Decoding Crisis in International Law: A Queer Feminist Perspective

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Introduction

International law has aptly been called a "discipline of crisis" — although I rather like the idea that it could be a "crisis of discipline" (as I inadvertently described it in a recent footnote). For better or worse (and I will argue that it is usually for worse), many of international law's most productive formative moments have been in response to calamitous occurrences understood to be crises, and efforts by scholars to map the development of the law, through the lens of those "incidents" or "events" that count as crises, abound. While emergency law-making was a regular feature of colonial governance, the productivity of crisis for international law intensified in the aftermath of 9/11, which suspended the international community in a more or less permanent state of catastrophe. Since then, crises, both real and imagined, are no longer confined to (post) colonial, military, and military emergencies.

financial emergencies – although these have not been in short supply. They have been declared with respect to issues of the everyday, such as the environment, immigration, poverty, health, and scarcities of food and water. The spreading atmosphere of crisis has enabled technologies of “crisis governance” to assume ascendancy, including the increased acceptability of executive law-making and reliance on economic, technocratic, and military experts to solve global problems.

Crisis governance has fostered neoliberal expansionism by legitimating the adoption of short-term, quick-fix responses that ignore the larger historical context of causation and individualize responsibility, dismissing analytical and critical perspectives, shutting out democratic participation and deliberation in the name of urgency, and depicting everyday structural inequalities and injustices as given.

In thinking critically about our discipline of crisis, I am assisted by Italian philosopher Giorgio Agamben who, drawing on the work of Carl Schmitt and Walter Benjamin, argues that the fiction of the emergency has a long history of creating new spaces for law’s production and reproduction, enabling law to extend its empire, reconfiguring the relationship between the state and its subjects and further colonizing “life itself” by taking possession of the human sphere of activity that we know as “politics.”

While Agamben sees this process as inexorable, I do not (or at least I hope it is not). But if life and politics are to be reclaimed from the grip of crisis-law, which all too often becomes permanent and can even intensify its hold, as so often happens in the postcolonial context, it is important to understand what makes a crisis so amenable to the spread of unaccountable executive power and the demise of politics. As seen since 9/11, explosions of crisis-law can make many practices, long thought to be unjustifiable, widely accepted. Crisis has provided the means of garnering new public support for racialized policing and security agencies acting outside the law, for blatant disregard of long-standing norms of human rights and fundamental freedoms, and for military and economic interventions that shore up the inequitable global order. The question that ultimately interests me is whether it is possible to turn the momentum of a crisis to more progressive ends. My focus in this chapter is on the insights that queer and feminist theory and activism offer in partial response to these questions.

I THE TECHNOLOGIES OF SEXUAL AND GENDER PANICS

One of the recurring features of the anatomy of crisis governance and the law it produces, not discussed by Agamben but impossible to miss from a queer feminist perspective, is the proliferation of sexual and gender “panics.” Such panics play an important role in crisis governance by helping to divert attention from larger injustices perpetrated in the name of the emergency, while also enabling the adoption of ever more personally invasive laws and regulations that states would otherwise not be able to justify. As Gayle Rubin, sex-radical feminist anthropologist, observed over two decades ago in relation to sexual panics, “sexual acts are burdened with an excess of significance,” making them available to “function as signifiers for personal and social apprehensions to which they have no intrinsic connection.”


7 Charlesworth, “International Law.”


The mystification of sexuality, at least in western societies, she said, makes sex a productive site for the generation of "rage, anxiety, and sheer terror" which, in turn, enables the state to enact new laws and regulations that extend its control even more deeply into our intimate lives.\footnote{Ibid.}

Anxieties associated with gender transgressions – when people do not perform their gender identities in keeping with mainstream social norms – are also often implicated in sexual panics as, for example, with the issue of sex work/prostitution. Panics about sex work are productive because they draw on anxieties about sexuality, associated with its commodification, as well as expectations about gender, associated with women’s domestic focus and dependency. As I will argue, gender panics can also work independently of sexuality, in a similar way to the sexual panic described by Rubin, by creating a climate of fear that enables the proliferation of law that reaches more deeply into our personal lives and helps to deflect attention from those everyday injustices that work in the interests of the state and the privileged few.\footnote{Susan Marks, “Human Rights and the Bottom Billion,” European Human Rights Law Review, 1 (2009), p. 37.}

The generation of fear by sexual and gender panics fosters compliant populations who are more ready to accept – even welcome – an increase in executive law-making and militarized policing. In the context of international law, examples of such panics, in the service of crisis governance, abound.

Those directly responsible for the 9/11 atrocities were themselves cast as sexually dubious by reports in the west of their apparent preference for masculine company while on earth and their hopes for reward in the form of eternal access to virgins in the afterlife.\footnote{Anna M. Agathangelou, “Power, Borders, Security, Wealth: Lessons of Violence and desire from September 11,” International Studies Quarterly, 48 (2004), p. 530.}

The intonation of sexual perversity assisted the project of denigrating Islam and dehumanizing the perpetrators, casting them in the (more) alarming register of hysterical fanatics, rather than that of (less alarming) international criminals. This undertone of erotic depravity helped US President Bush to declare the advent of a “new kind of war,”\footnote{The New York Times, September 16, 2001, reporting on President Bush's radio address to the nation on September 15, 2001.} a manoeuvre that simultaneously released him from the need to comply with the existing law and signalled the necessity of new law to deal with the emergency. Indeed, the crisis of 9/11 has been a bonanza for international law. I want to discuss two other examples of sexual panics, which have served as triggers for explosions of law that restrict individual rights and freedoms while also averting attention from systemic injustices of western economic and military domination: panics about the trafficking of women and girls into prostitution and peacekeeping sexual exploitation and abuse.

Sexual panics about the cross-border trafficking of women and girls to work in the sex industry have been a recurring feature of the development of international law. International agreements, ostensibly aimed at curbing the international trade in “white” women, were first adopted in the early twentieth century.\footnote{International Agreement for the Suppression of the White Slave Traffic, Paris, May 18, 1904, entered into force July 18, 1905, 1 LNTS 83; International Convention for the Suppression of White Slave Traffic, Paris, May 4, 1910, 211 Consol TS 45; 1912 Gr Brit TS No. 20; International Convention for the Suppression of the Traffic in Women and Children, Geneva, September 30, 1921, 9 LNTS 415; International Convention for the Suppression of the Traffic in Women of Full Age, Geneva, October 11, 1933, in force August 24, 1934, 150 LNTS 431. For discussion see Jo Doezema, “Loose Women or Lost Women? The Re-Emergence of the Myth of White Slavery in Contemporary Discourses of Trafficking in Women,” Gender Issues, 18 (2000), p. 30, who notes that the term “white slavery” was first used in 1839 in an anti-Semitic context where Jewish men were seen as responsible for trafficking European women.} While the scare of large numbers of vulnerable European women being deceived or forced into satisfying the sexual appetites of foreign (racialized) men has been shown to lack a factual basis (most women involved made choices based on their economic circumstances),\footnote{Elizabeth Bernstein, “Militarized Humanitarianism Meets Carceral Feminism: The Politics of Sex, Rights, and Freedom in Contemporary Anti-Trafficking Campaigns,” Signs: Journal of Women in Culture and Society, 36 (2010), p. 50.} the treaties based
on this mythology of panic proved to be an effective means of justifying harsher immigration controls and more punitive and discriminatory border policing.\(^\text{17}\)

Another spike in anti-trafficking crusades has occurred over the last decade and a half, driven largely by the United States in the context of post-9/11 nervousness about security and undocumented (potentially terrorist) migration.\(^\text{18}\) As a result, there has been another surge in international and domestic anti-trafficking laws.\(^\text{19}\) Like the earlier campaigns, the contemporary crusades rely heavily on iconic narratives of innocent and helpless women, unable to exercise free will, needing to be rescued from the clutches of traffickers, and even sometimes their own families, who exploit their sexual vulnerability.\(^\text{20}\)

The anxiety induced by these images, intensified by efforts to equate sex trafficking with modern-day slavery, has enabled governments, supported by the international community, to adopt draconian laws that impose harsh criminal penalties on supposed traffickers as well as their purported victims. These measures, like the early anti-trafficking treaties, completely deny women's agency by making the question of their consent to migration, and/or working in the sex industry, irrelevant, even in this post-colonial age of universal human rights.\(^\text{21}\)

The idea that women are not capable of autonomous sexual decision-making, or cannot be trusted in this regard, is made possible by conservative masculinist tropes of both gender and sexuality. These laws have, in turn, justified states allocating substantially increased financial and administrative resources to border surveillance, security police and detention facilities, all cloaked in a “mantle of righteousness”\(^\text{22}\) that claims to be protecting defenceless women and children. In fact, these efforts have made matters worse for many women who are treated as victims of trafficking, despite seeing themselves as economic migrants.

Global neoliberal governance is served by the panic about sex trafficking in a number of ways. By deflecting attention from other forms of human trafficking and other forms of exploitative labour, although significantly more prevalent, the panic almost normalizes them by contrast. It also locates the source of harm in wicked individuals, rather than in the structural conditions of inequality, poverty and destitution that motivate people to migrate, often at great personal risk, in order to secure their livelihoods and a better future for their children. Individualizing the blame depoliticizes the issue of exploitative labour and serves to absolve states and corporate actors, who reap the benefits of unfair and abusive labour practices, from responsibility. Human rights advocates have tried to counter the dominance of the crime control paradigm, legitimated by the sexual panic, by advocating for the human rights of trafficking victims. But their efforts have been limited to promoting the rights of victims after they have been trafficked, partly in response to highly aggressive criminal justice measures and partly because of internal disagreement over prostitution reform.\(^\text{23}\) The disproportionate focus on sex trafficking has also made it much more difficult for those human rights advocates seeking to address the structural inequalities that drive all forms of human trafficking, because they have to work against the power of a panic to define the field.

A second example of a sexual panic in the service of global crisis governance is the response to the problem of sexual exploitation and


abuse in UN peacekeeping missions. We are led to believe the problem to be endemic, as with sex trafficking. Sexual violence and exploitation by peacekeepers has been documented in Angola, Bosnia and Herzegovina, Cambodia, Democratic Republic of the Congo (DRC), East Timor, Liberia, Mozambique, Kosovo, Sierra Leone, and Somalia. In Liberia, Guinea, and Sierra Leone, a pattern of peacekeeping personnel trading sex for in exchange for humanitarian commodities and services was found to be “chronic and entrenched,” while in the DRC, the problem of sexual exploitation and abuse of local Congolese women and girls was found to be “serious and ongoing.” Yet, on close reading, the reports of sexual mistreatment, and the various official responses to them, make no effort to distinguish between sex that is exploitative or abusive, and sex that is not. Repeatedly, no substantive or consequential distinctions are made between consensual sexual relationships and sex work, on the one hand, and sexual offences like rape, forced prostitution, and sex trafficking on the other. A typical explanation for this slippage is as follows:

There have been abuses involving peacekeepers and local women. The most commonly reported ones are those associated with prostitution ... Although some peacekeepers have established more permanent intimate connections with local women, such relationships can rarely be considered purely voluntary, tinged as they are by the necessities of hunger and the need for housing or jobs.


The result is that diverse sexual activities are conflated by an atmosphere of crisis and a culture of “sexual negativity” into a single problematic of sexual injury or harm, and the response is protective rather than rights-based.

Fueled by the alarm that was generated, the UN Secretary General’s Bulletin, adopted in 2003 to address the problem, takes the extreme position of banning virtually all sex between peacekeeping personnel and host populations. This astounding over-inclusiveness would not have been possible without the power of panic. Some implementation policies in specific peacekeeping missions go even further than the letter of the Bulletin, prohibiting all forms of “fraternization” (everyday interactions) between off-duty peacekeepers and local populations, reviving colonial hierarchies of race, sexuality, and gender. The Bulletin’s promotion of protective representations of women, and its conflation of women and children, set back the projects of women’s and children’s rights and give a renewed legitimacy to conservative hierarchies of gender and sexuality in post-conflict societies. In reality, the zero tolerance of sex has pushed the sexual economies of peacekeeping missions underground, preventing

28 Rubin, “Thinking Sex,” p. 278, uses this term to describe the prevalence of the idea that sex is a “dangerous, destructive, negative force,” unless performed pursuant to a narrow set of socially approved “excuses,” such as “marriage, reproduction and love.” She limits her observations to “Western cultures,” and blames “most Christian traditions” for originating the idea. However, it is clear that sexual negativity characterizes many non-Western traditions as well, although it is manifested through historically and culturally specific social practices.
30 Secretary-General’s Bulletin, *Special measures for protection from sexual exploitation and abuse*, ST/SGB/2003/13, October 9, 2003. The only exceptions are when the people involved are married, or have been given permission by the Head of Mission to engage in a sexual relationship.
32 For further development of this idea, see Dianne Otto, “Making sense of zero tolerance policies in peacekeeping sexual economies,” in Vanessa Munro and
organisation around health and employment conditions and making the survival of the victims it claims to protect even more precarious.

The hyperbole about sexual exploitation and abuse, and all the regulatory and surveillance activity that it has generated, stands in striking contrast to the silence about the scandalous shortage of humanitarian resources in peacekeeping missions. It is poverty which largely drives peacekeeping sexual economies, and the problem is exacerbated by the imposition (without democratic consent) of free market economic policies in post-conflict societies, in the name of neoliberal globalization, which benefit only a privileged few. These matters threaten to tarnish the UN’s reputation much more fundamentally than a sex scandal. Thus, the outrage about sex displaces outrage at the global inequalities in wealth that are reflected in peacekeeping missions – the lack of employment opportunities in post-conflict societies; the insufficient clean water and food rations available to international aid agencies to meet human needs in a world of plenty; and the despair of humanitarian workers who feel they are unable to make a difference. In the dire poverty of postconflict societies, manufacturing a sexual panic serves to (mis’)recognize the primary harm as sexual, rather than economic, and its solution is understood in terms of apprehending and punishing individual perpetrators rather than addressing the systemic conditions of poverty and deprivation. Attention is deflected from the responsibilities of international community, including its neoliberal economic institutions, to address poverty in post-conflict societies. Also unacknowledged are the obligations of states to cooperate internationally to ensure that everyone enjoys economic and social rights and promote development that is equitable and sustainable.


33 Otto, “Sexual Tensions.”


wrily observes, “sexual exploitation” is the only form of exploitation that appears to be generating policy responses.

In the foregoing examples, anxiety about performances of gender takes a back seat to those stirred by sexual practices outside the institution of heterosexual marriage. However, I now turn to a number of instances where gender is the primary signifier that, like sexuality, can be attributed an “excess of significance,” enabling alarm to be manufactured around non-conformity with authorized gender roles, as a technique of crisis governance. In the aftermath of 9/11, anxiety about veiled women, whose performances of gender do not conform to western models of “enlightened” gender expression, was soon whipped into frenzy by headline news stories, including a national radio address by US First Lady Laura W. Bush. The gender panic helped to justify the continuing muscularity of the military occupation of Afghanistan as a means of rescuing Muslim women from the barbarism of their culture, in the face of waning popular support for the occupation in the West. The panic also drew attention away from the repressive new laws and techniques of crisis governance that were rapidly emerging, including the Security Council’s (executive) requirement that all UN member states adopt a far-reaching and detailed set of anti-terrorism measures, that seriously eroded personal rights and freedoms and granted extensive new powers to security organizations. Meanwhile, in Afghanistan, the situation for women worsened considerably, compounded by a backlash against women’s rights fuelled by the failure to work with local women and men to translate universal norms into local vernacular.


Single mothers have also provided grist to the mill of gender panics, particularly in the context of changes to social security programmes in the wake of the global economic crisis. The punishing regime of austerity measures introduced in Europe relies, at least in part, on the panic of the single (read bad) welfare-dependent mother looting the public purse.\(^{42}\) Successfully trialled earlier in the United States,\(^{43}\) shifting the blame for crisis, and its burden, onto poor and often racialized women who do not fit the middle-class stereotype of responsible womanhood, is an effective diversionary technique that draws attention away from the responsibility of states and the corporate beneficiaries of punishing neoliberal economic policies. The panic about lone mothers, and their uncontrolled sexuality, makes the neoliberal shift from social security as entitlement to social security as individual responsibility, more socially palatable. It follows then, as Agamben anticipates, that the shift justified in the name of crisis becomes the norm. Yet, as we know, reduced social protections do not provide a solution to economic crises and are likely to make the situation worse by reducing the flexibility and resilience needed to survive economic uncertainty.\(^{44}\)

My last example of gender panics that have served the interests of crisis governance is the casting of feminist and queer human rights advocacy and activism as terrorism. The 2009 Report of the UN Special Rapporteur on the promotion and protection of human rights while countering terrorism, which analyzed counter-terrorism from a gender perspective, drew attention to the regularity with which women’s human rights defenders are accused of being members of terrorist groups, and consequently arrested and persecuted in the name of countering terror,\(^{45}\) including in the Philippines, Sri Lanka, and Sierra Leone.\(^{46}\) In the Special Rapporteur’s analysis, this illustrated the danger of overly broad definitions of terrorism, which is characteristic of emergency law and a problem for many reasons. From my perspective, the demonizing of feminists as gender deviants is yet another example of a gender panic that works to justify intensification of the state’s disciplinary laws and institutions and to divert attention from systemic economic and social injustices. My reading is borne out by the incarceration of members of the feminist punk rock band Pussy Riot, whose questioning of Russian democracy, homophobia, and gender conformity was described in panicked terms by the judge at their trial as “shatter[ing] the constitutional foundations of the state.”\(^{47}\) The alarm associated with Pussy Riot has clearly justified the introduction of repressive new laws in Russia, some of which threaten the “foreign” funding of women’s crisis centres, cast as a menace under the broad arc of the panic of gender deviancy.\(^{48}\) Meanwhile, the terror of state and corporate brutality, the concentration of wealth in very few privileged hands, and the flagrant disregard of constitutional and democratic rights appears to be unchallengeable.

The heavy reliance of crisis governance on the technique of the panic – whether based on sexual and/or gendered (or racial) anxieties – is clear. Such panics project “rage, anxiety, and sheer


\(^{44}\) Statement to the General Assembly by Ariranga G. Pillay, Chairperson of the CESCR, 67th Session (October 23, 2012); Ariranga G. Pillay, Letter on behalf of the Committee on Economic Social and Cultural Rights to all States Parties to the ICESCR on the protection of rights in the context of economic and financial crisis, May 16, 2012.

\(^{45}\) Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/64/211, 3 August 2009, para. 27.


\(^{48}\) Ibid. The new law requires NGOs receiving foreign funding to register as “foreign agents.”
terror," as observed by Rubin, onto the bodies of those perceived to be deviant because they do not conform to dominant heteronormative and masculinist social prescriptions. Ratna Kapur describes these easy targets for panic as "sexual subalterns," who, in the Indian context of her analysis include sex workers, beauty queens, and migrant women, all of whom make economic choices that give them life outside family supervision.  

The panic shifts attention and outrage away from the exercise of unaccountable and hegemonic power in the name of crisis. In the process, the disciplinary hierarchies of dualistic gender and hetero-sexuality, which help to make populations compliant and governable, are reinforced.

Homophobia and misogyny, often working hand in hand as with the response to Pussy Riot, make it possible for governments and international institutions to introduce reforms that, in the absence of a panic, would have been impossible. In the United States, the panic of "domestic trafficking" has made possible federal legislation that subjects pimps (traffickers) to ninety-nine year prison sentences, puts sex workers at risk of apprehension by law enforcement in order to secure their testimony, and puts their clients at risk of arrest and vehicle seizure.  

Sexual and gender panics fuel the sense of emergency, enabling the technicians of crisis governance to adopt emergency laws that are never rescinded, like the so-called austerity measures adopted in the wake of the global financial crisis and, I fear, the zero tolerance of sex outside marriage in post-peacekeeping governance. These panics help to remap the legal and political landscape and invigorate a more repressive paradigm for the management of life, wherein the structures of privilege are protected and strengthened by ignoring structural injustices, individualizing responsibility and vigorously silencing dissent.

II THE POSSIBILITY OF RESISTANCE

Crises, while clearly productive for law, produce a deeper crisis for progressive thinking, making feminist and queer activism and ways of life more dangerous. Not only does the crisis paradigm provide a pretext for criminalizing dis-sidence and banning critique, as in the Pussy Riot example. It also offers a means to strengthen disciplinary ideologies and the exercise of biopolitical power through bodies, as in the peacekeeping sex example. Some feminist and queer ideas have even been drawn into the service of crisis governance. For instance, the strand of feminism (radical or subordination feminism) that understands (hetero)sex as the locus of women's subordination and dismisses sexual "freedom" as a means of extending male privilege and power, resonates with the anti-trafficking and anti-peacekeeping-sex panics unleashed by crisis, and has helped to legitimate them.

Similarly, some currents of gay and lesbian activism have supported language of "slavery" employed by diverse evangelical and feminist groups in the U.S. who share international abolitionist ambitions, effectively locates all social harm outside of the institutions of corporate capitalism and the state apparatus ... [reconfiguring] the masculinist institutions of big business, the state, and the police ... as allies and savours, rather than enemies, of unskilled migrants workers, and the responsibility for slavery is shifted from structural factors and dominant institutions onto individual, deviant [often brown] men.

Crisis governance, assisted by sexual and gender panics, inaugurates a more repressive paradigm for the management of life, wherein the structures of privilege are protected and strengthened by ignoring structural injustices, individualizing responsibility and vigorously silencing dissent.

51 Ibid., p. 144.

52 See further, Janet Halley, Prabha Kotiswaran, Hila Shamir, and Chantal Thomas, "From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in
“pink-washing” by the United States, the United Kingdom, Israel and other states, by drawing xenophobic comparisons between the sexual freedoms (superiority) of the west and the unfreedoms of many non-western (uncivilised) traditions, aligning particularly with Islamophobia in the present crisis-driven conjuncture of international politics. Indeed, crises have proved to be a dangerous time for all forms of critical and progressive thought and action, which are subjected to co-option and vilification, which we have seen extend to charges of treason in the context of the crisis of international terror. Clearly, then, crisis governance threatens international law’s emancipatory potential (assuming it exists) by dramatically reducing the space for political contestation and critique. I turn now to the question of whether it might nevertheless be possible to resist gender and sexual panics and turn the moment of crisis to more progressive, counter-neoliberal ends.

A crisis, whether real or imagined, always creates opportunities that did not exist before, as Milton Friedman, economic rationalist and notorious proponent of disaster capitalism has observed:

Only a crisis - actual or perceived - produces real change. When that crisis occurs, the actions that are taken depend on the ideas that are lying around. That, I believe, is our basic function: to develop alternatives to existing policies, to keep them alive and available until the politically impossible becomes the politically inevitable.

Although these opportunities seem particularly amenable to capture by neoliberal forces, there surely is also the possibility of turning them to progressive ends. Indeed, Aboriginal activist and scholar Marcia Langton made precisely this point, in relation to the Australian government’s emergency intervention into Aboriginal communities in the Northern Territory on the basis of hurriedly adopted legislation in 2007. To enact its lengthy and complex emergency legislation, the government relied on a report which found child sexual abuse in remote Aboriginal communities to be serious, widespread and often unreported. While a robust response to the report’s findings was entirely warranted, the government fostered a panic, which enabled it to impose unprecedented control over Aboriginal land and resources, without any prior consultation with those affected, and suspend the normal prohibition of discrimination on the basis of race from application to the new legislation. As Irene Watson had earlier observed, neo-colonial protectionism, in the guise of saving Aboriginal women and children, fundamentally undermines the possibility of indigenous self-determination. Yet despite all this, Langton urged that there was always the possibility of using the increased attention to Aboriginal disadvantage and the new resources provided in the emergency, to the advantage of Aboriginal communities. Whether and in what form this advantage will eventuate, we have yet to see.

A powerful counter-crisis strategy is to question the certainties of the crisis paradigm and explore possibilities for disrupting the neoliberal agendas that are being served. One example of disruption is the collaborative endeavour by human rights and labour advocates to shift the focus of anti-trafficking efforts from their preoccupation with sex trafficking, and the highly moralistic criminal justice approach that it sponsors, into a framework of labour exploitation. Chuang argues


58 Northern Territory National Emergency Response Act 2007 (Cth), s. 132.


that this shift would move the debate about prostitution “to its rightful place on the periphery,” and bring to the fore the question of the responsibility of states and corporations for maintaining conditions of poverty, conflict and disadvantage that make forced labour and human trafficking, in their many forms, so prevalent.61 Such a strategy would also remove the dynamic of panic from the picture, enabling responses that build on and strengthen the existing framework and institutions of international labour and human rights law, which aim to eradicate all forms of labour exploitation, not just those at the extremities. In contrast to crisis governance, a human rights and labour approach would seek to address the problem of structural inequalities, rely on critical and analytic thinking for its development, and promote the participation of employers and employees, including those most disadvantaged by the current arrangements, in collective efforts to find solutions. It would provide a platform for challenging the exploitative labour practices encouraged and normalized by neoliberal economics.

Another strategy of disruption would be to resist the panic itself, and thereby disable the sense of urgency that is used to justify executive decision-making and emergency law. The activism of gay men and sex workers, in the context of the HIV-AIDS pandemic, is a case of successful diffusion of a sexual panic, which led to a dramatic change in the World Health Organization’s paternalistic and utilitarian approach to public health crises. The initial public health response to HIV/AIDS, in the early 1980s, was defined by a sense of urgency which meant that the public health message was dominated by the idea of danger, rather than providing clear information about prevention.62 Eventually, in response to demands from many of those directly affected, the importance of respecting the human rights of HIV-infected people became, for the first time, an integral part of a global health strategy to address and control an epidemic.63 Further,

International lawyers, too, have been cast as “receiving and shapeless” – or compliant, at least – as when Oscar Schachter described us as an “invisible college” (referring to the relationship between government lawyers and the academy)67 and Phillip Alston portrayed us

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64 Gruskin et al., “Past, Present and Future.”
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as myopic "handmaidens" of free market globalization. Like Pussy Riot, we international lawyers also need to start a radical rebellion against the cultural order of the discipline of international law, which has proved to be so well-suited to normalizing crisis governance and its attendant silencing of critical politics concerned with addressing sexual and gender unfreedom, and economic and social injustice. There are already traces of past movements of discontent in the law, left by rebellions against colonialism and racism and struggles against women's inequality and heteronormativity, which provide footholds for another uprising — a rebellion that contests the discipline's logic of crisis thinking, revitalises participatory emancipatory politics, and refuses to countenance the instrumentalization of gender and sexual non-conformity as the grounds for panic.

III CONCLUSION

Marxist international lawyer China Miéville, author of many compelling futurist fantasy novels, including Un Lun Dun for young adults, has argued that looking to the existing law as a means of progressive change is to deny its "imperial actuality" and risk "legitimising... the very structure of international law that critical theory has so devastatingly undermined." There is some truth in his claim that the chaotic, crisis-driven, inequitable, world in which we live is the rule of law." However, I do not think that international law's imperial capture, or co-option, of progressive ideas is ever total. Like Miéville's fantasy city of Un Lun Dun, which is the flip-side of the London we all know, where many of London's unwanted people (like bus conductors), broken objects and smog end up hidden from the view of the mainstream, international law also has its own parallel universes, where other ways of thinking about the law and its possibilities are thriving. One place that I experience this shadow world is in the corridors and bars of the annual meeting of the American Society of International Law, where queers, feminists, and others who engage critically with international law seek each other out to discuss tactics. On one occasion I even encountered China Miéville there.

What we need is "un-crisis" thinking — the flip side of crisis thinking — if we are to find liberatory solutions to international problems by using international law. Like Miéville's "un gun" (which, needless to say, does not use typical ammunition), which he creates to fight the "evil" Smog that creeps into the brains of UnLunDuners and has addictive and malicious powers (rather like crisis thinking), un-crisis thinking means thinking outside the narrow confines of the box of crisis logic. It is the kind of thinking that we need in order to ensure that, on the one hand, we are not seduced into compliance by the institutional embrace of some feminist and queer ideas and, on the other hand, that we do not undervalue the "critical instability" created by the footholds that have already been carved into the law. The increased danger that crisis presents to radical ideas necessitates different strategies of resistance, including increased alertness to the possibility that feminist and queer ideas may be turned to the service of crisis governance, efforts to resist and counter sexual and gender panics, and tactics for disrupting the neoliberal agendas they serve.

71 China Miéville, Un Lun Dun (Macmillan, 2007).
73 Ibid., p. 299.
However, law alone is never enough. Essential to exploiting the possibilities of international law’s progressive dynamic is the important relationship between politics (life) and law. Political engagement will keep our attention focussed on the deeply entrenched structures of inequality and help to refuse the technologies of crisis governance. A focus on structural inequalities will also help to contest the inordinate reliance on the Security Council and other forms of executive government, to promote feminist and queer change. This necessitates devoting at least as much energy to supporting un-crisis activism “outside” the mainstream institutions of law and politics as to carving out spaces on the “inside.”

I can remember sitting in a lecture theatre as a 39-year-old law student, thinking how lucky I was to finally have the opportunity to reflect on the crisis-driven work that I had previously been engaged in, as an activist and as a community development worker with homeless young people and domestic violence survivors, and the role that law played in its perpetuation. And here I am, over twenty years later, still thinking about how crisis so often produces more law to entrench quick-fix responses that avoid addressing the structural causes of injustice, and about what could be done to change that – it is both exhilarating and exhausting. The institutionalization of feminist and queer ideas will always extract a price of compromise and dilution; but it can be mitigated by engaged political contestation by movements of sexual subalterns, as well as human rights advocates, in coalition with others, demanding otherwise. Politics, in all its richness and life-sustaining complexity, must be part of every feminist and queer strategy in law.
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