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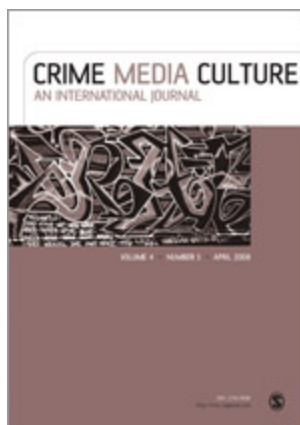
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**'Somewhere. Some time. Somehow. Something has to change': Prima Facie and the Cruel Optimism of Feminist Legal Advocacy**

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‘Somewhere. Some time. Somehow. Something has to change’: *Prima Facie* and the Cruel Optimism of Feminist Legal Advocacy

Abstract: In her play *Prima Facie*, playwright and lawyer Suzie Miller uses theatre to critique legal responses to sexual violence. This article thus offers an analysis of the play as both feminist theatre and feminist advocacy. We examine the rhetorical and performative strategies it deploys, arguing that they are effective because they mobilise long-standing feminist tropes which use a representative figure of the traumatised victim and the repetition of statistics to position the audience as potential victims of violence. Such strategies, however, fail to account for the complexity of sexual violence, intersectional understandings of it, or its relationship to other structural forms of harm that flow from turning to the state, as articulated by Black feminist scholars. These limitations also function in the play’s loop between an indictment of law’s failings and recuperating the law as a privileged site for responding to sexual violence. We read this tension as exemplifying the play’s enactment of a cruelly optimistic relationship to law, which is, we argue, a recurring feature in feminist cultural advocacy around sexual violence. However, we also suggest that reading the play through the words of its protagonist can open visions of justice beyond what Carol Smart has described as the ‘siren call of law.’

*Prima Facie*, an award-winning one-woman play by Australian playwright and lawyer Suzie Miller, addresses the impossibility of sexual violence survivors finding justice through the legal system. The play tells the story of Tessa, a successful defence barrister who is raped by a colleague. Sexual violence rocks the foundations of her life, but it is the trauma enacted on her by the legal system that causes the most significant harm. *Prima Facie* premiered in Sydney in June 2019, touring Australia before being staged in London in 2022. Following a sold-out London run, in 2023 it travelled to Broadway and has been restaged around Australia.

The unapologetically didactic script aims to educate audiences about sexual assault and the failings of legal responses. Exemplifying the genre of feminist advocacy (Kennedy and McCann, 2020), the play interpolates audiences as witnesses to the injustice visited on rape victims by the legal system, encouraging us to demand that ‘something’ be made to change. Miller (2022: 7) has described *Prima Facie*’s central concern as a paradox: the principles of adversarial criminal law (the right to a robust defence and the presumption of innocence) clash with the feminist imperative to ‘believe survivors’ (Gilmore, 2023). The result is that survivors frequently describe the trial as a ‘second rape’ which compounds the harm of the original assault (Madigan and Gamble, 1991). In considering Miller’s aims, we are interested in what the play, as a feminist cultural text, can show us about the dominant representational tropes that are used to give meaning to women’s experiences of sexual violence and to the possibility of justice for survivors.

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3 We suggest that the play's framing of the legal paradox is shaped by its own attachments to the  
4 reformability of law. Drawing on Lauren Berlant (2011), we argue that the play performs and illustrates  
5 the "cruel optimism" of feminist attachments to legal reform as a means of minimizing or even  
6 abolishing rape culture. For decades, feminists have offered trenchant critiques of the law's treatment  
7 of victims of sexual assault (Madigan and Gamble, 1991), and highlighted alternative modes of justice  
8 (McGlynn and Westmarland, 2018). Nonetheless, the law retains what Carol Smart (1989: 160)  
9 described as a 'siren call' for many feminists. That is, much feminist legal advocacy remains attached  
10 to working through the law to achieve social and political transformation, while recognising that the  
11 adversarial legal system, and its specific protocols and conventions, harms survivors and fails to deliver  
12 justice. This commitment to law has, however, been increasingly challenged in recent years by black  
13 and abolitionist feminist critics, who caution against calling on the powers of the state to respond to  
14 sexual and domestic violence, recognising that a carceral approach will harm the most vulnerable  
15 women, and the men and children in their lives (Bumiller, 2008; Davis et al, 2022). Nonetheless, the  
16 turn to law has become increasingly common in the past several decades in both the legal and cultural  
17 domains straddled by the play and remains a dominant feature of what is sometimes labelled  
18 'mainstream feminism' (Srinivasan, 2022: 159).

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20 We begin by elaborating on the play's significance in our post #MeToo Era and move on to analysing  
21 the representational modes of the script, dramatic performance and metatexts, locating them in  
22 broader feminist discourses of rape and sexual assault. Finally, we make the case for seeing the play  
23 as representative of a cruelly optimistic attachment to law as a significant element in feminist cultural  
24 and political responses to sexual violence and the possibilities for justice. We suggest that the cruel  
25 optimism of feminist attachments to law can be seen both in the diegetic realm of the play, as Tessa  
26 struggles with her desire to seek justice through the law despite knowing it will disappoint her, and at  
27 the meta-textual level, in the paratextual messaging and exhortations to its audience, which enact a  
28 similar ambivalence. Cruel optimism functions differently, however in these levels, and the tension  
29 between them concludes our reading of the play as a useful cultural text for exploring ambivalent  
30 feminist attachments to law.

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32 We regard the play as a powerful textual example of feminist advocacy around survivor discourse and  
33 the injustice of sexual violence. We argue, however, that in encouraging the audience to view rape  
34 through the single-axis lens of gender difference, which neatly fits the rubric of 'm/f, m >f, and carrying  
35 a brief for 'f' (Halley 2006), it blinds the audience to the intersection of sexual violence with persistent  
36 racism, queer sexualities and transphobia, and economic precarity -- intersections which undoubtedly  
37 change the meaning and significance of pursuing justice through the law (Davis et al, 2022). Placing  
38 these issues outside its frame furthers the play's naturalisation of the turn to law, diminishing its

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3 excoriating critique of the legal system, and tying the play affectively and intellectually to the carceral  
4 traditions that have dominated mainstream feminist discourse.  
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### 8 *Prima Facie* as Feminist Cultural Event 9

10 As a travelling feminist cultural event, *Prima Facie* has shifted in resonance and accrued significance  
11 over time. The original 2019 run, starring Sheridan Harbridge, was produced by Sydney's Griffin  
12 Theatre company, dedicated to staging plays by Australian writers. It was subsequently performed in  
13 other Australian cities to respectable but subdued critical and commercial success. This production  
14 was stark, with a bright light shining on Harbridge, who stood on a platform, only swapping her black  
15 suit jacket for red in the second half. Three walls on which large words were intermittently projected  
16 were the only other features of the set.  
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23 Produced in London three years later in a major West End theatre and starring Jodie Comer, an actor  
24 famous for her role in *Killing Eve*, the play acquired new cultural significance. The London production  
25 was more elaborate; the stage, set with a desk, several chairs, and floor-to-ceiling bookshelves,  
26 approximated a legal office, and Comer engaged with different props and costumes throughout.  
27 Minor changes were made to the script, reflecting variations in legal procedure and cultural context.  
28 While in both scripts Tessa is marked as having working-class origins, in the UK version this is more  
29 specific; she is Northern and attended Oxbridge. The name of her assailant is changed from the  
30 Australian 'Damian' to the British 'Julian,' to signify 'poshness' to a British audience. The London  
31 production was subsequently released as part of 'NT Live,' a National Theatre programme in which  
32 prominent plays are given wider cinematic release following their theatrical run. Comer won 'Best  
33 West End Debut Performer' at Britain's Stage Debut awards and the NT Live release is now the highest  
34 grossing Event Cinema release in the UK and Ireland. In 2023, the play, starring Comer, travelled to  
35 Broadway, and had a new run in Australia, again starring Harbridge. Throughout this article, we refer  
36 to the British script, which is now the international standard for future productions.  
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47 Promotional and paratextual materials have consistently oriented the public to the play's positioning  
48 as a feminist text with a message about the 'real world,' and it has proven highly amenable to being  
49 energised by local contexts and events. In 2019, the movement against sexual assault in Australia had  
50 not yet achieved the prominence that it would in 2021 following the public advocacy of survivors such  
51 as Grace Tame and Brittany Higgins. The more immediate context was instead the successful  
52 defamation case by Oscar-winner Geoffrey Rush against *The Daily Telegraph*, where lawyers attacked  
53 the testimony of actor Eryn J. Norvill, perpetuating a hostile legal climate for sexual assault allegations.  
54 While Sydney's Griffin Theatre Company scrawled the #MeToo hashtag on the program cover, the  
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3 slogan for the 2019 Canberra *Playhouse* run - “*It’s her word against his*” – referenced the law’s  
4 adversarial approach, perhaps alluding to the Rush case. The 2023 Australian production has accrued  
5 new relevance, especially considering media attention centring on the abandoned 2022 trial of Bruce  
6 Lehrmann, as noted by reviewers (see e.g., Stubbings, 2023).  
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10 In contrast, by the time *Prima Facie* premiered in London in 2022, the UK had witnessed significant  
11 public debate following #MeToo, with prominent cases including Kevin Spacey at the Young Vic  
12 theatre, several parliamentarians facing censure for sexual harassment, and allegations of sexual  
13 assault against Prince Andrew. The promotional materials in London relied heavily on Comer’s star  
14 appeal, but the fact that the production secured a high-profile star speaks to its cultural relevance.  
15 The play was scored by ‘Self-Esteem,’ an acclaimed feminist music artist in the UK. Her single ‘I’m Fine,’  
16 a song about sexual violence, provided the theme song for the production, with a video clip filmed in  
17 the same theatre as the London show. In the *NT Live* cinema release, audiences watched this clip,  
18 alongside a promotional video for the ‘Schools Consent Project,’ a charity promoting the work of  
19 lawyers and law students who offer consent education in schools. A round-table discussion about  
20 sexual violence and legal reform, which featured Comer, Miller, Schools Consent Project founder Kate  
21 Parker, and a female police officer, was chaired and introduced by prominent BBC journalist, Emily  
22 Maitlis, who had previously interviewed Prince Andrew about the sexual assault allegations against  
23 him.  
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34 In each context, the paratextual and promotional elements asserted the play’s status as a feminist  
35 cultural event. While there is no one single ‘feminism,’ there is an identifiable ‘feminist discursive  
36 public’ within the Western Anglophone cultures within which the play has travelled, and which, we  
37 suggest, constitutes its ideal audience (Rentschler and Thrift, 2015: 39). In contemporary cultural  
38 politics, concern for the harms and injustices of sexual violence is one of the most notable elements  
39 in the constitution of this public (Hemmings, 2018). This feminist public has both stimulated and  
40 provided a forum for a genre of feminist representational practices concerning the problem of sexual  
41 violence and its solutions, which is marked by a centring of the figure of the survivor and a tendency  
42 to link questions of justice to criminal law (Hall, 2004; Serisier, 2018). These tropes are drawn on and  
43 reproduced by cultural texts such as *Prima Facie*, which help to constitute both the cultural reality of  
44 sexual violence and authoritative feminist responses to it, making other feminist responses less visible  
45 and less imaginable. These tropes also help to explain its positive critical reception, its sold-out  
46 seasons, and its affective impact on audiences – as witnessed, in our experience, in enthusiastic  
47 audience response and standing ovations. In what follows we explore the play’s use of these tropes  
48 and their consequences for the vision offered by the play of possibilities for justice in relation to sexual  
49 violence.  
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### The Scene of Rape and the Abstract Victim

*Prima Facie* is split in half by a powerfully dramatized rape scene, which Tessa simultaneously describes and enacts for the audience. After a night of dinner, drinking and consensual sex with Julian, she suddenly feels “ill, dizzy, drunk” (Miller, 2022: 47). Nonetheless, he carries her from the bathroom to bed, holding her wrists while professing to ‘make love’ to her. The shift from consensual sex to rape is marked by Tessa’s comment that he is ‘in a different place, I’m not there with him. He doesn’t seem to know...[or] care’ (48) – as he ignores and overrides her ‘sexual sovereignty’ (Alcoff, 2018: 8). Speaking to her later, Julian attempts to over-write Tessa’s experience of ‘rape’ as ‘just sex’ (Gavey, 2005), telling her he can hardly remember what happened because he “drank so much...we both did” (Miller, 2022: 75). Ultimately, Julian’s trial will dramatize the law’s tendency to adopt Julian’s exemplary male point of view (Alcoff 2018; Naffine 2019). In adopting Tessa’s perspective throughout, however, the play insists on her right, and the right of women generally, to determine the boundary between consensual sex and rape.

The rape scene is a pivot point. The stage directions note ‘a space and time exists between the last scene and what is to come...a space with a tonal shift’ (Miller, 2022: 52). Everything is different after the rape, especially Tessa herself. The successful barrister and the rape survivor are almost incommensurable figures. The former is sure of herself, confident and even cocky. Her mode of speech is quick and aggressive, with the script and the performance using verbal and physical humour to enact, for instance, drunken nights out with colleagues. In the second half, as the stage directions note, Tessa ‘is different now. Less articulate. Less confident. Less quick’ (53). Her refrain of ‘this is me’ (53) while taking us through every tortuous step of entering the courthouse, followed by her recitation of the ‘782 days’ she has been waiting for the trial, compound the shift in pace and affect. She makes no jokes in the second half, nor does she inhabit the stage as fully, remaining largely in one place, and moving slowly.

In the second half, Tessa increasingly takes on a representative function as a figure of women’s suffering, telling the court and the audience what rape victims in general feel, think and remember. The play shifts from relaying Tessa’s particular story to enacting a fable that increasingly implicates and involves the audience. The affective force of this dramatic mode is accomplished through mobilisation of longstanding feminist tropes. Specifically, *Prima Facie* mobilises what Rachel Hall (2004: 12) argues are two linked representational devices deployed by feminists to highlight the seriousness of rape. These are the ‘abstract figure of the woman as victim’ and the repetition of sexual violence statistics dramatized to represent rape as a ubiquitous and inescapable problem.



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3 Tessa's name links alliteratively to the idea of testimony, and to one of the most famously wronged  
4 women of English literature, *Tess of the D'Urbervilles*. Like Tessa, Tess is an economically disadvantaged  
5 white woman who becomes romantically involved with a more privileged white man. He enacts harm  
6 against her which, due to gendered social hierarchies and legal inadequacies, cannot be redressed. In  
7 both texts, we are invited to feel, in Hardy's words, that 'twas a thousand pities it should have  
8 happened to she, of all others' and that the text is telling us something fundamental about women's  
9 suffering (Hardy, 1992: 80). In other words, both Tess and Tessa exist as individual characters and as  
10 'abstract' figures of women's suffering in the face of injustices associated with sexual violence (Hall,  
11 2004). The non-consensual sex and the harms that flow from it, as figured in the novel and the play,  
12 are illuminating in their contrast. In Hardy's novel, famously ambiguous about whether the encounter  
13 was rape or 'seduction', the act of sexual coercion itself is not the primary source of harm. It is, rather,  
14 the catastrophic after-effects -- the smearing of Tess's reputation, the illegitimate child she bears, and  
15 her eventual execution as a murderer - that make her a tragic figure. In contrast, the playscript ensures  
16 there is no room for ambiguity regarding rape, which is represented as the singular trauma of Tessa's  
17 life. Unlike many women who experience date rape, Tessa does not doubt that she has been raped,  
18 nor blame herself (Gavey, 2005). In the play, rape and its consequences are definitive, and clear to the  
19 survivor and the audience, if not to the legal system.

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22 The texts also offer contrasts regarding intersecting structures that produce injustice. Hardy's novel is  
23 concerned with the intersection of gendered vulnerability with social and economic inequality, which  
24 makes it especially costly for a woman in Tess's class position to resist the advances of a man of wealth.  
25 While the class differences between Tessa and Julian are made clear, they are not presented as causal  
26 in relation to sexual violence or its harms; they figure only peripherally in Julian's ability to hire a top  
27 lawyer. Instead, Tessa's class origins primarily assist in the play's mobilisation of a common plot  
28 sequence in feminist representations of rape: the 'reverse conversion' narrative, in which rape is  
29 represented as a singular, exceptional event that destroys a 'perfectly good intact life' which must  
30 then be pieced back together (Brison, 2002: 110). The fact that Tessa has transcended her class origins  
31 to become a 'thoroughbred' - a successful lawyer who consistently wins her cases - positions her as  
32 an archetypal neoliberal success story, and an exemplar of 'neoliberal feminism' (Rottenberg, 2018).  
33 Her success, however, serves to emphasise the destructive effects of the rape, which reduces her to  
34 an abstract victimised 'everywoman'. In making Tessa's success before the assault essential to the  
35 play's tragic register, the play inadvertently exposes the ethical and political risks that works of  
36 feminist advocacy open themselves to when they rely on the trope of reverse conversion - the idea  
37 that rape is more egregious the more one has to 'lose'.  
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3 Similarly essential to the play's efficacy is the deployment of a recurring 'one in three' statistic. The  
4 figure first appears in Scene Three, a flashback to Tessa's first day at law school, as she remembers  
5 the feeling of not belonging, seated between two students from elite private schools. The Dean asks  
6 the students to look to their left and right, warning them that 'one in three' will not complete the  
7 degree, and even fewer will go on to have a successful legal career. For Tessa, it is clear that "I am the  
8 one who will not make it.... I don't belong here' (Miller, 2022: 28). Both Tessa and the audience know,  
9 however, that she has escaped this statistic. While the male to her left completed, the girl to her right,  
10 who became her best friend, left to pursue acting. In the climactic penultimate scene, 'Finding One's  
11 Voice,' Tessa echoes the words and actions of the Dean, stating that 'the truth is that one in every  
12 three women are sexually assaulted' before telling the audience/gallery 'Look to your left, look to your  
13 right. One of us...' (Miller, 2022: 95).

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22 Statistics produce a sense of 'truthiness' which locates the play as speaking to and about the extra-  
23 diegetic, or 'real' world, with the actor advised to address 'the audience as/or the court gallery' (Miller,  
24 2022: 95; Wainer, 2016). There are, however, no self-evidently 'true' figures for sexual violence as all  
25 numbers are an estimate and 'one in three' is, for instance, higher than the statistics used by  
26 Australia's National Association of Services Against Sexual Violence (one in six) or the UK's Rape Crisis  
27 Centre (one in four).<sup>1</sup> In the play's rhetoric, one-in-three enables the call to 'look to the left, look to  
28 the right', demonstrating that, as a feminist rhetorical device, statistics do not 'communicate "the  
29 reality of rape" in numbers"', as much as they 'performatively compound it' (Hall, 2004: 7). Tessa's  
30 address to the audience tells women to 'fear for their own bodies and to imagine rape as a relentless  
31 force that merely shifts its location from one woman's body to another's' (Hall, 2004: 7-8). Binding  
32 women together through shared vulnerability, the statistical figures obscure the intersecting risks that  
33 are intensified by race, disability, or sexual identity, among other factors. Instead, Tessa calls the  
34 audience to recognise themselves in her representative status as an abstract figure of women's  
35 inescapable vulnerability to sexual violence.

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As women are called to identify as united in potential victimhood, race as an issue is notably absent  
from the script. While there is nothing that would obviously preclude a woman of colour from  
performing the title role, it is, we suggest, not accidental that both actors have been white. The fact  
that whiteness remains unnamed in relation to a legal domain that is explicitly designated as  
economically privileged and male, means that within the play race cannot matter. The play's vision of  
justice normalises the whiteness of both the institutions of power and the feminist subject who might

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<sup>1</sup> See <https://www.nasasv.org.au/sexual-violence> and <https://rapecrisis.org.uk/get-informed/statistics-sexual-violence/> respectively.

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contest them, constraining the play to the kind of ‘but for’ logic that Kimberlé Crenshaw (1989) has critiqued more broadly in feminist attempts to oppose systemic harm and discrimination. In this logic, harm is only legible, legally and socially, when it can be cast as having one underlying cause. And so, the logic of what bell hooks identifies as white feminism’s reliance on a “common oppression” (hooks, 1984: 6) in practice promotes ‘single-axis’ narrative forms like the ‘reverse conversion narrative’. Such forms ultimately recentre the figure of the successful, white woman like Tessa as the primary concern of feminist advocacy, in insisting that ‘but for’ her gendered vulnerability to sexual violence she would be a neoliberal success story (Crenshaw, 1989; Brison, 2002). While such narrative forms can be powerful, in a courtroom or a theatre, their power relies in part on their selective vision, which risks reproducing the illegibility of the more complex life stories that constitute the reality of rape for most women who experience it, just as they refuse the reality that other vectors of power, such as race, are also essential for grappling with the problem of sexual violence (Srinivasan, 2021: 178).

This logic, and the presumption of whiteness, not only in relation to Tessa, but especially to Julian, place debates and questions about the racialized harms of criminalisation and incarceration outside the remit of the play’s feminist legal imaginary. In an era shaped by ‘Black Lives Matter’ as well as #MeToo it is only by casting the scene of law within a white feminist schema that black and abolitionist feminist critique of both the law and white feminist depictions of it are avoided (Davis et al, 2000; Richie, 2000; Gilmore, 2022). How might the affective economy of the play, its single-axis critique of law, and its construction of the law’s reformability be shifted, for instance, if the audience were invited to imagine Julian as black or Tessa as homeless? The imbrication of feminism and law within the play is a major theme for the remainder of our analysis.

## Tessa’s *Voir Dire*: The Paradoxes of Legal and Feminist Knowledge About Rape

The climactic penultimate scene, ‘Voir Dire aka Finding One’s Voice’, acts as a second pivot point in the play, shifting from a depiction of Tessa as victim, to Tessa as a voice of critique and potential reform. She disrupts the progression from her traumatic cross-examination to the inevitable jury verdict by speaking up, flouting the restraints on her role as a witness. In response, Julian’s lawyer demands a *voir dire*. When the judge tells her she has ‘limited scope,’ Tessa, rather than being silenced by the combined intimidation of the defence barrister and Judge, continues to speak. Miller (2022: 9) has described the impact of Tessa finding her voice in this scene as calling ‘us all to action’. In this way, the play draws on and enacts the feminist ‘narrative politics’ of speaking out, which asserts that political insight, and change, is produced through experiential narratives of survivors. While this genre was, in the 1970s, grounded in collective practices of consciousness-raising, the play reflects more

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3 recent practices of survivor testimony, typically framed as the voice of a single exceptional speaker  
4 who imparts truth to the world (Serisier, 2018). The wording of the *voir dire* scene echoes, for instance,  
5 Chanel Miller's Victim Impact Statement, which became a global media phenomenon drawing  
6 attention to the harms of sexual assault and its treatment by law. Both legal devices provide a platform  
7 for a heroic individual to broadcast a political message 'to girls everywhere,' acting as a 'lighthouse'  
8 or beacon of hope (Baker, 2016). In neither text is there a sense that the speaker is supported by a  
9 collective; rather she has found the personal courage to express her truth, and become an advocate  
10 for, rather than a participant in, a larger collective of survivors.  
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17 But Tessa's exceptionality extends even further. She justifies her right to speak not only on her  
18 authority as a survivor, but through her 'unique position' as both a barrister and a complainant (Miller,  
19 2022: 92). The scene thus brings the paradox framed in the play - between the need to believe  
20 survivors and the due process of law - to a head. It also, we suggest, provides a clear articulation of  
21 the tension within the play between Tessa as lawyer and as victim-survivor, which complicates the  
22 relationship between survivorship and knowledge that the play asserts, complicating its vision of the  
23 relationship between testimony, justice, and law.  
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30 In the first half of the play, Tessa defends the brutality of the adversarial trial process as essential to  
31 the functioning of law. From her perspective, the system works, and she enjoys her role within it. In  
32 an early scene, she explains that the role of the defence lawyer is not to "know the truth" but to "NOT  
33 know the truth." The lawyer's task is to tell the 'best version' of the client's story by finding gaps in  
34 the complainant's testimony, even if doing so means that some guilty people, including alleged rapists,  
35 go free (Miller, 2022: 35). The only point in which this commitment is troubled is in her interaction  
36 with Jenna, a rape survivor who claims to be testifying so that other women will not suffer. As the  
37 defence barrister, Tessa experiences a moment of guilt when she sees Jenna 'fold in two' after her  
38 client is acquitted, which the play infers is largely due to Tessa's damning cross-examination. She  
39 closes down this moment where her empathy troubles her faith in her profession, stating simply, 'I  
40 can't think like that' before she and the play move on (41).  
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49 By contrast, in the "Voir Dire" scene, Tessa, finds she can only think 'like that'. The audience witnesses  
50 Tessa's transformation through the trauma of being on the other side of a skilful but brutal cross-  
51 examination. As a survivor, Tessa advocates for changing legal process to give survivors a fair hearing,  
52 one which is informed by awareness of the effects of trauma on memory. The play itself  
53 performatively endorses this position by presenting Tessa's testimony, and her enactment of her  
54 affective state, as the authoritative truth, with the audience located as witness to her truth rather  
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3 than in the role of judge or jury, and, implicitly, by having Tessa testify to the error of her previous  
4 stance.  
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7 The resolution of the tension between Tessa's subject position as lawyer and as rape victim is not,  
8 however, quite that simple. Instead, it is displaced by a further paradox. While the play advocates for  
9 believing survivors, Tessa's most powerful address is enabled because she not only 'speaks as a  
10 survivor' but also as a barrister, interpreting the survivor's testimony through the lens of legal  
11 expertise (Alcoff and Gray-Rosendale, 1993). Through the *voir dire*, Tessa insists that the law and the  
12 audience should listen because of her unique insight as a survivor. But it is her professional status as  
13 a lawyer, and the legitimacy that position confers, that enables her to know a *voir dire* exists, let alone  
14 claim the right to speak, an option not available to everywoman complainants such as Jenna.  
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21 The slippage in the *voir dire* scene between the speaking positions of survivor and expert/advocate  
22 recurs in the extra-diegetic world, and the paratextual elements surrounding the play. For instance,  
23 the roundtable which accompanies the *NT Live* screening focuses on reforms such as additional  
24 training for judges and the creation of specialist courts. In the roundtable, journalist Emily Maitlis  
25 describes advocate Kate Parker, a lawyer and founder of the Schools Consent Project, as a 'real life  
26 Tessa.' Additionally, there is an unstable relationship in the play between Miller's and Tessa's voices,  
27 particularly when the play, through Tessa, addresses the audience and exhorts them to act. This  
28 exhortation is reproduced, and given more substance, in Miller's extensive commentary about the  
29 play, in which she puts forward her own programme of law reform. Significantly, neither Miller nor  
30 Parker claim to speak as survivors, or on the basis of knowledge obtained from survivors. Miller's  
31 authorship of Tessa's 'survivor voice' was based, she states, on knowledge gained in law school and  
32 legal practice, and she has not referred to consulting survivors or survivor organisations when writing  
33 the play. The voice and identity of the advocate thus shadows and at times overpowers the fictional  
34 voice of Tessa as survivor, using the affective charge of survivor testimony to validate voices of legal  
35 and feminist expertise.  
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47 These distinct positions and voices produce paradoxical knowledge about and representations of the  
48 law itself as a site for knowing and judging sexual violence. Reflecting in her *voir dire* on what she has  
49 lost both from the rape and from the 'second rape' of the trial, she tells the court/audience:  
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53 I have lost my dignity and my sense of self,  
54 I have lost my career path, friends, peace of mind, my safety, The sense of joy in my sexuality.  
55 But *most of all*, I have lost my faith in this,  
56 The law,  
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58 The system I believed would protect me (Miller, 2022: 91, emphasis added).  
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3 The play here leans on the logic of exceptionality in the reverse conversion narrative, where we feel  
4 Tessa's tragedy in ways that we could not feel Jenna's, not only because she is telling us her story, but  
5 precisely because she was a successful lawyer who had invested so much. It is this exceptionality that  
6 is also mobilised to highlight the problem of the law: if even a successful barrister can be denied  
7 justice, the system must be truly broken. But also, it is the law itself as an object of value that is  
8 revealed as the most important and precious thing. Here too the play, however inadvertently, lays  
9 bare its commitment, shared with #MeToo, to "faith in the coercive powers of the state" (Srinivasan,  
10 2021: 170) – the same male state that is the object of its critique.

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17 However, there are multiple versions of the law in the play, and the lost law described here is vastly  
18 different from the law that Tessa explained in the first half of the play. She loved that law for allowing  
19 her to compete and win thrilling adversarial battles. The needs of victims like Jenna were quite  
20 ancillary and nobody, least of all Tessa, thought that the law was there to protect them. Tessa occupied  
21 her seemingly powerful and agentic position within the law embracing its masculinist competitive  
22 mode and refusing to 'think like that' when it comes to identifying the gendered injustice of normal  
23 legal process (West, 1988). To inhabit this position, Tessa blinds herself not only to her role in enabling  
24 injustice but also to the fact that the law, to which she has devoted her life, will not support her when  
25 she is herself a victim. In this way, Tessa is caught in a paradox between the figure of the agentic expert  
26 and the victimised survivor which this legal framework produces. But there is a different  
27 representation of law as a valuable and reformable object, which is held up by Miller in her role as  
28 feminist advocate. This attachment differs from Tessa's 'thoroughbred' delight in the game of law.  
29 This is an attachment that insists that the law remain a privileged site of address even as its failure to  
30 enact its own promises of justice is simultaneously revealed and invoked.

### 41 42 **Feminism's Cruelly Optimistic Attachments**

43 The play's ambivalent attachment to law offers an insight, we argue into the 'cruel optimism' that  
44 characterises an attachment to legal reform, and the reformability of law, in much feminist advocacy  
45 around sexual violence. Continued investment in an institution that not only fails us but, as the play  
46 so powerfully shows, does us harm is indeed an example of when 'something you desire is actually an  
47 obstacle to your flourishing' (Berlant, 2011: 1). In this section, we focus on the play's ambivalent  
48 attachment to the law as a reformable and recuperable object, something in which it is worth  
49 continuing to invest even as it remains an obstacle to flourishing.

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56 The law is rendered a reformable object of attachment in the play through the selective critique that  
57 it offers. As a trial drama, the play limits its critique of the injustice of the criminal justice system to  
58 the trial, and specifically to the defence and cross-examination, with the cross-examination scene  
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3 subtitled 'AKA The Silencing.' While this is understandable generically, it is noteworthy that the play  
4 features a police interview (Scene 9) and forensic examination (Scene 11). Both are represented as  
5 unpleasant but there is little acknowledgement of them as sites of trauma, injustice and attrition from  
6 the criminal justice system.<sup>2</sup> At no point does the play suggest, for instance, that either the police or  
7 the prosecutor might refuse to proceed with prosecution because Tessa was intoxicated, had  
8 consensual sex on the night in question, or refused to hand over her mobile phone, despite all of these  
9 being a common experience of survivors (e.g. Hohl and Stanko, 2015). Indeed, the only hostility Tessa  
10 experiences from the police is when the interviewing officer discovers she is a defence barrister: "Now  
11 you need us, though, don't you?" (61), thereby aligning the police and wider prosecutorial system with  
12 the play's own critique and limiting the extent to which the play allows for considerations of the  
13 'paradox' of the criminal justice system as a site of injustice for rape.  
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22 The representation of the trial emphasises the institutional and epistemological maleness of the  
23 criminal law (Naffine, 2019). Tessa notes on entering the court that all the personnel, from the Judge  
24 to the usher, are men, stating 'I am the only one. The only woman' (Miller, 2022: 72). During her *voir*  
25 *dire* she broadens this observation, noting that 'the law has been shaped by generations and  
26 generations of men' (94). In contrast, in the final moment of the *voir dire* scene Tessa locks eyes with  
27 a female police officer, a 'young woman in a uniform usually worn by men,' and this moment makes  
28 her feel 'something good' (Miller, 2022: 96). However, the audience is already aware, having seen  
29 Tessa in the first part of the play, that female personnel, such as a female defence barrister like Tessa  
30 herself, would not necessarily help. Prior to entering the court, Tessa explicitly notes that having four  
31 women jurors may not make a difference because 'women can be just as bad at believing other  
32 women' (70). Here the play enacts a characteristic ambivalence in its representation of the law as a  
33 reformable object. The audience is told that the problem is at least in part an over-representation of  
34 men in law, which can be addressed through figures such as the female police officer, even as it  
35 acknowledges that individual women, including Tessa herself, are perfectly capable of enacting the  
36 structural violence the law metes out to rape survivors (West, 1988).  
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48 At points, however, the play does indicate that what has been termed 'the man problem' of criminal  
49 law is not simply about who is in the room on a given day (Naffine, 2019). In her play notes, Miller  
50 writes that the problem is that the law is 'shaped by male experience,' and Tessa claims that 'a  
51 woman's experience of sexual assault does not fit the male-defined system of truth' (Miller, 2022: 7;  
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57 <sup>2</sup> This is explored in another prominent post-#MeToo feminist cultural event, *Unbelievable*, a limited-run series  
58 released on Netflix in 2019. Based on a true story, it shows a survivor unjustly charged by police with making a  
59 false report of sexual violence.  
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3 94). Here, we might expect the play to focus on classic ways in which the law ‘taints’ women’s  
4 testimony, filtering it through victim-blaming myths that women provoke rape through their dress or  
5 behaviour and that they lie about it for personal gain afterwards, but this is not the play’s focus  
6 (Gilmore, 2017). The defence barrister does raise some of these classic tropes in the cross-  
7 examination, notably alcohol, the idea that Tessa concocted the allegation for career advancement,  
8 or as revenge for Julian spreading rumours about their sexual encounters. In each case, however,  
9 Tessa narrates these as a misstep, forcing the barrister to ‘cover up what he didn’t see coming’ (Miller,  
10 2022: 89). Indeed, rather than harming her these questions, with their crude misogyny, help her ‘find  
11 her way,’ leading her to remind the barrister that she reported the rape almost immediately (Miller,  
12 2022: 89-90).

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21 Instead, the play focuses its critique on legal demands for survivors to produce a neat and coherent  
22 narrative. Speaking as a ‘victim-survivor,’ Tessa tells the court that ‘the rape and perpetrator are  
23 vividly recalled, the peripheral details not so clearly’ (Miller, 2022: 94). This references the key  
24 exchange in the cross-examination, which concerns the way in which Julian restrained Tessa during  
25 the rape. During questioning, Tessa can ‘feel a terrible wrong being done to me right now’ as the  
26 barrister focuses on a seeming inconsistency in her account. Where she says Julian was holding both  
27 her hands and covering her mouth, the barrister insists that this would require three hands. She  
28 realises his question ‘makes me look confused. Because I am’ before remembering that Julian was  
29 holding both of her hands in one of his, a point she then makes ‘with clarity’ (Miller, 2022: 86-87,  
30 emphasis in original). In relation to her later argument, however, this is not a ‘peripheral detail’ but a  
31 crucial element of the perpetrator’s use of force, which constitute the event as rape. The confusion is  
32 consistent with the far more unpredictable patterns of recall and memory lapse associated with  
33 trauma than the more coherent logic that Tessa asserts in her *voir dire* (Herman, 1992). In asserting  
34 the primacy of traumatic recall, however, the play works against the exceptionalism that it wants to  
35 claim for rape. Similar patterns of traumatic recall may be associated with other forms of violent and  
36 gendered crime. The problem, as feminist research has consistently shown, is that any apparent lapse  
37 or inconsistency in the testimony of rape survivors is used to justify their ‘tainting’ by doubt, suspicion  
38 and overt misogyny in a manner that is simply incommensurate with that applied to testimony of  
39 other traumatised witnesses (Gilmore, 2017; Madigan and Gamble, 1991). In practice, victims of other  
40 crimes may also find that the fragmented nature of traumatic recall damages their credibility in the  
41 eyes of the law with its desire for straightforward narrativization.

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Even as it offers a critique of the law’s inability to accommodate traumatic narrative, however, the  
play consistently insists that this critique applies only to rape survivors. Tessa asserts that the ‘law of  
sexual assault spins on the wrong axis’, implying that otherwise the legal system functions well (Miller,



2022: 94). It is clear, however, that there are multiple ways in which the law ‘spins on the wrong axis’, including well-documented systemic patterns of racial injustice, where people of colour consistently receive higher rates of conviction and higher sentences for all crimes, including sexual violence, while crimes perpetrated against women of colour receive consistently lower conviction rates and sentences (Davis, 1985; Richie, 2000). Ultimately, the repeated insistence on the exceptionality of rape as the only site of law’s failure operates to reassert an attachment to the law even in the moments of the play’s most powerful critique.

## The Siren Call of Law

According to Miller, Tessa ‘finds her voice’ when ‘sees the law for what it is’ – ‘an imperfect human construct, consequently evolving with social changes’ (Miller, 2022: 9). As activist theatre, Miller’s intention is bound up within a continuing attachment to the law, and to possibilities for reform. Berlant’s formulation of cruel optimism is particularly useful here because it speaks to multiple elements of Smart’s (1989: 160) depiction of the ‘siren call of law’: that is, its seductive appeal, resulting harm, and the fact that being aware of the harm does not nullify the law’s appeal. Berlant (2011: 25) notes that “one makes affective bargains about the costliness of one’s attachments, usually unconscious ones, most of which keep one in proximity to the scene of desire/attrition”. This means that the ‘the loss of what’s not working’ continues to be ‘more unbearable than the having of it’ (27). To give up on belief in the law’s ability to deliver justice feels worse than retaining an attachment to the law despite the well-known failure of even ‘successful’ legal reforms, such as rape shield laws, to deliver better outcomes for survivors (Corrigan, 2013).

When Miller has Tessa declare in the opening of the *voir dire* that of all her losses, it is losing her faith in the ‘system that I dedicated my life to’ that is the biggest loss ‘of all’, we are given a sense of why it is that Miller, or feminist legal advocates generally, might find the loss of this system more unbearable than continuing to devote effort to changing it. What is at stake for Miller (2022: 7) is suggested in her declaration that ‘I firmly believe that ‘innocent until proven guilty’ is the bedrock of human rights, despite the fact that ‘its application in sexual assault cases served to undermine rather than uphold any real fairness’. The play is devoted to insisting that there is a value in the ‘unique position’ of the feminist lawyer, both in the play and in the ‘real life Tessas’ such as Kate Parker (Miller, 2022: 93). Manifesting the contradictory but affective attachments that underpin the feminist lawyer’s identity, the play offers both critique of the law and further investment in it through the promise of what Miller (2022: 8) describes as an ‘authentic intersection between art and social change’, the promise that things can and will be different if only the right reform can be found, while avoiding the most systemic and damning critiques of law. Additionally, through the figure of Tessa as a successful female barrister,

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3 the play reveals its attachment to the 'anti-discrimination paradigm', which views feminism through  
4 the lens of access to and equality within professional spheres (Srinivasan, 2021: 164).

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7 Read through Miller, Tessa might be seen as a sacrificial figure, doomed to answer the sirens' call to  
8 provide a rationale for the continued investment of the feminist legal advocate. However, she can also  
9 be read as a dramatic figure which exceeds Miller's authorial intentions, and gestures beyond cruelly  
10 optimistic attachments to law. Early in Part II, she expresses the conviction that will carry her for the  
11 rest of the play: 'there's this person inside me, the girl who fought and fought to be seen... She's brave  
12 and if I do nothing, I think I could lose her' (Miller, 2022: 66). Even following the legal indignities of  
13 waiting 782 days for trial, and a gruelling cross-examination when she knows that the verdict is likely  
14 to go against her, she continues her appeal to law. But as the quote indicates, this is not because she  
15 is necessarily invested in the reformability of law, but because the discursive universe of the play has  
16 given her no other option for being brave and fighting for her sense of self.

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19 Even so, as noted above, her speech exceeds the boundaries of the courtroom, both as she blurs the  
20 'fourth wall' and calls on the play's audience to act as witnesses to the injustice of the trial, and even  
21 within the world of the play. As she finishes speaking, she feels 'a wave of sadness. Not despair, just  
22 pure sadness,' as she knows 'the jury won't find Julian guilty.' And yet, 'a weight has been lifted' as  
23 she sees 'three journalists writing madly, court artist staring at me, taking notes.' As with Chanel  
24 Miller's statement, the failure of law to listen to survivor speech can provide the impetus for survivors  
25 to go beyond the courtroom, sharing their experiences in the public sphere and encouraging others  
26 to speak out. For the character Tessa and real-life Chanel Miller, however, there is no necessary or  
27 explicit turn back to law; by going beyond the law, through journalism, social media, and Miller's  
28 memoir (2019), they have found other avenues to tell their stories.

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31 It is the determination of survivors to look beyond the law even as they speak back to it that  
32 complicates the cruel attachment to law that we argue is dramatized in the play. Through the dialectic  
33 of moving beyond and speaking back we can see a thread of continuity between the otherwise  
34 bifurcated Tessa of the first and second half of the play. While in the first half, she lambasts  
35 prosecutors for seeking 'jail time' instead of justice, in the second half she laments the failure of the  
36 legal system to convict Julian, leading her to declare both it and herself to be 'broken' (97). Even here,  
37 however, she does not express a desire for 'jail time' as such, rather she speaks of recognition and  
38 accountability: 'The legal system made me look like a liar. Julian will never have to say sorry, never  
39 have to admit what he did, never have to...'. As with many survivors, the vision of justice evoked by  
40 Tessa goes beyond that offered within and by the criminal justice system (McGlynn and Westmarland,  
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3 2018). Through such statements, the play reveals its ambivalence about turning to the law to reduce  
4 the prevalence of sexual violence while remaining attached to legal reform.  
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7 Tessa's implicit critique exceeds the representation of law as broken only in relation to assault. She is  
8 right that jail time is not justice, and indeed, justice is not a primary concern of the system whose inner  
9 workings she reveals to us in the first half of the play. Nobody receives justice in the second half:  
10 obviously not Tessa but, we might also say, not Julian, who will not reckon with the wrongness of his  
11 actions and so, we might imagine, will fail to change his behaviour. Tessa ends on a note of radical  
12 uncertainty, 'I do not know what to cling to.' And she asks how to 'walk out of the courtroom' and  
13 'leave the building' before stating her one certainty, that 'somewhere. Some time. Somehow.  
14 Something has to change. The linking of the two statements suggests not only that 'somewhere' is not  
15 the legal domain of the court, but also, to make that change Tessa will have to leave her cruelly  
16 optimistic attachments behind, refusing to heed the siren call of law. Searching for a way to 'leave the  
17 building,' for her 'somewhere' and 'somehow' might mean, we suggest, looking beyond the law.  
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## 26 **Conclusion**

27 We have offered a critique of *Prima Facie* not to dismiss it, but because we believe that it matters as  
28 theatre and as feminist advocacy, as indicated by its success. As affective political theatre it reinforces  
29 the declaration of contemporary feminist and survivor movements 'that we have an epidemic and all  
30 accusers must be believed' (Alcoff, 2018: 1). Its significance as an example of feminist advocacy, and  
31 a source of critical analysis, is found, first, in its successful portrayal of legal failings around sexual  
32 violence as a serious problem. Beyond this, it is important to consider how it frames this problem,  
33 shaping how it is understood, and what solutions are therefore possible.  
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40 Reading the play through the lens of cruel optimism, we propose, can help us identify the cruelly  
41 optimistic attachments of mainstream feminism, which simultaneously recognise law as harming  
42 survivors of sexual violence while simultaneously maintaining it as a reformable object. In its  
43 elaboration of its foundational legal paradox, the play presumes the ongoing centrality of law in  
44 responding to sexual assault, and, in so doing, helps to cement this centrality. This attachment is  
45 sustained, we suggest, less through belief in the possibility of our current legal system to deliver  
46 justice, than through other motivations, such as investment in the professional identity of an  
47 advocate, or the good feelings that come from working towards imagined positive change.  
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54 Further, the affective power of the play, relies significantly on a series of long-standing  
55 representational practices that locate white, middle-class women as the ideal subject of feminist  
56 interventions around sexual violence. These tropes limit our capacity to fully understand the harms of  
57 rape and of carceral responses to it, including the most vulnerable women, and to re-imagine our  
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3 conceptions of justice. It also reinforces a perception of mainstream, white and professional feminist  
4 advocacy as encompassing all feminist thought and politics in this area, naturalising it and its long-  
5 standing tendencies as the singular alternative to the status quo. To expose the limits of this framing,  
6 and to question the effects of its affective power, we draw on the scholarship of black and abolitionist  
7 feminist thought, showing that this is not the only way of understanding feminism or of framing the  
8 problem of sexual violence.  
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11 Similarly, in reading *Prima Facie* as enacting paradoxical feminist attachments, we read aspects of the  
12 play, and particularly the voices of Tessa and Miller as, at least at times, in a productive tension with  
13 each other. Focusing on Tessa's voice allows us to read the play as ending with an openness that  
14 exceeds the intentions of its author and gestures toward a feminist politics with a less cruelly  
15 optimistic attachment to the law. This does not necessarily mean abandoning the law entirely, but it  
16 does mean resisting the siren call that presents law as an obvious solution to complex social problems.  
17 Such critical readings, we believe, are one way for us, as feminist readers and critics, to engage with  
18 the play's call that "Somewhere. Somehow. Something has to change."  
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