

POPULAR CULTURE, LAW AND OUR “SEXED AND GENDERED LIVES”: FEMINIST REFLECTIONS ON “REFUSAL” AND “SISTERHOOD”

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1 Introduction

The following quotation captures the main concern of this article, namely the connection between feminism and mainstream popular culture:¹

“Because women’s work is never done and is underpaid or unpaid or boring or repetitious and we’re the first to get fired and what we look like is more important than what we do and if we get raped it’s our fault and if we get beaten we must have provoked it and if we raise our voices we’re nagging bitches and if we enjoy sex we’re nymphos and if we don’t we’re frigid and if we love women it’s because we can’t get a ‘real’ man and if we ask our doctor too many questions we’re neurotic and/or pushy and if we expect childcare we’re selfish and if we stand up for our rights we’re aggressive and ‘unfeminine’ and if we don’t we’re typical weak females and if we want to get married we’re out to trap a man and if we don’t we’re unnatural and because we still can’t get an adequate safe contraceptive but men can walk on the moon and if we can’t cope or don’t want a pregnancy we’re made to feel guilty about abortion and ... for lots of other reasons we are part of the women’s liberation movement.”²

The aim is to continue conversations and contemplations on women’s agency and subjectivity; on present sex and gender images in popular public discourses and on the limits and possibilities of feminist theory. The tentative argument explored here is that if popular culture is a site where “[power] is remade at various junctures within everyday life, [constituting] our tenuous sense of common sense”,³ it requires close examination by feminist scholars especially in relation to its role in contributing to women’s subordination and marginalisation.⁴ The wider concern is with how these discourses could find some expression in jurisprudential feminist critiques of women’s struggles to achieve justice, recognition, dignity and equality. Ngaire Naffine, arguing that law is imbued with gendered power, sets out the context and rationale (what could be called “the spirit”) of this article:

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¹ See A McRobbie “Post-feminism and Popular Culture” (2004) 4 *Feminist Media Studies* 255 255; S Thornham *Women, Feminism and Media* (2007) 23 55. See also, in general, J Hollows & R Moseley (eds) *Feminism in Popular Culture* (2006).

² National Organization for Women “Women’s Rights Manifesto” *The Torch* (14-09-1987) 1.

³ McRobbie (2004) *Feminist Media Studies* 255 citing J Butler, E Laclau & S Zizek *Contingency, Hegemony and Universality* (2000) 14.

⁴ McRobbie (2004) *Feminist Media Studies* 255.

“The proposition that law is imbued with the culture of men moves beyond the claim that law is made by men and therefore tends to entrench their position and dominance. The indictment is more far-reaching. Law, it is said, is conceived through the male eye; it represents the male perspective. It starts from the male experience and fails to recognise the female view.”⁵

The argument will develop as follows: Part 2 of this article employs film theory, literature and entertainment media to critically analyse the main focus of this article, namely sex and gender relations within public discourses. The link between society and key aspects of feminist theory is looked at through an analysis of how pop culture and entertainment media represents women and the implications this has on perceptions about women and the ability of women to “create their own spaces from where to engage in political ways of living”.⁶ In part 3, the notion of “refusal” as introduced by Karin van Marle⁷ is presented as a possible response to issues of gender (in)justice and (in)equality. Significant background for this ethics of refusal is provided by Julia Kristeva’s notion of contestation, Drucilla Cornell’s description of ethical feminism and Adriana Cavarero’s feminist engagement with Platonic philosophy. Drawing on various examples of refusal in Greek mythology and popular culture, the possibilities and challenges of overcoming structural gender inequality are discussed. Connected to the refusal of patriarchal conceptions of women’s issues is the refusal of gender hierarchies. In part 4, relying on a short analysis of two films and a series of feminist concepts, a “politics of sisterhood” will be reflected on as a counterweight to the underlying phallogocentric conditions that suffocate the agency of women and the legal, social, political and economic structures that subordinate, exclude and control women. In the conclusion, a few remarks will be made on the topic and on feminist jurisprudence in general.

This article recounts how popular culture and entertainment media can stand in diametric opposition to the goals of feminism and thereby hamper the emancipation of women and impede their struggle for recognition and dignity. Through popular culture, two real problems arise: Firstly, the narrative of “male-written history has created a bias in the concepts of human nature, gender potential, and social arrangements” which is lived out daily in society.⁸ Secondly, when society embraces this male-dominated culture, prevailing conceptions of law reinforce and perpetuate patriarchal power and gender stereotypes. In this way, the original plight of women is exacerbated.

Although the concern is with images and representations of women through popular culture and how this affects our “sexed and gendered lives”, this article will also support the call for feminism to take seriously the relation between feminist theory and the day-to-day struggles and material conditions of women. An *ethics of refusal* is concerned with problematising, deconstructing and re-interpreting these images, representations and harmful stereotypes.

⁵ N Naffine *Law and the Sexes* (1990) 7-8.

⁶ K van Marle “Laughter, Refusal and Friendship: Thoughts on a ‘Jurisprudence of Generosity’” (2007) 18 *Stell LR* 194 198.

⁷ 198.

⁸ Legal Information Institute “Feminist Jurisprudence” (13-02-2011) *Cornell University Law School* <http://www.law.cornell.edu/wex/Feminist_jurisprudence> (accessed 27-03-2012).

Thereafter, a *politics of sisterhood* is put forward as a response to women's existential situation through activism and advocacy, women's solidarity and reform-oriented activities.

As with all words and meanings, this article could be interpreted in many ways and feminist jurisprudence could be approached from many angles. This article specifically resists attempts to provide conclusive answers and prescriptive solutions not only because that goes against the grain of critical thinking but also because it closes the space for dialogue and limits the possibility of addressing pressing feminist challenges. Although readers may at first be inclined to think of these reflections as a "collection of ideas" on feminism, it presents itself here as a recollection of various feminist critiques with the aim of contributing to an original discourse on law, sex/gender and the lives of men and women.

2 Popular culture and everyday living

A reader of *The Times* newspaper, who goes by the name: "The Public Intellectual" from Pretoria recently wrote the following in a piece entitled "Why Women Should Despise Vixens":

"I must express my disdain at the most recent episode of the so called 'anti-dating' show vixens which airs on the Vuzu channel. The show features men who are in serious relationships having those relationships tested by living with a group of 'sexy' women who will do anything to 'tempt' him in order to measure how much trust and loyalty there is in the relationship. Each vixen has to kiss the male participant if they wish to be immune from expulsion from the house – leading to such shameful behaviour as two 'vixens' forcing themselves on the *man* by licking him and kissing him repeatedly despite clear (sic) indication that he does not welcome the advances. If women want to be respected and not undermined and objectified, they have to react with some shock and repulsion to these kinds of openly disrespectful and demeaning shows. Such vulgar expressions of sexuality undermine the kind of society we should strive for, that rejects patriarchy and the subjugation of women."⁹

In the same newspaper, weeks later, columnist Nica Cornell exposes how a popular film with a strong following among young girls imposes a narrative on them that women are needy of approval and acceptance from men and also highlights the difficulties women face in "own[ing] their own femininity and the power that comes with it".¹⁰ This is somewhat connected to the view that law and traditional jurisprudence protects and defines men and their sovereignty and for that reason, fails to sufficiently address issues relating to gender and women.¹¹

"I am worried, however, about the example set by the current tales. Twilight is one of these, with an audience of girls as young as 10. What kind of example does it set when the hero abandons the heroine and she effectively shuts herself down? What brings her out of her stupor? Another male. It tells young girls that their happiness must be dependent on the presence of a man."¹²

⁹ The Public Intellectual "Why Women Should Despise Vixens" *The Times* (16-06-2010) 12.

¹⁰ N Cornell "Fairy Tales and Hairy Messages" *The Times* (29-06-2010) 15.

¹¹ See G Minda *Postmodern Legal Movements* (1995) 131. See also R West "The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory" (1987) 2 *Wisconsin Women's LJ* 81.

¹² Cornell *The Times* (29-06-2010) 15.

These two newspaper articles provide further motivation for this focus on how popular culture (“pop culture”) portrays and influences the identity of women (in relation to men).¹³ The broader concern here is with the kinds of perceptions, preconceptions and misconceptions about women that are created, strengthened and perpetuated as well as how these spread into general society and affect the lived experience of women. The principal aim in this section is also to draw attention to the significance of popular culture studies as a terrain of academic enquiry for feminist jurisprudence. In the current gender landscape where women’s issues are subsumed under patriarchal interpretations of history, law and human rights, it is imperative to critically examine the broader socio-cultural influences that enculturate men and women into preordained, rigid and stereotypical roles. (To be precise, if gender is to be used as a radical analytical focus area for research, all platforms, avenues and methods – like movies, newspapers, television shows, music videos, the internet and books – through which ideas about women are formed and through which women can actively participate must also receive attention).¹⁴

Recent scholarship on the relationship between feminism and popular culture acknowledges that this relationship is indeed a troubled and uneasy one.¹⁵ The main reason for this is because, in perpetuating the hackneyed man/woman and feminine/masculine binary, mass media (advertisements, soap operas, magazines and cinema films) often accords a superior position to the man and the masculine. Joanne Hollows observes this trend in most mainstream cinema films (and again in magazines, commercials and television programmes) where women “function as the object of the narrative and signify passivity, while the man is the active subject of the narrative”.¹⁶

“Woman then stands in patriarchal culture as signifier for the male other, bound by a symbolic order in which man can live out his fantasies and obsessions through linguistic command by imposing them on the silent image of woman still tied to her place as bearer of meaning, not maker of meaning.”¹⁷

This leads her to conclude that mainstream cinema “is produced as a spectacle for the male gaze” and is “organised around male desire”.¹⁸ She then refers to the work of feminist film theorist Laura Mulvey to argue that the reason for this is because the very structures and conventions that underpin

¹³ See C Mukreji & M Schudson (eds) *Rethinking Popular Culture* (1991).

¹⁴ See in this regard K van Marle “To Revolt Against Present Sex and Gender Images: Feminist Theory, Feminist Ethics and a Literary Reference” (2004) 15 *Stell LR* 247 266:

“We should never stop exposing how dominant power inequalities and ideologies influence, ever so subtly, public and legal discourse, how, because of a hidden belief, heavily loaded acts and expressions are seen as objective and neutral.”

¹⁵ See Y Tasker & D Negra “Introduction: Feminist Politics and Postfeminist Culture” in Y Tasker & D Negra (eds) *Interrogating Post-feminism: Gender and the Politics of Popular Culture* (2007) 1 1-27; A Zeisler *Feminism and Popular Culture* (2008) 1-5; ME Buszek *Pin-up Grrrls: Feminism, Sexuality and Popular Culture* (2006).

¹⁶ J Hollows *Feminism, Femininity and Popular Culture* (2000) 48.

¹⁷ 48.

¹⁸ 48-50.

mainstream popular media are patriarchal.¹⁹ From this, it could be said that much of popular culture is imbued with a culture of male domination which in turn, influences and shapes sex and gender relations in society.

Television programmes like *Vixens*, *My Antonio*,²⁰ *For the Love of Ray J*,²¹ *The Rock of Love*²² and *The Bachelor*²³ which depict a large number of women desperately vying for the love and adoration of a man – usually (but not always) a failed male celebrity – are of particular concern. It is clear that such shows entrench deep-seated gender hierarchies and sexist attitudes towards women. The magnitude of their exposure makes it even more difficult for women to be liberated from sexist practices such as sexual harassment, rape and gender humiliation. This couldn't be any more true in the case of Nwabisa Ngcukana who was assaulted by a mob of taxi-drivers and hawkers at Noord taxi rank who publicly stripped her naked, tearing her clothes and underwear – because, according to *them* – she was not dressed appropriately and needed to be taught a lesson.²⁴ By suggesting that women are so needy of men that they would do anything – flirt in the most risqué manner, fight amongst each other, have gratuitous sex, dress suggestively *et cetera* – in order to “win his heart”, they are effectively objectified and demoted to an even lesser position in society. When the law must protect their dignity and rights, it is invariably layered with the assumptions about women that flow directly from such messages.

It is clear that the real objection in feminist theory should be the conditions in society which strengthen the foothold of patriarchy and its ubiquity in women's lives. When people are confronted with the image of women resorting to unscrupulous, desperate and disgraceful schemes in order to win a modelling competition, or to be a man's wife or girlfriend, *all women* are affected at some level by this distorted caricature. The “cautionary rule” that the courts applied in sexual misconduct cases involving women as victims – although it was abolished in *S v Jackson*²⁵ – reflects in large part the strong (and ill-informed) perception that women are malicious, vindictive and dishonest.²⁶ This is one instance in which we see how the identity of women as conceived through popular media directly affects the application of law. The most essential elements of any progressive legal system, equality and justice, can be dislocated in these small spaces. Consider, for example, the constant

¹⁹ 48-50. See L. Mulvey *Visual and Other Pleasures* 2 ed (2009); L. Mulvey “Unmasking the Gaze: Feminist Film Theory, History and Film Studies” in V. Callahan (ed) *Reclaiming the Archive: Feminism and Film History* (2010) 17.

²⁰ Featuring former actor and model, Antonio Sabato Jr.

²¹ Featuring Rhythm and Blues (“RnB”) musician “Ray J”.

²² Featuring former Rock and Roll musician Brett Michaels.

²³ Now in its fourteenth season. See Anonymous “The Bachelor” (25-06-2011) *Wikipedia* <[http://en.m.wikipedia.org/wiki/The_Bachelor_\(TV_series\)](http://en.m.wikipedia.org/wiki/The_Bachelor_(TV_series))> (accessed 07-07-2011).

²⁴ SAPA “Custom Allows Girls to Dress in Mini-Skirts” *Sowetan* (28-02-2008) 7.

²⁵ 1998 1 SACR 470 (SCA).

²⁶ B. Levinson (director) *Disclosure* (1994) Film: Warner Bros. Pictures, tells the story of an ambitious woman (played by Demi Moore) who falsely accuses a male co-worker (played by Michael Douglas) – against whom she was competing for a promotion – of raping her. We are faced in this film with two gender stereotypes: firstly, the constant equation of *women with sex* as a way of objectifying and vulgarising women and women's sexuality; and secondly, the depiction of women's successes and ambitions as being connected to competition with men – often involving these women having to resort to unscrupulous methods in the process.

characterisations of women as office secretaries, receptionists and assistants to white male tycoons (with whom they are normally having sexual affairs) and the tendency in most pornographic films to expose women in full-frontal nudity but to not do the same with the male actors. These have rightly created serious controversy and hostility in terms of gender equality in the media and seem to create the impression that women are more expendable, less valuable and can be exposed whereas men must still retain some modicum of dignity or decency.²⁷ There are of course examples within popular media of positive portrayals of women. Most striking in this regard is the political drama series *Commander-in-Chief* featuring Mackenzie Allen, a woman (played by Geena Davis), as President of the United States of America; *Star Trek Voyager*, a science fiction television series following the adventures of the crew of the USS Voyager which has a female captain, Kathryn Janeway, at the helm as commanding officer; and *Buffy the Vampire Slayer* which follows a young heroine (“Slayer”) who has been called by “fate” to fight vampires, demons and other dark forces – doing so valiantly and with great strength and bravery. Yet even these shows and films reproduce the notion that in order for women to be represented or heard, they must be more like men - thereby affirming the male standard as normative while denying women and the feminine. Other representations of women in popular media give a picture of women supporting each other during times of difficulty and pain,²⁸ overcoming domestic violence and emotional abuse,²⁹ and generally being in dominant or equal positions with men in corporate or political organisations and family relationships – that is, women living according to their own terms.³⁰ But like *Commander in Chief* which lasted only one season, many of these shows don’t ever garner a strong audience.³¹ Why is this?

There is no hard and fast answer to this question but there is a point to it, namely that feminist work would benefit from being grounded in an awareness of and insistence upon the material force of linguistic and visual representations. A more critical engagement with popular culture brings to bear how stereotypes, discriminatory acts, and pornographic images and words brutalise women. Resisting repression and subjugation will therefore also mean finding ways out of those representations and creating new ones.³² Such an engagement could focus on the ways in which representations have constitutive force – the way in which who women “are” is deeply connected to how they are represented.³³

²⁷ A Richards “Feminism and the Media” *Ask Amy: Media* <http://www.feminist.com/askamy/media/0506_media01.html> (accessed 07-07-2011).

²⁸ R Swicord (director) *The Jane Austen Book Club* (2007) Film: Sony Pictures Classics.

²⁹ M Apted (director) *Enough* (2002) Film: Columbia Pictures.

³⁰ In this regard, see the films referred to in n 68 below.

³¹ Anonymous “Commander in Chief (2005 TV series)” *The Internet Movie Database* <<http://www.imdb.com/title/tt0429455/>> (accessed 08-07-2011).

³² Inspiration for this point is drawn from D Cornell *Beyond Accommodation: Ethical Feminism, Deconstruction and the Law* (1991).

³³ See Drucilla Cornell’s response in “Martha C. Nussbaum and her Critics: An Exchange” (Letters to the Editor) *The New Republic* (19-04-1999) 43-44.

3 On an ethics of refusal

It is certainly not being proposed that shows, films, art and songs which are unfavourable to women be censored. Instead, the argument here is that women and even men must begin to refuse to accept, or at least problematise, the premises on which such shows are based and in turn, be able to refuse completely any aspects of popular media which seem to subordinate and negate the role and significance of women in society. It is here where the notion of an “ethics of refusal” becomes relevant. The notion of refusal was introduced by Van Marle as part of a tentative exploration “in the possibility of women’s subjectivity and agency – in women’s existence as subjects, and more than that: as subjects with the capacity to resist and to refuse”.³⁴ Refusal is important here for at least two reasons: (1) it is concerned with theorising and thinking about issues of transformation, reconciliation and inequality in ways that are radically different to and critical of formalist and liberal approaches that operate within the strict economy of law and human rights; and (2) it entails challenging and problematising current attitudes towards sex and gender issues from ethical and political perspectives, and exposing how these affect the lives and deaths of women.³⁵ It is especially important to quote Woolman and his reading of Van Marle’s contemplations on “refusal” when he writes:

“For Van Marle, there is a moral salience to everyday life – in the domain of small, intimate relationships where most of life happens – that cannot be captured in any theory of law or politics. Life *really* happens here, Van Marle seems to be saying, and we ignore the power of these spaces for real emancipation if we limit our vision to the domain of law, or politics, or even revolution... Her first move is to remind us of the emancipatory potential of everyday life: that the revolution is more likely to be found in the remaking of our face-to-face interactions.”³⁶

This makes the above analysis of pop culture (a space with which people interact daily) even more germane. But a stronger feature of the above quotation has to do with its importance for legal theory. To think about law (and in this case, how it affects women’s lives) in a vacuum, without truly understanding the “day-to-day” circumstances and concrete realities within which people find themselves, makes any theory or research observation vain and abortive. Although it’s true originator, Van Marle, does not use the term “ethics of refusal”, any close reading of her work suggests that she is placing an accent on the agency of individuals to actively resist and reject certain archaic, essentialist and sexist notions in the way they lead their lives.³⁷ If this is true, then Woolman is correct in his view that “ethics of refusal” “marks a new beginning in South African jurisprudence”.³⁸

³⁴ Van Marle (2007) *Stell LR* 194.

³⁵ 195.

³⁶ S Woolman “On Rights, Rules and Relationships: A Reply to Van Marle’s ‘Jurisprudence of Generosity’” (2007) 18 *Stell LR* 508 515. See generally, M Minow *Not Only for Myself: Identity, Politics and the Law* (1997).

³⁷ See K van Marle “The Archaic Structures of our Desire” (2010) 25 *SAPL* 195 195-196.

³⁸ Woolman (2007) *Stell LR* 508.

Van Marle, drawing on Hannafin,³⁹ already proposes a few refusals to ponder about in her discussion of Cavarero's rereading of Penelope's weaving and unweaving and how Penelope in turn creates her own rhythm, space and time in contrast to the norm that was imposed on Greek women and slaves of her time.⁴⁰ She puts forward "a refusal of a patriarchal assignment of confined and predetermined oppressive spaces to women"⁴¹ and a "refusal of the pervasiveness of the economical, or instrumental, calculated mindsets that aim to prevent amongst other things any form of questioning, opposition or resistance."⁴² Some other refusals which should be emphasised are:

- A refusal of popular culture's generally unfavourable and patronising depiction of women and an appreciation of the bias that underlies these representations and a rejection of thoughts and actions which reflect these stances of prejudice and discrimination against women in reality.
- A refusal by women to submit to the pressures and difficulties which make it easier for them to accept the chauvinistic treatment and patriarchal prescriptions set for them and a refusal to live out the stereotypes which bedevil women.⁴³
- A refusal to go along with the *status quo* or to be part of political and social spaces in which the *status quo* persists. In other words, challenging and debunking conventional political and legal norms.
- A refusal by men to uphold the practices that reproduce the sexual subservience of women and reflect the treatment of women as exchangeable or fetishised objects. Men must also resist the culture that has relegated women to inferiority and catapulted men and "the man" to a position of unjust superiority and domination. In other words, a refusal of "masculine normativity".⁴⁴
- A refusal to abide by the histories and heritages which symbolise patriarchy and hegemonic masculinity. This also implies a refusal of the idea that cultural heritage, political history and even certain religious assumptions like the "gender of God"⁴⁵ are set in stone, unchallengeable and unchangeable.
- A refusal of existing preconceptions and dominant gender archetypes in relation to notions like "authority", "caregiver", "(in)dependence",

³⁹ P Hannafin "The Writer's Refusal and Law's Malady" (2004) 31 *J Law & Soc* 3 14.

⁴⁰ A Cavarero *In Spite of Plato: A Feminist Rewriting of Ancient Philosophy* (1995). See also J Richardson "Elizabethan 'Spinning' and Penelope's Weaving" (2006) 17 *Law & Critique* 135 150.

⁴¹ Van Marle (2007) *Stell LR* 198.

⁴² 199.

⁴³ N Luke "Confronting the 'Sugar-Daddy' Stereotype" (2005) 31 *International Family Planning Perspectives* 6 14 reports on the disturbing new trend among young women of sleeping with much older married men in order to pay for their tuition and sometimes also to finance extravagant lifestyles. Such a trend highlights the difficulties of poverty and the harsh material conditions faced by women but also opens up a space for refusal and for overcoming gender-based economic disadvantage. See also Irish Independent "Middle Class Women Who Charge for Sex" (16-10-2010) *Independent.ie: Lifestyle* <<http://www.independent.ie/lifestyle/the-middleclass-women-who-charge-for-sex-2382053.html>> (accessed 07-07-2011).

⁴⁴ Van Marle (2007) *Stell LR* 203.

⁴⁵ See in this regard D Human "Women and Religion: An Ongoing Struggle for Gender Equality" (2007) 3 *PULP Fictions* 3 3-12; F Klopfer "Women and the Gender of God" (2007) 3 *PULP Fictions* 12 12-17.

“mother-/woman-/girlhood”, “breadwinner”, “power”, “standards”, and “capabilities”. This entails problematising the value and meaning attached to these, recognising their inherently prejudicial and subjective nature and insisting that they change.

- Following Van Marle, a refusal of “gender insensitive research frameworks, projects and policies”⁴⁶ and of the “binaries, objectifications and privatist mindsets”⁴⁷ that restrict women’s lives – ultimately, a recognition and reorientation of the pervasive *maleness* of knowledge, law and society.

With reference to the maidservant from Thrace who laughs at the conceited nature of patriarchy,⁴⁸ refusal can also be linked to “defiance”, “risk” and “revolt” – the thought of a young woman slave laughing at the conceits of her male masters is indeed defiant and risky. Julia Kristeva’s notion of *contestation* is also relevant here. To Kristeva “[contestation] expresses a fundamental version of freedom: not freedom to change or to succeed, but freedom to revolt, to call things into question”⁴⁹.

Kristeva understands “contestation” to mean the “violent desire to take over the norms that govern the private as well as the public, the intimate as well as the social, a desire to come up with new, perpetually contestable configurations.”⁵⁰ Writing elsewhere, Van Marle gives an apt example of the tension between an “ethics of refusal” in action and the hegemonic hold of patriarchy:

“The goddess Artemis, uncomfortable with the traditional trappings of womanhood persuades her father to allow her to be a hunter. . . . Artemis ‘[i]n the process, quickly discovers that the real challenge of freedom has more to do with spiritual strength (and learning to live with all one’s various selves) than with physical ability or movement’. She makes herself ‘at home’, lives in a shack with her dogs, a temporary home, rather than living as someone’s wife, mother or daughter creating home for them. The god Orion, upset because of her rejection of him destroys her home, kills her dogs and rapes Artemis. Artemis kills Orion with a scorpion and discovers another notion of home.”⁵¹

Artemis’ killing of Orion is the ultimate act of contestation, refusal and of the rejection of the patriarchal nature of Greek royalty. Let us also briefly recall more examples of *refusal* within a sex and gender context in the stories of the Greek mythological figures, Antigone and Medusa.

Van Marle regards both Antigone and *Medusa* as women who are free from the “restrictions and pervasive power of the mainstream.”⁵² On Antigone, Van Marle cannot be faulted but on Medusa, a different perspective is offered below. Antigone is significant for defying the orthodox lifestyle imposed on women at the time by following her own spiritual beliefs, values and traditions (what in legal theory would be called *natural-law*) and by insisting that her

⁴⁶ K van Marle “Towards a Politics of Living” in K van Marle (ed) *Sex, Gender, Becoming: Post-Apartheid Reflections* (2006) xi.

⁴⁷ vii.

⁴⁸ Cavarero *In Spite of Plato* 31, 50.

⁴⁹ J Kristeva *Revolt She Said* (2002) 12.

⁵⁰ 12.

⁵¹ K van Marle “Constitutional Patriotism or Constitutional Nationalism – A Reply to Wessel Le Roux’s Paper” (2009) 24 *SAPL* 400 405-406. See original source L du Toit *The Making and Unmaking of the Feminine Self* LLD thesis, University of Johannesburg (2005) 30.

⁵² K van Marle “Gender Mainstreaming – An Ethical Feminist Consideration” (2005) *Obiter* 642 656.

brother Polynices (a traitor to the kingdom of Thebes) be given a proper burial. In this way, she challenges the ruler of Thebes, Kreon's decree to have the bodies of traitors thrown out to wild animals outside the city walls.⁵³ Medusa is more intriguing because even despite her popular depiction as a woman who was feared and commanded power over men, she also illustrates the tension inherent in the idea of *refusal*. Medusa was not always a Gorgon (female monster). She was originally a beautiful maiden largely trapped under the patriarchal desires of Greek men. But after being raped by the god Poseidon, the goddess Athena (angry that her temple had been desecrated) transformed Medusa's hair into serpents as punishment.⁵⁴ In this state, those who gazed upon her face would turn to stone. Sigmund Freud describes Medusa as a "supreme talisman who provides the image of castration – associated ... with the discovery of maternal sexual identity."⁵⁵ Page duBois views Medusa as a symbol of "women's subversive, self-sufficient sexuality".⁵⁶ Other psychosexual interpretations of Medusa see her as the personification of feminine wisdom, female power and rage, and also women's creativity and free-spiritedness.⁵⁷

However, the irony of Medusa and the reason why Antigone should appeal more to feminists is that unlike Antigone, Medusa had no say in her life and future. First she was *raped*, then she was transformed from a beauty to a monster (against her will and alarmingly, by another woman) and then she became a terrifying powerful wicked figure (also, by no choice of her own). Following Kristeva above, Medusa lacked the "freedom to revolt" and the agency to be regarded as a significant example of *refusal*. Medusa did not call the patriarchal values and masculine paradigm of the Greek polity into question; in fact, she is the very embodiment of its pervasive power. Even in their respective deaths, this holds true. Antigone defied her death sentence by committing suicide thus claiming the ultimate right: the right to die. Medusa, on the other hand, was killed by the male-hero, Perseus. Theorists should avoid calculated, "grand narrative", "spectacle" styles of argumentation (Medusa's awesome power as a symbol of women's refusal) and should instead focus on the ordinary, and on action, thinking and revolt as exemplified by Antigone's act (choice?) of defiance and resistance. It is Antigone's refusal that holds the potential to enable new ways of living which do not rely on the coercion or subjection of women.⁵⁸

It is instructive in this section to also consider Drucilla Cornell's idea of ethical feminism as a refusal of essentialist feminist perspectives that deny

⁵³ R Graves *The Greek Myths 2* (1960) 380.

⁵⁴ L Bogan "Medusa in Myth and Literary History" (2010) *Modern American Poetry* <http://www.english.illinois.edu/maps/poets/a_f/bogan/medusamyth.htm> (accessed 27-03-2012).

⁵⁵ S Freud *Das Medusenhaupt* (1940) 266. For a similar view see B Walker *The Women's Encyclopaedia of Myths and Secrets* (1983). See also V Zajko & M Leonard (eds) *Laughing with Medusa: Classical Myth and Feminist Thought* (2006).

⁵⁶ P duBois *Sowing the Body: Psychoanalysis and Ancient Representations of Women* (1988) 57.

⁵⁷ R Goldsbrough "Medusa Background" (2010) *Ancients: Medusa – Deeper Meanings* <<http://rg.ancients.info/medusa/article.html>> (accessed 27-03-2012).

⁵⁸ See K van Marle "Lives of Action, Thinking and Revolt – A Feminist Call for Politics and Becoming in Post-Apartheid South Africa" (2004) 19 *SAPL* 605 605-628.

the significance of sexual difference and also those that overestimate the law's role in protecting women's rights:

"Ethical feminism promotes the recognition that who and how we have been as women who make our own histories will always slip beyond the grasp of our current conceptual knowledge precisely because of the way in which hegemonic patriarchal conceptions of women make the imagination of us as those subjects impossible."⁵⁹

The notion of ethical feminism is concerned with exposing the limits of formalised and institutional attempts to fully achieve women's equality, freedom and dignity. Instead the protection of women's dignity could be found in a moral re-orientation towards an *imaginary domain* in which women can claim their desire, articulate their sexuality and take responsibility for their lives within the ethical framework of respect for the dignity of others.⁶⁰ The imaginary domain, developed through psychoanalysis, opens up more spaces for refusal through its demand that all women as "sexed creatures who care deeply about matters of the heart" be afforded the moral and psychic space to evaluate, re-imagine and represent who they are.⁶¹ According to Cornell, ethical feminism "demands equality for women as free persons", but does not see the law or legal institutions and processes as the main vehicle for restructuring the current meaning of gender relations and sexual difference. In her view, "such a law would fall foul of the equal protection of the imaginary domain, since it would make the state and not the individual the source of the representation of her sexuate being".⁶²

In rethinking the relation between law, feminism and popular culture, it is imperative to question how this multifaceted politics of *refusal* could be part of the lived experience of all women, especially the young and urbane, and add to feminist insights on women's equality, dignity and community in ways "that [disrupt] present systems and [go] beyond mainstream approaches".⁶³

4 A politics of sisterhood

But even if all men and women were to adopt an activist "ethics of refusal" there is still the problem that is brought to light in Woolman's acknowledgement that "men still control the levers of power, and women, especially in countries such as South Africa, lack the degree of agency that men accept as their birthright".⁶⁴ The growing demands of women's struggles in the 21st century require that inexorable focus now be placed on ways in which women can form strategic political and moral affinities to claim that power and harness the agency to weaken the ubiquity of male dominance in their lives and communities – ways in which women can engage in a "politics of sisterhood" and a "commitment to activism that seeks to promote dialogue" between

⁵⁹ D Cornell *Moral Images of Freedom: A Future for Critical Theory* (2009) 155.

⁶⁰ See D Cornell *The Imaginary Domain: Abortion, Pornography and Sexual Harassment* (1995).

⁶¹ D Cornell *At the Heart of Freedom* (1998) x.

⁶² 14. See also D Cornell *Beyond Accommodation* (1991).

⁶³ Van Marle (2005) 26 *Obiter* 656.

⁶⁴ Woolman (2007) *Stell LR* 517.

them.⁶⁵ In continuing with the theme of popular culture, two films (based on novels) which illustrate some of the features of a “politics of sisterhood” will be discussed below.

In *The First Wives Club*, three college friends, Brenda, Annie and Elise are reunited by the tragic suicide of their friend Cynthia who had just discovered through the media that her husband was leaving her for a younger woman.⁶⁶ They too had been left by their husbands for younger women and were struggling with alcohol, depression, and financially as well. Reflecting on their collective pain and humiliation, they decide to form a “First Wives Club” for women who had suffered similar indignities (and had no recourse or access to the law) to be counselled, consoled and assisted. Each of them coax their former husbands into funding the club. However *after realising that revenge, vindictiveness and anger would make them no different to their husbands*, they turn the club into a non-profit organisation (women’s centre) for abused and depressed women and dedicate the organisation in the name of their college friend Cynthia. This film aptly describes essential elements of a “politics of sisterhood”. In many ways, these women refused to be victims paralysed by male rejection and decide to take comfort in each other – their friendship turns into a sisterhood in which they become dependent on their own capabilities as women. Unhappy to leave it there, they take things further and create a safety net for other women to enjoy the same recovery from the degradation they had suffered at the hands of their husbands who had left them, often with no money or other means for sustenance. Through these women, a politics of sisterhood is forged within the framework of togetherness, self-sufficiency, laughter, affirmation, detachment from a male-dominated world and a refusal to accept the power and space that men command in their lives.

This is quite similar to the events in *The Jane Austen Book Club*⁶⁷ in which five women (each of whom represent a character in one of Jane Austen’s novels) and one man (who represents all of Austen’s misunderstood male characters) start a book club as an escape from the various problems in their lives – an adulterous husband, an unfulfilling marriage, ageing, loneliness, and troubles with their sexual identity. In the process, they each discover happiness, reassurance and solace within the comfort of the sisterhood that the book club creates. What is striking is the way in which different women managed to create a space free (even if temporarily) from the patriarchal conditions and disempowering realities in which they live through laughter, action and speech.

⁶⁵ CT Mohanty *Feminism Without Borders: Deconstructing Theory, Practicing Solidarity* (2003) 37.

⁶⁶ H Wilson (director) *First Wives Club* (1996) Film: Paramount Pictures. Also see the novel on which the film was based, O Goldsmith *The First Wives Club* (1992).

⁶⁷ R Swicord (director) *The Jane Austen Book Club* (2007) Film: Sony Pictures Classics. See KJ Fowler *The Jane Austen Book Club* (2004).

The themes explored in these films have, as in all cases, been interpreted with a certain subjective state of mind.⁶⁸ What is interesting in the portrayal of the women from both films is that each of them in one way or another, enact and protect their *imaginary domain* by refusing the “internal tyrants”, vulnerabilities and pressures which could keep them in a marginal position. The moments of risk and resistance in both films show how, by choosing sisterhood as a response to the hubris and excess of masculinity, women could find ways to overcome misery and suffering even in the face of overwhelming misogyny, sexism and discrimination.

In advocating a “politics of sisterhood”, all women are being targeted. A “politics of sisterhood” enables the creation and widening of spaces through which women can actively and collectively refuse to live according to the dictates of the prevailing order and be empowered and comforted by each other. Through this kind of political living, they are able to rewrite histories, redefine their own role in society, rethink their capacity for agency, and recreate stories, all in authentically “woman” ways. Drucilla Cornell notes:

“If there is to be a feminism at all, as a movement unique to women, we must rely on a feminine voice and a feminine reality that can be identified as such and correlated with the actual lives of women. Yet all accounts of the feminine seem to reset the trap of rigid gender stereotypes, deny the real differences among women ... and reflect the history of oppression and discrimination rather than an ideal to which we ought to aspire. To solve this dilemma we must return to the significance of the feminine.”⁶⁹

Following Cavarero, a “politics of sisterhood” also signals a break from western philosophy’s fascination with the “what” rather than the “who”⁷⁰ because women will collectively “tell stories”, live their lives and engage with politics in ways that are inseparable from their uniqueness, singularity and womanhood. In this context, a politics of sisterhood could signal the emergence of a *feminine public sphere* where women (that is, *who* women are) can appear to each other.⁷¹ Van Marle notes that “like Penelope’s unweaving and reweaving, the politics created by the concern with the *who* rather than the *what* could lead to a space of resistance in the face of patriarchal attempts”⁷² in order to counterbalance law’s tendency to be exclusionary and reductive. Penelope and the other handmaidens in the weaving room and how they engage in action and speech (conversations, laughter and mutual

⁶⁸ There are of course many films that also explore the notion of sisterhood and, could serve as examples of refusal, resistance and risk depending one’s outlook. Other films which illustrate the displacement of rigid sex and gender categories and open up new ways of living and being for men and women, could be: M Gorris (director) *Antonia’s Line* (1995) Film: Bard Entertainment, NPS; P Marshall (director) *A League of their Own* (1992) Film: Columbia Pictures; B Beresford (director) *Paradise Road* (1997) Film: Fox Searchlight Pictures; K von Garnier (director) *Iron Jawed Angels* (2004) Film: HBO Films; J Ford (director) *Seven Women* (1966) Film: Metro-Goldwyn-Mayer; F Whitaker (director) *Waiting to Exhale* (1995) Film: 20th Century Fox; S Soderbergh (director) *Erin Brockovich* (2000) Film: Columbia Pictures; R Scott (director) *Thelma and Louise* (1991) Film: MGM (Sony Pictures Entertainment); H Ross (director) *Steel Magnolias* (1989) Film: TriStar Pictures.

⁶⁹ D Cornell “The Doubly-Prized World: Myth, Allegory and the Feminine” (1990) 75 *Cornell LR* 644 655. See also D Cornell “Revisiting ‘Beyond Accommodation’ After Twenty Years” (2011) 1 *Feminists @ Law* 1 2-3 <<http://journals.kent.ac.uk/index.php/feministsatlaw/issue/current>> (accessed 02-07-2011).

⁷⁰ A Cavarero *Rewriting Narratives, Storytelling and Selfhood* (2000) vii-xxxii.

⁷¹ See H Arendt *The Human Condition* (1958) 199.

⁷² Van Marle (2007) *Stell LR* 200.

trust) also exemplify a “politics of sisterhood”. To follow an ethical feminist insight, although the idea of sisterhood implies a degree of unity and common purpose, it does not imply uniformity or commonality. The sisterhood argued for here offers a glimpse as to how politics and law can be more sensitive to multiple contexts, radical difference (between men and women and among women themselves) and the inherent heterogeneity of society. Sisterhood politics pursue a narrative of multiple sexual identities and does not rely on a “deceptively unified feminine language and experience”.⁷³

But what does this mean for law and for the constitutional call for non-sexism?⁷⁴ In many ways, when women are empowered in this way by forming business organisations, NGOs, lobby groups, and support centres they are less reliant on the law and are therefore less disappointed when the law – as it currently is – fails to respond to their most pressing needs and challenges. In this way women promote and defend their rights through being empowered and by empowering each other. When they *do* seek relief from the courts, the strong backing that “sisterhood” organisations like People Opposing Woman Abuse (POWA) and Sex Worker Advocacy Task Force (SWEAT) provide, help to improve the likelihood of success.

Women can challenge patriarchy, contest authority and exploit opportunities directly in the form of a “politics of sisterhood” wherein civility, kindness and civic duty are powerful and enduringly persuasive qualities of living. Organisations such as, *inter alia*, the Rural Women’s Movement, Women’s Health Project, Women’s Institute for Leadership, Development and Democracy, Agenda, Tshwaranang Legal Advocacy Centre, Women for Peace, Sonke Gender Justice Network, Inter-Denominational Women’s Prayer League, and the National Council for Women of South Africa come to mind.⁷⁵ This should not necessarily be construed as an abandonment and replacement of law and human rights altogether, but as a way in which – considering the failure and impotence hitherto of law and human rights to appropriately address the social ills that affect women – they can be supplemented.⁷⁶

The notions of “refusal” and of “sisterhood” are to be understood as counter-hegemonic disruptions to the liberal, static and unreflective politics of law and rights discourse, and as beckoning alternatives to mainstream, traditional approaches to legal thinking and methodology.⁷⁷ The work of a group of feminist lawyers, activists and scholars in Italy known as the “Milan Women’s Bookstore Collective” typify this disruption and also serve as a significant

⁷³ My thanks to one anonymous reviewer for pressing me to clarify this aspect of a politics of sisterhood.

⁷⁴ Constitution of the Republic of South Africa, 1996 (“the Constitution”) s 1(b).

⁷⁵ See D Osted “Women’s Organisations: South Africa” (19-02-2004) *Global Index of Women’s Organisations* <<http://www.distel.ca/womlist/countries/southafrica.html>> (accessed 07-07-2011) for a comprehensive list of South African women’s organisations. See also L van Vuuren “Review of S Hassim Women’s Organisations and Democracy in South Africa: Contesting Authority” (2009) *Feminist Africa* <<http://www.feministafrica.org/index.php/womens-organisations>> (accessed 04-07-2011). See also P Andrews “From Gender Apartheid to Non-sexism: The Pursuit of Women’s Rights in South Africa” (2001) 26 *NCJ of Int’l L & Com Reg* 693.

⁷⁶ For this argument see C Douzinas *The End of Human Rights* (2000) and D Kairys (ed) *The Politics of Law: A Progressive Critique* (1998) cited generally in Van Marle (2007) *Stell LR* 194.

⁷⁷ K van Marle “Refusal, Risk, Liminality” in K van Marle (ed) *Refusal, Transition and Post-apartheid Law* (2009) 1 1-13.

example of sisterhood itself being an act of refusal, of risk and of a return to the feminine. Examining the relation of women to the law and the paradox of women obtaining rights and freedoms within the ambit of the law – which they regard as instrumental in women’s marginalisation, they urge woman lawyers, judges, activists and scholars to form networks of

“relations among themselves which rescue them from isolation and from assimilation into the male model, and put into circulation something more, a female plus, which gives them visibility and authority, not as neutral professionals but as bearers of an original knowledge capable of leaving a female-gendered mark on the law. The creation of new social relations among women ... can thus become a source of women’s social existence, and hence of law.”⁷⁸

What makes the notion of a “politics of sisterhood” provocative is the multiple possibilities it holds for women to create an alternate reality, to affirm the “feminine within sexual difference” and in so doing, assuage the outdated (mis)representations of women as “victims”, “underdogs” and “weak”. This is captured by the closing scene in *The First Wives Club* when Brenda, Elise and Anna sing the song “You Don’t Own Me”⁷⁹ in unison. Reflecting on Scales’ warnings against “incorporationism”⁸⁰ and Van Marle’s warnings against “the dangers of exclusion, false assumptions of truth, and conformity”,⁸¹ a “politics of sisterhood” could disclose alternatives to law and politics that do not rely on the co-option of women or on making women believe their interest and needs are being served by mainstream legal discourses (thus giving rise to complacency).

5 Conclusion

“Feminism demands the enlarged mentality that allows the imagination to run free.”⁸²

As earlier noted, the connection between feminist legal and political theory and the use of mass media and popular culture to posit the main arguments in this article is an intentional one, emphasising how life experiences, visual representations, cultures and social interactions condition and are conditioned by gender and sexual difference. The more modest claim of this article is to call for a feminist jurisprudence that approaches questions concerning women and the law in more dynamic ways by engaging with all spaces and cultural forms that influence women’s subjective experience in terms of how they are portrayed and perceived and ultimately, treated. Such a jurisprudence could seek ways in which to examine implicit invocations and reinscriptions of gender injustice and identify the gender implications of laws that claim to be neutral.⁸³ It would also need to be brought closer to women “on the

⁷⁸ The Milan Women’s Bookstore Collective *Sexual Difference: A Theory of Social-Symbolic Practice* (1990) 71.

⁷⁹ J Madara & G White “You Don’t Own Me” first recorded by L Gore (1963):

“You don’t own me/ Don’t try to change me in any way/ You don’t own me/ Don’t tie me down cos (sic) I’ll never stay/ I don’t tell you what to say/ I don’t tell you what to do/ So just let me be myself, that’s all I ask of you/ I’m young and I love to be young/ I’m free and I love to be free/ To live my life the way that I want/ To say and do whatever I please/ No, No, you don’t own me (x2).”

⁸⁰ A Scales “The Emergence of a Feminist Jurisprudence: An Essay” (1986) 95 *Yale LJ* 1373.

⁸¹ Van Marle (2005) *Obiter* 650.

⁸² D Cornell *Just Cause: Freedom, Identity and Rights* (2000) 7.

⁸³ P Smith (ed) *Feminist Jurisprudence* (1993) 10.

ground”, making it relevant and relatable, in order for them to also appreciate and embrace an “ethics of refusal” and to organise themselves in spaces reflective of a “politics of sisterhood”. To put it differently, feminist issues must be disseminated in order to be effective in properly reforming the gendered nature of law’s power and transforming male-centred institutional and ideological structures.⁸⁴

It is only with the theoretical insight of such a feminist jurisprudence that women and men can challenge the terms and means by which cultural and symbolic forms as well as dominant social processes “call women into being [and] produce them as subjects”⁸⁵ within a totalising system of power. As McRobbie notes:

“The media has become a key site for defining codes of sexual conduct. It casts judgements and establishes the rules of play.”⁸⁶

She asks why feminism is so “hated” and why “young women recoil in horror at the very idea of a feminist”. She proposes that the answer to this question could be found in the way in which popular texts and film genres “[give] rise to demarcated pathologies ... which carefully define the parameters of what constitutes liveable lives for ... women”.⁸⁷ This underscores the danger that young women who live in the “lap of luxury” may be comfortable enough to surrender their agency to men because of the wealth and high society that possibly shields them from the realities of women on the ground – those who suffer the rapes and domestic violence, who are subjected to harassment, discrimination and humiliation, and confronted by misogyny and sexism *on a daily basis*.⁸⁸ How can feminist jurisprudence engage with women who have been socialised to be *nonchalant* about the feminist agenda? How can women in the *mainstream* be more aware of gender bias and sex discrimination?

The awareness of gender bias and sex discrimination in popular culture is indeed a major concern but even more concerning is how this bias and discrimination plays itself out in law and legal institutions. Restorative justice for victims of sexual violence, the rights of sex-workers,⁸⁹ divorce law and family violence legislation, explicitly sexist common-law provisions, the labour conditions of women, choices concerning abortion and reproduction (including the non-consensual sterilisations of HIV-positive women), African cultural practices (such as *ukuthwala*, virginity testing, genital mutilation and male primogeniture), and criminal acts (such as human trafficking and intimate femicide)⁹⁰ that violate women’s basic rights, gender

⁸⁴ J Baer *Our Lives Before the Law: Constructing a Feminist Jurisprudence* (1999) 55, 68.

⁸⁵ McRobbie (2004) *Feminist Media Studies* 256.

⁸⁶ 258.

⁸⁷ 262.

⁸⁸ To be clear, I am not (and nor is McRobbie) arguing that wealth shields women from the harsh realities of sexism, discrimination and violence. I am merely highlighting the different ways in which different women experience sex and gender relations. However, I certainly do support the Critical Race Feminist insight that poverty, race and class play a significant role in the multiple oppressions faced by women.

⁸⁹ See South African Law Reform Commission *Sexual Offences: Adult Prostitution Project 107 Report* (2009).

⁹⁰ See J Radford & DEH Russell (eds) *Femicide: The Politics of Women Killing* (1992); A Morris *Women, Crime and Criminal Justice* (1987).

mainstreaming⁹¹ and even the gender composition of the judiciary and the Bar⁹² all illustrate the nexus between law and our “sexed and gendered lives”.⁹³ Feminist jurisprudence could then be considered as another sphere of gender politics where women (and men) can re-figure the established patriarchal order along more egalitarian lines. Refusal and sisterhood as two tools that can make this possible therefore offer an opportunity to rethink some contentious Constitutional Court judgments such as *S v Jordan*,⁹⁴ *Hugo v President of the Republic of South Africa*,⁹⁵ *Carmichele v Minister of Safety and Security*,⁹⁶ *Masiya v Director of Public Prosecutions*,⁹⁷ *Bhe v Magistrate, Khayelitsha*; *Shibi v Sithole*; *South African Human Rights Commission v President of the Republic of South Africa*,⁹⁸ and *Harksen v Lane NO*⁹⁹ which all, in some way, represent the unfinished business and unresolved complications of feminist jurisprudence and gender politics in South African law.

Patricia Smith notes three criticisms levelled against the genre of feminist jurisprudence: (1) It is not distinctively feminist, (2) it is not “properly” jurisprudence and (3) it is not *philosophically* interesting.¹⁰⁰ However, it seems that it is precisely these three criticisms that make feminist jurisprudence so unique – that it is based firmly on *critical* thinking around a multitude of disciplines that are central to *life under law*. At the heart of all three “criticisms” is an emphatic indication that feminist jurisprudence is not prepared to compromise the integrity of the feminist agenda by succumbing to “standards”, “norms” and “conventions” and constraining itself to the confines and artificial barriers of either *just* “feminism”, *just* “jurisprudence” or *just* “philosophy” – it breaks the mould; it is fluid, and open to multiple modes of analysis – along the lines of Arendtian “thinking without barriers”¹⁰¹ – and in this way can impact on all legal disciplines more vigorously.

It is one thing for feminist jurisprudence to embody an “ethics of refusal” but what has been missing has been more vivid conceptions about how women can engage in and sustain a “politics of sisterhood” in order to weaken the hegemony of patriarchy in society or at least to lessen women’s *dependence*

⁹¹ See Van Marle (2005) *Obiter* 642.

⁹² See A Sachs & JH Wilson *Sexism and the Law: A Study of Male Beliefs and Legal Bias in Britain and the United States* (1979) 185-188.

⁹³ Van Marle “Towards a Politics of Living” in *Sex Gender Becoming* vii. See L Olsen “The Sex of Law” in D Kairys (ed) *The Politics of Law: A Progressive Critique* (1990) 151; C Albertyn “Feminism and the Law” in C Roederer & D Moellendorf (eds) *Jurisprudence* (2004) 291; D Johnson, S Pete & M du Plessis *Jurisprudence: A South African Perspective* (2001) 217; K van Marle & E Bonthuys “Feminist theories and concepts” in E Bonthuys (ed) *Gender, Law and Justice* (2007) 31-50; Baer *Our Lives Before the Law* 55; J Conaghan “Reassessing the Feminist Theoretical Project in Law” (2000) 27 *J Law & Soc* 351; C Smart *Feminism and the Power of Law* (1989) 66-68.

⁹⁴ 2002 6 SA 642 (CC).

⁹⁵ 1997 4 SA 1 (CC).

⁹⁶ 2001 4 SA 938 (CC).

⁹⁷ 2007 5 SA 30 (CC).

⁹⁸ 2005 1 SA 580 (CC).

⁹⁹ 1997 11 BCLR 1489 (CC).

¹⁰⁰ P Smith “Feminist Jurisprudence” in D Patterson (ed) *A Companion to Philosophy of Law and Legal Theory* (1999) 302.

¹⁰¹ A Heywood *Politics* 3 ed (2007) 9.

on law, politics and a male-dominated society. Feminist jurisprudence, and its aspirations for gender equality, gender justice, and for an ethical law that responds appropriately to women's needs and challenges, therefore, is a project that entails foresight, consciousness-raising and a constant questioning of the law "as laid down by masculinity and patriarchy".¹⁰² It calls for rigorous analyses of all spheres of living which affect women (and men)'s subjectivity and most importantly, it involves women "weaving" a different reality for themselves, in spite of law and in spite of politics. In the final analysis, the aim should be more than *legal reform*, it should be reconciliation between the sexes and genders and a *radical transformation* of sex and gender relations.¹⁰³ In closing, the words of Luce Irigaray on "women's discourses and men's discourses" and on the gendered nature of culture and language, deserve to be quoted at length:

"Man seems to have wanted, directly or indirectly to give the universe his own gender as he has wanted to give his own name to his children, his wife, his possessions. This has a significant bearing upon the sexes' relationship to the world, to things, to objects. In fact, anything believed to have value belongs to men and is marked by their gender. Apart from possessions in the strict sense that man attributes to himself, he gives his own gender to God, to the sun and also, in the guise of the neuter, to the laws of the cosmos and of the social or individual order. He doesn't even question the genealogy of this attribution. ... How could discourse not be sexed when language is? It is sexed in some of its most fundamental rules, in the division of words into gender in a way not unrelated to sexual connotations or qualities... Differences between men's and women's discourses are thus the effects of language and society, society and language. You can't change one without changing the other. Yet while it's impossible to radically separate one from the other, we can shift the emphasis of cultural transformation from one to the other, above all we must not wait passively for language to progress. Issues of discourse and language can be deliberately used to attain greater cultural maturity, more social justice. It's the lack of consideration given to the importance this dimension of culture that gives the technological empire so much power as a neutral force, that reinforces sectarian setbacks, present-day social and cultural disintegration, the various monocratic imperialisms, etc."¹⁰⁴

One can hear the Aretha Franklin classic, "Sisters are doin' it for themselves" playing in the background.

SUMMARY

This article reflects on the current trajectory of feminist legal theory from the perspective of popular culture and social discourse. With the use of film theory, literature and entertainment media, the author illustrates how depictions of gender codes and representations of gender relations in popular culture link up with larger questions on sex and gender politics, equality and power. Analysing these issues in terms of the extent to which popular culture reinforces patriarchal prescriptions of women's identity and contributes to strengthening the culture of male dominance in society, two distinct theories are formulated as possible responses namely, an "ethics of refusal" and a "politics of sisterhood". The notion of "refusal" as introduced by Karin van Marle is an approach to issues of gender (in)justice and (in)equality that explores the capacity of women to resist male dominance and in turn, problematise the values and norms laid down by the reigning patriarchal order. To connect the refusal of patriarchal conceptions of women's issues to the refusal of gender power, a "politics of sisterhood" offers a counterweight to the underlying phallogocentric conditions and structures that subordinate, exclude

¹⁰² Van Marle (2007) *Stell LR* 203.

¹⁰³ For an interesting view on the failure of the Truth and Reconciliation Commission to facilitate reconciliation between men and women, see L. du Toit "Feminism and the Ethics of Reconciliation" in S. Vetchin (ed) *Law and the Politics of Reconciliation* (2007) 185.

¹⁰⁴ L. Irigaray *Je, te nous: Towards a Culture of Difference* (1993) 31-32.

and control women. The main purpose of this article is to emphasise the importance of thinking about women's lives and concrete realities, as experienced under (the) law, in dynamic ways that break from traditional approaches to feminism and gender equality. Refusal and sisterhood are two perspectives that disclose such possibilities for reflecting on women's struggles for equality, dignity and recognition and on eradicating the vestiges of patriarchy and sexism in our society. In the final analysis, the author argues for more than just legal reform and instead calls for reconciliation between the sexes and genders and a radical transformation of sex and gender relations.