5. CODA

> Thinking as process has to be fought for. It is threatened from all sides, by modern pseudoknowledge which leaves us at the mercy of every gadget that is technically possible […] the mind is under siege, and thinking is the only restraint against murderous know-how and the cruel silence of sheer violence which mutes both itself and its victims.
>
> -Jacqueline Rose[1]

IN HER essay, "Feminism and the Abomination of Violence", questioning the dominant strand of feminism represented by Catherine MacKinnon, Jacqueline Rose contends "that violence against women is a crime of the deepest *thoughtlessness*. It is a sign that the mind has brutally blocked itself."[2] It is *un*thinking that breeds all violence, including the violence against women. Violence "is a form of radical self-deceit" that seeks to cover up the anxiety about the limitations and the finitude of the human condition. Violence keeps up the (masculine) fantasy of control by blocking the mind from confronting the limitations and helplessness of human existence.

Feminism (or at least its dominant strand, governance feminism) in its abomination of violence, often drawing parallels between violence against women and war,[3] renders the category of violence itself as "unthinkable". Violence needs to be stopped at all costs, by any means, even if it requires waging a war against patriarchal societies around the world.[4] In so abominating violence, feminists block themselves from thinking about it. Resultantly, the unthinking that produces violence gets mirrored by feminism itself: feminism "finds itself replicating that part of the mind that cannot tolerate its own complexity."[5] It "thereby becomes complicit with the psychic

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1 Jacqueline Rose, "Feminism and the Abomination of Violence" 94 *Cultural Critique* 7 (Fall, 2016).

2 *Id.* at 6 (emphasis mine).

3 Catherine A. MacKinnon, 'Women's September 11th: rethinking the international law of conflict" 47(1) *Harvard International Law Journal* 1 (2006).

4 Lorna Finlayson, "Can the law be feminist?" 40(2) *London Review of Books* 29-31 (Jan., 2018), *available at:* https://www.lrb.co.uk/v40/n02/lorna-finlayson/can-the-law-be-feminist (last visited on Jan. 28, 2018). Finlayson shows the "inseparability of MacKinnon's sexual and global politics" and how in her zeal to change the world for women, MacKinnon "subscribes to a broadly pro-American narrative when it comes to global politics" with little concern about the intended and unintended consequences of such feminist politics.

5 *Supra* note 1 at 7.

processes that lead to the enactment of violence itself."[6] Simply put, feminism, in its non-acknowledgment of the dark side of the human mind, ends up imitating the very force that it is up against. Taking this insight seriously, this thesis has been an attempt to build an argument for *thinking*: thinking law, thinking feminism, thinking the 'dark' side. Positions and propositions have, as if, taken the place of thinking; psychoanalysis is precisely the attempt to think, think through the uncanny of the psychic processes.

When I had started this work, criminal law amendments of 2013 had been recently enacted in the aftermath of the Delhi gang rape. Despite various reservations, the amendments were seen as a step forward in feminist legal reforms. But as I am closing this thesis, it appears that the much hailed amendments could do little to transform the discursive or affective realms of law. The observations in *Mahmood Farooqui* v. *State*[7] and *Hardik Sikri* v. *State*[8] have yet again pushed back the discourse with respect to the law on rape back to *Mathura*,[9] and we are left with the same stereotypes of 'real rape', 'real victim', 'real resistance' and 'true consent'. The government's response to Unnao and Kathua rapes – criminal law ordinance with more stringent punishments and death penalty to rapists where the victim is less than 12 years old − is again governed by the unthinking carceral impulse.[10]

It is as if feminism never happened to us. At one level, my enquiry has sought to understand this quality of the Law/law, this push-back, this 'undertow' of law that resists progressive change. I have argued that in the rush for feminist legal reforms, largely shaped by the discursive strategies of governance feminism, it might be useful to pause and reflect; give up, or even if not give up, connect the activist zeal of

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6 *Id.* at 7.

7 *Mahmood Farooqui* v. *State (Govt. of NCT of Delhi),* 2017 SCC Online Del 6378. The Supreme Court has rejected the special leave petition, challenging this decision.

8 2017 SCC Online P&H 2806. While granting the bail, the court said, "a careful examination of [the victim's] statement again offers an alternate conclusion of misadventure stemming from a promiscuous attitude and a voyeuristic mind." The Supreme Court, however, stayed the bail order.

9 *Tukaram* v. *State of Maharashtra*, AIR 1979 SC 185. For a critique of the case see, Upendra Baxi, Vasudha Dhagamwar, *et al*, "An Open Letter to the Chief Justice of India" 4 SCC (*Jour*) 17 (1979).

10 The Criminal Law Amendment Ordinance, 2018. For a critique of the ordinance see, Flavia Agnes, "Death penalty for child rapists: This populist move will only cause India's children more harm", *available at*: https://scroll.in/article/876554/death-penalty-for-child-rapists-this-populist-move-will-cause-more-harm-to-indias-children (last visited on Apr. 28. 2018).

'doing' in favour of or with academic 'thinking'. Or, as Upendra Baxi recently affirmed, reversing Antonio Gramsci: "maintain *the optimism of the intellect* with the pessimism of will."[11]

We need to re-imagine the Law/ law as well as feminism even if the radical overhauling of their internal structures and logics seems impossible. It is important to clarify that it is not an argument for 'taking a break' even as the 'break' looks like a seductive option to gain freedom from the hegemonic language of governance feminism – which takes both global and local forms. Instead, my argument is that, we need to 'stay with' feminism. *Vis-à-vis* the law, my argument again, contrary to many contemporary feminists, is not to abandon law or due process, but to think law critically outside the confines of the liberal logic.[12] I ground my argument of 'staying with' law as well as feminism within the striking duality of the contemporary moment. While on the one hand, we seem to be inhabiting a post-law, post due-process world, driven by technological subjectivity that shapes the internet feminism of the fourth wave,[13] on the other hand, feminism itself has become a suspect category as men are claiming to be victims of feminism.[14] However, we (feminists) cannot think of emancipation through feminist legal reforms unless we acknowledge and engage with, what Juliet Mitchell has termed, the "undertow" that keeps pulling us backwards. Thus, the Law/law and feminism, the three dominant languages of justice, need to be interrogated for the *resistances* internal to them.

More broadly, my enquiry has been around which notion of truth (of the subject) do/ should law and feminism subscribe to: the *philosophical* idea of truth *or* the *tragic*

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11 Upendra Baxi, "Deliberative Democracy v Authoritarian Statism: *Traitésur la Tolérance* Dialogue, Dissent, and Civic Virtue" Fr. Paul de. La Gueriviere 6th Memorial Lecture (Jan. 25, 2018, Indian Social Institute, New Delhi).

12 In this formulation, I follow Drucilla Cornell's insight, contra Nivedita Menon, that law is "one of the important systems of cultural symbolization" and therefore "law, and more particularly rights, should not be dismissed." Drucilla Cornell, *The Imaginary Domain: Abortion, Pornography and Sexual Violence* 85 (Routledge, New York, 1995). I have tried to argue that we need to hold on to law and rights but first by re-defining these conceptions by inaugurating the 'emotion question' and acknowledging the internal contradictions of these discourses.

13 "The fourth wave of feminism: meet the rebel women", *available at*: https://www.theguardian.com/world/2013/dec/10/fourth-wave-feminism-rebel-women (last visited on Jan. 31, 2018).

14 See Chapter 3, fn. 136.

idea of truth?[15] The tragic idea of truth, explains Simon Critchley, "*is* all about affect."[16] As opposed to the philosophical idea of truth which "appeal[s] to the logistical or calculating part of the soul", the tragic notion, banished from Plato's *Republic,* is about excessive emotions, grief and lamentations. The tragic idea of truth is threatening for it may make us "lose control of the rational, logistical part of the soul."[17] However, it is this affective side of truth that compels to turn the gaze inwards to see not just the contradictions of, but what is rotten within, the human subjectivity, political order, legal institutions and so on. Arguing for bringing back the aesthetic form of tragedy to philosophy and giving up the "philosophical pretension that the universe can be made sense of rationally",[18] Critchley comes very close to Juliet Mitchell.

Mitchell's concerns in *Feminism and Psychoanalysis* − "in tragedy […] people are being told the truth, and not hearing it […] It seems to me in tragedy, part of what we learn is the fact that we don't hear"[19] − are at the heart of this thesis. What is it that we do not hear in the law? Similarly, Mitchell announced: "[H]owever marked the progress−the vote, sexual freedom, equal pay−something prevents the realization of equality. At the heart of progress there is a deathly statis or backward lunge."[20] What are the psychic co-ordinates of this backward lunge? I have tried to explore these questions in this thesis.

Situating myself on the cusp of these contemporary philosophical and feminist concerns, my argument has been to bring emotion *back* to the sites of the law (and feminism), from where it was exorcised perhaps long ago when philosophy won over tragedy (it was psychoanalysis that went back to (Greek) tragedy) and when the Law was ignored. I have attempted to push for a psychoanalytically-informed understanding of the law, where 'the truth' is not a clear, transparent and rational

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15 Todd Kesselman, "Tragedy and Modernity: The Logic of Affect" in Carl Cederström and Todd Kesselman (eds.), *Impossible Objects: Interviews Simon Critchley* 142 (Polity Press, 2012).

16 *Id.* at 142.

17 *Id.* at 141.

18 *Id*. at 150.

19 *Id*. at 154

20 Juliet Mitchell, "Debating Sexual Difference, Politics, and the Unconscious: With Discussant Section by Jacqueline Rose" in Robbie Duschinsky and Susan Walker (eds.), *Juliet Mitchell and the Lateral Axis: Twenty-First-Century Psychoanalysis and Feminism* 83 (Palgrave Macmillan, 2015).

category, but mediated in a complex way through trauma, pain and suffering as much as psychic blocks in and to rationality.

Looking Back

Feminists have long cautioned us about the over-reliance on law for seeking justice. It has been argued that since law is based on a universal set of fixes, it erodes or homogenises multiple notions of justice. But this has not meant that feminists have abandoned law as a site for reform since law cannot just be wished away. The pursuit of legal reforms through a discursive engagement with law is only seen as a partial but inevitable attempt to secure feminist justice. Diverging from this view of feminist engagement with law, in this work I have argued that feminists need to *re-claim* the law not merely as a discursive site but also a psychic site. We need a psychic theory of the law in order to even begin the work of transformatory change in socio-political order which is subject to the Law.

Borrowing the category of the 'legal unconscious' from psychoanalytic jurisprudence, I have argued for a re-conceptualisation of law. Such a re-conceptualisation−what I called a *feminised* law in the Introduction−is not to argue for a shift in the subject of law from man to woman, but for an understanding of law which recognises its internal contradictions and inconsistencies, its hold by the Law. It is an argument for a shift from the epistemological frame of 'law as reason' to law as the terrain of messy and contradictory reason-emotion continuums. As Peter Goodrich affirms in the epigraph in the Introduction: "psychoanalytic jurisprudence" needs "to introduce the question of emotion and the domain of subjectivity" into the analysis of (doctrines, interpretations and institutions) of law.[21]

It is my argument that an epistemic shift to "emotion" in terms of *subject's desire and the desire of the law* will constitute the 'break' from the patterns of dominant strands of feminism that have hijacked feminist imaginations. Law in this altered frame will

[21] Peter Goodrich, *Law and the Unconscious: A Legendre Reader* 5 (Macmillan Press Ltd., 1997).

not reduce and homogenise multiple notions of justice but would be able to render diverse, even conflicting, possibilities of justice possible.

This *feminised law* will be informed and transformed in two ways: *first*, at the level of the subject of law and *second*, law's own structure (making law, its processes and functionaries as the subject). Post-deconstruction, the subject has long been destabilised by gender, class, caste critiques, but the subject of law continues to remains a rational subject in-control. If we take the unconscious seriously, the subject of law will no longer remain the rational liberal subject in control. It would be imperative to acknowledge the legal subject in all her emotional dimensions, bringing to fore the relationship between the conscious and unconscious aspects of human subjectivity. At the level of the structure and institution of law, it requires an acknowledgement that there is an emotional undertow to the rationality of law and that the law's rational structure is sustained by its own Law, the Law of the psychic order. This emotional undertow is not buried deep in some dark corner, but manifests in the repetitions and clues writ large over the legal text. In fact, I have argued that the hyper-rationality of law is the impossible lid on its own unconscious.

In posing the emotion question, I have marked a departure from the cognitivist conceptualisation of emotions to the psychoanalytic framework and the concept of the "unconscious". I have shown how Martha C. Nussbaum's cognitive/ evaluative view of emotions is too rational and it does not contest the law's hegemonic notion of truth. Rather the binary of mechanistic versus evaluative conception of emotions, I believe, re-institutes the primacy of reason, which Nussbaum otherwise seeks to contest in her oeuvre on emotions. The complete disavowal of the mechanistic view (where emotions are forces which overtake the subject's rationality) leads to a simplistic understanding of subjectivity and agency.

In foregrounding reason in emotions, she dismisses the force of emotions which does disrupt rational choice-making: "[i]n rage, we act, but we act in a way that we are

acted upon."[22] We act and are acted upon at the same time. Often we know but we cannot act. We know the right thing and the right emotion but still there is a push back and we cannot change our emotional and social dispositions. Nussbaum's evaluative conception of emotion, guided as it is by rationality and moral appropriateness, is formulated on an anti-psychoanalytic understanding of how the psyche works. Even as the subject's emotions are acknowledged, the reasonable person is never replaced by the *emotional person*, meaning thereby that the emotional excesses that falls outside cognitive appraisals is never captured by the law. They reside in the shadow of the Law.

The evaluative view of emotions ensures that the legal discourse strictly subscribes to the dominant normative framework. In as much as there is an underlying belief and hope that the law will progressively develop in accordance with the changing norms of the social order, the view remains (as argued in Chapter 2) constricted within a teleological imagination of legal change and progress. Further, rooted as it is within normativism, the evaluative view erases the subjectivity of those whose emotions do not fit the criteria of social and moral appropriateness. The subject remains a subject-in-control, the moral author of her acts who is to be held accountable for her emotions and subsequent conduct. It may be noted that I am not making an argument for 'pure subjectivity' (only psychologising) as, I believe, we need to hold on to the normativity of law. However, the contention is that legal normativism needs to be brought closer to the psychic norms that govern the subject.

In the Nussbaumian scheme of things, the institutional and structural violence internalised by law is uncontested as the institutional structures are placed outside the frame of evaluations. Law itself remains entrenched within liberal discourse, something that is *a priori* and outside the emotional lives of its subjects. The gaze is never inverted. Liberal law does not see its own desire for and emotional investment in the violence of social and sexual normative orders. Further, I have

[22] Kesselman, *supra* note 15 at 153.

contended that the evaluative view based as it is on good and bad emotions of good and bad people (an anguished mother's anger is acceptable, not the homophobe's), at best takes the form of legal prescriptivism or what I have called the 'tyranny of shoulds', compelling prescriptive commandments of emotional transformation. People *should not* act according to payback anger, punishment *should not* be an expression of retributive rage, disgust *should not* be the guiding emotion for law and so on. This view is premised on the naïve faith that the rigidity of the psychic structures and emotional motivations can be altered through liberal education. While socialisation and moral education are significant in the construction of emotions, this position misses the key Freudian insight about the subject: that there are "unconscious motives, motives not accessible to the subject's waking consciousness and moral sensibility"[23] which cannot be fathomed or altered only through moral education.

I have also argued that Indian feminists have inadvertently aligned themselves with Nussbaum's evaluative view in their limited engagement with the emotion question. This especially surfaces in the (lack of) feminist engagement with the demands of justice that arise from grief often laden with retributive rage and desire for vengeance. The peculiar quality of the burden of grief is often enmeshed in revenge seeking rage, as if the sublimation of grief can be effectuated only through a strange egalitarianism by inflicting violence on the other so that the other also suffers equally. Feminists in India often confront this knot of grief and rage but they end up flattening it while working towards (social) answers and (legal) solutions (as shown in Chapter 3). The retributive rage that surfaces from grief is either completely erased or othered/pathologised as irrational. Payback anger is not taken seriously by feminists even though violence is an undeniable part of our psyche. Both legal as well feminist rationality all too easily slip into rationalisation while the fantasy structure of our desires remains untouched. This calls for an epistemic shift such that our fears, anxieties and drives become the

[23] Elizabeth Grosz, *Jacques Lacan: A Feminist Introduction* 11 (Routledge, London, 1990).

starting points for a feminist politics. The argument thus is to bring emotions at the forefront of law and feminism in order to develop a critical episteme of suffering that takes the unconscious seriously−not to endorse but to *engage with* the retributive payback rage at the deepest level.

I have also suggested that the feminist critiques of dominance feminism which turn to pleasure to look for feminist agency also require a critical introspection. The feminist shift from violence to pleasure again institutes a false binary based on a simplistic account of sexuality: accounts of violence (passivity) versus pleasure (agency) often erase the question of complicity and we fail to interrogate pleasure in violence and violence in (sexual) pleasure (as argued in Chapter 4). Therefore, we need 'to stay and reckon with' the brutal capacities of the human mind to inflict extraordinary violence and suffering on the Other. We need to ask: where is pleasure hidden in violence? Is the imagery of violence only the fantasy of the man, or does it also capture the fantasy structure of the woman? Perhaps by reading the fantasy structure of the sexual can we open up the possibilities of what Drucilla Cornell calls the 'imaginary domain' of feminine desire.

Looking Forward

In recent years, psychology has manifested in law in a pronounced manner. Under the new Juvenile Justice Act (which lowers the age at which minors can be prosecuted as adults, from 18 to 16), the Juvenile Justice Board has been entrusted with the power to decide whether the accused should be tried in the adult court or not based on a preliminary assessment report. For such assessment, "the Board *may* take the assistance of experienced psychologists or psycho-social workers or other experts."[24] Already there is surmounting evidence of how the psychologisation of the juvenile justice process is leading to discriminatory and

[24] The Juvenile Justice (Care and Protection of Children) Act, 2015, s. 15 (emphasis mine).

arbitrary results.[25] There is no clarity on how such psychological assessments are to be done.[26] Even in criminal trials, there is an increasing influence of psychology and psychiatry on law. The reformative potential of the convict is determined based on the examination by psychiatrists and psychologists and evaluated on how close she came to the standards of accepted norms that construct normality and abnormality, conformity and deviance, reformability and incorrigibility.[27]

I wish to clarify that this work is *not* an argument for such an uncritical introduction of psychology/psychiatry/forensic psychology into law. Aware of how as a 'truth technology' psychology has contributed to the discursive construction and disciplining of juridical subjects,[28] this thesis makes no claims for turning to the sciences of the mind for therapeutic justice. Often arguments of introducing psychoanalysis/ psychology in law– recognising that criminals, clients, lawyers and judges are all influenced by unconscious motivations – lead to disturbing claims and conclusions. The proponents make problematic distinctions between "normal" clients and others: "Most clients are normal persons in whom unconscious strivings have far less effect upon

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25 Poonam Agarwal, "The New Juvenile Justice Act Has Opened a Can of Worms", *available at*: https://www.thequint.com/news/india/new-juvenile-justice-act-leads-to-fresh-problems (last visited on Jan. 26, 2018).

26 In some bizarre cases IQ tests are used for psycho-social profiling. "A year since the new Juvenile Justice Act came into being, chaos rules its implementation", *available at*: https://scroll.in/article/826668/a-year-since-the-new-juvenile-justice-act-came-into-being-chaos-rules-its-implementation (last visited on Jan. 26, 2018).

27 In *Bharat Singh* v. *State* (NCT of Delhi), MANU/DE/2754/2014, Murlidhar J declined to confirm the death sentence of the accused who was convicted of the rape and murder of a three year old child, relying on the report prepared by the Medical Board of the Institute of Human Behaviour and Allied Sciences (IHBS). This judgment no doubt is a noteworthy attempt to foreground the rehabilitation and reformation theories of punishment in the dominantly retributive mood of the criminal justice system in cases of sexual crimes, but the psychological profiling of the convict that the judge called for and relied upon is pointing towards a dangerous trend. The probationer's officer was called to prepare a report on two aspects: (i) Is there a probability that, in the future, the accused would commit criminal acts of violence and would constitute a continuing threat to society. (ii) Is there a probability that the accused can be reformed and rehabilitated? The report of the PO was supplemented with report of the IHBS prepared by Professors of Clinical Psychology, Professors of Psychiatry, a psychiatric social worker and a clinical psychologist. The report read as follows:

1. Medical Board did not find any evidence of major psychiatric illness, no maladaptive personality traits or disorder especially anti social personality.
2. As per the available information, there is no prior history of any alcoholism or any psychoactive substance abuse except Nicotine use.
3. In the above view, there is nothing to suggest that the index client cannot be reformed and reintegrated and reformative process through social correctional measures.

28 Michel Foucault, *Discipline and Punish: The Birth of the Prison* (Penguin, UK, 1991).

conscious mentation than in neurotics and psychotics."[29] Schoenfeld went on to argue that that guilt-laden criminals be dealt with, not in regular criminal courts, but in the courts for juveniles since neurotic criminals (except perhaps those guilty of heinous crimes) "according to psychoanalysts remain children emotionally."[30]

Psychoanalysis, according to him, would help the law-men evaluate modern tests for detecting lies and determine if these tests deserve courtroom recognition.[31] The most important point that marks these writings is that they both look at the unconscious as if it is readily, easily and transparently available to the law and unconscious forces as a 'problem' for law.[32] To them, law needs to be saved from the dangers of unconscious forces. The desire to introduce psychoanalysis is to strengthen the framework of law and protect it from the irrational desires and drives:[33]

> as lawyers learn more about unconscious forces, they will undoubtedly become better able to assess-and most important, to minimize-the effect of repressed desires and feelings upon the law. And the development of these abilities is eminently desirable, for it is surely untoward–nay, unconscionable–for the law to be the dupe of unconscious wishes, especially if these wishes reflect the primitive, irrational, archaic, and mutually contradictory ideas and impulses of early childhood. Rather, the law ought– to the greatest extent possible– be a product of sober, serious, informed, reflective adult thought. Hence the more lawyers know about unconscious motivation, the more likely it is that they will be able to help the law resist the influence of immature and irrational repressed urges-and in so doing, help the law become as mature and effective as possible.

At the risk of repetition, contrary to the above position, my argument is to turn to psychoanalysis *not* to protect law from the irrational forces of the unconscious of the subject. Instead, I employ psychoanalysis, following Žižek:[34]

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29 C.G. Schoenfeld, "Law and Unconscious Motivation" 8 *Howard L.J.* 15 (1962). Similar position of pathologisation of criminals and criminality are put forward in B. Uma Devi, *Arrest, Detention, and Criminal Justice System: Arrest, Detention, and Criminal Justice System: A Study in the Context of the Constitution of India* (Oxford University Press, 2012).

30 Schoenfeld, *id*. at 25.

31 It may be apposite to state here that the Supreme Court of India has rejected these forensic tests (polygraph, narco-analysis, brain profiling) as unconstitutional. *Selvi* v. *State of Karnataka* (2010) 7 SCC 263.

32 Nussbaum categorizes this formulation of the unconscious as 'mechanistic conception of emotions'.

33 Schoenfeld, *supra* note 29 at 25-26.

34 Slavoj Žižek, *How to Read Lacan* 3-4 (W.W. Norton and Company, New York, 2006).

> [*not* as] a theory and technique of treating psychic disturbances, but a theory and practice that confronts individuals with the most radical dimension of human existence. It does not show an individual the way to accommodate him- or herself to the demands of social reality; instead it explains how something like ' reality ' constitutes itself in the first place. It does not merely enable a human being to accept the repressed truth about him- or herself; it explains how the dimension of truth emerges in human reality […] the goal of psychoanalytic treatment is not the patient's wellbeing, successful social life or personal fulfillment, but to bring the patient to confront the elementary coordinates and deadlocks of his or her desire.

My argument is for evolving a "theory of readability" where psychoanalysis is employed as a critical methodology for reading the languages of law and the legal unconscious. It is an argument for a hermeneutic intervention by providing 'an alternative technique for interpreting law' where legal texts and narratives are read "in the symptomatic terms of their latent meanings."[35]

This hermeneutic technique will open up possibilities of reimagining both law as well as feminism. A critical response to the postcolonial contemporaneity, constituted as it is by the retributive *jouissance* of law, denial of sexual agency, proliferation of dangerous group identities, requires a radical shift from the liberal imagination of the subject and law. In our engagement with the law, we need to theoretically re-work the concepts of power, sexuality, victimhood, consent, agency, masculinity, femininity with a feminism, to return to Jacqueline Rose with whom I started this dissertation, which has "the courage of its contradictions" and the awareness that "all certainties come to grief."[36] This can only be worked out by acknowledging and working through the unconscious structure of our desires and our inner fascisms.[37] I have argued that only by stepping outside the realm of reason can feminism engage with law meaningfully because "making reason's diktat our sole mantra and guide is as impoverishing as it is deluded and dangerous."[38]

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35 Peter Goodrich, "Maladies of the Legal Soul: Psychoanalysis and Interpretation in Law" 54(3) *Washington and Lee Law Review* 1035, 1038 (1997).

36 Jacqueline Rose, *Women in Dark Times* 269 (Bloomsbury, London, 2014).

37 See Michel Foucault, "Preface" in Gilles Deleuze and Felix Guattari, *Anti-Oedipus: Capitalism and Schizophrenia* xi (University of Minnesota Press, Minneapolis, 1983) (Translated by Robert Hurley, Mark Seem, and Helen R. Lane).

38 Rose, *supra* note 36 at 260.

Feminism needs to embrace uncertainty in order to disrupt the psychic terrain of the L/law that remains entrenched in the rigid narratives of sexual difference, power and desire. We also need to accept and work to bring to light the devastating truths of our inner worlds which reside, again, not in the narratives of certainties of who we are and what we desire, but in the *ambivalence* of our psychic structures where the lines between hostility and vulnerability, love and hate are blurred. This feminism would compel us, for instance, to see (sexual) harassment not as a simplistic ruthless acting out of male power but also as a desperate and melancholic "male performative"[39] performed and performable by men, women and trans subjects that necessitates exploration. This feminism would further caution us against any idealization of the flaws of the divided self or of the experience and politics of traumatised subjects. For we may find, with Freud, that trauma leads not to openness and acceptance, "but to dogma and delusion"[40] and "the most historically attested response to trauma is to repeat it."[41] This feminism, in its quest for a compassionate law and therapeutic justice, will not be content with simplistic accounts of love and forgiveness[42] but will struggle with the ambivalence of love where we are always at the risk of destroying, and being destroyed by, the one we are most attached to. Unless we acknowledge this side of our sociality which is based on 'festive cruelty' and 'sadistic delight', we will not be able to imagine new accounts of relationality[43] and shake the foundations of the Symbolic.

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[39] See Jacqueline Rose, "I am a knife" 40(4) *London Review of Books* 3-11 (Feb, 2018), *available at*: https://www.lrb.co.uk/v40/n04/jacqueline-rose/i-am-a-knife (last visited on Apr. 14, 2018). Rose compellingly asks: "if harassment and sexual violence are, as a certain version of radical feminism would have it, the whole story of human sexuality, then we may as well lock the door on who we are and throw away the key. How can we acknowledge the viciousness of sexual harassment while leaving open the question of what sexuality at its wildest – most harmful and most exhilarating, sometimes both together – might be?" It is clear therefore, that to Rose the "fraudulent boast" is not just masculine (as it tends to be in the weaker moments of her account) or confinable to men but to all subjects.

[40] Jacqueline Rose, "Response to Edward Said" in Edward W. Said, *Freud and the Non-European* 69 (Verso, London, 2014).

[41] *Id.* at 77.

[42] Alan Norrie, "Love and Justice: Can we flourish without addressing the past?" 17(1) *Journal of Critical Realism* 17-33 (2018); Alan Norrie, "Love in Law's Shadow: Political Theory, Moral Psychology and Young Hegel's Critique of Punishment" XX(X) *Social and Legal Studies* 1, 6 (2018). I characterise Norrie's account of love as simplistic as it erases the Freudian idea of emotional ambivalence where the pleasure principle is intrinsically entangled with the death drive.

[43] See Judith Butler, "On Cruelty" 36 (14) *London Review of Books* 31-33 (Jul., 2014), *available at*: https://www.lrb.co.uk/v36/n14/judith-butler/on-cruelty (last visited on Apr. 23, 2018).