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INTRODUCTION TO THE SYMPOSIUM ON INTERNATIONAL LAWS PUBLIC AND PRIVATE

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This symposium explores the interrelation and juxtaposition of private and public registers in the logics and practices of private international law, public international law, and foreign relations law. It is inspired by the scholarly work of a brilliant scholar and much-missed friend: Karen Knop, Professor and Cecil A. Wright Chair at the University of Toronto Faculty of Law (1960–2022).

The symposium draws from and engages with Karen's work in various ways. It also provides an opportunity to traverse scholarly ground covered extensively in the *American Journal of International Law* (*AJIL*), since its 1907 establishment, surrounding relations among private international law, public international law, and foreign relations law. The essay authors explore these perennial themes while making fresh use of the distinctive features of *AJIL Unbound*. As readers well know, *AJIL Unbound* provides for the online and open-access publication of short, original essays of international legal scholarship written in a readable style intended to be accessible to policymakers, practitioners, transdisciplinary scholars, and students around the world. It seeks to broaden and diversify *AJIL* scholarly exchanges by introducing new interlocutors, insights, and modes of analysis.

Karen was a critical force in the creation of *AJIL Unbound*. She was chair of the founding editorial committee of *AJIL Unbound* from its launch in 2014 until 2017, and a member of its editorial committee from 2017 until 2021. She was instrumental in devising and refining the *AJIL Unbound* model: an online journal that combined the timeliness and accessibility of a blog with the seriousness and integrity of a peer reviewed scholarly journal. The extraordinary reach of *AJIL Unbound* today, reflected in both the diversity of its contributors and its global readership, owes a great deal to the publication's early imprinting with Karen's distinctive editorial style and approach to scholarly life and work. Karen had a unique gift for, and commitment to, engaging with scholarly voices of immense variety. She gave serious and unwavering attention to pluralism, power, and inequalities in the international legal field, and she championed scholars working outside established canons and intellectual geographies. Her unique combination of empathy, curiosity, and rigorous attention to argumentative detail inevitably drew out what was new, significant, and challenging in any author's intervention. The fruits of her generous approach to scholarly mentorship and commitment to collegiality are apparent everywhere in the pages of the journal.

Karen was an exceptional scholar of public and private international law, and a groundbreaking feminist theorist. To appreciate how original and generative Karen's many writings were with respect to the themes of this symposium, we begin this introduction by surveying some relevant parts of the international legal scholarly terrain prior to her contributions. Specifically, we explore the work of several influential scholars examining the interaction

* *Minerva House Drysdale Regents Chair in Law and Co-director of the Bernard and Audre Rapoport Center for Human Rights and Justice, University of Texas School of Law, United States.* *We gratefully acknowledge the manifold contributions of our* AJIL Unbound *editor, Professor Ryan Liss, who himself was a student of Karen Knop, to each of the pieces in this symposium. Ryan's brilliant and generous editorial eye made this already remarkable editorial experience a true joy.*

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between public and private international law published in the pages of *AJIL Unbound*'s parent publication, *AJIL*, in the decades before Karen began her academic career. The journal was then—as it is now—filled with explicit and implicit discussion of the relations among private international law, public international law, and foreign relations law. One can, for instance, often find the "publicness" of public international law, with its commitment to values such as public rights, articulated or imagined as transcending or tempering an adjacent private sphere, invested with partisanship and inequality. Likewise, understandings of the "privateness" of private international law or the "foreignness" of foreign relations law have typically relied on neighboring spheres being ascribed as spaces of commonality, whether international or national in scale. Karen had a remarkable eye for how these configurations had taken shape across different debates, and for the stakes at play in various instances of this boundary-drawing. She navigated these dynamics adroitly yet was never beholden to them.

Some *AJIL* contributions advocated borrowing between the distinct domains of public and private international law. In 1913, twenty years after the first convening of the Hague Conference on Private International Law, Arthur Kuhn, organizer of the American Foreign Law Association and co-founder of the American Society of International Law, argued that public international law agreements should be used to bring uniformity to the realization of private international law goals, such as managing the idiosyncrasies of individual, familial, and sub-state community norms. On the laws governing marriage and divorce, he wrote that "the family tie everywhere is weaker by reason of the lack of a guiding international and interstate principle to determine the forum and law."[1] In contrast, by 1942, diplomat and international lawyer Philip Marshall Brown displayed the reverse preoccupation of public international lawyers—to recover riches from the private international law sphere to enhance the work of public international law. "The tangles of human relationships," he wrote, should be integrated into public international law rather than being "left to the conflicting ideas and confusion of diverse local jurisdictions." This integration, he argued, would render public international law more "adaptable to rapidly changing world conditions."[2] Karen, too, was interested in crossing and hybridizing this bifurcated terrain by tapping into law's "store of technicalities"—that is, by embracing and exploring afresh those doctrinal and other techniques most characteristic of lawyerly ways of crafting and deploying knowledge.[3] Yet her approach set her work apart from Kuhn's and Brown's in ways that we elaborate below.

Other *AJIL* contributions attempted to render the boundary between public and private spheres permeable, including in relation to public and private international law. In Brown's 1942 article, for example, despite his attempt to enhance public international law by drawing on private international law, he wrote that "[t]here is no clear line of demarcation" between them.[4] Forty years later, in 1982, Harold Maier, a scholar of international, comparative, transnational law, and conflict of laws, contended that "the values that inform both systems must necessarily be the same" since "both the public and the private international systems coordinate human behavior." He further noted that their "[c]onceptual separation" allowed "apparently conflicting propositions" to persist regarding the relationship of sovereignty to law.[5]

In 1991, Hilary Charlesworth, Christine Chinkin, and Shelley Wright brought an explicit and ground-breaking feminist critique to the pages of the *AJIL*—pursuing a different kind of problematization of the public/private boundary. They challenged the distinction between the public and private *within* public international law, lamenting that "the male organizational and normative structure of the international legal system" including its insistence on

[1] Arthur K. Kuhn, *Should Great Britain and the United States Be Represented at the Hague Conferences on Private International Law*, 7 AJIL 774, 780 (1913).

[2] Philip Marshall Brown, *Private Versus Public International Law*, 36 AJIL 448, 450 (1942).

[3] Karen Knop, *Citizenship, Public and Private*, 71 L. & CONTEMP. PROBS. 309, 341 (2008).

[4] Brown, *supra* note 2, at 450.

[5] Harold G. Maier, *Extraterritorial Jurisdiction at a Crossroads: An Intersection Between Public and Private International Law*, 76 AJIL 280 (1982).

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"dichotomies between the public and private spheres," have impeded "development [of] an *international* feminist perspective" in the field.[6] Only by loosening the "grip that the public/private distinction has on international law," they argued, might a "feminist transformation of international law" become possible.[7]

Karen began her academic career around the time that the Charlesworth, Chinkin, and Wright article was published. Her own feminist scholarship in international law built on, but took a different route from, theirs. In Karen's first major publication, in 1993, she surveyed—and identified critical differences among—the feminist critiques of the public/private distinction in international law that had only recently emerged.[8] Rather than align herself with one critique over the other, Karen argued that feminist approaches varied based on whether they used a body or property metaphor for the state. Challenging both metaphors, she argued that all the critiques would benefit from a less unified vision of the state: "While criticizing the premise of the State as bounded, [feminist scholarship in international law] has nevertheless accepted the premise of the state as unified."[9] Karen encouraged feminists to take more seriously the lessons from the New Haven School of international law (developed by Myers McDougal, Harold Lasswell, Lung-chu Chen, and Michael Reisman), as well as the arguments of other scholars such as Richard Falk, who sought to build an international civil society. Among these (and other) unlikely allies, Karen sought to seed an international legal feminism that was bolder in its structural ambitions than many then-prevailing versions. She contended that scholarly approaches that challenged the unified state, were they also to draw from feminist attention to gendered power dynamics, might advance feminist aims better than those that critiqued the public/private distinction within classical conceptions of international law.

Over the years, Karen continued her critique of the unified state in a variety of areas, as she identified and studied a number of non-nation-state actors who play important roles in public international law—from peace activists to Indigenous peoples, to cities.[10] That interest in nonstate actors eventually manifested in a new and highly productive direction as Karen turned to the field of private international law. In a series of articles, some coauthored with Ralf Michaels and Annelise Riles, she explored how the technical dimensions of private international law were replete with theoretically transformative possibilities, not only for public international law, but also for feminist theory and political action generally.[11] As all this work attests, Karen's aim was not so much to reject or overcome public/private divides as to find potential for political and legal insight at once within and outside established legal repertoires—hidden gems that were often missed by others.

Crucial to Karen's extraordinarily rich and creative work at the crossroads of public and private international law was her truly unique intellectual sensibility. Karen brought to these debates an unparalleled breadth of knowledge and erudite sensitivity. She was deeply respected and sought out for her mastery of international legal doctrine, including not only international case law but relevant case law from Canada to the United States, the Soviet Union

[6] Hilary Charlesworth, Christine Chinkin & Shelley Wright, *Feminist Approaches to International Law*, 85 AJIL 613, 625, 614 (1991) (emphasis in original).

[7] *Id.* at 627, 644.

[8] Karen Knop, *Re/Statements: Feminism and State Sovereignty in International Law*, 3 Transnat'l L. & Contemp. Probs. 293 (1993).

[9] *Id.* at 332.

[10] Karen pursued many of these ideas in her monograph. *See* Karen Knop, Diversity and Self-Determination in International Law (2002). For her discussion on cities and other sub-national entities, see Karen Knop, *International Law and the Disaggregated Democratic State: Two Case Studies on Women's Human Rights and the United States*, *in* We the People(s): Participation in Governance (Claire Charters & Dean R. Knight eds., 2011).

[11] *See*, *e.g.*, Karen Knop, Ralf Michaels & Annelise Riles, *From Multiculturalism to Technique: Feminism, Culture, and the Conflict of Laws Style*, 64 Stan. L. Rev. 589 (2012); Karen Knop, Ralf Michaels & Annelise Riles, *Foreword to Symposium: Transdisciplinary Conflict of Laws*, 71 L. & Contemp. Probs. 1 (2008); Knop, *supra* note 3; Karen Knop & Annelise Riles, *Space, Time and Historical Injustice: A Feminist Conflict-of-Laws Approach to the "Comfort Women" Agreement*, 102 Cornell L. Rev. 853 (2017).

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to Scandinavia, and across the African continent. Her legal expertise spanned numerous fields and subfields each of which would satisfy other scholars for a lifetime. Karen earned a Bachelor of Science with Honors in mathematics before studying law, and she had a deeply logical mind for both doctrine and philosophy. In addition, she was a serious and sophisticated reader of contemporary literature (in multiple languages) as well as an avid critic of theater, design, and the visual arts.

Karen knitted these disparate intellectual worlds together with her signature generosity, never caricaturing, but instead embracing, the internal demands and aims of each field and putting them in productive conversation with one another. Again and again, she carefully and understatedly produced her own unique tour de force of speaking across disciplines and intellectual communities in ways that were recognizable to all and yet at the same time cracked each open in new ways. She delighted in the unexpected juxtaposition of debates from one domain with those of another. For example, she showed how debates in feminist theory could be opened up by borrowing techniques from private international law[12]—the precise reverse of the longstanding move of importing insights from feminist theory into legal debates.

This symposium honors Karen's contributions, and the ethos of her scholarship, by featuring a fittingly expansive set of engagements with multiple aspects of Karen's work from a diverse array of authors. All authors benefitted from the opportunity to have engaged with Karen professionally, including, for some, at formative stages of their careers.

The symposium authors all bring some aspect of Karen's work to bear on their analysis of a particular set of international legal texts or contexts, often highlighting, as Karen did, features of the field hiding in plain sight. Some of the essays make use of Karen's work on the importance of reactivating the private in international law.[13] Building on Karen's "Gender and the Lost Private Side of International Law,"[14] for instance, Anne-Charlotte Martineau of the CNRS (Centre national de la recherche scientifique) in Paris, revisits the School of Salamanca's sixteenth century approach to remarriages in Brazil by Black and Indigenous people who had already been married in the places from which they had been forcibly removed.[15] By devoting attention to the often-missed focus on private law in the School of Salamanca, Martineau contests (or at least supplements) contemporary, critical readings of this school of thought in which gender is largely invisible. Miriam Bak McKenna of Roskilde University, Denmark and Matilda Arvidsson of the University of Gothenburg, Sweden, deploy this same work by Karen to call attention to international law's impact on women's property rights during the nineteenth century, much of which has gone unnoticed because of the silence of international law treatises on women's rights during that period.[16] Informed by Karen's studies of nineteenth century international legal scholarship, Filipe Antunes Madeira da Silva, of the University of Rosario, Colombia, explores the centrality of frontier expansion to the work of late nineteenth century Argentine jurist Carlos Calvo.[17] Antunes Madeira da Silva juxtaposes his reading of Calvo against Karen's reading of the work of Calvo's contemporary, the Scottish jurist James Lorimer, in her article "Lorimer's Private Citizens of the World."[18] Antunes Madeira da Silva shows how the

[12] Knop, Michaels & Riles, *From Multiculturalism*, *supra* note 11.

[13] Knop, *supra* note 3.

[14] Karen Knop, *Gender and the Lost Private Side of International Law*, *in* HISTORY, POLITICS, LAW: THINKING THROUGH THE INTERNATIONAL 357 (Annabel Brett, Martti Koskenniemi & Megan Donaldson eds., 2021).

[15] Anne-Charlotte Martineau, *The Private as a Core Part of International Law: The School of Salamanca, Slavery, and Marriage (Sixteenth Century)*, 118 AJIL UNBOUND 7 (2024).

[16] Miriam Bak McKenna & Matilda Arvidsson, *Gendering Public and Private International Law: Transversal Legal Histories of the State, Market and the Family Through Women's Private Property Rights*, 118 AJIL UNBOUND 12 (2024).

[17] Filipe Antunes Madeira da Silva, *Private Citizens of the World and Frontier Expansion*, 118 AJIL UNBOUND 18 (2024).

[18] Karen Knop, *Lorimer's Private Citizens of the World*, 27 EUR. J. INT'L L. 447 (2016).

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law of migration was deeply intertwined with, and constituted by, private law. With attention to a case of early twentieth century colonial, capitalist expansion in what is now the Colombian Amazon, Antunes Madeira da Silva elucidates how private rights often served international legal ends. Taken together, these essays add nuance to contemporary international legal understandings of colonial conquest by foregrounding how private law created both possibilities and obstacles for different individuals. In so doing, they mirror Karen's concern that "by neglecting private law, historians of international law produce only a partial account of how power operates through international legal concepts and institutions."[19]

Other essays in the symposium draw upon other threads of Karen's work. Nicole Stybnarova uses a foreign relations law lens to study the interactions of private international law, migration law, and administrative law in the context of Danish legal recognition of foreign marriages for the purpose of migration.[20] Referencing Karen's thoughts on foreign relations law and on critical method more generally, Stybnarova demonstrates how "shifting optics" from one legal field to another, as Karen often did in her work, yields new perspectives on and questions about how marriages are and are not recognized.[21] Legal sociologists Ron Levi and Sophie Marois, both of the University of Toronto, Canada, together with Sara Dezalay of the European School of Political and Social Sciences (ESPOL), Paris offer a critical reading of two 2021 reports by the French government on France's state violence in Algeria and Rwanda.[22] They suggest that the work of these reports might be understood as akin to what Karen termed "fact-ional" memory-making in her innovative discussion of the Tokyo Women's Tribunal, a peoples' tribunal in 2000 that "tried" Japanese officials for sexual crimes against women from Korea and other countries under Japanese colonial rule during World War II.[23] Drawing in particular on Karen's attention to the use and role of different kinds of experts in that memory-making, Levi, Marois, and Dezalay argue that through the agency of experts, the reports craft a state narrative of history that allows for public acknowledgement of violence while avoiding legal accountability for it.

The essays in the symposium share a focus on often unseen actors in the international legal field—whether operating in their "public" or "private" capacities—and the ways in which all are governed by law. The first three essays foreground the roles of women (Martineau, McKenna, and Arvidsson), enslaved Africans and Indigenous peoples (Martineau), as well as businessmen (Antunes Madeira da Silva). Engaging foreign relations law, Stybnarova places the spotlight on state actors who might otherwise be missing from both public and private international law analysis of marriage recognition in the immigration context. Levi, Marois, and Dezalay show the outsized role of archivists in French revisionist history and bring to light the important, if unwitting, part they played in closing off legal avenues for redress of past wrongs.

These five essays also call attention to the dexterity of international law's doctrinal engagements with temporality —a theme that so frequently surfaced in Karen's work. In each of the essays, the law's constitution of the past, present, and future—as well as the pace and tempo of legal time and the availability of the past and the future as resources for the legal present—are constantly shifting. McKenna and Arvidsson follow Karen's disruption of legal historical accounts of the absence of women's rights in nineteenth century international law treatises;[24]

[19] *Id.*

[20] Nicole Stybnarova, *Foreign Relations Law as a Method of Private International Law's Theoretical Self-Reflection and Critique*, 118 AJIL UNBOUND 24 (2024).

[21] Karen Knop, *Foreign Relations Law: Comparison as Invention*, *in* THE OXFORD HANDBOOK OF COMPARATIVE FOREIGN RELATIONS LAW 45 (Curtis A. Bradley ed., 2019).

[22] Ron Levi, Sophie Marois & Sara Dezalay, *Lawyers, Archivists, and the Turn to Transparency in the French State*, 118 AJIL UNBOUND 30 (2024).

[23] Karen Knop, *The Tokyo Women's Tribunal and the Turn to Fiction*, *in* EVENTS: THE FORCE OF INTERNATIONAL LAW 145 (Fleur Johns, Richard Joyce & Sundhya Pahuja eds., 2010).

[24] Knop, *supra* note 14, at 362.

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they point to multiple sites of engagement between women's property rights and public and private international law over the course of the century that are missed by that contemporary reading. Martineau and Antunes Madeira da Silva likewise challenge present reconstructions of the past, by surfacing international legal configurations that have gone unnoticed in the discipline. For Levi, Marois, and Dezalay, archival reports are at once about the past, the present, and the future. Through its official reports, the French state deploys archivists and historians to narrate the past in relation to the present, and also to produce a stable narrative that empowers the state for the future, or at least protects the state from legal accountability.

If Karen returned again and again to questions of temporality in the law, perhaps it was because her remarkable corpus of work was also the fruit of her own commitment to a distinctive temporality of scholarship. Karen took time—she took time to read others' work carefully and generously, to understand, to appreciate the aesthetic and the humor, to listen before she spoke. She took time to glance sideways, to wander down intellectual side streets and alleyways, looking for that intriguing find. She welcomed and engaged seriously with historical antecedents like Lorimer, and the students who would be the future protagonists of the field alike. All of this was part of Karen's way of living out her feminist commitments—of honoring those who had come before, welcoming those who would come after, and finding joy and surprise in the present of academic labor. Following Karen's unique attentiveness to the unfolding of ideas, doctrines, and legal practices in time, we find hope in the manifold ways her work will continue to touch current and future generations.

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