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VAWA @ 20: ART, VIOLENCE, AND WOMEN

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Morrison v. United States threatens to shrink our understandings of the violence women suffer and the varieties of harmony they deserve. In that way this Supreme Court decision that struck down the Violence Against Women Act's civil provision proved a disaster in far more ways than one.

Women often experience brutality, and seek—what, precisely? Ah, the old woman question. To understand these endurances and quests, we must fathom with far more precision what “violence” means to women, and what its opposite looks like to them. Until quite recently, such grand definitional projects seemed beyond the human ken. At the inception of second wave feminism, poet Muriel Rukeyser wrote: “What would happen if one woman told the truth about her life? The world would split open.”²

More than twenty years later Catharine MacKinnon clamored that we barely know what a woman *is*, let alone all the sensations that she experiences.³ Robin West, too, lamented that patriarchy had strangled women's abilities to speak about their pain and pleasure.⁴ Yet some progress prevailed: From feminist and womanist artists and critics came stories and even entirely new vocabularies defining women's mingled experiences with violence, happiness, suffering, bliss, rape, abortion, work, and sex. Louise Erdrich wrote novels about women's struggles to gain family, stay safe, and nourish even the tiniest seeds of happiness in the face

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² *Kathe Kollwitz*, in MURIEL RUKEYSER, *OUT OF SILENCE: SELECTED POEMS* 132 (Kate Daniels ed., 1994).

³ See CATHARINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* 117 (1989) (“Women's situation offers no outside to stand on or gaze at, no inside to escape to, too much urgency to wait, no place else to go, and nothing to use but the twisted tools that have been shoved down our throats.”).

⁴ Robin West, *The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory*, 15 WIS. WOMEN'S L.J. 150, 153 (2000).

of violent poverty and white supremacy.⁵ In Austria, novelist Elfriede Jelinek described the myriad ways capitalism and male dominance trash and kill women.⁶ Irish installation artist Cathy Wilkes voiced the rigors and despairs that come with living within this beleaguered thing, the female body.⁷ Angela Harris and Kimberlé Crenshaw studied how race and gender interacted in women's experiences of violence as well as in their own practices of world- and self-building.⁸ Carrie Mae Weems argued that history's violence creates the present moment and also engaged in peacemaking in her own efforts to reclaim that past in her art.⁹

Two thousand's *Morrison* laid waste to these truths due to the majority's etiolated imaginings of woman violence's marauding effects. Yet, feminist lawyers striving to write a constitutionally secure anti-violence law learned early in the legislative process that any ambitious definitions of violence would be hammered down by Congressional politics. What was the violence that VAWA would go after in its civil remedy, which was powered in part by the Commerce Clause?¹⁰ Though VAWA begins promisingly enough, announcing that it protects women's rights to be "free from crimes of violence motivated by gender,"¹¹ this potentially galactic compact was later limited by then-Senator Joseph Biden¹² to those offenses that constituted "a felony against the person or property where the conduct presented a serious risk of physical injury to another."¹³ VAWA also specified that it did not protect against "random" acts of violence that

⁵ One of my favorites of Erdrich's remains LOUISE ERDRICH, *THE BEET QUEEN* (1986).

⁶ ELFRIEDE JELINEK, *THE PIANO TEACHER* (Joachim Neugroschel trans., Grove Press 2009) (1983); ELFRIEDE JELINEK, *LUST* (Michael Hulse trans., *Serpent's Tail* 1993) (1989).

⁷ See Yxta Maya Murray, *Feminist Engagement and the Museum*, 1 BR. J. AM. LEG. STUDIES 31, 52-54 (2012).

⁸ See Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 189 U. OF CHI. LEGAL FORUM 139 (1989); Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1993); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990).

⁹ See Yxta Maya Murray, *From Here I Saw What Happened and I Cried: Carrie Mae Weems' Challenge to the Harvard Archive*, 8 UNBOUND: HARV. J. LEGAL LEFT 1 (2012).

¹⁰ Congress also invoked section 5 of the Fourteenth Amendment, which the Court declared constitutionally unsound on the unspeakable grounds of the *Civil Rights Cases*. *Morrison*, 529 U.S. at 621.

¹¹ Violence Against Women Act (VAWA) of 1994, 42 U.S.C. § 13981(d)(1) (2014).

¹² Biden was VAWA's backer, and he limited the definition of crimes of violence in response to questions raised by Senators of the Judiciary Committee and the Justice Department. Victoria F. Nourse, *Where Violence, Relationship, and Equality Meet: The Violence Against Women's Act's Civil Rights Remedy*, 11 WIS. WOMEN'S L.J. 1, 13-15 (1996).

¹³ VAWA, *supra* note 11 at § 13981(d)(2).

could not be proved motivated by gender under a preponderance of the evidence.¹⁴ Not under VAWA, then, would women be free of the violences that Erdrich, Harris, Weems, and others described. That is, VAWA would not protect them from gendered white supremacy,¹⁵ of being cast aside by capitalist culture when they no longer proved attractive to the male gaze,¹⁶ or of the pains of raising children without support.¹⁷ But, perhaps, they might at least be liberated of felonious abuses that bruised them so into submission, terror, and silence that even Congress agreed these crimes rippled into the broader worlds of U.S. markets.¹⁸

Morrison then amputated this modest definition of violence at its root. Even the most recognizable and agreed-upon forms of violence against women (rape, battery) did not affect commerce, we learned from the Supreme Court: “Aggregate” impacts would not trigger the Commerce Clause since such a calculus would threaten federalism.¹⁹ As MacKinnon wrote dryly: “How rape became ‘purely interstate’ challenges the imagination.”²⁰

What then of the feminist experiment of defining women’s experiences of violence and limning their desires for a better life? Upon reading *Morrison*, one feared that the world would never be split open. Yet if the decision seemed to solder the universe shut, the project begun by Rukeyser, Erdrich, Jelinek, MacKinnon, West, Harris, Wilkes, Weems, and so many others deserves continued study by woman-identified lawyers. Feminist legal scholars and activists laboring to staunch violence against women, and to build its happier antagonist, which I would label as “peace”—whatever that refractory word might mean—need to continue unearthing the significances of these conditions despite *Morrison*’s failures.

Art provides a resource for such seekers. I have written in other venues

¹⁴ VAWA, *supra* note 11 at § 13981(e)(1).

¹⁵ Which is the violence described by the likes of Louise Erdrich, *supra* note 5; as well as Crenshaw and Harris, *supra* note 8; and Weems, *supra* note 9.

¹⁶ This is Jelinek’s complaint, *supra* note 6.

¹⁷ Wilkes’ work can be seen as an indictment of our society’s treatment of mothers. Murray, *supra* note 7.

¹⁸ *Morrison*, 529 at 615 (“Congress found that gender-motivated violence affects interstate commerce ‘by deterring potential victims from traveling interstate, from engaging in employment in interstate business, and from transacting with business, and in places involved in interstate commerce; . . . by diminishing national productivity, increasing medical and other costs, and decreasing the supply of and the demand for interstate products.’” (quoting S. REP. NO. 103–138, at 29 (1993)).

¹⁹ *Id.* at 615: “If accepted, petitioners’ reasoning would allow Congress to regulate any crime as long as the nationwide, aggregated impact of that crime has substantial effects on employment, production, transit, or consumption.”

²⁰ Catherine A. MacKinnon, *Disputing Male Sovereignty: On United States v. Morrison*, 114 HARV. L. REV. 135, 150 (2000) (quoting *Morrison*, 120 S. Ct. at 1752).

how visual art might inform legal processes,²¹ and also how lawyers and peacemakers need to build a more complete vocabulary of violence and peace.²² Here, I bring these ideas together, and insist that art made by women should also constitute what I have called *artifacts* in the feminist anti-violence, and perhaps pro-peace project.²³ The term “artifacts” designates art made by people traditionally turned into mute legal subjects, and whose works communicate untold truths about women’s experiences of violence and their interpretations of peace.²⁴ These art products are both art objects—the *art*—as well as evidence that legal actors may study—the *facts*. Women’s artifacts help us define troublesomely inchoate concepts of brutality and concord so that we may bring such revelations into legal thought.

In the remainder of this essay I contribute to this undertaking, and study the difficult oeuvre of collagist Wangechi Mutu. Mutu was born in Kenya and lives today in Brooklyn,²⁵ and her astonishing, often ungentle coalition of magazine clippings earned her a retrospective at the Brooklyn Museum and representation by the Saatchi Gallery.²⁶ In interviews, Mutu has specified that her art articulates the world of “chimeras, these creatures, these woman warriors . . . they’re not me, per se, they’re human conditions.”²⁷ Many of Mutu’s clippings are taken from pornography and fashion magazines that feature African-American models, and she often combines features of Black and White women.²⁸ She takes as her missions the study of how Black male and female bodies have been dragooned by White supremacy, and also finds inspiration in how Black women can still

²¹ See, e.g., Yxta Maya Murray, *Rape Trauma, the State, and the Art of Tracey Emin*, 100 CAL. L. REV. 1631 (2012).

²² See Yxta Maya Murray, *Law and the Possibilities of Peace*, SEATTLE J. FOR SOCIAL JUSTICE (forthcoming July 2014), available at <http://ssrn.com/abstract=2461525>.

²³ See Murray, *supra* note 21, at 1663.

²⁴ *Id.*

²⁵ These details can be found in Rachel Wolff, *She’ll Probably Cut Up This Magazine Too*, NEW YORK MAGAZINE, Aug. 25, 2013, <http://nymag.com/guides/fallpreview/2013/wangechi-mutu-2013-9/>.

²⁶ *Id.*; see also Wangechi Mutu, SAATCHI GALLERY (Oct. 28, 2014, 7:56 PM), http://www.saatchigallery.com/artists/wangechi_mutu.htm.

²⁷ Interview with Barbara Kruger, quoted in Klaus Ottmann, *The Human Form Divine: Wangechi Mutu’s “Enceptual” Art*, in MUTU, GUGGENHEIM BERLIN, & DEUTSCHE BANK, WANGECHI MUTU: ARTIST OF THE YEAR 2010 64 (2010).

²⁸ See Deborah Willis, *Wangechi Mutu*, BOMB MAGAZINE, Feb. 28, 2014, http://bombmagazine.org/article/1000052/Wangechi_Mutu (“Black models and figures are almost absent in contemporary art and even in popular fashion magazines. I’d like to hear your thoughts about this and how you are re-inserting these images from pin-up girls to imaginary figures. You also insert white skin, blond hair, and red lips, and place these cut-out body parts and merge with black skin.”).

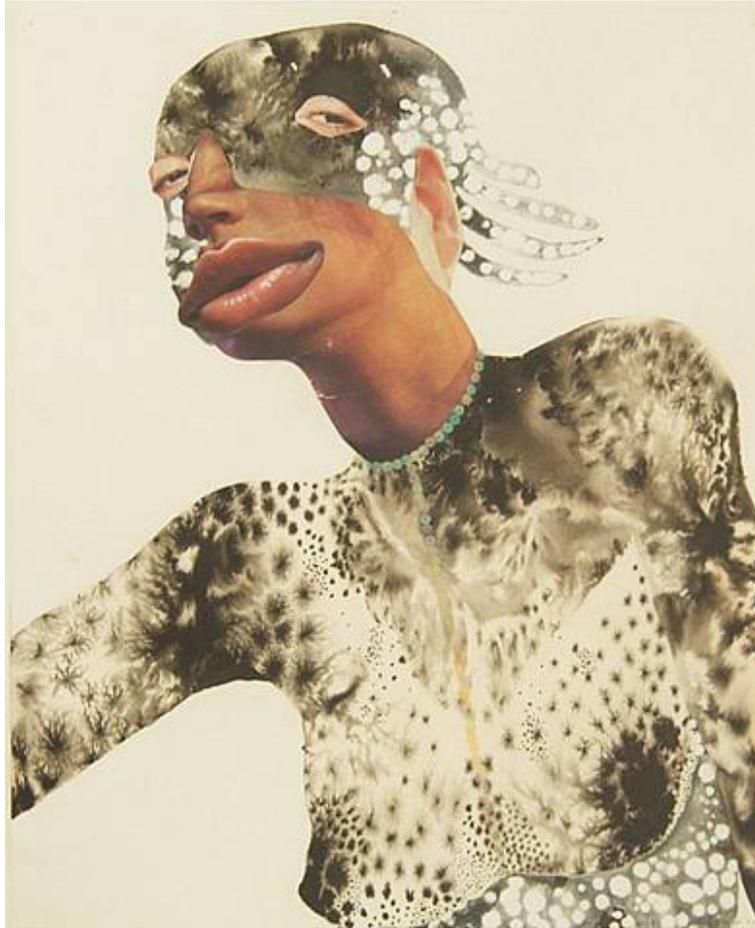
be “inappropriate” and transcend.²⁹ Here are but two of Mutu’s portraits of this feminine “human condition;” both are *Untitled*.



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²⁹ *Id.* (“The black female body has been violated and revered in very specific ways by the outsider—Europeans, especially. The issues that pertain to race: pathologizing the black mind, exoticizing and fearing of the black body, objectifying the body as a specimen, or a sexual machine, or a work animal, or relating the black body to non-human species as a way to justify cruelty . . . All these are practices that are placed excessively upon the black female body.”); *see also* description of the performer Grace Jones, and how she is inappropriate and transcendent. *Id.*

³⁰ WANGECHI MUTU, *UNTITLED* (2004), *available at* http://www.saatchigallery.com/imgs/artists/mutu_wangechi/20091124042145_wangechi_mutu_untitledne.jpg.



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In the first image, we find a complex study of atrocity. Here, Mutu composes a woman out of a broken body parts and squashed motorcycle bits. She is bleeding. She is also in free fall, like Lucifer tumbling to earth.³² Either a pink plant is blooming from her skull or we are observing the sanguinary evidence of an exit wound. But even in the midst of this danger, the woman looks at her observer with a smile on her face, and poses her body like a coquette's. From the burst of abdominal blood flies out what appears to be some sort of cyborg butterfly, which is perhaps a distressing or sublime version of the fetus.

Mutu's work nestles self-respect within a larger map of abuse. This subject behaves like a good girl even as she disintegrates and plummets to her death. Beauty is mapped onto her wounds—the head flower made of

³¹ WANGECHI MUTU, UNTITLED (2004), available at <http://www.escapeintolife.com/artist-watch/wangechi-mutu/>.

³² "How art thou fallen from heaven, O Lucifer, son of the morning! how art thou cut down to the ground, which didst weaken the nations!" *Isaiah* 14:12 (King James).

blood, the spectral butterfly swooping out from her exploded womb. The subject's recalcitrant dignity doesn't come from her good girl behavior or her sublime accessories, though: It comes from her sad, calm eyes, which do not shirk from looking straight back at you.

We learn about violence from this piece of Mutu's. Violence here does not only encompass federally and state-recognized felonies. Rather, the Mutu's chimera's injuries most probably stem also from "random" violence that issues from history, that hails from racism and consumer culture, and that emerges from the ether of the legal world mapped and locked by Morrison. It is found equally in the gushers of blood as it is in the high heels that trap the chimera's feet, which are so pertly posed like a movie star's. And this violence is not just local—it spans high and wide enough to be universal, even aerial. This violence comes from all directions. Yet it does not foreclose the agency and self-possession that the woman warrior expresses through her eyes.

We cannot see the force that bludgeoned the chimera. She is out of context. By so placing her in mapless space, Mutu pushes back against the limiting vision of Morrison to show that the powers of history and greed combine to create a violence that is so large that it proves handless and eyeless. It flows from more than one trigger. And its effects can be felt not only within the borders of a state but also in the sky, by human angels. This manifesto on violence obviously creates a conundrum for lawyers, who need labels and discrete causes and effects. But Mutu's puzzle also offers an opportunity for feminist legal agitators, who may be encouraged by her work to explore legal or perhaps post-legal³³ redresses that grapple with the legacies of slavery and colonialism, of rape and reproductive control, without ever collapsing into the superstition that women's self-possession has been destroyed by subordination. Mutu's art certainly goads us to work to name violences that extend far beyond extant legal imaginings, arguing that these as-yet unnamed origins of harm are killers as deadly as the felonies described by the vanquished VAWA.

Does the second work teach us about a feminist fathoming of "peace?" It comes closer to that condition than the first, certainly. In this image we discover a woman wearing skins made of stars or animal pelts, or maybe she has self-defensively taken on the colors of her environment like a chameleon. Either her face, or a mask, is made of mountains and moons. Her expression, again, conveys an extraordinary message. In Mutu's words, she transcends and is inappropriate. To me, also, she is remarkable because *she looks satisfied*.

³³ See Murray, *supra* note 22, at 27-28.

Is satisfaction a definition of peace? And why should this concept of peace matter to women? I have argued in other work that peace should form a specific goal towards which we should strive in law and through other technologies³⁴—but before we try to create a peaceful world, we have to find out what that signifies. I have defined peace before in terms of love, connection, and nourishing relationships (what some have called, also, “positive peace”), as well as an absence of violence (also known as “negative peace”).³⁵ I have additionally attempted to avoid a stereotypical and all-encompassing interpretation of the term “peace,” particularly as I have concluded that peace will always exist on a continuum (as does violence) and probably in an incomplete state.³⁶

But despite these intricacies, peace’s creation remains a worthy ambition. A woman’s peace is a wary, difficult, striding thing—not passive or nerveless in the least. Women’s demands for peace will certainly be arduous and sometimes clashing, but they will hustle for rights greater than the crumbs that Congress and the high Court would not even give us. For one thing, women’s peace should mean more than the absence of violence.³⁷ What else does it require? To circle back to Mutu: It may encompass satisfaction—but how do you get that for women? Well, feminists have already started to come up with a list:

Peace probably means that we could be ourselves.³⁸ It would mean that we could have kindred, family, and comrades.³⁹ We could have work.⁴⁰ We

³⁴ See, e.g., *Law and the Possibilities of Peace*, *supra* note 22; Yxta Maya Murray, *A Jurisprudence of Nonviolence*, 9 CONN. PUB. INT. L.J. 65, 122-23 (2009).

³⁵ See *Law and the Possibilities of Peace*, *supra* note 22, at 20.

³⁶ *Id.* at 18-21.

³⁷ This is the negative definition of peace, according to peace theorist Johan Galtung. *Id.* at 20.

³⁸ See, e.g., Dylan Vade, *Expanding Gender and Expanding the Law: Toward a Social and legal Conceptualization of Gender that is More Inclusive of Transgender People*, 11 MICH. J. GENDER & L. 253, 273 (2005) (“I would like to let go of the need to have a cohesive linear narrative, and the need to have just one narrative. My life is complex. All our lives are complex. I would like to see us use our narratives in ways that empower us and that allow us to freely explore, and become, ourselves. For this to become a possibility, we have to tell and share many more narratives, the complicated and the simple, and to be very careful not to reify or institutionalize any particular one.”).

³⁹ See, e.g., Pedro A. Malavet, *Outsider Citizenship and Multidimensional Borders: The Power and Danger of Not Belonging*, 52 CLEV. ST. L. REV. 321, 324 (2005) (describing the communitarian values of LatCrit, a Latina/o-centered brand of legal theory).

⁴⁰ See, e.g., Jill Maxwell, *Leveraging the Courts to Protect Women’s Fundamental Rights at the Intersection of Family Wage Work Structures and Women’s Role as Wage Earner and Primary Caregiver*, 20 DUKE J. GENDER L. & POL’Y 127, 128 (2012) (“most women, including married women, need to work to support their families”).

would have dignity.⁴¹ We could get pleasure.⁴² We would have housing.⁴³ We would even have a shot at the pursuit of happiness.⁴⁴ Mutu's woman made of the earth and sky gives us yet another part of peace to strive for, which is her cheerful, prideful ease. Women and men deserve a world where such an attainment is possible. The law should help us create such a world.

Is it too zany to hope for such a beautiful future? Is it too dangerous? Right now, it's certainly legally inconceivable.

But that's why we should look to art, to help pave a road and a language that works for this implausible, precarious good. Artifacts not only give birth to new knowledge about that which is brutal and that which is pacific, but also to new aspirations, and new ways of being. Art helps make that which is unspoken and chanceless into a coherent question—such as:

What would happen if we tried to enact a Peace for Women Act?

The realist replies: Probably a whole bunch of meetings and then nothing. First, women couldn't agree on what peace mean in the first place. And even if they did, it wouldn't get past the legislature. And even if it did, then it would get struck down by the courts. We'd be looking at a probably 99.9 percent chance that the PFWA would be yet another failure.

But there's always the possibility that something great could come of it. Maybe we would have a conversation about not only what kind of world we didn't want, but what kind of tradition we wanted to create. Maybe within all the loss there could be at least one success—some small legislative or judicial victory that could push women's welfares forward. Maybe we could develop non-legal institutions or structures or relationships that would foster the conditions that we seek to make. And then maybe, just maybe, the world would split open a little wider. And within the space that we built, we could lay a table for Mutu's smiling, superheroically masked chimera. We could sit next to her for a while and feel something like satisfaction. For in doing this worthy work, we wouldn't have just softened women's free fall. We wouldn't have labored only for a right to damages for the damage done to us. Rather, we could imagine all it would take to be what we wanted to be. We could set a course for a world where we might sometimes feel as if we were made of all the bounties of the earth and the heavens, and were at one with mountains, stars, wildebeests, and luminous moons.

⁴¹ See, e.g., Julie Shapiro, *Reflections on Complicity*, 8 N.Y. CITY L. REV. 657, 677 (2005) (noting that as a feminist anti-essentialist and advocate of LGBT rights the author encourages a "broader struggle seeking liberty and dignity, not only for lesbians and gay men but also for other marginalized communities").

⁴² See, e.g., Katherine Franke, *Theorizing Yes*, 101 COLUM. L. REV. 181 (2001).

⁴³ See, e.g., Lenora M. Lapidus, *Doubly Victimized: Housing Discrimination Against Victims of Domestic Violence*, 11 AM. U. J. GENDER SOC. POL'Y & L. 377 (2003).

⁴⁴ See, e.g., West, *supra* note 4.

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