



UNIVERSITY OF BRASÍLIA
FACULTY OF LAW
GRADUATE STUDIES

MANUELA CAMARGO DE ASSIS

**WHO NEEDS A FEMINIST CRITIQUE?
AN ANALYSIS OF THE FEMINIST SCHOLARSHIP ON SOVEREIGNTY IN
INTERNATIONAL LAW**

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A dissertation submitted to the Programa de Pós-Graduação da Faculdade de Direito da Universidade de Brasília, in partial fulfillment of the requirements for the degree of Master of Law.

Advisor: Prof. Dr. George Rodrigo Bandeira Galindo

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2023

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QUEM PRECISA DE UMA CRÍTICA FEMINISTA? UMA ANÁLISE DAS ANÁLISES
FEMINISTAS SOBRE SOBERANIA NO DIREITO INTERNACIONAL

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ABSTRACT

This dissertation investigates the feminist scholarship on sovereignty in international law. While concentrating on the concept of sovereignty, it examines how feminists reframe fundamental concepts and expand the conventional boundaries of the discipline. The work is structured into three distinct chapters. The initial chapter outlines the research's scope and methodology. The second chapter delves into both traditional and critical interpretations of sovereignty, juxtaposing them against feminist analysis, encompassing concepts such as the international legal personality, security and territory. Finally, the third chapter introduces innovative feminist and queer perspectives, casting light on their capacity to transcend binary frameworks in their understandings of sovereignty and highlighting the profound influence of sexuality on the lexicon of international law. This dissertation highlights the connections between colonialism, gender and sexual dynamics, emphasizing the need for more comprehensive critical analysis of international law's discourse. It also emphasizes the ongoing relevance of feminist and queer perspectives in facilitating broader dialogues for the discipline. Furthermore, this research illuminates the interconnected nature of both general and specific issues of the discipline and encourages critical engagement aimed at dismantling the traditional foundations of the discipline, hidden and alternative histories that might help to uncover the links between sovereignty, violence and inequality not only in the past, but also in the present.

Keywords: Feminist perspectives, queer analyses, sovereignty, international law, gender dynamics, critical engagement.

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RESUMO

Essa dissertação investiga a contribuição das abordagens feministas sobre a soberania no direito internacional. Ao concentrar-se neste conceito, examina como as abordagens feministas reformulam conceitos fundamentais e ampliam os limites convencionais da disciplina. O trabalho estrutura-se em três capítulos. O primeiro delinea o escopo e a metodologia da pesquisa. O segundo capítulo explora interpretações clássicas e críticas do conceito de soberania, contrastando-as com as análises feministas, que abrangem conceitos como personalidade jurídica internacional, segurança e território. Por fim, o terceiro capítulo apresenta perspectivas "novas" feministas e *queer*, lançando luz sobre a sua capacidade de transcender estruturas binárias em suas compreensões da soberania, destacando a influência profunda da sexualidade no vocabulário do direito internacional e as conexões entre colonialismo, gênero e dinâmicas sexuais, enfatizando a necessidade de uma análise crítica mais abrangente do discurso do direito internacional. Também se destaca a relevância contínua das perspectivas feministas e queer, as quais facilitam diálogos mais amplos dentro da disciplina. Além disso, busca-se chamar a atenção para as conexões entre as questões "gerais" e "específicas" da disciplina. Isso incentiva um engajamento crítico voltado para desmontar os fundamentos tradicionais da disciplina, revelando assim narrativas alternativas que podem contribuir para desvendar as relações entre soberania, violência e desigualdade, não apenas no passado, mas também no presente.

Palavras-chave: Perspectivas feministas, análises queer, soberania, direito internacional, dinâmicas de gênero, engajamento crítico.

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INTRODUCTION

This work was motivated by curiosity—and perhaps some frustration—regarding the place of feminist approaches to international law within the discipline, particularly among feminists and critical scholars. By questioning "Who needs a feminist critique?," this work seeks to reflect on the transformative potential of the feminist approaches to international law and the role played by them in the project of introducing gender as a necessary and fundamental aspect to consider when examining knowledge production in the discipline.

The seminal article "Feminist Approaches to International Law," written by Hilary Charlesworth, Christine Chinkin, and Shelley Wright, and published in 1991 marked a significant milestone in the feminist approaches to international law by explicitly stating that international law is gendered and that it reinforces the subordination of women. In their article, the authors present a roadmap for a project that adopts feminism as a method of analysis and of approaching life and politics, of asking questions and seeking answers. They argue that international law has largely resisted feminist analysis and suggest that this should change.

Although concepts such as sovereignty, territory, the use of force, and state responsibility may seem gender-neutral when applied to abstract entities like states, feminists see this as a misrepresentation of the truth. A feminist project would reveal how gender shapes the structures of lawmaking, power distribution, and knowledge production. Just as postcolonial scholars have unmasked European colonial interests, feminists seek to expose the masculine biases that underlie the so-called universal.

However, this project has not been fully realized. Despite the significant intellectual production of the past four decades, feminist approaches have largely remained confined to the fields of human rights and humanitarian law, following the lead of transnational feminist movements. Classical international law institutes, institutions, and themes have been left largely unexamined. In addition, some of the feminist agenda has been co-opted by conservative and neoliberal discourses that reinforce an essentialist position on women's experiences and perpetuate a hierarchical dichotomy between the "First World" (developed, progressive on women's human rights) and the "Third World" (uncivilized and oppressive).

As other critical streams, such as queer and decolonial approaches, gain prominence in the field of critical theories in international law, feminist approaches need to be reexamined. This is important to avoid the tendency to limit feminist theoretical production in international

law exclusively to the field of women's rights and protection but also to avoid rejecting and replacing it with other critical perspectives.

Given the vast scope and extensive body of intellectual production within feminist approaches in international law, this work presents a critical investigation on feminist intellectual production on sovereignty, questioning its relevance, limits, and even the existence of an authentic feminist approach to the discipline up until now. This is necessary to distance feminist approaches from a narrow focus on women's rights and to place them in broader critical theories, which take into account other issues, such as coloniality, class, disability, and sexuality.

In her 1994 article on sovereignty, Karen Knop observed that international law has largely overlooked the relationship between gender and the concept of sovereignty¹, which remains one of the most fundamental principles of the discipline². For Knop, although feminists in the field of international relations and TWAIL scholars had already begun examining the concept of sovereignty from a critical perspective, feminist approaches in international law were still in their early stages of development, with a primary focus on the so-called "women's issues." This raised questions about the place of feminist approaches in international law's intellectual production, and how they can be consolidated as an intellectual movement alongside other critical streams.

This investigation aims to provide an account of the intellectual production of feminist approaches to sovereignty over the last few decades, to reveal how their critiques have developed and whether they have been successful in providing a comprehensive analysis of sovereignty and other related concepts such as statehood, international personality, and self-determination.

Another reason for writing this work is the lack of historiographical approaches in international law from a feminist perspective, and the need to reflect on feminist intellectual production in the discipline. The absence of a feminist approach to history is particularly concerning when compared to the abundance of feminist perspectives on international law. As the critical account presented in this work will demonstrate, feminist approaches emerged around the same time as other critical streams and were actively engaging in critical debates as the historiographical turn was taking shape.

¹ KNOP, Karen. Why Rethinking the Sovereign State is Important for Women's International Human Rights Law. In: COOK, Rebecca J. (ed.). **Human Rights of Women**. [S.L.]: University Of Pennsylvania Press, 1994, p. 296.

² SCHREUER, Christoph. The Waning of the Sovereign State: Towards a New Paradigm for International-Law? **Eur. J. Int'L L.** [S.L.], 1993, p. 448.

Acknowledging that gender shapes and limits social and cultural experiences³, it becomes evident that it plays a crucial role in the dynamics of power and knowledge production within international law. This work, therefore, offers brief reflections on recent developments in international law historiography and feminist studies on history. These reflections will generate theoretical, methodological, and epistemological questions and proposals related to the process of writing a feminist history in international law.

This study is structured into three chapters. The first chapter aims to provide a review of recent discussions with methodological implications for the historiography of international law and to identify key points of the debate. It outlines and defines the feminist approaches in international law and specifies the body of intellectual work considered for this investigation, along with the reasons for doing so.

The first chapter also delineates the methodological choices made for the research. This work aims to both present and understand the ideas of feminist internationalists about sovereignty in the discipline, as well as to write an intellectual history. By incorporating gender and power as fundamental aspects of knowledge production, this research seeks not only to add feminist internationalists to existing historical narratives but also to challenge conventional ways of telling stories. Methodologically, this study draws inspiration from Scott's accounts of feminist histories. As a double agent, the feminist historian intends to simultaneously transform the discipline and claim her rightful place in it.

The second chapter of this research examines the feminist intellectual production on sovereignty from the late 1980s to the present day, placing it within the context of the emergence of critical theories of international law and highly sophisticated feminist theories in other fields of social sciences and legal theories. The narrative developed in this chapter aims to showcase the developments of the feminist intellectual discourse on the issue of sovereignty. Additionally, it provides an overview of the analysis of sovereignty among other critical streams, in order to contextualize the development of feminist analysis on the subject.

A hypothesis is that, unlike postcolonial internationalists and feminist theorists in other fields, such as history and legal theory, the internationalist feminists were unable to integrate their criticisms into broader discussions and that their works, especially those

³ FLAX, Jane. Postmodernism and Gender Relations in Feminist Theory. **Signs: Journal of Women in Culture and Society**, 1987, p. 626.

dealing with central themes of international law, such as sovereignty, did not receive as much attention as those focusing on women's rights. To avoid reproducing what is already known about the development of feminist approaches, the second chapter focuses on feminist scholarship that analyzes sovereignty, directly or indirectly, adopting women or gender as their main object of concern.

Avtar Brah's inquiry on how can feminism, anti-racism, or a class movement effectively promote change without first questioning the values and norms that justify dominance and inequality by naturalizing certain differences⁴ underscores the need for a feminist approach to sovereignty that goes beyond merely centering women's experiences and regarding them as subjects worthy of attention for transforming state-state, state-individual, and state-group relationships. Such an approach requires a critical examination of how gender impacts and shapes discourses and how gender stereotypes and biases are sustained, even in abstract situations involving entities like states and concepts like sovereignty.

In the third chapter, this research raises questions about the limits and pitfalls of the feminist approaches in international law and their relationship with queer perspectives, which have gained increasing attention. With the recent strong engagement with posthumanist and postmaterialist theories, it may seem that feminism is becoming obsolete.

Mainstream feminist theory has been criticized for its heteronormativity and lack of consideration for sexuality, as well as its neglect of the fluidity and instability of gender as a means of analysis. The emergence of intersectional and queer theory critiques has played a crucial role in paving the way for further examination based on additional perspectives⁵. As a result, numerous subfields within international law have now embraced "new" feminist and queer approaches, leading to a reevaluation of fundamental concepts within the discipline, such as sovereignty.

Here, it is argued that instead of proclaiming the end of the feminist critiques and proposing their replacement by queer or other approaches, these perspectives might be perceived as complementary, especially regarding the task of rethinking the place of the concept of sovereignty and the state for the discipline today. By examining and comparing the theoretical production of feminist and queer perspectives regarding sovereignty, the final chapter aims to address the question of whether a genuine feminist approach to international law must be acknowledged and how its legacy can be understood.

⁴ BRAH, Avtar. *Cartographies of diaspora: Contesting identities*. London and New York: Routledge, 1996.

⁵ POWELL, Catherine; WING, Adrien K.. Introduction to the Symposium on Feminist Approaches to International Law Thirty Years On: still alienating Oscar?. *AJIL Unbound*, [S.L.], v. 116, p. 261, 2022. Cambridge University Press (CUP). <http://dx.doi.org/10.1017/aju.2022.43>.

1. IMAGINING A FEMINIST HISTORIOGRAPHY

Notions of relevance and truth are not provided with self-evident meanings. They are instead connected to specific cultural and political categories related to the spatial and temporal contexts in which they arise, mobilized according to interests created by collective fantasies⁶. What might be considered important, or even nuclear, to the production of knowledge or the functioning of institutions is conditioned by interests and desires that carry as much subjectivity and partiality as it pretends to be objective and universal. If the ultimate goal of this research is to develop *a* critical analysis of the feminist approaches to international law on sovereignty⁷, certain notions of relevance and truth are to be employed and therefore explained.

To proceed with that, this first chapter develops the theoretical basis, methods, and subject of this investigation. It forms a mosaic of brief reflections on the role played by critical approaches and the study of history in international law. These reflections will give rise to methodological and epistemological proposals and questions concerning the process of elaborating a feminist analysis in international law and the writing of a feminist history in this specific field of research. Then, it outlines what, for the purposes of this research, will be considered and adopted as representative works of the feminist approaches to international law.

Then, some key points of the feminist theories, especially in their approaches to law and history, are presented, seeking to explain and present the concepts, conflicts, and proposals that inform the intellectual production of the feminist approaches to international law. In the end, the methodological parameters that inspire this research are outlined, based on an articulation of Joan Scott's feminist history, assuming the role of "double agent" and gender as a category of historical analysis.

1.1. Feminist engagements with international law and transnational feminist activism

Feminist activism in international law can be traced back to the 19th century, with the emergence of initiatives like the Women's International League for Peace and Freedom

⁶ SCOTT, Joan Wallach. **The Fantasy of Feminist History**. London: Duke University Press, 2011, p. 19.

⁷ Borrowing from Sandra Harding, when she affirms that her research is "*a* study, not *the* study," since "other participants in these debates would focus on issues other than the ones I have chosen." HARDING, Sandra. **Whose science? Whose knowledge?: Thinking from women's lives**. Ithaca, New York: Cornell Univ Press, 1991, p. viii.

(WILPF), or even earlier movements⁸, depending on how one defines feminism in relation to international law. However, it was not until after the Second World War and various armed conflicts around the world, such as those in former Yugoslavia, Bosnia-Herzegovina, and Peru, that there was a growing recognition of the specific forms of violence that women were subjected to during conflicts, including the systematic use of rape, forced prostitution, and other sexual crimes as instruments of war and methods of ethnic cleansing⁹.

Feminist advocacy and activism have led to the advancement of transnational campaigns for women's rights agendas. Their main concern has been seeking justice in international institutions, which has resulted in the development of a women-centered jurisprudence¹⁰, the inclusion of women in decision-making bodies of international institutions, and the elaboration of international documents to enforce women's rights within the discourse of human rights¹¹.

According to Dianne Otto, the UN legal discourse on women and gender emerged from the UN's Charter assertion of the importance of the equal rights of men and women. The development of this discourse falls into three overlapping and interactive stages: the promulgation of specialized conventions, prohibition of sexual discrimination, the assertion of women's rights and the need for structural change¹².

In the second half of the 20th century, there was a growing number of treaties concerning women's issues, including the Inter-American Convention on the Granting of Civil Rights to Women in 1948, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1979, and the Inter-American Convention to Prevent, Punish and Eradicate Violence against Women, also known as the "Convention of Belém do Pará," in 1994.

International courts began to include sexual crimes under their jurisdiction and recognize them as violations of human rights. During this time, the United Nations organized

⁸ See: OWENS, Patricia; RIETZLER, Katharina (Ed.). **Women's International Thought: A New History**. Cambridge University Press, 2020. OWENS, Patricia et al. (Ed.). **Women's International Thought: Towards a New Canon**. Cambridge University Press, 2022.

⁹ CHINKIN, Christine. Feminist Interventions into International Law. **Adel. L. Rev.** [S.L.], p. 13-24. 1997. COPELON, Rhonda. Gender Crimes as War Crimes: Integrating Crimes against Women into International Criminal Law. **McGill Law Journal**, [S.L.], v. 46, n. 01, p. 217-240, Jan. 2000. HAGAY-FREY, Alona. **Sex and gender crimes in the new international law: Past, present, future**. Leiden: Koninklijke Brill, 2011.

¹⁰ CHINKIN, Christine. Feminist Interventions into International Law. **Adel. L. Rev.** [S.L.], p. 13-24, 1997.

¹¹ OTTO, Dianne. Violence Against Women—Something Other Than A Violation Of Human Rights? **Australian Feminist Law Journal**, [S.L.], v. 1, n. 1, p. 159-162. 1993. Informa UK Limited. <http://dx.doi.org/10.1080/13200968.1993.11077116>. CHINKIN, Christine. Feminist Interventions into International Law. **Adel. L. Rev.** [S.L.], p. 13-24. 1997. BUNCH, Charlotte. Women's Rights as Human Rights: Toward a Re-vision of Human Rights. **Human Rights Quarterly**, [S.L.], v. 12, n. 4, p. 486-498, 1990.

¹² OTTO, Dianne. Holding Up Half the Sky, But For Whose Benefit?: a critical analysis of the fourth world conference on women. **Australian Feminist Law Journal**, [S.L.], v. 6, n. 1, 1996, p. 9.

four world conferences on women: the first in Mexico City in 1975, followed by Copenhagen in 1980, Nairobi in 1985, and Beijing in 1995. The Beijing conference resulted in the adoption of the Beijing Declaration and the Platform for Action, which aimed to promote women's empowerment and gender¹³ equality.

Transnational activism produced significant changes in the way women were treated under international law, as it allowed them to be recognized as subjects of rights and to seek reparation for situations of systematic violence. However, according to Ginna Heathcote, these achievements were not necessarily reflected in a wider body of knowledge production on behalf of women or gender within the international legal field. Looking back, it becomes evident that gender law reform is not always described as responding to and emerging from transnational feminisms within international legal scholarships¹⁴.

The transnational advocacy for women's rights also increased the perspective that gender is a political rather than a theoretical issue—it is both. They concentrated their efforts on highlighting the exclusion of women in the decision instances of international institutions and were concerned with violence and violation of rights; what mattered the most was how women could be protected from violences and not how gender has shaped the discipline. The latter concern would place gender in a central position among other critical theories, such as TWAIL, broadening the understanding of the hierarchically gendered dimension of the European and Western international legal consciousness.

In 1996, in an analysis of the formal outcomes of the Fourth World Conference of Women (FWCW) in Beijing in 1995, Diane Otto affirms that the 'woman' from international legal discourse is grounded in her position in the heterosexual family, while she is expected to contribute productively to the formal market economy and has access to rights and opportunities by way of comparative equality to men, participating in structures that reproduce gender hierarchies and legitimize the inequitable global *status quo*¹⁵.

However, structural and conceptual feminist analysis remains controversial. In contrast to other fields, such as domestic law and history, where feminist theories were being

¹³ The term "gender" has been a subject of intense debate globally, and there was significant controversy surrounding its usage in international treaties. Some countries were concerned that it could be interpreted as encompassing homosexuality and even bestiality. In: CHARLESWORTH, Hilary. Not Waving but Drowning: Gender mainstreaming and human rights in the United Nations. *Harvard Human Rights Journal*, [S.L.], v. 18, 2005, p. 16-17.

¹⁴ HEATHCOTE, Gina. *Feminist Dialogues on International Law: successes, tensions, futures*. [S.L.]: Oxford University Press, 2019.

¹⁵ OTTO, Dianne. Holding Up Half the Sky, But For Whose Benefit?: a critical analysis of the fourth world conference on women. *Australian Feminist Law Journal*, [S.L.], v. 6, n. 1, p. 27, 1996. Informa UK Limited. <http://dx.doi.org/10.1080/13200968.1996.11077188>.

developed with their own unique methodological, theoretical, and epistemological concerns¹⁶, as it will be further addressed, the process of consolidating feminist approaches in international law was still in its early stages. Rather than being seen as strategic tools to help understand the production of inequalities and the role of gender in international law, there has been a split between feminist messages and methods, leading to a lack of integration between feminist knowledge in law and gender projects within international law. Although the feminist message has been praised, until the end of the 20th century, feminist methods have been largely ignored, and as stated by Charlesworth, "Feminist messages without feminist methods are unlikely to bring change"¹⁷.

1.2 The feminist approaches to international law: an overview

By the late 1980s, feminist thought had permeated various domains of society, including politics, law, and culture. Canonical works of feminist theory, such as those by Catherine MacKinnon, Joan Scott, Wendy Brown, Gloria Anzaldúa, Audre Lorde, bell hooks, Luce Irigaray, Sandra Harding, and Judith Butler, had already been published when feminist approaches to international law began to emerge. Academic research fields such as Women's Studies and Gender Studies¹⁸ had also been established.

By the 1970s, there were already a growing literature and feminist articulation in the field of history, and, by the 1990s, feminist historians were engaged in radical feminist projects¹⁹. In a very Western and US-centered narrative, feminist legal theory can be traced

¹⁶ The feminist theories emerging at the time presented very specific concerns regarding intellectual production. According to Elizabeth Anderson, a feminist epistemology "endeavors to explain the achievements of feminist criticism of science, which is devoted to revealing sexism and androcentrism in theoretical inquiry [...] must explain what it is for a scientific theory or practice to be sexist and androcentric, how these features are expressed in theoretical inquiry and in the application of theoretical knowledge, and what bearing these features have on evaluating research. Second, the project of feminist epistemology aims to defend feminist scientific practices, which incorporate a commitment to the liberation of women and the social and political equality of all persons." In: ANDERSON, Elizabeth. *Feminist epistemology: An interpretation and a defense*. *Hypatia*. [S.L.], 1995, p. 50. On the other hand, feminist legal theories employed other methods, such as standpoint theories. Catherine Mackinnon, for instance, claims consciousness-raising as her methodological and epistemological approach. MACKINNON, Catherine A. *Towards a Feminist Theory of the State*. Cambridge: Harvard University Press, 1989. See: BARTLETT, Katharine T. *Feminist legal methods*. *Harvard Law Review*. [S.L.], p. 829-888, 1990.

¹⁷ CHARLESWORTH, Hilary. *Talking to ourselves? Feminist scholarship in international law*. In: KOUVO, Sari; PEARSON, Zoe (ed.). *Feminist Perspectives on Contemporary International Law*. London: Hart Publishing, 2011, p. 24.

¹⁸ There is a difference among feminists on the differences, the use and the theoretical and political implications of the two fields. See: SCOTT, Joan Wallach (ed.). *Women's Studies on the Edge*. Durham: Duke University Press, 2008.

¹⁹ SCOTT, Joan Wallach. *The Fantasy of Feminist History*. London: Duke University Press, 2011, p. 23. See generally RILEY, Denise. *Am I that name? Feminism and the category of 'women' in history*. London: The Macmillan Press, 1988. SCOTT, Joan Wallach (ed.). *Feminism and History*. Oxford: Oxford University Press, 1996. SCOTT, Joan Wallach. *Gender and the Politics of History*. New York: Columbia University Press, 1988.

back to the late 1970s, with one of the earliest recorded uses of "feminist jurisprudence" occurring in 1978 at a Harvard Law School event celebrating the institution's first female graduates. At the event, a panel of judges, lawyers, and legal educators debated the existence and potential development of a feminist jurisprudence²⁰.

The emergence of critical legal theories and the newstream in international law also preceded the renewed focus on feminist articulations within international law, this time in the theoretical sphere. When compared to other critical perspectives on international law and broader feminist theories, it could be argued that feminist approaches were relatively late to emerge. The first conference dedicated to feminist approaches to international law took place at the Australian National University in August 1990²¹. A consensus among internationalists has been reached on some issues related to legal reform after decades of campaigning and lobbying for gender equality.

In 1992, the ILA formed the Association Committee on Feminism and International Law, and its initial chairperson was Savitri Goonesekere from Sri Lanka. The committee consisted primarily of female international lawyers from various parts of the world. Its objective was to clarify how international law and international human rights law could advance equality within domestic law. In 1993, Hilary Charlesworth noted that feminist analysis had only begun in international law, attributing this delay to various factors, such as the abstract nature of concepts and subjects of international law, the emphasis placed on race, culture, and nationality, the lack of interest in gender, and the generally positivist or realist perspectives that were "inhospitable to feminist inquiry."²²

In the late 1990s, the marginalized position occupied by feminists was an object of concern. Only after decades of resistance and neglect, they eventually gained a significant presence among other critical streams, and the 1991 article "Feminist Approaches to International Law" became a widely recognized and referenced work²³. However, a broader

HEWITT, Nancy A. Beyond the search for sisterhood: American women's history in the 1980s. **Social History**, v. 10, n. 3, p. 299-321, 1985. HIGGINBOTHAM, Evelyn Brooks. African-American women's history and the metalanguage of race. **Signs: Journal of Women in Culture and Society**, v. 17, n. 2, p. 251-274, 1992. HIGONNET, Margaret. **Behind the Lines: Gender and the Two World Wars**. New Haven: Yale University Press, 1989. JAMESON, Elizabeth. Toward a Multicultural History of Women in the Western United States. **Signs: Journal of Women in Culture and Society**, v. 13, n. 4, p. 761-791, 1988. KERBER, Linda K. Separate spheres, female worlds, woman's place: The rhetoric of women's history. **The journal of american history**, v. 75, n. 1, p. 9-39, 1988. KLEINBERG, S. J. (ed.). **Retrieving Women's History: Perceptions of Women's Roles in Culture and Society**. Oxford: Berg Publishers- Unesco Series In Women'S Studies, 1992.

²⁰ PRUITT, Lisa R.. A Survey of Feminist Jurisprudence. **U. Ark. Little Rock L. Rev.** [S.L.], 1994, p. 183

²¹ CHARLESWORTH, Hilary. Alienating Oscar - Feminist Analysis of International law. **Stud. Transnat'L Legal Pol'y.** [S.L.], p. 1-18, 1993, p. 1.

²² CHARLESWORTH, Hilary. Alienating Oscar - Feminist Analysis of International Law. **Stud. Transnat'L Legal Pol'y.** [S.L.], p. 1-18, 1993, p. 2.

²³ SIMPSON, Gerry. Is International Law Fair? **Michigan Journal Of International Law.** [S.L.], 1996, p. 615.

incorporation of the feminist perspectives into the discipline remained a challenge, especially when it came to the discipline's classical issues, which did not seem to have a direct bearing on the "women's question."

By overlooking gender and women, internationalists have distanced themselves from the possibility of engaging in theoretical and historical reflections and advancing a more complete political agenda. At the same time, the narrow focus of concern for feminists in international law limited the impact of their intellectual production and their ability to explain how gender influences the distribution of power and knowledge, and how it affects the self-perception of international law and internationalists. This theoretical gap made it harder for feminists to explain the complex and profound relationships established within the discipline in its practices and discourses, as well as connect their concerns with the history of colonialism, violences, and exclusions produced in the non-Western world.

The feminists had taken on the task of unveiling and reflecting how gendered language and structures shape the way we perceive and organize the world. It is rather a normative instance that produces and reproduces power, inequality, and exclusion. Scholars focusing on gender naturally adopted very different approaches. The main concern of these scholars was to show how international law subordinated women and gender minorities or dissidents. For Anne Orford, "The rational, ruthlessly ordered world of sovereign states has no place for those portrayed as unruly, disordered, subversive, primitive or irrational."²⁴ Feminist theories are, according to Orford, a rich source of alternative visions in the quest to construct and enact difference and multiplicity as positive values, rather than as justifications for oppression and violence²⁵.

There remains a large field of study concerning fundamental concepts and structures of the discipline that are still to be analyzed from a feminist perspective. Heathcote argues that it is crucial to move beyond the idea of law as the sole mechanism for promoting feminist and gender work and instead focus on exploring the potential for future feminist dialogues in international law that are guided by feminist methodologies. This may involve considering alternatives to legal reform as a feminist project²⁶ and bringing feminist scholarship closer to other critical perspectives, such as the Third World Approaches to International Law.

²⁴ ORFORD, Anne. The Uses of Sovereignty in the NewImperial Order. **Australian Feminist Law Journal**, [S.L.], v. 6, n. 1, p. 72, 1996. Informa UK Limited. <http://dx.doi.org/10.1080/13200968.1996.11077195>.p.

²⁵ ORFORD, Anne. The Politics of Collective Security. **Michigan Journal Of International Law**. [S.L.], 1996, p. 405.

²⁶ HEATHCOTE, Gina. **Feminist Dialogues on International Law**: successes, tensions, futures. [S.L.]: Oxford University Press, 2019, p. 6.

1.3. Taking a break from feminism? The feminist critiques of feminist critiques

The discourse of gender and feminism became tied to the fight against violence as feminist internationalists responded to systematic violations of women's rights with fast and strong reactions. However, some scholars tied the issue of gender and feminism to women's suffering and subordination. This led to the strategic incorporation of discourse of radical feminism by internationalists to promote their agendas in legal reform. Janet Halley has called attention to the reliance of feminist academics and activists in international law for the promotion of the 'sexual subordination' feminist of Catherine Mackinnon²⁷ and described the institutionalization of feminist ideas in law and other sites of formal power as "governance feminism."²⁸ As Otto points out, the effect of discourses such as gender mainstreaming

can be read as entrenching deeply conservative views about gender, while simultaneously they can sustain the hope that opportunities for radical change may lie within even the most bureaucratic application. [...] First, there is the problem of selective engagement with feminist ideas as institutions employ them to serve institutional agendas which may not bear any relation to feminist goals. Second, gender mainstreaming commitments and policies are adept at avoiding accountability mechanisms, which helps to explain why they have made little difference in practice. And third, despite mounting new challenges to stereotyped representations of women as vulnerable and dependent, as I have just argued, there are signs that protective representations are reasserting themselves, as the sexual harms suffered by women are given disproportionate attention²⁹.

More radical and interesting critiques, however, have been presented by scholars concerned with the Third World, such as Vasukhi Nesiah and Ratna Kapur.

Nesiah, Otto, and Engle argue that some streams of feminist discourse in international law have been co-opted³⁰ by the mainstream language of recognition and inclusion. The stream of feminist scholarship that has gained more attention in international law focused on describing violence against women, with particular emphasis on sexual violence, as a crisis demanding greater enforcement of international law, notably through criminal law, heightened securitization, and even military intervention³¹. On the theoretical side, the language of crises also poses different complications. The rhetoric of crises rests on oppositions that "constrain

²⁷ OTTO, Dianne. Power and Danger: feminist engagement with international law through the UN security council. *Australian Feminist Law Journal*, [S.L.], v. 32, n. 1, 2010, P. 97. Informa UK Limited. <http://dx.doi.org/10.1080/13200968.2010.10854439>.

²⁸ HALLEY, Janet. *Split Decisions: how and why to take a break from feminism*. New York: Princeton University Press, 2006.

²⁹ OTTO, Dianne. The exile of inclusion: reflections on gender issues in international law over the last decade. *Melbourne Journal Of International Law*. [S.L.], 2009, p. 20.

³⁰ OTTO, Dianne. The exile of inclusion: reflections on gender issues in international law over the last decade. *Melbourne Journal Of International Law*. [S.L.], 2009, p. 13.

³¹ ENGLE, Karen; NESIAH, Vasuki; OTTO, Dianne. Feminist Approaches to International Law. *University Of Texas Law, Public Law Research Paper*. [S.L.], 2021, p. 1.

feminist theory within the binary terms of essentialism and anti-essentialism impedes the development of a more complex feminist theory." It can also be politically problematic, making problems of feminism appear merely "internal."³²

Adrian Howe, still in the early debates of feminist approaches to international law, presents a sharp critique of the "white Western feminist interventions in international law," arguing that they translate a restricted perspective guilty of "unacknowledged complicities with masculinist and imperial projects,"³³ and blind to the specific concerns of Third World women in the name of a global feminist perspective concerned with the ultimate goal of gender equality. Incorporating gender into theoretical arrangements still poses a challenge for internationalists. Postcolonial internationalists' systematic scrutiny highlighted the pervasiveness of issues such as imperialism and colonialism in international legal discourse. Meanwhile, feminists' focus on women's experiences and violence left a significant part of the discipline's discourses, theories, and structures unexamined. These reinforce and produce ways of understanding gender categories that ignore the political and practical impact of discursive colonizations and erasures reproduced by the adoption of universalist and Western categories in the name of "women."

However, feminist analysis need not restrict itself to seeking equal rights. Gender can be an analytic tool, seen as a primary way of signifying power relations that intersect with other articulations of power such as race and class³⁴. Even today, it remains a challenge for new feminist internationalists to justify their interest in analyzing areas of the discipline that are not directly related to "women's issues" at first glance. Due to the perception of feminist scholarship as being limited and restricted to certain topics by both mainstream and critical international scholarship, there has been a lack of dialogue between internationalists and feminists. This has led to isolation³⁵, and, as feminists discuss their issues of interest among themselves, the conflicts between them become even more apparent to outsiders.

Recognizing the need for feminist approaches to international law to be situated within a wider disciplinary context would not only enable them to expand their focus beyond

³² HOWE, Adrian. White Western Feminism Meets International Law: challenges/complicity, erasures/encounters. *Australian Feminist Law Journal*, [S.L.], v. 4, n. 1, 1995, p. 65-66. Informa UK Limited. <http://dx.doi.org/10.1080/13200968.1995.11077157>.

³³ HOWE, Adrian. White Western Feminism Meets International Law: challenges/complicity, erasures/encounters. *Australian Feminist Law Journal*, [S.L.], v. 4, n. 1, 1995, p. 71. Informa UK Limited. <http://dx.doi.org/10.1080/13200968.1995.11077157>.

³⁴ OTTO, Dianne (ed.). *Queering International Law: possibilities, alliances, complicities, risks*. [S.L.]: Routledge, 2018, p. 5.

³⁵ CHARLESWORTH, Hilary. Talking to ourselves? Feminist scholarship in international law. In: KOUVO, Sari; PEARSON, Zoe (ed.). *Feminist Perspectives on Contemporary International Law*. London: Hart Publishing, 2011.

women's issues and position feminist internationalists as part of an ongoing intersectional conversation, but would also facilitate dialogues with other critical perspectives. Drawing from various disciplines and sources, including other feminist fields and perspectives within international law, may aid in addressing this challenge. To gain a deeper understanding of the broader critical framework within which feminist approaches are situated, the upcoming topic will outline relevant aspects of other critical perspectives in international law.

1.4 The newstreams and the critique of hegemonic discourses in international law

During the 18th century, mirroring domestic law, many international lawyers adopted liberal principles of the Enlightenment and the Rule of Law as if they reflected the values of modern nation-states³⁶. Its development during the following century solidified the idea of a collective European conscience that reflected Western civilization³⁷. If Europe was perceived as a "system" of independent and equal political communities, then the legal principles governing them needed to be neutral and objective³⁸. The search for elimination of political subjectivity in the legal arena aimed to prevent an anarchic environment based on subjective desires³⁹. As argued by Koskenniemi, "Organizing society through legal rules is premised on the assumption that these rules are objective in some sense that political ideas, views, and preferences are not"⁴⁰.

However, the use of neutrality and objectivity concealed the specific political interests that supported international law, which was developed as part of European history and conscience⁴¹. The traditional narratives in the history of international law did not represent a neutral description of events but rather served to justify European expansion by portraying it as the fulfillment of a universalist promise from the beginning. The classic narratives consolidated in the history of international law, far from representing a neutral description of events, served to justify present European expansion by making it appear as the fulfillment of the universalist promise in the origin⁴².

³⁶ KOSKENNIEMI, Martti. *The Politics of International Law*. **Eur. J. Int'L L.** [S.L.], 1990, p. 4.

³⁷ KOSKENNIEMI, Martti. **The Gentle Civilizer of Nations: the rise and fall of international law 1870-1960**. Cambridge: Cambridge University Press, 2001, p. 52.

³⁸ KOSKENNIEMI, Martti. *The Politics of International Law*. **Eur. J. Int'L L.** [S.L.], 1990, p. 6.

³⁹ KOSKENNIEMI, Martti. *The Politics of International Law*. **Eur. J. Int'L L.** [S.L.], 1990, p. 5.

⁴⁰ KOSKENNIEMI, Martti. *The Politics of International Law*. **Eur. J. Int'L L.** [S.L.], 1990, p. 7.

⁴¹ KOSKENNIEMI, Martti. **The Gentle Civilizer of Nations: the rise and fall of international law 1870-1960**. Cambridge: Cambridge University Press, 2001, p. 52.

⁴² KOSKENNIEMI, Martti. **The Gentle Civilizer of Nations: the rise and fall of international law 1870-1960**. Cambridge: Cambridge University Press, 2001, p. 102.

Over time, critical perspectives emerged that challenged traditional theories and narratives in the field of international law. When examined through a political lens, the concept of international law as a hegemonic system conflicted with the notion that international law could truly represent universal values, as every notion of universal international law is ultimately rooted in a specific viewpoint, expressed by a particular actor in a particular situation⁴³.

The post-Cold War era saw a pervasive feeling of unease and concern among internationalists⁴⁴. For Nijman, an "upbeat sense of change [...] a sense of hope [...] that United Nations would rise in authority, that the Security Council should be able to function properly" has soon been replaced with a less optimistic view about the future, with concerns about peace, security, and order in international life⁴⁵. The context, coupled with the social and political transformations of the late 20th century, gave rise to a "new brand of legal scholarship [...] claiming to challenge the certainties of the old" within international law. This critical legal scholarship was influenced by the tenets of critical legal studies and came to be known as the newstream or New Approaches to International Law (NAIL), representing a break from the prevailing intellectual tendencies or presuppositions of international law⁴⁶.

Encompassing a range of critical perspectives, including Critical Legal Studies, New Approaches to International Law, Feminist Approaches, Third World Approaches, and Postcolonial Approaches, the newstream shared the goal of reexamining the foundations of international law and creating "space for emancipatory politics, while responding to recent trends in economic, political, and social theory."⁴⁷ As Skouteris notes, "Far from forming a coherent movement, this work should be seen more as a professional project, held together by a sense of belonging or recognition experienced by some of the participants"⁴⁸.

⁴³ KOSKENNIEMI, Martti. International law and hegemony: a reconfiguration. **Cambridge Review of International Affairs**, [S.L.], v. 17, n. 2, 2004, p. 199.

⁴⁴ CASS, Deborah Z.. Navigating the Newstream: Recent Critical Scholarship in International Law. **Nordic J. Int'l L.** [S.L.], p. 341-383, 1996. OTTO, Dianne. Feminist Approaches to International Law. **The Oxford Handbook Of The Theory Of International Law**, [S.L.], p. 1-18, 2016. Oxford University Press. <http://dx.doi.org/10.1093/law/9780198701958.003.0025>. OTTO, Dianne. Feminist Approaches to International Law. **The Oxford Handbook Of The Theory Of International Law**, [S.L.], p. 1-18, 2016. Oxford University Press. <http://dx.doi.org/10.1093/law/9780198701958.003.0025>. CHINKIN, Christine. Feminist Interventions into International Law. **Adel. L. Rev.** [S.L.], p. 13-24, 1997.

⁴⁵ NIJMAN, Janne E.. **The Concept of International Legal Personality**: an inquiry into the history and theory of international law. The Hague: T.M.C. Asser Press, 2004, p. 1.

⁴⁶ KENNEDY, David; TENNANT, Chris. New approaches to international law: a bibliography. **Harv. Int'l. LJ**, v. 35, 1994, p. 418.

⁴⁷ SKOUTERIS, Thomas. New Approaches to International Law. **Oxford Bibliographies Online Datasets**, [S.L.], p. 1-25, 2012. Oxford University Press (OUP). <http://dx.doi.org/10.1093/obo/9780199796953-0012>.

⁴⁸ SKOUTERIS, Thomas. New Approaches to International Law. **Oxford Bibliographies Online Datasets**, [S.L.], p. 1-25, 2012. Oxford University Press (OUP). <http://dx.doi.org/10.1093/obo/9780199796953-0012>.

The mainstream to which they were opposed referred to the body of dominant scholarship during the 20th century does not indicate a homogenous category but, instead, covered a number of different theoretical approaches including realism, classicism, and liberal-humanitarianism⁴⁹ and part of the work of the newstreams involved making explicit how even the most neutral and so-called scientific theories were representatives of specific temporal, spatial, cultural and economic contexts. The spread and notoriety of ideas about international law are related to questions of power "money, access to institutional resources, relationships to underlying patterns of hegemony, and influence"⁵⁰.

According to Deborah Cass, the newstream made three main conceptual critiques of the mainstream. First, it took a complacent approach towards questions of culture and difference. Second, it interpreted history from a progressivist perspective. Third, it promoted a unified reading of the historical development of international law. In opposition, critical scholars sought to expose the unstable and contingent nature of the law and how international actors were engaged in a highly personal quest, challenging the notion of universality and objectivity that characterized much of international legal discourse throughout the 20th century⁵¹.

Strategically, the newstream shifted its strategy from seeking reform to radical conceptualization. They situated legal problems in their political and cultural context, rewrote doctrinal histories, and integrated political considerations into legal analysis⁵². By developing interdisciplinary analyses, the new approaches brought a new understanding to international law, which allowed for a comprehension of the limits and possibilities of the discipline to address a variety of problems from distinct perspectives. According to Skouteris, under the label of newstream

We see work that reassesses the most foundational doctrines and assumptions of the discipline, to discern "grammars," "structures," or the (gender, colonial, or other) bias of the discipline in its entirety. A second common denominator is the deliberate use of method and epistemology. Authors choose to engage in methodological debates and engage in rigid epistemology in order to emphatically situate themselves in relation to the

⁴⁹ CASS, Deborah Z.. Navigating the Newstream: Recent Critical Scholarship in International Law. **Nordic J. Int'L L.** [S.L.], 1996, p. 341.

⁵⁰ KENNEDY, David. My Talk at the ASIL: What Is New Thinking in International Law? **Proceedings Of The ASIL Annual Meeting.** [S.L.], p. 104-125. 2000, p. 121.

⁵¹ CASS, Deborah Z.. Navigating the Newstream: Recent Critical Scholarship in International Law. **Nordic J. Int'L L.** [S.L.], 1996, 345.

⁵² CASS, Deborah Z.. Navigating the Newstream: Recent Critical Scholarship in International Law. **Nordic J. Int'L L.** [S.L.], 1996, p. 345.

traditional approaches and thus clearly delineate the disciplinary space in which they operate⁵³.

Depending on the perspective taken by critical scholars, the concept of universality could take on different meanings. For example, Third World Approaches to International Law (TWAIL), which critically examines the process of decolonization and European colonial rule over the Third World, viewed the universal as a "racialized hierarchy of international norms and institutions that subordinate non-Europeans to Europeans."⁵⁴ Meanwhile, feminist approaches highlighted how the claims of universality and impartiality in international law served to conceal the ways in which the law operated differently with respect to women and men⁵⁵. In addition, critical scholars personalized legal issues, highlighting the relationship between public and private dimensions and questioning how personal experiences shape the production of knowledge⁵⁶.

In general, the notion of the universal is not an autonomous or stable concept, but rather "appears through the positions of political actors, as a way of dressing political claims in a specialized technical idiom in the conditions of hegemonic contestation."⁵⁷ The newstream also provided insightful analysis on the role of "language as a constitutive tool of law-making."⁵⁸ For instance, Koskeniemi argued that mainstream claims that law is based on "objective, rational, or value-based choices" served to obscure the fact that legal arguments are "part of a mutually reinforcing system of rhetoric."⁵⁹

The linguistic focus reiterates the theme of the quest when it refers to the goal of the Newstream as one of "disentangle[ment]," or of "translation," or of trying to "describe the silences." It emphasizes the conceptual theme that law is constituted by language by the use of terms which imply structure and organization, such as "taxonomies" and "map" and "architectures." And it sometimes translates into an open discussion of its own terminology, again emphasizing the self-conscious and subjective nature of the Newstream scholarship⁶⁰.

⁵³ SKOUTERIS, Thomas. *New Approaches to International Law*. **Oxford Bibliographies Online Datasets**, [S.L.], 2012, p. 1 Oxford University Press (OUP). <http://dx.doi.org/10.1093/obo/9780199796953-0012>.

⁵⁴ MUTUA, Makau. What Is TWAIL? **Proceedings Of The ASIL Annual Meeting**.. [S.L.], 2000, p. 31.

⁵⁵ CHARLESWORTH, Hilary; CHINKIN, Christine. **The Boundaries of International Law: A Feminist Analysis**. Manchester: Manchester University Press, 2000, p. 50.

⁵⁶ CASS, Deborah Z.. Navigating the Newstream: Recent Critical Scholarship in International Law. **Nordic J. Int'L L.** [S.L.], 1996, p. 365.

⁵⁷ KOSKENIEMI, Martti. International law and hegemony: a reconfiguration. **Cambridge Review of International Affairs**, [S.L.], v. 17, n. 2, p. 197-218, 2004, p. 199.

⁵⁸ CASS, Deborah Z.. Navigating the Newstream: Recent Critical Scholarship in International Law. **Nordic J. Int'L L.** [S.L.], 1996, p. 359.

⁵⁹ CASS, Deborah Z.. Navigating the Newstream: Recent Critical Scholarship in International Law. **Nordic J. Int'L L.** [S.L.], 1996, p. 363.

⁶⁰ CASS, Deborah Z.. Navigating the Newstream: Recent Critical Scholarship in International Law. **Nordic J. Int'L L.** [S.L.], 1996, p. 370.

These new streams can be viewed as having a "critical faith" in the potential of international law to challenge established power relations, offering a productive focus for questioning and disrupting the discipline's complicity with hegemonic, imperial, and gender power from within⁶¹. Dianne Otto argues that criticism plays a vital role in the fight for everyday issues and dismisses the suggested separation between mainstream academic investigation being considered valid, and less conventional approaches being considered invalid⁶².

Critical scholars faced a significant challenge as mainstream scholars failed to engage with their ideas⁶³, leading to a dialogue that was largely one-sided, as pointed out by Hilary Charlesworth⁶⁴ in her article "Talking to ourselves?," pointing out that feminists were charged with theoretical incoherence or impurity⁶⁵. While some exemptions existed, mainstream scholars largely ignored the critiques of the newstreamers, labeling them utopian and as lacking applicability. This lack of engagement has led to a situation where critical scholars have had to make their arguments in a vacuum, without any meaningful responses from scholars "from the outside." Furthermore, some orthodox scholars have even denied the existence of the issues raised by critical scholars, highlighting the need for the inclusion of alternative accounts to create a more informed and reflexive field of knowledge⁶⁶.

Simpson⁶⁷ contends that the majority of international legal scholarship has remained unaffected by the new theoretical developments emerging from critical streams. While feminist scholarship has been somewhat tolerated, as long as it does not challenge the fundamental tenets of liberalism such as individual autonomy, choice, and objectivity, new-stream scholarship has been largely ignored. Furthermore, the work of Hilary Charlesworth has been subject to criticism from various perspectives but has yet to receive sustained and critical engagement from the mainstream. Scholars of international relations

⁶¹ OTTO, Dianne. Celebrating Complexity. **Proceedings Of The ASIL Annual Meeting**. [S.L.], 2012, p. 168.

⁶² OTTO, Dianne. Prospects for International Gender Norms. **Pace Law Review**. [S.L.], 2011, p. 873.

⁶³ SIMPSON, Gerry. Is International Law Fair? **Michigan Journal Of International Law**. [S.L.], 1996, p. 616.

⁶⁴ CHARLESWORTH, Hilary. Talking to ourselves? Feminist scholarship in international law. In: KOUVO, Sari; PEARSON, Zoe (ed.). **Feminist Perspectives on Contemporary International Law**. London: Hart Publishing, 2011.

⁶⁵ CHARLESWORTH, Hilary. Talking to ourselves? Feminist scholarship in international law. In: KOUVO, Sari; PEARSON, Zoe (ed.). **Feminist Perspectives on Contemporary International Law**. London: Hart Publishing, 2011, p. 18.

⁶⁶ KENDALL, Sara. On Academic Production and the Politics of Inclusion. **Leiden Journal Of International Law**, [S.L.], v. 29, n. 3, p. 617-624, 2016. Cambridge University Press (CUP). <http://dx.doi.org/10.1017/s0922156516000224>.

⁶⁷ SIMPSON, Gerry. Is International Law Fair? **Michigan Journal Of International Law**. [S.L.], 1996, p. 616.

have disregarded international law's reformist and progressive visions as being utopian, excessively legalistic, or naively unsophisticated regarding the realities of global disorder⁶⁸.

For some, the reason for that is the explicitly political agenda of the newstreams. When it comes to feminist engagements with international law, their political views contrast with the mainstream theories which present themselves as a “technical, apolitical vocabulary; it’s also a bit much for critical scholars in international law, who are skeptical about any reliance on the law to achieve social change”⁶⁹.

In a speech delivered at the 2005 Annual Meeting of the ASIL, held in Washington, DC, Hilary Charlesworth expressed her discontent with the lack of engagement of international law and theory since the beginning of the feminist approaches to international law.

Looking at the major writings in international law and theory over the past decade, it is very hard to detect any real attempt to engage with feminist theories of international law, or indeed with any outsider perspectives. Feminist theories seem to remain in a scholarly ghetto, at most a brief footnote, in international legal scholarship. Fernando Tesón is an exception to this tendency and I welcome his interest (though it is highly critical) in feminist theories of international law⁷⁰.

While feminist scholarship typically regards itself as being in conversation with the mainstream, asking for consideration of women’s lives in the design of scholarship and principles, and arguing for an expanded referential universe. This conversation is, however, almost completely one-sided; a monologue rather than a dialogue. It is very hard to find any response from the mainstream to feminist questions and critiques; feminist scholarship in both disciplines seems an optional extra, a scholarly ghetto⁷¹. But not only mainstream international legal scholarship has remained untouched by feminist analysis, Charlesworth also points out the lack of involvement of critical scholars with the feminist approaches⁷². She states that:

⁶⁸ SIMPSON, Gerry. Is International Law Fair? *Michigan Journal Of International Law*. [S.L.], 1996, p. 617. OTTO, Dianne. Prospects for International Gender Norms. *Pace Law Review*. [S.L.], 2011, p. 874.

⁶⁹ CHARLESWORTH, Hilary; RIMMER, Susan Harris. Feminist Internationalisms. *Australian Feminist Law Journal*, [S.L.], v. 32, n. 1, 2010, p. 5.

⁷⁰ CHARLESWORTH, Hilary. Feminist Ambivalence about International Law. *International Legal Theory*, [S.L.], v. 11, n. 1, 2005, p. 2

⁷¹ CHARLESWORTH, Hilary; RIMMER, Susan Harris. Feminist Internationalisms. *Australian Feminist Law Journal*, [S.L.], v. 32, n. 1, 2010, p. 5.

⁷² Janet Halley presents a different argument while proposing that we take a break from feminism and stating that feminism has come to exercise considerable power in international law and its institutions. HALLEY, Janet. *Split Decisions: how and why to take a break from feminism*. New York: Princeton University Press, 2006. For critiques on Halley's account see CHARLESWORTH, Hilary. Talking to ourselves? Feminist scholarship in international law. In: KOUVO, Sari; PEARSON, Zoe (ed.). *Feminist Perspectives on Contemporary International Law*. London: Hart Publishing, 2011, p. 17-32.

Some critical and progressive scholars use the occasional footnote to feminist scholarship to signal that they have kept up with their reading, but feminist ideas are almost never treated seriously; they are not acknowledged, debated, or refuted. Similarly, international law casebooks often include a paragraph or two from a feminist article in the “overview” or “theory” section to show that they have broad-minded authors, but feminist critiques usually appear as token offerings as they are not carried through to all areas of inquiry. In short, feminist theories form a scholarly ghetto in international legal scholarship⁷³.

Overall, the critical perspectives should not be regarded as an absolute truth and presented in grandiose speeches that portray the critics as heroic fighters against the mainstream. According to Immi Tallgren, self-proclaimed critical scholars often engage in the same behavior they criticize in others by ‘constructing blind alleys of expertise and ownership’⁷⁴. Recognizing the limitations of critical perspectives and the difficulties of deconstructing established narratives helps to identify and avoid the traps, pitfalls, and contradictions inherent to all forms of knowledge.

1.4.1 The historiographical turn

For centuries, the attitude of internationalists towards history has been one of searching for arguments of authority to legitimize a narrative of continuity between the present and the past of the discipline⁷⁵. That is not, of course, a privilege of international legal histories. In the field of intellectual history, for example, traditional narratives have emphasized “either the persistence of themes over long stretches of time or the steady accumulation of knowledge”⁷⁶. In international law, this was translated into a reconstruction of its origins from a restricted grouping of authors and events that played in favor of the so-called founding myth of the discipline⁷⁷.

⁷³ CHARLESWORTH, Hilary. The Women Question in International Law. **Asian Journal Of International Law**, [S.L.], v. 1, n. 01, 2011, p. 35.

⁷⁴ TALLGREN, Immi. Who are ‘we’ in international criminal law? On critics and membership. In: SCHWÖBEL, Christine. **Critical Approaches to International Criminal Law**. Abingdon And New York: Routledge, 2014, p. 71.

⁷⁵ GALINDO, George Rodrigo Bandeira. Para que serve a história do direito internacional? **Revista de Direito Internacional**, [S.L.], v. 12, n. 1, p. 252-349, 2015. Centro de Ensino Unificado de Brasília. <http://dx.doi.org/10.5102/rdi.v12i1.3368>, p. 417.

⁷⁶ FRICKEL, Scott; GROSS, Neil. A General Theory of Scientific/Intellectual Movements. **American Sociological Review**. [S.L.], 2005, p. 204.

⁷⁷ KOSKENNIEMI, Martti. What is International Law For? In: EVANS, Malcolm (ed.). **International Law**. Oxford: Oxford University Press, 2014. CARTY, Anthony. Myths of international legal order: past and present. **Cambridge Review Of International Affairs**, [S.L.], v. 10, n. 2, p. 3-22, 1997. <http://dx.doi.org/10.1080/09557579708400132>. BEAULAC, Stéphane. The Westphalian model in defining international law: Challenging the myth. **Australian Journal Of Legal History**. [S.L.], p. 181-213. 2004. KOSKENNIEMI, Martti. Histories of International law: dealing with Eurocentrism. **Rechtsgeschichte - Legal History**, [S.L.], v. 2011, n. 19, p. 152-176, 2011. Max Planck Institute for Legal History and Legal Theory. <http://dx.doi.org/10.12946/rg19/152-176>.

This can be illustrated by the use, among internationalists, of the Westphalian myth as a "convenient shorthand," allowing them to find explanations for the functioning of international law on the basis of the principle of sovereign equality of states⁷⁸. The Westphalian myth, for instance,

provided a shared explanatory structure for the socially constructed international reality and, in doing so, has had an extraordinary impact upon the shared consciousness of humanity. Furthermore, given that this myth managed its way into the very fabric of our international legal order – as the model for the idea, and the ideal, of state sovereignty in international law – the social power that *Westphalia* has continuously demonstrated within human reality increased considerably⁷⁹.

The prevailing narrative in international law history has traditionally divided it into two broad periods, one where it mostly governed the relationships between states and another, more humanist era with a focus on human rights⁸⁰. This narrative portrays the modernization and progress of international law and its institutions⁸¹ as inevitable⁸². However, this simplistic view fails to acknowledge the complexities of the past. Specifically, it overlooks how the discourse of international law, which was infused with hierarchical distinctions between Western and non-Western societies, reflected and perpetuated European domination and colonialism until the 19th century.

Koskenniemi notes that the discourse on the development of international law was structured in a way that enabled the accommodation of positions that supported the extension of European influence. This discourse was characterized by a dynamic of exclusion and inclusion. Non-Europeans were excluded based on cultural arguments about their otherness, which made it impossible to extend European rights to them. At the same time, native populations were included based on a perception of their similarity with Europeans, which led

⁷⁸ BEAULAC, Stéphane. The Westphalian model in defining international law: Challenging the myth. *Australian Journal Of Legal History*. [S.L.], 2004, p. 212.

⁷⁹ BEAULAC, Stéphane. The Westphalian model in defining international law: Challenging the myth. *Australian Journal Of Legal History*. [S.L.], 2004, p. 212.

⁸⁰ GROSS, Aeyal M. After the Falls: International Law between Postmodernity and Anti-modernity. In: JOUANNET, Emmanuelle; FABRI, Hélène Ruiz; SOREL, Jean-Marc (ed.). *Regards d'une génération de juristes sur le Droit International*. Paris: Editions Pedone, 2008, p. 184-187.

⁸¹ "The organization of society from a tribal basis, to one based on communities and then on individuals; the movement from status to contract; and from religion to philosophy to law follow the same linear route. The development in law from a concern with substantive norms, to a focus on procedure; from legal rules to institutions; from naturalism to realism to pragmatism, all mirror the same Enlightenment story. By excluding stories which deviate from this format, international law is thus written to reflect the history of the Enlightenment in which law is constantly improved and refined with the progress of time." CASS, Deborah Z.. Navigating the Newstream: Recent Critical Scholarship in International Law. *Nordic J. Int'L L.* [S.L.], 1996, p. 60.

⁸² CASS, Deborah Z.. Navigating the Newstream: Recent Critical Scholarship in International Law. *Nordic J. Int'L L.* [S.L.], 1996, p. 60.

to a universal humanitarianism under which international lawyers sought to replace native institutions with European sovereignty⁸³.

But a growing awareness among internationalists allowed them to perceive the history of international law as implicated in "interests other than the purely legal,"⁸⁴ perceiving traditional narratives as inherently related to the liberal internationalism narrative that presents itself as the "legal conscience of the civilized world" and "whose humanitarian aspirations cannot be dismissed as a set of bad-faith justifications for Western domination."⁸⁵

According to Anghie, the historical interaction between what was considered two distinct worlds—the imperial and the colonized—embodied a complex set of exchanges that highlighted the civilizing mission of international law. This mission defined certain groups of people as barbaric, violent, and oppressed by their savage leaders, and argued that their humanity and potential could only be fulfilled through the intervention of the civilized West, even if it required force. However, a closer examination showed that this mission was entirely self-serving and used to justify the conquest and exploitation of non-European people⁸⁶.

With the establishment of international law as a legal order earlier in the 20th century, a culture of professional international law was created⁸⁷ and internationalists styled themselves as "demystifying, rationalizing, enlightenment gestures, reacting against a sovereignty which had been worshiped as absolute, mystical, integrated."⁸⁸ International law appeared then as a "modernist project."⁸⁹ It was especially in the late 1980s that a profusion of critical streams of international law, reunited by the disbelief in traditional methods and the urge to seek change, started to be incorporated into the historiographic field of the discipline.

This opening for new ways of thinking about history within the discipline was called the "historiographical turn,"⁹⁰ referring to a widespread trend among international lawyers to

⁸³ KOSKENNIEMI, Marti. *The Gentle Civilizer of Nations: the rise and fall of international law 1870-1960*. Cambridge: Cambridge University Press, 2001, p. 130.

⁸⁴ CASS, Deborah Z.. *Navigating the Newstream: Recent Critical Scholarship in International Law*. *Nordic J. Int'L L.* [S.L.], 1996, p. 60.

⁸⁵ KOSKENNIEMI, Marti. *The Gentle Civilizer of Nations: the rise and fall of international law 1870-1960*. Cambridge: Cambridge University Press, 2001, p. 176.

⁸⁶ ANGHIE, Tony. *Between the Worlds*. In: JOUANNET, Emmanuelle; FABRI, H el ene Ruiz; SOREL, Jean-Marc (ed.). *Regards d'une g n ration de juristes sur le Droit International*. Paris: Pedone, 2008. p. 40.

⁸⁷ KOSKENNIEMI, Marti. *The Gentle Civilizer of Nations: the rise and fall of international law 1870-1960*. Cambridge: Cambridge University Press, 2001, p. 361.

⁸⁸ KENNEDY, David. *International law and the nineteenth century: History of an illusion*. *Nordic J. Int'L L.* [S.L.], 1996, p. 388.

⁸⁹ KOSKENNIEMI, Martti. *Histories of International law: dealing with Eurocentrism*. *Rechtsgeschichte - Legal History*, [S.L.], v. 2011, n. 19, p. 159.

⁹⁰ GALINDO, George Rodrigo Bandeira. *Martti Koskenniemi and the Historiographical Turn in International Law*. *The European Journal Of International Law*, [S.L.], v. 16, n. 03, p. 539-559, 2005. DE LA RASILLA, Ignacio. *The Turn to the History of International Law*. *International Law And History*, [S.L.], p. 11-40, 2021. Cambridge University Press. <http://dx.doi.org/10.1017/9781108562003.002>. D'ASPREMONT, Jean. *Turntablism in the History of International Law*. *Journal of The History Of International Law / Revue*

dedicate attention to the history of international law and to establish links between the past and the present situation of international norms, institutions, and doctrines. The historiographical turn also incorporated a very strong concern in overcoming the traditional separation between the theory from the history of the discipline⁹¹.

By being at the same time both reactive and propositional, the historiographical turn provoked a fragmentation of the classic narratives about the discipline's past, revealing a strong concern with the writing of stories that did not just reflect a monolithic position. They incorporated poststructuralist⁹², postmodernist⁹³, postcolonial⁹⁴ perspectives and devoted themselves to alternative histories of institutions, ideas, and characters of international law.

Aiming to break the hegemonic narratives about the past—which overflow its effects onto the present⁹⁵—critical streams emerged in international law, and some of them were devoted to the study of the history of international law, allowing for a renewal of historical consciousness, provoking a search for new sources as well as the adoption of alternative points of view, capable of transforming the classical interpretation given to past events. These critical perspectives replaced the traditional narrative that accepted the existence of a "single, homogeneous period in which international law has meant something specific," with a more nuanced comprehension of international law as "a complex set of practices and ideas as well as their interpretation."⁹⁶

D'histoire Du Droit International, [S.L.], v. 22, n. 2-3, p. 472-496, 2020. Brill. <http://dx.doi.org/10.1163/15718050-12340142>.

⁹¹ GALINDO, George Rodrigo Bandeira. Martti Koskenniemi and the Historiographical Turn in International Law. **The European Journal Of International Law**, [S.L.], v. 16, n. 03, 2005, p. 541.

⁹² OTTO, Dianne. Everything is Dangerous: some post-structural tools for rethinking the universal knowledge claims of human rights law. **Australian Journal Of Human Rights**, [S.L.], v. 5, n. 1, p. 17-47, 1999. Informa UK Limited. <http://dx.doi.org/10.1080/1323238x.1999.11911007>.

⁹³ CHIMNI, B. S.. Customary International Law: a third world perspective. **American Journal Of International Law**, [S.L.], v. 112, n. 1, p. 1-46, 2018. Cambridge University Press (CUP). <http://dx.doi.org/10.1017/ajil.2018.12>.

⁹⁴ ANGHIE, Antony. The evolution of international law: colonial and postcolonial realities. **Third World Quarterly**, [S.L.], v. 27, n. 5, p. 739-753, 2006. Informa UK Limited. <http://dx.doi.org/10.1080/01436590600780011>. MAHMUD, Tayyab. Geography and international law: towards a postcolonial mapping. **Santa Clara J. Int'L L.** [S.L.], p. 525-594, 2007.

⁹⁵ "The histories of *jus gentium*, natural law, and the law of nations, *Völkerrecht* and *Droit public de l'Europe* are situated in Europe; they adopt a European vocabulary of 'progress' and 'modernity'. Key distinctions in it between 'political' and 'economic', 'secular' and 'religious' as well as 'private' and 'public' point to European experiences and conceptualizations. Even if postcolonialism has now become international law's official ethos, it still remains the case that 'Europe rules as the silent referent of historical knowledge.'" KOSKENNIEMI, Martti. Histories of International law: dealing with Eurocentrism. **Rechtsgeschichte - Legal History**, [S.L.], v. 2011, n. 19,, 2011, p. 155.

⁹⁶ GROSS, Aeyal M. After the Falls: International Law between Postmodernity and Anti-modernity. In: JOUANNET, Emmanuelle; FABRI, Hélène Ruiz; SOREL, Jean-Marc (ed.). **Regards d'une génération de juristes sur le Droit International**. Paris: Editions Pedone, 2008, p. 187.

Valentina Vadi provides a didactic systematization of various methods and approaches employed by internationalists in writing new histories⁹⁷. These include structuralism, poststructuralism, contextualism, textualism, Critical Legal Studies, Third World Approaches to International Law (TWAIL), and "Law and Society." According to Vadi, the first three can be considered as methods, while Critical Legal Studies, TWAIL, and Law and Society function as broader intellectual movements, challenging and providing meaning to the political and epistemological practices of the discipline. Vadi particularly highlights TWAIL⁹⁸ as a "distinctive approach that questions the foundations, operations, and methods of international law and its histories,"⁹⁹ providing a pertinent critique of the discipline's Eurocentrism, which extends beyond events and ideas to the very parameters of historiography¹⁰⁰.

Rewriting the history of international law from critical perspectives reveals the precariousness and incompleteness of history¹⁰¹. This new historical consciousness not only questions the events and ideas promoted by the tradition but also challenges the very standards of historiography as European¹⁰². For postcolonial critics, for instance,

[...] international law is imperialist all the way down; it is "fundamentally animated by the civilizing mission that is an inherent aspect of imperial expansion which, from time immemorial, has presented itself as improving the lives of conquered peoples." If that is so, then any use of its categories, even a critical use – will be Eurocentric and there is no reason for pride if past indigenous institutions have resembled European ones. Those are corrupt institutions, instruments of domination and illegitimate control. Instead, what one needed to do is to attack the concepts and practices at their root, and to show their nature or historical (and present) uses as instruments of colonial oppression¹⁰³.

⁹⁷ VADI, Valentina. International Law and Its Histories: Methodological Risks and Opportunities Valentina. **Harvard International Law Journal**. [S.L.], 2017, p. 320. As the list presented by Vadi shows, a feminist perspective has been absent from the historical accounts in the international legal field. As it will be further addressed in this investigation, a feminist historiographical project within the discipline has only started to be developed in the last years.

⁹⁸ See generally GATHII, James Thuo. TWAIL: A brief history of its origins, its decentralized network, and a tentative bibliography. **Trade L. & Dev.** [S.L.], p. 26-64. 2011. MICKELSON, Karin. Taking Stock of TWAIL Histories. **International Community Law Review**, [S.L.], v. 10, n. 4, p. 355-362, 2008. Brill. <http://dx.doi.org/10.1163/187197308x366605>.

⁹⁹ VADI, Valentina. International Law and Its Histories: Methodological Risks and Opportunities Valentina. **Harvard International Law Journal**. [S.L.], 2017, p. 338.

¹⁰⁰ KOSKENNIEMI, Martti. Histories of international law: significance and problems for a critical view. **Temple International And Comparative Law Journal**. [S.L.], 2013. p. 222.

¹⁰¹ HARTOG, François. **Evidência da história: o que os historiadores veem**. Belo Horizonte: Autêntica, 2020, p. 13.

¹⁰² KOSKENNIEMI, Martti. Histories of international law: significance and problems for a critical view. **Temple International And Comparative Law Journal**. [S.L.], 2013, p. 221.

¹⁰³ KOSKENNIEMI, Martti. Histories of International law: dealing with eurocentrism. **Rechtsgeschichte - Legal History**, [S.L.], n. 19, p. 169, 2011. Max Planck Institute for Legal History and Legal Theory. <http://dx.doi.org/10.12946/rg19/152-176>.

The need for a more critical and open approach to history became evident as it was recognized that the historian's perspective could shape the answers and conclusions reached about certain events, subjects, and ideas. The realization that "the limits of our imagination are a product of a history that might have gone another way"¹⁰⁴ spurred the emergence of new questions, answers, and perspectives that challenged the dominant narrative of the past. This counter-hegemonic approach to history has had an impact on present-day analysis of the discipline. It became apparent that major international events could be experienced and understood differently by individuals, leading to an awareness that "great events over which we had no control and which were taking place at a great distance nevertheless could and would affect our lives."¹⁰⁵

Valentina Vadi argues that history can be used as a "tool kit" to understand the international legal system through its various methodologies, revealing its biases, blind spots, and potential for emancipation¹⁰⁶. As international law extended to different areas of social reality, the use of history became a means of reflecting on and questioning its origins and goals, leading to both a sense of identity, inspiration, and continuity, as well as discomfort, anger, and rupture¹⁰⁷. The historiographical turn, in general, resulted in an expanded scope of research, theoretical development, and methodological awareness¹⁰⁸, allowing for the imagination of alternative possibilities to shape the present and future of the discipline¹⁰⁹.

After five centuries negotiating an idea of self and its place within international society, international lawyers perceived a high level of "uncertainty, confusion and dispute about the very idea of the 'past' and even about the very idea of the recovery of the past in the form of 'history'."¹¹⁰ Since the originating narratives of international law "systematically excluded utopias, radicals, socialists, even, and perhaps especially, women."¹¹¹ Therefore, the

¹⁰⁴ KOSKENNIEMI, Martti. **The Gentle Civilizer of Nations: the rise and fall of international law 1870-1960**. Cambridge: Cambridge University Press, 2001, p. 4.

¹⁰⁵ ANGHIE, Tony. Between the Worlds. In: JOUANNET, Emmanuelle; FABRI, H  l  ne Ruiz; SOREL, Jean-Marc (ed.). **Regards d'une g  n  ration de juristes sur le Droit International**. Paris: Pedone, 2008, p. 35.

¹⁰⁶ VADI, Valentina. International Law and Its Histories: Methodological Risks and Opportunities Valentina. **Harvard International Law Journal**. [S.L.], 2017, p. 320.

¹⁰⁷ VADI, Valentina. International Law and Its Histories: Methodological Risks and Opportunities Valentina. **Harvard International Law Journal**. [S.L.], 2017, p. 317)

¹⁰⁸ LA RASILLA, Ignacio de. **International Law and History: Modern Interfaces**. Cambridge: Cambridge University Press, 2021, p. 15.

¹⁰⁹ NIJMAN, Janne E.. Seeking Change by Doing History. **Amsterdam University Press**. [S.L.], 2017, p. 11.

¹¹⁰ ALLOTT. International Law and the Idea of History. **Journal of The History Of International Law / Revue D'Histoire Du Droit International**, [S.L.], v. 1, n. 1, p. 2, 1999. Brill. <http://dx.doi.org/10.1163/15718059920956643>.

¹¹¹ KENNEDY, David. W.. A New Stream of International Law Scholarship. **Wisconsin International Law Journal**, [S.L.], v. 7, 1988, p. 27.

historiographical turn offered a way to rethink the foundational narratives and expose them as representing a particular modern Western European construction¹¹².

The historical experience of imperialism manifested and embodied this complex set of interactions and exchanges between what had been posited as two distinct worlds. International law it seemed to me, had, from the beginning, been animated by the "civilizing mission," defining certain groups of people as barbaric, violent, oppressed by their own savage leaders, possessing a humanity and potential that could only be realized through the intervention, by force if necessary, of the civilized West. Closer scrutiny suggested that this mission was entirely self-interested and self-serving, a justification for the conquest and exploitation of non-European people¹¹³.

If, until the historiographical turn, history served to legitimize arguments of authority, now history was being used as an instrument to fight it. Part of the work included elaborating strategies on how international law could be used to respond to the specific problems posed by its critics, since "To claim the constitutive relationship between imperialism and international law does not itself lead to the rejection of international law and everything it aspires to achieve."¹¹⁴

It became evident for internationalists that history can be used for other purposes than to legitimize an argument, norm, or proposal about the international legal order, but for that, it must be ready to question or even destroy the authority exercised over the present¹¹⁵. This posture, eminently practical and with strong ethical repercussions, led internationalists to rethink the relationship between theory and history, realizing that both the theoretical and the practical must work together to support a broader project in the field of international law¹¹⁶. As Galindo argues,

International law is far from producing justice on a large scale for the peoples of the world. It even serves to confirm power relations between states, institutions and people around the globe. History (or, to be more precise, historiography, in the sense of what historians write) has much to contribute to rethinking international law itself. It can offer alternative solutions, open new avenues of research and stimulate the jurist's creativity in solving global problems. Nowadays, criticism has proven to

¹¹² KENNEDY, David. W. A New Stream of International Law Scholarship. **Wisconsin International Law Journal**, [S.L.], v. 7, n. 1, 1988, p. 29.

¹¹³ ANGHIE, Tony. Between the Worlds. In: JOUANNET, Emmanuelle; FABRI, Hélène Ruiz; SOREL, Jean-Marc (ed.). **Regards d'une génération de juristes sur le Droit International**. Paris: Pedone, 2008. p. 40.

¹¹⁴ ANGHIE, Tony. Between the Worlds. In: JOUANNET, Emmanuelle; FABRI, Hélène Ruiz; SOREL, Jean-Marc (ed.). **Regards d'une génération de juristes sur le Droit International**. Paris: Pedone, 2008. p. 40.

¹¹⁵ GALINDO, George Rodrigo Bandeira. Para que serve a história do direito internacional? **Revista de Direito Internacional**, [S.L.], v. 12, n. 1, 2015, p. 343. Centro de Ensino Unificado de Brasília. <http://dx.doi.org/10.5102/rdi.v12i1.3368>.

¹¹⁶ KENNEDY, David. W. A New Stream of International Law Scholarship. **Wisconsin International Law Journal**, [S.L.], v. 7, n. 1, 1988, p. 10.

be the attitude that best offers instruments for changing international law, especially since it is not directly committed to the search for an authority for the present¹¹⁷.

By taking an ethical approach, critical internationalists were able to break away from the dominant paradigms that have influenced international legal thinking. These paradigms included a strict separation between theory and practice¹¹⁸, the past and the present, and the researcher and the object of study. Such dichotomies obscured the influence of the historian's present moral and political values on their interpretation of the past, as well as the potential for the moral values of the past to impact the present¹¹⁹. These separations and exclusions contributed to a particular vision of international law as being shaped by imperialism, but it also provided a source of hope, as critical internationalists sought out alternative strategies to advance their intellectual projects.

In this scenario, critics assumed the explicit task of bringing their epistemological and political commitments to the elaboration of their theories, historical research, and practices. The newstreamers had from the beginning a clear understanding of the need to articulate theory and history and to break with the hegemonic project of professionalization of the discipline that included a search for its "founding fathers."¹²⁰ Much of what was produced within the critique aimed to highlight the exclusionary mechanisms that operate within the discipline's progressivism. This included criticism of imperialist tendencies that underpinned internationalist discourse, Eurocentrism, and androcentrism, as well as other biases that excluded marginalized groups. This perspective reflects the understanding that no act of resistance can occur without engaging in the hegemonic discourse of international law.

There has been a close and complicated relationship between the newstreams and postmodern theories¹²¹. While "Postmodern historical accounts challenge not history's

¹¹⁷ GALINDO, George Rodrigo Bandeira. Para que serve a história do direito internacional? **Revista de Direito Internacional**, [S.L.], v. 12, n. 1, p. 353, 2015, p. 343. Centro de Ensino Unificado de Brasília. <http://dx.doi.org/10.5102/rdi.v12i1.3368>.

¹¹⁸ As it will become clear in this work, this critique is familiar to both critical streams in international law and feminist theories in general. Elizabeth Grosz had made a point arguing that the traditional split between theory and practice functioned to hide that "Particular interests are served by every theoretical position and in any textual or discursive system." By resisting pre-given values of what can be understood as scientific and deconstructing the dichotomic and exclusive nature of categories such as theory and practice, feminist theories presented themselves as both a 'theoretical practice' and a practical theory'. GROSZ, Elizabeth. What is feminist theory? In: PATEMAN, Carole; GROSZ, Elizabeth (ed.). **Feminist challenges: Social and political theory**. Boston: Northeastern University Press, 2013, p. 201-202.

¹¹⁹ GALINDO, George Rodrigo Bandeira. Para que serve a história do direito internacional? **Revista de Direito Internacional**, [S.L.], v. 12, n. 1, 2015, p. 348.

¹²⁰ LA RASILLA, Ignacio de. **International Law and History: Modern Interfaces**. Cambridge: Cambridge University Press, 2021, p. 21.

¹²¹ See: PAULUS, Andreas L.. International Law After Postmodernism: Towards Renewal or Decline of International Law? **Leiden Journal Of International Law**. [S.L.], p. 727-755, 2001. Several implications overflow from the adoption of "postmodernism" and bring reflections on the meaning of postmodernism itself. As presented by Alcoff, "The 'postmodern' is a fragmented, incoherent heteroglossia of contested meanings,"

dependency on space, but how spaces were constructed by traditional histories"¹²² Through their rejection of metanarratives, some scholars, such as Anthony Carty and Anne-Charlotte Martineau, argue that it was the postmodern approach that these critical streams incorporated into international legal historiography.

Martineau contends that international law has undergone a transition to postmodernity due to processes like globalization, the transformation of the Westphalian state-centered order, and the fragmentation of international law¹²³. As a result, critical scholarship seeks to reveal the complex implications of the discipline in power and knowledge distribution, illustrating that international law has served not only for progress but also for domination and exclusion¹²⁴. According to Martineau, feminist and postcolonial approaches are perceived as postmodern or poststructuralist in critical scholarship for challenging "the grand story of mankind that had previously been told by international law."¹²⁵

Upon closer examination, it became apparent that the seemingly impartial and neutral language of international law aimed to conceal contradictions and plurality¹²⁶. Anghie, for instance, argued that comprehending the reality in the Third World requires understanding the broader international context and the historical circumstances that led to colonization, as well as the mechanisms that brought about a particular idea of sovereignty in the Third World¹²⁷. He saw imperialism not only as a constituent element of history but also as an "epistemology, a way of understanding the identity and character of international law."¹²⁸ This means that the discipline is shaped by specific, historically-conditioned discourses that translate liberal

encapsulating the multifaceted and disputed nature of this concept. ALCOFF, Linda Martín. *The Politics of Postmodern Feminism, Revisited*. **Cultural Critique**. [S.L.], 1997, p. 5.

¹²² GALINDO, George Rodrigo Bandeira. *Force Field: On History and Theory of International Law*. **Rechtsgeschichte Legal History**, [S.L.], v. 20, n. 01, 2012, p. 93.

¹²³ MARTINEAU, Anne-Charlotte. *Une analyse critique du débat sur la fragmentation du droit international*. 2013. 473 f. Doctoral Dissertation - Law, Université Panthéon-Sorbonne - Paris I, Paris, 2013. KOSKENNIEMI, Martti; LEINO, Päivi. Fragmentation of international law? Postmodern anxieties. **Leiden Journal of International Law**, [S. L.], v. 15, n. 3, p. 553-579. 2002.

¹²⁴ GROSS, Aeyal M. *After the Falls: International Law Between Postmodernity and Anti-Modernity*. In: JOUANNET, Emmanuelle; FABRI, Hélène Ruiz; SOREL, Jean-Marc (ed.). **Regards d'une génération de juristes sur le Droit International**. Paris: Pedone, 2008, p. 195-196.

¹²⁵ GROSS, Aeyal M. *After the Falls: International Law Between Postmodernity and Anti-Modernity*. In: JOUANNET, Emmanuelle; FABRI, Hélène Ruiz; SOREL, Jean-Marc (ed.). **Regards d'une génération de juristes sur le Droit International**. Paris: Pedone, 2008. p. 196.

¹²⁶ MARTINEAU, Anne-Charlotte. **Une analyse critique du débat sur la fragmentation du droit international**. 2013. 473 f. -Doctoral Dissertation - Law, Université Panthéon-Sorbonne - Paris I, Paris, 2013. CARTY, Anthony. *Critical International Law: Recent Trends in the Theory of International Law* Anthony. **The American Historical Review**. [S.L.], p. 66-96. 1991, p. 2.

¹²⁷ ANGHIE, Tony. *Between the Worlds*. In: JOUANNET, Emmanuelle; FABRI, Hélène Ruiz; SOREL, Jean-Marc (ed.). **Regards d'une génération de juristes sur le Droit International**. Paris: Pedone, 2008, p. 40.

¹²⁸ ANGHIE, Tony. *Between the Worlds*. In: JOUANNET, Emmanuelle; FABRI, Hélène Ruiz; SOREL, Jean-Marc (ed.). **Regards d'une génération de juristes sur le Droit International**. Paris: Pedone, 2008, p. 40.

political values¹²⁹ into the international domain, and the postmodern stance exposes the myth of universality and consensus of reality, revealing it to be heterogeneous and plural instead¹³⁰.

In this context, internationalists have taken on the task of articulating their discomfort in participating in a tradition that is decisively shaped by a peculiar Western concept of law that is unsympathetic to the diversity of international society. For some, it would be impossible to write international legal histories or even participate in the field of international law without employing the vocabulary, techniques, and presuppositions inherited from European domination¹³¹.

This conflict, which is both methodological and political, is accompanied by a profound recognition that under the presumption of homogeneity lies exclusion. And in the process of fighting it, one also contributes, in some instances, to the perpetuation of Eurocentric practices that refrain even the most critical thinkers from imagining other futures for the world beyond those opened by canonical thinkers¹³².

Critical scholars strategically adopted international legal concepts, which, "like any other legal notions, are indeterminate as to their content and amenable to use for a number of contradictory causes."¹³³ This means that "No single doctrine, institution or jurisprudence can ensure against the uses of international law in undesired ways."¹³⁴ Emphasizing law as language does not reduce law to semantics or make it any less powerful but highlights it as a powerful social practice with concrete implications for reality¹³⁵.

Instead of searching for "the truth" as a single version of the past, internationalists aim to uncover the specific interests and biases that were promoted as universal and neutral throughout history. They share the belief that "The social context shapes knowledge, and that

¹²⁹ "The crucial question is simply whether a positive system of universal international law actually exists, or whether particular states and their representative legal scholars merely appeal to such positivist discourse so as to impose a particularist language upon others as if it were a universally accepted legal discourse." In: CARTY, Anthony. *Critical International Law: Recent Trends in the Theory of International Law* Anthony. **The American Historical Review**. [S.L.], 1991, p. 66.

¹³⁰ CARTY, Anthony. *Critical International Law: Recent Trends in the Theory of International Law* Anthony. **The American Historical Review**. [S.L.], 1991, p. 66.

¹³¹ KOSKENNIEMI, Martti. *Histories of international law: significance and problems for a critical view*. **Temple International And Comparative Law Journal**. [S.L.], 2013, p. 223..

¹³² KOSKENNIEMI, Martti. *Histories of international law: significance and problems for a critical view*. **Temple International And Comparative Law Journal**. [S.L.], 2013, p. 223-224; CARTY, Anthony. *Critical International Law: Recent Trends in the Theory of International Law* Anthony. **The American Historical Review**. [S.L.], p. 66-96, 1991.

¹³³ KOSKENNIEMI, Martti. *Histories of international law: significance and problems for a critical view*. **Temple International And Comparative Law Journal**. [S.L.], 2013, p. 225.

¹³⁴ ANGHIE, Tony. *Between the Worlds*. In: JOUANNET, Emmanuelle; FABRI, H el ene Ruiz; SOREL, Jean-Marc (ed.). **Regards d'une g en eration de juristes sur le Droit International**. Paris: Pedone, 2008, p. 41.

¹³⁵ CASS, Deborah Z. *Navigating the Newstream: Recent Critical Scholarship in International Law*. **Nordic J. Int'L L.** [S.L.], 1996, p. 360.

meanings are historically situated and constructed and reconstructed through the medium of language.”¹³⁶

Once designations in language become accepted, one is constrained by them not only in communicating ideas to others, but in the generation of ideas as well. Language structures one’s own experience of reality as well as the experience of those to whom one communicates. Meaning making and control over language have an intimate relation with power, since language, like other resources, is not equally distributed, and then if one affirms that men- European white men- had greater influence than other groups over language it is to say that they had the privilege of education and, therefore, of the social production of knowledge, of the publishing world, of the operational concepts of the disciplines¹³⁷.

Postmodernism also allowed feminist scholarship to focus on the negotiation of meanings, the relation between authority and the control over them, and how they are represented in language¹³⁸. As one might realize, the intellectual projects of critical internationalists and feminists have much in common. Generally speaking, both put forward efforts to bring marginalized perspectives, histories, and experiences to the center of their analysis, seek to deconstruct established methods and theories, rethink concepts, discourses, and practices and fight injustices, violence, and exclusions. Both denounce that under Western discourse of universality, neutrality, and objectivity lies a very partial perspective that reflects European men's experiences more than anyone else's. As Berman argues, postcolonial and feminist critiques make explicit the struggles behind hegemonic narratives and how they acquire legitimacy over the suppression and assimilation of alternative versions¹³⁹. For him,

Far from diverting us from theoretical or political responsibility, attention to “plural” histories and to the “identity-constitutive” role of power serves to deepen the gravity of the moral context of our work. If international legal history is not a linear progressive narrative, if the appearance of its historical and political unity is a product of struggle, then one cannot simply proceed with the naïve faith that one is pushing forward “the project” of world order. [...] From this perspective, it is the linear progress narratives which obscure the moral situatedness of the discipline.

However, as we delve deeper, the similarities between critical internationalists and feminists become less evident. Considering the challenges of conceptualizing feminist thinking, it is difficult to articulate the relationship between feminism and other critical

¹³⁶ HARE-MUSTIN, Rachel T.; MARECEK, Jeanne. Gender and the Meaning of Difference: postmodernism and psychology. In: HERRMANN, Anne H.; STEWART, Abigail J. (ed.). **Theorizing Feminism: parallel trends in the humanities and social sciences**. Oxford: Westview Press, 1994, p. 51

¹³⁷ HARE-MUSTIN, Rachel; MARECEK, Jeanne. The meaning of difference: Gender theory, postmodernism, and psychology. **American Psychologist**. [S.L.], 1988, p. 455.

¹³⁸ BUTLER, Judith. Contingent Foundations: Feminism and the Question of “Postmodernism”. In: BUTLER, Judith; SCOTT, Joan W. (ed.). **Feminists Theorize the Political**. New York: Routledge, 1992, p. 3-21.

¹³⁹ LASSER, Mitchel; KENNEDY, Duncan; KENNEDY, David; BERMAN, Nathaniel; SILBER, Norman; KESSLER, Lawrence. Critical Legal Theory. In: TIEFENBRUN, Susan (ed.). **Law and the Arts**. New York: Bloomsbury Publishing, 1999. p. 138-139.

perspectives. A key aspect that separates the new streams of international law from feminist approaches is the omission of the "women's question" or, more broadly, the "gender question" by the former. While critical scholars brought colonialism, imperialism, racism, capitalism, liberalism, and various other "isms" to the forefront of discussion, gender was largely ignored as a factor that informs and influences power dynamics.

It became the responsibility of feminists to address this omission, and one of their greatest challenges was to demonstrate that gender is a complex category that encompasses different domains of the human experience in the world. While feminists were being criticized for not paying enough attention to issues such as imperialism¹⁴⁰, postcolonial internationalists remained largely ignorant of feminist concerns. To better understand this, it is important to consider some aspects of feminist thinking within a larger framework.

1.4.2 Writing feminist histories in international law

After presenting important aspects of the critical literature on international law, this section focuses on exploring the reasons behind the lack of attention given to feminist perspectives in the writing of international legal histories and proposing alternatives to remedy this. Additionally, this section will provide an overview of feminist history to illustrate the potential of feminist perspectives in enriching historiography, especially intellectual history.

Historiography, just like any field of academic production, has traditionally neglected women as objects of study and practitioners. Historians have made it so by excluding "female" environments and interests, such as private life, from their scope of analysis, and failed to discuss the social, cultural, political, and legal transformations that affected women. Challenging that, feminist historians claimed a portion of the historiographical field to overturn patriarchy, break the oppressive chains of sexism and liberate women from the stereotypes that confine them, bringing them onto the stage of history¹⁴¹.

The last decades of the 20th century saw a multiplication of feminist historiography and, not encountered without resistance, this process has "generated a search for terms of criticism, conceptual reorientations, and theory that are the preconditions for feminist

¹⁴⁰ CHIMNI, B.s.. *Feminist Approaches to International Law: The Work of Hilary Charlesworth and Christine Chinkin*. In: CHIMNI, B. S.. **International Law and World Order: a critique of contemporary approaches**. [S.L.]: Cambridge University Press, 2017, p. 396.

¹⁴¹ SCOTT, Joan Wallach. *Feminism's History*. **Journal Of Women's History**, [S.L.], v. 16, n. 2, 2004, p. 11.

rewritings of history."¹⁴² In addition to feminist international lawyers, the women's movements has also inspired feminist historians and their efforts not only to document the lives of women but also to discuss the changes in the positions of women in the economic, educational, and political spheres. This was inspired, directly or indirectly by the political agenda of the women's movement¹⁴³.

In the historiographical field, by highlighting gender and sexual differences as both implicated in a broader range of discursive contexts, feminist historians were able to question historical knowledge as more than the "record of changes in the social organization of sexes," seeing that it also predicts knowledge about sexual difference¹⁴⁴. Gender is, in the words of Hare-Mustin and Marecek, a term that "illustrates the power of linguistic categories to determine what we know of the world,"¹⁴⁵ and has operated in such a profound way as to resist even the more radical of the critical initiatives and maintained masculinity as the parameters of history and of what it meant to be a professional historian¹⁴⁶.

However, in comparison to general historiographical narratives, feminist histories provided alternatives to the tautological linearity in women's history, which, when told, presupposed an initial situation of oppression that ended with the acquisition of legal equality in modern times. Following this pattern, new stories would be written about women progressively, breaking down legal barriers in favor of their full empowerment¹⁴⁷.

The presentation of women as heroines of history was directly connected to the individualistic character that usually covers the histories of women, which presents legal advances as a result of individual efforts or concessions "from above," without any influence

¹⁴² SCOTT, Joan Wallach. **Gender and the Politics of History**. New York: Columbia University Press, 1988, p. 18.

¹⁴³ SCOTT, Joan Wallach. **Gender and the Politics of History**. New York: Columbia University Press, 1988, p. 16.

¹⁴⁴ "Sexual difference [...] is never simply a function of material differences which are not in some way both marked and formed by discursive practices." BUTLER, Judith. **Bodies that Matter: On the Discursive Limits of "Sex."** Olhar Depois: Routledge, 1993, p. 1.

¹⁴⁵ HARE-MUSTIN, Rachel T.; MARECEK, Jeanne. Gender and the Meaning of Difference: postmodernism and psychology. In: HERRMANN, Anne H.; STEWART, Abigail J. (ed.). **Theorizing Feminism: parallel trends in the humanities and social sciences**. Oxford: Westview Press, 1994, p. 53.

¹⁴⁶ "No matter what the changes from realism to modernism to postmodernism, from claims of truth to claims of explanation, masculinity continues to function as it did in the nineteenth century: as part of a flight, a deepening, a broadening, in which the historian ascends, reaches, incises, and conquers to surpass himself and all others. He created more, a supplement, an extra, beyond what others have done- but does it transcendently, invisibly, so that while we see powerful historians as men, we also see only truth, pure intelligence, and compelling explanation. The profession's unacknowledged libidinal work- the social ideology that draws us to value male plenitude, power and self-presentation- is but rarely glimpsed in the mirror of history." SMITH, Bonnie. **The gender of history**. London: Harvard University Press, 2000, p. 239.

¹⁴⁷ THOMAS, Tracy A.; BOISSEAU, Tracey Jean. Law, History, and Feminism. **Feminist Legal History: Essays On Women And Law (NYU Press 2011)**. [S.L.], 2011, p. 3.

of feminist impulses and mobilizations¹⁴⁸. Methodologically, in order to avoid that, it was necessary to ask less obvious and often unusual questions to try to rescue what is not found in traditional archives.

Deconstructing an essentialist vision or trying to adopt the same values and parameters to talk about women was a strong feature of feminist histories. For Linda Kerber, for instance, it was crucial to recognize that the distribution of opportunities and time to present its ideas is not a matter of personal intelligence, since "Both men and women think seriously about large matters," but of social and historical factors. The triumph was to perceive that the absence of women was a lack of real effort in finding them¹⁴⁹.

It was very important to highlight the exclusionary operations that constitute the subjects and to point to the need of being "constantly aware of the contingent nature of the intellectual and social ideas we study" and how gender "construct the parameters of social and intellectual discourse."¹⁵⁰ The work of feminist historians has inspired the development of a feminist legal history and must as well inspire international lawyers. Learning with them, legal historians were able to incorporate a feminist and historical perspective in their project of writing the stories of the first lawyers, judges, and teachers and identifying the contexts, obstacles, challenges, choices, and possibilities they faced in gaining access to the legal world¹⁵¹.

By bringing gender to the center of their concern, most feminist legal historians place women as protagonists in their elaborations on the past, integrating them and reconstructing the contours of history¹⁵². Just like the historiographical turn in international law, these new critical contributions reflect the replacement of a single view of the past by a plural one, capable of enriching and making the history of law more complex¹⁵³.

1.4.3 Towards a feminist turn

¹⁴⁸ AUCHMUTY, Rosemary. Recovering Lost Lives: researching women in legal history. **Journal Of Law And Society**, [S.L.], v. 42, n. 1, 2015, p. 42.

¹⁴⁹ KERBER, Linda K.. **Toward an Intellectual History of Women: Essays by Linda K. Kerber**. Chapel Hill: University Of North Carolina Press, 1997, p. 19.

¹⁵⁰ GUNDERSEN, Joan R.. Review: Toward an Intellectual History of Women: Essays by Linda K. Kerber. **The William And Mary Quarterly**. [S.L.], 1998, p. 311.

¹⁵¹ SUGARMAN, David. From Legal Biography to Legal Life Writing: Broadening Conceptions of Legal History and Socio-legal Scholarship. **Journal Of Law And Society**. [S.L.], 2015, p. 42.

¹⁵² THOMAS, Tracy A.; BOISSEAU, Tracey Jean. Law, History, and Feminism. **Feminist Legal History: Essays On Women And Law (NYU Press 2011)**. [S.L.], 2011, p. 1.

¹⁵³ SUGARMAN, David. From Legal Biography to Legal Life Writing: Broadening Conceptions of Legal History and Socio-legal Scholarship. **Journal Of Law And Society**. [S.L.], 2015, p. 42.

A critical perspective offers internationalists an alternative means to intervene in the present, recognizing that the future of international law cannot be founded on exclusionary and violent structures of the past. Hidden, forgotten, or ignored aspects of history provide multiple possibilities for historical accounts of the discipline that are as diverse as those open to building the future. In the current political environment, the "question of colonialism" and the "women's question" are prominent themes that interlocutors of international law expect to be confronted¹⁵⁴. Despite the significant space occupied by feminist approaches to international law, historiography has shown little receptiveness to feminist concerns. The incorporation of a feminist perspective into the historiography of international law remains a challenge. While internationalists have increasingly deconstructed hegemonic narratives of exclusion, it is important to question why they have not yet turned their attention to women.

Even though postcolonial critiques aimed to expose and challenge the discipline's Eurocentrism, there have been few attempts to do the same with androcentrism, leading even more recent works to perpetuate the invisibility of women, who are absent from disciplinary, intellectual histories, and occupations outside of "household work or midwifery."¹⁵⁵ It is surprising that, despite the historiographical turn, there has been little to no attention given to developing a feminist approach to the history of international law. Critical internationalists have largely ignored gender, which is not limited to the binary opposition between men and women but is a category for producing meaning in the world.

This gap, as noted by De La Rasilla¹⁵⁶, perpetuates hegemonic narratives. By excluding gender as a fundamental issue in the historiography of the discipline, access to certain aspects of the past is hindered, and patterns of exclusion are reinforced. This highlights the inadequacy of the discipline in recognizing the implications of the knowledge it produces and underpins the practices of internationalists. It is crucial to understand how issues such as sexual difference, race, economic, geographic, and political contexts shape the intellectual projects of individuals¹⁵⁷.

¹⁵⁴ NIJMAN, Janne e. Marked Absences: locating gender and race in international legal history. **European Journal Of International Law**, [S.L.], v. 31, n. 3, 2020, p. 1025.

¹⁵⁵ TALLGREN, Immi. Absent or Invisible? Women Intellectuals and Professionals at the Dawn of a Discipline. In: MÉGRET, Frédéric; TALLGREN, Immi (ed.). **The Dawn of a Discipline: International Criminal Justice and Its Early Exponents**. [S.L.]: Cambridge University Press, 2020, p. 386.

¹⁵⁶ LA RASILLA, Ignacio de. Feminist Approaches to History of International Law. In: LA RASILLA, Ignacio de. **International Law and History: Modern Interfaces**. Cambridge: Cambridge University Press, 2021. p. 117-151.

¹⁵⁷ This becomes evident while reading "Regards d'une génération de juristes sur le droit international" edited by Hélène Ruiz-Fabri, Jean-Marc Sorel and Emmanuelle Tourme-Jouannet. Each essay brings together theoretical and biographical traits, while the authors combine their personal stories with the histories of their intellectual, academic, and professional interests, allowing the reader to understand how the opportunities opened for them in the field of international law were decisive to their intellectual production.

The absence of feminist approaches to history is even more concerning when the silence of feminist voices in historiography is compared to the abundance of feminist approaches to international law. As the historical account presented in this work will show, the feminist approaches emerged at the same time as other newstream theories or approaches and were engaging in critical debates while the historiographical turn was taking form. Recognizing gender as a category that defines and limits the social and cultural experiences of human beings¹⁵⁸ allows one to acknowledge its decisive role in establishing power dynamics and access to power in the production of knowledge within international law, as well as in the development of its theories and practices.

Although recent historiography of international law has included criticisms of colonial, imperialist, and racist biases, a comprehensive feminist historiography¹⁵⁹ has yet to be consolidated. A systematic project for the development of a feminist approach to history in international law is still open. This absence of feminist histories in the discipline can be attributed to a dual phenomenon, in which historiography, even in its critical approaches, has shown little receptivity to feminist concerns, while authors representing feminist approaches have also not paid much attention to history. In her article "Feminist Interventions to International Law," Christine Chinkin suggests that the work of feminists should be "both retrospective and forward-looking."¹⁶⁰ However, this goal has not yet translated into a more profound historical awareness of feminist and gender issues within the discipline, leaving it an incomplete project.

There is still much to be done in terms of understanding the challenges involved in articulating gender with other critical concerns that aim to highlight and challenge the mechanisms of exclusion present in the progressive narrative of the discipline¹⁶¹. Nevertheless, it is important to acknowledge the growing trend of feminist projects in the historiography of international law, as evidenced by publications, dialogues, and events about women, gender, and feminism, such as the works of authors Imi Tallgren¹⁶², Katharina

¹⁵⁸ FLAX, Jane. Postmodernism and Gender Relations in Feminist Theory. **Signs: Journal of Women in Culture and Society**. [S.L.], p. 621-643, 1987, p. 626

¹⁵⁹ LA RASILLA, Ignacio de. The Turn to the History of International Law. **International Law And History**, [S.L.], 2021, p. 31.

¹⁶⁰ CHINKIN, Christine. Feminist Interventions into International Law. **Adel. L. Rev.** [S.L.], 1997, p. 24.

¹⁶¹ KENNEDY, David. W.. A New Stream of International Law Scholarship. **Wisconsin International Law Journal**, [S.L.], v. 7, n. 1, 1988, p. 26.

¹⁶² In 2023, the book "Portraits of Women in International Law" was published, investigating in an innovative format the slow and late inclusion of women in the spheres of knowledge and power in international law. It "confronts the challenge of adding faces of women across the history of international law and recognizing their contributions at a time when even the most revelatory of portrait galleries, such as this one, is simultaneously desired and suspect." TALLGREN, Immi (ed.). **Portraits of Women in International Law: new names and forgotten faces?**. Oxford: Oxford University Press, 2023, p. vii.

Rietzler, and Patricia Owens¹⁶³. In the introduction to the recently published "Women's International Thought: Toward a New History," Owens and Rietzler argue that the absence of a substantial body of material dealing with the erasure of women from the canon of international relations cannot be seen as a failure of feminists¹⁶⁴. Instead, it is the task of intellectual historians to produce histories that can read and challenge the biased policies of their discipline¹⁶⁵.

My inquiry, far from adopting an accusatory tone, arises from a sense of curiosity and a desire to expand the scope of feminist perspectives, promoting an exchange between them and other critical streams. After all, feminists did not wait for canonical authors to write about women's experiences or to include gender as a category of analysis in their fields of research, as demonstrated by the vast bibliography of women's history, including feminist histories in the legal field. The explanation for the absence of feminist approaches in the historiography of international law appears to be more complex. As discussed previously, feminist activism for legal reform and feminist scholarship were not necessarily aligned. While a significant portion of intellectual production was dedicated to analyzing and criticizing, for example, the law and legal institutions and their immediate impacts on women's lives, the concern to deconstruct the historical narrative using gender as an analytical perspective was often sidelined.

Efforts to integrate feminist approaches into the historiography of international law require an acknowledgment of the limitations of both fields of study to avoid reproducing the errors and gaps of previous narratives without deeper reflection. While a closer examination of gender dynamics can give impetus to Third World Approaches to International Law, feminist readings have much to learn from the criticisms they receive from TWAIL and other

¹⁶³ OWENS, Patricia; RIETZLER, Katharina (Ed.). **Women's International Thought: A New History**. Cambridge University Press, 2020. OWENS, Patricia et al. (Ed.). **Women's International Thought: Towards a New Canon**. Cambridge University Press, 2022. TALLGREN, Immi et al. *Absent or Invisible?: Women Intellectuals and Professionals at the Dawn of a Discipline*. **The Dawn of a Discipline International Criminal Justice and Its Early Exponents**, 2020. HUTCHINGS, Kimberly; OWENS, Patricia. Women thinkers and the canon of international thought: Recovery, rejection, and reconstitution. **American Political Science Review**, v. 115, n. 2, p. 347-359, 2021. HUBER, Valeska; PIETSCH, Tamson; RIETZLER, Katharina. Women's International Thought and the New Professions, 1900–1940. **Modern Intellectual History**, v. 18, n. 1, p. 121-145, 2021. NIJMAN, Janne E. Marked Absences: Locating Gender and Race in International Legal History. **European Journal of International Law**, v. 31, n. 3, p. 1025-1050, 2020.

¹⁶⁴ OWENS, Patricia; RIETZLER, Katharina. **Women's International Thought: A New History**. Cambridge: Cambridge University Press, 2020.

¹⁶⁵ Having their existence recognized does not mean that they have penetrated and impacted the discipline in a very profound way. For critiques on the isolation of the feminist approaches, see: CHARLESWORTH, Hilary. Feminist ambivalence about international law. *Int'l Legal Theory*, v. 11, p. 1, 2005. CHARLESWORTH, Hilary et al. *Talking to ourselves? Feminist scholarship in international law*. In: *Feminist Perspectives on Contemporary International Law*. Hart Publishing, 2011. HEATHCOTE, Gina. **Feminist Dialogues on International Law: successes, tensions, futures**. [S.L.]: Oxford University Press, 2019. CHARLESWORTH, Hilary; HEATHCOTE, Gina; JONES, Emily. Feminist scholarship on international law in the 1990s and today: An inter-generational conversation. *Feminist Legal Studies*, v. 27, n. 1, p. 79-93, 2019.

streams. Therefore, understanding that issues such as race, class, coloniality, and sexuality cannot be isolated from "women's issues" is necessary to elaborate more conscious narratives that are less likely to reproduce patterns of domination, and exclusion, as evidenced by the two recent works edited by Owens and Rietzler.

The absence of feminist approaches to international law from the field of historiography can be partially explained by the urgency perceived by feminists to analyze, criticize, and offer alternatives to normative instruments and international accountability mechanisms in cases of violence and serious violations of women's human rights. As a result, feminist work has focused more on the theory and practice of international law than on the study of its past. Writing international legal histories from a feminist perspective can be a "reflective practice" that "suggests a continual process of learning, un-learning, and change."¹⁶⁶ Feminist theories require feminist researchers to explore absences, silences, differences, oppression, and the power of epistemology¹⁶⁷, and "a commitment to inquiry about how we inquire."¹⁶⁸ On the other hand, bringing alternative perspectives to historiographical thinking and breaking with hegemonic narratives of progressivism allows for a change in posture towards the possibilities of transformation.

To take one example, if international human rights law is perceived as constantly moving toward a more progressive state, but is instead caught in limbo between a harsh past and a utopian future, proposals to regulate the present are bound to be impeded. This prognosis can be illustrated in the ambivalence in human rights law towards the well-documented problem of violence in the home, which continues to infect most societies despite widespread condemnation. While a host of factors, such as religious belief, economic structures, and assumptions about the male right to exert power, militate against its eradication, the continued belief in the inevitability of improvements also plays a role. This optimism, often unsubstantiated by facts, blunts the impetus for change in the present by encouraging women to be satisfied that some movement is occurring and so to remain patient and passive, even if in fact conditions are worsening or remaining static rather than improving in many situations¹⁶⁹.

If international human rights law continues to rely on a history that suggests that progress is inevitable¹⁷⁰, the ongoing abuses of power will remain obscured. In order to

¹⁶⁶ HODSON, Loveday; LAVERS, Troy (ed.). **Feminist Judgments in International Law**. Oxford: Hart Publishing, 2019, p. 8.

¹⁶⁷ ACKERLY, Brooke; TRUE, Jacqui. Reflexivity in Practice: Power and Ethics in Feminist Research on International Relations. **International Studies Review**. [S.L.], 2008, p. 694-695.

¹⁶⁸ ACKERLY, Brooke; TRUE, Jacqui. Reflexivity in Practice: Power and Ethics in Feminist Research on International Relations. **International Studies Review**. [S.L.], 2008, p. 694-695.

¹⁶⁹ CASS, Deborah Z.. Navigating the Newstream: Recent Critical Scholarship in International Law. **Nordic J. Int'L L.** [S.L.], p. 341-383, 1996.

¹⁷⁰ CASS, Deborah Z.. Navigating the Newstream: Recent Critical Scholarship in International Law. **Nordic J. Int'L L.** [S.L.], p. 341-383, 1996.

advance the project of restructuring the traditional discourse of international law to accommodate alternative worldviews"¹⁷¹, it is essential to develop a deeper historical awareness. This will provide stronger support for the demands of feminist movements and a better understanding of the ruptures and continuities that have informed their work in the field of international law.

1.5 Women, gender, and feminism: problematic concepts

Concepts such as women, gender, and feminism lack consensus because their meanings are context-dependent and influenced by specific theoretical and political presumptions. Strategic use of these terms depends on the goals of those employing them. To develop a feminist analysis of sovereignty in international law, it is essential to establish parameters for shared meaning and define the elements that comprise feminist approaches to international law. This research acknowledges that the meanings of women and feminism are not universally agreed upon and vary among authors.

A common assumption among feminist approaches to international law is to question the absence of women in international law and to revise legal theory and practice to avoid reinforcing gender inequality and the hierarchical relationship between men and women in the international legal system. Frequently, this involves asking the question "Where are the women?" to highlight the need for increased representation.

Feminist scholars in international law commonly define gender as the social understanding of femininity and masculinity, while sex refers to the biological differences between men and women. However, there is no consensus on these definitions, and how feminist internationalists use these concepts in their analysis is closely related to ongoing debates in feminist theories. In their critiques of sovereign states, feminist internationalists often use sex and gender to examine how masculine and feminine traits are incorporated in different contexts. The traditional Western paradigm characterizes gender in ways similar to heterosexual white Western men. To understand these critiques, it is necessary to grasp the scope of analysis and reflect on how authors employ pivotal concepts such as feminism, women, and gender.

¹⁷¹ CHARLESWORTH, Hilary; CHINKIN, Christine; WRIGHT, Shelley. Feminist Approaches to International Law. *American Journal Of International Law*, [S.L.], v. 85, n. 4, 1991, p. 644.

1.5.1 Unveiling consensus: the meanings of women and feminism

There is undoubtedly a widespread consensus about the meaning of feminism. Over the past six decades, feminists have made significant interventions in the worlds of politics, law, arts, media, and the academia. It is not an overstatement to say that feminism has become an integral part of the political and social fabric, not only in Western societies. While feminists may not always assume a dominant position in public debate and institutions due to their representation of a subordinate group¹⁷², it cannot be said that feminists remain "isolated voices crying in the wilderness."¹⁷³

On the contrary, some of the key concepts in the feminist lexicon, such as empowerment and sisterhood, have become mainstream and have been widely incorporated into daily vocabulary in different contexts. The question then arises whether it is possible to establish a coherent and enduring definition of what it means to be a feminist and what distinguishing features characterize a feminist perspective by delving into the history of these developments.

For instance, many would agree that a feminist is someone who believes that women experience discrimination because of their sex, that their specific needs are often neglected and unsatisfied and that satisfying these needs would require a radical change in the social, economic, and political order¹⁷⁴. According to María Lugones, feminism could be understood as "a response to the fact that women have been excluded or included in degrading and disfiguring ways in what has been an almost exclusively male account of the world."¹⁷⁵ However, once we delve into the specific theoretical and practical articulations of feminists, it becomes clear that there is no unified feminist perspective. For example, when feminists are asked what it means to be a woman or how sexual differences can be explained, there is often dissent among them.

If we agree that women have specific needs, how can these needs be met? Is it possible to change the subordinate status attributed to women by using existing social norms, such as fighting for legal reform, or is change only possible if the legal order itself is

¹⁷² DELMAR, Rosalind. What Is Feminism? In: HERRMANN, Anne H.; STEWART, Abigail J. (ed.). **Theorizing Feminism: parallel trends in the humanities and social sciences.** Oxford: Westview Press, 1994, p. 18.

¹⁷³ HARDING, Sandra. **Whose science? Whose knowledge? : Thinking from women's lives.** Ithaca, New York: Cornell Univ Press, 1991, p. viii.

¹⁷⁴ DELMAR, Rosalind. What Is Feminism? In: HERRMANN, Anne H.; STEWART, Abigail J. (ed.). **Theorizing Feminism: parallel trends in the humanities and social sciences.** Oxford: Westview Press, 1994, p. 5

¹⁷⁵ LUGONES, María; SPELMAN, Elizabeth. Have we got a theory for you! Feminist theory, cultural imperialism and the demand for 'the woman's'. **Women's Studies International Forum.** Pergamon, 1983, p. 573.

reconstructed, or even destroyed? Additionally, how can we talk about "women" when the category reflects a plurality of cultural, geographical, economic, religious, racial, ethnic, and subjective experiences that define the interactions of human beings with each other and the world?

Even theoretically, these questions can be approached differently since feminists adopt various and sometimes conflicting methodologies and perceive concepts such as justice, equality and violence in different ways. Even when asking similar questions, they may take different paths that lead to different answers. This highlights the complexity of tracing the commonalities between feminist theories and the challenge of understanding what unites them when the idea of feminism itself is not a matter of consensus.

Over the last century, a range of critical theories has emerged under the feminist label to bring women and gender to the center of analysis. These theories "played with a range of choices in the process of self-representation, registering a relation both to the body and to the social meaning of womanhood."¹⁷⁶ They borrowed insights from various perspectives, such as Marxism, psychoanalysis, poststructuralism, and deconstructionism¹⁷⁷. While adopting methodologies from their original theoretical fields, such as law, anthropology, and philosophy, the interdisciplinary¹⁷⁸ nature of feminist scholars has made them targets of criticism both within their disciplines and among feminists¹⁷⁹.

Issues concerning marginalized groups were already a part of popular discourse, no longer hidden or ignored. By the 1970s, much of what was perceived as safe, sanitized, moral, and correct could no longer monopolize public imagery. As Susan Sontag argued¹⁸⁰, "The freakish is no longer a private zone"; it is already a part of public life, "seen daily on the newsstands, on TV, in the subways."¹⁸¹ The feminist claims were already well-known, even if not appreciated.

¹⁷⁶ DELMAR, Rosalind. What Is Feminism? In: HERRMANN, Anne H.; STEWART, Abigail J. (ed.). **Theorizing Feminism: parallel trends in the humanities and social sciences**. Oxford: Westview Press, 1994, p. 5.

¹⁷⁷ JAGGAR, Alison M.; BORDO, Susan (ed.). **Gender/Body/Knowledge: feminist reconstructions of being and knowing**. London: Rutgers University Press, 1989, p. 4.

¹⁷⁸ WOODWARD, Kath; WOODWARD, Sophie. Gender studies and interdisciplinarity. **Palgrave Communications**, v. 1, n. 1, p. 1-5, 2015. FINGER, Anke; ROSNER, Victoria. Doing Feminism in Interdisciplinary Contexts. **Feminist Studies**. [S.L.], p. 499-535. 2001. PRYSE, Marjorie. Critical Interdisciplinarity, Women's Studies, and Cross-Cultural Insight. **NWSA Journal**. [S.L.], p. 1-22. 1998.

¹⁷⁹ FRIEDMAN, Susan Stanford. (Inter)Disciplinarity and the Question of the Women's Studies Ph.D. **Feminist Studies**. [S.L.], p. 301-325. 1998.

¹⁸⁰ SONTAG, Susan. **On Photography**. New York: Farrar, Straus & Giroux, 1977, p. 45.

¹⁸¹ On the public/private distinction in general, see: PATEMAN, Carole. **The Sexual Contract**. [S.L.]: Stanford University Press, 1988. HIGGINS, Tracy E. Reviving the public/private distinction in feminist theorizing. **Chi.-Kent L. Rev.**, v. 75, 1999, p. 847. GAVISON, Ruth. Feminism and the public/private distinction. In: **Privacy**. Routledge, 2017, p. 217-261.

Among marginalized groups, there was a very radical impulse to use previous knowledge to rethink and search for alternatives to the perpetuation of profound inequalities and violence directed toward them. In the 1980s, feminists entered universities with the project of challenging "conceptions of knowledge and reality that have dominated the Western intellectual tradition at least since the 17th century."¹⁸²

There were Marxist, liberal, cultural, postmodern, black, lesbian, and decolonial feminists—even though these labels proved to be insufficient to grasp the complexity of their thinking—producing significant and complex theories that formed the basis for the development of feminist approaches to international law. Feminists shared discontent with the way gender was treated—or left behind—by mainstream and critical theories in all fields, but they also had a profound interest in discussing the meanings and implications of gender in their methodological, epistemological, and theoretical projects.

In the midst of diversity, women were taken as the first subjects of feminism and became the representatives of feminist discourse¹⁸³. That led to the conflation of both concepts of feminism and women, in a way that "feminist history" meant "women's history"¹⁸⁴ and feminist analysis of law meant advocating for women's rights. That process also contaminated feminist international thinking, so that even nowadays it is hard to distinguish feminist theorists from scholars who research women's human rights¹⁸⁵. As Delmar explains,

When the women's movement came into existence in the late 1960s, it emerged into a social order already marked by an assimilation of other feminisms. [...] the logic of mainstream feminism—that there could be a politics directed towards women—had been assimilated, even if women have

¹⁸² JAGGAR, Alison M.; BORDO, Susan (ed.). **Gender/Body/Knowledge: feminist reconstructions of being and knowing**. London: Rutgers University Press, 1989. p. 2-4.

¹⁸³ "So unquestioningly are feminism and women's movement assumed to be coterminous that histories of feminism are often written as histories of the women's movement, and times of apparent quiescence of the movement are taken as symptomatic of a quiescence of feminism." In: DELMAR, Rosalind. *What Is Feminism?* In: HERRMANN, Anne H.; STEWART, Abigail J. (ed.). **Theorizing Feminism: parallel trends in the humanities and social sciences**. Oxford: Westview Press, 1994, p. 9,

¹⁸⁴ SCOTT, Joan Wallach. **Gender and the Politics of History**. New York: Columbia University Press, 1988; RILEY, Denise. **Am I that name? Feminism and the category of 'women' in history**. London: The Macmillan Press, 1988; DELMAR, Rosalind. *What Is Feminism?* In: HERRMANN, Anne H.; STEWART, Abigail J. (ed.). **Theorizing Feminism: parallel trends in the humanities and social sciences**. Oxford: Westview Press, 1994. p. 5-25.

¹⁸⁵ "It is worth noting that overall, there are more feminist scholars in law schools that do work focused on women than on feminist theory more broadly. Describing oneself as a 'feminist theorist' is not a common academic description. Similarly, incorrect labels are applied or bundled up as one thing, if you work on feminist theory or feminist approaches to international law then it is generally assumed that you work on women's human rights, and – well really – any issue in the international domain that specifically names women as victims" CHARLESWORTH, Hilary; HEATHCOTE, Gina; JONES, Emily. *Feminist Scholarship on International Law in the 1990s and Today: an inter-generational conversation*. **Feminist Legal Studies**, [S.L.], v. 27, n. 1, 2018, p. 4.

not normally acted as a unified political constituency, and if 'women's' politics had, by the 1960s, become stereotyped¹⁸⁶.

Since women's movements were based on a settled perception of women rather than an analysis of what women really meant, it ended up leading feminists—and non-feminists—to confusion on whether to understand feminism as a movement seeking to advance women's interests or a wider project with a diverse agenda¹⁸⁷. Feminist theories emerging in the late 1980s took the task of challenging these assumptions, since they were counterproductive to their theoretical projects but also because the very idea of women in these early women's movements and feminist's theories was regarded as exclusive.

By assuming that women shared experiences and agendas, feminists replicated the Western tradition of universalizing a partial perspective, presenting specific strands of feminism as capable of embracing all women. This was particularly prevalent among white Western feminists who disregarded issues of intersectionality and diversity among women and has deeply influenced feminist discourse in international law. As a result, it remains a challenge for feminist scholars to recognize and address the limitations of the category of women while still acknowledging its importance.

The idea that feminism was solely about women, that gender was a synonym for women, or that it only reflected existing biological differences was being left behind and replaced by a more complex but also conflicting view that women are not a homogeneous group with shared beliefs, experiences, and demands, and that sexual difference also has its meanings attached to specific cultural systems of knowledge¹⁸⁸. Authors such as Denise Riley, who investigate the meaning of "women" within feminist discourse, understand that sometimes "undercutting bad usages of 'women' may bring feminists to behave as if there is a true and apt level of feminization to which feminism has unique access by virtue of its scrupulous commitment to women and their needs." In this kind of discourse, feminists claim "the authority to speak for 'women's experiences' and may take this category to be self-evidently true and original."¹⁸⁹

The focus on "women's issues" has gradually been replaced by a more complex and conflicting view that no longer sees women as a homogeneous group, but instead recognizes

¹⁸⁶ DELMAR, Rosalind. What Is Feminism? In: HERRMANN, Anne H.; STEWART, Abigail J. (ed.). **Theorizing Feminism: parallel trends in the humanities and social sciences**. Oxford: Westview Press, 1994, p. 18.

¹⁸⁷ DELMAR, Rosalind. What Is Feminism? In: HERRMANN, Anne H.; STEWART, Abigail J. (ed.). **Theorizing Feminism: parallel trends in the humanities and social sciences**. Oxford: Westview Press, 1994, p. 9.

¹⁸⁸ MOHANTY, Chandra. Under Western Eyes: feminist scholarship and colonial discourses. **Feminist Review**, [S.L.], v. 30, n. 1, p. 61-88, 1988. SAGE Publications. <http://dx.doi.org/10.1057/fr.1988.42>.

¹⁸⁹ RILEY, Denise. **Am I that name? Feminism and the category of 'women' in history**. London: The Macmillan Press, 1988, p. 53.

that sexual difference also has its meanings linked to specific cultural systems. For Judith Butler, the subject of feminism could even cease to be the female subject, and the deconstruction of identity, far from meaning the deconstruction of politics, would be "established as political in the very terms through which identity is articulated."¹⁹⁰

By problematizing both the concepts of gender and sex, Butler aims to question the concept of women and, consequently, feminist policies of representation. Since the feminist movement was based on a "consensual description of women" rather than an analysis of the category itself, this generated confusion whether to understand feminism "as a movement that seeks to promote women's interests or as a broader movement with a distinct set of ideas concerned with feminine issues"¹⁹¹.

The theories that have emerged in the last forty years have enriched feminist self-consciousness by introducing more sophisticated ways to analyze and question the consensus of language, reframing it not as a problem but as a strategy to acknowledge the conceptual instability of feminist thought. The category of women might not be inherently problematic, but the presumption that a universal or specific meaning exists in advance to ground a feminist political movement is¹⁹². Nowadays, many authors, including feminist scholars in international law, would agree that the idea that feminism or gender have self-evident meanings needs to be challenged, as they can become obstacles to understanding feminism as a diverse and multifaceted concept¹⁹³.

1.5.2 The meanings of gender

The concept of gender is central to feminist thought, but it has been subject to contestation and disputes. Feminist thought was largely built on the understanding that biological difference between sexes constitutes the basis for an elaborate hierarchical system

¹⁹⁰ BUTLER, Judith. **Gender Trouble**: feminism and the subversion of identity. New York: Routledge, 2006, p. 148.

¹⁹¹ DELMAR, Rosalind. What Is Feminism? In: HERRMANN, Anne H.; STEWART, Abigail J. (ed.). **Theorizing Feminism**: parallel trends in the humanities and social sciences. Oxford: Westview Press, 1994, p. 9.

¹⁹² For Butler "This is not to say that the term 'women' ought not to be used, or that we ought to announce the death of the category. On the contrary, if feminism presupposes that 'women' designates an undesignatable field of differences, one that cannot be totalized or summarized by a descriptive identity category, then the very term becomes a site of permanent openness and resignifiability. [...] To deconstruct the subject of feminism is not, then, to censure its usage, but, on the contrary, to release the term into a future of multiple significations, to emancipate it from the maternal or racialist ontologies to which it has been restricted, and to give it play as a site where unanticipated meanings might come to bear". BUTLER, Judith. *Contingent Foundations: Feminism and the Question of "Postmodernism"*. In: BUTLER, Judith; SCOTT, Joan W. (ed.). **Feminists Theorize the Political**. New York: Routledge, 1992, p. 16.

¹⁹³ DELMAR, Rosalind. What Is Feminism? In: HERRMANN, Anne H.; STEWART, Abigail J. (ed.). **Theorizing Feminism**: parallel trends in the humanities and social sciences. Oxford: Westview Press, 1994, p. 5. p. 5.

that unequally classifies and qualifies bodies identified as masculine and feminine in order to privilege men's experience and locate the set of characteristics considered masculine as the referential or superior. This cultural relationship, which names, signifies, and organizes the relationships between individuals, is called gender.

There are strong political-epistemological implications in the use of the expressions "feminism" and "gender" in social sciences. In the 1980s, when feminist studies began to seek academic legitimacy, the term gender replaced "women" and "feminism." "Gender" did not necessarily translate into taking a position on inequality and power, while talking about "women's history" revealed a political commitment by presenting them as legitimate historical subjects¹⁹⁴. Subverting this trend, Scott argues that gender could be perceived as knowledge about sexual differences.

Such knowledge is not absolute or true, but always relative. It is produced in complex ways within large epistemic frames that themselves have an (at least quasi-) autonomous history. Its uses and meanings become contested politically and are the means by which relationships of power-of-domination and subordination are constructed. Knowledge refers not only to ideas but to institutions and structures, everyday practices as well as specialized rituals, all of which constitute social relationships. Knowledge is a way of ordering the world; as such it is not prior to social organization, it is inseparable from social organization. It follows then that gender is the social organization of sexual difference. But this does not mean that gender reflects or implements fixed and natural physical differences between women and men; rather gender is the knowledge that establishes meanings for bodily differences¹⁹⁵.

By exploring sex and gender as two concepts that have been historically constructed, Scott highlights that although they are related, the two categories are not synonyms. The uses of gender highlights an entire system of relationships that could involve sex, but that is not determined by it or a determining factor of sexuality¹⁹⁶. Both categories, sex and gender, could be perceived as different but intimately connected in a way that mutually reinforce each other. However, the debate on the relationships between sex and gender has become more diverse, so that today there are multiple conflicting discourses on this matter. This is compounded by the emergence of the so-called queer theories (further presented in the third chapter), which go beyond feminist perspectives to consider the various constellations of positions and subjects that deviate from normativity and are marked by factors other than gender.

¹⁹⁴ SCOTT, Joan Wallach. Gender: A Useful Category of Historical Analysis. **The American Historical Review**. [S.L.], 1986, p. 1056.

¹⁹⁵ SCOTT, Joan Wallach. **Gender and the Politics of History**. New York: Columbia University Press, 1988, p. 2.

¹⁹⁶ SCOTT, Joan Wallach. Gender: A Useful Category of Historical Analysis. **The American Historical Review**. [S.L.], 1986, p. 1057.

According to Judith Butler, feminism often distinguishes between sex and gender in order to challenge the idea that biology is destiny. However, she argues that this distinction reinforces the belief that gender is culturally constructed while sex is a natural given¹⁹⁷. Butler deconstructs this premise by understanding that not only gender, understood as a relative convergence between specific sets of cultural and historical relations, but also the concept of sex could and should be contested as a discursive and cultural product, the result of an arbitrary measure of distinction.

To accept sex as a biological destiny and gender as determined by culture would be to accept that gender is an essential aspect of the self, which Butler argues is problematic¹⁹⁸. Joan Scott, in the field of feminist histories, makes a similar critique of the adoption of the category "women" by historians and proposes the idea of gender as a category of historical analysis. For the author, looking at the relations of domination between men and women would require going beyond biological binarism and looking at gender "as the primary way of signifying relationships of power [...] it structures the perception and concrete and symbolic organization of social life."

To understand the first works of the feminist approaches to international law, it's important to recognize a rather evident aspect of their scholarship, which is the focus on women and their experiences, and how they were influenced by grand feminist theories from the end of the 20th century. Even when attempting to incorporate the concept of gender into their scope of analysis, many of them remained focused on women's experiences, the violence perpetrated against women, and their inclusion in decision-making instances of international law. These approaches challenge the limited ways women were perceived by international law, which mainly considered them as "victims, particularly as mothers, or potential mothers, and accordingly in need of protection."¹⁹⁹

This brief explanation of the feminist debate around gender and feminism clarifies the context in which many of the works of the feminist approaches are situated and the difficulty of adopting a concept of womanhood, feminism, or gender. A great range of feminist scholarship in international law adopted the idea of gender as the cultural aspect of sex, with sex being biologically determined. However, this perspective leads to theoretical and practical problems when attempting to articulate more radical agendas for transformation.

¹⁹⁷ BUTLER, Judith. **Gender Trouble**: feminism and the subversion of identity. New York: Routledge, 2006.

¹⁹⁸ RODRIGUES, Carla. Butler e a desconstrução do gênero. **Revista Estudos Feministas**, [S.L.], v. 13, n. 1, p. 180, 2005. FapUNIFESP (SciELO). <http://dx.doi.org/10.1590/s0104-026x2005000100012>.

¹⁹⁹ CHARLESWORTH, Hilary; CHINKIN, Christine. **The Boundaries of International Law: A Feminist Analysis**. Manchester: Manchester University Press, 2000, p. 48.

Hilary Charlesworth distinguishes between the terms "sex" and "gender," using the former to refer to biological distinctions between men and women and the latter to refer to social understandings of femininity and masculinity²⁰⁰. Despite recognizing that this distinction is controversial among feminist scholars, Charlesworth maintains this separation. In contrast to Charlesworth, Dianne Otto employs the concepts of sex and gender interchangeably²⁰¹. Otto believes that accepting them as dichotomous categories would limit the creative possibilities for the expression of identity, desire, and sexuality by releasing the category of sex from its biological foundations²⁰². Reinforcing this distinction also leads to misunderstandings about how law produces its subjects, which can make it easier to reproduce dominant social norms and practices that naturalize women's inequality²⁰³. Otto is mostly concerned that

there is no frame for imagining what comes after the enterprise of addressing sexual violence. [...] that the institutionalization of feminist ideas, in international law and politics, has divested them of their radical potential. I am also concerned that the urge to think "after gender," as much as the idea excites me, may destroy the categories that so many of us rely upon as springboards to our critiques of the present and our imaginings of better futures²⁰⁴.

The challenge for feminist approaches was to effectively articulate gender and sex in order to provide a comprehensive critique of the discipline without being co-opted or having their critiques instrumentalized to maintain the status quo. In her genealogy of the female subject of human rights law, Otto highlights three different ways in which women have been presented in the international realm. First, women were presented as wives and mothers in need of protection. Second, women were presented as "formally equal" to men in the realm of public life. Third, women were presented as the "victim subject" produced by colonial narratives of gender, as well as by notions of women's sexual vulnerability²⁰⁵.

²⁰⁰ CHARLESWORTH, Hilary; CHINKIN, Christine. Sex, gender and September 11. **American Journal Of International Law**, [S.L.], v. 96, n. 3, 2002. p. 600.

²⁰¹ OTTO, Dianne. Gender comment: Why does the UN committee on economic, social and cultural rights need a general comment on women? **Can. J. Women & L.** [S.L.], 2002, p. 4. OTTO, Dianne. Lost in Translation: Re-Scripting the Sexed Subjects of International Human Rights Law. In: ORFORD, Anne (ed.). **International law and its others**. Cambridge: Cambridge University Press, 2006, p. 319.

²⁰² OTTO, Dianne. Lost in Translation: Re-Scripting the Sexed Subjects of International Human Rights Law. In: ORFORD, Anne (ed.). **International law and its others**. Cambridge: Cambridge University Press, 2006, p. 319.

²⁰³ OTTO, Dianne. Lost in Translation: Re-Scripting the Sexed Subjects of International Human Rights Law. In: ORFORD, Anne (ed.). **International law and its others**. Cambridge: Cambridge University Press, 2006, p. 320.

²⁰⁴ OTTO, Dianne. Prospects for International Gender Norms. **Pace Law Review**. [S.L.], 2011, p. 875-876.

²⁰⁵ OTTO, Dianne. Lost in Translation: Re-Scripting the Sexed Subjects of International Human Rights Law. In: ORFORD, Anne (ed.). **International law and its others**. Cambridge: Cambridge University Press, 2006, p. 320

Despite encompassing shifting modes of representation, the gendered nature of the distinction between men and women remained unchallenged, and feminist scholarship and activism ended up reinforcing the "continuing power of the discourse of gender naturalization."²⁰⁶ According to her,

feminist inclusion strategies have reproduced unequal relations of gender power in their efforts to make women's gender-specific human rights violations legally cognizable and achieve women's full inclusion in a universal discourse. The method of making the 'gendered human rights facts' of women's lives legally actionable repeated the hierarchical gender scripts that produce the gendered violations in the first place²⁰⁷.

Controversies surrounding gender and sex continue to inform much of feminist scholarship in international law to this day. It's worth noting the significant influence that feminist legal theories have had on feminist approaches to international law. As relative latecomers to the field of "feminist critiques" in the humanities and social sciences, feminist approaches to international law have been heavily influenced by feminist theories outside the discipline, particularly those in feminist legal theory, as it will be discussed in the second chapter.

1.6 Methodological remarks

1.6.1 The double agent and the contextualist approach

This work encompasses not only a feminist project but also the project of putting feminist approaches on the map of broader critical scholarships concerned with the exclusionary patterns of general concepts and principles of international law. It analyzes the outcomes, with achievements and pitfalls, of their intellectual production on sovereignty and questioning what it says about the feminist approaches to international law more generally. Due to the extensive bibliography of feminist approaches to international law, this research is limited to the investigation of their intellectual production on sovereignty and, occasionally, on the circumscribing concepts that are deeply intertwined with it, such as statehood, international personality, territory, security, just to name a few.

This double task is inspired by Scott's accounts of feminist histories. By writing histories that face gender and power as fundamental aspects of knowledge production, the

²⁰⁶ OTTO, Dianne. Lost in Translation: Re-Scripting the Sexed Subjects of International Human Rights Law. In: ORFORD, Anne (ed.). **International law and its others**. Cambridge: Cambridge University Press, 2006, p. 332.

²⁰⁷ OTTO, Dianne. Lost in Translation: Re-Scripting the Sexed Subjects of International Human Rights Law. In: ORFORD, Anne (ed.). **International law and its others**. Cambridge: Cambridge University Press, 2006, p. 351.

concern lies not only in adding the feminist internationalists to an existing body of stories but also changing the ways the stories can be told. Acting as a double-agent, the feminist historian expects, simultaneously, to change the discipline and take her rightful place in it.

Here we are double agents: practicing history to deepen and sharpen the critiques of new oppositional studies while slyly repudiating the discipline's emphasis on continuity and the unidirectionality of causality (past to present). There is a great future for double agents of this kind and a certain thrill in the job. It is destabilizing both to those we engage with and to ourselves. There is no worry that our identity will become fixed or our work complacent; there are always new strategic decisions to be made²⁰⁸.

To develop such a project, different tools might be employed. Even if, so far, there has not been a significant body of historiographic works in the international legal field from a feminist perspective, the projects developed in other critical streams have highlighted the great potential of intellectual history in investigating ideologies behind contemporary perspectives on international law²⁰⁹. As the history of what people have taught about and believed, based most often on what they have written²¹⁰, the concern of intellectual history is to explain why certain meanings "arise, persist, and collapse at particular times and in specific sociocultural situations."²¹¹ In some ways, this research might help to understand the preeminence and persistence of sovereignty as a central concept for the discipline, as well as a favorite topic of research among critical scholars.

Even if in dissent, feminist approaches to international law formed a specific stream of scholarship within the discipline that can be perceived as participating in a common discourse, in the sense that they address themselves to the promises and the problems²¹² of rethinking international law so as to question its bias and limits with respect to women and other marginalized groups. But another question is to affirm that the feminists truly form a critical approach recognized among other critical and mainstream approaches to the discipline. Have they developed the status of a scientific and intellectual movement?²¹³ Were they able to produce a large scope of critiques of the classic concepts and basic structures of the discipline? Have they provided means for change? Even if not capable of fully answering

²⁰⁸ SCOTT, Joan Wallach. Feminism's History. *Journal Of Women's History*, [S.L.], v. 16, n. 2, 2004, p. 25.

²⁰⁹ GALINDO, George Rodrigo Bandeira. Force Field: On History and Theory of International Law. *Rechtsgeschichte Legal History*, [S.L.], v. 20, n. 01. 2012, p. 95

²¹⁰ FISHER III, William W. Texts and Contexts: The Application to American Legal History of the Methodologies of Intellectual H. *Stanford Law Review*, [S.L.], v. 49, n. 5, 1997, p. 1065.

²¹¹ TOEWS, John E.. Intellectual history after the linguistic turn: The autonomy of meaning and the irreducibility of experience. *The American Historical Review*. [S.L.], 1987, p. 882.

²¹² TOEWS, John E.. Intellectual history after the linguistic turn: The autonomy of meaning and the irreducibility of experience. *The American Historical Review*. [S.L.], 1987, p. 882

²¹³ FRICKEL, Scott; GROSS, Neil. A General Theory of Scientific/Intellectual Movements. *American Sociological Review*. [S.L.], p. 204-232, 2005.

these questions, this research indirectly addresses them by taking feminist scholarship seriously in international law and also in relation to other critical perspectives within and outside the discipline.

To understand that, thinking about the question of method is crucial. It involves fundamental judgments on how we conduct research and understand the links between critical thinking and the object of inquiry²¹⁴, making explicit the always partial lens of the historical narratives and theoretical production²¹⁵. While this research does not develop historiographical research, it borrows from the reflections of the critical historiography or the discipline, especially TWAIL, and seeks to pave the way for the development of a more comprehensive history of the discipline also concerned with gender as an analytical category. This research provides a critical map to (re)locate feminist approaches within the debates of broader critical scholarships, highlighting the potential for further and deeper investigations of the problematic exclusionary and violent patterns upon which the discipline of international law has been structured.

This research adopts insights from the contextualist approach proposed by J. G. Pocock, comprehending that the meaning of the texts analyzed "is radically dependent upon the systems of words and concepts in which the author moved when he or she was writing" and that the "central job is to reconstruct that context and then to interpret the text in light of it."²¹⁶ The discourse is understood as the language system and associated belief system of particular communities, and departs from the idea that the dialogues among feminist internationalists were organized and bound by a set of common assumptions that gathered them as in a coherent—even if not unified—body of intellectual production. Taking Pocock's method as a guideline, some methodological explanations will follow.

The task of rebuilding the linguistic context in which the authors are inserted is undoubtedly complex. It involves not only a spatial and temporal delimitation but also a study of great authors, the so-called classics, and other smaller ones who actively participated in them²¹⁷. The delimitation of this frontier cannot be done *a priori*, as it depends on a previous reading of texts, the survey of problems, and the discussions held by the authors among themselves, so that it is possible to establish a hypothesis about the periods, authors, works

²¹⁴ ORFORD, A.. On international legal method. *London Review Of International Law*, [S.L.], v. 1, n. 1, p. 167, 2013. Oxford University Press (OUP). <http://dx.doi.org/10.1093/lril/lrt005>.

²¹⁵ FISHER III, William W. Texts and Contexts: The Application to American Legal History of the Methodologies of Intellectual H. *Stanford Law Review*, [S.L.], v. 49, n. 5, 1997, p. 1087.

²¹⁶ FISHER III, William W. Texts and Contexts: The Application to American Legal History of the Methodologies of Intellectual H. *Stanford Law Review*, [S.L.], v. 49, n. 5, 1997, p. 1087.

²¹⁷ POCOCK, J. G. A.. *Linguagens do Ideário Político*. São Paulo: Edusp- Editora da Universidade de São Paulo, 2003.

and, mainly, on the grammar that forms the languages used and provides the substrate for the authors' intervention in that field of knowledge²¹⁸.

For Pocock, the discourse encompasses three dimensions: the structural²¹⁹, the specific linguistic performances²²⁰ or "speech acts," and the relationship between language and experience²²¹. The first task of the historian would be to identify the paradigmatic forces of the languages adopted by the authors, then understand the permanent interaction that constitutes the discourse. When it comes to the experience, the language is perceived as something that is formed over time, in response to many internal and external pressures, the historian does not assume that the language of the moment simply denotes, reflects, or is made up of the experience of that moment. Rather, it interacts with experience and provides the categories, grammar, and mindset through which experience can be recognized and articulated²²².

The relationship between language and experiences is ambivalent, in the sense that the words notice, and are aware of the fact that it denotes different things at the same time, and problematic, in the sense that the debate over how they can be used to denote things is

²¹⁸ POCOCK, J. G. A.. *Linguagens do Ideário Político*. São Paulo: Edusp- Editora da Universidade de São Paulo, 2003, p. 10.

²¹⁹ "Of relatively stable conventions, usages, idioms, rhetorics, or vocabularies that Pocock now refers to as 'languages.' [...] conceptual [...] and metaphorical frameworks that can be translated from one vernacular to another [...] Languages embody the rules that define a communicative world, determining what counts as reality and limiting the possible ways in which realities can be connected. [...] The first task of the historian of discourse is to identify and reconstruct such languages, to demonstrate their 'paradigmatic' force or organizing power in various texts and to construct their implicit forms into an explicit 'ideal type' or hypothetical model that can then become an instrument for identifying a particular language in other texts and contexts." TOEWS, John E.. Intellectual history after the linguistic turn: The autonomy of meaning and the irreducibility of experience. *The American Historical Review*. [S.L.], 1987, p. 882.

²²⁰ "the specific linguistic performances or 'speech-acts' that are not just events in language but actions on language, expropriating the inherited, already constituted framework in order to modify or transform it. Such acts are acts of communication demanding and eliciting responses or "countermoves," which are themselves creative expropriations and transformations of language. It is this process of constant interaction between speech and language, action and structure, that constitutes a 'discourse.' The conditions that make a discourse possible are a plurality of languages and the existence of speakers who have access to these languages and are thus able to engage in creative linguistic performances. TOEWS, John E.. Intellectual history after the linguistic turn: The autonomy of meaning and the irreducibility of experience. *The American Historical Review*. [S.L.], 1987, p. 882.

²²¹ "The past, as the inherited inventory of constituted patterns of meaning, weighs on the present of the linguistic actor, precluding any direct causal determination of speech by experience or reflection of experience in speech. Yet the innovations and transformations that individual speech acts perform on inherited languages must ultimately be situated in a history of experience and related to it in a 'diachronous, ambivalent and problematic' manner. [...] Knowledge of the experience to which discourse responds and which it transforms into meaningful experience is itself only accessible through the mediation of texts: experience is not simply given but already worked over and mediated by language and thus as much an object of interpretation as the texts in the history of discourse." TOEWS, John E.. Intellectual history after the linguistic turn: The autonomy of meaning and the irreducibility of experience. *The American Historical Review*. [S.L.], 1987, p. 882-893.

²²² POCOCK, J. G. A.. *Linguagens do Ideário Político*. São Paulo: Edusp- Editora da Universidade de São Paulo, 2003, p. 56.

ongoing²²³. But experience must not be conceptualized as the objective circumstances that condition reality and identity but as a "variable phenomena [...] discursively organized in particular contexts or configurations."²²⁴

Analyzing feminist discourses in international law, the levels of the language and speech-acts assume a dual form. The feminist internationalists are, at the same time, proposing a dialogue with international lawyers and, indirectly, participating in feminist dialogues that involve feminist theories from other fields of study. While using international legal academic platforms to circulate their intellectual productions, writing about international legal concepts and departing from international legal paradigms and theories, they are also situated in the midst of feminist thought, publishing in feminist journals, employing key concepts, methods, and epistemological insights from feminists to rethink the knowledge production in the field of international law.

When, for instance, they affirm that "International law deserves feminist scrutiny,"²²⁵ they are trying to deal with the complicated task of both questioning the discipline's capacity of responding to feminist concerns and their ability to participate in the international legal debate. The reading of their texts must, from a contextualist perspective, situate them in wider conventions and paradigms that influence the way in which the authors will participate in dialogues as speakers of a theoretical language and, through these ongoing dialogues, they update the language of international law.

Hence the focus on sovereignty. As a fundamental concept from which a lot of canonical and critical theories arose, it carries the significance of being a question that matters for international law. If the discourse around sovereignty has changed during the last centuries, it is not impossible that a feminist perspective might further influence how the concept of sovereignty is understood, but for that, their analysis, critiques, and proposals must be comprehended.

In this sense, questions of power cannot be ignored. Knowledge production is imbricated with authority and how intellectual elites of professional scholars came to establish their academic positions and compelled others to speak in the languages they had developed²²⁶. The concept of sovereignty, in these contexts, has been historically informed by

²²³ POCOCK, J. G. A.. *Linguagens do Ideário Político*. São Paulo: Edusp- Editora da Universidade de São Paulo, 2003, p. 57.

²²⁴ SCOTT, Joan Wallach. *Gender and the Politics of History*. New York: Columbia University Press, 1988, p. 5.

²²⁵ CHARLESWORTH, Hilary. Women as Sherpas: Are Global Summits Useful for Women? *Feminist Studies*, [S.L.], v. 22, n. 3, 1996, p. 539.

²²⁶ POCOCK, J. G. A.. *Linguagens do Ideário Político*. São Paulo: Edusp- Editora da Universidade de São Paulo, 2003, p. 68.

gender dynamics and hierarchies. On the other hand, the study of the language of international law also encompasses how marginalized groups appropriated the intellectual discourse for their own political purposes, employing professional language in ways that modify its effects.

To establish the context of this analysis, this research focuses on the last forty decades, when the feminist approaches acquired a name and a discussion on women and gender in the theoretical framework of international law has expanded. In the field of human rights, humanitarian law, or international criminal law, feminist literature can be found in practically all parts of the world, being developed by authors from inside and outside international law. But as far as sovereignty is concerned, a feminist scholarship was slower in its development, taking place initially in the field of international relations and feminist legal theory and, with different meanings and implications, in philosophy.

One of the main points that inform the development of feminist rhetoric in the discipline is precisely this appropriation of the discourse of internationalists in favor of interests and objectives that are often opposed to those traditionally prioritized by the discipline, it embodies the ongoing question of whether the master's tool will ever dismantle the master's house²²⁷, and if what we seek is for the house to be dismantled²²⁸. If, agreeing with Pocock, we understand that the more institutionalized a language is and the more public it becomes, the more it will be available for the purposes of different speakers articulating different concerns, it could even be understood as inevitable that the feminist discourse penetrates the terrain of international law.

In this sense, adopting sovereignty and not other more common scopes, such as the feminist approaches strictly related to the human rights of women, also provides a field less related to transnational activism and feminist discourses for legal reform that became really popular from the mid-20th century on and has already been so criticized by feminists, receiving the name of governance feminism²²⁹ or international conflict feminism²³⁰. The theme of sovereignty falls within a scope in which a greater dialogue can be held between feminists and other critical scholars, and this allows a better understanding of the dimension, depth, and impact of feminist criticism in the discipline.

²²⁷ LORDE, Audre. The master's tools will never dismantle the master's house. **Feminist Postcolonial Theory: A Reader**. [S.L.], 2003, p. 1-3.

²²⁸ CHARLESWORTH, Hilary; CHINKIN, Christine. **The Boundaries of International Law: A Feminist Analysis**. Manchester: Manchester University Press, 2000, p. 308-335.

²²⁹ HALLEY, Janet. **Split Decisions: how and why to take a break from feminism**. New York: Princeton University Press, 2006.

²³⁰ NESIAH, Vasuki. Gender and Forms of Conflict. **Oxford Handbooks Online**, [S.L.], p. 1-15, 2017. Oxford University Press. <http://dx.doi.org/10.1093/oxfordhb/9780199300983.013.23>.

If the work of the intellectual historian implies the recognition of the dialogues, the responses of authors to other's—speech acts—it is an interesting aspect to highlight that the feminists have spent the last decades mostly "talking between themselves."²³¹ In general terms, neither the mainstream scholar nor the critics have provided serious responses to feminist discourses²³². When replying to feminist texts, the feminist language must therefore be employed, even if to be criticized.

If the scholarship avoids responding, it consequently avoids using this language, which would lead them to face a non-desirable and flawed aspect of international legal discourse. To make feminist discourses "not ignorable" would be a challenge to hegemonic discourses, as well as to critical theories, making it impossible for them not to address gender as a fundamental issue and, for that, the intellectual production of feminist international lawyers reveals itself as an even more interesting subject of investigation.

1.6.2 Mapping the feminist approaches to sovereignty in international law

For internationalists, the initial task of thinking about sovereignty and other fundamental concepts of the discipline required considering, first and foremost, the place of women in these narratives, or in this case, the absence of women from these narratives. In the 1990s, with the growth of systematic feminist analysis in international law, central aspects of the discipline were to be scrutinized through feminist lenses. The project outlined, almost as a manifesto, in the 1991 article, which shared the same name as the critical current, would be a project of reconstruction and deconstruction of international law. Charlesworth, Chinkin, and Wright argue that "International law has thus far largely resisted feminist analysis. The concerns of public international law do not, at first sight, have any particular impact on

²³¹ CHARLESWORTH, Hilary. Talking to ourselves? Feminist scholarship in international law. In: KOUVO, Sari; PEARSON, Zoe (ed.). **Feminist Perspectives on Contemporary International Law**. London: Hart Publishing, 2011, p. 17-32. Generally, in the field of International Relations see: TICKNER, J. Ann. You just don't understand: troubled engagements between feminists and IR theorists. *International Studies Quarterly*, v. 41, n. 4, p. 611-632, 1997. TICKNER, J. Ann. What is your research program? Some feminist answers to international relations methodological questions. *International Studies Quarterly*, v. 49, n. 1, p. 1-21, 2005. YOUNGS, Gillian. Feminist International Relations: a contradiction in terms? Or: why women and gender are essential to understanding the world 'we' live in. *International affairs*, v. 80, n. 1, p. 75-87, 2004.

²³² For exceptions, see: BIANCHI, Andrea. *International law theories: An inquiry into different ways of thinking*. Oxford University Press, 2016. TESÓN, Fernando R. Feminism and international law: A reply. *Va. J. Int'l L.*, v. 33, p. 647, 1992. LA RASILLA, Ignacio de. The Turn to the History of International Law. *International Law And History*, [S.L.], p. 11-40, 2021. Cambridge University Press. <http://dx.doi.org/10.1017/9781108562003.002>. CHIMNI, B.S. *Feminist Approaches to International Law: The Work of Hilary Charlesworth and Christine Chinkin*. In: CHIMNI, B. S.. *International Law and World Order: a critique of contemporary approaches*. [S.L.]: Cambridge University Press, 2017, p. 358-439.

women: issues of sovereignty, territory, use of force and state responsibility, for example, appear gender free in their application to the abstract entities of states."²³³

Through the promotion of a feminist perspective in addressing specific issues within the discipline, scholars seek to unveil how seemingly neutral and classic principles are actually gendered, revealing that international law has a gender, a fundamentally biased manifestation in favor of men²³⁴ or, as Otto articulates, that "The universal norm of humanity [...] is defined by male standards."²³⁵ By proposing a feminist approach to international law, they also furthered the notion of feminist legal theory, which can be understood in a variety of ways.

Feminist legal theory can promote a variety of activities. The term signifies an interest (gender as an issue of primary importance); a focus of attention (women as individuals and as members of groups); a political agenda (real social, political, economic and cultural equality regardless of gender); a critical stance (an analysis of "masculinism" and male hierarchical power or "patriarchy"); a means of reinterpreting and reformulating substantive law so that it more adequately reflects the experiences of all people; and an alternative method of practicing, talking about and learning the law. Feminist method must be concerned with examining the fundamentals of the legal persuasion: the language it uses; the organization of legal materials in predetermined, watertight categories; the acceptance of abstract concepts as somehow valid or "pure"; the reliance in practice on confrontational, adversarial techniques; and the commitment to male, hierarchical structures in all legal and political organizations²³⁶.

As presented at the beginning of the chapter, until the late 1990s, feminist experiences in the international field were reflected in transnational women's movements but were not translated into an effort to articulate concepts and theoretical possibilities for rethinking the ways the discipline excluded or reinforced the subordination of women²³⁷. Consequently, it fell upon a new generation of internationalists at the end of the 1990s to carry forward this theoretical, methodological, and epistemological project.

At that time, great attention was given to the feminism of difference, evoked by Carol Gilligan²³⁸, and the radical critiques of Catherine Mackinnon. These two authors were two of

²³³ CHARLESWORTH, Hilary; CHINKIN, Christine; WRIGHT, Shelley. Feminist Approaches to International Law. *American Journal Of International Law*, [S.L.], v. 85, n. 4, 1991, p. 614.

²³⁴ CHARLESWORTH, Hillary. Feminists Critiques of International Law and Their Critics. *Third World Legal Studies*, [S.L.], v. 13, n. 1, 1995, p. 2.

²³⁵ OTTO, Dianne. Violence Against Women—Something Other Than A Violation Of Human Rights? *Australian Feminist Law Journal*, [S.L.], v. 1, n. 1, 1993, p. 160.

²³⁶ CHARLESWORTH, Hilary; CHINKIN, Christine; WRIGHT, Shelley. Feminist Approaches to International Law. *American Journal Of International Law*, [S.L.], v. 85, n. 4, p. 613-645, 1991, p. 634.

²³⁷ HEATHCOTE, Gina. *Feminist Dialogues on International Law: successes, tensions, futures*. [S.L.]: Oxford University Press, 2019, p. 2.

²³⁸ See: CHARLESWORTH, Hilary; CHINKIN, Christine; WRIGHT, Shelley. Feminist Approaches to International Law. *American Journal Of International Law*, [S.L.], v. 85, n. 4, p. 613-645, 1991. Cambridge University Press (CUP). <http://dx.doi.org/10.2307/2203269.1>; CHARLESWORTH, CHINKIN 1993; CHARLESWORTH, 2010; SLAUGHTER, CHARLESWORTH, 1995; KNOP, 1994, ENGLE, 1992. To critics of Gilligan on the feminist approaches see: OTTO, Dianne. *Lost in Translation: Re-Scripting the Sexed Subjects*

the main references in this initial moment of feminist approaches to international law. Gilligan's work was used to promote a "critical analysis of legal reasoning, which lays claim to abstract, objective decision making" and, by employing Gilligan's notion of "a different voice,"²³⁹ feminists would be able to "describe the possibility of an equally valid 'feminine' reasoning based on factors usually considered irrelevant to legal thinking."²⁴⁰

The emphasis on the 'ethics of care' also framed feminist discourse in international law, but critics such as Ratna Kapur called attention to the ways in which it contributed to dismissing or de-radicalizing the promotion of peace in international law²⁴¹. On the other hand, Mackinnon's scholarship has paved the way for many feminist critiques of statehood and sovereignty, establishing the standard vision of the state and the law as representatives of masculinity and carriers of oppression toward women.

In recent times, the field of feminist scholarship in international law has witnessed significant enrichment through diverse perspectives on gender and feminism. A noteworthy illustration of this is the Research Handbook on Feminist Engagement with International Law, which was published in 2019. This comprehensive work delves into non-Western intellectual traditions and addresses the concerns of non-Western, non-white women, as well as issues related to sexuality and sexual diversity. Moreover, there has been a growing engagement of internationalists with various feminist approaches such as posthuman feminism, environmental issues, and decolonial feminism, among others. These developments highlight the expanding scope and inclusivity of feminist scholarship within the realm of international law.

of International Human Rights Law. In: ORFORD, Anne (ed.). **International law and its others**. Cambridge: Cambridge University Press, 2006. p. 318-356. Otto argues that "radical feminism, particularly in its cultural strands, accepts the 'sexualization' of gender dualities but seeks to challenge, even reverse, their 'hierarchization' by revaluing the 'feminine.'"

²³⁹ In her groundbreaking book "In a Different Voice," the moral psychologist Carol Gilligan noted that men's emphasis on separation and autonomy leads them to develop a style of moral reasoning that focuses on justice, fairness, and rights. In contrast, women's emphasis on connections and relationships leads them to develop a style of moral reasoning that stresses the needs and responsibilities of particular people. Gilligan also claimed that because most experts in moral development theory have used male as opposed to human norms to measure women's as well as men's moral development, they have mistakenly concluded that women are less morally developed than men. Deeply disturbed by this negative assessment of women, Gilligan set out to prove that not women, but the standards used to judge women's growth as moral persons, must be changed. TONG, Rosemarie; BOTTS, Tina Fernandes. **Feminist thought: a more comprehensive introduction**. 5. ed. New York: Routledge, 2018, p. 138.

²⁴⁰ CHARLESWORTH, Hilary; CHINKIN, Christine; WRIGHT, Shelley. Feminist Approaches to International Law. **American Journal Of International Law**, [S.L.], v. 85, n. 4, 1991, p. 615.

²⁴¹ KAPUR, Ratna. Gender, Sovereignty and the Rise of a Sexual Regime in International Law and Postcolonial India. **Melbourne Journal Of International Law**. [S.L.], 2013, p. 24.

Even though the primary focus remains on the "canonical" texts of FAIL, with frequent references to authors such as Hilary Charlesworth and Dianne Otto²⁴², a broad and diverse body of work has been developed by internationalist feminists not only in Europe but also in Asia, Latin America, and Africa, spanning from the late 20th century to the present. Early career scholars are striving to further expand the engagement of international law with feminist perspectives in a more comprehensive and profound manner²⁴³. If this scholarship does not receive the proper attention, it is due to the dynamics of knowledge (re)production, which favor certain languages, spaces, institutions, and individuals. However, this tendency must be constantly challenged by those who aim to critically examine international law.

For the purposes of this research, mapping the feminist approaches to international law requires an analysis of how feminist internationalists articulated feminism and international law to further their political, methodological, and theoretical projects. The emergence of feminist approaches to international law in the late 1990s was marked by frustration with "conceptual schemes and dominant notions of objectivity, rationality, and scientific method that carry with them androcentric assumptions and beliefs" and that frustration led them to examine the pillars of Western knowledge²⁴⁴.

While feminist scholarship in international law shares much in terms of aims, methods, and concerns with other critical internationalists, there have been conflicts, problematic negotiations, and isolation from other scholars. This work delves into writings from the last four decades to analyze the intellectual production of feminists in the international legal field. The focus is not on a progressive account of women's rights but rather on how authors developed their arguments and sought to reveal the gendered nature of sovereignty in international law at more abstract levels.

The feminist scholarship on sovereignty is here understood as one that analyzes state sovereignty "through a feminist lens as a means to reframe and rethink approaches to sovereignty while also expanding the parameters of feminist thinking on international law."²⁴⁵

²⁴² And this work might also be accused of this rather selective engagement with the feminist approaches, even if trying to encompass a broader source of plural feminist scholarships within the discipline.

²⁴³ See: GILLERI, Giovanna. Gender as a hyperconstruct in (rare) regional human rights case-law. **European Journal Of Legal Studies**, [S.L.], n. 2, p. 25-42, 2020. European University Institute. <http://dx.doi.org/10.2924/EJLS.2019.031>. EICHERT, David. Decolonizing the Corpus: a queer decolonial re-examination of gender in international law's origins. **Michigan Journal Of International Law**, [S.L.], n. 433, p. 557, 2022. University of Michigan Law Library. <http://dx.doi.org/10.36642/mjil.43.3.decolonizing>.

²⁴⁴ HARDING, Sandra. **Whose science? Whose knowledge? : Thinking from women's lives**. Ithaca, New York: Cornell Univ Press, 1991, p. 105.

²⁴⁵ HEATHCOTE, Gina. **Feminist Dialogues on International Law: successes, tensions, futures**. [S.L.]: Oxford University Press, 2019, p. 105.

Knop's seminal article called for feminist analysis of state sovereignty in 1993 and acknowledged the failure of feminist scholarship to rethink state sovereignty, preferring to work within or around it while criticizing the premise of the state as bounded. This approach, according to her, cannot yield a clear direction for rethinking state sovereignty.

Early feminist writings on international law, such as the work of Knop, Charlesworth, and Chinkin, considered and critiqued the foundations of international law, including the definition of statehood and feminist perceptions of sovereignty. Although feminist texts on international law acknowledged that a "major reordering of international legal doctrine and institutions would be required to accommodate women,"²⁴⁶ there has been a general neglect of this aspect of international law by feminist scholars and a selective engagement of international legal scholars with feminist scholarship, leaving unexamined their intellectual production on general concepts and broader problems of the discipline. Therefore, this chapter returns to the questions posed by Knop regarding the relationship between feminist political goals, the critiques of sovereignty, and critical legal understandings of sovereignty.

²⁴⁶ HEATHCOTE, Gina. **Feminist Dialogues on International Law**: successes, tensions, futures. [S.L.]: Oxford University Press, 2019, p. 107.

2. THE GENDER OF SOVEREIGNTY

The concept of national sovereignty is a fundamental component of the intellectual framework of international law²⁴⁷. According to the classic understanding, an international society comes into existence when a group of states, cognizant of their shared interests and values, form a society in which they regard themselves as bound by a common set of regulations in their relations with each other and take part in the operation of joint institutions²⁴⁸. In this view, each state is deemed co-equal and sovereign, possessing ultimate authority and jurisdiction over its territorial limits, boundaries, and citizens.

Fundamental questions about how law affects the behavior of sovereign states, the construction of the concept of sovereignty, and its reflection in modern international legal theory and practice are fundamental issues that continue to be the focus of ongoing investigation²⁴⁹. Sovereignty has been the subject of extensive debates and discussions among scholars in the fields of international law and international relations, whose theoretical frameworks continue to have a substantial influence on the practice of international law and our comprehension of sovereignty as a legal concept.

In 1994, the feminist international lawyer Karen Knop described the concept of state sovereignty as

an ambivalent concept in international law and the international legal imagination—at once brute fact of power and central metaphor of normativity, obstacle to paradisiacal future worlds and means of their realization, barrier to transparent global relations between individuals and groups and essential sanctuary for them²⁵⁰.

Although international law is supposed to be composed of multiple sovereign states that are ostensibly equal in their absolute power over their territory and decision-making, in reality, states vary greatly in their power and influence. The concept of sovereignty can therefore operate in vastly different ways, reflecting and (re)producing global inequalities. Critical scholars have analyzed how the concept of sovereignty remains central—and

²⁴⁷ SCHREUER, Christoph. The Waning of the Sovereign State: Towards a New Paradigm for International-Law? *Eur. J. Int'l L.* [S.L.], 1993, p. 448.

²⁴⁸ BULL, Hedley. *The anarchical society: a study of order in world politics*. New York: Columbia University Press, 1977, p. 13.

²⁴⁹ GOODMAN, Ryan; JINKS, Derek. Toward an Institutional Theory of Sovereignty. *Stan. L. Rev.* [S.L.], p. 1749-1788, 2002. ANGHIE, Antony. Rethinking Sovereignty in International Law. *The Annual Review Of Law And Social Science*. [S.L.], 2009, p. 292. BROOKS, Rosa Ehrenreich. Failed States, or the State as Failure? *U. Chi. L. Rev.* [S.L.], p. 1159-1196, 2005.

²⁵⁰ KNOP, Karen. Why Rethinking the Sovereign State is Important for Women's International Human Rights Law. In: COOK, Rebecca J. (ed.). *Human Rights of Women*. [S.L.]: University Of Pennsylvania Press, 1994. p. 295.

problematic—to the discipline, with some viewing it as "troubled" and "unhelpful"²⁵¹ in explaining the reality of the international legal system, while others see it as deeply Eurocentric and exclusionary.

As it will be developed in the next sections, the concept of sovereignty has faced heavy criticism²⁵². Postcolonial scholars have highlighted sovereignty as a means for exploiting the so-called Third World, while feminist analysis has brought attention to the inherent masculine bias in the discourse of sovereignty, revealing how the discipline has constructed an image of the state as a bounded entity that reflects a white, Western, and heterosexual paradigm, suggesting that the sovereignty of men in the dynamics of law and society mirrors the state as a sovereign entity²⁵³.

The purpose of this chapter is to explore how feminist scholars challenge traditional understandings of sovereignty, to address and challenge the discriminatory foundations of the discipline. It aims to present the complex and diverse feminist scholarship concerning the concept of sovereignty in international law that, in different ways, aims to reveal how international legal concepts and theories are not gender-neutral and how gender plays a crucial role in classical themes of international law beyond those directly related to women.

The chapter is divided into three sections. The first section explores the centrality of the state in international law, introduces the classic concepts of sovereignty, and discusses postcolonial critiques and the use of colonial and gendered metaphors in the rhetoric of sovereignty.

The second section examines feminist legal theories and approaches in international relations, highlighting their influence on feminist analysis in international law. It also discusses how sovereignty is understood in these respective fields.

The third section focuses on feminist analysis of sovereignty and related concepts such as international personality, security, statehood, and self-determination. It explores how the feminist scholarship portrays the sovereign state as a bounded entity mirroring the position of men in Western liberal societies. Furthermore, it examines the impact of the discourse of

²⁵¹ PARFITT, Rose. Theorizing Recognition and International Personality. In: HOFFMAN, Florian; ORFORD, Anne (ed.). **The Oxford Handbook of International Legal Theory**. Oxford: Oxford University Press, 2016, p. 1. CRAWFORD, James. **The creation of states in international law**. Oxford: Oxford University Press, 2006, p. 32.

²⁵² Charney ended up affirming that "The word 'sovereignty' should be stricken from our vocabulary." For him, "It evokes the anachronistic idea of the total independence and autonomy of the state, and has no real meaning today. Use of the word calls to mind a fundamentalist view that is difficult to debate in light of its emotive baggage." CHARNEY, Jonathan. International Law Decisions in National Courts. **The American Journal Of International Law**. Washington, 1997, p. 394.

²⁵³ CHARLESWORTH, Hilary; CHINKIN, Christine. **The Boundaries of International Law: A Feminist Analysis**. Manchester: Manchester University Press, 2000, p. 125-137.

separation of sovereign entities on international law. The section concludes by presenting a feminis rewriting of the Lotus Case.

Each section provides the necessary tools for comprehensively understanding the relationship between sovereignty and gender in international law. Overall, this chapter demonstrates the importance and value of feminist analysis in understanding and challenging the exclusionary foundations of international law.

2.1 Sovereignty and the centrality of the state for international law

Sovereignty operates as a dual principle, both internally and externally. Internally, it denotes ultimate authority within a society, such as the power to enact and revoke laws²⁵⁴. Externally, it is regulated by international law, a consensus-based regime that relies on a state's voluntary participation and acceptance of limitations on its actions²⁵⁵. The principle of sovereignty implies equality with other sovereign states and preeminence of power within a state's own jurisdiction²⁵⁶. The duality of sovereignty manifests an inherent tension in international law, as the sovereign state creates but is also expected to be bound by it²⁵⁷.

The principle of equality among states is recognized in the Charter of the United Nations (Article 2(1)), but it is a formal, not a moral principle. Therefore, states are not necessarily granted equal voting or speaking rights in international organizations, but they are considered to have the same status and standing²⁵⁸. This notion was recognized by Swiss philosopher Ermer de Vattel in 1758, who famously stated that "A small republic is no less a sovereign state than the most powerful kingdom."²⁵⁹

The 1927 Lotus case judgment by the Permanent Court of International Justice (PCIJ) remains a pivotal part of international law's comprehension of sovereignty and is often one of the first cases taught to students studying State sovereignty as a fundamental principle of the international legal system²⁶⁰. The case came to be central to understanding the nature of the

²⁵⁴ MOSKOV, Julie. *Soft Borders: Rethinking Sovereignty and Democracy*. **Soft Borders**, 2002, p. 20.

²⁵⁵ CHARLESWORTH, Hilary; CHINKIN, Christine. **The Boundaries of International Law: A Feminist Analysis**. Manchester: Manchester University Press, 2000, p. 134.

²⁵⁶ CHARLESWORTH, Hilary; CHINKIN, Christine. **The Boundaries of International Law: A Feminist Analysis**. Manchester: Manchester University Press, 2000, p. 134.

²⁵⁷ ANGHIE, Antony. Rethinking Sovereignty in International Law. **The Annual Review Of Law And Social Science**. [S.L.], 2009, p. 293.

²⁵⁸ CRAWFORD, James. **The creation of states in international law**. Oxford: Oxford University Press, 2006, p. 41

²⁵⁹ LEE, Thomas H.. International Law, International Relations Theory, and Preemptive War: The Vitality of Sovereign Equality Today. **Law And Contemporary Problems**. [S.L.], 2004, p. 150.

²⁶⁰ HODSON, Loveday; LAVERS, Troy (ed.). **Feminist Judgments in International Law**. Oxford: Hart Publishing, 2019, p. 14.

international legal system as defined by the sovereign equality of its primary members, the States²⁶¹, and provided international law with a powerful principle of State sovereignty²⁶².

The case emerged after a collision on the high seas between the French steamer, the SS Lotus, and the Turkish collier, SS Bozkurt, resulting in the deaths of eight Turkish nationals. A jurisdictional issue arose when Turkey initiated joint criminal proceedings against the officer on watch of the SS Lotus and the captain of the SS Bozkurt, which France opposed. The PCIJ was asked to decide whether Turkey's actions conflicted with international law principles and what reparations were due if so. The Court determined that Turkey did not breach any principles of international law in prosecuting the officer according to its domestic law.

In the decision, the PCIJ emphasized that international law governs relations between independent states. The rules of law binding upon states, therefore, emanate from their own free will. Other entities and subjects possess a more restricted international legal status, and their rights and obligations are usually dependent on those granted to them by the states²⁶³. As per this model, the state retains its position as the primary subject of international law, serving as the nuclear source of authority²⁶⁴.

According to Scheuer, the classic model of international law, which applies among sovereign states, has some useful purposes but also significant shortcomings. The concentration of power at the national level facilitated power abuse, and concepts like sovereignty have been used to justify internal repression and shield states from international scrutiny²⁶⁵. Moreover, the rhetoric of sovereignty conceals a series of implications that not only reflect pre-existing inequalities but also reinforce them²⁶⁶. Sovereignty is a highly ambiguous concept that can serve different goals and ideologies, sometimes in opposition to

²⁶¹ CHINKIN, Christine *et al.* Bozkurt Case, aka the Lotus Case (France v Turkey): Ships that Go Bump in the Night. In: HODSON, Loveday; LAVERS, Troy (ed.). **Feminist Judgments in International Law**. Oxford: Hart Publishing, 2019, p. 28.

²⁶² CHINKIN, Christine *et al.* Bozkurt Case, aka the Lotus Case (France v Turkey): Ships that Go Bump in the Night. In: HODSON, Loveday; LAVERS, Troy (ed.). **Feminist Judgments in International Law**. Oxford: Hart Publishing, 2019, p. 27.

²⁶³ JONES, Emily. **Feminist Theory and International Law: posthuman perspectives**. Abingdon And New York: Routledge, 2023, p. 6.

²⁶⁴ JONES, Emily. **Feminist Theory and International Law: posthuman perspectives**. Abingdon And New York: Routledge, 2023, p. 6.

²⁶⁵ SCHREUER, Christoph. The Waning of the Sovereign State: Towards a New Paradigm for International-Law? **Eur. J. Int'l L.** [S.L.], 1993, p. 448.

²⁶⁶ RUSKOLA, Teemu. Raping Like a State. **UCLA Law Review**. [S.L.], 2010, p. 1478.

one another²⁶⁷, but remains a cornerstone of the intellectual framework of classical and modern international law²⁶⁸. For Craven,

the place assumed by the State in international law is almost too self-evident. If international law is defined, as it tends to be, as the law that applies between sovereign States, then some engagement with States, what they are, how they come into being, and how they change, has to be part of the disciplinary orientation²⁶⁹.

The widespread belief is that international law is circumscribed by the legal fictions of statehood, sovereignty, and consent. However, the concept of sovereignty is both controversial and historically contingent. The apparent agreement on the nature of the state in international law effaces upon closer examination, revealing that the nature of the state in international law is not as clear-cut as it may seem.

Scholars have produced a substantial body of theoretical work, predicting or asserting the decline of the state's protagonism in international law²⁷⁰. According to Koskenniemi, efforts to challenge the state's centrality in the international system have been ongoing since the publication of Kant's "Perpetual Peace" in 1795²⁷¹. At the end of the Cold War, some scholars proclaimed the end of sovereignty, while globalization, fragmentation of international law²⁷², and technological advancements increased focus on human rights and environmental crises, and the so-called cosmopolitan legal order has pointed to a possible decline of sovereignty in an increasingly interdependent world²⁷³ and prompted internationalists to seek alternative perspectives to the state-centric terminology.

²⁶⁷ "At once brute fact of power and central metaphor of normativity, obstacle to paradisiacal future worlds and means of their realization, barrier to transparent global relations between individuals and groups and essential sanctuary for them." KNOP, Karen. *Borders of the Imagination: the state in feminist international law. Proceedings Of The Annual Meeting*: American Society of International Law, Cambridge, v. 88, 1994, p. 295.

²⁶⁸ SCHREUER, Christoph. The Waning of the Sovereign State: Towards a New Paradigm for International-Law? *Eur. J. Int'L L.* [S.L.], 1993, p. 448.

²⁶⁹ CRAVEN, Matthew. Statehood, self-determination, and recognition. In: EVANS, Malcolm. *International law*. Oxford: Oxford University Press, 2014. p. 205.

²⁷⁰ SCHACHTER, Oscar. The decline of the nation-state and its implications for international law. *Colum. J. Transnat'L L.* [S.L.], 1998, p. 7.

²⁷¹ KOSKENNIEMI, Martti. What is International Law For? In: LAW, International (ed.). *International Law*. 4. ed. Oxford: Oxford University Press, 2014, p. 33

²⁷² KOSKENNIEMI, Martti. What is International Law For? In: LAW, International (ed.). *International Law*. 4. ed. Oxford: Oxford University Press, 2014, p. 47. For Koskenniemi and Leino, "Such 'fragmentation' is not a technical problem resulting from lack of coordination. The normative preferences of environmental and trade bodies differ, as do preferences of human rights lawyers and international law generalists, and each organ is determined to follow its own preference and make it prevail over contrasting ones. The result is, sometimes, deviating interpretations of the general law, such preferences reflecting the priorities of the deciding organ, at other times the creation of firm exceptions in the law, applicable in a special field." See: KOSKENNIEMI, Martti; LEINO, Päivi. Fragmentation of international law? Postmodern anxieties. *Leiden Journal Of International Law*, [s. l.], v. 15, n. 3, p. 553-579, 2002.

²⁷³ SCHREUER, Christoph. The Waning of the Sovereign State: Towards a New Paradigm for International-Law? *Eur. J. Int'L L.* [S.L.], 1993.

The collapse of the Soviet Union, the triumph of free market, the consolidation of the European Union, and other worldly events made it inevitable to question the survival of the international legal system as it was originally built, namely as the law that governs government relations between states. International human rights law, for instance, has challenged the basic tenet of the classical conceptualization of sovereignty, which asserts that a sovereign government has absolute legal authority within its own territory and over its citizens²⁷⁴. Some would argue that global cosmopolitan law now supersedes the role of state consent and their international treaties²⁷⁵. Although these regulations have limited state actions in specific ways, the fundamental structure of international law has not been altered and States still retain significant control.

In a parallel development, various other entities—multinational corporations, international organizations, and new social movements, for instance—have been studied as alternative sites of authority in the international system²⁷⁶. Additionally, the growing number of conflicts in Asia, Africa, and Eastern Europe has sparked debates about the future of the sovereign state²⁷⁷. Large-scale atrocities, such as those in Kosovo and Rwanda, have led to a reconceptualization of the notion of “sovereignty as responsibility.” This has also prompted a renewed examination of the concept of humanitarian intervention²⁷⁸.

The erosion of state sovereignty²⁷⁹ due to transnational issues, ranging from environmental issues to terrorism and including the commodification of weapons of mass destruction, highlights the apparent inability of modern nation-states to control their territory, their borders, and the danger faced by their citizens. In the present, numerous supranational organizations, transnational private global authorities, and transgovernmental networks are

²⁷⁴ For Schiemann, the European Union could prove to be a model and inspiration in the hope of transcending the sovereign State rather than simply replicating it in some new superstate. SCHIEMANN, Konrad. Europe and the Loss of Sovereignty. **International And Comparative Law Quarterly**, [S.L.], v. 56, n. 3, 2007, p. 475. According to Otto, "The UDHR represented an unparalleled foray into the domestic jurisdiction of states and was understood as promoting 'a unique and revolutionary purpose for international law.'" OTTO, Dianne. Everything is Dangerous: some post-structural tools for rethinking the universal knowledge claims of human rights law. **Australian Journal Of Human Rights**, [S.L.], v. 5, n. 1, 1999, p. 17. .

²⁷⁵ COHEN, Jean L.. Whose Sovereignty? Empire Versus International Law. **Ethics & International Affairs**. [S.L.], 2004, p. 1.

²⁷⁶ RAJAGOPAL, Balakrishnan. **International law from below: Development, social movements and third world resistance**. Cambridge University Press, 2003.

²⁷⁷ BROOKS, Rosa Ehrenreich. Failed States, or the State as Failure? **U. Chi. L. Rev.**. [S.L.], p. 1159-1196, 2005.

²⁷⁸ See: ALSTON, Philip; MACDONALD, Euan (Ed.). **Human rights, intervention, and the use of force**. Oxford University Press, 2008. ORFORD, Anne. **Reading humanitarian intervention: Human rights and the use of force in international law**. Cambridge University Press, 2003. ENGLE, Karen. Calling in the Troops: The Uneasy Relationship among Women's Rights, Human Rights, and Humanitarian Intervention. **Harv. Hum. Rts. J.**, v. 20, p. 189, 2007.

²⁷⁹ COHEN, Jean L. Whose Sovereignty? Empire Versus International Law. **Ethics & International Affairs**. [S.L.], 2004, p. 1.

involved in the process of rulemaking and regulation, sometimes bypassing the state in the creation of both hard and soft law, as many would argue²⁸⁰.

One common feminist strategy in the international system has been to challenge the dominant position of the state in international law, promoting international civil society²⁸¹ as a counterbalance to the statism prevalent in international law. It has been valuable for comprising non-state groups and networks, in generating international law outside the state system²⁸². For women, civil societies have been useful in creating transnational networks, mobilizing information, and sharing strategies. The positive outcomes of women's global networking can be seen in the attention devoted to women's human rights at the World Conference on Human Rights in 1993, the acceptance of the Declaration on the Elimination of Violence against Women by the General Assembly, and the inclusion of crimes against women in the jurisdiction of the international war crimes tribunal²⁸³.

However, the feminist engagement with international civil society has not been free of contradictions. Even if not constrained by the self-interest-driven calculations of states, what would make them more responsive to women's aspirations and more innovative in proposing changes²⁸⁴. International civil societies may not always prioritize women's interests, often replicating existing power imbalances within the nation-state system. While the field of human rights has been more accessible and hospitable for women's demands than any other in the international system²⁸⁵, the selective engagement of international civil society groups with particular strands of feminism has helped push forward agendas that would "not necessarily

²⁸⁰ COHEN, Jean L. Whose Sovereignty? Empire Versus International Law. **Ethics & International Affairs**. [S.L.], 2004, p. 1.

²⁸¹ "The category of international civil society is broader than that of NGOs and covers a range of both organised and unorganised, alternative and complementary groupings. In different contexts international civil society can embrace officials of international organisations, voluntary organisations, grassroots organisations and transnational social organizations." CHARLESWORTH, Hilary; CHINKIN, Christine. **The Boundaries of International Law: A Feminist Analysis**. Manchester: Manchester University Press, 2000, p. 90.

²⁸² KNOP, Karen. Why Rethinking the Sovereign State is Important for Women's International Human Rights Law. In: COOK, Rebecca J. (ed.). **Human Rights of Women**. [S.L.]: University Of Pennsylvania Press, 1994.

²⁸³ CHARLESWORTH, Hilary; CHINKIN, Christine. **The Boundaries of International Law: A Feminist Analysis**. Manchester: Manchester University Press, 2000, p. 92-93.

²⁸⁴ KNOP, Karen. Why Rethinking the Sovereign State is Important for Women's International Human Rights Law. In: COOK, Rebecca J. (ed.). **Human Rights of Women**. [S.L.]: University Of Pennsylvania Press, 1994. p. p. 316.

²⁸⁵ CHARLESWORTH, Hilary; CHINKIN, Christine. **The Boundaries of International Law: A Feminist Analysis**. Manchester: Manchester University Press, 2000, p. 201.

emancipate women,"²⁸⁶ such as the women, peace, and security agenda, or the repeated characterization of women as victims.

Another way to challenge the dominance of the sovereign state in international law is for women to directly present their interests in the international arena. This can involve bringing cases related to women's rights before relevant international bodies. By doing so, this tactic challenges the notion that states are the sole representatives of women at the international level and highlights the structural limitations of states in representing the diverse interests of women. However, it's important to acknowledge that this strategy carries the risk of assimilating women into standards established for men, and not all international institutions are receptive to such interventions. For instance, organizations like the GATT system, the WTO, and the Security Council have remained largely resistant to the influence of non-governmental organizations (NGOs)²⁸⁷.

However, a vision of international law without statehood and sovereignty has yet to be realized, and there is still much work to be done to deconstruct naturalized assumptions on the role of the discourse of sovereignty in international law. In recent decades, critical scholarship has undertaken the task of exposing the Eurocentric and androcentric nature of sovereignty and how it reinforces positions of inequality and power imbalances, both metaphorically and in concrete ways.

While some scholars advocate for the abandonment of key concepts and structures in international law such as sovereignty and statehood, others argue the opposite. According to Cohen, proclaiming the death of sovereignty to create a cosmopolitan legal order risks misconstruing the nature of contemporary international society and the political choices at stake²⁸⁸. This path would also conduct to the political instrumentalization of law and the

²⁸⁶ "The strong focus on sexual violence and victimization has invited the state's selective engagement with feminist ideas and the pursuit of a carceral vision and, in the process, deflected attention from the broader structural, political and economic arrangements that produce violence. At the same time, the state's appropriation of gender advocacy to strengthen the security apparatus clearly serves the state's priorities, which are directed towards establishing social and political stability – partly to ensure that the market performs efficiently and optimally. In the guise of protecting women and protecting the right to free choice, state and market forces collude to ensure the political and economic regulation of the citizen-subject." KAPUT, Ratna. **Gender, alterity and human rights: Freedom in a fishbowl**. Cheltenham, UK: Edward Elgar Publishing, 2018. p. 104.

²⁸⁷ KNOP, Karen. Why Rethinking the Sovereign State is Important for Women's International Human Rights Law. In: COOK, Rebecca J. (ed.). **Human Rights of Women**. [S.L.]: University Of Pennsylvania Press, 1994. p. 296.

²⁸⁸ COHEN, Jean L.. Whose Sovereignty? Empire Versus International Law. **Ethics & International Affairs**. [S.L.], 2004, p. 3.

moralization of politics rather than to a global rule of law²⁸⁹. By doing that, internationalists could become apologists for imperial projects²⁹⁰.

Despite the problematic nature of statehood and sovereignty, some believe internationalists can still find ways to use them strategically. Nijman, for example, supports the value of statehood as a political structure for international law, contradicting the literature that heralded its decline²⁹¹. Similarly, Koskenniemi views statehood as a formal-bureaucratic rationality that serves as a bulwark against totalitarianism, imposing substantive values on those who do not subscribe to them²⁹². However, one might ask whose values might be represented and whose values might be excluded from this.

Feminist scholars might, however, share a different opinion. While Koskenniemi celebrates the 'wonderful artificiality' of statehood because the state allows a 'position of retreat in which we can reflect upon our sociological and ethical conceptions and their relations to the truth or acceptability of our preferred way of life', Charlesworth and Chinkin argue that

statehood in international law is much more than a formal, abstract structure. It is committed to a particular version of sexual difference and is unable to represent the interests of women (or indeed of some men). Substantive values may be obscured in the structure of statehood, but they nevertheless affect a state's entire population. In this sense, statehood falls inevitably into the totalitarian trap Koskenniemi believes it avoids. By understanding that the state is both sexed and gendered, we can move from the fiction of abstract rationality to a debate about the substance of its values²⁹³.

As Matthew Craven asserts, it is essential to identify the characteristics and determinants of state identity, considering not only the formal properties of statehood but also the sense of "self," "singularity," and "community" that justify the attachment of international legal obligations to specific territories and social groups²⁹⁴. Overall, not only sovereignty but central concepts and principles of the discipline such as territorial integrity, non-intervention, and self-defense all rely on the exclusive or dominant role of the state²⁹⁵. A few decades ago,

²⁸⁹ COHEN, Jean L.. Whose Sovereignty? Empire Versus International Law. **Ethics & International Affairs**. [S.L.], 2004, p. 3.

²⁹⁰ See: KOSKENNIEMI, Martti. **From apology to utopia: the structure of international legal argument**. Cambridge: Cambridge University Press, 2006.

²⁹¹ NIJMAN, Janne E.. **The Concept of International Legal Personality: an inquiry into the history and theory of international law**. The Hague: T.M.C. Asser Press, 2004, p. 6.

²⁹² KOSKENNIEMI, Martti. The Future of Statehood. **Harv. Int'L. L. J.**, [S.L.], v. 32, n. 2, 1991, p. 407.

²⁹³ CHARLESWORTH, Hilary; CHINKIN, Christine. **The Boundaries of International Law: A Feminist Analysis**. Manchester: Manchester University Press, 2000, p. 170.

²⁹⁴ CRAVEN, Matthew C.R.. The Problem of State Succession and the Identity of States under International Law. **European Journal Of International L.** [S.L.], 1998, p. 162.

²⁹⁵ SCHREUER, Christoph. The Waning of the Sovereign State: Towards a New Paradigm for International-Law? **Eur. J. Int'L L.** [S.L.], 1993, p. 448.

Schreuer affirmed that "The sovereign State is still the chief pillar of our international system, and there is no evidence that it is crumbling or is in danger of collapse."²⁹⁶

Despite ongoing controversies, there is a prevailing consensus that, even if international law has a broader scope, it continues to be primarily applied to relations between states. It is worth noting, however, that sovereignty is no longer seen as absolute as it has been somewhat restricted. Nevertheless, its core remains unchanged, and despite the expansion of international regulations, the fundamental power structure has not been transformed²⁹⁷. As of yet, no alternative to statehood has emerged as a complete substitute and sovereignty remains a cornerstone concept for international law, and that is one of the reasons that justify the discussion proposed in this work.

2.2 A brief review of TWAIL scholarship on sovereignty

Through critical analysis, scholars have highlighted the connection between the colonial project and the establishment of sovereignty as a fundamental aspect of modern international law. TWAIL scholarship has employed historical analysis to uncover inconsistencies and ambiguities in international legal discourse, including the concept of sovereignty. In their examination, these scholars investigated how Europe became the exclusive authority on sovereignty and how this framework was developed²⁹⁸. Such a critical perspective has brought attention to alternative histories that are often obscured by dominant narratives of exclusion and has led to a new understanding of the workings and effects of colonialism²⁹⁹. Postcolonial scholars view colonialism as intimately intertwined with the concepts and structures of international law, with civilizational discourse serving as the basis upon which international law was constructed³⁰⁰.

²⁹⁶ SCHREUER, Christoph. The Waning of the Sovereign State: Towards a New Paradigm for International-Law? *Eur. J. Int'L L.* [S.L.], 1993, p. 453.

²⁹⁷ SCHREUER, Christoph. The Waning of the Sovereign State: Towards a New Paradigm for International-Law? *Eur. J. Int'L L.* [S.L.], 1993, p. 448-449.

²⁹⁸ ANGHIE, Antony. Rethinking Sovereignty in International Law. *The Annual Review Of Law And Social Science*. [S.L.], p. 291-310, 2009.

²⁹⁹ ANGHIE, Antony. Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law. *Harvard International Law Journal*. [S.L.], 1999, p. 7.

³⁰⁰ Anghie contends that "How is law and order to be established among equal and sovereign states' precludes an exploration of the history of the relationship between non-Western states and international law because the non-Western states were deemed to be lacking in full sovereignty almost from the very beginning of modern international law." ANGHIE, Antony. Towards a Postcolonial International Law. *Critical International Law*, [S.L.], 2014, p. 129. Oxford University Press. <http://dx.doi.org/10.1093/acprof:oso/9780199450633.003.0005>.

As argued in the first chapter, the classical history of international law has often been depicted in progressive terms³⁰¹. This may give the impression that international law has always existed, and its core concepts have remained unchanged³⁰² "since the beginning," "always" following the same parameters. Any shifts or transformations would be perceived as means of development and improvement, in which the discipline moves away from a murky past towards an enlightened future. However, critical historiography draws a different picture.

At the end of the 19th century, an international society had not yet emerged beyond Europe, and the fundamental rights of peoples or states were no better protected than they had been a century earlier³⁰³. Europeans still maintained a position of superiority toward their uncivilized others, and colonial wars were a regular occurrence in international affairs. During this time of uncertainty regarding the universal dissemination of civilized principles, international law became intertwined with imperialism³⁰⁴.

The narrative of universality within international law is a recent construct that emerged in that context. This construct was supported by an intimate relationship between law and civilizational discourse, with the latter serving as a benchmark for European societies in contrast to the Third World barbarians. According to Koskenniemi, international lawyers were not indifferent to the humanitarian problems associated with colonialism. They believed it was their responsibility to address these issues by introducing rational public law-based administrative structures to govern colonial territories.

According to Anghie, the conventional narratives framing the Peace of Westphalia as the origin of modern sovereignty "obscures the reality of the experiences of non-Western states that were excluded from the realm of sovereignty and international law."³⁰⁵ If international law was later established as a set of doctrines applicable to all states, connected to imperial expansion³⁰⁶, and a product of the consent of sovereigns, sovereignty was a limited

³⁰¹ KOSKENNIEMI, Martti. **The Gentle Civilizer of Nations: the rise and fall of international law 1870-1960**. Cambridge: Cambridge University Press, 2001, p. 102.

³⁰² KOSKENNIEMI, Martti. **The Gentle Civilizer of Nations: the rise and fall of international law 1870-1960**. Cambridge: Cambridge University Press, 2001, p. 102.

³⁰³ KOSKENNIEMI, Martti. **The Gentle Civilizer of Nations: the rise and fall of international law 1870-1960**. Cambridge: Cambridge University Press, 2001, p. 98.

³⁰⁴ KOSKENNIEMI, Martti. **The Gentle Civilizer of Nations: the rise and fall of international law 1870-1960**. Cambridge: Cambridge University Press, 2001, p. 99.

³⁰⁵ ANGHIE, Antony. Towards a Postcolonial International Law. **Critical International Law**, [S.L.], 2014. Oxford University Press. <http://dx.doi.org/10.1093/acprof:oso/9780199450633.003.0005>, p. 129.

³⁰⁶ ANGHIE, Antony. Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law. **Harvard International Law Journal**. [S.L.], 1999, p. 1.

feature that included only those states with specific cultural practices, meaning that non-Western states were denied the status of sovereigns³⁰⁷.

The export of the European model sovereignty was a key aspect of bringing the benefits of civilization to the colonies³⁰⁸. Westlake contended that the concept of "sovereignty" was exclusive to Europe and that distinct legal frameworks were applied to civilized and uncivilized states, with the latter not being deemed sovereign under international law. Consequently, such states were vulnerable to legal attacks and conquest under the pretense of modernization and civilization³⁰⁹.

The existence of various forms of social organization beyond Europe provided European powers with colonial aspirations with a convenient reason to deny statehood to these communities and annex their territories. The sovereign state had become the universal standard for international actors, and contemporary international law is still structured around this conception. However, as noted by Anghie, international law as it exists today still draws its essence from a common source of Western beliefs. The fundamental norm of the international system, which holds all states to be sovereign equals, has been denied by fact since international law's emergence, as in the sphere of influence that marked the Cold War and the conflicts in Central America and Eastern Europe in the 20th century³¹⁰.

As Simpson points out, even if presented in a different form, new arguments reproduce the structure of the old ones. They undermine the basic principle of international law that all sovereign states are equal, by effectively giving powerful states rights over the less powerful, and reinforce a vocabulary of oppositions, such as the distinction between liberal and neoliberal, democratic and nondemocratic states, premodern and postmodern. The reproduction of old structures undermine the basic principle of international law that states that all sovereign states are equal.

Powerful states are effectively given rights over weaker states, which culminates in the adoption of different sets of rules for different categories of states, undermining those that belong to an "inferior category," with the justification being that the different treatment will help them adopt the "correct" behavior, namely the Western liberal method of functioning as a democratic state³¹¹. The notion of equality among states might then be perceived as a fictional

³⁰⁷ ANGHIE, Antony. Rethinking Sovereignty in International Law. *The Annual Review Of Law And Social Science*. [S.L.], 2009, p. 293.

³⁰⁸ KOSKENNIEMI, Martti. *The Gentle Civilizer of Nations: the rise and fall of international law 1870-1960*. Cambridge: Cambridge University Press, 2001, p. 109-110.

³⁰⁹ ANGHIE, Antony. Rethinking Sovereignty in International Law. *The Annual Review Of Law And Social Science*. [S.L.], 2009, p. 292.

³¹⁰ SIMPSON, Gerry. Is International Law Fair? *Michigan Journal Of International Law*. [S.L.], 1996, p. 622.

³¹¹ SIMPSON, Gerry. Is International Law Fair? *Michigan Journal Of International Law*. [S.L.], 1996, p. 622.

idea, while the significant disparities among states create a persistent tension between reality and the prescriptions of the fundamental principles of international law³¹².

Scheuer highlights that this ideal model of equal relationships between territorial communities has not always existed, as many would argue. According to him, the Roman imperial and medieval models were primarily based on hierarchical models of subservience and dependency³¹³. The Peace of Westphalia in 1648 represented a turning point for international law from a vertically structured imperial model to a horizontally structured inter-State form. However, the author argues that this is an oversimplification of the story, as the Empire persisted until 1806 and the transition to sovereign equality was a gradual process, culminating in the early 20th century with the collapse of the Austro-Hungarian and Ottoman Empires and the replacement of the Concert of Europe as the primary international forum with a global community of sovereign states³¹⁴.

With this context in mind, colonialism would not be considered a deviation from this movement³¹⁵. With the end of the informal empire, European public institutions and sovereignty had to be extended into colonial territories³¹⁶. As Koskenniemi states, arguments about sovereignty in international law emerged first and with particular intensity in conflicts of jurisdiction between European powers to determine the rules applicable in the relationship between the colonizing powers and the indigenous populations³¹⁷.

The discourse surrounding colonialism in late 19th-century international law was sufficiently adaptable to accommodate a diverse range of viewpoints and provided a robust rationale for the expansion of European influence³¹⁸. It relied on the concept of exclusion-inclusion, whereby non-European peoples were deemed ineligible for the same rights, and international lawyers endeavored to supplant indigenous institutions with

³¹² SCHREUER, Christoph. The Waning of the Sovereign State: Towards a New Paradigm for International-Law? *Eur. J. Int'l L.* [S.L.], 1993, p. 449.

³¹³ SCHREUER, Christoph. The Waning of the Sovereign State: Towards a New Paradigm for International-Law? *Eur. J. Int'l L.* [S.L.], 1993, p. 447-448.

³¹⁴ SCHREUER, Christoph. The Waning of the Sovereign State: Towards a New Paradigm for International-Law? *Eur. J. Int'l L.* [S.L.], 1993, p. 447-448.

³¹⁵ SCHREUER, Christoph. The Waning of the Sovereign State: Towards a New Paradigm for International-Law? *Eur. J. Int'l L.* [S.L.], 1993, p. 447-448.

³¹⁶ KOSKENNIEMI, Martti. *The Gentle Civilizer of Nations: the rise and fall of international law 1870-1960*. Cambridge: Cambridge University Press, 2001, p. 121.

³¹⁷ KOSKENNIEMI, Martti. *The Gentle Civilizer of Nations: the rise and fall of international law 1870-1960*. Cambridge: Cambridge University Press, 2001, p. 121.

³¹⁸ KOSKENNIEMI, Martti. *The Gentle Civilizer of Nations: the rise and fall of international law 1870-1960*. Cambridge: Cambridge University Press, 2001, p. 130

European authority, all while claiming to advance universal humanitarianism and eliminate the cultural "otherness" of non-Europeans³¹⁹.

In a critical reflection, Anghie perceives the principle of sovereignty as flexible enough to serve the imperatives of the "civilizing mission" while, at the same time, being reinterpreted in contemporary discourses, such as human rights, governance, and economic liberalization³²⁰. Joanne Baker, in her turn, posits that the historically contingent character of sovereignty allows its meaning and definitions to be adopted by political entities to pursue their objectives of decolonization and social justice.

In an insightful analysis, Anghie contends that instead of approaching international law solely from the perspective of maintaining order among sovereign states, a different approach would focus on the challenge of maintaining order among diverse cultures. This reframing allows us to recognize the significant role played by the clash between European cultures and its 'Other' in determining which entities are deemed fully sovereign and which are considered to possess only imperfect sovereignty. This conflict, rather than merely reinforcing Western sovereignty, actually serves to strengthen it while simultaneously disempowering others through processes of dispossession and subjugation³²¹.

Once a non-European entity is classified as lacking sovereignty, the European sovereign entity gains the authority to take action against it, potentially replacing it and adopting the mission of 'civilizing the natives.' The most extensive exercise of European sovereignty took place not within Europe but in non-European territories, where no opposing sovereignty existed to restrain or challenge European powers. This allowed European powers to operate with their full destructive potential³²².

The mission and dynamic of difference persist in a supposedly post-imperial world through neo-imperialism, which is justified through various means by international law. The concept evolved from the division between "civilized" and "uncivilized" societies, and was transformed into a distinction between "advanced" and "backward" societies during the League of Nations era, with a focus on economic status rather than race or culture. Currently, it takes the form of categorizing countries as 'developed' and 'developing.' As usual, these categories are accompanied by numerous efforts to achieve equalization, implying that

³¹⁹ KOSKENNIEMI, Martti. *The Gentle Civilizer of Nations: the rise and fall of international law 1870-1960*. Cambridge: Cambridge University Press, 2001, p. 130

³²⁰ ANGHIE, Antony. Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law. *Harvard International Law Journal*. [S.L.], 1999, p. 71.

³²¹ ANGHIE, Antony. Towards a Postcolonial International Law. *Critical International Law*, [S.L.], 2014. Oxford University Press. <http://dx.doi.org/10.1093/acprof:oso/9780199450633.003.0005>, p. 134.

³²² ANGHIE, Antony. Towards a Postcolonial International Law. *Critical International Law*, [S.L.], 2014. Oxford University Press. <http://dx.doi.org/10.1093/acprof:oso/9780199450633.003.0005>, p. 134.

underdeveloped nations must be elevated or assimilated³²³. International actors like the International Monetary Fund (IMF) and the World Bank play a significant role in this project, prescribing global standards and theories that often intrude into the economies of non-Western states. The push for 'good governance' as a prerequisite for development also affects the sovereignty of these states³²⁴.

In postcolonial African states, for instance, neoliberal expansionism indicates a resurgence of a well-established narrative that poses a challenge to their economic independence and political autonomy. Management policies emphasizing export-driven growth have been formulated with support from global institutions like the World Bank, IMF, and other lending organizations. This ongoing trend involves collaboration between wealthy corporate interests, supported by market democracies, and international organizations to shape economic values and practices in the Global South³²⁵.

The connections between colonialism and gender in international law has been largely overlooked by TWAIL scholarship. Further research is needed to examine the links between gender and the civilizational discourse that inform many international legal concepts and structures. This exploration will be further developed in the third chapter. It must, however, be explicitly acknowledged that the colonial legacy extends its effects to gender relations as well. A broader understanding of how Western categories of sex, gender, and security were (and still are) imposed over the so-called Third World also helps to highlight how sexual/gendered metaphors have been employed to undermine Third World sovereignty and the alternatives to the Western model of statehood since the emergence of international law.

2.3 Gendered features of colonial metaphors

Perceiving gender as a category that defines and limits the social and cultural experiences of human beings enables us to recognize its crucial role in shaping power dynamics and determining access to power in the production of knowledge within the field of international law. Moreover, it allows us to remain mindful of how the discourse of international law perpetuates gendered and racialized features that undermine the sovereignty of nations and people.

³²³ ANGHIE, Antony. Towards a Postcolonial International Law. **Critical International Law**, [S.L.], 2014. Oxford University Press. <http://dx.doi.org/10.1093/acprof:oso/9780199450633.003.0005>, p. 137.

³²⁴ ANGHIE, Antony. Towards a Postcolonial International Law. **Critical International Law**, [S.L.], 2014. Oxford University Press. <http://dx.doi.org/10.1093/acprof:oso/9780199450633.003.0005>, p. 138.

³²⁵ CLARKE, Kamari Maxine. The Rule of Law Through Its Economies of Appearances: The Making of the African Warlord. **Indiana Journal Of Global Legal Studies**. [S.L.], 2011, p. 34-35.

There is an intimate relationship between the state and the modes of conceptualizing social relations. When it comes to a society organized by the traditional Western model of statehood, especially capitalist states, Karen Sacks identifies a "male bias," meaning a hierarchical way of perceiving the characteristics of other societies. The interpretations of the relative status of men and women in the real or hypothetical history of non-states³²⁶ are always based on the assumption of dominance of one sex over another, mirroring Western culture³²⁷. Peterson, for instance, argues that "Making states is making *sex*," since states were made to ensure intergenerational continuity by constituting and normalizing binary sex/gender difference and heteropatriarchal kinship relations³²⁸.

When it comes to international law, the notion of sovereignty has always carried an implicit and, sometimes, explicit gendered dimension, silencing diverse voices within a state and representing the interests of a male elite³²⁹ as well as reproducing through language and discourse social stereotypes that hierarchize masculine and feminine characteristics³³⁰. Many feminist scholars have called attention to the gendered vocabulary adopted by internationalists and how it reinforced the hierarchical division between the Western and non-Western world. As Charlesworth and Chinkin point out, the exploration and discovery of 'virgin' territory were prerequisites for the legal acquisition of territory through occupation. The authors explain that

Penetration of dark, unbounded territory (*terra nullius*) justified its ownership. Colonialism was represented in an erotic way, with the male colonizer taming, through intercourse, an unbounded, uncontrolled female people. Colonized territories were presented as uncivilized, unable to protect their territory or to resist the well-organized incursions of a superior culture³³¹.

Western sovereignty advanced an idea of civilization that was not blind to gender categories, imposing, for example, a chivalrous regard for women as a hallmark of European civilization³³². But the respect for the female sex was selective. There are strong connections between European civilization and the barbarism that has historically been attributed to

³²⁶ SACKS, Karen. State Bias and Women 's Status. **American Anthropologist**, [S.L.], v. 78, n. 3, 1976, p. 565.

³²⁷ SACKS, Karen. State Bias and Women 's Status. **American Anthropologist**, [S.L.], v. 78, n. 3, p. 565-569, 1976.

³²⁸ PETERSON, Spike V.. The Intended and Unintended Queering of States/Nations. **Studies In Ethnicity And Nationalism**, [S.L.], v. 13, n. 1, 2013, p. 57.

³²⁹ JONES, Emily. **Feminist Theory and International Law: posthuman perspectives**. Abingdon And New York: Routledge, 2023, p. 38.

³³⁰ O'DONOGHUE, Aoife. The Admixture of Feminine Weakness and Susceptibility: Gendered Personifications of the State in International Law. **Melbourne Journal Of International Law**. [S.L.], 2018, p. 233.

³³¹ CHARLESWORTH, Hilary; CHINKIN, Christine. **The Boundaries of International Law: A Feminist Analysis**. Manchester: Manchester University Press, 2000, p. 130.

³³² KOSKENNIEMI, Martti. **The Gentle Civilizer of Nations: the rise and fall of international law 1870-1960**. Cambridge: Cambridge University Press, 2001, p. 335.

"Others" through the lens of violence against women. The discourse of European men has often reflected their own actions by portraying indigenous men as barbaric. Western men were responsible for perpetrating massive violent acts against indigenous women during the process of colonization, yet they assigned the label of untamed, barbaric, and uncivilized to non-Western men. This rhetoric has also served to justify invasions of Third World countries in more recent times, with women's human rights being presented as the justification for these invasions. The argument is that women need to be rescued from the misogynistic hands of underdeveloped societies, as O'Donoghue exemplifies

In 2018, the US administration stated that 'a century ago, civilized nations joined together' to ban chemical weapons and they are once again sending their warriors out to save women and children from a Syrian monster incapable of taking care of its own people³³³.

Colonialism produced the effect of imposing various gender configurations in line with new racial constructs. As postcolonial and decolonial feminist literature has shown, for some indigenous societies gender was not always based on body-oriented conceptualizations and was not necessarily presented in dichotomic terms. Some, such as María Lugones and Oyèrónkẹ Oyèwùmí, argue that this specific way of perceiving gender and using biology to categorize society and determine gender identities was imposed through colonization³³⁴. Gender, for Maria Lugones, is a Western invention and has become a form of power beyond a mere organization principle, by presenting the concept of "coloniality of gender," she makes reference to the specific tool of domination used by Western colonizers to alter the indigenous self and identity³³⁵.

In more recent decades, as human rights discourse emerged, many postcolonial and decolonial scholars have pointed out the complicity of the human rights paradigm with

³³³ O'DONOGHUE, Aoife. The Admixture of Feminine Weakness and Susceptibility: Gendered Personifications of the State in International Law. *Melbourne Journal Of International Law*. [S.L.], 2018, p. 255.

³³⁴ SACKS, Karen. State Bias and Women's Status. *American Anthropologist*, [S.L.], v. 78, n. 3, 1976, p. 568. On the contact between the iroquois and europeans, she states that "Between Iroquois and European the only appropriate meaning of the male/female metaphor was one consonant both with European understanding of proper male/female relations, and European understanding of proper international relations"; GILLERI, Giovanna. Gender as a hyperconstruct in (rare) regional human rights case-law. *European Journal Of Legal Studies*, [S.L.], n. 2, 2020, p. 33.

³³⁵ GILLERI, Giovanna. Gender as a hyperconstruct in (rare) regional human rights case-law. *European Journal Of Legal Studies*, [S.L.], n. 2, 2020, p. 33. See: OYÈWÙMÍ, Oyèrónkẹ. *The invention of women: Making an African sense of Western gender discourses*. University of Minnesota Press, 1997. LUGONES, María. The Coloniality of Gender. In: HARCOURT, Wendy. *The Palgrave Handbook of Gender and Development: Critical Engagements in Feminist Theory and Practice*. [s.i.]: [s.i.], 2016. p. 13-33. LUGONES, María. Toward a Decolonial Feminism. *Hypatia*, [s.l.], v. 25, n. 4, p.742-759, 2010. LUGONES, Maria. Heterosexualism and the Colonial/Modern Gender System. *Hypatia*, [s.l.], v. 22, n. 1, p.186-209, 2007. On the untranslatability of manifold native sexualities deriving from complex indigenous social fabrics, see: COTTET, Caroline; PICQ, Manuela Lavinás. *Sexuality and translation in world politics*. Bristol, England: E-International Relations, 2019.

hegemonic European agendas³³⁶. Additionally, feminist and sexuality activists have emphasized the exclusionary and disciplinary effects of the same paradigm³³⁷. The grading of binary oppositions created by Western modernity continues to construct the dominating metanarrative of masculinist Europe as the embodiment of the highest stage of human development and the pinnacle of global progress, according to Europe's universal indices³³⁸.

The process of universalizing the European experience, achieved by transforming Western paradigms into the central theoretical issues of the discipline, has resulted in the suppression and subordination of alternative experiences and histories. By incorporating gender as a critical concept, the history of international law can be enriched with diverse perspectives. This approach can help to explain not only the success of the civilizing mission, which involved the assimilation of Third World countries into the Western framework of international law, but also how gender, sexual, and racial categories were imposed and how the violent effects of this process continue to persist in the present day.

Indigenous communities and colonized peoples "must be an aspect of the re-conceptualization of state sovereignty within feminist dialogues on international law,"³³⁹ as Gina Heathcote states. Hierarchical and dichotomous categories of inferiority and superiority, such as those based on gender and race, still shape ways of thinking, acting, and perceiving the world. A failure to appreciate the complexity of relations results in a rather limited understanding of sovereignty and its operations, as well as a deficient grasp of the processes and mechanisms that resulted in the universalization of international law.

If the gender structure of Western Europe was based on a hierarchical dichotomy that opposed men and women, humans and nature, and other categories that ultimately reflected gender concepts, international law would not be an exception. While postcolonial theories unveiled the exclusionary nature of the concept of sovereignty towards the "Third World" and its fundamental role in the European civilizing narrative of the 19th century, the feminist approaches inaugurated in the last century departed from feminist theories that investigate how gender is perceived, organized, and produced.

³³⁶ OTTO, Dianne (ed.). **Queering International Law: possibilities, alliances, complicities, risks**. [S.L.]: Routledge, 2018. PUAR, Jasbir. Rethinking Homonationalism. **International Journal Of Middle East Studies**, [S.L.], v. 45, n. 2, p. 336-339, 2013. Cambridge University Press (CUP). <http://dx.doi.org/10.1017/s002074381300007x>.

³³⁷ OTTO, Dianne. Everything is Dangerous: some post-structural tools for rethinking the universal knowledge claims of human rights law. **Australian Journal Of Human Rights**, [S.L.], v. 5, n. 1, 1999, p. 20.

³³⁸ OTTO, Dianne. Everything is Dangerous: some post-structural tools for rethinking the universal knowledge claims of human rights law. **Australian Journal Of Human Rights**, [S.L.], v. 5, n. 1, 1999, p. 31.

³³⁹ HEATHCOTE, Gina. **Feminist Dialogues on International Law: successes, tensions, futures**. [S.L.]: Oxford University Press, 2019, p. 106.

The alternative framework developed in this work also calls for a deeper examination of how sovereignty could be regarded from feminist and TWAIL perspectives. The enormous task of identifying masculine, heterosexual, Western, and white biases and ridding the discipline of them continues, as does the related task of imagining an international law that fulfills its promise of advancing the cause of justice.

2.4 A brief review of feminist scholarship on sovereignty and the state

Feminist scholars have long been interested in the nature of the state and its implications for the international and national social order, adopting various approaches that range from perceiving the state as a potential savior to viewing it as an oppressive institution³⁴⁰. However, these positions might be perceived as too abstract and universal to accurately account for the relationship between states and women³⁴¹. Judith Allen, for instance, challenges the usefulness of the state as a focus for feminist work, describing it as an overly aggregated, unitary, and unspecific category that fails to address the disaggregated and diverse local sites that are of utmost concern to feminists. According to her, the state is too blunt of an instrument to provide effective explanations, analyses, or strategies beyond generalizations³⁴². Similarly, Wendy Brown argues that the multidimensional nature of state power makes it difficult to circumscribe and challenge. She questions whether local investigations might be more appropriate for feminist analysis than focusing on broad categories such as the state³⁴³.

Other feminist writings emphasize the potential of state intervention to address sexual inequality, acknowledging that restructuring the state could lead to significant social change, or are problems associated with assuming that state involvement is always beneficial for women³⁴⁴. Radhika Coomaraswamy highlights that entrusting the state with the responsibility of ensuring women's rights and viewing it as perpetually benign and paternalistic raises

³⁴⁰ CHARLESWORTH, Hilary; CHINKIN, Christine. **The Boundaries of International Law: A Feminist Analysis**. Manchester: Manchester University Press, 2000, p. 165-167.

³⁴¹ CHARLESWORTH, Hilary; CHINKIN, Christine. **The Boundaries of International Law: A Feminist Analysis**. Manchester: Manchester University Press, 2000, p. 167.

³⁴² CHARLESWORTH, Hilary; CHINKIN, Christine. **The Boundaries of International Law: A Feminist Analysis**. Manchester: Manchester University Press, 2000, p. 167.

³⁴³ BROWN, Wendy. **States of Injury: Power and Freedom in Late Modernity**. Princeton: Princeton University Press, 1995, p. 179.

³⁴⁴ CHARLESWORTH, Hilary; CHINKIN, Christine. **The Boundaries of International Law: A Feminist Analysis**. Manchester: Manchester University Press, 2000, p. 165.

serious questions³⁴⁵. Moreover, states do not treat all women equally, and minority women often face a complex relationship with the state, experiencing neglect of their specific interests as well as discriminatory intervention and scrutiny³⁴⁶.

Previous scholarship on the gendered nature of concepts such as sovereignty and the state in various disciplines has been a significant source of inspiration for feminist approaches to international law. Understanding them is crucial to recognize the feminist approaches to scholarship not in isolation, but rather as part of a broader network of interdisciplinary perspectives. Knowledge production is a shared and diffuse process and this awareness also helps to avoid the perception of intellectual production within feminist approaches to international law as unprecedented, as if they were the precursors of an unmatched genre of analysis. Compared to other feminist critiques of legal theory and international relations, feminist approaches to international law emerged relatively late, in the context of expanding feminist scholarship in other fields, which has inspired and influenced their analysis. This section explores how feminist legal theories and approaches to international relations have influenced scholarship on sovereignty within feminist approaches to international law.

2.4.1 Feminist legal theories

Feminist legal theories seek to provide a comprehensive framework for understanding the intricate connections between law, patriarchy, gender, and sexual inequality within liberal legal systems. This effort gained significance in the post-civil rights era when women gained access to formal equality rights, reproductive rights, and anti-discrimination legislation in Western countries³⁴⁷. These theories acknowledge that gender not only functions as a prevailing social discourse but also operates as a hierarchical structure that reinforces male dominance and women's oppression³⁴⁸.

Several distinct approaches emerged within feminist legal theory, each with its own strengths and limitations. These include cultural/relational feminism, radical feminism, the public-private dichotomy, the standpoint/positional epistemology, realist/sociological

³⁴⁵ COOMARASWAMY, Radikha. O bellow like a cow: Women, ethnicity, and the discourse of rights. In: CASTELLINO, Joshua (ed.). **Global Minority Rights**. New York: Routledge, 2011, p. 89-107.

³⁴⁶ CHARLESWORTH, Hilary; CHINKIN, Christine. **The Boundaries of International Law: A Feminist Analysis**. Manchester: Manchester University Press, 2000, p. 165.

³⁴⁷ WEST, Robin. Women in the Legal Academy: A Brief History of Feminist Legal Theory. **7 Fordham L. Rev.** [S.L.], 2018, p. 980.

³⁴⁸ HEATHCOTE, Gina. **The law on the use of force: A feminist analysis**. Abingdon And New York: Routledge, 2012, p. 11.

feminism, and the social injury/harm approach. These approaches aimed to deconstruct and transform gendered legal frameworks so as to not reproduce masculine standards³⁴⁹. The attention was devoted to centering women in the analysis and making them visible in law to advance women's rights³⁵⁰. An important historical figure in feminist legal theory, Robin West, traces the emergence of "feminist jurisprudence" in response to the absence of women in the legal field³⁵¹.

The early 1990s marked the peak of feminist legal theory³⁵², but its influence has endured through a diverse body of scholarship. This legacy inspired feminist approaches to international law, where concepts and strategies from feminist legal theory were adapted to challenge gender biases in international law. Catherine Mackinnon's work has been particularly influential in the realm of the feminist approaches to international law and the role of the state in both domestic and international law³⁵³. Loveday Hodson and Troy Lavers draw inspiration from Mackinnon's "Toward a Feminist Theory of the State" for the feminist international judgments project (FIJP)³⁵⁴, and Hilary Charlesworth has acknowledged Mackinnon's significant contribution to feminist analysis in international law and how it has influenced her own scholarship.

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 injustices³⁵⁵.

Mackinnon's analysis, rooted in radical feminism, which she considered the only "feminism unmodified," was based on a comprehensive feminist theory that identifies sex as

³⁴⁹ PRUITT, Lisa R.. A Survey of Feminist Jurisprudence. *U. Ark. Little Rock L. Rev.* [S.L.], 1994, p. 188. CAIN, Patricia A.. Feminist Jurisprudence: Grounding the Theories. *Berkeley Women's L.J.* [S.L.], 1998, p. 195.

³⁵⁰ PRUITT, Lisa R.. A Survey of Feminist Jurisprudence. *U. Ark. Little Rock L. Rev.* [S.L.], 1994, p. 191.

³⁵¹ PRUITT, Lisa R.. A Survey of Feminist Jurisprudence. *U. Ark. Little Rock L. Rev.* [S.L.], 1994, p. 188.

³⁵² WEST, Robin. Women in the Legal Academy: A Brief History of Feminist Legal Theory. *7 Fordham L. Rev.* [S.L.], 2018, p. 995.

³⁵³ See: WRIGHT, Shelly. Economic Rights and Social Justice: A Feminist Analysis of Some International Human Rights Conventions. *Australian Year Book Of International Law* 12. [S.L.], p. 241-264, 1988. CHARLESWORTH, Hilary; CHINKIN, Christine; WRIGHT, Shelley. Feminist Approaches to International Law. *American Journal Of International Law*, [S.L.], v. 85, n. 4, p. 613-645, 1991. Cambridge University Press (CUP). <http://dx.doi.org/10.2307/2203269>. CHINKIN, Christine. Rape and sexual abuse of women in international law. *European Journal Of International Law*. [S.L.], p. 326-341, 1994.

³⁵⁴ HODSON, Loveday; LAVERS, Troy (ed.). *Feminist Judgments in International Law*. Oxford: Hart Publishing, 2019, p. 14. OTTO, Dianne. Feminist Judging in Action: reflecting on the feminist judgments in international law project. *Feminist Legal Studies*, [S.L.], v. 28, n. 2, 2020, p. 211. Springer Science and Business Media LLC. <http://dx.doi.org/10.1007/s10691-020-09421-7>, p. 3.

³⁵⁵ CHARLESWORTH, Hilary. Book review of Catharine MacKinnon, Are Women Human? And Other International Dialogues. *American Journal Of International Law*. [S.L.], 2013, p. 719.

the fundamental basis of women's oppression and men's power³⁵⁶. According to her, "Sexuality is to feminism what work is to Marxism."³⁵⁷ While acknowledging the differences among women based on factors such as race, class, and culture, Mackinnon maintains that women as a group share a position of subordination and subjugation to male domination. This is primarily due to men's sexual control over women.

According to Mackinnon, law's supposed objectivity is actually male-centered, which reinforces the impossibility of a woman's perspective by presenting the male as the norm and erasing any indication of gender bias in the name of impartiality. This renders the rule of law an ideology that further cements the male perspective not only as a viewpoint but also as the definitive interpretation of the Constitution³⁵⁸ when it comes to domestic law.

When formulating her equality theory, Drucilla Cornell shared Mackinnon's belief that any theory of gender equality must address how sexual identity, particularly femininity, is constructed and subordinated in a gendered hierarchy. However, Cornell argues that Mackinnon fails to perceive feminine sexual difference as anything other than victimization, and proposes as an alternative, the concept of "equivalent rights" as a more comprehensive and affirmative approach to reducing feminine sexual difference to victimization³⁵⁹.

Cornell values and celebrates the specificity of femininity³⁶⁰ and advocates for a theory of equality that does not reinforce the norm of masculine privilege or uphold gender hierarchies. According to her, the challenge is to confront the relationship between sex and sexuality and develop a theory that does not simply reinforce the privilege of the masculine as the norm and instead challenges the gender hierarchy³⁶¹.

Patriarchy's existence isn't tied to a specific understanding of masculine or feminine nature³⁶². Butler counters Mackinnon's and Cornell's views by asserting that gender cannot be separated from the political and cultural intersections that create and maintain it³⁶³. Any reality, including male domination, cannot fully solidify, given the malleability of

³⁵⁶ PRUITT, Lisa R.. A Survey of Feminist Jurisprudence. *U. Ark. Little Rock L. Rev.*. [S.L.], 1994, p. 197.

³⁵⁷ MACKINNON, Catherine A. *Toward a Feminist Theory of the State*. Cambridge: Harvard University Press, 1989, p. 3.

³⁵⁸ CORNELL, Drucilla. Review: Sexual Difference, the Feminine, and Equivalency: A Critique of MacKinnon's *Toward a Feminist Theory of the State*. *The Yale Law Journal*. [S.L.], 1991, p. 2254.

³⁵⁹ CORNELL, Drucilla. Review: Sexual Difference, the Feminine, and Equivalency: A Critique of MacKinnon's *Toward a Feminist Theory of the State*. *The Yale Law Journal*. [S.L.], 1991, p. 2248.

³⁶⁰ CORNELL, Drucilla. Review: Sexual Difference, the Feminine, and Equivalency: A Critique of MacKinnon's *Toward a Feminist Theory of the State*. *The Yale Law Journal*. [S.L.], 1991, p. 2249, 2265.

³⁶¹ CORNELL, Drucilla. Review: Sexual Difference, the Feminine, and Equivalency: A Critique of MacKinnon's *Toward a Feminist Theory of the State*. *The Yale Law Journal*. [S.L.], 1991, p. 2249, 2272.

³⁶² SCHROEDER, Jeanne L.. *Feminism Historicized: Medieval Misogynist Stereotypes in Contemporary Feminist Jurisprudence*. *Iowa Law Review*. [S.L.], 1990, p. 1136-1137.

³⁶³ BUTLER, Judith. *Problemas de Gênero: feminismo e subversão da identidade*. 15. ed. Rio de Janeiro: Civilização Brasileira, 2017, p. 21.

institutionalized meaning through language, allowing reinterpretation³⁶⁴. Hence, feminist jurisprudence and gender theory should acknowledge that present-day stereotypes are culturally dependent.

Other scholars, like Patricia Cain³⁶⁵ and Drucilla Cornell³⁶⁶, criticized feminist legal theories for neglecting diverse women's experiences, sidelining voices of lesbians and black women. Schroeder argues that examining the ideas of intellectual pioneers who shaped concepts in contemporary law reveals the perpetuation of existing preconceptions. Modern feminist legal theory faced critiques for adopting a male-centric view of femininity or reinforcing a rigid division between genders. Schroeder advocates for historical analysis to expose the ethnocentric bias in feminist agendas, suggesting that integrating "feminine values" into jurisprudence won't necessarily lead to a more liberated world³⁶⁷.

Butler questioned feminist politics, linking the discourse of legitimization to objectives of exclusion. Law, as she contends, shapes both reality and discourse. Juridical power doesn't just represent but produces, concealing the concept of "a subject before the law" to legitimize its own control. Feminist critique must delve beyond representation to comprehend how the category "women" is shaped and confined by existing power structures³⁶⁸.

Jeanne Schoeder argues standard interpretations are conservative and ahistorical in explaining masculine and feminine nature and modern sexual law's foundations³⁶⁹. These interpretations stem from late 20th-century American white professionals, ignoring diverse experiences across cultures and history. Pruitt criticized 1990s feminist jurisprudence for perpetuating stereotypes about women's nature³⁷⁰. Deriving essentialist theories from individual experiences is deemed an act of cultural arrogance and prone to error³⁷¹.

In conclusion, the critiques directed at modern feminist legal theory underscore its susceptibility to perpetuating a dominant, male-centric definition of femininity. This has often

³⁶⁴ CORNELL, Drucilla. Review: Sexual Difference, the Feminine, and Equivalency: A Critique of MacKinnon's Toward a Feminist Theory of the State. *The Yale Law Journal*. [S.L.], 1991, p. 2264.

³⁶⁵ CAIN, Patricia A.. Feminist Jurisprudence: Grounding the Theories. *Berkeley Women's L.J.* [S.L.], p. 191-214, 1998.

³⁶⁶ CORNELL, Drucilla. Review: Sexual Difference, the Feminine, and Equivalency: A Critique of MacKinnon's Toward a Feminist Theory of the State. *The Yale Law Journal*. [S.L.], p. 2247-2275, 1991.

³⁶⁷ SCHROEDER, Jeanne L.. Feminism Historicized: Medieval Misogynist Stereotypes in Contemporary Feminist Jurisprudence. *Iowa Law Review*. [S.L.], 1990, p. 1138-1139.

³⁶⁸ BUTLER, Judith. *Gender Trouble: feminism and the subversion of identity*. New York: Routledge, 2006, p. 3-4.

³⁶⁹ SCHROEDER, Jeanne L.. Feminism Historicized: Medieval Misogynist Stereotypes in Contemporary Feminist Jurisprudence. *Iowa Law Review*. [S.L.], 1990, p. 1137.

³⁷⁰ PRUITT, Lisa R.. A Survey of Feminist Jurisprudence. *U. Ark. Little Rock L. Rev.* [S.L.], 1994, p. 187.

³⁷¹ SCHROEDER, Jeanne L.. Feminism Historicized: Medieval Misogynist Stereotypes in Contemporary Feminist Jurisprudence. *Iowa Law Review*. [S.L.], 1990, p. 1137.

resulted in oversimplified distinctions between genders that inadvertently reinforce divisive dichotomies³⁷². Despite these criticisms, feminist legal theories have played a pivotal role in shaping feminist approaches to international law, what might also provide clues to understand some of its gaps and pitfalls. At the time, these theories offer profound insights into the intricate connections between law and women, providing a robust foundation for understanding how gender operates within legal systems. By engaging with and challenging traditional legal disciplines, feminist legal theories have not only expanded our comprehension of gender dynamics but have also paved the way for more inclusive and equitable legal frameworks on both domestic and international scales.

2.4.2 Feminist theories on the state

While some feminist writings underscore the potential of state intervention in addressing sexual inequality, acknowledging that restructuring the state could lead to substantial societal changes, there are inherent complexities associated with assuming that state involvement is universally advantageous for women's interests³⁷³. Radhika Coomaraswamy emphasizes that assigning the state the responsibility of safeguarding women's rights and viewing it as inherently benign and paternalistic raises critical questions³⁷⁴. Additionally, it is important to recognize that states do not treat all women uniformly, as minority women often navigate a nuanced relationship with the state. This interaction can involve neglect of their specific concerns, as well as instances of discriminatory intervention and surveillance³⁷⁵.

In the pursuit of understanding the interplay between the state and women, Catherine Mackinnon contends that a comprehensive feminist theory of the state is imperative³⁷⁶. She suggests that this theoretical framework should examine the intricate dynamics between the state and society within a context specific to sex, focusing on how law operates as a form of

³⁷² CORNELL, Drucilla. Review: Sexual Difference, the Feminine, and Equivalency: A Critique of MacKinnon's Toward a Feminist Theory of the State. *The Yale Law Journal*. [S.L.], 1991, p. 2251.

³⁷³ CHARLESWORTH, Hilary; CHINKIN, Christine. *The Boundaries of International Law: A Feminist Analysis*. Manchester: Manchester University Press, 2000, p. 165.

³⁷⁴ COOMARASWAMY, Radhika. To bellow like a cow: Women, ethnicity, and the discourse of rights. In: *Global Minority Rights*. Routledge, 2017, p. 89-107.

³⁷⁵ CHARLESWORTH, Hilary; CHINKIN, Christine. *The Boundaries of International Law: A Feminist Analysis*. Manchester: Manchester University Press, 2000, p. 165.

³⁷⁶ MACKINNON, Catherine A.. *Toward a Feminist Theory of the State*. Cambridge: Harvard University Press, 1989, p. 158.

state power in a society where power is inherently gendered³⁷⁷. Mackinnon presents her theoretical insights in her work "Towards a Feminist Theory of the State." In this work, she portrays the state as a platform that facilitates male domination over women and provides a metatheory to analyze the origins of male dominance and its consequences for the legal treatment of women.

According to Mackinnon, the state embodies and reinforces masculine values that perpetuate male dominance while marginalizing and dehumanizing women³⁷⁸. The power dynamics between men and women are institutionalized through the state³⁷⁹, extending into both private and public spheres of social existence. The law, in this context, becomes a tool for the reinforcement of male interests and the perpetuation of gender-based domination³⁸⁰.

Mackinnon contends that patriarchal domination arises from the power of men, whether institutionalized through the state or not. In contrast, Hoffman's perspective is that "It is not simply that the domination of men is like the sovereignty of the state. Rather, it is a question of arguing that men exercise their domination through the state and that, without the sovereign state, they would not be able to control women in a patriarchal manner."³⁸¹ Many share the opinion that Mackinnon does not systematically outline a feminist theory of the state³⁸². Some, in response, would argue that feminism does not even need a theory of the state³⁸³.

However, treating the state either as an unequivocal savior or as an oppressor that operates uniformly across contexts might oversimplify the intricate dynamics at play³⁸⁴. Judith Allen raises pertinent questions about the utility of centering feminist work solely on the state. She critiques the state as a highly aggregated, unitary category that lacks specificity to address the diverse and disaggregated local contexts that are of primary concern to feminists. According to Allen, the state's broad nature may hinder effective explanations, analyses, or

³⁷⁷ MACKINNON, Catherine A.. **Toward a Feminist Theory of the State**. Cambridge: Harvard University Press, 1989, p. 159.

³⁷⁸ MACKINNON, Catherine A.. **Toward a Feminist Theory of the State**. Cambridge: Harvard University Press, 1989, p. 169.

³⁷⁹ MACKINNON, Catherine A.. **Toward a Feminist Theory of the State**. Cambridge: Harvard University Press, 1989, p. 170.

³⁸⁰ MACKINNON, Catherine A.. **Toward a Feminist Theory of the State**. Cambridge: Harvard University Press, 1989, p. 170.

³⁸¹ HOFFMAN, John. Is there a case for a feminist critique of the state? **Contemporary Politics**, [S.L.], v. 4, n. 2, p. 164, 1998. Informa UK Limited. <http://dx.doi.org/10.1080/13569779808449958>.

³⁸² ROBINSON, Laura M.. Toward a Feminist Theory of the State by Catherine A. MacKinnon. **The Canadian Journal Of Sociology**. [S.L.], 1993, p. 103. BERTRAND, Marie Andrée. Towards a Feminist Theory of the State by Catharine A. MacKinnon. **Social Justice**. [S.L.], 1990, p. 97-98.

³⁸³ ALLEN, Judith. Does Feminism Need a Theory of "The State"? In: WATSON, Sophie (ed.). **Playing the state: Australian feminist interventions**. London: Verso, 1990, p. 22.

³⁸⁴ CHARLESWORTH, Hilary; CHINKIN, Christine. **The Boundaries of International Law: A Feminist Analysis**. Manchester: Manchester University Press, 2000, p. 167.

strategic responses, necessitating a more nuanced approach³⁸⁵.

Similarly, Wendy Brown advances the discussion by highlighting the multidimensional nature of state power. Brown contends that the complexity and breadth of state power make it challenging to delineate and confront effectively. She suggests that focusing solely on the state might not capture the full spectrum of power dynamics at play. Instead, she posits that localized investigations, which delve into specific contextual nuances, might provide more insightful avenues for feminist analysis³⁸⁶.

According to her, while all forms of state power bear a gendered dimension, not all modalities of state power manifest the same aspects of masculinism. Therefore, constructing a feminist theory of the state necessitates the concurrent task of articulating, deconstructing, and interconnecting the multiple threads of power that encompass both masculinity and the state. Given that state power and male dominance lack a singular, unified structure, a feminist theory of the state is better understood as a complex network rather than a linear argument. It involves navigating an intricate matrix of often contradictory strategies, technologies, and discourses of power³⁸⁷.

The discourse on the state's implications for women within feminist theory is multifaceted and dynamic. This discourse underscores the need for a sophisticated understanding of the state's role in shaping gender relations and provides crucial insights into power dynamics that impact women's lives. Recognizing the limitations of broad categorizations and embracing nuanced approaches are fundamental to advancing the feminist discourse on the state and its intricate relationship with women.

2.4.3 Gendering sovereignty in international relations and international law

The concept of sovereignty in feminist legal theories takes on various forms, ranging from philosophical vocabulary to political and social theories. Often, it refers to the autonomous and dominant character of the male subject, which is reflected in the power of the state. In the field of international relations (IR), discussions about sovereignty seem to be better grounded, naturally, in the vocabulary and context of international law. The emergence of a feminist critique in international relations also provoked significant impacts on the scholarship of feminist approaches to international law. IR feminist critique has aimed to

³⁸⁵ ALLEN, Judith. Does Feminism Need a Theory of “The State”? In: WATSON, Sophie (ed.). **Playing the state**: Australian feminist interventions. London: Verso, 1990, p. 21-38.

³⁸⁶ BROWN, Wendy. Finding the Man in the State. **Feminist Studies**. [S.L.], 1992, p. 14-16.

³⁸⁷ BROWN, Wendy. Finding the Man in the State. **Feminist Studies**. [S.L.], 1992, p. 14.

reveal the gendered foundation of international relations since, according to them, previous IR research on the state had failed to give sufficient attention to gender and its function in maintaining the state and its operations, or to the fact that men dominate the public sphere of the state and interstate power.

The statist model of sovereignty has made feminist concerns less visible in international law. The traditional understanding of international law as solely applicable to sovereign states has prevented scholars from bridging abstract concepts, such as sovereignty, to the everyday lives of individuals, especially women. According to Hoffman, writing about women requires taking men into account, while exploring the interactions between men and women requires examining issues concerning power, privilege, hierarchy, violence, and the state³⁸⁸.

Feminist scholarship in international relations inquired into the impact of gender on the theory and practice of the discipline, as well as the gender-specific consequences of international processes³⁸⁹. The participation of women, their experiences, and their unique perspectives seemed, therefore, to provide more comprehensive and insightful knowledge capable of surpassing conventional androcentric accounts³⁹⁰. Spike V. Peterson identified several feminist IR dialogues, including discussions of women's rights as part of human rights discourses, women's involvement in peace and environmental activism, investigations of women's political activities, and the examination of gender's role in militaries, nationalism, foreign politics, and other related topics³⁹¹.

In 1988, Ann Tickner sought to reformulate the principles of political realism developed by Hans Morgenthau from a feminist perspective. She argued that the exclusion of women from international relations was not only discriminatory but also a result of a

³⁸⁸ HOFFMAN, Jon. **Gender and Sovereignty**: feminism, the state and international relations. New York: Palgrave, 2001, p. 4.

³⁸⁹ HALLIDAY, Fred. State and Society in International Relations: a second agenda. **Millennium**: Journal of International Studies, [S.L.], v. 16, n. 2, p. 420, 1987. SAGE Publications. <http://dx.doi.org/10.1177/03058298870160022701>.

³⁹⁰ HAWKESWORTH, Mary E.. Knowers, Knowing, Known: Feminist Theory and Claims of Truth. **Signs**, [S.L.], v. 14, n. 3, 1989, p. 557.

³⁹¹ PETERSON, V. Spike (ed.). **Gendered States: feminist (re)visions of international relations**. Colorado: Lynne Rienner, 1992, p. 16. See: HALLIDAY, Fred. Hidden From International Relations: Women and the International Arena. **Millennium**: Journal of International Studies, [s.l.], v. 17, n. 3, p.419-428, 1988. SAGE Publications. <http://dx.doi.org/10.1177/03058298880170030701>. PETERSON, Spike V.. Whose rights? A critique of the "givens" in human rights discourse. **Alternatives**. [S.L.], p. 303-344. 1990. CHARLTON, Sue Ellen M.; EVERETT, Jana; STAUDT, Kathleen (ed.). **Women, the state, and development**. New York: State University Of New York Press, 1989. HARRINGTON, Mona. Feminism and Foreign Policy. In: MILLER, Linda B.; SMITH, Michael Joseph (ed.). **Ideas And Ideals**: essays on politics in honor of Stanley Hoffmann. Abingdon And New York: Routledge, 1994. p. 359-375. <https://doi.org/10.4324/9780429033957>.

self-selective process perpetuated by the way in which the subject was taught³⁹². Later, she called for a reformulation of concepts such as "power," "security," and "sovereignty," which "have been framed in terms we associate with masculinity."³⁹³ Tickner argued that modern states and contemporary interstate systems depend, at least in part, on the perpetuation of unequal gender relations, where women's voices are frequently suppressed by conventional theories that rely on the political views of powerful men to comprehend and direct state power.

Four years later, the book "Gendered States," edited by Spike V. Peterson, presented a compelling critique of the neglect of gender in researches on statehood in international relations. The publication was the result of a conference called "Gender and International Relations" and part of a broader project named "The Gendered Construction of State Society Relationships: Its Implications for International Relations."³⁹⁴ The central question of the book was how the gendered construction of state-society relationships affects international relations theory and practice, exploring the implications of the fact that men's analysis and experience have shaped public understanding of the state's nature and purpose³⁹⁵.

Part of classic international relations scholarship focused on how sovereignties produce identities that legitimize national and international orders³⁹⁶. The state plays a crucial role in determining economic development, social security, individual freedom, and even life and death through the development of advanced weaponry³⁹⁷. The state's development is shaped by a dialectical process, and its construction of security and sovereignty, as well as its use of militarism and nationalist ideologies, play a significant role in consolidating and effectively reproducing centralized authority³⁹⁸. However, concentrating authority at the level of national government has also enabled abuses of power, and exercising power internally, beyond external scrutiny, has been easier due to the protection provided by sovereignty.

³⁹² TICKNER, J. Ann. Hans Morgenthau's principles of political realism: A feminist reformulation. *Millennium*. [S.L.], 1988, p. 430.

³⁹³ HOFFMAN, Jon. *Gender and Sovereignty: feminism, the state and international relations*. New York: Palgrave, 2001, p. 21.

³⁹⁴ PETERSON, V. Spike (ed.). *Gendered States: feminist (re)visions of international relations*. Colorado: Lynne Rienner, 1992, p. x.

³⁹⁵ PETERSON, V. Spike (ed.). *Gendered States: feminist (re)visions of international relations*. Colorado: Lynne Rienner, 1992, p. x.

³⁹⁶ WEBER, Cynthia. *Queer International Relations: sovereignty, sexuality and the will to knowledge*. New York: Oxford University Press, 2016, p. 2.

³⁹⁷ PETERSON, V. Spike (ed.). *Gendered States: feminist (re)visions of international relations*. Colorado: Lynne Rienner, 1992, p. 2.

³⁹⁸ PETERSON, V. Spike (ed.). *Gendered States: feminist (re)visions of international relations*. Colorado: Lynne Rienner, 1992, p. 5.

Additionally, the imperative to safeguard the national community from external threats has often led to repression at the internal level.

As a dynamic entity, the state continuously evolves and adjusts its goals as it interacts with and disengages from other social forces. Perceiving the state not as a fixed object, but as an ongoing project that must be interpreted in its cultural, temporal, and spatial context³⁹⁹ allowed feminists to provide a more comprehensive analysis of the impacts of statehood and sovereignty in many different contexts.

By the early 1990s, a consolidated body of feminist scholarship had already been established in IR, including literature on the role of the state and sovereignty in the discipline. However, the same could not be said about the field of international law. Feminist approaches to international law drew heavily on the insights of international relations specialists such as Cynthia Enloe, Spike V. Peterson, Ann Tickner, and Jindy Pettman. These scholars provided fresh and insightful critiques on the building blocks of international law and relations, including the state, sovereignty, war, and peace. According to Hilary Charlesworth, Jindy Pettman's work was particularly significant because of her emphasis on the relationship between gender, race, nationality, and class. She affirms, that

Feminist international relations (IR) scholarship offered international lawyers the tools, and the courage, to challenge the claim that international law supplies a rational, detached, and universal form of justice. It allowed us to argue that international law is both sexed and gendered and that this has skewed the apparently impartial discipline⁴⁰⁰.

The traditional notion of international law as applicable only to sovereign states has hindered scholars from connecting abstract entities and the fictional category of sovereignty to the concrete lives of individuals, particularly women. By acknowledging the gendered nature of international relations, feminist scholarship has highlighted the ways in which the statist model of sovereignty has made feminist concerns less visible.

2.5 Sovereign men, sovereign states

Among feminists, the concept of sovereignty is frequently used to signify a patriarchal concept of domination and monopoly⁴⁰¹. According to Mackinnon, "Men are sovereign in

³⁹⁹ PETERSON, V. Spike (ed.). *Gendered States: feminist (re)visions of international relations*. Colorado: Lynne Rienner, 1992, p. 4.

⁴⁰⁰ CHARLESWORTH, Hilary. Worlding Women in International Law. In: D'COSTA, Bina; LEE-KOO, Katrina (ed.). *Gender and Global Politics in the Asia-Pacific*. New York: Palgrave Macmillan Ltd, 2009, p. 20.

⁴⁰¹ HOFFMAN, Jon. *Gender and Sovereignty: feminism, the state and international relations*. New York: Palgrave, 2001, p. 21.

society in the way that Austin describes law as sovereign: a person or group whose commands are habitually obeyed and who is not in the habit of obeying anyone else"⁴⁰². Many scholars share with Mackinnon the understanding that men have been the sole source of political and legal authority. According to her, the power of men over women throughout society is organized as the power of the state. This point of view suggests that traditionally, law have marginalized women's perspectives, relying exclusively on powerful men's interpretations of the world to govern society and state actions.

One argument commonly raised is that men hold a privileged position within society, while women are marginalized in decision-making and platforms of power, resulting in the prioritization of male interests through state institutions⁴⁰³. Feminist scholars have repeatedly scrutinized the notion of sovereignty as one that embodied the idea of self-representation of Western male rationality and reflects the nature of statehood both internally and externally.

The dominant modern Western notion of subjectivity entails the concept of a free and rational sovereign individual who claims some kind of authority over others who are disqualified. Women are perceived as falling outside the closure of moral agency in the pattern of dualistic polarities that operate as power differentials, and where the foundational distinction between male and female authorizes an infinite set of binary differences based on supposedly natural masculine and feminine qualities⁴⁰⁴.

Nancy Hirschmann notes that in liberal theory, the value of equality is based on the notion of equal freedom and the protection of individual spheres of action from external interference⁴⁰⁵. Within the framework of classical liberalism, to which the concepts of freedom, equality, and sovereignty are closely related, women have been denied sovereignty⁴⁰⁶, which has been typically referenced in terms of men's autonomy and "independence" in the public sphere.

The principle of sovereign equality plays a crucial role in the international legal system. However, feminist critique highlights its limited practical application and widespread

⁴⁰² MACKINNON, Catherine A. **Toward a Feminist Theory of the State**. Cambridge: Harvard University Press, 1989, p. 169-170.

⁴⁰³ MACKINNON, Catherine A.. **Toward a Feminist Theory of the State**. Cambridge: Harvard University Press, 1989, p. 170.

⁴⁰⁴ SHILDRICK, Margrit. **Leaky Bodies and Boundaries: feminism, postmodernism and (bio)ethics**. New York: Routledge, 2015, p. 146-147.

⁴⁰⁵ HIRSCHMANN, Nancy J.. Domestic Violence and the Theoretical Discourse of Freedom. **Frontiers: A Journal Of Women Studies**. [S.L.], 1996, p. 129.

⁴⁰⁶ HOFFMAN, Jon. **Gender and Sovereignty: feminism, the state and international relations**. New York: Palgrave, 2001, p. 22. HIRSCHMANN, Nancy J.; STEFANO, Christine di (ed.). **Revisoning the political: Feminist reconstructions of traditional concepts in Western political theory**. New York: Routledge, 1996, p. 55

contestation or disregard. Both feminists and postcolonial scholars argue that international law has failed to establish a coherent theory of equality or inequality and acknowledge the existence of inherently coercive relationships influenced by colonialism⁴⁰⁷.

In their influential work "The Boundaries of International Law: A Feminist Analysis," Hilary Charlesworth and Christine Chinkin dedicate a chapter to examining the concept of the state in international law. They assert a strong connection between the notions of independence, sovereignty, and Western ideals of masculinity⁴⁰⁸. Citing Benedict Kingsbury, who observed a "relationship of mutual containment between sovereignty and inequality,"⁴⁰⁹ Charlesworth and Chinkin argue that while sovereignty theoretically prevents certain forms of inequality, it fails to address others.

According to Charlesworth and Chinkin, inequality among political and legal units can impose limitations on sovereignty by establishing hierarchies. Furthermore, the emphasis placed on sovereignty shields internal inequalities within states from international scrutiny. While the principle of equality aims to facilitate specific objectives by providing access to established institutions and systems, such as initiatives for gender equality, these measures do not challenge the underlying hierarchies of power and wealth upon which they are constructed⁴¹⁰.

Some could advocate for the replacement of the autonomous male model of the state with a female counterpart, arguing that a feminized state would impact international law-making, potentially increasing flexibility. Harrington suggests a feminist international law that formulates rules democratically, responding to emerging problems, rather than relying on abstract, universal prescriptions by sovereign states. Nonetheless, such strategies have limitations. They uphold the idea of the state as a unitary entity, undermining the recognition of non-state actors in international law, and also rely on contested notions of women as naturally caring and nurturing agents⁴¹¹.

⁴⁰⁷ HILARY CHARLESWORTH. **The New United Nations "Gender Architecture": a room with a view?**. In: ARMIN VON BOGDANDY (org.). **Max Planck Yearbook Of United Nations Law**. Leiden: Martinus Nijhoff Publishers, 2013, p. 54.

⁴⁰⁸ CHARLESWORTH, Hilary; CHINKIN, Christine. **The Boundaries of International Law: A Feminist Analysis**. Manchester: Manchester University Press, 2000, p. 134.

⁴⁰⁹ KINGSBURY, Benedict. Whose International Law? Sovereignty and Non-State Groups. **ASIL Proceedings**. [S.L.], p. 1-13, 1994.

⁴¹⁰ HILARY CHARLESWORTH. **The New United Nations "Gender Architecture": a room with a view?**. In: ARMIN VON BOGDANDY (org.). **Max Planck Yearbook Of United Nations Law**. Leiden: Martinus Nijhoff Publishers, 2013. p. 54-55 .

⁴¹¹ CHARLESWORTH, Hilary; CHINKIN, Christine. **The Boundaries of International Law: A Feminist Analysis**. Manchester: Manchester University Press, 2000, p. 168.

In these arguments, a common theme emerges, wherein sovereign states are depicted as individual men, implying that they mirror human behavior within society. This portrayal is accomplished by attributing human characteristics to the state. Feminist perspectives have thoroughly examined this phenomenon, not only criticizing the gendered discourse of international law but also employing their own personifications to expose the gendered assumptions.

Their goal is to establish links between the abstract notion of states and their tangible effects on the material world. Feminist scholarship commonly asserts that the public world, including languages and institutions, reflects an inherent opposition between men and women. This binary opposition is extended by feminist scholars to encompass all aspects of human life, allowing for the application of the same reasoning to non-human objects and concepts.

2.5.1 Assessing the fictional entity of the state

The state, although fictional, still exerts profound effects on the material world. According to Cartesian and Kantian accounts, rationality surpasses the physical body, and disembodied rationality becomes essential for the existence of law's central subjects such as states. The Kantian concept of rational agency, crucial in Western law, depends on disembodied reason, establishing universal knowledge a priori, while the body and its particularities are subordinate in knowledge construction and accumulation.

While the embodiment of the Kantian transcendental self is necessary for knowledge production in the phenomenal world, the body remains external to reason, hindering pure rationality⁴¹². This opposition shapes legal concepts and the definition of the legal person, which is defined by universal and abstract characteristics that transcend embodiment. Gear argues that the disembodiment of reason assumes an intimate relationship between rationality and gender, where rationality is disembodied but to be recognized as rational requires identification with maleness, and to be recognized as male requires a particular morphology. The privileging of a particular kind of body is thus inherent in the disembodiment of reason⁴¹³.

The legal person is a construct that does not necessarily rely on a "thick, flesh and blood human being" but on a highly selective construct, the ideal type of white, Eurocentric,

⁴¹² RICHARDSON, Janice; SANDLAND, Ralph. **Feminist perspectives on law and theory**. Abingdon And New York: Routledge, 2013.

⁴¹³ GREAR, Anna. Deconstructing Anthropos: a critical legal reflection on 'anthropocentric' law and anthropocene 'humanity'. **Law And Critique**, [S.L.], v. 26, n. 3, 2015, p. 235.

property-owning masculinity⁴¹⁴. Ahmed notes that the disembodiment of the masculine perspective inscribes a body that is so comfortable it goes unnoticed, as it serves as a home for the mind without interruption or confusion from irrationalism, bleeding, or pregnancy⁴¹⁵.

Within the Western, male, and white paradigm, social life establishes a hierarchy between a standard and its opposition. This hierarchy constructs scientific rationality and the unified legal subject through binary concepts such as body and mind, rational and irrational. One concept is ascribed a positive value, while the other assumes a subordinate position⁴¹⁶. According to Otto, the subordinate term is not entirely erased or self-defining but rather disciplined by the dominant autonomous term⁴¹⁷. In the realm of international law, those individuals granted positions of superiority and autonomy hold power, whereas those opposed to them are subordinated. Consequently, the former is typically associated with masculine attributes, while the latter assumes feminine characteristics.

Charlesworth offers a critique of the binary oppositions that underlie international legal discourse. She argues that the vocabulary of objectivity, logic, and order ascribes a higher value to statements associated with masculinity, while subjective, emotional, or 'disordered' discourse is coded as feminine and consequently devalued⁴¹⁸. In discussions concerning the state, authors often attribute human characteristics to it. However, this personification is not generic, but specific to a particular subject. The development of this fictional image has a long history, and its effects overflow into reality.

Karen Knop challenges the analogy between individual and state legal personality, considering it unsustainable due to underlying assumptions about individual and state sovereignty. She proposes understanding the state as composed of individuals and groups, rather than drawing a direct analogy between individual sovereignty in domestic law and state sovereignty in international law. Knop critiques feminist approaches that interchange these conceptions of state sovereignty without considering the distinct constructions of international law that underpin them. She specifically criticizes accounts that use the domestic analogy to

⁴¹⁴ GREAR, Anna. Deconstructing Anthropos: a critical legal reflection on 'anthropocentric' law and anthropocene 'humanity'. *Law And Critique*, [S.L.], v. 26, n. 3, 2015, p. 237.

⁴¹⁵ AHMED, Sara. Deconstruction and Law's Other: towards a feminist theory of embodied legal rights. *Social & Legal Studies*, [S.L.], v. 4, n. 1, p. 55-73, 1995. SAGE Publications. <http://dx.doi.org/10.1177/096466399500400103>, p. 56.

⁴¹⁶ OTTO, Dianne. Everything is Dangerous: some post-structural tools for rethinking the universal knowledge claims of human rights law. *Australian Journal Of Human Rights*, [S.L.], v. 5, n. 1, p. 30.

⁴¹⁷ OTTO, Dianne. Everything is Dangerous: some post-structural tools for rethinking the universal knowledge claims of human rights law. *Australian Journal Of Human Rights*, [S.L.], v. 5, n. 1, p. 30.

⁴¹⁸ CHARLESWORTH, Hilary. The missing voice: Women and the war in Iraq. *Or. Rev. Int'L L.* [S.L.], 2005, p. 21; CHARLESWORTH, Hilary. Worlding Women in International Law. In: D'COSTA, Bina; LEE-KOO, Katrina (ed.). *Gender and Global Politics in the Asia-Pacific*. New York: Palgrave Macmillan Ltd, 2009, p. 21.

transform the perceived masculine nature of state sovereignty through a feminine ethics of care⁴¹⁹.

Heathcote, on the other hand, explores the value of state sovereignty through the concept of a split subject rather than a bounded one. Rather than merely contrasting male and female categories and subjects in a perpetual and unresolved tension, she redefines the subject in a way that is both relational and autonomous, devoid of gender or sex. This alternative framing requires an understanding of individuals and states as sovereign entities experiencing splits, fractures, connections, and relationships that inherently blur subject boundaries, whether at the individual or state level⁴²⁰.

2.6 The interplay of sovereignty and international legal personality from a feminist perspective

The concepts of sovereignty and international legal personality (ILP) are closely intertwined in international law. ILP addresses the question of who can be considered an actor on the international stage and who is entitled to participate in international law and society⁴²¹. It signifies the capacity of an entity to assert itself within the political and legal order⁴²², which in turn allows an entity to possess rights and duties under international law⁴²³, making it essential to the present analysis. As Charlesworth contends, any serious engagement with international law in its classical terms requires addressing international legal personality⁴²⁴.

International legal personality (ILP) gained prominence in the late 19th century as positivist international lawyers, in the context of European imperialism, aimed to establish an international law system based on state consent. In the 1990s, Louis Henkin compared the

⁴¹⁹ KNOP, Karen. Re/statements: feminism and state sovereignty in international law. In: SIMPSON, Gerry (ed.). **The Nature of International Law**. London: Routledge, 2001, p. 387.

⁴²⁰ HEATHCOTE, Gina. **Feminist Dialogues on International Law**: successes, tensions, futures. [S.L.]: Oxford University Press, 2019, p. 111-112.

⁴²¹ NIJMAN, Janne E.. **The Concept of International Legal Personality**: an inquiry into the history and theory of international law. The Hague: T.M.C. Asser Press, 2004, p. viii.

⁴²² NIJMAN, Janne E.. **The Concept of International Legal Personality**: an inquiry into the history and theory of international law. The Hague: T.M.C. Asser Press, 2004, p. viii.

⁴²³ PARFITT, Rose. Theorizing Recognition and International Personality. In: HOFFMAN, Florian; ORFORD, Anne (ed.). **The Oxford Handbook of International Legal Theory**. Oxford: Oxford University Press, 2016. p. 1.

⁴²⁴ "The traditional subject of international law is the nation state and the essence of international law is its operation on states: for example, the prescription of rules about diplomatic representatives exchanged by states, about agreements between states, and about when states may use force against each other. The membership of most international governmental organisations is restricted to states. The major sources of international law set out in Art 38 of the Statute of the International Court of Justice, conventions and custom, are the product of actions by states." CHARLESWORTH, Hilary. The sex of the state in international law. In: NAFFINE, Ngaire; OWENS, Rosemary J (ed.). **Sexing the Subject of Law**. Sidney: Sweet & Maxwell, 1997, p. 251-252.

states to individuals in the state of nature. He argued that states, like humans, possess equality, rights, duties, morality, and decision-making abilities. They have the right to exist (the right to life) and the right to territory (the right to property). By entering into relations with one another, they establish a political system that reflects a social contract⁴²⁵.

However, the roots of ILP can be traced back to even earlier personification models, such as Grotius in the 15th century⁴²⁶. Pufendorf, in 1688, described the legal status of the state in terms of personality, characterizing the state as a distinct entity with intelligence and will, capable of independent actions separate from individuals⁴²⁷. The concept of international personality was intertwined with that of civilization, suggesting that international rights and duties were only applicable to civilized nations. As Rose Parfitt points out,

the meaning of 'civilization' in international legal terms remained unclear, but idealized notions of European behavior and institutions were certainly invoked. The standard test that emerged was whether a state's government was sufficiently stable to undertake binding commitments under international law and whether it was able and willing to adequately protect the life, liberty, and property of foreigners⁴²⁸.

TWAIL scholarship has focused on the complexities surrounding the transfer of international personality to the Third World and how it has been racialized through the promise of liberation. Anghie, inspired by Fanon's critique of Hegel's recognition dialectic, emphasizes the dilemma faced by non-European peoples to have access to the international system of nations. They are required to conform to European standards of authority in order to be recognized and assert themselves. Anghie further contends that the notion of full sovereignty or international personality was only developed by positivist jurisprudence, which limited native personality to the transfer of land to Europeans or even denied it entirely through the doctrine of *terra nullius*. This approach effectively established a coherent understanding of full sovereignty and international personality⁴²⁹.

At the end of the 20th century, the survival of the sovereign state came under scrutiny as new participants emerged in the international arena. This shift led to a transition from a state-centric perspective to one that emphasized the role of non-state actors and the

⁴²⁵ JONES, Emily. **Feminist Theory and International Law: posthuman perspectives**. Abingdon And New York: Routledge, 2023, p. 33.

⁴²⁶ JONES, Emily. **Feminist Theory and International Law: posthuman perspectives**. Abingdon And New York: Routledge, 2023, p. 33.

⁴²⁷ JONES, Emily. **Feminist Theory and International Law: posthuman perspectives**. Abingdon And New York: Routledge, 2023, p. 33.

⁴²⁸ PARFITT, Rose. Theorizing Recognition and International Personality. In: HOFFMAN, Florian; ORFORD, Anne (ed.). **The Oxford Handbook of International Legal Theory**. Oxford: Oxford University Press, 2016, p. 3.

⁴²⁹ PARFITT, Rose. Theorizing Recognition and International Personality. In: HOFFMAN, Florian; ORFORD, Anne (ed.). **The Oxford Handbook of International Legal Theory**. Oxford: Oxford University Press, 2016. p. 10.

connection between the intergovernmental system and global civil society⁴³⁰. The world seemed to move away from the traditional Westphalian order towards an "Age of Non-State actors."⁴³¹

Within this rapidly changing international context, the academic debate increasingly focused on sovereignty and the changing role of the state. Non-state actors were gaining more influence, leading to arguments that the state was approaching its decline and that sovereignty had become more relative than ever before⁴³². Sovereignty, as the central axiom of the inter-state society, represents the fundamental constitutional doctrine governing a community primarily consisting of states with a uniform legal personality⁴³³. In the Westphalian view, international legal personality was typically understood as the legal personality of states⁴³⁴.

In contrast to the earlier perception of sovereignty as something inherently possessing natural rights, Craven argues that the concept of personality emerged as a more formal and technical concept that acknowledged "the existence of a systemic order that attributed a range of competences to certain designated actors."⁴³⁵ While some authors view international legal personality as an alternative to sovereignty, others have argued that it was not necessarily less unhelpful. This is because "full" international personality, which encompasses rights such as sovereign equality, self-defense, non-intervention, and territorial integrity, is only attributed to states, through constitutive recognition or indirectly through the establishment of designation rules, leading to limitations in its applicability⁴³⁶.

The traditional understanding that the state represents the most complete expression of international legal personality (ILP) reinforces the link between ILP and state membership in the international public sphere while creating barriers for non-state actors seeking similar international status⁴³⁷. States are a complex set of interrelated but distinct institutions, relations, hierarchies, discourses, interests, and players, and can be seen as encompassing

⁴³⁰ NIJMAN, Janne E.. **The Concept of International Legal Personality**: an inquiry into the history and theory of international law. The Hague: T.M.C. Asser Press, 2004, p. 1.

⁴³¹ NIJMAN, Janne E.. **The Concept of International Legal Personality**: an inquiry into the history and theory of international law. The Hague: T.M.C. Asser Press, 2004, p. 2.

⁴³² NIJMAN, Janne E.. **The Concept of International Legal Personality**: an inquiry into the history and theory of international law. The Hague: T.M.C. Asser Press, 2004, p. 2.

⁴³³ NIJMAN, Janne E.. **The Concept of International Legal Personality**: an inquiry into the history and theory of international law. The Hague: T.M.C. Asser Press, 2004, p. 10.

⁴³⁴ NIJMAN, Janne E.. **The Concept of International Legal Personality**: an inquiry into the history and theory of international law. The Hague: T.M.C. Asser Press, 2004, p. 11.

⁴³⁵ PARFITT, Rose. Theorizing Recognition and International Personality. In: HOFFMAN, Florian; ORFORD, Anne (ed.). **The Oxford Handbook of International Legal Theory**. Oxford: Oxford University Press, 2016, p. 3.

⁴³⁶ CRAVEN, Matthew. Statehood, self-determination, and recognition. In: EVANS, Malcolm. **International law**. Oxford: Oxford University Press, 2014, p. 206.

⁴³⁷ NIJMAN, Janne E.. **The Concept of International Legal Personality**: an inquiry into the history and theory of international law. The Hague: T.M.C. Asser Press, 2004, p. 442.

various sites or arenas of power, with different degrees of responsiveness to women's interests⁴³⁸. International lawyers must also consider power dynamics between nation-states and how they are accommodated.

Nijman suggests that ILP can be used as a relative and derivative concept to establish the international legal status of new participants in the global legal system and its institutions. Nijman does not present a deep feminist account of international personality, but understands the complexity of applying a feminist perspective on international personality due to its perception of statehood as a masculine concept that excludes private actors from the international arena, asserting that only states possess true status within international law⁴³⁹. By granting ILP to private non-state actors, it presents an opportunity to challenge gendered classifications and perspectives⁴⁴⁰.

ILP reproduces the public-private sphere distinction denounced by feminist scholarship, prioritizing external problems as the primary concern of international law. The conceptual dominance of statehood in international legal theory shields the internal workings of the state from scrutiny⁴⁴¹. The feminist analysis highlights the barrier between the state as an entity and those within it, illustrated by principles of non-intervention and non-interference in domestic affairs, as well as doctrines of immunity and non-justiciability. Additionally, Charlesworth and Chinkin argue that international law has limited constraints on national decision-making processes, providing little investigation into the differential significance of statehood for women and men⁴⁴².

Challenging gendered dichotomies can help scrutinize established distinctions, such as state/non-state, member/non-member, sovereignty/domestic jurisdiction, governmental/non-governmental, and state/non-state action. Viewing the state as acting through various actors and motives would then reveal the rigidity of these dichotomies and challenge the conceptual dominance of statehood⁴⁴³. One ultimate goal of feminist analysis proclaimed by Charlesworth would be to expose the impossibility to represent women's

⁴³⁸ CHARLESWORTH, Hilary; CHINKIN, Christine. **The Boundaries of International Law: A Feminist Analysis**. Manchester: Manchester University Press, 2000, p. 167

⁴³⁹ NIJMAN, Janne E.. **The Concept of International Legal Personality**: an inquiry into the history and theory of international law. The Hague: T.M.C. Asser Press, 2004, p. 442.

⁴⁴⁰ NIJMAN, Janne E.. **The Concept of International Legal Personality**: an inquiry into the history and theory of international law. The Hague: T.M.C. Asser Press, 2004, p. 442.

⁴⁴¹ CHARLESWORTH, Hilary; CHINKIN, Christine. **The Boundaries of International Law: A Feminist Analysis**. Manchester: Manchester University Press, 2000, p. 167

⁴⁴² CHARLESWORTH, Hilary; CHINKIN, Christine. **The Boundaries of International Law: A Feminist Analysis**. Manchester: Manchester University Press, 2000, p. 125.

⁴⁴³ CHARLESWORTH, Hilary; CHINKIN, Christine. **The Boundaries of International Law: A Feminist Analysis**. Manchester: Manchester University Press, 2000, p. 167

interests in international legal discourse⁴⁴⁴. This is primarily due to the abstract nature of international law, making it challenging to connect with women's experiences. Feminist approaches to international law aimed to personalize and personify its normative constructions, highlighting the male-dominated environment in which these legal principles were formulated and implemented⁴⁴⁵.

While emphasizing the classical notion of the state in international legal discourse, Charlesworth contended that "Little attention has been given to the sex attached to the notion of statehood." According to her argument, the central figure in international law, the nation-state, is shaped by specific beliefs concerning sexual differences. The state is often portrayed as "male," though at times, it may be attributed with "female tendencies," particularly during moments of crisis⁴⁴⁶.

It is intriguing to observe how discussions regarding the gender and sex of the state are brought into the context of statehood in international law. Charlesworth presents her argument by suggesting that sex is not related to statehood in a relative or relational manner. Instead, it is firmly attached to it, allowing for an objective and unequivocal perception. She draws a parallel by likening sexing the state to the process of sexing chickens, which involves closely inspecting the bird's genitalia to determine its sex⁴⁴⁷.

However, by conflating sex with the biology of reproduction, the author runs the risk of perpetuating dichotomies that rigidly oppose maleness and femaleness. Furthermore, while Charlesworth cites the extensive feminist literature that questions the gender/sex debate, she overlooks the connection between her own argument about the constructed, contingent, and political nature of sex and its alignment with the reproductive attributes of both chickens and the state.

She proceeds with her argument by examining the elements of the traditional international law definition of the state as the reproductive mechanism in international law, referencing the Montevideo Convention. In doing so, she draws a connection between the sex of the state and the lack of response from international law to sexism, contrasting it with its approach to racism.

⁴⁴⁴ CHARLESWORTH, Hilary. The sex of the state in international law. In: NAFFINE, Ngaire; OWENS, Rosemary J (ed.). **Sexing the Subject of Law**. Sidney: Sweet & Maxwell, 1997, p. 253.

⁴⁴⁵ KNOP, Karen. Re/statements: feminism and state sovereignty in international law. In: SIMPSON, Gerry (ed.). **The Nature of International Law**. London: Routledge, 2001, p. 418.

⁴⁴⁶ CHARLESWORTH, Hilary. The sex of the state in international law. In: NAFFINE, Ngaire; OWENS, Rosemary J (ed.). **Sexing the Subject of Law**. Sidney: Sweet & Maxwell, 1997, p. 253.

⁴⁴⁷ "Just as sexing chickens requires a close inspection of the genitalia of the bird, sexing the state involves a study of that entity's reproductive mechanisms." CHARLESWORTH, Hilary. The sex of the state in international law. In: NAFFINE, Ngaire; OWENS, Rosemary J (ed.). **Sexing the Subject of Law**. Sidney: Sweet & Maxwell, 1997, p. 254.

Discrimination against women has been constructed as a matter of solely individual concern, without any ramifications for the identity or nature of the state entity in which it occurs. The problem is sublimated because state entities are not understood to be discriminated against on the basis of their sex; indeed the concept of the sex of a state would not be understood, although the race of a state would. So, the recognised attributes of a state can apparently include race, but not sex⁴⁴⁸.

Her conclusion is that statehood in international law extends beyond a mere formal and abstract structure; it is committed to a specific understanding of sexual difference, leaving it incapable of representing the interests of women (and some men) effectively⁴⁴⁹. However, this analysis presents two explicit issues. First, it compartmentalizes race and sex as separate issues affecting people differently, seemingly neglecting the impact of race on women (as the focus is mainly on the absence of women in international law's concerns). Secondly, it fails to explore the historical construction of gendered notions in the discourse of international law.

The feminist critique of the State as male has also been the object of criticism among other feminist scholars in international law. According to Karen Knop,

If the personification of the State exposes international legal norms as male, the acceptance of the sovereign State, sovereign self equation paradoxically denies the individual and collective identity of women within and across States. In an international society populated by States, women are analytically invisible because they belong to the State's sphere of personal autonomy. This mode of feminist analysis implicitly resurrects the older idea of international law as governing relations between sovereign States, leaving unexplored contemporary international legal methodologies that encompass other participants, interactions, and trends⁴⁵⁰.

Knop's analysis addresses both questions, how to increase women's participation in the process of international law and the implications of feminist theories for alternative conceptions of sovereignty⁴⁵¹. According to her, women should become conscious of their own assumptions about state sovereignty, to understand its potential for empowerment as well as to critically examine the ways in which it sets the functional and allegorical parameters of international law⁴⁵².

The critique of binary oppositions in international legal discourse, particularly regarding sovereignty, intersects with the concept of international personality. While the personification of the sovereign state has a long history, the notion of international personality

⁴⁴⁸ CHARLESWORTH, Hilary. The sex of the state in international law. In: NAFFINE, Ngaire; OWENS, Rosemary J (ed.). **Sexing the Subject of Law**. Sidney: Sweet & Maxwell, 1997, p. 255.

⁴⁴⁹ CHARLESWORTH, Hilary. The sex of the state in international law. In: NAFFINE, Ngaire; OWENS, Rosemary J (ed.). **Sexing the Subject of Law**. Sidney: Sweet & Maxwell, 1997, p. 268.

⁴⁵⁰ KNOP, Karen. Re/statements: feminism and state sovereignty in international law. In: SIMPSON, Gerry (ed.). **The Nature of International Law**. London: Routledge, 2001, p. 386.

⁴⁵¹ KNOP, Karen. Re/statements: feminism and state sovereignty in international law. In: SIMPSON, Gerry (ed.). **The Nature of International Law**. London: Routledge, 2001, p. 388.

⁴⁵² KNOP, Karen. Re/statements: feminism and state sovereignty in international law. In: SIMPSON, Gerry (ed.). **The Nature of International Law**. London: Routledge, 2001, p. 388.

emerged as a more formalized and technical version tied to state consent. This raised significant questions for feminist perspectives on sovereignty, as the personification and attribution of rights and duties in international law have often reinforced gendered and hierarchical power structures. As Knop points out, women's aspirations do not always lie in the direction of autonomy and sovereignty, but that points to the importance of developing women's perspectives on sovereign theory. Examining the intersection of these ideas provided valuable insights into the complexities and limitations of sovereignty within the international legal system and the promotion of real transformations regarding the participation of women in international law.

2.7 Violence, separation, and the security discourse

According to Judith Butler, in order to grasp the presence of violence in our world, it is necessary to explore the interplay between notions of sovereignty and the self, encompassing concepts like nationalism and models of masculinity⁴⁵³. Although not explicitly stated in the context of international law, this affirmation serves as a starting point for considering the connections between violence and sovereignty, which feminist approaches to international law have addressed over the years. The final chapter presents a "new" feminist analysis that explicitly deals with these issues within a broader framework. Meanwhile, the "structural feminist critique" of international law discussed in this chapter has focused on establishing links between notions of securitization in international law and gender inequality, with a special focus on gender-based violence. According to Gina Heathcote,

Strands of feminist approaches within international law include structural bias feminisms, third world feminisms, post-colonial feminisms and structural bias instrumentalism. [...] Structural bias feminism argues that international law has persistent structural flaws that are sexed and gendered. Charlesworth and Chinkin's book, *The Boundaries of International Law*, presents a comprehensive development of structural bias feminism as a method applied to the tenets of international law. Charlesworth and Chinkin argue that international law is 'intertwined with a gendered and sexed subjectivity and reinforces a system of male symbols'. In relation to the law on the use of force, Charlesworth and Chinkin conclude, 'peace is not achieved until states take seriously their internal obligations to ensure freedom from violence at home, within the community or committed by state agents'. I extend this contention to include the need to recognise the structural biases that permeate the production of lawful justifications for violence. Furthermore, I contend that the collective security system of authorising force produces, rather than reduces, gendered harms⁴⁵⁴.

⁴⁵³ BUTLER, Judith; CAVARERO, Adriana. *Condição humana contra "natureza": diálogo entre Adriana Cavarero e Judith Butler. Estudos Feministas*. [S.L.], 2007, p. 661.

⁴⁵⁴ HEATHCOTE, Gina. *The law on the use of force : a feminist analysis*. Abingdon And New York: Routledge, 2012, p. 6.

The general argument presented by feminist authors was that there was a nexus between political economy and gender relations as causal in the build up to conflict, or to its avoidance⁴⁵⁵. In 2005, Hilary Charlesworth became the twenty-fourth holder of the Wayne Morse Chair at the University of Oregon. In her speech, she addressed how sex and gender were deeply implicated in the invasion of Iraq, and criticized the fact that these issues were rarely considered relevant in discussions of major international crises⁴⁵⁶. By bringing up the theme of security, she highlighted the dichotomous nature of security discourse and its ties to "warding-off," rejection, and an ideal of an independent and autonomous entity resisting chaos around it⁴⁵⁷.

According to Charlesworth, internationalists have failed to understand how insecurity, both in its narrow and broader conceptions, is closely linked to unequal relationships between women and men. She argues that "The alleviation of military, economic, and environmental insecurities involves the resolution of unjust social relations within states."⁴⁵⁸ A feminist perspective highlights that existing power relations are not inevitable, particularly with regard to gender. Anne Orford asserts that feminist analysis challenges the notion of inherent state power both within and outside its borders by revealing the historical processes that contributed to the development of such power and the essential prerequisites for its perpetuation⁴⁵⁹.

Theories of collective security often assume that global security must be understood in terms of state security. Schreuer argues that, despite the questioning of concepts such as statehood and sovereignty in international relations, the system of sovereign states still strongly supports international law⁴⁶⁰. The fundamental premise underlying collective security theories is that states are naturally aggressive, self-interested, and competitive⁴⁶¹.

In this context, the concept of the separative self is useful in understanding the relationship between the state, power and domination. Nedelsky argues that the separative self

⁴⁵⁵ REES, Madeleine; CHINKIN, Christine. Exposing the gendered myth of post conflict transition: The transformative power of economic and social rights. *Nyuj Int'L L. & Pol.* [S.L.], 2016, p. 1216-1217.

⁴⁵⁶ CHARLESWORTH, Hilary. The missing voice: Women and the war in Iraq. *Or. Rev. Int'L L.* [S.L.], 2005, p. 7.

⁴⁵⁷ CHARLESWORTH, Hilary. The missing voice: Women and the war in Iraq. *Or. Rev. Int'L L.* [S.L.], 2005, p. 22.

⁴⁵⁸ CHARLESWORTH, Hilary. The missing voice: Women and the war in Iraq. *Or. Rev. Int'L L.* [S.L.], 2005, p. 23.

⁴⁵⁹ ORFORD, Anne. The Politics of Collective Security. *Michigan Journal Of International Law*. [S.L.], 1996, p. 399.

⁴⁶⁰ SCHREUER, Christoph. The Waning of the Sovereign State: Towards a New Paradigm for International-Law? *Eur. J. Int'L L.* [S.L.], 1993, p. 448.

⁴⁶¹ ORFORD, Anne. The Politics of Collective Security. *Michigan Journal Of International Law*. [S.L.], 1996, p. 398.

constantly seeks security, which it believes can only be achieved through power and domination, ultimately resulting in protective walls⁴⁶². That explains why certain human behaviors aim to deny and destroy these aspects of the human condition⁴⁶³.

Humans may rebel against their own humanity and that of others, as Butler contends, and the same can be said for states. Although initially seeming pathological, the behavior has paradoxically become normalized⁴⁶⁴. The fear of exposure and vulnerability, seen as fundamental to the human condition, is projected in the state's desire for independence; what resonates with Nijman's statement that personality in international law has traditionally rested in the recognition of separate identities in law⁴⁶⁵.

Despite the proliferation of discussions about sovereignty erosion, states remain the primary interpreters and enforcers in international law. According to Heathcote, the state's subject status as the primary legal subject is based on a perception of the state imbued with male characteristics, qualifying it as 'normal.' Recent shifts toward identifying 'failed states' in the international system further reinforce the implicit rationality attributed to the good/Western/democratic state due to the entrenched sexed dichotomy in the failed state discourse⁴⁶⁶.

While characterizing international law as a "discipline of crises," Charlesworth argues that the recognition of such crises would drive the advancement and reinforcement of international law. The crisis vocabulary employed in this context is heavily gendered, evoking notions of a heroic mission to justify military intervention⁴⁶⁷. Orford also highlights a similar masculine paradigm in which the international community is depicted as opposing the targeted state subject of intervention, often portrayed as a vulnerable and helpless feminine victim⁴⁶⁸. According to her, the militaristic heroic model is the common-sense framework that informs security discourse⁴⁶⁹.

⁴⁶² NEDELSKY, Jennifer. Law, Boundaries, and the Bounded Self. **Representations**. [S.L.], p. 162-189. 1990, p. 180.

⁴⁶³ BUTLER, Judith; CAVARERO, Adriana. Condição humana contra "natureza": diálogo entre Adriana Cavarero e Judith Butler. **Estudos Feministas**. [S.L.], 2007, p. 661.

⁴⁶⁴ BUTLER, Judith; CAVARERO, Adriana. Condição humana contra "natureza": diálogo entre Adriana Cavarero e Judith Butler. **Estudos Feministas**. [S.L.], 2007, p. 662.

⁴⁶⁵ NIJMAN, Janne E.. **The Concept of International Legal Personality**: an inquiry into the history and theory of international law. The Hague: T.M.C. Asser Press, 2004, p. 3.

⁴⁶⁶ HEATHCOTE, Gina. **The law on the use of force : a feminist analysis**. Abingdon And New York: Routledge, 2012, p. 9-10.

⁴⁶⁷ CHARLESWORTH, Hilary. International Law: A Discipline of Crisis. **The Modern Law Review**, [s. l], p. 377-39, 2002.

⁴⁶⁸ ORFORD, Anne. Muscular humanitarianism: Reading the narratives of the new interventionism. **European Journal Of International Law**. [S.L.], p. 679-711. 1999, p. 679-711.

⁴⁶⁹ ORFORD, Anne. Muscular humanitarianism: Reading the narratives of the new interventionism. **European Journal Of International Law**. [S.L.], 1999, p. 709.

Chinkin raises similar arguments, contending that during the build-up to conflict, the patriarchy transforms men into warriors with heroic status. Simultaneously, this narrative diminishes women in conflict to mere victims, disregarding their agency and excluding them from peace processes, as if they had no relevant input to offer. In essence, regardless of the actual realities of conflict and violence, it almost always serves to reinforce the traditional and conservative power structures that initially contributed to the emergence of the conflict⁴⁷⁰.

The scholarly discourse on security often depicts a close correlation between nature, danger, sovereignty, and security, implying that states are inherently inclined to resort to military and economic measures to enhance their power, territorial control, or global influence unless subjected to certain limitations⁴⁷¹. Nevertheless, state power is not monolithic, but rather must constantly be produced and reproduced through complex appeals to patriotism, economic interests, and conceptions of masculinity and femininity. States can "naturally" exercise their military and economic power in aggressive external shows of force only if such appeals are successful in controlling individual subjects⁴⁷².

As Anne Orford observes, the dominant model of state borders deflects attention from the insecurity experienced by marginalized groups within Western societies, such as women, indigenous peoples, the mentally ill, gay men, and ethnic or religious minorities. When women's security is part of the concern, many feminist scholars have drawn attention to the threats posed to women not by foreign states, but by more local actors, including the men in their families⁴⁷³.

According to Gina Heathcote, the focus on the implications of transnational networks—encompassing finance, security, media, and human rights—has often resulted in legitimizing the strengthening of state boundaries, powers, and control rather than diminishing the state's role. Despite viewing transnational threats and movements as potential challenges to the state, the collective security response has been to reassert the state's role as a protector against the potential excesses of transnational and global networks. The collective security regime, as Heathcote argues, necessitates the existence of states as it delegates the authority for legitimate violence to the collective enforcement body⁴⁷⁴.

⁴⁷⁰ REES, Madeleine; CHINKIN, Christine. Exposing the gendered myth of post conflict transition: The transformative power of economic and social rights. *Nyuj Int'L L. & Pol.* [S.L.], 2016, p. 1216-1217.

⁴⁷¹ ORFORD, Anne. The Politics of Collective Security. *Michigan Journal Of International Law*. [S.L.], 1996, p. 398.

⁴⁷² ORFORD, Anne. The Politics of Collective Security. *Michigan Journal Of International Law*. [S.L.], 1996, p. 399.

⁴⁷³ CHARLESWORTH, Hilary. The missing voice: Women and the war in Iraq. *Or. Rev. Int'L L.* [S.L.], 2005, p. 23.

⁴⁷⁴ HEATHCOTE, Gina. *The law on the use of force : a feminist analysis*. Abingdon And New York: Routledge, 2012, p. 37.

While strong state borders do not guarantee safety for marginalized groups, they can even exacerbate their vulnerability. In Orford's view, it is possible to argue that many individuals in Western democracies have always been excluded from the realm of the sovereign state⁴⁷⁵. The concept of statehood formulated by international law erects a boundary between the state as an entity and those who reside within it. The principles of non-intervention and non-interference serve as an illustration of this division and also have a distinct effect on the significance of statehood for both genders, with varying impacts on women and men⁴⁷⁶.

Liberal constructions of citizenship—derived from the Western notion of the family headed by a patriarch—profoundly inform constructions of international sovereignty giving the international a platform of assumptions that sex the security structure. Despite the changing understanding of sovereignty produced in response to internal state violations and non-Western theoretical accounts of state power, traditional conceptions of sovereignty continue to inform the construction of the law on the use of force. Traditional conceptions of sovereignty produce a model of security where states, as sovereign citizens in the international order, are produced as actors analogous to the Western, liberal (masculine) subject requiring analogous forms of policing⁴⁷⁷.

The idea of statehood, sovereignty and related concepts implies a distinction between public and private spheres. State responsibility is a legal construct that allocates risk for the consequences of acts deemed wrongful by international law to the artificial entity of the state⁴⁷⁸. According to Chinkin, since the state claims jurisdiction over the totality of functions within its territorial control, it might therefore be appropriate to assert its responsibility for all wrongful acts emanating from it, or from nationals subject to its jurisdiction. She questions who does the denial of state responsibility for the actions of non-state actors protect — the state, individual freedom of action, or the most powerful who are able to remain outside the scope of international regulation of an international rule of law?⁴⁷⁹.

2.8 Rethinking boundaries and bodily integrity

⁴⁷⁵ ORFORD, Anne. The Politics of Collective Security. *Michigan Journal Of International Law*. [S.L.], 1996, p. 397.

⁴⁷⁶ CHARLESWORTH, Hilary; CHINKIN, Christine. *The Boundaries of International Law: A Feminist Analysis*. Manchester: Manchester University Press, 2000, p. 125.

⁴⁷⁷ HEATHCOTE, Gina. *The law on the use of force : a feminist analysis*. Abingdon And New York: Routledge, 2012, p. 36-37.

⁴⁷⁸ CHINKIN, Christine. A critique of the public/private dimension. *European Journal Of International Law*. [S.L.], p. 387-395. 1999, p. 395.

⁴⁷⁹ CHINKIN, Christine. A critique of the public/private dimension. *European Journal Of International Law*. [S.L.], p. 387-395, 1999, p. 395.

According to the Montevideo Convention on Rights and Duties of States of 1933, one of the criteria for recognizing a state as a person of international law is the possession of a defined territory. The concept of statehood, therefore, aims to maintain a fixed territorial space under exclusive control, which the international community has limited authority over⁴⁸⁰, as outlined in Article 2(4) of the UN Charter. When applied to abstract state entities, the notion of coherence and territorial integrity presupposes a bounded and unified state entity.

The notions of boundaries, borders, and peripheries hold significant influence in legal discourse⁴⁸¹. Charlesworth and Chinkin argue that the state, as constituted by international law, is perceived as a "bounded, self-contained, closed, and separate entity that has the right to reject unwanted contact or interference."⁴⁸² They draw parallels between the right to property, which establishes an individual's exclusive sphere free from collective demands and prohibitions, and the international legal concept of statehood, which seeks to preserve a fixed territorial space under exclusive control, with limited influence from the international community⁴⁸³. Charlesworth and Chinkin further explore these aspects through the lens of feminist legal scholarship, examining the interplay between gender, law, the state, and the body.

Within the field of international law, the feminist discussion of statehood has centered around the concept of invasion. Despite the diversity among women, numerous authors have identified women as sharing the experience of violence and discrimination, leading to the emergence of concrete agendas for transnational feminist movements. In the realm of international law, feminist approaches have placed a strong emphasis on addressing the issue of sexual violence, with women often being primarily defined by their vulnerability to it⁴⁸⁴. The critique of sexual violence has produced significant impact on theoretical discussions among international lawyers⁴⁸⁵, extending beyond specific instances of violence to broader and more abstract contexts.

⁴⁸⁰ CHARLESWORTH, Hilary; CHINKIN, Christine. **The Boundaries of International Law: A Feminist Analysis**. Manchester: Manchester University Press, 2000, p. 129.

⁴⁸¹ CHARLESWORTH, Hilary; CHINKIN, Christine. **The Boundaries of International Law: A Feminist Analysis**. Manchester: Manchester University Press, 2000, p. 128.

⁴⁸² CHARLESWORTH, Hilary; CHINKIN, Christine. **The Boundaries of International Law: A Feminist Analysis**. Manchester: Manchester University Press, 2000, p. 129.

⁴⁸³ CHARLESWORTH, Hilary; CHINKIN, Christine. **The Boundaries of International Law: A Feminist Analysis**. Manchester: Manchester University Press, 2000, p. 129.

⁴⁸⁴ OTTO, Dianne. The exile of inclusion: reflections on gender issues in international law over the last decade. **Melbourne Journal Of International Law**. [S.L.], 2009, p. 23.

⁴⁸⁵ OTTO, Dianne. The exile of inclusion: reflections on gender issues in international law over the last decade. **Melbourne Journal Of International Law**. [S.L.], p. 11-26, 2009.

The metaphor of sexual invasion has been applied to both state-to-state relations and interpersonal interactions, prompting feminist analysis in international law to uncover less obvious aspects of this rhetoric. Feminist scholars addressing sexual violence have emphasized the intrusion of men into women's bodies as a fundamental aspect of male dominance. They argue that, similar to a heterosexual male body, the state lacks "natural" entry points, and its bounded nature makes forced entry a clear violation of international law⁴⁸⁶. The rhetoric of territorial integrity in international law is based on a particular understanding of male sexuality and its interaction with the female body. The assumption of the state as a bounded entity implies that "states will be worse off if any aspect of their territorial integrity is sublimated."⁴⁸⁷

According to Charlesworth and Chinkin, the traditional account of territorial integrity and legal sovereignty in international law places boundaries at the center and portrays intercourse as a violation⁴⁸⁸. They argue that this reinforces the perception of women within states as unbounded, submissive, and unequal to men. Excessive preoccupation with boundaries also hinders understanding the autonomy of individual states as dependent on—rather than inherently opposed to—the international community.

Karen Knop, on the other hand, criticizes feminist analyses that likens encounters between the self and the other to the invasion and intrusion experienced by women during heterosexual intercourse. This perspective highlights the violation of boundaries and draws parallels between the violation of a woman's bodily integrity and the violation of a state's territorial integrity⁴⁸⁹. Knop provides examples demonstrating how metaphors and analogies shape perceptions and interpretations. These examples include linking Iraq's violation of Kuwaiti sovereignty during the Gulf War to the imagery of rape, psychoanalytical analyses portraying international law and sovereign states as hermaphroditic, and drawing parallels between rape in warfare and the behavior of occupying troops in conquered territories⁴⁹⁰.

The concept of split subjects, further presented in the next chapter, also explores alternative embodiments of sovereignty, reframing the persistent masculine subject addressed by feminist scholars as a split—rather than an isolated and unified—subject. This provides a

⁴⁸⁶ CHARLESWORTH, Hilary; CHINKIN, Christine. **The Boundaries of International Law: A Feminist Analysis**. Manchester: Manchester University Press, 2000, p. 129.

⁴⁸⁷ CHARLESWORTH, Hilary; CHINKIN, Christine. **The Boundaries of International Law: A Feminist Analysis**. Manchester: Manchester University Press, 2000, p. 131.

⁴⁸⁸ CHARLESWORTH, Hilary; CHINKIN, Christine. **The Boundaries of International Law: A Feminist Analysis**. Manchester: Manchester University Press, 2000, p. 132.

⁴⁸⁹ KNOP, Karen. Re/statements: feminism and state sovereignty in international law. In: SIMPSON, Gerry (ed.). **The Nature of International Law**. London: Routledge, 2001, p. 418.

⁴⁹⁰ KNOP, Karen. Re/statements: feminism and state sovereignty in international law. In: SIMPSON, Gerry (ed.). **The Nature of International Law**. London: Routledge, 2001, p. 418.

relational understanding of subjects experiencing fractures, connections, and multiple relationships that inherently blur fixed boundaries, whether at the individual or state level⁴⁹¹.

The interplay of statehood, sovereignty, and international law has implications for our perception of public and private, and the responsibility of states for wrongful acts. It also influences security discourses and justifications for the use of violence. In summary, the various perspectives from feminist scholars call for a reevaluation of the relationship between state power, security, and violence, stressing the importance of considering the gendered dimensions of international law and its impact on women's lives, while seeking improved responses to these issues.

2.9 Redefining sovereignty: the feminist rewriting of the Lotus Case as the Bozkurt Case

Rewriting judgments from a feminist standpoint has been an ongoing project in legal theory for some time⁴⁹². Recently, this initiative has been inaugurated in international law. This exploration opens up important avenues for understanding how feminist perspectives can challenge and reshape traditional legal approaches in the realm of international law. The 2019 publication of "Feminist Judgments in International Law," edited by Loveday Hodson and Troy Lavers, features fifteen well-known international law judgments from 1927 to 2012, from various courts and jurisdictions. The collection deals with cases that raised particular attention to women, as well as those addressing general questions of international law⁴⁹³. This section will focus on the rewriting of the Lotus Case (France v Turkey), renamed by the feminist chamber as the "Bozkurt Case," one of the cases presented in the book.

The process of writing Feminist Judgments in International Law began years before the publication of the book in 2019, within the Feminist International Judgments Project (FIJP) – which brought together almost 50 international legal scholars and some activists,

⁴⁹¹ HEATHCOTE, Gina. **Feminist Dialogues on International Law: successes, tensions, futures**. [S.L.]: Oxford University Press, 2019, p. 111-112.

⁴⁹² HUNTER, Rosemary; MCGLYNN, Clare; RACKLEY, Erika (Ed.). **Feminist judgments: From theory to practice**. Bloomsbury Publishing, 2010. STANCHI, Kathryn M.; BERGER, Linda L.; CRAWFORD, Bridget J. (Ed.). **Feminist judgments: rewritten opinions of the United States Supreme Court**. Cambridge University Press, 2016. DOUGLAS, Heather et al. (Ed.). **Australian feminist judgments: Righting and rewriting law**. Bloomsbury Publishing, 2014. CAPERS, Bennett; DEER, Sarah; YUNG, Corey Rayburn (Ed.). **Feminist Judgments: Rewritten Criminal Law Opinions**. Cambridge University Press, 2022. In Brazil, a feminist judgment project began in 2021, with a book published in 2023, see: SEVERI, Fabiana Cristina (org.). **Reescrevendo decisões judiciais em perspectivas feministas: a experiência brasileira**. Ribeirão Preto: Fdrp-Usp, 2023.

⁴⁹³ HODSON, Loveday; LAVERS, Troy (ed.). **Feminist Judgments in International Law**. Oxford: Hart Publishing, 2019, p. 14. OTTO, Dianne. Feminist Judging in Action: reflecting on the feminist judgments in international law project. **Feminist Legal Studies**, [S.L.], v. 28, n. 2, 2020, p. 211. Springer Science and Business Media LLC. <http://dx.doi.org/10.1007/s10691-020-09421-7>, p. 206.

who were asked to collaborate in the task of (re)writing key international judgments from a feminist perspective⁴⁹⁴. According to Hodson and Lavers, feminist scholarship

brings into question the very structure of international law, its methods and values. Decision making in international law traditionally prioritises abstract logic and hard (formal) law, thereby reducing the potential importance of conciliation, negotiation, soft law and equity.¹⁸ Traditional scholarship in international law also has the State as its key focal point, raising questions about the power of the State, the sovereignty of States and the use of force by States. Consequently, issues of importance to women all too often fall into the blind spots of international law's gaze⁴⁹⁵.

What if the Lotus Case had been decided from a feminist perspective? The Bozkurt Case might provide us with a glimpse of how such a perspective could have influenced jurisprudence and the interpretation of sovereignty in international law. The Lotus Case, the oldest case in the collection, is often the first case that students read when learning about State sovereignty as a fundamental principle of the international legal system⁴⁹⁶. In the feminist judgment, the authors aim to challenge the assumption that Western sovereignty is the measure of civilization and explore the nexus between feminist methodologies and power relations⁴⁹⁷. One of the key affirmations in the judgment is the readiness to disregard the outdated model of Western sovereignty and embrace contemporary conceptions of international sovereignty, solidarity, and cooperation, as envisioned by the Covenant of the League of Nations⁴⁹⁸.

The international legal world is organized into demarcated spaces, such as sovereign spaces within defined territories, empires with less clearly defined borders, and international spaces such as the High Seas and airspaces. Nevertheless, the Lotus Case presented an opportunity for the Court to acknowledge the people existing in these spaces and move beyond the strict boundaries of sovereignty to ensure accountability for wrongdoing. The collision of the two ships in this case caused the disappearance of sovereign borders, which

⁴⁹⁴ HODSON, Loveday; LAVERS, Troy (ed.). **Feminist Judgments in International Law**. Oxford: Hart Publishing, 2019, p. 14. OTTO, Dianne. Feminist Judging in Action: reflecting on the feminist judgments in international law project. **Feminist Legal Studies**, [S.L.], v. 28, n. 2, 2020, p. 211. Springer Science and Business Media LLC. <http://dx.doi.org/10.1007/s10691-020-09421-7>, p. 4.

⁴⁹⁵ HODSON, Loveday; LAVERS, Troy (ed.). **Feminist Judgments in International Law**. Oxford: Hart Publishing, 2019, p. 14. OTTO, Dianne. Feminist Judging in Action: reflecting on the feminist judgments in international law project. **Feminist Legal Studies**, [S.L.], v. 28, n. 2, 2020, p. 211. Springer Science and Business Media LLC. <http://dx.doi.org/10.1007/s10691-020-09421-7>, p. 6.

⁴⁹⁶ HODSON, Loveday; LAVERS, Troy (ed.). **Feminist Judgments in International Law**. Oxford: Hart Publishing, 2019, p. 14.

⁴⁹⁷ CHINKIN, Christine *et al.* Bozkurt Case, aka the Lotus Case (France v Turkey): Ships that Go Bump in the Night. In: HODSON, Loveday; LAVERS, Troy (ed.). **Feminist Judgments in International Law**. Oxford: Hart Publishing, 2019, p. 29.

⁴⁹⁸ CHINKIN, Christine *et al.* Bozkurt Case, aka the Lotus Case (France v Turkey): Ships that Go Bump in the Night. In: HODSON, Loveday; LAVERS, Troy (ed.). **Feminist Judgments in International Law**. Oxford: Hart Publishing, 2019, p. 36.

meant nothing to those who perished or were left behind. The Court rejects the legal fiction of strictly demarcated territories and instead acknowledges real sovereign equality using general principles of international law⁴⁹⁹.

International law is moving beyond its conception of itself as a system between formally equal sovereign (European) States who are territorially bounded, individual personalities in international law, towards a system based on connection and co-operation. International law is about how we live internationally, how we encounter each other in international spaces and how a wide array of (different) voices may be considered when trying to understand what international law could be, and is becoming. As evidence of this emerging shift towards cooperation in international law, this judgment itself may be presented⁵⁰⁰.

In the feminist judgment of the Lotus Case, the principle was renamed the "Bozkurt Principle: Ships that go bump in the night." This new naming helped shift the focus away from France, which was central in the original judgment, and instead acknowledged the violence inflicted on the Bozkurt ship and its passengers and crew. Moreover, it recognized that the case was actually centered on events that occurred in Turkey, rather than France.

By examining various feminist perspectives and using documents available at the time of the original judgment, the feminist chamber re-wrote the Lotus Case as a feminist judgment. This case was not merely a collision of two ships, but the first time the Court was asked to rule on a general principle of international law. The case provided an opportunity to redefine and renegotiate international space in line with the changing sovereign members of the international community⁵⁰¹.

The feminist chamber reconceptualized sovereign equality by adopting a contextual approach and analyzing the historical relations between the two States. They held that the Republic of Turkey was well deserving of the status of a sovereign and equal State. The feminist judgment counteracts the masculine interpretation of State sovereignty adopted in the original judgment and portrays how Turkey has been feminized by France and other European powers. The feminist chamber notes the history of international law, which feminizes weaker and primitive peoples, tying it to the inequality suffered by women. The feminist judges aimed to assist newer States such as Turkey in being met with equal treatment.

⁴⁹⁹ CHINKIN, Christine *et al.* Bozkurt Case, aka the Lotus Case (France v Turkey): Ships that Go Bump in the Night. In: HODSON, Loveday; LAVERS, Troy (ed.). **Feminist Judgments in International Law**. Oxford: Hart Publishing, 2019, p. 41

⁵⁰⁰ CHINKIN, Christine *et al.* Bozkurt Case, aka the Lotus Case (France v Turkey): Ships that Go Bump in the Night. In: HODSON, Loveday; LAVERS, Troy (ed.). **Feminist Judgments in International Law**. Oxford: Hart Publishing, 2019, p. 41

⁵⁰¹ CHINKIN, Christine *et al.* Bozkurt Case, aka the Lotus Case (France v Turkey): Ships that Go Bump in the Night. In: HODSON, Loveday; LAVERS, Troy (ed.). **Feminist Judgments in International Law**. Oxford: Hart Publishing, 2019, p. 39.

The feminist judges arrived at this conclusion through a contextual approach sensitive to the history of the States and their relations, as well as to the actual victims of the incident in this case. This reasoning differed vastly from that of the PCIJ. By adopting a contextual approach, the feminist judges gave effect to an entirely different reality⁵⁰².

The feminist judgment in the *Bozkurt Case* differs significantly from the original *Lotus Case* judgment in its approach to sovereignty and international relations. The feminist chamber ruled in favor of Turkey but emphasized peaceful dispute settlement and cooperation between states, rather than territorial sovereignty through "free will." This approach could potentially redefine sovereignty as dependent on both internal and external relations, aligning with the International Congress of Women's resolutions for permanent peace. The feminist judgment recognizes the *Bozkurt Principle* of international cooperation⁵⁰³, drawing on various international legal instruments.

In contrast to the *Lotus Case*, which did not raise any women's rights issues, the feminist judges used feminist methodologies to examine underlying gendered assumptions in the 1920s international legal order and the Court's approach. This led to the feminist judgment raising several issues concerning the nature of sovereignty and international society, the socio-cultural context of France-Turkey relations, and the inclusion of feminist voices in the Court.

The feminist judgment's impact is significant, as it challenges legal orthodoxy and promotes the consideration of context and power hierarchies in judicial reasoning. The feminist chamber's decision to adopt a contextual approach and focus on the actual victims of the incident in the case led to a declaratory order requesting information from the States about the victims and their dependents⁵⁰⁴. The judgment could have a transformative effect on the development of international law, allowing for the imagining of different possibilities and realities⁵⁰⁵.

⁵⁰² SHARMA, Kritika. What If Feminist Judgments Were Written on Earth 616? A Tale of Feminism and Science Fiction. *Law, Technology And Humans*, [S.L.], v. 4, n. 2, 2022. Queensland University of Technology. <http://dx.doi.org/10.5204/lthj.2496>, p. 86.

⁵⁰³ OTTO, Dianne. Feminist Judging in Action: reflecting on the feminist judgments in international law project. *Feminist Legal Studies*, [S.L.], v. 28, n. 2, 2020, p. 211. Springer Science and Business Media LLC. <http://dx.doi.org/10.1007/s10691-020-09421-7>.

⁵⁰⁴ SHARMA, Kritika. What If Feminist Judgments Were Written on Earth 616? A Tale of Feminism and Science Fiction. *Law, Technology And Humans*, [S.L.], v. 4, n. 2, 2022. Queensland University of Technology. <http://dx.doi.org/10.5204/lthj.2496>, p. 86.

⁵⁰⁵ SHARMA, Kritika. What If Feminist Judgments Were Written on Earth 616? A Tale of Feminism and Science Fiction. *Law, Technology And Humans*, [S.L.], v. 4, n. 2, 2022. Queensland University of Technology. <http://dx.doi.org/10.5204/lthj.2496>, p. 86.

Adopting the feminist re-writing methodology and applying it to the decision of international tribunals pavement an important platform for scholars and others to come together and challenge legal doctrine through the process of ‘telling the story differently’ and highlighting law’s silences through the use of contextual materials⁵⁰⁶. Overall, the feminist judgment in the Bozkurt Case demonstrates the importance of feminist perspectives in international law and the potential for a more peaceful and cooperative international order. The Bozkurt Principle prioritizes interdependency and peaceful cooperation between states, providing a new framework for considering sovereignty and international relations.

The feminist judgment in the Bozkurt case offers a thought-provoking perspective that resonates with the feminist critiques of sovereignty. Through its meticulous analysis of historical legal decisions and its application of a feminist methodology, the feminist chamber highlights a crucial intersection: the revelation of the inherently gendered facets of sovereignty. This perspective sheds light on the prevailing assumption that sovereignty operates in a neutral, impartial manner, a notion that has long been accepted as consensus. By delving into the gaps, silences, and narratives within the legal discourse, the feminist judgment uncovers the fallacy of the "disinterested, disengaged, and distant judge." In parallel, it underscores how international law itself is not exempt from these gendered dynamics. This feminist perspective not only challenges the established norms but also prompts a reconsideration of the foundational principles of sovereignty and their connection to the broader fabric of gendered power structures. In essence, the feminist judgment of the Bozkurt case serves as a critical lens through which the myth of gender-blind sovereignty and the ostensibly impartial nature of international law are exposed, fostering a deeper understanding of the intricate intersections between legal doctrines and gender dynamics.

⁵⁰⁶ HUNTER, Rosemary. An Account of Feminist Judging. In: HUNTER, Rosemary; MCGLYNN, Clare; RACKLEY, Erika (ed.). **Feminist Judgments**: from theory to practice. Oxford: Hart Publishing, 2010, p. 36.

3. REFRAMING SOVEREIGNTY THROUGH FEMINIST AND QUEER LENSES

This chapter focuses on innovative feminist perspectives on sovereignty in international law that surpass the previous scholarship of feminist approaches developed from the late 1990s until the beginning of the 21st century. In the last decade, new insights on gender and sexuality in relation to fundamental concepts and principles of international law have emerged. The first part of the chapter is dedicated to exploring these "new" feminist approaches, with particular emphasis on posthuman and psychoanalytic perspectives. Then, the second part of the chapter is dedicated to queer approaches to international law.

To which degree queer and feminist theories converge and diverge or represent part of the same range of scholarship or not is an old debate. Many of the authors working on feminist scholarship are also addressing queer issues, while much of the queer scholarship also borrows from feminist scholarship. On the other hand, both have been facing the same challenges regarding co-optation for controversial and problematic purposes and have gone "normative" in many senses. It is not unusual to make reference to feminist queer perspectives⁵⁰⁷. Therefore, for the purposes of this research, a delimitation will be made of the queer scholarship analyzed here and a more complete explanation will be provided on how and why it should be placed among the feminist scholarships presented in this chapter.

In recent scholarship on sovereignty in international law, feminist and queer analyses converge on several key points of argumentation. Both approaches critically examine the personification of the state and its broader implications, seeking to challenge the dominant male-centered and disembodied assumptions that underlie the concept of the sovereign Western state.

The chapter concludes by reflecting on the challenge of navigating the existing language and interpretation framework in international law. It acknowledges the presence of gendered and sexually informed vocabulary in early legal texts, which perpetuates binary notions and hierarchical worldviews. The chapter further underscores the implications of this vocabulary for present-day international law.

These analyses not only aim to expose the gendered functioning of sovereignty but also endeavor to propose alternative understandings that break away from the prevailing oppositional framework. By addressing the personification of the state and formulating alternative perspectives, feminist and queer analyses offer valuable contributions to the

⁵⁰⁷ BROWNE, Kath et al. Towards transnational feminist queer methodologies. *Gender, Place & Culture*, v. 24, n. 10, p. 1376-1397, 2017.

ongoing discourse on sovereignty and its interconnectedness with power, identity, and representation.

3.1 Alternative sovereignty: exploring new feminist approaches

As presented in the previous chapters, the feminist approaches to international law encompass a wide range of perspectives within an extensive intellectual discourse. Feminist approaches that critically engage with international law, such as postcolonial feminism and queer feminism, delve deeper into the foundational concepts and assumptions of the field but receive even less attention than the more traditional feminist scholarship, the so-called mainstream feminist approaches. These alternative and more critical approaches have been marginalized, occupying a peripheral position within both theoretical and practical discussions⁵⁰⁸. A – perhaps strategic – nearsightedness has allowed for the erasure of feminist dialogues that are not accommodated by institutional agendas⁵⁰⁹.

[m]uch feminist international legal scholarship presents itself as being in conversation with the mainstream of international law ... [t]his conversation is, however, almost completely one sided ... It is very hard to find any response from international legal scholars to feminist questions and critiques; feminist scholarship is an optional extra, a decorative frill on the edge of the discipline⁵¹⁰.

It is important to recognize the existence of a growing body of feminist scholarship in the field, which has often been overshadowed by "mainstream feminism." Within these alternative feminist approaches, scholars across different generations, including Dianne Otto, Ratna Kapur, Vasukhi Nesiah, Gina Heathcote, Anne Orford, Yoko Otomo, and many early career scholars have developed and advocated for ethical positions while acknowledging the complexities and contradictions of the project of redressing gender among other preoccupations of critical scholars, such as imperialism, capitalism, technology, warfare, racism, and environmental crisis.

These new approaches offer the advantage of addressing both institutional and intellectual questions in a nuanced manner, rejecting simplistic dichotomies, such as materialism versus idealism or subject studies versus disciplinary studies. Instead, by adopting critical and – to say the least – unconventional perspectives, such as posthuman and

⁵⁰⁸ JONES, Emily. **Feminist Theory and International Law: posthuman perspectives**. Abingdon And New York: Routledge, 2023, p. 3.

⁵⁰⁹ HEATHCOTE, Gina. **Feminist Dialogues on International Law: successes, tensions, futures**. [S.L.]: Oxford University Press, 2019, p. 15.

⁵¹⁰ CHARLESWORTH, Hilary. Talking to ourselves? Feminist scholarship in international law. In: KOUVO, Sari; PEARSON, Zoe (ed.). **Feminist Perspectives on Contemporary International Law**. London: Hart Publishing, 2011, p. 17-18.

psychoanalytic theories, they view these dimensions as interconnected aspects of knowledge and power production, recognizing the multifaceted and conflicting nature of this process⁵¹¹.

Vasukhi Nesiah argues that countering the narrow focus of mainstream feminism requires a project that is still in its early stages within the feminist analysis of international law. This project involves redirecting critical energies towards questioning the material and ideological frameworks that influence the debate, rather than simply taking sides⁵¹². In the search for critical tools capable of facilitating a broader and more profound transformative project, many internationalists have also discovered the fertile lands of Third World feminism and queer theories. These perspectives have allowed them to articulate their frustrations and dissatisfactions with mainstream and other critical theories, while also developing alternative approaches to fundamental concepts within the discipline. According to Powell and Wing,

Along with other critics of first wave feminism, queer theorists have also attacked mainstream feminist theory for its heteronormativity and inattentiveness to sexual orientation as well as the instability of gender as a category of analysis.²⁰ Intersectional and queer theory critiques have helped pave the way for further critiques based on additional bases, *inter alia*, including sex positivity, transfeminism, ecofeminism, and postmodern feminism. Many subfields of international law have now incorporated intersectional analyses—ranging from international criminal law to international refugee law.⁵¹³

This chapter will explore these alternative perspectives and how they contribute to the critical analysis of sovereignty, focusing on posthuman feminism and psychoanalytic approaches, while also presenting the possibilities opened for the development of a Third World feminist perspective on sovereignty. While introducing the psychoanalytic perspective, Yoriko Otomo challenges the rationalist assumptions that underlie the traditional understanding of sovereignty and state behavior and emphasizes the importance of unconscious and emotional processes in shaping political decisions. This approach opens up new possibilities for understanding the complex and often irrational dynamics of international politics and challenges the traditional view of sovereignty as a rational and objective concept. The concept of splitting subjects, further explored by Gina Heathcote, reframes the concept of sovereignty to call attention to the transformations and instability that inform state sovereignty, with a focus on relationality and diversity, rather than concentration of power and isolation.

⁵¹¹ SCOTT, Joan Wallach. **Gender and the Politics of History**. New York: Columbia University Press, 1988, p. 9.

⁵¹² NESIAH, Vasuki. The Ground Beneath Her Feet: "Third World" Feminisms. **Journal of International Women's Studies**, v. 4, n. 3, 2003, p. 30.

⁵¹³ POWELL, Catherine; WING, Adrien K.. Introduction to the Symposium on Feminist Approaches to International Law Thirty Years on: still alienating Oscar?. **AJIL Unbound**, [S.L.], v. 116, p. 261, 2022. Cambridge University Press (CUP). <http://dx.doi.org/10.1017/aju.2022.43>.

Further, posthuman feminism emphasizes the interconnectedness of humans and non-human entities and questions the traditional view of the state as the only relevant actor in international law. Posthuman feminism questions the dualistic separation between nature and culture and advocates for a more holistic understanding of sovereignty that acknowledges the agency and interconnectedness of all entities. This approach has important implications for sovereignty and international law, as it challenges the traditional understanding of sovereignty as a fixed and bounded entity and calls for a more nuanced understanding of the complex interrelations between the state and the environment.

Another clarification is necessary regarding the concept of "new feminist approaches," adopted in the title of the chapter. Firstly because the works presented here are contemporary to the mainstream feminist scholarship and secondly because, while employing the adjective "new" one runs the risk of presenting these perspectives as very exceptional and unprecedented, even if they have a rather long tradition in other fields of the humanities and social sciences. It also might suggest a replacement for the "old." In this chapter, this terminology is not adopted without concerns, but it appears to make sense in this context to highlight the distinctive character of many of the works dealing with sovereignty and gender specifically in the field of international law while also bringing other elements of concern and interdisciplinary dialogue with other critical perspectives, theories, and disciplines.

It is also striking to present "new" feminist perspectives while much of the previous feminist scholarship has been ignored in the context of international law. Feminist, postcolonial, and queer scholarship addressing gender issues in the context of the Third World often neglect to incorporate concepts and theories put forth by Latin American feminists. Despite adopting an intersectional framework, there is a noticeable absence of engagement with decolonial feminisms, for example, with only a few exceptional references to figures such as Maria Lugones⁵¹⁴ and Gloria Anzaldúa⁵¹⁵. Moreover, international law has failed to adequately address the interconnected nature of racial, gendered, sexual, and class

⁵¹⁴ Occasionally, Charlesworth mentions Lugone's concept of "world-traveling" and "loving perception" when discussing feminist methods in international law, but her scholarship, as well as that of other authors within the feminist approaches, shows no real engagement with Lugones's decolonial feminist theory. See: CHARLESWORTH, Hilary. Feminist critiques of international law and their critics. **Third World Legal Stud.**, p. 1, 1994. CHARLESWORTH, Hilary. Human rights as men's rights. In: **Women's Rights, Human Rights**. Routledge, 2018. p. 103-113. CHARLESWORTH, Hilary. Women and international law. **Australian Feminist Studies**, v. 9, n. 19, p. 115-128, 1994. CHARLESWORTH, Hilary. Cries and whispers: responses to feminist scholarship in international law. **Nordic J. Int'l L.**, v. 65, p. 557, 1996.

⁵¹⁵ See: OTTO, Dianne (ed.). **Queering International Law: possibilities, alliances, complicities, risks**. [S.L.]: Routledge, 2018.

inequalities, offering only partial solutions to the complex challenges faced by women⁵¹⁶. Similarly, the newstream have shown limited attention to the theoretical contributions made by Latin American feminists, which are not "new" and do not need to be rescued but rather deserve to be taken seriously⁵¹⁷.

3.1.1 Psychoanalytic insights

The rise of theoretical approaches advocating alternative legal truths challenges the notion that international scholarship exclusively relies on an "insider's" perspective. Rather, it is now recognized that the insider's perspective has evolved to encompass a broader range of relevant considerations in legal analysis. This transformation can be attributed to the intentional integration of alternative perspectives and non-legal methodologies in law throughout the 20th century⁵¹⁸.

Notably, within international legal scholarship, feminist and queer scholars have embraced psychoanalytic theory as one of the alternative perspectives that offers valuable insights into understanding the inherent biases of international law⁵¹⁹. Within this framework, certain scholars have explored the similarities between state behavior and human behavior to elucidate the intricate relationship between states and the concept of sovereignty⁵²⁰. Although feminist scholarship predominantly views sovereignty as derived from a masculine, white, Western, and heterosexual paradigm, as discussed in the second chapter, this viewpoint only captures a partial understanding.

Embracing psychoanalytic theory, feminist and queer scholars have expanded and complicated the understanding of sovereignty in international law. Sovereignty is no longer—if it ever was—confined to predetermined attributes but is recognized as a dynamic and relative concept that reflects and reinforces the changing positions of diverse actors in

⁵¹⁶ FRISSO, Giovanna Maria. Third World Approaches to International Law: feminists' engagement with international law and decolonial theory. In: RIMMER, Susan Harris. **Research Handbook on Feminist Engagement with International Law**. Cheltenham, UK: Edward Elgar Publishing, 2019, p. 479-498.

⁵¹⁷ On the debate on queer and feminist theories: WIEGMAN, Robyn. The times we're in: Queer feminist criticism and the reparative 'turn'. **Feminist Theory**, v. 15, n. 1, p. 4-25, 2014. MARINUCCI, Mimi. **Feminism is queer: The intimate connection between queer and feminist theory**. Bloomsbury Publishing, 2016. HAMMERS, Corie; BROWN III, Alan D. Towards a feminist-queer alliance: a paradigmatic shift in the research process. **Social epistemology**, v. 18, n. 1, p. 85-101, 2004. SHOWDEN, Carisa R. Theorising maybe: A feminist/queer theory convergence. **Feminist Theory**, v. 13, n. 1, p. 3-25, 2012.

⁵¹⁸ DAVIES, Margaret. The Alien Within. In: STEPHENS, Dale; BABIE, Paul (ed.). **Imagining Law: Essays in Conversation with Judith Gardam**. Adelaide: University Of Adelaide Press, 2016, p. 285.

⁵¹⁹ KOUVO, Sari; PEARSON, Zoe (ed.). **Feminist Perspectives on Contemporary International Law**. London: Hart Publishing, 2011. p. 7.

⁵²⁰ KNOP, Karen. Re/statements: feminism and state sovereignty in international law. In: SIMPSON, Gerry (ed.). **The Nature of International Law**. London: Routledge, 2001, p. 387.

different contexts. Alternative projects encompass diverse conceptualizations of both international and individual subjects, while also exploring other facets within the realm of international affairs that distinctly demonstrate the fluidity and divergence of legal subjectivity. This includes examining debates surrounding earned sovereignty or instances of extraterritorial control observed in the early 21st century⁵²¹.

In this section, attention will be given to the imputes provided by psychoanalytic theories and feminist critiques of psychoanalysis to rethink the functioning and the consolidation of sovereign identities in international law. Drawing mostly upon the work of Yoriko Otomo, who discusses the homosocial⁵²² inclinations in the masculinist conceptions of sovereignty⁵²³ as well as the fraternal bonding between states that encounter each other as equals while rejecting states that are perceived as unable to demonstrate sufficient closure on internal affairs⁵²⁴.

Otomo, in both her articles "Of Mimicry and Madness: Speculations on the State" and "Searching for Virtue in International Law", presents a thought-provoking analysis of state relations through the lens of psychoanalysis, drawing insights from Freud, Girard, Lacan, and the feminist critique of Julia Kristeva and Luce Irigaray. Her analysis skillfully integrates diverse scholarship from the "outside," shedding fresh insights into concepts that have been extensively explored by scholars, as in the case of sovereignty, proposing that psychoanalysis, with its sophisticated understanding of subjectivity, can serve as a valuable framework for reimagining and documenting the interactions between states and the creation of a sovereign identity as constitutive of the subjects who speak the law⁵²⁵.

To explain the complications of the consolidation and maintenance of the sovereign identity, she starts by presenting Lacan's concept of the "mirror stage," which refers to a developmental phase in which a child, upon seeing their own reflection in the mirror, simultaneously recognizes and misrecognizes it as a representation of a unified self, while also realizing its separation from the world. This leads to the formation of a "split subject" in which subjectivity is divided into Self and Other, creating an inherently alienating structure due to the tension between fragmented personal experiences and the solid and permanent

⁵²¹ HEATHCOTE, Gina. **Feminist Dialogues on International Law: successes, tensions, futures**. [S.L.]: Oxford University Press, 2019, p. 116.

⁵²² OTOMO, Yoriko. Of Mimicry and Madness: speculations on the state. **Australian Feminist Law Journal**, [S.L.], v. 28, n. 1, 2008, p. 55.

⁵²³ OTOMO, Yoriko. Searching for Virtue in International Law. In: KOUVO, Sari; PEARSON, Zoe (ed.). **Feminist Perspectives on Contemporary International Law**. London: Hart Publishing, 2011, p. 37.

⁵²⁴ HEATHCOTE, Gina. **Feminist Dialogues on International Law: successes, tensions, futures**. [S.L.]: Oxford University Press, 2019, p. 116.

⁵²⁵ OTOMO, Yoriko. Searching for Virtue in International Law. In: KOUVO, Sari; PEARSON, Zoe (ed.). **Feminist Perspectives on Contemporary International Law**. London: Hart Publishing, 2011, p. 36.

body image in the mirror. Lacan's understanding of the mirror stage primarily emphasizes its structural significance in delineating the "Imaginary" order, rather than its historical relevance for infant development. While the subject's identification with its mirrored image drives a nostalgic longing for past symbiotic wholeness, it also acknowledges the impossibility of achieving reunification with the Other.

To address this internal rupture, the image of the Other must be incorporated, enabling the subject to conceive itself as the source of its own origin and unity. However, this imaginary relation, although structurally necessary, can be stifling and unproductive, necessitating mediation by a "third term." The meaning of desire lies in being recognized by the other, rather than simply appropriating the desired object. However, recognition, as borrowed from Kojève⁵²⁶, is only possible between equals, as satisfaction can only be attained through mutual recognition, a desire that remains crucial in shaping legal relations⁵²⁷.

To observe the mimetic structures in the relations between sovereign states, Otomo departs from the idea that sovereign jurisdiction is founded on the occupation and possession of territory, signifying the capacity to act as a unitary entity capable of enforcing its word⁵²⁸. These mimetic structures are evident in the language and in the form of treaties, edicts, and proclamations within contemporary international law. The language of protection and security often plays a role in enforcing this sovereign identity, as it stems from the need to protect other subjects of international law, preserving the mirror image, which serves as the sole guarantee of self-recognition⁵²⁹.

Modern international law, founded on the concept of a "family of nations," is viewed as a story of brothers⁵³⁰. Presenting itself as a secular system, it lacks an immediate transcendental authority (referred to as the Father in psychoanalytic terms) to constitute each state's subjectivity. Their relations with one another are officially configured as homosocial

⁵²⁶ See: KOJÈVE, Alexandre. **Outline of a Phenomenology of Right**. Rowman & Littlefield, 2007.

⁵²⁷ OTOMO, Yoriko. Searching for Virtue in International Law. In: KOUVO, Sari; PEARSON, Zoe (ed.). **Feminist Perspectives on Contemporary International Law**. London: Hart Publishing, 2011, p. 35-36.

⁵²⁸ OTOMO, Yoriko. Searching for Virtue in International Law. In: KOUVO, Sari; PEARSON, Zoe (ed.). **Feminist Perspectives on Contemporary International Law**. London: Hart Publishing, 2011, p. 37.

⁵²⁹ OTOMO, Yoriko. Of Mimicry and Madness: speculations on the state. **Australian Feminist Law Journal**, [S.L.], v. 28, n. 1, 2008, p. 61.

⁵³⁰ "The homosocial bonds were also fundamental to the establishment of international legal academia. [Westlake] regards international legal academia as a fraternity whose masculine reasonability is mirrored both internally and externally by the state. This notion of the fraternity of scholars is replicated elsewhere including in Pomeroy's idea of the 'brotherhood of nations'. The characteristics and symbolism connected to the international legal academic were established in the absence of women and in repetition of a process of exclusion of women from the public sphere of action that dates back to Greek philosophy. Homosociality is put at the core of international legal academia's right to influence legal development." O'DONOGHUE, Aoife. *The Admixture of Feminine Weakness and Susceptibility: Gendered Personifications of the State in International Law*. **Melbourne Journal Of International Law**. [S.L.], 2018, p. 242.

through language, emphasizing equality and recognition. These relations are supported by systems of occupation and exchange, driven by a desire to attain "a whole, white, 'clean-and-proper' subjectivity."⁵³¹ Recognition in this context occurs not in terms of (hetero)sexual relations but through kinship bonds between equals.

This construction is not without gendered dynamics, as it requires a sacrifice to sustain the fantasy of unification, which is also a male fantasy. The binary associated with the feminine must be sacrificed, leaving the fraternal bond that allows for the consolidation of recognition between states. Otomo cites Julia Kristeva, arguing that the domination of "Being" involves the progressive triumph of what is defined as 'more' (true, right, clear, reasonable, intelligible, paternal, masculine) over its 'other' (fantastic, harmful, obscure, 'mad', sensible, maternal, feminine), culminating in a fiction of a simple, indivisible, ideal origin⁵³².

The mimetic inversion happens as the lost body reproduces the phallogocentric order symbolized by the Father/Sun/God, while the memory of the mother's body is sacrificed. "What is loosely called international law—the language between states—reflects and refracts its sameness in itself and for itself," mediating their mimetic desires. According to Otomo, the utopian body of the maternal feminine has no place and cannot be emancipatory as long as it exists within the mimetic structures of men. The self's desire finds meaning in the desire of the other, not because the other holds the key to the desired object, but because the self's first object is being recognized by the other⁵³³.

The recognition of fraternal states and their Others becomes fragile when figures of alternative sovereignties, not grounded on the utopian body of a secular subject, come into play⁵³⁴. Homosocial bonds could only exist among European states sharing the common ground of civilization. The complication arises when sovereign subjects must speak international law, make decisions, and enforce their word. Jurisdiction cannot operate without a body, voice, and power, and the inability to do so results in hysteria⁵³⁵.

⁵³¹ OTOMO, Yoriko. Searching for Virtue in International Law. In: KOUVO, Sari; PEARSON, Zoe (ed.). **Feminist Perspectives on Contemporary International Law**. London: Hart Publishing, 2011, p. 37.

⁵³² IRIGARAY, Luce. **Speculum of the other woman**. New York: Cornell University Press, 1985, p. 275.

⁵³³ OTOMO, Yoriko. Of Mimicry and Madness: speculations on the state. **Australian Feminist Law Journal**, [S.L.], v. 28, n. 1, 2008, p. 60.

⁵³⁴ OTOMO, Yoriko. Searching for Virtue in International Law. In: KOUVO, Sari; PEARSON, Zoe (ed.). **Feminist Perspectives on Contemporary International Law**. London: Hart Publishing, 2011, p. 43.

⁵³⁵ OTOMO, Yoriko. Searching for Virtue in International Law. In: KOUVO, Sari; PEARSON, Zoe (ed.). **Feminist Perspectives on Contemporary International Law**. London: Hart Publishing, 2011, p. 37. This is somewhat related to the feminist discussion of the State as a bounded self, at the same time that it presents itself as a disembodied entity, presented in the second chapter. Otomo argues that "Both the masculinist subjectivity core to the idea of the sovereign state and the feminist critique itself, are founded on the idea of a utopian body outside of a system of law guaranteed by a transcendental being." In this case, this closeness from both international law's rhetoric of sovereignty and its feminist critique might come from the fact that the critiques are presented on the same terms and depart from the same frames of disembodied rationality.

Enforcement, therefore, poses a complication in the context of brotherhood and *otherhood*, involving two distinct behaviors: consensual agreements between equals and violent or economic coercion toward states that do not share homosocial bonds. The norms of recognition cannot be extended to situations where not only was equality absent but also an inherent inferiority existed. The existence of the uncivilized other would pose a challenge to the tentative unification of the European sovereign when trying to both incorporate the image of the Other and fulfill its desire for separation simultaneously⁵³⁶.

This apparent contradiction has been justified by generations of internationalists since the beginning of the process of colonialism, and when it comes to the permanence of colonial and imperial patterns of dominance and exclusion, the critical scholarship, specially TWAIL, has made a great work in uncovering the "messianic logic" of international law which "sanctioned and encouraged violence against so-called 'primitive' non-European peoples in order to bring them into conformity with European religious and societal norms, including norms about gender."⁵³⁷

In many cases, this assimilation occurred not through physical violence, through the medium of legal discourse. Otomo illustrates that with the historical encounter between the United States and Japan, the U.S.' demand for unconditional surrender, and the subsequent establishment of a secularized Japan. The U.S.' demand presented a contrast between force and salvation, promising a future of peace and democratic stability. Otomo analyzed this demand not as merely seeking Japan's transformation into a democracy but rather a demand for unconditional love and recognition of the U.S.' territorial authority, contending that the Emperor's speech obscured the fact that the new nation's formation was conditional upon joining the fraternal relation of the international economy.

In response to the demand for surrender, Emperor Hirohito delivered a momentous speech, known as the Gyokuon Hoso or "Jewel Voice Broadcast," where he renounced his divine ancestry, secularizing the state and emphasizing mutual trust and affection between the ruler and the people. This secularization involved a substitution of the divine for the s(p)ecular body, enabling both states to assert authority over their respective territories. The

⁵³⁶ "The subject initially incorporates the image of the (m)Other in order to deny the 'internal rupture and [conceive] of itself as the source of its own origin and unity' and forgets this loss in mirror images of itself which reflect back a fantasy of wholeness" OTOMO, Yoriko. Searching for Virtue in International Law. In: KOUVO, Sari; PEARSON, Zoe (ed.). **Feminist Perspectives on Contemporary International Law**. London: Hart Publishing, 2011. p. 36.

⁵³⁷ EICHERT, David. Decolonizing the Corpus: a queer decolonial re-examination of gender in international law's origins. **Michigan Journal Of International Law**, [S.L.], n. 433, 2022, p. 565-566. University of Michigan Law Library. <http://dx.doi.org/10.36642/mjil.43.3.decolonizing>.

speech was a skillful rearticulation of the Japanese nation, signifying the transition from a divine corporeal guarantor to a secular phallic avatar within the mimetic discursive economy.

This resurrection of sovereignty through the act of Imperial speech, the re-appropriation of the language of nation and empire, and the repositioning of Japan from the role of 'occupier' to 'occupied', was the beginning of Japan's re-writing of post-war history, 'where issues of war responsibility have more often than not deflected and bypassed the questions of Japanese colonialism'⁵³⁸.

This process was deeply informed by colonial dynamics and acts of resistance. Otomo makes reference to Homi Bhabha's discussion of colonial imitation⁵³⁹, which explores the complex dynamics of mimicry and mockery in the context of colonialism, which functions not merely as a simple act of imitation but rather as a nuanced process that involves the transformation of authority and power dynamics. According to Bhabha, mimicry exists in the "area between mimicry and mockery," where the colonizer's attempt at reforming and civilizing the colonized is threatened by the gaze of its own disciplinary double. In other words, the colonizer's efforts to impose its culture and norms on the colonized are challenged by the latter's mimicry, which reveals the underlying power imbalances and the potential for resistance.

The mimicry creates an ambivalent relationship between the colonizer and the colonized, resulting in a sense of both recognition and dislocation. It can also function as a form of resistance, unsettling established power dynamics and challenging the authority of the colonizer. In this sense, there is no simple opposition between colonizer and colonized, since the latter does not play the role of passive copying but has also a space to assert its agency and identity in the face of colonial oppression.

With this narrative, Otomo seeks to explain the relations of violence, sacrifice, occupation, and possession in more nuanced manners. While also thinking about the interactions between legal subjects in international law in terms of "hosting," she calls attention to the dependency and conditional nature of occupation that highlight the instability of borders and the impossibility of full control. It evidences the impossibility of the establishment of a proper body, since the existence of this body itself (meaning the masculine, European sovereign state) already presupposes the occupation of the body of the Other, while at the same time this hosting relation is deeply informed by sexual dynamics.

⁵³⁸ OTOMO, Yoriko. Of Mimicry and Madness: speculations on the state. *Australian Feminist Law Journal*, [S.L.], v. 28, n. 1, 2008, p. 74.

⁵³⁹ See: BHABHA, Homi. Of mimicry and man: The ambivalence of colonial discourse. *October*, v. 28, p. 125-133, 1984.

While the mimetic inversion occurred in the case of Japan's unconditional surrender, the hysteric symptom, which could have led to a challenging of the presupposition of sovereignty, was precluded. Nonetheless, Otomo highlights the need for further analysis of instances of state-sanctioned violence within the international legal order, using psychoanalytic, feminist, and postcolonial perspectives to understand desire, recognition, mimicry, and sacrifice. The ultimate aim is to reveal the complexities of sovereignty and territoriality and to question the notion of unconditional sovereignty in an age marked by male-dominated structures and power dynamics. If one understands the international as the "space between territorial bodies," then law becomes "a performance of jurisdiction," and the "Feminist critiques of psychoanalysis are helpful for revealing the fraternal structuration of states and making explicit the operation of sacrifice and violence within this structure."⁵⁴⁰

3.1.2 Splitting subjects

Inspired by Otomo's analysis, an alternative framing of state sovereignty from a feminist perspective has been recently proposed by Gina Heathcote, aiming to challenge traditional conceptions of sovereignty while addressing the unfulfilled promises of feminist thinking in addressing the foundations of international law⁵⁴¹. By reframing sovereignty as a split and relational concept, the author seeks to think through conceptions of what it means to be human without asserting traditional models of legal subjectivity, thus contributing to mainstream debates on the changing nature of sovereignty during the 20th and 21st centuries and paving the way for a more inclusive and diverse approach to international law.

Heathcote advocates for a new vocabulary that challenges compliance strategies lacking revolutionary feminist practices. She emphasizes the distinction between engaging with and resisting institutional structures of international law to achieve political goals and seeks to fill the space created by failures of masculinist international law discourse with revolutionary readings and writings.

The text points out the limited feminist scholarship on state sovereignty despite developments such as the responsibility to protect doctrine, the emergence of non-state entities, and shifts in the criteria for statehood. She revisits early analysis of feminism and state sovereignty, highlighting the need for feminists to critically examine and understand

⁵⁴⁰ OTOMO, Yoriko. Searching for Virtue in International Law. In: KOUVO, Sari; PEARSON, Zoe (ed.). **Feminist Perspectives on Contemporary International Law**. London: Hart Publishing, 2011, p. 40.

⁵⁴¹ HEATHCOTE, Gina. **Feminist Dialogues on International Law: successes, tensions, futures**. [S.L.]: Oxford University Press, 2019, p. 104.

state sovereignty's potential as a strategy of empowerment. The text discusses the personification of state sovereignty and rejects the analogy between individual and state sovereignty.

Heathcote presents the concept of "split subjects" as a relational comprehension of legal subjects that incorporate temporal and territorial implications. She borrows feminist philosopher Julia Kristeva's insight on pregnancy as a 'radical splitting of the subject'⁵⁴², while explaining that this doesn't mean advocating the transference from a masculinist to a feminine conception of law. Rather, it encompasses a project of seeing the "diversity of bodies and derived from the recognition of plural subjectivities."⁵⁴³ As such,

The split subject, or the pregnant body, is understood as difference, as potentiality, as the natal moment which connects what it means to be human (rather than female or male). The focus on the split subject also permits attention to the instability of borders, the changing and porous nature of sovereignty, and nomadic, migrant, and peripheral subjects as knowledge-makers.⁵⁴⁴

This splitting, according to her, can be perceived in the transformations of state sovereignty during the late twentieth and early twenty-first centuries,

as new subjects (states) emerged in the aftermath of conflict and during secession struggles, via decolonisation processes, or as the consequence of international interventions, as well as through the rise of non-state entities such as self-governing territories and UN territorial administrations, as equally as through the consolidation of international institutions and regional networks as spaces of international cooperation. Furthermore, as understandings of home and belonging have been disrupted by virtual and physical movement across territories, previous markers that constituted the boundaries of international subjectivity have struggled to contain the diversity of actors moving through and with access to any given territory⁵⁴⁵.

The text delves into the responsibility to protect doctrine and its implications for state sovereignty. Originating from the Independent Commission on Intervention and State Sovereignty (ICISS). The doctrine was formulated to address the international community's failure to respond to humanitarian crises, such as those in Rwanda and the Former Yugoslavia. It consists of two components: the responsibilities states have towards their populations and the responsibilities of other states to intervene when a state fails to protect its people.

⁵⁴² "Pregnancy seems to be experienced as the radical ordeal of the splitting of the subject: redoubling up of the body, separation and coexistence of the self and of an other, of nature and consciousness, of physiology and speech." KRISTEVA, Julia *et al.* *Women's Time. Signs*. [S.L.], 1981, p. 31.

⁵⁴³ HEATHCOTE, Gina. *Feminist Dialogues on International Law: successes, tensions, futures*. [S.L.]: Oxford University Press, 2019, p. 109.

⁵⁴⁴ HEATHCOTE, Gina. *Feminist Dialogues on International Law: successes, tensions, futures*. [S.L.]: Oxford University Press, 2019, p. 95.

⁵⁴⁵ HEATHCOTE, Gina. *Feminist Dialogues on International Law: successes, tensions, futures*. [S.L.]: Oxford University Press, 2019, p. 108.

However, the latter aspect lacks clear legal definition and remains a subject of debate in international law.

Heathcote highlights the limited success of military interventions in transforming women's security and challenging the gendered nature of legal authority and violence, then arguing that responsibility to protect creates two tiers of sovereignty, favoring powerful states with intervention capabilities while leaving weaker states vulnerable to external interventions. This doctrine "reinforces differences and inequalities and ultimately leaves the masculinist, bounded, and powerful state as unchallenged."⁵⁴⁶

To challenge these unequal power dynamics, the text calls for a reimagining of sovereignty in terms of splits. Even with a legal commitment to sovereign equality, the spaces where some subjects experience cross-state interventions as power and where other subjects experience interventions as violations are understood in more relational and relative terms. On the other hand, neither the vulnerable or violent state could be seen in isolation, following the model of the "bounded masculine legal subject," because they are permanently under the risk of facing internal conflict. While the doctrine of responsibility to protect would embrace the fiction of boundness as the norm, "The split subject, in contrast, exists in a normative universe of both potential and existing dependencies across legal subjects that need not be denied as it is the capacity for the subject to split that constructs what it is to be a sovereign subject."

In sequence, the author examines the concept of secession and its implications for state sovereignty, with a focus on the relations between secession and sovereignty. It highlights that secession poses a challenge to state sovereignty⁵⁴⁷, as it is both illegal and capable of splitting the legal subject of a state⁵⁴⁸. Despite not being clearly recognized as a legal right, secession has occurred throughout history, leading to acknowledgment of its political significance. The traditional view of international law, based on state consent, has gradually shifted to accommodate the reality of interstate relations, where coordination and compliance can be achieved through various methods, including the involvement of non-state actors.

The split subject perspective allows for a better understanding of the complexities of state sovereignty, acknowledging its relational nature and potential for change and diversity

⁵⁴⁶ HEATHCOTE, Gina. **Feminist Dialogues on International Law: successes, tensions, futures.** [S.L.]: Oxford University Press, 2019, p. 119.

⁵⁴⁷ HEATHCOTE, Gina. **Feminist Dialogues on International Law: successes, tensions, futures.** [S.L.]: Oxford University Press, 2019, p. 123.

⁵⁴⁸ HEATHCOTE, Gina. **Feminist Dialogues on International Law: successes, tensions, futures.** [S.L.]: Oxford University Press, 2019, p. 122.

within communities⁵⁴⁹, offering a space for diverse identities and needs within a state, particularly in border territories with pre-colonial histories of flow and movement. It emphasizes the importance of inclusive decision-making and working in concert to address the shared consequences of secession. By reimagining sovereignty through these lenses, the text advocates for non-coercive approaches to address secessionist claims and promote common diversity⁵⁵⁰.

3.1.3 Posthuman feminism

In recent times, internationalists have increasingly focused on posthumanist and new materialist theories. This attention is evident through recent publications, events, and conferences that critically examine prevailing assumptions about the matter in both modern and postmodern contexts, incorporating perspectives from science and technology studies as well as posthumanist feminisms⁵⁵¹. Within this context, particular emphasis is placed on readings that offer analytical tools for understanding sovereignty from a posthuman feminist perspective.

A central goal of posthuman legal theory is to ethically challenge the dominant position of the human subject in legal discourse⁵⁵². Notably, Matilda Arvidsson has made significant contributions to posthuman approaches in the context of international humanitarian law, specifically focusing on the material and digital aspects of welfare⁵⁵³. It has been argued

⁵⁴⁹ HEATHCOTE, Gina. **Feminist Dialogues on International Law: successes, tensions, futures**. [S.L.]: Oxford University Press, 2019, p. 124.

⁵⁵⁰ HEATHCOTE, Gina. **Feminist Dialogues on International Law: successes, tensions, futures**. [S.L.]: Oxford University Press, 2019, p. 125.

⁵⁵¹ ARVIDSSON, Matilda. Targeting, Gender, and International Posthumanitarian Law and Practice: framing the question of the human in international humanitarian law. **Australian Feminist Law Journal**, [S.L.], v. 44, n. 1, p. 9-28, 2018. Informa UK Limited. <http://dx.doi.org/10.1080/13200968.2018.1465331>. JONES, Emily. **Feminist Theory and International Law: posthuman perspectives**. Abingdon And New York: Routledge, 2023. JONES, Emily; OTTO, Dianne. Thinking through anthropocentrism in international law: queer theory, posthuman feminism and the postcolonial - A conversation between Emily Jones and Dianne Otto. 2020. JONES, Emily. Posthuman international law and the rights of nature. **Journal of Human Rights and the Environment**, v. 12, p. 76-101, 2021. HOHMANN, Jessie M.; SCHWÖBEL-PATEL, Christine. A Monument to EG Wakefield: New and Historical Materialist Dialogues for a Posthuman International Law. **International Law and Posthuman Theory (Arvidsson & Jones, eds)(2023)**, 2023. GREAR, Anna; BOULOT, Emille; VARGAS-RONCANCIO, Iván D. (Ed.). **Posthuman legalities: new materialism and law beyond the human**. Edward Elgar Publishing, 2021.

⁵⁵² JONES, Emily. **Feminist Theory and International Law: posthuman perspectives**. Abingdon And New York: Routledge, 2023, p. 15.

⁵⁵³ ARVIDSSON, Matilda. Targeting, Gender, and International Posthumanitarian Law and Practice: framing the question of the human in international humanitarian law. **Australian Feminist Law Journal**, [S.L.], v. 44, n. 1, p. 9-28, 2018. Informa UK Limited. <http://dx.doi.org/10.1080/13200968.2018.1465331>. ARVIDSSON, Matilda. The swarm that we already are: artificially intelligent (AI) swarming 'insect drones', targeting and international humanitarian law in a posthuman ecology. **Journal of Human Rights and the Environment**, v. 11, n. 1, p. 114-137, 2020.

that the attempt to rethink non-human subjecthood with concerns for gender and the environment might help to respond to the challenges of the Anthropocene and the interspecies survival in an increasingly violent and interdependent global order⁵⁵⁴.

A monographic work has been published in 2023 that adopts a posthuman feminist approach. Emily Jones, the author, advocates for its relevance to contemporary issues, including increasing inequalities, advancements in technology, and the environmental crisis⁵⁵⁵. She views posthuman feminism as an interdisciplinary approach that has the potential to challenge the dominant foundations of international law by integrating various fields of study, such as philosophy, science and technology studies, queer and feminist theories, postcolonialism, and critical race theories⁵⁵⁶. Jones argues that posthuman feminism aims to dismantle exclusionary humanist hierarchies based on factors like gender, race, and class, while also reevaluating the anthropocentric notion that humans hold superiority over nonhuman entities, including the environment and non-human animals⁵⁵⁷.

Feminist, queer, and postcolonial scholars have criticized the construction of the sovereign state in international law, contending that it is imbued with gender and racial biases. These scholars often begin by analyzing the underlying model of subjectivity that shapes the concept of the state, highlighting that international law portrays the state as an integral entity with fixed and inviolable borders, transforming it into a "legal person" through the exercise of jurisdictional authority⁵⁵⁸.

While international law, in theory, does not primarily revolve around humans, it emphasizes the importance of state consent and recognizes the state as a central legal subject. According to this framework, the state is regarded as part of a horizontal legal system composed of sovereign states that are formally equal. Other entities, including international organizations and individuals, are also acknowledged as international legal subjects, but their status as such is contingent upon state consent. In this model, the state retains its central role in international law and serves as the primary source of authority, as it has been discussed in the previous chapter.

⁵⁵⁴ QUIROGA-VILLAMARÍN, Daniel R.. Domains of Objects, Rituals of Truth: mapping intersections between international legal history and the new materialisms. *International Politics Reviews*, [S.L.], v. 8, n. 2, 2020, p. 136. Springer Science and Business Media LLC. <http://dx.doi.org/10.1057/s41312-020-00083-w>.

⁵⁵⁵ JONES, Emily. *Feminist Theory and International Law: posthuman perspectives*. Abingdon And New York: Routledge, 2023, p. 1.

⁵⁵⁶ JONES, Emily. *Feminist Theory and International Law: posthuman perspectives*. Abingdon And New York: Routledge, 2023, p. 10.

⁵⁵⁷ JONES, Emily. *Feminist Theory and International Law: posthuman perspectives*. Abingdon And New York: Routledge, 2023, p. 1.

⁵⁵⁸ JONES, Emily. *Feminist Theory and International Law: posthuman perspectives*. Abingdon And New York: Routledge, 2023, p. 34.

Non-state entities possess more limited forms of legal personality, with their rights and duties depending on the permissions granted to them by states⁵⁵⁹. For instance, while individuals may have rights when their human rights are violated, they are unable to enter into treaties like states can. Consequently, the state remains the sole entity within international law that possesses a comprehensive range of rights and responsibilities. Although authors like Nijman may argue that individuals, as citizens, are the ultimate source of power in international law, the state, as a non-human subject, formally maintains its status as the central subject of international law⁵⁶⁰.

To understand the exclusionary humanism within international law and its human-centered consequences, Jones examines the concept of the sovereign state, which is considered the central subject of international law. If, in the 19th century, sovereignty was a privilege of the civilized nations, in the present, sovereignty operates differently, with all states formally considered absolute in their internal sovereignty. This implies that they are fully independent, autonomous, and possess complete control over their decision-making processes. This construction of the sovereign state emphasizes isolation and separation. Although international law comprises numerous sovereign states, each allegedly equal in their absolute power over their territory and decision-making, this equality is essentially a legal fiction. The doctrine of sovereign equality, in conjunction with state consent, is employed to address this contradiction. However, in practice, states are not truly equal, as there are significant disparities in power among them which significantly influence the true implications of consent within the realm of international law⁵⁶¹.

Not only states but also corporations are significant non-human (but too human) subjects for international law. Jones argues that the principles of sovereign equality, state consent, and the legal personhood of corporations within international law highlight the inherently human characteristics of the (non-human) sovereign state. These characteristics are deeply intertwined with power dynamics, gender, and race⁵⁶². However, although international law has historically acknowledged non-human subjects, particularly the sovereign state, it does not inherently adopt a posthuman perspective. According to Jones, international law has typically recognized only certain non-human entities as legal persons, such as international

⁵⁵⁹ JONES, Emily. **Feminist Theory and International Law: posthuman perspectives**. Abingdon And New York: Routledge, 2023, p. 28-29.

⁵⁶⁰ JONES, Emily. **Feminist Theory and International Law: posthuman perspectives**. Abingdon And New York: Routledge, 2023, p. 30.

⁵⁶¹ JONES, Emily. **Feminist Theory and International Law: posthuman perspectives**. Abingdon And New York: Routledge, 2023, p. 31.

⁵⁶² JONES, Emily. **Feminist Theory and International Law: posthuman perspectives**. Abingdon And New York: Routledge, 2023, p. 37.

organizations, states, and corporations, and this recognition has been contingent upon their alignment with the principles of liberal humanism, anthropocentrism, gender biases, racial hierarchies, and the overall framework of the international legal project, including neoliberal economics⁵⁶³.

The posthuman feminist analysis of sovereignty proposed by Jones holds significant importance and offers illuminating insights into deconstructing long-standing paradigms and assumptions that have deeply permeated international law since its inception. By challenging the problematic Eurocentric, humanist, and exclusionary frameworks, this perspective sheds light on the notion that the state, despite being a non-human entity, is imbued with "too human" characteristics. This realization becomes particularly relevant in the ongoing critique of how the state has been personified as male in international law. As such, this scholarship provides feminist approaches with a fresh and creative lens through which to examine the intricate relationship between gender and sovereignty. By scrutinizing and reframing these traditional perspectives, posthuman feminist analysis encourages a more comprehensive and inclusive understanding of sovereignty, opening up new avenues for advancing gender-informed discussions in the field of international law.

The triumph of the posthuman perspective lies in revealing the "too human" characteristics present in non-human entities of international law. This means that these entities are significantly influenced by human concepts such as race, gender, class, and sexuality in both their internal and external operations. However, there is a need for skepticism towards all-encompassing theories that attempt to address environmental demands, racial and gender inequalities, the impact of technology (especially in warfare), and other related issues. As Jessie Hohmann posits, adopting new materialist insights can challenge Eurocentric and idealist doctrines and rules, which tend to separate mind from matter, humans from nature, and subject from object. But one must not forget that these separations continue to determine who and what is granted rights, subjectivity, power, and agency, as opposed to those deemed passive objects vulnerable to exploitation under international law⁵⁶⁴.

Nevertheless, it's important to acknowledge that these "new" ideas do not entirely replace "old" materialist theories or, as Daniel Quiroga-Vilamarín highlights, that the label "new materialisms" may be misleading, as these movements have significant connections to

⁵⁶³ JONES, Emily. **Feminist Theory and International Law: posthuman perspectives**. Abingdon And New York: Routledge, 2023, p. 25.

⁵⁶⁴ HOHMANN, Jessie. Diffuse subjects and dispersed power: new materialist insights and cautionary lessons for international law. **Leiden Journal Of International Law**, [S.L.], v. 34, n. 3, 2021. Cambridge University Press (CUP). <http://dx.doi.org/10.1017/s0922156521000157>, p. 5.

previous theories and exhibit internal disagreements about the meaning and significance of matter⁵⁶⁵. While decentering human actors can bring attention to previously overlooked aspects of non-human assemblages, it is crucial to consider that this perspective might obscure questions of responsibility and power⁵⁶⁶. This concern is especially relevant if posthuman scholarship is looked at in reference to TWAIL scholarship.

Critics of posthumanism argue that, by emphasizing the exclusion of nature and individuals with diverse attributes of discrimination, it reinforces a dichotomy between the "heterosexual, white, middle-class, male subject" and all other entities (humans, non-human subjects, and matter)⁵⁶⁷. One might question to what the intricate nature of oppressive mechanisms acknowledged in all its complexity by posthuman feminist theory, rather than merely being juxtaposed and oversimplified, and how does this recognition influence the practical landscape of international law⁵⁶⁸. Intersectional, black, and decolonial feminism are significant in this context, and efforts must be made to avoid oversimplifying oppression and losing the progress made by such approaches.

While posthumanism has been successful in highlighting the interconnected nature of human embodiment, knowledge production, culture, and their relationship with the environment, objects, non-human animals, and technology, critics point out that it sidesteps the analytical challenges posed by race, colonialism, and slavery⁵⁶⁹. She notes that decolonial philosophies have already anticipated and addressed these issues raised as discoveries of posthumanism, given that racial exigencies have significantly influenced discourses surrounding non-human entities. Jackson proposes reimagining "the human" as a product of multiple historical and ongoing contestations and examining the relational aspects of these contestations, rather than equating "the human" solely with the colonial imposition of

⁵⁶⁵ QUIROGA-VILLAMARÍN, Daniel R.. Domains of Objects, Rituals of Truth: mapping intersections between international legal history and the new materialisms. *International Politics Reviews*, [S.L.], v. 8, n. 2, 2020, p. 130. Springer Science and Business Media LLC. <http://dx.doi.org/10.1057/s41312-020-00083-w>.

⁵⁶⁶ QUIROGA-VILLAMARÍN, Daniel R.. Domains of Objects, Rituals of Truth: mapping intersections between international legal history and the new materialisms. *International Politics Reviews*, [S.L.], v. 8, n. 2, 2020, p. 137. Springer Science and Business Media LLC. <http://dx.doi.org/10.1057/s41312-020-00083-w>.

⁵⁶⁷ HERZOG, Amelie; HAMMERSCHMIED, Anastasia. Making Sense of Posthuman Feminist Theory in International Law. *Völkerrechtsblog*, [S.L.]. Fachinformationsdienst für internationale und interdisziplinäre Rechtsforschung. <http://dx.doi.org/10.17176/20230524-140125-0>.

⁵⁶⁸ HERZOG, Amelie; HAMMERSCHMIED, Anastasia. Making Sense of Posthuman Feminist Theory in International Law. *Völkerrechtsblog*, [S.L.]. Fachinformationsdienst für internationale und interdisziplinäre Rechtsforschung. <http://dx.doi.org/10.17176/20230524-140125-0>.

⁵⁶⁹ JACKSON, Zakiyyah Iman. Animal: new directions in the theorization of race and posthumanism. *Feminist Studies*, [S.L.], v. 39, n. 3, 2013, p. 671. Project MUSE. <http://dx.doi.org/10.1353/fem.2013.0024>.

Enlightenment humanism⁵⁷⁰. One might then question how this reimagined human would transform the understanding of the sovereign state.

3.2 Queering sovereignty

By contrasting queer approaches with feminist approaches, one might see the need to go beyond feminist analysis and understand that discussing the limits and pitfalls of feminist approaches also means taking them seriously. While putting women as the central object of concern and producing a comprehensive critique of their exclusion as subjects and practitioners has been an important project, it is not enough, as Engle, Nesiah, and Otto explain,

From a queer feminist perspective, the failure of feminist projects in international law to challenge the interrelated assumptions of gender duality and heteronormativity effectively stereotypes women as sexually vulnerable and men as sexually predatory. To the extent that these projects consider sexual harm to men, they tend to assimilate it to that same paradigm, seeing some men as predators of the other men they feminize. Further, the extreme level of gender-based violence experienced by those who express a gender identity that falls outside the prescribed male/female lexicon is largely ignored, as is sexual violence that does not follow the heteronormative script. These failures undo much of the feminist work towards understanding how gender functions largely, if not entirely, as a social category, leaving everyone poorly equipped to understand the deeper work that the normalization of gender duality does as a fundamental organizing principle in international law. Naturalized dualistic conventions of gender and sexuality not only play a constitutive role in signifying relations of power; they help to invest international law with authority and legitimacy. Therefore, challenging those conventions must be a core component of every critical engagement with international law⁵⁷¹.

When applying a queer perspective to international law, there may be a misconception that it replaces feminist approaches. However, queer and feminist perspectives can be complementary, offering distinct analytical tools for examining contemporary and historical issues in international law.

What queer understandings of sex/gender and their challenge to ideas of the sex binary and asymmetry direct feminists towards is a more expansive politics [...]. Then sex and gender are understood as both socially constructed and not restricted to the determinants of "male" and "female" alone, then the term "gender" ceases to equate exclusively to "women." It is then possible to view the oppression that

⁵⁷⁰ JACKSON, Zakiyyah Iman. Animal: new directions in the theorization of race and posthumanism. *Feminist Studies*, [S.L.], v. 39, n. 3, 2013, p. 681. Project MUSE. <http://dx.doi.org/10.1353/fem.2013.0024>.

⁵⁷¹ ENGLE, Karen; NESIAH, Vasuki; OTTO, Dianne. Feminist Approaches to International Law. *University Of Texas Law, Public Law Research Paper*. [S.L.], 2021, p. 13.

women face within a wider context of heteronormative power, as well as to promote more expansive possibilities for experiencing and expressing sex/gender⁵⁷²

This section will delve into the application of queer approaches to international law and their contribution to advancing feminist scholarship on sovereignty. It critically examines the adoption of queer perspectives by situating them within their historical context, describing the foundations of this tradition, and evaluating its current theoretical developments.

Moreover, it explores various scholarly works concerning sovereignty that employ queer lenses. By providing creative and radical insights into the operation of gender and sexual dynamics within international law, as well as their relation to discourse and practice, queer perspectives take into account the shifting constellations of non-normative subject positions, which are not only sexually marked but also distinguished by reference to race, class, gender, and other vectors of power. We can open up the possibilities of emancipatory alliances and a more complex and mobile understanding of power within and beyond the traditional and hegemonic paradigms of international law.

3.2.1 Conceptualizing the queer in international law

Originally, the term "queer" had an overwhelmingly negative connotation and was used as a pejorative term to refer to those who were perceived as different from the socially established norms. However, over time, the term has been reclaimed by the LGBTQ+ community and transformed into a celebratory identity.

Teresa de Lauretis, a feminist and gender theorist, coined the term "queer" in 1991 with the aim of articulating that heterosexuality is not the norm for all human sexuality and that all gay and lesbian studies do not boil down to the same set of narrow assumptions or questions. Additionally, race is seen as playing a crucial role in shaping sexual subjectivities⁵⁷³. Eve Sedwick, another influential queer theorist, has shown that queer theory is about bringing to light what has often been hidden or ignored in discussions of gender and sexuality⁵⁷⁴. Through its focus on fluidity, contingency, and the destabilization of normative categories, queer theory has opened up new avenues for understanding the complex and multifaceted nature of gender and sexuality.

⁵⁷² MCNEILLY, Kathryn. Sex/gender is fluid, what now for feminism and international human rights law? A call to queer the foundations. In: RIMMER, Susan Harris (ed.). **Research Handbook on Feminist Engagement with International Law**. Cheltenham, UK: Edward Elgar Publishing, 2019, p. 434-35

⁵⁷³ SEDGWICK, Eve Kasofsky. **Epistemology of the closet**. Berkeley: University Of California, 1990.

⁵⁷⁴ See: SEDGWICK, Eve Kasofsky. **Epistemology of the closet**. Berkeley: University Of California, 1990.

Scholars who engage in queer studies rigorously question gender, sexuality, and human desire, dismantling old norms that perceive heterosexuality as the only acceptable sexual behavior between human beings. Queer theory aims to question everything that has been traditionally assumed about the "rightness" of heterosexual behavior and the "wrongness" of non-heterosexual desires⁵⁷⁵.

For Teemu Ruskola,

Queer theory provides a method for analyzing how queer and normative subject positions are constituted in relation to one another and how they are secured, but also how they remain necessarily unstable and provisional. In short, it is a method for analyzing the discursive dynamics by which subjects are made and unmade, maintained and destabilized⁵⁷⁶.

Some scholars and activists are accustomed to discussing queer within the discourse of LGBTQ+ communities and assume that a queer agenda conflates with gay, lesbian, and trans rights. Moreover, queer perspectives differ from the discourse of normative LGBTQ+ inclusion, while it aims for change that is more ambitious than simply achieving equal rights⁵⁷⁷. The LGBTQI+ agenda, which mainly focuses on human rights, can be valuable legally, socially, and politically. However, it does not necessarily encompass queer theory, since "queer" refers to a range of non-normative subject positions that are simultaneously sexual, social, and political⁵⁷⁸, encompassing a variety of possibilities of existence and resistance, putting subjects in different positionalities that are relative rather than static.

Furthermore, queer approaches can be employed to provide an analysis of different relations, not only "homosexual" ones. Queer methods and perspectives can be adopted to understand the heteronormative, masculine assumptions underlying classic concepts of international law, such as sovereignty. In summary, a queer perspective challenges the idea of the immutability of any aspect of identity and theorizes these "normal" arrangements as disciplining both heterosexual and homosexual expressions of sexuality.

When introducing Dianne Otto, Doris Buss, Aeyal Gross, and Amr Shalakany for the Queer International Law panel in 2007, Ralph Wilde commented on how the discipline of international law cannot be fully comprehended through a liberal framework alone and

⁵⁷⁵ TONG, Rosemarie; BOTTS, Tina Fernandes. **Feminist thought : a more comprehensive introduction**. 5. ed. New York: Routledge, 2018, p. 199.

⁵⁷⁶ RUSKOLA, Teemu. Raping Like a State. **UCLA Law Review**. [S.L.], 2010, p. 1481.

⁵⁷⁷ OTTO, Dianne (ed.). **Queering International Law: possibilities, alliances, complicities, risks**. [S.L.]: Routledge, 2018, p. 1. KAPUR, Ratna. **Gender, alterity and human rights: Freedom in a fishbowl**. Cheltenham, Uk: Edward Elgar Publishing, 2018, p. 69.

⁵⁷⁸ RUSKOLA, Teemu. Raping Like a State. **UCLA Law Review**. [S.L.], 2010, p. 1481. See: GROSS, Aeyal. Queer Theory and International Human Rights Law: Does Each Person Have a Sexual Orientation? **Proceedings Of The Annual Meeting (American Society Of International Law)**. [S.L.], p. 129-132, 2007.

recognized the discipline's evolution in the late 20th century, with the integration of important intellectual developments such as feminist and postcolonial theories. Nevertheless, Wilde highlighted the absence of queer approaches that account for the experiences of non-heterosexual sexualities in the world, creating a gap in the intellectual canon of international law. According to Wilde,

Rather as feminist approaches seek to understand how ideas generally have been shaped by ideas of the relationship between women and men in particular, so queer theory interrogates how ideas of sexual orientations are implicated in, and affected by, ideas of the world more generally. Although there is now a relatively established tradition of applying queer theory to law, its application to international law remains sparse, especially if one moves beyond the treatment of lesbians, gay men, bisexuals, and trans people in human rights law. Yet just as feminist approaches to international law involve much more than considering how international law literally treats women—also addressing, for example, how ideas of the state, the use of force and so on are gendered—So the application of queer theory to international law has a rich potential to enhance understandings of our discipline and intellectual tradition beyond the issue of rights⁵⁷⁹.

Dianne Otto argues that queering international law involves more than expanding the discipline's boundaries to include non-heterosexual experiences and identities, which could mean, for instance, extending human rights law to prohibit discrimination based on sexual orientation, recognizing same-sex marriage, and protecting sexual expression as a private matter. Simply expanding the scope of the law is not enough. "Queer" implies a more comprehensive critique of the regimes of normality. Queering international law involves challenging the very foundations of the discipline and its underlying assumptions about what is normal and acceptable⁵⁸⁰.

The dichotomies inherent to modernity not only establish a hierarchical relationship between them but also generate knowledge that transforms our understanding of the 'other.' This has led to various movements, including those advocating for the recognition of indigenous sovereignties, women's and queer liberation, and racial equality. However, the very production of resistance is limited by the binary paradigm it seeks to challenge, thereby constraining its transformative potential⁵⁸¹. The assumptions, conceptual underpinnings, and terminologies of international law have also come under scrutiny due to their role in shaping our perception of the international community. They perpetuate normative ideas of who

⁵⁷⁹ WILDE, Ralph. Introduction. **Proceedings Of The Annual Meeting (American Society Of International Law)**. [S.L.], 2007, p. 119.

⁵⁸⁰ OTTO, Dianne. "Taking a Break" from "Normal": Thinking Queer in the Context of International Law. **Proceedings Of The ASIL Annual Meeting**. [S.L.], p. 119-122, 2007, p. 119-120.

⁵⁸¹ OTTO, Dianne. Everything is Dangerous: some post-structural tools for rethinking the universal knowledge claims of human rights law. **Australian Journal Of Human Rights**, [S.L.], v. 5, n. 1, 1999, p. 31.

qualifies as fully human, while appearing to be objective and universal, leading to strong marginalization of those who do not conform to the universal standard⁵⁸².

In the field of international relations, Cynthia Weber explores the "queer curiosity" as a method, refusing "to take for granted the personal-to-institutional institutional arrangements, taking readers on a journey of discovery that reveals what happens to our understanding of international politics when the variable of sexuality is included in mappings of its relations of power."⁵⁸³ By doing that, Weber seeks to expose the underlying sexual ordering that is so taken for granted that it is considered "natural." Dianne Otto brings Weber's methods to the field of international law, suggesting that a queer perspective involves a "curiosity about the conceptual and analytical underpinnings of international law's adjudication of the normal," which emphasizes a concern with pleasure and celebrates human sexuality and gender expressions in all their diversity and fluidity, beyond the dualistic confines of heterosexuality/homosexuality and male/female.

Just as feminist curiosity exposed international law's gendered framework and postcolonial curiosity of its European underpinnings, queer curiosity makes visible the heteronormative biases in international relations. These efforts to view international law through queer theories have produced a vast body of research dedicated to exploring the role of international law as a performative discourse and as a framework for transnational governance that reproduces and produces hegemonies of gender and sexuality⁵⁸⁴. In doing so, attention is drawn to the power that gender norms have in creating fear and panic in the face of the shifting contours of the "abnormal" and argues that queer curiosity might "open new ways to imagine a more peaceful, equitable and inclusionary world, and offer fresh means and methods to work towards its realization."⁵⁸⁵

As Otto puts it, "Asking queer questions will lead to solutions that ensure, rather than threaten, the proliferation of diverse practices of freedom and pleasure, and help to fundamentally change the way in which things have been normally done in international law."⁵⁸⁶ As part of this rethinking, she suggests that we also consider the need to reframe sex and gender as multiple and shifting, in order to include the "abuses suffered by men and

⁵⁸² OTTO, Dianne. Celebrating Complexity. *Proceedings Of The ASIL Annual Meeting*. [S.L.], 2012, p. 169.

⁵⁸³ WEBER, Cynthia. *Queer International Relations: sovereignty, sexuality and the will to knowledge*. New York: Oxford University Press, 2016, p. 19.

⁵⁸⁴ SCHRAMM, Bérénice K.; CARVALHO, Juliana Santos de; HOLZER, Lena; BEURY, Manon. Doing Queer in the Everyday of Academia: reflections on queering a conference in international law. *AJIL Unbound*, [S.L.], v. 116, 2022, p. 16.

⁵⁸⁵ OTTO, Dianne (ed.). *Queering International Law: possibilities, alliances, complicities, risks*. [S.L.]: Routledge, 2018, p. 1.

⁵⁸⁶ OTTO, Dianne (ed.). *Queering International Law: possibilities, alliances, complicities, risks*. [S.L.]: Routledge, 2018, p. 11.

others, whose gender expressions and identities fall outside the gender binary (m/f) system."⁵⁸⁷ This perspective also allows us to perceive sexuality as a foundational organizing principle of international law⁵⁸⁸.

3.2.2 *Shifting masculinities: the queer and the state*

Heterosexual analytics permeate our daily lives, often unnoticed, in many ways underpinning the notion of a well-functioning society⁵⁸⁹. Ngaire Naffine argues that law's primary concern is to protect the 'bounded, stable, and non-permeable' heterosexual male body⁵⁹⁰. These assumptions have long prevailed in international law, shaping the ideal image of the state while excluding all forms of embodied deviance⁵⁹¹. Many contend that the "heterosexist ideology"⁵⁹² is deeply embedded in international law's imperialistic foundation⁵⁹³. This is because Europe's 'civilizing mission' relied heavily on promoting 'responsible' heterosexuality—defined as state-sanctioned, monogamous, adult, and reproductive—as a core element of state governmentality⁵⁹⁴. Dianne Otto argues that the nation-state itself owes its existence to supposed natural heterosexual kinship arrangements⁵⁹⁵. Nevertheless, not all relationships can be simply categorized as heterosexual or homosexual oppositions, since they are also equally informed by racial, ethnic, and gender hierarchies.

That the nation-state depends so fundamentally on heteronormative reproductive relations for the transfer and reproduction of national loyalty and culture has been entirely overlooked by theorists of nationalism [...]. This helps to explain the current anxiety of many European states over their falling birth rates and why increasing (racially diverse) immigration is not necessarily seen as the answer. It also explains why same-sex marriage (presumed reproductive) has become so widely embraced in the West, because it promises to (re)produce citizens loyal to the nation-state, rather

⁵⁸⁷ OTTO, Dianne (ed.). **Queering International Law: possibilities, alliances, complicities, risks**. [S.L.]: Routledge, 2018, p. 1.

⁵⁸⁸ OTTO, Dianne (ed.). **Queering International Law: possibilities, alliances, complicities, risks**. [S.L.]: Routledge, 2018, p. 6.

⁵⁸⁹ OTTO, Dianne. Resisting the heteronormative imaginary of the nation-state. In: OTTO, Dianne (ed.). **Queering International Law: possibilities, alliances, complicities, risks**. [S.L.]: Routledge, 2018, p. 240.

⁵⁹⁰ NAFFINE, Ngaire. The body bag. In: NAFFINE, Ngaire; OWENS, Rosemary J (ed.). **Sexing the Subject of Law**. Sidney: Sweet & Maxwell, 1997, p. 79-94.

⁵⁹¹ O'DONOGHUE, Aoife. The Admixture of Feminine Weakness and Susceptibility: Gendered Personifications of the State in International Law. **Melbourne Journal Of International Law**. [S.L.], 2018, p. 256.

⁵⁹² PETERSON, Spike V.. The Intended and Unintended Queering of States/Nations. **Studies In Ethnicity And Nationalism**, [S.L.], v. 13, n. 1, 2013, p. 62.

⁵⁹³ O'DONOGHUE, Aoife. The Admixture of Feminine Weakness and Susceptibility: Gendered Personifications of the State in International Law. **Melbourne Journal Of International Law**. [S.L.], 2018, p. 253.

⁵⁹⁴ OTTO, Dianne. Resisting the heteronormative imaginary of the nation-state. In: OTTO, Dianne (ed.). **Queering International Law: possibilities, alliances, complicities, risks**. [S.L.]: Routledge, 2018, p. 240.

⁵⁹⁵ OTTO, Dianne. Resisting the heteronormative imaginary of the nation-state. In: OTTO, Dianne (ed.). **Queering International Law: possibilities, alliances, complicities, risks**. [S.L.]: Routledge, 2018, p. 240.

than outlaws likely to question the idea of state loyalty [...]. These colonial technologies of governance rendered perverse many local practices and beliefs about kinship and community responsibility. In a similar vein, there was 'heavy imperial investment' in representing the sexual behaviours of indigenous peoples as deviant.⁵⁹⁶ Colonial discourses of sexuality were not just concerned with controlling and normalising populations. The tropes of sexuality also served an analytical function by marking the superiority of the Western nation-state⁵⁹⁷.

Feminist approaches in international law have extensively discussed the state's maleness, but comparatively little has been produced regarding the complex sexual dynamics and diverse positionalities of states in this regard. The representation of non-Western states as feminine, weaker, and hence vulnerable was not rarely presented in explicit terms, and critical analysis of these discourses has revealed the consequences of portraying state-on-state violence as sexual violence, which ultimately naturalizes male domination over women's bodies.

Aoife O'Donoghue examined the contemporary implications of state personification for international legal academia, exploring to what extent 19th-century international legal texts employed personification as part of an explicitly interlinked misogynistic and racist discourse⁵⁹⁸. O'Donoghue argues that masculinity was directly associated with the "success" of a national state, and gender difference played a fundamental role in shaping national and state identity. The use of personification to categorize states was particularly advantageous to European imperialist projects, promoting Eurocentric notions of statehood as global and unyielding⁵⁹⁹.

In the analysis, the author emphasizes that gendered personification is based on socially constructed behaviors, activities, and attributes associated with being male or female, rather than solely on physical factors determining sex. The fluidity of some states, which may possess both male and female genders simultaneously, complicates the binary divisions, making the social construction of gender essential to understanding coexistence. The process of personification imparts a gendered character to the state⁶⁰⁰ but, as part of the discourse and legal language, is not directly tied to a specific embodied and material body. The personification in terms of female attributes does not represent ideals for women to aspire to;

⁵⁹⁶ OTTO, Dianne. Resisting the heteronormative imaginary of the nation-state. In: OTTO, Dianne (ed.). **Queering International Law: possibilities, alliances, complicities, risks**. [S.L.]: Routledge, 2018, p. 242.

⁵⁹⁷ OTTO, Dianne. Resisting the heteronormative imaginary of the nation-state. In: OTTO, Dianne (ed.). **Queering International Law: possibilities, alliances, complicities, risks**. [S.L.]: Routledge, 2018, p. 243.

⁵⁹⁸ O'DONOGHUE, Aoife. The Admixture of Feminine Weakness and Susceptibility: Gendered Personifications of the State in International Law. **Melbourne Journal Of International Law**. [S.L.], 2018, p. 230.

⁵⁹⁹ OTTO, Dianne. Resisting the heteronormative imaginary of the nation-state. In: OTTO, Dianne (ed.). **Queering International Law: possibilities, alliances, complicities, risks**. [S.L.]: Routledge, 2018, p. 251.

⁶⁰⁰ O'DONOGHUE, Aoife. The Admixture of Feminine Weakness and Susceptibility: Gendered Personifications of the State in International Law. **Melbourne Journal Of International Law**. [S.L.], 2018, p. 233.

instead, it confined women and feminine characteristics to the realm of metaphor, limiting their active participation⁶⁰¹.

The personification is fluid and dependent on the writer's aim. An allegorical state may be personified as female, while its political governance is depicted as male. The feminine attributes assigned to the state serve higher purposes of recognition within the legal framework. Euro-American states often assumed a masculine character, signifying self-governance and activity, while non-civilized states were feminized, implying a lack of proper governance. At times, the virility and aggressiveness associated with masculinity are conferred upon non-Western states. Even the apparent normativity of heterosexuality has been relativized in the 21st century when Western states use gay and lesbian rights as indicators of Western superiority and non-Western "backwardness."⁶⁰²

Here, two distinct yet closely related scopes of analysis come into focus. One pertains to the practical implications of moral standards on gender, race, and sexuality concerning security practices, militarization, trade agreements, and border protection. The other examines the language used by internationalists to describe states using gendered, sexualized, and racialized terms. This section addresses both aspects.

When exploring the rhetorical aspects of international law, various lenses can be employed to unveil different facets. While feminists focused on identifying the "women" in this context, Teemu Ruskola adopted queer lenses to present a more nuanced perspective. He perceives deviant states as not strictly masculine or feminine but as entities that shift between different gendered and sexual positions. By viewing gender as a relational and provisional attribute, Ruskola contends that gender and sexual rhetoric assume relative positions as states perform various roles in relation to one another. His analysis acknowledges the significance of masculinity without attributing predetermined characteristics to it.

Ruskola examines the anthropomorphic metaphor⁶⁰³ of states in international legal rhetoric, considering the normative masculinity ascribed to Western sovereign states. He argues that non-Western states were assigned variously deviant masculinities, along with civilizational and racial attributes, which rendered them "rapable."⁶⁰⁴ Moreover, his analysis draws attention to the states' ability to assert sovereignty over each other beyond the heteronormative framework, including states representing a queer identity.

⁶⁰¹ O'DONOGHUE, Aoife. The Admixture of Feminine Weakness and Susceptibility: Gendered Personifications of the State in International Law. *Melbourne Journal Of International Law*. [S.L.], 2018, p. 234

⁶⁰² OTTO, Dianne. Resisting the heteronormative imaginary of the nation-state. In: OTTO, Dianne (ed.). *Queering International Law: possibilities, alliances, complicities, risks*. [S.L.]: Routledge, 2018, p. 238.

⁶⁰³ RUSKOLA, Teemu. Raping Like a State. *UCLA Law Review*. [S.L.], 2010, p. 1479.

⁶⁰⁴ RUSKOLA, Teemu. Raping Like a State. *UCLA Law Review*. [S.L.], 2010, p. 1477.

Traditionally, the sovereign state has been considered male, leading to the presumption that colonized and conquered states were gendered female. However, Ruskola's analysis suggests that "Even the paradigmatic European state's gender was far from determinate." It could be more or less masculine depending on the colonial other against which it saw itself, as well as colonized states, which occupied a range of positions on the male-female continuum, reflected on the queer legal rhetoric that regulated colonial violence⁶⁰⁵.

colonized states exist effectively in a state of aggrieved masculinity, waiting for their eventual emancipation into full sovereign manhood. The unbearable humiliation of imperialism ultimately arouses a desire in the colonized to resist the aggression and to become manly, self-determining subjects of the interstate community. In this subtler reading, colonialism is thus not simply a metaphoric rape by Western (male) states of non-Western (female) states. Rather, it constitutes a homoerotic violation of non-Western states' wounded masculinity that in turn causes the subjugated states to want to become sexual violators themselves⁶⁰⁶.

Non-European states exhibited a range of non-normative positions, and Europe maintained its superior position by flexibly adapting its stance toward them⁶⁰⁷. Europe's perception of China, Japan, Africa, and America was not uniform. China was deemed hypercivilized but not fully masculine, while Africa was considered hypermasculine and savage. America and Africa were more amenable cases for the mission civilisatrice, as their civilizations were largely invisible to Europeans. The representation of Indians as sodomitical stemmed from a moral assumption about their deviant masculinity rather than empirical observation.

Europe, holding its superior position as both manly and civilized, reinforced its supremacy through the laws governing the Family of Nations. The differing 19th-century international lawyers' perspectives on Liberia, Japan, or Turkey as states capable of attaining some level of civilization, compared to territories seen as incapable of such progress, demonstrate the persistent use of parental imagery. This imagery persisted even after the creation of mandate and trust territories in the 20th century⁶⁰⁸. Analyzing Japan from a psychoanalytic perspective, Otomo called attention to Japan's almost accommodative role as part of the fraternal relations of the international economy through unconditional surrender.

Ruskola, for instance, uses China as an example to illustrate how ancient Asian civilizations posed a challenge to European colonial powers and presented a different spectrum of progression from maleness to femaleness in the personification of states in

⁶⁰⁵ RUSKOLA, Teemu. *Raping Like a State*. *UCLA Law Review*. [S.L.], 2010, p. 1495.

⁶⁰⁶ RUSKOLA, Teemu. *Raping Like a State*. *UCLA Law Review*. [S.L.], 2010, p. 1497.

⁶⁰⁷ RUSKOLA, Teemu. *Raping Like a State*. *UCLA Law Review*. [S.L.], 2010, p. 1500.

⁶⁰⁸ O'DONOGHUE, Aoife. *The Admixture of Feminine Weakness and Susceptibility: Gendered Personifications of the State in International Law*. *Melbourne Journal Of International Law*. [S.L.], 2018, p. 250.

international law. Despite being distinct from Europe, these civilizations exhibited markers of "high" civilization, complicating the colonial narrative. China was never fully colonized, but it experienced repeated "penetration" through concessions and spheres of influence by European states, the United States, and Japan.

Initially, China was seen as a symbol of stability and a political model, recognized as a civilizational equal or even a political superior to Europe. However, over time, its image underwent a radical transformation, shifting from to intense sinophobia and modern anti-Chinese racism. Despite these changes, idealized images of China persisted in historical consciousness, making it a volatile legal and discursive subject. Ruskola highlights how sinophobia was not a result of new critical facts about China but rather a reinterpretation of existing knowledge, leading to an unstable perception of the country's legal status as an international sovereign⁶⁰⁹.

China's relative elevated status in the European imagination had to be downgraded before it could be economically violated. Although China was not violated militarily, it faced economic violations as a response to its perceived inscrutability. International lawyers sought to stabilize China as an object of legal knowledge, using a vocabulary that transformed its economic and political isolation into acts of interstate aggression. The queer rhetoric of violation racialized, gendered, and sexualized China's international position, leading to the establishment of Western extraterritorial jurisdiction, bypassing full-scale territorial conquest.

Examining the theory of development by Walt Rostow⁶¹⁰, Ruskola uncovered an underlying psychosexual dynamic in colonialism. Colonized states, perceiving themselves as aggrieved masculinity, sought eventual emancipation and sovereignty. This perspective sheds light on colonialism as a homoerotic violation of wounded masculinity, leading to a desire in the colonized to become sexual violators themselves. The metaphor of penetration in the context of European colonial interactions with China signifies a hazing ritual to gain entry into the European fraternity of nations⁶¹¹.

China's legal position was particularly queer within the East, occupying a unique position in the European imagination. While some labeled China outright as "barbaric," its characterization was never as definitive as in Africa and the Americas. Evaluations of China ranged from "civilized" to "semi-civilized" to "semi-barbaric" and everything in between. The country's unstable status as an international sovereign resembled the position of the coolie, a

⁶⁰⁹ RUSKOLA, Teemu. Raping Like a State. *UCLA Law Review*. [S.L.], 2010, p. 1504.

⁶¹⁰ See: ROSTOW, Walt Whitman. *The stages of economic growth: A non-communist manifesto*. Cambridge university press, 1990.

⁶¹¹ RUSKOLA, Teemu. Raping Like a State. *UCLA Law Review*. [S.L.], 2010, p. 1497.

paradigmatic Chinese individual in the Euro-American consciousness. The coolie, an indentured male laborer, mediated between various binaries of the 19th-century liberal imagination, just like China mediated between the categories of sovereign and colonized, civilized, and savage.

Despite the symbolic logic and vocabulary used to depict China as a lawbreaker, its ultimate fate was not full territorial conquest. Instead, a form of non-territorial imperialism emerged, facilitated by extraterritoriality. China's post-Opium War treaties with Western powers allowed for extraterritorial privileges, exempting their citizens from Chinese laws and treating them as if they were still in their home states. This legal technology provided the groundwork for a colonialism without colonies, paving the way for a century of unequal exchange and unequal relations.

Extraterritorial jurisdiction, originally a form of consular jurisdiction in early modern Europe, underwent significant changes in 19th-century Asia. It became strictly unilateral, encompassing both civil and criminal disputes. The condition for its elimination was the adoption of Euro-American legal reforms, making China an exception to the territorial jurisdiction norm. The practice of extraterritoriality and subsequent legal, financial, and technological penetrations allowed Western individuals in China to operate as floating islands of sovereignty, effectively becoming inviolable ambassadors-at-large for their civilizations⁶¹².

The rise of public international law leases allowed Western powers to establish territorial control over China through railroad concessions and territorial leases. China faced the threat of territorial division among competing powers during the Scramble for Concessions. The proliferation of foreign railroad concessions inside and outside of leaseholds established a form of sovereignty in its own right, referred to as "railroad sovereignty."⁶¹³ This marked a shift from simple extraterritoriality to a form of colonial control although a full-fledged colonial rape never occurred⁶¹⁴.

China's discursive location underwent significant shifts, with its perception in the European imagination changing over time. Initially regarded as a civilizational equal and even a political superior, China's status declined, and it was increasingly likened to Africa, transforming into a race of "semi-civilized," "barbaric," and even "savage" people⁶¹⁵. Japan's rising legal status was accompanied by Europeanization rhetoric and the abolishment of Western extraterritorial jurisdiction. China's figurative transition from consensual commercial

⁶¹² RUSKOLA, Teemu. Raping Like a State. *UCLA Law Review*. [S.L.], 2010, p. 1521.

⁶¹³ RUSKOLA, Teemu. Raping Like a State. *UCLA Law Review*. [S.L.], 2010, p. 1522.

⁶¹⁴ RUSKOLA, Teemu. Raping Like a State. *UCLA Law Review*. [S.L.], 2010, p. 1523.

⁶¹⁵ RUSKOLA, Teemu. Raping Like a State. *UCLA Law Review*. [S.L.], 2010, p. 1523.

intercourse to colonial rape was symbolically marked during the Boxer Rebellion. The Allied Troops' forced entry through the imperial Qian gate in Beijing in 1900 signified a shift from quasi-consensual relations to a more violent and oppressive approach towards China⁶¹⁶.

A historical examination of the constitutive limits of that culture helps us understand why even today it is easier for some actors than others to execute credibly the global scripts of sovereignty. Institutional organization of the state is one important element in making a successful claim for sovereignty, but it is not always enough; it also matters who is making the claim⁶¹⁷.

Despite the democratization of sovereignty after World War II, old metaphors of gender and sexuality continue to influence contemporary scripts of sovereignty. The idea of formal equality among sovereign states remains a central tenet of international law, but sovereign equality has faced erosion with the emergence of "outlaw states," which often face gendered, sexual, and racial characterizations. Certain states are portrayed as manlier and destined to lead, such as the United States, while others are deemed corrupt and weak, labeled as "failed states." Rogue states, with excessive masculinity, are seen as needing discipline. Such states are often portrayed as queer in the political imagination, evident in the derogatory depictions of Saddam Hussein during the Gulf War⁶¹⁸.

Political entities not recognized as states, often referred to as terrorists and likened to modern-day pirates, are true outcasts of the international legal order⁶¹⁹. Their actions are portrayed using sexual terms, as part of what Otto calls the "analytics of sexuality."⁶²⁰ Undesired non-Western actors are politically targeted, seen as suspect and perverse, leading to their exclusion from legal norms and selective engagement by national states with international law.

In recent years, we have seen states take unprecedented measures to secure their borders, primarily by employing the kind of aggressive shows of force that SPAS, WILPF and other peace groups oppose. Many of these measures are in violation of international legal obligations. This includes breaching the sovereignty of neighbouring states, using force arbitrarily, denying due process to many of those attempting to cross, refoulement of refugees and asylum seekers, extrajudicial executions, indefinite detention, and the use of torture and other forms of cruel, inhuman and degrading treatment⁶²¹.

Gender and sexuality persistently influence international relations and contribute to the unequal treatment of non-Western states in the international legal order. The mystification

⁶¹⁶ RUSKOLA, Teemu. Raping Like a State. *UCLA Law Review*. [S.L.], 2010, p. 1525.

⁶¹⁷ RUSKOLA, Teemu. Raping Like a State. *UCLA Law Review*. [S.L.], 2010, p. 1528.

⁶¹⁸ RUSKOLA, Teemu. Raping Like a State. *UCLA Law Review*. [S.L.], 2010, p. 1536.

⁶¹⁹ RUSKOLA, Teemu. Raping Like a State. *UCLA Law Review*. [S.L.], 2010, p. 1536.

⁶²⁰ OTTO, Dianne. Resisting the heteronormative imaginary of the nation-state. In: OTTO, Dianne (ed.). *Queering International Law: possibilities, alliances, complicities, risks*. [S.L.]: Routledge, 2018, p. 248.

⁶²¹ OTTO, Dianne. Resisting the heteronormative imaginary of the nation-state. In: OTTO, Dianne (ed.). *Queering International Law: possibilities, alliances, complicities, risks*. [S.L.]: Routledge, 2018, p. 247.

of sexuality, particularly in Western societies, generates rage, anxiety, and terror, allowing states to enact new laws and regulations to extend control into intimate lives of citizens⁶²².

Ever since [9/11] the intonation of sexual perversity has assisted the Western project of denigrating Islam and demonising its adherents, casting a pall of suspicion and fear of contagion. These sexualised tropes have helped fuel the panic that has made walls, and the lawlessness and death that they foster, seem both necessary and desirable. As Puar contends, the 'invocation of the terrorist as a queer, nonnational, racially perverse other [became] part of the normative script of the US war on terror'⁶²³.

The agenda of sexuality, especially regarding homosexuality, has various facets. While many states opposed LGBTQ+ rights as a reflection of colonial paradigms, Western and Latin American states have sought to display their liberal sexual credentials by advocating for LGBTQ+ rights⁶²⁴. However, this enthusiasm can lead to the domestication of queer expressions and communities, granting them rights within the normative framework and ultimately serving the sovereign state's governance and control over territorial borders and jurisdiction⁶²⁵, meaning that ultimately the law is "doing something."

The legal transformation concerning sexual and gender minorities is ambiguous⁶²⁶. The privileging of dyadic heteronormative marriage, disguised as individual choice, helps establish primary loyalty to the modern nation-state and makes territorial sovereignty and state governance possible. Heterosexual kinship arrangements constitute the foundation of the modern nation-state and the "normal" system of state-centered international law, impacting human (dis)connectedness⁶²⁷.

A queer analysis and compromise with the international legal imaginary may not completely change the perpetuation of these inequalities, but critique must push forward and challenge both hegemonic traditions and legal achievements. Inequalities divide communities, and state sovereignty plays a significant role in dividing international communities, not

⁶²² OTTO, Dianne. Resisting the heteronormative imaginary of the nation-state. In: OTTO, Dianne (ed.). **Queering International Law: possibilities, alliances, complicities, risks**. [S.L.]: Routledge, 2018, p. 250.

⁶²³ OTTO, Dianne. Resisting the heteronormative imaginary of the nation-state. In: OTTO, Dianne (ed.). **Queering International Law: possibilities, alliances, complicities, risks**. [S.L.]: Routledge, 2018, p. 248.

⁶²⁴ OTTO, Dianne. Resisting the heteronormative imaginary of the nation-state. In: OTTO, Dianne (ed.). **Queering International Law: possibilities, alliances, complicities, risks**. [S.L.]: Routledge, 2018, p. 245.

⁶²⁵ OTTO, Dianne. Resisting the heteronormative imaginary of the nation-state. In: OTTO, Dianne (ed.). **Queering International Law: possibilities, alliances, complicities, risks**. [S.L.]: Routledge, 2018, p. 246.

⁶²⁶ "It is not self-evident that sexual recognition/legitimacy through rights acquisition ensures greater freedom for the entitled sexual subject. Instead, this understanding fails to take the discursive operations of human rights into account – how human rights are implicated in power, operating as technologies of governance that produce and inscribe the very subject to be governed, and the choices available to her. They reproduce a specific normative order, which continues to regulate, discipline and monitor the sexual subject." KAPUR, Ratna. **Gender, alterity and human rights: Freedom in a fishbowl**. Cheltenham, UK: Edward Elgar Publishing, 2018, p. 69.

⁶²⁷ OTTO, Dianne. Resisting the heteronormative imaginary of the nation-state. In: OTTO, Dianne (ed.). **Queering International Law: possibilities, alliances, complicities, risks**. [S.L.]: Routledge, 2018, p. 246-247.

reflecting the transnational dimensions of human experiences⁶²⁸, so rethinking kinship and social relations can provide insights into reframing the sovereign state. Questioning the language, rhetoric, and policies of international law helps understand their functioning and consequences. A queer perspective on sovereignty involves understanding dynamics in a relational sense, not merely referring to embodied subjects outside the normative spectrum of gender and sexuality.

Similar adjectives used to describe indigenous people in Latin America are now applied to LGBTQ+ communities, and stigmatizing and disqualifying policies maintain the perpetuation of the nation-state sovereign system. The understanding of homonationalist and homophobic agendas raised by public discourses, carried transnationally, sheds light on the perpetuation of the Western vs. non-Western, civilized vs. barbaric standards that have shaped international legal discourses and practices must be part of a broader research agenda among critical scholarship in international law.

3.3. Unraveling colonial influences on gender and sexuality in international legal discourse

We do not deliberately choose to employ the concepts of international law. Instead, we must navigate within the existing framework of language and interpretation if we wish to be both heard and understood⁶²⁹. This concern is frequently voiced by critical scholars across various fields, including feminists, queer, and postcolonial studies. Adopting pre-existing language does not imply complicity with it nor does it imply that this language is fixed and unchangeable, as language itself undergoes social appropriation and transformation when attempting to ascribe names to the ever-elusive reality of the world. An illustrative instance of how original meanings can be disrupted and transformed is evident in the evolution of the term "queer," which has shifted from being derogatory to embodying a form of resistance and destabilization of normative categories.

To engage in international legal discourse, it is essential to accept the existing vocabulary, but this acceptance should not equate to resignation. Rather, one must recognize and harness the transformative potential embedded within this vocabulary. Resignation is an option only available to those who feel comfortable with their portrayal under international

⁶²⁸ HEATHCOTE, Gina. **Feminist Dialogues on International Law**: successes, tensions, futures. [S.L.]: Oxford University Press, 2019, p. 108.

⁶²⁹ KOSKENNIEMI, Martti. **From apology to utopia**: the structure of international legal argument. Cambridge: Cambridge University Press, 2006, p. 12.

law, while many others have not yet had the chance to be represented in the picture. The endeavor of utilizing and subverting international legal discourse, incorporating its methods, concepts, and terminology, is a challenging and ongoing task for critical scholarship. This pursuit aims to reveal and question the problematic assumptions concerning race, gender, sexuality, and class that are inherent to the hegemonic discourse.

Recent decades have seen a significant body of literature drawing attention to gender as a locus of power that influences the drafting, enforcement, and (re)interpretation of international law⁶³⁰. Gender, sexuality, and race are not external elements to the vocabulary of international law; instead, they form an integral part of the violence perpetuated by sovereign states, even if their interconnections often remain obscured, buried beneath its foundational principles⁶³¹. Perceiving international legal discourse as operating within a natural or universal domain disregards its historical origins and neglects the underlying politics that have shaped it⁶³². Since its inception, international law has been a product of human actions and ideas situated within specific historical, social, and cultural contexts⁶³³.

In a recent publication, David Eichert delves into the historical conditions and discursive frameworks that paved the way for the Rome Statute debate concerning gender. His focus lies on the foundational body of European legal texts dating from 1300 to 1800, often referred to as "the origins of international law." Eichert argues that these teachings, crucial in shaping public international law as universally applicable rules, also played a role in perpetuating common discourses in Europe related to gender and sexuality⁶³⁴.

Similarly, O'Donoghue explores the contemporary implications of state personification within the realm of international legal academia, assessing to what extent 19th-century international legal texts employed personification as part of an explicitly interconnected misogynistic and racist discourse⁶³⁵.

⁶³⁰ EICHERT, David. Decolonizing the Corpus: a queer decolonial re-examination of gender in international law's origins. *Michigan Journal Of International Law*, [S.L.], n. 433, 2022. University of Michigan Law Library. <http://dx.doi.org/10.36642/mjil.43.3.decolonizing>, p. 561.

⁶³¹ RUSKOLA, Teemu. Raping Like a State. *UCLA Law Review*. [S.L.], 2010, p. 1480.

⁶³² PETERSON, Spike V. The Intended and Unintended Queering of States/Nations. *Studies In Ethnicity And Nationalism*, [S.L.], v. 13, n. 1, 2013, p. 57.

⁶³³ EICHERT, David. Decolonizing the Corpus: a queer decolonial re-examination of gender in international law's origins. *Michigan Journal Of International Law*, [S.L.], n. 433, 2022. University of Michigan Law Library. <http://dx.doi.org/10.36642/mjil.43.3.decolonizing>, p. 562.

⁶³⁴ EICHERT, David. Decolonizing the Corpus: a queer decolonial re-examination of gender in international law's origins. *Michigan Journal Of International Law*, [S.L.], n. 433, 2022. University of Michigan Law Library. <http://dx.doi.org/10.36642/mjil.43.3.decolonizing>, p. 560.

⁶³⁵ O'DONOGHUE, Aoife. The Admixture of Feminine Weakness and Susceptibility: Gendered Personifications of the State in International Law. *Melbourne Journal Of International Law*. [S.L.], 2018, p. 230.

While both articles address different aspects of how gender and sexuality have influenced the development of international law, they converge in acknowledging the fundamental role of international legal scholarship throughout the past centuries in shaping the present relationship between international law and gender/sexuality. This influence can be observed in the practices of international institutions and the language adopted by internationalists.

Although explicit gender metaphors may have been removed from textbooks, the attributes assigned to masculinity and femininity in 19th-century texts persistently remain associated with the state and continue to be cited and endorsed by scholars⁶³⁶. Furthermore, sexual, gendered, and racial metaphors continue to underpin and shape uneven global legal relations in the present day⁶³⁷. Discursive representations of gender and victimhood—along with misogynistic and racist personifications of the state⁶³⁸ and rhetoric centered around sexualized interstate violence⁶³⁹—have not only operated as mere discourses or rhetorical strategies. Instead, they have established structured relationships among states and individuals within the international legal landscape.

The European legal tradition historically presented gender in a binary and hierarchical manner, defining it as encompassing only men and women, with men being considered superior. Regrettably, these very ideas were perpetuated in early international law texts as seemingly self-evident truths. The civilizational discourse not only combined these notions but also demonstrated a disregard for women and "femaleness," attributing their exclusion from the public world to a perceived lack of rationality and reasonability, rendering them unfit for competent governance.

Furthermore, heterosexual dynamics equally played a significant role in shaping the relationships between citizens and nations, primarily due to the importance of reproduction in forming a nation-state's identity. Prominent scholars have tolerated or even incentivized acts of violence and exploitation in their pursuit of preserving and perpetuating the nation. For instance, De Vattel contended that for a nation to sustain and ensure its continuity, it had the

⁶³⁶ O'DONOGHUE, Aoife. The Admixture of Feminine Weakness and Susceptibility: Gendered Personifications of the State in International Law. *Melbourne Journal Of International Law*. [S.L.], 2018, p. 256.

⁶³⁷ RUSKOLA, Teemu. Raping Like a State. *UCLA Law Review*. [S.L.], 2010, p. 1484.

⁶³⁸ O'DONOGHUE, Aoife. The Admixture of Feminine Weakness and Susceptibility: Gendered Personifications of the State in International Law. *Melbourne Journal Of International Law*. [S.L.], 2018, p. 230.

⁶³⁹ RUSKOLA, Teemu. Raping Like a State. *UCLA Law Review*. [S.L.], 2010, p. 1531.

right to acquire women, and "if its neighbors, who have a redundancy of females, refuse to give some of them in marriage to those men, the latter may justly have recourse to force"⁶⁴⁰.

The assertion provides a clear and compelling example of how the concept of "nation" and its existence relied on reproduction, thereby intertwining sexual and gender dynamics. The worldview of early European international law writers revolved around a heterosexual order⁶⁴¹, deeply ingrained, with authors believing that heterosexual marriages should be the foundation of a Christian Law of Nations⁶⁴².

While Indigenous communities embraced a broad range of gendered categories that differed significantly from European norms⁶⁴³, colonizers frequently made reference to "deviant" gender practices, using the religious condemnation of "sodomy"⁶⁴⁴ and "transvestism" to justify violent conquest and forced conversion. As the process of colonialism continued, European missionaries, soldiers, and settlers often brutally enforced their understanding of gender onto various Indigenous societies seeking to assimilate them into a Christian, Eurocentric, and hetero-cissexist world order⁶⁴⁵.

These traditions not only exhibited sexism against women but also inaccurately excluded individuals outside the gender binary⁶⁴⁶. Moreover, they were enforced upon the world through colonization and imperialism. However, these rigid structures of heterosexuality did not mean that alternative embodiments of gender and sexuality were absent from the so-called civilized societies. Evidence suggests that medieval and early

⁶⁴⁰ EICHERT, David. Decolonizing the Corpus: a queer decolonial re-examination of gender in international law's origins. *Michigan Journal Of International Law*, [S.L.], n. 433, 2022. University of Michigan Law Library. <http://dx.doi.org/10.36642/mjil.43.3.decolonizing>, p. 571.

⁶⁴¹ EICHERT, David. Decolonizing the Corpus: a queer decolonial re-examination of gender in international law's origins. *Michigan Journal Of International Law*, [S.L.], n. 433, 2022. University of Michigan Law Library. <http://dx.doi.org/10.36642/mjil.43.3.decolonizing>, p. 572.

⁶⁴² EICHERT, David. Decolonizing the Corpus: a queer decolonial re-examination of gender in international law's origins. *Michigan Journal Of International Law*, [S.L.], n. 433, 2022. University of Michigan Law Library. <http://dx.doi.org/10.36642/mjil.43.3.decolonizing>, p. 573.

⁶⁴³ EICHERT, David. Decolonizing the Corpus: a queer decolonial re-examination of gender in international law's origins. *Michigan Journal Of International Law*, [S.L.], n. 433, 2022. University of Michigan Law Library. <http://dx.doi.org/10.36642/mjil.43.3.decolonizing>, p. 581.

⁶⁴⁴ See: SEUFFERT, Nan. Queering international law's stories of origin: Hospitality and homophobia. In: OTTO, Dianne. *Queering International Law: possibilities, alliances, complicities, risks*. New York: Routledge, 2018. p. 213-235.

⁶⁴⁵ EICHERT, David. Decolonizing the Corpus: a queer decolonial re-examination of gender in international law's origins. *Michigan Journal Of International Law*, [S.L.], n. 433, 2022. University of Michigan Law Library. <http://dx.doi.org/10.36642/mjil.43.3.decolonizing>, p. 580.

⁶⁴⁶ EICHERT, David. Decolonizing the Corpus: a queer decolonial re-examination of gender in international law's origins. *Michigan Journal Of International Law*, [S.L.], n. 433, 2022. University of Michigan Law Library. <http://dx.doi.org/10.36642/mjil.43.3.decolonizing>, p. 559.

modern Europeans were familiar with intersex, transgender, and gender-diverse individuals who navigated complex and nuanced gender boundaries⁶⁴⁷.

Non-heterosexual internationalists also existed, but identifying them in historical research would require alternative strategies and methodologies⁶⁴⁸. This attention to contexts and creativity in thinking about alternative methods is representative of the efforts of feminist legal history, which does not seem yet to feature prominently in the histories of women in international law. Exploring the relationships of biographical subjects could be exemplified in the brief mention of Gezina Van der Molen, an important Dutch figure in international law who never married and shared her life with a teacher, Maria Elisabeth Nolte⁶⁴⁹. A greater curiosity regarding the nature of the relationship established between Molen and Nolte could reveal a character even more invisibilized by the discipline's history: a lesbian woman. How many women, black, and queer characters have been erased from the history of international law?⁶⁵⁰

The writers often credited with shaping international law were not simply selective in their inclusions. Instead, their work reproduced a binary and hierarchical worldview that reflected the predominant heteropatriarchal values pervasive in European legal discourse at the time⁶⁵¹. During the 19th century, international legal academics continued to perpetuate specific beliefs about sexual difference, influencing how statehood was described and

⁶⁴⁷ EICHERT, David. Decolonizing the Corpus: a queer decolonial re-examination of gender in international law's origins. *Michigan Journal Of International Law*, [S.L.], n. 433, 2022. University of Michigan Law Library. <http://dx.doi.org/10.36642/mjil.43.3.decolonizing>, p. 573.

⁶⁴⁸ In the words of the feminist legal historian Rosemary Auchmuty: "My chapter was a study of women's friendship networks in Lambeth, where I lived at the time, intended to demonstrate that if you could identify some lesbians in history and then studied who they socialized with (these were all women in public life so there were plenty of sources for their lives), you could formulate a pretty good idea of which other women were lesbians at the time, in the absence of other evidence. If one woman lived with another, but had previously lived with a different woman who now lived with... that sort of thing, I was not concerned to 'prove' anything, rather, to suggest possibilities excluded in past accounts." AUCHMUTY, Rosemary. Recovering Lost Lives: researching women in legal history. *Journal Of Law And Society*, [S.L.], v. 42, n. 1, p. 46, 2015. Wiley. <http://dx.doi.org/10.1111/j.1467-6478.2015.00697.x>.

⁶⁴⁹ NIJMAN, Janne E. Marked Absences: locating gender and race in international legal history. *European Journal Of International Law*, [S.L.], v. 31, n. 3, p. 1036, 2020. Oxford University Press (OUP). <http://dx.doi.org/10.1093/ejil/cha072>.

⁶⁵⁰ "[...] Asking the notorious 'women question' with regard to histories of international criminal law may seem too passé – and reductive. How could research 'on women' be conducted today – decades after the post-structuralist questioning of identity, agency, power, and knowledge – without adhering to a positivist stream of scholarship that considers the category women unproblematic, monolithic, and foundational? The difficulty starts in circumscribing the meanings given to 'being a woman/man' in this field of international law, today and in 'the past'. Even a superficial reading of gender and women studies, or women's, feminist, and gender histories, suffices to convince the reader of the complexity." TALLGREN, Immi. Absent or Invisible? Women Intellectuals and Professionals at the Dawn of a Discipline. In: MÉGRET, Frédéric; TALLGREN, Immi (ed.). *The Dawn of a Discipline: International Criminal Justice and Its Early Exponents*. [S.L.]: Cambridge University Press, 2020. p. 387.

⁶⁵¹ EICHERT, David. Decolonizing the Corpus: a queer decolonial re-examination of gender in international law's origins. *Michigan Journal Of International Law*, [S.L.], n. 433, 2022. University of Michigan Law Library. <http://dx.doi.org/10.36642/mjil.43.3.decolonizing>, p. 573.

incorporated into international law. The gender categories adopted by international lawyers were not novel legal constructs but rather a replication and reassertion of a long-standing social reality present in European notions about gender and international law for centuries⁶⁵².

One might question how gender could be detached from international law, as the founding figures of the discipline consistently discussed their opinions on women, femininity, men, and masculinity. The endeavor to include gender in these discussions becomes even more apparent when examining the historical foundations, where authors sought to safeguard their homosocial bonds by excluding women while simultaneously making strategic references to them for their own political and rhetorical objectives.

Sexuality cannot be divorced from international law, given the prevalence of sexual invasion and intercourse metaphors in international legal discourses. Furthermore, sexual reproduction plays a vital role in a nation's existence, a concern that has been significant in international law from its inception, while the distinction between civilized and barbarian societies—which formed the basis for sovereign rule—also involved specific sexual and gendered traits assigned to each category. Additionally, a permanent population, which presupposes a heterosexual structure, is a fundamental requirement that defines a sovereign nation.

Black and decolonial feminists have brought to light the intricate—and not merely juxtaposed—ways race, gender, class, and sexuality operate, elevating or diminishing the status of different subjects. International law's historical complicity with colonial and imperial injustices persists today, as Anghie argues, with 19th-century elements still present in contemporary approaches to international law and relations⁶⁵³. Examining other forms of oppression, such as class, gender, religion, and violence, is crucial to understanding how this complicity endures⁶⁵⁴.

The concept of "coloniality of gender" reveals the wide-ranging consequences of gender, racial, and colonial impositions across *all* domains of existence⁶⁵⁵. It illuminates how solidarity among victims of domination is forcibly dissolved. Coloniality extends beyond

⁶⁵² EICHERT, David. Decolonizing the Corpus: a queer decolonial re-examination of gender in international law's origins. **Michigan Journal Of International Law**, [S.L.], n. 433, 2022. University of Michigan Law Library. <http://dx.doi.org/10.36642/mjil.43.3.decolonizing>, p. 559.

⁶⁵³ ANGHIE, Antony. Francisco de Vitoria and the colonial origins of international law. **Social & Legal Studies**. [S.L.], 1996, p. 321.

⁶⁵⁴ MARTINEAU, Anne-Charlotte. Overcoming Eurocentrism? Global History and the Oxford Handbook of the History of International Law. **European Journal Of International Law**, [S.L.], v. 25, n. 1, p. 336, 2014. Oxford University Press (OUP). <http://dx.doi.org/10.1093/ejil/chu017>.

⁶⁵⁵ LUGONES, María. The Coloniality of Gender. In: HARCOURT, Wendy. **The Palgrave Handbook of Gender and Development: Critical Engagements in Feminist Theory and Practice**. New York: Palgrave Macmillan, 2016, p. 14.

sexuality to collective authority, work, subjectivity, and knowledge production. A decolonial feminist perspective complicates the gendered language in international law, where terms like "feminine" do not solely pertain to women. Different racial contexts shape the characterization of "women," with white European women seen as sexually and intellectually passive, while non-white, colonized women were in fact perceived as strong and fit for any type of work, not viewed as passive or weak, adjectives that, in some contexts, were attributed to non-white men.

By questioning which stories are preserved, ignored, or erased, decolonial approaches aim to deconstruct dominant historical narratives and explore the intricate consequences of European colonization to the Third World. These alternative perspectives challenge hegemonic narratives on gender, revealing how many non-Western societies conceptualized and continue to understand gender differently from what was imposed by European colonizers, often seeking to revive precolonial notions about gender.

These inquiries arise from a counter-hegemonic political agenda that remains critical of universal "truths," prompting a re-examination of history using diverse tools and perspectives. Such inquiries invite deeper reflections on the genealogies of sovereignty. Posing inconvenient questions might help to find deeper implications of notions of sovereignty, how the personification takes form, and how its colonial origins transformed the gender, sexual, and racial relations among colonized people, as in the revindication of sovereignty from countries of the Global South and to what extent these claims challenged or maintained the old Western paradigms.

The gendered and sexually informed vocabulary of international law was not coincidental; instead, it constituted an integral and inseparable part of the discipline's foundation. It also contributed to shaping Western law and society. The stability of gender categories—grounded in the binary notion of male and female—has constituted a fundamental aspect of state sovereignty. This stability has been upheld, in part, due to a predominant emphasis on violence against women, indigenous, black and queer people, by both state and non-state actors⁶⁵⁶. Anghie asserts that "Sovereignty was shaped by the colonial encounter, and its exercise often reproduced the inequalities inherent in that encounter."⁶⁵⁷ However, sovereignty was also shaped by gender and sexual politics. Sovereign states relied on violence

⁶⁵⁶ KAPUR, Ratna. Gender, Sovereignty and the Rise of a Sexual Security Regime in International Law and Postcolonial India. *Melbourne Journal Of International Law*. [S.L.], 2013, p. 4.

⁶⁵⁷ ANGHIE, Antony. *Imperialism, sovereignty and the making of international law*. Cambridge University Press, 2007, p. 114.

against Indigenous people and the erasure of any divergent expressions of gender and sexuality to maintain the fiction of stability required by the framework of international law.

CONCLUSION

If this dissertation was fueled by curiosity and a degree of frustration, it concludes—at least formally—with a sense of heightened expectation and, perhaps, a dose of skeptical optimism concerning the future of feminist approaches to international law. This conclusion will address some of the questions posed by this research and offer final reflections.

Firstly, it is worth reflecting on the question raised in the title: 'Who needs a feminist critique?'. This question entails the notion that a feminist critique of international law may not be as readily self-evident as it initially appears. The presence of feminist perspectives does not necessarily imply a corresponding necessity on the part of the discipline. Upon reviewing certain accounts by some authors concerning the role of feminist approaches in the field, one might draw the conclusion that they are not necessary at all. International law's primary focus centers on states—abstract and artificial entities formally bestowed with legal personality—whose existence is separate from that of their embodied citizens. Consequently, part of the feminist endeavor has been to advocate for and elucidate why it is relevant and crucial to engage with feminism within international law.

Therefore, part of the feminist project, one of self-justification, has been to defend and explain why it makes sense and matters to talk about feminism in international law. This involves unveiling and establishing connections between the abstract language of international law and the tangible circumstances of individuals, while also demonstrating how even abstract concepts are framed in terms of gender, ultimately reinforcing masculinity as the uncontested norm.

Feminists have undertaken significant efforts on a global scale, through feminist advocacy for women's human rights, gender mainstreaming, and combating sexual violence. Consequently, feminists have expended considerable time and effort to demonstrate that human rights, international criminal law, humanitarian law, all of these realms demand a feminist analysis. However, what about other domains within international law? What about the traditional concepts and principles that do not explicitly address the experiences and hardships of women worldwide? Concepts like *jus cogens*, territory, hard and soft law, or sovereignty? Do these aspects also warrant a feminist critique?

The proposition that international law needs a feminist critique emerges from the fact that international law operates as a system positioning itself as universally valid, wielding influence over states and individuals, apportioning authority and resources, furnishing an extensive array of normative prescriptions, and governing spatial boundaries and territories.

International law functions as both an outcome and a catalyst in shaping categories in an increasingly interconnected world. As gender plays a pivotal role in shaping the creation and dissemination of power and knowledge within society, it becomes imperative for those engaged in international law to give it due consideration. And feminist scholarship inherently aligns with the pursuit of addressing these very concerns.

In this context, I must also address the question "Why sovereignty?" The concept of national sovereignty holds a significant place in the framework of international law. Traditionally, an international society is formed by states recognizing shared interests and values, binding themselves to common regulations, and participating in joint institutions. In this classical understanding, each state is considered co-equal and sovereign, possessing ultimate authority and jurisdiction over its territory and citizens. However, debates surrounding sovereignty have persisted, particularly in the fields of international law and relations, where various theoretical frameworks have influenced its conceptualization and application.

By asserting that sovereignty requires a feminist critique, this study is not aiming to forge an entirely new feminist theory centered around sovereignty. Instead, it seeks to pose a subsequent query: if this critique is indeed essential, have feminist perspectives within international law managed to advance it thus far? How has the development of feminist critiques pertaining to sovereignty unfolded? Have these critiques effectively illuminated the gender-related dimensions inherent in comprehending this concept? Moreover, what significance, constraints, and unique attributes characterize feminist scholarship in this domain?

In order to address these inquiries coherently, this dissertation has been structured into three distinct chapters. The initial chapter established the theoretical foundation, methods, and scope of this investigation. It emphasized the role of critical approaches, the newstream, and the historiographical turn of international law to contextualize the feminist approaches. Methodological and epistemological propositions and inquiries regarding feminist analysis and historiography within the specific realm of international law were presented.

The feminist scholarship examined within this research is placed within broader critical scholarship concerns, aiming to uncover exclusionary patterns in international law concepts and principles. The historical context and theoretical lenses that feminist scholars adopt are explored, emphasizing their engagement in both the international legal dialogue and feminist discourse, thereby facilitating a deeper understanding of their contributions.

The second chapter explored the concept of national sovereignty within the framework of international law. It highlighted the classical understanding of sovereignty and delved into the critical examination of the relationship between colonialism, sovereignty, and gender within international law through the lens of TWAIL scholarship, underscoring the need for feminist perspectives to challenge and reshape their understanding of sovereignty, ultimately seeking to build a bridge between feminist and TWAIL analyses of this concept.

The second chapter also explored feminist scholarship's engagement with sovereignty, the state, and their implications for women. It focused on the first stream of feminist scholarship on sovereignty in international law and its particular association with feminist scholarship that associated state behavior with masculine domination, then presented feminist discussions on the concept of international legal personality (ILP), on the relations between sovereignty, violence, and security, and on the complexities of boundaries, territorial integrity, and bodily autonomy within international law. The second chapter ended with a presentation of the feminist rewriting of the Lotus Case as the Bozkurt Case, which challenges the assumption that Western sovereignty is the measure of civilization and explores the nexus between feminist methodologies and power relations.

The feminist scholarship on sovereignty presented in the second chapter mostly reflected the idea of the state as male and the concept of sovereignty as reproducing a masculine bias that excluded women. Most recently, innovative feminist perspectives present a more relational and plural account of the role played by gender in shaping sovereignty in international law. The third chapter explores these innovative feminist and queer analyses of sovereignty, from psychoanalytic perspectives, the idea of splitting subjects, and posthuman feminism. These approaches challenge both traditional and previous feminist scholarships of sovereignty and the state, offering alternative lenses for analysis that move beyond the binary paradigm of male/female and heterosexuality/homosexuality.

Queer perspectives are shown to have further enriched critical analysis of sovereignty, emphasizing the interconnectedness of subjects moving beyond the normative spectrum of gender and sexuality and how deeply informed by sexuality the vocabulary of international law is. These alternative perspectives not only expose the gendered function of sovereignty but also propose a more nuanced and complex understanding that challenges traditional male-centered and disembodied assumptions.

The third chapter delved into the intricate interplay between colonial influences, gender, and sexuality within the realm of international legal discourse. It underscored the challenge of working within an existing framework of language and interpretation, often

highlighted by critical scholars, including feminists, queer theorists, and postcolonial studies. The evolution of terms like "queer" demonstrates the transformative potential inherent in existing language. Engaging in international legal discourse requires a nuanced approach, meaning that accepting the existing vocabulary of the discipline does not equate to resignation, but rather recognition of its transformative potential.

Gender and sexuality have provoked deep-rooted impacts on international law, ranging from the historical origins of central concepts of the discipline to their perpetuation within modern legal practices. International law's language has not only shaped power dynamics but has also been molded by them. This final section challenges the stability of gender categories within international law and underscores the intertwined nature of colonial legacies, gender hierarchies, and sovereignty, which has often been maintained through violence and exploitation. Ultimately, this exploration prompts a reevaluation of international law's foundations and its ongoing role in perpetuating or challenging systems of domination.

While this research focused on sovereignty, it delved into the linguistic, structural, and experiential dimensions touched by feminist discourse in international law. This investigation has revealed how feminist internationalists engage with both the field of international law and broader feminist thinking, offering critiques and propositions that challenge what they perceive as male-oriented paradigms. By examining the interplay between power and authority in shaping the understanding of sovereignty, feminist scholars have also paved the way for reshaping them. This scholarship has not developed without internal conflicts, strategic negotiations, and the fear of isolation within the international legal domain.

As the shift from the second to the third chapter shows, the feminist analysis of sovereignty in international law has undergone significant transformations. While the first body of literature was heavily tributary to feminist theories from the 20th century concerned with women's experiences and voices, it faced the difficult task of bringing together feminist messages and methods. By repeating the idea that state behavior mirrored male behavior and by placing the opposition between men and women as central to their analysis, this early scholarship was myopic to the diversity among women and the plurality of possibilities for feminist analysis concerned with other marginalized groups. This perspective, however, was valuable for shedding light on the partiality of international law and to how deeply informed by gender dynamics the concept of sovereignty is.

This scholarship, however, was not enough to respond to broader questions. While TWAIL analysis resorted to history to try to understand the emergence and functioning of sovereignty, the feminist approaches have dedicated way less attention to the past,

concentrating their attention on the present and projections for the future of international law. In most parts of the feminist scholarship, the canonical works and the early projects of internationalists were heavily underappreciated, making them unable to perceive continuities, ruptures, and patterns of practices and rhetoric that could be valuable. On the other hand, the plurality of sexual and gender positions, as well as the issue of race, have been underappreciated and are fundamental to understanding how the concept of sovereignty has been shaped and operationalized.

The new feminist and queer approaches, rather than replacing the early feminist scholarship, move further in their concerns and continue to pave the way for a more inclusive and transformative discipline. When considering them, one might not only ask "Who needs a feminist critique?" but also what kind of feminist critique would be necessary. The examination of sovereignty from a plurality of perspectives remains essential to the ongoing project of feminist revaluation of international law. By critically engaging with the discipline, feminist scholars have broadened the scope and impact of its scholarship and practice, but there's still much to be done.

Sovereignty, once seen as a sacred and abstract concept, is now exposed to feminist scrutiny that has provided deeper and more nuanced understandings of its implications and consequences. The task of deconstructing international law's male bias and bringing marginalized voices to the conversation requires constant vigilance and dedication, as there will always be more layers of discourses and practices to excavate.

This analysis of sovereignty carries the primary goal of reflecting on how feminist scholarship has been (or not) able to address more "general issues" of the discipline, rather than those not directly related to women's issues. In the end, maybe one conclusion is that the "general issues" are as much "women's issues," "queer issues," as they are "Indigenous, decolonial, postcolonial issues." The "general" framing uncovers a supposed neutrality and objectivity that shifts the critiques in another direction. The dichotomy between general and specific concerns functions as a strategy of distraction for deeper critical analysis. In the case of the feminist critique, for instance, the problems that matter for women as a specific group and audience have been deeply inquired into, leaving the pillars, the most basic and powerful structures of the discipline, untouched.

Ultimately, this dissertation emphasizes the importance of ongoing critical engagement, challenging established norms, and pushing for more radical agendas for political transformation. The feminist and queer perspectives in international law are crucial for reimagining and reshaping the discipline, promoting interdependency, cooperation, and

inclusivity among states. Sovereignty, far from being abandoned, remains a crucial concept to be addressed by feminist scholarship, as it uncovers the supposedly neutral and objective nature to expose their underlying gender biases.

Here, showing how partial and biased the most "general issues" are—since they represent and voice the concerns, experiences, and notions of relevance of very limited groups in international society - serves the purpose of removing from the concept of sovereignty the untouchability with which they are clothed to the point of seeming too abstract and distant from the material situations of violence, inequality, exploitation, and dispossession experienced by women and other gendered, racially, and sexually marginalized subjects.

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