TOWARDS A FEMINIST AESTHETIC OF JUSTICE: SARAH KANE’S BLASTED AS THEORISATION OF THE REPRESENTATION OF SEXUAL VIOLENCE IN INTERNATIONAL LAW

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TOWARDS A FEMINIST AESTHETIC OF JUSTICE: SARAH KANE’S BLASTED AS THEORISATION OF THE REPRESENTATION OF SEXUAL VIOLENCE IN INTERNATIONAL LAW

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Abstract: Aesthetic considerations are bound up with thematic questions of justice, and an interdisciplinary engagement between law and culture offers methodologies through which to interrogate and reframe legal understandings of harm. While there is no particular form that can, a priori, be designated feminist, we can talk meaningfully about practices of representation, and methodologies, as being feminist or otherwise. This essay seeks to re-animate questions concerning the relationship between feminisms and representation, asking what it might mean to talk about a legal, feminist aesthetic: what are the terms of evaluation that seem relevant in judging representation as feminist or otherwise? What are the stakes of such an enquiry? These methodological questions will be considered with respect to a specific archive—first, a legal archive comprising recent feminist engagements with international criminal and human rights law dealing with sexual violence in conflict zones; and second, a cultural text, Sarah Kane’s play Blasted (1995). This essay engages with and extends feminist commentary regarding the legal interventions, explicating the benefits of a law and culture approach to ongoing questions in feminist theories and practice. It provides an example of the ways in which a cultural text can illuminate problematic practices of representation that have developed in the law and critical commentary, and which seem natural or even unmoveable. The practice of re-seeing made available through engagement with this cultural text is, it is argued, a practice of justice.

1.0 CAN THERE BE A FEMINIST AESTHETIC OF JUSTICE?

An ongoing question in feminist studies is whether there is such a thing as a legal feminist aesthetic.¹ Many feminists argue that an aesthetic based on prescriptive or normative theories of form, derived from feminist politics, is an ‘impossibility’.² We need to analyse the context and particularity of each form,³ and examine its political and cultural effects.⁴ While there is no particular form that can, a priori, be designated feminist, we can talk meaningfully about practices of representation, and methodologies, as being feminist or otherwise. This essay seeks to re-

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² As above at 1-2.

³ As above at 8-22.

⁴ As above at 8-22.
animate questions concerning the relationship between feminisms and representation, asking what it might mean to talk about a legal, feminist aesthetic: what are the terms of evaluation that seem relevant in judging representation as feminist or otherwise? What are the stakes of such an enquiry? These methodological questions will be considered with respect to a specific archive—first, a legal archive comprising recent feminist engagements with international criminal and human rights law dealing with sexual violence in conflict zones; and second, a cultural text, Sarah Kane’s play Blasted (1995). This essay engages with and extends some of the feminist commentary regarding the legal interventions, explicating the benefits of a law and culture approach to ongoing questions in feminist theories and practice.

The interconnectedness between legal and cultural domains is a key insight of the law and culture movement, and methodologies formed in this area have much to contribute to feminist theories of harm. As Guyora Binder argues, the law is constituted through imaginative and expressive processes, as well as by its own logics and rationalities. This ‘aesthetic judgment’ should be the subject of critical intervention, alongside more traditional jurisprudential analysis. Such an approach implies that the ‘entire culture’ across legal and cultural domains should be the focus of critique and intervention, not only legal texts. We need to pay attention to the law’s relationship to wider cultural assumptions and narratives. We need to see the law as a norm-producing domain, a view that is especially pertinent in the area of gendered harms and sexual violence, where more work needs to be done to challenge existing frameworks for the recognition of harms. This essay will examine the ways in which aesthetic considerations are bound up with thematic questions of justice, exploring how an interdisciplinary engagement between law and culture offers methodologies through which to interrogate and reframe legal understandings of harm. The goal is not to arrive at a set of solid, universal representational practices that might be deemed ‘feminist’, but rather to develop a flexible series of analytic and aesthetic approaches that can guide critical examinations of practices of representation in the law, on the one hand, and culture, on the other. This engagement between legal and cultural domains reveals and allegorises problems with legal processes that have been outlined by feminists, and assists in diagnosing legal entanglements, as well as pointing to new ways of thinking about adjudication in this area.

7 As above at 108.
2.0 The Archive: Examining Legal and Cultural Representations of Sexual Violence in International Frameworks

Feminist legal scholars and practitioners have made key interventions in international law, with the criminalisation of sexual violence in war becoming part of law through the International Criminal Tribunal for the former Yugoslavia (‘ICTY’), the International Criminal Tribunal for Rwanda (‘ICTR’) and the Rome Statute of the International Criminal Court (‘Rome Statute’). The codification of sexual violence in international criminal law and international human rights law, as well as the cases heard through these developments, has been the object of significant commentary and critique. The focus of this article will be the explication of a number of key narratives and tropes in these legal texts that have been identified by feminist scholars as being problematic, and provides an example of the ways in which a law and culture analysis can deepen critical methodologies in this area.

The criminalisation of sexual violence in international law involved the introduction of new substantive laws as well as new prosecutorial practices. Commentary on these developments has shown, however, that these new areas of law have had only ambivalent success in realising feminist goals regarding the adjudication of sexual violence. As Patricia Wald, a former ICTY judge notes, what is widely regarded as the greatest achievement in this field is the

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mere fact of recognition—the establishment of international law and precedent around gendered violence, especially rape and sexual assault.\textsuperscript{12} Wald points out that sexual violence was almost totally ignored by the Nuremberg and Tokyo tribunals at the end of the Second World War, an omission made all the more egregious given that, as Leo van De Hole states, evidence of mass rape had in fact featured in the Nuremberg Trials.\textsuperscript{13} Feminist activism remedied this invisibility by ensuring sexual violence was included as a crime in the statutes of the Yugoslav and Rwandan Tribunals, and then the Rome Statute that established the ICC. Doris Buss identifies four main objectives held by feminists at this time: a need to establish gendered and sexualised forms of harm in the context of armed conflict; connecting gendered and sexualised harm to the definition of crimes in international law, especially genocide; situating wartime rape within a broader political context; and ensuring that rape became visible as a gendered crime, not only as a crime against a particular community.\textsuperscript{14} Janet Halley notes that feminists wanted to ‘put an end to the representation of wartime rapes as crimes against women’s honor [sic]’\textsuperscript{15} and to make people see rape as a crime of sexual violence that causes immense personal suffering.\textsuperscript{16} Feminists also sought to ‘represent victimised women not as members of ethnic, national or religious groups but as individuals’.\textsuperscript{17} She argues that feminist discourse sought to change the structure of international humanitarian law at its core, by devising a re-classification of harms based on the recognition of sexual violence.\textsuperscript{18}

\textbf{2.1 The Problematic of Feminist Methodology}

Feminists succeeded in influencing the ICTY’s treatment of sexual violence as well as the international criminalisation of rape, but their objectives have been only partly realised. Commentators have outlined continuing concerns that the law may not be able to ever fully realise these goals due to a number of limitations in the existing frameworks, including: the tendency to obscure gendered harm through a heightened interest in ethnicity;\textsuperscript{19} the failure to deal well with the idea of connected harms; the limitation of understandings of violence to exceptional events such as war, rather than the everyday violence endured by so many people; and the poor outcomes on perceptions of women’s agency and capacity to consent.

These problems identified by feminist scholars are uniquely suited to analysis based on law and culture methodologies—as the problems derive in part from cultural entanglements and assumptions about gendered violence, as well as from established narratives within the law that

\begin{itemize}
  \item \textsuperscript{13} Van de Hole Leo ‘A Case Study of Rape and Sexual Assault,’ (2004) 56 Eyes on the ICC 1(1) 54 at 64.
  \item \textsuperscript{15} Halley Janet ‘Rape at Rome: Feminist Interventions in the Criminalization of Sex-related Violence in Positive International Criminal Law’ (2009) 30 Michigan Journal of International Law 1 at 47.
  \item \textsuperscript{16} As above at 59.
  \item \textsuperscript{17} As above at 55.
  \item \textsuperscript{18} As above at 60.
\end{itemize}
tend to force feminist interventions to follow particular, sometimes problematic, directions. One of the key paradoxes with which feminists have had to grapple in redressing problems associated with the representation of rape is that the invisibility of sexual violence is not necessarily the main problem, and promoting visibility is not necessarily the solution. In many cases, the terms and consequences of particular kinds of visibility demand our critical attention, rather than merely the fact of visibility or invisibility itself. Drawing on the work of Avery Gordon’s theorisations of trauma in *Ghostly Matters: Haunting the Sociological Imagination* (1997), Halley argues that ‘hypervisibility’ of rape is sometimes more problematic than invisibility. Halley, through Gordon, argues that hypervisibility can be a mode through which, paradoxically, meaningful visibility is obscured. This is because, quite often, the wrong narratives about sexual violence dominate in legal and cultural domains, and these narratives act to block the possibility of other stories being told, thereby occluding the claims of a range of victims and harms.

Feminists have noted a number of problematic narratives and tropes that have arisen through legislative and judicial responses in this area. Doris Buss argues that while it is laudable that the ICTY adopted a ‘broad, flexible and arguably progressive’ approach to sexual violence in response to the war in Yugoslavia, this response has relied on the recognition of the long-standing and problematic narrative of stranger rape as ‘real’ rape. The organisation of the recognition of violence based on this narrative has detrimental effects on the concepts of agency and consent, and marginalises competing narratives that challenge these assumptions.

Buss has identified the ‘rape as a weapon of war’ trope in legal and political institutions from the Security Council to the Tribunals for Rwanda and the former Yugoslavia. Articulating legal recognition through this narrative means failing to challenge constructions of women as always-already victims within wartime concepts. Examining the jurisprudence of the International Criminal Tribunal for Rwanda, she argues that the Chamber’s representation of rape as an instrument of genocide constrains the range of harms that become intelligible and the kinds of victims who are recognizable. Further, this trope has the unintended effect of naturalizing rape as an inevitable outcome of ethnic conflict. Engle draws attention to problems with consent as established by the ICTY courts, noting that according to the precedents established at the ICTY whereby rape becomes a war crime, consensual sex becomes ‘legally impossible.’ One of the consequences is that women’s agency is also nullified. She points to the overwhelming construction of women in the former Yugoslavia as victims: ‘at some level, all Bosnian Muslim

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21 As above at 154.
22 As above at 156.
24 As above.
25 As above.
26 Buss above note 23 at 145.
27 Buss above note 23 at 151.
28 Engle above note 10 at 804. This idea of a web of coercion that negates consent might also be usefully considered in terms of proximity and space, especially since Engle links this notion of women as always-already coerced to the notion of the war zone, since space and time must be defined in order to provide parameters for the coercive space.
women were imagined to have been raped.\textsuperscript{29} Halley argues that in the case of the adjudication of wrongs in the Rwanda Tribunal, the rape-as-genocide narrative functions in this way: ‘rape is ‘hyper’ or maybe merely ‘strikingly’ visible in the Tribunal’s work through its repeated invocation as a generalised pattern of the genocide’,\textsuperscript{30} and the effects of this narrative go against the interests of specific victims, as well as wider processes of social justice, because they generate normative assumptions about the relationship of specific women, as well as the category of ‘woman,’ to sexual violence.

Halley also identifies another meta-narrative—the ‘war-rape antimony’—as problematic. It is a narrative that ‘keeps the badness of war and the badness of rape in mutual suspension … the pathos of its typical reception is that this antimony collapses in ways that ratify some of the most problematic ideological investments linking rape to war’.\textsuperscript{31} For Halley, this narrative creates problems concerning consent and agency, and also potentially ‘weaponises’ rape, paradoxically, through its special condemnation.\textsuperscript{32} I will consider these key narratives and tropes in more detail below, drawing together what they might mean for a feminist aesthetic and analytics, with the goal of re-animating the development of critical practices that pay attention to practices of representation of sexual violence across legal and cultural domains.

\section*{3.0 Re-Seeing Responsibility for Harm Through the Shock Experience}

\subsection*{3.1 Blasted as Critical Intervention}

I will begin in the following section by outlining the cultural text that will be used in dialogue with the law in this essay, Sarah Kane’s play Blasted, which innovatively challenges practices of representation surrounding sexual violence in both legal and cultural domains. Blasted diagnoses a number of problems with representational practices surrounding rape in an international context, and allegorises some of the paradoxes for feminist interventions in this area. The play has as its central concern the role of proximities and boundaries—geographic, political and personal—in generating systems of recognition of harm and responsibility. The loss or vanishing of spatial separation serves to dramatise and thematise questions relating to justice and responsibility for harms. The play challenges the authority of these boundaries to order meaning, as well as the metaphors that structure legal recognition of harms. Blasted is particularly interesting for its non-realist engagement with key questions relating to violence, gender and justice, and for its implementation of a ‘shock’ experience that takes the audience beyond a solely analytic response to these issues. The reading below will examine the ways in which the play’s contemplation and

\textsuperscript{29} As above at 794.
\textsuperscript{30} Halley above note 20 at 154.
\textsuperscript{31} As above at 156.
\textsuperscript{32} As above at 158.
deliberate violation of distance, with respect to the figure of the raped woman, challenges both legal and cultural understandings of boundaries and the roles they play in conceptualizing justice.

I read Blasted alongside the legal proceedings, as well as feminist commentary in relation to the proceedings. This interdisciplinary engagement between the play and the legal texts leads to a number of framing questions: what can a cultural text teach the law about the frameworks of recognition possible in relation to responsibility and harm? Whose suffering comes to matter in legal and cultural domains, and how does it come to matter? What do the various shocks in Kane’s play, involving the violent collapse of boundaries, tell us about the ways in which we structure injury and responsibility? How do the categories of ‘gender’ and ‘woman’ structure the legibility of harms? How do hierarchies function in making violence legible, both across geographical boundaries and between personal and political borders? How might new metaphors, frameworks, and practices of reading make new harms and responsibilities visible? Should the categories of ‘gender’ and ‘woman’ be preserved in feminist responses to violence, and if so, how should these categories be used? I will suggest that the play is not only diagnostic but theorises practices of interpretation that can assist in future directions of feminist practice, particularly concerning the private/public boundaries that are drawn in this area of law, the ways in which distinctions between the personal/political and local/foreign are mobilised, and the gendering of violence.

3.2 The New Brutalism and Embodied Shock as Didactic Practice

Sarah Kane’s play Blasted premiered in 1995 at the Royal Court Theatre Upstairs in London. Part of the ‘New Brutalists’ or ‘New British Nihilists’ movement, and likened to the work of Samuel Becket and Harold Pinter, Blasted shocked theatregoers with its scenes of graphic sexual brutality, critics particularly denouncing the play for its gratuitous violence and its failure to subscribe to the conventions of realism. The critics’ stance on Blasted has since softened; several critics have retrospectively declared Kane’s 1995 play to be a moment of landmark importance in 1990s British theatre and a powerful work of feminist critique.33 Blasted re-opened at the Royal Court Theatre in 2001 to critical appraisal, with several notable productions since staged in the UK, Europe and New York City.34

Blasted begins with the domestic scenario of a ‘couple.’ Ian, a middle-aged tabloid writer, and Cate, an emotionally vulnerable and intellectually disabled young woman, meet for a reunion in an expensive hotel room in Leeds. Ian’s dialogue reveals his bigotry and cruelty to the audience—his comments are misogynist, homophobic and xenophobic. Yet he is also revealed to be vulnerable, a dying man (he is suffering from lung cancer and liver disease). The apparent ordinariness of this set-up is quickly undercut when Ian relentlessly torments Cate, and then rapes her, an event that occurs off-stage. The rape precipitates a sudden and shocking break in the structure, genre and plot of the play: the seeming naturalism of the opening scenes is shattered as

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a mortar bomb blows the hotel room apart and a soldier bursts into the room, transforming the hotel room from a site of interpersonal trauma to one that incorporates wider civil conflict, a break constituting a ‘violent tear that mars realism’s pristine enclosure.’ The hotel is now located in the middle of an apocalyptic warzone. The soldier addresses Ian and forces him to listen to accounts of the many atrocities that he has both witnessed and committed during the Bosnian war. In particular, the soldier expresses a desire to avenge the brutal rape and murder of his girlfriend, Col, at enemy hands. It becomes clear that revenge is about to be enacted as the soldier overpowers Ian and then rapes him savagely with his revolver. In an act of particular brutality, the soldier blinds Ian by sucking out his eyes, before committing suicide himself.

Cate then returns to the hotel room, bringing with her a baby that she has attempted to rescue from the warzone outside. She informs Ian that soldiers are swarming the city. The baby dies shortly afterwards and Cate buries its body under the floorboards before again departing the room. The now-blinded Ian is left lying pathetically next to the body of the dead soldier. In a move that has horrified theatregoers, Ian proceeds to eat the flesh of the dead baby before dying himself. Cate subsequently returns to the hotel room with some food that she has obtained by prostituting herself to enemy soldiers. Ian comes back to life, muttering only the word ‘shit’. Cate eats and then in a gesture of generosity, feeds the remaining food to Ian who thanks her. The play ends.

Early reviewers of the play—when not dismissing the work in toto as a ‘disgusting feast of filth’—tended to single out two moments as especially ‘shocking’: (1) the moment when a bomb explodes, transforming the stage space from a nondescript Leeds hotel room to ‘Yugoslavia’ and (2) the moment when the Soldier sucks out Ian’s eyes. These two shocks are very different—one involves a violation of geography (Sarajevo in Yorkshire!) and the other an abuse of physical intimacy (a perverted kiss)—yet they share a common feature, the sudden collapse of distance and a consequent violation of integral boundaries. Blasted and its deployment of shock provide an allegory of the role of proximities and boundaries in their figuration of the adjudication of sexual violence. The connection between seemingly local and distant violence can be read in a number of productive ways. First, the thematic argument of the piece is that the seeds of the devastating violence and terror found in civil war, revolution and large-scale strife lie in domestic spaces that so frequently host their own terroristic power. Second, the aesthetic argument is that the horrors of the ‘foreign’ violence in the play feed back into the audience’s experience of the ‘domestic’ violence in ways that demonstrate the artificiality of these boundaries—demonstrating that the divisions between domestic/foreign, personal/political and private/public violence are artificial. Both aesthetic and substantive arguments are intertwined, in ways that demonstrate the significance of questions of representation: the play argues that representation is not epiphenomenal to substantive questions of justice, and that the terms of representation need to be considered carefully when seeking answers to questions of justice.

35 Kane above note 5 at 9.
4.0 The Relationship Between Representation and Justice in the Adjudication of Violence

In evaluating the adjudication of violence, we need to ask whose harms are recognised in these adjudications and what are the consequences of this adjudication? These questions are bound up with questions of representation. As Halley notes, the ‘reality’ of rape cannot be separated from the stories, metaphors and frameworks that attend it: ‘rape, though real and really, really bad, is also inevitably ideological … rape as representation inevitably attends rape as event.'\(^\text{38}\) In judging representations of violence, we ask whose interests are served by particular representations of harm, and the nature of the flow-on effects, not only to the immediate victims of violence but to other victims, and to society more generally. Practices that lead to the recognition of harm, of failures to see harm, and of recognising harm in unhelpful ways, are all marked in *Blasted*. The play uses the conceit of vanishing spatial proximities—the collapse of geographic context, of space between people, and of the internal/external boundaries of the individual—to produce vulnerable figures who simultaneously mark historical and contemporary political violence, political and personal violence. This text disorients cultural and political spatial contexts so that personal violence becomes a metaphor for political violence, and political violence becomes a metaphor for personal violence. In the following sections I consider the relationship between representation and justice by examining connections between *Blasted* and critiques that have been raised by feminist legal theorists in their evaluations of international criminal law and international human rights law.

4.1 The Spatiality of Harms in the Adjudication of Justice

The use of space, proximity and boundaries in determining the recognition of harms is thematised in *Blasted*, which distorts the usual ways in which some kinds of violence are marked as an event or exception from everyday life. The mortar blast transforms the space on stage as well as the geography and space of the world of the play, which, unmoored from its location, becomes like Yugoslavia in Leeds and yet still retains its Englishness. The disjunction the blast causes is not because the hotel room is changed into another location but because what should be contained and distant irrupts into the familiar. And yet, as the play shows, the familiar is not safe: rather, we have the conjunction of the violent event with quotidian violence. In making this conjunction, Kane upsets the usual confinement of trauma to a specific or delimited event. The habit of emphasizing exceptionality in the recognition of suffering is not limited to the law. Trauma theorists have shown that cultural practices often privilege narratives of trauma in which trauma is a rupturing, aberrant event, disguising the fact that suffering is pervasive and ever-present in the lives of many people. Or as Ann Cvetkovich puts it, ‘Sometimes the impact of sexual trauma doesn’t seem to measure up to that of collectively experienced historical events, such as war and genocide.'\(^\text{39}\)

\(^{38}\) Halley note 20 above at 111.

\(^{39}\) Cvetkovich above note 44 at 3.
Accordingly, there has been a recent critical turn to use ‘the everyday’ as a problematic, promoting ‘an ethics and politics of everyday life that is not simply subordinated to sublime, ecstatic, or peak experiences’.40 This is not to say that the answer is to see all sexual violence as equally horrific—or that there should be any totalizing answer. But attention needs to be paid to the practice of privileging events over the quotidian. Doris Buss explains the paradox with which feminists have been presented: to argue for increased visibility and recognition of sexual violence has meant activating certain, familiar narratives, especially around nationalism and exceptionality: the benefit of this tactic is that connecting violence against women to crimes committed against the nation grants these injuries greater political attention, but the disadvantage is that it denies ‘the systemic, everyday-ness of violence against women’.41 Harms are recognized, but only at the expense of a deep understanding of these harms, of their pervasiveness. The question becomes whether ‘it is possible to highlight the routinisation of violence against women in the face of mass atrocity?’42 Are we forced to choose between privileging violence as an event, or seeing it in its interconnected everydayness? The goal is to move towards a method of analysis, and ultimately of representation, that refuses this binary. But cultural and legal stories regarding sexual violence are powerful and enduring, so significant work needs to be done in re-training our modes of perceiving these aesthetics and logics.

Blasted disrupts a mode of seeing that supports the criminalisation of sexual violence (and other war crimes) in certain spaces, while other spaces lie free. Both the special tribunals and the work of the ICC have disproportionate application in certain areas of the world.43 This geography of intervention reflects political inequalities, where weaker states are subjected to greater international criminal regulation, in comparison to more powerful nations.44 Narratives of aberrant criminality concerning these specific jurisdictions are both gendered and racialised, and act to reinforce these international power imbalances. This uneven enforcement of international criminal law, supported by underlying narratives that connect rape, nation and international order, is yet another example of the instrumentalisation of rape as a means of narrating colonization, neo-colonisation and now ‘globalisation’, in ways that shore up dominant power relations. As Buss notes, ‘Within international criminal law, narratives of rape perform particular conceptions of disorder, which, in turn, naturalise the return to order through criminal prosecution’.45 Further, ‘certain kinds of violence and violators are defined as criminal, while the state-based order is positioned as seemingly violence-free’.46 The framing violence implicit in the international order is occluded in these adjudications of sexual violence, with an implicit link being made between how

41 Buss above note 19 at 10.
42 As above at 10.
43 Buss Doris ‘Performing Legal Order: Some Feminist Thoughts on International Criminal Law’ (2011) 11 International Criminal Law Review 409. As of February 2012, all cases under consideration by the ICC involve African countries, with preliminary investigations also being conducted in developing countries such as Afghanistan, Georgia, Guinea, Colombia, Palestine, Honduras and Korea (see http://www.icc-cpi.int/Menus/ICC/Situations+and+Cases/ accessed 14 February 2012).
44 As above at 421.
45 As above at 419.
46 As above.
we view rape in wartime and our notions of ‘national solidarity’. Halley argues that ‘the new IHL/ICL rules presume an antagonism between armed combatants on one side of the armed conflict and civilians on the other’. Thus the new rules act to entrench civilians’ obligations to be antagonistic to their state’s enemies, and thereby entrench women within national frameworks that may not benefit them.

_Blasted_ makes a political argument, then, in disrupting the spatial mapping of violence, and refusing to respect the national boundaries of such violence, as demanded by international law. It brings the violence home, with the ‘English’ violence being bound-up with the ‘foreign’ violence in ways that cannot be easily untangled or judged. The foreign violence becomes familiar, the domestic violence becomes strange to us.

### 4.2 The Hierarchy of Harms, and Undoing False Analogies

One consequence of the ways in which sexual violence has been made visible in international criminal and human rights law has been that these harms have been made to compete with other harms. The codification and adjudication of sexual violence relies on, and in turn produces, narratives that rely on categorizations of ordinary sexual violence, ordinary wartime violence, and extraordinary wartime sexual violence. These harms compete with each other for recognition, and acknowledging one kind of harm seems to automatically occlude another kind of harm. Engels argues that the determination to characterise rape, particularly of Bosnian Muslim women, as genocide or ethnic cleansing, served to create another kind of rape: ordinary wartime rape. Engle compares Catharine MacKinnon’s position that only the systematically-orchestrated mass rape by the Serbs during the Balkans war should be considered ‘genocidal’ with Rhonda Copelon’s insistence that all women in the war could be considered targets of genocidal rape. However, as Engle reiterates, the issue at hand was not so much whether ‘rape had been used as an instrument of genocide’, but rather whether ‘a focus on genocidal rape functioned to downplay the extent to which all women raped during war were victims’.

Halley has been particularly critical of the effects of feminist intervention on the creation of a new hierarchy of harms, suggesting that this notion of rape as a ‘discourse of equivalents’ is partially intensified by the legislating that is occurring around wartime rape since the law demands comparisons and the ranking of harms. Thus in the aftermath of the ICTY and ICTR case law and the Rome Statute, rape has moved up in its ranking in terms of legal importance, a dramatic shift from the days of the Nuremberg trials where ‘rape barely counted as a harm’. Halley is critical of efforts to move sexual violence “up” the hierarchy of crimes and to characterise these

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47 Halley above note 20 at 118.
48 As above at 119.
49 As above.
50 Engle above note 10 at 786.
51 As above.
52 Halley above note 20 at 113.
53 As above.
54 As above.
harm as necessarily gendered. She argues that feminists have attempted to tip the ‘war-rape antimony’ in favour of rape and thus to ‘suppress war by accentuating rape, and to accentuate rape by suppressing war’. The effect of this strategy is a struggle of harms, which sets up an artificial and damaging hierarchy, in which some harms are determined to matter more than others—a struggle which is highly gendered.

And yet, it seems unfair to judge feminist interventions for participating in this hierarchy of harms when it is the nature of the law’s terms, with which legal feminists engage, to force harms to be categorised and ordered. Halley identifies problems with an understanding of rape as ‘inherently comparative’, a problem that she acknowledges is not limited to the adjudication of sexual violence, but one that arises from the nature of legal logic: ‘lawyering by analogy—lawyering by precedent—is lawyering by comparison’.

Halley’s observation correlates with a deeper critique of legal practices, as observed by scholars in the area of law and culture. In particular, this is an observation that Wai-Chee Dimock has given extended attention to, in her book Residues of Justice. For Dimock, legal adjudication is a process in which unlike things are made comparable—a strategy said to deliver justice from the time of Aristotle onwards, and one that is figured by metaphor of the scales of justice. This justice is not only a process of abstraction, but ‘perhaps an exercise in reduction as well, stripping away apparent differences to reveal an underlying order, an order intelligible, in the long run, perhaps only in quantitative terms’. The law is ‘ultimately a form of reification’, a process which makes ‘warring particulars’ equal. Very little can intervene in this process so Dimock turns to the domain of literature for a better account of justice for ‘... a critical practice responsive to what we might call the cognitive residues of a text, responsive to what remains not exhausted, not encompassed by its supposed resolution.

Here we might look to cultural texts for the residues and specificities of gendered harms, and to the illumination of law’s problematic logics. The answer is not to perpetuate a logic that relies on the equivalence of harms, but to argue for codifications that rely on specificity and context, as much as possible. As Cvetovich argues:

Although one feminist response has been to argue for the inclusion and equation of sexual trauma with other forms ... its persistent invisibility actually demands a quite different approach, one that can recognise trauma’s specificities and variations.

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55 As above at 83.
56 As above at 84.
57 As above.
58 As above at 113.
59 As above.
61 As above at 6.
62 As above.
63 As above at 141.
64 Cvetovich above note 40 at 33.
That is, theorisation and legalisation should proceed from the specific, rather than use the specific to supplement a ‘universal’ theory. In the next section, I will explore practices of reading and interpretation, encouraged by Blasted, to interrogate the law’s assumptions and logics.

5.0 The Politics of Form: Witnessing Gaps and Occlusions in the Representation of Rape

5.1 Reading Rape

Blasted’s impact rests partly on the contrast between the hyper-visibility of specific scenes of violence, which produce a ‘spectacle of suffering’, and the invisibility of other harms. The play points to, and allegorises, a practice of reading that is needed in response to claims for justice, one that pays attention not only to that which is in fact excluded from current forms, but also to that which is incapable of being represented within current frameworks of recognition, or if seen, arises only in ways that are problematic. The play critiques the seeming naturalism of our practices of seeing and representation, violently drawing our attention to that which is beyond the play’s own terms of reference. In this section, I focus on two aspects of the play which theorise the politics of forms and their relationship to justice: first, the play’s formal experimentation with realist and non-realist modes of representation, and the relationship of these forms to questions of justice; and second, the issue of the play’s treatment of Cate’s rape, which is both a formal and thematic concern.

The play begins in a naturalistic mode, and it is the mortar blast that occurs after the initial scenes, directly following Cate’s rape, which signifies a dramatic shift in context, story and mode of representation. The bomb signifies a break in the structure of the play, ending the audience’s experience of social realism. The scenes that follow the blast take the audience to a hyper-violent, surreal world, in which the ‘normal’ binaries of private/public, national/international and even life/death no longer apply. Kim Solga argues that the shock creates a ‘new, intensely visible threshold’. This threshold is key to directing the audience to new practices of seeing and understanding, as it pulls our gaze beyond the limits of seeing, calling attention to the gaps in representation. We are directed to consider what has happened beyond the view of the naturalistic setting—including Cate’s rape—and to understand this threshold as a marker of realism’s function as a ‘gate-keeper’. The last section of the play informs the ways in which we should review the first scenes: it demands that we re-visit the seeming naturalism of the initial scenes, and read horror into their seeming neutrality.

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65 Solga above note 36 at 366.
67 Solga above note 36 at 367.
68 As above.
69 As above.
The play’s obsession with genre is a particularly helpful point of entry for critique of the law’s practices of representation. The play’s anti-realism can be read usefully against the law’s implied claim to access and adjudicate reality in unmediated ways. The law takes its own realism for granted, and assumes that its own representations are transparent—which means its occlusions are difficult to see, and seem natural. The potential for theatre to challenge the normative conventions of the law has been explored by Marett Leiboff, who argues that the theatrical offers a unique jurisprudence.70 Following Artaud, Leiboff argues that the essence of theatrical interaction lies in the response of the body, thus challenging law’s version of knowing at a deep structural level, which is based on rational or mind-only experiences.71 Theatricality’s radical shift in mode acts to subvert the law’s interpretive practices, particularly those based on narrative expectations, as ‘all-knowing’.72 The law’s habit of privileging the text is not only challenged but is ‘disintegrated’ against this physical engagement.73 In Blasted, a new jurisprudence of sexual violence is arrived at, based on the audience’s shock experience. Thus an aesthetic practice—the audience’s shock and horror, mobilised to reinterpret the initial scenes—becomes a practice of justice, because it is only when the audience ‘re-sees’ the initial scenes that Cate’s harms are given full account. It is at this point that the audience understands—an understanding that is both a rational and physical experience—not only the extent of Cate’s harms, but also the injustice of their usual invisibility. The play’s demand for the audience to re-see beyond the threshold, to become aware of what is seen and unseen, and to respond, is a critical legal move, challenging the law’s unquestioned assumption that it has unmediated access to reality. The theatrical alerts us not only to the politics behind law’s privileging of textuality, and the effects of this assumption, but in a visceral way to the very presence of this privileging.

Related to this question of the limits of realism is the play’s treatment of Cate’s rape, which occurs off-stage. Critics have interpreted this as a ‘very purposeful elision’, in contrast to Ian’s ‘spectacular violations’.74 Returning to Halley’s point about the hyper-visibility of the rape of women, it can be argued that the play’s refusal to represent Cate’s rape directly is a refusal to engage with problematic logics of the representation of sexual violence against women. Although Cate’s rape is not explicitly depicted, it is still represented—its absence forms part of the logic of harms, some directly shown and others not. We should interpret a number of scenes of the play to be about this unstaged part, and the representation of sexual violence against Cate relies on reading across the scenes. Cate’s experience lacks a direct witness, but this calls on the audience to witness Cate’s suffering as including this lack, and also places on the viewer an ethical obligation to address this absence, to question it, and to remedy it.

The mortar blast, which transforms the space and geography both of the set and the play, is merely a physical, although admittedly extreme, representation of the disruptions evident in the deeply troubling relationship between Cate and Ian. Indeed ‘blasts’ have occurred throughout these initial scenes: Cate’s fits, her intimations of abuse by her father, Ian’s abusive relationship

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70 See, for example, Leiboff Marett ‘Law, Muteness and the Theatrical’ (2010) 14 Law Text Culture 384.
71 As above at 387.
72 As above.
73 Leiboff above note 70 at 390.
74 Solga as above note 36 at 349.
with her, her rape, Cate’s ‘slowness’, and Cate and Ian’s long term prior relationship, troubling because she is clearly young and much younger than Ian. Thus, while shocking, the mortar blast can be read as an irruption into the set that extends and amplifies the many irruptions that precede it. Certainly, when staged, the sound and visual effects of the blast are overwhelming, wherein lies the threat of displacement the blast contains. But read in this way, the mortar blast does not disrupt the play, undoing the naturalism and spiralling the world of the play into another mode as well as another space, but rather foregrounds the violence already at play within the drama.

The play therefore carefully explores the textures of both the invisibility and hyper-visibility of rape. It matters that the terrible violence the Soldier inflicts upon Ian is couched in the language of love for his girlfriend Col against the rape of Col and others. It matters too that the terrible violence that Ian inflicts on Cate (both seen and unseen, both physical and mental) is framed within the terms of an ambivalently ‘romantic’ relationship, and is not described overtly as violence. Cate’s rape by Ian is not shown on the stage, and is not explained in any way—it is invisible and silent. The play begins and ends with domestic scenes, and it is the everyday, domestic violence that is ‘blasted’ in the play when the Bosnian conflict intervenes in the middle of the hotel room, violating the ‘necessary distances’ of geographic and political context. In other words, not only should we think of Cate’s rape when Ian is being tortured and raped by the soldier, but we should also super-impose Ian’s rape upon our memory of Cate’s torture. The pre-text of this reading is that what is perceived as being so horrific in civil war is a commonplace in local hotels, and the play has a lot to say about the terroristic in this ‘domestic’ violence, potentially horrifying the audience’s understanding of the domestic. Cate’s rape is never resolved through the narrative—and nor are the other scenes of violence—in ways that shore up established story-arcs around sexual violence, those narratives produced by realism’s promise that we all know how the story ends, and what it means. By refusing this narrative closure, and by instead presenting us with ongoing and shocking vignettes of violence, the play forces us to either devise a counter-narrative or leave the fragments unresolved. By directly depicting other scenes of sexual violence, the play also demonstrates the ways in which narratives can compete for our attention, and that it is a failed logic that orders these stories around a hierarchy of harms, an approach that demands us to choose some harms and victims over others.

5.2 Categorisation of Harms, and Intersectionality

A problem related to the hierarchy of harms is the categorisation of harms, another way of organising harms that has occluded the complexities of politics and materiality. The dilemma, of course, lies with legal logics that require harm to be categorised in a single or dominant way.75

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Rape defined as a crime against humanity requires that the act take place as ‘part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds’.\textsuperscript{76} Rape defined as genocide requires that the act of rape was ‘committed with intent to destroy, in whole or in part, a national, ethical, racial or religious group’.\textsuperscript{77}

For Doris Buss, the ways in which gender and ethnicity have been organised in relation to each other, in international criminal law, is key to the ways in which ‘sexual violence and inequality are both seen and unseen in the [Yugoslav and Rwandan] Tribunals’.\textsuperscript{78} Buss argues that ethnicity may be emerging ‘as a meta-narrative within which sexual violence against women materialises in constrained and limited ways’.\textsuperscript{79} Ethnicity is becoming the dominant category of recognition, with sexual violence and gender inequality becoming ‘highly visible’ through the efforts of feminist jurists, but only ‘superficially so,’ as these are subsumed beneath the logics of race and ethnicity.\textsuperscript{80} Examining the intent components of two key crimes prosecuted by the Tribunals, crimes against humanity and genocide, it can be seen that the Tribunals primarily focus on harm in terms of ethnicity: ‘Rwandan Hutus seek to annihilate Rwandan Tutsi; Bosnian Serbs attack Bosnian Muslims …’.\textsuperscript{81}

The effects of focusing on ethnicity as a category of harm are two-fold: first, this practice occludes the gendered nature of sexual violence; and second, it focuses on the crime as an ‘event,’ bounded by the geography and dates of conflict, rather than accounting for the sexual violence that is ongoing in the context. These occlusions make it difficult to ask questions such as:

\begin{quote}
How did the sexualisation of Tutsi women impact upon the position of Hutu women in the sexual hierarchy of race before the genocide? How did that sexual hierarchy facilitate and enable the patterns of genocidal sexual violence against all women?\textsuperscript{82}
\end{quote}

Ultimately, women become visible only in an instrumental way—‘in ways that serve to buttress the uncertain borders of group identity’,\textsuperscript{83} and as ‘signifiers of community vulnerability’.\textsuperscript{84} Engle suggests that the law in this area has ‘reified understandings of ethnic difference’,\textsuperscript{85} downplayed ‘women’s sexual, political, and military agency’\textsuperscript{86} and supplemented ‘a focus on gender with a focus on sex’.\textsuperscript{87} She argues that in this respect, feminist debates have ‘done little to recover any of the prewar understandings of the contingency and construction of ethnic and religious identity in Bosnia and Herzegovina’.\textsuperscript{88} Such discourse has formed a way to ‘avoid seeing women as sexual

\textsuperscript{76} ICTR Statute, Article 3.
\textsuperscript{77} ICTR Statute, Article 2.
\textsuperscript{78} Buss above note 19 at 6.
\textsuperscript{79} As above at 3.
\textsuperscript{80} As above at 7.
\textsuperscript{81} As above at 20.
\textsuperscript{82} As above at 7.
\textsuperscript{83} As above at 12-13.
\textsuperscript{84} As above at 21.
\textsuperscript{85} Engle note 8 above at 807.
\textsuperscript{86} As above.
\textsuperscript{87} As above.
\textsuperscript{88} As above at 809.
participants in the war', and perpetuated clichéd stereotypes of women as ‘powerless victims of war’, which also ‘might unwittingly function to strip women of many types of power, including the power to resolve or prevent conflict.”

_Blasted_ acknowledges and resists a logic of recognition that is organised through national or group identities, and insists on re-inscribing the gendered nature of sexual violence. By displacing Cate’s rape by Ian, which occurs offstage in the initial ‘naturalistic’ part of the play, and then making the rape of Ian the centre of the action of the second part of the play, _Blasted_ reminds us that gender is at the centre of dominant cultural and legal narratives of sexual violence, and that these representations are also central to its realities.

**6.0 CONCLUSION**

Aesthetic considerations are bound up with thematic questions of justice, and an interdisciplinary engagement between law and culture offers methodologies through which to interrogate and reframe legal understandings of harm. The interdisciplinary reading offered above suggests a shift in approach is needed when analysing the legal adjudication of sexual violence, from a focus on examining the fact of prosecution, or otherwise—to a consideration of the ways in which sexual violence is represented. What is clear from reading legal and cultural archives together—the legal adjudication of sexual violence, feminist commentary, and the intervention of _Blasted_—is that dominate narratives and tropes regarding sexual violence are extremely powerful in determining the ways in which adjudication proceeds, and are also very difficult to shift. Halley asks ‘why condemnations of rape seemed particularly susceptible to discursive closure’.

The answer to this question lies in part in examining the role played by the intersecting narratives about rape, which seem to direct interventions (including feminist interventions) along specific axes. _Blasted_ supplements legal feminist interventions in diagnosing problematic practices of representation, and in providing an allegory of those entanglements and boundaries that have no straightforward resolution.

Disturbing these boundaries in an authentic way would have profound results. Ann Cvetovich has argued that:

> More so than distinctions between private and public trauma, those between trauma as everyday and ongoing and trauma as a discrete event may be the most profound consequence of a gendered approach.

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89 As above at 811.
90 As above at 812.
91 Halley note 15 above at 81.
We can look to ways that ‘affective experience that falls outside of institutionalised or stable forms of identity or politics’[^93] might form the basis of critique of the law, revealing the law’s hardened forms of recognition, and the many forms of harm that it excludes through these forms. *Blasted* provides a way to keep this critique alive, drawing attention to the mediated nature of representation, legal adjudication, and the choices that feminists are forced to make when arguing for adjudication under international criminal law (that is, that we must go down the axis of public as opposed to private violence, and that the terms of adjudication reinforce the assumptions, narratives and tropes that keep alive so much systemic and everyday violence).

The law would most likely be overwhelmed by the claims of trauma were it to dispense with artificial boundaries and acknowledge the claims of ‘private’ violence, and the pervasiveness of gendered violence. What becomes interesting, then, are its strategies of refusal, and the crafting of its boundaries. So many legal categories and boundaries, narratives and tropes, seem necessary and permanent. It is this problem of the seeming naturalness and permanence of representational practices—the problem of our failure to see the very nature of these practices, before we even get to their harms—that we need to redress, through an analytics that takes seriously the cultural aspects of the law. The goal is not to arrive at a set of solid, universal representational practices that might be deemed ‘feminist’, but rather to develop a flexible series of analytic and aesthetic approaches that can guide critical examinations of practices of representation in the law. I have provided one example of this methodology above, where the shock experience of *Blasted* makes us aware, painfully, of the cost of the law’s stories, and the effects of its logics. As highlighted by *Blasted*, an analysis of the law’s boundaries provides us, as critical scholars, with heightened awareness of those points at which we might press a little harder, to open up new frameworks of recognition for harm. ●

[^93]: As above at 16.