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# OUT-LAWING GOD THE DAUGHTER

EMILY ALBRINK FOWLER HARTIGAN\*

## OUTLAW DAUGHTERS, YOUNG AND ANCIENT

Struggling to reconcile her feminist spirituality with her tradition's legal code, the *halakah*, Jewish feminist theologian Judith Plaskow asks if law is a female form.<sup>1</sup> She contrasts the law's constriction and abstraction with traditional feminine characteristics of openness and fluidity. She locates herself as "standing again at Sinai," revisiting the place "before the law,"<sup>2</sup> now that daughters may stand as adults equal with the patriarchs. If she does not stand in vain, law's historically masculine incarnation is not law's "necessary" form. The negative face of law historically made by men is not inherently triumphant in law's very nature, for the old texts of our traditions contain the promise of the law written in our hearts,<sup>3</sup> a law that forgives and creates more than it forbids and punishes.

The traditionally forbidding visage of law mimics the constructed face of the "God of our Fathers"; the punitive Father God and the harsh letter of the law are connected in both their errors and their promises for transformation. My students of all genders find the repugnant aspects of law almost identical to the repellent idol of a simply patriarchal God: they say both are caught in rigid structure, "proclaimed on scrolls," "put in boxes," "set in stone."<sup>4</sup> Both the Father and His Law primarily impose their wills through "authority" and "force." Plaskow hopes to redeem her tradition through a God of relationship and love, affirming both law and a new feminine authority. Perhaps only such a law, with masculine and feminine in correct relation, can save law from sclerosis, from brittle stasis that leaves it victim to economic interests that may seem more viable than a

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1. JUDITH PLASKOW, *STANDING AGAIN AT SINAI* 65 (1990).

2. Jacques Derrida, *Force of Law: The "Mystical Foundation of Authority,"* 11 *CARDOZO L. REV.* 920, 993, 999 (1990).

3. *Jeremiah* 31:33. Unless otherwise stated, all Biblical references are from *THE NEW OXFORD ANNOTATED BIBLE WITH THE APOCRYPHA* (1973).

4. These are the students' phrases.

decrepit legal system. In concrete terms, such a supple law may let women practice law without giving up essential threads of themselves.<sup>5</sup> It also may free men to acknowledge their feminine sides, and to integrate this "other" aspect of themselves into their lives as lawyers. My belief that the law is finally not domination but gift, that it is not laid upon our backs so much as written in our hearts, animates this writing. I struggle to write myself free of the old, idolatrous law, becoming at times an outlaw in order to pass through the bandit's threshold into the spirit of law renewed.

I want to craft from the old foundational stories and the current legal storyline, a lawful place—nascent, alive, feminine—where women (and men) may feel, intuit, experience, sense, even pray, as well as reason about the legitimacy of their calling to the law. In this place, women are not misfits; they become gifts of change, difference and of renewal. This place is woven not by proclamation, but by strands of story and threads of poetic-reasoned reflection. From the extant story, my central move is beyond the dictatorial "Law of the Father," that civilization-founding discipline of political organization.<sup>6</sup> Law professor Jerome Frank and phenomenologist Jacques Lacan invoke the Law of the Father<sup>7</sup> whose core is as Robin West and others remind us,<sup>8</sup> patriarchal and "phallogocentric."<sup>9</sup> This law is necessary, punitive, foundational, dominating, stable, hierarchic, violent, ordering, coercive, predictable, commanding and repressive. In response to the father's discipline, a resistant counter-theme of the outlaw arises. In *Saint Genet*, Jean-Paul Sartre lauds writer/convict Jean Genet's

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5. For an account of how legal education confirms a masculine socialization process that women students disproportionately experience as antithetical to their identities, see generally Katharine T. Bartlett, *Feminist Perspectives on the Ideological Impact of Legal Education Upon the Profession*, 72 N.C. L. REV. 1259, 1260 (1994).

6. See generally JUDITH BUTLER, *BODIES THAT MATTER: ON THE DISCURSIVE LIMITS OF "SEX"* (1993).

7. See JEROME FRANK, *LAW AND THE MODERN MIND* 19 (1953).

8. See Robin West, *Law, Rights, and Other Totemic Illusions: Legal Liberalism and Freud's Theory of the Rule of Law*, 134 U. PA. L. REV. 817, 822-28 (1986) (quoting the key Freudian idea that "the primal father was the original image of God"); see also Jonathan Boyarin, *Another Abraham: Jewishness and the Law of the Father*, 9 YALE J.L. & HUMAN. 345 (1997). Also see the Washington & Lee Symposium on Lacan, especially, Jeanne Lorraine Schroeder, *Juno Moneta: On the Erotics of the Marketplace*, 54 WASH. & LEE L. REV. 995, 1008, 1012 nn.25, 30 (1997).

9. See generally JACQUES DERRIDA, *THE POST CARD* (Alan Bass trans., 1987); GEOFFREY BENNINGTON & JACQUES DERRIDA, *JACQUES DERRIDA* 206-07 (Geoffrey Bennington trans., 1993).

“criminal” rebellion against the stultifying bourgeois order.<sup>10</sup> A generation later, French feminists Hélène Cixous and Catherine Clément wrote a now-classic book translated as *The Newly Born Woman* but titled in French *La Jeune Née*.<sup>11</sup> The title, literally “the [feminine] young born” or “the [feminine] young newborn,” plays in its French pronunciation on *La Genet*—the feminine article, the name of the outlaw. Here Cixous proclaims that “[t]he law does not exist,”<sup>12</sup> that the law performs dirty tricks, that it uses mastery to make knowledge inaccessible, rendering the law “sacred” and unavailable.<sup>13</sup> Mastery, patriarchy, domination, use language to cloak power with the ghostly remnants of the true words, the undomesticated names of the deepest powers of humanity—thus, the penis becomes the socially constructed phallus, and the spectral rhetoric of political and economic apologetic saps authentic sexuality. True sexuality, true freedom, true love, true spirit and true law are obscured by the heavy, masking language of power, and by a dominant public discourse that uses words as tools to fabricate elaborate articulations severed from the body (of woman, man, earth and cosmos).

In contrast, the daughter imagines that law is available to all, *especially those oppressed* by masters. She envisions law beyond the system of domination, law once again sacred, inviting rather than forbidding through spirit—blessed, belonging to us all, holy, whole. I call on one outside (before and after) the “Law of the Father”: God the Daughter. In response, this text begins more than once. This Article springs from a place of silence that produces in a cadence unlike most public discourse on law, in writing that is not constructed primarily in logical sequence but first in a voice akin to Audre Lorde’s “Black mother poet” existing in everyone;<sup>14</sup> thus it grows in cycles of reflection, amending itself with filigrees of epicycles. The central voice is circling from mother to daughter, from law-abider to outlaw, and speaks an invitation to chaos and fire and newness and order and light and dark and serenity and paradox. It calls for a lawfulness so intense that it dances outside the “law.” My voice includes, as constitutive, but

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10. JEAN PAUL SARTRE, SAINT GENET: ACTOR AND MARTYR 652-53 (Bernard Frenchman trans., 1963) (1952).

11. HÉLÈNE CIXOUS & CATHERINE CLÉMENT, *THE NEWLY BORN WOMAN* (Betsy Wing trans., 1986).

12. *Id.* at 137.

13. *Id.* at 139.

14. To invoke a universalizing “everyone” is not to claim that I know what is in you more perceptively than you do, but that I know what is in me, and that she is available to you, through the invitation of those who know her.

not primary, "rationality." As Lorde notes, rationality is necessary: "It serves the chaos of knowledge. It serves feeling."<sup>15</sup> I need both old and new, rational and arational: I honor both, and by telling you just this I may give away my tools for negotiating how you may take my text. I have given myself away, but I will also reclaim myself and recall us to begin, begin again, each approach an attempt to be drawn closer to the unpronounceable truth.

I begin loving and resisting old texts. I undo and reweave texts of law, lifting new weft through old strands, in justice, toward liberation. Those who experience the given as a necessary, vested order may see my movement as destruction, yet I venture to tell a loving undoing of the binding stories that have left us, once their time was past, in profound need of searching just those stories for their newness. There is at the base of my offering a trust of human story and law, and of the process of reclamation, of recollection. I also offer contemporary stories of law, and recount how one generation-old story spoke eerily to mine, lapping at the edges of my reality. These stories are full of daughters, moving in time, time moving. They are not domesticated, these ancient and young wild women in the law.<sup>16</sup> Although they follow the law, neither the stories nor the Daughters "obey the rules."

### THE ITINERANT ETERNAL

Such telling, retelling stories touch, beyond my grasp of it, an integration among the diverse moves I make in order to know (always trailing along some unknown "I" who may or may not make herself known). If there is any unity to truth, then what I sense through all my searching and being searched may converge, if only in a *peripatetic absolute, a dancing essentialism*. Neither speech nor writing can contain truth, but they are at the points of intersection among avenues along which we travel in restless attempts to discern goodness, beauty, justice, love. And so it is not surprising to me that reading old writing, in present conversations about these texts, yields a way of knowing that this culture has forgotten, much as we have forgotten, our grandmothers.

This crucial form of knowing is woman's way in the law. It has never fully disappeared from Western legal thought. As Jacques Derrida's deconstruction manifests, the "other side," the "supplement" is

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15. AUDRE LORDE, *SISTER OUTSIDER* 100 (1984).

16. See, e.g., ALEX KATES SHULMAN, *A GOOD ENOUGH DAUGHTER: A MEMOIR* (1999) (a recent account of a feminist daughter's return to relationship with her parents).

necessary to and demi-visible in the dominant discourse.<sup>17</sup> Yet, the tenacious if unconscious suppression of the overtly feminine in the law is a weighty, almost crushing story. It inveighs the most profound taboos against women in law—those carrying the full inertia of the patriarchal religions. The desire to conquer superstition or the self-delusion of “primitive” mindsets contends against taking religious taboos seriously, however. Both to challenge and to honor religion will be a tricky business.

The modern sensibility imagines itself beyond religion, but to transcend the negative power of religion via “head” knowledge alone is not sufficient. I “know” that sexism is wrong but I expect to spend all my life learning what that means and how to come (daily) to a substantial, concrete consciousness of that abstract “truth.” Thus, to “know” that religion in history manifests and perhaps adds to ignorance and violence is not to transcend the evils of the spirit. The pronouncement that we want not to be racist is not to become unracist, as if the proposition “racism is wrong” were an incantation of full emotional, spiritual and intellectual cleansing. Legal scholar Derrick Bell reminds and reminds us<sup>18</sup> of the fact that such a discursive truth can only be lived into a semblance of reality through daily, hourly, even momentarily accepting the paradox that the consciousness of racism is so ingrained in us that we will never be fully free of it. So even for those who think to have escaped religion, or to be beyond an author who would belong to a Church, your embeddedness in human civilizations permeated by religious and mythic consciousness means that you are inevitable inheritors of this struggle. The “good news” of this may be the emerging, *multiple* attempts to reclaim spirit as a fundamental aspect of the human, even as the plurality of images of the divine becomes undeniable. Vigilance against power’s abuse, even the power of spirit, remains necessary—but wholesalé, undifferentiated denial of the redoubtable reality of spirit cannot sustain itself. Although the academic canon has tried to ban the spirit,<sup>19</sup> to render it alienatingly unordinary, the university and even the law school have not fully dispirited our talk nor circumscribed human discourse. I invoke spirit to tell my tale to untangle women from the prohibitions of millennia, to re-invite them into the law. Their exclusion has been

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17. See BENNINGTON & DERRIDA, *supra* note 9 (providing an introduction to Derrida’s extensive, difficult and profound corpus).

18. See generally DERRICK BELL, *AND WE ARE NOT SAVED* (1987); DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL* (1992).

19. See Suzanna Sherry, *The Sleep of Reason*, 84 GEO. L.J. 453 (1996).

both explicit and subterranean, so I must do more than announce a rule of inclusion; I must fully revise the existing story. Such revision is "outside" the old law, yet such outlawry is not simply a negation. Still, the outlaw tale must declare independence from and meet its adversary in order to know and love it. In the malleability of time, newness emerges in *the woman who studies, teaches, practices law*.

In my faith tradition, this outlaw lexophile is Mary (Miriam) of Bethany. However, as our world of tradition now includes a combative secularist strand, I also revisit the Greek "classics." Aeschylus' *Oresteia* depicts the institution of law by a woman who was, in today's terms gendered masculine—Athena.<sup>20</sup> That story, which according to Engels founded the patriarchy,<sup>21</sup> is also the story of the Furies, and their story has come to a time of new movement. Such new movements are akin to the loosening of the weave of a cloak or tablecloth, so that strange threads may be woven through. It is not to destroy the fabric of the old, but to make space between the strands which we have seen as tightly-knit, so that in this new, free space, the rest of the story may surface. The emergent pattern of the fabric will change, yet its integrity will be enhanced more than destroyed. I will try to follow the space in the text, to make way for these old stories to retell themselves, revealing what was previously densely veiled. Unsettling as such growing filaments may seem, they may enliven us all, make our cloaks warmer, and clothe a more inclusive table. However, they face resistance.

The powers against which my stories of Mary, the Furies, and their sisters are set are the dictums of tradition. They begin with the Fall, and they continue through Christianity, rabbinic Judaism and Islam—rife with potent taboos against women. In the midrash Genesis Rabba, the very cause of the Fall was Adam's presumption in teaching law to a woman. In another foundational narrative,<sup>22</sup> woman is defective for all central sacramental religious legal purposes, because without male genitals she is not in Christ's image. In yet another, as Jewish commentator Vanessa Ochs reminds us in her contemporary tale of these taboos, *Words on Fire*, "[t]he words of the

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20. See Grene & O'Flaherty, *infra* note 50.

21. See FREDERICK ENGELS, *THE ORIGIN OF THE FAMILY, PRIVATE PROPERTY, AND THE STATE* 30 (1972).

22. This refers to the embarrassing explanation of why women in my Church may not be ordained within the hierarchy of cultic priesthood.

Torah should be burnt rather than be taught to women.”<sup>23</sup> My story cannot avoid the Fall, or the “defective,” or the fire.

My storytelling may seem “defective” because it moves into a space that has been so thoroughly emptied that it has been forgotten, unrecognizable. It is the space of woman both publicly potent and cognizable as “privately” feminine in her consciousness. Woman has no historical place in the law; the law has historically had no story for woman’s experience. We were neither lawyers nor subjects of the law—only objects mediated by the true subjects, men. Each household had a head, as recently as John Rawls’ epochal *A Theory of Justice*,<sup>24</sup> and that head was its visible embodiment, the man. The rest of the family members, “women-and-children” were internal to the entity who spoke, legislated, contracted and had feelings and a story.<sup>25</sup> Women were crucial to family love, but had only a derivative public face.<sup>26</sup> The new guise of women, now that we have had the vote for most of this century and could practice law for decades (a very few . . .), is that woman *as other* calls for her equal but different place in public, and thus unavoidably changes the very warp and weft of the public and the private.

The move from pseudo-objectivity that encapsulates only the authoritative, universal (male) speaker’s subjectivity is evident in phenomenology, which focuses on the world as experienced by the subject. Experience is something everyone has, and it is not falsifiable by someone more articulate or powerful. Thus, the focus on experience opened the door of public discourse to those without credentials, without approved learning, without social status. Yet, as practiced by intellectuals, phenomenology hardly empowered women and other silenced groups. Much of phenomenological writing is at first, to the uninitiated, eerie.<sup>27</sup> It seems like solipsism, grounding in the idiosyncratic first person; it sounds like a spectral poetic of relationship—and it is so abstract. It is filled with the Self and the Self-Same and the Other and alterity, not with real people. It is also filled with men, writing of the feminine as the Other—even in the wonderfully warm

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23. VANESSA L. OCHS, *WORDS ON FIRE: ONE WOMAN’S JOURNEY INTO THE SACRED*, 199 (1990).

24. JOHN RAWLS, *A THEORY OF JUSTICE* (1971).

25. *Id.* at 128.

26. See generally JEAN BETHKE ELSHTAIN, *PUBLIC MAN, PRIVATE WOMAN: WOMEN IN SOCIAL AND POLITICAL THOUGHT* (1981).

27. See, e.g., EMMANUEL LEVINAS, *COLLECTED PHILOSOPHICAL PAPERS* (Alphonso Lingis trans., 1987); ALPHONSO LINGIS, *DEATHBOUND SUBJECTIVITY* (1989).



radical dialogism of Martin Buber's *I and Thou*, the Thou is feminine.<sup>28</sup> The one to be related to. What if the Other were to speak? This is, suddenly, the voice of the woman, *the Eternal Feminine talking back*, the statue of Gaitea coming to tangible, audible life. Once she comes alive, as Shaw's Professor Higgins finds out, she has a mind of her own.<sup>29</sup>

*Is that not what men have supposedly been waiting for? An equal other with whom to live in conversation?* (Paul Ricoeur agonizes to make space for *oneself as another*,<sup>30</sup> not seeming to know that in that very title he has named himself "anOther" not only as a generous speaker but also as the Other's beloved.) Yet despite the miracle of an emerging community of feminine Others, some persistently experience retellings as doing violence to cherished texts, as Out of bounds. I ask such defenders of the traditional classics to reconsider, to imagine that I love the texts no less than they—yet differently. I experience the texts as alive, inviting us to discern facets previously obscured by historical constraints, facets that constantly migrate to novel configurations within the texts. I invite into the out-circle of sacred texts, some just being written by the "newly born woman."<sup>31</sup>

### BODY AND BLOOD, SOUL AND DIVINITY

The Grail is the cup from which each individual life receives its essential food and drink: it is the chalice containing the mystery of blood and spirit: it is a maternal womb, the body of Mary herself.<sup>32</sup>

In our seminar on religious consciousness and law, Howard Lesnick and I had been treated to reflections on the resistances that sexism within religious traditions evoked for women students. Several of the Jewish women addressed the *mikveh*, the post-menstrual bath through which women become ritually pure, and their wavering reconciliations with it. These stories were somewhat familiar to me; I recalled the woman rabbinic student who first told me of her turn back to that ceremony of feminine re-entry into life and sexual activity, and her references to Rachel Adler's thought on the issues. Two days after the seminar, I picked up *Tikkun*, and saw on the front

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28. MARTIN BUBER, *I AND THOU* (Ronald G. Smith trans., 2d ed. 1958).

29. See generally GEORGE BERNARD SHAW, *PYGMALION* (1912).

30. See PAUL RICOEUR, *ONESELF AS ANOTHER* (Kathleen Blamey trans., 1992).

31. See CIXOUS & CLÉMENT, *supra* note 11.

32. HELEN M. LUKE, *KALEIDOSCOPE* 73 (1993).

“Blood and Purity, Rachel Adler.”<sup>33</sup> Adler’s article announced a steep, rich change in her perspective. She wrote of the class system which ideas of purity and impurity created in Judaism, of the gendered use of *niddah* (impurity) that connotes abhorrence and repulsion. Her earlier theology had claimed that impurity was universal; she had seen the rituals of female purification as part of a cycle of purification that was natural and neutral. In this article, she faced her realization that “ancient Israelite religion [drew] a crucial distinction between men’s and women’s capacities for holiness.”<sup>34</sup> While menstrual blood has the capacity to contaminate, circumcision blood has the power to create covenant, she argued. She noted that all along, Judaic notions of purity had fallen with unequal condemnatory force on women. According to her, “[t]he social reality, since the rabbinic period at least, was that impurity was feminine.”<sup>35</sup> *Tikkun* editors had chosen for the large italic inset, this excerpt: “Human bleeds. Human births its worlds in agonies of blood and bellyaches. . . . I tear Your Torah verse from verse, until it is broken and bleeding just like me.”<sup>36</sup>

The editors did not highlight the next sentence: “Over and over I find You in the bloody fragments.” Adler was still in conversation with “*Eheyeh*, creator of a world of blood.”<sup>37</sup> It is *Ehyeh*—coming from *ehyeh asher ehyeh*<sup>38</sup> (which may be translated *I am becoming Who I am becoming*) spoken to Moses on Horeb—whom she addresses as “You,” and she hears back a counsel of love through Torah. It is this *continuing, ongoing, outgoing* conversation in the feminine revisions of text, that is the movement I am following in reimagining scripture. Crucial to that process is contemporary conversation among people studying scripture. One way sacred texts live and grow for me is illustrated by what happened the day after I read Adler. In a class on the Gospel of John, a text that evokes radical ambivalence for me because of its surface anti-Semitism, we began to work with the story of the wedding feast at Cana, Jesus’ first “sign” of changing water into wine.

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33. Rachel Adler, *In Your Blood, Live: Re-Visions of a Theology of Purity*, 8 *TIKKUN* 38 (1993).

34. *Id.* at 40.

35. *Id.*

36. *Id.*

37. *Id.*

38. Catherine M. LaCugna, *The Relational God: Aquinas and Beyond*, 46 *THEOLOGICAL STUD.* 647, 647 (1985) (providing another provocative translation).

The teacher, Chris Ravndal, asked about what sort of purification the water, once put in the jars, might be for. Scholarly sources seemed puzzled over that, he and the class concluded. One man in his late sixties said he was just letting his imagination go wild. He said he began to get images of the story. He focused on the stone jars. They held thirty gallons, he noted, each of those six jars. They were for ritual cleansing, and he began to imagine that they, being of stone not clay, were not tight-necked high jars, but wide, low, generous jars—open enough, he said, for immersion. He seemed to be thinking of the baptismal theme, but I went back to Adler. Suddenly this older white male had provided an image which opened the story to something I would have been unable to think on my own—the outrageous image of these six containers as early *mikveh* baths. Even more outrageous, unacceptable, wildly ironic images followed: the turning of the clear water into the red fluid. Jesus might have been reversing the order of things beyond the depth of the most profound blood taboos, the most radical repulsion. The wine that foreshadows the communion wine, the blood of Christ, was perhaps also the turning of this oppressive ritual into one of life. The water that was to overcome any vestiges of menstrual blood was instead turned the red of celebration of new life. The wedding feast is in vain if the woman has none of the blood of life, the lining of the womb which welcomes the sperm and egg and is the child's first home.

With this shift, the details of this most sketchy story can come to new resolution. Jesus does not start the story, his mother does. She is invited to the wedding. Jesus and his disciples follow. She tells him of the lack of wine, the festival drink. He replies with a Hebrew expression which means, why should I become involved in this concern of yours? Her concern is that of Woman, the name by which He addresses her (without the article, jarring into symbol)—and Woman is Life. Human life. He says His hour has not yet come. But when she instructs the servants to do what He says, canny mother that she is, He takes the step into history. He had already separated from His mother, having gone about His Father's business at twelve, entering the all-male world of Temple learning. But now He leaves His masculine private life; He begins public signs, meaning in public. And He begins by filling the jars of female subordination with the water of life that He then turns into blood red wine. He simply tells the servants to fill the jars with water, and then to draw out and take to the steward. Imagine being given a cup of dark red liquid from the menstrual bath containers, when at least your servants knew that it was poured in as

water moments before. That Christians drink the blood of Christ is strange enough, for those outside the tradition—but that it might also be menstrual blood, transfigured, transubstantiated, into wine, is that not unthinkable?

As I turned the strange image in my mind—the underservants first told by Mary the true authority to do what Jesus told them, then in thrall to His off-stride directions (pour water into the containers, then draw some of it off and give it to their chief steward), surely terrified that the crimson fluid would be more than sacrilege—I thought of the unspoken revulsion of the idea of putting mouth to a vessel of filth which African-American law professor Patricia Williams evoked. She told the powerful story of her law school classmate whom a police officer put at gunpoint for refusing to pay for sour milk in a Southern diner. Her friend marveled that no one was interested in whether she was telling the truth that the milk was sour. The glass sat on the counter, but “nobody would taste it because a black woman’s lips had touched it.”<sup>39</sup> The like possibility that the man in charge might drink menstrual blood is almost more than I could bear to put into words. Touching the impurity reversed the law, turning from “clarity” to dusky, heady drink. Jesus inverted the order that cursed woman putting her out of reach for half of each lunar circuit. With a conjuring trick redolent of adolescent fantasy-jokes, He produced the finest wine. And is such outrageous behavior not possible for a Jesus who talked openly with women, broke all sorts of ritual rules, taught that the Sabbath laws were made for us, not us for the laws, preached that we must look to the fuller reality rather than being blinded by letter alone—and promised, miraculously, that love would fulfill every jot and tittle of the law?

### THINGS HIDDEN

[The encyclical on birth control] in fact leaves one with the feeling that the church is exalting physical values far above the truths of heart and spirit. Instead, she could, if she would, proclaim the truth that every true meeting between the opposites *must* give birth or it is a fruitless mingling, the sin of destroying meaning.<sup>40</sup>

I approach another taboo for contemporary discourse. I am about to tell an understory, an inside story, the personal side, of my

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39. PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* 57 (1991).

40. HELEN M. LUKE, *THE VOICE WITHIN: LOVE AND VIRTUE IN THE AGE OF THE SPIRIT* 9 (1984).

federal clerkship's perspective on my judge. This is the living story, one that the protagonists have altered themselves. I started to write this story once before, but it was not time. Then, I began in a conversation with my research assistant. In reaching to show her constitutional commentator Professor Sandy Levinson's book titled *Constitutional Faith*,<sup>41</sup> I opened to the newspaper clipping I had inserted in the book. In the soft picture were two women and a man, all three of whom Sandy knew from his federal clerkship. Five years after him, I had gone to clerk for the same judge, one of the most courageous Southern judges of the era of 1960s desegregation. There in the picture were the judge and his secretary of thirty years, and her replacement; having decided she wanted to live some of her retirement while she could still enjoy her husband and many of her wide interests, she found the only graceful way out of what I admiringly call a work marriage, by getting her daughter to come work in the court. The three of them, mother, daughter and workaholic judge, smiled the genuine felicity of the new arrangement.

So I began to tell my assistant about the woman, whom I can now name because the judge is dead, and her role in that federal court. I recounted first Sandy's observation some years back that as between the two of them, the judge and his alleged inferior, he would rather hear her life story (it began, I noted, some time before she left school in the tenth grade and got married in Georgia at age 15). Then I tried to tell quickly how the reality which Mrs. Wentz (for he never indulged in the asymmetry of using her first name, never once called her Edna) could tell, related to the story the judge (James B. McMullan) would spin. For instance, their versions of how she and then he left the law firm in which he was a named partner and eventually landed in that federal courthouse together, differed. She told a story of the unfairness in the firm, and her inability to abide how the women were treated. He said it was her "time of life," that she was going through menopause. I told her I thought she was the one who led him, unknowing in the Spirit, to the historic situation in which he eventually issued the first major bussing order in the U.S., desegregating a huge metropolitan area with what is still acknowledged as an anomalous success among years and states of court-ordered plans.<sup>42</sup>

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41. SANFORD LEVINSON, *CONSTITUTIONAL FAITH* (1988).

42. See generally FRYE GAILLARD, *THE DREAM LONG DEFERRED* 39-53 (1988) (describing the case of *Swann v. Charlotte-Mecklenburg Bd. of Education*, 404 U.S. 811 (1971)).

Time passed, and the article my assistant and I hoped to write fell victim to her final exam schedule. I was embattled in my scholarship and caught up in other projects. One winter day at the height of my struggles, I got a letter “to all the law clerks.” This was out of season; every year, the old clerks gathered for a dinner to honor the judge—but that annual letter came in late spring. This one was about his cancer, and multiple surgeries, and hospitalization. I called the house, expecting that he wouldn’t be able to talk, but he picked up the phone. He sounded rotten, though reminiscently feisty. I knew from having called Mrs. Wentz that there was great fear for his survival. I ended up promising him that if he’d just live, I’d come visit him—one of our ongoing tussles had left me disinclined for the last couple of years to spend the time and money to go half-way across the country, and I had missed the dinners. (I continued to visit Mrs. Wentz.)

We both survived the spring, and in the summer I made my visit. As usual, I stayed with the Wentzes and we talked late the night before I was to visit with Judge McMillan. She was concerned that they begin to write his story<sup>43</sup>—he was on senior status, and she had had several years of retirement, and he was failing. I noted that it could not be just his story, that she had shaped all of what happened. She demurred, but as I prompted with echoes of old story strands, she began to tell her versions. One of her sagas was about that move from the law firm, another about a case the Judge<sup>44</sup> had heard sitting with a panel of the D.C. Circuit Court of Appeals. I knew the law firm story, but the D.C. case was less familiar.

She said it was a rape case, and that the appellate judges were tending toward letting the defendants all off the hook.<sup>45</sup> A woman had agreed to accept delivery for a friend, of a mattress and springs ordered from an appliance store, and the delivery service man had come to her door. When she had argued with him about whether he

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43. He did not live to do so. Both he and she have read my rendition of their story; I have added a few of my praises for her since, as she might have resisted them, and I feel led to say them anyhow. She is truly remarkable.

44. One of the issues I had was how to address him. I had a strong sense of the Quaker rejection of honorific titles; he had a sense of the formal that meant even long-time former clerks called him “the Judge” and addressed him as “Judge.” Eventually he signed letters to the clerks “Judge” but he and I had worked out a different arrangement. Because of a passage from theologian Henri Nouwen that I had sent him about Person meaning someone who passed through (*per* and *sonnare* are the etymological roots of the word) a reality greater than could be contained, after years of our differing on whether male/female difference was primary (I was in my neutral stage of feminist equality), we settled on Person, which is what I called him. Mrs. Wentz called him “the Judge.” The other clerks used Mrs. Wentz; after my clerkship, I called her Edna.

45. *Lyon v. Carey*, 533 F.2d 649 (D.C. Cir. 1976).

would bring it up to the apartment and how she would pay, he had gotten very angry with her. He then forcibly raped her. The panel was initially inclined to let the deliveryman's employer out of the case, leaving no defendants except the indigent deliverer. Mrs. Wentz had resorted to her common sense, an aspect of her that so radically complemented her nearly perfect grammar and her considerable reasoning powers that only her luminous faith overshadowed them. She told McMillan that it was ridiculous to say that the delivery was not in the course of this man's employment—that somehow the rape was unrelated to the job. She said what those three men needed was a woman's perspective. She proceeded to provide that.

McMillan went to the panel with his proposed view of the case, and turned things around. (I immediately interrupted Mrs. Wentz: "Was MacKinnon on the panel?!" When Mrs. Wentz' daughter gave me the opinion later that day in chambers, there was Catharine MacKinnon's father—one of the uncanny touches I have come to expect from the strange and wonderful force field Mrs. Wentz and the Judge inhabited.)<sup>46</sup> And McMillan's opinion was clear and prescient, indicating an appreciation of rape as a crime of violence and domination in a way only one of his incredible commonplace metaphors could convey. Back in 1976, this man with whom I had a running battle over his gentrified, dated Southern view of women, analyzed the incident in terms of friction and anger, and gave the plaintiff a chance for recovery. His final imagery was so simple and direct that even now it takes me aback. After first depicting the interaction as one in which "deliverymen" [sic]<sup>47</sup> were foreseeably put in situations where tension could develop with customers and precipitate violence, he then repeated the trial testimony, giving the woman her own voice. Next, he proceeded through a sophisticated analysis of the points of law. If an assault arose out of the interactions with the customer, the master could be held liable. This was a question of fact, not for the court to decide (nor as the lower court had, to set aside a verdict by a jury for the plaintiff). He concluded that the case should not be taken from the jury solely because, "instead of a rod of wood . . . *in addition* to weapons of steel . . . and *in addition* to his hands . . . , [the delivery person]

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46. Its uncanniness is amplified: a footnote tells the reader that the three-judge panel consisted of MacKinnon, Leventhal and McMillan, yet MacKinnon did not participate in the decision.

47. This is a *deliberate* incongruity, to catch the reader, to point to the *gender* (footnote required by editor).

also employed a sexual weapon—a rod of flesh and blood—in the pursuit of a job-related controversy.”<sup>48</sup>

With his phrase, “a rod of flesh and blood,” McMillan steered the case from the ultra-personal sexual realm from which the lower court drew an implication of pure idiosyncrasy, and returned it to the area of sexual politics which Judge MacKinnon’s daughter was to make so famous. This was vintage Wentz and McMillan.

I never should have forgotten that McMillan could surprise me, however. I talked to him about the “rod of flesh and blood” case, and I telegraphed my concern with the woman’s “side” of the story, and Wentz’s role in his judicial life. When we got to lunch, I asked him about how he ended up on the federal bench. I had heard versions, over the years, from others—including the alleged remark by Senator Sam Ervin that recommending McMillan was the biggest mistake he ever made—but never his full version. He told me of the law firm, and how Mrs. Wentz was hounded out of it. He said that when Mrs. Wentz left, she said to him “When you get to be a federal judge, then I’ll be glad to come work for you.” The thought of being a federal judge had never seriously occurred to him, he recounted. It had been her idea.

Incredulous, I asked him if he had ever told what he’d just said, to anyone else, including Mrs. Wentz. No, he said; no one had ever asked him. And there’s truth to that. This man knew, since the first ten minutes of her initial job interview, the value of Mrs. Wentz. He has not always volunteered its full due but he has named it and listened for her wisdom for all these years. He put up with her wrangling with him, her uppity ways, her failure to fit into her gender role because she overflowed with perceptiveness, faith and strength. From his class, gender and historical vantage, it took courage and humor and sometimes raw persistence—yet he recognized how much he learned. He knew that she often had a finer sense for justice than he. And he was willing to write her into the story, even when he knew I was biased in her favor.

He did not have to reveal so much—I was ready to draw the implications of what was obvious to me, and even to Mrs. Wentz: he came to the bench just in time to become outrageously entangled in school desegregation. He went out, often at night, during the initial trial and visited every single school building in the county. He saw the

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48. *Lyon*, 553 F.2d at 653.



places, and met the people involved, in the daily life of a major Southern urban school system. And then he ordered, for the first time in any appreciable case, countywide bussing. He had to move from his home, when the threats turned into an actual bombing of the plaintiff's black attorney's home. He was removed from his church's board of elders. Former friends got up and left their tables, when he entered the country club dining room. His children were threatened. This man who was as kind and patient as any I have met, felt compelled to carry a gun. Yet, there was almost palpable reality to the joke that no one who knew Mrs. Wentz would dare harm him. She was his fierceness, and he her enduring, courageous presence in the world of "power." Yet, I had envisioned her role in his appointment as more of a "but for" than his story revealed: he saw it as her idea from the beginning. His vision left no onus of interpretation on me, no leaps of inference that risked intruding on his reality. It also reminded me of my lingering inability to imagine fully this woman's worth, of my always being surprised by the gift of her. It called to mind the times when his moral energy flagged, and her redoubtable faith moved in to steady, strengthen and love.

After giving his story away to Mrs. Wentz, McMillan gave me a gift he could not have understood. He began to tell his version of why the senior partner had been so merciless against her. She had remembered it as the partner's sexism in general. She recalled Elsie, the faithful bookkeeper who, when she was trapped by time and age in the firm, was passed by as others' salaries were raised. Elsie used to write the payroll checks, with tears running down her cheeks, Wentz recounted with anger each time she told me over the years. McMillan saw it as more pointed, concentrated against Mrs. Wentz—why, I asked, aside from her indomitable competence and presence? Because, he explained, Mrs. Wentz knew the partner had epilepsy, a condition he hid, and it was simply intolerable for him that she, a mere woman and "underling," knew that private weakness. She would be the literal last person to hold such a fact against anyone, but the partner could not tolerate her knowing. The day McMillan told me this was two weeks after the hearing against my dean, back where I had taught for several years. The Faculty Senate Professional Conduct Committee found him to have committed serious professional misconduct against me; they asked me why he was so irrational about me. I said I did not want to psychologize him. But it is precisely the supposed intimate information I knew about him, that he said justified his showing "incendiary gossip" (the Committee's words in their initial

report) from my tenure file to someone not involved in the tenure process. He claimed I said something I had not about someone in his family (though it would not have been in my lexicon an insult). Mrs. Wentz told me later that she had no idea the partner had epilepsy. What McMillan was telling me was the crucial insight into masculine psychology, and the mirror tragedy of that partner's self-and-other-condemnation nearly thirty years ago. The fear that women knew the hiddenness of their lives rendered these two men incapable of tolerating the women's existence in their world of work. When she was driven from the firm, Mrs. Wentz was exactly the age I was when denied tenure. Her story revealed the paranoia of the partner; her life gave me promise for the future and solidarity for the present.

McMillan's part of the tale, his revelation of more than could conclusively be read into what was known from the outside and his portrait of his partner's psyche, marks the sort of gift which those who live by patriarchal power are uniquely stationed to contribute to our shared stories. It reminded me of something my friends who work with incest victims tell me is nearly unheard of, but of which I know one blessed instance. A dear friend of mine has in her extended family a man who was a stepfather. His daughter and then my friend's daughter began to remember inappropriate actions on his part. In the crisis of complicated family counseling, after the most affected young woman returned to psychosis, the stepfather told the therapist something to be used by the therapist for the benefit of the daughter and the rest. He remembered doing more than the young woman had been able to bear to recollect. Without further accusation, he rummaged in the dark corners of his mind, and came forward with the outrageous truth. He did not blurt it out, but told it during solitary session, to be used for the good of the victim. He then suffered a stroke, from which he never quite recovered. I do not understand the stroke, but I celebrate his gift, his prodigal spending of his own storyblood, for healing. McMillan was in a more fortunate position. What he had to tell is good news all around. But it let a strong woman into the center of the story, into the middle of history. It acknowledged that their move—hers, and his when, a year after she quit the firm, he came (as she knew he would) to her house to ask her to come be secretary for a federal judge—was a dance of partnership, of mutual regard, of co-authorship. And he rejoiced in honoring her, even more than in out-maneuvering me, in telling the story. It is, as I promised him but he was able to ensure, his story, and hers. This re-visioning's dance of loving response between men and women

promises an undictated, interwoven human text, peopled by transfigured men and women, moving in the ground of the Spirit.

So where is the female figure in the story of Western law up until Edna Wentz, until this nascent interweaving? For me, she is in the Furies and the Eumenides, and then in Mary of Bethany. She is the spirit of the law, and she is embodied in the spirit of Mary who not only chose "the better" (or the "good") part, but who also anointed the Anointed One, for that is what Messiah means.

### SUING FOR LOVE

to arrive at being,  
as she the Old Mother has done  
in the root place, the hewn  
wooden cave, home  
of shadow and flame, of  
language, gradual stillness,  
blessing.

Denise Levertov, *Dream Instruction*<sup>49</sup>

First, we turn to Aeschylus.<sup>50</sup> In this fundamental mythic "tragedy" (though it has an ostensibly happy ending), the leader of the Greek forces that triumphed over Troy, Agamemnon, straggles back with a tiny portion of his men. He brings along Cassandra the Trojan prophetess, and is greeted by his wife Clytemnestra, the mother of Orestes, Electra and the youngest daughter, Iphigenia. Iphigenia had been sacrificed without feeling at the outset of the war by her father, to save his embarking fleet. Clytemnestra has taken up with Aegisthus (who has a deep family blood quarrel with Agamemnon) and plans to murder her husband; this she does with carnal relish. Meanwhile, Orestes has decided to return home, and he and Electra work themselves up to the task directed by Apollo: the murder of their mother. Orestes overcomes his ambivalence and kills Clytemnestra to her cries of betrayal, and then is driven mad by the Furies whose role is, in Robert Graves' words, "to hear complaints brought by mortals against the insolence of the young to the aged, of children to parents, of hosts to guests . . . and to punish such crimes by hounding the culprits relentlessly, without rest or pause, from city to city and from country to country."<sup>51</sup>

49. DENISE LEVERTOV, *EVENING TRAIN* 61 (1992).

50. See AESCHYLUS, *THE ORESTEIA* (David Grene & Wendy Doniger O'Flaherty trans., 1989) [hereinafter Grene & O'Flaherty].

51. ROBERT GRAVES, *THE GREEK MYTHS* 122 (1955).

The Furies, who are older than Zeus, rage when Athena sets up the Areopagus, the court on the Acropolis where juries will hear such capital crimes as matricide. They battle with Apollo for the votes of the citizens; the votes come out evenly divided for and against Orestes. Athena then breaks the tie in his favor and proceeds to talk with the Furies to get them to accept a positive role in the city's future. They finally acquiesce, and all the women of the city process underground with the Furies, into "holy silence."<sup>52</sup>

Throughout the *Oresteia*, the strange and motivating presence is the Furies. In their staging of the abridged play, a trio at the University of Chicago chose to make the Furies shapeless, dark, mysterious.<sup>53</sup> Yet, it is the Furies' power that Athena must have, if she is to craft a polity where the rule of law can live. They are unknowable, invisible (they do not reappear after their parade underground), and absolutely vital.<sup>54</sup> These wild, fearful, passionate manifestations of the feminine must accept some vestige of domestication for Athens to move from blood feud to law—yet Aeschylus tell us of the weird bargain made with them, a bargain since broken. This contemporary stance of infidelity to the invisible feminine spirit, is the undoing of the state as true community—I see that shattering, freeing judgment in both my re-textured story and in Aeschylus.

I initially taught the *Oresteia* because of a remark I made in Jurisprudence class: that I hoped to give power to the students, to let them take the initiative in the governance of the class as an exercise in the constitution of a legal community. I mentioned that in my opinion, matricide would not be necessary. One of the men was reading Aeschylus' trilogy on the foundation of the legal order, written to allow a one-evening rendition of the entire saga. He said my reference raised for him the implications of mother-murder, and of the ruses used to avoid its consequences for Orestes. Months later, this student ended up reading Orestes' part, when the class read the play in my basement to make up the two weeks of class I had missed because of my father's final illness, death and burial. We had a wonderful set of plays within

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52. See Grene & O'Flaherty, *supra* note 50, at 249.

53. Nicholas Rudall, *The Oresteia: The Theoretical Perspective*, in Grene & O'Flaherty, *supra* note 50, at 22.

54. One reason they are vital is that they represent the dwellers in the "empty tomb" of my tradition, the dark space is the blessed chaos that marks the final step before the mediation of all the oppositions both in the Christian story and in the deconstructive world-connecting/dividing abyss. An eloquent placement of this in feminist theology appears in RITA NAKASHIMA BROCK, *JOURNEYS BY HEART: A CHRISTOLOGY OF EROTIC POWER* 102 (1988).

plays, and the most sought-after parts were, by then, the Furies themselves.

Early in the reading, after stumbling over what were to her unpronounceable Greek names, the student playing Clytemnestra simply redubbed Aegisthus "Ricky." From then on, Orestes was Bob (even though the part was read by a real Sam), Clytemnestra was Sally. The students were distancing the play to a safe focal point, and only Sally, the law review's editor-in-chief, could carry her true name. Thus the solemn substitution of "Ricky" in the text produced constant laughter as the blood spilled and the radically mythic power of the plays was diluted to potable strength. By the Libation Bearers,<sup>55</sup> everyone was attentive, and the audience was set for the Chorus that suddenly lapsed into a weird singsong. Later, they explained that they began spontaneously to imitate a Saturday Night Live routine with Tonto, Tarzan and Frankenstein's Monster.

These three men, delighting in the sly parody yet also very earnest in the venture into Greek myth that one student called "intellectual bungee-jumping," foreshadowed the three most powerful older women in the class, who had chosen the Furies' parts with unlawful glee. The humor, the typecasting, the double-naming, kept an intense interaction with the play and within the class, alive. In a class populated by a spectrum from right-wing Republican men to instinctual feminist older women, this reading was an already-challenged mimesis of the foundation of the patriarchy.

The women intuitively liked the Furies, though their ambivalence wavered between rejoicing in the old goddesses' patent wildness and indestructibility and recoiling from their venom and indescribability. Once it was clear that a "kindly" deal had been struck, some of the class felt freed to cast the Furies as the spirit of the law and as the feminine-betrayed, simultaneously. There is a vantage from which this simultaneity is felicitous, from which the patriarchy has its virtues and the matriarchy had its vices, and that which is beyond both still resounds in Aeschylus' text. One version of that resonance beyond the author's consciousness is Yale literary pundit Harold Bloom's: he sees the unintended rhetorical victory as Clytemnestra's; he says she is the triumphant, dominant image in her final moves in her campaign against maleness. Bloom locates her in the "darkness of the war between men and women," from which Clytemnestra "goes on calling

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55. See Grene & O'Flaherty, *supra* note 50, at 209.

to the sleeping Furies: 'Up, let not work's weariness/beat you, nor slacken with sleep so you forget my pain'.<sup>56</sup>

I agree with Bloom that the animating presence in the play keeps calling, but I think he is still stuck on the mother, while it is the Daughters of the Night who have begun to recognize that the bargain struck with Athena was not only coerced but also has been breached, and that it is time to renegotiate. It is not Clytemnestra who most strikes me, but the Furies. And in further disagreement with Bloom, I think that the reclamation of feminine power implicit here is not so much a call to arm for war, as one *to stand equal so as to sue for love*.

The "malestream" story of today would have neither disturbance—neither fire of battle nor of passion. Instead, the reasonable, rational, objective patriarchy would continue with what Helen Cixous<sup>57</sup> calls the "long inertia of the foreseen."<sup>58</sup> Yet, such continuity is no longer possible without interruption because "old boys" talk cannot yet hear polite requests for time to speak made by those outside that "tranquilizing and anaesthetic" droning of the law imposed by Orestes.<sup>59</sup> What counts as legal discourse is increasingly suffocating. It weighs down the spirits of the young who populate law school classrooms, those who must suffer bureaucracies, and the ordinary person who has stopped listening to the legislators because there is no remaining hope of true talk. Lethal law continues to paper its "pretty pace" over the cracks shouted by deconstruction, dutifully marching into the abyss at right angles, carving a sharp, martial vertical turn, blinding us to flight or newness. But in the abyss, Orestes' deaf troops will meet the Daughters of the Night, the sisters who have made the world, the Fates and the Furies, freedom and necessity. And the wild women of the abyss will climb back into the upper world of discourse, shattering the old violence as Judith vowed to shatter Holophernes' war.<sup>60</sup> The Furies do not come to take over the conversation, but to re-invigorate the questions Athena presumed to settle, to re-locate the hearth and to re-animate the polis.

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56. Harold Bloom, *Introduction to MODERN CRITICAL INTERPRETATIONS: AESCHYLUS'S THE ORESTEIA* 1, 4 (Harold Bloom ed., 1988) [hereinafter *MODERN CRITICAL INTERPRETATIONS*].

57. See generally CIXOUS & CLÉMENT, *supra* note 11.

58. *Id.* at 112.

59. *Ibid.* at 112.

60. The Hebrew book of *Judith* is included in the Roman Catholic canon of the Hebrew scripture. See *THE ANCHOR BIBLE, JUDITH* (Carey A. Moore trans., 1985) (1964).

Athena would not be surprised. She set the "spirits who are large, difficult to soften"<sup>61</sup> to the "handling entire of men's [sic] lives"<sup>62</sup> and heard their invocation to their sister "steering spirits of law"<sup>63</sup> as the Eumenides accepted their place.<sup>64</sup> The concern with place voiced by the Furies echoes in the French feminists' reminder that women have had no true place in our civilization<sup>65</sup> because the place inhabited by the Furies has been rendered invisible. The "primeval dark of earth-hollows"<sup>66</sup> was not, as Athena promised, "held in high veneration"<sup>67</sup> but demonized and banished as unenlightened. The silence that was invoked twice in the final Chorus of the women as a blessing, became funerary. The promise in retrospect was illusory: "[A] place free of all grief and pain,"<sup>68</sup> and the dire prophecy was to come true: Athena has let the elder god[dess] be driven "unfriended from the land."<sup>69</sup> The promise of the Goddess of Wisdom who did not know she had a mother (because Zeus had swallowed her) and who sided with the man, cannot sustain the bond necessary for the community to flourish. Athena promised "a place . . . deep hidden under ground"<sup>70</sup> where the Furies would accept devotions offered by the citizens—and we have ceased offering devotions to the underground power of the feminine, stopped venerating the power of the arational, failed in recognizing the woman's place in public economy. We have perverted both the wondrous chthonic power of the subterranean and the promise on which the dualism between public and private was forged.

That promise was wrong (and right) from the start, as perhaps all coherent promises are. It is not only that Apollo's biology was amiss, pretending that the woman had no blood tie to the child because the mother was only an empty vessel for male insemination, or even that Apollo posed as a Fury by threatening Orestes with his hounding should Orestes not kill his mother, but that Athena used the guise of Persuasion to cover a move of naked coercion. Catherine MacKinnon

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61. Aeschylus, *The Eumenides*, in GREEK TRAGEDIES, VOL. 3, 38:929 (David Grene & Richmond Lattimore eds., Richmond Lattimore trans., 1960) [hereinafter Grene & Lattimore].

62. *Id.* at 38:930-31.

63. *Id.* at 39:961.

64. *Id.* at lines 38:928-31, 39:961-63.

65. See generally CIXOUS & CLÉMENT, *supra* note 11; LUCE IRIGARAY, *AN ETHICS OF SEXUAL DIFFERENCE* (1993).

66. Grene & Lattimore, *supra* note 61, at 41:1036.

67. *Id.* at 41:1037.

68. *Id.* at 36:893.

69. *Id.* at 36:883.

70. *Id.* at 33:804-05.

is prefigured in the wicked irony of Athena's call to the Furies to be reasonable: "I have Zeus behind me. Do we need to speak of that? I am the only god who knows the key to where his thunderbolts are locked. We do not need such, do we?"<sup>71</sup> Any talk after such a threat is neither clear nor free. Any Furious move underground is coerced, tainted, prostituted. The "Kindly Ones" have been overpowered partners in the sexual contract that is every bit as unfree as MacKinnon argues. Zeus' world, with matronizing Eumenides and patronizing bolt-hurlers, rests on radically compromised law and love, both.

Harold Bloom and the men commentators seem to have failed in nerve, or imagination. Clytemnestra is not the most vivid figure in the *Oresteia* nor in the story of law—the Furies are. In one guise, they are the specter of the resurrection of blood feud that I find is almost always invoked in conversation with men about much of what I have just written. In a much more promising guise, for those of us who see the evil as *privato bonum* (the absence of good), the image of evil that the masculine depiction of the Furies creates is a powerfully promising imaginative space. It is one locus of the "feminine Imaginary" proposed to counter Lacan. Think of this description, for example, as redeemable: "Something worse even than the worst horrors created by the ancient mythic imagination has crept out of the pit."<sup>72</sup>

That is Yale's John Herington in Bloom's edited volume on the *Oresteia*. These creatures who are more terrible than the Harpies or the Gorgons, these mark the space into which the newly born woman may flow. They have brought back from underground hiddenness and time before law, the power of the grandmothers, and their concern is as it ever was, family and justice. They were faithful to the old law, and able to make a compromised peace with a newer law—imagine how they would welcome and grace a law that honored both.

### DEATH BY CONTRACT

Who can conceive the span of You,  
great vault, ribbed cauldron slung beneath the abyss,  
cage of eternity?

Denise Levertov, *Variation on a Theme by Rilke*<sup>73</sup>

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71. *Id.* at 34:826-29.

72. John Herington, *No-Man's-Land of Dark and Light*, in *MODERN CRITICAL INTERPRETATIONS*, *supra* note 56, at 121, 141.

73. DENISE LEVERTOV, *A DOOR IN THE HIVE* 107 (1989).



I begin again, with Mary's ancestor in the Spirit, Sophia. She was there at the creation, playing. He noticed. She must have been a wondrous conversation partner, for the Book of Wisdom<sup>74</sup> tells that she "understands turns of speech, and the solutions of riddles."<sup>75</sup> She is one, and renews all things, passing into souls from age to age and producing friends of God.<sup>76</sup> She was more than even her greatest human lover could comprehend, so that Solomon who wrote the Book of Wisdom thought it wisdom, to try to find the truth of motherhood by threatening to cut a child in half with his male sword.<sup>77</sup> She knew that the font of wisdom was love, not fear; he meant well. But it is time for her to tell her own story, and for Solomon to stick to fatherhood—likewise Abraham, and God the Father, these males for whom love is the threat to kill their children. Such love may be needed, but it is not the only kind of love, nor was the world made by male power without the necessary perfect mirror of Wisdom. Yet, I will concede what the canonical text does not say, will concede to Solomon and Abraham and Father God: she could not have been who she was, either, nor can she be, without your mirror, also.

She comes amid violence, for that is part of the truth of the world that killed the Son and kills the Daughter. She is in her early twenties, threatened with commitment to the state mental hospital. She is in her forties, and trying to rescue herself and her three children from a drunken, battering stepfather. She is one of those three children, fourteen and full of unprocessed rage for life and truth in the face of the most damaging crime a child can undergo. And she is turning forty and running on raw mother-instinct in the face of the combined insanity of denial and murder that the patriarchy spawns from us all, sons and daughters alike. I will locate myself: all but the last were my clients; I was the one running on instinct.

I will tell you the story of the young woman under temporary commitment orders, the desperate courageous mother and the fourteen-year-old-daughter. I will tell you as I remember, first, not as a scholar. First, it comes to a person whose calling is of the mind, but primarily still a woman of law who remembers. I have processed this

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74. This is a writing, sometimes called "Wisdom of Solomon," held canonical as part of the Hebrew scripture by Catholics but considered part of "The Apocrypha" by Protestants. See THE NEW OXFORD ANNOTATED BIBLE WITH THE APOCRYPHA, *supra* note 3.

75. *The Wisdom of Solomon* 8:8.

76. *The Wisdom of Solomon* 7:27.

77. Marie Ashe, *Abortion of Narrative: A Reading of the Judgment of Solomon*, 4 YALE J.L. & FEMINISM 81 (1991).

story, in my gut and heart and memory. It is the story of one of my people—women who want to be free—and of the violence of possessions, of money, of control. I never met her face to face—God’s mercy spared me that immediacy. But I met her children—two daughters and a son—as well as her brother and sister-in-law, her two husbands. I will call her Carolyn. She was my partner A.’s client at first. When Carolyn first called to say that her former husband—whom we were pursuing for statutorily-set child support—called to threaten to have her shot, A. asked me to take the case. I was the one who handled distasteful cases, abused spouses, criminals, snatched children. The others preferred business clients. Carolyn, an accountant-cleric who needed fair child support in order to leave her abusive second marriage, fell to me. She was determined to be free, to escape with her children to a life in which they were safe and did not have to see their mother battered, she said. She was terrified. Her ex was a trucker. Carolyn told A. that she would drive down the highway wondering which of the huge semis might be slated to run her into an embankment, to force her suddenly into a bridge. He had said on the phone, “I can have you blown away for \$100.” In my experience, child support cases hit the most wildly irrational spots in male psyches. Ownership metaphors were so pervasive that a custody battle could be a rhetorical goldmine if the judge were not caught up in that mind set.<sup>78</sup> Among my Public Defender cases were recalcitrant fathers under contempt citations. My hours with these men, often in jails, and with mothers on the “other side” had revealed men driven to disable themselves, vocationally, mentally and even physically rather than pay pitifully low support orders. They directed nearly all hostility at the mother. These wounded fathers experienced themselves as exploited, devalued and dehumanized by grasping manipulative women who wanted the money for themselves. As soon as the child was not in the domain of the father’s household, the child became an it: a wound, a prize, a tool, a battleground, a pretext, a weapon. They experienced this as due to the heartless, powerful, controlling, conniving women. The fathers’ visions of themselves were reinforced by male judges even as the statistics screamed the financial violence done by courts to women, especially in their child-rearing role.

All Carolyn wanted was escape money. She had a net worth statement her ex had submitted to buy his semi. After refusals to

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78. See generally Barbara Bennett Woodhouse, “Who Owns the Child?”: *Meyer and Pierce and the Child as Property*, 33 WM. & MARY L. REV. 995 (1992).

comply with court-ordered discovery, he asked suddenly for one conciliatory-sounding delay. He would provide information at the hearing if we would postpone for two weeks. Carolyn and I would meet that Monday morning before the hearing, and prepare. The prior Friday I was at the state mental hospital with a client who had come to me, she said, because I was reputedly "good with crazies." She would pay; she had a job. She did not want her parents involved. She wanted out.

Ann and I spent two hours before the hearing. In one of those times of clarity that comes too rarely, I experienced those hours as a three-way conversation among me, my client's intact part and her "crazy" part. We negotiated, the three of us. All those years of navigating the byways of my mother's schizophrenia gave me a stance from which to hear: I could discern Intact-Ann, "Crazy"-Ann, the conversation between them, and then their conversations with me. Intact Ann and I prevailed. "Crazy"-Ann refused to admit she was mentally ill. Intact-Ann hated medication but wanted to avoid a six-month commitment. I told them the strength of the state's case, the high likelihood they would get the entire six months if we insisted on a full hearing. If Ann would agree to genuine co-operation for fourteen days and then follow-up meds for a minimum of four weeks more, she could avoid the months of total state control. Intact-Ann wanted that. She bargained with her "crazy" side, which held out for not capitulating to the label mentally ill. I suggested we could try to agree to all the diagnostic bases under DSM III for the disorder they were pressing, and agree that we did not object to the hearing officer's drawing the inevitable conclusion. At first the officer balked because the state's psychiatrist insisted on patient "insight" which meant agreement with her. I argued that under my proposal, my client would willingly take the psychotropic drugs and enter into their treatment, a course much more likely to produce their version of wellness than forcible commitment. My client needed to safeguard the ability to name her own reality. Finally, despite the doctor's grumbling, the hearing officer agreed. I felt as if some profound psychic battle had been won. I was sure Ann would make it, as she did, in the minimum time frame, paying her own bills and walking out under the sound of her own tale, told in her vocabulary. The victory came from our attending to her thread of integrity, in the face of utilitarian conventions of institutional regularity and professional efficiency. I was exhausted, and elated. There was a phone call for me, an emergency. In the nursing

enclosure of the locked ward, A. told me: Carolyn had been shot. The killer was at large, with a list of others to be killed.

Any woman who has dealt with such cases as a lawyer for a woman in the nexus of violence, will know some sense of the reactions. First rage—raw, inexpressible rage. Then fear—because they hate the women’s lawyers nearly as much, sometimes more. Then some strange, almost stagy self-consciousness of being in the center of a transparently life-and-death drama. I went back to the office. In retrospect, a bit even at the time, I realized that the lieutenant who came was not questioning us efficiently. He was making talk, giving us a chance to babble, spending time. The efficiency was that we were all in the same place at the same time, so one lieutenant sufficed as his cohorts searched for the contract murderer. We learned of his capture; conversation dwindled politely, and the officer was gone. We knew beyond any rational or irrational doubt who had had Carolyn killed. It felt as if some aspect of the battle for freedom that Ann and I had just won, had escalated wildly. Somehow, we resolved in our office, it was not final that Joe walked into Carolyn’s house and blew her away in front of her two younger children. But we had no idea how all this could work out. I did not know it would be the largest prosecution in county history, and that Joe and the ex and the middleman would all be convicted. Nor did I realize that it would be the daughters who would draw me further in and fight alongside.

The first irreplaceable valiance sprang from 14-year-old J.’s unexamined rage. She saw her mother shot, heard her one gasp of resistance, and wheeled to follow the gunman out the door. Screaming and pounding on his car trunk, she watched as he sped off—and got the license number of the rented car. Next was the young woman at the rental agency desk at the airport, where the driver was checking in the car when the police called. She took the call calmly, gave unrevealing responses, and told the driver she had to go in the back to check his credit. With unpremeditated imagination, she had made up the ruse that provided the necessary minutes for the police to arrive. From the driver they got the information to find Joe before he left the state.

That was Friday. Monday morning early, Carolyn’s older daughter S. was at my office. She simply said she had to have help. Disjointed, emotional, she knew that the children had to be with their uncle. That weekend her father had come to take the kids to dinner and said he wanted them with him; the stepfather wanted them also.

The children trusted the uncle. They wanted to be safe. They were terrified because they did not know who ordered the killing. Even though they knew of their father's threats and had supported their mother through her determination not to be intimidated, their father had suggested that their stepfather, a police officer, was awfully violent. Already, one evening with their father had disoriented them, made the notion that he could have killed Carolyn seem concretely unthinkable. S. wavered, wandered in her panic. Their father had been so nice at dinner. He couldn't have done it. Maybe Carolyn had gotten the threats wrong, exaggerated them. Who did I think the killer was, she asked. I listened more, dodging. Her story, her reality shifted right in front of me. She was terrified that the police would stand with the stepfather; she couldn't believe her father could have done it; maybe they had misremembered those phone threats. S. was losing track of ordinary reality. J. was the only competent witness to the murder, and her father wanted custody.

The long version of the story is one in which the dominant reality allows three-hour hearings over the ludicrous notion that a father has some "right" to children when there is a palpable possibility that he has committed cold-blooded murder and a daughter is the only witness. The short one is that the court appointed me guardian ad litem for the children although it violates every formal canon of ethics, because no one else appeared to want to get into that absurd, violent space. God spared me an appreciation of my own peril, except for the possibility I might be disbarred, as that is what the father's attorney threatened to try because I dared represent the children and say that the father might be the killer. I got the children, uncle and aunt into emergency counseling, from which I learned that the deepest wound to a child is for one parent to kill the other.

For me, that insight from nearly ten years ago, that for one parent to murder the other most damages the child, comes round to here and now in the gender issue. To deny the divinity of the other sex, to kill the other parent, is to maim the child radically. J. never expressed hatred of her father to me. She never expressed regret at her mother's pursuit of her legal protections, despite the costs. She testified steadily, without commentary. She had no special winsomeness, no visible warmth. She knew what she knew, and she told her story. It was the central strand in a trial that was so powerful that the father finally admitted hiring the killer but claimed he was only supposed to scare Carolyn. *The father had no idea what his violence did to the*

*feminine in the souls of his children.* There is no cure for the inner murder, for their mother's dying as the cost for freedom, but there is the force of the story told so clearly that law creaked through its infinite blind alleys and formalistic truthlessness, into the truth, even a single truth for a moment.

Ann is free. J. is free. Carolyn is free. But what of the men? Central to this is Carolyn's brother. He braved nearly intolerable stress through his brittle diabetes, and he prevailed for those children. They had a safe space, one so manifest that it overcame the very fancy lawyers, the father ready to kill for money, the shadowy middleman and his network, and the strange world of the contract murderer. And as I have thought of this story as it recurs now, here, I realize that what I wrote when I began the segment about Carolyn, that my people are women who want to be free, is no longer simply true. My people are now also men who want women to be free and to be free themselves. *And* the women have somehow transformed to ones who want men also to be free, not merely to be free themselves—that is, men and women who want to be free as we must, *in relation*.

### LOVING OUTLAWS

And what if excess of love  
 Bewildered them till they died? . . . .  
 [All] Are changed, changed utterly:  
 A terrible beauty is born.

W.B. Yeats, *Easter, 1916*<sup>79</sup>

I begin once again, with Mary. She is traditionally one of the "three Marys" in the Catholicism I learned: Mary the Mother of Jesus, Mary of Magdala and Mary of Bethany. Mary the virgin Mother has all but obscured the Mary now emerging in feminist theology,<sup>80</sup> the unwed teenager who may even have been raped, the dark madonna of the rejected and outcast. Another new facet of her story is depicted in Denise Levertov's *Annunciation*—her freedom to have refused, to have said no, that left "the Spirit suspended, waiting. . . ."<sup>81</sup> She, I propose is the contemplative, rather than simply, as my tradition has

79. THE COLLECTED POEMS OF W.B. YEATS 180, 182 (Richard J. Finneran ed., 1996).

80. See Sallie McFague, *God as Mother*, in *WEAVING THE VISIONS* 139 (Judith Plaskow & Carol P. Christ eds., 1989) [hereinafter *WEAVING THE VISIONS*]; Beverly Wildung Harrison, *The Power of Anger in the Work of Love: Christian Ethics for Women and Other Strangers*, in *WEAVING THE VISIONS*, *supra*, at 214; see also Elisabeth Schüssler Fiorenza, *Jesus: Miriam's Child, Sophia's Prophet*, in *CRITICAL ISSUES IN FEMINIST CHRISTOLOGY* 164 (1995).

81. See LEVERTOV, *supra* note 73, at 88.

it, Mary of Bethany. Mary the mother “pondered [the words] in her heart,”<sup>82</sup> kept her own counsel, and reflected in solitary prayer. In contrast, Mary of Bethany is the scholar, the priestess, the woman most like Diotema, Socrates’ tutor. Mary of Bethany listens with the men, learns Torah, and then performs the public ordination of the First of the “priesthood of all believers.” She is learned in the law of God, and performs the initiation of Jesus into His final office—and yet she does it as celebration, using healing balm, the nard that heals wounds and, most of all, burns.<sup>83</sup> The Messiah is initiated by His Mother, baptized by John, claimed by His Father, named by his disciple Peter, and anointed by his disciple and priest, Mary of Bethany.

Mary is the sister of Martha and Lazarus; this trio is the most vivid set of Jesus’ friends in the Greek scripture. Mary’s story appears in three places: the raising of her brother, the altercation with her sister Martha, and her use of nard to bless Jesus. Traditionally, the story of Martha and Mary is interpreted as representing the active versus the contemplative life (although there are within the tradition wonderful reversals such as Meister Eckhardt’s meditation on Martha’s greater maturity). In the main, Martha is cast as the worried, works-centered hausfrau sort, while Mary is the dreamy listener sitting at Jesus’ feet.<sup>84</sup> These depictions fail to consider what Jesus would have been doing in a roomful of men, teaching. He would have been doing what rabbis then did—discussing Torah. What was soon to become the written Talmud was then the oral Torah, kept alive by repetition, interpretation and faithfulness to the revelation at Sinai. Mary was sitting with the men while Martha was serving the table (as even one version of the anointing story places her).<sup>85</sup> The contrast is of gender roles. Martha is hardly a figure of little faith—her role in the death of her brother is that of proclaiming Jesus as Messiah<sup>86</sup>—but she is the resolute keeper of the hearth, the guarantor of hospitality. Mary is the more emotional (she joins Jesus in his deepest movement of spirit short of Gesthemene,<sup>87</sup> when he weeps over her brother), the less domestic, the more celebratory, the more public. Mary is wildly sensuous, anointing Jesus’ feet<sup>88</sup> (or his head,<sup>89</sup> depending on the version)

82. *Luke* 2:19.

83. And thus is used in preparing bodies for burial also. See *John* 12:7; *Matthew* 26:12; *Mark* 14:8.

84. See *Luke* 10:38-42.

85. See *John* 12:2.

86. See *John* 11:27.

87. See *John* 11:35.

88. See *John* 12:3.

and drying them with her hair. This is not a cloistered woman, not a person of sheer inwardness, not someone unable to act against the decorum even of Jesus' inner circle. It is Mary with whom Judas tangles directly; he then storms off to sell Jesus to the authorities after Jesus sides with her act of beauty over Judas' accusations about her waste. Rather than choosing the fungibility of the nard, Jesus tells Judas that the poor are ever-present, but God's abundance is to be celebrated when it is at hand.<sup>90</sup>

By now the irony might be predictable: in the two versions (*Matthew* and *Mark*) of the story of the anointing that focus on Jesus' head (the ritual locus for ordination), the stories juxtapose Jesus' promise of a permanent place in the Gospel to the anointer with the denial of a name for the feminine anointer.<sup>91</sup> Only when the woman remains merely emblematic in the text<sup>92</sup> may the holy designation, "wherever the good news is proclaimed throughout the world, what she has done will be told in her memory,"<sup>93</sup> be repeated. She may be memorialized only when she is anonymous. When she appears fully nominalized as Mary of Bethany, in *John*, Jesus' solemn assurance of permanent inscription is omitted.<sup>94</sup> Yet, in *John* the raising of Lazarus reveals that many Jews "had come to visit Mary"<sup>95</sup> on the occasion of her brother's death. Mary's reticence (it is Martha who rushes to see Jesus on the road) and central place in drawing so many to comfort her suggest she has become a person of significant community status. The initial encounter comes in *Luke*, where "a woman named Martha welcomed him into her home"<sup>96</sup> but by the death of Lazarus and the anointing, Jesus has an established relationship with Mary. This relationship can be seen as triggering Judas' betrayal, as the high point in the affirmation of Jesus as Messiah from which Judas' and the male disciples' compulsion to calculate draws the fatal betrayal. Both *Matthew* and *Mark* follow the anointing immediately with Judas' journey to the chief priests.<sup>97</sup> Judas has told Mary that her extravagant gesture might have gained "three hundred [silver pieces]"<sup>98</sup> for the poor; Jesus

89. See *Mark* 14:3; *Matthew* 26:7.

90. See *John* 12:8; *Matthew* 26:10,11; *Mark* 14:6,7.

91. See *Mark* 14:3-10; *Matthew* 26:6-14.

92. They do locate her in Bethany. See *Matthew* 26:6; *Mark* 14:3.

93. *Mark* 14:9. Virtually identical is *Matthew* 26:13.

94. See *John* 11, 12.

95. *John* 11:31.

96. *Luke* 10:38.

97. See *Matthew* 26:14; *Mark* 14:10.

98. *John* 12:5.



has blessed the expenditure as "something beautiful."<sup>99</sup> Judas turns immediately to convert Jesus into thirty silver pieces, into a tenth of the price of the nard. The economy of calculation finds Him expendable; the economy of beauty finds Him beyond price.

I propose that Mary, the unnamed woman in Bethany for the synoptics Matthew and Mark, gave the sign that Jesus could not give. When he was asked, he said he would only give the sign of Jonah, the prefiguration of the Resurrection.<sup>100</sup> Mary gave a sign that even those, in my experience, who testify to the Good News, cannot fully comprehend—the *sign of the Messiah*. God has come to be with us in the world, but remains unseen for the most part because, as Gadamer suggests, "a sign is something only given to one who is ready to accept it as such."<sup>101</sup> Gadamer finds wisdom in Heraclitus' maxim that the Delphic god neither conceals nor reveals, but gives a sign.<sup>102</sup> The acceptance of the sign is not, in my view, a matter of willfulness, but of some more mysterious attitude of mind and heart and soul and body that major traditions try to capture by such ideas as attention, mindfulness, presence or wakefulness. To me, it is a willingness to abide the beauty of God and God's co-creators, a move of some sort of authentic openness and love, and a move that takes us outside the "law" in the ever-turning lawfulness of the dance. To stand the beauty of God is, I suspect, to be willing to accept both the beauty of the feminine in public, and the responsive beauty of men and women who waken to it. As Yahweh's unveiled face was initially too much to contemplate without death, so the naked feminine face of God and of Her newly awakened lover, elicit a fear of death.<sup>103</sup>

Then, of all things, what comes to mind is French philosopher of power and eros, Michel Foucault, whom I read as a dark mystic of death almost too terrifying in his bizarre faithfulness to love, asking: "[T]o die for the love of boys: What could be more beautiful?"<sup>104</sup> Foucault died of AIDS and may have known he was transmitting it to the young men in the San Francisco bathhouses he frequented near

99. THE NEW AMERICAN BIBLE (Catholic) translates the deed's designation as kind and good in *Mark* and *Matthew*, while THE NEW OXFORD ANNOTATED BIBLE translates both as beautiful.

100. See *Matthew* 16:4; *Luke* 11:29.

101. HANS-GEORG GADAMER, *THE RELEVANCE OF THE BEAUTIFUL AND OTHER ESSAYS* 152 (1986).

102. See *id.*

103. On the power of the unveiled feminine, see Elsa Tamez, *The Power of the Naked, in THROUGH HER EYES: WOMEN'S THEOLOGY FROM LATIN AMERICA* 1-14 (Elsa Tamez ed., 1989).

104. JAMES MILLER, *THE PASSION OF MICHEL FOUCAULT* 350 (1993).

the end of his life.<sup>105</sup> He reflected on the beauty of death amid the profligacy of love and life.<sup>106</sup> Yet, such terrifying, outlawed notions of newly born love seem somehow the only credible sequel to the Holocaust presided over by the apotheosis of "Christian" civilization and that same civilization's creation of the Bomb that can kill the earth. Such new visions of love speak of the redemptive power of the outrageous, the outlawed, the profligate, the excessive, like the scandal of a mere woman law-lover's use of a year's wage worth of nard to anoint an itinerant teacher of the law of God—driving His best male friends to betray Him out of jealousy for his Blessing of Remembrance on this woman, Mary. This is the law of love, the return for the gesture beyond bounds by the woman who sat silent learning the Law, by Miriam of Bethany. I rejoice in affirming Jesus' assurance that wherever the Good News is proclaimed, she is to be remembered, and I remember her by name, and claim her as priest, lawyer, rabbi and sister.

#### FURIES-IN-LAW

Who is here. The Erinyes.  
 One to sit in judgment.  
 One to speak tenderness.  
 One to inscribe the verdict on the canyon wall.  
 If you have not confessed  
 the damage if you have not recognized  
 the Mother of reparations . . .  
 if still you are on your way  
 still She awaits your coming

Adrienne Rich, *From an Old House in America*<sup>107</sup>

What can renewed law, the Law of the Daughter, be? If it is to avoid punitive legalism, how will it protect the weak from the powerful? If we move beyond good and evil, beyond what is known of rectitude, beyond the Law of the Father, where are we safe? For the woman of law, that dilemma arises in the abstract through the question of what conduct newly born law should restrict, and in the concrete with the question of the sinner, that one who is close to God. In particular, what of the outlaw Genet, who said he hated women (the issue is misogyny, then, not homosexuality) or those who produced the movie *The Crying Game* in which stunning plays on difference

105. *Id.* at 382-83.

106. *See id.* at 339-74.

107. ADRIENNE RICH, *THE FACT OF A DOORFRAME: POEMS SELECTED AND NEW 1950-1984*, at 221 (1984).

snagged on one true bias, women named as "tits and ass" and portrayed as unremittingly evil?<sup>108</sup> When is the move outside the law destructive; when is the resistance to law to be resisted? What of the professor of legal ethics, a cleric who admitted sexual abuse of male and female students, allowed to teach another year and retire with full honors and portrait—without having given account? What of the daughter's law when it faces the abusive patriarch?

Feminist poet Adrienne Rich's "She who awaits" the coming of the one who has not come to terms with the old verdict, the old inscription on the wall of the abyss, is not simply the Mother of reparations. That Mother must be faced, as must the reality of the verdict as it was written in Aeschylus—but the Erinyes, the Furies, have moved, are moving, up from the depths of darkness, not to demand vengeance but to come to terms with and inspire the *new* inscriptions that are being written. The old law that was ridden down with the Furies is gone in its matriarchal guise, forever. The law after the Law of the Father is not the Law of the Mother. The daughter is not the Father's Mother, or the Son's. She wants to take care not to invert the patriarchy into female domination. And she does not want to have to be someone's mother, in order to be who she is.

There are several crosscurrents here. Phenomenologist Emmanuel Levinas deals with the voice of the Other as a command.<sup>109</sup> I have resisted this because command is parental.<sup>110</sup> Yet, is Levinas saying that the male can only first hear the female as commanding other, the other to whom he must respond, and then subsequently come into some more nearly equal relationship? Must the patriarch first submit to the law, and only after facing the "Mother of reparations" may he move to partnership? I am not sure, but this catches for me another major crosscurrent, and a dangerous one. I will say what I can, and only that for now. I will say that the Law of the Father must be named for its degenerate form, its cruel consequences and transgressions, before the Daughter can turn in love. I will say that only after I learned to hate my father could I turn to adult love for him. And I believe this is the dilemma for what is called the "Athena woman" or the "father's daughter"—which most intellectual women are. So the

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108. *THE CRYING GAME* (1992).

109. See generally EMMANUEL LEVINAS, *OTHERWISE THAN BEING OR BEYOND ESSENCE* (Alphonso Lingis trans., 1981).

110. See generally Emily Fowler Hartigan, *The Power of Language Beyond Words: Law as Invitation*, 26 HARV. C.R.-C.L. L. REV. 67 (1991).

voices of the daughters that you will hear in the academy and find coming to writing, will have this dilemma to traverse.<sup>111</sup>

The face of the Mother of reparations is not, I think, the face of the Mother of vengeance. Clytemnestra the father-killer is dead. Orestes has been acquitted. He knew he committed a wrong, but did it as instructed by the oracle. The Daughters of the Night have not been honored, and they are reappearing in order to claim a new place. What is their relationship to Zeus? If the Furies have power in the world, their own place in the lexicon of lightning bolts (which, after all, are a meeting of heaven-sent and earth-contained electrical currents, not one-way Olympian blasts), then what is the story of this new meeting? When I began to try to find from men's perspectives what they feared as women fear domination and violation, one said to me that he feared being found to have done what would make his mother ashamed of him. That fear of maternal judgment seems crucial in moving to a law that is regulatory but not destructive, a law that is recognizable as freedom rather than imposition. The Daughter must be able to protect herself, but to do so at best without violence. The transgressions of the Father must be acknowledged without generating retribution, and the daughter must be told of how she becomes the Mother, of how she taps the power of the Matriarch just as the Son taps that of the Patriarch, without meaning to do so. I think immediately of Clarence Thomas and Anita Hill, of the dilemma of two very different worlds (and a third, to me a seemingly false one, exemplified by Orin Hatch's histrionic designation of a man who would talk about dirty movies around a woman employee as revolting, outside all civilized cognizance) of consciousness. There is also a fourth false world, the old one in which Hill does not count as a witness, because her testimony (a word derived from the male anatomy that Romans had to hold to be witnesses) did not register as one on which a judgment of credibility might be based. The newspapers were full of women who said in essence, *Honey, get real and quit griping about the inevitable*. They were also full of women rejoicing in the dignity of Hill's quiet, compelling, "rational" depiction of a commonplace of sexual violation laid bare. And there was another, deeply troubling, stand: the men who said in effect that they would not have known what conduct would count as sexual harassment, and who found that sense of not knowing deeply threatening.

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111. See CHRISTINE DOWNING, *WOMEN'S MYSTERIES: TOWARD A POETICS OF GENDER* 28 (1992).

Those bewildered men struck a chord; if Socrates is right, and none does evil save through ignorance, then the relations between men and women take place in a milieu so rafted with the unknown that evil, unintended harm, seems inevitable. How could the law, which is supposed to give notice of prohibited conduct, operate in this milieu? How can law tolerate mystery, much less celebrate it? Perhaps only if it is named and integrated in its true place, can mystery serve law. One role of mystery is to serve as the medium of transition from the old to the new. Law must know how to renew itself, and that cannot be reduced to designations of lawmaking to some branch of the government. Renewal is more profound in its origins and less determinate than a political science text suggests. Law is more pervasive, more fluid, more intangible than we seem to have portrayed it. What can serve to make its unknown qualities seem trustworthy? What comes to mind is something I experience as mysterious as anything about human life, much less the divine: forgiveness. Hannah Arendt said that the only truly new thing is forgiveness.<sup>112</sup> Perhaps the space in which free will operates is not only the divine withdrawal, the *Tsimtsum* (described in Jewish mysticism<sup>113</sup>) that creates space for humankind to live where God is not using all the air, but also the space of forgiveness. And that may be the second task of God the Daughter, after She has claimed her voice—to forgive the Father (and the Mother?). For this to be integrated into this new sense of law, law itself must become forgiving. The only “law” for generating newness may be a forgiveness that names the harm and celebrates the Father’s acceptance of responsibility, both.

We talk of a forgiving medium, of something that does not give up its nature in order to make accommodation for mistake, but which becomes flexible or porous or variegated enough to absorb the unexpected “mistake.” Sometimes, we realize, such mistakes come to make the project of the medium better, more beautiful, more distinctive. Such incorporation of the unexpected in a medium of regularity, is the integration of an unintended particularity within a context of predictable uniformity. This is the idea of law that we could even “regularize” in the sense of knowing ahead of time that mere rules do not make law. We could name and celebrate the uncertain places of decision, the places in which law is not “lawful” in the sense predicated by exhaustive criteria from the old law. This is what Derrida

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112. See HANNAH ARENDT, *THE HUMAN CONDITION* 236-43 (1958).

113. See GERSHOM G. SCHOLEM, *MAJOR TRENDS IN JEWISH MYSTICISM* 260-68 (2d ed. 1946).

calls the “force” of law, or even its violence. He calls it that because the newness “violates” or goes beyond the old law as conceived until that time (a time of initial constitution or new application—for neither is mechanical, nor can it be). If we see that generative force that is “outside the law” as somehow lawful, as moving from the same source of goodness that created the cosmos and the law as we have known it, then it is not violence, but grace.<sup>114</sup> Derrida refers to it, following Walter Benjamin on whom he is commenting, the “mystical” foundation of authority.<sup>115</sup> In one sense, it is the simple mysticism of knowing that we will always, again and again, come to the end of what we know.

Perhaps it is just at this point—at the end of what we know—that forgiveness is possible. In my tradition, Jesus said “Forgive them, Father, for they know not what they do.” Perhaps that was less a patronizing generosity than it was an invitation to the future. Does it mean that the Law of the Father and of the Mother must forgive first? Might the Furies, in retrospect, forgive in order to absolve the son and move into their true role as blessed daughters? They would move from the Mother of reparations to their kindly roles as the guiding spirits of the land—so long as the land was not ruled by a son who became, over them, a Father. The fear of this forgiving medium is voiced in Aeschylus and in Sophocles. Neither Antigone as loving daughter (faithful, note, to her peer brother)<sup>116</sup> nor Furies without their terror,<sup>117</sup> struck the Greek mind as sufficient for law’s ordering function. If law is imposed, then there must be fear for it to be followed. But if law follows from the very becoming-nature of things, then it is subject to the regime of love. In my tradition that began with the herald of the angels, repeated over and over throughout the story of the Good News: be not afraid, for God is with us. Perhaps we do not have to be the controlling Fathers or the moralizing Mothers, the “single parents” of the cosmos, any more. Perhaps we can know ourselves in partnership with the Unknown One who created the process, as co-creators<sup>118</sup> whose very unfolding is lawful in its disturbing

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114. For another set of rich reflections on these knots of law and forgiveness in the gender transitions of the end of the patriarchy, see Rachel Adler, *The Battered Wife of God: Violence, Law and the Feminist Critique of the Prophets*, 7 S. CAL. REV. L. & WOMEN’S STUD. 171, 200-01 (1998)

115. See Derrida, *supra* note 2, at 920, 925, 927, 929.

116. SOPHOCLES: *ANTIGONE* 92:570-78 (Mark Griffith, ed., 1999).

117. See Grene & O’Flaherty, *supra* note 50, at 160:700.

118. In the pantheon of the old God, then, God is “dead” because only God as an Other beyond imagination can be One with whom we can be in true adult relation. I see that opening

revelations of new law, new meaning, new order. Perhaps the forgiving law is one that comes to make all things new—not heedlessly, overturning the old ways as the Furies were driven down, but with both respect and play, both honoring what has been and welcoming what is to come. There must be a “law” of renewal for anything to be more than mechanical replication. What is new is parabolically hidden in the old and open to unfolding through the infinite mystery of human free will lived in love and wisdom. This is an outlaw law that does not dictate, but invites. It is written in our hearts and reflected in our unexpected<sup>119</sup> life of Love with the Other.

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in writers as various as MARK C. TAYLOR, *NOTS* (1993); JEAN-LUC MARION, *GOD WITHOUT BEING* (Thomas A. Carlson trans., 1991) and LUCE IRIGARAY, *MARINE LOVER OF FRIEDRICH NIETZSCHE* (Gillian C. Gill trans., 1991).

119. The way of surprise rather than a preclusive imagined inner monologue is explored in Simone Weil's thought by Rowan Williams, *The Necessary Non-Existence of God*, in *SIMONE WEIL'S PHILOSOPHY OF CULTURE: READINGS TOWARD A DIVINE HUMANITY 52* (Richard H. Bell ed., 1993).