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Book Review: Aisling Swaine, Conflict-Related Violence Against Women: Transforming Transition (2018)

Jennifer Moore

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men autobiographies, she writes, identify “‘Chineseness’ in terms of victimization by state’s regulatory structures,” thereby obscuring “the lives of victims of alternative forms of violence, caused, for example, by capitalist exploitation.”⁹

The Americanization of Human Rights is a thoughtful and well-researched contribution to the interdisciplinary of literature and human rights, persuasively linking textual production and reading practices to trends in US political discourse. As a work of ideology critique it is incisive. The monograph is committed to revealing the way ethical institutions can be co-opted by ideologies of cynical political realism, and to demonstrating the ways human rights and humanitarianism as practiced today can be internally self-defeating. This commitment to ideological unmasking is now, and has been for some time, dominant in humanities research. It will be interesting to see how future work from scholars like Klaas takes up the challenge, articulated more and more throughout the discipline, of explaining how and why certain models of action might be plausible positive models for future endeavors. Finding ethical systems that work as intended and detailing what makes this possible can be a way of promoting human flourishing just as surely as uncovering the unseen workings of dismaying ideologies. Now more than ever, understanding the interior structure of our collective successes may be just as

important as understanding the reasons why we so often fail.

James Dawes
DeWitt Wallace Professor of English
Macalester College

James Dawes is the author of The Novel of Human Rights (Harvard, 2018), Evil Men (Harvard, 2013), That the World May Know: Bearing Witness to Atrocity (Harvard, 2007), and The Language of War (Harvard, 2002).

Aisling Swaine, *Conflict-Related Violence Against Women: Transforming Transition* (Cambridge University Press, 2018), ISBN 9781107514195, 321 Pages.

In 2000, the United Nations Security Council adopted Resolution 1325 on the subject of women, peace and security, calling “on all parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict.”¹

The phenomenon of the mass rape of women in wartime has become a subject of increasingly intensified concern over the past two decades, expressed in diplomatic initiatives and judicial developments, notably war crimes and crimes against humanity convictions for rape and forced marriage handed down by international criminal tribunals.² The

9. *Id.* at 237.

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1. SC Res. 1325, UN Doc S/RES/1325 (31 Oct. 2000), ¶ 10.
 2. See *Situation in the Central African Republic in the Case of the Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05–01/08 (21 March 2016) (International Criminal Court), para. 741 (finding Bemba responsible for crimes against humanity of murder and rape committed by his soldiers). See also Statute of the International Criminal Court, art. 7(1), art. 7(1)(g) (defining rape and other forms of sexual violence as crimes against humanity “when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”). [On 8 June 2018, Bemba’s convictions

understanding that the systematic rape of women is a core methodology of contemporary armed conflict has become part of the popular imagination, reflected in journalistic portrayals of sexual violence in wartime, reinforced in reporting by humanitarian organizations, and buttressed in academic analysis.³

Acknowledging that rape is sometimes utilized as a “weapon of war”—where one militant organization seeks to terrorize an ethnic or sociopolitical community associated with another warring faction through a pattern of sexual violations of numerous women of that community—represents an important development in humanitarian action and scholarly inquiry. The phenomenon of mass rape in conflict has been witnessed, analyzed, investigated, and prosecuted in recent conflicts from the former Yugoslavia,

Rwanda, Sierra Leone, the Democratic Republic of the Congo, and Colombia, among others.⁴

However, as Aisling Swaine instructs in her important book *Conflict-Related Violence Against Women*,⁵ “tactical” or “strategic rape” is but one important facet of the range of harms women experience in time of war, not to mention in peacetime. She cautions that the international community’s concerted efforts to profile, prevent, and punish “conflict-time tactical sexualized violence”⁶ has had the unintended consequence of constructing a “monolithic rape identity”⁷ for women in wartime, with the result that “systemic public rape has been given more attention and credence than the violence that appears in women’s everyday lives.”⁸

Alongside her rejection of an impoverished encapsulation of women’s wartime

were overturned by the ICC Appeals Chamber, due to a majority of the Chamber finding insufficient evidence to find Bemba responsible as a remote commander for the conduct of his troops.) See also *Prosecutor v. Hassan Sesay, Morris Kallon, and Augustine Gbao*, SCSL-04-15-T (2 Mar. 2009) (Special Court for Sierra Leone, Trial Chamber I) ¶ 1352:

“forced marriages” and outrages on personal dignity, when committed against a civilian population with the specific intent to terrorise, amount to an act of terror. The Chamber considers that the evidence on the record establishes that members of the AFRC/RUF regularly committed such acts of sexual violence as part of a campaign to terrorise the civilian population of Sierra Leone.

3. See, e.g., Nina Wilén & Bert Ingelaere, *War-torn Congo has Been Called the “Rape Capital of the World.” Here is how Fighters Think About Sexual Violence*, WASH. POST (31 Aug. 2017) (this article reports on interviews with former Rwandan rebels living in the Democratic Republic of the Congo). See also *Sierra Leone: “Forced Marriage” Conviction a First*, IRIN (26 Feb. 2009), <http://www.irinnews.org/report/83160/sierra-leone-forced-marriage-conviction-a-first>. Scholarly references to rape as a systemic practice in war are not limited to the field of international criminal law but are “violence may be a crime against humanity as well as a calculated weapon of war is relevant to the growing appreciation of the political and persecutory character of sexual violence in the realm of asylum law.” See KAREN MUSALO, JENNIFER MOORE & RICHARD BOSWELL, *REFUGEE LAW AND POLICY: A COMPARATIVE AN INTERNATIONAL APPROACH* 757 (3d ed. 2011).
4. Regarding the International Criminal Court’s preliminary investigation into possible war crimes and crimes against humanity in Colombia, including sexual and gender-based crimes, see Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the Conclusion of her Visit to Columbia (10–13 Sept. 2017), <https://www.icc-cpi.int/Pages/item.aspx?name=170913-otp-stat-colombia>.
5. AISLING SWAINE, *CONFLICT-RELATED VIOLENCE AGAINST WOMEN: TRANSFORMING TRANSITION* (2018).
6. *Id.* at 9.
7. *Id.* at 10.
8. *Id.* at 11, 93 (“Women’s experiences of war have been conflated with sexualized violence by armed combatants to the relative exclusion of the relevance of wider forms of harm.”)

identity as rape victims, Swaine points out a worrisome tendency among academics, the media, and others to promote “the ‘othering’ of violence in cultures which are perceived to have ‘worse’ or extraordinary violence,” particularly in African countries, and including Liberia, a country she studies.⁹ Swaine points out that “the perception that one war is more barbaric than another may . . . have more to do with how wars are reported on and labeled than is readily admitted.”¹⁰ With reference to her field research into recent conflicts in Europe, Africa, and Asia, Swaine highlights the connections between patriarchy, misogyny, the fear of women’s power, and the multiple forms of violence that women experience across a great variety of cultures and societies. It is important, she notes, to address the more insidious forms of gender subordination that operate in a society, so that “despite the veneer of equality in a western democratic setting such as Northern Ireland, its patriarchy too is acknowledged.”¹¹

Swaine’s treatment of “conflict-related violence against women” represents an important contribution to the canon of feminist scholarship on gender-based violence. Her insights emerge from qualitative research she conducted in three post-conflict countries encompassing Northern Ireland, Liberia, and Timor-Leste. Wading into the fierce analytic currents of “public” versus “private” harms, she emphasizes the amorphous nature of the public and private realms through insights shared by the women she inter-

viewed in her three field settings. Most significantly, she rejects the notion that so-called public violence against women in wartime should be our exclusive concern. Her research highlights that not all women who were sexually or otherwise assaulted in the conflicts she studies were attacked by unknown militants who used their vulnerable bodies as convenient mediums through which to repress their communities. Many women she interviewed were individually targeted and brutalized in intimate spaces by people they were related to who acted with the confidence that their mistreatment would go unpunished because of women’s subordinate status in their family, community, and society. She demands that academic and humanitarian responses to violence against women take into account the complexity of conflict and of women’s lives across periods of war and peace.

Swaine articulates two powerful themes that percolate throughout her book and interweave with additional threads of the rich and complex analysis that characterizes her book overall. One concerns the *variant* nature of violence against women in times of war,¹² and the other concerns its *ambulant* nature over time.¹³ First, in terms of “variant” violence, she contends that women in her three case studies experience a spectrum or “diversity of harm during conflict,”¹⁴ which includes “in-between harms beyond strategic rape.”¹⁵ Her notion of “in-between” harms reflects the hybrid nature of certain abuses women suffer in wartime, on the one hand *public*

9. *Id.* at 86.

10. *Id.*

11. *Id.* at 84, internal quotations and citations omitted.

12. *Id.* at 91–138. (Swaine explores the spectrum of gender-related violence most fully.)

13. *Id.* at 139–83. (Swaine explores the changing nature of violence women face over time, from peace to war to post-conflict.)

14. *Id.* at 288.

15. *Id.* at 270.

and strategic when inflicted on a massive scale, but experienced by the individual as *private and ordinary*. In the three case studies underlying her scholarly analysis, Swaine shines light on other harms women commonly suffer in wartime, including sexual and economic exploitation, forced marriage, property theft and destruction, displacement, murder, non-sexual forms of violent assault, and bodily mutilations.¹⁶

Second, with her notion of “ambulant violence” Swaine stresses that in the cases she has studied, wartime abuses of women exist in dynamic historical continuity with the harms that women experience during both the pre-war and the post-war periods. Here she speaks of “the connections and distinctions in harms within and outside of conflict,”¹⁷ stressing in particular the ebbs and flows in the incidence or reporting of domestic violence in the pre-war, war, and post-war periods. Throughout her book, Swaine demonstrates the dynamic relationship between variant violence and ambulant violence, reinforcing the sense that violence against women in the societies she studies is a constant reality over time, although its forms, causes, and rationales may fluctuate in kind and intensity.

A few examples from the extensive qualitative research that underlies Swaine’s book powerfully illustrate her two interrelated points concerning variant and ambulant violence. In Northern Ireland, her first conflict study, her interviewees report that Republican women were strip-searched by paramilitary members at checkpoints during the Troubles, and in the meantime, they were beaten

at home by their off-duty Republican paramilitary spouses. During the Liberian civil war, her second study, she learned that some women who were raped by armed militants were also assaulted by their neighbors with whom they lived in the purported safe haven of refugee and displaced persons camps. Moreover, other Liberian women she interviewed spoke of the widespread nature of domestic violence both before and after the civil war. Somewhat ironically, domestic violence was regarded to have waned somewhat during the Liberian war in the climate of fear of rebel attack in which husbands were relatively disempowered in their own households, a dynamic that changed once the war was over, when domestic violence ratcheted up again. In Timor-Leste, her third case, women reported experiencing sexual violence at the hands of the Indonesian military during the occupation, and subsequently being abused by their ex-resistance fighter-husbands upon their return home to civilian life.

Other feminist scholars have likewise emphasized that in the popular imagination, women’s suffering in war tends to be hyper-sexualized, such that “experiences of violence are viewed in narrow ways, with a fixation on harms to the body and for women with a concentration on sexual harms.”¹⁸ Similarly, some writers agree with Swaine that sexual violence in time of war should not be divorced from the spectrum of violence women experience in peacetime, given that both classes of harm reflect the underlying reality of gender inequality. Notably Ní Aoláin highlights that “[w]omen may experience an ongoing level of background

16. *Id.* at 3.

17. *Id.* at 288.

18. FIONNUALA NÍ AOLÁIN, DINA FRANCESCA HAYNES & NAOMI CAHN, ON THE FRONTLINES: GENDER, WAR, AND THE POST-CONFLICT PROCESS 41 (2011).

sexual violence in conflict, consistent with 'normal' or accepted violence that occurs without armed hostilities between combatants in play."¹⁹

While Swaine is not the first scholar to point out the over-focus on rape and sexual violence as a feature of armed conflict to the exclusion of other forms of violence against women that occur in war and peacetime, her book represents a deepening of this kind of literature. Through her painstaking research methodology, she evidences and illustrates the spectrum of violence against women in her three conflict studies encompassing Northern Ireland, Liberia, and Timor-Leste. She is also careful to identify gaps in the statistical record where they exist, particularly challenging the scholarly claim that violence against women spikes after armed conflict. Swaine interrogates this hypothesis through her own qualitative research, demonstrating that upon further questioning, many women from all three countries who initially implied that domestic violence was on the rise in their communities post-conflict, subsequently clarified in follow-up inquiries their assessment that women were *reporting* domestic abuse in greater numbers, possibly because post-war legislative reforms and community education drives gave women greater confidence to seek protection.²⁰

In addition to identifying the tendency of scholars to conflate the increased *reporting* of domestic violence with the increased *incidence* of domestic violence, Swaine demonstrates through her three conflict studies the powerful impact of *labeling* and rhetoric regarding certain types of gendered violence on public

awareness and policy responses to these classes of harms in relation to others. On the one hand, she credits the importance of labeling in raising consciousness, changing attitudes, and spurring political will for gender empowerment and equality-based reforms. On the other, Swaine also cautions her readers of the potential pitfalls of labeling, particularly where the rhetoric is highly focused on a narrow class of gender-based harms. By way of example she points to her findings demonstrating that a heightened awareness of rape in the post-war period in Liberia was associated with insufficient awareness and inadequate preventive action against domestic violence. Contrastingly, in Timor-Leste in the post-conflict era, a fixation with the problem of domestic violence, partly spurred by international humanitarian actors, led to neglect of the problem of rape.²¹

Both a virtue and a challenging aspect of Swaine's book is the complexity of her analysis and the scope of her agenda. Over the course of eight chapters she addresses three countries, three major themes (variant violence, ambulant violence, and the labeling of violence), three temporal phases (pre-war, conflict, and post-conflict), three levels of change (macro, meso, and micro), and three types of change (structural, systemic, and individual). In the last two chapters she takes on post-conflict "transitional justice," which she appropriately seeks to reframe in terms of transformative initiatives that would transcend a narrow focus on international criminal tribunals and national truth commissions.²² In fact, other writers have critiqued the narrow penal or retributive justice focus of post-conflict

19. SWAINE, *supra* note 5, at 46.

20. *Id.* at 195–97.

21. *See generally id.* at 208–22.

22. *Id.* at 229–30; *see generally* 229–88.

transition²³ or called for deeper implementation of the historical-reconciliative and social-redistributive aspects of transformative justice.²⁴ Moreover, Swaine underestimates somewhat the reach of international law, framing it narrowly in terms of the individual accountability mechanisms offered by international criminal law. In fact, international human rights law and domestic civil rights law offer additional venues for holding governments accountable for protecting a broad spectrum of civil-political and

economic-social rights, including requiring reparative mechanisms to address patriarchy and the systemic oppression of women.²⁵ Fully fleshing out a vision for implementing gender-empowering post-conflict transformation in societies throughout the world is beyond the scope of her book. Nevertheless, Swaine provides an impressive roadmap for beginning this process in her final chapter.

We might distill the multiple elements of *Conflict-Related Violence Against Women* into one coherent and unifying

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23. See, e.g., Mark A. Drumbl, *Victims who Victimize: Transcending International Criminal Law's Binaries*, LONDON REV. INT'L L. 25 (2016), https://is.muni.cz/el/1422/jaro2016/MVV196K/um/Victims_as_Victimizers.pdf. ("Yet so long as the accoutrements of the criminal law—courtrooms, judgments, and jailhouses—expand as the iconic way in which to imagine post-conflict justice and solemnly authenticate the past, non-justiciability leads to invisibility.")
24. See, e.g., JENNIFER MOORE, HUMANITARIAN LAW IN ACTION WITHIN AFRICA 333 (2012)t ("Criminal accountability, social welfare, and historical truth-telling are each vital to durable peace.")
25. Notable examples of the efficacy of civil and human rights proceedings in improving women's access to justice are provided by recent jurisprudence relating to gender-discriminatory inheritance laws in Northern Uganda and gender-related murders or "femicides" in Mexico. See, e.g., *Law & Advocacy for Women in Uganda v. Attorney General of Uganda*, Constitutional Petition No. 13 of 05 (Ugandan Constitutional Court, 5 Apr. 2007). In the background to this decision, Ugandan legal advocacy organizations challenged national legislation discriminating against women in inheritance, resulting in a landmark 2007 decision in which the Ugandan Constitutional Court struck down various provisions of Uganda's Succession Act dating back to 1972 for offending Uganda Constitution mandating gender equality in the devolution of estates. See UGANDA CONST. arts. 21, 23 (1995). See LANDnet et al, Memorandum on [Uganda] Succession Amendment Bill 1–4 (18 Apr. 2018), <http://www.landnet.ug/landwatch/wp-content/uploads/2018/06/SUCCESSION-BILL-Complete-to-SEND.pdf>, citing *Law & Advocacy for Women in Uganda v. Attorney General of Uganda* (2007). See also, e.g., *González et al v. Mexico* ("Cotton Field Case"), Judgment 16 Nov. 2009, Inter-Am. Ct. H. R. (Ser. C), http://www.corteidh.or.cr/docs/casos/articulos/seriec_205_ing.pdf. The next-of-kin of three young Mexican women who were disappeared and whose mutilated bodies were found in a Cotton Field brought suit against the Mexican government in the Inter-American Commission and Court of Human Rights alleging that Mexico had failed to prevent, investigate, and prosecute their murders in the context of a pattern and practice of gender-related murders or "femicides" around the city of Juarez over a prolonged period of time. In its decision, the Inter-American Court found Mexico responsible for the women's disappearances and deaths and ordered investigations and trials of suspected perpetrators and the payment of reparations to the deceased women's next of kin. *Id.* ¶ 602 (4). In so doing, the Court utilized and affirmed the concept of "femicide" as defined in Mexican law, as an

extreme form of gender violence against women, resulting from the violation of their human rights in the public and private sphere, comprising a serious of misogynous conducts that can lead to the impunity of the State and society and may culminate in the homicide or other forms of violent death of women.

Id. ¶ 140.

theme, which is also an urgent call to action. Swaine demands our recognition, across temporal and cultural space, that “violence is a constant in women’s lives.”²⁶ Rather than fixating on rape as a weapon of war, Swaine instructs activists and academics alike to understand sexual and other forms of violence against women as manifestations of wider patterns of gender discrimination and as calculated mechanisms to sustain patriarchy, rather than merely utilitarian mechanisms to carry out sectarian warfare by terrorizing a community through its female members. Moreover, the “ordinary,” “everyday” violence against women that occurs in peacetime sets the stage for the spectrum of violence from the commonplace to the catastrophic that occur in time of war. “If violence against women is a feature of peace, it will inevitably be a feature of conflict,” she cautions.²⁷ Swaine thus urges us to put the gender back into gender-related violence and to recognize the structural and entrenched nature of violence against women, whether in times of war or times of peace. In this way, we may acknowledge the “tolerated practices of gendered harm,”²⁸ and on that basis begin to consider, together, “how transition can be a moment in which conflict-affected societies can truly work to mitigate gender-related harms altogether.”²⁹

Jennifer Moore
University of New Mexico
School of Law

Jennifer Moore is Professor of Law at the University of New Mexico School of Law. She is the author of Humanitarian Law in Action within Africa (Oxford University Press 2012) and co-author of Refugee Law and Policy: A

Comparative and International Approach (5th Edition, Carolina Academic Press 2018).

Ayça Çubukçu, *For the Love of Humanity: The World Tribunal on Iraq* (Philadelphia: University of Pennsylvania Press 2018), ISBN 9780812250503 (hardcover), 224 pages.

For the Love of Humanity: The World Tribunal on Iraq is a first-person account of a citizens’ tribunal, authored by one of the tribunal’s organizers, and held in twenty public sessions across the world between 2003 and 2005 to assess the 2003 military actions that brought the overthrow of the government of Iraq.

As Ayça Çubukçu explains, political activists from various countries convened in Istanbul in fall 2003 to plot the course of sessions to be organized on the model of court hearings that would shine a critical spotlight on the invasion of Iraq of earlier that year. The organizers were reacting to the fact, as indicated, that despite a widespread understanding that the reasons given for the invasion were invalid, the international community as represented by the United Nations was not expressing condemnation.

Çubukçu is an anthropologist by training, and she took upon herself the task of chronicling the process by which the tribunal was conceived and implemented. She describes tension in the formulation of the tribunal between those who saw it as challenging the legality of the invasion, and those who adopted what she calls a “political” focus. The “legalists”

26. SWAINE, *supra* note 5, at 283.

27. *Id.* at 288.

28. *Id.* at 287.

29. *Id.* at 267.