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In Search of Authority, Rebellion and Action

Olivia Barr, Luis Eslava, Yoriko Otono

To make trouble uns, within the reigning discourse of my childhood, something one should never do precisely because that would get one in trouble. The rebellion and its reprimand seemed to be caught up in the same terms, a phenomenon that gave rise to my first critical insight into the subtle ruse of power: the prevailing law threatened one with trouble, even put one in trouble, all to keep one out of trouble. Hence, I concluded that trouble is inevitable and the task, how best to make it, what best way to be in it.

Judith Butler, *Gender Trouble* (Preface, 1990), vii

PROLOGUE

Butler's invitation to trouble could be answered in three acts. The first may be to recognise that law's seductive promise of safety from violence is maintained through the imminent threat of the violence of reprimand and sanction. Rebellion, suggests Butler, is thus not foreign to our normative systems but is rather the impetus for a dialectics that pendulates between compliance and condemnation. The sanctioning of that movement (at once transgressive, at once normative) is thus work - perhaps the only work - that law performs. The force of law, in

other words, does not simply derive from its disciplinary content but from revolt itself.¹ The second act may be to place ourselves at risk: at risk of losing our moral and ethical coordinates, and thus of ourselves, by interrupting this homeostasis between compliance and condemnation. This placement or displacement is at once an existential and corporeal action that takes place in common, community, communion. It is, in this sense, an inherently politico-ethical practice that demands a third preliminary act: a declaration of intention to trouble, and to be troubled.

In this special edition of *Sortiz* we, together with fellow troublemakers, respond to Butler's invitation. We do so not only by investigating law's ruses of power through a series of critical reflections, but also by attending to the implications of such investigations for our own offices.² In this introduction we accept, too, Butler's invitation to make trouble through a writing that seeks to identify our individual realisations of law's 'subtle ruse of power'. Through this confessional writing we engage with *method* as a mechanics to trouble. This opens up the possibility of responsiveness to, and of taking responsibility for, life in law.

To synchronise our discordant anxieties and strategies, we triangulate our narratives of law and to law through a Chorus that acts as the critical consciousness that we share and with which we struggle. We then turn our attention to the meaning of these experiences in relation to the politics of working and living with law. Finally, we conclude with a few remarks about the engagement of methods in the rich collection of papers that form this special edition. In each author's search for authority, rebellion and action, we are reminded of the importance of paying attention to the ways in which we choose to make trouble.

¹ For an extended account of the 'force of law', see Derrida (1992).

² Shaunnagh Dorsett and Shaun McVeigh (2007) describe Salmond's account of the office of the jurist in their article "The Persona of the Jurist in Salmond's *Jurisprudence: on the Exposition of 'What Law is ...'*". In particular, they suggest that 'Office can be considered in two aspects. First, the office of jurist is an office of State (*axis*). Second, the office is practiced through legal science...the genres of jurisprudence delimit an office as much as a method of organization and exposition of legal materials' (Dorsett and McVeigh 2007, 774).

I. EPISODE: QUESTIONING AUTHORITY

Scene: An inner-city bridge over the excavated remnants of an unfinished building project.

Enter Olivia: Everyday, I walk above this empty space of ruined concrete and metallic debris on my way to my office as government solicitor. Each time I walk this bridge, my gaze falls on the multiple images of the Wandjina, hidden amongst the matrix of graffiti.

Chorus: Why do you repeat this gaze?

Olivia: Sacred to many indigenous peoples in Australia, including those whose land I walk above, these Wandjinas mark the land *as* Aboriginal law. They remind me of Anglo-Australian common law's highly ambiguous and destructive relationship with indigenous jurisdictions. They remind me that this bridge and this government building, which form part of the institution of the State, are marked by Aboriginal law. How can I speak of this unsettling? I cannot ask the questions of law I want to ask. I represent the State. I embody this institution. As a newly pledged solicitor, charged with fidelities to both law and State, this reminder of the presence of Aboriginal law is unsettling. I feel trapped by law's structures and my allegiance to them.

Chorus: What will you do?

Olivia: I want my voice back. In this moment of silence, walking the line above questions I want to, but cannot ask, it is time to walk away from my office as government solicitor and my formal obligations to law and State. I will search for a way to speak of, and to, law's structures. By leaving this bridge, I make my choice to refute the silence.

Exit Olivia.

Scene: A Colombian law school, which has seemingly forgotten its radical origins.

Enter Luis: I received my training in law in a place founded, in the 19th century, on the principles of radical liberalism – a movement which valued law as the moderator of a society based on secular and humanistic values. This rebellious impulse against a post-colonial order, which resisted questions about its alliance to the Catholic Church and its systemic class, race and gender discrimination, was translated to me, a century later, in the form of my doctrinal training in the civil tradition. Trained in the body of law, through the routines of positive and procedural law, I always felt these radical origins were somehow lost in the century that had past since its foundation. I always felt the ideals of questioning the order had become paved by the acceptance of law as it is, instead of law as a form of radical living. Law's form has become more important than its relationship with the wider context in which we are living.

Chorus: What does this loss of relation mean?

Luis: Law as a promise of radical life and the ideals of questioning law's order has been replaced by an acceptance of the formality offered by law's text. The Colombian conflict and its violence intensified to such an extent that each year at University is marked by my memory of the assassination of public figures. With others I clung to the formality of law without taking responsibility for our crisis in more creative ways.

Chorus: What will you do with this memory?

Luis: The formality of law is short-sighted. The official sources of law, as blind impositions, need to be interrogated. But more than this, I remember the rebellious impulse that created this institution and with the memory of this impulse, choose to begin engaging with fields and methodologies perceived as peripheral to law. This decision allows me to re-locate myself in relation to law, without abandoning law.

Years pass and Luis relocates to Australia.

Luis: My uneasiness before the law persists in this new place. I have been inscribed and instructed in the Colombian legal jurisdiction and I have transposed myself to this foreign territory and lost my capacity to speak before the law.

Olivia: I, too, lost my capacity to speak. How will you find yours?

Luis: Law requires an eternal complicity of those who speak - where this speech can occur and what can be spoken. The perverse relationship law maintains with its sources of authority makes me uneasy. It is the incapacity of law, in its official guises, to respond to the full meaning of life that is lacking. My compromise is to understand and work in such a dynamic by alternating my role before the law as scholar, lawyer and citizen. Shifting between these positions, I both assume and reinvent what law is and should be.

Exit Luis.

Scene: A University in the Antipodes.

Enter Yoriko: During the first few years of my legal education I searched for figures of authority, rebellion and action: for truth in the authority of law; for the institution of a new more 'just' power through rebellion, and for a body which would bear one or both, through action.

Chorus: What did you find?

Yoriko: Something unexpected. Truth and justice cut short each expedition with brief revelations of their paradoxical logic.

Chorus: What did you do with these revelations?

Yoriko: Despite being trained to become a productive body of- and for the law, I found it difficult to accept this inheritance and returned to the academy. My disappointment in law's failure to deliver (to be delivered) was followed by a desire to find out how, as a migrant feminist, I could institute a relation to law that did not rely upon a sacrificial economy. My desire to displace law elsewhere, however, is shadowed by two persistent questions: who, or what, would take its place? And, what if this re-emplacement is authorised by law itself?

Chorus: You stand before- or as the law and still, there is no way in and no way out. To revolt or to surrender would be madness, would it not?

Yoriko: A madness to which I might unconditionally surrender my lawyerly body. Perhaps it will be in this instant of unconditional madness, in a still-frame of catastrophe, that I will find the hand-trick of law's easy constitution.

Olivia, Luis and Yoriko: Having received law in the context of a predominantly doctrinal and positivist pedagogy, we have each failed to perform a reproduction and maintain a passive acceptance of this inheritance. We turn, as others have done, towards critical legal thinking.

Lawyers responding to a call to critique find themselves intermittently abandoning their own office as if the authority to appear before the law and to speak to it must be suspended in order to critique. The relation of critical lawyers to the image and office of the sovereign becomes - as it has always been for sociologists, anthropologists, feminists and others - mediated. They - we - are filled with anxiety that we transgress too much, or not enough, and writing of, as, or against law insists on becoming a confession. This confessional writing is replete with the idioms of a transplanted Judeo-Christian tradition: a tradition, no less, which claims its subjects as its own. Methodology here irrupts as a form of enacting ourselves before the law. It is not simply a set of silent steps. The question of method enables us to critique law without abandoning it. This realisation of our writing as confession enables us to understand our work in relation to law's economy.

II. REBELLION AND A DEADLY EMBRACE

Chorus: So why interrogate? Why revolt if there is no 'outside' of law to revolt from? How does methodology mediate your – our – relations to law?

In the opening article to this edition, Anne Orford asks what we *want* from authority, rebellion and action. Orford's question, preempting a telos of revolt, gestures towards the complicated relation that we, as trained practitioners of the law, have to- and as authority.

For us, concerns with law and law's authority do not simply pose a challenge to be overcome in order to somehow arrive at a space where there is no longer anymore law to worry about. The authority of law is the place at which our interrogations about law's power and its dynamics begin. Importantly, this is an interrogation executed on multiple fronts that cannot be collapsed into one voice. There may be no 'outside' of law and its authority, but we also recognise there is no single way of making trouble in law. If we are all within the boundaries of law, it is also certain we are not one before the law. Embracing disparate questionings of the images, practices and values of law, we revolt against (or toward) them not because we seek a utopic displacement of authority, but to expand our possible ways of living as- and with law.

This set of relations is captured in Michel Foucault's reading of a famous allegory, the 'Ship of Fools' (Foucault 2001: 5). While the Ship of Fools has traditionally been interpreted as an allegory of moral decrepitude,³ Foucault describes it as a "crew of imaginary heroes, ethical models, or social types embarked on a great symbolic voyage", who seek, "if not fortune, then at least the figure of their destiny or their truth." (Foucault 2001: 5). For us, as for Foucault, the Ship of Fools is a visual allegory of what we seek in our interrogation of the order of law. Our fools' ethic is a joyous, multiplicitous and a cacophonous journey, gently making and unmaking the normative boundaries of our communities.

³ The Ship of Fools is most commonly associated with an interpretation crystallized by Sebastian Brant in the 15th century (Brant 1971), and illustrated by Hieronymus Bosch (c. 1490-1500, see Image 1). Both Brant and Bosch imagine the allegory as the condensation of vices and weaknesses, and the vulgarity and decadence, of their time.

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In our own ways, we are in search of laws beyond imperial pretension to explore the possibilities of other orderings of law. Exploring on behalf of our communities, we do not challenge authority with the aim of embracing it for our sole benefit, but rather, engage in an exercise that calls into question assumptions of peace, order and morality of the wider community. In this way our revolt, as with Foucault's fools, function as a collective performance that invites others to reflect on themselves, and their relationships with their communities and their laws. As lawyer-researchers we journey, perhaps, as Foucault's Ship of Fools, and hope in our search for authority, rebellion and action to find the figure of our truths.

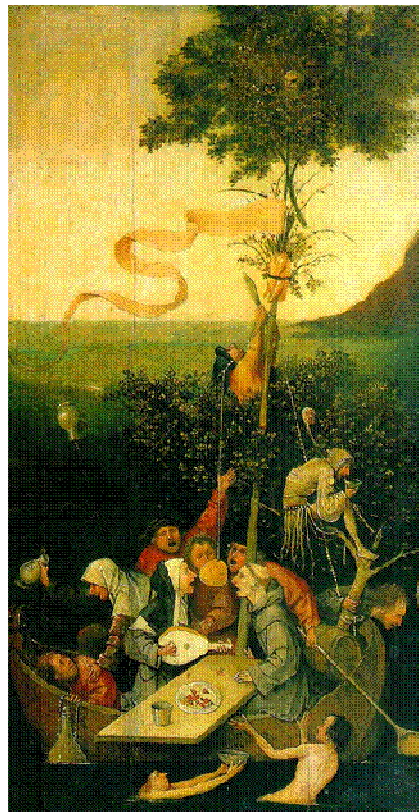


Image 1: *The Ship of Fools*, Hieronymus Bosch (c. 1490-1500).

This melancholic and unsynchronized search for other truths (and perhaps with it, some kind of salvation?) undergirds our interrogation of legal text and practice. Distinguished from traditional positivist readings of law that may assume a smooth relation between law and its subjects, we here characterize our relation to law, and our methodologies, as agonic. Resisting silence and its complicity, a process of reflexive questioning marks our work. Fools we are, to revolt from or as the insides of law, and fools attuned, perhaps, to dialectical movements between the shores of one norm and the next. Modes of travel or methods of reading become a relation, mediation, translation and strategy with which we negotiate the persistent ethical and political concerns that haunt those shores.

III. ACTION: METHODOLOGIES FOR MAKING TROUBLE

Chorus: Finally, how do you act, and where?

The work of reading law, as we explore here, requires time (to think; to read; to interrogate), space (to perform our interrogation; a place to fill with our bodies and to make trouble) and involves strategy (ways of reading; borrowings from other fields; survival within the academy). Through this combination of time, space and strategy emerge our methodologies. Our performance in front of- or for law becomes, as a result, a daily performance with the potential to transform into a different *kind* of practice.

This special edition of *Sortuz* looks at the forms such rebellions may take, including the different strategies involved and the stakes of their performance. This edition brings together a selection of papers presented at the workshop, *In Search of Authority, Rebellion, and Action: Postgraduate & Early Career Researchers' Workshop on Methodological Approaches to Legal Scholarship*, held at the Melbourne Law School, University of Melbourne, on 18 – 19 December 2008. All the contributions to this edition display, we believe, alternative and strategic methodological engagements with law and its potential. As demonstrated in each article, our capacities to make trouble; to revolt, embrace or contest authority; to act in front of or for law, do not constitute a hegemonic or uniform act. Rather, as critical legal scholars we assume a multiplicity of

avenues of interrogation, alliances and tasks. It is in these assumptions, as discussed both in this Introduction and throughout this special edition, that the political nature of methodology is revealed.

These ideas are further illustrated in the photograph that serves as the front cover of this edition (see Image 2).



Image 2: G8 Summit 2005 protests, Edinburgh (4 July 2005).
Copyright, Dave Hogan.

Taken by freelance photographer Dave Hogan in the main street of Edinburgh, Princes Street, during the protests against the G8 Summit 2005 – which was held at the Gleneagles Hotel located less than 50 miles from Edinburgh – we can see a photographer being photographed.⁴ Kneeling in front of a barricade of formal authority, the image asks us to consider how and where to act, emphasising the importance of perspective – of method – in critical engagements and most of all, reminding us that questioning authority – law – is always a matter of practice. Who are we in front of authority? Are we the photographer? Are we being photographed? Across which trajectories do the optics of power travel? Perhaps, as critical legal scholars, we

⁴ We thank Dave Hogan for the use of his photograph.

question authority by textualising its uneasy existence and potentially revealing the multiple manners, places and subjectivities through which we can make trouble.

At the beginning of this edition, Anne Orford calls for a reconsideration of the relation between worldly authority, rebellion and action (or activism) and observes that what is at stake in the performances of critical legal scholars is the question of what we want. Orford offers an important reminder that law is one name given to the conventional and official transmission of authority and the movement of meaning through the written text. For Orford, legal scholars maintain a symbiotic relation to text because of a belief in “the sacred authority of writing and to the sacred authority of law and all that it promises.” She leaves us thinking how we, as legal scholars, can gather to speak about law while still being able to see law not as an echo of its sources of authority but as a platform to imagine what law promises. This is, of course, a question about our methodological decisions as both legal scholars and law subjects.

Orford’s call for a productive reconsideration between law, text and authority is taken up in Angus Frith’s meditative reflection on the nature of research in the hybrid spaces between indigenous and non-indigenous legal systems. As a non-indigenous ‘Gubbah’ lawyer and scholar, Frith challenges law’s methodological assumptions of authority and shares a critique of the negotiation of multiple roles and fidelities involved in working between and across different juridical epistemologies and legal texts.

Heather Morgan is also concerned with the role of the researcher and its capacity for making trouble. In her artful critique of the markings of criminal actions, Morgan uses the body of the researcher, her body, as a tool of observation. Morgan contemplates a register of law-making often overlooked in legal scholarship, a register Morgan describes as the “action before the punishment, before the courtroom, even before the crime.” Navigating CCTV rooms, she examines the techniques and material practices involved in framing criminal actions and constructing the criminal body in an exploration of anxieties surrounding the gendered nature of law’s gaze.

Jason Taliadoros and Mickaël Ho Foui Sang both consider how best to make trouble through their explorations of the disciplinary boundaries of researching between law and history. In a nuanced contemplation of the nature of medieval understandings of 'rights' by lawyer-theologians, Taliadoros reveals the constant methodological negotiations required in embracing trans-disciplinary and inter-disciplinary work. As a lawyer-historian, he explicates the role and status of the double body of the lawyer-theologian, ever conscious of the intricacies in navigating disciplinary discourses.

Ho Foui Sang advances Taliadoros' concern with the difficulties of researching between and across disciplines in his thought-provoking analysis of memorial laws in France. Ho Foui Sang unravels layers of this contemporary French debate as part of a broader analysis on the nature of legislation and contestation over the naming of historical truth. Reflecting on the roles attributed to both lawyers and historians in this debate, Ho Foui Sang observes both law's and history's anxious relations to truth and authority and calls for careful consideration of the nature of disciplinary barriers in rethinking these important questions of truth, memory and authority.

Finally, Jothie Rajah concludes this special edition with a rich account of the importance of actively considering the question of methodology in legal scholarship. Reflecting on the political nature of methodology, Rajah questions the relationship between authority and methodology in her research. In an evocative exposition of the Singaporean state as both rule *of* law and rule *by* law, Rajah shares what is at stake in her performance as a legal scholar and implicitly suggests what may be at stake in all of our performances as legal scholars.

To conclude, it is through explicit considerations of different methodological engagements with law that the contributors to this special edition hope to make trouble, and invite readers to enjoy the same.

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