WHAT IS TO BE DONE?

*José E. Alvarez**

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Vasuki Nesiah's survey of select feminist critiques of liberal theories of international law keeps the principal target–those liberal theories–off stage. Despite its subtitle ("Feminist Critiques of Liberal Theories of International Law"), her book chapter is not a comprehensive survey of feminist critiques or of liberal theories of international law.[1] Nor does it try to show how or why the leading international treaty to advance the rights of women–the Convention to Eliminate All Forms of Discrimination Against Women (CEDAW)–fails to do so. It does not tell readers what is to be done about the failings of that or other liberal human rights regimes. Anyone looking for a manual on how best to transform international law into a tool for improving the lives of the one half of the world's population that continues to experience acute forms of discrimination and precarity needs to look elsewhere. Nesiah's essay does not aspire, as did Lenin's classic 1902 pamphlet bearing the title of this essay, to turn armchair theorists into professional revolutionaries – in this case, to overturn the patriarchy (and not merely to advance the interests of the working class).[2] Although Nesiah's title promises a response to Max Weber's concern that rational forms of social organization built on the accumulation of profit have robbed us of enchantment,[3] it leaves readers to divine how best to "re-enchant the world."

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1. Vasuki Nesiah, *'Re-canting the World': Feminist Critiques of Liberal Theories of International Law*, in OXFORD HANDBOOK OF WOMEN AND INTERNATIONAL LAW (J. Jarpa Dawuni, Nienke Grossman, Jaya Ramji-Nogales, & Hélène Ruiz Fabri eds., 2025) (indicating that "liberal feminist traditions are not directly addressed in this chapter").

2. *See, e.g.*, Rob Sewell, *Introduction* to VLADIMIR LENIN, WHAT IS TO BE DONE? (1902).

3. MAX WEBER, *Science as a Vocation*, *in* FROM MAX WEBER: ESSAYS IN SOCIOLOGY 129, 155, (H.H. Gerth & C. Wright Mills eds., 1946).

Nesiah's essay is instead a tightly focused synthesis of particular lines of critique advanced by scholars writing in "more radical and historically marginalized traditions,"[4] principally Zeina Jallad, Sherry Pictou, and Rahul Rao. Nesiah situates the work of these and other scholars within three critiques of liberal international law that she acknowledges are broadly familiar to readers of feminist theory, namely: (1) critical assessments of international human rights' reliance on the "universal" rights of individuals shorn of wider connections to race, class, or other communal attributes or associations; (2) historical correctives to international law's "redemptive" progress narratives; and (3) critical re-evaluations of the ways international regimes reproduce capitalism's structural injustices. Her chapter praises the "plural traditions of heterodox feminisms" that she surveys and draws out their connections to scholarly movements such as Indigenous studies, TWAIL, Critical Race Theory, and Queer Theory.[5]

In this comment, I defend the value of Nesiah's abstract theoretical work while attempting to address some of what it leaves out. I show how some scholars—including some mentioned by Nesiah—have applied her three critiques to the CEDAW regime. I conclude that the CEDAW Committee's evolving jurisprudence remains broadly subject to those three critiques but still has the potential to generate transformational change.

I. CEDAW AND THE POLITICAL SUBJECTIVITY CRITIQUE

From its earliest days, CEDAW has been criticized by liberal feminists (and not only those writing in "more radical" traditions) for focusing on, as do most traditional international human rights instruments, the protection of individuals. The path-breaking 1991 AJIL article cited by Nesiah which introduced U.S. readers to liberal feminist critiques of international law was among the first to take aim at CEDAW's political subjects and individuals' ostensibly "universal" rights. Charlesworth, Chinkin, and Wright argued that this emphasis: ignores demands for collective rights; deflects attention from the realities of power; presumes the importance of civil and political rights over economic, social, and cultural oppressions; and overlooks the problem that some individual rights, such as the right to freedom of worship, may be detrimental to women.[6] Nine years later, two of those authors' equally path-breaking book, *The Boundaries of International Law*, deepened this

4. Nesiah, *supra* note 1, at n. 5.

5. *Id.* at 3.

6. Hilary Charlesworth et al., *Feminist Approaches to International Law*, 85 AM. J. INT'L L. 613, 618–19, 634–38 (1991) (noting that relying on formal rights extended to individual men and women also leads to a felt need to 'balance' those rights such that, for example, right of women to be free from violence in home needed to be counterbalanced with right of (mostly) men to enjoy their right to occupy marital home).

critique. That book argued that international law's focus on protecting the rights of individuals reinforced public/private distinctions, contributed to a limited understanding of "equality," and ignored the "underlying structures and power relations that contribute to the oppression of women."[7]

Since then, many other scholars have challenged, from a variety of feminist perspectives, the transformational promise of CEDAW because its text seems to elevate the individual autonomy, formal equality, equal citizenship, and democratic participation of cis-women modeled on the presumptive demands of liberal women in the West.[8] Sylvia Tamale, a scholar cited by Nesiah, has issued a harsh indictment of CEDAW along these lines. Building on the work of Chandra Mohanty, Tamale challenges the "universalizing" ideas that, in her view, have been wrongly exported to diverse African realities by way of instruments like CEDAW. Tamale argues that the principle of equality, mentioned 22 times in CEDAW's text, is in reality foreign to Africa. "[M]ost African women know that 'gender equality' is a mirage, a 'pipe dream,' that needs to be unpacked," she writes; "an abstract alien concept" deployed selectively without yielding "any significant results for women" in either the Global North or South.[9] Echoing Charlesworth and Chinkin, Tamale argues that CEDAW's equality principle elevates atomistic individualist values over collective ones, ignores group-based oppressions, essentializes the idea of men and women, presumes that the measure of equal treatment is the standard male, and privileges already privileged Western women who have the resources to access the underlying legal rights.[10] She adds that CEDAW's reliance on the standard "liberal" human rights paradigm and insistence on remedying individual cases of discrimination cannot achieve the requisite change in society.[11] Tamale agrees with Ratna Kapur's "blunt" assessment that "on some level, our rights-related liberal projects are on life support and further palliation is pointless."[12]

The contention that the CEDAW's efforts to promote equality are a mere palliative fits well with Nesiah's summation in her Part I. The political subjectivity critique, she argues, demonstrates the limits of human rights legal discourse and the need to turn instead to "nonjuridical" political participation, including "potent" extremes such as the self-immolation of the Tunisia street vendor which opens Part I.

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7. HILARY CHARLESWORTH & CHRISTINE CHINKIN, THE BOUNDARIES OF INTERNATIONAL LAW: A FEMINIST ANALYSIS 230–31 (2000).

8. *See*, *e.g.*, Darren Rosenblum, *Unsex Cedaw, or What's Wrong with Women's Rights*, 20 COLUM. J. GENDER & L. 98 (2011); Nicola Lacey, *Feminist Legal Theory and the Rights of Women*, *in* GENDER AND HUMAN RIGHTS 13, 19–22 (Karen Knop ed., 2004).

9. SYLVIA TAMALE, DECOLONIZATION AND AFRO-FEMINISM 131–32 (2020).

10. *Id.* at 133–34, 137.

11. *Id.* at 138.

12. *Id.* at 130 (quoting RATNA KAPUR, GENDER, ALTERITY AND HUMAN RIGHTS: FREEDOM IN A FISHBOWL, 172 (2002)).

This echoes claims by critical scholars like David Kennedy and Martti Koskenniemi that reliance on instruments like the CEDAW impede feminist progress by deflecting emancipatory energy by directing revolutionary political action into litigious efforts to secure narrow legal remedies that, at best, ameliorate select instances of discrimination.[13]

II. CEDAW AND THE HISTORY CRITIQUE

The CEDAW regime has also been subject to forms of rehistoricization heavily indebted to Nesiah's critique in Part II. A considerable number of feminists have challenged liberal claims that the entry into force of CEDAW marked a landmark achievement in refranchising half of the world's population. As Nesiah suggests, these scholarly challenges have been grounded in work by TWAILERs like Makau Mutua as well as those who have produced critical historical accounts of international law, such as Samuel Moyn, Anne Orford, Jessica Whyte, and Ntina Tzouvala.[14] These narratives have put CEDAW's reliance on individual rights in a broader context.

A number of feminists, including some mentioned by Nesiah, have argued that CEDAW, like the other human rights treaties criticized by Mutua, have reinforced imperial legal projects to "save" Third World women.[15] Chandra Talpade Mohanty, for example, critiques what she sees as CEDAW's "Eurocentric" reading of history—which elevates gender as opposed to race, class, sexual preference, or nationality as the primary reason for women's subordination. She contends that this perpetuates a profoundly ahistorical, monolithic image of "Third World women" as always and everywhere victimized by their unrelentingly oppressive and uniformly patriarchal cultures, while ignoring patriarchy's manifestations in the so-called First World.[16] Consistent with the history

13. *See*, *e.g.*, DAVID KENNEDY, THE DARK SIDES OF VIRTUE: REASSESSING INTERNATIONAL HUMANITARIANISM 11–12 (2004); *see also* Martti Koskenniemi, *The Effect of Rights on Political Culture*, *in* THE EU AND HUMAN RIGHTS 99, 100–01 (Philip Alston ed., 2000) (arguing that once rights become institutionalized "they lose their transformative effect and are petrified into a legalistic paradigm," thereby constraining politics).

14. Makau Mutua, *Savages, Victims, and Saviors: The Metaphor of Human Rights*, 42 HARV. INT'L L. J. 201 (2001); Samuel Moyn, *A Powerless Companion: Human rights in the Age of Neoliberalism*, 77 L. & CONTEMP. PROB., 147 (2014); JESSICA WHYTE, THE MORALS OF THE MARKET: HUMAN RIGHTS AND THE RISE OF NEOLIBERALISM (2019); NTINA TZOUVALA, CAPITALISM AS CIVILIZATION: A HISTORY OF INTERNATIONAL LAW (2020).

15. *See*, *e.g.*, Lacey, *supra* note 8, at 29 (arguing that CEDAW treats women as "victims" needing special protection); Rosenblum, *supra* note 8, at 169 (expanding the victim/savior analogy by arguing that CEDAW's insistence on a male/female binary generally depicts women as victims and men as perpetrators, thereby marginalizing those outside CEDAW's protection, including gay and heterosexual men and transgendered persons).

16. CHANDRA TALPADE MOHANTY, FEMINISM WITHOUT BORDERS: DECOLONIZING THEORY, PRACTICING SOLIDARITY 38–39 (2003); *see also* RATNA

critique, Mohanty seeks to "decolonize" feminism (and CEDAW) by "demystifying" capitalism.[17] She argues that gender inequalities cannot be addressed without challenging capitalism's international division of labor. The root causes of women's subordination, she contends, differ among nations but must take into account the histories of racist and colonial domination and their present-day manifestations and legacies.

Others have echoed the contention that liberal human rights regimes like CEDAW ignore the complex (and heterogeneous) underlying "root causes." Susan Marks contends that UN human rights expert bodies like the CEDAW Committee avoid political controversy by condemning individual rights violations without asking why they occur. She contends that such expert bodies halt their investigation of "root causes" too soon; they identify the victims and the perpetrators but not, for example, the beneficiaries of the underlying acts.[18] These failures, she argues, lead such regimes to rely on technical fixes to correct acts of discrimination but not society-wide remedies that might address the historically grounded (and usually economic) structures that systematically reproduce them. Marks argues that human rights committees fight the "symptom" rather than the "actual disease"; expert committees like CEDAW do not, in short, raise hard political questions about whether the policies deployed by states or market actors are tools of class or economic exploitation.[19]

As this criticism suggests, the history critique challenges the progress narrative on which CEDAW's efforts to promote gender equality is built. But it also challenges the accuracy of the stories of discrimination told by the CEDAW Committee when it issues Views in response to communications under the CEDAW's Optional Protocol. Consider, as an example, *Cecilia Kell v. Canada*.[20] In that case, the CEDAW Committee upheld some of the claims by an Indigenous Canadian woman who had been arbitrarily evicted from a jointly owned house by her abusive husband but had been rejected by Canadian courts. The Committee found that Canada had failed to prevent its public authorities from engaging in discrimination and had failed to respect the equal rights of both spouses to the family home in violation of CEDAW's Arts. 2(d-e) and 16(1)(h) but rejected claims under other parts of the Convention.[21]

KAPUR, EROTIC JUSTICE: LAW AND THE NEW POLITICS OF POSTCOLONIALISM 5 (2005) (critiquing "partiality" of 'universal' rights and cultural assumptions of Western feminists who presume that they speak for globe).

17. *See* MOHANTY *supra* note 16, at 139–68; *see also* SUNDHYA PAHUJA, DECOLONIZING INTERNATIONAL LAW: DEVELOPMENT, ECONOMIC GROWTH AND THE POLITICS OF UNIVERSALITY (2011).

18. Susan Marks, *Human Rights and Root Causes*, 74 MOD. L. REV. 57, 70,76 (2011).

19. *Id.* at 72–73.

20. *Cecilia Kell v. Canada*, CEDAW/C/51/D/19/2008 (CEDAW Comm. 2012).

21. *Id.* The Committee did not uphold violations of CEDAW Articles 14(2)(h), 15 (1), (2) (3), and (4). For a discussion of the case, see, e.g., JOSÉ E. ALVAREZ & JUDITH BAUDER, WOMEN'S PROPERTY RIGHTS UNDER CEDAW, 54–59, 171–73, 189, 199,

Scholars engaged in rewriting international judgments in a more feminist vein have used the View issued by the CEDAW Committee in that case to highlight its shortcomings by fully exposing "the multiple ways in which the law marginalized and silenced" an Indigenous woman while failing to give meaning to (or enforce) the rights to housing, to conclude a contract, or to own property contained in the Convention. Their rewritten version of *Kell v. Canada* seeks to correct many of the deficiencies highlighted by Nesiah's history critique. It seeks to provide a more accurate account of procedural failings embedded in the Canadian legal system that systematically dispossess rural women while also fleshing out the intersectional discriminations to which Kell was subjected by her partner, her community, and Canadian courts.[22] The rewritten *Kell* also highlights how Kell's status as an "Aboriginal parent" made her especially vulnerable to the seven guarantees that, in the view of the authors of the revision, should have been read into the Convention's right to housing, namely: security of tenure; availability of certain services; affordability, habitability, accessibility, and locational concerns; and cultural adequacy.[23]

Consistent with the "history critique" in Nesiah's Part II, the re-engendered View in *Kell* treats domestic violence as an internationally illegal forced eviction. It also finds that Canada's failure to protect Cecilia Kell was deeply connected to her cultural identity and not merely her status as female.[24] That revised View would have the CEDAW Committee adopt a more expansive, fluid approach to intersectional discrimination that would, consistent with Pictou's prescriptions for change, resist, rather than entrench, "colonial injustices."[25] As one scholar put it, *Kell v. Canada*, as radically rewritten, comes closer to embracing "transformational equality" by: breaking the cycle of disadvantage not only for the individual communicant but for collective women, accommodating difference through structural change, and promoting social inclusion and participation.[26]

III. CEDAW AND THE STRUCTURE CRITIQUE

The CEDAW regime has been no less a target of critics of "neo-liberal globalization" and international lawyers' penchant for pursuing the "civilizing mission" as other international legal institutions.

219–25, and 346 (2024).

22. Lolita Buckner Inniss et al., *Cecilia Kell v. Canada, in* FEMINIST JUDGMENTS IN INTERNATIONAL LAW 333, 334, 338–39, 344–45 (Loveday Hodson & Troy Lavers eds., 2019).

23. *Id.* at 355 (drawing on the ICESCR Committee's jurisprudence).

24. *Id.* at 353–58.

25. Nesiah, supra note 1, at 10 (citing Pictou).

26. *See* Megan Campbell, *CEDAW and Women's Intersecting Identities: A Pioneering New Approach to Intersectional Discrimination*, 11 DIREITO GV L. REV. 479, 493, 498–99 (2015).

Mohanty's efforts to "decolonize" international law includes a plea to liberal feminists to stop promoting—as CEDAW does—"financial equality" between men and women grounded in "U.S. capitalist values" of individualism and "profit, competition, and accumulation."[27] She argues that capitalism is "seriously incompatible with feminist visions of social and economic justice."[28] Her vision of "socialist feminism" is critical of "economic reductionism" that presumes all Third World women have comparable desires to be empowered agents of the free market. Consistent with the structural critique described by Nesiah, Mohanty and others are hostile to the "consumerist and corporatist values" inherent to the "neo-liberal free market" and prescriptions to "economically empower" women pursued by its agents, such as the World Bank.[29] The propositions that, like the World Bank, CEDAW instrumentalizes gender equality to enable women to own property (including the marital home) to become not only producers of agricultural products but owners of plots of land, and to secure equal access to credit in order to become entrepreneurial managers of small businesses, all seem consistent with the Convention's obligations to respect various forms of property.[30] It is not hard to see these criticisms as connected to a broader literature that considers all UN human rights instruments to be sub-rosa mechanisms for "civilizing" efforts to export capitalism along with models of "good governance."[31] On this view, the CEDAW regime poses no threat to the structural adjustment policies pursued by international financial institutions but is, on the contrary, consistent with those institutions' presumptions that the enemy of intolerance (including prejudices against women) is economic growth and that there is a virtuous cycle between securing gender equality and the "emancipatory potential of market capitalism."[32]

In the hands of other adept scholars like Anne Kent and Daniel Del Gobbo, the three critiques surveyed by Nesiah become an intertwined rebuke of CEDAW. Kent warns against "feminist internationalization" that "homogenizes" the poor by opting for: protection of individual rights while ignoring the impact of class or race, seeing the world only as

27. Mohanty, supra note 16, at 6.

28. *Id.* at 9.

29. *Compare* Sunera Thobani, *Reviewing Feminism Without Borders*, 20 HYPATIA 222 (2005) *to* Nesiah, supra note 1, at 14.

30. *See* CEDAW, articles 11, 13, 14, 15, and 16.

31. *See generally* ANTONY ANGHIE, IMPERIALISM, SOVEREIGNTY, AND THE MAKING OF INTERNATIONAL LAW (2005); *see also* Tzouvala, *supra* note 14. Whyte's description of the way the civilizing mission has been transformed, through contemporary human rights regimes, into tools for entrenching "the institutional and moral foundations of a competitive market economy" explicitly connects human rights regimes to neo-liberal recipes for economic development. In her view, human rights are not merely Samuel Moyn's "powerless companion" to neoliberalism but its aiders and abettors or "fellow travelers." Whyte, *supra* note 14, at 198–233.

32. *Id.* at 18.

a "battleground of male and female individualism" that neglects the role of economic structures in producing a gendered division of labor, and treating "Foreign Capital as the agent of wealth and prosperity" as do international financial institutions.[33] Del Gobbo, echoing the Janus-faced character of the promotion of "universal" LGBTQ+ rights by entities like the World Bank, as described by Nesiah,[34] criticizes CEDAW's binary focus on biological sex, exclusion of gay and bisexual men from its scope, and failures to advance the lived experiences of other gender-nonconforming people.[35] Relying on Mohanty's and Tamale's structural and history critiques, Del Gobbo describes CEDAW's focus on protecting the gender binary as reflecting culturally imperialist assumptions that simultaneously fail to recognize the "multiple and changing ways that gender and sexuality are expressed in the Global South" while casting those societies as "retrogressive" and in need of governance reforms.[36]

IV. ARE THESE CRITICISMS OF CEDAW FAIR?

In a recent co-authored book, I respond to these and other critiques of CEDAW in light of the CEDAW Committee's property rights jurisprudence.[37] My conclusion, in brief, is that some of the feminist critiques are wrong or outdated, and that even those that are fair require considerably more nuance. The CEDAW's text does not protect only those civil and political rights most valued in Western countries. Both its text and the CEDAW Committee's subsequent jurisprudence has addressed a full range of socioeconomic, cultural, and other "fundamental" rights both within the family and in "public" spheres.[38] As is suggested by its ambitious preamble, the Convention's object and purpose was not to replicate the West but to eradicate "all forms of racism, racial discrimination, colonialism, [and] neo-colonialism . . . essential to the full enjoyment of the rights of men and women." Despite treaty language suggesting that the overarching goal is to ensure treatment "on equal terms with men," the Convention has not been interpreted by its expert committee as requiring women to be treated like

33. Anne Orford, *Feminism, Imperialism and the Mission of International Law*, 71 NORDIC J. INT'L L. 275, 289 (2002). For an overview of neo-liberalist critiques of CEDAW and its connections to 'revisionist' criticisms of the international human rights movement see Alvarez & Bauder, *supra* note 21, at 181–186.

34. Nesiah, supra note 1, at 16–19 (discussing how World Bank came to advance "homocapitalism" after its own structural adjustment policies had contributed to anti-gay "moral panic" in places like Uganda).

35. Daniel Del Gobbo, *Queer Rights Talk: The Rhetoric of Equality Rights for LGBTQ+ Peoples*, *in* FRONTIERS OF GENDER EQUALITY 68, 69 (Rebecca J. Cook ed., 2023).

36. *Id.* at 78, 80.

37. Alvarez & Bauder, *supra* note 21, at 187–280.

38. *See, e.g.*, CEDAW, article 1; *see generally*, Alvarez & Bauder, supra note 21.

men. [39] The CEDAW Committee has embraced states' obligations to advance substantive equality and does not measure its attainment by whether women are formally given the same rights as men.

On the other hand, it is fair to charge the CEDAW regime with Eurocentricism to the extent that, despite the massive gaps with respect to women's access to property rights around the globe, most of the individual communications filed with the CEDAW Committee under the Optional Protocol (and certainly those that are deemed admissible and result in published Views), come from Europe. Some of the reasons for this are obvious: most women, even those who live in one of the 115 states parties to CEDAW's optional protocol, do not know that it is possible to communicate with the Committee to complain. It is not surprising that women living in Europe—where access to Geneva seems less remote and human rights activist lawyers exist, have resources, and face fewer constraints – are more likely to seek CEDAW's "second-look" at national injustices. At the same time, all 189 CEDAW parties are subject to scrutiny over their periodic state reports and are equally subject to the Committee's General Recommendations. The CEDAW Committee's critical scrutiny of the practices of European states in all of its outputs, including its Views, indicate that it is overly simplistic to conclude that the CEDAW regime disproportionately condemns practices in the developing world.

It is also fair to charge many of the CEDAW Committee's Views and Concluding Observations with failing to engage in fulsome consideration of "root causes." But the Committee's often superficial examinations of treaty breaches, failures to explore in depth the societal structures that underlie discrimination or lead to sexist stereotypes, and tendency to defer to states' (or their courts') conclusions may be the byproduct of the severe bureaucratic constraints under which the Committee (and other UN human rights committees) operate, including the severe word limits on its outputs and time constraints during the Committee's brief Geneva sessions.[40] This is particularly a handicap with respect to the Committee's outputs that most approximate a judicial judgment—namely, issuance of Views in response to individual or group communications or the few cases that trigger an "inquiry" under the Optional Protocol. In those instances, the Committee's limited powers leave it at the mercy of the state that is the target of a communication. The Committee is most likely to be able to engage in a robust examination of root causes if the state charged with violating the Convention cooperates by supplying the underlying information.[41]

39. *Compare* CEDAW, preamble paragraph with article 7, *to* CEDAW, article 4 (authorizing temporary special measures to accelerate de facto equality between men and women).

40. *See, e.g.*, Alvarez and Bauder, supra note 21, at 39.

41. Compare, in this respect, the relatively rich account of Canada's historic

Similarly, with respect to responses to state reports, the CEDAW Committee is heavily reliant on international civil society to correct the accounts offered by governments. These operational handicaps might suggest that the system of which the Committee is a part was built by states to fail.

But many of the harshest criticisms of CEDAW do not take into account that the Convention's interpretation has evolved over time.[42] Even with respect to those rights most likely to be criticized for being accessories to "neo-liberalism" (i.e., property rights), the CEDAW Committee's outputs (Concluding Observations, Views, General Recommendations) increasingly resist the homogenization of women, go beyond requiring only formal equality based on a male comparator, and make serious efforts to address complex intersectional discriminatory practices that undermine substantive (and not just formal) equality.[43] While individuals remain the focus of the CEDAW Committee's outputs, groups of women can and have filed communications and the Committee's Views now often include recommendations for remedies for groups of women likely to suffer from the same harm, such as changes in legislation or regulatory practices.[44]

The claim that the CEDAW regime is an agent of economic neo-liberalism needs reassessment. While the CEDAW Committee's jurisprudence presumes that the capitalist economies that now prevail in virtually all 189 CEDAW state parties will continue, even its property protecting jurisprudence does not reflect a "neo-liberal" economic agenda as that term is most commonly understood. CEDAW's property jurisprudence is quite distinct from that generated under, for example, the international investment regime.[45] The CEDAW Committee does not equate property rights with formal title and focuses on protecting the values associated with property (such as the need for the security and

treatment of Aboriginal women in Report of the Inquiry concerning Canada (CEDAW/C/OP.8/CAN/1 (2015), which relied on evidence supplied by the Canadian government, with the overly parsimonious View issued in *X v. Cambodia* (CEDAW/C/D/146/2019 (2023)). In the latter (which proceeded to a decision without Cambodia even bothering to respond to the complaint) the Committee's conclusions merely repeat, virtually verbatim, the communicant's complaint, without elaboration.

42. *See, e.g.*, Alvarez & Bauder, *supra* note 21 at 190–196.

43. Particular examples include the CEDAW Committee's efforts to redress the intersectional discriminations faced by older women in the public and private spheres—such as those older women whose care of family members precludes access to social security or other benefits. *See, e.g.*, Alvarez and Bauder, *supra* note 21, at 116–17 (discussing GR 16, 17, 29, 27, and 34); 137–39 (discussing Concluding Observations relating to access to social security); and 125–29 (discussing Natalia Ciobanu v. Moldova upholding a claim by an older women who had failed to qualify for a pension because she had spent years caring for her disabled daughter).

44. *See, e.g.*, *id.*, at 331–332.

45. *Id.* at 235–280.

personal protection provided by adequate housing) rather than advancing commodification or the right to exclude others from one's personal property. That jurisprudence does not direct governments to privatize state-owned enterprises, deregulate businesses, or promote economic globalization.[46] Indeed, the Committee has been critical of all those traditional recipes for economic development – even if promoted by entities like the World Bank – if they contribute to women's impoverishment.[47] Moreover, despite the Convention's ostensible focus on protecting "universal" values, the Committee has been nuanced on advancing those values at the expense of local practices. Although it has condemned polygamy on the premise that it is fundamentally at odds with gender equality, some of its outputs, like its Inquiry Report on Canada, evinces the "Indigenous feminist perspective" that Pictou recommends.[48]

It is ironic that some of those who criticize CEDAW's binaries engage in questionable dichotomous thinking of their own. The peculiar contention by some critical scholars that "rights talk" depoliticizes what ought to be political – and, therefore, postpones more radical revolutionary or transformative change – merits scrutiny. It is not universally the case that rights or law talk displaces politics. Whether that happens varies from place to place and may depend on, for example, whether a strong women's movement exists at the local level to deploy rights talk for political ends.[49] It is not obvious that CEDAW's incremental advances on securing greater gender equality are harmful "palliatives" that forestall more fundamental change.[50] We should be leery, in any case, of a theory of change that endorses continuous misery

46. *See, e.g.*, *id.* at 196–209.

47. *See, e.g.*, *id.*, 78–82 (discussing GR 34 which addresses systematic intersectional discrimination affecting women (including Indigenous, Afro-descent, ethnic and religious minorities; this includes the need to address macro-economic policies—such as trade liberalization, privatization and commodification of land, water and other natural resources—the have negative and differential impacts); 252–253 (finding that Convention's extraterritorial scope requires state parties to ensure that their private companies do not discriminate against women even when engaging in business abroad).

48. *Compare* Report on Inquiry, *supra* note 41 *to* Nesiah, supra note 1, at 9 (citing Pictou). *But see* Celestine Myamu Musembi, *Pulling Apart? Treatment of Pluralism in the CEDAW and the Maputo Protocol*, *in* WOMEN'S HUMAN RIGHTS: CEDAW IN INTERNATIONAL, REGIONAL AND NATIONAL LAW 183, 186–213 (Anne Hellum & Henriette Sinding Aasen eds., 2013) (criticizing CEDAW Committee's "abolitionist" approach to polygamy to "legal pluralis"' approach to that and other cultural practices under Maputo Protocol).

49. *See, e.g.*, Carmen Dian Deere, *Women's Land Rights, Rural Social Movements, and the State in the 21st -century Latin American Agrarian Reforms*, 17 J. AGRARIAN CHANGE 258 (2016). *See generally*, BETH SIMMONS, MOBILIZING FOR HUMAN RIGHTS (2009); NINA REINERS, TRANSNATIONAL LAWMAKING COALITIONS FOR HUMAN RIGHTS (2021).

50. *See* Alvarez & Bauder, *supra* note 21, at 213 (comparing the "Tocqueville effect" positing that economic improvements in France, spanning decades, helped to lead to the French revolution).

on the promise of eventual revolution.

V. SO, WHAT IS TO BE DONE ABOUT CEDAW?

Much of the liberal scholarship on CEDAW seeks to answer this question. That literature is replete with pragmatic prescriptions for improving the CEDAW regime, particularly by reforming the way the Committee operates or by increasing the resources available to it. Madeline Gleeson, in a recent article in AJIL, for example, proposes to "unlock CEDAW's transformative potential" through reforms to generate more coherent, consistent, predictable, analytically rigorous, and persuasive CEDAW Committee outputs.[51]

Nesiah does not tell us whether the CEDAW regime or other liberal regimes like the International Criminal Court – with or without institutional reforms – can contribute to "re-enchanting the world." If, as Silvia Federici suggests, genuinely feminist tools need to run counter to the "spirit of capitalism,"[52] CEDAW – which, as noted, protects the rights of women to be, among other things, entrepreneurs – offers only the "illusory promise of justice."[53] On the other hand, Federici herself has argued for legal reforms that the CEDAW Committee has required of state parties.[54] Those of us who see those kind of recommendations as demonstrating CEDAW's transformative potential are not as ready to give up on liberal international law as are some of the radical feminists surveyed by Nesiah.

None of this is intended as a critique of Nesiah's essay. As Ingo Venzke has argued, good scholarship does not have to propose "real world" solutions—as some bureaucratic assessors of academic merit now require.[55] Nesiah offers us, to use Venzke's terms, "an emancipatory critique of society."[56] She is directing readers to scholarship that, as Venzke would put it, questions how problems are understood and represented, unmasks ideology, and allows us to think *without the*

51. Madeline Gleeson, *Unlocking CEDAW's Transformative Potential: Asylum Cases Before the Committee on the Elimination of Discrimination Against Women*, 118 AM. J. INT'L L. 41 (2024). For Gleeson, this includes procedural changes intended to increase its transparency and accountability (as by making clear what precisely is the U.N. secretariat's role in drafting the Committee's Views as well as identifying which of the Committee's members was the case rapporteur or were part of the working group for a given communication) as well as substantive changes (such as rethinking the deferential standard that apparently is applied to representations made by states in the course of responding to communications).

52. Nesiah, supra note 1, at 2 (citing Federici).

53. Id., at 6 (citing Jallad).

54. Compare *supra*, note 43 (describing CEDAW jurisprudence on older women) with Silvia Federici, *Notes on Elder Care Work and the Limits of Marxism*, *in* BEYOND MARX 239 (Marcel van den Linden and Karl Heinz Roth eds., 2014) (arguing for changes in labor and pension laws to compensate generally female unpaid caregivers).

55. Ingo Venzke, "Against Impact," 37 LEIDEN J. INT'L L. 765 (2024).

56. *Id.* at 5.

constraints of being operational.[57] An insistence on answering Lenin's question in the here and now runs counter to radical projects insofar as the point of such projects is to reimagine a system rather than letting the system define what is pragmatically possible or realistic. At a time when universities—and much else—face pressures to show measurable results in line with corporate mindsets insisting on "impact assessments," it is a relief to see academic work that is not ashamed to be called utopian.

57. *Id.*