

CONTENTS

Acknowledgmentsvii

Introduction: Feminist Perspectives on Transitional Justice

Martha Albertson FINEMAN and Estelle ZINSSTAG 1

PART 1

FEMINIST PERSPECTIVES IN CONTEXTS

Introduction 9

Chapter 1

International Law and Domestic Gender Justice, or Why Case Studies Matter

Catherine O'ROURKE 11

1. Introduction 11
2. Feminist critiques of international criminal law 13
 - 2.1. ICL as legally deficient. 15
 - 2.2. ICL as sexualising and infantilising women 17
 - 2.3. ICL as silencing individual women and more radical feminist critiques. 19
 - 2.4. Feminist engagement with ICL as hegemonic and imperialist. 20
3. A 'Boomerang Pattern'? 22
4. International law, local gender justice? The case of Chile 25
 - 4.1. Women, gender and transitional justice in a pacted transition 25
 - 4.2. ICL as legally deficient. 30
 - 4.2.1. Truth, phase 1, the Chilean National Truth and Reconciliation Commission 30
 - 4.2.2. Truth, phase 2, the National Commission on Political Imprisonment and Torture. 32
 - 4.3. ICL as sexualising and infantilising women 33
 - 4.3.1. Sexual violence as women's exclusive experience of conflict and repression, obscuring other harms suffered by women, such as socioeconomic harms or the loss of a family member. 33

| | | |
|--------|---|----|
| 4.3.2. | Focus on sexual violence establishing exclusionary categories of 'ideal' female victimhood that reinforce the restrictive regulation of female sexuality. | 34 |
| 4.3.3. | Focus on women's sexual victimhood marginalising women as agents of political change | 36 |
| 4.4. | ICL as silencing individual women victims and more radical feminist critiques | 37 |
| 4.4.1. | Silencing of individual women victims | 37 |
| 4.4.2. | Engagement with international criminal law as silencing more radical feminist critique | 38 |
| 4.5. | Feminist engagement with ICL as hegemonic and imperialist. | 38 |
| 4.5.1. | The hazards of governance feminism | 38 |
| 4.5.2. | Feminism and the imperialist mission of international law | 40 |
| 5. | Conclusion | 41 |

Chapter 2

Advancing a Feminist Analysis of Transitional Justice

| | |
|---|----|
| Fionnuala Ní AOLÁIN | 43 |
| 1. A brief history of presence and engagement | 45 |
| 2. The limits of law. | 53 |
| 3. Conclusion | 61 |

Chapter 3

Feminist Perspectives on Extraordinary Justice

| | |
|--|----|
| David C. GRAY and Benjamin A. LEVIN. | 63 |
| 1. The moral meaning of violence | 68 |
| 2. Intersectional identity and dynamic stability | 72 |
| 3. Women and extraordinary justice | 76 |
| 4. Women at the nexus | 84 |
| 5. Conclusion | 87 |

Chapter 4

Intersectionality: A Feminist Theory for Transitional Justice

| | |
|--------------------------------------|-----|
| Eilish ROONEY. | 89 |
| 1. Introduction | 90 |
| 2. Travelling modalities. | 95 |
| 3. Awkward absences. | 97 |
| 4. Negotiating presence. | 103 |
| 5. Intersecting transitions. | 108 |
| 6. Conclusion | 112 |

PART 2
 FEMINIST LEGAL STRATEGIES AND THEIR CONSEQUENCES

Introduction 117

Chapter 5
International Law, Crisis and Feminist Time
 Mary H. HANSEL 119

1. Introduction 120

2. The crisis model of international law and humanitarian intervention 121

 2.1. The nature of the crisis model 122

 2.2. The NATO intervention in Kosovo 123

 2.3. Conclusion 124

3. The marginalization of women under the crisis model 124

 3.1. White male heroism in the crisis model 124

 3.1.1. The centrality of the hero's rescue 125

 3.1.2. The presumed benevolence of the hero 126

 3.2. The crisis model's effects on women in targeted states 128

 3.2.1. Obscuring the 'international law of everyday life' 128

 3.2.2. Neglecting hardships endured during crisis 129

 3.2.3. Failures to consider women in the aftermath 129

 3.2.4. Conclusion 130

4. The crisis model's temporal underpinnings 130

 4.1. 'Emergency time' governing the crisis model 131

 4.2. Developing a broader temporal view 133

 4.3. Conclusion 134

5. Feminist temporal approaches to inform international law 134

 5.1. Predominant strains of feminist temporality and applications to the crisis model 135

 5.1.1. Time as regression 135

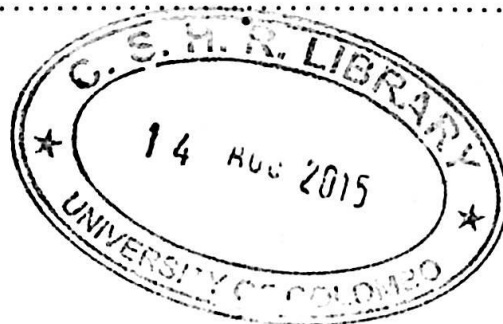
 5.1.2. Time as redemption 137

 5.1.3. Time as rupture 138

 5.1.4. Time as repetition 140

 5.2. Conclusion 142

6. Conclusion 142



Chapter 6

Justice as Practised by Victims of Conflict: Post-World War II

Movements as Sites of Engagement and Knowledge

CHEAH Wui Ling 145

1. Introduction 145
2. The response of international law to conflict-related harms:
Evolving approaches 148
 - 2.1. International humanitarian law and international criminal law.. 148
 - 2.2. International human rights law..... 150
 - 2.3. The 2005 UN Basic Principles 151
3. The rise and development of post-World War II movements..... 153
 - 3.1. The Japanese American redress movement..... 154
 - 3.2. The Hibakusha movement and the global anti-nuclear
movement 157
 - 3.3. The 'comfort women' movement 160
4. Justice as conceptualised by post-World War II movements:
Recognition and atonement..... 163
 - 4.1. Recognising the suffering and rights of victims..... 164
 - 4.2. The atonement of wrongdoers 166
5. Conclusion: Learning from victims and justice as practised 168

Chapter 7

**The Symbolic and Communicative Function of International Criminal
Tribunals**

Teresa Godwin PHELPS 171

1. The early ICTR and ICTY trials 175
2. Later ICTY and ICTR trials 180
3. The Special Court for Sierra Leone..... 181

PART 3

EMERGING ALTERNATIVES WITHIN TRANSITIONAL JUSTICE

Introduction 187

Chapter 8

**Sexual Violence Against Women in Armed Conflicts and Restorative
Justice: An Exploratory Analysis**

Estelle ZINSSTAG..... 189

1. Introduction 189
2. Sexual violence against women in armed conflicts 191

| | | |
|----|---|-----|
| 3. | Restorative justice and sexual violence | 197 |
| 4. | The Sierra Leone Truth Commission: A case study | 205 |
| 5. | Some points of discussion | 208 |
| 6. | Conclusion | 212 |

Chapter 9

Greensboro and Beyond: Remediating the Structural Sexism in Truth and Reconciliation Processes and Determining the Potential Impact and Benefits of Truth Processes in the United States

Peggy MAISEL

215

| | | |
|------|--|-----|
| 1. | Introduction | 215 |
| 2. | Feminist critique of human rights and TRC processes | 218 |
| 3. | The South African TRC | 223 |
| 3.1. | Brief history of the development of the TRC | 224 |
| 3.2. | A 'gender-neutral' TRC | 225 |
| 3.3. | Comparison to other TRC processes | 232 |
| 4. | Greensboro | 234 |
| 4.1. | Establishing the Greensboro TRC | 236 |
| 4.2. | The Greensboro mandate | 238 |
| 4.3. | The Commission process | 240 |
| 4.4. | The final report, recommendations, and impact in Greensboro .. | 244 |
| 5. | Beyond Greensboro | 247 |
| 6. | Conclusion | 253 |

Chapter 10

Exclusion of Women in Post-Conflict Peace Processes: Transitional Justice in Northern Uganda

Joseph WASONGA

255

| | | |
|----|---|-----|
| 1. | Introduction | 255 |
| 2. | Historical perspective of the conflict in northern Uganda | 256 |
| 3. | Transitional justice initiatives | 260 |
| 4. | Place of women in transitional justice in northern Uganda | 268 |
| 5. | Conclusion | 273 |

Chapter 11

Shifting Paradigms for State Intervention: Gender-Based Violence in Cuba

Deborah M. WEISSMAN

275

| | | |
|----|---|-----|
| 1. | Introduction | 275 |
| 2. | Cuba in the international: Human rights as political opportunity structures | 276 |

| | | |
|--------|---|-----|
| 3. | Objective and subjective elements of gender equality as framework . . . | 278 |
| 4. | Specific approaches to domestic violence. | 280 |
| 4.1. | Definitions and determinants | 280 |
| 4.2. | Cuban responses to domestic violence. | 281 |
| 4.2.1. | Research and policy initiatives. | 282 |
| 4.2.2. | Controlling domestic violence through participatory mechanisms. | 283 |
| 4.3. | Legal responses. | 284 |
| 5. | Conclusion | 286 |

PART 4

CASE STUDIES

| | |
|-------------------------------|------------|
| Introduction | 291 |
|-------------------------------|------------|

Chapter 12

Beauty and the Beast: Gender Integration and the Police in Post-Conflict Bosnia and Herzegovina

| | |
|---|-----|
| Lisa R. MUFTIĆ and Azra RAŠIĆ | 293 |
|---|-----|

| | | |
|------|--|-----|
| 1. | Introduction | 293 |
| 2. | Police reformation in Bosnia | 294 |
| 3. | Gender integration as part of the police reformation process | 295 |
| 3.1. | Recruitment and training. | 296 |
| 3.2. | Promotion | 296 |
| 3.3. | Working conditions. | 297 |
| 3.4. | Maternity leave. | 297 |
| 3.5. | Police misconduct | 298 |
| 4. | Research questions. | 298 |
| 5. | Methods. | 299 |
| 6. | Female Bosnian national police officers. | 300 |
| 7. | Conclusion | 306 |
| 8. | Limitations & future studies | 308 |

Chapter 13

The Parallel Processes of Law and Social Change: Gender Violence and Work in the United States and South Africa

| | |
|---------------------------|-----|
| Julie GOLDSCHIED. | 311 |
|---------------------------|-----|

| | | |
|------|--|-----|
| 1. | Introduction | 311 |
| 2. | Context | 312 |
| 2.1. | Prevalence of abuse | 312 |
| 2.2. | Women's labor market participation | 314 |

| | | |
|------|--|-----|
| 3. | Reform efforts and critiques..... | 316 |
| 4. | Gender violence and work | 320 |
| 5. | South Africa's potential for legal responses..... | 324 |
| 6. | Implications for reform..... | 326 |
| 6.1. | Limits of litigation and employment law responses..... | 326 |
| 6.2. | Challenges of implementation, enforcement and training | 327 |
| 6.3. | Gender violence in a socio-political context | 328 |
| 6.4. | Broad-based commitments and difficult conversations | 329 |
| 7. | Conclusion | 331 |

Chapter 14

Neoliberalism's Impact on Women: A Case Study in Creating Supply and Demand for Human Trafficking

| | | |
|------|--|-----|
| | Dina Francesca HAYNES | 333 |
| 1. | Arizona market in context | 334 |
| 1.1. | Post-war Bosnia and Herzegovina | 335 |
| 1.2. | The first myth: achieving ethnic harmony through market forces | 336 |
| 1.3. | Human trafficking at Arizona market | 339 |
| 1.4. | The second myth: the actors on the ground during war should also be making economic development decisions..... | 342 |
| 1.5. | Politico-socio-economic engineering: the story of Brčko and its relationship to Arizona market | 344 |
| 2. | The impact of neoliberalism's market liberalization practices on women | 348 |
| 3. | Conclusion | 353 |
| | <i>About the Authors</i> | 357 |