
Performativity, Regulative Fictions, Huge Stabilities:

FRAMING BATTERED WOMAN'S SYNDROME

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I want in this paper to explore the stories that proliferate around the lived narrative realities of women who kill violent husbands. I will even tell some more stories but I do this in the knowledge that not just any stories will do. As Graycar (1996) has argued there are very real limits to the performative power of feminist narratives if they fail to engage with the huge stabilities, legal discipline, categories doctrines and, I would add, practices, that they are attempting to change.

In other words, it will be suggested that while it is essential that alternative stories, in particular the stories of the powerless be told, this approach is itself constrained by the limits imposed by the legal categories within which we understand legal problems and hear the telling of legal stories. This discussion then is concerned with the ways in which legal categories help to shape legal problems, and in the case of violence against women, help to obscure the reality of many women's lives. (1996:80)

At the same time I want to explore some of the theoretical stories emerging from recent feminist theorising which may in their turn begin to trace the intertextual histories of legal categories. For the law also tells stories, not least important of which for this paper would have to be the narratives associated with universal justice and the reasonable man.

The metaphor of gender as the compulsory performance of heterosexuality - a metaphor taken from Judith Butler's work (1993) - helps to foreground these questions insofar as it 'brings into relief ... the understated, taken-for-granted quality of heterosexual performativity' (Butler 1993:235). Butler's concept of performativity is derived from some com-

plex and difficult theoretical positions :

Althusser's concept of interpellation ('paradoxically, the discursive condition of social recognition precedes and conditions the formation of the subject' (Butler 1993:226));

Foucault's argument that discourse produces (rather than representing) the things of which it speaks ('the power of discourse to produce that which it names' (Butler 1993:225));

Austin's concept of the performative speech act as used in Sedgwick in her work on queer performativity (whereby what is spoken performs what it speaks: "I pronounce you ..." puts into effect the relation that it names' (Butler 1993:224));

Derrida's understandings of the performative and of iterability or citation ("Could a performative succeed", Asks Derrida, "if its formulation did not repeat a 'coded' or iterable utterance?" (Butler 1993:226).

Butler's work operates in the culturally specific context of psychoanalytic feminism and queer theory, asking how it is that the compulsory repetition (citation) that is gender may at the same time proliferate different, subversive performances of the self:

If the regulatory fictions of sex and gender are themselves multiply contested sites of meaning, then the very multiplicity of their construction holds out the possibility of a disruption of their univocal posturing. (1990:32)

The issue for Butler in the end though is not just the proliferation of performances of the self produced within the constraints of power, unregulated by its fictions. It is the attempt to use them, agentively, subversively: 'Performativity describes this relation of being implicated in that which one opposes, this turning of power against itself to produce alternative modalities of power, ...' (Butler 1993:241). But subversion depends on cultural intelligibility:

Cultural configurations of sex and gender might then proliferate or, rather, their present proliferation might then become articulable within the discourses that establish intelligible cultural life, confounding the very binarism of sex, and exposing its funda-

Butler's doctrinal categories, derived from psychoanalytic feminisms and the combination of poststructuralism, deconstruction and specific theories of signification provide useful metaphors of resistance which are (like Marcus's below) never sufficiently located institutionally, socially, culturally. They lack the contextual complexity of materialist semiotic understandings of, for example, the 'cinematic' (Heath and de Lauretis 1980) the legal apparatus (Frow 1995). I have the same anxieties as Graycar about the telling of feminist stories, or performing the self differently, as if that in itself were a sufficient agenda for change. And yet I remain interested in the way particular performances of selves are constrained and organised. At the same time I believe that the luxury of proliferating sexualities and identities may well serve to further obscure the realities of the lives of women with lesser cultural and symbolic capital. So I want to ask how much change in the embodied self, how many 'modes of becoming, modes of transformation' (Grosz 1994:210) does the system actually produce as its excess (power producing its others) and how much of what is produced is rather a desperate response to social and cultural forces neither understood nor theorised? In the case of women who kill the stories that are told of and by them are often profoundly gendered. Biology is in some sense the 'cause'. With Butler then I want to ask: 'What kind of performance might reveal this ostensible "cause" to be an effect of sedimented history?' (1990: 139). That is the question I want to pose in this paper looking at women who kill their husbands, but also at the husbands who, in some sense, had to be killed.

PERFORMANCE AND PERFORMATIVITY

The courtroom, which Graycar's intervention does not directly address, is also a place of performance. And whatever else the consequences of killing a male spouse may be, unrehearsed performance in a courtroom where the other players know the script, the spatial organisation, the rules of the game (kinesics, proxemics) and have performed the adversarial encounter before - is almost inevitable. The one person who does not know the 'code' and for whom therefore the courtroom performatives/performance cannot be 'successful' because for her it cannot be meaningful iteration or citation, indeed is neither of these things at all, is the female complainant in a rape or sexual assault trial or the defendant if it is a spousal murder trial.¹ Rather more like Eco's (1976) undercoder, she has no code and therefore must hypothesise, abduct the meaning of what goes on around her, indeed

of what is targeted at her. At the same time she is given no time for this reflective activity, but is expected to improvise. The only time in the murder proceedings when she may expect to have some insider knowledge is when the defence is leading its case, but here of course because of the rules of this particular adversarial game anything she says or does is immediately suspect and open to cross-examination where she will and can have no pre-rehearsed idea of the rules. At the same time, every speech act in this context performatively reproduces (or violates) in some version, the rape, the assault, the abuse which is her story. (Matoesian 1993).

In the space of the courtroom her lack of semiotic and performative expertise risks being read with a degree of cultural ethnocentrism as 'a lack, ... primitive, underdeveloped' (Bal: 1992:7). If we look at this from a different perspective we can see that she is also the phenomenon that has to be decoded. In her story, they the ones who are unrehearsed. Bal (1992:7) in fact quotes a passage from Eco in which he describes the position of the one who does not know the code and is forced to undercode:

Even if we do not know the socialised meanings of those gestures we can at any rate recognise the gesturer as Italian, Jew, Anglo-Saxon and so on, just as almost everybody is able to recognise a Chinese or a German speaker as such even if he does not speak Chinese or German. These behaviours are able to signify even though the sender does not attribute such a capacity to them. (Eco 1976:18)

Bal (1990:7) rightly points out that what Eco has provided above, despite himself, is 'a semiotic description of racism, and of other practices of discrimination, like ethnocentrism and sexism.' It is worth quoting her in full here:

It is the ever-widening gap between the intention of the sender, who is not, in principle, concerned with his/her own identity as other, and the insufficient knowledge from which the interpreter of the sender's code suffers, that creates the void in which the racist code can implant itself. The example demonstrates in fact to what extent codes are necessarily correlative: meaning comes to occupy all empty space, emptiness being the most frightening sign of what is different, and ignorance of code cancels all significations, save that which is already known by the interpreter. (Bal 1990:7)

This it seems to me is precisely what always happens in courtrooms when the stories women tell do not indeed fit the legal categories, cannot be made sense of in those terms. The space left empty by this lack of correlation of codes indeed cancels all meanings other than the stereotypical stories the interpreter already knows (Graycar 1996 gives several useful examples).

We begin here I think to see just how complex, performatively, the courtroom context where a woman has killed the man to whom she needs to be appended to gain ethical treatment (Gatens 1996), must be. A performative moreover is an authoritative utterance, one which is located in the materiality of institutions, codes, interests and the corporeality of power relations. If you are not so located, if the institution and its categories exclude you, your performance can never have the power either of iterability or of performativity except within the frameworks of the stereotypes that rush to fill the semiotic void of your exclusion. There you may well be read as a citation of a story you were never in, heard as performatively enacting realities you never knew, written as other by men whose categories cannot contain you.

You are Desdemona to a murdering Othello, a man who is convinced of your guilt and who keeps demanding: 'Are you not a whore?', 'Are you not a strumpet?', declaring: 'Oh thou black weed, wouldst thou hadst ne'er been born'. Othello is a play about many of the issues I want to address here - the jealous, insecure, 'battering' husband, the loving, empathetic and responsive wife who is written and silenced by men, the misogyny of Iago, the very old binary tropes of praise and blame which structure the stereotypical stories of femininity in the play. The play makes use of many of the narrative scripts I will deal with below and it has been used as literary evidence to develop the defence of provocation in the case of spousal murder by a husband (*Parker v The Queen* (1963) 111 C.L.R. 610). We might well want to ask what kind of sedimented history produces this performance.

RAPE, NARRATIVE AND SOCIAL CHANGE?

Sharon Marcus has argued (1992) forcefully against the consistent way in which she sees women being positioned and positioning themselves as 'victim' in what she calls 'the rape script'. It is crucial she says to treat rape as linguistic because if it is merely a script, then it is subject to change:

Another way to refuse to recognise rape as the real fact of our

lives is to treat it as a linguistic fact: to ask how the violence of rape is enabled by narratives, complexes and institutions which derive strength not from outright, immutable, unbeatable force but rather from their power to structure our lives as imposing cultural scripts. To understand rape in this way is to understand it as subject to change. (Marcus 1992: 388-89)

By script she argues that she means narrative, a gendered grammar of violence (392). Her argument is that this script predisposes women, especially if they know the rapist, to counter masculine verbal and physical aggression with non-combative responses, what she calls 'self-deprecating notions of polite feminine speech'. In this gendered grammar (narrative) of violence, women's resistance is condemned and unthinkable. Women must be the objects of violence and the subjects of fear. It is certainly true that this is the script that Shakespeare's Desdemona performatively enacts. Her loving response, her refusal to take offence, does allow him to set the limits to her discourse. Certainly she is the subject of fear and the object of murder. Marcus then argues that women must rewrite their will, their agency and their capacity for violence. Like Butler she argues that the social construction of gender does not preclude new performances of the self. In terms reminiscent of Gatens (1996) she argues that rape, as script, engenders a female body excluded from the right to engage in a fair fight. Women's 'rapability' is she argues related to their legal position as 'property' exchanged in marriage, unable to enter contracts. This legal position makes it both implausible that women will resist attempts at appropriation and logical that their bodies be regarded as violable, penetrable. Her final proposal is that women take seriously the temporality of male sexuality, the fragility of the erection, the vulnerability of male genitalia - and frighten rape culture to death!

Nina Puren (1995) has already pointed to part of the problem with these arguments by demonstrating that the typical rape trial scenario immediately tells a very different story. It is probably also arguable that those women who appear in court as complainants in rape trials, given the far larger numbers of raped women who do not proceed to that point, are already not positioning themselves as 'victim' but as someone with the right to bring charges, to speak, to refuse the violence that has been done to them (Heath and Naffine 1994). Puren (1995) has argued that in the courtroom the woman who claims complainant status (I prefer not to say that she sees herself as 'victim' although she may) is liable to find herself relocated by the court in a different rape script where she is the grammatical medium of the action - its cause or agent (Halliday 1985) - and the rapist is rewritten

as the target or recipient of her actions. Translated, this means that she is construed as 'rapable', deserving it, provoking it, wanting it, telling lies about it. She not he is the cause or agent of events until proven otherwise. He (in this version) is immensely vulnerable and pliable, subject to the whims of any temptress or perhaps to uncontrollable nature. In the light of this, Marcus's reading of the rape script seems something of an oversimplification. There is clearly more than one script. In a hostile adversarial context, to suggest that women rewrite the script, when there others over which they have no subversive control whatsoever, seems a more problematic task and one that must give us cause to reflect again on Graycar's point about legal categories and on Butler's understanding of performativity.

This then is where I will finally turn to the spousal murder cases I want to discuss because in effect what happens in these cases (at least in one reading) is that women do indeed 'rewrite their capacity for violence' and become the agent of their own defence. They perform themselves differently and performatively just as Marcus recommends. Unfortunately this story of agency and self-defence is then transformed by legal categories until the idea that there might have been violent and prolonged provocation to kill is written out.

DOMESTIC PAIN/PUBLIC STORIES

Only a very small number of battered women actually kill their abusers (Mahoney 1991-1992). In all the studies that have been done on the question of homicide men appear responsible for 85-87% of all homicides committed, with women committing the relatively small remainder of crimes (Wallace 1986, Bonney 1988, Strang 1991). The proportion of male killers is even higher when murder/suicides are taken into account (Wallace 1986).. Homicide occurs predominantly in a domestic context. It appears, in that context, to be a gendered crime in that while women mostly kill to avoid harm for themselves or others, men kill in an attempt to exercise power or control over their spouse. Many women are killed by their spouses as a result of separation, attempts to leave, even threats to leave. (Mahoney 1991-1992; Wallace 1986; Stubbs 1994).

Despite all these statistics and the very clear story they tell about masculinity, when women kill a violent spouse their legal advisers are still (in 1996) at pains to prove that she killed in self-defence. While a number of legal defences and case precedents are beginning to provide alternative

defences and a higher likelihood of a verdict of manslaughter than murder² there is no certainty as yet in any of this for the woman who kills. The alternative is Battered Woman's Syndrome (Walker 1979, 1984, 1989) or, more recently, the hostage/torture narrative of Stockholm Syndrome (Graham, Rawlings and Rigsby 1994).

Lenore Walker's feminist work on Battered Woman's Syndrome was designed to contest the narrative that battered women are masochistic, enjoy the violence or feel they deserve it, that they go looking for abusive men and that they bring the abuse on themselves (a narrative that is performatively enacted still in many cross-examinations in courtrooms where these women come to trial). The actual definition of the proposed syndrome is difficult to tie down, vacillating between her theories of learned helplessness, the cycle of violence and post-traumatic stress disorder. It is it seems somewhat ironic that the script/narrative that legal personages and legal doctrine can accommodate is one that to some extent matches the stereotypical view of women in many of their own existing scripts and narratives. This is a woman who is a victim, who is very clearly not an agent of her own self-defence.³ It is also of course a script that comes with authority, with evidence - the (usually male) expert medical or psychological witness. In a very real sense the performative authority of the expert witness is what produces Battered Woman's Syndrome as a reality, enacts it as a scientifically valid reason for killing - and thus also produces the verdict of manslaughter or something even less. Pragmatically then, in terms of matching the law's categories with a version of the woman's experience and producing a successful result for her, many feminist lawyers see this as a viable and useful defence although many of them do not seem to believe Walker's story (Brown 1996).⁴

Much more recently the hostage has become a possible character in this bevy of narratives. The term Stockholm Syndrome was coined in 1973 to describe the puzzlingly protective and later loving reactions of four bank employees to their captors (Graham, Rawlings and Rigsby 1994). Those who developed the idea of the 'syndrome' in this case described what happened as a strategy of loving to survive under conditions of captivity, a 'love addiction'. So while these women are written as having strategies they also end up with an 'addiction'. Eastaerl (1996) uses this work to rewrite the story (without the addiction or the love), of Marie Whalen a woman who was sent to prison for five years for killing her husband. Eastaerl shows how the same evidence that was used at her trial can be used to write a hostage story with a different ending. When the caged lady in Eastaerl's story kills her captor with a knife and an axe while he is drunk,

she is applauded for her action. 'She has killed a 'bad' man' (Easteal 1996:15).

The idea that the battered wife has been the victim of torture, a captive, a hostage in her own home is, it seems, also a potentially useful basis for a different kind of self-defence argument. What is amazing however, given the statistics above, and the number of domestic murder/suicides involving the taking hostage of women and children in their own homes, is that it took a public, media event to set the 'experts' to work looking for more syndromes. The hostage narrative as currently constituted risks deflecting attention from the 'captor' (it is she who has the addiction) and from the utter normality of violence within the marital home or domestic space. As Easteal shows, there is a perfectly comprehensible hostage story in which the woman is not, again, reduced to taking erotic pleasure in her captivity or abuse. The taking of hostages must be seen as criminal behaviour within domestic as well as public space - not written as unusual, a public and rare kind of crisis.

HALLUCINATIONS OF THE COMMON LAW

Margaret Raby's trial in late 1994 was the first time a defence of Battered Woman's Syndrome (BWS) as a partial defence of provocation was used in Victoria. The nature of provocation as a 'male model of behaviour' (requiring 'sudden' provocation to an immediate, violent act of 'uncontrollable' male passion) was recognised in this courtroom and there were discussions of those gendered issues. Margaret Raby was convicted by Justice Teague and a jury of twelve of killing her husband (after eleven weeks of marriage) on 20/10/1994 and given a mitigated sentence of 28 months with a non-parole period of seven months. Having spent six months in remand, she probably had little time left to serve. The consequences of the use of the defence of BWS, of its recognition as a legally valid category, can I think be seen in the words of Justice Teague's judgement with its concomitant amazing ability not to hear what it itself has to say about masculinity and torture, or to recognise that abnormality might be normal in such a context as the first paragraph below describes:

Keith Raby ... was almost continuously adversely affected by alcohol and drugs, and ... he effectively imprisoned you and then brainwashed you physically, psychologically and sexually.

.... you were not acting normally. Among the less graphic descriptions of you were 'dissociated', 'not with it', 'detached'. In my view that abnormal state although assessed by Dr. Bartholomew as falling short of automatism, is a key factor in my ultimate assessment as to how you should be punished.

There is no message here that the conduct of the deceased was such that he was getting his just deserts. Nor is there any message that any other women in a similar form of subjugation ought to be encouraged to think that to resort to self-help through violence is to be condoned. Disposing of battering men is absolutely unacceptable. Exposing them for the villains that they are is to be encouraged in every way. (The (Underlining is my own)(R v. Raby (Unreported, 22nd. November 1994, Supreme Court of Victoria, No. 94, Teague, J., 1, 2))

Justice Teague can excuse Margaret Raby's conduct only if her story is rewritten by another man, an expert witness, as 'not normal'. Like Desdemona's her guilt and her innocence are (can only be) written by men. Therese McCarthy has commented that: 'The fact that "expert" testimony is required to understand the effects of a crime which is second only to traffic offences in terms of police workload is extraordinary.' (1995:145).⁵

It is even more extraordinary, and the more obviously a gendered response, when one realises that on the same day as Margaret Raby was convicted of manslaughter, another judge in Melbourne, Judge Robert Cahill, was working on another provocation trial. He told the court he understood why a man called Peacock had killed his wife (after he discovered she was having an affair) and said that he was reluctant to jail him at all, declaring: 'I seriously wonder how many men married four or five years would have the strength to walk away without inflicting some form of corporal punishment' (The Herald Sun, 20 October 1994). This is evidence of a systematically gendered difference in the way homicide is treated in our courtrooms, not a one-off example (Greenwood 1996), and there are sedimented historical reasons for this. Kate Hay (1995) has pointed out that the case which is often cited as the case that overhauled the law of provocation (The Queen v R (1981) 28 S.A.S.R. 321) in fact relies on 'quite arcane legal precedents' (1995:13), and she quotes precedents from as far back as 1871, 1946, 1963 to prove her point. King, C.J. delivered the leading judgment in this case, telling us what provocation is in a 'well-ordered and civil society'. It is not 'hatred, resentment, fear or revenge' (325). It is 'conduct which might cause an ordinary person to lose his self-control to such an

extent as to perpetrate the violent act which has resulted in the death' (327). King, C.J. provides an example:

In times when the criterion of provocation were expressed in terms directed to duels and personal quarrels among men who ordinarily bear arms or to violence produced by violence.... The modern cases are however not for the most part concerned with clashes between armed men, but with provocative conduct of a very different type, very often consisting of matrimonial infidelity. (327) (My underlining)

Thus the legal categories of provocation and self defence appear to be thoroughly embedded in a sedimented narrative history:

The institution hallucinates standard forms of procedure and norms of usual behaviour on the strength of half remembered arguments, through the dazed recollection of unreported cases or largely forgotten conversations. (Goodrich and Hachamovitch 1991:174)

In the light of these excursions into the words and wit of judges it does seem to me that it is time Othello stopped being narrativised as a hero, time he became the grammatical medium in such cases, not she, time we started to ask just who it is who has lost his faculties in these courtrooms.

The Raby transcript reminded me narratively of the Robyn Bella Kina case and of a book called *Lifers* (1987) written by eleven women doing life for spousal murder in Canada. Since that time Greenwood's *The Thing She Loves* (1996) has produced further evidence that the story these women try to tell is a very common one, indeed frighteningly normal. Elsewhere (Threadgold 1997 forthcoming) I have attempted to trace the details of that story in its textually and intertextually mediated forms. Here I want to focus on some legal responses to it.

Robyn Bella Kina is an Aboriginal woman who was convicted of killing her partner Tony Black, a white man who had had several previous relationships with Aboriginal women. She served six years in prison after being convicted of murder before she was the subject of a petition for pardon to the governor of Queensland and a reference to the Court of Appeal from Queensland Attorney-General, Dean Wells. The Court of Appeal set aside her conviction in late 1993, and ruled that justice had miscarried at her trial. The grounds on which this decision was made were her

Aboriginality which, it was said, had lead to miscommunications in the earlier trial proceedings, and BWS. It is important here to understand that Kina was advised by her legal representatives (the Public Defender and the Aboriginal Legal Service) not to give evidence at her first trial and that the defence on that occasion did not present any evidence of the violent abuse she had been subjected to at the hands of Tony Black. In the transcript of the Court of Appeal judgments it is argued that Robyn, because she was Aboriginal, had difficulty communicating what had happened to her to those defending her. She appears to have allowed her legal representatives to decide for her that she should not give evidence in her own defence.

Nevertheless, she found for herself, through another prisoner, and contacted, a social worker, David Berry, to whom she was able to speak. His report and his attempts to speak to her legal advisers all seem to have fallen on deaf ears in the period leading up to the first trial. His evidence was not in fact finally heard until the Court of Appeal. Dr. Diana Eades who gave linguistic evidence before the Court of Appeal argued that Robyn's initial inability to communicate was typically Aboriginal but that in prison she had learned how to communicate in a non-Aboriginal way so that she could later reveal what had happened to her.⁶ This may have been strategically useful evidence on Eades part, but outside the courtroom, none of this explains why all along she was able to communicate perfectly well with Berry and later with a series of journalists who brought her case before the public eye. In 1991, David Goldie and Amanda Groom interviewed her for an ABC-TV documentary, *Without Consent*. David May interviewed her for *Good Weekend* in 1994 (March 26, 1994).

Berry is reported as saying, of her disclosure to him at their first meeting of Black's violence: 'It required no particular skills; I just sat there and listened.' (*Good Weekend*: 42). In fact there seems to have been a still unacknowledged (perhaps benevolent) racism in the legal conviction that Aboriginals are so uncommunicative that they are better silenced altogether, and in the still unexplained absence of Berry's and Hamilton's (the Legal Aid solicitor who wrote a report on some aspects of Black's violence as told to her by Robyn) reports at the first trial.⁷ In all of this, except when David Berry's tells the story, it is Robyn's communicative skills that are assumed to have been deficient. Interviewed by *Good Weekend* after her release from prison she had this to say:

'I don't feel bitter about anything hey,' she says at a riverside cafe. 'With the lawyers, I guess I couldn't sorta open up to them, and for some reason they just wouldn't listen to Dave Berry ...

Lawyers talk in big words. You think: 'I wish they would use ordinary words.' And then you think: 'Maybe they just don't know them!' She laughs. 'There are a lot of people in jail who just don't understand lawyers.' (1994:41)

It is not just feminist stories then that have trouble with legal categories. There was also a good deal of evidence in Kina's diaries of Black's abusive behaviour - Kina's own story in her own words - which her various defenders apparently did not think worth using as evidence. Part of the problem here may well have been that that diary told a story of love and domestic fiction which could not be read as abuse in terms of the law's understandings.⁸ For example, Kina's diary recorded that 'he made me have sex his way' - and no-one thought to ask what that meant. At the Court of Appeal this was finally decoded as 'forced anal sex'. Although I do not find mention of it anywhere in the court proceedings Kina's diary also seems to have contained love letters to 'Tony' (or poems perhaps?) which may have appeared to her defenders to confirm her guilt. Thus the Good Weekend story has at the bottom left hand corner of the first page an image of a poem taken from the diary titled: 'Paradox: Kina's revealing poetry' (1994:38). The Poem reads:

Tony
If I could hold you
just a second,
I'd hold you just a day.
You'd be in my arms forever
forever and a day

Certainly in the Raby trial similar letters addressed to Keith Raby were used in evidence against Margaret Raby (Transcript, 384-86). In both cases, it seems, the co-existence of expressions of love and extreme sexual violence and abuse were read, could be read, as only contradictory 'paradoxical' signs of guilt. They are never read as coping strategies in intolerable situations, attempts to write the self differently in diaries and letters which the law erroneously reads as 'fact' and 'evidence' despite the historical evidence of the ambiguity between fact and fiction with respect to precisely these genres that O'Connell's (1992) work demonstrates (Threadgold 1997 forthcoming; Davis 1983; Armstrong 1987).

It is significant that while both Raby and Kina are described in very similar terms, and while both are apparently quite articulate when speaking to friends and sympathisers, these behaviours are significantly never attrib-

uted in Raby's case to her colour, the fact that she is white. With the help of a woman defence lawyer her 'symptoms' are attributed by the 'experts' to 'trauma-induced BWS and amnesia' - not you will notice to cultural and linguistic deficiency. This comparison should tell us something about the way the performativity of the courtroom silences and misreads novice, unpractised performances in that space or even denies them the right to participate in the performance at all. Robyn Kina did not even make the cast! It should also tell us something about the dangers of reading fragments of the performance of the self, the bits that correlate (with difficulty) with your own performance, your own categories/stories as the whole and all there is to know.

But the law goes on reading partial scripts with considerable equanimity. The women in my story, Robyn, Margaret and Susan, do not remember making the confession that brings them to court. Margaret Raby appeared on video confessing in the courtroom and could not remember:

You heard yourself saying (on the video) you got the knife and there was a time lapse and you hesitated and stabbed him? ——
I wouldn't have - there was no way I would ever hurt Keith.
(Raby transcript, cross-examination, 376)

Susan writes years later of still being unable to recall, of not intending to kill:

It happened very quickly. One minute I was sitting at the table rolling cigarettes, and the next minute my husband let out a yell and he fell out of his chair. Apparently, I'd jumped him, grabbed a steak knife and stuck it in his heart. He yelled and fell. When he fell the knife fell out. I remember thinking that I'd just nicked him; I didn't think I'd put the knife in that far.

...

From now on, the rest of what happened has been reconstructed from other people's stories ...(My italics, Susan 1987:8)

Robyn describes an act of self defence and protection of a younger niece, but says she did not mean to kill. Moreover her act is followed by immediate regret, nurturing of the injured man:

I just reached out and stabbed him once in the body. I did not mean to kill him. I did not mean to injure him seriously. I was not

aiming for his heart. When I saw that I had stabbed him, I threw the knife away. He staggered and fell to the ground. I was very upset.. I said to him that I was sorry and that I loved him and I also said: "Please don't die". I held him in my arms. I asked my niece Enid to go for an ambulance.

Later on the ambulance came and the police interviewed me. I was told that he had died. I felt terrible.(My underlining, Kina transcript Court of Appeal: 13)

What is remarkable about these last two examples is the way, in the telling, grammatically the women cease to have agency over the events described. For Susan it is 'apparent' that she has killed her husband. She knows she wounded him with a knife but had no intent to kill. The same is true of Kina who is the passive recipient of the news that Black is dead and also had no apparent intent to kill. In both cases the women were warding off violent verbal and physical attacks from the men concerned at the time. In Raby's case Keith Raby had attacked her with a knife the morning of his death. She was hospitalised but returned home to make it up with him. Later that evening she killed him. Her story emerges in response to defence questions at her trial:

You said before that when you first saw him sitting in the chair you thought that he was dead? — Yes.

By the time you lowered him to the floor, did you still think he was dead? — I don't know. I can't remember.

Okay. So you lowered him to the floor and then what happened? — Then I laid down beside him.

What did you do? — I put my arms round him and I kissed him.

Did he respond? — No.

So what happened after that? — I just cuddled him.(Raby transcript,356-7)

In each of these cases what seems to happen above is that the woman attempts to write herself out of the scene of death in which she finds herself, to write herself back into the story about love and caring that is also in her letters or her poems. Raby and Kina also attempt to have IVF in

order to have babies by the men who are both their husbands and their abusers. This too may a final last ditch attempt to keep the love and marriage story alive, to perform the self differently as a strategy of self defence. This loving in fact has been a strategy for averting violence for a very long time. The parallel here between the law as patriarchal structure and the family as patriarchal structure is startling. The loving which is strategic in this abusive situation, but so well rehearsed that it has become a lived reality, is read as the problem in court, the contradiction that proves guilt, and leads to further abuse in that place. Why has she not left, done something about it, they ask? The fact that she has just acted finally, that she has killed to protect herself from the abuse, is somehow as suppressed as her memories of what she has done. So the reasoning goes: it cannot really have happened, she is telling lies to protect herself - and we have the transformation of her story of violent abuse into a story the law is more familiar with, that of the scheming, manipulative and untruthful wife. She lacks integrity

At the same time and quite paradoxically the only way for those who believe her story to defend her is to argue very firmly that she has not acted at all, that she has been the object of a syndrome, amnesia, dissociation, BWS. And while the 'experts' are proving that she has lost her faculties, the prosecution is intent on proving that she is the medium of her own abuse:

You knew that they would disapprove of Keith? — Yes.

So that really you went into this, Mrs. Raby, with your eyes wide open, didn't you? — Not eyes wide open.

Well, you were told by Vanessa that he was an alcoholic and a violent man and that he would probably alienate your family because you knew they would disapprove? — Excuse me sir, is it wrong to want a little bit of happiness? (Raby transcript, p.388)

— Tell us what he said. I am going to stand here until you answer? — I am sorry. I apologise for using these words.

Go on? — Can I just use the initials?

Just tell us what he said, that is all we want to know.

His Honour: If it will make you feel a bit better, I have told many other people to use words like this in this courtroom ———
He called me a fucking cunt.

That is all? Was that all he said? Is that all he says Mrs. Raby? Were they the only words he said? — I think so. (Raby transcript, 367)

Elsewhere (Threadgold 1997 forthcoming) I have tried to trace the sedimented histories which might explain some of this behaviour (his and hers, in both the courtroom and the home) in terms of Armstrong's (1987) and O'Connell's (1992) account of the complex intersections between conduct books, the rise of the novel as 'domestic fiction', Richardson's *Pamela*, and the politics and activism surrounding the passing of the *Hardwicke Marriage Act* (1754) in the course of the eighteenth century. I have suggested there that this is the historical apparatus, or one of them, which, in producing the 'covered' woman who gives up her civil status for affect when she marries, also produces, effects, the continuum of rape, pornography, abuse, torture, love and marriage.⁹ The Act in its intersections with the literary performativity of *Pamela* and domestic fiction, was a very effective means of controlling the circulation of wealth and women, enacted as a deliberate policy for changing the performance of femininity, an ethical apparatus to reshape women's most innermost selves, a grammar of domesticity, of freedom and slavery. It may also be the apparatus, or part of it, which produces also the battering man. It seems certainly to be the apparatus and the script in which the cross-examining barrister in Raby is permanently stuck. It also looks remarkably like the Marcus rape script discussed above. Little wonder that there is such confusion in our culture about the relationship between sex, violence, love, eroticism, pornography and the Oedipal family story.

THE MISSING STORY: THE BATTERING MAN

Of the many stories I have told above there are several which are as important to the production of masculinities as of femininities. The battering man's story is beginning to be dimly heard and articulated in courtrooms but his story is still hardly ever related explicitly to the story of the woman who has killed and is before the law. In the Raby trial one of the expert witnesses did outline his characteristics. Dr. Ken Byrne, a forensic psychologist, gave evidence of nine types of abuse common in battering relationships (Transcript: 468-171). And listed nine characteristics of the battering

nan:

1. He has very poor self-esteem which he masks by violent brava-do and fictional stories of violent encounters.
2. He blames the woman for the abuse and utterly believes that his perverse behaviour is justified.
3. He believes that men are vastly superior to women.
4. He takes no responsibility for his violent behaviour. He blames others for causing him to behave in a violent or abusive manner.
5. He is pathologically jealous to a gross extreme. He will imagine affairs and forbid any encounters not only with other men but also friends, neighbours, relatives.
6. He has a Jeekyll and Hyde or a dual personality. He is capable of being both vicious and loving.
7. He has a poor ability to deal with stress. Minor occurrences can send him into an uncontrollable rage where he physically abuses the woman.
8. He is totally unable to distinguish between aggression and sex. Sexual contact is often forced and aggressive. It is a means of expressing anger and hostility rather than affection.
9. He does not see his violent, abusive behaviour as wrong. He does not believe there should be any averse consequences for his behaviour. (Transcript of evidence 487-491).

Despite this list, she is the one with the syndrome. The sedimented histories produced by and through the Hardwicke *Marriage Act* and its domestic fiction and legal analogues (anyone can understand a man wanting to punish his wife a little rougher than usual handling ... and so on) goes some way toward explaining the social production of such damaged masculinities. These it seems to me are some of the sedimented histories that might name his problem and show it to be a consequence of the kinds of 'imposing cultural scripts' Marcus wanted to identify in the rape script.

It seems to me that such huge stabilities, such imposing cultural scripts, are

exactly what Cameron and Frazer's *The Lust to Kill* (1987), Creed's *The Monstrous Feminine* (1993) and Armstrong's subversive tale of the power of the domestic woman are probably beginning to trace. Cameron and Frazer argue that the culturally determined nature of sexual murder emerges from its connections with cultural representations of sexuality and gender. Murdering man's 'beastliness' is a specifically late nineteenth century phenomenon. There have, they argue, to be reasons for this and they find them in the potential for sex murder and sexual violence which they claim has been embedded in Western society since the late eighteenth century, the period of the initial performative power of the Hardwicke *Marriage Act*:

The eroticising of domination, cruelty and death is by no means natural; it arose at a specific time in history. But it is also not confined to a few abnormal men: its imaginary forms are ubiquitous in the West, ... In a culture which thus conflates sex, power and death, the sexual killer (and the battering husband) is hardly an exile. (Cameron and Frazer 1987: 68. Brackets and underlining are mine)

Creed (1993) explores a small part of this apparatus for the production of sexual selves in greater depth, looking at horror movies made by men. Her primary thesis is that men fear women not, as Freud argued, because they are castrated, but because they might castrate. Cataloguing images of woman as monstrous feminine that are alive and well in the contemporary horror film - witch, archaic mother, monstrous womb, vampire, femme castratrice, castrating mother - she argues that, horrific as they are, they provide understandings of the dark side of the patriarchal unconscious, the pervading ambivalence towards the mother who nurtures but effects separations. It is in these terms she suggests that horror films speak to the unconscious fears of both the human subject (who fears pain, bodily disintegration and death) and the gendered subject (male fears of women's reproductive role and of castration, female fears of phallic aggressivity and rape). In the course of this complex series of arguments Creed also criticises feminist theories of the spectator which, positioned by the dominant Freudian story of the feminine as lack, never permit the female viewer to identify with aggressivity on the grounds that the female imaginary is always non-violent.

There are then many sedimented histories potentially producing accounts of women's represented and expected passivity. They are, if we can believe the implications of Cameron and Frazer's discursive and of Creed's aes-

thetic and psychoanalytical journey, part of a discursive formation/apparatus that begins in myth, legend and religion and continues its representations in the horror film, in art, pornography, poetry and popular and domestic fiction and in traditional common-law legal categories. They give some clues to the fears and fantasies that dominate the cultural imaginary and that add to a beginning and rudimentary archaeology of the battering husband. They also tell us that to imagine you can step outside the social imaginary and see the truth is a legal or a domestic fiction. There are only performances, differently contextualised, performatively responding to different situations, provoked by different interactions within different institutions, with different strategic agendas - all intertextually constituted in deeply sedimented histories, histories that are corporeal and performative, histories that cannot be separated from fictions and bodies.¹⁰

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