
ENDGAME: FEMINIST LAWYERS AND THE REVOLUTIONARY BODY

*Yoriko Otomo**

1.0 INTRODUCTION

If the basis of a popular government in peacetime is virtue, its basis in a time of revolution is virtue and terror — virtue, without which terror would be barbaric; and terror, without which virtue would be impotent.¹

Over two hundred years ago a male French lawyer spoke of governance, virtue, terror and impotence at a time, one could safely speculate, of crisis. Nearly two and a half centuries later, these words haunt lawyers faced with another crisis: one provoked by the radical indeterminacy of moral authority. Whereas Robespierre unequivocally drew his battle lines, lawyers — and particularly those lawyers who identify as feminists — face a far more ambivalent struggle. The language of ‘everyday’ crises (war crimes, human trafficking, domestic violence, and so on) evokes a direct response from those of us who seek to change the perceived ‘masculinist’ socio-political system for improvements in the welfare of others: we need better law, and more of it. This desire, however, is at odds with one particular *telos* of feminism, as a movement or movements: that of revolution. The problem thus emerges in the form of a practical issue as to where feminists and feminist lawyers stand: *as* or *for* law, or *outside* or *against* law (if such acts are indeed possible).

Various feminist scholars have long been faced with this particular problem, and feminist legal theorists have proposed strategies for writing *as* and *about* law.² However, in terms of the ways in which such interventions may be deployed there is an anxiety among feminists who embrace law’s normative discourses of emancipation, over when to resist and when to comply

* Yoriko Otomo is a PhD candidate and lecturer at the School of Law, University of Melbourne. Correspondence to: School of Law, University of Melbourne, Victoria, Australia 3010. Email: y.otomo@unimelb.edu.au. A different version of this paper was presented at the International Institute for the Sociology of Law, Oñati, Spain, 22 May 2008, and will be published as ‘Searching for Virtue in International Law’ in an edited collection arising out of that workshop. Thanks to Sari Kuovo, Zoe Pearson, Hilary Charlesworth and Vanessa Munro for their comments on that paper. I am grateful to the anonymous referees for their generous advice on this paper.

¹ Robespierre Maximillian *Speech in the French National Convention* 1794.

² Indeed, this has been an ongoing subject of debate, more or less since the 1970s. See for example Davies Margaret and Mack Cathy, ‘Legal Feminism: Now and Then?’ (2004) 20 *Australian Feminist Law Journal*.

with the law.³ This anxiety is compounded by a tension with third wave feminists who are concerned with deconstructing gender binaries foundational to law itself.⁴ The relation of various feminisms to each other and to law could perhaps more usefully be thought in terms of their occasional desires for revolution — desires to displace law *elsewhere*, and to substitute in its place an order without a name. If this is indeed a helpful way in which to conceive this relation, the questions that follow from it address the form that such revolutions may take; the different strategies involved, and the stakes of their performance.

It is perhaps useful to begin such an enquiry by thinking about *international* law, itself a utopic expression to some extent, of the French revolution. Given the limited scope of this article, what is offered here is a brief series of contemplations on the key issues at stake in such an inquiry. The contemplations unfold in four parts. Part 2 ‘Revolt, Revolution’ returns to an archetypal scene of revolution, with its invocation of power’s inextricable foundations of virtue and terror. Part 3 ‘Hysteria’ looks at feminist strategies of reading legal text, and proposes the “international” of international law as a space open to a poetics of *écriture féminine* (writing of the feminine), while Part 4 ‘An Order Without a Name’ addresses a problem of metaphysics that lurks at the heart of such an enterprise. Part 5 ‘Searching for Virtue’ suggests international law as a space in which to hold onto or ask the *question* of authority and ends with an invitation to think of crisis and revolution, not as event, but in terms of movement that is created by the act of re-reading legal text.

2.0 REVOLT, REVOLUTION

The writings of feminist legal theorists are torn between the impulse to resist⁵ and the drive to comply⁶ with the law. To withhold or to fill up. Are these really our two poles of inhabitation?⁷ ‘The Terror’, declared Robespierre, ‘is nothing save justice, prompt, severe, inflexible. It is an emanation of Virtue’, and virtue, ‘nothing more than love of the fatherland and of its laws’.⁸ Robespierre’s formulation of terror, then, equates to law and the legal decision, and virtue is

³ The title of a recent feminist international law workshop is emblematic of this concern: ‘Between Resistance and Compliance? Feminist Perspectives on International Law in an Era of Anxiety and Terror’ Institute for the Sociology of Law, Onati, Spain, May 2008.

⁴ Highlighted as a ‘core tension’ by Hilary Charlesworth at the above-mentioned workshop.

⁵ “Resist”: c.1374, from O.Fr. *resister*, from L. *resistere* “to resist, to stand back, withstand”. Resistance is attested from 1417, from O.Fr. *resistence*, from L.L. *resistentia*, from L. *resistentem* (nom. *resistens*), pp. of *resistere*. Sense of “organized covert opposition to an occupying power” first recorded 1940 in reference to French opposition to Nazi rule’. Weekley Ernest *An Etymological Dictionary of Modern English* Dover Publications 1967.

⁶ “Comply” from the early 14c., from O.Fr. *complir*, pp. of *complir*, from L. *complere* ‘to fill up’. Originally ‘to fulfill, carry out’. Sense of ‘consent’ began c.1600 and may have been a reintroduction from It., where *complire* had come to mean satisfy by “filling up” the forms of courtesy’. Weekley as above.

⁷ Thematic of the afore-mentioned feminist international law workshop held in the autonomous community of the Basque Country, 2008.

⁸ Robespierre Maximilian *On the Moral and Political Principles of Domestic Policy* 1794 accessed at <http://www.fordham.edu/halsall/mod/robspierre-terror.html>.

figured in terms of love — for the sovereign guarantor of that law, predicated upon governance through fraternal force. How am I, a woman and feminist lawyer, to make sense of this while representing a profession that at once offers salvation and perpetuates a gendered violence which we feminists are working so hard to change? How am I to embody this office⁹ while at the same time calling for a revolutionary shift in law's sexuate relation to territory?

To think about this let us return to revolution, resistance and revolt. Revolution, as a desire to displace law to an infernal elsewhere, was arguably a key idiom of feminist thought during the second half of the twentieth century. All three of the so-called 'French feminists' (Luce Irigaray, Julia Kristeva and Hélène Cixous), heavily influential upon the development of contemporary feminist thought, have at various times utilised the rhetoric of revolt and revolution in their writings.¹⁰ While these writings would all be pertinent subjects of analysis, I will focus on the work of Julia Kristeva given the limited scope of this article, and because her work most explicitly explores that trope. Kristeva illuminates this idiom through an etymological analysis, discovering the multitude of meaning of *revolt*: to turn; to cover around; to envelop; to return; to exchange, to displace; to repair; to repeat; to re-read, to disgust. She also traces the relation between 'volta', which means both *time* (Latin) and in the thirteenth century, *volume* — sheets of paper rolled or wrapped around a stick.¹¹ Kristeva notes that the word was initially far removed from politics,¹² with revolt in the fourteenth century meaning 'mirrors, interlocking objects, the projection of images'. By 1550, recounts Kristeva, the term was used to signify change and mutation, applied thereafter 'to another semantic field: that of politics: thus the revolution of time leads to the revolution of State ... In the eighteenth century, 'revolution' becomes more specific and widespread, with parallels frequently drawn between planetary and political mutations'.¹³

⁹ Dorsett Shaunnagh and McVeigh Shaun describe Salmond's account of the office of the jurist in 'The Persona of the Jurist in Salmond's *Jurisprudence: on the Exposition of "What Law is ..."*' (2007) 38 VUWLR. In particular, they suggest that 'Office can be considered in two aspects. First, the office of jurist is an office of State (*civis*). Second, the office is practiced through legal science...the genres of jurisprudence delimit an office as much as a method of organization and exposition of legal materials' (p. 774). What I describe as the 'office of Law' derives from this common law understanding of 'office' as simultaneously institution, profession and practice, 'impossible' because they can never contain, inhabit or authorise themselves completely and without remainder.

¹⁰ See for example, Irigaray Luce *Thinking the Difference: For a Peaceful Revolution* Routledge New York 1994; Cixous Helene 'The Laugh of the Medusa' (1976) *Signs* 1 Cohen Keith and Cohen Paula (trans) p 875–893; Kristeva Julia *Revolution in Poetic Language* Columbia University Press Columbia 1984. It is arguable that French feminist movements themselves have arisen out of the French revolution.

¹¹ Kristeva Julia *The Sense and Non-Sense of Revolt* Columbia University Press 2001 p 2: The idea of twisting or enveloping, a topological and technical concept, is dominant ... More interesting as far as the modern meaning of the word is that "the revolt" and "revolt" which comes from Italian words that maintained the Latin meanings of "to return" and "to exchange," imply a diversion at the outset that will soon be assimilated to a rejection of authority. In sixteenth-century French, "to revolt" is a pure Italianism and signifies "to turn," "to avert" (to revolt the face elsewhere) ...

¹² 'The Latin verb *volvere*, which is at the origin of "revolt", was initially far removed from politics. It produced derivatives with meanings — semes — such as "curve", 'entourage," "turn," "return". In Old French, it can mean "to envelop," "curvature," "vault," ... "to roll," and "to roll oneself in"; the extensions go as far as "to loaf about" (*galvauder*), "to repair," and "vaudeville" (*vaudevire*, "refrain").' Weekley above note 5 p 1.

¹³ As above p 3.

The rich imagery of Kristeva's invocations sketches an oscillation between the corporeal and the political; the imaginary and the symbolic.¹⁴ Revolt as both book (the law) and the turning of time itself are placed alongside one another as prefiguring revolution of the sovereign state. Kristeva further nuances the relation between resistance, revolution and revolt when she says, 'revolt as a producer of purity in our modern world is endangered by an easy — not to say perverse — fit between law and transgression; it is spoiled by constant authorisation, if not incentives, made by the law itself, to transgress the law and to be included'.¹⁵ One could also read the figure of revolt here as marking out the stakes for the feminist lawyer: any attempt to overturn existing law is always already anticipated by law itself, whose ontological structure relies upon absolute power to authorise that very attempt.¹⁶ The law calls us, lawyers, to confess or to speak in its authority and its name. To speak; to revolt against a law founded upon a transcendental structure secured by the invisible bodies of women would be an impossible act. Law, in other words, insists on providing us with our only condition of possibility (to speak, to revolt), while at the same time denying any office of the secular feminine.

Law thus institutes a hermetically sealed ontotheology: a metaphysics which twice forgets the feminine by collapsing together the phallogocentric idioms of ontology and theology. The result — a masculine economy that revolves without remainder — not only refuses the possibility of feminine individuation, but is guaranteed by that very refusal. Any revolt toward this economy, then, seems not only doomed to failure but to shore up the very structure that it seeks to displace. Kristeva points out, however that 'if one considers law obsolete, prohibition weak, and values empty or flimsy, a certain dialectical link between law and transgression is *impossible*'.¹⁷ If we are to pursue this line of reasoning it becomes necessary to find ways of reading for law's own struggle with the weakness or emptiness of its prohibitions. To disrupt law's impulse to draw revolt into its economy of power; to in fact make a transformative revolt possible, we must seek out ways of reading for the places where law fails to institute its authority. The following part turns to examine the possibilities of using the tropes of psychoanalytic discourse to carry out this work.

¹⁴ I refer here to the psychoanalytic 'orders' (Imaginary, Symbolic and Real) identified by Jacques Lacan and widely used in psychoanalytic writings. To describe them briefly, the Imaginary is a space where the ego is constituted through images that prophesy a whole, clean-and-proper body. The Symbolic describes the semantic process whereby that body is determined as a *subject*, through language. Kristeva's account of the imaginary focuses on the *failure* or fear of loss of a connection to origin at the moment of the subject's constitution.

¹⁵ Kristeva above note 11 at 25.

¹⁶ This is an operation that has been described in other idioms, notably by Giorgio Agamben in *State of Exception* University of Chicago Press 2005 Attell Kevin (trans), on which there is an extensive literature. It has, however, been little invoked within a feminist legal theory context.

¹⁷ Kristeva above note 11 at 27 (my emphasis).

3.0 HYSTERIA

The concept of hysteria (from the word *hystera*, meaning womb) extends back almost three thousand years in European history.¹⁸ Hysteria has alternately been accorded status as a disease or illness, or as a medical *category* under which those elements of uncontrollable difference — provoked, specifically, by the feminine — have been placed. In the early twentieth century Sigmund Freud described ‘hysteria’ as ‘the product of a psychological trauma which had been forgotten by the patient’,¹⁹ ‘a series of perfectly rational thoughts...[that] have been transformed into the symptom by means of condensation and the formation of compromises ... and also, it may be, along the path of regression’.²⁰ Kristeva notes that in Freud’s view, if castration anxiety is not allayed in and through the dissolution of the Oedipus complex, there is only one way out of anxiety...hysteria.²¹

In the late 1960s Jacques Lacan rearticulated Freud’s description of hysteria as ‘a specifically feminine pathology that speaks to and against patriarchy’²²; a formulation which was subsequently appropriated as a feminist trope by writers such as Cixous, Irigaray and Kristeva.²³ Elaine Showalter draws out Josef Breuer’s metaphor of hysterics: ‘the flowers of mankind, as sterile, no doubt, but as beautiful as double flowers’²⁴ alongside the feminist Olive Schreiner’s imagination of the cultivated flower which, ‘having no more need to seed turns all its sexual organs into petals, and doubles, and doubles; it becomes entirely aesthetic.’²⁵ This interplay between hysteria and the aesthetic converges upon writing, as symptom (Kristeva argues that women write as hysterics with a semiotic style more likely to involve repetitive, spasmodic separations from this discourse which they are forced to imitate), strategy (Cixous calls for an *écriture féminine*²⁶) and/or resistance (Irigaray suggests ‘a revolutionary potential in hysteria’²⁷).

There are two main currents of feminist doctrine; one which proposes that ‘[h]ysteria is the very stuff of revolutions’²⁸ and the other which is ‘... skeptical about the ultimate power of hysteria as a form of feminine subversion’.²⁹ I suggest a place for hysteria which lies somewhere

¹⁸ Showalter Elaine in Gilman Sander L. King Helen Porter Roy Rousseau G.S. Showalter Elaine *Hysteria Beyond Freud* 1993 ix, accessed at <http://content.cdlib.org/xtf/view?docId=ft0p3003d3&brand=eschol>. See also Kapsalis Terri and Litherland Gina *The Hysterical Alphabet* University of Chicago Press 2007

¹⁹ Freud Sigmund *The Interpretation of Dreams* Hayes Barton Press 1991 Richards Angela (ed) p 14. Original translation by Strachey James, first published in 1953 by the Hogarth Press and the Institute of Psycho-Analysis by arrangement with George Allen & Unwin Ltd (original publication in 1900 as *Die Traumdeutung*)

²⁰ As above at 756.

²¹ As above at 86.

²² Showalter as above note 18 p 286.

²³ See also the well-known examples of work by Cixous Hélène ‘The Laugh of the Medusa’ above note 10; *Portrait de Dora* Editions des Femmes Paris 1976.

²⁴ Breuer Josef and Freud Sigmund *Studies on Hysteria* Penguin Classics 2004 Luckhurst Nicola (trans)

²⁵ Schreiner Olive letter to Pearson Karl in *The Letters of Olive Schreiner* Oxford University Press 1988 (Rive Richard ed.) p 86.

²⁶ Zajko Vanda and Leonard Miriam *Laughing with the Medusa* Oxford University Press 2006.

²⁷ Irigaray Luce ‘Any Theory of the Subject’ in *Speculum of the Other Woman* Cornell University Press 1985 (Gill, Gillian G trans) p 47: ‘It is because they want neither to see nor hear that movement that they so despise the hysteric’.

²⁸ Stevenson Anne ‘The Hysterical Women’s Movement’ *Times Literary Supplement* 9 September 1983 p 961.

²⁹ Showalter Elaine as above note 18 p 332.

between the two. Rather than conflating the performance of hysteria with an affirmation of the female sex, it is perhaps more useful to consider hysteria a symptom that arises out of, and in reaction to, a particular gendered construction. If we do so, a nuanced practice of reading and writing hysteria — and in law in particular — takes on a capacity for resistance and revolt.

The institutions and practices of law, both conceived as, and perpetuating, universal patriarchal tropes, offer particularly productive sites of investigation. The ontological constitution of the modern state is imagined as being predicated upon a whole, territorialized body ruled by a single sovereign's voice, imbued both with terror and virtue to enforce its word. Enforcement necessarily enacts a violence, of fact (the control of all those living on state territory) and of metaphysics (the subjectivity of those on state territory interpellated by law is predicated upon a phallogocentrism). By deconstructing law's texts and practices, feminists may expose this violence and the economies of sacrifice upon which it relies, as well as its lack of an originary or archaic time.

In searching for a site in which to revolt, the place *between* territorial bodies — international law — emerges as one rich with possibility. Law created and spoken there, far from being a nexus of power, mourns a lack of jurisdiction: hysteric gestures of a depopulated, deterritorialized marker without a unified voice or power to enforce its word. It also mourns the loss of memory, or its inability to mark time through the use of precedent. Deconstruction here may — if successful, since such practice is not without its risks — articulate a crisis that lies at the heart of law: a hysteric manifestation of lack or loss, of an initial castration from the body of the maternal feminine.

Without binding precedents or the power of prophecy, the hysteric voice — a mimicry and self-parody — occurs when law no longer needs to, or is no longer able to, reproduce itself. This is the voice and the writing, is it not, of woman? Hysterical writings issued from a place where the modern state fails to congeal, constitute separations from the dominant discourses of sovereign-made law and are haunted, as such, by the spectre of loss.³⁰ In terms of international law, hysteria arises when the speaker has no unitary voice, no power to enforce the word, nor *polis* to stand in for the clean-and-proper body. This hysteric subject lacks the corporeal guarantee required for participation in the sovereign economy of fraternal recognition. The drive to revolt against its own impossible office can thus only be discharged through aesthetic signification.³¹ A practice, then, of reading for the hysteric may make possible another kind of revolt, outside the binaries of prohibition/transgression or resistance/compliance.

³⁰ See Beardsworth Sara *Julia Kristeva: Psychoanalysis and Modernity* State University of New York Press 2004 for a reading of Kristeva's oeuvre. Beardsworth proposes that Kristeva's identification of the 'loss of loss' is a radical response to the problem of modern nihilism.

³¹ Kristeva Julia in *The Sense and Non-Sense of Revolt: The Powers and Limits of Psychoanalysis* Columbia University Press 2001 p 56 explains: 'This, in sum, represents a profound integration of the Hegelian dialectic into Freudian thought. The libido detached from the object turns toward Narcissus and threatens him. What will act as a counterbalance and prevent Narcissus from being destroyed? It is a new object, which is not mommy or daddy, the breast or any other external erotic object, or the body itself, but an artificial, internal object that Narcissus is capable of producing: his own representations, speech, sounds, colors, and so forth'.

The voice of the hysteric makes articulable the impossible office of law,³² and may offer a moment where the possibility of an ethical encounter arises.³³ Kristeva writes:

Poetic language is then equivalent to, if not more than, ethics. “Ethics” should be understood here to mean the negativizing of narcissism within a *practice*; in other words, a practice is ethical when it dissolves those narcissistic fixations (ones that are narrowly confined to the subject) to which the signifying process succumbs in its sociosymbolic realization. Practice, such as we have defined it, positing and dissolving meaning and the unity of the subject, therefore encompasses the ethical.³⁴

That the search for a political subjectivity of the feminine is wound around the language of ethics comes as no surprise. Similarly defined by Lacoue-Labarthe as ‘a battle against idolatry’, the practice of poetry should seek to interrupt the poetic, thereby rupturing an otherwise unbroken order. Lacoue-Labarthe, however, also warns of the danger inherent in this practice when he notes that ‘the place where the “poetic” collapses ... becomes abysmal’.³⁵ It is this abysmal, abyss, seductive and threateningly final, which puts us on our guard. Before we (feminists, feminist lawyers) proclaim an ethical practice of a revolutionary feminine, let me first canvass some of its challenges.

*In the Name of the Father?
But without voice to speak,
Law’s vacant office lies
No place between nations;*

*A wild ex-habitation
Where bodiless machinations
Conjure empty significations
And delay, the decision*

*Hysteria’s rose lips
Transform into petals
And doubles, and doubles —
A mad recognition,
Her disorder of organs
Exceed, the decision*

³² See above note 9.

³³ This is somewhat analogous to Jacques Derrida’s call for an ‘unconditional sovereignty’: see generally, Derrida Jacques *Rogues* Stanford University Press 2005.

³⁴ Kristeva above note 10 p 233; Beardsworth above note 30 p 51.

³⁵ Lacoue-Labarthe Phillippe *Poetry as Experience* Stanford University Press 1999 p 68–9.

4.0 AN ORDER WITHOUT A NAME

Hysteria; hysteric writing; writing woman: this diagnosis, strategy and resistance congeal upon language (or its lack). There are, thus far, two strategies on the table for reading and writing feminist revolt. They are: one, to figure language as a process of pure production and pure waste (through poetic practice) and two, to write stories or minor histories of the sacrifice of the maternal feminine (i.e. to identify woman's lack of language, or to reappropriate it).³⁶ Both carry separate risks that cannot be ignored. Anne Orford warns that the first strategy — aesthetic production by a writing body — faces the writing-over of others: '... each attempt to read, speak or write the law differently ... imposes a new form. In this rewriting, an other disappears'.³⁷ Not only is this something that must be negotiated at every turn, but there is, in this negotiation, the added threat that this aesthetic production might lose its relation to that against which it revolts. Where the writings of women collapse the violent hierarchies of sex, the image of 'woman' may similarly slip into an 'abyssal place'. We risk, in other words, being no longer able to write as 'woman' when her status in the social symbolic order is conditional upon those very same hierarchies, or to trace the operations of real political power when aesthetic production shifts from parody to pastiche.³⁸

The second problem (more specifically and perhaps more problematically) relates to feminist writing which evokes maternal sacrifice (or, the sacrifice of the maternal feminine) as a strategy, to reveal³⁹ those fraternal economies of sacrifice that perpetuate a vertiginous hierarchy

³⁶ Orford writes: 'In a short section of his book *Of Grammatology*, entitled: 'The Exorbitant. Question of Method', Derrida argues for a critical practice that tries to read for the traces of that which escapes the circle of exchange, the economy of substitution or "the eternal return of the same". [He proposes that] "the task of reading" is and should be ex-orbitant, following that which is unique, singular or excessive'. Orford Anne 'Beyond Harmonization: Trade, Human Rights and the Economy of Sacrifice' (2005) 18 *Leiden Journal of International Law* 179.

³⁷ See Orford as above p 211: 'Although in "Circumfessions" Derrida dreams of a writing that could directly express the living body without violence, for him, language is always the dead remains of a living body:

If I compare the pen to a syringe, and I always dream of a pen that would be a syringe, a suction point rather than that very hard weapon with which one must inscribe, incise, choose, calculate, take ink before filtering the inscribable, playing the keyboard on the screen, whereas here, once the right vein has been found, no more toil, no responsibility, no risk of bad taste or violence, the blood delivers itself all alone, the inside gives itself up. (p.12)

Kelly Oliver writes: 'Even as Derrida imagines writing that is like a transfusion of the living body into language, he resigns himself to the violence of trying to inscribe the un-inscribable. The living body is this un-inscribable'. Kristeva, on the other hand, sees language as something which is infused with life by the bodily drives, and does not see it as something which has been cut off from the body: '... while for Kristeva bodily drives involves a type of violence, negation, or force, this process does not merely necessitate sacrifice and loss. The drives are not sacrificed to signification, rather, bodily drives are an essential semiotic element of signification'. Oliver Kelly *The Portable Kristeva* Columbia University Press New York 1977 p xx.

³⁸ Fredric Jameson describes 'pastiche' as a blank parody: 'Pastiche is, like parody, the imitation of a peculiar or unique, idiosyncratic style, the wearing of a linguistic mask, speech in a dead language. But it is a neutral practice of such mimicry, without any of parody's ulterior motives, amputated of the satiric impulse, devoid of laughter'. Jameson Fredric *Postmodernism, or, the Cultural Logic of Late Capitalism* Duke University Press 1991 p 18.

³⁹ 'Revelation' not only derives from its fourteenth century understanding as "information disclosed by a divine agency", but shares a common root with the French word for "dream" (rêve), of the Latin "revelare", "to unveil". Dreaming as a *divine*

of sex. The logic of sacrifice itself is always already inscribed into the aporias of unconditionality;⁴⁰ sovereignty and possession, within which the politics of everyday negotiation with the Other become difficult to discern. In other words, to evoke an originary violence against the feminine through the use of an idiom which has been appropriated to perpetuate that same violence on an ongoing basis, is a strategy fraught with danger for feminist lawyers.

In acknowledging or even venerating a maternal feminine, there is a risk that we (firstly) transform the maternal body into icon while failing to recognize that the icon of the masculine divine also participates in the construction of gender identities, and (secondly) that furthermore, we lack any kind of process for the transubstantiation of that maternal icon back into culture. By 'icon' I mean an empty form within the symbolic order that is constituted, similarly to 'man', by a binary structure predicated upon the oppression or erasure of an other. In terms of the second concern, I note that there is no equivalent ritual for the transmutation of Word to body as effectuated by the Eucharist, for the feminine, which is why it is so difficult to undertake the work of establishing a culture of the feminine. The risk for feminists, in short, is that as subjects we are made to locate ourselves within a fraternal economy, identifying either with the victim/God or its Other; the heroic masculine, or a mythic feminine.⁴¹

These risks bring up a series of pressing questions for feminist lawyers. What does the identification of hysteria or hysteric writing *do* to how we think the body of the feminine? What do we inherit, and what do we give up, in using a discourse of psychoanalysis when talking about the maternal body? And what does it mean for feminists who embody law (the Law of the Father), which at the same time *denies* the feminine, to be searching for an ethics or politics after law, in a nameless place? Jacqueline Rose is concerned by a similar set of problems in *On Not Being Able to Sleep: Psychoanalysis and the Modern World*⁴² when she asks:

When the traces of the mother are uncovered in analysis, is it the end of the line? ... If you make the mother *the* unconscious object, what hermeneutic arrest have you stumbled into ... ? Are we dealing ... with a force ... that moves us to places beyond thinking, or, by analogy with the mother in one of her most famous incarnations of stereotypes, with a type of first and last resting place? And if the second, does the mother acquire the status of only truth or rather the only place ... ?⁴³

unveiling thus contains within it the trace of the ontotheology with which the text and practice of psychoanalysis remain tightly bound.

⁴⁰ International law is shot through with the trope of unconditionality: the dream of an economy that does not hold anything in reserve. The discourse of unconditionality emerges most notably in international law fantasies of territorial sovereignty, free trade and development.

⁴¹ 'The term 'gender' refers to the social relations between the sexes, and the social construction of sexual roles. It stresses the relational aspects of masculinity and femininity as concepts defined in terms of each other, and it engages with other analytic categories of difference and power, such as race and class. Rather than seeking to repair the historical record by adding women's experiences and perceptions, gender theory challenges basic disciplinary paradigms and questions the fundamental assumptions of the field.' Showalter above note 18 p 288.

⁴² Princeton University Press Princeton 2003. Rose's rich discussion of these problems centers upon the work of Christopher Bollas, which due to the limited scope of this article I cannot include here.

⁴³ As above at 151.

In this world of only mothers, Rose remarks that it seems ‘a trap, too easy’ to think for a feminist position which sees psychoanalysis ‘as a pure emanation of patriarchy’, or for a (Lacanian) psychoanalysis which perceives feminism to have failed to acknowledge that what it lays ‘at the door of the mother [is] what is irredeemable about human desire’.⁴⁴ It is perhaps more useful, Rose suggests, to think in terms of there being two different fantasies of the mother, ‘Mother as fact, the one safe haven of interpretation, but then mother, or her space, as the vanishing point of all identities, where no form of knowing could ever reach’.⁴⁵ Rose thus draws out a nuanced feminist and psychoanalytic account of how we know the Mother/mother, not by using that image as a guarantor for human desire, but by proposing the space designated by the fantasy of the mother as the limit or ‘vanishing point’ of knowledge, representation, and language. This echoes Kristeva’s imaginary, where the fantasy (or, as she calls it, ‘the principle’) of the maternal always threatens ‘an identity catastrophe’ that ‘causes the proper Name to topple over into the unnameable’.⁴⁶ For feminist lawyers, this threat or risk posed by the fantasy to which they are tied — a fantasy that otherwise guarantees the ontology of law — offers the possibility of returning, of revolting, and of re-reading legal text.

Endgames
For our revolutions
Rolling the contours of others’ bodies

A terror barbaric
Mad women in the attic
Marking the corners of Law’s cardboard walls

Mute virgin/queen
Exudes milk and tears
Estranged —

Is virtue found
In Law’s violent fears?
Revolt, return, re-read.

5.0 SEARCHING FOR VIRTUE

Feminist revolution can thus be figured in terms of *epistemological event* or *hermeneutic movement* between the symbolic and the imaginary, which goes some way to helping us think about the bodies and the functions of the feminine. The ‘ism’ of feminism(s), however, presupposes a *telos* of political advantage and for feminist lawyers this takes the form or practice of law — the very space signified by the fantasy of the masculine speaking body. To resist or to comply? To withhold or to fill up? We are back where we began and can now respond by turning this tension

⁴⁴ As above at 152.

⁴⁵ As above at 156.

⁴⁶ Kristeva Julia ‘Stabat Mater’ in *The Kristeva Reader* (Moi Toril ed.) New York: Columbia University Press 1986 p 161–2.

into a productive one using our forensic practices of revolution. What does production mean, however, for we feminists who embody the law, and what ethics informs our speech or writing of it?

The question of production and ethics is brought into a critique of international law by Orford, who resists the ‘all-mightiness of the Symbolic’⁴⁷ by performing a *writing through* the maternal body, imbuing it with the capacity for a revelation that is entirely feminine.⁴⁸ Recounting the story of Abraham and his sacrifice of his son Isaac, Orford brings Sarah (Abraham’s wife) and Hagar (his wife’s maid, with whom he bore his first son) back into the narrative. Not only does Orford point to the forgotten sacrifices of the feminine in that story as one articulation of a Western metaphysics that is reproduced in international law texts, but she also identifies the paradox at the heart of the logic of sacrifice. We find, she says of the sacrificial exchange, that ‘we cannot bring ourselves to exchange that which we love, and thus do not in fact possess it’.⁴⁹ This difficult sentence works, I think, to demonstrate the radical and revolutionary potential of the act and discourse of sacrifice itself, which act of exchange has historically functioned uni-directionally to realise and privilege the masculine, speaking, human subject. The sentence does so, firstly by reminding us that the (divine) demand for sacrifice is the demand to give ‘that which we love’ in exchange for knowledge (of ourselves), and secondly by arguing that we cannot exchange the thing we most love, and so (or because) we do not (or never) possess it. Sacrifice, then, is not only an impossible act, but its discourse a critical place from which the subject may undo its own knowledge or property of itself.⁵⁰

Although this seems to me to be a helpful way in which to start interrogating the sacrificial economies that found many texts, the fact that revelation of the feminine is figured, here and elsewhere⁵¹ in terms of *love* leaves me with a certain anxiety. When thinking revolt with feminisms and with international law, it is difficult to conceive of an ethics of love that answers for *legal* subjects constituted by and through the violence of law. How do we imagine an ethics for reading and writing law — even international law — when a subject has been forced to give up that, which cannot be sacrificed? When an other is *not* one that cannot be figured in terms love — an enemy; an occupier; a master; an institution, a state? When a relation with another legal subject has already been inscribed and decided by the law, with no room left for love to enter the equation? When what is at stake is not salvation of, or by the law, but material survival?

This question is one that needs investigation beyond the scope of this article, however, suffice to note here that the modern subject emerging, for example, out of the French Revolution

⁴⁷ As above at 161–2.

⁴⁸ Due to the limited scope of this article I cannot give a full account of Anne Orford’s argument here, but it can be viewed in her article, ‘Beyond Harmonization: Trade, Human Rights and the Economy of Sacrifice’ above note 36.

⁴⁹ As above.

⁵⁰ For a further and detailed discussion of the ‘property of the self’, see Derrida Jacques ‘“Eating Well” Or the Calculation of the Subject: An Interview with Jacques Derrida’ in *Who Comes After the Subject?* Cadava Eduardo Connor Peter and Nancy Jean-Luc (eds) Routledge 1991.

⁵¹ For Kristeva, love can or should provide the possibility for the emergence of a political being: Kristeva Julia *Powers of Horror: An Essay on Abjection* Roudiez Leon (trans) Columbia University Press 1982; *Tales of Love* Roudiez Leon (trans) Columbia University Press 1987; *In the Beginning was Love: Psychoanalysis and Faith* Goldhammer Arthur (trans) Columbia University Press 1987; *The Sense and Non-Sense of Revolt* Roudiez Leon (trans) Columbia University Press 2001.

(recall that Robespierre's formulation of virtue is figured in terms of love for the Law of the Father) and the feminist response to it, are *both* founded upon the fantasy of a secular subject (a subject 'outside' of law). If hysteria is the means, then what of the ends? I propose that while an ethics of love may be difficult to put into practice in law, it is nonetheless possible to think about *international* law as offering a revolutionary space. The jurisdiction of international law relies, not upon a sovereign body that it always already possessed, but upon a dialectical movement between the fragile recognition of fraternal states and its Others. Rather than through an ethics of love, it is in this movement and through historical analyses of international law that we can seek to trace our evental sites of hysteria.⁵²

The existing *telos* of revolution sits within a conception of violence that is figured as only either sanctioned, or unsanctioned. At the end of the twentieth century Jacques Derrida asks: 'Must one resist? And, first of all, psychoanalysis?'⁵³ I close with this question as it serves as a reminder to interpret international law's resistance against its own impossible office alongside the psychoanalytic tropes through which we may explore feminist thinking.⁵⁴ And when perhaps we resist, our revolutions could act not as a displacement of authority to a utopic elsewhere,⁵⁵ but as a 'wrapping around' or 'protective covering':

*Drawing clay from hollowed earth
Thrown on potter's wheel and drawing
Centrifugal tensions drawing
Shapes of multiple dimensions*

*Is this what we are searching for?
A raw and tender revolution?
This, as Law's decomposition
Discloses faith*

*The vertigo of these inversions
Trace our anxious hands
Redrawing virtue without sacrifice
Envelop, our debris ●*

⁵² 'Evental': coined by the translator of Alain Badiou's *Being and Event* Continuum New York 2006.

⁵³ Derrida Jacques *Resistances of Psychoanalysis* Stanford University Press Stanford 1998 Kamuf Peggy Brault Pascale-Anne and Naas Michael (trans) p 1.

⁵⁴ 'Resistance must be interpreted; it has as much meaning as what it opposes; it is just as charged with meaning and thus just as interpretable as that which it disguises or displaces: in truth, it has *the same meaning*, but dialectically or polemically adverse, if one can say that.' Derrida as above p 13. Derrida explains: 'Every resistance supposes a tension, above all, an internal tension. Since a purely internal tension is impossible, it is a matter of an absolute inherence of the other or the outside at the heart of the internal and auto-affective tension'. As above p 26.

⁵⁵ 'Entering the social order requires assimilating its authority through a revolt by which the individual makes meaning his or her own. Revolt, then, is not a transgression against law or order but a displacement of its authority within the psychic economy of the individual ...' Oliver above note 37 p 410. It is precisely this fantasy of displacement — at once a fantasy of modernity and of feminism — that I am concerned does not sit well with a critical approach to law.