
Foreword

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This collection is a rich tapestry of ideas about what feminist thought offers to international law. It not only explores feminist histories in the discipline, but also takes feminist ideas into new fields in imaginative ways. The book's pages capture the energy, optimism and inquisitive spirit of feminism, as well as its doubts and fears.

Many of the chapters use the terms 'feminist' and 'feminism' as if there were agreement on what they mean. Indeed, part of the force of these words rests on their capaciousness and symbolism. It is, however, worth considering some of the meanings that jostle under the umbrella of feminism, many of which emerge in the contributions. As the description of this volume indicates, feminism is animated by bold ambitions for the future. A common expression of a feminist utopia is that of a world in which there is equality between women and men. But such a pithy formulation papers over important questions such as whether equality requires identical treatment of women and men, whether it entails that both sexes end up with comparable opportunities or social goods, whether it requires recognition of a distinctive women's voice or women's qualities, or whether it means the eradication of relationships of domination and subordination between the sexes and transformation of society. The notion of equality between women and men also assumes a male comparator. This version of the central feminist goal similarly sidesteps questions of equality *between* women, and the roles of factors such as age, race, disability, sexuality and economic position in affecting women's lives. It assumes the fixed duality of sexual difference. In short, the identification of feminist futures is a contentious task.

Feminism can be understood as a political ambition, but it is also an intellectual method which challenges claims to objective and impartial knowledge in various disciplinary traditions. These roles are closely entwined, as the contributions here show. Andrea Bianchi has described feminist theories as 'overtly partisan';¹ methodologically, however, this is only accurate in the sense that they seek to uncover the partisan nature of all approaches to knowledge, especially those that assert their detachment from political perspectives. A similar charge, albeit from a queer theoretical perspective, is that feminism has 'seriously narrow[ed] intellectual inquiry, prioritizing politics over critique'.² Elizabeth Grosz has observed the uneasy relationship between two distinct roles of feminist theory – responding to political feminist goals and analysing the thoroughgoing masculinity of disciplinary knowledge. Feminist theories are often dismissed by the academy because of their explicitly political ends; and yet they are

¹ Andrea Bianchi, *International Law Theories* (2016) p. 189.

² Brenda Cossman, Dan Danielsen, Janet Halley and Tracey Higgins, 'Gender, Sexuality and Power: Is Feminist Theory Enough?' (2003) 12 *Columbia Journal of Gender and Law* 601, 624.

also criticised by feminist activists for engagement with the male-dominated world of theory.³ Feminism's cluttered mix of utopian thought and critical thinking thus complicates the search for feminist futures.

The contributions to this volume overall illustrate that the language of feminism indicates a type of inquiry, a way of asking questions that draws attention to particular silences in the field of international law and that often relies on sex and gender as categories of analysis. The relationship between the notions of sex and gender is vexed. One account makes a clear distinction between the concepts, defining sex as a matter of biology and gender as the constructed attributes of sex and the designation of social roles.⁴ This approach is interested in how understandings of masculinity and femininity shape disciplinary thought. Gender in this sense refers not to the characteristics of particular men and women but to a set of social constructions, varying over time and place. Common features of these constructions are, first, that masculinity and femininity are defined as opposite to one other. Second, those qualities or traits deemed masculine are assigned a greater value than those defined as feminine.⁵

In many international legal contexts, however, the terms 'sex' and 'gender' are treated as synonyms. For example, the Statute of the International Criminal Court refers to 'gender' in the description of some of the crimes within the Court's jurisdiction, defining it as 'the two sexes, male and female, within the context of society'.⁶ The elision of sex and gender found in this definition, linking gender with biology, implies that gender is a fixed, objective fact about a person. We also see the merging of sex and gender in the calls for 'gender equality' found in the Millennium Development Goals (2000) and the Sustainable Development Goals (2015). In both these documents, the elaboration of the notion of gender equality refers only to the comparative position of women and men.⁷

Does the distinction between sex and gender inform an understanding of being a woman in specific contexts? While it can be useful in countering the idea that women's inequality is based on biological inevitability, the division can cast a shadow over the use of the category 'women', raising the spectre of essentialism.⁸ Toril Moi has suggested that distinguishing sex and gender is not always productive in feminist thought, especially as a basis for understanding subjectivity. She draws on Simone de Beauvoir's observation in *The Second Sex* that 'one is not born a woman, rather we become one' to suggest that the body should be understood as a *situation*, rather than a biological entity.⁹ This approach rejects the idea of biological determinism, going

³ Elizabeth Grosz, 'A Note on Essentialism and Difference' in Sneja Gunew, ed., *Feminist Knowledge: Critique and Construct* (1990) at 332.

⁴ E.g. UN Women, 'Concepts and Definitions' available at <http://www.un.org/womenwatch/osagi/conceptsanddefinitions.htm>.

⁵ Marysia Zalewski, 'Well, What Is the Feminist Position on Bosnia?' (1995) 71 *International Affairs* 339, 341.

⁶ United Nations, Rome Statute of the International Criminal Court, ICC-ASP/2/Res.3, 12 September 2003, Article 7 (3), available at <http://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-CDC7CF02886/283503/RomeStatutEng1.pdf>.

⁷ MDG, Goal 3; SDGs, Goal 5.

⁸ Toril Moi, *Sex, Gender, and the Body* (2005).

⁹ *Ibid.* 59.

beyond sex to emphasise the values, norms and demands a woman encounters in society.¹⁰ Understanding the body as a situation means, in Moi's words, 'the concrete body experienced as meaningful, and socially and historically situated'.¹¹ This account acknowledges the oppression of ideologies and practices relating to sexual difference, while nevertheless allowing for women's agency.¹²

Feminist inquiries are more than intellectual adventures; they are enlivened by a specific political project, making women's lives visible, in the hope that such investigations will shape the future. As this collection demonstrates, feminist projects do not all point in the same direction. They encompass chronicling the roles women play in the international system, studying the impact that feminist ideas and concepts can have in patriarchal institutions, and expanding the scope of feminist analyses to hitherto unexplored areas of international law.

The title of this book takes us to the future, suggesting that feminist engagement has the capacity to transform international law. Although feminism is built on an imagined future of equality, its trajectory on the international plane supports Albert Einstein's observation that 'the distinction between past, present and future is only a stubbornly persistent illusion'.¹³ Feminist issues have often been corralled in the margins of the international system or rendered so bland that they have little transformative bite. The oppression of women is supported by an elaborate structure of male privilege, and change typically occurs only around the edges. In its ambition and scope, this collection, however, encourages us to be hopeful. It is a showcase of feminist debate and self-reflexive analysis, highlighting the creative power of feminist curiosity in international law. Feminist thought may not transform the discipline in the short term, but it can at least unsettle its boundaries.

¹⁰ Ibid. 79.

¹¹ Ibid. 74.

¹² Ibid. 83.

¹³ Quoted in Emma O'Donnell, *Remembering the Future: The Experience of Time in Jewish and Christian Liturgy* (2015).