
**Priorities of Feminist Legal Research:
A sketch, a draft agenda, a hint of an outline...**

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Two decades back feminist scholarship addressing international law still occupied outsider status in many arenas. Early interventions in the field outlined the priorities of feminist research in international law as the mainstreaming and consolidation of feminist insights in other terrains into international legal analysis, inclusion of feminist perspectives within mainstream legal practice, and the expansion of feminist analysis of public/private onto the international law stage.¹ Today I would argue that our priority should be change not consolidation, challenge not inclusion, re-examination not expansion.

The agenda laid out by those early interventions has been significantly advanced in the intervening decades. That very success has been partly responsible for the changed landscape of international law; today we have a new context characterized by unexpected complications and considerations that warrant a revisiting of our priorities. The arena relating to the legal regime operative in times of war presents a case in point. In the mid-nineties Rhonda Copelon and other pioneers in this field lamented the historic marginalization of women's experience of armed conflict, and the concomitant neglect of legal arguments that could press accountability for human rights violations against women in such contexts.² Much feminist research in the decade that followed was directed at advancing and strengthening legal arguments that would

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¹ The most famous intervention in this regard is the path breaking "Feminist Approaches to International Law" by Hilary Charlesworth, Christine Chinkin and Shelley Wright that was published in the *American Journal of International Law*, Vol. 85, No. 4 (1991), pp. 613-645. Alongside this piece there were a series of interventions in the early 1990s that broke new ground in their discussion of feminism in an international law terrain and defined a broad and diverse field of research. See also Karen Engle's "Female Subjects of Public International Law" in 26 *New England Law Review* 1509 (1992), and Ratna Kapur and Brenda Cossman's "Trespass, Impasse, Collaboration" in 2 *Journal for Human Justice* 99 (1991). By the mid-90s, in a turn led in different arenas by Rhonda Copelon and Catharine MacKinnon, we also saw a proliferation of articles focused particularly on women and international law pertaining to war. For an account of these developments in international criminal law, see Janet Halley, "Rape at Rome: Feminist Interventions in the Criminalization of Sex Related Violence in Positive International Criminal Law" in 30 *Michigan Journal of International Law* 1 (2008).

² Rhonda Copelon, "Women and War Crimes," 69 *St. John's Law Review* 61 (1995).

feed into war crimes tribunals in The Hague, Arusha and Freetown.³ Today the fruits of those efforts are reflected in the International Criminal Court, in a series of Security Council Resolutions focusing on women victims of war and a dramatic increase in institutional and material resources devoted to women's experience of human rights abuse in the context of conflict. The advances of feminist agendas regarding the recognition of women in these varied domains is indicative of how dominant streams of feminism have succeeded in authorizing and delimiting what counts as legal and policy 'knowledge' about women in war.⁴

These achievements have been accompanied, and perhaps enabled, by their own blind spots. The contingent parameters of successful legal strategy in a particular historical context have too readily been generalized as the parameters of intellectual inquiry and our political agenda as such. For instance, feminist interventions engaging with contexts of war twenty years ago may have been correct to emphasizing women's victimization in such contexts because there was little recognition of the gendered impact of war; yet in those intervening years that contingent strategy has been naturalized as the feminist approach to war as such. Thus today feminist interventions have been disproportionately invested in building legal arguments that define and advance the gendered victim subject. Thus the strategy has focused on working towards an international legal and policy framework for war as one that sees women primarily as victims, as one where crimes such as rape get incorporated into legal definitions and findings of "apex" crimes such as genocide, as one where the sanction for those crimes gets equated with crimes such as murder, and recognition of this victimization becomes the ground from which women speak and the gendered impact of war can be recognized. Too often this strategy insulates itself from critique and contestation because it sees feminism itself as also victimized and always on the defensive. This stance has crippled legal strategy but it has also stunted our intellectual agendas. While there may have been and may continue to be specific historical contexts where

³The appointment of Catharine MacKinnon as Special Adviser on Gender Crimes to the Office of the Prosecutor in the International Criminal Court is perhaps the most striking illustration of this remarkable convergence of research and political and legal strategy. In 1994 MacKinnon wrote her enormously influential "Rape, Genocide, and Women's Human Rights" in *17 Harvard Women's Law Journal* 5 (1994). In 2008 she was appointed Special Adviser on Gender Crimes. See Halley, above n.1.

⁴Some have described feminism's incorporation into the corridors of international law and policy at the highest levels, as indicative of feminism's own will to power, of the consolidation of "governance feminism". On governance feminism, see Halley et. al. in "From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work and Sex Trafficking," *29 Harvard Journal of Law and Gender* 335 (2006).

we decide that a focus on injury and the gendered victim subject may be the best legal strategy, this is not an intellectual framework that should be generalized a priori as setting the parameters for feminist research agendas in diverse contexts of war. Rather we should seek to open up the question of subjectivity by interrogating those received parameters even if it may have ambivalent, or even adverse, consequences for legal strategy.

If feminist legal research is to rediscover an intellectually and politically radical space it may need to interrogate its own claims. This may involve less intimacy with the halls of power and more political risk. Similarly, if feminist legal research agendas are going to be intellectually robust and subversive of received truth claims, we may need to unpack the universalization of analytical prisms such as the public/private distinction and examine the conditions of their production.⁵ Moreover, if feminism was going to be about a politically relevant and engaged analytics, it may not always begin with gender as the starting point of analysis;⁶ critical feminist analysis will be precisely that which can eschew such pieties in understanding and challenge the enabling conditions and distributive implications of international law in ways that are intellectually versatile and politically relevant. Finally, and relatedly, while many other areas of feminist research have unpacked, pluralized and troubled the category of ‘woman’, the category is deployed as self-evident and strikingly untroubled in the domain of feminist research on international law. If we want to reinvigorate feminism’s critical traditions we need to risk the heretical and contest closure on this most fundamental of questions.

This is just the beginning of an effort to sketch some ideas about how we may define a vital, critical feminist legal research agenda. I begin by examining where we already find ourselves – where feminist agendas have become consolidated, insulated from challenge and empowered for expansion. Thus my argument is that rather than defining feminist research agendas by

⁵ For instance, an approach that ‘applies’ the public/private distinction to contest statist approaches and attend to “women’s rights as human rights” posits the public/private distinction as a framework that constrains our intellectual inquiry. Thus we entrench an analytic practice that is reflexive rather than reflective. Instead, investigating multiple genealogies of the public/private in diverse and specific contexts can open us to the fact that law and statehood can be structured in ways that are plural, fluid and unexpected.

⁶ For instance, if we are looking at the distributive dynamics of international trade, we cannot begin with an a priori assumption that gender is the starting point to challenging the legal architecture of the international trade regime.

celebrating and fortifying particular “achievements”, historicizing those achievements and their conditions of possibility should itself be the agenda. The agendas of twenty years ago cannot be the agenda of today; different historical circumstances call for different approaches. In other words, creative intellectual renewal and political relevance both demand that we develop a critical political imagination that constantly has its own assumptions in its crosshairs.