power of law and legitimacy within, if not among, nations.

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This collection brings together writings by Catharine A. MacKinnon over the twenty years between 1985 and 2006. MacKinnon, now the Elizabeth A. Long Professor of Law at the University of Michigan Law School, has been a central figure in feminist scholarship in law since the 1970s. Unlike many academics, MacKinnon has always combined her writing with activism. She is perhaps best known for her work with Andrea Dworkin on developing municipal ordinances in the United States that prohibited pornography as a form of sex discrimination and provided civil remedies against publishers of pornography. MacKinnon’s writing also led to the recognition of sexual harassment as a matter of sex discrimination, a development that has influenced the law in many countries.

Feminist analysis in law owes a huge debt to Catharine MacKinnon. The clarity of her vision, her unflagging energy, and her charismatic presence have given feminist legal scholarship credibility and momentum. I recall vividly the first time that I encountered MacKinnon’s writings in the 1980s and their illumination of the legal community that I inhabited. Her work has provided a potent way of looking at the world through a feminist lens, and a vocabulary to formulate its injustices.

This book charts MacKinnon’s journey from the national to the international spheres. As she recounts in the preface, her involvement with the Canadian Women’s Legal Education and Action Fund in the mid-1980s to work on cases under the newly adopted Canadian Charter of Rights and Freedoms prompted an interest in comparative legal perspectives. In 1991, during the violent breakup of Yugoslavia, MacKinnon began to work with Bosnian women who had been raped by Serbian forces, and she brought various court cases on their behalf seeking reparation for the violence that they had suffered. More recently, MacKinnon has been the special adviser on gender to the prosecutor of the International Criminal Court.

The book reflects a tumultuous period in international law and politics. Its scope stretches from the end of the Cold War in 1989 and the revival of the UN Security Council, through the establishment of two ad hoc international criminal tribunals (for the former Yugoslavia in 1993 and for Rwanda in 1994), to the terrorist attacks of September 11, 2001, the entry into force of the Rome Statute for the International Criminal Court in 2002, and the invasion of Iraq in 2003. The book also covers major human rights innovations at the national level, such as the introduction and development of the 1982 Canadian Charter of Rights and Freedoms and the 1996 South African Constitution. Various women-specific instruments were adopted during this period. These include the Optional Protocol to the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (entry into force 2000), the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (entry into force 1995), and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (entry into force 2005). The scope of the book also coincides with the era of the Nairobi (1985) and Beijing (1995) World Conferences on Women. This period was also one in which the feminist analysis of international law and institutions developed, inspired in no small measure by MacKinnon’s scholarship.

Are Women Human? contains twenty articles and speeches grouped into four sections entitled: “Theory and Reality,” “Struggles Within States,” “Through the Bosnian Lens,” and “On the Cutting Edge.” In such a collection, there is inevitably some overlap in the writing, but the extensive footnoting and the index greatly assist the reader. The

collection is a treasure trove for archaeologists of feminist scholarship as it captures reactions to some of the galvanizing events of the international fin de siècle. Some chapters are very short (for example, “Are Women Human?” is just two pages, and “The Promise of CEDAW’s Optional Protocol” is four pages), and have not been significantly updated. They provide a tantalizing snapshot of an issue, rather than a sustained argument.

Part of the energy of the collection arises from the chapters’ origins as speeches, written in an immediate and uncompromising language. MacKinnon’s lively, polemic writing style makes the often complex argument accessible. She has an acute ear for phrases that pithily capture her argument, often relying on contrast and alliteration. The introduction to such a collection of writings has a special role in creating coherence among the various pieces. Here, the introduction, “Women’s Status, Men’s States,” identifies MacKinnon’s agenda as investigating the international arena as a site to promote women’s rights as an alternative to the masculinity of national institutions. Her influential earlier book, Toward a Feminist Theory of the State, had argued that the state was a form of institutional male authority, masquerading as a system concerned with peace and justice. The legal system, as the instrument of the state, in MacKinnon’s memorable image, “sees and treats women the way men in society see and treat women.” The elements of this process, according to MacKinnon, include distinguishing the regulation of public and private realms, disguising male dominance as difference, masking coercion with consent, and invoking morality to obscure the oppression of women. She asks whether “the international system is a counterbalance [to the masculinity of national legal systems]? Or is it metamale?” (p. 4). In other words:

Does the move from national to international essentially simply magnify the scale and diversity of law’s masculinity, or does it at the same time offer distinct dynamics, opportunities and challenges? Even as international law and institutions could challenge or limit the power of individual states, do they build and depend upon and support the power of states as such at the same time? (Id.)

MacKinnon is also concerned with whether the apparent replacement of some of the roles of states, by forces such as multinational corporations, organized crime, and religion, has affected international masculinities. Another framing question is whether the emergence of women as a global force can challenge the top-down masculinity of the state and its surrogates from the bottom up.

MacKinnon’s answers are foreshadowed in her formulation of the questions. She argues that international law not only reflects the masculinity of the states that create it but also offers the possibility of limiting state influence; that globalization may have reduced the centrality of the state but it has done little to affect its masculinity; and that women have indeed been effective at using the international arena against masculine dominance. MacKinnon identifies women as a “global group in the sense that the distinctive social definition, treatment, and status of women as a sex relative to men is recognizable in diverse forms all over the world” (p. 13). She later invokes (in paraphrase) Virginia Woolf’s famous lines from Three Guineas, observing that “[w]omen have no state, are no state, seek no state” (p. 267). At the heart of women’s inequality is their sexuality and men’s sexual violence. MacKinnon acknowledges, however, that “solutions need to be diversely tailored with care to many local forms of [the] system [of women’s subordination]” (p. 13).

The idea of a global category of women, defined above all by women’s sexual vulnerability, requires a historical context. The practice of defining women by their bodies dates back to the eighteenth century but MacKinnon tends to assume that the category is self-evident, almost ahistorical, perhaps because it is an important identity for political mobilization. She offers international lawyers many insights, such as the following: “The particular combination of requiring state acts for many international violations with layers

of immunity for official acts and acts of state, added to rules favoring local resolution and disallowing extraterritorial jurisdiction and to the lack of interstate claims, shuts women out” (p. 7). Of course, these rules shut out many other groups as well, as demonstrated in the recent judgment by the International Court of Justice in *Jurisdictional Immunities of the State*. In that case, Germany successfully invoked jurisdictional immunity from civil claims in Italian courts for breaches of international humanitarian law committed during the German occupation of Italy in the Second World War.

MacKinnon is committed to the authority of international law, which she understands as comparable to the U.S. legal system, but on an elevated plane. She is confident about the law’s capacity to articulate the harms that women suffer, and she sees, rather optimistically, international law on the verge of recognizing sex equality as a norm of *jus cogens*: “Sex equality, although subject to varying interpretations, is nearly universally embraced as an international norm” (pp. 9–10). The problem for MacKinnon is not recognition of sex equality, but rather enforcement and commitment. A broader approach to regulation of women’s rights suggests, however, that law is only one element in achieving change, and that attention also needs to be paid to areas such as education, the economy, and the media. This is particularly so in the international arena.

MacKinnon sees the international arena as both “a specific problem of organized male dominance and a world-scale opportunity for the solutions to fit the scale of the problem” (p. 13). Her attraction to international law appears based in part on its marginalized status: She observes that international law and women both lack “access to legitimate force to compel adherence to its will” (id.) and so must deal with a wider range of methods to be effective. Nonetheless, the sensibility that runs through this collection is that the international system is where the action is for women. Law is a hierarchy and the best form of law is at the top:

“Observably gendered against women’s interests, the international system has nonetheless produced gains for women unavailable elsewhere. In challenging men’s rule to produce these gains, women as such have emerged as . . . a [transnational] group in itself. . . . [T]he international is the authentic locale for the fight for women’s rights” (p. 12). For MacKinnon, the international level fits the scale and the structure of the women question. The international level is propitious for change because (among other reasons) men are less likely to identify with men farther away from them—distance giving men what they call objectivity, hence making them more likely to see abuse of women for what it is.

This is a claim based on a rather romantic view of the international legal arena where women’s rights remain hotly contested. MacKinnon refers to the “explosive productivity” of the four UN World Conferences on Women (p. 12). But these advances are very insecure, as attested to by the UN’s failure to organize a fifth World Conference almost twenty years after the 1995 Fourth World Conference in Beijing. The institutional difference about further global summits concerning women rests on a fear that the language of the Beijing Declaration would be watered down through the combined efforts of the Holy See and the Organization of the Islamic Conference. Similar politics meant that in 2012, for the first time since its establishment in 1947, the UN Commission on the Status of Women failed to adopt a final statement.

While international law carries a certain glamour and allure, in some senses it has been a disappointing mechanism for redress of women’s rights. This is illustrated by the mixed history of the Optional Protocol to CEDAW. MacKinnon’s brief chapter (written in 2004) on the Optional Protocol hailed it as a tool that would empower women to assert their right to equality, offering “the possibility of reinvigorating the international human rights framework and hope for equality to women” (p. 67). Yet as of October 2012, more than a decade after the Optional Protocol’s entry into force, CEDAW has adopted views in just twelve cases, and has conducted an investigation under Article 8 in a single case.

MacKinnon’s elevation of the international system as the most accommodating for women’s rights understates the critical role of national and local systems for women. Women have a greater chance of influencing more local systems, and rely on them in more immediate ways than on the international. Moreover, the main value of international human rights standards is their local translation, which makes the politics of national legal systems critical. MacKinnon’s keen faith in international law emerges in her final chapter, “Women’s September 11th: Rethinking the International Law of Conflict.” Here she draws a parallel between men’s violence against women and the attacks of September 11, 2001. She points out that the number of people who were killed in the United States in the September 11 violence (approximately 3,000) is almost the same as the number of women who are killed by men in the United States each year (pp. 260 –61). The international response to each phenomenon is markedly different, however, although both can be understood legally as violence by nonstate actors against nonstate targets. She asks why violence against women is not understood as comparable to terrorism—indeed, a war on women—and proposes that international armed intervention should be considered as a response:

What will it take for violence against women, this daily war, this terrorism against women as women that goes on every day worldwide, this everyday, group-based, systematic threat to and crime against the peace, to receive a response in the structure and practice of international law anything approximate to the level of focus and determination inspired by the September 11th attacks?

Why did the condition of Afghan women, imprisoned in their clothes and homes for years . . . not rank with terrorism or rise on the international agenda to the level of a threatening conflict? . . . Why, with all the violations of international law and repeated Security Council resolutions, was their treatment alone not an act of war or a reason to intervene (including, yes, militarily) on any day up to September 10, 2001? (P. 269 –270)

While MacKinnon’s contrast between the perceived extreme dangers of terrorism and the quotidian acceptance of violence against women pinpoints the double standards of states, I find her remedy troubling. It effectively endorses armed intervention as a method of achieving change, despite all the evidence that such intervention is counter-productive, tending to install even more repressive political orders inimical to women’s rights. Her remedy fails to recognize that male power operates in complex ways and cannot be snuffed out by the use of force. It also buys into a deeply gendered understanding of dispute resolution and short-circuits a more sustained discussion about the ways to achieve equality. Similarly disconcerting is MacKinnon’s endorsement of violence when legal mechanisms fail at the national level; for example, she applauds a group of women in Nagpur, India, who “reclaimed their humanity” by stabbing a rapist to death when it became clear that he was about to be released without charge (p. 14).
MacKinnon is not afraid of controversy; indeed, she accepts the strong reaction to her work by the legal establishment as a sign that it has hit its mark. She appears, however, stung by criticism when it comes from feminist and progressive scholars. MacKinnon addresses some of the feminist criticism only elliptically. For example, the charge that international feminist movements rely on essentialized views of women and are insufficiently sensitive to cultural differences is dismissed in a footnote in the introduction (p. 9, n. 50), although it is developed further in chapter 5 (see below). Moreover, the claim that her litigation interventions for Croatian women ended up giving support to Croatian nationalists, who endorsed rape against other ethnic groups, is not addressed.

MacKinnon’s passionate response to her critics is found in chapter 5, “Postmodernism and Human Rights.” She reduces postmodernism to “a flag flown by a diverse congeries, motley because lack of unity is their credo and they feel no need to be consistent,” (p. 49) and as “the blood sport of the academic cutting edge” (p. 62). Indeed, her account of postmodernism verges on parody. Postmodernists, according to MacKinnon, “pretend[] to be profound while being merely obscure (many are fooled), slathering subjects with words” (p. 49). Nonetheless, her rejection of postmodernism seems somewhat ambivalent. On the one hand, she seeks to distance feminism from postmodern argument because she fears that the latter’s interest in contradiction and paradox will dilute the political project of achieving equality for women. On the other hand, her objections to postmodernism seem based, at least in part, on the attribution of ideas. For example, with respect to the postmodernist critique of universalism, MacKinnon writes: “Feminism in one sense started the critique of universality as currently practiced by showing how women are left out of the human episteme. We took the critique of society as socially constructed to a new depth by showing how even something often thought by others
to be biological—sexuality—is social and draws power lines” (p. 51).

The charge of essentialism—that the category “women” is linked to a fixed set of characteristics and fails to acknowledge differences between women—is an easy and in some contexts meaningless critique deployed by feminists against each other. The political force of feminism rests precisely on identifying common experiences. MacKinnon rejects the charge of essentialism by arguing that her theories are developed from the ground up, from the lives of real women, from empirical observation rather than from a conceptual perspective. However, she neither details her empirical method in this grassroots research, nor does she acknowledge the considerable variations in female/male relations in different contexts, or that the patterns of sexual oppression and domination are complicated and shifting. Certainly, MacKinnon has often been misrepresented by critics as positing a type of global conspiracy by men against women, but her own approach would be strengthened by greater recognition of the complexities and contradictions in the roles that sex and gender play in ordering society, as well as a deeper scrutiny of feminist methods.

MacKinnon’s essays have an autobiographical flavor that imbues them with an appealing vibrancy and passion. Acknowledging her roots in the U.S. system, MacKinnon thanks her “clients and colleagues from Bosnia-Hercegovina and Croatia, who gave me the world” (p. viii). But this self-image of a traveller from the national to the international arenas generates an overly optimistic view of the law’s capacity to redress harms. Thus, the decision by the U.S. Court of Appeals for the Second Circuit in Kadic v. Karadzic, litigation on which MacKinnon was co-counsel for the plaintiff-appellants, is presented as a “signal victory” (p. 7) for women worldwide. The decision held that the Alien Tort Statute allowed Bosnian women to use U.S. courts to declare the actions of Radovan Karadžić, leader of the Bosnian Serbs, illegal and to award extensive damages against him. MacKinnon correctly interprets the holding

as increasing the jurisdictional frontier for crimes against women, but it was a mixed victory, less successful in practical terms. The decision did not, for example, constrain Karadžić’s actions, or deliver actual financial redress for his victims due to the obstacles to collecting on the damage award.

MacKinnon’s insistence on foregrounding sexual politics is a valuable counterweight to the vacillation about women’s lives common in international fora, where women’s equality is often regarded as a negotiable value. This book serves as an introduction to her powerful voice, and I recommend it as an important record of her engagement in many landmark developments in the recognition of women’s rights. It manifests, however, the perhaps inevitable tensions resulting from multiple goals: political project, mobilization for women’s rights, and scholarly analysis. The book’s argument rests on a number of fixed dichotomized categories (such as women/men, international/national) and pays insufficient attention to the conflicts, contradictions, and slippages the categories involve. We still need a deeper analysis of questions such as the relationship between local and international spheres, the way that the categories of “men” and “women” are constructed in international law, and the operation of sex and gender in this arena.

Are Women Human? offers answers, when perhaps what we need are better questions, including how law produces the subjects it regulates. The political struggles of feminism encourage the divination of a single cause of women’s inequality with men. It is more difficult to theorize the nonlinear nature of the feminist project—the ways in which it moves forward and slips backwards—and the insecurity of advances, as well as the ways in which feminist vocabularies can be deployed to preserve the status quo.

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Renewed interest in child combatants coincided with the revival of international criminal justice. Over the last two decades, images of rifletoting girls and boys became emblems of civil wars in places as far apart as Sri Lanka and Sierra Leone. A report by United Nations expert Graça Machel attributed the apparent increase in so-called “small-soldiers” not only to the chaos that accompanies internal armed conflict, but also to technology that enables mass production of lethal weapons light enough for children to carry.1 Stories of such children entered popular culture through memoirs, novels, and movies.2 At meetings in Cape Town and Paris, nongovernmental and intergovernmental organizations adopted principles aimed to protect everyone under the age of eighteen who is associated with armed forces or groups.3 States responded, adopting two treaties that outlawed the compulsory recruitment and use in hostilities of persons in that same age group.4 States additionally conferred international criminal jurisdiction over the use and recruitment, forcible and otherwise, of children younger than fifteen; as a consequence, a number of commanders


2 Memoirs include ISHMAEL BEAH, A LONG WAY GONE: MEMOIRS OF A BOY SOLDIER (2007), and CHINA KEITETSI, CHILD SOLDIER: FIGHTING FOR MY LIFE (2005); novels, KOUROUMA, supra note 1, and UZODINMA IWEALA, BEASTS OF NO NATION (2005); movies, Blood Diamond (2006) and War Witch (2012).


4 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, Arts. 2–4, May 25, 2000, S. TREATY DOC. No. 106-37, at 32, 33; ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182), Arts. 1–3, June 17, 1999, 38 ILM 1207 (1999). As of this writing, these treaties had 152 and 177 states parties, respectively. The United States is a party to both.