

## *Book Reviews / Recensions de livres*

*Looting and Rape in Wartime: Law and Change in International Relations.*

By Tuba Inal. Philadelphia: University of Pennsylvania Press, 2013. 269 pages.

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The subject of rape in the context of war has long been the concern of feminist scholars of international law and international relations (IR).<sup>1</sup> Drawing from both disciplines, Tuba Inal presents a detailed historical and ideological analysis of the changing normative context that has contributed to the creation of prohibition regimes of looting and rape in wartime. Inal's work, based on her doctoral thesis,<sup>2</sup> focuses on gender and regime change and demonstrates the significance of regime change to the prohibition of violence perpetrated against property and women in war.

Inal describes the influence of the normative context of eighteenth-, nineteenth-, and twentieth-century international affairs on the progressive development of international law (international human rights law, international humanitarian law, and international criminal law) and state compliance, with an adherence to particular prohibitions and prohibition regimes. She presents a social history of how, over a hundred-year period, the "booty and beauty"<sup>3</sup>

<sup>1</sup> Scholars such as Kelly Dawn Askin, Doris Buss, Annie-Marie LM de Brouwer, Christine Chinkin, Rhonda Copleton, Karen Engle, Cynthia Enloe, Nicole LaViolette, Catherine A Mackinnon, Fionnuala Ní Aoláin, Valerie Oosterveld, Donna Pankhurst, Inger Skjelsbæk, and J Ann Tickner.

<sup>2</sup> Completed in 2008 at the University of Minnesota under the supervision of Kathryn Sikkink, and with commentary on legal analysis by Fionnuala Ní Aoláin.

<sup>3</sup> General Andrew Jackson, cited in Tuba Inal, *Looting and Rape in Wartime: Law and Change in International Relations* (Philadelphia, PA: University of Pennsylvania Press, 2013) at 167.

understanding of the spoils of war came to be viewed as uncivilized. Through Inal's substantive chapters on prohibition and (non)-prohibition, the reader comes to understand the social construction of the rape of women in the context of war as a military necessity, an inevitability, a violation of personal property, a defilement of family honour, an affront to personal dignity, and, only recently, as an act of genocide. Her narration of pillage and rape in the context of war would appeal to both legal historians and IR scholars, although her text is primarily orientated towards IR scholars.

Inal's introductory chapter poses the following question: "How can [the] historical discrepancy [between the handling of rape and pillage by international law] help us understand the impact of gender on change in international relations?"<sup>4</sup> The answer to this question lies in the influence of power-based, interest-based, and knowledge-based theories concerning the development of 'prohibition regimes.'<sup>5</sup> Inal's main argument is that prohibition regimes in IR are directly linked to changes in legal practices and beliefs. Prohibition regimes are concretized under three necessary conditions: a state's obligation and willingness to comply based on a cost-benefit approach; state acknowledgement of a practice as abhorrent and against core norms; and the persistent recognition of the prohibition in emerging law and policy by state and non-state actors.

The formal legalization of prohibition regimes occurs when states exhibit a high level of legal obligation, interpretive precision, and domestic and international delegation.<sup>6</sup> This argument draws from existing debates in IR and international law on internal atrocities.<sup>7</sup> Inal uses feminist modes of explanation to advance her prohibition regime argument and explain the normative context of codifying the *Hague Conventions* (1899, 1907), the *Geneva Conventions* and *Additional Protocols* (1949, 1977), and the *Rome*

<sup>4</sup> *Ibid* at 2.

<sup>5</sup> Ethan A Nadelmann, "Global Prohibition Regimes: The Evolution of Norms in International Society" (1990) 44:4 *Intl Organization* 479.

<sup>6</sup> Inal, *supra* note 3 at 5-6, citing Kenneth W Abbott et al, "The Concept of Legalization" (2000) 54:3 *Intl Organization* 401.

<sup>7</sup> See Kenneth W Abbott, "International Relations Theory, International Law, and the Regime Governing Atrocities in Internal Conflicts" in Steven R Ratner & Anne-Marie Slaughter, eds, *The Methods of International Law* (Washington, DC: American Society of International Law, 2004).

*Statute of the International Criminal Court (Rome Statute)* (1998).<sup>8</sup> However, she does not address causality through specific empirical claims, focusing on the state as a national actor. In her research, Inal looked to her personal interviews with delegates and activists as well as to reports of diplomatic conferences written by states, international organizations, and women's organizations. These sources form her descriptive account of core norms, normative shocks, and norm entrepreneurship in the codification of international humanitarian law.

Inal's second and third chapters focus on the prohibition of pillage and the (non)-prohibition of rape in war and trace the moral force of American and European notions of progress, humanity, and civilization on the preparation of codes and manuals on the conduct of soldiers in war. She examines the writings of jurists, diplomats, and peace organizations involved in the drafting of the *Lieber Code* (1863), the Brussels Conference (1874), the *Oxford Code* (1880), the *Geffcken Code* (1894), and the Hague Peace Conferences (1899, 1907). Not surprisingly, Inal concludes that the influence of economic liberalism, private property, and the rise of the modern state in international society contributed towards the late nineteenth-century prohibition of pillage in war.

Inal draws on historical sources, such as the seventeenth-century writings of Hugo Grotius and the *Proceedings at the Laying of a Wreath on the Tomb of Hugo Grotius* (4 July 1899) in order to emphasize the centrality of the discourse of civilization and to explain why rape, when framed as a question of a violation of private property and an attack on family (male) honour, is excluded from the

<sup>8</sup> *Convention no II with Respect to the Laws and Customs of War on Land, with annex of regulations*, 29 July 1899, 32 Stat 1803; *Hague Convention no IV Respecting the Laws and Customs of War on Land*, 18 October 1907, BTS 1910 No 9, 1 Bevans 631, 36 Stat 2227; *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, 12 August 1949, 75 UNTS 31; *Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*, 12 August 1949, 75 UNTS 85; *Geneva Convention Relative to the Treatment of Prisoners of War*, 12 August 1949, 75 UNTS 135; *Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, 12 August 1949, 75 UNTS 287 [*Geneva Convention IV*]; *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts*, 8 June 1977, 1125 UNTS 3 [*Additional Protocol I*]; *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts*, 8 June 1977, 1125 UNTS 609; *Rome Statute of the International Criminal Court*, 17 July 1998, 2187 UNTS 3.

*Hague Conventions*.<sup>9</sup> However, her primarily Western perspective and her insufficient treatment of the non-Western world weaken her overall argument. For example, this gap is made visible in her discussion of rape in the context of Bangladesh's war for independence (1971). Her text could have benefited from a discussion of the social construction of the (non-Western) barbarian against which the moral hierarchies of modern states militaries are defined. Inclusion of this discussion would have clarified the significance of discourses of civilization on normative change. This critique is not specific to Inal's text; it may be said of many scholars in both disciplines.<sup>10</sup>

Inal offers several other explanations as to the (non)-prohibition of rape that reflect the gendered ideologies of the hundred-year period of her text and that, in many ways, are still reflected in the present day: (1) in the context of diplomatic proceedings, the vulgarity of the term by nineteenth-century standards; (2) the regulation of women in domestic legal discourse; (3) the construction of rape as a sexual activity, not as violence; (4) the notion that rape could only be perpetrated against a virgin or an upper-class woman; and (5) the false medical jurisprudence on rape. Inal uses quotations from the meetings of the International Council on Women and the International Woman Suffrage Alliance to reveal a shift in the feminist agenda to the issue of rape and war and to link to her later arguments on the significance of agenda setting and norm entrepreneurship in prohibition regimes.

In Chapters 4 and 5, she describes the normative context, actors, and factors that led from the protection of women against rape to the prohibition of rape in international law. She emphasizes that this shift from "protection" to "prohibition" in law and legal discourse is significant to understanding regime change. The reader comes to understand the challenges associated with the development of the prohibition regime of rape and the importance of precision and delegation in the legalization of this regime. This insightful analysis has the potential to be applied to prohibition regimes in the making, such as the protection of civilian journalists.<sup>11</sup>

<sup>9</sup> Inal, *supra* note 3 at 28, 53–55.

<sup>10</sup> See Antony Anghie & BS Chimni, "Third World Approaches to International Law and Individual Responsibility in Internal Conflicts" (2003) 2:1 *Chinese J Intl L* 77.

<sup>11</sup> See Press Emblem Campaign, "Draft Proposal for an International Convention to Strengthen the Protection of Journalists in Armed Conflicts and Other Situations" (2007) Press Emblem Campaign, online: <<http://www.presseblem.ch/4983.html>>.

Inal's detailed descriptive and interpretive accounts of the diplomatic conferences of the *Geneva Conventions* (1949) and *Additional Protocols* (1977) in Chapter 4, and the *Rome Statute* (1998) in Chapter 5, further clarify the challenges associated with the creation of a prohibition regime.<sup>12</sup>

Rather than focusing on states and their political and military actors, Inal casts women's organizations, such as the Alliance Internationale des Femmes, the Fédération Abolitionniste Internationale, and the World's Young Women's Christian Association, as key actors in the lead up to the Geneva Conference and the moment that rape entered international law in Article 27 of the *Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War* (12 August 1949).<sup>13</sup> She links resistance to the legal prohibition of rape as a war crime, and as a grave breach of international humanitarian law, to a failure in the proper delegation of authority in the *Additional Protocols*. Myopic legal and cultural understandings about rape and violence against women persisted well into the 1990s, where, according to Inal, men controlled diplomatic negotiations and agenda setting at the international level. At this point in the text, Inal's argument could have been strengthened by a more thorough use of sources, such as domestic legal codes, military manuals, and the statements of high-level officials, which map the extent to which states recognized rape as a crime in war in domestic practices.

Inal credits the role of women's groups and organizations in influencing the normative context of the negotiations before, during, and after the UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, which took place in Rome from 15 June to 17 July 1998. She identifies a shift in core norms and specific normative shocks that led to the prohibition regime against rape, as enshrined in Article 7(1) of the *Rome Statute*, in *Prosecutor v Jean-Paul Akayesu* of the International Criminal Tribunal for Rwanda, and in *Prosecutor v Zdravko Mucic (Celebici Camp Case)* of the International Criminal Tribunal for the former Yugoslavia.<sup>14</sup> Similar to her arguments

<sup>12</sup> See note 8 in this review.

<sup>13</sup> *Geneva Convention IV*, *supra* note 8, art 27.

<sup>14</sup> *Prosecutor v Jean-Paul Akayesu*, ICTR-96-4-T, Trial Judgment (2 September 1998) at para 731 (Trial Chamber), online: International Criminal Tribunal for Rwanda <[www.ictt.org](http://www.ictt.org)>; *Prosecutor v Zdravko Mucic (Celebici Camp Case)*, IT-96-21-T, Trial Judgment (16 November 1998) at para 495 (Trial Chamber), online: International Criminal Tribunal for the former Yugoslavia <[www.icty.org](http://www.icty.org)>.

about the prohibition regime of pillage in war, she again grounds the prohibition regime of rape in war in the discourse of civilization. Inal pinpoints the normative shock of the atrocities in the Balkans and Great Lakes and in the “[depiction of] rape as a repulsive, uncivilized practice that should be rejected by all civilized nations. If one wants to be a civilized nation, one needs to reject the practice of rape in war and participate in a prohibition regime to prevent it.”<sup>15</sup>

By grounding her arguments primarily in the discourse of civilization, Inal diminishes the complexity and instrumentality of rape to, for example, denigrate identity (racial, ethnic, sexual, and so on); humiliate, torture, and gain information; and/or control resources in those states that are marked as fragile or failed in IR debates. Further, her argument supports the notion that the promotion of prohibition regimes is a marker of civilization and creates moral hierarchies among states who demonstrate higher levels of legalization. Inal also ignores the means by which prohibition regimes for rape committed by non-state actors may be addressed. In addition, Inal’s use of gender as a fixed category, and frequent equating of gender and sex, perpetuates the fixed binaries that pervade legal discourse and that have prevented normative change.<sup>16</sup>

Inal’s explanation of norm entrepreneurship is quite thorough and synthesizes existing feminist scholarship on the topic. Core norms embodied in the Vienna Declaration and Programme of Action (1993),<sup>17</sup> and by the exponential growth in UN subsidiary organs related to women’s rights, provided an impetus for successful agenda setting by norm entrepreneurs who influenced the wording of Article 7(1) of the *Rome Statute*. Inal’s conclusion repeats the claim that law and change take time and tremendous effort on the part of norm entrepreneurs to shift core norms about gender. She underscores the emancipatory potential in a gendered reading of regime change international law and IR; emancipation occurs at the stage when the creation of a prohibition regime in law and policy encourages enforcement mechanisms

<sup>15</sup> Inal, *supra* note 3 at 164.

<sup>16</sup> See Helen Kinsella, “Gendering Grotius: Sex and Sex Difference in the Laws of War” (2006) 32:4 *Political Theory* 61.

<sup>17</sup> *Vienna Declaration and Programme of Action*, UNGAOR, UN Doc A/CONF.157/23 (1993).

and retributive justice beyond law and in the form of norm internalization. In terms of her readership, these conclusions would be of benefit to scholars and policy-makers alike.

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*What Is a Fair International Society? International Law between Development and Recognition.* By Emmanuelle Tourme-Jouannet. Oxford, UK: Hart Publishing, 2013. 252 pages.

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At first sight, international law seems particularly moralistic and inclusive. For instance, its human rights instruments are often used to pressure governments into respecting citizens' rights. Moreover, many of its institutions (such as the World Bank) are devoted to the amelioration of populations' standards of living. Emmanuelle Tourme-Jouannet's book, however, depicts international law more gloomily than mainstream literature; it proposes to take its readers for a visit through international law's darker abysses — an area where few dare to venture. It is established that, contrary to what one might think, international law actually largely remains the expression of the West's domination over the rest of the world — that “the rules of the game are designed by the winners.” During this disheartening visit, Tourme-Jouannet focuses on two specific areas: the international law of development and the international law of identity recognition. ‘International law of development’ is a term coined by the francophone literature, designating the World Bank, the International Monetary Fund, and all instruments tackling global economic disparities. The ‘international law of recognition’ consists of all instruments aiming to recognize the rights of minorities to be culturally different. This book relies on these two branches of international law to highlight the inequalities that have been created through “the global development agenda,” hoping that a better understanding of these problems may facilitate their resolution.

Many of the book's ideas relate to an oppressive sociological phenomenon pertaining to the creation of laws (domestic or international), which seems to be at the root of many of international law's insidious effects. This phenomenon manifests itself as follows. Law often tends to be the expression of a specific “vision of justice” shared by society's most powerful classes. The rule is simple: powerful