftist minister of agriculture, on land issues, she did so on the understanding that the Mapuche movement needed to avoid reliance on the law to secure land. *Illegality*, stemming from an intersectional account of how law dispossessed poor indigenous communities, was hereby made central to the struggle for equitable development.³²

In a related vein, Benería and Roldan's study of women's work in Mexico City identified gendered (dis)connections between the formal economy, and the semi-legal and illegal realm of activities that typified subcontracted homework. They analysed the chains of contracts and other legally-mediated relationships that linked women working in their homes, or in the illegally-operating basements of legitimate factories, to multinational firms selling electrical appliances. As they noted, legal employment status was crucial to well-being. Formal workers received a money wage that was established by contract and subject to labour codes and standards; they were typically covered by minimum wage laws, and they had access to social security, and protection against arbitrary dismissal (1987, 77). Workers in the subproletariat received casual not protected wages (and were often paid in part in non-cash forms, such as food/shelter) (77); they had no contractual relationship with employers, no access to social security benefits, and no protection from labour law: *almost 90% of the women workers in their study earned an income lower than the legal minimum wage* (97). In contrast to Boserup, who viewed informal work as a timelag problem that modernization would eventually overcome, for Marxist feminists the system of production was integrated such that the formal/informal economy distinction obfuscated structural interdependence. That said, however, law played a key role in making the distinction materially significant, and in articulating the relationship between the realms. The largest drop in wages across the production chain was when the product went underground (37): work was outsourced because it could be done more cheaply when labour laws could be ignored. They painted what they called a 'gloomy' picture (72) whereby efforts to enforce existing labour laws would likely fail, both because they would be difficult to enforce, and because if they were enforced women would lose their jobs, the cost advantage of employing them hereby removed. Meanwhile workers were prevented from collective action because their work was illegal, and it would in

³² By the time *Sex and Class in Latin America* was published, the coup against Allende's government had reversed the land reforms secured by this sort of extra-legal activism. According to one study, Mapuche families kept only about 16% of the land recovered between 1962 and 1973. Much of the land was given back to local farming elites, or to corporations for pine and eucalyptus plantations. See Martín Correa, Raúl Molina, and Nancy Yáñez, *La reforma agraria y las tierras Mapuches: Chile 1962–1975* (Santiago: LOM, 2005), cited in NACLA (2013).

any case be hard for homeworkers to overcome strict union recognition laws to gain visibility.

Part of what differentiates the accounts of law offered by Mbilinyi, Newbury and Grundfest Schoepf, Heyzer, Llanquitray, and Benería and Roldan from those provided by Boserup, and DAWN, is the somewhat more co-constitutive role given to law in discussions of GAD. For these Marxist feminist scholars, law is mostly instrument, used to maximise class, colonial, gendered, and/or racialized power. However, they also analyse the distinctive nature of the power of law *as law* within this nexus. Heyzer focuses on a multi-level account of law as instrument, in which colonial, military, and national laws interpenetrate with local-level administrative and company rules to deliver a profoundly unjust, and thoroughly legalised, outcome. Llanquitray critiques both the misplaced faith in law reform to achieve justice, and the epistemologies and subjectivities that this faith helps to produce. Her target is not just the false promise of restitution through law, but the consequences of that promise for subsequent repertoires of collective action, including for how social movements make claims about true ownership. To seek law's protection renders indigenous people more vulnerable to the dispossession and violence – epistemic, and structural – that stems from its recognition. In turn, those writing on women's role within the irregular economy offered an analytic framework wherein, to paraphrase Piciotto, law is more than a cloak for extra-legal forms of power. Law's power is implicated in – in fact central to – the gendered constitution of the formal/informal economy boundary, such that the intertwining of illegality and legality emerges as a theme. We hereby see law's role in gendered capitalism as entangled, and constitutive; the 'gloominess' of the picture (Benería and Roldan 1987, 72) is in part about the bind of legality, and its alternatives, within current capitalist development.

5.3 A Distinctive Account of Family Law

A second key feature of Marxist feminist work on development was the insight that the subproletarianization of women as wives rested on law, such that *family law* became an analytic target for scholars trying to understand the gendered relationship between sectors of the economy. From this perspective, family law, and legal mediation of kinship arrangements, became relevant to discussions of capitalist development in a distinctive way.

Central to this reconceptualisation of the role of the family within development was its historicisation. Hence several scholars traced the use of customary and colonial law to tie women to extended kin, and to husbands, in order

to restrict their economic independence. Margaret Jean Hay's study of colonial Kenya found that the rise in inequalities, land fragmentation, male labour migration, and rural impoverishment associated with colonial capitalism invigorated efforts to restrict women's independent access to property. 'Customary' law on marriage, inheritance, and separation was codified "to require that a woman remain in a viable marriage in order to enjoy access to agricultural land, livestock, and other forms of movable wealth, and to retain custody of her children" (1982, 112; see also Chanock 1982). In some cases women's ability to travel outside rural areas was made dependent on a legal marriage certificate (Lovett 1989, 28–9). Mbilinyi's research on 'runaway wives' in colonial Tanganyika showed how unmarried women, or women who had left husbands, were rounded up and forcibly sent 'home' to 'their' tribal areas, as part of efforts to restrict female migration (Mbilinyi 1988, 2). Women's attempts to run away from rural areas not only undermined the power of male elders, but also threatened the effectiveness of a migrant labour system that was dependent on their subsistence production.

While the above accounts were historical, others were contemporary. For example Mbilinyi also highlighted the relevance of family law to the Tanzanian effort to become "a democratic socialist and developed nation" (1972, 57). The Marriage Act (1971) involved an effort to correct women's legally oppressed status, giving rights of inheritance for widows, and requiring a first wife to register consent before her husband could legally marry a second wife (Mbilinyi 1972, 67). While acknowledging these reforms as necessary, Mbilinyi noted that liberal notions of consent were scant use in situations of economic dependence, where women had little real choice (Mbilinyi 1972, 68). Relatedly there had been no discussion, in divorce cases, of how to legally account for what women contributed to the family via their social reproduction labour. In a variant of a wages-for-housework argument, she wrote:

Women's work, like peasant subsistence production, is socially necessary but is not valued in the market place. It would seem that some kind of compensation should be provided for this. (Mbilinyi 1972, 68)

Susan Jacobs provided another example, from Zimbabwe, of state efforts to direct women into families. In the early 1980s the new government introduced several pieces of legislation with positive effects for women, including to equalise the legal age of majority. However, it also launched a 'clean up' campaign directed at urban prostitutes involving mass arrests. Some women were released on production of a marriage certificate, while others were sent to resettlement camps (Jacobs 1989, 168).

In the 1982 collection on development edited by Benería, Zenebeworke Tadesse³³ – a sociologist who would later work for UNRISD and co-found the Association of African Women for Research and Development – offered a particularly interesting cautionary tale about faith in law reform to improve women's status, this time from the perspective of a state engaged in an avowedly revolutionary approach to law (1982).³⁴ She considered the gendered impact of Ethiopian land reforms that had abolished private ownership, collectivized land holding, given possessionary rights to peasants, and created peasant associations with judicial tribunals to adjudicate land disputes, in an effort to undercut the power of corrupt judges. Tadesse documented the limits of these measures. For example, the Land Reform Proclamation (1975) specified that a personal cultivator of land (regardless of sex) should be allotted land, but the assumption underpinning practice was that the husband, as head of the family, was to be the recipient of plots; family members were to then allocated to work them. Moreover the law rested on assumptions about monogamous families that were out of step with kinship realities, harming women in polygamous households. Men would formally register one wife for purposes of land allocation, leaving others without access to land (Tadesse 1982, 214). Tadesse hence concluded with a suggestion that abolition of private land ownership must be joined with an “an all out struggle against patriarchal authority” involving marriage law reform to abolish the concept of household (217). In other words, genuinely revolutionary law reform would tackle both private property and (hetero)normative forms of kinship: otherwise it would fail to secure transformation in women's position.

This assertion – absent from Boserup's work, and the DAWN discussions – was far from unusual in Marxist feminist debates about development. To illustrate this, I wish to return briefly to the (1978) special issue of the feminist journal *Quest*. Focused on international feminism, this was an early effort at articulating the fault lines of global feminist theory. The issue contained an essay by US academic Jane Flax, on the Cuban Family Code adopted in 1975. (Flax is a feminist philosopher; she would later write on psychoanalysis). The Code aimed to address women's ‘second shift’ – their responsibility for unpaid

³³ In other publications her name is spelt Zenebeworke, or abbreviated to Zen. See e. g. Tadesse (1979).

³⁴ Interestingly DAWN did not analyse socialist or communist attempts to reframe development (see discussion on in Sen and Grown 1987, 25). Hence their accounts of law remain within a capitalist framing. By contrast, the Marxist feminist conversations on which I draw in this section include several analyses of the complex gendered impacts of avowedly revolutionary laws, in contexts ranging from Cuba to China to Ethiopia.

social reproduction labour alongside paid employment. Like Tadesse, Flax assessed this key episode of avowedly revolutionary law reform from a socialist feminist perspective, and she hereby raised fundamental questions about the role of state law in gender relations. In part because it identified the family as the ‘elementary cell’ of society and the centre for relations between men, women, and children, for Flax “The Code raises rather than resolves one of the most difficult issues for feminist theory: the role of the heterosexual family and its place in a liberated society” (1978, 87). The Cuban state’s preference for judicially recognised marriages reflected a ‘bias towards heterosexuality’ that she found ‘extremely troubling’: “Can patriarchy be completely eliminated without an attack on the channelling of sexuality in exclusively heterosexual directions?” (87). In a highly prescient insight – and again one that was relatively common to Marxist feminist work – Flax noted “while we need means of insuring responsibility between adults and between adults and children, it is not clear that granting the state a monopoly on regulating and legitimating these relations is the solution” (88).

Encountering this work – written before the Marxist government in Ethiopia helped cause a famine, but when the Cuban state’s repression of homosexuality was already known³⁵ – is both unsettling, and instructive. The benefit of hindsight clearly unsettles the hope that Marxist law reform will deliver (gender) justice. That said, however, Tadesse and Flax themselves questioned that hope: both scholars claimed that state-centred approaches to revolution risked side-stepping crucial debates about women’s sexual and economic autonomy. Their work is hereby refreshingly disruptive to dominant accounts about how, and when, sexuality emerged as a theme within development conversations. Transnationally, conversations about sexuality within development have tended to highlight the significance of reproductive rights, and/or HIV/AIDS.³⁶ Here, though, we see two socialist feminists, non-lawyers from the South and North respectively, debating the role of family and land law in regulating heterosexuality in the context of capitalist development.

In addition, what stands out from these examples is their holistic, and heavily critical, account of the role of law. Beyond privileging experiences of implementation over formal legislation; beyond highlighting the risk of legal reforms

³⁵ In the late 1960s, the Cuban state targeted gay men for internment and ‘re-education’ in forced labour camps. It also banned hiring gay people in jobs ‘where they could exert influence over Cuban youth’ and a 1974 law “proscribed any ‘public ostentation’ of a homosexual identity as offensive to socialist morality under the rubric of ‘peligrosidad social’ [‘social dangerousness’]” (Guerra 2010, 269).

³⁶ See, for example, the account in Oosterhoff and Sweetman (2018).

distracting attention from women's on-going subordination; beyond noting the violence of law, and the importance of illegality in struggles for emancipation, Marxist feminists foregrounded the role of legal recognition in structuring, and suturing, the economic *and* kinship relations central to development. Specifically, family law was understood to be a key mechanism by which women's subordination was secured. It enabled the state to channel sexuality into normative forms of the household, which – for Marxist feminists – had a key economic role. Put more simply, family law was just not about patriarchy; it was also about capitalism. While this understanding can be faulted for its somewhat functionalist account of law, what it brought into focus, uniquely, is the political economic relevance of the legal architectures that help structure kinship.

6 Recitation Lessons, and Attachment Risks: A Tentative Conclusion

To close, I wish to recap the insights that emerge from a revisiting of the place, and role, of law in early texts on women and development. As indicated in Section 2, the aim is not to triumphantly show that feminists 'got there' first, whether the 'there' in question is a thoughtful analysis of LAD in general, or illegality and kinship regulation in particular. Neither is it to contrast past feminist theories about law with current GAD practices; I lack the space to analyse those practices in any substantive way here. Rather, I wish to use the opportunity provided by revisiting these texts to simply, for now, welcome back what they say, and to critically interrogate the ambivalent attachments they provoke, in me and, perhaps, in others who have been involved in GAD for some time.

Most obviously, a welcoming back of this early work unsettles many dominant accounts of waves, or moments, within the LAD field. It becomes clear that gender, law, and development debates predate the turn to international human rights, and the post-Washington consensus. We see that law has long been seen by feminists as permeating dominant development efforts, with overwhelmingly negative effects on women.

Relatedly, the act of revisiting such texts confirms the urgent need to connect up law and development discussions to critical work on law emanating from *interdisciplinary* GAD conversations. In the literatures discussed here, we see feminist economists, social workers, sociologists, anthropologists, historians, political scientists, and education scholars all reflecting critically on law and development. They did not organise their work under a 'law and development' moniker, however; in fact, there is almost no reference in these works to

what is now considered to be the law and development canon. Instead, these authors clustered under academic headings of feminist state theory, women/gender and development, African studies, and – crucially – Marxist feminism. Hence we need to urgently revise our approach to canonical literatures in the field if we are to effectively understand the range, and depth, of debates that were being had about gender, law, and development in the 1970s and 1980s.

More specifically, from these texts we see that feminist authors from very different intellectual and political traditions tended to share an interest in law's role as key *cause* of women's dispossession and inequality, but show relatively little enthusiasm for law reform as *solution*. Feminist work was also characterised by an interconnected, multilevel, and socio-legal approach to law. Legal pluralism was taken for granted, even by liberals, such that reform to state law was not assumed, *apriori*, to be the key lever for social change.

Moreover, when state law was discussed it was often understood to be connected to other levels of law and regulation, at both the transnational level (through the activities of development agencies and international financial institutions), and the local level. In this regard, lower levels of law were central to the conversation: town-level licenses and permits were far more important than constitutional reforms.

The gendered production of illegality, and the relationship between law and its others, was another central preoccupation. While liberals framed laws restricting women's movement, or economic activities, as evidence of prejudice, others saw the role of 'law as weapon' differently: as also about capital accumulation, and a narrowing of women's claims-making on the state. From the Marxist feminist texts in particular we see a wide, more-than-legal repertoire of women's collective action, whereby law is confronted head on with land invasions, indigenous notions of property ownership, and illegal brewing. Political economic claims and entitlements are mobilised outwith, not just through, law.

The critical edge of early feminist scholarship on law within development is also manifest in the Marxist feminist account of family law. This tied together analysis of kinship structures and political economy, to critique revolutionary law reform initiatives for being insufficiently transformative. The problem with family law was not merely that it discriminated against women, in a liberal mode of understanding, but that it was tied to a capitalist mode of production that involved the state channelling of sexuality, and unpaid social reproduction labour, into the family form. Using this framing of the problem, feminists critiqued both land reform efforts that ignored the family, and family law reforms that failed to account for women's role in social reproduction.

If we accept that a revisiting of early GAD texts produces these insights about law, a subsequent question emerges: what is the point of articulating

these insights now? Is it, as one colleague wondered, to provide a ‘gotcha’ moment, where I show that feminists arrived at many of the key critiques of LAD first?³⁷ Is it to upend dominant historiographies of LAD, to trace an alternative version wherein women’s voices are re-centered? Or is it, as Hemmings would suggest, an opportunity to do something else as well, or instead – to rethink our own investments in narratives of progress, or loss, or return, such that we consciously try to tell the LAD story differently?

For me, one of the biggest risks in a recitation exercise like this is the inability to manage my own ambivalent, somewhat grumpy, investment in corrective accounts that promise a truer, redemptive, feminist story about LAD. The danger is of indulging my wounded attachment to imagined loss, via a ‘return’ to a time when GAD was a path to vibrant debate about global, critical, and feminist political economy, rather than a highway to corporatized conferences about law and business feminism. Were I to so indulge, I would end with a partly triumphant, partly sad, partly indignant summary of how our conversations about law used to be so much more critical, and inter-disciplinary, and inter-sectional, than they are now. I would ask what went wrong; why and how we got so limited in our thinking that we instinctively count more laws as a sign of progress, in a way that Ester Boserup would find deeply puzzling. And in some ways those are crucial questions. They help us excavate a potent alternative story about GAD and law, where even liberal thinkers had a deeply materialist and pluralist analysis of rights, and legally-facilitated violence, dispossession, and extraction were central concerns. I do very much wish that these concerns were more central to current gender, law, and development conversation.

Yet the ambivalence remains, in part because I *know* the collective risks of the return fantasy. Accountability and reflexivity diminish when return fantasies flourish. In this regard, I have attempted to use the recitation to gesture towards a different approach to engaging feminist thinkers from GAD’s recent past, one that welcomes back critical insights about law without using them to immediately feed blame narratives in the present. There are vital questions left hanging by the choice to inject such an analytic pause, not least about the fate of these critical insights in the current rush to law-heavy solutions for gender inequality. But they are best asked in subsequent articles. For now, I seek simply to re-cite the work I have encountered, and underscore its potency, in an effort to bring the ‘half-forgotten’ (Hemmings 2011, 23) back into our debates on law, gender, and development. Such unforgetting provokes a complex mix of joys and

³⁷ Sonia Lawrence asked me this question in 2017, after encountering an early version of this paper.

sorrows, but, more straightforwardly, it also confirms the need to broaden our stories of the LAD subfield to include interdisciplinary feminist scholarship.

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