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

By Tuba Inal

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Why did it take the international community 100 years longer to prohibit rape than looting? And why, when women were historically seen as property, were they not seen as sufficiently precious property to protect? These are the intriguing questions Tuba Inal introduces in her new book, *Looting and Rape in Wartime: Law and Change in International Relations*. What follows is an interesting exploration of social and political discourses on femininity, masculinity and sexual violence from the 19th century in Europe to the present day. These she uses, in turn, to investigate how norms emerge and are codified within the international sphere.

Inal begins with the emergence of the international prohibition regime on pillage within war. She traces the origins of this to the Lieber Code (1863). This code inspired the first international attempts to codify legal norms around warfare (the Brussels Conference of 1874) and ultimately led to the enshrinement of anti-pillage principles in the Hague and Geneva Conventions — the foundational texts of international humanitarian law (IHL). In identifying the development of international norms around the unacceptability of pillage within modern warfare, Inal argues that notions of ‘progress’ and ‘civilisation’ contained within Enlightenment philosophy were crucial. So too, she states, was the central importance given to private property within liberal political and economic theory (pp 44–46). Having established the fairly straightforward process by which anti-pillage provisions came to be included in key IHL texts, she then moves to dedicating the rest of the book to the bigger question that she seems to be asking: Why, when the establishment of an international prohibition regime against pillage emerged relatively uncontroversially in the late 19th century, did it take until the late 20th century for similar steps to be taken for rape?

The reproduction of the drafts, debates, submissions and delegate contributions on the key texts within the development of IHL is bound to be of interest to legal historians and those trying to understand the historical context and conditions within which IHL norms have emerged. Inal also presents a well-documented account of the importance of gender to international relations. While gender has traditionally been treated as a marginal concern within the supposed ‘hard power’ arena of global politics (Tickner 1992; Enloe 1990), Inal’s study demonstrates that

normative ideas about femininity and masculinity are crucial to understanding what becomes an international norm and what remains invisible.

My main criticism of this book is that it reproduces a rather classic narrative within which international law is written from and by the West, rendering the non-West once more a mere site of intervention. This has significant consequences for the assertions of universality that are subsequently made in relation to international legal norms. But it also obscures part of the picture.

For example, when speaking of 19th-century norms around gender and sexuality, this historiography would have benefited from including not only a discussion of class (which Inal does) but also emerging discourses on race. Related to the 19th-century discourses of 'civilisation' and 'progress' that Inal identifies as crucial to the establishment of the pillage prohibition regime, there is a darker side which must also be recognised. Feminist scholars of colonialism have demonstrated that this discourse of 'civilisation' was also deployed by both colonial administrators and metropolitan feminists in justification of the colonial enterprise. The idea of 'brown women needing to be saved from brown men' (to draw on Gayatri Spivak's (1988) oft-quoted phrase) became a key concern to both colonial men and women. At the same time, while Inal explains the interrelationship of class and gender in rendering rape invisible within diplomatic circles, the significance of rape as both metaphor for and actual practice of colonial conquest also seems worth mentioning.

It is also a limitation of this book that it explores only the relevance of European norms around sexual violence to the developments within international law. Not only does it reinforce a vision of international law as inherently Eurocentric, it potentially misses some important pieces of the puzzle that Inal seeks to put together. By describing an apparently linear process within which 'second wave feminism, which emerged in the Western world in the 1960s and continued into the '70s before it spread into the ranks of international feminism' (p 123), the role of women's consciousness raising and political and social activism outside the West is lost. Feminism once again becomes the product of the West, later exported to the rest. This serves to further entrench the apparent division between the 'feminism' of the West and the 'tradition' of the non-West: a process a number of postcolonial feminist scholars have identified as further marginalising many non-Western women who find themselves trapped between the two.

It also highlights the paradoxical relationship of rape to the universal claims of human rights. The 'universality' of rape is based on its inevitability (through biological and natural reasons that we still find reproduced today). Meanwhile, the condemnation of rape becomes possible only if it can be linked to the perversity or barbarity of *certain* men: the working-class men targeted by British politicians and suffragettes in 19th-century policy debates (p 75), the 'uncontrollable elements' asserted by German officials (p 109), or different ethnicised or racialised men (for example, 'African men'). What remains unnamed is the universality of patriarchy

and misogyny. Inal attempts to highlight this to an extent, but by failing to incorporate a race perspective she misses vital links between the past responses to rape and the current regime that has emerged.

Incorporating this perspective may also shed light on a number of significant questions that remain to be answered. For example, why didn't the International Alliance of Women persist in and engage with the drafting process of the Geneva Conventions? Inal notes that this remains a mystery (p 97) and, to my mind, it is a very interesting one. While for Inal it seems to reflect a certain timidity of the women's movement, I wonder if the decision to focus on 'enfranchisement of women, political equality, economic and social equality, educational opportunities, equal pay, appointment of qualified women to policy-making posts and increased opportunities to receive training for such posts' (p 98) reflects a strategic decision on priorities.

This issue re-emerges later, when discussing the first UN women's conference held in Mexico in 1975. Inal notes: 'The focus of the conference was "equal legal capacity, education, economic means, access to family planning and [more] women in decision-making positions" and the issue of violence against women did not come up' (p 128). Again, this seems to Inal to be a sign of weakness. Could it not be read differently? Could it not be argued that these concerns — which seem to relate predominantly to women's access to political and personal decision-making power — might have been identified as indirectly tackling the issue of women's vulnerability to violence? The radical feminist perspectives put forward by American lawyers such as Catharine MacKinnon reflect only one understanding of the causes of sexual and gender-based violence, even as they have become the privileged discourse within the international arena in recent times (see Halley's (2009) critique of this and her discussion of the idea of 'governance feminism'). It is also interesting that feminist scholars (myself included) are increasingly lamenting the international political and legal focus on sexual violence, arguing that it has led to a marginalisation of the broader range of women's human rights issues that remain unaddressed while simultaneously reinforcing women as passive victims rather than (constrained) agents in war, further disempowering them.

Finally, the lack of attention to the geopolitical context of emerging international concern for sexual violence against women also belies another source of complexity. The establishment of the category of "Woman" for the purposes of the violence against women campaign that emerged in the 1990s did provide a useful means of uniting women from different national, regional, socio-economic and cultural backgrounds. It has, however, also been criticised for being inattentive to the range of sites and factors that contribute to women's oppression and exploitation, creating an ahistorical account of women and violence that does not address complex root causes. Indeed, Inal unwittingly provides an example of the dangers of this category. Discussing the 1995 Beijing Women's Conference, she writes, 'negotiations over the issues of abortion and gay rights were so tense that they went on until 4 am' (p 159).

She presents this as evidence of the ongoing difficulty women face but, in fact, this is a problem that emerged *among* women themselves due to ideological differences. There continues to be the problem of marginalisation *within* the women's movement, with racialised, sexualised and other minorities subjected to exclusion and discrimination. This is something that Inal glosses over by presenting an all-too-homogenised 'women's movement' (which, as noted above, is only identified from the West).

While Inal speaks of 'normative shocks' that lead to certain shifts in international responses, her historiography also demonstrates an important degree of continuity within discourses. For example, the central focus on the 'protection of family' in IHL responses to sexual violence has continued to resonate through more recent international jurisprudence, for example the Special Court for Sierra Leone's characterisation of the wrong associated with forced marriage as a crime against humanity (Grewal 2012). Having been critical of international law for its over-emphasis of women as symbolic representatives of their community and the creation of a distinction between 'real rape' victims and those undeserving of protection, I found this detailed history helpful in explaining a little better how and why this has occurred. In this sense, for me what is most significant about Inal's study is not so much how ideas and discourses of gender shift at particular times, but how much they essentially *stay the same*.

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