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Rebecca J. Cook & Simone Cusack, *Gender Stereotyping: Transnational Legal Perspectives* BOOK REVIEW

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Proposition 16(c) (sic) of the Women's Protocol is invalid because it seeks explicitly to disfranchise the unborn child by virtue of a clause that purports to authorize violation of the unborn child's right to life. Such a limitation of a non-derivable (sic) right, the right to life, is inadmissible under the provisions of ICCPR Article 4(2).¹⁰¹

The reader is exhorted that "we" should never "consent to compound the pain" of incest and rape by encouraging victims to terminate their pregnancies or indeed giving them the option of safe abortion.¹⁰²

VIII. A LOST OPPORTUNITY

Human Rights and the Unborn Child calls repeatedly for principled analysis, intellectual integrity and an end to revisionist interpretation yet fails to meet its own challenge. A principled analysis might have acknowledged that the core human rights instruments do not coincide with Joseph's philosophical position and explored her vision for the development of international law, including means of addressing conflicts of rights. Joseph prefers to make the grandiose claim that her book represents an "authentic" articulation of legal rights which have been misunderstood or distorted by those charged with their interpretation and enforcement. Her closing words "we will try to ensure in international law the timeless truth that ideologies must conform to human

rights and not human rights to ideology"¹⁰³ would be apposite to an evaluation of her own analysis. While Joseph's philosophical position is expressed with passion and at times eloquence, she errs in co-opting international human rights law as an embodiment of her views. The resulting amalgam of lax legal reasoning, vitriol and ill-disciplined name-calling marks a lost opportunity to advance legal scholarship.

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Rebecca J. Cook & Simone Cusack, *Gender Stereotyping: Transnational Legal Perspectives* (University of Pennsylvania Press, 2010), 288 pages, ISBN 9780812242140.

I have focused on domestic law almost the entirety of my career.¹ I was recently confronted, however, with how intimately the domestic law and international law might interact when I examined the United States case of *Town of Castle Rock v. Gonzales*,² regarding the enforcement of protective orders in domestic violence contexts. The facts of this case are also the basis for *Jessica Gonzales v. United*

101. *Id.* at 250.

102. *Id.* at 251, 300.

103. *Id.* at 329.

1. Early in my legal career, I did a brief stint at the law firm of Cleary, Gottlieb, Steen & Hamilton where I did some limited work on international securities matters.
2. *Town of Castle Rock v. Gonzales*, 545 U.S. 748 (2005). See Zanita E. Fenton, *Town of Castle Rock v. Gonzales: A Tale of State Enabled Violence*, in *WOMEN AND THE LAW STORIES* (Elizabeth Schneider & Stephanie Wildman, eds., forthcoming 2011).

States,³ submitted to the Inter-American Commission on Human Rights. Human rights Conventions, such as the International Covenant on Civil and Political Rights (ICCPR)⁴ or the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),⁵ may provide new insights and avenues to address the injustices presented and permitted by US domestic laws and the interpretations of these laws. Although the United States Supreme Court found no due process violation in the failure of the state to protect⁶ or even to follow up in the instance of a validly issued state protective order,⁷ international conventions could provide greater protection by requiring "due diligence" in fulfilling the state's obligation to protect its citizens. Writing about this case enlightened my perception of the divergences and commonalities between International Human Rights law and the domestic laws of the various nation states. Plainly, *Gonzales* is a case where the United States would benefit from an account of alternative

norms. The US should be a leader in creating new norms that better diminishes gender stereotypes rooted in concepts of women as property,⁸ instead of reaffirming those stereotypes.

*Gender Stereotyping*⁹ by Rebecca Cook and Simone Cusack directly addresses the global uses of gender stereotypes that perpetuate the subordinated status of women. The wisdom and guidance within its covers is of great value and relevance to the *Gonzales* case:

The general obligation to protect requires States Parties to take appropriate measures to address violations by non-state actors, such as the family, the community, and the market. The obligation to protect women against wrongful forms of gender stereotyping by non-state actors includes undertaking ongoing awareness-raising regarding biases and prejudices against women, applying sensitizing, preventive, and other appropriate legislations, policies, or programs, introducing effective procedures in response to complaints against non-state actors, and implementing

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3. *Jessica Gonzales v. United States*, Case 12.626, Inter-Am. C.H.R., Report No. 52/07, OEA/Ser.L.V/II.128, doc. 19 (2007).
 4. International Covenant on Civil and Political Rights, *adopted* 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* 23 Mar. 1976). The United States has ratified this Convention and, thus, it constitutes part of the supreme law of the land. U.S. Const. art. VI, cl. 2. Ratification of the ICCPR by the United States occurred in 1992; it also included five reservations. International Covenant on Civil and Political Rights, 138 Cong. Rec. S4781-01 (daily ed. 2 Apr. 1992). To maintain its credibility as a leader in global human rights matters, the United States should consider modifying or withdrawing the Reservations. See Kristina Ash, *U.S. Reservations to the International Covenant on Civil and Political Rights: Credibility Maximization and Global Influence*, 3 NW U. J. INT'L HUM. RTS. 7 (2005).
 5. Convention on the Elimination of All Forms of Discrimination Against Women, *adopted* 18 Dec. 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess., U.N. Doc. A/34/46 (1980), 1249 U.N.T.S. 13 (*entered into force* 3 Sept. 1981), *reprinted* in 19 I.L.M. 33 (1981).
 6. In *Deshaney v. Winnebago*, 489 U.S. 189 (1989), the Court denied that failure of the state to protect a child for whom it had knowledge of abuse, was a violation of any substantive right. *Town of Castle Rock*, *supra* note 2, determined that a state's refusal to enforce a valid protective order did not constitute a procedural due process violation.
 7. *Town of Castle Rock*, *supra* note 2.
 8. See generally Fenton *supra* note 2.
 9. REBECCA J. COOK & SIMONE CUSACK, *GENDER STEREOTYPING: TRANSNATIONAL LEGAL PERSPECTIVES* (2010).

appropriate remedies to redress wrongful forms of gender stereotyping.¹⁰

Gender Stereotyping is especially timely in that my "epiphany" is not unique. There seems to be a growing trend amongst lawyers trained in the United States, as well as in other nations, to make that connection not only apparent, but one that is effective for facilitating change. For example, there is an increasing number of lawyers, from a variety of locations, who work with the "Bringing Human Rights Home Lawyers' Network."¹¹ This project encourages United States compliance with international human rights law, including through the United Nations and Inter-American Human Rights systems and the development of strategies to use human rights law in US courts and legislatures.

Gender stereotypes are ecumenical and entrenched in astoundingly consistent ways across locations. They have had an integral role in the enduring nature of all forms of gender discrimination and subordination. Stereotypes may have different content in accordance with the relevant country and context, as well as pervade a cross-section of national life, in education, employment, health, family relations, or other areas of life. With this in mind, the elimination of gender discrimination and the role of state actors in this process is the central purpose of *Gender Stereotyping*. *Gender Stereotyping* draws on both

domestic and international law, and uses the judgments of the courts and human rights treaty bodies to suggest ways to eliminate gender stereotypes and, ultimately, women's inequality by utilizing the transnational legal process. *Gender Stereotypes* makes the connection and relevance between domestic law and international law in a fluid and productive manner. Its approach is one that attempts to fully address the complexities of global realities as international law tries to navigate differences in culture and history. It identifies both universal problems in the subordination of women, often through gender stereotypes, and focuses on one possible pathway for solutions, CEDAW, with a nuanced guide for its interpretation and use in multiple contexts, cultures and nations, as well as concrete ideas for implementation.

Cook and Cusack's focus on CEDAW as a starting point in the elimination of gender stereotypes is inspired. CEDAW was adopted in 1979 by the UN General Assembly.¹² It has continuing relevance through its Committee, which watches over the progress for women made in those countries that are the parties to CEDAW and makes recommendations on any issue affecting women to those countries. The Committee is able to work with nation states to meet the objectives of CEDAW. This means that the principles embodied by CEDAW can be more than empty propositions.

10. COOK & CUSACK, *supra* note 9, at 81(citations omitted).

11. Information available at http://www.law.columbia.edu/center_program/human_rights/HRinUS/BHRH_Law_Net. See generally, BRINGING HUMAN RIGHTS HOME (Cynthia Soohoo, Catherine Albisa, & Martha F. Davis eds., 2008).

12. CEDAW, *supra* note 5. The seven UN member states that have not ratified the convention are Iran, Nauru, Palau, Somalia, Sudan, Tonga, and the United States. Niue and Vatican City have also not signed it. The US is the only developed nation that has not ratified CEDAW. The US has signed, but not yet ratified it.

In fact, CEDAW touts several successes over recent years. Among these successes are Austria's enforcement of existing laws to punish femicide; the High Court of Bangladesh's issuance of a milestone decision issued in 2009 prohibiting sexual harassment, taking guidance from CEDAW's Article 11 on equality in employment; Kenya's revised interpretations of customary laws for inheritance to ensure gender in equality in compliance with Kenya's Constitution, the African Charter, and CEDAW; and Morocco's groundbreaking introduction of a new Family Code in 2004 giving women greater equality and protection of their human rights within marriage and divorce, as mandated by Article 16 of the Convention, as well as the introduction of reforms to the Labour Code, introducing the concept of sexual harassment in the workplace, changes to the Penal Code to criminalize spousal violence, among other reforms.¹³

These are just a few of the many successes, big and small, that CEDAW may claim over its thirty years in existence. Nevertheless there is much more to accomplish. With CEDAW's record of successes, it is the obvious choice as a vehicle for future progress. Cook and Cusack accurately evaluate the possibilities and untapped potential that lie within more effective use of Article 5(a) of CEDAW, which most directly identifies stereotypes as a problem. Article 5(a), properly interpreted and applied, has the

potential to exceed CEDAW's structure of equality in order to achieve substantive equality, reflected in real and meaningful changes in women's daily lives. "The obligation to eliminate gender hierarchies is established in article 5(a) of the Women's Convention, 'which requires States Parties to take all appropriate measures to eliminate prejudices and practices which are based on the idea of the inferiority or the superiority of either of the sexes.'"¹⁴

In a rather innovative fashion, Article 5(a) of CEDAW requires state parties to take appropriate measures to "modify the social and cultural patterns of conduct of men and women . . . [to eliminate] the idea of the inferiority or the superiority of either of the sexes [based] on stereotyped roles for men and women."¹⁵ In addition, the CEDAW Committee suggests in its General Recommendations that the elimination of the stereotypes is one important goal,¹⁶ most significantly in its General Recommendation No. 19.¹⁷ Specifically, it seeks the elimination of

[t]raditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. . . . the underlying consequences of these forms of gender-based violence help to maintain women in subordinate roles and contribute to the low level of political participation and to their lower level of education, skills and work opportunities.¹⁸

13. These and other success stories from the thirty year existence of CEDAW is available at <http://www.unifem.org/cedaw30/>.

14. COOK & CUSACK, *supra* note 9, at 73.

15. CEDAW, *supra* note 5, art. 5(a).

16. See, e.g., General Recommendation No. 3 (Sixth session, 1987); General Recommendation No. 19 (Eleventh session, 1992); General Recommendation No. 23 (Sixteenth session, 1997), available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/index.html>.

17. General Recommendation No. 19 *supra* note 16.

18. *Id.*

Both Article 5(a) and General Recommendation No. 19 for CEDAW emphasize the elimination of gender stereotypes as crucial to the broader goal of eliminating gender discrimination and subordination. However, notwithstanding its General Recommendations, the Women's Committee has not thoroughly defined the scope of this goal or given adequate guidance on how to achieve these goals.

While the Committee has stressed that addressing wrongful gender stereotyping is central to the elimination of all forms of discrimination against women and the achievement of substantive equality, it has yet to develop the general and specific nature of the obligations in the Women's Convention.¹⁹

Gender Stereotyping fills in many of the existing gaps and provides a guide on how to apply Article 5(a) effectively. It is comprehensive in its citation of cases and academic sources. It begins by explaining the cognitive psychology that is the basis for understanding how stereotypes are used in human cognition to organize information. From the perspective of Cook and Cusack, the eradication of the wrongful stereotypes concerning women is essential to the elimination of discrimination against, and the subsequent subordination of, women. The essence of their position is that treating women according to restrictive generalizations instead of their individual needs, abilities, and circumstances denies women their fundamental human rights and freedoms. Cook and Cusack draw from a large variety of cases and contexts providing examples of how laws, institutions, policies, and practices perpetuate

deleterious stereotypes affecting women by denying benefits to them, imposing burdens upon them, or degrading them. It too often seems that even with the invocation of international norms and constitutional principles that embody equal protection, stereotypes are unaffected. Examples of how these stereotypes manifest include laws preventing women from owning property or engaging in certain professions, and a lack of entitlement to protection from violence. Each of these instances have been successfully challenged and dismantled through the appeal to international human rights norms. Nonetheless, more work needs to be done.

Gender Stereotyping really proves its worth in the flexibility of its approach that allows for nuanced solutions for a range of individual realities and contexts. "Understanding the individual, situational, and broader contextual factors of a gender stereotype can help to explain how a stereotype contributes to the conditions for the social stratification or subordination of women."²⁰ That is to say, stereotype is neither a singular issue nor does it exist in a vacuum. Stereotypes take on different characteristics depending on race, national origin, class, and a range of other characteristics that change in accordance with different nations, cultures, and situations. Furthermore, the various contexts interact to produce additional means and forms of subordination. "A further challenge is to understand why and how gendered traits interact with other traits in compounded ways to cause hostile or false stereotyping. Compounded stereotypes often reflect

19. COOK & CUSACK, *supra* note 9, at 71(citations omitted).

20. *Id.* at 54.

false preconceptions about different subcategories of women, and evolve according to different articulations of patriarchy and power structures."²¹

This same flexibility and nuance in approach to identifying the perpetuating factors in the global subordination of women also inspires an interpretive approach to CEDAW that allows for different national, cultural, and social contexts to be addressed such that homogenization is neither the outcome nor the goal.

Dismantling stereotypes is difficult because they contribute to, and result from, the many different modes of patriarchy, power structures, and gender injustices embedded in societies. In order to overcome them, androcentric norms need to be decentered, and sexism needs to be replaced with positive valuation of those attributes, characteristics, and behaviors that are coded as feminine.²²

This book does something that is often overlooked in books of its kind. It gives concrete examples and ideas about how to put its interpretations of CEDAW and about dismantling stereotypes into practice. Cook and Cusack offer a progression of positive measures to be implemented by the various branches of governments to better carry out their obligations under CEDAW to eliminate stereotypes in both the public and private spheres. They suggest enacting legislation designed to counteract wrongful gender stereotypes, reforming existing legislation to eliminate state affirmation of harmful gender stereotypes, creating bench books and training

programs for judges, and constructing ethical guidelines to govern the conduct of lawyers and to prevent the reinforcement of wrongful stereotypes, to name a few.²³ As a consequence of training programs implemented for judges:

Training programs could also explore the development of ethical guidelines for lawyers who are engaged in litigation, analyze rules of evidence so as to prevent the application of wrongful gender stereotypes, and formulate judges' instructions to juries, where jury systems exist, cautioning jurors against the reliance on gender stereotypes.²⁴

In fact, the systemic remedies identified in *Gender Stereotypes* are precisely the type, along with individual remedies, sought by Jessica Gonzales in her human rights case.

The book concludes with the authors' approach for what should be included in General Recommendations for CEDAW with regard to stereotypes. In addition, it suggests additional interim measures:

One approach for the Women's Committee is the crafting of the general recommendation on articles 2(f) and 5(a) of the Convention. Another approach is to ensure that, where appropriate, new General Recommendations on other issue-specific provisions of the Convention, such as article 10 on education, articulate States Parties' obligations to eliminate wrongful gender stereotyping as they pertain to those provisions.²⁵

A nice final touch to the practical yet nuanced approaches expounded in

21. *Id.* at 30.

22. *Id.* at 24.

23. *Id.* at 82–84.

24. *Id.* at 83.

25. *Id.* at 137.

Gender Stereotypes is its acknowledgment that eliminating stereotypes and the corresponding discrimination and subordinating effects is an on-going project of which we must constantly be vigilant. "This book is only a beginning of a transnational conversation on how to eliminate wrongful gender stereotyping. It is by no means comprehensive. Its aim is to be suggestive of the kinds of debates among nations, among disciplines, and across sectors that are needed to address the pernicious effects of wrongful gender stereotyping."²⁶ An on-going conversation intended to find concrete solutions and a pathway forward is exactly what needs to happen.

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Yutaka Arai-Takahashi, *The Law of Occupation: Continuity and Change of International Humanitarian Law, and its Interaction with International Human Rights Law* (Leiden, Brill, 2009), 760 pages ISBN 978 90 04 16246 4.

The first line of the preface informs the reader that this book is the result of over six years of research and, indeed, the wealth of information and wide scope of material analyzed most certainly reflect a significant endeavor. Essentially, Yutaka Arai-Takahashi has written the most comprehensive analysis of the law of occupation in recent times. While also providing a historical overview on the development of the laws, the book raises many of the modern dilemmas in the law of occupation, such as the role of the United Nations Security Council in what are sometimes known as "transformative occupations." In addition to the chapters devoted directly to law of occupation, the book also includes substantive chapters on areas which, while directly tied into matters within the realm of the law of occupation under international humanitarian law, go beyond this sphere. This can be seen in the chapters on the extraterritorial applicability of international human rights law, and the relationship between the latter and international humanitarian law. This welcome approach incorporates and engages in a comprehensive manner with a range of issues that must be addressed in order

26. *Id.* at 173.