

## A New Theory of Customary International Law and the Rights of Women

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Discussion of a forthcoming article. In this article, I explore the applicability of theories expressed in Professor Brian Leppard's book, *Customary International Law: A New Theory with Practical Applications* to the attainment of rights for women using international law. Professor Leppard seeks to develop a legal principle that customary international law can be established even if the existence of consistent state practice is absent. He advocates a new definition of customary international law:

"A customary international law norm arises when states generally believe that it is desirable now or in the near future to have an authoritative legal principle or rule prescribing, permitting, or prohibiting certain conduct."

He joins others who have challenged the traditional sources of customary international law. Under his theory, a norm of customary international law can be established even if consistent state practice does not exist. State practice becomes some evidence of the belief required under Leppard's definition.

In this article, I apply Leppard's theory to the human rights of women. I first review some of the basic concepts and issues regarding the establishment of customary international law norms. Next, I explore the suppression of women's rights based upon customary state and domestic law and how this has been addressed by international law. Finally, I attempt to create a solution that could lead to the recognition of women's human rights as customary international law based upon a modern aspirational view of customary international law.