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## Response – Revisiting *Unspeakable Subjects*: A Retrospective on (and in...) Good Company...

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I am hugely grateful to Gina, Arlie and all the contributors for their generosity in revisiting *Unspeakable Subjects*; and for prompting me to do so. My work has spun off in different directions over the last 20 years: and the April event, as well as this symposium, have made me reflect on why I moved at a tangent from feminist theory – even though the challenges which it identifies and seeks to tackle, along with its underlying analysis and inspiration, have remained at the core of my work. In this brief set of remarks in dialogue with the contributors – and with myself – I will revisit a few of those challenges, particularly in light of the #MeToo context within which Arlie and Gina have deftly framed this retrospective.

In case the idea of being in dialogue with myself sounds a tad egotistical (!!), let me start off by taking up Gina's insightful thoughts on split, plural and speaking subjects. One of the key components of any scholarship, it seems to me, is critical reflexivity; and in thinking about this contribution, I have been reflecting inter alia on my own split subjectivity. One amusing jumping off point for this was finding that half the contributors had referred to me as Nicola – the name I publish in; and half as Niki – the name which my friends and colleagues use. The reasons are obvious; but the history is not unrelated to the way power works in the academy to shape us into professionalised personae which we then have to manage, and sometimes to renegotiate, in relation to our, if I can put it this way, extra-academic selves. When I started publishing articles in my mid 20s, I had already developed a fully-fledged allergy to third person constructions such as 'it is submitted that', and a commitment to writing in the first person. But, looking back, I suspect that I didn't feel quite permitted to speak in my own voice; and that the full name helped me to manage that split between a professional self and an extra-academic self. It is a trivial but perhaps telling example of a more general tension which arises within counter-cultural and counter-normative life and work of any kind. I bumped up against it in relation to *Unspeakable Subjects* in another amusing yet troubling form: on reading my analysis of the contrasting writing styles of French feminist writers and English-speaking academics like herself, an old friend (and well-known feminist legal theorist) wrote me a hilarious email asking me if I was accusing her of 'writing like a bloke'!

More seriously (not that I am implying that risking offence to an old friend was a trivial matter...), I think that the idea of split subjectivity also helps to illuminate the difficulty which I have often had – I suspect I am not alone – in bringing my feminist sensibilities, perspectives and insights to bear on my not-explicitly-feminist work. This is something which Sharon very deftly pointed out in a review of my last book on criminal responsibility, which covered terrain over which I had written about the distinctive criminal legal construction of women's subjectivity in a previous book, yet which did insufficient work to fully draw together the threads of the two volumes.<sup>1</sup> I mention this not only to underline the continuing, underlying dynamics which work against critical and counter-normative scholarship, even among those of

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<sup>1</sup> Sharon Cowan, 'In Search of Connections: Reading Between the Lines of Nicola Lacey's *In Search of Criminal Responsibility*' (2017) 4(2) *Critical Analysis of Law* 211.

us who want to engage in it; but also to underline something which is insufficiently recognised, yet which is a logical corollary of the first point. This is that critical work, precisely because it insists in looking below the surface, and working against the grain, is tough, difficult, intellectually demanding. So, it is wonderful to see those links being made in all the contributions – as in the contributors’ broader scholarship.

1998 marked not just the publication of this book, but also my arrival at LSE (a happy coincidence, since the roots of the book lay in good part in the inspiration and support provided by meetings of the Women Law Teachers’ Group, which used to meet at LSE in the 1980s, thanks to Jennifer (Jenny) Temkin). The last twenty years have therefore given me a special opportunity to think, inspired by LSE’s motto, about ‘the causes of things’. This working context has fostered a strong interest in the conditions under which particular social arrangements and vectors of power arise and become embedded – a necessary precursor to understanding the conditions under which they can be resisted, mitigated or changed. This direction in my own work came just as much feminist work was moving in a highly theoretical direction, which probably explains why I didn’t explicitly work again on feminist legal theory once Emily’s and my contribution to a collective text on jurisprudence was complete.<sup>2</sup> I am someone with a taste for theory; but I remain strongly committed to holding the projects of socio-legal analysis, critique, utopia and reformism together within an integrated praxis of normative reconstruction. So it is wonderful to see that idea used so productively in all the contributions, and to see the development more generally of projects which bring those resources together - the various feminist judgments projects being an excellent example.

Reading the contributions, I am struck by how many of the themes which preoccupied me 20 years ago remain on the intellectual and political agenda. While this is reassuring at one level (!), as several of the contributors note, it is also somewhat depressing. Why has progress been so slow, and why are we still having to make the argument for situated autonomy or integrity, for a critical appraisal of the gendered ‘privatisation’ of harms to women, or for the gendered nature of legal constructions of concepts such as responsibility, autonomy and, as Emily points out, harm itself? Why is it such hard work to reveal the erasure of power and of the gendered structural conditions which shape the interpretation, construction and operation of legal concepts? Powerful and complex social dynamics are of course at work here. But it is fascinating to see how, amid the continuities of concern, some important changes have materialised in terms of the ways in which ‘fake gender-neutralised’ (!) legal concepts and structural erasures are operating as the socio-political world has evolved over the last 20 years. (As Irene points out, this evolution has been in a very different direction to the one for which I hoped; though I should say that I now think that I had an over-rosy view of some aspects of communitarian thinking in the paper on the welfare state which formed part of *Unspeaking Subjects*). These changes are illustrated, albeit in different ways, by every contribution, and I am simply going to take up one example: that of responsibility. The idea of individual responsibility as founded in capacity, and as inherently autonomy-respecting, has, as Arlie points out, been key to the legitimisation of criminal law. Yet it is increasingly clear that associated discourses of individual choice (including those about consent in contexts such as sexual offences or medical law) are deployed not merely in a context of the erasure of power and gendered impact, as Insa, Irene, Chiara and Emily all show, but also to blur the boundaries between notions of responsibility founded in capacity and those based on character or role.

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<sup>2</sup> Emily Jackson and Nicola Lacey, ‘Feminist Legal Theories’ in James Penner, David Schiff and Richard Nobles, et al., *Introduction to Jurisprudence and Legal Theory: Commentary and Materials* (OUP, 2002).

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Hence, for example, if the subject uses her ‘responsible choice’ in the wrong way, the discourse of responsibility-attribution shifts into a strongly evaluative, character-based mode, with the subject constructed as an ‘undeserving’ claimant, a ‘bad’ or ‘irresponsible mother’, a ‘deserving accused’. Within the persisting discursive mechanism which positions women as, as Arlie nicely puts it, ‘atypical subjects’, therefore, there remains a powerful tendency to construct us/them as not merely (or not) infantilised or incapable but even (or rather) as abject, bad or dangerous where they step beyond what remain heavily gender-differentiated, value-laden and strongly policed norms of conduct. The re-emergence of powerful discursive constructions of responsibility founded in bad character, either as founded in evaluation of character traits or in the diagnosis of a dispositional or situational association with risk, is in my view one of the most important shifts in recent criminal law; and both Insa’s and Irene’s papers make it clear something parallel is at work in the welfare context. It applies, of course, to men as well as women; but the conception of what counts as bad, dangerous or risky character remains highly gendered.

Many challenges, therefore, remain to be confronted; and new ones are emerging all the time. Let me mention just one – and one which is closely related to emerging paradigms of character-based responsibility-attribution. As Gina and Arlie note in their introduction, the #MeToo movement has, over the last year, served to shed light on forms of sexual abuse which have long been on the feminist agenda for critique, reform and reconstruction, yet which have proved exceptionally difficult to place on the broader political landscape. This is a significant advance. But as a criminal lawyer, I confess to having found myself at various points worrying that a populist strand in the expression of understandable revulsion at some of the revelations may be fostering a potentially more generalised diminution in the respect for procedural safeguards which are of huge importance in reducing the potentially oppressive nature of criminalising power. Demonising and stigmatisation are retrograde forces in criminal justice – as even the slightest acquaintance with the degradation of the American criminal justice system in particular over the last 50 years makes obvious. The challenge here, it seems to me, remains the one of normative reconstruction: not to abandon the important values embedded in ideas such as rights, responsibility, fairness and autonomy; but to reconstruct them, and the safeguards with which they are associated, in ways which speak to the insights of feminist politics. In this context, I celebrate Chiara’s suggestion that a third wave feminism is reclaiming concepts such as autonomy.

In conclusion, let me return to Gina’s conception of plural subjectivity. In this context – and encouraged by Sharon’s kind words about the semi-autobiographical quality of the introduction to *Unspeakable Subjects* – I want to respond to the quite overwhelmingly generous comments of many of the contributors about my personal impact on them. I will do so simply by acknowledging something which will be obvious any reader of *feminists@law*. The opportunity to build relationships and to debate feminist ideas with friends, colleagues and students has been one of the great joys and privileges of my career; and my own life and work have been fundamentally shaped by the work of many other people, including the contributors to this symposium. Writing – and, in several cases, working – with Emily, and with Elizabeth (Liz) Frazer, Zelia Gallo, Hanna Pickard, Celia Wells, Lucia Zedner; teaching a seminar on feminist issues in law with Mary Stokes in Oxford in the 1980s (we were apparently known as Cagney and Lacey: a reference for the mature reader...!); teaching feminist legal theory with Susanne Baer at the Humboldt University in Berlin in the mid-1990s and with Ratna Kapur at NYU in 2001; working with Carol Smart, Beverley Brown, Elizabeth (Liz) Kingdom, Alison Young on *Social and Legal Studies*; and in addition to all of them, reading Kimberlé Crenshaw,

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Seyla Benabib, Nancy Fraser, Moira Gatens, Ngaire Naffine, Jennifer Nedelsky, Anne Phillips, Patricia Williams, Iris Marion Young, ..... I could of course go on. How, then, could I possibly unpick where all the strands of thought which make up *Unspeakable Subjects* came from? Contrary to the implication of the individualised protocols of contemporary research assessment (let us pass in dignified silence over their increasingly, and ludicrously, hyperbolic grading benchmarks...), any book or article is a tapestry; indeed is part of a broader tapestry, the product of plural subjectivity, and a product which will never be complete. So let me close by expressing my profound gratitude to both the contributors and the many other scholars whose ideas, inspiration, friendship and support are woven into the texture of *Unspeakable Subjects*.