
Introduction – Speaking Subjects: Celebrating Twenty Years of Lacey’s *Unspeakable Subjects*

Gina Heathcote* and Arlie Loughnan**

The calendar year 2018 has seen an unprecedented rise in public discourse, globally, on issues that had previously been the domain of feminist and gender scholarship. Key issues such as the challenging of sexual harassment and sexual assault as well as the need for diverse representation in public institutions became headline news. Campaigns such as Tarana Burke’s #MeToo project and the #WomensWave spread from their US origins into a series of larger – global – conversations.¹ For feminist activists and academics these are interesting times where decades of intergenerational work is being captured – and debated – in mainstream public discourse.

The year 2018 also marked the twentieth anniversary of the publication of Professor Nicola Lacey’s seminal feminist account of legal thinking, *Unspeakable Subjects: Feminist Essays in Legal and Social Theory* (1998). To mark the commencement of a third decade since the publication of *Unspeakable Subjects* we hosted an event at SOAS University of London to consider the continuities and relevance of the book in 2018. Scholars from law, criminology, gender studies, queer studies and sociology came together to discuss both the book and Lacey’s wider intellectual contribution to the field of feminist legal studies. One of the outcomes of the symposium is this collection of personal and academic reflections as well as academic articles published in *feminists@law*. What was striking at the Symposium, and also in this collection, is the importance and relevance of *Unspeakable Subjects* to this particular moment. As the history of feminist ideas and activism infiltrates public debate, it seems not just timely but absolutely crucial that the intellectual origins of contemporary debate be re-examined and remembered.

The analysis of the tensions within feminist theories and their role in propelling insight into understandings of gender law reform is particularly pertinent. *Unspeakable Subjects* draws out the role of feminist jurisprudence in relation to legal theories more broadly – establishing templates for engaging the ‘big’ questions in legal theory from the construction of public and private, understanding of legal authority and theories of justice – while also situating feminist jurisprudence in dialogue with adjunct critical accounts, in particular legal accounts of race, political economy and sexuality. At the same time, the substantive examples in *Unspeakable Subjects* – sexual assault, pornography/censorship, and political arrangements – prefigure the spaces where feminist work enters public discourse in 2018. In this collection these continuities between Lacey’s oeuvre and contemporary conversations are enlarged – drawing out the power, persistence and relevance of her contribution to feminist legal theories over time.

Each of our contributors has also benefited from intellectual mentoring and friendship with Niki – something that was given considerable attention at the Symposium, drawing out the

* Reader in Gender Studies and International Law, Centre for Gender Studies and School of Law, SOAS University of London, UK. Email gh21@soas.ac.uk

** Professor of Criminal Law and Criminal Legal Theory, School of Law, University of Sydney, Australia. Email arlie.loughnan@sydney.edu.au

¹ On the origins of #MeToo see Emejulu (2018).

commitment to feminist care that she continues to bring – and always has brought – into intellectual spaces. As editors our turn to Lacey’s work marks these memorable and formative personal engagements with her that we – and all the participants at the Symposium further affirmed – felt was an important element of the feminist scholar and her scholarship. The publications here also represent a desire to recognise, and celebrate, the very distinctive feminist jurisprudence and feminist legal theories that have emerged in the British context and within which Lacey’s work is central.

Noting that the field of feminist legal theory is often assumed to be dominated by US feminist voices, whether US radical, liberal or cultural feminisms as well as US critical race feminisms, we felt it timely to recognise the voices beyond US debates that have been pivotal in marking and establishing the field of feminist legal studies. Within that field, Lacey’s contribution is significant and *Unspeaking Subjects* stands as a particularly important contribution that responds to and elaborates on debates within, as well as criticisms of, US feminist legal theories. Our project is thus also a paying of attention to feminist histories and a conscious act of engaging feminist trajectories and roots for their continued pertinence and relevance in an era where such histories are all too often forgotten or discarded in the search for new scholarship, new ideas and accounts.

The submissions here demonstrate the contemporary relevance of re-reading and returning to *Unspeaking Subjects* in this moment when the politics of austerity, renewed legal challenges to women’s autonomy and the need for intersectional approaches emerge as pressing issues within wider social discourses. As such, the Symposium and this collection weave between established accounts and contemporary issues, drawing on each to develop new insight through the return to and elaboration of the persistence of the central claims of *Unspeaking Subjects*.

Looking across the collection of papers brought together in this special issue, a number of themes emerge. One prominent theme in the collection is the ongoing relevance of the critique of liberal law offered by Lacey in *Unspeaking Subjects*. In particular, the lesson that feminist theorists must critically interrogate the apparently neutral and objective language of law – evident in the notion of the reasonable man and the gender neutrality of criminal defences, for example – remains as pertinent as ever. As Emily Jackson writes in her contribution, in the field of medical ethics and law, the apparent neutrality of law is embodied in the individualistic, autonomous patient, who makes rational decisions and is unaffected by the doctor-patient power dynamics. As legal systems respond to rapid social, political and technological change, the need to expose the ways in which liberal laws are cut through by power relations remains as great as ever.

One of Lacey’s central concerns in *Unspeaking Subjects* is to offer a critical examination of legal and state claims to do justice for citizens in the polity. In her analysis of the welfare state, Lacey identifies as a central move a shift from ‘private to public patriarchy’ (1998: 59) at the heart of welfare provision. Insa Koch picks up this theme with her analysis of the gendered nature of austerity policies relating to access to council housing stock. With reference to a larger ethnographic study (Koch 2018), Koch argues that inequalities of eligibility and access are patterned along gender lines, where they frequently intersect with issues of race and class. Her examination of women’s actual and lived experiences of welfare provides a strong critique of the gendered workings of ‘austerity’ politics, founding a strong case for political reform,

and demonstrating the ongoing need for the kind of critical analysis of state power presented in *Unspeakable Subjects*.

Concern with austerity also animates Irene Gedalof's contribution to the collection. Like Lacey, Gedalof is concerned to open our ideas of social justice to a recognition of collective differences and, with this, to challenge the public/private divide that stabilises and reinforces gender norms. For Gedalof, this challenge is only more urgent in a political moment that, as she writes, 'refuses precisely these recognitions'. Referring to her monograph critically analysing neo-liberal austerity narratives (Gedalof 2018), Gedalof argues that the policies and practices of austerity individualise the problem of inequality and the crisis it provokes, and construct the problem of the 'irresponsible parent who fails to reproduce properly inside the normatively gendered framework of marriage', generating a culture of worklessness across the generations. In this policy discourse, 'social justice' works to deny 'social context, social institutions, communities and cultures' (Lacey 1998: 67), drawing attention to the limits of liberal theories of justice and the pertinency of their critique, both now and at the time *Unspeakable Subjects* first appeared.

Another theme of the collection revolves around reflection on the nature of feminist jurisprudence. Just as *Unspeakable Subjects* engages in critical reflection about the state of feminist theory, and encourages scholars to maintain reflexivity about their scholarly practice, Gina Heathcote draws out the need for 'feminism's power to question and reshape the categories of traditional debate' (Lacey 1998: 187) within legal writing and research to be actively and explicitly engaged. With a focus on legal subjectivity, Heathcote seeks to articulate new methods of critique and reform to re-imagine a legal subject beyond sex difference, permitting greater engagement with difference within and throughout gendered lives. For Heathcote, Lacey's work in *Unspeakable Subjects* provides a stimulus to advance feminist jurisprudence in examining the foundations of law, thus ensuring that contemporary feminist legal theories are better able to commence dialogues that respond to contemporary 'feminist writing on gender and race, subjectivity and silencing/listening'.

Yet another theme evident in the collection concerns the contribution *Unspeakable Subjects* makes to debates within particular legal subfields. In her contribution, Arlie Loughnan picks up on Lacey's work in criminal law theory, and draws connections between this work and Lacey's feminist legal theory. As a criminal law theorist, Lacey has pioneered a 'critical' approach to the study of criminal responsibility, leading the field in taking on the dominant legal-philosophical tradition of scholarship to make the case for the influence of social arrangements, power structures, and traditions and practices on the normative concepts such as criminal responsibility that structure criminal law (e.g. Lacey 2016). And, in interdisciplinary work that may be seen as a bridge between her feminist theoretical work and her criminal law theory, Lacey examines the ways in which gender and responsibility and crime have come together and apart in different historical periods (Lacey 2008). Inspired by this and other work of Lacey's, Loughnan analyses women's responsibility for crime over the twentieth century. Drawing on a larger work examining Australian criminal law (Loughnan 2018), she points to the persistence of specificity and particularity in responsibility for crime that subsists beneath the general story of the triumph of generality and universalism in criminal responsibility, but which escapes the attention of mainstream responsibility scholars. In this account, Loughnan joins Lacey in exposing 'the politics of the criminal law' by reference to the 'departures of legal doctrine from its own standard method' (Lacey 1998: 199).

Chiara Cooper's article in this collection also picks up on the contribution *Unspeakable Subjects* makes to particular issues within criminal law, namely sexual autonomy and consent. For Cooper, *Unspeakable Subjects* offers a solid basis for an exploration about the value of sexual consent in the context of 'ambiguous' sexual misconduct brought to the fore in the #MeToo movement. Cooper argues that the current view of sexual consent in rape law and in society 'fails to account for nuanced understandings of sexual abuse(s)' and thus fails to accommodate the experiences of survivors of abuse. Following Lacey in seeking to disrupt the white, able bodied, masculine, heterosexual body as the legal norm (Lacey 1998: 123-4), she advocates a 'more inclusive sexual politics' away from the autonomous understanding of consent to one which acknowledges gendered power relations, environments and societal structures.

A final theme to emerge in this collection relates to feminist networks or friendships in the academy. It is clear that Lacey's contribution to fostering such networks, and mentoring her students and colleagues, is unsurpassed. Part of this contribution comes from Lacey's work. As Sharon Cowan writes in her contribution, '*Unspeakable Subjects* ... became a cornerstone, and a turning point' in her doctoral thesis, giving her 'permission to be bolder' and expand her intellectual horizons. For Cowan, the influence of this work, and Lacey's role as her doctoral examiner, was the beginning of a long friendship, as she has remained 'a supporter, a referee, an interlocutor and an enormous inspiration' since then. Similarly, for Jackson, working with Lacey at LSE over many years has been a great fortune. As Jackson writes, 'quite simply, through Niki's work and through her example, I have learned how to think and write critically about the law'. As these comments indicate, Lacey's contribution to feminism is truly lived – in her friendships, the support she offers to others and in her interactions with students and colleagues, as well as in her scholarship. In this way, Lacey embodies the feminist academic practice she writes about in *Unspeakable Subjects*.

We hope you will agree with us that the outcome is an impressive set of reflections and research on the place of feminist legal theory in 2018: from austerity politics in Britain to the complexity of #MeToo on sexual politics in legal systems, the collection draws in a range voices, methodologies and laws in a manner that recalls the breadth and depth of *Unspeakable Subjects*.

We cannot think of more appropriate words with which to conclude this Introduction than to quote Cowan's contribution to the collection:

Niki is one of the best known and best loved feminist legal and social theorists, in the UK and beyond. She is an intellectual giant, prolific, creative, collaborative, and extremely busy. And yet, she is unstinting in her commitment to mentoring, nurturing and encouraging young scholars from all sorts of disciplines.

We agree wholeheartedly, and are delighted to present this collection in celebration of the wonderful *Unspeakable Subjects* and its wonderful author.

References

Akwugo Emejulu, 'On the problems and possibilities of feminist solidarity: The Women's March one year on' (2018) 24(4) *IPPR Progressive Review* 267.

Irene Gedalof, *Narratives of Difference in an Age of Austerity* (Palgrave, 2018).

Gina Heathcote, *Feminist Dialogues on International Law* (Oxford University Press, forthcoming 2019).

Insa Koch, *Personalising the State: Punishment, Class and State Failure in Urban Britain* (Oxford University Press, 2018).

Nicola Lacey. *Unspeakable Subjects: Feminist Essays in Legal and Social Theory* (Hart, 1998).

Nicola Lacey, *Women, Crime and Character: From Moll Flanders to Tess of the D'Urbervilles* (Oxford University Press, 2008).

Nicola Lacey, *In Search of Criminal Responsibility: Ideas, Interests and Institutions* (Oxford University Press, 2016).

Arlie Loughnan, 'Women's responsibility for crime: Dynamics of change in Australia since the turn of the twentieth century' (2018) 5(2) *Law & History* 137.