

as increasing the jurisdictional frontier for crimes against women, but it was a mixed victory, less successful in practical terms. The decision did not, for example, constrain Karadžić's actions, or deliver actual financial redress for his victims due to the obstacles to collecting on the damage award.

MacKinnon's insistence on foregrounding sexual politics is a valuable counterweight to the vacillation about women's lives common in international fora, where women's equality is often regarded as a negotiable value. This book serves as an introduction to her powerful voice, and I recommend it as an important record of her engagement in many landmark developments in the recognition of women's rights. It manifests, however, the perhaps inevitable tensions resulting from multiple goals: political project, mobilization for women's rights, and scholarly analysis. The book's argument rests on a number of fixed dichotomized categories (such as women/men, international/national) and pays insufficient attention to the conflicts, contradictions, and slippages the categories involve. We still need a deeper analysis of questions such as the relationship between local and international spheres, the way that the categories of "men" and "women" are constructed in international law, and the operation of sex and gender in this arena.

*Are Women Human?* offers answers, when perhaps what we need are better questions, including how law produces the subjects it regulates. The political struggles of feminism encourage the divination of a single cause of women's inequality with men. It is more difficult to theorize the non-linear nature of the feminist project—the ways in which it moves forward and slips backwards—and the insecurity of advances, as well as the ways in which feminist vocabularies can be deployed to preserve the status quo.

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*Reimagining Child Soldiers in International Law and Policy.* By Mark A. Drumbl. Oxford, New York: Oxford University Press, 2012. Pp. xii, 239. Index. \$110, £55, cloth; \$35, £17.99, paper.

Renewed interest in child combatants coincided with the revival of international criminal

justice. Over the last two decades, images of rifle-toting girls and boys became emblems of civil wars in places as far apart as Sri Lanka and Sierra Leone. A report by United Nations expert Graça Machel attributed the apparent increase in so-called "small-soldiers" not only to the chaos that accompanies internal armed conflict, but also to technology that enables mass production of lethal weapons light enough for children to carry.<sup>1</sup> Stories of such children entered popular culture through memoirs, novels, and movies.<sup>2</sup> At meetings in Cape Town and Paris, nongovernmental and intergovernmental organizations adopted principles aimed to protect everyone under the age of eighteen who is associated with armed forces or groups.<sup>3</sup> States responded, adopting two treaties that outlawed the compulsory recruitment and use in hostilities of persons in that same age group.<sup>4</sup> States additionally conferred international criminal jurisdiction over the use and recruitment, forcible and otherwise, of children younger than fifteen; as a consequence, a number of commanders

<sup>1</sup> Impact of Armed Conflict on Children: Report of the expert of the Secretary-General, Ms. Graça Machel, UN Doc. A/51/306 (Aug. 26, 1996) [hereinafter Machel report], paras. 27, 34, 42–43; see AHMADOU KOUROUMA, ALLAH N'EST PAS OBLIGÉ 45 (2000) (referring to "small-soldiers").

<sup>2</sup> Memoirs include ISHMAEL BEAH, A LONG WAY GONE: MEMOIRS OF A BOY SOLDIER (2007), and CHINA KEITETSI, CHILD SOLDIER: FIGHTING FOR MY LIFE (2005); novels, KOUROUMA, *supra* note 1, and UZODINMA IWEALA, BEASTS OF NO NATION (2005); movies, *Blood Diamond* (2006) and *War Witch* (2012).

<sup>3</sup> UNICEF, CAPE TOWN PRINCIPLES AND BEST PRACTICES (Apr. 27–30, 1997), at [http://www.unicef.org/emerg/files/Cape\\_Town\\_Principles%281%29.pdf](http://www.unicef.org/emerg/files/Cape_Town_Principles%281%29.pdf); UNICEF, *The Paris Principles: Principles and Guidelines on Children Associated with Armed Forces or Armed Groups* (Feb. 2007) [hereinafter Paris Principles], at <http://www.unicef.org/emerg/files/ParisPrinciples310107English.pdf>.

<sup>4</sup> Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, Arts. 2–4, May 25, 2000, S. TREATY DOC. No. 106-37, at 32, 33; ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182), Arts. 1–3, June 17, 1999, 38 ILM 1207 (1999). As of this writing, these treaties had 152 and 177 states parties, respectively. The United States is a party to both.

stood trial for those offenses.<sup>5</sup> The outcry provoked by the U.S. war-crimes prosecution of Omar Khadr, a fifteen-year-old Canadian seized amid a gunfight in Afghanistan, evinced the extent to which global legal communities had come to view underage combatants as victims, pure and simple.<sup>6</sup>

That view incurs challenge in this book by Mark A. Drumbl, a professor at Washington and Lee University School of Law. “On the topic of child soldiers, the faultless passive victim image fills the international legal imagination,” Drumbl asserts (p. 9). Dissatisfied, Drumbl undertakes, as his title indicates, to reimagine the topic. The author’s use of that infinitive is not happenstance: he refers repeatedly to “the international legal imagination,” which he defines as the “normative, aspira-

tional, and operational mix of international law, policy, and practice—constituted as it is directly and indirectly by a broad constellation of actors” (p. 9). He finds scant use of the term in international law; it bears echo, however, with the social science concept of the “imaginary.”<sup>7</sup> That is fitting, for the book’s presentation of social science research respecting children in armed conflict contributes an empirical synthesis to a law and policy discourse that had drawn heavily from doctrine and anecdote.

As foreshadowed in the introductory chapter, *Reimagining Child Soldiers* first reviews both the combat roles children have played over the centuries—teenaged Joan of Arc makes an appearance (p. 28)—and the global efforts in the last quarter century to put an end to child soldiering. Drumbl juxtaposes the longstanding fact of children’s participation in conflict, a practice that “endemicallly persists” (p. 26), with contemporary contentions that even young people who do not carry weapons qualify as “soldiers,” and that all such child soldiers are “vulnerable victims bereft of agency” (p. 36). The book proceeds to counter those contentions, surveying empirical studies conducted in an array of settings: the ongoing unrest in northern Uganda, stronghold of the Lord’s Resistance Army led by International Criminal Court indictee Joseph Kony,<sup>8</sup> for example, as well as past wars in places like El Salvador, Mozambique, and Sierra Leone.

The book next provides an account of soft and hard law sources, ranging from the Paris Principles<sup>9</sup> to the practices of national and international tribunals, that have shaped the contours of accountability—seldom accountability for children themselves, but rather for “a handful of” persons who recruit or use them in hostilities (pp. 135). With respect to these accused, Drumbl cautions that “child soldiering is simply not reducible

<sup>5</sup> Convictions for child-soldiering in violation of Article 4(c) of the Statute of the Special Court for Sierra Leone were affirmed against rebel leaders in *Prosecutor v. Sesay*, Case No. SCSL-04-15-A, Appeals Judgment (Oct. 26, 2009) and *Prosecutor v. Brima*, Case No. SCSL-2004-16-A, Appeals Judgment (Feb. 22, 2008) (reported by Valerie Oosterveld at 103 AJIL 103 (2009)). At this writing, appeal is pending in *Prosecutor v. Taylor*, Case No. SCSL-03-01-T, Trial Judgment (May 18, 2012), by which the former president of Liberia was convicted on similar counts. Also on appeal are verdicts pertaining to two Congolese militia leaders charged under Art. 8(2)(e)(vii) of the Rome Statute of the International Criminal Court, July 17, 1998, 2187 UNTS 3 (hereinafter Rome Statute): the conviction in *Prosecutor v. Lubanga*, Case No. ICC-01/04-01/06, Judgment Pursuant to Article 74 of the Statute (Mar. 14, 2012) (reported by Diane Marie Amann at 106 AJIL 809 (2012)), and the acquittal in *Prosecutor v. Ngudjolo*, Case No. ICC-01/04-02/12, Jugement rendu en application de l’article 74 du Statut (Dec. 18, 2012). Cited documents from these courts are available at <http://www.sc-sl.org> and <http://www.icc-cpi.int>, respectively.

<sup>6</sup> “Omar Khadr as a child soldier, is a victim,” read the subhead of a brief whose signatories included present and former foreign ministers and international and national judges, as well as the former chief prosecutor for the Special Court for Sierra Leone. Amicus Curiae Brief filed by McKenzie Livingston, Esq. on Behalf of Sen. Robert Badinter, et al. at 6, United States v. Khadr, (Jan. 18, 2008), at [http://www.law.utoronto.ca/documents/Mackin/khadr\\_Amicus\\_Badinter.pdf](http://www.law.utoronto.ca/documents/Mackin/khadr_Amicus_Badinter.pdf). See Paul Koring, *Khadr to Appeal War Crimes Convictions*, GLOBE & MAIL, Apr. 27, 2013, at A5 (reporting on Khadr’s decision to challenge, in light of subsequent federal appellate decisions, his 2010 conviction by guilty plea).

<sup>7</sup> See CHARLES TAYLOR, MODERN SOCIAL IMAGINARIES 23 (2004) (outlining, in a work by a noted Canadian philosopher, a concept of “social imaginary” akin to Drumbl’s definition of “imagination”).

<sup>8</sup> See Warrant of Arrest for Joseph Kony Issued on 8 July 2005 As Amended on 27 September 2005, *Prosecutor v. Kony et al.*, Case No. ICC-02/04-01/05-53 (Sept. 27, 2005).

<sup>9</sup> Paris Principles, *supra* note 3.

to the deviance of sociopathic adult recruiters or conflict entrepreneurs” (p. 167). In tandem with Drumbl’s critique of the simple-victim image, this observation sets the stage for the book’s primary aspiration: to disseminate a more complex understanding of child soldiering in order to shift global emphasis away from uneven pursuit of retribution and toward comprehensive improvement of non-criminal means to justice.

At the fulcrum of *Reimagining Child Soldiers* are the empirical studies on which Drumbl relies. Taken together, they demonstrate that no single story captures all the experiences of all the children whom armed conflict affects. Though some children indeed are faultless and passive victims impressed into militia service, others choose to join for a variety of motives, Drumbl writes:

to defend the state, avenge, pillage, labor, acquire training, earn rations and shelter, pursue fosterage and secret society initiation, attenuate boredom and *anomie*, give voice to political viewpoints, pursue the vocation of being a soldier, struggle for political liberation and revolutionary emancipation, fight oppression, articulate collective self-determination, engage in *jihad*, and (in the case of some girls) seek gender equality and avoid arranged marriages. (P. 79).

Even kidnapped children sometimes manage to escape. Those who stay may adapt to and even “mobilize around” military life (p. 80). Children commit atrocities not only for the reasons of coercion or immaturity advanced by “the international legal imagination,” but also for other reasons: “the will to survive, obedience, the normalization of violence, the satisfaction derived from killing, and ideology” (p. 81).

Variations in motivation and response increase as a child grows, according to Drumbl. The presumption of incapacity may hold fast for the youngest of persons caught up in conflict, but it breaks down with age. By way of example, Drumbl maintains: “It is not a given that children are incapable of fighting in accordance with the laws of war” (p. 85). Juveniles, especially older teenagers, comprehend the basics of right and wrong on which those laws are founded; studies reveal instances in which juveniles chose to avoid violence as well as those in which they chose to

embrace it. “Child soldiers,” Drumbl summarizes, “act differently under comparable extrinsic circumstances” (p. 89).

While at first blush unremarkable, that statement in fact calls into question the status quo as Drumbl posits it. The statement’s implication that children’s actions are contingent on multiple impulses and numerous circumstances stands at odds with the faultless passive victim image. Especially contested is the movement to place within that image everyone who is seventeen or younger. Drumbl contends that this “Straight 18” movement<sup>10</sup> hinders due consideration of evidence that “agency,” an individual’s ability to make reasoned choices, is enhanced over time (*see* pp. 4–5, 18, 80, 109, 134–38, 141, 150).

Drumbl further exposes tension between the willingness of some states to prosecute children for ordinary crimes—or, as in *Khadr*, for crimes against the interests of the state—and the aversion of the international system to such prosecutions. Reflecting such aversion is the exclusion of children from the jurisdiction of tribunals like the International Criminal Court.<sup>11</sup> In Drumbl’s view the “powerful trendsetting role” of the Rome Statute (p.121), coupled with a desire not to “ruffle enlightened international sensibilities,” has prodded many states to forgo the postconflict adoption of national mechanisms that would call to account wrongdoers under the age of eighteen (*id.*). He questions “whether the community can effectively address its own roles and responsibilities—as it must—in the absence of reciprocal dialogue regarding the roles and responsibilities of the children themselves, especially adolescents implicated in the commission of acts of atrocity” (p. 111).

Building on these insights, Drumbl advocates a nuanced approach to the issue of child soldiers;

<sup>10</sup> *See* United Nations, *Zero Under 18*, <http://childrenandarmedconflict.un.org/our-work/zero-under-18-campaign> (May 6, 2013); *see also* Child Soldiers International, *Straight-18*, [http://www.childsoldiers.org/theme\\_reader.php?id=1](http://www.childsoldiers.org/theme_reader.php?id=1) (visited July 30, 2013).

<sup>11</sup> *See* Rome Statute, *supra* note 5, Art. 26 (“The Court shall have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime.”).

in his words, “a *model of circumscribed action*,” by which each individual is recognized to possess a capacity to act, or not to act, within the particular boundaries of the dynamic context that she or he confronts (pp. 98–99). Constraints like youth or poverty or drugs or coercion are not ignored under this model, but rather specifically assessed. Such an assessment may lead to more precise programs of prevention and thus deter children’s entry into armed service, Drumbl argues (p. 167). As for accountability, Drumbl would accord “qualified deference” to “good faith” accountings of children’s actions—deference that he makes clear would not extend to the harsh and protracted treatment endured by Omar Khadr (pp. 210–12). The promise of the model of circumscribed action is to effect culturally appropriate measures that seek genuinely to involve former child soldiers in their own societal reintegration and thus “encourage,” as Drumbl puts it, “more fine-grained modalities of restoration, conflict resolution, and justice” (p. 215).

Drumbl’s espousal of nonpunitive means to justice finds company among scholars reflecting on the last two decades in which international criminal prosecutions have held sway,<sup>12</sup> just as his emphasis on the volition of some youths and the “ambivalence” (p. 71 n.52) of some communities serves as a timely reminder of the complexities of the child soldiering issue.<sup>13</sup> His demand for accurate analysis of children’s abilities likewise situates the book within a current of recent literature, including this reminiscence by an erstwhile child soldier who went on to serve as a judge on the International Court of Justice: “Children, even relatively young children, learn to be cunning or street-smart when circumstances demand, and

they are fast learners when they have to be in order to live another day.”<sup>14</sup>

One might wish that Drumbl had given greater consideration to the merits of endeavoring to keep as many persons as possible from combat—a goal that would be furthered should states fulfill their “Straight 18” promises to forestall recruitment.<sup>15</sup> In this sense, implementing the prohibition on recruitment could operate to reduce overall participation in combat, much as narrowing death-eligibility has operated to reduce the overall scope of capital punishment in the United States.<sup>16</sup> One also might quibble that in reifying “the international legal imagination” *Reimagining Child Soldiers* falls victim to the very sort of “zero-sum” or “totalizing” technique that it is at pains to criticize (pp. 100, 166). Yet that is perhaps an inevitable hazard of the dense synthesis that forms not only the core of Drumbl’s argument, but also the springboard for his hoped-for improvement of policy and practice. In sum, this book represents an ambitious and valuable addition to thinking about the troubling phenomenon of underaged combatants.

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<sup>14</sup> THOMAS BUERGENTHAL, *A LUCKY CHILD: A MEMOIR OF SURVIVING AUSCHWITZ AS A YOUNG BOY* 208 (2009) (reviewed by Lori Fisler Damrosch at 104 *AJIL* 307 (2010)); see *id.* at 118–30 (recounting his stint as the uniformed ten-year-old “mascot” of a Polish army unit during the final weeks of World War II); see also Annette Ruth Appell, *The Pre-Political Child of Child-Centered Jurisprudence*, 46 *HOUS. L. REV.* 703, 705–06 (2009) (resolving to “challenge the contours of childhood” and “examine children’s agency”); Bill Rolston, *Combatants’ Children: Conflict and Resilience in Northern Ireland*, 6 *INTERDISC. J. HUM. RTS. L.* 61, 82 (2011–2012) (concluding, based on interviews, that “[c]hildren have the capacity to be more than passive victims” and that “against all odds, resilience can triumph”).

<sup>15</sup> See *supra* note 4 (indicating that more than three-quarters of states in the world have joined treaties to this effect).

<sup>16</sup> See James S. Liebman & Lawrence C. Marshall, *Less Is Better: Justice Stevens and the Narrowed Death Penalty*, 74 *FORDHAM L. REV.* 1607, 1673–74 (2006).

\* This review was written exclusively in the personal capacity of the author and does not reflect the views of any institution which with she is affiliated.

<sup>12</sup> *E.g.*, Alexandra Huneeus, *International Criminal Law by Other Means: The Quasi-Criminal Jurisdiction of the Human Rights Courts*, 107 *AJIL* 1 (2013); Elizabeth B. Ludwin King, *Does Justice Always Require Prosecution? The International Criminal Court and Transitional Justice Measures*, 45 *GEO. WASH. INT’L L. REV.* 85 (2013).

<sup>13</sup> *Cf.* Machel report, *supra* note 1, para. 43 (allowing that adult combatants frequently take advantage of children, yet adding that “it is important to note that children may also identify with and fight for social causes, religious expression, self-determination or national liberation”—as “in South Africa or in occupied territories, they may join the struggle in pursuit of political freedom”).