Law's Vulnerability, and Vulnerability in Law

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Abstract Vulnerability acts as a touchstone in this issue as we find our contributors reflecting on its intersection with gender and sexuality in different ways. Saeidzadeh draws out the significance of misrecognition in her consideration of responses to transsexuality in Iran, while Doonan highlights the potential pitfalls of relying on situational vulnerability in her critique of anti-trafficking legal discourse in the US. Lindsey considers the legal potential of situational vulnerability as a tool to address the ‘persistent failure to take action against abuse’ in the UK. Durojaye and Oluduro contribute to the recent revitalisation in asking ‘the woman question’ by drawing on African law and literature to flesh out the development of a gender-sensitive, substantive equality approach from the jurisprudence of the African Commission on Human and Peoples’ Rights as it addresses vulnerability to violence. The reviewers continue this international conversation as they address recent contributions on sexuality, family formation and social security.

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In this final issue of 2016, *Feminist Legal Studies* hosts a selection of articles that all address questions of gender and sexuality and their intersection with vulnerability and the law, but in distinct ways. The articles traverse a wide range of subject matter including transsexuality in Iran (Saeidzadeh 2016), anti-trafficking law in the US (Doonan 2016), adult safeguarding law and practice in the UK (Lindsey 2016), and the ‘woman question’ in African Commission jurisprudence (Durojaye and Oluduro 2016). Together these papers reflect the international perspectives of our authors and readership, while also revealing a varied breadth of theoretical and methodological approaches to feminist legal studies.

In ‘Transsexuality in Contemporary Iran: Legal and Social Misrecognition’, Saeidzadeh (2016) opens a window onto contemporary trans-sexualism in Iran. In so doing, she complicates unidimensional Western reporting on legal gender corrective surgery as progressive politics. Islamic law allows gender reconstructive surgery under Ayatollah Khomeini’s 1982 fatwa, and surgery is available due to the privileged but politically neutral status of the medical profession. This paper draws on Saeidzadeh’s fieldwork in Iran to map the multiple strata of gender recognition and expression intersected at all levels by medicalisation. It is through the multiple lenses of this intersection that Saeidzadeh reveals incipient and unreconstructed homophobia and patriarchy. She traces how ‘misrecognition’ (Fraser 2000) becomes a strategic choice to achieve ‘inner comfort and peace’ in the negotiation of the dominant heteronormativity that defines the lived experiences of post-operative trans people in Iran. The testimonies drawn on by Saeidzadeh reveal the vulnerable social space between body and essence (soul) that post-operative trans-people occupy. This work opens up new ways in which to understand embodiment and vulnerability.

In ‘A House Divided: Humanitarianism and Anti-immigration within US Anti-Trafficking Legislation’, Doonan problematizes the victim protection narrative evident in the U.S. government’s self-proclaimed humanitarian leadership in the global initiative to abolish human trafficking (2016). As US lawmakers perpetuate a trafficking victim narrative to sustain their moral authority, this article highlights the potential pitfalls of relying on situational vulnerability to sustain agendas for legal reform. Doonan provides a compelling discourse analysis of floor debates, witness statements, committee hearings, and reports from both the US Senate and House of Representatives during the period between 1999 and 2000. By dismantling the carefully constructed but ultimately self-interested discourses of ‘formulaic victim narratives, masculinist protection and the language of slavery’, Doonan illustrates how they are mobilised by US legislators to gain political capital from a *prima facie* humanitarian agenda. By exposing contemporaneous legal and policy initiatives that deny trafficked migrants including children state protection, Doonan reveals the contradiction at the heart of US anti-trafficking policy.

In ‘Developing Vulnerability: A Situational Response to the Abuse of Women with Mental Disabilities’, Lindsey examines adult safeguarding law and practice with a particular focus on vulnerability and mental disability (2016). The paper proceeds upon the assumption that human beings are vulnerable and dependant, and Lindsey draws on the work of Fineman (2008) and Mackenzie et al. (2014) to argue for the advancement of situational vulnerability as an analytic tool to inform legal reform. In the author’s compelling analysis, women with disabilities challenge essentialised

conceptions of vulnerability at the intersection of gender and disability evident in interventions such as the 2016 Department of Health Statutory Guidance on the Care Act 2014 (UK). In its analysis of case law, the paper draws a clear distinction between the case of *TB* [2014],¹ in which the courts recognised inherent vulnerability on account of evidence of a mental disorder, and the more situational and embodied approach to vulnerability in cases such as *Riaz* [2014],² *Re A* [2010]³ and *MM* [2007].⁴ Lindsey identifies a role for the courts' inherent jurisdiction to fill the gap in both the civil and criminal law's 'persistent failure to take action against abuse' to open up civil remedies such as injunctions against perpetrators to further the situational vulnerability ethos emerging in the new legal framework. This would then contribute to an important shift in understanding vulnerability from the 'internal towards the external', in a way that will facilitate vulnerability as a tool for empowerment.

In 'The African Commission on Human and Peoples' Rights and the woman question', Durojaye and Oluduro offer a critical assessment of the limited jurisprudence on 'the woman question' in the case law of the African Commission (2016). In this, the Commission's 30th anniversary year,⁵ they draw on Ba (1981), Banda (2005) and Tamale (2004, 2008), among other African scholars, to develop the method of asking 'the African woman question' as a form of gender analysis. They show how Commission jurisprudence could ask the African woman question more rigorously through a critical evaluation of its deployment of human rights arguments in two cases: *Doebbler*⁶ and the *Egyptian Initiative for Personal Rights*.⁷ They find the seeds of a gender-sensitive, substantive equality approach in the Commission's broad interpretation of the Article 5 right to be free of degrading treatment in *Doebbler*, and in its recognition of gender-specific acts of violence as a violation of rights to equality and non-discrimination in *Egyptian Initiative*. The former requested the abolition of the 'negative cultural practice' of the public lashing of women, while the latter found Egypt to be in violation of due diligence equality requirements in not protecting women from violence and in not providing compensation to victims of violence. They find that the Commission's approach to the African woman question could improve through fuller engagement with international, regional and national jurisprudence, with regional commitments to

¹ *The London Borough of Tower Hamlets v TB and SA* [2014] EWCOP 53; available here <http://www.bailii.org/ew/cases/EWCOP/2014/53.html>. Accessed 30 November 2016.

² *Birmingham City Council v Riaz and others* [2014] EWHC 4247 (Fam); available here <http://www.bailii.org/ew/cases/EWHC/Fam/2014/4247.html>. Accessed 30 November 2016.

³ *In Re A (Capacity: Refusal of Contraception)* [2010] EWHC 1549 (Fam); available here <http://www.bailii.org/ew/cases/EWHC/Fam/2010/1549.html>. Accessed 30 November 2016.

⁴ *Local Authority X v MM* [2007] EWHC 2003 (Fam); available here <http://www.bailii.org/ew/cases/EWHC/Fam/2007/2003.html>. Accessed 30 November 2016.

⁵ See further <http://www.achpr.org>. Accessed 30 November 2016.

⁶ *Doebbler v. Sudan* (2003) AHRLR 153 (ACHPR 2003); available here <http://www.achpr.org/communications/decision/236.00/>. Accessed 30 November 2016.

⁷ *Egyptian Initiative for Personal Rights and INTERIGHTS v Egypt* Communication 323/06 decided during the 10th Extraordinary session of the African Commission on Human and Peoples' Right held between 12 and 16 December 2011; available here <http://www.achpr.org/communications/decision/323.06/>. Accessed 30 November 2016.

equality such as the African Union's 2004 Solemn Declaration on Gender Equality, and by providing women with 'some form of psychological and medical care for the trauma they experienced'.

The selection of book reviews in this issue continues the international conversation through a focus on sexuality, family formation and social security. In his reading of Puri's *Sexual States: Struggle over the Anti-Sodomy Law in India* (2016), Suresh highlights the way in which the book thinks sexuality through biopolitics (2016). Taking India as its case study, the book argues, with reference to regulatory practices aimed at defining and controlling sexed bodies, that the state itself becomes sexualised. Suresh takes issue with some methodological and theoretical elements and omissions in the book noting the further potential for analyses of this kind. Killean's review of Bunting et al. (2016) commends the interdisciplinary approach of this edited collection's analysis of forced marriage, consent and coercion in the African colonial and post-colonial context. The book is a 'timely and important' contribution to the literature, and in Killean's reading, an innovative counter to the trend to conceive of forced marriage as 'exceptional and without history' (2016). The book is both a rich text with an emotive punch while remaining live to the problematic dichotomy in much feminist discussion of forced marriage between vulnerability and agency.

Scheopner's (2016) review of Bennion and Fishbayn-Joffe on *The Polygamy Question* (2016) highlights its collected strength in accounting for the lived experience of polygamy. The book seeks to trace the genealogy of academic interest in polygamy, explore its legal treatment in North America, and consider how a legal framework for recognition might be developed. In his review of Goldblatt and Lamarche (2014), O'Conneide gives an account of the work in this volume, which arose from a workshop in 2013 in Oñati on the topic of 'Interpreting and Advancing Women's Rights to Social Security and Social Protection' (2016). That workshop considered how various state and international bodies have set about giving effect to the right to social security and social protection, from a gender perspective. The volume illustrates how women's rights are frequently undermined by the existing functioning of social security systems, while maintaining a critical and contextual approach to rights discourse itself.

In this, the last *Feminist Legal Studies* issue of 2016, we take the opportunity to highlight the contribution of our peer reviewers in sustaining and responding to the scholarship we publish. On behalf of Editorial and Advisory Board members and *FLS* authors, we thank peer reviewers for their time, care and collegiate commitment to the journal and to feminist legal scholarship.

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