

Challenging (Neo)liberal Women's Rights and Opening Transformative Spaces in Southern Africa⁸

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This article critiques the dominant (neo)liberal feminist rights discourse in Southern Africa and argues for a retrieval of the more transformative discourse that Northern women's liberation movements of the 1960s and 1970s shared with African national liberation movements. It analyzes the evolution of strategy within Women and Law in Southern Africa since the late 1980s, from a legal centralist "women's rights as human rights" approach that focused on gaining individual formal rights, to a legal pluralist and transformative approach. It argues that within WLSA projects and other locations in Southern African women's activism, there are emergent transformative spaces in which women can collectively draw on their whole lived experience to generate new forms of consciousness and new strategies to challenge neoliberal structures in order to gain economic and gender justice.

"Women's rights as human rights" is the discourse predominantly used today by women activists in Southern Africa who seek to challenge existing gendered relations of power and privilege, a "choice" of discourse resulting from the confluence of many African, Northern and transnational events and influences in recent decades. These include the growth of a transnational human rights movement, the United Nations conferences on

⁸ This article has benefited greatly from comments by participants in the NorthEast Workshop on Southern Africa in October 2011, where I presented an earlier version, and from the thoughtful suggestions of Stichproben editors.

women from 1975 to 1995, the adoption by the African Union and later by the Southern African Development Community of conventions and protocols on women's rights, the adoption by Southern African governments of the Convention on the Elimination of All Forms of Discrimination against Women, and the incorporation of women's rights provisions into Southern African constitutions and laws—most notably into the post-apartheid South African Constitution.

Women's rights approaches have been called into question by some African critics who characterize "women's rights" as a Western import that conflicts with "African culture(s),"⁹ a critique hardened by the various campaigns from North America and Europe framed as using women's rights to "save" African women from their own cultures.¹⁰ The human rights system itself has been criticized as a regime of domination created by the capitalist powers after World War II, manipulated particularly by the United States, as it uses "human rights" claims to justify its own foreign policies while refusing to accept UN jurisdiction over its own government or nationals (Williams 2010). "Saving" African women and imperial uses of "human rights" come together in the U.S. partial justification of the invasion of Afghanistan as a way to liberate Afghani women and the expanded use by Secretary of State Hillary Clinton of the soft power of women's rights conditionalities.

The discourse of human rights was once deployed by radical national liberation movements in Africa as part of anti-colonialist and anti-apartheid struggles in their attempts to transform the consciousness of the dominated as a basis for transforming society. But that human rights discourse has been narrowed in meaning as liberation movements have been defeated or have come under neoliberal domination. Transnational women's rights discourse in its U.S.-influenced liberal individualist form is embedded within a larger discourse of neoliberal globalization, cast in a neomodernization narrative that promises, yet again, the economic and political "development" of African societies through the adoption of

⁹ Useful anthologies on "rights and culture" in Africa include An-Na'im (2002); Nnaemeka/Ezeilo (2005); Mamdani (2000); Wanyeki (2003); Zeleza/McConnaughay (2004).

¹⁰ The campaign against "female genital mutilation" is the most prominent and controversial example of "saving" African women from their own cultures. Critics have argued for supporting African women's own actions to transform cultural practices without demonizing (female) practitioners and for using the term "genital cutting." (See James/Robertson 2002)

capitalist relations and culture.¹¹ The (neo)liberal feminism of U.S. and transnational advocacy tends to focus on legal rights at the expense of attention to the immiseration of women and the growing inequalities among women within countries as well as between regions.¹² The “empowerment” of women then tends to be measured by the passage of laws and the signing of protocols, by the creation of formal gender machinery, and by the numbers of women in parliaments—all of which too often have little effect on the economic and gendered relations of power and privilege within which most women live their daily lives.¹³

At an ontological level, the transnational and African discourse of women's rights tends to carry within it an assumption of feminist “innocence,” of the belief that reconstructing gender relations in feminist terms will eliminate gender power relations, will be “purely emancipatory, that is, not generated by and generative of its own relations of noninnocent power” (Flax 1992: 457). In addition to expressing individualist cultural values congruent with capitalism, the neomodernization feminist narrative—like the human rights narrative itself—promises to “deliver us from domination or enable us to construct or otherwise exercise knowledge innocently” (Ibid.). This understanding of new forms of domination being constructed by discourses of emancipation, following from Foucault's analysis of the disciplinary power of “liberatory” reforms (1980), is generally absent from women's rights advocacy, in the North or the South. Such an understanding usefully calls attention to potential losses for women in new regimes of power that enforce individual rights at the expense of the mutuality of kinship and community obligations, potentially creating new conflicts and constraints in relations among women and men and children.

It is, therefore, crucial to understand the complexities and dangers in using a “women's rights as human rights” strategy. But rather than turn away completely from women's rights, activists and scholars could take a more nuanced position, one that challenges the neoliberal frame. A narrow focus

¹¹ For a dependency theory-based critique of 1960s modernization theory as applied to African women, see Van Allen (1976b). For critiques of the negative impact on African women of neoliberalist policies, including structural adjustment, see Chachage/Mbilinyi (2003); Thomas-Emeagwali (1995).

¹² See Englund (2006) for a trenchant, empirically-based critique of how a definition of human rights as “freedoms” can further disempower and immiserate the African poor, men as well as women.

¹³ See, for example, Gouws (2005), Hassim (2006).

on legal rights represents a restricted and ahistorical vision of political change. It leads easily into protracted debates about “rights” vs. “culture,” and a feminist discourse in which formal law is generally cast as the universal protector of women’s rights and African culture as the source of women’s oppression.¹⁴ A wider lens can allow for understanding rights law as itself originating in particular (Northern) cultures, and colonialism in which the rights discourse was first carried to Africa as itself destroying bases of female power in African societies.¹⁵ It can allow for an understanding that African kinship and customary law systems offer “rights” and protections that many women may wish to retain or regain, and that actual social change requires negotiations with customary law and with cultural patterns of gendered relations of power and privilege.

A wider lens can allow an acknowledgement of the potential advantage of shifting African women’s advocacy from the “weak, dependent language of needs to the more powerful and assertive discourse of rights” (Hodgson 2002: 6). But it can also enable us to recognize that although “rights” claims may offer African women agency that “needs” claims deny, a rights discourse also constructs “women” and “problems” and “solutions” in a particular way. The discourse of “women’s rights as human rights,” with its origins in “rescuing” African women from their own cultures—through international feminist campaigns against “genital mutilation,” sex trafficking or the sexual violence of civil war—potentially still carries within it a coded construction of women as victims of their own cultures. I will apply the “wider lens” by retrieving some of the history of transformative strategies, by tracing the development of Southern African feminist legal pluralism that incorporates negotiation with culture and custom, and by analyzing some of the emerging transformative spaces in Southern African gender activism.

Retrieving History: Transforming Consciousness as a Political Strategy

¹⁴For example, Banda (2005, 2006); Benedek/Kisaakye/Oberleitner (2002); Bonthuys/Albertyn (2007); Kerr (1993); Musa/Mohammed/Manji (2006); Semler (1998).

¹⁵Scully (2009, 2010) argues for a critical historical perspective on colonial (and post-colonial) law to be included in human rights projects that rely on the state, and suggests consideration of non-state strategies. For examples of the destruction of African female power by the colonial state, see Amadiume (1987); Hafkin/Bay (1976); Van Allen (1976a); Berger/White (1999).

Legal approaches to creating gender equality have become so ubiquitous that it may seem odd to question them. But this was not always so. In the 1960s, a transnational liberation discourse developed, drawing significantly on the ideas of Paulo Freire and Frantz Fanon.¹⁶ Movements in Africa and Latin America, as well as in Europe and the United States, developed processes and strategies to enable dominated groups to challenge "internalized oppression" and break the cultures of silence that reproduced relations of domination. Such ideas emerged within the "participatory democracy" of the U.S. New Left and the "beloved community" of the U.S. civil rights movement, and the radical women's liberation movement (WLM) that emerged from those movements appropriated and transformed those critical concepts and practices into consciousness-raising within women's "small groups." Three aspects of that movement are potentially useful for thinking about African transformative gender possibilities:

- (1) the consciousness-raising process that evolved drew theory and practice from women's own lived experiences in their own cultures, although at the time many activists did not recognize that their experiences were race-, class- and culture-bound;
- (2) the WLM emerged partially from male-dominated Left movements when women's concerns and leadership were rejected;
- (3) a feminist consciousness-raising process frequently developed within groups organized for other purposes.¹⁷

Marxist-led national liberation movements in Africa from the 1960s through the 1980s all put forth progressive visions of "the liberation of women through national liberation" and argued for the need to transform

¹⁶ Freire argued that "education" is never neutral, and advocated a "critical pedagogy" that enables the dominated to express their own understandings of relations of domination, break the "culture of silence" controlling them, and mobilize to transform society (2007 [1968]). Fanon analyzed the racialized psychopathology and inherent violence of colonialism (2001 [1961], 2008 [1952]). Their ideas were widely influential, both for scholars and for activists, from African and Latin American national liberation movements to U.S. Black Power in the 1960s, to the South African Black Consciousness Movement and the 1976 rebellion against "Bantu Education" and post-apartheid efforts to transform South African education (Kallaway 2001).

¹⁷ There were many threads within the women's movement, but these aspects were common. See Evans (1980) for WLM roots in the civil rights movement and the New Left; Koedt/Levine/Rapone (1973) for essays from the first years of the movement. This characterization also draws on my experiences in the New Left, the Civil Rights Movement and the WLM.

“traditional” customs seen as oppressive to women through “political education” in guerrilla camps, liberated areas, and underground movement structures.¹⁸ However, as African liberation movements succeeded and became governing parties, the promise of liberation for women seemed to fade. Political consolidation required governments to seek political support from local rural authorities, the male elders often most resistant to cultural and social change. Many women, urban as well as rural, also were reluctant to give up customs such as bridewealth, or lobola as it is commonly known in Southern Africa. Some women had become guerillas alongside men, but when the particular social locations created within the guerilla wars disappeared, women were not generally able to claim equivalent places within postwar social structures. Some stayed politically active; many returned to “the family”—that is, to activities constructed as “female” before the liberation struggle—child-rearing, domestic labor and farming.¹⁹ Liberation movements in lusophone Africa were almost immediately put under duress and armed attack by counter-revolutionary forces, funded by the Portuguese and then by South Africa in the case of Mozambique, and by the United States in Angola, which further reduced the political space and resources available for addressing gender issues.

The governments that were eventually created in Southern Africa by liberation movements, with their varying degrees of democracy, have generally retained formal commitments to the emancipation of women. In South Africa’s long history of struggle, women worked for decades and risked much to create a women’s presence and advocacy within the African National Congress (ANC) and its affiliated movements. Women’s organizing created the base of the mass democratic movement in the 1980s, and an unprecedented coalition of women across the political spectrum came together to push women’s issues into the Constitution and gender machinery into the governmental structures of the New South Africa (Hassim 2006, Walker 1991). South Africa and other post-liberation struggle countries have created gender machinery and electoral mechanisms, including proportional representation with quotas and “zebra” lists

¹⁸ FRELIMO (1974); Organization of Angolan Women (1984); Hubbard/Solomon (1995); Nhongo-Simbanegavi (2000); Chung (2006); Arnfred (2011). For this description, I also draw on my experiences in the Canadian-based Liberation Support Movement in the 1970s, and in ANC support work in Botswana in 1987 and 1988.

¹⁹Seidman (1984); Kruks/Wisner (1989); Urdang (1989); Hubbard/Solomon (1995); Wanzala (1995); Sheldon (2002); Arnfred (2011); O’Gorman (2011).

(alternating male and female candidates). Their rankings of percentages of women in parliament, for example, are among the highest in Africa (Inter-Parliamentary Union 2011), and South Africa has been much praised within the transnational human rights community for its progressive constitution. However, the potential significance of the history of the political, cultural, and armed struggle and of socialist commitments to the liberation of women seems to have largely faded from view in the transnational discourse of gender activism, replaced by women's rights as human rights. The conservative turn in U.S. politics in the 1980s left little room for radical transformative visions in public discourse, and the focus on women's legal rights that has so influenced transnational gender discourse came to the fore. In South Africa, with its more recent experience of political liberation from apartheid, there are continuing attempts to retrieve lessons from the history of the struggle and women's significant part in it, although much of the dialogue about gender even there focuses on rights, the narrowed vision of social change that is more easily pursued within neoliberal regimes.

Women's Rights and Legal Centralism: "Law" vs. "Culture"

The legal centralism still prevalent in women's rights discourse in and on Southern Africa constructs "law"—formal state law—as in opposition to "culture" or "custom," and as a preferable, if narrow, path for the resolution of gender conflicts.

As Anne Griffiths, a critic of legal centralism, puts it:

[In legal centralism] only what takes place in a legal forum (and not what is excluded) is the subject of investigation. Thus, the domain of law remains clearly demarcated from other spheres of life, and, as a consequence, focuses only on the issues that are regarded as pertinent ... in terms of its own internal rules and processes. (Griffiths 1997: 37)

Advocates within this paradigm usually acknowledge that, in Fareda Banda's words, "Law cannot always provide a solution to discrimination rooted in socio-economic and cultural dispossession" (Banda 2006: 13). In the colonially-constructed dual legal systems of state and customary law that persist in Southern Africa, "rights," and therefore "women's rights,"

are discursively located within constitutional and statutory law, so that the obvious solution to gender injustice seems to be to reform or broaden the formal law.

Southern African women's rights NGOs began their work from this strong legal centralist perspective—focusing on political strategies to lobby for reforming statutory laws and judicial strategies to challenge existing laws on constitutional and/or regional and international law grounds. Formal law—positive law—was seen as a neutral tool for social change, an “innocent” discourse that carried neither gender values within it nor created new forms of power relations. The “women's law” literature contains detailed descriptions of the history of legal and political struggles to reform laws, protocols, conventions and treaties, critical analyses of these national, regional and international instruments in terms of how well they actually encompass significant women's issues, and country and regional studies of women's attempts to negotiate the dual legal and judicial systems.²⁰ Banda in particular provides insightful analyses of law and women's rights in Africa (2005), and specifically in SADC (2006), but her strategy remains anchored within the legal centralist paradigm: advocating that all African states recognize women's rights in positive law and put them into effect.

Women's rights law contains a promise, both symbolic and practical, not only of equalizing women's legal status but of increasing women's protection from abuse, facilitating their access to resources and promoting their inclusion in policy-making. Some critics have suggested that male political leaders may sign protocols and charters, pass laws and create gender machinery more in order to gain international prestige and meet donor conditionalities than out of genuine commitment to women's equality. But even if passed for such instrumental reasons, gender law can provide a basis for criticism of government inaction by women's rights activists and their mobilization to press government to put into effect the provisions of services and access to resources it has promised.

However, even when a government is willing to act, “putting into effect” laws that are supposed to promote women's rights is complex, not least because cases need a claimant. Using constitutional challenges to overturn discriminatory laws may work effectively when women can exercise their

²⁰ For example, Banda (2005, 2006); Benedek/Kisaakye/Oberleitner (2002); Hermans (1999); Hodgson (2002); Kerr (1993); Musa/Mohammed/Manji (2006); Semler et al. (1998); and much of the work of WLSA, including Armstrong (1987); Stewart/Armstrong (1990); Ncube/Stewart (1995).

rights without challenging personal gendered relations of power. But when women attempt to claim newly legislated rights that conflict with kinship-structured gender power relations—access to land, child maintenance, or protection from domestic or community gender violence—considerable personal risk may be involved. Women may not report being raped because of potential social stigma, the fear of being seen as a “good” rape target, or rejection or violent abuse by their husbands. Even if the criminal justice system becomes more responsive to reports of domestic abuse, women may not report abuse because they fear only further abuse will result (One in Nine 2012). Even without the risk of violence, women may choose not to make a claim in court for maintenance or land or inheritance because they fear a loss of customary “rights” to those same social “goods” (Hermans 1999, Wanyeki 2003).

Legal Pluralism: Women and Law in Southern Africa (WLSA)

Legal centralism, and by implication the whole grand narrative of women's progress toward equality through the gaining of rights in positive law, has been destabilized by arguments for legal pluralism emerging from critiques by feminist legal scholars and by the problems encountered by women's rights NGOs in the field. New spaces for contestation have potentially emerged, as parties to debates about human rights law in Southern Africa have tried to deal with the plight of women trying to navigate the plural legal-judicial systems that are the legacy of colonialism. These systems contain conflictual interminglings of colonially codified “customary African law” with the colonially-created and influenced constitutional, statutory and common law systems and their contemporary evolutions. The “customary African law” was itself produced through collaborations between anthropologists hired by colonial governments seeking to control African subjects and African male elders seeking to regain control they were losing over young men and women under colonial capitalism (Chanock 1998 [1985]; Burrill/Roberts/Thornberry 2010; Molokomme 1994; Schmidt 1992).

In Southern African constitutions, this colonially-codified “customary law,” with its unacknowledged reassertions of male domination, is commonly privileged as the regulator of family relations. Judges in the formal courts thus often appeal to “codified” customary family law. Feminist advocates of

women's rights in Southern Africa have therefore historically followed the legal centralist strategy of trying to establish the primacy of rights in formal law over the authority of codified customary law.

Women and Law in Southern Africa (WLSA) started from this centralist perspective but has over time shifted its understanding of "the problem" and of how a more effective and transformative women's rights strategy might be developed. WLSA is a regional action-oriented research organization.²¹ WLSA social scientists and lawyers have worked extensively with Nordic activists in women's law and the social sciences, and from that base have moved to develop their own African-based research capacity, analysis and strategy.²² Much of WLSA's approach is informed by a feminist, Freirean perspective. WLSA activists use a research method that attempts to engage participants in a critical understanding of law and strategies to maneuver within it, so that women can formulate their own needs and goals based in lived experience. WLSA then uses the results of this research, reflected in WLSA reports, as a basis for its other activities, including advocating for legal, judicial, and policy changes; providing legal advice; running workshops; and assisting women in mobilizing to access basic resources (Stewart 1996; Mvududu/McFadden 2001; WLSA 1995, 1997, 2010).

Although WLSA started with a focus on educating women about the formal law, that focus was disrupted by their own research findings that many women were not using the judicial system—magistrates' courts and the rest of the hierarchical colonially and "modern"-created criminal and civil justice system—even when they understood the law. Instead they were using the customary law systems, the local courts in which living customary law continually evolves, and the kinship/family systems of dispute resolution that underlie and overlap with those customary law systems. WLSA came to understand "customary law as utilized outside the courts as a set of principles that guided dispute resolution rather than as the rigid set of rules that were being applied by the superior courts" (Stewart 1996: 170). Women with problems with marital violence, lack of support in marriage, maintenance for children, inheritance, and other claims that impact family

²¹ Founded in Zimbabwe in the late 1980s, WLSA has operated in Botswana, Lesotho, Malawi, Mozambique, Swaziland, Zambia and Zimbabwe.

²² WLSA from its inception until recently was almost wholly funded by DANIDA, with additional funding from NORAD. See Arnfred/Petersen (1996) for examples of this collaboration.

relations would go first to the extended family, then to the customary court, then to the "chief," and if they still wanted to pursue a case not yet resolved, they would finally go to the magistrate's court. WLSA describes the complex and contradictory legal systems faced by women as a maze that deters all but those with great determination and significant financial and familial resources from pursuing formal legal claims (Armstrong et al. 1992; Armstrong 1992; WLSA 1992, 1997, 2001).

The contradictions created for women by statutory law and its judicial application are clearly revealed in WLSA's analysis of maintenance law, in the context of the still common institution of lobola (bridewealth), a payment from the family of the new husband to the family of the wife, traditionally in cattle, but now often commodified. What payment of lobola means in practice is subject to debate within the women's law discourse, but there is agreement that it conveys "ownership" of children born to the wife. If there is a divorce, for whatever reason, including repeated violence against the wife, by customary practice she is likely to lose custody of the children when they reach a certain age, no matter what the statutory law says (WLSA 2002). A woman may choose, therefore, to try to resolve marital problems within the extended family, or to "resolve" conflict by following "traditional" expectations of an obedient, quiet wife, preferring, in WLSA's perspective, peace over rights (WLSA 1997, 2001).

The cultural construction of "ownership" of children also impacts women who have children without being married, as increasing numbers of women do in Southern Africa, and as many as 50% of women do in Botswana. The WLSA Botswana study describes the trap created for unmarried women with children by the interactions of customary and statutory law, specifically the reformed Maintenance Law and its judicial application (WLSA 1992). Under the new Maintenance Law, as judicially applied, an unmarried woman should use the law to claim maintenance from the child's father. The judge understands the Maintenance Law as enabling the woman to be independent of her own father, upon whom she might otherwise have to depend for support—that is, constructing her as a legal adult. The judge sees a maintenance order as creating no new relationship between her and the child's father or between the children and their father, as the court has ordered payment and the father is answerable to the court. Custom, however, differs. The woman's father may offer support for his grandchild as a way of allowing his daughter to keep her child, and him his

grandchild, as his support retains the child as a member of his lineage. He may also see his support as providing protection for his daughter from potential physical abuse. Custom would construe the daughter's claim for maintenance for a first child from the child's father as a payment that transfers ownership of the child to the father's lineage, and custody of the child to the father or his lineage when the child reaches a certain age. Feminist legal activists who enter this situation thinking to help the mother "understand" the law and use it to achieve "independence" may at best be ignored, and at worst, create even more difficult situations—potential loss of their children, for example—for the women they are trying to help.

WLSA's grounded research thus led to a focus on the "doubled" nature of family/kinship relations, as a location of women's inequality and oppression, as emphasized in Northern feminist critiques, but also as a source of support and belonging, as strongly emphasized within African social constructions (Arnfred 1996). WLSA researcher-activists therefore adopted a layered strategy that tries to extend and deploy legal rights when possible, to recognize existing limitations of kinship regimes of power, and to try to shift those relations over time, both in customary law and in daily practice.²³ They point to the relative positions of power that women may attain with age: the powerless daughter-in-law can, with time and the production of sons, become the mother-in-law with authority and status. They recognize the claims on the support and protection of others that women may be able to claim. They then try to create a grounded analysis of actually existing family regimes of power and support in order to see how and where women can find space to assert greater control over their own lives (Mvududu/McFadden 2001; WLSA 1995, 1997).²⁴

This more critical stance toward "women's rights" also led WLSA—in dialogue with Nordic rights scholars—to an understanding of supposedly gender neutral human rights and the international, regional, and national laws that employ "gender neutrality" as in actuality still constructing human rights as "male," whatever the intentions of those who campaigned for "women's rights as human rights."²⁵ WLSA activists thus came to see the Convention on the Elimination of All Forms of Discrimination against

²³ See Ndulo (2011) for a related legal argument that judges should act to bring international standards of gender equality into customary living law.

²⁴ Tsing's (2005) concept of "engaged universals" that travel and through "friction" create new particular forms of rights or freedoms is useful for thinking about the WLSA process.

²⁵ See Hodgson (2002) about the intentions of activists to "degender" human rights.

Women (CEDAW), the iconic convention on women's rights, as assuming that "the problem" is to make women "be men" (WLSA 1997: 21). WLSA argues that women cannot "be men" in a system whose underlying regime of gendered relations of power discursively contains and constrains them within male-dominated kinship relations. WLSA points to the injustice embedded in "gender neutral" laws and policies, particularly those concerning reproductive health and rights, and those that relate to mothers and their children.

WLSA therefore has turned to support for "gender relativity" rather than "gender neutrality"—the adoption of laws and policies that reflect the reality of different needs based in both biology and social constructions, particularly the different needs created by the social construction of (biological) motherhood and the "mother-child nexus" within and outside marriage, and the social constructions of (biological) male and female sexuality that make women, not men, vulnerable to heterosexual violence and coercion, a particularly crucial perspective given the high prevalence of HIV/AIDS in Southern Africa and the higher infection rates among young women compared to young men (WLSA 2007). Gender relativity also allows for a recognition of the specificity of women's lived experience, the sources of power and support that can be claimed within existing gender regimes. Gender relativity creates a space in which African women can construct differently powerful selves, drawing not on male constructs of power and autonomy, but on historical and contemporary narratives of African female power, including the power of mothers, narratives that are not available to (most) Northern women and not generally acknowledged within the discourse of women's rights (Van Allen 2009).

As WLSA argues, women have been rebelling against control by family regimes of power for a long time. The 19th century imposition of the migrant labor system in Southern Africa began the weakening of kinship controls. Since then young men and young women have been grasping the opportunities offered by social disruption and transformation and new forms of support to escape the controls of male and female elders. Young women have been fleeing intensified agricultural labor as well as arranged marriages and abusive husbands, choosing to have children outside marriage, and seeking alternative sources of support where they have been able to find them, from Christian churches to capitalist wage labor

(Bozzoli/Nkotsoe 1991; Chanock 1998; Mookodi 2004; Schapera 1947; Schmidt 1992).²⁶

Some women are now using wage labor and reconfigured female-based kin networks to escape the control by husbands perpetuated in customary and statutory marriage law in much of Southern Africa (Mookodi 2004). Young women seem, in some places, to be choosing to create families based on the mother-child nexus, linked more strongly to their own mothers than to the fathers of their children, thereby escaping the controls over person and property embedded in marriage, but at the same time risking the economic marginalization of (often) low paid wage labor (Van Allen 2000). They also, ironically, sometimes face an increase in male violence, from the high levels of sexual violence in South Africa, with its violent political history, to the emergence of the femicides that the media label “passion killings” in nominally peaceful Botswana. The emergence of these forms of violence into public view indicates the levels of stress and disjuncture in contemporary gender relations and the unwillingness and/or inability of Southern African governments to respond (Bonthuys/Albertyn 2007; Moffett 2006; Seidman/ Bonasa 2010; Mookodi 2004).

WLSA is looking for ways to help women cope with these stresses and disjunctures through sophisticated use of the plural legal system, and at the same time find ways through that system to new familial and community configurations in which women—poor women, the majority of African women—have much greater access to social and economic resources and control over their own bodies and lives. Within structures originally envisioned as helping women to claim legal rights, a new understanding of using law as a resource has created locations in which women can bring together their “whole selves”—their whole lived experience—to mobilize against poverty and its neoliberal perpetuation at the same time as they act against gendered relations of power.

²⁶ This is not to suggest that the migrant labor system and successive forms of capitalist restructuring of African social relations provided only “opportunity”—within the migrant labor area of Southern Africa, the imposition of the system caused great suffering and seriously weakened the reciprocal bonds of support that bound women and men together in settled lives, as Africans were constructed as “native labour” for white capitalism. But individuals did also take advantage of the possibilities offered.

Transformative Spaces and Gender Struggle

Frustration with the limitations of women's rights is producing new openings in Southern African feminist discourse. In South Africa, with its long history of political struggle and the continuing, ever growing, militancy of the new social movements, there are continuing critical debates about the ANC's (lack of) commitment to gender equality. This creates a discursive space for consideration of the contemporary significance of the history of women's struggles and an opening to new forms of creating change today, as reflected in the words of Nomboniso Gasa, former head of the South African Commission on Gender Equality, and editor of a collection that attempts to write South Africa's history from an overtly feminist perspective (Gasa 2007):

We look to history in an attempt to understand what its legacies are in the present, to explore the multiple levels of what is remembered and understood, and most importantly to make sense of the complex narrative and lived experiences of South African women today. What lessons are to be found there, which will help us to address the dilemmas and stubborn challenges of today? What can we learn from the courage of yesterday's pathfinders? ... A theme that runs through all the periods of women's struggle in South Africa from the resistance against carrying identity documents in the late 1800s to the 1913 march and protests in Booemfontein, [to] Potchefstrom in the 1920s and the 1956 march to Pretoria—is that *women exercised their own agency*. (Gasa 2011: n.pag., emphasis added)

Although we are in a different historical moment, dealing with the destabilizing and often dispiriting impacts of capitalist globalization, not the sometimes exhilarating if also vertiginous conditions of liberation struggles, we can draw inspiration from women's history. The continuing discourse in South Africa asks for a renewed interrogation of women's experiences in liberation movements, what the processes were that seemed to open new possibilities for changing gendered relations of power, how the spaces for exploring those possibilities collapsed, and what spaces and processes need to be (re)created to force actual change on the ground—new forms of

gender power relations following new African feminist visions, created from African women's experiences of social connection.

In understanding the processes taking place, those aspects of the U.S. women's liberation movement identified above can be useful: consciousness-raising that draws theory and practice from women's lived experiences, the need to form autonomous women's organizations when women's concerns and leadership are rejected in male-dominated Left formations, and the ways in which transformative processes develop within groups organized for other purposes. Rather than looking only to formal legal and political arenas, we might gain a richer understanding of how cultural change is actually taking place by looking for the emergence of new transformative spaces—the small spaces where women come together to share experiences, analyze them and devise strategies to confront and engage women and men in recreating new forms of gender power relations. Transformative spaces are continually being created, as discussion groups and workshops and activist groups dealing with gender issues proliferate in Southern Africa, under various sponsors and rubrics, in universities and in communities, below the radar of officially recognized “empowerment” of women as measured by the Millennium Development Goals.²⁷ Many of these spaces may be brought into being by agents with other agendas, as NGOs fund workshops intended to train local women, and sometimes men, according to externally designed agendas. But whether through acts of reconceptualization and reorientation by local “trainers,” or through the subversions and cultural negotiations of participants, such spaces can sometimes be transformed into arenas in which African women can exercise their own agency to create their own futures. New spaces also appear to be emerging within the new social movements that have arisen in response to South Africa's turn toward neoliberalism and the consequent salience of service delivery issues, as women in some organizations react to male

²⁷ On such “spaces” in women's studies classes and the Southern African network of feminist faculty centered in the Gender Studies Institute, University of Cape Town, see Ampofo/Arnfred (2010). Godisang Mookodi and Leloba Molema of the University of Botswana faculty contributed accounts of such “spaces” in their classes and GSI/UCT-sponsored projects at UB (personal communications 2011, 2012).

leaders' domination and form their own women's groups, in which gender issues are brought together with anti-poverty politics.²⁸

In South Africa, gender activists confront renewed assertions of "traditional" male authority over women and increasingly high levels of violence against women. Moffett argues that the justificatory discourse of contemporary gender violence in South Africa draws on apartheid legitimations of violence "against the disempowered, not only in overtly political arenas but also in social, informal and domestic spaces" (Moffett 2006: 129). Seidman and Bonasa characterize the high levels of violence against women as indicating men's reassertion of the control over women they lost during the anti-apartheid struggle, a loss men may see expressed in the new gender friendly Constitution, laws and government statements, regardless of the lack of implementation that feminists lament. They suggest that reasserting male identity through individual control over individual women by violence is much more available to young men than effectively claiming the economic gains they hoped to see in the New South Africa, with the social dislocations created by the HIV/AIDS epidemic exacerbating gender tensions, an analysis that links the neoliberal policies of privatization to increases in gender violence (Seidman/Bonasa 2010). Organizing against gender violence thus becomes a primary location for feminist political struggle, and new potentially transformative spaces are emerging within that struggle as they are within WLSA's projects, enabling women to draw on their lived experiences in ways that link gender and class, sexual violence and poverty.²⁹

Women's rights strategies can push gender issues into public discourse, and constitutions and laws can legitimate feminist demands for change—even though this is somewhat problematic in South Africa at present with Jacob Zuma as President (Hassim 2009). However, what is needed is a transformative politics that can use rights when rights are useful, but can also promote cultural transformation through changes in gendered consciousness and action. If we want to understand potential transformations of gender power relations in Southern Africa—of women's

²⁸ Jolaosho (2011) provides an empathetic and thought-provoking analysis of the 2007 organization of an autonomous women's group, Remmoho ("We are together"), by women members of Johannesburg's Anti-Privatization Forum.

²⁹ Such spaces and processes can be found within the coordinated projects of the Curriculum Development Trust (CDP) and the One in Nine Campaign against rape (CDP 2011; One in Nine 2012; Seidman /Bonasa 2010), as analyzed in Van Allen (2012).

consciousness and the creation of new visions, new imaginaries, and new potential bases for cultural and economic struggle—we might do well to look within the small, safe spaces, where women are recreating themselves.

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