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Searching for Virtue in International Law

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INTRODUCTION

W E FEMINISTS, INTERNATIONAL lawyers—are called to find ourselves in an era of anxiety and terror. What is this anxiety, this terror? What is virtue, and where are our revolutions? The writings of feminist legal theorists are torn between the impulse to resist¹ and the drive to comply² with the Law. To withhold or to fill up. Are these really our two poles of inhabitation?

Hilary Charlesworth, in responding to Janet Halley’s provocation to ‘take a break from feminism’³ points out that vis-à-vis international law, both as an academic discipline and as a platform for imperialist state-building operations around the world, feminism still lies ‘in a scholarly ghetto’, and calls for renewed attention to feminist theories within the discipline. Charlesworth does nuance this call, however, with an acknowledgement of a core tension between feminism’s embrace of normative projects that aim to improve the lives of women, and critical theory’s concerns with identifying the politics of law itself.⁴

I agree with Charlesworth’s call to engage feminist theory in the work towards real and necessary social change, and even more so in light of Halley’s

¹ ‘Resist’: c.1374, from O.Fr. *resister*, from L. *resistere* ‘to resist, standing back, withstanding’. Resistance is attested from 1417, from O.Fr. *resistance*, from L.L. *resistentia*, from L. *resistentem* (nom. *resistens*), prp. of *resistere*. Sense of ‘organized covert opposition to an occupying power’ first recorded 1940 in reference to French opposition to Nazi rule.

² ‘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’.

³ J Halley, *Split Decisions: How and Why to Take a Break from Feminism* (Princeton, Princeton University Press, 2006). Also see discussion of Halley’s work in Grahn-Farley, below, this collection.

⁴ Charlesworth, above, this collection.

depiction of the woman ‘taking a break’ from feminism on the cover of her book: the image shows an older, darker, faded, unsmiling Hindu woman looking directly *at* the viewer, while in the foreground the head of a younger, whiter, prettier, woman without a bindi is transposed onto the body of the other woman, smiling and looking *away* into the distance. Taking a break from feminism, indeed, has never been a more ambiguous proposition.

This chapter seeks to respond both to the editors’ thematic and undertake a sustained engagement with the tension between the feminism and critical legal theory identified by Charlesworth. Both are now well-established ‘marginal’ discourses within the academe of international law, and yet, both shuffle uneasily (and sometimes antagonistically) beside one other. I propose that the divergence between what I argue are first- and second-wave feminist approaches, and critical theory, can (and must) in fact be strategically realigned, by relying upon the non-essentialising feminism of the ‘third wave’. Common to both of these strands of thought are feminist post-structuralist thinkers such as Julia Kristeva and Luce Irigaray, upon whose work I will draw for this analysis.

My point of departure, then, is to rethink our opening reflection. We, feminist international lawyers, do not find ourselves trapped between resistance against, and compliance with, international law. The feminist telos has firmly been defined as responding to masculinist hegemony, and compliance with the existing discourse is not usually entertained. Rather, I argue, we find ourselves impelled towards resistance against the existing structures of an international law with its normative discourse of emancipation, while at the same time being seduced by the possibilities of revolution:

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.

(Robespierre, speech at the French National Convention, 1794)

Over 200 years ago a French man speaks of virtue, barbarism, terror and impotence. Navigating the hook-turn, littered streets of Melbourne’s central business district, I contemplate whether any of these terms still hold meaning for a Japanese-Australian girl trying to understand the meaning of international law in a post-9/11 world. The summer’s desert air scorches the city’s bitumen and its few remaining trees. I sit in an air-conditioned glass office.

‘The Terror,’ declares Robespierre, ‘is nothing save justice, prompt, severe, inflexible. It is an emanation of Virtue’, and virtue, he says, ‘is nothing more than love of the fatherland and of its laws.’ Robespierre’s formulation of virtue, then, is also figured in terms of love, but a love for the sovereign guarantor, predicated upon governance through fraternal force. How do we resist the call to revolution and governance through a violence understood only as either sanctioned or unsanctioned? And how do we seek an impotent virtue, or a virtue which resists inscribing legal subjects into the logic of sacrifice in the name of love?

This chapter unfolds in four parts. This first returns to an archetypal scene of revolution, with its invocation of power's paradoxical foundations of virtue and terror. The second part uses a 'third-wave' feminist approach to discuss masculinist constructions of sovereign subjectivity and sovereign state relations. I propose that international law imagines sovereign subjectivity (the ontological constitution of the nation-state) as being predicated upon a whole, territorialized body ruled by a single sovereign's voice and empowered with both terror and virtue to enforce its word. I argue that this leaves open the international—the space between territorial bodies—as an ambivalent space, and that law created and spoken in this space, far from being a nexus of power, is a performance of jurisdiction; the hysteric manifestation of a depopulated, deterritorialized gesture without a unified voice or power of enforcement. For feminists seeking to institute a different kind of ethics or a different mode of politics, this is a site, perhaps, of revolution.

The third part of this chapter addresses a problem of metaphysics which arises at this moment, and which lurks at the heart of feminist enterprise. In short, I argue here that *both* the masculinist subjectivity core to the idea of the sovereign state *and* feminist critique itself, are founded on the idea of a utopic body outside of a system of law guaranteed by a transcendental being. The final part of this chapter addresses a final problem facing those feminist international lawyers in search of virtue: any revolution risks erasing something else, or of being subsumed into the existing order in its entirety, as has occurred (as Charlesworth argues) with the discourse of gender-mainstreaming within the state-building programme. The answer, perhaps, to these challenges of our project, is to hold on to both resistance *and* revolution as feminist telos, but to distinguish in our minds between the institutional *structures* of international law (which we must continue to engage with and resist in order to achieve our political goals), and the *space* created by failures of masculinist international law discourse which we can fill with revolutionary readings, writings, speakings and beings.

ANXIETY AT THE GATES, OR CRISES IN INTERNATIONAL LAW

In thinking about what it means to be a feminist working on, or in, international law, and in looking at the operations of desire—manifest in speech and writing—in the place between nations, I will look to psychoanalytic theories of subjectivity. Sovereign jurisdiction is founded on the occupation and possession of territory.⁵ The creation of a sovereign identity as 'speaking

⁵ For a more detailed explanation of this ontological analysis of sovereign subjectivity see Y Otomo, 'Of Mimicry and Madness: Speculations on the State' (2008) 28 *Australian Feminist Law Journal* 53.

subject⁶ (one who speaks the law) within the community of nations is founded upon the concept of occupation and possession of a body, thus able to act as a unitary One, to speak, and to enforce its word. At the moment of realisation of separation (from the mother's body; from the community) the subject experiences a loss which is subsequently covered over: 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',⁷ and forgets this loss in mirror images of itself which reflect back a fantasy of wholeness.

Luce Irigaray explains, however, that women's bodies have been defined as the Other of masculine sexuality and men's bodies.⁸ Similarly, Kristeva explains the process of this 'othering':

[W]e see that the social and symbolic pact ... brothers rebelling against the father's authority in order to establish a socius—is a transversal link that is constituted by the evacuation of the maternal: in order to establish the symbolic pact, one has to get rid of the domestic, corporal, maternal container.⁹

This consolidation of the sovereign-as-speaking-subject is predicated upon the sacrifice of its binary other, the maternal feminine. The legal theorist Anne Orford has affirmed that this 'prior unacknowledged sacrifice of the feminine'¹⁰ enables us to locate the fraternal structure of the law, and moreover, the 'economic nature of Christian sacrifice'¹¹ which underlies the fraternal bond. As she describes, the 'economy of sacrifice is ... founded on the circulation of risk and reward between fathers ... and sons',¹² suspending the 'question of the feminine [which] haunts the institutions founded on [that] economy'.¹³

The subjectivity of the speaking sovereign is further consolidated through the operation of recognition¹⁴ between states, which function to reunify each

⁶ 'In order to bring the body back into theories of language, she develops a science that she calls "semanalysis", which is a combination of semiotics, taken from Charles Peirce and Ferdinand de Saussure, and psychoanalysis, taken from Sigmund Freud, Jacques Lacan, and Melanie Klein.' K Oliver (ed), *The Portable Kristeva* (New York, Columbia University Press, 2002) xvi. See also xvi: 'Kristeva attempts to bring the speaking body back into discourse by arguing both that the logic of language is already operating at the material level of bodily processes and that bodily drives make their way into language.'

⁷ E Grosz, *Jacques Lacan: A Feminist Introduction* (London, Routledge, 1990) 47.

⁸ Oliver, above n 6, xix.

⁹ J Kristeva, *The Sense and Non-Sense of Revolt: The Powers and Limits of Psychoanalysis* (New York, Columbia University Press, 2001) 21.

¹⁰ A Orford, 'Beyond Harmonization: Trade, Human Rights and the Economy of Sacrifice' (2005) 18(2) *Leiden Journal of International Law* 179–213.

¹¹ Ibid 197.

¹² Ibid 198.

¹³ Idem.

¹⁴ Recognition, according to Kojève, is only possible when enacted between *equals*, since man can only be satisfied by recognition from those whom he himself recognises. On Kojévian recognition see, eg, A Kojève, *Outline of a Phenomenology of Right* (BP Frost ed, BP Frost and R Howse tr, Lanham, Rowman & Littlefield Publishers, Inc, 2000).

subject with their (masculine) mirror images. In short, modern international law—founded on the ‘family of nations’—can be seen as a story of brothers. Given that modern international law presents itself as a secular system, there is no immediate transcendental (in psychoanalytic terms, the Father) who is able to constitute each state’s subjectivity. Their relations to one another are thus officially configured as homosocial¹⁵ (through the language of equality, recognition, etc) and shored up by systems of occupation and exchange, impelled by desire to attain a whole, white, ‘clean-and proper’ subjectivity.

The problem arises when those sovereign subjects must *speak* international law; make a decision; enforce their word. Since jurisdiction cannot operate without a body, voice and power to enforce, their inability to do so results in hysteria, visible in the form and language of the texts of international law. Is this, perhaps, the site of revolution? Might it be possible, using the psychoanalytic metaphor of hysteria, to respond to Orford’s call to ‘read for those moments when this closed circle is under threat of being breached or at least pulled out of shape by other relations?’¹⁶

To summarise briefly, the concept of hysteria (from the word *hystera*, meaning womb) extends back almost 3,000 years in European history.¹⁷ Hysteria has alternately been accorded status as a (usually female) disease or illness, or as a medical *category* under which the uncontrollable elements of difference and danger—the feminine being one—have been placed. The hysteric symptom was reinscribed in the early twentieth century by Freud as ‘the product of a psychical trauma which had been forgotten by the patient’,¹⁸ ‘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.’¹⁹ Is there then, as Luce Irigaray suggests, ‘a revolutionary potential in hysteria’,²⁰ and if so, how can we read it into this closed circle of sovereigns? The appropriation of hysteria as a ‘specifically feminine pathology that speaks to and

¹⁵ See Eve Kosofsky Sedgwick’s response to this term, coined by Rene Girard: *Between Men: English Literature and Male Homosocial Desire* (New York, Columbia University Press, 1985). For further discussions about the themes of masculinity and international law, see Nesiah and Kouvo, below, this collection.

¹⁶ Orford, above n 10, 211.

¹⁷ E Showalter in SL Gilman, H King, R Porter, GS Rousseau, E Showalter, *Hysteria Beyond Freud* (1993) ix, accessed online: www.content.cdlib.org/xtf/view?docId=ft0p3003d3&brand=eschol.

¹⁸ S Freud, *The Interpretation of Dreams* (A Richards ed, Hayes Barton Press, 1991) (original translation by J Strachey, 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*) 14.

¹⁹ Ibid 756.

²⁰ L Irigaray, ‘Any Theory of the “Subject”’ in *Speculum of the Other Woman* (GG Gill tr, Ithaca, Cornell University Press, 1985) 47: ‘It is because they want neither to see nor hear that movement that they so despise the hysteric.’

against patriarchy²¹ took place from the late 1960s onwards by Jacques Lacan, and by the so-called French feminists (Hélène Cixous, Luce Irigaray and Julia Kristeva). There are two main opposing feminist views on hysteria; one which proposes that '[h]ysteria is the very stuff of revolutions',²² and the other which is 'skeptical about the ultimate power of hysteria as a form of feminine subversion'.²³ I suggest a place for hysteria which lies somewhere between the two. Rather than conflating the performance of hysteria with an affirmation of the female sex, it may be more useful to consider it a symptom which arises out of, and in reaction to, a particular gendered construction (in the form of a *masculine* nation-state).

Elaine Showalter refers to Josef Breuer's metaphor of hysterics as being 'the flowers of mankind, as sterile, no doubt, but as beautiful as double flowers'²⁴ and to 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 The hysteric voice, then—a mimicry or self-parody—occurs when Law no longer needs to, or is able to, reproduce itself. The subject can neither be, nor have, a corporeal guarantor required for participation in the fraternal economy of sovereign recognition. In terms of international relations and 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. The drive to revolt against its own impossible office can only be discharged through aesthetic signification.²⁶ The voice of the hysteric, I argue, is a symptom which may indicate both the impossible office (in Law), and a moment where the *possibility* of the ethical encounter arises.²⁷ Hysteria—spasmodic separations from the dominant discourse—is a remembering of what Kristeva calls the 'loss of loss' itself.²⁸

²¹ Showalter, above n 17, 286.

²² A Stevenson, 'The Hysterical Women's Movement' *Times Literary Supplement* (9 September 1983) 961.

²³ Showalter, above n 17, 332.

²⁴ J Breuer and S Freud, *Studies on Hysteria* (New York, N Luckhurst tr, Penguin Classics, 2004).

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

²⁶ J Kristeva in *The Sense and Non-Sense of Revolt: The Powers and Limits of Psychoanalysis* (New York, Columbia University Press, 2001) 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.'

²⁷ This is somewhat analogous to Jacques Derrida's call for an 'unconditional sovereignty', which will be discussed in the following section.

²⁸ See S Beardsworth, *Julia Kristeva: Psychoanalysis and Modernity* (New York, State University of New York Press, 2004) for an excellent reading of Kristeva's oeuvre.

In the Name-of-the-Father?
But without voice to speak,
Law's empty office lies
In that place between nations;

A wild inhabitation
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—

BLIND SPOTS AND HOOK TURNS

So back to the questions with which we began: where are our revolutions, and what of virtue? Kristeva nuances our position between resistance and revolt when she says that '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 authorization, if not incentives, made by the law itself, to transgress the law and to be included'.²⁹ Kristeva undertakes an etymological analysis of 'revolt', discovering its multitude of meanings: to turn; to cover around; to envelop; to return; to exchange; to displace; to repair; to repeat; to re-read; to disgust.³⁰ She notes that the word was initially far removed from politics,³¹ with the Latin 'volta' meaning

²⁹ Kristeva, above n 26, 25.

³⁰ 'Volta also means "time" ... Another direct derivative from Latin belongs in this lineage, the adjective *volubilis*, "that which turns with ease" as in *volubilitas linguae*; the French equivalent is *volubile* (vorable). And *volumen*, sheets of paper rolled around a stick, with the spatial meaning of "wrapping" or "covering," results in "volume," which comes to mean "book" in the thirteenth century ... That the book has kinship with revolt might not be self-evident at first, but I will try to remedy this obfuscation. The linguist Alain Rey stresses the cohesion of these diverse etymological evolutions, which start with a matrix and driving idea: "to twist, roll, wrap" ... and "covering," an object that serves as a wrapping. 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)'. *ibid* 2.

³¹ '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," and even "omlet," "to roll," and "to roll oneself in"; the extensions go as far as "to loaf about" (*galvauder*), "to repair," and "vaudeville" (*vaudevire*, "refrain")'. *ibid* 1.

‘time’, then ‘book’ (‘volume’) in the thirteenth century, and then transforming in the fourteenth century to mean:

mirrors, interlocking objects, the projection of images ... Gradually, the term comes to signify change, mutation. In 1550, and for a century afterward, it is applied 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.³²

The law provides us with our only condition of possibility (to speak), while at the same time denying any office of the secular feminine. Any revolt within this structure seems impossible. However, Kristeva points out that: ‘if one considers law obsolete, prohibition weak, and values empty or flimsy, a certain dialectical link between law and transgression is impossible.’³³ This means that if we can identify hysteria in the space between nations (the symptom of a bodiless Law), then this dialectical link is indeed broken, and another kind of revolt, outside the binaries of prohibition/transgression or resistance/compliance, may become possible.

To summarise, feminist critiques of psychoanalysis are helpful for revealing the fraternal structuration of states and making explicit the operation of sacrifice and violence within that structure.³⁴ Moreover, it has enabled us to identify a crisis that lies at its heart—an hysteric manifestation of its lack or loss, with all the pleasure and pain of its initial castration from the body of the maternal feminine, which rupture opens up the possibility of revolt. Before imagining what such revolt may look like, however, we must first note key challenges for the feminist project. If our two options for revolt against the fraternal economy are: one, to figure language as a process of pure production and pure waste, and two, to write stories or minor histories of the sacrifice of the maternal feminine (as proposed by Kristeva and Orford), both carry separate risks which cannot be ignored. I will now briefly outline those risks before turning back to the question of revolution.

The first problem, in relation to an aesthetic production by the writing body, is identified by Orford who points out that ‘each attempt to read, speak or write the law differently ... imposes a new form. In this rewriting, an other disappears.’³⁵ Not only is this writing-over of others something

³² *Ibid* 3.

³³ *Ibid* 27.

³⁴ The extent to which Lacanian psychoanalysis and so-called ‘French feminism’ can be applied outside of their context (ie a writing which imagines the nation-state as the revolutionary nation-state) to international relations and international law more generally, remains a question.

³⁵ See Orford above n 10, 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

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. In other words, we risk being no longer able to trace the operations of real political power when production shifts from parody to pastiche.³⁶ The second problem relates to the writing of sacrifices. The logic of sacrifice itself is always already inscribed into the aporias of unconditionality; sovereignty; possession, within which the politics of everyday negotiation with the Other become difficult to discern. There lies a risk, in acknowledging or even venerating a maternal feminine, that we transform that body into icon³⁷ while neither explicitly recognising that the icon of the masculine divine also participates in the construction of social gender identities, nor having a process for the transubstantiation of that maternal icon back into culture. The risk, in short, is that subjects may be forced to locate themselves within the fraternal economy, identifying either with the victim/God or its Other; the heroic masculine, or the mythic feminine.³⁸

In relation to the writing of ‘forgotten sacrifices’, Anne Orford suggests that ‘the demand to sacrifice cannot be met [when] we ... find that we cannot bring ourselves to exchange that which we love, and thus do not in fact possess it.’³⁹ This suggestion reveals the paradox at the core of sacrifice (ie that the object of sacrifice—what we most love—is also

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). 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.’ Oliver, above n 6. 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.’ *ibid.*

³⁶ Fredric Jameson terms ‘pastiche’—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.’ F Jameson, *Postmodernism, or, the Cultural Logic of Late Capitalism* (Durham, Duke University Press, 1991).

³⁷ As Kristeva notes: ‘even though maternal religions exist, they are always already on a path toward splitting the symbolic being from its psychological and maternal basis.’

³⁸ ‘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 n 17, 288.

³⁹ Orford, above n 10.

that which *cannot* be sacrificed since it cannot be substituted, is therefore inexchangeable, and was therefore never possessed to be offered in the first place). Not only does this logic of sacrifice pose difficulties for feminists abjuring the concept of possession, but it is also, here and elsewhere,⁴⁰ figured in terms of *love*, which faces its own set of limitations when proposed as an ethical framework for legal subjects. By this, I mean that both the modern subject emerging out of the French Revolution and the feminist response to that ‘masculine’ subject are founded upon the utopic body of a secular subject (that is, a subject without God; outside of Law).

When thinking revolt with international law, it is difficult to conceive of an ethics of love which answers for *legal* subjects constituted by and through the force of law. How do we imagine an ethics for reading and writing law—even international law—when the legal subject has been forced to give up that which could not be sacrificed? When the other is *not* one which can or should be approached with 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 the possibility of love? When what is at stake is not salvation of—or by the law, but physical survival? How can we open up the legal decision to feminist readings without inscribing bodies into an aporetic logic of sacrifice and possession? How can we revolt when we know not what virtue looks like?

Hook turns
 Strange part-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?
 Return, repair, re-read.

⁴⁰ Both Julia Kristeva *The Sense and Non-Sense of Revolt: The Powers and Limits of Psychoanalysis* (Herman, Jeanine trans, 2001 ed) [trans of: *Sens et non-sens de la révolte: Pouvoirs et limites de la psychanalyse*, 1999]; *Tales of Love* (Roudiez, Leon, trans, 1987) [trans of: *Histoires d’amour*, 1984], and Luce Irigaray, *Je, Tu, Nous: Towards a Culture of Difference* (Martin, Alison, trans, 1993 ed).

SEARCHING FOR VIRTUE

Our revolt, then, becomes possible when law (our condition of possibility; the third term) no longer functions as a guarantor. The jurisdiction of international law relies, not upon a sovereign body which it always already possessed, but upon a dialectical movement between the fragile recognition of fraternal states and its Others. The revolt of jurisdiction is inherent in the form of international law, and displacement of authority⁴¹ can take place, not through an exchange of one power for another, but at these eventual sites of hysteria through historical materialist analyses of international law.⁴²

To explain, it may be possible to nuance the relations between legal subjects by thinking them through an ethics of *hosting*:⁴³ the host is a person who receives guests; a lord of strangers; but also a multitude; a coloniser; an enemy; an army; a stranger. The body of Christ; the Eucharist; a body that hosts parasites. A woman; a womb; a hostage.⁴⁴ An ethics of hosting complicates the notion that a relation to the other can always be figured in terms of love, and introduces the possibility of thinking about the a priori conditional nature of legal subjects' occupations of each other's bodies, and the modes of exchange between them. An ethics of hosting would not require the subject to *love* another, because in the event of hosting, desire is always already displaced. It does not depend upon any will to hospitality, but rather, foregrounds a bare survival. While this idea of hosting is a response to my earlier engaging (even through critique) with the masculine/feminine binary, the concept of a hosting body is by no means a gender neutral one. We may, for example, remain with a maternal metaphor, but rather than writing it into the sacrificial fraternal economy, hold onto the more nuanced (parasitic, symbiotic, combative) relations between mother and

⁴¹ '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 n 6, 410.

⁴² 'Evental' was coined by the translator of Alain Badiou's *Being and Event* (London, Continuum, 2006).

⁴³ (1) 'Person who receives guests' c.1290, from O.Fr. *hoste* 'guest, host' (12.c), from l. *hospitem* (nom. *hospes*) 'guest, host', 'lord of strangers' from PIE *ghostis* 'stranger' (cf O.C.S. *gospodi* 'lord, master' Goth. *gasts* 'guest'; (2) 'Animal or plant having a parasite' c.1857; (3) 'Guest, enemy' (O.E. *gaest, giest*; (4) 'Multitude' from O.Fr. *host* 'army' (10.c), from M.L. *hostis* 'army, war-like expedition', from L. *hostis* 'enemy'; (5) 'Body of Christ, consecrated bread' c.1303, from L. *hostia* 'sacrifice'. If I may draw the parallel, the female body also receives and 'hosts' other bodies, and in which sense the idea of the hosting body may be subject to a feminist reading.

⁴⁴ Interestingly, the word 'hostage' derives from the c.1275 meaning of 'a lodger held by a landlord as security' (O.Fr. *hoste* 'guest'), or from the Latin *obsidanus*, 'condition of being held as security'. The modern use of 'hostage' in discourses of terrorism dates from the 1970s.

child when thinking about international law's regulation of such relations. Such a nuanced reading of the feminine is advocated by Kristeva:

First, the speaking being's relationship with maternal space is precisely an 'archaic' relationship in which borders are nonexistent [non-differentiation] or unstable, a relationship of osmosis in which separation, if it is under way, is never absolutely clear. This is the realm of narcissism and the instability of borders between mother and child, in the preoedipal mode of the psyche.⁴⁵

By rethinking the legal categories of occupation and exchange (or investment) in terms of this 'instability of borders' we can begin to write about the ongoing negotiations which make up the corporeal relation of host and its Other. For while hosting-as-event is an entirely conditional occupation and exchange of and between legal subjects, it also enables an ethics outside of the aporia of conditionality which on the one hand presumes a 'clean and proper body'⁴⁶ (in a conditional relation; relation in which conditions can be established), or an iconic body (in an unconditional relation, where entry into the economy of 'words and rewards'⁴⁷ is predicated upon the sacrifice of an Other).

At the end of the twentieth century, Jacques Derrida asks: 'Must one resist? And, first of all, psychoanalysis?'⁴⁸ International law's hysteric resistance against its own impossible office, too, must be interpreted.⁴⁹ And if we resist, our interpretations and our revolutions can act, not only as a displacement of authority, but as a *wrapping around*, a *protective covering*. Undertaking critique with sensitivity to sexual difference *qua* hosting relations is perhaps one way of thinking through the treacherous landscape of resistance and revolution.

Drawing clay from still hallowed earth
 Thrown on potter's wheel and drawing
 Centrifugal tensions drawing
 Shapes of multiple dimensions—

⁴⁵ Kristeva, above n 26, 21.

⁴⁶ As described by J Kristeva, *Powers of Horror* (LS Roudiez tr, New York, Columbia University Press, 1982).

⁴⁷ Orford, above n 10.

⁴⁸ J Derrida, *Resistances of Psychoanalysis* (P Kamuf, PA Brault, and M Naas tr, Stanford, Stanford University Press, 1998) 1.

⁴⁹ '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.' *ibid* 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 inheritance of the other or the outside at the heart of the internal and auto-affective tension' (at 26).

Is this what we are searching for?
A raw and tender revolution?
This, as Law's decomposition
Reveals its fate—

The vertigo of these inversions
Make our anxious hands
Redrawing virtue without sacrifice,
We trace our own debris

