

RECENT BOOKS ON INTERNATIONAL LAW

EDITED BY RICHARD B. BILDER

BOOK REVIEWS

Research Handbook on Feminist Engagement in International Law. Edited by Susan Harris Rimmer and Kate Ogg. Northampton, MA: Edward Elgar, 2019. Pp. xxvii, 558. Index. doi:10.1017/ajil.2020.10

Susan Harris Rimmer, associate professor at Griffith University Law School, and Kate Ogg, senior lecturer at Australian National University College of Law, have compiled an important volume on feminist engagement with international law. The editors build on recent research and scholarship produced on the subject, but also extend their inquiries to areas not previously covered by feminist scholars of international law in great detail, but which are of significance to the corpus of international law scholarship.

The publication of this volume is an ambitious project—for its scope and reach (including public and private international law); its contributors (a global collection of knowledgeable and engaged scholars); its approach (incorporating theory and practice); and its methodological orientation (involving both quantitative and qualitative approaches). The volume incorporates a range of diverse perspectives. More than thirty contributors were drawn from invited submissions as well as an open call for participants, resulting in a globally representative group of submissions, with contributing authors at different stages of their careers. To bridge theory and practice, each section of the volume includes a contribution from a practitioner of international law.

The organization of the book is particularly helpful. The conceptual orientation is about building and strengthening prior international

legal scholarship, attempting to fill the gaps and omissions in such scholarship, incorporating and engaging with other critical theories, and pursuing an approach that is impactful and meaningful to women's lives. Although the majority of the contributors appear to have been trained in law, almost all have academic orientation or grounding in other disciplines as well, making the approach richly interdisciplinary.

A valuable inclusion in the introductory discussion is an empirical review of feminist international legal scholarship's contribution to international law, especially the field's reach and influence, as well as its diversity and inclusion of varying (and sometimes conflicting) viewpoints. Harris Rimmer and Ogg provide a useful catalogue of feminist contributions to the field of international law between 1950 and 2016. At the same time, they succeed in dispelling some of the conflicting perspectives regarding feminist scholarship in international law's disproportionate focus on violence against women, as well as concerns raised about the ghettoization of feminist legal scholarship. The empirical data they provide is impressive, but the data also suggests the hard work that still needs to be done to achieve the goals of gender equality and women's empowerment—at the global and national level.

The introduction notes the contribution of feminist approaches to international law, weighing the success of the contributions (their impact on international law) as well as the limitations or obstacles to the achievement of gender equality in international law, including its institutions and structures. The editors point out how feminist legal scholars have created the discursive space in the legal and political realm to influence international law. They also demonstrate how those scholars have brought women's issues from the margins of discourse to a more centralized space

of recognition, at least formally. But they lament the disappointments and the lack of progress in crucial areas of international law.

Regarding the successes of feminist international law scholars since the start of the new millennium, Harris Rimmer and Ogg point to the 2002 Rome Statute of the International Criminal Court, especially the inclusion of sexual violence in the definition of crimes against humanity. Between 2000 and 2015, the United Nations passed eight resolutions on women, peace, and security, as well as creating UN Women in 2010, which is seen as the UN's global engine for gender equality and women's empowerment. They also point to regional gains, such as the 2003 Maputo Protocol on the Rights of Women in Africa and the 2014 Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence. At the time of the book's publication, seven women had been awarded the Nobel Peace for their endeavors related to human rights, democracy, and peace-building.

Harris Rimmer and Ogg particularly highlight the growing influence of feminist legal scholarship in the academy, including the proliferation of international law courses and related academic activities generated by such scholarship. To this list of successes I would add the impressive women's advocacy at the global and local level, including the large number of nongovernmental organizations dedicated to gender equality and women's empowerment. Of particular significance is the emergence in 2017 of the #MeToo movement, whose influence and impact are yet to be examined.

The editors also point to many disappointments, despite the successes noted above. For example, the UN has to date failed to appoint a woman as secretary-general, despite the availability of several prominent women to serve in this role. In addition, the number of women at the senior level throughout the UN system remains paltry. In addition, at the national level, men with deeply sexist and misogynistic attitudes have been elected as political leaders in several countries.

Harris Rimmer and Ogg also point to a contradiction: a growing despondency about the limited influence of feminists at the international law level, despite the proliferation of feminist legal scholarship. And they also note the ongoing debates about feminism as being dominated by Western feminists and therefore still largely demographically homogenous. Further, they refer to Janet Halley's exhortation that international lawyers should take a break from feminism.¹

This tabulation of gains and disappointments raise several issues for the editors, notably the inclusion of diverse perspectives (such as critical race theory, third world feminism, and queer theory) into feminist critiques of international law; whether having women in senior positions will make a fundamental difference to the structure and edifice of international law, as opposed to mere tinkering at the edges; and whether the focus of feminist legal scholars should move beyond the widely covered areas of human rights law, which are often erroneously interpreted as "soft" law.

The four goals that the authors set out for the volume, highlighted below, are pursued throughout the volume and arranged into four parts. The first goal is diversifying the feminist perspectives on international law, especially in areas that have none or have limited engagement with feminist perspectives. Second, the volume seeks to engage with a wider audience and therefore render feminist perspectives on international law more influential. The third goal is to find strategies for feminist scholarship that may be translated into productive ways to change women's lives. Fourth, the contributors are invited to engage with racial and other critiques that have vexed the feminist legal theory project.

The introductory keynote address of Sima Samar, Afghan women's and human rights advocate, (ch. 2) bestows on the volume a kind of gravitas that signals both admirable achievements as well as continuing disappointments.

Part 1, "Diversifying Feminist Engagement with International Law," lays the groundwork

¹ JANET HALLEY, *SPLIT DECISIONS: HOW AND WHY TO TAKE A BREAK FROM FEMINISM* (2006).

for the rest of the volume, with contributors pursuing new horizons of international law. Several contributions engage with areas of international law not generally well traversed or influenced by feminist legal theory. From Harris Rimmer's interrogation of the "social activity" of diplomacy by states and the theorizing of gender and diplomacy (ch. 3) to a range of analyses on environmental concerns, climate change, and natural disasters, the contributors engage with areas of law largely untouched by feminist legal theory. In different ways and from a range of perspectives, each of the contributors point to the possibilities of feminist methodologies and a feminist ontology to reimagine these areas of law.

In the discussion of some of the chapters, there is resourceful reference to national law analogues. For example, in her chapter examining the complete absence of feminist analysis of private international law, Mary Keyes, professor at Griffith University Law School, ponders whether "there is nothing to be said about women in private international law," or that "[women] are not involved in, or at least not especially affected by, private international law" (ch. 7, p. 103). She appropriately locates these absences in the gendered analytical gaps in the common law within countries, especially when it comes to family law and the law of contract.

It is therefore hard to raise substantive criticisms of this volume. Very often in texts of this kind, namely feminist legal approaches, the specter of essentialism looms large. Although an essentialist critique may be apposite in some of the chapters, in fact quite a few contributors grapple with the idea of a range of perspectives that include those of women. Some are mindful of the challenge of attributing one viewpoint to all women as a homogenous group. For example, Rowena Maguire, senior lecturer at Queensland University of Technology School of Law, explores a range and diversity of feminist approaches in her chapter on climate law and policy, recognizing that "a range of feminist theories and perspectives are useful in exploring the gender and climate nexus" (ch. 5, p. 64). So too Jaya Ramji-Nogales, associate dean for academic affairs and professor at Temple University

Beasley School of Law, revisits the category "women" in Part 2 to "demonstrate the promise and peril of using the category "women" as the foundation of a political movement" since she notes that "'women' constitutes a diverse group with different and at times diametrically opposed political perspectives" (ch. 14, p. 241).

Another general critique of feminist legal theory's contributions has been the lack of a thorough appreciation of the totality of women's experience of subordination and oppression, and consequently the limitations of feminist legal theory to address such totality. In this respect, the contributors to Part 3 of the volume, entitled "Feminist Engagement with International Law: Improving Women's Lives," confront these concerns in creative and thoughtful ways, recognizing the interconnectedness of social and economic rights with civil and political rights. One of the longstanding critiques of feminist legal theory approaches to international law has been its oversized attention to questions of violence against women, without an appreciation of the structural violence of poverty and economic inequalities and indignities.²

All the contributors to Part 3 appreciate the larger critique and incorporate those perspectives in their analysis. Beth Goldblatt, professor at the University of Technology Sydney, is particularly effective in highlighting the connections between poverty and violence (ch. 21). Similarly, Emma Larking, visiting research fellow at Australian National University, adopts a macroeconomic comprehensive approach to highlight global and systemic economic problems that are designed to reify gendered inequalities (ch. 18).

Part 4 of the volume, entitled "Building Bridges with Other Critical Theories," makes a strong contribution to the idea of inclusivity, which animates much of the analysis in this

² Sandra Fredman, *Women and Poverty: A Human Rights Approach* (Working Paper No. 2, 2015), available at <https://ohrh.law.ox.ac.uk/wordpress/wp-content/uploads/2015/07/OxHRH-Working-Paper-Number-2-Fredman1.pdf>; Berta E. Hernández-Truyol, *Women's Rights as Human Rights: Rules, Realities and the Role of Culture: A Formula for Reform*, 21 BROOK. J. INT'L L. 605 (1996), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2687514.

volume, and also directly dispels the concerns of feminist essentialism mentioned earlier. Even though a few contributors in the other sections also engage with critical theories beyond feminism, the contributors to this section of the volume engage in a robust dialogue with some of the major critiques of feminism. Those critiques have centered on the Eurocentric origins and tendencies of feminism and its claims of universality in the face of local contestations, especially around religion or cultural norms. The contribution of Kathryn McNeilly, senior lecturer at Queen's University Belfast School of Law, explores the queering of international law, and makes the appeal that "human rights themselves must be approached as fluid, non-binarised and multitudinous" (ch. 25, p. 430). From Howard University Associate Professor Jarpa Dawuni's perch as an African woman inviting a reframe of feminist questions, "a new conceptual framework aimed at charting a different direction for the study of women in international law" (ch. 26, p. 445) to University of Cape Coast Faculty of Law Lecturer Veronica P. Fynn Bruey's attention to the concerns of indigenous women in international law (ch. 29), this section is a clarion call to reshape the lens of international law by a critical feminist perspective that embraces the intersectionality and interconnectedness of women's multiple identities.

The different parts of the book fit together well, although several chapters within the different sections could just as well have been placed elsewhere. This is an observation, not a criticism, since the four themes are interconnected on so many levels. The choices of the editors, Ogg and Harris Rimmer, in parsing out the various sections to give the broader thematic impetus is quite effective. As a research handbook the volume covers almost all the bases, from diversification of the field, to pushing for influence on a broader scale, including embracing a range of critical theories, and ultimately providing innovative perspectives to make a real difference in women's lives. The various chapters in this volume also invite further explorations, which reflect the tradition and hallmark of feminist

legal theory, namely, an ongoing and recurring inquiry of women's realities.

The book faces two challenges which are only addressed tangentially. The first is an apparently global retreat from the utopian and cosmopolitan vision underlying the possibilities of constitutionalism and law to be transformative, especially regarding gender equality. It seems like the ascension of global constitutionalism, so widely hailed in the wake of the fall of the Berlin Wall, has now largely abated. Arguably, in the last few years there has been an emergence of an "authoritarian constitutionalism"³ and what has been termed "autocratic legalism."⁴ Although these developments are most pronounced at the national level, their global resonances are profound and could have a deep impact on international law and some of the (limited) gains of feminism.

In this regard, the thoughtful chapter by Aoife O'Donoghue, professor at Durham University, and Ruth Houghton, lecturer at Newcastle University Law School, which raises the question whether global constitutionalism could be feminist, might have been a good place to think through the implications of the current context (ch. 6). Their seven-point manifesto is compelling, but one wonders whether the global constitutional frame has shifted somewhat, and how feminist perspectives might impact or influence this shift.

The second challenge is a perennial one, namely about transforming legal rights and legal power into political power. The feminist legal theoretical gains, as mentioned elsewhere, have been quite impressive. But ultimately the legal gains must be translated into fundamental political power. Despite extraordinary gains, all indicators still point to women globally as

³ Gábor Halmi, *Populism, Authoritarianism and Constitutionalism*, 20 GER. L.J. 296 (2019), available at <https://www.cambridge.org/core/journals/german-law-journal/article/populism-authoritarianism-and-constitutionalism/344BB7C4B6D417DE3FB6ECE50B5B1386/core-reader>.

⁴ Kim Lane Scheppele, *Autocratic Legalism*, EUR. U. INST.: CONSTITUTIONALISM AND POL. BLOG (2017), at <https://blogs.eui.eu/constitutionalism-politics-working-group/populist-constitutionalism-6-kim-lane-scheppele-autocratic-legalism>.

second-class citizens. In fact, the World Economic Forum's 2018 Global Gender Gap report states that it will take 202 years for women to achieve economic equality with men.⁵

This considerable collection of feminist perspectives is akin to a theoretical smorgasbord, an intellectual buffet offering a wide variety of ideas tinged with complexities, challenges, and possibilities. Like a smorgasbord, the variety of offerings cater to different preferences and tastes, and allows for dipping in and out, choosing to start at the beginning, middle, or end. For those who teach, research, practice, or otherwise engage with international law, this volume is a useful source and a notable contribution to the literature.

PENELOPE ANDREWS
New York Law School

Internationalized Armed Conflicts in International Law. By Kubo Mačák. Oxford, UK: Oxford University Press, 2018. Pp. xl, 268. Index. doi:10.1017/ajil.2020.2

Internationalized Armed Conflicts in International Law addresses the transformation of a noninternational armed conflict into an international one—which the author refers to as its “internationalization” (p. 24). The matter is one of increasing importance in recent decades, given the growing tendency of states to become involved in one way or another in internal conflicts in another state, or the possibility that a civil conflict may result in the transformation of warring factions into separate warring states. Although international law has been evolving to apply more of the international law of armed conflict to internal conflicts, significant differences nonetheless remain, and it is therefore important to assess when the process of “internationalization” crosses the line, and what the consequences of that transformation are.

⁵ World Economic Forum, *The Global Gender Gap Report* (2018), available at http://www3.weforum.org/docs/WEF_GGGR_2018.pdf.

Kubo Mačák is an associate professor at the University of Exeter Law School and has, among other things, worked at the International Criminal Tribunals for the former Yugoslavia and Rwanda, and has done research at the International Committee of the Red Cross and the Max Planck Institute. His scholarly background is evident in the thoroughness and rigor of his analysis in this book.

The process of internationalization. The first half of the book deals with the process by which noninternational conflicts may become international. Macak's analysis stays within the current structure of the law that provides for two regimes—one for international conflicts and another for noninternational conflicts—and does not attempt to move toward a possible third category to which some but not all of the international rules might apply.

Macak argues that there are several mechanisms through which internationalization may occur. The first is where a noninternational conflict becomes an international one by the military intervention of an outside state on the side of a rebel movement. He takes the view that a situation of outside intervention without the consent of the territorial state may be more ambiguous if the intervening state does not engage its armed forces directly, but supports a rebel group in various other ways. He argues that the provision of material or logistical support to a rebel faction is not sufficient to internationalize the conflict, but that such internationalization would occur if the outside state exercises overall control of the rebel movement, in particular by organizing and coordinating its actions against the government in power.

On the other hand, he argues that if foreign intervention occurs with the consent of the territorial state, the situation remains a noninternational conflict. This in effect rejects the proposition that such an intervention might transform the conflict into one governed by the rules of international conflict if the conflict is on such a scale as to justify the application of those rules. Macak's position on this point seems to reflect the current understanding of states, as reflected in modern conventions on armed conflict.