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# VOICING EMBODIMENT, RELATING DIFFERENCE: TOWARDS A RELATIONAL LEGAL SUBJECTIVITY

*Patrick Hanafin\**

Do we really want to switch from the marginality of our official quasi non-existence to being citizens equal to men? Or do we want to use this marginality as a starting point for changing our condition and all of society with it?<sup>1</sup>

What is, or should be, women's level of consciousness cannot be decided by legal decree.<sup>2</sup>

... women cannot be legislators in a society which does not acknowledge their existence.<sup>3</sup>

## 1.0 INTRODUCTION

Legal change does not imply a transformation in the symbolic position of women. How can one transform women's symbolic position by trying to do so within the logic of the phallographic order? According to Luce Irigaray, when women's movements attempt to gain only:

a change in the distribution of power, leaving intact the power structure itself, then they are resubjecting themselves, deliberately or not, to a phallographic order. This latter gesture must of course be denounced, and with determination, since it may constitute a more subtly concealed exploitation of women.<sup>4</sup>

The law brings with it a simultaneous giving and taking away of freedom leaving women suspended in male symbolic space. This then leaves one in a bind. We cannot not want increased freedom, as Wendy Brown reminds us, but, at the same time, such freedom comes at the price of the continued regulation of female choice. Brown explains this paradox in the following terms:

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<sup>1</sup> The Milan Women's Bookstore Collective *Sexual Difference: A Theory of Social-Symbolic Practice* Indiana University Press Bloomington 1990 p 73, citing a participant at the Umanitaria conference, organized by the Milan Women's Bookstore Collective in Milan on 27–28 October 1979.

<sup>2</sup> As above at 74.

<sup>3</sup> As above at 75.

<sup>4</sup> Irigaray Luce *This Sex Which Is Not One* Cornell University Press Ithaca 1985 at 81.

To the extent that rights consolidate the fiction of the sovereign individual generally, and of the naturalised identities of particular individuals, they consolidate that which the historically subordinated both need access to — sovereign individuality, which we cannot not want — and need to challenge insofar as the terms of that individuality are predicated on a humanism that routinely conceals its gendered, racial, and sexual norms. That which we cannot not want is also that which ensnares us in the terms of our domination.<sup>5</sup>

In saying this Brown is aware that the notion of rights has brought about recognition for many marginalized groups. However the problem is that having obtained legal recognition the material position of such groups does not as a consequence improve. The task then is to attempt to reimagine rights discourse in a manner which gives body to each unique individual, to reimagine the way in which we conceive the political in order to undo the way in which the default setting of citizenship and rights discourse remains the allegedly disembodied gender-neutral subject that is really male (i.e. takes male bodies and traditional life-styles as the norm). This would involve a symbolic re-appropriation of law. The validity of such an approach is that it short-circuits the binary of masculine and feminine in rights discourse and also undoes the universalist male paradigm which informs the ideology of rights.

This would involve the creation of the unthinkable for patriarchal law, a void, because for law everything must be regulated. The important thing is that an imagined control exists. In order to begin thinking how such non-identical spaces can be thought I will refer to the work of Adriana Cavarero and Lia Cigarini, both of whom have attempted in their writings and in their praxis to think these spaces where the unique existent can interact with other unique existents in a space of relational politics, a politics based on the embodied self who acts, speaks and thinks for herself. This amounts to a move from a masculine univocality, the politics of an imposed classical masculine voice, to a politics of relational plurivocality.

## 2.0 THE TRUE LIFE OF LAW

The male legislator, obsessed with death, must give himself the illusion that such an end can be deferred interminably. The search to control regeneration is also a search to evade death. This model of democracy sees the creation of a notion of community as immunity against intruders and ultimately against death, a social compact built on the desire to survive.<sup>6</sup> By valorizing life as true abstract life, woman is relegated to the status of mere life, an intermediary figure used as a means of reproducing life in the service of the state.

Adriana Cavarero provides a compelling account of this exclusion of the mere or embodied life of women from the male symbolic order in her rereading of Plato's account of the

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<sup>5</sup> Brown Wendy 'Suffering the paradoxes of rights' in Brown Wendy and Halley Janet (eds) *Left Legalism/Left Critique* Durham Duke University Press 2002 p 420 at 430.

<sup>6</sup> For an illuminating analysis of this phenomenon see Cavarero Adriana *Stately Bodies: Literature, Philosophy, and the Question of Gender* Ann Arbor University of Michigan Press 2002. See also her 'Logos e politica' in Cavarero Adriana *A Più Voci: Filosofia dell'espressione vocale* Fetrinelli Milan 2003 p 200. See in addition Esposito Roberto *Immunitas* Einaudi Turin 2002.

myth of Demeter.<sup>7</sup> She observes that we in modernity are the inheritors of ‘an imagination produced by [an] *ignorance about genetics* that characterized classical Greece, a golden age for the patriarchal order.’<sup>8</sup> Once the patriarchal symbolic order was stabilized, she argues, a deliberate ignorance about genetics was set up which is crucial to an understanding of the contemporary societal imagination of women. This is the idea that the father alone has the power to generate. For Cavarero, Plato displaces in his writings the power of women to generate life. Woman is reimagined and represented as a transitional site on the way to the production of a life which is ultimately generated by the father. She cites Apollo in the *Eumenides* who sees the mother as a mere nurse to the fetus with which she is inseminated.<sup>9</sup> In this schema the mother is only a host and the fetus is a guest.

This ignorance of genetics plays a key role in supporting the patriarchal symbolic order. The fact that woman’s role in reproduction and birth is bypassed in this schema allows the male to claim himself as fount of all life. Moreover, the erasure of woman’s birth-giving power allows the male to agonize interminably over his mortal existence. This life-generating power is merely a means of momentarily deferring death. Reproduction is necessary for the survival of the species and becomes the task of man. As mortal beings the regenerative power is the only means of guaranteeing the illusion of immortality. In this schema man looks constantly ahead to the moment of his death and his legacy. This becomes the be all and end all of life in the shadow of death. Indeed it becomes the foundation of the modern liberal order with the creation of the social contract as a means of survival, as a temporary immunity from death. This is the male symbolic order founded on death not birth. For Cavarero birth as an idea has been:

lost as a consequence of the consolidation of this new ignorance about genetics... it happened with the imposed perception of the mother as a temporary container rather than as the origin of life, and as a nutritional apparatus for new bodies both born and unborn. In the second place, birth ceased to bring into the world living beings who lived their lives to the fullest and in a unity of mind and body. Birth was limited instead to providing humans with a body, which came from the paternal lions, while their intellect emerged and lived in disembodied regions.<sup>10</sup>

The masculine philosophical appropriation of birth in order to make the male the source of life as pure thought is, for Cavarero, tantamount to an original matricide. In other words this original matricide is the theft of birth from the female and the male philosophical obsession with pure abstract thought. She claims that: ‘the philosopher abandons the world of his own birth in order to establish his abode in pure thought, thus carrying out a symbolic matricide in the erasure of his *birth*.’<sup>11</sup> This original matricide has ramifications far beyond the realms of philosophical discourse. It extends and underpins the normative order of society. Thus for Cavarero: ‘The juridification of the lifeworld is only the most evident, tangible aspect of society’s invasion of the symbolic order

<sup>7</sup> Cavarero Adriana *In Spite of Plato: A Feminist Rewriting of Ancient Philosophy* Polity Press Cambridge 1995 at 57.

<sup>8</sup> As above at 71.

<sup>9</sup> As above at 72.

<sup>10</sup> As above at 73.

<sup>11</sup> As above at 38.

of birth.<sup>12</sup> Thus, for example, legal intervention in reproduction continues this original matricide, allowing for the biopolitical management of the *mere life* of material bodies in the name of the *true life* of the soul.<sup>13</sup>

We can see within this logic why there exists an anxiety to regulate women's reproductive choice whether in the context of abortion or in the case of new reproductive technologies. What is at stake here is the theft of birth from woman and the erasure of woman from symbolic space. The legal regulation of reproductive matters remains within the logic of the originary genetic ignorance in that women's birth-giving power is ignored and curbed. In regulating either abortion or human reproductive technology the freedom of women is constricted. Women's reproductive choices are constructed as a function needing regulation. It is thus no surprise that, in many instances, the foetus or embryo (as promise of true life) is accorded as much importance if not more than the individual woman in such regulation. What is valorized, in effect, is the potential for true life which is housed temporarily in the female body. Thus, for Cavarero, maternity's power is 'regulated by public norms within the public order.'<sup>14</sup> Even though in modern embryology according to Cavarero, equal roles are accorded to ovum and sperm, the symbolic frame remains the same. For Cavarero, this symbolic frame functions as follows:

the function of maternity is reproductive, and the function of reproduction is social. Both are made to belong to the realm of human cohabitation, and both are a matter of public interest that can be regulated by laws. This has an even simpler consequence: politically organized society continues to claim that maternal nurturing is to be taken for granted and will be provided in the form of unpaid household labor and care giving.<sup>15</sup>

In this regard, today the state can justify its role in intervening in the management of women's reproductive health and choices. In other words, the function of reproduction is entirely social and is treated as a function needing regulation, through either an increase or decrease in production. According to this logic, 'to leave demographic issues to any single woman's sovereign choice... would be contrary... to maternal power reduced to a social function, and to a public interest claiming to be *universal*... Since women are the ones who produce citizens, this production must be guided, planned, and controlled.'<sup>16</sup> Abortion legislation, for example, always envisages the 'ways and contexts in which a woman's decision to have an abortion must be made.'<sup>17</sup> This counterproductive nature of state imposed reproductive rights as in the case of abortion laws is for Cavarero the contemporary legacy of the 'original matricide. The violence against Demeter continues. Her injured body (*physis*), cannot content itself with a merely symbolic survival in the testimony of clandestine abortions, or in the partial compromises conceded by the law.'<sup>18</sup>

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<sup>12</sup> As above at 86.

<sup>13</sup> As above at 25.

<sup>14</sup> As above at 73.

<sup>15</sup> As above at 73.

<sup>16</sup> As above at 74.

<sup>17</sup> As above at 74.

<sup>18</sup> As above at 79.

Thus, in either a regime of prohibition or availability, ‘the fact that the woman wants to abort is never presented as a question of women’s free choice... From the beginning, the issue of abortion is political. It is a concern of the state that is regulated by the laws of the nation. It is above all an issue of the law, which fluctuates embarrassingly between ethics and metaphysics.’<sup>19</sup> The embryo seen as the potential for pure life is granted the rights which are granted to men once ‘the act of regeneration has been pulled out of the sovereign space of maternal power.’<sup>20</sup> As a result:

birth has been removed not only from the sovereignty of maternal power but also from the basic feminine experience of maternity... not only maternity, understood as reproductive function, and the fetus, understood as legal subject, are concerns of the state, but so is the ovum, in its aseptic separateness and unpredictable wanderings through more or less compliant wombs.<sup>21</sup>

If woman’s material existence is denied by the male symbolic order, then the body of woman is seen not as a space of autonomous decision-making but as a container for reproducing the nation. In this sense the original genetic ignorance becomes tied to the national symbolic. This majoritarian masculine politics of survival is not a politics of empowerment but a politics of entrapment in an imagined natural order. In this paradigm, as Barbara Duden notes: ‘flesh is extinguished and replaced by a disincarnate notion’.<sup>22</sup> This politics does not refer to life in the material sense but to what Barbara Duden has called ‘synthetic life’.<sup>23</sup> For Duden, ‘synthetic life’ has become the idol of the present, not only for the Church but also for ethicists, politicians, journalists and advertising executives, amongst others. In this new ideogram ‘life’, Duden detects a wider concern with endangered life. She observes that ‘this idolatry of life’ is a consequence of ‘a surreptitious shift in social and medical management concerns about the importance of “survival”’.<sup>24</sup> This reflects a concern about mortality, survival and extinction. In this sense she notes that ‘The four-letter word [life] is meaningless and loaded; it can barely be analysed, yet it is a declaration of war’.<sup>25</sup> This politics of survival attempts to arrest death by composing a narrative which valorizes true life over mere embodied life.

The figure of Demeter for Cavarero symbolizes this original matricide, the valorization of true over mere life, but also acts as a means of recuperation of female sovereignty over birth. For her:

Demeter seems therefore to demand a new philosophy of birth capable of winning some territory back from the metaphysics of death and from the social codes built upon it...

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<sup>19</sup> As above at 74–75.

<sup>20</sup> As above at 75.

<sup>21</sup> As above at 78.

<sup>22</sup> Duden Barbara *Disembodying Women: Perspectives on Pregnancy and the Unborn*. Harvard University Press Cambridge 1993 at 100.

<sup>23</sup> As above at 99–106.

<sup>24</sup> As above at 110.

<sup>25</sup> As above at 104.

... the new way of measuring the sense of human existence on birth rather than death, cannot be brought about simply by replacing the negative with the positive in reverse parallelism. It must do battle with an already invaded territory where the occupying forces seem to be advancing boldly rather than considering retreat.

... it seems that the best response to the original matricide and the violation of the order of birth is to counterattack the *invasion* with a *withdrawal*, rather than to work toward compromise (which nonetheless brings some practical advantages with respect to laws that completely outlaw abortion). When the maternal power with respect to generation is juxtaposed with the invasiveness of the law, it becomes a site that *per se* resists any regulation. In short, the issue is how to redefine the experience of maternity and the range of decisions inherent in it, as a space free from juridical power ... it is a matter of defining maternal power as a right whose norms cannot be arbitrarily negotiated, or compared with other juridical situations.<sup>26</sup>

Cavarero is not interested in finessing existing laws or indeed in creating better laws but of dispensing with legal regulation. For her, maternal power cannot be regulated. The task for women is to undo the original matricide perpetrated by males. In Cavarero's analysis of Demeter's myth, she notes that birth must be won back from the legal technical gaze of the male. It is a question of retrieving the relation between mother and daughter, through a retrieval of the mother's gaze:

birth calls for a dual system of the gaze: one between the mother and the daughter, the other between the mother and the son. It is because in the myth of origin the son decides to distract himself and turn his attention to death, exiling the daughter there, that the gaze between the mother and the daughter is forcibly interrupted. Therefore, after this act, in the patriarchal symbolic order, neither the son nor the daughter look at the mother, the *physis*. But while the son can decide to do so, the daughter has been violently prevented from looking. Bioethics cannot then develop as a meaningful science if it does not acknowledge the 'ethical fault'... of the son against *bios* that has rendered the meaning of *physis* invisible.<sup>27</sup>

Out of the reappropriation of the maternal gaze a new mode of bioethics is possible, one based on the mere life of the embodied self rather than on the true life of abstract thought. It is a reversal of the original genetic ignorance, the becoming visible of body:

There is, therefore, a great need for bioethics. But it appears that the daughter, rather than the son, is in a position to claim its voice. In retrieving the once interrupted gaze of the mother, she who has innocently experienced –and still experiences– the warped and downtrodden order of birth brings back to light an experience of *bios* far better than the one of self-proclaimed 'experts'... [This is] a new disinvestment from the order of death, claiming that the life which, by its own *nature*, was such from the beginning is not subject to invasion. Within this original horizon of *physis* protected by maternal power, bioethics becomes the more or less appropriate name for ethics. Indeed *ethos* is about action, and

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<sup>26</sup> Cavarero above note 7 at 79–80.

<sup>27</sup> As above at 88.



action is the agency of individuals who orient themselves into the world, as they begin their lives having been born from a mother.<sup>28</sup>

Here what is at stake is a reinterpretation of political community as such. The notion of community for Cavarero is based on a theory of birth which sees each individual as unique but who is not born alone. Each individual by the fact of being born is linked by an originary bond with the mother:

Through the figure of Demeter, it is therefore crucial to trace again a feminine symbolic order in which maternity itself can be a space, not a 'place.' Most of all it is necessary to outline a space from which we come and toward which we look with a *daughter's* eyes, according to the order of reality prior to the symbolic, in which every female human is born a daughter before she becomes a mother.<sup>29</sup>

Birth then becomes for Cavarero the most important primary figure of community. Cavarero carves out a theory of relational subjectivity which moves from the traditional construction of the subject as a *what*, a societal construct a universal disembodied male figure to a notion of politics built on the *who*, the individual who relates and interacts with other individuals. This is an 'embodied uniqueness of the existing being as he or she appears to the reciprocal sight of others. The *who*... has a face, a name, and a story'.<sup>30</sup>

### 3.0 FROM THE *WHAT* TO THE *WHO*

In her most recent work Cavarero turns her attention to voice as an indicator of uniqueness. Voice has been relegated, like the body, in the patriarchal symbolic. Voice is taken from women, just like birth, and in its place is imposed speech, the speech of the male. Women's voices are forced to be still and only mouth that which the masculine order would have them say. Cavarero observes that women's voice is silenced, just as her body is made invisible in the male symbolic order. Woman's voice is prevented 'access to the rational universality of a language reserved only for the male subject'.<sup>31</sup> Just as it is necessary to recuperate the maternal gaze so it is imperative that woman recover her own voice.

In order for this to occur a new female symbolic space must be created. Cavarero names this space of relational subjectivity the *absolute local*. For her, the *absolute local* is a space which names a taking place of the political. For Cavarero the political is defined in Arendtian terms as the open space of interaction and communication between individuals. It is the 'relational space which occurs with the event of this communication, and which simultaneously, disappears'.<sup>32</sup> The

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<sup>28</sup> As above at 88.

<sup>29</sup> As above at 89.

<sup>30</sup> Cavarero Adriana 'Who Engenders Politics?' in Parati Graziella and West Rebecca *Italian Feminist Theory and Practice: Equality and Sexual Difference* Fairleigh Dickinson University Press Madison 2002 p 88 at 99.

<sup>31</sup> Cavarero Adriana *A piu voci: Filosofia dell'espressione vocale* Feltrinelli Milan 2003 p 225.

<sup>32</sup> As above at 223.

*absolute local* refers not to *what* those who share this space are, but to *who* they are. This space then is the space of the *who*, the unique individual. It is a space which subsists outside the time of the political as understood by the male symbolic order. It refers to a deconstruction of belonging, the marginalization of qualities and the depoliticization of the *what*. This is not, for Cavarero, a utopian political space, but is one which can be found in political praxis. The example she refers to is that of sexual difference politics in Italy. In this example she sees an insistence on the relational matrix of the political and on the desire for a symbolic existence which in the practice of relations between women, every woman performs starting from herself. Cavarero describes the praxis of Italian sexual difference theory elsewhere as: ‘a plural and interactive space of exhibition that is the only space that deserves the name of politics’.<sup>33</sup> Cavarero sees in the politics of sexual difference in Italy an example of a politics which speaks the language of the *who*. Thus, for her, ‘the theory of sexual difference becomes a concrete politics tied to the material context where language is generated’.<sup>34</sup>

In this politics, speech is not some abstract system that the male symbolic order imposes, but *is* politics. Speech here is that which refers to the material context of the said. It is the performance of embodied existence. This, however, is not an essentialist praxis where each person speaks as the *what* of Woman. Rather, one speaks as unique existent, as a *who*. This speech is not just voice but is the embodied singularity which the male metaphysical ear does not want to hear. It disrupts the male symbolic representation of woman as pure voice deprived of speech. In the patriarchal order the deprivation of the gaze between mother and daughter is accompanied by the deprivation of relational speech between mother and daughter. The reappropriation of speech and gaze is the basis for a politics of subjective relationality, the *absolute local*, which subsists beyond the biopolitical traps of territory, nation state and identity.

#### 4.0 MAKING SPACE FOR MERE LIFE ABOVE THE LAW

The praxis of Lia Cigarini in the field of law can be seen as resembling Cavarero’s demand for a new female symbolic space. Cigarini was one of the plural authors, along with Cavarero, of The Milan Women’s Bookstore Collective’s now classic text on the relation of sexual difference and law, *Non credere di avere dei diritti* (*Don’t think you have any rights*).<sup>35</sup> In its analysis of the practice of sexual difference politics in Italy in the 1970’s and 1980’s the book examines, *inter alia*, the relation of women to the law and the paradox of obtaining so-called rights and freedoms within

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<sup>33</sup> Cavarero Adriana *Relating Narratives: Storytelling and Selfhood* Routledge London 2000 p 57.

<sup>34</sup> As above at 99.

<sup>35</sup> Libreria delle Donne di Milano *Non credere di avere dei diritti: la generazione della liberta femminile nell’idea e nelle vicende di un gruppo di donne* Rosenberg & Sellier Turin 1987. The work was subsequently translated into English as *The Milan Women’s Bookstore Collective* above note 1.

the space of law. In their analysis of the 1978 Italian abortion law which decriminalized the provision of abortion and introduced a statutory regime for its provision, the Collective notes:

what we got was an abortion law that, in essence, takes into account male sexual needs, birth control, and public order (by putting an end to black market abortions). There is no thought of female sexuality. Was there at least a concern for women's health? Not really, otherwise women would not have been *obliged* to abort in public hospitals.<sup>36</sup>

Thus the echo of original matricide is felt in this legislation where women are obliged to conform to a male-centred view of reproduction and sexuality. The possibility of female sovereignty over the birth-giving process is ruled out from the outset even in a so-called liberal piece of legislation. This is one example of the Collective's critique of liberal feminism's misguided embrace of so-called progressive legislation as a means of female empowerment. In speaking of the difference between a liberal feminist politics of rights and the sexual difference politics practiced by groups such as the Collective itself, they note that second-wave liberal feminism tends to identify women as a homogeneous oppressed group which requires the protection of the state in the form of laws. On the other hand the philosophy and praxis of sexual difference:

considered women a different gender which was denied existence in the actual social system... [it] gave rise to the political practice of sexualizing or inscribing gender into social relations, language, and law — in short, of modifying the given social reality so as to impose on it the presence and the voice of the sex which has been negated.<sup>37</sup>

This practice of sexual difference within the legal context for the Milan Collective requires that women lawyers and judges 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.<sup>38</sup>

Instead of calling for yet more laws to give women yet more rights and burden them with further regulation, Cigarini in her writings calls for what she calls 'legislative voids.' For example, this could mean decriminalizing abortion and not replacing this with a piece of legislation which would regulate where, when, and how an abortion could take place. The decision and means would remain within the sovereign power of women. Cigarini, herself a lawyer, argues that women engage in their own relational practice of law. The place of this exchange is within the very trial process itself.<sup>39</sup> Cigarini felt paralyzed by the contradiction between, on the one hand, being a female lawyer and wanting to carry out one's profession well, and on the other hand, the

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<sup>36</sup> The Milan Women's Bookstore Collective as above at 68.

<sup>37</sup> As above at 73.

<sup>38</sup> As above at 71.

<sup>39</sup> See Cigarini Lia 'La pratica del processo' in Cigarini Lia *La Politica Del Desiderio* Pratiche Editrice Parma 1995 p 118.

sense of estrangement she felt from the pre-given dominant masculine mode of practicing law. In order to escape this paralysis she applied the praxis of sexual difference politics to law. This relational politics of law would manifest itself in the following way:

The subsequent choice... was to collaborate with other female lawyers in cases where there is a direct and concrete conflict between a woman and a man as in divorce proceedings. And where clearly defined female desires are at stake: the desire of a woman who wishes to defend her own interests against those of a man; her desire to be represented by another woman, a female lawyer, whom she regards, as a woman to be more competent than a man; a female lawyer who, in accepting to represent only women, demonstrates loyalty to her own sex.<sup>40</sup>

This is the taking place of the female symbolic, a practice of sexual difference within yet outside the law. Cigarini terms this praxis as being *above the law* [*Sopra la legge*]. It enacts in the legal context the *absolute local* of Cavarero. For Cigarini the *above the law* is a space of relation which interrupts the male legal symbolic. She believes that this figure *above the law* is the manifestation of a bringing into the world of true freedom for women. It is a relational concept of freedom which starts from an individual unique existent in relation with other unique existents. For Cigarini, in this space of relation with another there is all the symbolic order necessary for women to become free in their relations with other women, with men and with the entire society.<sup>41</sup> This praxis is a refusal to speak in the words given to women by law. It is to speak with one's own voice in one's own words.<sup>42</sup>

This conception of the unique existent is the contrary of the *what* of universal humanism, the disembodied subject of rights. It is the *who* of the unique self possessed of her own speech, her own narrative, which she relates to another unique existent. In Cavarero's words this unique existent 'ends up rendering useless both the concept of repetition and the principle of generalization that nourishes the individualist theory. Uniqueness is an absolute difference, which... changes the very notion of politics.'<sup>43</sup> This unique *who* is alien to the law as we know it. The *who* is not the Other, (the other disembodied subject who attempts to enter the domain of the law of the universal subject) but merely *another*. This notion of *another* is

a unique existent that no categorization or collective identity can fully contain. She is the you that comes before the we, before the plural you, and before the they. ... [However the] ... you is not at home in modern and contemporary developments of ethics and politics. The you is ignored by the individualistic doctrines, which are too concerned with praising the rights of the I.<sup>44</sup>

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<sup>40</sup> As above at 119.

<sup>41</sup> Cigarini Lia 'Sopra la legge' in Cigarini Lia *La Politica Del Desiderio* Pratiche Editrice Parma 1995 p 195.

<sup>42</sup> See further Cigarini Lia 'Fonte e principi di un nuovo diritto' in Cigarini Lia *La Politica Del Desiderio* Pratiche Editrice Parma 1995 p 109.

<sup>43</sup> Cavarero above note 33 at 89.

<sup>44</sup> As above at 90.

Instead of the I of individualist legal discourse or the we of many revolutionary strategies, Cavarero calls for a relational thinking of the I with the you. By rewriting rights to talk neither of a universal subject nor the equally disembodied universal Other, but *another*, to move from the universal to the unique, we might approach a way of securing true freedom for women.

## 5.0 REFUSING DISEMBODIMENT

This unique individual who refuses to be styled by law's speech is threatening to the patriarchal political and legal order.<sup>45</sup> In this counter-performance the individual takes her own sovereign decision. Within this space of relation *above the law* what is performed is a right to refuse to be rendered disembodied which is so powerful because not given by some divine power or moral code. This right to refuse disembodiment calls us to think beyond the State and our role in the biopolitical matrix. It is a praxis of politics as relational. In a different theoretical *timbre* Giorgio Agamben describes this praxis of what one could call a politics of *another*. Indeed one could appropriate Agamben's description of this politics as an apt description of sexual difference politics:

In the final instance the State can recognise any claim of identity... What the State cannot tolerate in any way... is that... singularities form a community without affirming an identity... The State... is not founded on a social bond, of which it would be the expression, but rather on the dissolution, the unbinding it prohibits. For the State, therefore, what is important is never the singularity as such, but only its inclusion in some identity, whatever identity (but the possibility of the *whatever* itself being taken up without an identity is a threat the State cannot come to terms with). ...

Whatever singularity ... [which] rejects all identity and every condition of belonging, is the principal enemy of the State.<sup>46</sup>

The *whatever* singularity of the individual without identity is an enemy in the eyes of the State. This unique existent cannot be managed, made to speak in the language of the state, or be manipulated for biopolitical purposes. This then is a politics of active refusal.

It is this very role of the unique individual as sovereign or self-making which Michel Foucault hints at when he states that:

We must reject the division of tasks which is all too often offered to us: it is up to individuals to become indignant and speak out, while it is up to governments to reflect and to act. It is true that good governments like the hallowed indignation of the governed provided it remains lyrical. I believe that we must realise how often, though, it is the rulers who speak,

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<sup>45</sup> For a full elaboration see Braidotti Rosi *Transpositions* Polity Press Cambridge 2006 at 234–250.

<sup>46</sup> Agamben Giorgio *The Coming Community* Stanford University Press Stanford 1996 at 84–86.

who can only and want only to speak. Experience shows that we can and must reject the theatrical role of pure and simple indignation which we are offered.<sup>47</sup>

This can be interpreted as a call for a relational politics in which individuals are no longer the mere masks that resound with the fixed speech of law but unique existents who speak to another who listens. In such a politics as Foucault explains:

We are here only as private individuals, who have no other claim to speak, and to speak together, than a certain shared difficulty in accepting what is happening...

... Who... has commissioned us? No one. And that is precisely what establishes our right...

... to rise up and to address those who hold power.

... [it is a right]... of private individuals actually to intervene in the order of... politics...<sup>48</sup>

This conforms to a relational notion of right dislodged from the repressive state apparatus. As Tom Keenan has observed, what Foucault enacted in this move was the definition of 'a theory of rights as the condition of a radically democratic politics, rights without limit and end, rights as the irreducible claim and gesture of the political as such.'<sup>49</sup> This praxis is opposed to the fixing in place of the subject through the means of legislation. On the contrary, this is not a politics of clearly delineated, abstract, and always male subjects but of singularities without identity, without qualities, *whos* not *whats*.

One of the female figures whom Cavarero resuscitates from the tomb of male philosophical discourse in her book *In Spite of Plato: A Feminist Rewriting of Ancient Philosophy*, is Penelope<sup>50</sup>. Cavarero sees her as a figure who creates a new symbolic space and time for women. The space which Penelope creates is 'the space where a woman stays close to herself. Here women belong to themselves completely and absolutely. Their sense of belonging comes first and this makes other things possible.'<sup>51</sup> This figure then becomes emblematic of the creation of a space for women where the masculine gaze and symbolic order cannot intrude. In Penelope, Cavarero sees the emblematic figure of another thought which sees life and death as entwined, a materialist philosopher *avant la lettre*. The weaving room to which Penelope is consigned becomes an exemplary space for a politics of relational subjectivity. In this space, women:

stay together quietly, exchanging looks and words rooted in the individual wholeness of their existence, now so evidently gendered in the feminine that this life shared in a common horizon allows every woman to recognize herself in another woman.

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<sup>47</sup> Foucault Michel 'Face aux gouvernements, les droits de l'homme', in Foucault Michel *Dits et écrits* Vol 4 Gallimard Paris 1994 p 707 at 708.

<sup>48</sup> As above at 707–708.

<sup>49</sup> Keenan Thomas *Fables of Responsibility: Aberrations and Predicaments in Ethics and Politics* University of California Press Berkeley 1997 at 173.

<sup>50</sup> See Cavarero above note 7 at 1–30.

<sup>51</sup> As above at 16.

They are weaving and laughing in their quiet abode.<sup>52</sup>

Such a politics amounts to an undoing of the structure which allows the language of law to be male and which allows the female voice to be permanently silenced before the law. This figure who refuses to be fashioned by law's speech but who fashions her own speech in relation with another, like Cavarero's Penelope, seemingly changes nothing, but at the same time changes everything. Life (as the male symbolic order would have us know it) has changed and resonates with incarnate laughing voices. ●

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<sup>52</sup> As above at 30.