

GOVERNANCE, REPRESENTATION AND THE ‘MONSTROUS REGIMENT’: IS THE COLLECTIVE FEMININE?

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Alternatives to the individualistic emphasis of liberal theory focus attention on collective dimensions of social life with implications for legal and political analysis of the state, of representation, and of international law. In this context, relationships between the individual–collective dichotomy and the dichotomy of gender demand attention because of the claimed affiliations of individualism with social understandings of masculinity.

I INTRODUCTION

Liberal theory over several centuries and in many variants has exalted the individual as the proper agent and locus of political life. The liberal approach to democratic governance of states focuses on the enjoyment of franchise by individual voting citizens. International law swings in behind with its elevation of the universal human rights of individuals, on the basis of which states owe fiduciary obligations to those citizens, thereby acquiring the privileges of sovereignty. Alternatives and responses to this liberal world view look instead to collectives for legitimacy in governance. ‘Collectivism’ in this sense may be said to include communitarian and socialist traditions in political theory as well as nationalism and totalitarianism.¹

Alongside the debate between individualism and collectivism in the political sphere, feminist theorists and activists have continued to interrogate the gendered parameters of governance. The liberal individual has been exposed as an individual thought of as male. And if the rights of persons worldwide are understood as the universalised expression of the rights of an abstract individual, then this abstract individual has somehow remained a masculine individual. A powerful ideological alliance is thus defined, a hegemonic

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¹ Alan Ryan, *On Politics: A History of Political Thought from Herodotus to the Present* (Penguin, 2012) 954.

alignment of individualism with masculinity. The ‘other’ to this ‘self’ would thus, it would appear, take the form of a *feminine collective*.

Problems with this vision are many, not least the concerns suggested by the ‘dark sides’ of collectivism as noted above. There is also the uneasy feeling that this counter-alliance has been brought forth and in a sense constituted by the individual–masculine ‘complex’ itself. Yet the inadequacies of the latter, ‘master’ formula are so serious that this tentative formulation of the feminine collective should be explored, and its potential for the articulation of resistance opened up. As Knop et al describe in relation to multiculturalism, the challenges involved in seeking to maintain a sensitivity both to gender and to culture do not justify a quietist relapse into methodological individualism.² The purpose of the present article is thus to explore the contested and in some ways paradoxical notion of the feminisation of the collective; and to indicate some possible consequences in relation to governance and to gender politics, with especial attention being paid to the ways in which these processes are manifest in the context of international law.

No enquiry comes from nowhere. A faith in solidarity animates this project, tempered by the awareness that the cultural and intellectual traditions on which the author draws are Occidental, and contaminated by privilege, in myriad ways. As Sundhya Pahuja writes, ‘It is relatively clear why we should be uneasy with the desire to save the world and with the avatars of that desire’³ ([s]uch as development, transitional justice, humanitarian intervention, the Responsibility to Protect, democratisation and the rule of law, etc).⁴ Pahuja continues: ‘After the critique of the trope of salvation and the identification of its tenacious hold on international law as an underlying philosophy of history, it is possible to see the desire to save as the continuation of the ‘benevolence of Empire’.⁵ But this is by no means all the baggage that one carries. ‘To stay with international law in order to call it to account in terms of its own promises of universality would be to downplay the consequences of the role of developmentalism in holding up that promise, and to replay Eurocentrism at the heart of critique.’⁶

Pahuja encapsulates two key concerns of critical international law in the following way: ‘[H]ow to tackle the persistent Eurocentrism of the critique of

² Karen Knop, Ralf Michaels and Annelise Riles, ‘From Multiculturalism to Technique: Feminism, Culture, and the Conflict of Laws Style’ (2012) 64 *Stanford Law Review* 589, 656.

³ Sundhya Pahuja, ‘Laws of Encounter: A Jurisdictional Account of International Law’ (2013) 1 *London Review of International Law* 63, 96

⁴ *Ibid* 96, n 151.

⁵ *Ibid* 96 (footnotes omitted).

⁶ *Ibid*.

Eurocentrism within critical international legal scholarship; how to express solidarity with those who suffer without that suffering becoming the foundation for one's authority.'⁷ Pahuja's focus is on authority and its negotiation on the world stage. Gender politics plays a background role in the paper from which these quotations from Pahuja have been taken, but gendered experiences and understandings can hardly fail to contribute to the constructed identity of the author of any intervention in scholarly debate any more than the consequences of class and geography can fail to do so. It is therefore with what is hoped to be a strategic awareness of such constraining locations and positionings that this essay sets out. And the dichotomy of self as autonomous individual, versus self as defined by the groupings and communities with which one identifies or is associated with in the eyes of others, is a dichotomy that bears witness to an ontological divide of fundamental significance: the one and the many. As Ratna Kapur has observed in the post-colonial context, self-sufficiency as a trope of liberal theory is complemented by that theory's account of the neutrality of the market-place within which such self-sufficient individuals supposedly compete. Thus '[t]here is an illusion that the individual can be in control of her life, while collective struggles and institutions that enable self-sufficiency are undermined'.⁸ The ideology described here by Kapur is presumably the gist of Margaret Thatcher's claim that 'there is no such thing as society',⁹ against which it can be said with Kapur that without society there is no individual.

Related issues have already been subjected to scrutiny in contemporary debate in public international law. In her contribution to *International Law and Its Others* Dianne Otto has posed the question: 'What alternatives are there to the abstract universal subject and his female "others"?'¹⁰ Otto's query arises in the context of international human rights law, but its significance is even broader. This formula indeed obstructs the production of 'emancipatory gender subjectivities',¹¹ as Otto remarks, and it does so in a multiplicity of ways. Each part of Otto's question is significant. There is the abstract universal subject, identified as male by the subsequent 'his'. 'He' is singular, individual. There are the female 'others', some kind of collective. And there is the grammatically possessive connection between them: 'his'. The focus of

⁷ Ibid 96–7, footnotes omitted; a third key concern is: 'how to read resistance, and the agency of the "poor", in the context of a developmental world.'

⁸ Ratna Kapur, 'Gender, Sovereignty and the Rise of a Sexual Security Regime in International Law and Postcolonial India' (2013) 14 *Melbourne Journal of International Law* 317, 345.

⁹ Margaret Thatcher, Interview with *Women's Own*, 31 October 1987.

¹⁰ Dianne Otto, 'Lost in Translation: Re-Scripting the Sexed Subjects of International Human Rights Law' in Anne Orford (ed), *International Law and its Others* (Cambridge University Press, 2006) 318, 352.

¹¹ Ibid.

this article is this doubly asymmetrical formula of *the individual man and the collective of women*. The trouble starts with the abstractness of the universal male subject:

The allegedly neutral universal subject of human rights law also reproduces other hierarchies, including those of race, culture, nation, socio-economic status and sexuality, which intersect with constructions of gender to produce subjects that bear the markings of complex histories of subjugation and resistance.¹²

But this formula also sets up the feminine as plural or collective other to the singularity of the universal masculine. In some ways the contrast defines and validates the latter. As Otto expresses this, ‘the universal subject ... continues to rely for its universality on its contrast with feminized particularities’.¹³ In Lorraine’s analysis of Luce Irigaray, ‘the contemporary masculine subject reflects himself onto a feminine other in order to affirm himself repeatedly as a self-identical and self-sufficient subject’.¹⁴ The role of the feminine is, so to speak, as that of conceptual support team to the masculine champion. It is a team that drops out of ‘his-story’ like so much scaffolding, because the logic of the universal is that it does not rely on particulars at all. To force the universal and the particulars to cohabit is, as Hegel might have said, to deploy violence.¹⁵ The same can be said of the individual and the collective. Thus, when jammed reluctantly together, the solitary man and the horde of women take up a troubled project.

The formula *man: women* (so to express it), it will be suggested, plays some important roles in our thinking about governance. For the question of governance is in many ways the question of representation, which is the question of the one and the many in political life. At least since the time of Thomas Hobbes this has puzzled political philosophers. Among the gendered aspects of this question is a particular aspect of the asymmetry: the asymmetry between a masculine one and a feminine many. It is a sign of the hegemony of this gendered asymmetry in political life that it is the reverse formulation — many men ruled by one woman — that has historically been seen as scandalous. John Knox’s diatribe against what he called the ‘*monstrous regiment*’ (that is, rule) of women in the time of Mary Tudor is an extreme but

¹² Ibid 318–9. On intersectionality, see Kimberlé Crenshaw, ‘From Private Violence to Mass Incarceration: Thinking Intersectionally about Women, Race and Social Control’ (2012) 59 *University of California Los Angeles Law Review* 1418.

¹³ Otto, above n 10, 321.

¹⁴ Tamsin Lorraine, *Irigaray and Deleuze: Experiments in Visceral Philosophy* (Cornell University Press, 1999) 23.

¹⁵ Catherine Kellogg, *Law’s Trace: From Hegel to Derrida* (Routledge, 2010) 119.

not an isolated example.¹⁶ The scandalous quality of the apocryphal ‘Pope Joan’ arises from the same world view.¹⁷ More recently, attempts by women leaders to bring collective issues to the world stage after the end of World War I, for example, in the context of the design of a League of Nations and of a policy of self-determination, were greeted with hysterical predictions as to the calamitous societal effects of such political activity. Neglecting their family-centred, reproductive mission in this way threatened (in the words of the French psychologist Gustave Le Bon) to make of the European ‘a nomad without a home or a family’.¹⁸ Even in the 21st century political leaders who are female receive special, gendered attention such as intensified sartorial commentary and scrutiny of lifestyle choices. Clearly then political leadership by women is sometimes seen as disruptive or, at least, worthy of remark. At some level there is a presupposition that women’s place is not in the lead but in the ranks of the led. This may be called the dark side of the discourse of the collective as feminine. But there is also something of a bright side.

The individuality of the masculine ‘one’ is itself problematic in ways that involve but also exceed questions of gender politics. There are thus important upsides to ‘the collective’, and to collective forms of analysis in social life, that confer what might be thought of as a positive evaluation on the occupants of that sphere. To accept a definition of collectivity as inferior may be to buy into the dichotomy, to collaborate in the key move by which individualism proclaims itself master. The rehabilitation of the collective may even contribute to the production of ‘emancipatory gender subjectivities’.¹⁹ Of course simplistic reductions, involving the demonising of the individualistic, have to be avoided here. An Orwellesque reduction of individualism, yoked with masculinity, as ‘bad’, and collectivism, yoked with femininity, as ‘good’, which is one reformulation of the dichotomy, would surely be inadequate. In any case the term ‘individual’ and its various grammatical forms are problematic. The validity of a broader critique of ‘individualism’ has been queried on the grounds of imprecision: Martha Nussbaum asks, ‘Isn’t it time to declare a moratorium on the use of the word “individualism”, with its multiple ambiguities?’²⁰ The notion of ‘collective’ is scarcely less complex. A more nuanced exploration may, however, be of value.

¹⁶ John Knox, *The Political Writings of John Knox: The First Blast of the Trumpet Against the Monstrous Regiment of Women and Other Selected Works* (Folger Books, 1985).

¹⁷ John Julius Norwich, *The Popes: A History* (Chatto and Windus, 2011) 60.

¹⁸ Glenda Sluga, *The Nation, Psychology, and International Politics, 1870–1919* (Palgrave Macmillan, 2006) 91.

¹⁹ Otto, above n 10.

²⁰ Martha Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Harvard University Press, 2006) 441.

The critique of individualism, and the related exploration of communitarian or cosmopolitan alternatives, is itself a well-established tradition of social thought. Within jurisprudence new attention is being given to the role of a collectivist analysis in public international law, an area of study previously dominated by highly individualistic conceptual frameworks.²¹ The more visionary of international legal theorists seem to have been working to articulate a 'global solidarity'.²² Questions of governance inevitably arise from such projects. Therefore while international politics tends to illustrate the downside of the feminisation of the collective, international jurisprudence offers some possibilities for the re-evaluation of that feature. International law has been subjected to feminist critique in recent decades and the re-evaluation of the collective may be thought of as a contribution to that continuing project.

The attempt is made to sketch some of the cultural history of this notion, including its place in popular culture as well as in the writings of key authors in the sphere of subjectivity. Some comments are therefore made on the contributions of Nietzsche and of Freud, and on the background to their formulations. Alone or together (given the overlaps among their intellectual antecedents and among their intellectual followers), Nietzsche and Freud have generated or perpetuated a substantial fraction of the tropes and discourses available to the western intelligentsia regarding human gender. As Lisa Appignanesi and John Forrester put it, '[c]ontemporary thinking about what woman is is so permeated with the discourse that Freud and his women invented that it is impossible to conceive of a future language of sexuality that does not call on the name of Freud'.²³ Some discussion of the disciplines of psychology and of philosophy is therefore required. This approach is not new to scholarship in public international law and in the history of international governance,²⁴ although some versions of the appeal to the humanities within critical international legal studies are problematic.²⁵

Both Nietzsche and Freud seem to have considered women to be something of a mystery, at times a threatening mystery: 'Throughout history people have

²¹ John R Morss, 'The Legal Relations of Collectives: Belated Insights from Hohfeld' (2009) 22 *Leiden Journal of International Law* 289; also see Balakrishnan Rajagopal, *International Law from Below* (Cambridge University Press, 2003) 272.

²² Martti Koskeniemi, *From Apology to Utopia* (Cambridge University Press, 2005) 611.

²³ Lisa Appignanesi and John Forrester, *Freud's Women* (Weidenfeld and Nicolson, 1992) 474.

²⁴ Anne Orford, 'Trade, Human Rights and the Economy of Sacrifice' in Anne Orford (ed), *International Law and its Others* (Cambridge University Press, 2006) 156; Sluga, above n 18.

²⁵ Costas Douzinas, 'Speaking Law: On Bare Theological and Cosmopolitan Sovereignty' in Anne Orford (ed), *International Law and its Others* (Cambridge University Press, 2006) 35; John R Morss, 'Saving Human Rights from its Friends: A Critique of the Imaginary Justice of Costas Douzinas' (2003) 27 *Melbourne University Law Review* 889.

knocked their heads against the riddle of the nature of femininity.’²⁶ ‘The woman question’ has continued to be vexatious for their male intellectual heirs in recent times, with both Derrida and Deleuze having been accused from time to time of lacking feminist backbone and even, in effect, of collaborating in the long traditions of scholarly misogyny. Rosi Braidotti has suggested that Derrida assimilates and domesticates feminist theory.²⁷ Gayatri Spivak suggests in the context of Derrida’s discussions of sexual difference, seen as illustrative of male deconstructionist philosophy, that ‘the question of woman in general ... is *their* question, not ours’.²⁸ In any event both Nietzsche and Freud relied in significant ways on the women in their lives, including the women who they considered in their different ways to be professional colleagues. One of the latter, Lou Andreas-Salomé, was indeed a mutual colleague of both men, albeit at different periods of her life. ‘Nietzsche’s circle of women’ is discussed by Julian Young, and *Freud’s Women* are discussed by Appignanesi and Forrester.²⁹ Behind every great man there is, it appears, a group of women. To begin the exploration of this trope and of its consequences, something should be said on the positive role of the collective in public international law. For international law is not about potentates: it is about the proletariat.

II THE INDIVIDUAL AND THE COLLECTIVE IN PUBLIC INTERNATIONAL LAW

The examination of individuals and collectives as such, as the objects, subjects or agents of law, is an ongoing project. A good case can be made that public international law urgently needs to be reconceptualised from a methodologically individualistic discipline to a communitarian or collectivist one.³⁰ This proposal starts from the position that public international law is concerned with populations, with their movements and with their stasis, with their governance and with their interactions. Above all perhaps international law is concerned with the intermingling of populations, across time and across space. Self-determination yields good examples of this. As Waldron comments: ‘If the state is conceived — in however humane a spirit — as the

²⁶ Sigmund Freud, *New Introductory Lectures on Psychoanalysis* (Penguin, 1973) 146.

²⁷ Kellogg, above n 15, 145; and see Rosi Braidotti, ‘On Bugs and Women: Irigaray and Deleuze on the Becoming-Woman’ in Carolyn Burke, Naomi Schor, and Margaret Whitford (eds), *Engaging with Irigaray* (Columbia University Press, 1994) 111, 118.

²⁸ Cited in Kellogg, above n 15, 146.

²⁹ Julian Young, *Friedrich Nietzsche: A Philosophical Biography* (Cambridge University Press, 2010) 387; Appignanesi and Forrester, above n 23.

³⁰ John R Morss, *International Law as the Law of Collectives: Toward a Law of People* (Ashgate, 2013).

possession of a particular people, its status *vis-à-vis* other peoples coexisting in the same territory is bound to be problematic.³¹ A linguistic minority may feel like second-class citizens in a larger polity, but if that minority becomes the majority in a seceded entity, then another minority may be automatically generated. ‘The iterations have a sort of fractal quality, whose regress reflects the point [that] ... peoples and communities are inevitably intermingled.’³²

To reduce populations to unitary, ‘Westphalian’ entities, especially to states, is to impose a particular ideological framework. In particular it is to impose a form of individualism in analysis which is closely related to liberalism, long dominant in international law’s conceptual structure.³³ Influential formulations of a liberal approach to international law continue to appear, John Rawls’ *Law of Peoples* being notorious in this regard.³⁴ The gendered character of the liberal–individualism of the state has been interrogated by Teemu Ruskola in historical perspective. Ruskola examines a kind of ‘normative masculinity’ of states in their relationships with each other, a conceptual framework in which, for example, China’s style of ‘masculinity’ was seen as deviant. This in turn played a part in constituting China as a legitimate target for foreign intervention, both military and economic, by more manly nations, so to speak, in a way that could be figuratively described as homoerotic violence.³⁵ Certainly a discourse of the state as man was familiar in the 19th century. Around mid-century, strongly influenced by the Romantic movement, the Swiss constitutional jurist Bluntschli asserted that ‘the State-organism has not only a personality and a will but also a sex — it is masculine as contrasted with the Church which is feminine’.³⁶

In the discipline as we know it, states are treated as special kinds of individuals, and so are ‘peoples’. This is what is meant by the orthodox statement that states and peoples are subjects of international law. Subjecthood for the latter is generally speaking contingent on the status of a

³¹ Jeremy Waldron, ‘Two Conceptions of Self-Determination’ in Samantha Besson and John Tasioulas (eds), *The Philosophy of International Law* (Oxford University Press, 2010) 397, 400.

³² *Ibid.*

³³ Koskenniemi, above n 22.

³⁴ John Rawls, *The Law of Peoples with ‘The Idea of Public Reason Revisited* (Harvard University Press, 1999).

³⁵ Teemu Ruskola, ‘Raping Like a State’ (2010) 57 *University of California Los Angeles Law Review* 1477, 1505.

³⁶ A H Campbell, ‘James Lorimer: A Natural Lawyer of the Nineteenth Century’ (1953) 39 *Transactions of the Grotius Society: Problems of Public and Private International Law* 211, 217–8; Bluntschli went on in the 1860s to contribute to the codification of public international law: Martti Koskenniemi, *Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (Cambridge University Press, 2002) 42; see also Ruskola, above n 35, 1495.

self-determination claim, although protections against the various forms of genocide may also be said to exemplify the subjecthood of peoples under international law. Individual human persons are also, increasingly, treated as the bearers of universalised human rights or as vulnerable to international prosecution as criminals. According to Domingo, ‘in this new global paradigm the person is the primary subject and focus, and is not relegated to a secondary role, as happened with the application of the [statist] international law paradigm’.³⁷ Domingo cites with approval the comments of Anne Peters in this regard: ‘In a constitutional world order, natural persons are ... the primary members of the global constitutional community.’³⁸ Recent advocacy of a ‘fiduciary’ analysis of state obligations to their citizens, under peremptory and other norms of international law, is a related proposal.³⁹ An important line of argument drawing inspiration from philosophical traditions, especially from Kant, converges on the claim that international law should be thought of as focused on the needs and rights of natural persons, and evaluated in those terms.⁴⁰ To the extent that the ‘textbook’ international law that is about the conduct of states and of peoples is itself ‘really’ a law of individuals, a trend from state-focused to natural-person-focused forms of international law might be said to be the mere re-branding of an individualistic understanding of international law.

This enhanced status for individual persons in international law is of course, in important ways, a direct implementation of liberalism. Consistent with this perspective, it can be argued that the individuality of the first two kinds of entity mentioned above — of the state and of the people — is a metaphorical application or extension of the individuality of the third. States and peoples may be merely quasi-individuals. They may be ‘legal fictions’ that rely on the authenticity of our conceptualisation of the individual human person. This would be the orthodox view, which would treat the individuality of the human person as authentic and the individuality of state or people as artificial, along the same lines as granting legal personhood to a private corporation. It may on the other hand be argued that the ‘individuality’ is constructed, or ‘legally fictionalised’, in respect of all three entities. Social construction traditions in the social sciences might suggest this broader critique which is disinclined to

³⁷ Rafael Domingo, ‘Gaius, Vattel, and the New Global Paradigm’ (2011) 22 *European Journal of International Law* 627, 641.

³⁸ *Ibid.*

³⁹ Evan Criddle and Evan Fox-Decent, ‘A Fiduciary Theory of Jus Cogens’ (2009) 34 *Yale Journal of International Law* 331; Paola Gaeta, ‘Symposium: The Human Dimension of International Law, Introduction’ (2010) 21 *European Journal of International Law* 7.

⁴⁰ Patrick Capps, *Human Dignity and the Foundations of International Law* (Hart, 2009); Amanda Perreau-Saussine, ‘Immanuel Kant on International Law’ in Samantha Besson and John Tasioulas (eds), *The Philosophy of International Law* (Oxford University Press, 2010) 53.

treat the humanist concept of individual person as sacrosanct.⁴¹ Within the theory of international law, Kelsen's norm-focused approach⁴² may be said to converge on this position, an argument that is brought into focus by comparison with the person-centred orientation of his contemporary Hersch Lauterpacht. Feminist problematisation of the bearer of universal human rights as masculine contributes to the same sceptical project, as does Marxist critique of the 'bourgeois' characteristics of the rights enjoyed by the putative rights-bearer.⁴³ So far as human rights are concerned, it thus can be argued that the internationally relevant rights and obligations of individual persons only arise, and only make sense, within the context of the protection of, and respect for, collectives. Similarly, the contemporary information economy with its proliferation of 'big data' gives rise to new possibilities of 'claims and collectivities', and to 'alliances and subjectivities not previously configured within public international legal purview'.⁴⁴ Of course as Johns's paper illustrates, there are 'dark sides' to this story as well. Collective understandings of political life include totalitarianisms and fundamentalist crusades, the siege mentality, xenophobia and so on, just as much as they include progressive community activism. Yet it does seem possible to discern a deep conceptual collaboration between an individualistic ideology for international law and a privileging of the masculine. Whence could such cultural connections derive? To answer this question requires some discussion of scientific and popular discursive traditions, as well as some attention to the claims of philosophy and of psychology. These two groupings of resources are dealt with in turn.

III MASCULINITY, INDIVIDUALISM AND A CULTURE OF MISOGYNY IN POPULAR AND SCIENTIFIC CULTURE

The pitfalls of the asymmetrical formula *man: women* are many. Some of these pitfalls arise from the excessive familiarity of the assumptions that underlie its varied versions. There are many ways in which these various dualities seem to match up, to such an extent that the correspondence seems over-determined. There are a variety of positions and familiar claims from within the humanities (and social sciences) according to which individualism connotes autonomy, activity, self-sufficiency, assertiveness and all the other 'John Wayne' qualities traditionally identified as masculine within modern

⁴¹ Ben Bradley and John R Morss, 'Social Construction in a World at Risk: Toward a Psychology of Experience' (2002) 12 *Theory & Psychology* 509.

⁴² Jochen von Bernstorff, *The Public International Law Theory of Hans Kelsen: Believing in Universal Law* (Cambridge University Press, 2010); Ruskola, above n 35, 1488.

⁴³ Kellogg, above n 15, 18.

⁴⁴ Fleur Johns, 'The Deluge' (2013) 1 *London Review of International Law* 9, 30.

western culture.⁴⁵ From time to time neuroscience provides what purports to be evidence in support of ‘anatomy as destiny’. Correspondingly, ‘womanly’ virtues as traditionally conceived would seem to centre around receptivity, sharing, caring, nurturing, interdependence and sympathy.

A series of sources and resources in the cultural repertoire may be drawn upon in order to illustrate the discourses of ‘individual as masculine’ and of ‘collective as feminine’. One set of ideas with which to start is the misogynistic vision of women as a feared ‘species’. John Knox’s notorious diatribe, *The first blast of the trumpet against the monstrous regiment of women*, was directed at the rule (‘regiment’) of named female sovereigns and political leaders of his times. Its argument was that women in general lack the qualities — physical, cognitive and emotional — appropriate for leadership. According to Knox:

[N]ature revealed women to be ‘weak, frail, impatient, feeble and foolish, and experience hath declared them to be inconstant, variable, cruel and lacking the spirit of counsel and regiment’. Female magistracy was an ‘abomination’. ‘repugnant to nature, contumely to God, a thing most contrarious to His revealed will’, and ‘finally it is the subversion of good order, of all equity and justice’.⁴⁶

Machiavelli had also made the point that women’s involvement in public affairs was to be avoided, although as a pragmatist he recognised that female consorts might from time to time inherit positions of power. They were presumably to be wisely advised, like male Princes, not summarily dismissed from office.⁴⁷

Less venomously than Knox, but on a wider front, popular culture in the west over several centuries since his time may be said to exemplify a view of women as ‘all the same’. The title of Mozart’s *Così fan tutte* (libretto by Da Ponte) translates approximately as ‘they are all like that’. Closer to our time, the Sherlock Holmes stories are a valuable source of insight into popular thought as well as popular science of the late 19th century.⁴⁸ For Sherlock Holmes, a century after Mozart, to fixate on opera singer Irene Adler as ‘*the*

⁴⁵ ‘Any theory of the “subject” has always been appropriated by the “masculine”’ as discussed by Irigaray, see Lorraine, above n 14, 67.

⁴⁶ Ian Ward, *Shakespeare and the Legal Imagination* (Butterworths, 1999) 89, quoting John Knox, *On Rebellion* (Cambridge University Press, 1994).

⁴⁷ *Ibid.*

⁴⁸ John R Morss, *The Biologising of Childhood: Developmental Psychology and the Darwinian Myth* (Erlbaum, 1990) 29.

woman'⁴⁹ gains its effect precisely from Ms Adler standing out from the crowd in Holmes's refined perception. Neither Watson nor Moriarty was, it appears, 'the man' for Holmes. Individuality in men did not need to be remarked upon. The fluidity with which Watson's wife appears and disappears from various stories also suggests the anonymity of the (female) crowd. John le Carré's George Smiley also blends into crowds, one of his several womanly qualities, as one might say.⁵⁰ This self-effacement, perhaps amounting to masochism, also characterises James Joyce's sometimes woman-like Leopold Bloom in *Ulysses*.⁵¹

To continue the operatic theme, Ms Irene Adler may have performed in Verdi's *Rigoletto* with its famous aria *La donna è mobile*. Fickleness, unpredictability, vulnerability to ephemeral circumstances, sensitivity to nature, and suggestibility can perhaps all be linked as a 'discourse'. Women are housebound but wont to tyrannise the house and drive men out into the world.⁵² With the phenomenon of multiple personalities, beloved of the entertainment industry, every woman is already lots of women (Eve, Tara). By contrast, in popular culture, civilised men may contain one beast within them (Mr Hyde, The Incredible Hulk), but rarely a roomful. Women are somehow multiple and interchangeable, the Bunny Girl or backing singer, the groupie or the 'comfort woman'. In *The Beggar's Opera*, a man muses on a choice between two mistresses: 'How happy could I be with either/Were t'other dear Charmer away!'⁵³ Structuralist theory offers a straightforward reading of such examples, with women being exchanged along the line like the port at High Table: '[t]he system of exchange in which all women are objects.'⁵⁴

None of these examples from popular or literary culture is conclusive and prejudicial generalities about men are also easy to locate: 'Boys will be boys, but girls will be women.' Enough has been said to make the point that if there are valuable associations between the collective and the feminine, there are also seriously toxic forms of that correspondence. One important line of thinking about gender differences, which straddled popular and scientific discourse, was an evolutionist form of the exaltation of the elite adult male.

⁴⁹ Sir Arthur Conan Doyle, 'A Scandal in Bohemia', *Sherlock Holmes Complete Short Stories* (John Murray, nd) 1.

⁵⁰ John le Carré, *Tinker, Tailor, Soldier, Spy* (Hodder and Stoughton, 1974).

⁵¹ Richard Ellmann, *Ulysses on the Liffey* (Faber, 1972) 182.

⁵² Sandra M Gilbert and Susan Gubar, *The Madwoman in the Attic* (Yale University Press, 1979).

⁵³ John Gay, *The Beggar's Opera* (Oxford University Press, 2013) 44.

⁵⁴ Claire Kahane, 'Introduction Part Two' in Charles Bernheimer and Claire Kahane (eds), *In Dora's Case* (Virago, 1985) 31.

This formula dominated debate in the final decades of the nineteenth century and both reflected and sustained biologically determinist views on race, gender and much more beside. In hindsight it is difficult not to find the claims ludicrous as well as offensive. The adult elite male, at least when awake, sane, and sober, was found to be superior in fairly much every way to primitives, children, women, the Irish, and so on.⁵⁵ Havelock Ellis, the British sexologist influential on Freud,⁵⁶ compared posture and locomotion in women, in the lower classes, and in country people. When these groups were contrasted with the upright, adult urban gentleman, their posture and locomotion approximated to that of children. Thus women are ‘nearer to the infantile condition than men’.⁵⁷ Chamberlain’s *The Child: A Study in Evolution of Man* (published in 1900) described how ‘[a] prominent abdomen is a noticeable characteristic alike of children, women, and many primitive races’.⁵⁸ All this was in line with evolutionist anthropology.⁵⁹ Decades earlier, comparison of brains had suggested that ‘with its rounded apex and less developed posterior lobe the Negro brain resembles that of our children, and by the protuberance of the parietal lobe, that of our females’.⁶⁰ Thus ‘[t]he grown-up Negro partakes, as regards his intellectual faculties, of the nature of the child, the female, and the senile white’.⁶¹ Weight told the same story: ‘Men of the black races have a brain scarcely heavier than that of white women.’⁶²

In 1870 Cope wrote that

[t]he gentler sex is characterised by a great impressibility ... warmth of emotion, submission to its influence rather than that of logic, timidity and irregularity of action in the outer world. ... [P]erhaps all men can recall a period of youth when they were hero-worshippers — when they felt the need of a stronger arm, and loved to look up to the powerful friend who could sympathize with and aid them. This is the ‘woman stage’ of character.⁶³

As Gould notes,

[w]omen fitted the argument especially well for two reasons — the social observation that men wrote all the textbooks and the morphological fact that

⁵⁵ Morss, above n 48, 23.

⁵⁶ Frank Sulloway, *Freud: Biologist of the Mind* (Fontana, 1980) 305.

⁵⁷ Cited in Stephen J Gould, *Ontogeny and Phylogeny* (Harvard University Press, 1977) 118.

⁵⁸ *Ibid.*

⁵⁹ Stephen J Gould, *The Mismeasure of Man* (Penguin, 1981).

⁶⁰ Cited in Gould, *ibid* 128.

⁶¹ Cited in Gould, *ibid* 130.

⁶² Cited in Gould, *ibid* 103.

⁶³ Cited in Gould, *ibid* 130.

skulls of adult women are more childlike than those of men. Since the child is a living primitive, the adult woman must be as well.⁶⁴

A similar position was taken by Le Bon, prominent French psychologist of the late 19th century, and influential author of *The Crowd: A Study of the Popular Mind*. Le Bon proposed that:

[P]sychologists who have studied the intelligence of women, as well as poets and novelists, recognize today that they represent the most inferior forms of human evolution and that they are closer to children and savages than to an adult, civilized man. They excel in fickleness, inconstancy, absence of thought and logic, and incapacity to reason ... A desire to give them the same education, and, as a consequence, to propose the same goals for them, is a dangerous chimera ... The day when, misunderstanding the inferior occupations which nature has given her, women leave the home and take part in our battles; on this day a social revolution will begin, and everything that maintains the sacred ties of the family will disappear.⁶⁵

In relation to crowds, Le Bon observed that:

It will be remarked that among the special characteristics of crowds there are several — such as impulsiveness, irritability, incapacity to reason, the absence of judgment and of the critical spirit, the exaggeration of the sentiments, and others besides — which are almost always observed in beings belonging to inferior forms of evolution — in women, savages, and children, for instance.⁶⁶

Le Bon's significance should not be underestimated. Hans Kelsen found it necessary to tackle a line of thinking that he detected in Le Bon, Durkheim and in Freud, among others, by which group conduct was treated in quasi-psychological terms (a 'collective soul' and so on).⁶⁷ Freud comments positively on Kelsen's intervention in this debate.⁶⁸ 'Women, savages, and children' are all major targets of international rights protections in the contemporary era if the right to self-determination can be thought of in relation to the second term.⁶⁹ In each case it can perhaps be said that the

⁶⁴ Ibid 129.

⁶⁵ Ibid 105.

⁶⁶ Gustave Le Bon, *The Crowd: A Study of the Popular Mind* (Batoche Books, 2001) 20

<<http://socserv.mcmaster.ca/econ/ugcm/3ll3/lebon/crowds.pdf>>.

⁶⁷ Von Bernstorff, above n 42, 56.

⁶⁸ Sigmund Freud, 'Group Psychology' in Pelican Freud Library Vol 12, *Civilization, Society and Religion* (Penguin, 1985) 115.

⁶⁹ Frédéric Mégret 'From "Savages" to "Unlawful Combatants": A Postcolonial Look at International Humanitarian Law's "Other"' in Anne Orford (ed), *International Law and its Others* (Cambridge University Press, 2006) 265, 285.

predominant attitude to those protected groups or populations, is to treat them as 'victims'.⁷⁰ At least from a liberal perspective, individuals in possession of agency do not need, or would not accept, such protection.

International governance intersects with the gendered and power-driven world views of the elite in a variety of ways. In this context, some of the most potent images of the feminine in Western culture interconnect with Orientalism. Orientalism in Edward Said's account has functioned to blinker Western consciousness about its own place in the world as well as the place of others so that enquiring into it is a form of critique.⁷¹ There are significant correspondences between the Occidental construction of the Orient and of the feminine. There are significant correspondences between the Occidental construction of itself, and of the masculine. Orientalism as explored by Said is a mode of Western thought which constructs an East out of its own fears and desires and interposes that construction between itself and any encounter with the alien.⁷² The Orient is thus an imagined place, no less imaginary for its concrete realisation in innumerable cultural products from *The Mikado* to *The Thief of Baghdad*. Nor is its imaginary status compromised by its concrete realisation in whatever geographical territories we subsume under it from time to time, for the Orient is a moveable banquet.

Said's notion of Orientalism involves the depiction of the East over several centuries by the elite of the Occidental world, whether diplomats, scholars, painters or writers of fiction. Orientalism represents the East in a manifold and complex manner, frequently inconsistent and unsystematic in very much the way that Orientalism describes 'the Eastern mind'. For Orientalism the East is dangerous, erotic, undisciplined, exciting, vibrant, ineffective, and massively overwhelming all at the same time: as one might say, over-sexed, over-populated, and over there. There is a closely associated trope of differentiation and individualism in relation to the West, and collective culture in the East. The latter notion is often couched in terms of family values. The Western orientation is often thought of as typified by the entrepreneurial spirit of the United States. Thus Orientalism, however diffuse and hybridised, contributes to the model of the autonomous and individual male set against the background of somewhat anonymous if alluring females. As Said powerfully describes, Orientalism included an overpowering urge to speak on behalf of the people of the East, to 'represent' them in the many meanings of that word. In this respect, among others, the Oriental is analogous to childhood, a state defined as deficient in both the capacity and the political

⁷⁰ Otto, above n 10, 342.

⁷¹ Ralph Wilde, *International Territorial Administration: How Trusteeship and the Civilizing Mission Never Went Away* (Oxford University Press, 2008) 40.

⁷² Edward Said, *Orientalism: Western Conceptions of the Orient* (Penguin, 1995).

status to exercise autonomy. Like children, Easterners stand in need of interpretation and, at the discretion of the Westerner, either advocacy, discipline, or administrative guidance.⁷³ One way or another they are on the ‘receiving end’ of Western policy. Governance takes the form of domination of the many by the few.

IV PHILOSOPHY, PSYCHOANALYSIS, PSYCHOLOGY: THINKING MAN AND CARING WOMEN

Philosophers have wrestled with gender questions as well as, not infrequently, contributing to the promulgation of discrimination. Gender privilege is deeply embedded in western philosophy. Derrida remarked that ‘there is an uninterrupted metaphysical familiarity with that which, so naturally, links the “we” of the philosopher to the “we men” to the “we” in the horizon of humanity’.⁷⁴ In western philosophy of modern times, Schopenhauer is renowned for having characterised women as ‘childish, silly, and short-sighted, in a word big children, their whole lives long: a kind of intermediate stage between the child and the man ...’.⁷⁵ Schopenhauer went on to say that ‘the fundamental defect of the female character is *a lack of a sense of justice*. This originates first and foremost in their want of rationality and capacity for reflexion ...’.⁷⁶ Further, he states that

[w]oman is more absorbed in the present than we are, so that, if the present is enduring at all, she enjoys it more, and this produces that cheerfulness characteristic of her through which she is so suited to entertain and, if need be, console the care-laden man.⁷⁷

Schopenhauer’s views can easily be dismissed as bigotry, along the same lines as the evolutionist formulations noted above, although his influence on later thinkers should not be overlooked. Thus Freud echoes the above remark when he says that

[t]he fact that women must be regarded as having little sense of justice is no doubt related to the predominance of envy in their mental life; for the demand for justice is a modification of envy and lays down the condition subject to which one can put envy aside.⁷⁸

⁷³ Ibid.

⁷⁴ Cited in Kellogg, above n 15, 6.

⁷⁵ Arthur Schopenhauer, *Essays and Aphorisms* (Penguin, 1970) 81.

⁷⁶ Ibid 83 (emphasis added).

⁷⁷ Ibid 82.

⁷⁸ Freud, above n 26, 168–9.

Compared to Schopenhauer's, Hegel's formulations were considerably more sophisticated. His analogy between plants and women⁷⁹ and his account of 'the divine, feminine law of the family and the masculine, human law of universality'⁸⁰ demand at least a cautious suspension of disbelief, given the relationship of these claims to Hegel's larger theoretical system. For Hegel, 'ethical life, or *Sittlichkeit*, requires that the more natural, feminine, unconscious realm of the family [must] be mediated by the cultural, masculine, and conscious realm of the state'.⁸¹ Indeed there is a developmental imperative here: 'men inhabit the sphere of the family "on the[ir] way to the state"'.⁸² For Hegel then the state is closely associated with the masculine. Against the above background of gendered debate, Nietzsche's comments about women were passionate if inconsistent. At times Nietzsche was unambiguously pro-feminist,⁸³ and at other times 'often offensive'. His views were 'always colourful'.⁸⁴ It was Nietzsche's Zarathustra who was advised 'You are going to women? Then don't forget the whip'⁸⁵ and who, according to Kennedy, opposed women's emancipation 'because it serves to "destroy the will to power and to encourage the herd mentality"'.⁸⁶ Indeed, 'Nietzsche had little time for community, ascribing the idea of a national community to male impotence'.⁸⁷

Freud's attitude to the masses could also be misanthropic.⁸⁸ Nietzsche observed that 'women are always less civilized than men ... At the base of their souls they are wild'.⁸⁹ But it was also Nietzsche who said the following:

When a man stands in the midst of his own noise, in the midst of his own surf of plans and projects, then he is apt also to see quiet, magical beings

⁷⁹ Kellogg, above n 15, 153.

⁸⁰ Ibid 131.

⁸¹ Ibid 123.

⁸² Ibid 125, citing Hegel as shown.

⁸³ Young, above n 29, 287.

⁸⁴ Rosalyn Diprose, 'Nietzsche, Ethics and Sexual Difference' in Peter Sedgwick (ed), *Nietzsche: A Critical Reader* (Blackwell, 1995) 69; see also Rebecca Stringer, "'A Nietzschean Breed": Feminism, Victimology, Ressentiment' in Alan Schrift (ed), *Why Nietzsche Still?* (University of California Press, 2000) 247.

⁸⁵ Young, above n 29, 373.

⁸⁶ Cited in Diprose, above n 84, 70.

⁸⁷ Ward, above n 46, 194. For a radical understanding of individuality in Nietzsche, see Gianni Vattimo, *Dialogue with Nietzsche* (Columbia University Press, 2006) 163.

⁸⁸ Jacqueline Rose, *The Last Resistance* (Verso, 2007) 63

⁸⁹ Cited in Young, above n 29, 400.

gliding past him and long for their happiness and seclusion: *women*. He almost thinks that his better self dwells there among the women.⁹⁰

To say that Nietzsche was conflicted about women is therefore perhaps an understatement. Nietzsche's close friend Lou Andreas-Salomé — whip-bearer in a well-known, playful photograph⁹¹ — was a novelist and a nomadic intellectual as well as, in her middle and later years, a psychoanalyst. According to Appignanesi and Forrester, Andreas-Salomé's approach was that woman possesses

instinctual plenitude ... She is whole, complete, like the original egg cell; she exists in a unity of spirit, intellect, body and feeling. Man, more differentiated than her, is forced by his dissatisfaction into ceaseless searching and Don Juanesque pursuits. This striving is a sign of male inadequacy.⁹²

In the second decade of the 20th century, in Vienna, Andreas-Salomé attended Alfred Adler's meetings ('the camp of masculine protest' in Freud's words⁹³) as well as Freud's own. She became a close and highly respected colleague to Freud, and in an extraordinary gesture of trust, co-analyst of Freud's daughter Anna. In Freud's *Totem and Taboo* (first published in 1912–13), the image of a primitive male horde was presented, as a way of portraying the ancestry of Oedipal feelings and other aspects of family dynamics.⁹⁴ In Freud's account, the male horde of brothers overthrew the father and ceremonially consumed him. 'This memorable and criminal deed ... was the beginning of so many things — of social organisation, of moral restrictions and of religion.'⁹⁵ Freud continued: 'An event such as the elimination of the primal father by the company of his sons must inevitably have left ineradicable traces in the history of humanity.'⁹⁶ In response to this, Andreas-Salomé raised the idea of a matriarchal ancient society.⁹⁷

Freud seems to have thought of Andreas-Salomé as a paradigm of a woman thinker, writing to her later, 'I tend to exclude all opinions except one, whereas you tend to include all opinions together'.⁹⁸ Freud's characteristic

⁹⁰ Cited in Diprose, above n 84, 73–4.

⁹¹ Young, above n 29, 343, 249.

⁹² *Ibid* 255.

⁹³ *Ibid* 260.

⁹⁴ Morss, above n 48, 141.

⁹⁵ Sigmund Freud, *Totem and Taboo*, Standard Edition XIII (Hogarth Press, 1953–74) 142.

⁹⁶ *Ibid* 155.

⁹⁷ Appignanesi and Forrester, above n 23, 264.

⁹⁸ *Ibid* 265.

‘Sherlock Holmes-like’ self-portrayal as the systematic scientist steadily excluding hypotheses, was very much a self-portrait as male thinker. As Holmes himself says to Watson, his spouse-like companion, ‘I shall keep piling fact upon fact on you, until your reason breaks down under them and acknowledges me to be right’.⁹⁹ For Freud as for Holmes, facts are weapons. The contrasting inclusive style of thinking that Freud identified and praised in Andreas-Salomé was a positive spin on the traditional illogicality of the female. Lou Andreas-Salomé herself wrote succinctly: ‘Men argue and squabble. Women bestow grace.’¹⁰⁰

Moving to some comments on the discipline of psychology, in the early decades of the 20th century a dualistic formula on ‘two principles of mental functioning’ was emerging in psychiatric and psychological debate.¹⁰¹ This was influential on early conceptualisations of psychoanalysis, in Jung as well as in Freud, especially in relation to the more severe forms of mental disturbance that were the chief concern of Jung’s mentor Bleuler. It was Bleuler who coined the term ‘schizophrenia’ and described one of its characteristics as an ‘autistic’ style of thought, to be contrasted with rational, scientific or realistic thought. Autistic thinking is familiar to the normal person in the form of dreaming, as well as in imaginative thought more generally. In the normal, growing child autistic thinking gradually and grudgingly gives way to realistic thinking. As Freud put it in *The Interpretation of Dreams*: ‘Dreaming is a piece of infantile mental life that has been superseded.’¹⁰² This dualistic model, itself influenced by evolutionist thinking in neurology, began to be applied to the field of cognitive development in the individual child. Building in part on this dualistic model of human thinking, scientific, rational thinking was being articulated as the mature end-point of a series of stages of thinking from childhood onwards. The dualistic model contrasted a primitive kind of thought as in dreams or madness, or as in non-civilised adults, with a civilised, coherent, systematic kind of thinking. The baggage of this model of course included assumptions about gender.

In the hands of Swiss psychologist Jean Piaget, younger children’s thinking and experience came to be defined as animistic, syncretic, and heteronomous.¹⁰³ Autonomy of moral judgment as well as scientific ways of

⁹⁹ Sir Arthur Conan Doyle, ‘The Red-Headed League’, *Sherlock Holmes Complete Short Stories* (John Murray, nd) 30.

¹⁰⁰ Appignanesi and Forrester, above n 23, 262.

¹⁰¹ Morss, above n 48, 116.

¹⁰² Sigmund Freud, *The Interpretation of Dreams*, Standard Edition V (Hogarth Press, 1953) 567.

¹⁰³ Morss, above n 48, 118.

understanding the world were defined as higher forms of thinking painstakingly evolved over years. While it would be simplistic to characterise Piagetian intellectual maturity as ‘male’, the image of autonomous scientist-explorer owes much to the traditional conceptions of masculine and feminine thinking. Piaget’s personal connection with psychoanalysis was through didactic analysis provided by the extraordinary Sabina Spielrein,¹⁰⁴ former patient and probably sexual conquest of Jung and, by now, a forceful innovator within Freud’s circle. Russian-born like Andreas-Salomé, the much younger Spielrein read a paper to the Vienna Psycho-Analytical Society in 1911 on ‘Destruction as the cause of coming into being’. The paper was delivered a year before Andreas-Salomé arrived in Vienna to study psychoanalysis. Spielrein’s work on destruction included the notion of a ‘collective species-preserving sexual drive’ in tension with a ‘self-preserving ego-individual drive’.¹⁰⁵ It was a precursor of Freud’s writings on the death instinct.¹⁰⁶

Later generations of psychoanalytic scholars and psychologists added in various ways to the conceptualisation of gender difference, of individuation and of autonomy. Piagetian-like stages of moral judgment through adolescence to adulthood were explored by Harvard psychologist Lawrence Kohlberg in the 1970s, on the basis of hypothetical ethical dilemmas.¹⁰⁷ For example, a man called ‘Heinz’ is described in one scenario as desperate to assist his sick wife who may be helped by a new drug for which an exploitative pharmacist is charging way over the odds. Should Heinz (who is poor) break into the pharmacy and steal the drug? Most to the point, what reasons are given for saying yes he should, or no he should not? Kohlberg’s understanding of maturity in moral judgment, and of the immature steps toward it, was Kantian rather than Nietzschean. Advanced moral judgment is principled and not to be swayed by the pressures of conformity, or by considerations of personal consequences. Calling the man ‘Heinz’ — a ‘foreign’ name — was one way of setting the scenario at a distance, to be analysed in a detached manner. Like Piaget’s, Kohlberg’s scientism prescribed that the affective be sequestered from the cognitive.

Influenced by psychoanalytic versions of feminist theory, Kohlberg’s colleague Carol Gilligan proposed that the form of moral judgment defined by Kohlberg as mature is in important ways a masculine form. She described in

¹⁰⁴ Morss, above n 48, 147; Appignanesi and Forrester, above n 23, 223; John Kerr, *A Most Dangerous Method: The Story of Jung, Freud and Sabina Spielrein* (Vintage, 1994).

¹⁰⁵ Morss, above n 48, 218.

¹⁰⁶ Appignanesi and Forrester, above n 23, 216.

¹⁰⁷ Lawrence Kohlberg, Charles Levine and Alexandra Hower, ‘Moral Stages: A Current Formulation and a Response to Critics’ (1983) 10 *Contributions to Human Development* 174.

parallel a particularly female ‘ethic of care’¹⁰⁸ generating a distinct form of moral judgment. This ‘different voice’ is said to be more inclusive, more concerned with how a victim, community or group is feeling, rather than basing moral decisions on abstract principles somewhat in the way of the Kantian categorical imperative, as Kohlberg had presupposed. To some extent women’s responses to Kohlberg’s research problems gave rise to a classifying of them as immature compared to male research subjects (although it should be stressed that Kohlberg found the highest level of moral judgment rare in adults of either sex).¹⁰⁹ Gilligan’s dualistic model of moral judgment contrasted an abstract and autonomous orientation typical of males (itself perhaps the result of western practices in parenting and so on) with a feminine concrete caringness. Men, it was proposed, typically look for the ‘correct’ answer to a moral problem based on a systematic code; women, on the other hand, ascertain the needs and vulnerabilities of everyone involved and seek a solution grounded in a collective welfare.¹¹⁰ It might be observed that the distinction very much mirrors the contrast between criminal justice and reconciliation, two orientations that frequently emerge as rival ideologies in international post-conflict situations.

Gilligan’s methodology remained fairly orthodox for a lifespan developmental psychologist, despite the indirect influence on her of psychoanalytic theory as well as her interests in narrative.¹¹¹ Her influential work both reflected, and consolidated, notions of gender difference that give a central place to male autonomy on the one hand, and to female connectedness on the other. Kapur is critical of the essentialism of Gilligan’s approach, which she discusses in the context of certain United Nations Security Council (UNSC) initiatives toward increasing the participation of women in international decision-making.¹¹² To the extent that the rationale for such initiatives is that women are more naturally caring, and less naturally war-like, than men, this approach:

reproduces gender essentialism and assumptions of women as naturally inclined towards caring and pursuing peace and also frames gender issues

¹⁰⁸ Carol Gilligan, *In a Different Voice* (Harvard University Press, 1982).

¹⁰⁹ Kohlberg, Levine and Hower, above n 107.

¹¹⁰ Gilligan, above n 108.

¹¹¹ Methodology in orthodox and critical psychology of individual development is discussed in: John R Morss, ‘Connecting with Difference: Being Critical in a Postmodern World’ in Tod Sloan (ed), *Critical Psychology: Voices for Change* (Macmillan, 2000) 103; John R Morss, ‘Two Cheers for Postmodernism: Living the Paradox’ in Lois Holzman and John R Morss (eds), *Postmodern Psychologies, Societal Practice, and Political Life* (Routledge, 2000) 15; John R Morss, *Growing Critical: Alternatives to Developmental Psychology* (Routledge, 1995).

¹¹² Kapur, above n 8, 340.

within a security framework. The underlying assumption informing [UNSC] *Resolution 1325* — that women inherently speak in a different voice than men — in turn implies that a gender perspective can be injected into the peace process, and women’s rights secured, simply by having women around the table.¹¹³

V TOWARDS RESISTANCE: FEMINIST VOICES AND THE MALE CRITIC

As Kapur indicates, the institutional recognition of the collective female can sometimes turn out to be a form of paternalistic tokenism in the sense that the possible contributions or disruptions of that collective are severely constrained. A form of essentialism is conserved such that appeal is made to supposedly inherent qualities of women as contrasted with men. In this regard, scepticism is appropriate in reading the debates on feminist contributions. Thus Judith Butler entertains the idea of ‘read[ing] Irigaray and Deleuze as in some sense replicating a sexual difference in their work (with Irigaray taking on the “feminine” work of corporeality and Deleuze the “masculine” work of the conceptual)’.¹¹⁴ Social commentator Michael Walzer has referred to Carol Gilligan’s work in the context of a discussion of Simone de Beauvoir. As Walzer notes, de Beauvoir dismissed the romantic notion of femalehood, as apparently endorsed by Andreas-Salomé, according to which ‘woman has a particular closeness with the earth ... she feels the rhythm of the moon, the ebb and flow of the tides ... she has more soul, or is less destructive by nature’.¹¹⁵ Yet de Beauvoir discussed some characteristic male failings and female virtues as follows:

For example, that grotesque masculine way of taking themselves seriously, their vanity, their self-importance ... And then the habit of putting down all the competition — generally women don’t do that. And patience ... is also a female characteristic. And a sense of irony. And a straightforward manner, since women have their feet on the ground because of the role they play in daily life. These ‘feminine’ qualities are a product of oppression, but they ought to be retained after our liberation. And men would have to learn to acquire them.¹¹⁶

Walzer takes issue with de Beauvoir’s apparent strategy of ‘assimilation’ of a male world and world view, as in her suggestion that ‘[t]he future can only

¹¹³ Ibid 339.

¹¹⁴ Lorraine, above n 14, 235.

¹¹⁵ Quoted in Michael Walzer, *The Company of Critics: Social Criticism and Political Commitment in the Twentieth Century* (Basic Books, 2002) 169.

¹¹⁶ Quoted in Walzer, *ibid* 167–8.

lead to a more and more profound assimilation into our once masculine society'.¹¹⁷ This 'imitation of men' constrains de Beauvoir's critical project, according to Walzer, so that while her 'attack' on 'the male world [is] from the inside', and for that reason effective, her critique of women is 'from the outside'. Walzer concludes that 'here her criticism needs to be supplemented by critics differently positioned, who explicitly defend different values, who speak "in a different voice" — a voice that is just barely audible, though always repressed, in her own best work'.¹¹⁸

Walzer's evaluation of de Beauvoir might be thought of as damning with faint praise, and could with ease be read as patronising. But the issues are important. Has de Beauvoir given too much away in supporting the work of Sartre — 'walking a step or two behind ... sometimes dragging her feet, sometimes hurrying to catch up'?¹¹⁹ Certainly de Beauvoir states that 'men represent universality' and that the modern woman 'accepts masculine values: she prides herself on thinking, taking action, working, creating, on the same terms as men; instead of seeking to disparage them, she declares herself their equal'.¹²⁰ But Walzer's disparagement of de Beauvoir's position seems like bad faith. There is something quietist about de Beauvoir's program as there was for Virginia Woolf's 'a room of one's own' but the position of privilege from which Walzer speaks compromises his critique. To purport to detect de Beauvoir's 'just barely audible' and repressed voice seems bold if not impudent. It is perhaps a kind of Orientalism at work.

But 'voice-talk' is ubiquitous in accounts of feminist issues. In a discussion of law and literature in times of terror, Ian Ward describes the historical 'despatch' of the female voice 'to the realm of myth', that is to say by patriarchy, such that the female voice 'becomes the voice of the outsider, of the "other"'.¹²¹ In this connection Ward cites Maria Aristodemou who writes that in the beginning 'there was not logos but music, not utilitarian word but an image, not law but a feeling'.¹²² Ward continues the above quoted passage by suggesting that the (female) voice of the outsider is 'the voice which articulates a permanent challenge to patriarchal presumptions of universality ... It terrifies, and the greatest terror of all is the terror of many voices'. This may be overstated but the reference to multitude is important. Ward's immediate referent is Deborah Brevoort's play *The Women of Lockerbie* in which the women seek to preserve and care for the memory of the victims of

¹¹⁷ Quoted in Walzer, *ibid* 161.

¹¹⁸ Walzer, *ibid* 169.

¹¹⁹ *Ibid* 153.

¹²⁰ Quoted in Walzer, *ibid* 162.

¹²¹ Ian Ward, *Law, Text, Terror* (Cambridge University Press, 2009) 121.

¹²² Quoted in Ward, *ibid* 121.

the crashed aeroplane in ways at odds with the demands of officialdom. Euripides' *The Trojan Women* and *The Bacchae* are other texts to which Ward alludes in his valuable discussion of the literary portrayal of female communities and women's solidarity. The Bacchae run wild, hunt animals and perform magic in Thebes under the influence of Dionysus. 'The women of Lockerbie, like the women of Thebes, are a threat to order.'¹²³ Womankind as alien order is a long-standing trope.¹²⁴

The heroic, solitary male has a way of laying down the international law, of pontificating. Thus:

Humanity has no foundation and no ends, it is the definition of groundlessness ... If rights express the endless trajectory of a nihilistic and insatiable desire, humanity's only sacred aspect is its ability to sacrifice endlessly in order to re-sacralize the principle of sovereignty as terrible and awe-inspiring or as its slightly ridiculous simulacrum.¹²⁵

There seems to be something about masculinity within the professional culture of our times that enables such an idiom, and enables the status required to deploy it. The language and the practice of governance are gendered in ways which no doubt exceed the awareness of the current author. Switching attention from an individual level to a collective level and back again, a kind of deconstructive style of thinking, may have the effect of shaking the gendered discourse into visibility. This is needed no less at global levels than at local or regional levels. And, like deconstruction, that kind of shaking never stays done.

¹²³ Ward, *ibid* 107.

¹²⁴ This attitude, or a literary appropriation of it, seems to be what Walter Benjamin was referring to when he commented that '[i]t is from the soggy ground of such experiences that Kafka's female characters arise. They are swamp creatures...': Walter Benjamin, *One-Way Street and Other Writings* (Penguin, 2009) 216. Kafka has other uses for gendered expression, equally enigmatic if less bizarre: 'In the village on Castle Hill they have an expression that sheds some light here. "There's a saying here, perhaps you know it: 'Official decisions have the shyness of young girls'", quoted in Ward, *ibid* 197.

¹²⁵ Douzinas, *above n* 25, 55–6.