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Nearing the 'Wild Heart': The Cixousian 'Feminine' and the Quest for Law's Origin

Sara Ramshaw

I was born so far from my beginnings.¹

The birth of law begot not one, but two. At that same instant, transgression was similarly born. (Fraternal) twins. *Doppelgängers*! No transgression without law²; no law without transgression.³ Law/Transgression. Masculine/Feminine. Head/Heart.⁴ Superior/Inferior.⁵ '[D]ual, hierarchical oppositions'.⁶ 'The Dawn of Phallogocentrism'.⁷ Throughout history. The same story. 'It all comes back to man – to *his* torment, his desire to be (at) the origin. Back to the father'.⁸ Back to Freud and his 'primal horde'.⁹ Enter: Hélène Cixous.¹⁰ For Cixous, the question of origin is always a question of the 'origin of the

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² Cixous Hélène 'Albums and Legends' H. Cixous and M. Calle-Gruber *Hélène Cixous Rootprints: Memory and Life Writing* trans. E. Prenowitz Routledge London New York 1997 177 at 179.

³ Cixous Hélène 'Writing and the Law: Blanchot, Joyce, Kafka, and Lispector' H. Cixous *Readings: The Poetics of Blanchot, Joyce, Kafka, Kleist, Lispector, and Tsvetayeva* trans. V.A. Conley University of Minnesota Press Minneapolis 1991 1 at 7.

⁴ At 12.

⁵ Cixous Hélène 'Sorties: Out and Out: Attacks/Ways Out/Forays' H. Cixous and C. Clément *The Newly Born Woman* trans. B. Wing I.B. Tauris London 1996 63 at 63.

⁶ At 64.

⁷ At 64.

⁸ At 100.

⁹ At 65 (emphasis in the original).

¹⁰ See Freud Sigmund *Totem and Taboo* trans. J. Strachey Routledge & Keegan Paul London 1960; and Fitzpatrick Peter *Modernism and the Grounds of Law* Cambridge University Press Cambridge 2001 at 11-36.

¹¹ Hélène Cixous is a French poet, playwright, fictional author and theorist. A brief précis of her translated works includes: 'The Laugh of the Medusa' trans. K. Cohen and P. Cohen (1975) *Signs* 1 (Summer); 'Castration or Decapitation?' trans. S. Kuhn (1976) *Signs* 7; *Portrait of Dora* trans. A. Barrows (1975) *Gambit International Theatre Review* 8; *Angst* trans. J. Levy John Calder London 1985; *Inside* trans. C. Barko Schocken Books New York 1986; *The Newly Born Woman* (with Catherine Clément) above note 4; *Readings with Clarice Lispector* ed./trans. V. Conley Harvester Wheatsheaf London 1990; *Readings: The Poetics of Blanchot, Joyce, Kafka, Kleist, Lispector, and Tsvetayeva* above note 2; *Three Steps on the Ladder of Writing* trans. S. Cornell and S. Sellers Columbia

gesture of writing', of the origin of the 'very drive to write'; it is always a question of the 'wild heart':¹¹ for one must have a 'touch of something savage, uncultured, in order to let it happen.'¹² This 'wild heart', this 'drive to write', is, in the Cixousian lexicon, closer to the 'feminine'; and the texts it produces constitute what she calls 'feminine writing' or *écriture féminine*¹³ – that is, 'writing, freed from law, unencumbered by moderation, [which] exceeds phallic authority'.¹⁴ 'Feminine writing', in other words, disrupts and transcends the 'univocality, linearity, and the fixity which comprise "phallic" discourse'.¹⁵

Endeavoured in this article is a discussion of law and legal authority, which attempts to disrupt or transcend (classic) phallic discourse. Relying heavily upon the poetic writings of Cixous, it will be demonstrated that 'feminine writing', as a narrative (non)structure, which does not conform to the 'predictable beginning, middle, and end', nor have 'the linear direction of the heroic journey or chronology of history',¹⁶ resists a return to the origin. Such writing 'frees the writer to express and communicate complex ideas, values and attitudes, ones which may have been previously repressed'.¹⁷ In so doing, 'feminine writing' encourages a discussion of law that has been otherwise neglected or unexpressed and offers a unique challenge and resistance to the authority upon which law's foundational claims rest.

With the above in mind, this article will be structured thematically, highlighting three key concepts, namely that of the 'feminine', origin, and law/transgression. Each topic will be discussed in turn, with the Cixousian 'feminine' position to follow. The resulting discussion promises to offer not only a critique of classical notions of law, but also an illustration of how Cixous's writings differ from other poststructuralist theorists, such as Jacques Derrida,¹⁸ and how these differences (often encapsulated under the heading of 'sexual difference'¹⁹) offer a new and intriguing way of looking at law and legal authority.

University Press New York 1993; *Manna: For the Mandelstams for the Mandelas* trans. C. MacGillivray University of Minnesota Press Minneapolis 1994; *The Terrible but Unfinished Story of Norodom Sihanouk, King of Cambodia* trans. J.F. MacCannell, J. Pike and L. Groth University of Nebraska Press Lincoln 1994; *Hélène Cixous Rootprints: Memory and Life Writing* (with Mireille Calle-Gruber) trans. E. Prenowitz Routledge London New York 1997.

¹¹ This is taken from the title of Clarice Lispector's first novel, *Perto do coração selvagem* [*Near to the Wild Heart*], which is itself a quotation from James Joyce's *Portrait of the Artist as a Young Man* Penguin Books Harmondsworth 1916 at 171. Lispector Clarice *Near to the Wild Heart* trans. G. Pontiero Carcanet Press Ltd. Manchester 1990.

¹² Cixous above note 2 at 1.

¹³ 'Feminine writing' can best be described as a 'body where two bloods [*sangs*] circulate, in opposite directions [*sens*]'. Linearity, in other words, is constantly 'in contradiction and in explosion' in the 'feminine' text. Cixous Hélène and Mireille Calle-Gruber 'We are Already in the Jaws of the Book: Inter Views' H. Cixous and M. Calle-Gruber *Hélène Cixous Rootprints: Memory and Life Writing* trans. E. Prenowitz Routledge London New York 1997 1 at 62.

¹⁴ Cixous above note 4 at 86.

¹⁵ Pontuale, Francesco 'The Awakening: Struggles toward l' *écriture féminine*' *The Mississippi Quarterly* Winter 1996/97 37 at 37.

¹⁶ Comte Annette 'Hyperfiction: A New Literary Poetics?' *Text* Volume 5 Number 2 October 2001 (<http://www.gu.edu.au/school/art/text/oct01/comte.htm>) at 8.

¹⁷ At 8.

¹⁸ Derrida's relationship to feminism and feminist theory is an extremely complex and complicated one. As John Caputo notes: 'Derrida sometimes disconcerts feminists because he lets "woman" and even "feminism" disseminate or deconstruct, letting them slip into undecidability, letting it seem that he, or at least deconstruction, can do no good for feminism.' Caputo John 'Dreaming of the Innumerable: Derrida, Drucilla Cornell, and the Dance of Gender' *Derrida and Feminism: Recasting the Question of Woman* eds. E.K. Feder M.C. Rawlinson and E. Zakin Routledge New York 1997 141 at 141. For some interesting explorations into Derrida's relationship to feminism see: *Derrida and Feminism: Recasting the Question of Woman* eds. E.K. Feder M.C.

The 'Feminine'

Her scene of wild writings forever escapes vigilance armed reason, force, jealousy, death wish, Schadenfreude, the traps and bites of life's enemies.²⁰

To preface my analysis of Cixous and the law, it is important to note that the 'feminine' of which Cixous speaks is not a biologically-determined concept. Instead, it is a way of being in the world, which corresponds with the *économie libidinale féminine* or the 'feminine libidinal economy'.²¹ For Cixous, *économie libidinale* refers to 'an energetic and economic model of the libido as a drive of desire that basically can be spent or retained'.²² There exist two principal libidinal economies in the Cixousian lexicon: the 'masculine' and the 'feminine'. Although the two economies do not 'distinguish themselves in such a decisive way in reality',²³ differences between them can be read as 'differences in behaviour with regard to the preservation of the self, the spending of the self, and the relation to the other'.²⁴ In other words, the 'femininity' of which Cixous speaks entails the 'keeping alive the other that is confided to her, that visits her, that she can love as other. The loving to be other, another, without its necessarily going the rout of abasing what is same, herself'.²⁵

Cixous will be the first to admit to the problems embedded in her use of the terms, 'feminine' and 'masculine'. In her essay, 'Extreme Fidelity', she explains:

What I call 'feminine' and 'masculine' is the relationship to pleasure, the relationship to spending, because we are born into language, and I cannot do otherwise than to find myself before words; we cannot get rid of them, they are there. We could change them, we could put up signs in their place, but they would become just as closed, just as immobile and petrifying as the words 'masculine' and 'feminine' and would lay down the law to us. So there is nothing to be done, except to shake them like apple trees all the time.²⁶

It is exactly this desire for a state of perfect communication and satisfaction, but to never attain it, which Lispector calls being 'near to the wild heart': it is the constant seduction and

Rawlinson and E. Zakin Routledge New York 1997; and *Feminist Interpretations of Jacques Derrida* ed N.J. Holland The Pennsylvania State University Press Pennsylvania 1997. For a useful and interesting employment of Derridean philosophy to feminist legal theory, see Cornell Drucilla *Beyond Accommodation: Ethical Feminism, Deconstruction, and the Law* New Edition Rowman & Littlefield New York 1999.

¹⁹ For example, in 'We are already in the jaws of the Text: Inter Views', Calle-Gruber asks Cixous to expound upon her differences with Jacques Derrida, differences Calle-Gruber attributes to the fact that Derrida has a 'different body' than Cixous. Cixous and Calle-Gruber above note 13 at 83.

²⁰ Cixous Hélène 'La – The (Feminine)' *The Hélène Cixous Reader* ed. S. Sellers Routledge London New York 1994 57 at 59. 'Schadenfreude' can be translated as 'To gloat over others' misfortunes'. At 67.

²¹ This term was first coined by Jean-François Lyotard in his book by the same name. Minuit Paris 1974.

²² MacGillivray Catherine 'Introduction: "The Political Is – (and the) Poetical"' H. Cixous *Manna: For the Mandelstams for the Mandelas* trans. C. MacGillivray University of Minnesota Press Minneapolis 1994 vii at 262.

²³ Cixous Hélène 'Extreme fidelity' *Writing Differences: Readings from the Seminar of Hélène Cixous* ed. S. Sellers Open University Press Milton Keynes 1988 9 at 14.

²⁴ Salesne Pierre "Hélène Cixous" Ou l'art de l'innocence: the path to you' *Writing Differences: Readings from the Seminar of Hélène Cixous* ed. S. Sellers Open University Press Milton Keynes 1988 113 at 122.

²⁵ Cixous above note 4 at 86.

²⁶ Cixous above note 23 at 15.

torture by language, by our ‘doubts about the sincerity of the other’ and about ‘reliability and meaning’.²⁷ In the words of Lispector: “What cannot be expressed only comes to me through the breakdown of language. Only when the structure breaks down do I succeed in achieving what the structure failed to achieve”.²⁸

For Cixous, Western philosophy and literary thought are, and have always been, predicated on an endless series of hierarchical binary oppositions, which always come back to the fundamental ‘couple’, man/woman, with the male being privileged over the female.²⁹ In order for one of the terms in the binary opposition to acquire meaning, it must destroy the couple: ‘Death is always at work’, remarks Cixous.³⁰ As she explains, victory is equated with activity, defeat with passivity; and, under patriarchy, the male is always the victor.³¹ Thus, Cixous’s entire theoretical project, and that of *écriture féminine* in general, is to create a ‘feminine’ way of writing, a language, which subverts these patriarchal binary schemes where logocentrism (i.e., the privileging of Logos, the Word, as a metaphysical presence) colludes with phallogocentrism (i.e., the privileging of the phallus as the symbol or source of power), thereby creating phallogocentric ideology.³² Writes Cixous:

...There will be some elsewhere where the other will no longer be condemned to death. But has there ever been any elsewhere, is there any? While it is not yet ‘here,’ it is there by now – in this other place that disrupts social order, where desire makes fiction exist. Not any old fiction, for, of course, there is classical fiction caught in the oppositions of the system, and literary history has been homogenous with phallogocentric tradition, to the point of being phallogocentrism-looking-at-itself, taking pleasure in repeating itself.

But I move toward something that only exists in an elsewhere, and I search in the thought that writing has uncontrollable resources. That writing is what deals with the no-deal, relates to what gives no return. That something else (what history forbids, what reality excludes or doesn’t admit) can manifest itself there: some other. With the desire to keep this other alive – hence some living feminine – some difference – and some love...³³

‘Feminine Writing’

Writing: a way of leaving no space for death, of pushing back forgetfulness, of never letting oneself be surprised by the abyss. Of never becoming resigned, consoled; never turning over in a bed to face a wall and drift asleep again as if nothing happened; as if nothing could happen.³⁴

²⁷ Fitz Earl E. *Sexuality and Being in the Poststructuralist Universe of Clarice Lispector: The Différance of Desire* University of Texas Press Austin 2001 at 8.

²⁸ Cited at 8.

²⁹ Cixous above note 4 at 64.

³⁰ At 64.

³¹ At 64. Cf. Moi Toril *Sexual/Textual Politics* 2nd ed Routledge New York 2002 at 103.

³² Moi at 103, 191.

³³ Cixous above note 4 at 97.

³⁴ Cixous Hélène ‘Coming to Writing’ *Coming to Writing and Other Essays* ed. D. Jenson trans. S. Cornell D. Jenson A. Liddle and S. Sellers Harvard University Press Cambridge 1991 1 at. 3.

In so far as the Cixousian 'feminine' 'refuses to appropriate or annihilate the other's difference in order to construct the self in a (masculine) position of mastery',³⁵ and 'bring[s] into existence alternative forms of relation, perception and expression',³⁶ 'feminine writing' can be 'revolutionary'.³⁷ Such writing not only exceeds the binary logic that informs our present system, and thereby potentially creates a framework for a new 'language' and culture, but can initiate changes in the social and political sphere and 'challenge the very foundation of the patriarchal and capitalist state'.³⁸

For Cixous, the aim of 'feminine writing' is to resist 'lock[ing] up meaning',³⁹ to 'give it/oneself over to the chance of linguistic and textual crossings, to work a non-form'.⁴⁰ The purpose, in other words, is to 'listen to language speak'.⁴¹ Sellers explains:

Like Derrida, Cixous stresses that any attempt to fix the meaning of the text is both impossible and reductive; and she urges writers to actively incorporate the myriad rhythms, sound-patters and suggestions thrown up by the writing process itself.

...

Cixous sees the type of textual composition woven from the multiple and heterogeneous possibilities generated by the writing process as challenging the rules of (linear) thought, objective meaning, and the single, self-referential viewpoint decreed by masculine law. She believes (feminine) writing has the potential to undermine and present an alternative to this law, and the hierarchy of linguistic, social and political relations the law creates.⁴²

This 'feminine' text, through its willingness to 'traverse the spaces left by the masculine', to 'encounter the other in all its various forms',⁴³ and to 'remain open to the other as *other*',⁴⁴ provides a unique challenge to both 'mastery and meaning' in language.⁴⁵ And it is in Cixous's distinct conception of 'feminine writing' that she most clearly distinguishes herself from her contemporaries.⁴⁶ In the words of Conley: 'Cixous searches for a desire not based on lack but for a love that lets the other live, that does not incorporate, but lets the

³⁵ Sellers Susan 'Introduction' *The Hélène Cixous Reader* above note 20 xxvi at xxix.

³⁶ At xxix.

³⁷ At xxix.

³⁸ At xxix.

³⁹ Calle-Gruber Mireille 'Portrait of the Writing' H. Cixous and M. Calle-Gruber *Hélène Cixous Rootprints: Memory and Life Writing* trans. E. Prenowitz Routledge London New York 135 at 142.

⁴⁰ At 142.

⁴¹ At 142.

⁴² Sellers Susan *Language and Sexual Difference: Feminist Writing in France* MacMillan Education Ltd London 1991 at 143-44.

⁴³ At 144.

⁴⁴ At 144 (emphasis in original).

⁴⁵ At 144.

⁴⁶ I would be extremely negligent if I did not mention at this time Cixous's cohorts in *écriture féminine*, namely Luce Irigaray and Julia Kristeva, both of whom are often associated with Cixous and with 'feminine writing'. However, as Calle-Gruber points out, there are many ('mostly') differences, 'particularly literary differences', between the three women. Of particular relevance to Cixous's poetics is the fact that 'Irigaray and Kristeva are theoreticians, they do not produce writer's works'. Cixous and Calle-Gruber above note 13 at 7.

other be other'.⁴⁷ The resulting text is one that 'can hardly let itself be reined in or corralled'.⁴⁸ For who can 'bridle the divagation?'⁴⁹ Who can 'put the outside behind walls?'⁵⁰

Keeping in mind the above, I now turn to a discussion of two topics, which share a particular preoccupation in the writings of both legal theorists and poststructuralists alike, namely those of origin and law's relationship to transgression. To be highlighted below is the uniqueness of Cixous's approach with respect to these subjects. Before doing so, however, one further point deserves noting. 'Feminine writing', it must be emphasised, is not simply or solely 'a question of demolishing already-existent discourse'.⁵¹ It is 'another approach. Another language'⁵² all together. Moreover, in its 'seeing what no one else saw',⁵³ 'feminine writing' endeavours to be poetic in its style. As such, the Cixousian 'feminine' gives herself a 'poet's right':

'An economy said to be F.', 'an economy said to be M.' – why distinguish between them? Why keep words which are so entirely treacherous, fearful and war mongering? This is where all the traps are set. I give myself a poet's right, otherwise I would not dare to speak. The right of poets is to say something and then to say, believe it if you want to, but believe it weeping; or else erase it, as Genet does, by saying that all truths are false, that only false truths are true, etc.⁵⁴

That being said, I now am free to commence my enquiry. Alas, chained as we are to the laws of linearity and narrative, I am obliged to begin at the beginning, at the origin...

Origin

And in the same breath, the origin also undone: writing is end without end, beginning without beginning. ... In the beginning, it's already in the middle.⁵⁵

Poststructuralists, in particular, appear to display an interesting obsession when it comes to the role 'origin' plays in conceptualisations of law and legal authority. Fitzpatrick, for instance, has dedicated portions of several books and articles to a discussion of precisely

⁴⁷ Conley Verena Andermatt 'Introduction' *Readings with Clarice Lispector* ed./trans. V. Conley Harvester Wheatsheaf London 1990 vii at xiii.

⁴⁸ Cixous above note 34 at 57.

⁴⁹ At 57.

⁵⁰ At 57.

⁵¹ Cixous and Calle-Gruber above note 13 at 57.

⁵² At 57.

⁵³ This is taken from a poem found in Lispector's *Near to the Wild Heart*. In its entirety, the poem reads:

Margarita befriended Violeta
one was blind, the other mad,
the blind girl knew what the mad girl was saying
and ended up seeing what no one else saw...

Lispector above note 11 at 44.

⁵⁴ Cixous above note 23 at 15.

⁵⁵ Calle-Gruber above note 39 at 141-2.

this issue.⁵⁶ Perhaps the obsession warrants some merit. As Derrida makes evident, the 'law of the law' unfolds in the form of the following imperative: 'law must be without history, genesis, or any possible derivation'.⁵⁷ It comes to us in the form of Kant's 'Categorical Imperative' in which pure morality, pure moral law, has 'no intrinsic history'.⁵⁸ Notwithstanding this Imperative, however, we continue to spend innumerable hours trying to trace law's history and resolve once and for all the question of its origin. Explains Derrida:

The question and the quest are ineluctable, rendering irresistible the journey toward the place and the origin of law. The law yields by withholding itself, without imparting its provenance and its site. This silence and discontinuity constitute the phenomenon of the law. To enter into relations with the law which says 'you must' and 'you must not' is to act as if it had no history or at any rate as if it is to let oneself be enticed, provoked, and hailed by the history of this non-history. It is to let oneself be tempted by the impossible: a theory of the origin of law, and therefore of its non-origin, for example, of moral law.⁵⁹

The dilemma is thus made manifest through Derrida's comments; and the obsession becomes understandable. If law is to be without history, or, at the very least, if its authority is seen to 'exclude all historicity',⁶⁰ then any origin posited regarding law is in fact a 'fiction',⁶¹ a story recounted by the only one with the authority to tell it: law. 'Everything happens in relation to an originary given, to the law of the law: I exist'.⁶² Law is thereby called upon to narrate itself and narrate its own existence and origin; and in this narration, law posits itself as absolute in its power: fixed, stable, implacable, final.⁶³ I want to be 'everything', 'absolute world'.⁶⁴ But, as Fitzpatrick has noted, law cannot be 'merely or fixedly determinant'.⁶⁵ It conversely requires a certain responsiveness to historical change, to the needs of a nation or the development of society. In other words, in stark contrast to its purported fixity and stability, law actually has to accommodate changing facts, all coming from beyond it.⁶⁶ Similarly, the story of law's origin, in order to remain properly commanding, must likewise

⁵⁶ To name just a few: 'Breaking the unity of the world: Savage Sources and Feminine Law' (2003) 19 *Australian Feminist Law Journal*; "'No Higher Duty': Mabo and the Failure of Legal Foundation" (2002) 13 *Law and Critique* 233; *Modernism and the Grounds of Law* above note 9; and *The Mythology of Modern Law* Routledge London New York 1992.

⁵⁷ Derrida Jacques 'Before the Law' *Acts of Literature* ed. D. Attridge Routledge London 1992 181 at 191.

⁵⁸ At 191.

⁵⁹ At 192.

⁶⁰ At 190.

⁶¹ For more on the notion of the origin as a fiction, see: Birmingham Peg 'Towards an Ethic of Desire: Derrida, Fiction, and the Law of the Feminine' *Feminist Interpretations of Jacques Derrida* above note 18 127; and Derrida above note 57.

⁶² Cixous above note 2 at 19.

⁶³ Fitzpatrick above note 9 at 6.

⁶⁴ Blanchot Maurice 'The Song of the Sirens: Encountering the Imaginary' M. Blanchot *The Station Hill Blanchot Reader: Fiction and Literary Essays* trans. L. Davis P. Auster R. Lamberton Station Hill Press/Barrytown Ltd. New York 1999 443 at 448.

⁶⁵ Fitzpatrick above note 9 at 6.

⁶⁶ At 236.

contain a responsiveness to historical change. Of note then is that the story of law's founding is not actually 'original', but is instead a tale that must be repeatedly evoked and brought to bear on new situations; with each repetition, change is incorporated and absorbed into law's 'formative, and normative, range'.⁶⁷ As such, this 'suitably adjusted'⁶⁸ origin is always 'the origin of what is *non*'⁶⁹; and any "return" to such, for history's sake, must be "eternal".⁷⁰

Although much of the above is uncontroversial in relation to Cixousian theory, it is important to highlight the 'vital curiosity'⁷¹ many poststructuralists have, Derrida included, with respect to 'those primal scenes that elude us, and that have caused [us]'.⁷² Admittedly, embedded in poststructural accounts of origin is an 'undecidability'; and those 'in whom the undecidable breathes can only breathe goodness, that is to say: taking into account or concern for what is other...'.⁷³ However, for theorists such as Derrida, the other- or foreign-ness of the origin is often painted as a 'portrait of [one's] own foreignness'.⁷⁴ In other words, entailed in such accounts is perhaps (always perhaps) a 'mourning relationship',⁷⁵ a mourning for what could-be or for what could-have-been. There exists, in other words, a sort of 'jealousy of the past',⁷⁶ a 'jealousy of the future anterior'.⁷⁷

In contrast, Cixous finds power in otherness, in her foreignness to herself: 'When "I speak" it is always at least "we", the language and I in it, with it, and it in me who speak'.⁷⁸ For Cixous, the origin is always a part of her, of her present/presence: 'we change, we ourselves, in the present, are the site of innumerable events'.⁷⁹ Accordingly, when Cixous dreams, she dreams not of origins, nor of the past, but of the present. Her dream is always one of '*writ[ing] in the present*'⁸⁰ – which in truth is an impossible dream for 'one cannot write in the present because one writes *after* the present'.⁸¹ In her view, it is the realization of this impossible dream of 'writ[ing] the present',⁸² which leads to 'transformations of writing',⁸³ to transformations of language and world. In other words, it is this writing of the present, this writing the present, which 'moves the place, the time of enunciation',⁸⁴ which moves the origin; returning us perhaps (always perhaps) to the 'origin of the gesture of writing'.⁸⁵

But I digress (transgress?)...

⁶⁷ At 25.

⁶⁸ At 25.

⁶⁹ At 25 (emphasis added).

⁷⁰ At 25.

⁷¹ Cixous and Calle-Gruber above note 13 at 90.

⁷² At 90.

⁷³ At 83.

⁷⁴ At 84.

⁷⁵ At 88.

⁷⁶ At 88.

⁷⁷ At 88.

⁷⁸ At 84.

⁷⁹ At 88.

⁸⁰ At 78 (emphasis in original).

⁸¹ At 78 (emphasis added).

⁸² At 78.

⁸³ At 78.

⁸⁴ At 78.

⁸⁵ Cixous above note 2 at 1.

Law/Transgression

The obsession many poststructuralists have in regard to origin is, at times, rivalled solely by an obsession with law and its ever-beyond: transgression. In solidarity with the above discussion regarding the undecidability of the origin, one cannot speak of law/transgression without first speaking to the '/': the boundary/limit, which defines and divides the law from that of transgression. This boundary or limit, Hill notes, obeys a logic all its own, and is forever endowed with an 'infinite scepticism'⁸⁶ as to the limit of what is proper and improper to it. Once traced or inscribed, the limit serves to discriminate between a certain order (law) and a certain disorder (transgression).⁸⁷

While the limit and the limitlessness beyond the limit are disjoined from one another, they do not exist in isolation: the limitlessness beyond the limit *belongs to* the limit, just as the reverse is also the case. Fitzpatrick explains:

[The illimitable limit] borders and connects with what is disparately beyond us: but also not entirely beyond, for if the limit were completely divisive there could be no relation between what is separated by the limit. The two sides of the limit would exist in complete difference, not knowing at all of each other. So, with the limit there must be some subsisting relation and thence some commonality between the two sides. Obviously, however, the limit cannot be merely relational either. In a pure relation, the two sides would simply appear and disappear in each other and there could be no limiting division between them. We are, then, 'bound' to an irresolution between the limit as a condition and quality of our contained, distinct being and the limit as opening onto all that lies beyond and is other to that being.⁸⁸

Applied to law and transgression (law/transgression), it can be said that theirs is a similar relation, one which cannot be purely or absolutely relational. Law and transgression, in other words, cannot blend into each other completely. If such were the case, neither concept would have any specific or determinate meaning. Argues Fitzpatrick:

Whilst transgression is in thrall to the norm, it is nonetheless a condition of its efficacy in creating the norm that it also remain apart and dangerous, otherwise it would lack creative force or simply correspond with some norm, and in either case cease being effectively transgressive.⁸⁹

Thus, the relation, if it can be called such, which exists between law and transgression, is one that is neither completely relational, nor completely non-relational. And it is this so-called 'relation' with respect to law and transgression, which leads to a certain openness or responsiveness in law.⁹⁰ That being said, Fitzpatrick emphasises that, in order for law to have any kind of authority or power at all, it must mask or deny its relationship with respect to transgression. As such, at the end of the day, and notwithstanding the relationship (/)

⁸⁶ Hill Leslie *Blanchot: Extreme Contemporary* Routledge London 1997 at 93.

⁸⁷ At 93.

⁸⁸ Fitzpatrick above note 9 at 59.

⁸⁹ At 60.

⁹⁰ At 62.

posited between the two, law must be seen to affirm itself, without reference to anything outside: “to it alone, pure transcendence”.⁹¹

Whilst again Cixous would not deny the ‘relation’, as forwarded above, between law and transgression, for her, such descriptions remain ‘all very masculine’,⁹² all very logical and linear. Wherein lies the poetry? The contradiction? Wherein lies any attempt at disrupting the phallic hierarchies so embedded in the law/transgression linguistic binary? To rectify this lack, the subsequent section will be dedicated to a summary of the Cixousian approach to law and legal theory, an approach which can only be described as one of fearless transgression. To be demonstrated below is how, in her fearlessness, the Cixousian ‘feminine’ institutes the possibility of disrupting law’s ‘mastery and meaning’, and of challenging the definitional and phallic power law has over society and language.

The ‘Feminine’ Come-back

Not necessarily in response to, but perhaps more as an expansion of, the above, it is important to outline the Cixousian ‘feminine’’s quest in relation to the disruption of (classic) phallic discourse and the dismantling of the myth of an originary first term or “logos”.⁹³ Applied to law and legal discourse, the Cixousian ‘feminine’ reveals to us the secret of law: ‘there is no secret’.⁹⁴ For Cixous, ‘law is but a word’⁹⁵; and ‘the text is the law’.⁹⁶ This is illustrated in her analysis of Kafka’s tale, ‘Before the Law’,⁹⁷ which is itself a re-telling of law’s origin.

By way of background, Kafka’s short parable commences with a doorkeeper keeping watch over the entrance to Law. A man who comes from the country enters the scene and begs admittance to the Law. The door lies open, but he is denied access at that time. Maybe later, says the doorkeeper. The man is surprised by this response: ‘the Law, he thinks, should surely be accessible to every man and at all times’.⁹⁸ Nevertheless, the man from the country decides to wait for permission to enter. So, there he sits for days and years, making many attempts to be admitted. Finally, when he is extremely old (and almost deaf and blind), the man asks the doorkeeper one final question: why, in all the years he has been waiting, has no one else asked for admittance to the Law? The doorkeeper replies that no one else could possibly have been admitted at the gate before which he stands: this gate was meant solely for him. Upon those words, the doorkeeper shuts the door.⁹⁹

In her exploration of Kafka’s parable, Cixous asserts that the tale is but the sublimation of a paradox: ‘It is not the *body* [of the law] that prevents the man from the

⁹¹ Cited at 61. Citing Blanchot Maurice trans. L. Davis *The Step Not Beyond* SUNY Press Albany 1992 at 25.

⁹² Cixous above note 2 at 7.

⁹³ Sellers ‘Introduction’ *Writing Differences: Readings from the Seminar of Hélène Cixous* ed. S. Sellers Open University Press Milton Keynes 1988 1 at 1.

⁹⁴ Cixous above note 2 at 25.

⁹⁵ At 14.

⁹⁶ At 16.

⁹⁷ The parable of ‘Before the Law’ can be found in Kafka’s novel, *The Trial*. Kafka Franz *The Complete Novels: The Trial, America, The Castle* trans. W. and E. Muir Vintage London 1999 at 120-21. It has also been published as a short story in its own right. See Kafka Franz ‘Before the Law’ F. Kafka *The Complete Short Stories* ed. N. N. Glatzer trans. W. and E. Muir Vintage London 1999 3-4.

⁹⁸ At 120.

⁹⁹ At 120-1.

country from going through the door, but the *word*.¹⁰⁰ Cixous claims that the text, the evidence of writing, *is* the law: 'the text begins with "Before the law." The text says it, and imposes on the reader a law that consists in making it impossible to put into question the existence of the law'.¹⁰¹ Similarly, Derrida asserts that the text 'is the law, makes the law and leaves the reader before the law'.¹⁰² In fact, Derrida would go even further to say that *before* the *text* there stands a *title*, and this title has an 'essential relationship with something like the law':

A sort of intrigue is already apparent in a title which names the law (*Before the Law*), a little as if the law had entitled itself or as the word 'title' had insidiously inserted itself into the title.¹⁰³

The man from the country, posits Cixous, is already *in* the law in that he is 'before the word'.¹⁰⁴ He is unable to 'go through' the door of law because, if he was so able he would discover that the 'law does not exist': '...one has to remain in front of the word, so that the word dictates the law'.¹⁰⁵ Cixous argues that the doorkeeper 'can only *close* the entrance'¹⁰⁶ – 'I am now going to shut *it*'¹⁰⁷ – for he is in fact ignorant of what lies beyond. He can only say what he knows: that there is an entrance.¹⁰⁸ The secret of law is thus that it has no inside. Writes Cixous:

The law especially defends its own secret, which is that it does not exist. It exists, but only through its name. As soon as I speak about it, I give it a name and I am inside Kafka's texts. The law is before my word.¹⁰⁹

Whilst the man from the country may not know anything about the inside of law, he does know that there is a prohibition against the inside, which is absolute. Thus, in a way, 'the man who remains before the law, is in fact inside the law'.¹¹⁰ In other words, the law comes into being through the textual invocation of the door-keeper, the keeper who acts and prohibits. It is through this doorkeeper that the possibility of transgression is instituted.¹¹¹ And, under the laws of phallogocentric discourse, 'there can be no transgression without law'¹¹² (nor no law without transgression).

Transgression plays a key role in the Cixousian approach to law. Whilst there 'must be law so it can be transgressed',¹¹³ the Cixousian 'feminine' responds differently to law and

¹⁰⁰ Cixous above note 2 at 14.

¹⁰¹ At 15.

¹⁰² Derrida above note 57 at 211.

¹⁰³ At 189.

¹⁰⁴ Cixous above note 2 at 15.

¹⁰⁵ Cixous *Readings with Clarice Lispector* above note 10 at 11-12.

¹⁰⁶ Cixous above note 2 at 17.

¹⁰⁷ The doorkeeper is referring to the entrance to law. Kafka above note 97 at 121 (emphasis added).

¹⁰⁸ Cixous above note 2 at 17.

¹⁰⁹ At 18.

¹¹⁰ Cixous above note 23 at 16.

¹¹¹ Cixous above note 2 at 18.

¹¹² At 7.

¹¹³ At 12.

transgression. Cixous cites Clarice Lispector's novel, *Near to the Wild Heart*,¹¹⁴ as an exemplar of the 'feminine' approach to law. In this book, the main protagonist, Joana, as a young girl, steals a book. When confronted by her aunt about the theft, Joana admits that, yes, she did steal the book. However, she explains that stealing is only bad if you steal and are frightened.¹¹⁵ The relevant exchange is as follows:

Aunt - Do you think that you can ... that you can just go around stealing?
 Joana - Well ... perhaps not.
 Aunt - Why do you do it then...?
 Joana - Because I want to.
 Aunt - You what? – her aunt exploded.
 Joana - That's right, I stole because I wanted to. I only steal when I feel like it. I'm not doing any harm.
 Aunt - God help me! So, stealing does no harm, Joana.
 Joana - Only if you steal and are frightened. It doesn't make me feel either happy or sad.¹¹⁶

In her analysis of the scene, Cixous writes that Joana is not 'under the spell of transgression'.¹¹⁷ She argues that Lispector-as-Joana ignores the law and the transgression with which it is intimate 'by putting herself at the origin of what could be the law. She herself decides the value of such and such a gesture. She had the incredible strength to resist the ready-made in the world with its finished laws ordered by a system of moral values, hierarchized into good and bad'.¹¹⁸ Lispector dehierarchizes, destabilizes and erases law: 'To steal without fear is not to steal at all'.¹¹⁹ Lispector 'does not respond to the calling of the law';¹²⁰ 'Joana does not appear before the law'.¹²¹

The 'feminine economy' is thus 'characterized by a refusal to internalise the law, by an openness to the Other'.¹²² This is evidenced in Cixous's treatment of another myth of origin, that of Eve and the Apple. Cixous labels Eve's response to the law 'feminine' in order to distinguish it from the classic 'masculine' response. It represents the way all of us are required to deal with social schema: 'We can choose to accept their prohibitions, or, like Eve, we can ignore and defy the law, searching for a means to inscribe our defiance in the attempt to subvert its power'.¹²³ Cixous contends that Eve is not afraid of 'the inside', of pleasure: 'neither her own, not that of the other'.¹²⁴ It is Cixous's position that Eve was punished precisely because of this positive relationship to the inside, this access to pleasure:

...of course a positive relationship to the inside is something which threatens society and must be controlled. That is where the series of 'you-shall-not-

¹¹⁴ Lispector above note 11.

¹¹⁵ At 46.

¹¹⁶ At 46.

¹¹⁷ Cixous above note 2 at 12.

¹¹⁸ At 24-5.

¹¹⁹ At 26.

¹²⁰ At 12.

¹²¹ At 12.

¹²² Shiach Morag *Helene Cixous: A Politics of Writing* Routledge London 1991 at 65.

¹²³ Sellers above note 93 at 1-2.

¹²⁴ Cixous above note 23 at 16.

enter' begins. It is not insignificant that in the beginning there should be a scene of pleasure which takes this form.¹²⁵

This experience of the inside, to pleasure, is what Cixous calls 'an experience of the capacity for other, an experience of non-negative change brought about by the other, of positive receptivity'.¹²⁶

The man from the country remains always 'outside in relation to the desired inside'.¹²⁷ Remarks Cixous regarding the 'world of absolute law which does not give its reasons': 'By definition undefineable, that is what the law is: pure anti-pleasure'.¹²⁸ She does, however, recognize a certain desire that can be felt for the law. The man from the country, for example,

arrives, desiring to enter the law. His desire already belongs to the law. It does not come while he desires to transgress the law. However, to want to enter the law is transgressive. The man from the country is in a strange situation where from the moment he wants to enter in the law, he is not there. In order *not* to transgress the law, he has to remain in the immobile situation before the law. One has to want to enter.¹²⁹

The above-noted desire in regard to the law is always a 'desire to know', a desire for knowledge. The man from the country thinks there *is* something to know; he thinks there *is* law. In desiring to know this thing called law, the man from the country is always outside the law. In the story of Eve and the Apple, Eve, too, desires to know – the law, the apple: 'There is an apple and straight away there is the law'.¹³⁰ But the difference between Eve and the man from the country is that she is not afraid of knowledge, of the apple, its insides, or the inside of law (because she knows there is *nothing* for which to fear). Eve bites into the apple and finds pleasure in its inside; there is no gap between desire and its object. The man from the country was not so brave.¹³¹

Conclusion

¹²⁵ At 16-17.

¹²⁶ At 18.

¹²⁷ Cixous above note 4 at 102.

¹²⁸ Cixous above note 23 at 18.

¹²⁹ Cixous above note 2 at 15.

¹³⁰ Cixous above note 23 at 16. Consider also the apple that K. eats following his arrest in *The Trial*: "He flung himself on his bed and took from the washstand a fine apple which he had laid out the night before for his breakfast. Now it was all the breakfast he would have...". Kafka *Complete Novels* above note 97 at 16.

¹³¹ This statement is supported not only by Kafka's text, but by the fragments of his notebooks, in which one finds the following passage omitted from the story:

I ran past the first watchman. Then I was horrified, ran back again and said to the watchman: 'I ran through here while you were looking the other way.' The watchman gazed ahead of him and said nothing. 'I suppose I really oughtn't to have done it,' I said. The watchman still said nothing. 'Does your silence indicate permission to pass?' ...

Kafka Franz *Wedding Preparations in the Country and Other Posthumous Prose Writings* trans. E. Kaiser and E. Wilkins Secker & Warburg London 1953 at 354-5.

In light of the above, the Cixousian approach to law and legal authority is as follows. For Cixous, law is but a word. Moreover, it is a meaningless word, for how can threatening Eve with death if she eats the apple ever be comprehensible 'in the paradisiac state where there is no death'?¹³² Also of importance is the imperative advanced by law, which states that those who have a positive relationship to knowledge, to the 'inside', the other, and to pleasure will be punished; for such relations threaten society and must be controlled.¹³³ Compare this approach to classical notions of law and legal authority, and to the poststructuralist account outlined above. If not already evident, the point to be made in this article, which is perhaps (always perhaps) quite a controversial one, is that poststructuralists, in their obsession with origin and law/transgression, remain forever 'masculinist' in their approach, at least in terms of Cixousian philosophy. The Cixousian 'feminine' has a completely 'different relationship to preservation, to loss, to the persistence of the past, etc., to all the affects, emotions, attitudes aroused by the mysteries of time, to forgetting, memory, anamnesis.'¹³⁴ Whilst the origin may, at times, creep into Cixous's writing, and she has been known to "go back" towards the source¹³⁵ every now and again, the Cixousian 'feminine' responds to the issue of origin (and to that of law/transgression) 'with a *music* that is different from his'.¹³⁶ In other words, she hungers less for the 'enigma of [her]self'¹³⁷ and more for the 'phenomenon of an instant';¹³⁸ she is 'more inclined to study symptoms',¹³⁹ as opposed to origins.

It is my contention that, in so moving, the Cixousian 'feminine' journeys 'farther - to the unknown, to invent'.¹⁴⁰ Forever thirsting after the further-than-herself within herself,¹⁴¹ she eludes a return to the origin: 'she doesn't go back there.'¹⁴² This is where those who seek the 'wild heart', with its infinite capacity for love ('real love which feeds only on differences'¹⁴³) and those who seek the law -- 'the heart *or* the law', distinguishes Blanchot¹⁴⁴ - - diverge. The law must continually return to its origin in order to reassert its absolute power and authority. This return is a response to transgression, commonly conceived, as a going-beyond of the limit set by law; a violation or infringement of said law. In contrast, the 'wild heart' does not glance back or reminisce about wherefrom she came. She pushes ever-forward. She is the lesser-known 'transgression', that of '(the sea) spread[ing] over (the land)'.¹⁴⁵ She is 'living water', *agua viva*, ever-growing and spreading; fearless: for how can the sea be afraid of the land it is blanketing, enveloping?; how can the watery-womb be fearful of the foetus it is protecting and nourishing?

¹³² Cixous above note 23 at 16.

¹³³ At 17.

¹³⁴ Cixous and Calle-Gruber above note 13 at 88.

¹³⁵ At 90.

¹³⁶ At 88 (emphasis added).

¹³⁷ Cited at 90.

¹³⁸ At 90.

¹³⁹ At 90.

¹⁴⁰ Cixous above note 4 at 93.

¹⁴¹ Cixous and Calle-Gruber above note 13 at 56.

¹⁴² Cixous above note 4 at 93.

¹⁴³ Blanchot Maurice *The Unavowable Community* trans. P. Joris Station Hill Press New York 1988 at 59.

¹⁴⁴ At 26 (emphasis added).

¹⁴⁵ *The Oxford English Reference Dictionary* 2nd ed. eds. J. Pearsall and B. Trumble Oxford University Press Oxford 1996 at 1530.

Unleashed and raging, she belongs to the race of waves. She arises, she approaches, she lifts up, she reaches, covers over, washes a shore, flows embracing the cliff's least undulation, already she is another, arising again, throwing the fringed vastness of her body up high, follows herself, and covers over, uncovers, polishes, makes the stone body shine with the gentle undeserting ebbs, which return to the shoreless nonorigin, as if she recalled herself in order to come again as never before...¹⁴⁶

In the Cixousian lexicon, 'feminine writing' is also known as '*the style of live water*'.¹⁴⁷ It is a style of writing in which 'thirst is itself that which quenches, since to be thirsty is already to give oneself a drink.'¹⁴⁸ In other words, it 'gives rise to works which are like streams of blood or water, which are full of tears, full of drops of blood or tears transformed into stars. Made up of phrases which spill forth dripping, in luminous parataxis.'¹⁴⁹ This 'style of live water', this *écriture féminine*, constitutes a fearless transgression. It is an 'out and out',¹⁵⁰ a spreading out over the limit between land and sea, the land remaining below the above-sea. The origin, the limit, is thus always in movement; 'in tune with its environment'¹⁵¹; in 'endless multiplication and extension', 'words play[ing] off one another heterogeneously'.¹⁵² Thus, the Cixousian 'feminine' dedicates herself to 'heterogeneity, alterity, and the suspension of law'.¹⁵³ She spends her day vigorously shaking apple trees and greedily – guiltlessly! – devouring the ripe fruit that falls from the branch.

Does all this mean that the Cixousian 'feminine' carries within herself a loathing for law, for linearity and narrative? To the contrary. She does see some utility in these concepts: 'When there is narrative, there is a path. The reader can follow this path, look right and left. It facilitates a certain type of reading that comes back to the law, *lex*, to something that binds, links, reads.'¹⁵⁴ However, it is the 'feminine' text, in its disobedience of 'all organizing laws, all constructions',¹⁵⁵ which 'goes very far' in Cixous's opinion.¹⁵⁶ In other words, it is the Cixousian 'feminine', in her pushing the notion of lawlessness, of non-narrativity and non-linearity, 'to the extreme', who elicits a potential disruption to, or transcendence of, the law of the text,¹⁵⁷ the law of the world.

As one final note, the 'feminine' text cannot be completely devoid of *all* law: she is, after all, not 'mad'.¹⁵⁸ And the 'feminine' text does contain some 'living codes',¹⁵⁹ codes

¹⁴⁶ Cixous above note 4 at 90-1.

¹⁴⁷ Cixous above note 23 at 25 (emphasis in the original).

¹⁴⁸ At 25.

¹⁴⁹ At 25.

¹⁵⁰ Cixous above note 4 at 63.

¹⁵¹ Conley Verena Andermatt 'Introduction' H. Cixous *Readings: The Poetics of Blanchot, Joyce, Kafka, Kleist, Lispector, and Tsvetayeva* trans. V.A. Conley University of Minnesota Press Minneapolis 1991 ix at xiv.

¹⁵² MacGillivray above note 22 at xxv.

¹⁵³ Hill above note 86 at 206.

¹⁵⁴ Cixous *Readings With Clarice Lispector* above note 10 at 14.

¹⁵⁵ At 15.

¹⁵⁶ At 15.

¹⁵⁷ At 14.

¹⁵⁸ At 15.

¹⁵⁹ At 15.

containing 'a beginning and an end'.¹⁶⁰ Yet, the difference between Cixous's approach and those of other theorists is that the 'law' governing the Cixousian 'feminine' flows from the 'movements of the body and enunciation';¹⁶¹ it comes to us under the guise of 'theme'.¹⁶² As Cixous explains: 'Rather than a narrative order, there is an organic order.'¹⁶³ And this organic order, if 'lived in its immediacy',¹⁶⁴ would prove to us that we all have within ourselves 'a savage part that is the ultimate refinement of culture'.¹⁶⁵ In other words, 'feminine writing', in its want of organizing (meta-) laws or rules, becomes perhaps the most 'violently real', the most 'faithfully natural',¹⁶⁶ and the most 'contrary to classical narration' (linearity).¹⁶⁷ As such, 'feminine writing' offers us one of the few opportunities of nearing the 'wild heart'; and it is solely through the Cixousian 'feminine' that a disruption of classical phallic discourse can be instituted, and the opportunity of loving the 'other as *other*',¹⁶⁸ actualised.

¹⁶⁰ At 15.

¹⁶¹ At 15.

¹⁶² At 15.

¹⁶³ At 15.

¹⁶⁴ At 13.

¹⁶⁵ At 13.

¹⁶⁶ At 15.

¹⁶⁷ At 15.

¹⁶⁸ Sellers above note 42 at 144.