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## Re-imagining Equality: Meaning and Movement

Gillian Calder, University of Victoria and Sharon Cowan, University of Edinburgh

### 1. Introduction: Thinking and doing

*Most of everyday law is conducted performatively and not in writing. Our daily life interactions are embodied. They do not need to be recorded on paper to be effective.*<sup>1</sup>

In July 2006 we were invited to participate in a conference in Oñati, Spain, with a group of some of the most respected feminist legal scholars from countries such as Canada, the U.K., the U.S. and Australia.<sup>2</sup> The conference theme was ‘Rethinking Equality.’ In preparing the required paper for circulation to all the other participants, we decided that in order to rethink equality, it might be necessary to rethink the rethinking. As two young(ish), white, feminist legal scholars approaching the huge academic task of analysing the ways in which equality jurisprudence has shifted in recent years, we wondered whether we might approach the task with a methodology better suited to our thought process than the traditional product of a written academic paper. In short, we imagined that applying a more embodied and performative perspective to the question of equality might challenge us to a more nuanced answer of the question, ‘what is equality?’, or indeed, lead us to identify substantively different, yet pressing questions that needed to be addressed.

In this paper we argue that by using our bodies we can reflect on our thinking about legal concepts and tools, such as the notion of equality. We consider the ways in which our understanding of equality can be enhanced by re-imagining equality through the medium of physical performance. We also offer an articulation of how we tried to operationalise this more embodied approach to equality. Here we explore our collaborative experience of trying to present, in a conference setting, the impact of law upon the body, through physical theatre rather than the usual format of oral presentation of written work. Both the presentation and this paper use embodied metaphors to ask what we think is essentially an embodied question – what is equality? In the pages that follow, we reflect upon the experience of standing before an academic audience and using our bodies to enter into dialogue about contemporary debates on equality, with particular attention to this mode of engagement as feminist methodology and feminist critique.<sup>3</sup>

Our project began with the collaborative endeavour of producing, as was required by the Oñati conference organizers, a written paper analysing the problems faced by contemporary feminists and other critical scholars who are grappling with the concept of

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<sup>1</sup> Julie Lassonde *Performing Law* LL.M. Thesis, University of Victoria, 2006. Accessed on-line at: [http://law.uvic.ca/lassonde\\_at\\_10](http://law.uvic.ca/lassonde_at_10).

<sup>2</sup> Meeting of the International Sociological Association’s Research Committee on the Sociology of Law’s Working Group on Gender, Oñati International Institute for the Sociology of law, Spain, 10-12 July 2006.

<sup>3</sup> The authors have also participated in several fora investigating the relationship between feminist legal theory, performance and embodiment over the duration of this project that have contributed to our understanding of the issues that this paper provokes. These include: ‘Why and How? Theoretical and Methodological Directions in Law, Feminism, Gender and Sexuality’ U.B.C., Vancouver, B.C., August 2006; ‘Interrogating Embodiment’ University of Kent, UK, November 2006; ‘Out of Balance, Out of Focus: A Performance and Installation by Julie Lassonde’ Law, Culture and the Humanities Annual Conference, Berkeley, CA, March 2008; and ‘Beyond Critique 3: Forging Feminist Critique’ Law and Society Annual Meeting, Montreal, QC, May 2008.

equality. That paper was uploaded onto the conference website, but instead of being the end product itself, became the catalyst for the exploration of an idea. In our allotted presentation time at the conference, we decided not to deliver our written paper but instead aimed to embody our ideas about equality by physically performing them for our audience. To date we have chosen not to publish the original paper, but instead to focus our energies on thinking more deeply about the need to place our bodies at the centre of our work. But, this left us with an interesting dilemma – whether we should document this particular academic journey from paper to performance, and if so, how. Ultimately, we decided that writing about and publishing our experience would be the best way to communicate our ideas to a broader academic audience.

Yet, we remain troubled. We recognize that there is an irony in writing for publication an academic paper about a performance that we developed, at least in part, to challenge the academic valorisation of the written word,<sup>4</sup> and to avoid - arguably masculinist, racist and classist - hegemonic academic conventions.<sup>5</sup> In that sense, in writing up our performative experiences for journal publication we are both ‘doing’ and ‘undoing’ academic practice.<sup>6</sup> Further, we are aware of the wealth of feminist critique of the way in which women are reduced to their bodies and thus dismissed in favour of men, who are thought to represent the rational, objective legal mind.<sup>7</sup> At the same time, putting our bodies into our work was a political, methodological and theoretical commitment to challenging the normative foundations of what it means to be a ‘proper’ academic presenting ‘proper’ data. In doing so, our goal was not to hierarchise one form of academic engagement over another, but instead to question the ways in which ‘appropriate’ means of constructing (and performing) knowledge are privileged in the academy. This paper then, is an analysis of the ways in which our understanding of equality can shift when we think with body and not just the mind,<sup>8</sup> and a discussion of the impact that methodology and approach can make when trying to encourage our

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<sup>4</sup> Sandra Bell and Jane Gordon ‘Scholarship: The New Dimension to Equity Issues for Academic Women’ (1999) 22 *Women’s Studies International Forum* 645. See a discussion of the challenges and opportunities of subverting academic convention through performance and other media, in Elizabeth Adjin-Tettey, Gillian Calder, Angela Cameron, Maneesha Deckha, Rebecca Johnson, Hester Lessard, Maureen Maloney and Margot Young ‘Postcards from the Edge (of Empire)’ (2008) 17 *Social and Legal Studies* 5 at 8-9. There are many other examples of feminist work that attempt to challenge masculinist academic conventions about appropriate ways of thinking and writing – see for instance the work of Luce Irigaray, in particular *Marine Lover: Of Friedrich Nietzsche* Columbia University Press New York 1991 which is written in the form, if one can use such a conventional word of this text, of a love letter to Nietzsche.

<sup>5</sup> For a self-reflective discussion of some of the challenges inherent in disrupting the deeply masculinist environments of academia see: The Feminist Geography Reading Group ‘(Un)doing Academic Practice: notes from a feminist geography workshop’ (2000) 7 *Gender, Place and Culture* 435 at 435-436. For a study of the relationship between outsider voice and the dominant racist, classist and gendered conventions surrounding the writing of academic texts see: Theresa Lillis, ‘New Voices in Academia? The Regulative Nature of Academic Writing Conventions’ (1997) 11(3) *Language and Education* 182-199. For a powerful example of how transgression of traditional academic conventions can lead to an unthinking of law’s own power, particularly in the context of racism within the legal academy see: Patricia J. Williams, *The Alchemy of Race and Rights: Diary of a Law Professor* (Cambridge: Harvard University Press, 1991).

<sup>6</sup> The Feminist Reading Group above note 5 at 435.

<sup>7</sup> Nicola Lacey ‘Theory into Practice?: Pornography and the Public/Private Dichotomy’ (1993) 20 *Journal of Law and Society* 93 at 98.

<sup>8</sup> See August Boal *Games for Actors and Non-Actors, Second Edition* Routledge London 1992 at 49.

academic peers to engage with what might seem like familiar problems in creative ways,<sup>9</sup> ways which prompt an engagement with the embodied self.

In these next pages we will tell the story of our performance, in the hopes that it will provoke a visual image for those who were not present. To do this we will explore the decisions we took regarding our choice of methodological approach and our thoughts about whether or not, conceptually, this methodology was an appropriate one to communicate our ideas. This is followed by a discussion of how we turned our paper into a physical performance. We then present the script of our performance, followed by some of the feedback we received from the four academic audiences for whom we have performed this paper.<sup>10</sup> We conclude this paper by emphasising the advantages of approaching academic concepts through physical as well as cerebral practices. We also reflect on the process of engaging an audience by way of unconventional methodologies, and in particular, by confronting them with the physical representation of equality. We end by urging feminist scholars to consider the impact of ‘both taking up and resisting aspects of the masculinist [academic] environment.’<sup>11</sup>

## 2. Law and embodiment

*In order to understand this poetics of the oppressed one must keep in mind its main objective: to change the people – ‘spectators,’ passive beings in the theatrical phenomenon – into subjects, into actors, transformers of the dramatic action. ... the spectator delegates no power to the character (or actor) either to act or think in his place; on the contrary, [s]he assumes the protagonic role, changes the dramatic action, tries out solutions, discusses plans for change – in short trains himself [herself] for real action. In this case, perhaps the theatre is not revolutionary in itself, but it is surely a rehearsal for the revolution.*<sup>12</sup>

*There has been no other movement for social justice in our society that has been as self-critical as the feminist movement. Feminist willingness to change direction when needed has been a major source of strength and vitality in feminist struggle. That internal critique is essential to any politics of transformation. Just as our lives are not fixed or static but always changing, our theory must remain fluid, open, responsive to new information.*<sup>13</sup>

Our decision to present our ideas in physical rather than in written form was based on the premise that it is important to recognise the embodied nature of law through performance. We agree with Julie Lassonde’s suggestion that it would be ‘helpful to imagine embodied acts as expressing, generating and being inextricably intertwined with a specific set of legal performances.’<sup>14</sup> The goal of the project was twofold: a self-

<sup>9</sup> For a discussion of the relationship between feminism and legal method see Mary Jane Mossman ‘Feminism and Legal Method: The Difference it Makes’ (1987) 3 *Wisconsin Women’s Law Journal* 147.

<sup>10</sup> We first performed our paper in July 2006, at the Centre for Law, Gender and Sexuality conference ‘Up Against the Nation State’, University of Kent at Canterbury, June 2006. Following Oñati, we performed our paper for two further audiences; first the Association for the Study of Law Culture and Humanities Annual Conference. Georgetown University, Washington D.C. March 2007, and Professor Maneesha Deckha’s ‘Feminist Legal Theories’ class at the University of Victoria, Faculty of Law in March 2008. At each presentation we incorporated feedback from the previous performance.

<sup>11</sup> Feminist Geography Reading Group above note 5 at 436.

<sup>12</sup> August Boal *Theatre of the Oppressed* Theatre Communications Group New York 1979 at 122.

<sup>13</sup> bell hooks *Feminist Theory: From Margin to Centre* (Second Edition) Pluto London 2000 at xiii.

<sup>14</sup> Lassonde above note 1 at 1.

reflective journey of two feminist legal scholars interrogating their own approach to equality; and a self-conscious decision to portray that journey corporeally. To achieve these goals we intended to physically dislocate the expectations and disturb the equilibrium of an audience who are for the most part familiar and comfortable with using words, not bodies, to talk about bodies; we also wanted to provoke our audience of equality scholars, for whom the concept of equality may seem intuitively recognizable, to explore existing - and potentially inflexible - assumptions about what equality means.

The context of this question of legal performance of embodied acts stemmed from the conference challenge to ‘rethink equality’. However, the contextual nature of our own work was a convenient starting point, particularly as we have each been working to highlight the difficulties of applying the concept of equality in ways that truly enhance the lives of those relying on the concept. These feminist projects that we have separately embarked upon examine the ways in which particular laws construct normative notions of sex/gender and masculinity/femininity. They also question the dichotomous binaries that often constrain equality jurisprudence – for example, formal/substantive, sameness/difference, public/private, and recognition/redistribution.

In Gillian’s work, these questions arise in the realm of maternity and parental leave. A large part of her recent scholarship has focused on the ways in which laws in this area approach pregnancy and motherhood as a rational choice which justifies the differential treatment of male and female workers, without attending to the normative assumptions about the gendered nature of reproductive labour and childcare which underlie this worldview.<sup>15</sup> In contrast, a body of Sharon’s work examines the ways in which normative assumptions about sex/gender are perpetuated in the field of transgender jurisprudence, and how laws relating to the transgendered body continue to be dependent on dichotomised and heteronormative understandings of sex/gender and masculinity/femininity even as these laws purport to deal with the lived reality of non-linear formulations of sex/gender and sexuality.<sup>16</sup> To better understand what equality means, then, critically engaging with the different constructs of equality in each others’ work offered an important starting place.

At first glance it is clear that both projects necessarily involve an analysis of the impact of laws upon the body. In these separate projects we had regard to the impact of positive laws, and also the effect of social regulatory systems which introduce and perpetuate sex/gender norms, since law is ‘not radically distinct from culture and politics, but is simply one of a number of ordering mechanisms and is thoroughly imbued with the

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<sup>15</sup> See for example, Gillian Calder ‘The Personal *is* Economic: Unearthing the Rhetoric of Choice in the Canadian Maternity and Parental Leave Benefit Debates’ in Sharon Cowan and Rosemary Hunter (eds) *Choice and Consent: Feminist Engagements with Law and Subjectivity* Cavendish Publishing Ltd London 2007 p. 125; Gillian Calder ‘A Pregnant Pause: Federalism, Equality and the Maternity and Parental Leave Debate in Canada (2006) 14 *Feminist Legal Studies* 99; Gillian Calder ‘Recent Changes to the Maternity and Parental Leave Benefits Regime as a Case Study: The Impact of Globalization on Social Programs in Canada’ (2003) 15 *Canadian Journal of Women and the Law* 342.

<sup>16</sup> See for example, Sharon Cowan, Ralph Sandland and Andrew Sharpe ‘The Gender Recognition Act 2004: Debate and Dialogue’ (2009) *Social and Legal Studies* forthcoming; Sharon Cowan ‘“Gender is no substitute for sex”: A comparative human rights analysis of the legal regulation of sexual identity’ (2005) 13 *Feminist Legal Studies* 67; Sharon Cowan ‘“That woman is a woman!” The case of *Bellinger v. Bellinger* and the mysterious (dis)appearance of sex’ (2004) 12 *Feminist Legal Studies* 79.

dominant philosophies.’<sup>17</sup> Engaging with law therefore means not simply attending to the way in which law impacts upon our lived, embodied lives, but also having regard to the social regulatory norms that both construct and are constructed by law. These norms that suffuse law may in fact have a much more direct, immediate and ‘every-day’ regulatory effect on the body than positive laws. So while it may be unlawful to discriminate against a pregnant or transgender employee in the workplace, the lived realities of motherhood and sexual identity are clearly mediated by the social relationships and norms that create - and make it (un)comfortable to inhabit - our social spaces.<sup>18</sup> As a corollary to this, we can also say that practices of embodiment have an impact not only on the direct and immediate world around us, including legal regulation of our bodies, but that different bodily performances can also have a transformative effect on our relationships and social interactions.<sup>19</sup> For example, the every day performance of turning up in a space where one is not expected, and moving around in the world in a way that defies normative categories such as sex - these practices can challenge and transform law *and* social practice. What are our bodies expected to do? They are supposed to conform to our gendered sense of self and therefore not disrupt the social sense of *knowing* who is female and who is male; hence the discomfort with those who are said to be ‘men’ in the women’s bathrooms.<sup>20</sup>

This expansive view of what deserves critical attention in legal scholarship - and the question of how to engage - is also taken by Julie Lasonde in her work on performance and law:

When I say that such performances transform law, I mean much more than simply changes to rules written in statutes and in court cases. Robert Cover takes a similarly broad view of ‘law.’ Cover believes that we live in a place where multiple *nomos* or normative universes overlap and conflict.<sup>21</sup> State law is only one of them. Each community has rules guiding behaviour and narratives about how these rules were created ... A *nomos* is ‘the law’ for a specific community. Engaging with the law involves understanding the *nomos* we live in and others that surround us.<sup>22</sup>

Bringing our two quite divergent feminist projects into conversation seemed to offer some potential for a deeper understanding of the notion of ‘law’, and how it is performed. We embarked upon this enterprise, because we believe in the power and importance of collaborative work, and because we believed that the creative enterprise we had begun could not be properly done by one person, drawing on the reflection that

<sup>17</sup> Margaret Davies ‘Taking the inside out’ in Ngaire Naffine and Rosemary Owens (eds) *Sexing the Subject of Law* The Law Book Co Ltd Sydney 1997 p 25 at 32-3.

<sup>18</sup> For a discussion of the relationship between female bodies and gendered spaces see: Rebecca Johnson, ‘Bars, Breasts, Babies: Justice L’Heureux-Dubé and the Boundaries of Belonging’ in Elizabeth Sheehy (ed) *Adding Feminism to Law: the Contributions of Madame Justice L’Heureux-Dubé* Irwin Law Toronto 2004 p 143.

<sup>19</sup> As above.

<sup>20</sup> See for example *Sheridan v. Sanctuary Investments Ltd. (No. 3)* (1999) 33 C.H.R.R. D/467 (B.C.H.R.T.); *Croft v. Royal Mail Group Plc*, [2003] I.R.L.R. 592. See also ‘Transsexuals lose case over right to use the ladies’ *The Guardian* 15 August 2003. Most recently, stewards supervising use of the toilets at the 2008 Pride rally in Trafalgar Square, London, refused to allow MTF transgender folk to use the women’s toilets, insisting rather that they use the disabled facilities. See <http://www.transatpride.org/TransAtPride/Transphobia.html>.

<sup>21</sup> Robert Cover ‘Foreword: Nomos and Narrative’ (1983) 97 *Harvard Law Review* 4 at 33, cited in Lasonde above note 1 at 5.

<sup>22</sup> As above.

‘creative work requires a trust in oneself that is virtually impossible to sustain alone.’<sup>23</sup> Moreover, we also saw many moments of convergence, tension and dialogue between the equality claims made in our respective work. What our conversation showed was that while we are arguably both pursuing feminist ends, our projects when viewed individually, evoked compellingly different notions of what it meant to achieve equality.<sup>24</sup> Finding a way to understand these divergences pushed us to focus our project on alternative methods of thinking about equality within feminist legal frameworks.

We recognise that theoretical debates about equality often tend toward the abstract (especially the ‘equality of what?’ question<sup>25</sup>), or can become reduced to a diluted and oversimplified discussion of sameness versus difference. The result of a primarily cerebral approach to the legal concept of equality is often the elision of the practical complexities of the embodied lives of pregnant and transgendered people (amongst others). However, given that we were both working in areas where the body was the central focus we were committed to approaching our joint project in a way that acknowledged the importance of the body, not just in our written text but in the way we presented our ideas to the academic world, thus rethinking what it means to articulate ideas in a ‘scholarly’ way.<sup>26</sup> And although many have written about the relationship between legal norms, gender and the body, as Julie Lasonde points out, few have consciously used their bodies in order to shed a different kind of light upon this relationship.<sup>27</sup> Thus, we began to give some thought to how to bring the body into a joint presentation. This more ‘capacious’ approach to our scholarship it seemed would have to involve ‘stepping back from one’s investigation, looking for connections, [and] building bridges between theory and practice.’<sup>28</sup> One way of doing this is to explore the notions of performance and performativity.

<sup>23</sup> Vera John-Steiner *Creative Collaboration* Oxford University Press New York 2000 p 8 as cited in a review by Elizabeth Creamer Education Review on-line 2001, retrieved 23 March 2006 at <http://edrev.asu.edu/reviews/rev117.htm>. With thanks to Maureen Maloney, as cited in Adjintetty and all above note 4 at page 10. To embody this realization, our performance begins with an exercise that sees the two of us, on the ground, clasping hands, and then pulling back to harness the tension in each other’s bodies; we gently and gracefully pull each other up. For a discussion of this exercise see: ‘Pushing against each other’ in Augusto Boal above note 8, at 58-61. See however, the comments of Bell and Gordon who argue, ‘In particular, feminist or women’s work is more likely to be devalued when it is interdisciplinary or collaborative ... ; involves applied, action-oriented, political, or community-based collaborative research models ... ; is not mainstream or challenges established scholarly works ... ; or the nature of the topic or methodology is seen as less than serious’ as above note 4 at 650. Ours was the only collaborative contribution to the Oñati conference

<sup>24</sup> For example, in the maternity and parental leave context the feminist project is to achieve substantive equality, whereas in the transgender context, struggles have largely focused on formal equality claims.

<sup>25</sup> See for example Ronald Dworkin *Sovereign Virtue: The Theory and Practice of Equality*: Harvard University Press Cambridge 2000; Thomas Nagel *Equality and Partiality* Oxford University Press Oxford 1991. Of course the ‘equality of what’ question has also been open to feminist critique – see for example Catharine MacKinnon *Women’s Lives, Men’s Laws* Harvard University Press Cambridge 2005; Martha Nussbaum *Sex and Social Justice* Oxford University Press Oxford 1999; Amartya Sen *Inequality Re-examined* Oxford University Press Oxford 1992; Iris Marion Young *Justice and the Politics of Difference* Princeton University Press Princeton 1990. For feminist analysis of various different approaches to the question see Davina Cooper ‘“And you can’t find me nowhere”: relocating identity and structure within equality jurisprudence’ (2000) 27 *Journal of Law and Society* 249.

<sup>26</sup> Feminist Geography Reading Group note 5 at 438.

<sup>27</sup> Julie Lasonde ‘Embodying Norms: A Personal Reflection on my Interdisciplinary Artistic Practice’ (2008) unpublished manuscript on file with the authors and used with permission at 4.

<sup>28</sup> Bell and Gordon above note 4 at 656.



### 3. Law, gender and performance: Theory and practice

*If gender is a kind of doing, an incessant activity performed ... it is a practice of improvisation within a scene of constraint. Moreover, one does not 'do' one's gender alone. One is always 'doing' with or for another, even if the other is only imaginary.*<sup>29</sup>

The notion of performance is both a theoretical and practical vehicle for the interrogation of legal and social norms about sex and gender. Of course, the idea of linking sex/gender with performance is not new. There is now a well established body of theoretical literature, with central contributions by Judith Butler, on the relationship between sex/gender, sexuality and performance. Butler argues that gender is performed in the sense that it is the compulsory reiteration of an ideal. Gender is a 'stylized repetition of acts' rather than a concrete stable and immutable identity.<sup>30</sup> It is not a natural trait, but an effect of discourse, 'a set of repeated acts within a highly rigid regulatory frame that congeal over time to produce the appearance of substance, of a natural sort of being.'<sup>31</sup> For Butler, a single performed representation of gender, for example in a drag show, is connected to the idea of performativity; a performance as a bounded act can reveal that what we think of as natural is performative and citational, a show of repeated norms. This is not to say that we can *choose* our gender in our every day lives, for example in deciding to wear (or not to wear) a dress on any given day. We do not wake up in the morning and choose our gender as we choose our clothes. Rather we are only recognised and accepted as a particular gender, and hence as a human being, if how we live and perform that gender accords with hegemonic and constantly reiterated sex/gender social markers.

In one sense, we wanted to explore this idea of performativity and performance as it relates to gendered and heterosexist legal norms about how 'good' and 'rational' transgender or pregnant women were expected to behave, for example in the workplace or in family life.<sup>32</sup> We also wanted to explore how such legal and social norms could be disrupted. Gender norms and practices are shifted not only through changes in law and social policy but perhaps more importantly through the often small changes that take place in the everyday performance of these gender norms. Although transformation does not come about through one individual performance, and perhaps what can be achieved is limited, changes in the way that inscribed sex/gender norms are performed can and do disrupt the heteronormative gendered world we live in. A trans woman who turns up at work and uses the women's bathrooms is challenging both employment practices *and* formal laws

<sup>29</sup> Judith Butler *Undoing Gender* Routledge New York 2004 at 1.

<sup>30</sup> Judith Butler *Gender Trouble: Feminism and the subversion of identity* Routledge New York 1990 at 140.

<sup>31</sup> As above at 33.

<sup>32</sup> A recent example of the way in which gender and family norms have been challenged, and those who challenge them have been portrayed as grotesque or as 'freaks', is the case of Thomas Beatie, the trans man who, having kept his uterus, recently gave birth. See for example: <http://www.towleroad.com/2008/04/david-letterman.html> (David Letterman on his US television show referred to Beatie as 'an androgynous freak show'; <http://www.towleroad.com/2008/04/morning-joe-hos.html> (where the hosts of a US cable show *Morning Joe* referred to Beatie's pregnancy as disgusting and nauseating); and <http://sandrrose.com/2008/04/04/oprah-puts-on-a-freak-show/>. In reports of this case, inverted commas are often used around 'pregnant man' or even 'transsexual'. See for example <http://news.bbc.co.uk/1/hi/world/americas/7488894.stm>; <http://www.guardian.co.uk/world/2008/jul/04/usa.gender>; <http://news.sky.com/skynews/Home/Sky-News-Archive/Article/20082851311794>



that support the workplace rule that rather than male or female toilets, she must use the disabled toilet.<sup>33</sup> Her practice of using the women's bathrooms also challenges her fellow employees to rethink the question of what it means to be a woman, raising the possibility of acceptance of a spectrum of sex/gender identities and embodied social rituals within the broad category 'woman'.<sup>34</sup>

Similarly, the disruptive practice of breast-feeding a baby in public, or, as documented by Rebecca Johnson, the decision to challenge a pub's eviction of a customer for contravening its 'no minors' policy by breast-feeding a baby in public, demonstrates the impact of gendered bodily performances upon the world around us. The presence of the breast feeding woman also makes visible the multi-layered interconnectedness of the female body and gendered space – for example linkages 'between space, expression and equality; between workplace rules and the shape of family life; between law and society; between legal categories and the possibility of justice.'<sup>35</sup> As Johnson argues, any discussion of human rights or citizenship that takes seriously the 'embodiment of the breast-feeding mother' will prompt important questions about the relationship between boundaries of propriety and the policing of the 'leaky female body'.<sup>36</sup>

Feminists have long critiqued the tendency within legal and philosophical discourse to valorise mind over body, reason over emotion, objectivity over subjective knowledge or experience, particularly since the weaker term is often associated with femaleness as opposed to maleness.<sup>37</sup> Therefore, we aimed to highlight the ways in which we, as feminist academics who are aware of the law's dismissal of the (especially female) body,<sup>38</sup> often fail in our own work to confront the lack of attention to the body and to embodied performances of the sexed/gendered self.

We were still left, however, with a series of questions. How can we engage equality as it impacts on the pregnant and the transgendered body if we only do this as a matter of academic discussion? How can we more fully acknowledge the physical aspects of our work, seeing the body not as a separate entity to be theorised in abstract from the physical world it inhabits? In areas of law where it is clearly the body that matters, how do we talk about and re-imagine equality by using our bodies in a manner that challenges what it means to engage theoretically with any given legal question? An answer rested in what is one of the central aims of feminism, the contestation of the theory/practice divide whereby 'theorists can be practitioners and practitioners can be theorists.'<sup>39</sup> For

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<sup>33</sup> See the UK case of *Croft v. Royal Mail Group PLC* [2003] I.R.L.R. 592.

<sup>34</sup> This is not to say that these challenges are always (ever) successful on either count. It is also important here to guard against instrumentalising the lives and problems of transgender people for the purposes of challenging, or 'queering' heteronormative legal discourses, particularly when many trans people do not wish to challenge the sex/gender binary system, but to be accepted and live within existing sex/gender boundaries.

<sup>35</sup> Johnson above note 18 at 151.

<sup>36</sup> As above.

<sup>37</sup> Maneesha Deckha provides a provocative discussion of these binaries particularly as pertains to the divide between human and non-human animals, in 'The Salience of Species Difference for Feminist Theory' (2006) 17 *Hastings Women's Law Journal* 1 at 4-8.

<sup>38</sup> See for example, Nicola Lacey above note 7 at 98-100.

<sup>39</sup> Gayle Austin 'Feminist Theories: Paying attention to women' in Lizbeth Goodman and Jane de Gay (eds) *The Routledge Reader in Gender and Performance* Routledge New York 1998 p 136 at 139. For an insightful discussion of inextricable relationship between theory and practice for feminism see Ann Elizabeth Armstrong's discussion of the resonances between the embodied practice of *Theatre of the Oppressed* and feminist theories: 'Negotiating feminist identities and Theatre of the

us, performing the ideas prompted by collaborating on our separate projects enabled us to situate our bodies within the process of challenging the thinking/doing divide.

#### 4. **Embodying law: Dancing with dichotomies**

*Much feminist work on gender identity has focused on the idea of embodiment whose dynamic, mediatory connotations are held to partially overcome the dualisms of mind and body, determinism and practice and the material and non-material ... Above all, the feminist thematisation of the idea of embodiment emphasizes the unfinished and unstable elements of corporeal existence ... the body is a dynamic, mutable frontier.*<sup>40</sup>

*Imagination is memory transformed by desire.*<sup>41</sup>

Our original written paper focused on one particular question, which would become central to our later performances of the work: whether equality necessarily had to be conceptualised as a consistent unitary notion, applicable across all areas of law; or whether we could apply a nuanced and context-specific approach whereby, like the body, equality is both fluid and dynamic and can be theorised and practiced from a feminist perspective in ways suited to the framework in which it appears. We chose to perform this paper, to have it 'live' through its performed incarnation, recognising that the conference room provides a temporary performance space, which, like theatre, can be seen as a 'laboratory [in which the concept of gender can be dismantled].'<sup>42</sup>

The next step was to make the paper a physical being. Since we had playfully entitled our piece 'Dancing with dichotomies' in order to capture the dynamic yet binary ways that the key tensions in equality jurisprudence are often articulated; it seemed appropriate that we should at least begin by thinking about the possibility of dancing our paper. Despite the tensions evident in different applications and understandings of equality across our projects, it was important to us not to represent a completely conflictual picture in the physical representation of our work, since the collaborative project we had embarked upon had points of convergence as well as disagreement. Finally, we wanted to present a narrative about looking together for answers to our questions, even where we disagreed – dancing then seemed to lend itself well to our performance project.

The challenge then became how best to make this idea a reality. So we began, with help, to use the medium of dance to represent our written paper. As Julie Lassonde notes, dance seems to be an appropriate means of communicating ideas about the reiteration of gender norms, since dancers 'have a particularly good understanding of how the process of physical repetition can dramatically reshape and transform the body.'<sup>43</sup> However, in conversation with a friend<sup>44</sup> who is a performer and teacher of contact improvisation,<sup>45</sup>

Oppressed' in Jan Cohen-Cruz and Mady Schutzman (eds) *A Boal Companion: Dialogues on theatre and cultural politics* Routledge London 2006 p 173.

<sup>40</sup> Lois McNay *Gender and Agency: Reconfiguring the Subject in Feminist and Social theory* Polity Cambridge 2000 at 32-3.

<sup>41</sup> Augusto Boal *The Aesthetics of the Oppressed* Routledge London 2006 at 21.

<sup>42</sup> Dolan as cited in Austin above note 39 at 141.

<sup>43</sup> Lassonde above note 27 at 2.

<sup>44</sup> We are very grateful to Mark Reitma from Edinburgh whose work with our paper greatly influenced the path of this project.

<sup>45</sup> 'Contact improvisation is a dance with gravity, momentum, and everything else that is happening in the moment, including the physical and energetic contact the dance-partners share. It is a

we soon realised that choreographing our ideas would not be quite as simple as we had hoped. Our initial proposal was to present our ideas as physical movement without any speaking at all. Although we wanted to disrupt the usual format of an academic conference and try to ask people to step outside the conventional intellectualised format and into a physical setting, we found ourselves limited by our own imaginations.<sup>46</sup> Lassonde notes that ‘the repetition of gestures that transform dancers’ bodies and that eventually take a readable shape is part of the discipline of dance’;<sup>47</sup> however, we found ourselves needing to supplement the dance with performative text. Ultimately, it may be that we were not brave enough to put our ideas into this kind of practice but we decided to write a script for a play that we would perform through a combination of speaking and movement. By performing a play about dancing (which is in fact a conversation about issues central to feminist and other debates about equality), by using our bodies and ‘combining verbal and non-verbal elements simultaneously’, we hoped that we would more easily allow the audience to ‘visualise, to fill in blanks and gaps.’<sup>48</sup>

The design of the performance introduced another series of issues, in particular, problems flowing from our attempts to represent equality claims through the body. The equality claims that we were dealing with in our work raised the question of authenticity or speaking on behalf of others, as a central concern since as neither of us is pregnant or transgendered. Feminists have long been aware (partly through bitter experience) of the problem of speaking on behalf of others, and of the question of ‘who can *appropriately* represent whom.’<sup>49</sup> We had no intention of masquerading as trans or pregnant persons. Also, we did not want to take the dichotomised problems identified and critiqued in our own two projects, as necessarily representative of all of the problems that can arise across all equality claims. We wanted to make some more general claims about the ways in which equality can work for and against those who rely upon it in law, and about the ways in which we, as feminist academics, approach, perceive, articulate and live equality issues.

Again, since neither of us is, for example, a person of colour, or disabled, we did not want to speak on behalf of those who are – we did not want a literal example of discrimination which we could not physically represent. But on the other hand our script had to have an air of reality, something that could be watched and believed. Our friend Mark, who read it through the eyes of a practitioner of contact improvisation, suggested that using the characteristic of height as the metaphor for our dance would enable us to begin to enact and embody the legal questions embedded in our paper. With Mark’s

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whole-body study in the subtle art of non-verbal collaboration and co-creation. Often a meditative practice, improvisation is done without music, to allow space to tune into what is happening and the moment-to-moment impulses of the body.’ From ‘What is Contact Improvisation?’ accessed on-line at: <http://www.contactimprov.ca>.

<sup>46</sup> For discussion of the resistance to abandoning the written word completely, see Adjin-Tettey and others above note 4.

<sup>47</sup> Lassonde above note 27 at 2. See also Janet Wolff ‘Dance Criticism: Feminism, Theory and Choreography’ in Lizbeth Goodman and Jane de Gay (eds) *The Routledge Reader in Gender and Performance* Routledge New York 1998.

<sup>48</sup> Austin above note 39 at 136. We recognise that in many instances the written word allows the reader infinite capacity to bring their own imaginations to bear upon the subject, and that the physical representation of a subject can structure and sometimes therefore limit the ways in which an audience reads a subject. We hoped to open up rather than close down this capacity for imaginative engagement, but see our discussion of questions of race below.

<sup>49</sup> Susan Melrose ‘Introduction to Part 4: “What do women want (in theatre)?”’ in Lizbeth Goodman and Jane de Gay (eds) *The Routledge Reader in Gender and Performance* Routledge New York 1998 p 131 at 132.

assistance we began to work on this as our central metaphor. As the metaphor came to life, we were able to make visible in a tangible way, notions of established norms which were difficult to challenge.

## 5. The Script: “Re-Imagining Equality: Dancing with Dichotomies”

### Act One: The Warm-up

*Suspended from the ceiling of the room is a ‘thing’ – something that moves, but is unidentifiable as anything particular; to the side of the room are three boxes, labelled, and a rolled up ‘constitution.’ (There is a powerpoint presentation, someone else helps us with this)*

*Silently, we move into the centre of the tables, sit down on the floor and do a trust exercise – pulling each other up from the floor, and then lowering each other back down. Still without speaking, we then move to the place at the head of the table where the other presenters have been sitting.*

### Act Two: The Dance Begins

*Sharon (sitting at the head of the table): introduce the ideas in the paper (brief; 5 minutes or so)*

- *goals of the paper*
- *challenges*
- *key questions, methodology*
- *our two projects*

*Gillian (after a few minutes, moves into the centre of the tables and starts dancing); something ‘classical’ and recognizable (ballet); able to touch the thing*

Sharon: (not fazed, (not noticing), keeps talking, then) What are you doing?

### Scene One

Gillian: I am dancing

Sharon: What kind of dance is that?

Gillian: This is **dancing**

Sharon: That looks great, I would like to dance too. Can you talk and let me dance now?

*Gillian (moves back to the head of the table): talks about the project, similarly to Sharon*

- *goals of the paper*
- *challenges*
- *maternity and parental leave*
- *the pregnant body*

Sharon (*behind her, dancing for 2-3 minutes*): I can’t reach the thing

Gillian: Show me what you are doing.

*Sharon dances – and can't reach the thing*

### Scene Two

Gillian: You are shorter, naturally (a 'thing of god's appointing'), that's why you can't reach the thing, I wouldn't worry about it; nothing you can do about your height.

Sharon: That seems unfair to me.

Gillian: I don't think it's about fairness. I think it's just about accepting that for your dance – you don't need to touch the thing. You have chosen this different dance that doesn't include the thing.

Sharon: I should be allowed to try it with the thing. I think that both our forms of dance can include the thing – I just need a way to dance closer to it. Surely if we put our heads together there is something we can envision.

*(Gillian and Sharon pause, then Gillian pulls out constitution)*

Gillian: We the people ...

Sharon: What is that?

Gillian: It's some rules about how much help you can get when you have a problem with dancing – it says here that we can compensate for your shortness.

### Scene Three

Gillian: Well, look we do have a couple of boxes here, one is for tap dancing and the other is for belly dancing, so one of those might help you to reach the thing. Do you want one of these?

Sharon: Well there's a lot of tap dancing in what I am doing so maybe I could try that box?

Gillian: Ok – *(gives S box and then goes back to talking to the audience)*.

Sharon: *(gets on box dances but keeps falling off, tries for a bit and then interrupts G again)*. I can't do it on this box.

Gillian: Well, I gave you a box, to help you with height I'm not sure what else we can do. Box providers can only do so much. Anyway, I think it's the dance that's making you fall off the box, not the box. It's not the box's fault, it's a standard, regular box.

### Scene Four

Gillian: And seriously, what kind of dance is that?

Sharon: It is Charleston/tap.

Gillian: Ah, well you see the box is only for tap dancing, if you are mixing it with other dance it won't be right for you. Maybe you should just try to tap dance.

Sharon: But what if I want to do both? Have my own unique dance that incorporates other kind of dance? Or just do some wild dancing that doesn't have a name? What if a bunch of us want to dance together – we can't all fit on this box! Shouldn't I still be able to dance with the thing?

Gillian: I think that if what you really want is to be able to reach the thing, then you need to do either tap dance or belly dance, otherwise you won't fit the box.

### Scene Five

Sharon: Doesn't it make sense to make sure that however I am dancing, I can dance with the thing? Why do I have to have a pre-labelled box? Why can't I fashion my own box that just fits me?

Gillian: These kinds of boxes have existed for 100s of years. And anyway, then everyone would want their own box, and then we'd have an infinite number of boxes. It doesn't seem possible to have to customize boxes for everyone?

*(Gillian and Sharon pause and think about this one, too)*

Sharon: Maybe there should just be one box that everyone could use. Every human being could use the same box.

Gillian: I don't think that's going to work either -- I mean how could it be the right shape and height for everyone at the same time?

Sharon: *(spots another box in the corner)* Can I not have that box, it looks about right for me.

Gillian: OK -- but this box is for people doing Scottish country dance, you aren't doing that, I don't think that box is really for you *(she puts the box down)*

Sharon: But it looks the right shape and height and everything *(stands on box)*

Gillian: Well, smarty pants, if you are going to use that box you are going to have to change your dance.

Sharon: OK, I don't think that's fair, but at least I know how to do that one. I'll change my dance so that the box matches my dance. Ha. *(Sharon dances Scottish country dance on the box, and is easily able to reach the thing)* Fab, this is perfect. Lalalala.

### Scene Six

Gillian: That looks fun ... (*G dances too*) Hang on, I can't reach the thing when I do Scottish country dance, so I need to use the box too.

*Gillian gets on the box; Scottish country dance box*

Sharon: Hey what you doing? You can't use that box.

Gillian: Why not?

Sharon: First of all, because you can reach it without the box. Boxes should be reserved for those that need them. And second, and most importantly, because you aren't Scottish, and you don't know the steps.

Gillian: First of all, I didn't need the box, I want it. And secondly, I am so Scottish – I was born in Paisley, and even though I am now a Canadian citizen – it still says born in Scotland on my passport.

Sharon: That doesn't count. You haven't lived your life as a Scottish person, you haven't grown up eating fried food, everyone who knows you knows you as Canadian. In fact, how much more Canadian can you get? None, none more Canadian.

Gillian: But I really am Scottish – and as you know, there are none so Scots as the Scots abroad. Plus, I make a mean vegetarian haggis. And I can learn how to dance the steps.

Sharon: Compared to me you are not Scottish!

Gillian: That may be so, but compared to – that guy – I am.

Sharon: But I spent years learning these steps, you can't just come in and decide you are a Scottish country dancer and get on the box just like that. You can't be Scottish and Canadian.

Gillian: But how is that fair? Being Scottish is part of how I understand myself in the world. Who gets to decide who is Scottish, and who can dance on the Scottish box?

### **Act Three: The Dilemma and the Questions**

Together: (*Gals sit down on the box*) **This is a box dilemma.**

Gillian: So how do we resolve our dilemma?

Sharon: I think instead of asking what dance we are doing, we should be asking what kind of box do we need.



Gillian: **GOOD POINT**, you are SO smart and beautiful. But wait, actually, maybe the question is really about why the thing is so important to us. We can dance perfectly well without the thing, which is perhaps more trouble than it is worth. Maybe we should just forget about the thing. Maybe we should cut the thing down or move it to the side. We don't need the thing. **Maybe fairness is not about getting the right box but about getting rid of the thing that we need boxes for.**

Sharon: I don't think we can do that. What about the people who want to dance with the thing or stretch in that particular way? People who want to touch the thing because it stretches their bodies in a particular way and makes them feel good about the dance they are doing? If we cut it down, we are stopping them from being able to dance in the way they need. To us the thing is an added bonus, but maybe some people need the thing.

Sharon and Gillian: Hmmmm, let's think about our options:

Gillian: Leave the thing as is. Change is exhausting.

Sharon: But there are so many things that we could do to make sure people can dance with the thing! Leave the thing, but enable everyone to dance with the thing with lots of different boxes – assuming, of course, that fairness can come in the form of a box?

Gillian: Or, we could cut the thing down so no one can dance with thing up there (that's kinda fair I suppose?) but they can still dance with it on the ground.

Sharon: Or, move the thing to the side, so that you can dance on the side with it if you want, but it isn't the central focus of the room.

Gillian: Or, we could just lower the thing, so maybe instead of getting people closer to the thing, we bring the bring the thing closer to people?

Sharon: Or, we could make other things and hang them at different heights. Not everyone will have THE thing, but they will have a different but similar thing.

Gillian: Another dilemma. How to solve this? Should we make this decision just based on our own experience today? Can we decide without consulting the people it will affect – all those potential dancers out there?

Sharon: Do we have to choose just one?

Gillian: No.

Sharon: Do they all have to get us to the same place?

Gillian: Dunno.

Sharon: We can't decide this ourselves.

Gillian: No

Sharon: Ok. What are other people doing to solve their box dilemmas? Let's ask about the dancing, the boxes and the thing – what do other people think we should be focusing on?

Gillian: Maybe we can ask everyone to just turn to the person sitting next to them, and tell your partner what our performance evoked for you, does it have any resonance with your own work. What for you was the box, the dance and the thing?

*(Encourage the audience to speak to each other for 5 minutes and then start a full group discussion.)*

THE END

## 6. Performing equality: Reactions and resistance

*When a society loses sight of [those] ideals and grants obeisance to words alone, law becomes sterile and formalistic; lex is applied without jus and is therefore unjust.<sup>50</sup>*

At the end of our performance we asked members of the audience to turn to the person next to them and ask/tell them what they had seen in our performance, before beginning a more general group discussion. We had aimed to provoke a conversation about whether or not the debates that people saw within our performances, which ranged across a spectrum of equality contexts, really had the same issues at their core, or whether the context specific application of equality generated an inherently different set of issues in each area. Given the range of insights on and interpretations of our performance, it became clear to us that many of the questions about what equality means both conceptually and practically are context and situation specific. Indeed, people could not even agree whether 'the thing' hanging from the ceiling was a goal, or itself the problem or obstacle to a good life. The exercise demonstrated in a tangible way that alongside associated concepts such as discrimination, accommodation and difference, equality was not seen as a fixed and immutable concept.

At the time of writing the script has been performed for four different academic audiences. The discussion at the end of each performance (and the conversations between individual audience members) allowed for the usual distinction between paper givers and receivers to become somewhat blurred.<sup>51</sup> In the comments we received from all four sets of audiences, we were surprised by the range of responses to the general question, 'what did you see in our performance?' Some people saw substantive issues, for example the scenario as a metaphor for enabling someone to get a good job (where the thing represented the object to strive for, in this case employment); or as a disability claim (seeing the use of boxes as an accommodation issue). Others saw a means of bringing out current debates. For example, because the script includes a discussion about who gets to decide whether or not Gillian is properly Scottish, some saw in our performance the question of who is a woman for the purposes of the law (i.e. some could see a representation of the question, do we get to self identify our sex/gender, and when, if ever, is it justifiable for someone else, including the law, to deny your own gender self representation?).

<sup>50</sup> As above at 139.

<sup>51</sup> Feminist Geography Reading Group above note 5 at 437.

At some of our presentations, our performance seemed to invoke unease in our relatively small audience. Some of the anxiety was articulated, such as the comment of one participant that she didn't like at all being asked to discuss our performance with the person next to her, as she said she was much more comfortable within a conventional academic setting of presenter, paper and audience question and answer. We also sensed disquiet, which was not explicitly articulated, that our presentation had clearly stepped outside of the bounds of what had been expected. We ourselves also experienced some discomfort at some of our performances, in sensing that our contribution had not been taken seriously, but rather had offered simply a moment of levity or entertainment. While we had aimed to engage our audience in a less formal way, overall we sensed some resistance to our project, and even where the context was one of a feminist conference to rethink equality, we did not feel able to fully explore with many of the participants the creative and theoretical aspects of our project.

Interestingly for us, although the aim was to make the metaphor as general as possible, and therefore not tied to any one particular equality issue, it was not until we performed our dance for the third time at a conference in the United States that someone raised the issue of race. Unlike issues of sexual identity, or physical ability, which were explicitly raised in all previous discussions, most of our audiences did not identify with – did not *see* – issues of race or ethnicity that could have been prompted by our performance of current equality debates. This has encouraged us to reflect on the ways in which we embodied equality in our performance, since despite our best intentions to draw in many different equality debates, our performance did not seem to facilitate a discussion about equality that centred such a pre-eminent equality issue. Since we are both white women, we wondered whether our piece invited the audience to compare us against each other rather than think about broader issues of equality in society, including race. However, the experience also prompted us to question how it can be that our audience did not see, in our open ended performance of a very general metaphor, issues connected to the ongoing concerns about how to ensure that the concept of equality benefits racialised minorities. It appears that, perhaps unsurprisingly, a performance – like a text, or even a law – that is rendered 'race neutral' makes it more difficult for the spectator (or reader) to *see difference*, and the ways in which race is implicated therein.<sup>52</sup> Our experience serves as a reminder to us that we must endeavour to centre these issues in our work if they are to be taken seriously in any discussion of equality issues, and continually question whether law and legal concepts 'can truly exist apart from the colour-conscious society in which they exist.'<sup>53</sup>

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<sup>52</sup> Williams above note 5 at 48.

<sup>53</sup> As above at 120. Our fourth performance, which was presented at a law school seminar for a course on equality, and was therefore the first delivered to a non-conference audience, led to different sort of ambience and engagement. Thanks to Professor Maneesha Deckha and the seminar students in Feminist Legal Theories, at the University of Victoria, Faculty of Law, Spring 2008. The feedback from these students was, though somewhat tentative, more participatory than we had experienced in the previous settings involving primarily academic audiences. It also enabled us to think about the relationship between this project and our own approaches to pedagogy as law teachers and our ongoing commitments to bringing creative methodologies to our thinking about the law. For a recent study on the relationship between legal pedagogy and outsider course enrolment in Canadian law schools see: Natasha Bakht and others 'Counting Outsiders: A Critical Exploration of Outsider Course Enrollment in Canadian Legal Education' (2007) 45 *Osgoode Hall Law Journal* 667 at 674-692. For a discussion of the use of theatre in the law school classroom as a particular form of transformative experiential learning see: Gillian Calder, 'Embodied Law: Theatre of the Oppressed in the Law School Classroom' (2008) 1 *Mask: The Online Journal of Law and Theatre* forthcoming.

## 7. Dancing with equality – a dynamic concept?

*I cannot overemphasize the need for play, for in play you don't extract yourself from the activity. In order to invent I felt it necessary to make art a practice of affirmative play or conceptual experimentation. The ambiguity of play and its transitional character provide a sense of belief whereby a shift in direction is possible when faced with a complexity that you don't understand. Free from scepticism, play relinquished control. Play allows one to accept discontinuities and continuities; it also allows one to happen upon solutions or invent them. However, even in play the task must be carried out with conviction. It's how we do what we do that confers meaning on what we have done.<sup>54</sup>*

Performing our paper instead of orally presenting it was challenging for our audiences (as well as ourselves), many of whom were left quite uncomfortable when pushed outside of the conventional legal conference format. Other people found the experience entertaining and interesting, and were excited to engage in discussion with us about the dance. However we did not want the 'success' of our project to rest purely on its entertainment or difference factor. Instead, as we set out to do when we first envisioned our paper corporeally, we turned our minds to what, in fact, we had learned from performing equality. Although using performance as a means of understanding the dynamic nature of equality had been our starting assumption, putting our bodies into the performance helped us to *understand* equality as a dynamic rather than static concept. To this end, using bodily movement was an especially apt method for conveying the message that theorising about equality cannot be divorced from its physical context. If we really were going to rethink equality, perhaps we couldn't do it sitting still.

A comment we received from Mary Jane Mossman after our performance in Spain was the catalyst for this important realisation. She saw why we had chosen to present our work physically through movement, and in particular through the metaphor of dance. As she articulated it, perhaps in order to understand the dynamic nature of equality we needed to be moving ourselves. This resonated for us with the words of the artist Richard Serra describing his installation of enormous sculptures which form the centre piece of the permanent collection of the Guggenheim museum in Bilbao, Spain. Two days before our Oñati presentation we had wandered through the installation, each of us wearing the headphones that museums often give their patrons, and we were overwhelmed by these huge elegant formations. The sculptures are formed from massive pieces of steel - some flat, some curved - which the viewer is invited to walk between and around, and to touch. The biggest of these is called 'The Snake',<sup>55</sup> comprised of three curved steel panels measuring thirteen feet high and fifty-two feet long. Serra says of his work:

I placed the sculptures to establish a free-flowing circulation ... Meaning can only be ascertained as the viewer moves through space, that is, through the space of each individual sculpture and the space of the installation as a whole. The meaning of the installation will be activated and animated by the rhythm of the viewer's movement. *Meaning occurs only through continuous movement, through*

<sup>54</sup> Richard Serra *Richard Serra: The Matter of Time* Steidl Publishers Bilbao 2005 at 50.

<sup>55</sup> Richard Serra *Snake, 1994-1997* permanent exhibit at Guggenheim Bilbao Museoa

*anticipation, observation and recollection ... Each person will map the space differently (our emphasis).*<sup>56</sup>

Equality is a concept at play in many different sex/gender based discrimination claims. Although the notion that equality is fluid is one that could be explored in written work, it seemed to us that it could also be illuminated as a dynamic concept if seen whilst *moving through* an analysis of different equality contexts, rather than while standing still in any one field. In addition, *each person maps the space of the particular equality context differently* – that is to say, equality plays out in different and often competing ways for differently situated social actors, and it is these social actors’ embodied experiences of (in)equality that shape and contour the resulting debate about what it means to be equal. Therefore, we imagined that the dynamic nature of equality, and the different work that the concept does in these various areas of discrimination claims, could be more fully understood if we were to try to present the problems of equality both by using our bodies in movement, and by situating a real set of equality problems within the visual framework of the physicality of our differently shaped bodies.

Serra goes on:

The sculptures are not objects separated in space. On the contrary, they engender the spatial continuum of the environment in which they exist. They impart form to the entire space; they shape the space through axes, trajectories, and passages between their solids and voids.<sup>57</sup>

In a similar way we might say that our bodies also (en)gender the spatial continuum in which they exist; that our bodies are not atomistic individual non-relative objects separated in space; and that it is through the shape and trajectories of gendered bodies, as well as the spaces between them, that we form the world in which we live and give shape to the laws that regulate us. We can see this, for example, in the ways that pregnant or transgendered bodies have continually shaped and shifted the equality based claims used in maternity/parental leave and trans marriage cases – as Lassonde says, ‘our embodiment is not static’.<sup>58</sup> But we would also suggest that these equality debates – in fact any legal problematic - can be presented as a physical performance, and through this performance we can escape the constraints of intellectualising the problems and try to revisit them through the body. As Augusto Boal writes, ‘the whole body thinks, not just the brain.’<sup>59</sup>

Cognizant, too, that people’s senses are often put to sleep by their social habits<sup>60</sup> we wanted to find a way of re-engaging people’s senses about the world, specifically in relation to our project about the relationship between equality and the body. In this context one deeply ingrained academic habit we wished to confront was the social habit of listening to someone read a written paper to you from across a desk. Although this traditional method of delivering a paper could be seen as a type of embodied experience, we found that there is something profoundly different about the visual aspect of

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<sup>56</sup> The quotations are written by Richard Serra and reproduced in Serra above note 54 at 141. With thanks to Andrew Petter and Maureen Maloney for finding the published text.

<sup>57</sup> As above.

<sup>58</sup> Lassonde above note 1 at 8.

<sup>59</sup> Boal above note 8 at 49. For further discussions of the use of Boal’s work in the context of law see Calder above note 53; Adjin-Tettey and others above note 4.

<sup>60</sup> Lassonde above note 1 at 14, citing Lygia Clark.

performing a paper as opposed to sitting still and reading. The immediate engagement of the physical is one aspect. Julie Lassonde, for example, has suggested that ‘using the body to talk about the body’ at the very least reminds the audience of their own physical bodies in a way that pure text does not.<sup>61</sup> Thus, in being presented with the visual, as well as with the written word, our audience had the opportunity to engage in an embodied way with the question -- what is this piece trying to say to me – with the result that viewers might see something that even the performers have not anticipated. This also challenges ‘academic conventions and protocols relating to scholarly presentation, knowledge production, mode of representation and communication in academe,’<sup>62</sup> as well as the traditional academic spatial and physical divisions between presenter and audience. For us, this is a specifically feminist approach which situates both our bodies and our self-reflecting minds in the centre of our work, and challenges masculinist, racist and classist traditions of learning and theorising.<sup>63</sup>

## 8. Conclusion: Embodying Law

*Nothing is simple. Each day is a new labour.*<sup>64</sup>

*The most affirming thing anyone can do for you is demand that you push yourself further.*<sup>65</sup>

In this project we tried to find a way of challenging ourselves and others whose work focuses on the effects of laws upon the body, to think about the effect of the body on laws, to place the body at the centre of our work, and remind ourselves not to privilege the mind at the expense of this process of embodiment. This is not just an academic exercise. As Adjin-Tettey and others have recently suggested, ‘this call to couple an embodied, physical fight against oppression with intellectual and academic activism is frequently heard from women activists on the “front lines”.’<sup>66</sup> The goal was not to privilege one way of thinking or doing above any other, but to confront and interrogate, if possible, the process of rethinking and engaging with what is often an abstract legal ideal – equality.

In each of the equality projects that we are engaged in, we continue to strive to centrally locate the body in theoretical and practical ways. In this paper we have offered an analysis of how and why we attempted to challenge established norms of academic practice, as well as engage with the legal concept of equality in an embodied and physically fluid rather than static, theoretically constrained way. One reflection we leave this project with is our own embodied experience; that this kind of endeavour is often not taken as seriously as other forms of academic scholarship. This tells us much about the experience of trying to bring the audience with us on our methodological and embodied journey - that the performance is ‘only as revealing as the interpreter is convinced.’<sup>67</sup> Our broader reflections about what we have learned through this project

<sup>61</sup> Lassonde above note 27 at 6.

<sup>62</sup> Adjin-Tettey and others above note 4 at 8.

<sup>63</sup> See cited materials above note 5.

<sup>64</sup> Williams above note 5 at 130.

<sup>65</sup> This oft-quoted statement from Adrienne Rich (accessed on-line at: [www.u.arizona.edu/~jacovijl/Rich-Claiming%20an%20Education.doc](http://www.u.arizona.edu/~jacovijl/Rich-Claiming%20an%20Education.doc)) was used to provoke discussion at a feminist critique panel at LSA/CLSA in Montreal, May 2008 above note 3.

Thanks in particular to Sarah Lambie for facilitating discussion of this point.

<sup>66</sup> Adjin-Tettey and others above note 4 at 31.

<sup>67</sup> Jessica Silbey ‘Filmmaking in the Precinct House’ (2005) 29 *Columbia Journal of Law and the Arts* 107 at 172.

are tied much more to an understanding of the dynamism of both equality and inequality, and the acknowledgment that substantive learning can result by pushing our own comfort levels with what is, and what should properly be, the subject, the object and the method of legal knowledge.

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