

EROTIC JUSTICE: LAW AND THE NEW POLITICS  
OF POSTCOLONIALISM by Ratna Kapur, London,  
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Ratna Kapur's *Erotic Justice* is yet another recent addition to the vast and heterogeneous field of postcolonial discourse. Firmly placing her theoretical trajectories within postcolonial legal feminism, Professor Kapur examines the theme of the subaltern subject. Although her text focuses primarily on the issue of women, she also considers other subjects at the margins of traditional legal discourse, such as transnational migrants, sexual minorities, and Muslims. In her work, she reconceptualises law as a system of domination and resistance, where the role and place of the world's peripheral subjects and cultural Others have been (and continue to be) constructed (and reconstructed). Kapur uses her sexual subaltern subject to trace the hegemonic operations of the law, where the Other is culturally configured (continually) in hierarchical structures of difference. In this text, she explores how the law has been implicated in recent debates on sexuality, culture, and subalternity, and significantly, how it is 'used not only as a site of empowerment, but also as a device for excluding the world's Others, or including them on terms that are quite problematic, both historically as well as in the contemporary context' (p2).

The language used in *Erotic Justice*, and its theoretical and thematic base, will not be unfamiliar to those who are already converts to (or, at least, sympathisers of) postcolonial and postmodernist discourse. While Kapur situates her postcolonial feminist legal position from the location of the Indian subcontinent, her aim is to speak to a broader global audience. Indeed, the controversies in her text mimic the larger debates in academic discourse: hegemony and subalternity, cultural homogenisation versus cultural heterogeneity, and the public arena and the private domain, among other common themes. At its core, Professor Kapur's work is concerned with fundamental questions relating to epistemology and ontology, and is essentially a study of the contiguous relationship between knowledge systems and categories of power.

Like other critical legal scholars, Kapur rejects the view of law proffered by the liberal positivist tradition, and challenges its claims to universality, neutrality and objectivity. Her writing is unashamedly critical in her rejection of liberal legalism, and the base from which its presumptions and 'truths' unquestioningly operate. Indeed, Kapur belongs to those contingent of scholars who believe that the Western legal project, framed in its liberal positivist tradition, operates hegemonically, and excludes alternative categories of recognition and meaning.

As a postcolonial legal scholar, Ratna Kapur is acutely aware of how the colonial past continues to instruct the postcolonial present. For example, she examines how contemporary Indian cultural values are 'protected' by obscenity laws, which have their origins in Victorian England. One of her major arguments is that the law operates hegemonically, and has been (and continues to be) used as an instrument of control by the imperial classes. For this reason, the reterritorialisation of the non-Western world features as a key theme in her work.

Kapur champions the critical tools offered by postcolonial feminism—primarily, the ability ‘to understand the world’s “Others”, and diverse locations from which they can speak’ (p6). She also suggests that postcolonial feminism offers legal discourse some essential guides about *method*—particularly a wariness towards generalisations which transcend the boundaries of culture and region. The intersection of law and postcolonial feminism is used by Kapur to challenge the Eurocentric assumptions (and constructions) which relate to identity, representation and difference. Significantly, she exploits her theoretical framework to demonstrate the way in which a centre–periphery relationship *still* clearly exists in this postcolonial world.

If not explicitly, her text implicitly adopts the postmodernist view of the need to recognise multiplicity, cultural hybridity, difference, heterogeneity, and open–closed systems and structures of belief. Moreover, Kapur is of the view (consistent with a postmodernist postcolonial approach) that *universal* accounts of society, culture, tradition and values are exclusionary, and are only achieved through the suppression of alternative realities. Like all postcolonial scholars, she is wary of ‘authentic’ positions, binary thought processes and grand theorising. Kapur is also greatly concerned about the pitfalls of essentialism, and the dangers inherent in constructing another monolithic category—ie ‘the subaltern voice’.

*Erotic Justice* is comprised of five self-contained chapters, which ‘are linked by a postcolonial feminist legal analysis’ (p7). In Chapter 1, she introduces her broad theoretical and thematic base, and outlines the way in which her sexual subaltern subject will be used to trace the hegemonic operations of the law.

In Chapter 2, ‘New Cosmologies: Mapping the Postcolonial Feminist Legal Project’, she challenges the universal feminist position assumed by liberal internationalism, and rejects the uniform remedies offered by scholars such as Martha Nussbaum. Kapur’s critique of liberalism focuses on its essentialism, and its incapacity to fully appreciate the complex postcolonial ‘layered’ subject. She also explores how the public/ private divide in India, which was partly constituted by colonial legal regimes, continues to inform contemporary debates on sexuality and the identity of the nation state. She uses her postcolonial feminist lens to explore the issue of sexual harassment and its contradictory results for the sexual subaltern subject. Kapur also analyses how the politics of the religious right in India (primarily through the Bharatiya Janata Party), have exploited notions of cultural authenticity to pursue their agenda on sexuality, nationhood and the role of women in state and culture.

In Chapter 3, ‘Erotic Disruptions: Legal Narratives of Culture, Sex and Nation in India’, Kapur examines the role of law in the formulation and reformulation of sexuality and culture. She is interested in showing how cultural essentialism has been used by hegemonic actors to reaffirm dominant sexual ideologies in postcolonial India. In this chapter, Kapur explores some of the contemporary controversies on the Indian scene, such as satellite broadcasting and adult television, *Kama Sutra* condom advertisements, and movies like *The Bandit Queen* and *Fire*, which all pose as ‘erotic disruptions’ to the hegemonic Indian narrative. She also traces the threat presented by sexual subalterns, such as

homosexuals and sex-workers, whose 'increasing visibility' threaten 'to destroy the fantasy of the joint Indian family and the ancient cultural values and traditions that have cemented it together' (p58).

In Chapter 4, 'The Tragedy of Victimisation Rhetoric: Resurrecting the "Native" Subject in International/ Postcolonial Feminist Legal Politics', Kapur shifts her focus to the international arena, and suggests that the global feminist movement, particularly through its focus on violence against women (VAW), has reinforced the image of women as victims. Kapur argues that the victim subject used by VAW campaigns continue to sustain gender and culture essentialism. These monolithic categories are then used to reinforce the first world/third world divide, where the victim 'native subject' is used (yet again) to justify imperialistic intrusions. Like Gayatri Spivak, Chandra Mohanty and other postcolonial feminists, Kapur uses her theoretical trajectory to expose the essentialism inherent in the global women's rights movement. She is critical of the centre-periphery cultural model which has come to characterise global feminism, and which continues to stereotype the third world subject as 'abject'. Moreover, according to Kapur, the focus on the victim subject by legal scholarship fails to exploit the emancipatory potential of feminist insights.

In the final chapter, 'The Other Side of Universality: Cross-Border Movements and the Transnational Migrant Subject', Kapur explores how yet another subaltern—the 'transnational migrant subject'—is regulated by the law. In this chapter, Kapur traces the shifting contours of legitimacy (and illegitimacy) which follow the transnational migrant subject, and demonstrates how notions of nationhood are reinforced by the law through its construction of this subaltern as Other. She suggests that when the law does intrude into the rights of the transnational migrant, the interventions are often based on imperialistic assumptions about the Other. Kapur explores the plight of the transnational migrant subject largely through three separate areas of legal regulation: anti-trafficking legislation (in countries such as the US), where she particularly focuses on the impact of anti-trafficking laws on women who migrate for work (including sex-work); the eligibility and citizenship criteria for immigration to countries such as the UK; and the recent Australian legal response to terrorism and asylum-seekers.

Ultimately, Kapur's critique of the liberal project is not intended to result in 'hopelessness' (p10). Rather, its aims are transformative: 'to articulate a different cosmology within which to understand the relationship between postcolonial subjects, law, culture and sexuality, that does not reproduce universalising agendas or fall into a cultural relativist trap' (p10). Kapur's transformative goals in *Erotic Justice* are fully realised, as the text not only presents another challenge to liberal legalism's imperialism, but it is also a clear demonstration of the disruptive and theoretical possibilities the subaltern subject can bring to law.

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