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Of sex and war: carceral feminism and its anti-carceral critique

Mattia Pinto

Abstract

In the last three decades, wartime sexual violence has become one of the main concerns for feminists engaged with international law. This essay reviews Karen Engle's monograph on the causes and implications of today's common-sense narrative about sexual violence in conflict. It shows how Engle's powerful critique of 'carceral feminism' may represent a starting point for a new discussion of sex and war in international law.

Issue Section: Books Etc

Karen Engle, *The Grip of Sexual Violence in Conflict: Feminist Interventions in International Law* (Stanford UP, 2020)

On the last day of my internship at the International Criminal Court (ICC), 8 June 2018, I was in the public gallery when Judge Christine Van den Wyngaert read a summary of the appeal judgment that acquitted Jean-Pierre Bemba Gombo of all charges. The ICC Appeals Chamber reversed the Trial Chamber's 2016 decision that had convicted the former military commander from the Democratic Republic of Congo for the crimes against humanity of rape and murder and the war crimes of rape, murder and pillaging.¹ While Bemba's family and supporters cheered the Appeal Chamber's decision, members of the diplomatic corps, NGOs, and victim advocates demonstrated clear surprise and uneasiness. It was in particular the reversal of the conviction for rape that astounded a large part of the international community. Commentaries published in the following days criticised the ICC for its failure to issue its first final conviction for sexual violence and to bring justice to the victims of such a crime.² Concerns were also expressed about the small number of convictions for rape by international courts and tribunals compared to the pervasiveness of sexual violence in war.³ Bemba's acquittal appeared to confirm the inability of international (criminal) law to respond to sexual violence in conflict.⁴

¹ *Prosecutor v Jean-Pierre Bemba Gombo*, Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III's 'Judgment pursuant to Article 74 of the Statute', ICC-01/05-01/08-3636-Red, 8 June 2018.

² See, e.g., S SáCouto, 'The Impact of the Appeals Chamber Decision in Bemba: Impunity for Sexual and Gender-Based Crimes?', *International Justice Monitor*, 22 June 2018, <https://www.ijmonitor.org/2018/06/the-impact-of-the-appeals-chamber-decision-in-bemba-impunity-for-sexual-and-gender-based-crimes/>.

³ See, e.g., L Arimatsu, 'Preventing and punishing sexual violence in war post-Bemba', *LSE Centre for Women Peace and Security*, 1 November 2018, <https://blogs.lse.ac.uk/wps/2018/11/01/preventing-and-punishing-sexual-violence-in-war-post-bemba/>.

⁴ See, e.g., K Carlson, 'Bemba acquittal overturns important victory for sexual violence victims', *The Conversation*, 15 July 2018, <https://theconversation.com/bemba-acquittal-overturns-important-victory-for-sexual-violence-victims-99948>.

In *The Grip of Sexual Violence in Conflict: Feminist Interventions in International Law*, Karen Engle offers a different account.⁵ Although her focus is not the ICC, she shows how wartime sexual violence has gained heightened prominence in international law during the last three decades, thanks to feminist engagement with international institutions. According to Engle, it is not the failure of international law to respond to sexual violence that should be criticised, but rather the particular imaginaries about sexual violence that have ‘gripped’ international legal and political discourse. Engle’s analysis proposes that today’s ‘common-sense’ narrative about sexual violence is based on distorted representations of gender, sex, and ethnicity, which obscure the diversity and complexity of human experience in war. Reliance on criminal accountability as the principal response to gender-based violence is, for Engle, a clear manifestation of such a narrative: it reinforces an individualized and carceral approach to human rights violations, whilst deflecting resources from more structural responses. In what follows, I review Karen Engle’s book, showing how *The Grip of Sexual Violence in Conflict* provides a powerful critique of the way ‘carceral feminism’ deals with issues concerning sex and war. First, I situate the scholarly debate around wartime sexual violence in its political and historical context. Second, I provide a summary of Engle’s work, synthesising her arguments and discussing her contribution to the field. Finally, I offer a critical assessment of Engle’s work and show how her analysis can inform future research.

WARTIME SEXUAL VIOLENCE IN CONTEXT

In 1975, Susan Brownmiller published an analysis of sexual violence, *Against Our Will: Men, Women and Rape*, which instantly became a ‘classic’.⁶ It was one of the first books to define sexual violence as a political issue rather than a crime against women’s ‘honour’. *Against Our Will* also brought the fight against rape into the spotlight and encouraged the feminist movement to view sexual violence as a central element of women’s oppression. To address sexual violence, some feminists sought radical substantive justice and were sceptical of the state’s institutions.⁷ Others allied with state authorities and campaigned for more vigorous prosecutions and harsher punishment, along with broader protections for victims and their rights.⁸ This development first occurred in North America and, later, in various other countries as well as internationally.⁹

In her book, Brownmiller also provided a systematic historical study of wartime sexual violence, including rapes committed during the two World Wars, the war in Bangladesh in the 1970s and the Vietnam War.¹⁰ Twenty years later, as Engle illustrates in the first chapter of

⁵ K Engle, *The Grip of Sexual Violence in Conflict: Feminist Interventions in International Law* (Stanford UP, 2020).

⁶ S Brownmiller, *Against Our Will: Men, Women and Rape* (Secker & Warburg, 1975).

⁷ A Gruber, *The Feminist War on Crime: The Unexpected Role of Women’s Liberation in Mass Incarceration* (University of California Press, 2020) 7.

⁸ M Gottschalk, *The Prison and the Gallows: The Politics of Mass Incarceration in America* (Cambridge UP, 2006); K Bumiller, *In an Abusive State: How Neoliberalism Appropriated the Feminist Movement Against Sexual Violence* (Duke UP, 2008).

⁹ M Ticktin, ‘Sexual Violence as the Language of Border Control: Where French Feminist and Anti-Immigrant Rhetoric Meet’ 33 *Signs: Journal of Women in Culture and Society* (2008) 863.

¹⁰ Brownmiller (1975) ch. 3.

her book,¹¹ the conflicts in the former Yugoslavia and Rwanda brought the persistence of wartime sexual violence back into the focus. At this time, several feminists had begun to frame their cause in the language of human rights. The slogan ‘women’s rights are human rights’ gained momentum during the Vienna World Conference on Human Rights in 1993, when outrage around sexual violence helped unite different feminist groups in depicting rape as the emblematic violation of human rights.¹² Revelations about rapes occurring during the conflict in the Balkans led many feminists to support the establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY) and penal responses to sexual violence in conflict more generally.¹³ Other crucial moments in the fight against sexual violence were the decision of the International Criminal Tribunal for Rwanda (ICTR) in *Akayesu* (the first time an international tribunal ruled that sexual violence could constitute genocide) and the drafting process of the ICC’s Rome Statute.¹⁴ As Janet Halley has shown, feminist activists saw the ICC as an opportunity to expand the criminalisation of sexual violence both in armed conflict and in peacetime.¹⁵ Similarly, since the early 2000s women’s rights advocacy has contributed to putting criminal accountability for wartime sexual violence at the centre of the UN Security Council’s Women, Peace and Security (WPS) agenda.¹⁶

As Engle explains, according to the dominant narrative, sexual violence is the quintessential violation of women’s human rights and, as such, should be primarily opposed through criminalisation and punishment.¹⁷ Elizabeth Bernstein has characterised this approach as ‘carceral feminism’,¹⁸ and notes that it constitutes ‘a key vehicle both for the transnationalization of carceral politics and for folding back these policies into the domestic terrain in a benevolent, feminist guise’.¹⁹

The carceral feminist narrative has not gone unchallenged. Various feminists have increasingly questioned the movement’s embrace of criminal law both in peace and wartime. At the domestic level, queer, black, poststructuralist and intersectional feminists have showed how criminal law fails to tackle the root-causes of rape and aligns feminists with

¹¹ Engle (2020) ch. 1.

¹² AM Miller, ‘Sexuality, Violence against Women, and Human Rights: Women Make Demands and Ladies Get Protection’ 7 *Health and Human Rights* (2004) 16.

¹³ K Engle, ‘Feminism and Its (Dis)Contents Criminalizing Wartime Rape in Bosnia and Herzegovina’ 99 *American Journal of International Law* (2005) 778.

¹⁴ *Prosecutor v Jean-Paul Akayesu*, Trial Judgement, ICTR-96-4-T, 2 September 1998; Rome Statute of the International Criminal Court, adopted on 17 July 1998 and entered into force on 1 July 2002.

¹⁵ J Halley, ‘Rape at Rome: Feminist Interventions in the Criminalization of Sex-Related Violence in Positive International Criminal Law’ 30 *Michigan Journal of International Law* (2008) 1.

¹⁶ N Reilly, ‘How Ending Impunity for Conflict-Related Sexual Violence Overwhelmed the UN Women, Peace, and Security Agenda: A Discursive Genealogy’ 24 *Violence Against Women* (2018) 631.

¹⁷ See C Bunch & N Reilly (eds), *Demanding Accountability: The Global Campaign and Vienna Tribunal for Women’s Human Rights* (Center for Women’s Global Leadership, 1994); C MacKinnon, ‘Rape, Genocide, and Women’s Human Rights’, in A Stiglmayer & M Faber (eds), *Mass Rape: The War Against Women in Bosnia-Herzegovina* (University of Nebraska Press, 1994).

¹⁸ E Bernstein, ‘The Sexual Politics of the “New Abolitionism”’ 18 *differences* (2007) 128; E Bernstein, ‘Carceral Politics as Gender Justice? The “Traffic in Women” and Neoliberal Circuits of Crime, Sex, and Rights’ 41 *Theory and Society* (2012) 233.

¹⁹ Bernstein (2012) 235.

patriarchal criminal-justice institutions.²⁰ Similar positions have been expressed by anti-racist protestors in the wake of George Floyd’s death, where activists have raised demands to ‘defund the police’. Claims that this approach would harm potential victims of sexual violence have been rebutted by showing the ineffectiveness of criminal justice in preventing violence.²¹

Relying and expanding the critique of feminists in the domestic context, critical and postcolonial feminists have also raised concerns regarding the structural biases of international (criminal) law and its limits in dealing with wartime sexual violence.²² Engle herself has long criticised the way feminist engagement with international law has sustained carceral regimes and militaristic interventions to secure women’s rights. In a 2005 article, for instance, she showed how the international criminalisation of wartime rape, advocated and secured during and after the Yugoslav conflict, served to reify ethnic difference and diminish women’s agency.²³ In subsequent works she explored and challenged how some women’s rights advocates have embraced military intervention to respond to what they considered ‘genocidal rape’²⁴ or contributed to making criminal law the dominant UN response to sexual violence.²⁵ Finally, by amplifying her arguments in relation to the entire human rights movement, Engle denounces an increasing reliance on criminal law to enforce international human rights and humanitarian law, following what she calls ‘the turn to criminal law in human rights’.²⁶ All of these themes and arguments are now resumed and expanded in *The Grip of Sexual Violence in Conflict*.

There is, in short, profound disagreement among feminists about how to frame and respond to sexual violence during both peace and war. What role, if any, do human rights discourses and criminal law solutions play in addressing such abuse? Has women’s rights advocacy on sexual violence produced less violence and more freedom? Or has it legitimised punitive regimes and reproduced sex, gender, and cultural stereotypes? We face many questions and few satisfying answers. Until now: Engle’s book provides a compelling and much-needed account to understand and reconsider feminist advocacy in international law.

²⁰ E Bernstein, *Brokered Subjects: Sex, Trafficking, and the Politics of Freedom* (University of Chicago Press, 2018); ME Kim, ‘From Carceral Feminism to Transformative Justice: Women-of-Color Feminism and Alternatives to Incarceration’ 27 *Journal of Ethnic & Cultural Diversity in Social Work* (2018) 219; S Iyer, ‘Taking a Break from the State: Indian Feminists in the Legal Reform Process’ 17(2) *Journal of International Women’s Studies* (2016) 18.

²¹ M Kaba, ‘Yes, We Mean Literally Abolish the Police’, *New York Times*, 12 June 2020, <https://www.nytimes.com/2020/06/12/opinion/sunday/floyd-abolish-defund-police.html>.

²² J Halley, ‘Rape in Berlin: Reconsidering the Criminalisation of Rape in the International Law of Armed Conflict’ 9 *Melbourne Journal of International Law* (2008) 78; R Kapur, *Gender, Alterity and Human Rights: Freedom in a Fishbowl* (Edward Elgar, 2018) ch. 3; AB Houge & K Lohne, ‘End Impunity! Reducing Conflict-Related Sexual Violence to a Problem of Law: End Impunity!’ 51 *Law & Society Review* (2017) 755.

²³ Engle (2005).

²⁴ K Engle, ‘“Calling in the Troops”: The Uneasy Relationship Among Women’s Rights, Human Rights, and Humanitarian Intervention’ 20 *Harvard Human Rights Journal* (2007) 189.

²⁵ K Engle, ‘A Genealogy of the Centrality of Sexual Violence to Gender and Conflict’, in F Ní Aoláin et al. (eds), *The Oxford Handbook of Gender and Conflict* (Oxford UP, 2017) 132.

²⁶ K Engle, ‘Anti-Impunity and the Turn to Criminal Law in Human Rights’ 100 *Cornell Law Review* (2015) 1069; K Engle, ‘A Genealogy of the Criminal Turn in Human Rights’, in K Engle, Z Miller & DM Davis (eds), *Anti-Impunity and the Human Rights Agenda* (Cambridge UP, 2016).

ENGLE'S CRITIQUE OF WARTIME SEXUAL VIOLENCE

The Grip of Sexual Violence in Conflict traces three decades of feminist engagement with international institutions, in an effort to explain how and why the issue of sexual violence in conflict has 'gripped' international legal discourse about gender and war. The monograph reconsiders the role of women's rights advocates in their treatment of wartime sexual violence in a variety of institutional sites and debates, including those involving military intervention, international criminal law, and human peace and security. Engle argues that feminist advocacy in international law has gained mainstream recognition after years of being at the margins. However, she contends that the attention given to sexual violence, while contributing to the success of a certain form of feminism, has deflected attention away from other issues of feminist concern, such as peace, economic maldistribution, imperialism, and cultural essentialism. Engle identifies a particular strand of what she terms 'structural-bias feminism'—which sees female sexual subordination as the greatest barrier to women's emancipation—as helping consolidate a 'common sense' about sexual violence that 'relies upon and reinforces negative images of sex and sexuality, and problematic understanding of gender, ethnicity, and war and peace'.²⁷

In terms of methodology, Engle undertakes a critical and textual analysis of political discourses and legal documents from the early 1990s to today. She is inspired by the historian Joan Scott and her study of the political discourse regarding the headscarf ban in France.²⁸ Just as Scott's work was not about French Muslims but about the dominant French view of them, so too Engle does not primarily focus on the victims of sexual violence in conflict but on 'particular imaginaries' about them.²⁹ In this sense, *The Grip of Sexual Violence in Conflict* is ultimately an attempt to unearth common understandings of how certain feminists imagine the issue of wartime sexual violence and how these understandings have been carried into the mainstream. Though not explicitly foregrounded, other theoretical and methodological points of reference appear to be Michel Foucault's genealogical analysis and critical legal studies (CLS). Engle's book is partly a genealogy of the dominance of sexual violence in conflict. Especially in the first chapter, she goes back to the emergence of the women's human rights movement to recover the choices that were made and to show how today's approach to sexual violence is neither natural nor inevitable, but the product of historical contingency. *The Grip of Sexual Violence in Conflict* also represents a penetrating critique of international law and human rights activism. Not only does Engle question the efficacy of military and carceral interventions advocated by human rights activists, but she also exposes the distributive effects of this advocacy. By detailing the implications of the focus on sexual violence, she hopes to open a new path for a different kind of feminist engagement with international law.

²⁷ Engle (2020) 2.

²⁸ JW Scott, *The Politics of the Veil* (Princeton UP, 2007).

²⁹ Engle (2020) 17.

In the Introduction, Engle illustrates what she describes as the ‘common-sense’ narrative about sexual violence in conflict. She identifies five propositions of this narrative: i) sexual violence is the worst crime committed in war; ii) the harm of such crime mostly results from the shame it inflicts on individuals and community; iii) the perpetrators of wartime sexual violence are individual male monsters; iv) the victims are primarily women and girls, but also men and boys; v) criminal law constitutes the ultimately meaningful method not only to end sexual violence but also to promote peace. The interactions between the various aspects of this common sense are explored in each chapter of the book. Together they illustrate the pervasiveness of this narrative over time and across institutional sites.

In Chapter One, Engle takes the 1993 Vienna World Conference on Human Rights as a focal point to retrace the debate between structural-bias feminists, Third World and sex-positive feminists. While structural-bias feminists focused on gender (and often sexual) oppression as the central cause of women’s inequality, the other groups insisted on sexual freedom or anti-colonialism as essential components of women’s emancipation. Engle’s argument is that structural-bias feminists managed to strengthen their position in international law by centring on violence against women as a universal phenomenon taking different forms across culture, race, and class. Not only did this development sideline Third World and sex-positive critiques, but it also moved feminist advocacy in international law from a liberal approach to one supporting military, carceral, and security regimes. While some feminists called for military interventions to protect women from rape (Chapter Two), others advocated for and took advantage of the international criminal tribunals created for adjudicating cases from the former Yugoslavia and Rwanda (Chapters Three and Four). Still others focused on the UN Security Council’s WPS and redirected the attention from peace-building to ending impunity for sexual violence (Chapter Five).

Chapter Two illustrates how the feminist debate concerning the ethnic conflict in the former Yugoslavia helped forge the common-sense narrative about sexual violence. Feminists who characterised rape by Serbian soldiers as ‘genocidal’ called for and justified military intervention by constructing such abuses as the worst crimes committed in the war. Other feminists argued against treating the rapes by Serbs differently from those perpetrated by other parties, but, in so doing, presented gender as a universal category of oppression and anticipated its broader inclusion in international criminal law. Engle also explains that both groups of feminists agreed that rape was a source of shame and stigmatization for affected women and their community. This idea was then reinforced by the jurisprudence of the ICTY and ICTR—respectively explored in Chapters Three and Four. For example, in order to establish a finding of genocide, in *Akayesu* the ICTR relied on the humiliation, discussed as shame, experienced by the entire Tutsi community.³⁰ In this way, according to Engle, ‘the ICTR’s judgment essentially placed the blame for the genocide ... on the very group that was the target of it’.³¹ Shame is also employed as a prosecutorial alibi: victims’ silence due to humiliation worked to justify the low rates of indictments and convictions for sexual violence.

³⁰ *Akayesu* (1998).

³¹ Engle (2020) 112.

Engle argues that shame plays another role in international criminal law: criminal prosecution is thought to shift the humiliation and stigma from the victim to the perpetrator.

According to Engle, the feminist embrace of international criminal law ‘functioned both to reinforce ethnic difference and to deny women’s sexual agency’.³² Civilian women were presented as unable to consent to sex during war with combatants from the other side, historical conceptions of ethnicity were reinforced, and other aspects of women’s (and men’s) lives during conflict were largely ignored. The turn to international criminal law also precluded the consideration that sexual violence ‘might not be shameful and stigmatizing’ for some individuals or communities.³³ Engle notes that similar implications also derive from the UN Security Council’s increased attention to sexual violence. In Chapter Five, she illustrates how the WPS agenda and other Security Council activities over the past two decades have ‘both reflected and contributed to nearly every part of the common sense’ about sexual violence in conflict.³⁴ In particular, Engle questions the assumption that ‘sexual violence in conflict causes overwhelming, even annihilating, harm to the victim’s personhood while also tearing communities apart’.³⁵ This assumption, included even in those resolutions providing for women’s increased participation in peace-building, portrays victims ‘as incapable of political, sexual, military, or even economic citizenship’.³⁶

Engle’s work does not end here. In the Epilogue, *The Grip of Sexual Violence in Conflict* provides new and alternative ways to think and address issues of gender, sex and war. In what is probably the most innovative and thought-provoking part of the book, Engle draws on literary examples to provide a more nuanced perspective on women’s experiences in conflict. The sources are: Ernest Hemingway’s 1940 novel *For Whom the Bell Tolls*;³⁷ the anonymous diary *A Woman in Berlin: Eight Weeks in the Conquered City*, written in 1945 by a German woman;³⁸ and Nadia Murad’s 2017 memoir *The Last Girl: My Story of Captivity and My Fight against the Islamic State*.³⁹ Through the analysis of these books, Engle shows how women in wars frequently serve as combatants, commit atrocities, have sexually positive experiences, and are affected by rape in different ways without necessarily experiencing shame. The literary sources used by Engle present a powerful counter-narrative to the ‘common sense’: women often exercise agency during wars and, even when subjected to sexual violence, they do not always and inevitably see it as fully destructive. The book concludes that ‘[t]o resist both the common-sense view and the deployment of force it justifies, we need to extricate ourselves from the grip of sexual violence’.⁴⁰

³² Ibid 100.

³³ Ibid 119.

³⁴ Ibid 123.

³⁵ Ibid 136-37.

³⁶ Ibid 137.

³⁷ E Hemingway, *For Whom the Bell Tolls* (Charles Scribner’s Sons, 1996) [1940].

³⁸ Anonymous, *A Woman in Berlin: Eight Weeks in the Conquered City: A Diary*, trans. P Boehm (Picador, 2005) [1945].

³⁹ N Murad & J Krajewski, *The Last Girl: My Story of Captivity, and My Fight against the Islamic State* (Tim Duggan, 2017).

⁴⁰ Engle (2020) 172.

BUILDING ON ENGLE AND MOVING FORWARD

The Grip of Sexual Violence in Conflict is a stimulating and beautifully written book. Engle's arguments are provocative and challenging, and at the same time carefully supported by evidence. Her timely critique invites us to reassess contemporary feminist engagements with international law, but also possesses a theoretical and practical significance for imagining a new human rights advocacy in the context of war and gender. Engle identifies her main audience as 'those who work on or interact with the issue of sexual violence in conflict'.⁴¹ Yet the book is also an essential read for anyone interested in feminism, human rights and international (criminal) law. As only the best pieces of critical scholarship can do, the clarity of the monograph makes it accessible for scholars and practitioners alike.

In the rest of this essay, I want to highlight two points that do not emerge as clearly as I believe they should from the overall course of Engle's arguments. First, *The Grip of Sexual Violence in Conflict* is most compelling and persuasive when Engle insists on the complexity of human experience in war. However, Engle herself appears, at times, to fall into the trap of simplification when she describes the common-sense narrative. This narrative is presented as a clear-cut account of the causes, consequences, and responses to sexual violence. Yet Engle's account does not correspond to the complex and multifaceted positions that feminists advocate in practice. It is certainly true that some feminists, especially from the US, have helped define some aspects of the common sense described by Engle. In relation to the centrality of criminal law, for example, many women's rights advocates came to the international context after a career using domestic criminal law as the preferred response to domestic rape, and they unsurprisingly saw international criminal law as the equivalent instrument for dealing with wartime sexual violence.⁴² However, an assessment of the overall work of feminist scholars who are concerned with sexual violence in conflict shows more nuance.⁴³ While their work does not necessarily erode (and sometimes even rhetorically deploys) the institutional common sense described by Engle, many feminists still acknowledge that international institutions will not end sexual violence. Yet, they are willing to engage with them as a matter of pragmatism.⁴⁴ Their writing, for instance, indicates an awareness of the limitations of international criminal law, which is only seen as an element of a broader set of strategies to be applied in support of victims of sexual violence.⁴⁵ In contrast with what Engle states, many feminists do not imbue criminal law 'with great deterrent power'.⁴⁶ They more

⁴¹ Ibid 154.

⁴² J Gardam, 'A New Frontline for Feminism and International Humanitarian Law', in V Munro & M Davies (eds), *The Ashgate Research Companion to Feminist Legal Theory* (Ashgate, 2013) 226.

⁴³ See, e.g., LA Chappell, *The Politics of Gender Justice at the International Criminal Court: Legacies and Legitimacy* (Oxford UP, 2015); E Dowds, *Feminist Engagement with International Criminal Law: Norms Transfer, Complementarity, Rape and Consent* (Hart, 2020).

⁴⁴ L McLeod, R Johnson, S Meintjes, A Brown & V Oosterveld, 'Gendering Processes of Institutional Design: Activists at the Negotiating Table' 16(2) *Journal International Feminist Journal of Politics* (2014) 254.

⁴⁵ LA Chappell, 'Author's Response: The Politics of Gender Justice at the ICC: Legacies and Legitimacy', *EJIL:Talk*, 22 December 2016, <https://www.ejiltalk.org/authors-response-the-politics-of-gender-justice-at-the-icc-legacies-and-legitimacy/>.

⁴⁶ Engle (2020) 14.

simply believe that, when pursued in a victim-centred manner, criminal justice may offer an avenue for accountability and restitution for egregious wrongs.⁴⁷

In an effort to demonstrate the hegemony of structural-bias/carceral feminism, not only does Engle sometimes overestimate the ubiquity of this feminist perspective, but she also devotes little space to its contestation. If we exclude Chapter Two and, to some extent, Chapter Five, the reader may tend to think that today there is little or no opposition to carceral and security measures as a response to gender and sexual harm. However, as I already mentioned, poststructuralist, queer, and postcolonial scholarship (including Engle's previous work) has long questioned the desirability of fixating on sexual violence as well as the feminist investment in criminal law.⁴⁸ The question is not merely how and why structural-bias/carceral feminists were so successful, but also how and why critical voices are not listened to.

We can regard the distinction between mainstream feminist advocacy and its critics as a distinction between a practical and a radical approach. The former contends that engagement with powerful institutions (in our case, international criminal tribunals and the UN Security Council) is risky but necessary to secure visibility and bring about some results. Dispute may be fierce, but the international legal order is recognised as legitimate. The latter rejects the legitimacy and capacity of these institutions to promote women's emancipation, and instead advocates for transforming the structures of society. Following Chantal Mouffe, we can also view this approach as 'antagonistic' engagement with international law.⁴⁹ Poststructuralist, queer, and postcolonial scholarship generally advance a critique which repudiates the premises to which other activists and scholars collectively subscribe. Framing critical feminist voices as antagonistic allows us to understand why they have not gained traction in the context of international institutions. By questioning the (colonial, racial, neo-liberal) foundations of the international legal order, they are regarded as too radical and at odds with political and socio-economics concerns of states and international institutions.⁵⁰

This leads to my second observation which concerns the role of human rights in sustaining carceral and security measures. Engle argues that the fixation on sexual violence has displaced attention away from other issues with which feminists had previously been concerned, including imperialism, economic distribution, and the root causes of war. The argument is convincing but tells us only a part of the story. As I have already mentioned, at the domestic level, gender violence has been an issue of feminist campaigns since the mid-1970s. From the very beginning, certain feminist groups designated the criminal law as the primary response to violence against women.⁵¹ In the 1980s, what helped these advocates prevail over other feminist approaches was the presentation of their calls for criminalisation as something that

⁴⁷ Even though consequentialist arguments for criminal punishment are at times invoked, the primary underlying rationale for carceral feminism seems to be expressive retributivism.

⁴⁸ For an overview, see N Henry, 'The Fixation on Wartime Rape: Feminist Critique and International Criminal Law' 23 *Social & Legal Studies* (2014) 93.

⁴⁹ C Mouffe, *Agonistics: Thinking the World Politically* (Verso, 2013) 7. In relation to feminism, see R Sunder Rajan, 'From Antagonism to Agonism: Shifting Paradigms of Women's Opposition to the State' 30 *Comparative Studies of South Asia, Africa and the Middle East* (2010) 164.

⁵⁰ Kapur (2018) 94.

⁵¹ R Elias, *The Politics of Victimization: Victims, Victimology, and Human Rights* (Oxford UP, 1986) 20; A Karmen, *Crime Victims: An Introduction to Victimology* (Brooks/Cole, 1984).

was necessary to protect victims' rights.⁵² Similarly, one cannot overlook the role that women's human rights played at the international level in reinforcing carceral feminism. By reframing sexual violence in conflict as a universal and politically neutral issue of humanitarian concern, carceral feminists were able to prevail over other feminist perspectives with little opposition.⁵³ In other words, it was primarily the language of human rights, rather than (merely) a focus on sexual violence, that 'guided and arguably reinforced' the common-sense narrative described by Engle.⁵⁴

The global crisis of the radical left at the end of the 1970s not only marked an ideological shift from political ideology and towards human rights,⁵⁵ but also an abandonment of *antagonistic* struggles to transform society in favour of legal-institutional reforms aimed at defending the rights of individuals.⁵⁶ Human rights have arisen as consensual, rather than conflictual, tools of engagement with the international legal order: they may spark criticism, but they rarely question the structures of power over which the international legal order is built.⁵⁷ In the context of sexual violence, human rights have supported, rather than countered, military, carceral and security regimes. Engle uses the phrase 'the turn to criminal law in human rights' to indicate the increased embrace of criminal accountability for addressing human rights violations.⁵⁸ The very idea of a 'turn', however, gives the perception that in the past human rights were separated from punitive structures and that the recourse to criminal law is an incident from which human rights can be rescued.⁵⁹ 'Acceleration' of human rights towards military and carceral regimes would be more accurate. This wording better explains how human rights, the more they have become the global language of justice, the more they have lent themselves to, and 'accelerated', the reinforcement of security frameworks.

In this regard, it can be helpful to read *The Grip of Sexual Violence in Conflict* alongside with another recent book, Ratna Kapur's 2018 *Gender, Alterity and Human Rights*.⁶⁰ This monograph offers a sharp critique of human rights as composed of a set of primarily regulatory and governance mechanisms. Kapur argues that human rights do not challenge structural injustice; rather they are 'affected by—and overly and covertly implicated in—structures of power'.⁶¹ She illustrates how human rights normalise and universalise dominant gender, sexual and cultural stereotypes, and, in so doing, reproduce the same narrative that Engle criticises in her book. Kapur is also very clear that the emancipatory premises of freedom can be expressed only once it is delinked from the human rights project. *Gender, Alterity and Human Rights* complements *The Grip of Sexual Violence in Conflict*, by providing a clearer critique of, and turn away from, human rights. Moreover, Engle's Epilogue finds a

⁵² K Roach, 'Four Models of the Criminal Process' 89(2) *Journal of Criminal Law and Criminology* (1999) 671.

⁵³ Similarly, in the context of human trafficking, Bernstein (2018) 10-11.

⁵⁴ Engle (2020) 28.

⁵⁵ S Moyn, *The Last Utopia: Human Rights in History* (Harvard UP, 2010) 213.

⁵⁶ P Arthur, 'How "Transitions" Reshaped Human Rights: A Conceptual History of Transitional Justice' 31 *Human Rights Quarterly* (2009) 321, 339-40.

⁵⁷ K McNeilly, 'After the Critique of Rights: For a Radical Democratic Theory and Practice of Human Rights' 27 *Law Critique* (2016) 269, 272.

⁵⁸ Engle (2020) 14-15; Engle (2015); Engle, Miller & Davis (eds) (2016).

⁵⁹ H Hannum, *Rescuing Human Rights: A Radically Moderate Approach* (Cambridge UP, 2019) ch. 2.

⁶⁰ Kapur (2018).

⁶¹ *Ibid* 2.

counterpart in the final three chapters of *Gender, Alterity and Human Rights*, which seek to re-think freedom through alternative registers beyond the liberal imaginary. Despite being very different in style and scope, both Engle's Epilogue and Kapur's last chapters challenge dominant narratives and open up spaces for imagining and enabling new ways forward.

CONCLUSION

Karen Engle is one of the most remarkable scholars of human rights movements today. Her work has long questioned what are generally perceived as some of the greatest successes of human rights and international law, not least in relation to indigenous rights, feminist advocacy and international criminal law. By exploring what is overlooked in mainstream narratives, she has shown how these achievements have often involved the construction of legal and political arrangements which impair the very people human rights law is supposed to protect. *The Grip of Sexual Violence in Conflict* continues in this direction. In a book that is unafraid to appear controversial, Engle shows how the dominant focus on sexual violence in conflict has led women's rights advocates to deploy stereotyped images of victims and their community as well as to support militarised and carceral measures.

As the reaction to Bemba's acquittal demonstrates, today the dominant outlook among scholars and activists working on issues of sexual violence in conflict is very different to Engle's arguments. Yet the clarity of her writing, the vast evidence provided, and her compelling analysis of legal and political texts may actually represent a starting point for a new and different discussion of sex and war in international law. Engle's examination of the common-sense narrative of sexual violence in conflict may also inform further research in other contexts and institutional sites. A (too) obvious example is the ICC, but it would also be interesting to extend Engle's research beyond international law. For instance, this could involve comparing the way advocacy around wartime sexual violence developed at the international level with similar trends at the domestic level involving rape in peace. Another field of research could engage more extensively with narratives and counter-narratives at the local level in conflict and post-conflict societies, and include the experiences of women (and men) on the ground. For its potential to inspire new activism and fresh research, *The Grip of Sexual Violence in Conflict* is doubtless a pivotal contribution to critical scholarship on human rights and feminism.