Methodologies for Change and Tensions of Tradition and Imagination: Producing Knowledge of Gender Possibility on The Outskirts of Legal Strategy

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Author Bio

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Abstract

Gendered subjects are rendered legible in our political landscape when the law addresses them, and thus law plays an indispensable role in processes of change. Methodologies in gender work to theorise the nuance of lived experiences and individualism, but it is challenging for them to independently bring about change. Legal strategies, on the other hand, work to create and define the contours which shape global societies, but fail to integrate nuance into its analysis. This article argues legal strategies alone prove insufficient in bringing about meaningful change, especially as they pertain to the issues of gender and sexuality. Consequently, this article will thus reflect on the "situatedness" of law as a power tool, analysing the effects of its construction, and *who* gets to construct it.[1] Moreover, it will analyse the limits of the law as a mechanism of enacting true change, illustrating how gender methodologies may imagine possibility beyond legal strategy.

Keywords: law, gender, knowledge production, change, memory, feminist judgements, feminist law

[1] Donna Haraway, "Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective," *Feminist Studies* 14, no. 3 (1988): 575.

Introduction

It was a significant milestone for same-sex couples when the Netherlands became one of the first nations to legalise same-sex marriage.[2] When *Roe v Wade* ruled abortion as a constitutional right in 1972, it was a pivotal moment for American women's autonomy.[3] Likewise, it was groundbreaking for women's rights when they were allowed to vote in the US for the first time in 1920.[4] In our political landscape, gendered subjects are rendered legible when the law addresses them, and legal bills are acknowledged as the symbol of change for that respective group. However, legal action alone does not eradicate discrimination and exclusion, underscoring that law itself remains insufficient. Today, issues of gender continue to be contested across legal, political, and social landscapes. Pertaining to this discourse, both gender and legal methodologies are essential for addressing and measuring impactful action; they consequently intersect when it comes to achieving meaningful change on gender issues. While legal methodologies require proof, evidence, and quantifiable data to substantiate claims and bring cases to court, gender methodologies acknowledge that many issues lie beneath the surface, and inquire into the unseen mechanisms that impact lived experience.

The friction between the two fields arises from the challenges of legal rhetorics to consider nuanced emotions and human stories of marginalised legal subjects. Here, the approach to 'gender issues' is intentionally defined broadly: beyond questions of equality, gender issues encompass identity politics, which are inherently nuanced and unquantifiable. Gender methodologies consider lived experiences and are primarily situated in spheres of academia and activism. It is perhaps more challenging for them to, by themselves, elicit widespread change. Legal methodologies, on the other hand, have historically worked to shape both private and public spheres within global societies. It is as Jane Cowan et al observe that legal systems demand "clearly defined, context-neutral categories (including categories of identity and membership) in order to be able to classify persons and deal with them on the basis of these categories."[5] Grietje Baars also interprets the law as 'heteronormative'; to Baars, law serves an ideology that promotes "the phobia of, and indeed violence towards, those whom

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[2] The Associated Press, "Dutch Legislators Approve Full Marriage Rights for Gays," *The New York Times*, September 13, 2000, https://www.nytimes.com/2000/09/13/world/dutch-legislators-approve-full-marriage-rights-for-gays.html.

[3] Center for Reproductive Rights, "Roe v. Wade," *Center for Reproductive Rights*, 2022, https://reproductiverights.org/roe-v-wade/.

[4] National Archives, "19th Amendment to the U.S. Constitution: Women's Right to Vote (1920)," *National Archives*, February 8, 2022, https://www.archives.gov/milestone-documents/19th-amendment.

[5] Jane K. Cowan, Marie-Bénédicte Dembour, and Richard Wilson, "Introduction," in *Culture and Rights: Anthropological Perspectives*, ed. Jane K. Cowan, Marie-Bénédicte Dembour, and Richard Wilson (Cambridge: Cambridge University Press, 2001), 10.

the norm cannot see, recognise, protect or contain".[6] Thus, the mechanisms of legal strategy expose gender as an issue law is not equipped to address, revealing the flaws of traditional legal practice. Moreover, if 'change' is defined as a collective shift in normative thinking and its implementation within society, it remains impossible to discuss change without the law. As such, one must imagine otherwise — to imagine how creative methodologies may work *in response to*, *within*, and *independently of* law when it comes to gender politics.

Sharon Cowan et al explain, "while art and law can and do serve different purposes, and the law wields state power in a way that art does not, art *can* help us reflect on the power of law".[7] They argue that though one is not more important than the other, both law and art serve different goals. Art encourages creative methodologies, as they prioritise human experiences in a way law is unable to. This article will argue that legal strategies alone prove insufficient in bringing about meaningful change, specifically as it pertains to the wide range of issues falling under the category of gender. Although legal strategies are a crucial catalyst for broader processes of change, this article demonstrates that law alone is insufficient. To illustrate this, it uses three issues of gender to examine the limits of the law and its production: first, law is constructed by those in power, and thus cannot truly account for the needs of marginalised legal subjects. Second, law has historically been used as a means to control nations, states, social societies and its subjects. Finally, the law proves to be an ill-equipped system to deal with the fluid issues of gender. Following each issue, the article will detail examples of imaginative work that has worked *in response to*, *within*, and *independently of* the law, to repair or critique the mechanisms and production of legal strategies.

First, I situate law as a form of knowledge production constructed exclusively by those in power. Patricia Williams argues the significance of legal subjectivity, noting that to be recognised by the law is to have rights; she argues, "rights are islands of empowerment" and thus, "to be un-righted is to be disempowered", adding, "the line between rights and no rights is most often the line between dominators and oppressors."[8] Voices of marginalised individuals are historically absent from the law, and therefore legal strategies often have not brought about meaningful change for them. For example, if law is constructed by men, it will fail to address nuanced discriminations faced by women. In effect, gendered beings who wish to obtain their "islands of empowerment" in the eyes of the law thus must

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[6] Grietje Baars, "Queer Cases Unmake Gendered Law, Or, Fucking Law's Gendering Function," *Australian Feminist Law Journal* 45, no. 1 (January 2, 2019): 19, https://doi.org/10.1080/13200968.2019.1667777.

[7] Sharon Cowan, Chloë Kennedy, and Vanessa E. Munro, "Seeing Things Differently: Art, Law and Justice in the Scottish Feminist Judgments Project," *feminists@law* 10, no. 1 (2020): 7.

[8] Patricia Williams, "On Being the Object of Property," *Signs* 14, no. 1 (1988): 22.

imitate the very legal structures that oppressed or dismissed them. Indeed, gendered beings have historically negotiated the bounds of their own identity to attain legal visibility. The Vienna Conference of 1993 presented a turning point for both international women's rights and human rights, as it recognised violence against women to be a result of unequal power relations. However, in pushing this narrative, women were inadvertently presented as victims who lacked agency. This replicated suppressing structures of power.[9] Another example arises in the case of *Wilkinson v Kitzinger* in 2006 where a same-sex couple was legally recognised so long as they were able to imitate the marriage roles of a traditional, heterosexual couple. This section assesses gendered individuals' negotiation of identity in order to bring cases to court and demand rights. It reveals not only the inaccessibility of the law, but also demonstrates how this is detrimental to collective notions of identity. I then discuss how scholarship in memory is a method of imagination that repairs the essentialised and binary notions of gender within the law. Scholarship in memory imagines alternative ways of how legacies might be archived, studied and read. If the law, as Patrick Macklem states, "accesses the past in ways that treat history as a set of facts", scholarship in memory allows marginalised groups to reclaim their past, present and future narratives.[10]

Next, I situate law as a power tool that historically uses gender and sexuality as a means to exert control over the "other", noting its roots in colonialism. Baars argues that law has an innate "sexing/gendering function (sexage)" used by the state, moreover, "the vehemence with which the state's bureaucracy (registry offices, courts, hospitals, prisons) polices and enforces this function, and the ideological commitment felt by the official (and many in our society) to a strict binary and heteronormative family structure and, relatedly, the seeming legitimacy of the state's right to know our bodies.'[11] Tracing Natal and Uganda's interactions with the imperial project, homophobia and the hierarchisation of gender was mobilised by those in power to articulate belonging but also to illustrate the difference of the racialised "other". This ultimately demonstrates how colonial powers utilised the law to determine what rights were afforded to certain individuals and not others, further, that it was dependent on the political or social agendas they wished to front in that moment. Against this backdrop of legal legacy, the law today still poignantly continues to "dictate the contours and content" of identity in the same way.[12] This does not just have an effect on one's legal subjectivity but also in their everyday lived experiences. The burgeoning Feminist Judgements Project (FJP) is a recent

[9] Ratna Kapur, "The Tragedy of Victimisation Rhetoric: Resurrecting the Native Subject," *Harvard Human Rights Journal* 15, no. 1 (2002): 6.
[10] Patrick Macklem, "Rybna 9, Praha 1: Restitution and Memory in International Human Rights Law," *The European Journal of International Law* 16, no. 1 (2005): 14.
[11] Baars, "Queer Cases," 16.
[12] Cowan, Dembour, Wilson, "Introduction," 11.

methodology that works within the contours of traditional legal strategy, by rewriting closed cases utilising feminist methodology. By highlighting emotions and human stories within traditional legal formats, the project critiques the law as a mechanism of power and oppression. The FJP proves the possibility of prioritising victims' experiences within traditional legal practice, demonstrating how law has instead been used as a tool of oppression. It also reveals the law as constructed from what Tim Ingold describes as the" vantage point" of the research world.[13] The FJP thus brings into question the "situatedness" of knowledge production within law.[14] In this case, *how* it is produced and *by whom*. The FJP effectively demonstrates that feminist methodology was, and has always been, a possibility within judgement writing.

Finally, law is a rigid system relying on logic and is thus not equipped to deal with the intangible or fluid issues of gender politics. Jane Cowan et al theorise the tensions between culture and rights, arguing law ignores the "unavoidable messiness" of social life.[15] Re-adapting this theory to the question of gender and law, an attempt to make sense of gender with legal strategy usually ignores the nuanced lived experiences of marginalised identities. The law fixates on quantitative evidence to validate claims, effectively excluding the complexities of gender, and the experiences that fall between the lines of identity politics and legal subjectivity. Gina Heathcote et al point out, however, that despite law's failure to acknowledge them, we must realise feminists are "in conversation on the streets, in the home, in kitchens, in the market, in the academy, across disciplines, otherwise out of sight", and that these subjects are operating within knowledge frames that "need to be learnt, perhaps re-learnt, to fully understand the meaning of feminist praxis."[16] Moreover, legal change does not always result in social change. This section turns to the act of protest, demonstrating how inspiring emotional responses is a powerful methodology of change independent of the law. The freedom of format adapted by methodologies of self-expression speaks to wider audiences, and thus imagines alternative ways of seeing and being.

Meaningful change must thus look beyond the scope of legal process and strategy; Paul Gready and Simon Robins call for a methodology of "evaluation as understanding", considering nuance and affect

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[13] Tim Ingold, *Imagining for Real: Essays on Creation, Attention and Correspondence* (London: Routledge, 2021), 237.
[14] Haraway, "Situated Knowledges," 575.
[15] Cowan, Dembour, Wilson, "Introduction," 21.
[16] Gina Heathcote and Lucia Kula, "Abandoning the Idealized White Subject of Legal Feminism: A Manifesto for Silence in a Lusophone Register," *Global Constitutionalism* 12, no. 3 (April 5, 2023): 478, https://doi.org/10.1017/s2045381722000284.

within these cases.[17] Similarly, Heathcote and Kula call for imaginative work beyond the politics of inclusion; instead examining "the knowledge formations within global feminist spaces to inquire how feminist knowledge is reshaped by international institutions even as itself is incomplete".[18] Through examining the tensions between imagination and tradition, it becomes clear that both are essential for true gender possibilities to emerge.

Law is constructed by those in power

A foundation of existing social history is essential for individuals to feel empowered and safe to bring their issues to court. With cases directly concerning identity politics, the sensitive nature of these issues and their potential repercussions on the individual make this especially true. For example, Black women in the US - who face discrimination based on both race *and* gender - experience this reality on two sides. When women in the US fought for abortion rights in the early 1970s, Angela Davis argues Black women were only empowered to do the same once they were able to identify themselves within the wider feminist movement.[19] Though abortion rights are an inherently gendered matter affecting all women, Davis here demonstrates it is an issue profoundly affecting Black women, disproportionately discriminated against by the US healthcare system. This reveals that rights emerge as legitimate demands only when supported by a socio-cultural context. Further, it unveils the power dynamics dictating who is empowered to access the law—and if they are able to at all. This arduous process of claiming basic rights in court demonstrates the challenges marginalised voices face when entering the legal sphere, exposing the consistent role of those in power in constructing the law.

Furthermore, **s**ubjects who fought for their status as legal subjects have historically done so by adopting the culture of the law. In many cases, marginalised individuals must adopt the language of the law to be understood within the legal frame. They must negotiate the bounds of their own identity to access the culture of legal language, even if these self-realisations are foreign to their sense of self. Adopting identities for legal recognition often requires mimicking the very structures responsible for their oppression. Karon Monaghan, in her analysis of *Wilkinson v. Kitzinger*, demonstrates that same-

[17] Paul Gready and Simon Robins, "Transitional Justice and Theories of Change: Towards Evaluation as Understanding," *International Journal of Transitional Justice* 14, no. 2 (2020): 281.
[18]Heathcote and Kula, "Abandoning the Idealized White Subject of Legal Feminism," 481.
[19] Angela Davis, *Women, Race & Class* (London: Penguin Modern Classics, 1981), 186.

sex marriage in this case was acknowledged and legitimised only insofar as it 'resembled' a heterosexual marriage.[20]

Thus, when marginalised legal subjects enter the legal sphere, their identities are articulated through the language of the very system that has oppressed them, often adopting an over-generalised or essentialist stance towards gendered beings and excluding their lived experience completely. Davis observes this within the context of the 20th century women's rights movement in the US began to gain traction; while it was an achievement for women's voices to be acknowledged in courtrooms, it was predominantly the voices of white women, thereby excluding the intersectional realities of women of colour.[21] Ratna Kapur also draws attention to the 1993 Vienna Conference, where women experiencing violence in the Global South were positioned as tragic 'victim subjects'. Though the conference intended to bring justice to these women, it presented them as victims who lacked agency and autonomy, perpetuating the very suppression it sought to address. Kapur argues the reliance on victimisation rhetoric was a deeply misguided articulation based on gender essentialism, overlooking opportunities to thoughtfully engage with women's lived experiences in the Global South.[22] Essentialised rhetorics prominent in the context of legal institutions ultimately fail to enact meaningful change for those who continue to fall between the margins of the law and identity politics.

Remembering: memory in response to legacy

Macklem argues, "collective memory possesses the potential to achieve legal significance as a justification of minority rights, which in turn require the broader society to remember a minority's past, respect its present collective identity, and accommodate its future aspirations".[23] The continuous negotiation of identity within the eyes of the law demonstrates its inaccessibility but also reflects a legacy that has shaped collective memories of identity and belonging. Scholarship in memory first arose in race studies, re-introducing the lived experiences of those historically falling through the margins of law and the archive. Patricia Williams reflects how slave law in the US rationalised the Black subject in direct opposition to the white subject, manifesting as a violent memory remaining in

[20] Karon Monaghan, "Commentary on Wilkinson v Kitzinger," in *Feminist Judgments: From Theory to Practice*, ed. Rosemary Hunter, Clare McGlynn, and Erika Rackley (London: Hart Publishing, 2010), 428.
[21] Davis, "Women, Race & Class", 185.
[22] Kapur, "The Tragedy of Victimisation Rhetoric," 6.
[23] Macklem, "Rybna 9, Praha 1," 15.

the contemporary social consciousness of race identity.[24] The law similarly rationalises its patriarchal values in direct opposition to women and other marginalised genders, reinforcing these dynamics in contemporary social thought. Heathcote et al also describe the "white subject of legal feminism" which renders women of colour silent.[25] Beyond the issue of representation, it also affects how individuals remember and identify with their own histories and legacies. Sarah Lamble notes queer bodies and sexualities are rendered unthinkable and unknowable through the eyes of the law through their exclusion, highlighting the collective harm this causes to identity.[26] **As a result, methodologies in memory work respond to existing legal and historical structures, employing personal and creative measures to invoke a collective reimagining of identity.**

In a touching example of work in memory, Saidiya Hartman rethinks Black legacies by reflecting on the human story that might have belonged to a young girl on a slave ship. She draws attention to the "impossible stories" of these girls, who bear names that "deface and disfigure"; the "words exchanged between shipmates that never acquired any standing in the law", that failed to be recorded in the archive, such as "appeals, prayers and secrets never uttered because no one was there to receive them."[27] This calls attention to the stories that have historically failed to appear in legal archives, but offer critical narratives regarding gendered and racial histories. Where marginalised individuals who appear in the archive are reduced to a number or name on a record, Hartman subverts this with her writing style, creating a space in which the reader might imagine themselves in the shoes of the young girl. By employing affect within the traditional discourse of legal archives, Hartman implores us to consider the realities beyond what can be read in legal history. Antije Krog also responds to the Truth and Reconciliation Commission in South Africa by presenting grief and loss as bodily memory; Krog uses affect theory to convey the visceral experiences that are felt on the body; experiences that exceed the scope of the events formally recorded by the commission.[28] Affect here as feminist methodology imagines beyond the facts presented in the court, revealing a consideration of the repercussions of grief not otherwise present in legal records. Both examples demonstrate how feminist methodology works in response to legacy, reimagining and repositioning the politics of knowledge production surrounding marginalised identities. They also highlight the key role that the law has in shaping histories and defining identities. As Macklem notes, "law, too, participates in memorial

[24] Williams, "On Being the Object of Property," 9.
[25] Heathcote and Kula, "Abandoning the Idealized White Subject of Legal Feminism," 490.
[26] Sarah Lamble, "Unknowable Bodies, Unthinkable Sexualities: Lesbian and Transgender Legal Invisibility in the Toronto Women's Bathhouse Raid," *Social and Legal Studies* 18, no. 1 (2009): 3.
[27] Saidiya Hartman, "Venus in Two Acts," *Small Axe* 12, no. 2 (2008): 10.
[28] Antjie Krog, *Conditional Tense: Memory and Vocabulary After the South African Truth and Reconciliation Commission* (Seagull Books: University of Chicago Press, 2013): 308.

consciousness. Law's memorial sites are comprised of principles, rules and procedures that invest moments in history with normative significance. Within these sites, law accesses the past in ways that treat history as a set of facts."[29]

Subjectivity is undoubtedly influenced by the way in which identities are presented through the law. Duffy analyses the impact of litigation narratives, arguing that through "reframing" the way issues are discussed, they gain a humanising power that can "awaken and shape public consciousness".[30] Similarly, work in memory has the potential to "awaken" and "shape" legal narratives, thus shifting the way in which identities are presented and acknowledged. Ratna Kapur calls for a legal context in which the subject is able to construct their identity by their own terms; however, she warns that to position the subject as a victim of their gender, or framing them in relation to patriarchal structures, is in fact reminiscent of re-enacting the imperial project in a post-colonial world.[31]

Law as power discourse: shaping the "other"

Law, historically, is a means by those in power to shape identity of the self but also of the "other". Macklem notes that law organises society by upholding rights and "imposing constraints on the exercise of public and private power."[32] This finds its roots in the imperial project, where the organisation of legal systems by European colonists could be mobilised to exert control over the colonised. T.J. Tallie discusses how colonial law was used to hierarchise gender in Natal, thus demonstrating how gender could be "marshalled on all sides to press claims for belonging, control, or legitimacy."[33] This organisation of legal systems exposes a "legal and moral wrangling", demonstrating the "slipperiness of colonial social formations", and how gender could be used to articulate their claims of belonging.[34] In the example of Uganda, homophobia has been used interchangeably to articulate both imperial and decolonising rhetorics; Rahul Rao demonstrates colonists rooted their homophobia in African tradition, while decolonising rhetoric later used anti-sodomy laws and the Anti Homosexuality Act to situate their homophobia in the influence of the

[29] Macklem, "Rybna 9, Praha 1," 14.
[30] Helen Duffy, "Strategic Rights Litigation: Bursting the Bubble on the Champagne Moment" (Inaugural Lecture), 9.
[31] Duffy, "Strategic Rights Litigation," 9.
[32] Macklem, "Rybna 9, Praha 1," 14.
[33] T.J. Tallie, *Queering Colonial Natal: Indigeneity and the Violence of Belonging in Southern Africa* (Minneapolis and London: University of Minnesota Press, 2019), 17.
[34] Tallie, *Queering Colonial Natal,* 17.

West.[35] Here, gender-related issues are once again co-opted by law in order to further conflicting political agendas. The shifting stances on homophobia thus demonstrate law was used as a tool to govern sexual orientation within the wider discourses of (anti-) colonial power.[36] The fluidity and flexibility of the law thus exemplify how it can be mobilised by those in control, within different contexts, to assert different political or social agendas.

Moreover, the role international law continues to play in organising social communities cannot be understated. Macklem argues law participates in the "turbulence of modernity" every time it constructs new forms of legal rights and obligations.[37] Furthermore, those in power use legal strategies to construct identities of the "other" but they also, by extension, construct identities for themselves through their relationship with the "other". For example, in an attempt to curb trafficking in Nepal, women under 30 were restricted from travelling outside the country without permission from a husband or male guardian.[38] Thus, by enforcing this legal subjectivity onto women, it reinforced the dominant status of men by way of their relationship to women. The relationship between sex workers and their legal subjectivity also influences how they perceive themselves, but also how those outside the sex work industry might perceive them. In countries such as Taiwan and Thailand, where sex work remains illegal, their illegality adds another complex layer to existing harmful socio-cultural perceptions. The figure of the sex worker has been a highly contested identity within both feminist groups and male-dominated spaces alike; in one case, the Korean women's movement in the early 2000s essentialised sex workers as victims of sexual violence.[39] However, demonstrations by the National Sex Workers United responded by distributing pamphlets with messages that constructed their identities as workers, not victims. Lopez-Jones points out issues such as discrimination and harassment are not exclusive to the sex industry, except that the sex worker's "illegal or marginal status" makes it challenging for them to defend their jobs, and in some cases, obtain protection from gendered or sexual violence.[40] Constructing the sex worker as an iteration of the "other" exemplifies how legal subjectivity certainly plays a role in how one navigates their society, but also how outsiders perceive them and respond to them accordingly.

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[35] Rahul Rao, *Out of Time: The Queer Politics of Postcoloniality* (New York: Oxford Academic, 2020), 36.
[36] Rao, "Out of Time", 36.
[37] Macklem, "Rybna 9, Praha 1," 1.
[38] Meenakshi Ganguly, "Nepal Plans to Limit Women's Travel for Work, Again," *Human Rights Watch*, February 11, 2021, https://www.hrw.org/news/2021/02/11/nepal-plans-limit-womens-travel-work-again#:~:text=Restrictions%20on%20Nepali%20women.
[39] Chen Mei-Hua, "Sex and Work in Sex Work: Negotiating Sex and Work among Taiwanese Sex Workers," in *East Asian Sexualities: Modernity, Gender & New Sexual Cultures*, ed. Stevi Jackson, Liu Jieyu, and Woo Juhyun (London: Zed, 2008), 104.
[40] Chen, "Sex and Work in Sex Work," 104.

‘The Masters Tools’: imagining possibility within the law

Against a backdrop of power dynamics creating the “other”, legality has shaped the way individuals navigate their identities as gendered and sexualised beings. As Heathcote et al argue, “in the way they are presented, categorised and dominated”, legal subjects “are limited in the many ways they can reinforce or even introduce different forms of resistance, and this still shapes the boundaries of how they navigate the fluidity of their identities.”[41] However, resistance work within academic practice directly critiques the law, reconfiguring legal and historical methodologies that have been used as tools of oppression. The Feminist Judgements Project (FJP) re-imagines traditional cases with feminist methodology, re-authoring judgements and bringing to light human stories and lived experiences.[42] This FJP highlights the law as a power discourse, one that has aided in the construction of the “other”. In Kanika Sharma et al’s contribution with *Dadaji Bhikaji v Rukhmabai,* the authors position the issue of consent as central to the judgement, a matter which was not considered at the time of the original judgement.[43] Thus, by working within the bounds of existing legal formats, the FJP demonstrates that feminist methodology in legal formats was, and always is, a possibility.

The FJP, however, has received critique for its choice of style. The format adopted by the project follows that of traditional case writing, and thus remains inaccessible to those outside of academia.[44] In turn, the project perpetuates the very same exclusivity in its production of knowledge, which hinders broader processes of change. Here, the knowledge is still produced from the “vantage point” of the research world, still heavily influenced and adapted to its politics.[45] Moreover, the FJP reproduces the location of where legal strategies are informed and constructed; in this case, by legal academics situated within the traditional legal system. However, I argue the FJP adds resistance within the legal institution by using “the master's tools” to directly critique its own strategies.[46] Though limited in the change it may illicit independently, the FJP’s re-contextualisation of traditional legal strategies makes clear that law functions as a power tool. The FJP, as a method of imaginative

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[41] Heathcote and Kula, “Abandoning the Idealized White Subject of Legal Feminism,” 490.
[42] Rosemary Hunter, “An Account of Feminist Judging,” in *Feminist Judgments: From Theory to Practice*, ed. Rosemary Hunter, Clare McGlynn, and Erika Rackley (London: Hart Publishing, 2014), 30.
[43] Kanika Sharma, Laura Lammasniemi, and Tanika Sarkar, “Dadaji Bhikaji v Rukhmabai (1886) ILR 10 Bom 301: Rewriting Consent and Conjugal Relations in Colonial India,” *Indian Law Review* 5, no. 3 (August 12, 2021): 1–23, https://doi.org/10.1080/24730580.2021.1962083.
[44] Jennifer Koshan, “Impact of the Feminist Judgment Writing Projects: The Case of the Women’s Court of Canada,” *Oñati Socio-Legal Series* 8, no. 9 (2018): 1330.
[45] Ingold, “Imagining for Real,” 237.
[46] Audre Lorde, *The Master’s Tools Will Never Dismantle the Master’s House* (London: Penguin Books, 1984), 25.

work, thus brings about meaningful change within the academy. It may prompt current legal players to reflect on the legacies that formed their practicing institution, encouraging them to consider their own approaches more closely when it comes to legal methodology.

Law attempts to quantify what is intangible

The legal system is not equipped to deal with the issues of gender. Gender issues are fluid, individual, complex and dynamic - contrasting rigid legal systems that value quantitative evidence above all else. It is the attempt to quantify the dynamic issues of gender that lead to false essentialisms and victim rhetorics, ignoring the nuances and lived experiences of marginalised identities. As a result, these individuals rest on the margins, navigating a society that does not account for them. In Canada, the 'Pussy Palace 'case (*R v Hornick*) demonstrated the longstanding legal invisibility of queer and transgender bodies by both the police and the court. The case involved a series of raids by Toronto Police Services in a queer bathhouse, where clients were subject to both space and bodily violation under the guise of a liquor license investigation. Sarah Lamble, in her analysis of the case, argues both judge and defence focused their attention to the actions of the police, completely overlooking the underlying sexual discriminations of the queer community that this case had brought to light.[47] In this case, the law was unable to account for the nuances of the queer experience, instead occupied with quantifying the actions of the police. Likewise, when a case is won, its symbolic equality does not always ensure the same social or material equality.[48] For example, legally establishing women and men should obtain equal pay does not exempt women from other forms of discrimination such as workplace harassment, which is often challenging to quantify. In Japan, the Basic Law for a Gender Equal Society (1999) saw numerous counselling desks open for sexual harassment claims; despite the formal implementations of platforms now available to victims of harassment and discrimination, the number of women in managerial positions remains low, reflecting that nothing has changed despite the new law.[49]

Cowan discusses the attempts to quantify culture within the law, arguing the language of the law is an "intellectual strategy" that reveals "moral ambiguities" that the law cannot account for.[50] The law's

[47] Lamble, "Unknowable Bodies, Unthinkable Sexualities," 4.
[48] Rosemary Auchmuty, "What's So Special About Marriage? The Impact of Wilkinson v Kitzinger," *Child and Family Quarterly* 20, no. 4 (2008): 483.
[49] Muta Kazue, "The Making of Sekuhara: Sexual Harassment in Japanese Culture," in *East Asian Sexualities: Modernity, Gender and New Sexual Cultures*, ed. Stevi Jackson, Liu Jieyu, and Woo Juhyun (London: Zed, 2008), 64.
[50] Cowan, Dembour, Wilson, "Introduction", 21.

attempt to quantify gendered identities certainly reveals the "moral ambiguities" of identity politics, while tensions between law and gender methodologies reveal legal language as an "intellectual strategy" of those in power. As Cowan argues, the law does not acknowledge the "unavoidable messiness of social life."[51] Thus, it is not in the ability of the law to address these critical nuances, revealing the necessity for other methods to imagine alternative realities and ways of being.

Alternative mobilisations: imaginative work outside the law

In addressing the nuances of gender issues where the law falls short; imaginative work might act independently from the practice of law altogether. These forms of imaginative work often reach a wider audience that is located outside the law, subverting traditional locations of knowledge production. In the example of public demonstration, the *khwajasara* organised and led the very first Trans Pride in 2018 in Lahore. The *khwajasara* marched in traditional clothes, waving both Pakistani and trans pride flags. The abundance of symbols associated with tradition and trans solidarity celebrated their own identities, a way of re-imagining their futures. Hamzić states, 'it was as if *khwajasara* activists brought out to the public some of the celebratory and heart-warming manifestations of their dera life and their traditional *badhai* performances– albeit for the purposes of demanding their newly affirmed legal rights".[52] Further, "the skills and practices of belonging, solidarity and collective action had been honed first, only to be brought to the new–and larger– social and political contexts".[53] Protest and demonstration is a form of imaginative work and knowledge production that affects and speaks to a wider audience outside the law. In another example of the media, Baxi describes the rise of the press institution; it now had the power to expose and therefore, to an extent, deconstruct the "governmental lawlessness" and social tyranny that was present.[54] She argues, "if litigation was for those in power, the press was for the people".[55] The use of the media enables NGOs and activist organisations to bring injustices on the local level to the national level, demanding action from those in power. The press, as a separate institution to the law, has the power to provide a voice to different groups and to critique the law. Furthermore, the press speaks to wider audiences and, like the climate of social media, it is a method to mobilise, create communities and spread awareness for issues and contested gendered identities. Activism and the press are powerful

[51] Cowan, Dembour, Wilson, "Introduction," 21.
[52] Vanja Hamzić, "The Dera Paradigm: Homecoming of the Gendered Other," EthnoScripts 21, no. 1 (2019): 48.
[53] Hamzić, "The *Dera* Paradigm," 48.
[54] Upendra Baxi, "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India," *Third World Legal Studies* 4, no. 6 (1985): 114.
[55] Baxi, "Taking Suffering Seriously," 114.

tools of subversive and imaginative knowledge production. They prove that change can begin within the locations of social society. Thus, social society has the power to influence litigation, but litigation does not always influence social change. This is reflective of the law's accessibility, as well as the nature of knowledge production and who gets to produce it, and to what aim.

Conclusion

Gender possibility remains at the outskirts of legal strategy, just always a little out of reach. This article has demonstrated how mechanisms of legal strategy alone are insufficient to bring about meaningful change in the realm of gender. Gready et al argue the impossibility of theorising change, calling for a methodology that must "extend beyond a vague hope that change will 'trickle down' from national, institutional interventions."[56] True meaningful change, thus, must arise from a shift in collective thought, and from reflecting on who gets to access and construct knowledge production. Affective forces, such as memory, the feminist judgements project, demonstration, and the press appeal to *feeling* - directly challenging our relationship with the traditional legal systems. Imaginative work of this caliber thus challenges the existing methodologies of law by working *in response* to the law and the archive, *within* the very format of the law, and by using creative means *independent of* the law. In doing so, imagination provides alternative ways of seeing and being, inspiring true change for both litigators and the collective alike. As Williams states, "rights contain images of power, and manipulating those images, either visually or linguistically, is central in the making and maintenance of rights".[57]

[56] Gready and Robins, "Transitional Justice and Theories of Change," 288.
[57] Williams, "On Being the Object of Property," 22.

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