

Legal Aesthetics in The Touching Contract

Enright, Máiréad; Kinsella, Tina

DOI:

[10.1177/1743872120987113](https://doi.org/10.1177/1743872120987113)

License:

Creative Commons: Attribution (CC BY)

Document Version

Publisher's PDF, also known as Version of record

Citation for published version (Harvard):

Enright, M & Kinsella, T 2021, 'Legal Aesthetics in The Touching Contract: Memory, Exposure and Transformation', *Law Culture and the Humanities*, pp. 1-23. <https://doi.org/10.1177/1743872120987113>

[Link to publication on Research at Birmingham portal](#)

General rights

Unless a licence is specified above, all rights (including copyright and moral rights) in this document are retained by the authors and/or the copyright holders. The express permission of the copyright holder must be obtained for any use of this material other than for purposes permitted by law.

- Users may freely distribute the URL that is used to identify this publication.
- Users may download and/or print one copy of the publication from the University of Birmingham research portal for the purpose of private study or non-commercial research.
- User may use extracts from the document in line with the concept of 'fair dealing' under the Copyright, Designs and Patents Act 1988 (?)
- Users may not further distribute the material nor use it for the purposes of commercial gain.

Where a licence is displayed above, please note the terms and conditions of the licence govern your use of this document.

When citing, please reference the published version.

Take down policy

While the University of Birmingham exercises care and attention in making items available there are rare occasions when an item has been uploaded in error or has been deemed to be commercially or otherwise sensitive.

If you believe that this is the case for this document, please contact UBIRA@lists.bham.ac.uk providing details and we will remove access to the work immediately and investigate.

Legal Aesthetics in *The Touching Contract*: Memory, Exposure and Transformation

Law, Culture and the Humanities
1–23

© The Author(s) 2021



Article reuse guidelines:
sagepub.com/journals-permissions
DOI: 10.1177/1743872120987113
journals.sagepub.com/home/lch



Máiréad Enright

Birmingham Law School, UK

Tina Kinsella

Institute of Art, Design + Technology, Dun Laoghaire, Ireland

Abstract

This paper considers how an artwork might play a role in the political, legal and aesthetical ‘working-through’ of historical injustices. With specific reference to Sarah Browne and Jesse Jones’ participatory performance project, *The Touching Contract* (2016), we consider how traumatic affects from Ireland’s past continue to shape the present. Drawing primarily on the work of Jacques Rancière and Bracha L. Ettinger, we argue that *The Touching Contract* has the capacity to transform participants’ relation to legal history in two ways. First, by juxtaposing unspoken histories of female bodily vulnerability in relation to law with legal form during an encounter with participatory performance, this art project generates ‘mystery’, producing a productive ‘interval’ (Rancière) between the common sense of legal history and its potential re-calibration. Second, in its production of a relational ‘affectosphere’ (Kinsella), *The Touching Contract* provokes participants’ capacity to engage with that interval, to be genuinely affected by the transmission of legal history and respond to it in new ways.

Keywords

law and aesthetics, law and art, Rancière, Ettinger, Ireland, contract, performance, trauma, affect

Corresponding author:

Máiréad Enright, University of Birmingham, Birmingham, UK.

Email: m.enright@bham.ac.uk

I. Introduction

We are concerned with how particular artworks might play a role in the political, legal and aesthetic ‘working-through’ of historical trauma. We know that if traumatic material is not worked-through, it is repeated.^{1,2} Working-through of traumatic legal histories is an urgent task in Ireland.³ In this piece, we analyse Sarah Browne and Jesse Jones’ *The Touching Contract*⁴ as a containing structure for repressed legal histories and thwarted political desires – what Sara Ahmed terms ‘histories that hurt’.⁵ As a participatory performance piece involving unknown attendees for its realization, *The Touching Contract*’s outcomes do not depend on the artists’ intentions. Rather, it deploys artistic and aesthetic devices to create what we might call a semi-structured ‘situation’ putting the potential traumatic affects of historical injustice ‘in-play’ for those participating in the performance to respond to, or not. Any outcome is entirely dependent upon the particular cohort of attendees at the performance in any given time or place.

The Touching Contract was performed several times; in Dublin during September 2016, and in London months later. We both collaborated with the artists at various stages in devising these performances. Máiréad Enright worked on the contractual documents and archives discussed in this, on ‘drafting workshops’,⁶ in which women testified to difficult encounters with Irish law.⁷ Tina Kinsella was a participant in one workshop, and a collaborator on ‘The Voice Emerges’, a precursor to *In The Shadow of the State*. This paper begins by describing a performance in Dublin which we both attended as participants.⁸ The next section suggests the centrality of legal affect to *The Touching Contract*. It shows how this performance depended on generating an atmosphere of vulnerable exposure to law and its related traumas. The third section uses Jacques Rancière’s work on ‘mystery’ to examine the legal aesthetics of *The Touching*

-
1. Bracha Ettinger, *The Matrixial Borderspace* (Minneapolis: University of Minnesota Press, 2006), p. xi.
 2. Ettinger, *The Matrixial Borderspace*, p. 272.
 3. Ruth Fletcher, “#RepealedThe8th: Translating Travesty, Global Conversation, and the Irish Abortion Referendum,” *Feminist Legal Studies* 26 (2018), pp. 233–59.
 4. For images from performances see “Sarah Browne | The Touching Contract,” (2016). <http://www.sarahbrowne.info/work/the-touching-contract/> (accessed 15 February 2019); Create, “The Touching Contract – In the Shadow of the State,” *Create – National Development Agency for Collaborative Arts in Social and Community Contexts* (2016). <http://www.createireland.ie/in-the-shadow-of-the-state/the-touching-contract> (accessed 15 February 2019); ‘Artangel’, (2016) <https://www.artangel.org.uk/in-the-shadow-of-the-state/the-touching-contract/> (accessed 20 December 2020).
 5. Sara Ahmed, “Beyond the Affirmative Gesture,” in *The Affect Theory Reader* (Durham & London: Duke University Press, 2010), pp. 29–50.
 6. For further discussion of these methods see ‘Interview – with Sarah Browne and Jesse Jones; “Towards a Post-Patriarchal State”, Visual Artist’s News Sheet, Nov/Dec 2016,’ *Joanne Laws* (2016).
 7. “Sarah Browne | In the Shadow of the State,” (2016).
 8. In this piece, we generally refer to ‘participants’ rather than ‘audience’, to indicate that we are not talking about passive spectators.

Contract. Ranci ere suggests that ‘dissensual community’ can emerge in the encounter with mystery. We suggest that by juxtaposing histories and memories of female bodily vulnerability with legal form, *The Touching Contract* generates a disturbing and productive ‘interval’. This can produce a dissensual community that can pressure the common sense of legal history and seek its potential re-calibration. The final sections move in a different direction to suggest how *The Touching Contract* acts on its participants, to produce potentially transformative responses. Kinsella elsewhere theorises the atmosphere of *The Touching Contract* as a connective ‘affectosphere’: a transitive and relational sensorium that provokes participants’ capacity to be affected by traumatic legal history, and to respond to it in transformative ways.⁹ That work grounds this paper’s final sections.

II. The Performance

The Touching Contract was performed for the first time at the Rotunda hospital in Dublin, on the evening of 23 September 2016.¹⁰ The Rotunda is an important site in Irish revolutionary history. Located on Parnell Square, it sits a little away from the Garden of Remembrance: a national monument to those who ‘died in the cause of Irish freedom’. A statue to the nationalist leader CS Parnell stands nearby. Inside, a plaque records that the revolutionary Countess Markievicz lay in state there after her death. In 2016, Irish institutions were taken up with centenary commemorations of the 1916 Easter Rising; a founding event of the modern Irish state. That year, the Rotunda hosted *Birth of a Nation*: an exhibition celebrating its own links to the Rising. The Rotunda is the oldest continuously operating maternity hospital in the world. In Dublin, doctors pioneered the use of oxytocin to induce contractions and provide doctors with spatial and temporal control over pregnant woman’s labouring bodies, so-called ‘active management of labour’.¹¹ The performance coincided with the Abortion Rights Campaign’s annual ‘March for Choice’,¹² demanding the repeal of the Constitution’s 8th Amendment, which prohibited most abortion access, and denied some health-preserving treatment to birthing women.¹³ Setting *The Touching Contract* in this space at this time both directed participants’

9. Tina Kinsella, “Querying the State: Activism to Affectivism in *The Touching Contract*,” unpublished public lecture for Artangel, Swedenborg Society (November 2016).

10. Sarah Browne, “*The Touching Contract* (Dublin) with Jesse Jones,” <http://www.sarah-browne.info/work/the-touching-contract/> (accessed 6/10/2019).

11. Rosemary Mander and Jo Murphy-Lawless, *The Politics of Maternity* (Oxford and New York: Routledge, 2013), p. 266.

12. “In the Home and in the 8th. That’s Where Women Belong in the Constitution,” *The Irish Times* (2016). <https://www.irishtimes.com/life-and-style/people/in-the-home-and-in-the-8th-that-s-where-women-belong-in-the-constitution-1.2784516> (accessed 20 December 2020). The theme of the March in that year was ‘Rise and Repeal’, and expressly drew on imagery related to the 1916 Rising.

13. The 8th Amendment was repealed in a referendum in May 2018.

attention towards Irish law's revolutionary promises, and away from them, to its actual bodily consequences.

The Touching Contract is one iteration of a four-part artistic project, *In The Shadow of the State*.¹⁴ It was partly commissioned by the Arts Council of Ireland /An Chomhairle Ealaíon, as a response to the 1916 centenary.¹⁵ Proposing the female body as a repository of thwarted legal histories and desires, *In the Shadow of the State* probes the 1916 centenary's dominant legal aesthetic: how the state managed, performed and reproduced public commemoration to construct and curate the image of the Nation and its laws. These commemorations re-circulated claims about the 'Proclamation of Independence' as an origin of Irish law, rooted in rights discourse and a concomitant set of claims to national freedom.¹⁶ In the Proclamation, the Rising's leaders claim the allegiance of the nation and its people, promising in exchange a legal order rooted in rights and equality. The Proclamation was publicly displayed and read, often in military ceremonies.¹⁷ School children read and re-drafted copies on celebratory 'Proclamation Days'.¹⁸ Although related interventions acknowledged women as 'forgotten' revolutionary leaders, less was then said about the wrongs done to women in the years and decades after 1916, when revolutionaries obtained law-making power.¹⁹ New long-lasting laws limited reproductive rights,²⁰ enabled obstetric violence,²¹ incarcerated disobedient women in institutions such as the Magdalene Laundries²² and Mother and Baby Homes,²³ and facilitated the forced adoption, export, abuse and fatal neglect of their children.²⁴

14. Joanne Laws, "Towards a Post-Patriarchal State," *The Visual Artists' News Sheet Online* (2016).

15. Catherine Frost, "Summoning Sovereignty: Constituent Power and Poetic Prophecy in Ireland's 1916 Proclamation of the Republic: Constituent Power and Poetic Prophecy in Ireland's 1916 Proclamation: Catherine Frost," *Constellations* 24 (2017), pp. 76–88. Ciara L. Murphy, "'The State of Us': Challenging State-Led Narratives through Performance during Ireland's 'Decade of Centenaries'," *Journal of Contemporary Drama in English* 6 (2018), pp. 146–59.

16. Frost, "Summoning Sovereignty."

17. RTE, "Proclamation Reading at the GPO," (2016). <https://www.irishtimes.com/1916/proclamation-reading-at-the-gpo-1.2588747> (accessed 16 February 2019).

18. Independent.ie, "Proclamation Day: The Day Pupils Remembered - and Won't Ever Forget," *Irish Independent* (2016).

19. See e.g. M. McAuliffe, L. Gillis, E. NiChleirigh and M. Almqvist, "Forgetting and Remembering-Uncovering Women's Histories at Richmond Barracks: A Public History Project," (2016). As attention shifts to the War of Independence and the foundation of the Free State, these questions are receiving more public attention; Susan Byrne, "'Keeping Company with the Enemy': Gender and Sexual Violence against Women during the Irish War of Independence and Civil War, 1919–1923," *Women's History Review* (2020), pp. 1–18; Linda Connolly, "Sexual Violence in the Irish Civil War: A Forgotten War Crime?," *Women's History Review* (2020), pp. 1–18.

20. Ruth Fletcher, "Pro-Life Absolutes, Feminist Challenges: The Fundamentalist Narrative of Irish Abortion Law 1986–1992," *Osgoode Hall Law Journal* 36 (1998), pp. 1.

21. Máiréad Enright, "'No. I Won't Go Back': National Time, Trauma and Legacies of Symphysiotomy in Ireland," in *Law and Time* (Oxford and London: Routledge, 2018), pp. 46–74.

22. James M. Smith, *Ireland's Magdalen Laundries and the Nation's Architecture of Containment* (Manchester: Manchester University Press, 2007), p. 316.

23. Paul Michael Garrett, "Excavating the Past: Mother and Baby Homes in the Republic of Ireland," *British Journal of Social Work* (2015), bcv116.

24. Paul Michael Garrett, "'Unmarried Mothers' in the Republic of Ireland," *Journal of Social Work* (2016), 1468017316628447.

In *The Touching Contract*, Browne and Jones depart radically from the official narrative, emphasising the female body as a repository for these legal histories.²⁵ In this, their work resonated with a series of ongoing unofficial demands for reproductive justice: for abortion access, and reparation for past institutionalisation of marginalised mothers.²⁶ In 2016, the state determinedly disavowed these claims, repeatedly invoking the legitimacy of the laws inherited from 1916, in the language of sovereignty, constitutionalism and democracy.²⁷ *The Touching Contract* works the emerging tension between the promise of official legal discourse and women's marginalised experience of maternal, obstetric and reproductive violence. It makes space for complex consideration of law's experiential dimension, specifically the transfer of intergenerational trauma that follows such violence.

Participants in *The Touching Contract* moved in single file, down a steep staircase, entering an ante-room set up to look like a state office, perhaps a social welfare office. On entering, they queued to sign a 'Declaration of Consent', as a condition of entering the performance. The Declaration is a hybrid document: part contract, part consent form. It read:

This is an Artistic Performance. The Performance will begin with the sound of a triangle. You will be Touched by one or more female Performers, nominated by the Artists. That Touch will be improvised, direct and non-forceful. Performers will exercise their Discretion in deciding how to Touch you. However, the Touch(es) Administered maybe experienced as having one or more of the following qualities. . .²⁸

The Touching Contract itself was never fully identified, though the Declaration alluded to it. All participants signed the Declaration. Few questioned its content or read the Terms and Conditions. On signature, each form was sealed in an envelope and returned to its signatory. Mediators – austere women dressed as officials – oversaw this process. Although the Declaration informed participants that they would be touched during the performance, and that there were certain 'risks' inherent in that touch, it provided no specifics. Some participants opted to simply 'observe' the performance, agreeing to be blindfolded so that they could hear but not see it.

Participants – perhaps 100 – moved from the ante-room into the larger, high-ceilinged Pillar Rooms. This space hosts fundraising concerts and events. It is not a ward or examination room. Six performers, in uniform blue tracksuits, waited there. The performers

-
25. We could think of this work as sensitising participants to a 'sexual contract' underlying the Proclamation's social contract; Carol Pateman, *The Sexual Contract* (London: Polity Press, 1988). For Pateman, entering into a social contract is simultaneously entry into a fraternal sexual contract which orders men's access to women and makes men masters over them. Pateman particularly emphasises the subordination of women's birthing power to the masculine 'political birthing' of the nation.
 26. See, for example, "SOS Ireland - Survivors of Symphysiotomy," *Survivors of Symphysiotomy Ireland*, (2019); "Justice for Magdalenes Research – A Resource for People Affected by and Interested in Ireland's Magdalene Institutions," (2013)
 27. Máiréad Enright and Sinéad Ring, "State Legal Responses to Historical Institutional Abuse: Shame, Sovereignty and Epistemic Injustice," *Éire-Ireland* 55 (2020), pp. 68–99.
 28. Sarah Browne, <http://www.sarahbrowne.info/work/the-touching-contract/> (accessed 6/10/19).

were Noelle Browne, Mary Duffin, Léann Herlihy, Sinéad Keogh, Deirdre Murphy, Rebecca Reilly and Noni Stapleton. Their identity was unclear, but their uniform invoked police, nurses or perhaps religious figures. Some participants later observed that performers seemed to outnumber them, though the reverse was true. To Alma Kelliher's unsettling soundtrack, these performers led participants through a loosely choreographed, but improvised, pattern of movements. At first, the performers were silent, but when the midwife Philomena Canning²⁹ struck a triangle, they began to pace among the participants.

Participants were not told what the performers' actions signified.³⁰ The performance, however, was in five rough phases. The first was a period of examination or inspection – touching and manipulating participants' clothing, bodies and faces. The performers appeared to be searching for a target, applying unspoken criteria. There were echoes of searches in prison, or processes scrutinising and categorising large populations. In the second phase, it seemed to become clear that the performers had been looking for the few men among the participants. Six were brought into the centre of the room in a circle. The performers moved them through a series of ritualised positions. Each performer stood opposite one man and made a triangle over their own faces with their hands. According to Tina Kinsella, this gesture represents women's silencing.³¹ The performers, moving their hands downwards, inverted this triangle, encouraging the men to mirror their actions. As the gathered female audience watched, the sequence ended with each man standing legs spread and hands on his stomach, forming what seemed to be the outline of a uterus. Then, in a gesture familiar from histories of political imprisonment,³² each performer removed a small item – writing on rolled up paper – from her mouth and secreted it on a man's body.

In the third phase, the soundtrack gained momentum. The performers aggressively herded and separated the participants – sometimes shouting, invoking the numbers of articles of the Constitution (8, for example, referencing the 8th Amendment prohibition on abortion). Once the participants were in two groups, the performers broke into wild, angry or sexualised dancing. At the end of this phase, they appeared to collapse – exhausted and sometimes weeping. Eventually, they gestured to participants for help. Some offered their hands. The performers, beginning with those who had helped them, led the participants into the centre of the room, and began to join them together – placing hands on shoulders or heads, or over faces, intertwining the bodies so that they could

29. Philomena Canning was a midwife and champion of home births who was subject to a long-running legal dispute with the Health Service Executive (HSE) of Ireland. She died of cancer in March 2019, aged 59, having recently settled her case with the state.

30. Since we both had been involved in the 'drafting workshops', we could suppose that the performers' gestures and movements reference oppressive experiences of 'legal touch' discussed there, but this would not have been apparent to most participants.

31. Tina Kinsella, "Reconsidering 1916: Embodiment, Memory and Relational Affect in Sarah Browne and Jesse Jones," *In the Shadow of the State*, unpublished conference paper for *Making Memory—Visual and Material Cultures of Commemoration in Ireland*, National College of Art and Design, Dublin (September 2016).

32. In Northern Irish history, 'comms' are messages smuggled out of prison secreted on individual bodies.

each feel each other's weight, warmth and discomfort. Initially, this was a moving collective, as performers knotted bodies together, but eventually it became an awkward immobile mass. Finally, the performers led participants out of this central cluster slowly, one by one. Performers embraced each participant, looking them directly in the eye, and hugging them closely, before leading them slowly back into the ante-room where they had signed their Declarations. Some participants experienced this embrace as an act of reconciliation or care. Others thought it invasive or hypocritical. Browne and Jones remained outside the Pillar Rooms rather than directly overseeing it. Throughout the performance, the lack of language or direction, the unpredictability and ambiguity of the performers' movements, the soundtrack, the institutional surroundings and the necessity of intimate stranger contact contributed to an unsettled, and sometimes menacing atmosphere. Participants mounted little resistance.

After the performance, participants were invited to convene in the ante-room where they were offered warm, over-brewed tea and soggy buttered toast. The environment was redolent with the atmosphere of shock and hospitalisation, of curious comforts and structures of care encountered and offered in times of need and distress. Participants were initially silent – slowly consuming the tea and toast – before beginning to talk to one another. These conversations were an opportunity for participants to explore its legal and historical references. A selection of objects which women had selected during the earlier drafting workshops (considered infused with law's touch) were available for inspection and handling before and after the performance. They included a speculum used in gynaecological examination; a cigarette offered in a prison cell; a long-awaited passport; a patient chart from a difficult labour; an adopted woman's birth certificate and an expired car tax disc that precipitated a distressing encounter with a policeman. An archive of historical legal documents referenced in the Declaration was also available for participants to examine and read.

III. The Touching Contract: Producing an Unknowable Affective Encounter

The Touching Contract evokes legal affects which differ starkly from those around the public proclamations that made up so much of 2016's commemorative landscape. Focusing on legal affect allows us to explore what is usually unarticulated in law or forced into its background, to address those of its material effects that are resistant to language and symbolization processes. Affect indexes fields of experience that are 'extra-textual' and immanent to encounters between bodies.³³ From this perspective, law can also be experienced prior to the structures of language, cognitive reasoning or symbolization. Affect directs our attention to how psyche and body are experientially imbricated by way of a pre-personal, aesthetic engagement with the world that does not rely upon cognitive faculties for its operation. Gesturing towards how psycho-corporeal sensations or intensities structure our agency in the world and enable our movement through

33. Simon O'Sullivan, "The Aesthetics of Affect: Thinking Art beyond Representation," *Angelaki: Journal of Theoretical Humanities* 6 (2001), pp. 125–35.

it, Brian Massumi notes that the challenge of affect is to '[r]ethink body, subjectivity and social change in terms of movement, affect force, and violence - before code, text and signification'.^{34,35} As Greta Olson observes, the 'assemblages of nodes, waves, materials and intensities' that affect implies, upset dominant social understandings of law as rooted in text in favour of those which are pre-verbal, embodied and relational.³⁶

In *The Touching Contract*, law's potential to flatten the field of experience – through categorization and abstraction^{37,38} – is re-galvanized through a move from text to touch. In emphasising this move, we do not suggest that *The Touching Contract* presents law primarily or only as text.³⁹ Neither do we suggest that legal text carries no affect. Rather, we are drawing attention to a provocatively simplified division in the structure of *The Touching Contract*. Although *The Touching Contract* begins with contractual processes – reading, risk evaluation and signature – the Declaration itself does not regulate the experience of the performance. Rather, it primes participants for an unknowable affective encounter. Though critical theory warns of their capacity for violence,⁴⁰ contracts are often understood to promise control, or at least a little predictability.⁴¹ The Declaration here, whilst warning participants of the risks of engagement with the performance, withheld much of the detail which might allow evaluation of those risks. It only told participants to expect “improvised, direct and non-forceful” touch “applied at the Performer’s discretion using their Body, an Object or Instrument” and “delivered by one or more Performers or by another Participant or Participants at their instruction”. It deliberately expressed risks as feelings and sensations:

- Sensations of embarrassment (e.g. blushing, sweating shaking)
- Sensations of awkwardness, self-consciousness, nervousness or anxiety (e.g. giggling, digestive discomfort)
- Feelings of bewilderment or boredom
- Interpretative difficulties
- Heightened arousal
- Regret for time lost
- Sense of social difference heightened through interpretative performance (gender, age, class, sexuality, ethnicity)
- Sense of anti-climax

34. Brian Massumi, *Parables for the Virtual* (Durham and London: Duke University Press, 2002), p. 66.

35. Massumi, *Parables for the Virtual*, p. 337.

36. Greta Olson, “The Turn to Passion: Has Law and Literature Become Law and Affect?,” *Law & Literature* 28 (2016), pp. 335–53.

37. Patricia J. Williams, *The Alchemy of Race and Rights* (Harvard University Press, 1991), p. 6.

38. Williams, *The Alchemy of Race and Rights*, p. 276.

39. For example, in contract law, silence or a gesture can sometimes constitute acceptance.

40. Friedrich Nietzsche, *Nietzsche: 'On the Genealogy of Morality' and Other Writings* (Cambridge University Press, 1994), p. 45; Walter Benjamin, “Critique of Violence,” *Reflections: Essays, Aphorisms, Autobiographical Writings* (1978), pp. 277–300.

41. Angela Mitropoulos, *Contract and Contagion: From Biopolitics to Oikonomia* (Chico, California: AK Press, 2012), p. 263.

- Outbursts of emotion (tears, rage, confusion, laughter)
- Sense of becoming undone
- Sense of being overcome
- Sense of accomplishment or empowerment
- Hypersensitivity to the future touch of the state
- Other complications which the Artists have not been able to anticipate

The Declaration gave no scope for negotiation; to accept some risks and modify or refuse others. Consent was opt-in or out.^{42,43} In one sense, then, consent was fixed. However, it was also potentially boundless.⁴⁴ The risks listed are states of bodily and emotional affective being, which precisely depend on individual experience for their interpretations. The overall effect, according to Kinsella, is that the Declaration ‘presses upon that contradictory dynamic that affect indexes; all this affective matter which we struggle to bring to language and issue forth into symbolization and communication’.⁴⁵ The sense, at the point of signature, was of not knowing precisely what is being risked. The Declaration enacts a difficulty: that the law may already anticipate refusal or withdrawal; that consent invites touch, rather than protecting the subject from it. Instead of offering security, the Declaration drew to the surface the always-impossible responsibility of legalised risk-taking; leaning on its very ambiguity and unknowability.⁴⁶ This remained unresolved even after the performance. There was no shared cathartic moment of agreement. The imposed, unsettled character of a Declaration designed to make its subjects more vulnerable is an important foil to the masculine military Proclamation and its promises.⁴⁷

At the threshold to the Pillar Rooms, text (and to a great extent speech) gave way to the encounter with affect through sound, movement, bodily proximity and anticipated touch. Participants were not invited to speak during the performance: deliberation, imposed shared interpretations and narrative are set aside, as the performance of the contract is negotiated at the level of the body. Although the performance still gestures towards formal jurisdiction, it attempts some autonomy from the world outside.^{48,49} It does not engage participants in any overt law-making process. The transition here is not from law-as-text to non-law, but to other ways of inhabiting law. As a

42. Kathy O’Dell, *Contract with the Skin: Masochism, Performance Art, and the 1970s* (Minneapolis: University of Minnesota Press, 1998), p. 53.

43. O’Dell, *Contract with the Skin*, p. 178.

44. On the ever-extending demands of contract see e.g. Deleuze discussed in O’Dell *Contract with the Skin* p. 51; Maurizio Lazzarato, *The Making of the Indebted Man: An Essay on the Neoliberal Condition* (Semiotexte/Smart Art, 2012), p. 199.

45. Kinsella, “Reconsidering 1916,” (2016).

46. For further discussion of the contractualisation of risk see Lazzarato, *The Making of the Indebted Man* 70-71; Pat O’Malley, “Uncertain Subjects: Risks, Liberalism and Contract,” *Economy and Society* 29 (2000), pp. 460–84.

47. For a more critical reading of the proclamation see Daniel Jewesbury, “History’s Prison: Escaping the Temporality of the State-Still-To-Come,” *Études Irlandaises* (2016), pp. 149–61.

48. Andreas Philippopoulos-Mihalopoulos, *Spatial Justice: Body, Lawscape, Atmosphere* (Routledge, 2014), p. 163.

49. Philippopoulos-Mihalopoulos, *Spatial Justice*, p. 278.

quasi-contractual form, the Declaration is always inherently incomplete, uncertain and dependant on other performances.⁵⁰ So, the withdrawal of text at the threshold of the Pillar Rooms is not a withdrawal of or from law, but a potential amplification of law's other senses and modes of being.

This withdrawal intensifies legal affect. Being visceral, pre-personal, pre-personal, not-yet translatable into named experience, affect is associated with amorphous moods that have no identifiable cause or destination, yet seem to stick to us and work on us without our invitation or consent. This is because affect is radically anti-individualistic and profoundly relational. Law's intersubjectivity is directly enacted through affective connection. Participants did not only move in relation to law when directly touched by the performers. Their actions were structured by the circulation of exchanged and co-produced bodily intensities, were drawn in by curiosity and excitement or paused when a moment in the soundtrack touched a nerve. As the performance progressed, a radical de-individualisation of the participants had occurred: the production of law became increasingly difficult, communal and corporeal as the knot of bodies enacted dependence, burden or shared vulnerability. Thus, in *The Touching Contract*, law operated cohesively, through the bodies and organised decisions of specific agents. At the same time, as the performance progressed, bodies were animated by something less controlled – they danced wildly, they wept, they collapsed – but even then, their capacity to order the participants' movements remained. By the end, participants were joined in one heavy mass; feeling the weight of other bodies; waiting for release; conscious of the touch of hands on delicate body parts: eyes and mouths.

Taken altogether, *The Touching Contract* foregrounds and materialises the affects that law enacts upon us and through us, in and through performers' and participants' bodies in ways which invite attention to their own vulnerability under law, and to the vulnerability and woundedness central to others' histories with the same law. In the sections which follow, we explore the transformative potential of this vulnerable and vulnerabilising encounter.

IV. *The Touching Contract* and the Politics of Aesthetics

The law installed by *The Touching Contract* is a rebuke to the dominant legal aesthetic of the 2016 commemorations. For Jacques Rancière, the political is not confined to the state's official institutions. He calls these the 'police order', the purpose of which is to uphold the 'distribution of the sensible' which conditions what can be seen, heard, done, thought or made.^{51,52} The police order perpetuates the illusion that a given set of behaviours constitutes

50. See, for example, Michel Callon, "Writing and (Re) Writing Devices as Tools for Managing Complexity," in *Complexities: Social Studies of Knowledge Practices* (John Laws and Annemarie Mol, eds) (Durham, NC: Duke University Press, 2002), pp. 191–217. See also the argument that contracts are relational and find their meaning in later improvisations between the parties, after any final text has been drafter and the time for performance has come Linda Mulcahy and Sally Wheeler, "Contract Law: Socio-Legal Accounts of the Lived World of Contract," in *Integrating Socio-Legal Studies into the Law Curriculum* (Caroline Hunter, ed.), (London: Macmillan Education UK, 2012), pp. 104–20.

51. Jacques Rancière, *The Politics of Aesthetics* (A&C Black, 2013), p. 7.

52. Rancière, *The Politics of Aesthetics*, p. 145.

every possible mode of expression, that the given distribution of the sensible is immutable. In particular, the police order emphasises consensus. For Rancière, consensus means ‘that the givens of any collective situation are objectivised in such a way that they can no more lend themselves to a dispute’.⁵³ Politics, by contrast, reveals the contingency of the prevailing order of things. Rancière maintains that politics plays out, not only at the level of formal institutional critique and intervention, but at the level of the senses. Politics is a constitutively aesthetic activity. The struggle within politics is always one over the image of society – what can be seen or shown – and its ambiguous reality. Art, by showing or not showing this struggle, is always politically engaged as it offers a means by which to reveal the illusion of consensus that the police order strives to maintain. By revealing, contextualising or complicating who gets to perceive and create, art can be a means to enact dissensus. The official commemorations of 1916 were a crucial moment of reinforcement of the consensus underpinning a particular ‘police order’ of Irish law rooted in the proclamation of a foundational text. *The Touching Contract*, by contrast, introduces an affective legal encounter, which shines light on the forms of domination and obstetric, reproductive and maternal violence perpetrated by the state which traces its legitimacy to that proclamation. It draws attention to the order’s many failings, and to the ongoing denial of its revolutionary and reparative potential. That *The Touching Contract* as performed is diffuse and unpredictable; that it makes no specific claim for change is not an obstacle to calling it ‘political’. This performance is political and inherently anarchic, in the sense that Rancière defines politics as always incomplete, opening us ‘again and again, as often as necessary’ to alternatives to the status quo.^{54,55}

Reading *The Touching Contract*’s legacy only in terms of dissent misses the affective gestures it makes to law. For Rancière, artistic practices have unique political potential, not only to express dissent from the prevailing order, but to suggest how it might be otherwise.⁵⁶ This is because art can ‘suspend the ordinary co-ordinates of sensory experience and reframe the network of relationships between spaces and times, subjects and objects, the common and the singular’.⁵⁷ Through archive, art draws from and accesses other forms of life, including law. As Veronica Tello observes, the radical potential of work of this kind does not lie in archive for archive’s sake. It can:

smuggle, for example, repressed images or voices. . . out of the amnesiac vacuums and the shadows of homogeneous national narratives in attempts to recalibrate – or show the potential recalibration – that art can make possible.^{58,59}

-
53. Jacques Rancière, “Contemporary Art and the Politics of Aesthetics,” *Communities of Sense: Rethinking Aesthetics and Politics* (2009), p. 31–50.
54. Jacques Rancière, *Dis-Agreement: Politics and Philosophy* (U of Minnesota Press, 1999), p. 59.
55. Rancière, *Dis-Agreement*, p. 180.
56. A fuller version of this argument is developed in Máiréad Enright, “Four Pieces on Repeal: Notes on Art, Aesthetics and the Struggle Against Ireland’s Abortion Law,” *Feminist Review* 124 (2020), p. 104–23.
57. Jacques Rancière, “The Politics of Aesthetics | Mute,” (2006). <http://www.metamute.org/editorial/articles/politics-aesthetics> (accessed 16 February 2019).
58. Veronica Tello, *Counter-Memorial Aesthetics: Refugee Histories and the Politics of Contemporary Art* (Bloomsbury Publishing, 2016), p. 27.
59. Tello, *Counter-Memorial Aesthetics*, p. 273.

The *Touching Contract* engages with archive by incorporating the memory of law's violence in text and gesture. The signed Declaration incorporated a set of Terms and Conditions, displayed on the surrounding walls. Both incorporated references to contractual documents related to Irish reproductive injustice; forms for access to state redress schemes, an indemnity agreement between the state religious congregations which once ran abusive residential institutions for children, adoption 'consent forms' and the consent form Irish women filled in when obtaining abortions in England. The performers' choreographed gestures, though deliberately open, encouraged the participants to consider law's relationships to bodily oppression and control. The objects available for examination in the ante-room similarly held memories of legal encounters. With that archive, *The Touching Contract* weaves together contemporary experience with historical memory to reveal a radical strangeness and sensory foreignness in relation to the commonplace operation of law. That is not to say that every participant appreciated every aspect of the archive, whether during the performance or in the anteroom afterwards. Nevertheless, throughout the performance they were confronted with archived references to embodied female memory.

In combining identifiably legal performance and text with this distinct archive in a space dedicated to the commemoration of 1916, Browne and Jones produce what Rancière dubs *mystery*. In mystery, heterogeneous, incompatible or incommensurable objects are removed from their natural context and placed in contrapuntal relation to one another. *The Touching Contract* brings disparate elements into proximity, in ways which recalibrate their relationship to provoke new connections between experiences which the dominant legal aesthetic holds apart. This unexpected familiarity of disparate elements creates 'an occasional analogy, attesting to a more fundamental relationship of co-belonging, a shared world where heterogeneous elements are caught up in the same essential fabric'.^{60,61} The dominant legal aesthetic frames the law of 1916 as emancipatory, while concealing the relationship between law and women's visceral experiences of oppression. *The Touching Contract* combines these purportedly dissonant elements, recombining law and the wounded body, and translating the experience of one back into the language of the other. This discombobulation can produce a flash of insight, making new connections between experience and language legible, but also allowing them to remain heterogeneous; in unsettled or uncanny relation to one another. The power of mystery lies in the 'interval' between two poles, where the analogy between incommensurable objects placed in continuum and the clash between them.⁶² In *The Touching Contract*, recognisable law is not abandoned in favour of a radical visceral affect. Instead, the two are read continuously with one another, and some new de-stabilising vision of law emerges in between them, irreducible to either. *The Touching Contract*, to borrow Honig's phrase, 'works that interval' to make 'a new kind of sense' of law.^{63,64} Moving away from privileged mappings of law produced and reproduced in commemoration, *The Touching Contract* provokes participants out of their

60. Jacques Rancière, *The Future of the Image* (Verso, 2009), p. 51.

61. Rancière, *The Future of the Image*, p. 147.

62. Rancière, *The Future of the Image*, p. 60.

63. Bonnie Honig, *Antigone, Interrupted* (Cambridge University Press, 2013), p. 147.

64. Honig, *Antigone, Interrupted*, p. 341.

‘assigned places in a given state of things’^{65,66} by bending, stretching and fragmenting them in a way that enables co-reading with the visceral memories of oppression brought to the surface in the archive.⁶⁷

Mystery, Rancière suggests, harnesses ‘the coupling power of the uncoupled’,⁶⁸ generating new social relations and invent ‘new trajectories between what can be seen, what can be said and what can be done’.⁶⁹ The *encounters* between people provoked by *The Touching Contract* co-generates a dissensual community by tearing ‘bodies away from their natural destination’⁷⁰ to forge a new community of sense, enfolded in a different sensory fabric which anticipates or pre-figures a new reality.⁷¹ *The Touching Contract* produces a dissensual community: participants experience art together, and through this experience glimpse or briefly manifest the kind of community they might one day be. An ‘interval’ opens up between the existing community of which the participants are a part, and the new community suggested by the mystery founded in aesthetic experience with political effects insofar as:

... the extent that the loss of destination that it presupposes, disturbs the way in which bodies fit their functions and destinations. What it produces is not rhetorical persuasion about what has to be done. Nor is it the framing of a collective body. It is a multiplication of connections and disconnections that reframe the relation between bodies, the world where they live and the way in which they are ‘equipped’ for fitting it. It is a multiplicity of folds and gaps in the fabric of common experience that change the cartography of the perceptible, the thinkable and the feasible. As such, it allows for new modes of political construction of common objects and new possibilities of collective enunciation.⁷²

The experience of dissensual community in *The Touching Contract* is fragile, structured by disconnection – a mere ‘vibration’ between a succession of spectators or participants who are ‘apart-together’.⁷³ It can be contrasted with, for example, the ‘just distance’ produced by a court’s judgment.^{74,75} It does not depend on final decision or consensus; rather, it can preserve incommensurability. The interval avoids the constant efforts of the police order to assimilate what appears in the interval to itself.^{76,77} This community

65. Jacques Rancière, *Dissensus: On Politics and Aesthetics* (Bloomsbury Publishing, 2015), p. 151.

66. Rancière, *Dissensus*, p. 240.

67. Tello, *Counter-Memorial Aesthetics*, p. 161.

68. Rancière, *The Future of the Image*, p. 59.

69. Rancière, *Dissensus*, p. 149.

70. Jacques Rancière, “From Politics to Aesthetics?,” *Paragraph 28* (2005), pp. 13–25.

71. Jacques Rancière, “Aesthetic Separation, Aesthetic Community: Scenes from the Aesthetic Regime of Art,” *Art & Research 2* (2008), p. 1–15.

72. Rancière, “Aesthetic Separation, Aesthetic Community,” p. 11.

73. Rancière, “Aesthetic Separation, Aesthetic Community,” p. 5.

74. Paul Ricoeur, *Reflections on the Just* (University of Chicago Press, 2007), p. 61.

75. Ricoeur, *Reflections on the Just*, p. 273.

76. For Nancy, touch is also an interval; Jean-Luc Nancy, *The Muses* (Stanford University Press, 1996), p. 15.

77. Nancy, *The Muses*, p. 140.

produced in this moment may not have a deep identity in common. Nevertheless, it shares an exposure to new forms of visibility/intelligibility/possibility suggested by the mystery. Although he maintains that aesthetic experience allows new communities to come into being, Rancière leaves unanswered the question of how this happens. However, even if we accept the importance of ambiguity to the political effects an encounter with an artwork may produce, there is a case for paying greater attention to the subjective, and especially the affective dimensions of the aesthetic encounter.⁷⁸ For that reason, we turn to Kinsella's claim that *The Touching Contract* provokes a connective and performative 'affectosphere' enabling crucial forms of bodily exposure, which allow participants to access the vulnerability at the heart of their relation to law.⁷⁹

IV Connective Affectospheres: Exposure and Vulnerability in *The Touching Contract*

This section initially draws on Judith Butler's theorisation of recognition and performativity to consider how we are both possessed and dispossessed by law. *The Touching Contract* reveals to us this exposure and vulnerability in relation to law by directing attention to the ways in which we are both *subjects who produce law* and are *subject to law*. This participatory performance not only exposes this contingency of the operation of law but facilitates an aesthetic, affective and performative structure for working-through the traumatic affects and effects this contingency produces. To this end, Tina Kinsella coins the term 'affectosphere' to convey the modalities by which aesthetic, affiliative and interpretative processes can process the delayed structure of traumatic affects, or after-effects of trauma,⁸⁰ by re-embodying them in the present.⁸¹ This re-embodying of traumatic affect operates as a potentially transformative possibility in the future by way of an expansion of the conditions by which the *subject of trauma* can become recognizable in the present.

According to Butler, full recognition of how one is possessed and dispossessed by law is, perhaps, 'never possible'. To 'be a subject at all' requires 'first complying with certain norms that govern recognition' and 'make a person recognizable'.⁸² To understand the complexities at stake in Butler's re-conceptualization of recognition, we turn to her theory of performativity, which is offered as an account of agency, and its limits, in relation to the social reproduction of norms. Butler's theory of performativity proposes that the semblance of normativity we experience in daily life is produced through the socio-cultural production of norms

78. Tello, *Counter-Memorial Aesthetics*, p. 28.

79. Tina Kinsella, "'Reconsidering 1916 – Embodiment, Memory and Relational Affect in Sarah Browne and Jesse Jones' In the Shadow of the State,' (2016).

80. The term 'after-affects' of trauma is coined from Griselda Pollock, *After-Affects After-Images: Trauma and Aesthetic Transformation in the Virtual Feminist Museum* (Manchester: Manchester University Press, 2013).

81. Kinsella, "'Reconsidering 1916 – Embodiment, Memory and Relational Affect in Sarah Browne and Jesse Jones' In the Shadow of the State'.

82. Judith Butler, "Performativity, Precarity and Sexual Politics," *Revista de Antropología Iberoamericana* 4 (2009).

enacted upon the subject and enacted by the subject through repetitive stylized acts in time. Crucially, for Butler, our inculcation to these norms is not by way of conscious knowledge or deliberate assent. Norms precede us, circulate in the world without any necessary component to their conventions, and act upon us through ‘institutional forms of power’ that ‘are already acting prior to any action I may undertake’.⁸³ The ‘life of norms continues on, beyond us, with a certain indifference to finitude’, and, thereby, our enactment of norms operates according to an ‘iterative logic’ that constitutes an affective sensibility, which leads ‘us to feel in certain ways’ and understand ourselves in particular ways.⁸⁴ The repetition of norms and the production of their conventions, according to Butler, produce the conditions for social and political recognition insofar as noncompliance with norms renders the subject potentially unrecognizable. That norms are continuously repeated and enacted through time demonstrates their insufficiency as a priori criteria by which to provide a coherent account of the subject because the very fact that norms have to be continuously repeated is evidence of their instability.⁸⁵ *The Touching Contract* exposes both this performative dimension of the operation of norms and the possibility for non-recognition in the interface between subject and law. The contract issued prior to the performance outlined the various qualities of touch a participant might encounter during the event as well as a somewhat hyperbolic list of risks associated with the performance that the attendee must consent to before they could participate in the performance itself. The parsing of risks into ‘Significant, unavoidable, or recently occurring risks’ and ‘Uncommon and more serious risks’ mimics the language of official consent forms. Being rendered, in part, in obscure terminology, the contract performs the performativity of the norms of law because the risks listed are open to any number of interpretations. Beside the medical and legal terminology of the contract, we find linguistic gestures towards those states of emotional and bodily being which are not easily translatable into language: sweating, blushing, shaking, boredom, arousal, tears, anger, rage, confusion, laughter, inspiration, becoming undone, being overcome, ending with ‘hypersensitivity to the future touch of the state’. Understanding of these risks depends precisely upon subjective experience rather than universal, observable and verifiable phenomena. Without this personal context, which stands outside of the text of law, one precisely risks being in the position of non-recognition in relation to the operation of the law that the contract produces. Thus, the Declaration, and our engagement with it, exposes the possibility of non-recognition before law by exploring the impossibility of consent to law through the presentation of an array of ‘risks’ so broad that one could not possibly consent to them all. One might say that *The Touching Contract* reveals the limit of law’s text. The Declaration and the interpretative performance of *The Touching Contract* peel away the veils that shroud the operation of norms, to bear witness to the complexes and symptoms by which such norms are naturalized and reveal to us our compliance with them.

83. Judith Butler, *Judith Butler-The Difference of Philosophy (2015)| Notes on Impressions & Responsiveness* (YouTube streaming video. University College Dublin, 2015).

84. Butler, *Judith Butler-The Difference of Philosophy (2015)| Notes on Impressions & Responsiveness*.

85. Tina Kinsella, “Precarious Subjectivity and Affective Performativity in the Academic Precariat,” *Irish Journal of Anthropology* XX:II (2017), p. 73.

At the same time, the contract manifests the possibility of an alternative version of law through the invocation of law's effects by provoking us to consider the affective states of bodily being law can produce. The performance itself surfaced the ways in which we are touched, with and without our consent, by law and the institutions of the state – medical, judicial, educational – as well as exploring the varying qualities of those touches by the state – be they caring or brusque, compassionate or dispassionate, intimate or impersonal. The qualities of touch experienced during the performance reflect the myriad ways in which affect augments or diminishes our capacity to act in relation to law, signalling what we might call the paradox of ‘inbetween-ness’ found in the crossing over between subject and world, and affectively encountered in:

. . . the capacities to act and be acted upon . . . in those resonances that circulate about, between, and sometimes stick to bodies and worlds; and in the very passage or variations between these intensities and resonances themselves.⁸⁶

The performance activated touch as this inbetween-ness which is relational and circulates between bodies and the worlds they encounter each other in. Paradoxically, it is the very encounter with this inbetween-ness, unrecognised by law, which produces the possibility of an alternative foundation for law. We are formed by the norms that proceed us and which act upon us through institutional structures of power. In this way, the structuration of affect, in relation to law, is this relational intertwining, folding or crossing over between acting and being acted upon. The performative production of norms is such that we, in re-enacting those norms, are continuously shaping their contour and thereby their future affects and effects. Disrupting the operation of the norms of law that operate through its text, *The Touching Contract* brings to the surface the relational transmission of traumatic, unspoken or unspeakable affect. *The Touching Contract* allows that which was previously unrecognizable by law to migrate towards future affective and effective modalities of communication and, thereby, recognition. Such performative and affective participation in, with and through an alternative version of law that expands the possibilities by which one is recognizable before law as well as the modes by which we recognize others in relation to law. *The Touching Contract* provides an affective, relational and interpretative structure for the performative process of working-through of our complicity with the operation of law by surfacing our vulnerability in relation to law through exposure of the unconscious traumatic affects this complicity produces.

For Butler, especially in early life, vulnerability is bound up in the conception of ‘relations’. We are ontologically vulnerable; our bodies are defined by relations which make life and action possible as we are dependent on others. Butler argues that we never entirely transcend that experience of dependence on others and indeed, for some of us, heightened vulnerability to violence persists throughout our lives. She proposes that by recognising our primordial, ontological vulnerability, we encounter possible new bonds of solidarity and resistance: we can be affected by others and become responsive to their call; we take responsibility for them without rationalizing their suffering, or apportioning

86. Gregory J. Seigworth and Melissa Gregg, “An Inventory of Shimmers,” *The Affect Theory Reader 2* (2010), p. 1.

responsibility for it as law is wont to do.⁸⁷ Recognition of vulnerability, then, can create conditions for inscribing new modalities of resistance to control by law. Although Butler calls for recognition of our ontological corporeal vulnerability as a basis for ethical and political solidarity, she fails to provide an account of *why* the subject should recognise, care about or be responsive to the vulnerabilities of others. Recognition, in this sense, can be understood as an operation of the cognitive faculties that can be resistant to affective material, such as trauma, that moves across corporeal and psychological frontiers and even between bodies and groups of people. In this way, Butler's schema for recognition cannot fully account for affective experiences that are resistant to the operation of norms to the extent that they are rendered utterly unrecognizable by the cognitive processes of language and its attendant signifying economies and symbolisation processes. Artist and psychoanalytic theorist Bracha L. Ettinger, by contrast, goes further than Butler's account of consequent recognition and affirmation of primary bodily vulnerability as a condition for responsiveness and responsibility to vulnerabilised others.

Ettinger argues that we have a primordial *susceptibility* to aesthetic affects which is rooted in the subjectivizing encounter in the late intrauterine environment.⁸⁸ By virtue of this nascent, affective subjectivisation, we are already primed for aesthetic and affective connection with, and response to, unknown others in a stratum of our subjectivity that she entitles the transsubjective stratum of subjectivity. This stratum of subjectivity remains with us after birth, even though it is preconceptual, presubjective and nonconscious. It can be retroactively reactivated, particularly through the encounter with art.⁸⁹ The encounter with art may transmit affective material through aesthetic processes, even the affects of trauma that are not directly accessible to memory through cognitive processes. This affective, relational transsubjective stratum of subjectivity (that donates to the subject a susceptibility to the vulnerability of others) is something primordial that can be retroactively accessed through our encounter with certain artworks as it is not subject to cognitive apparatus that Butler privileges in her understanding of recognition. Such an access to the susceptibility of the primordial vulnerability of others by way of aesthetic affect is inexpressible in ordinary law. Ettinger suggests that the place of art is a:

. . . time-space-event of passage, a transport-station of trauma . . . over different times and different places, where the same place is stretched between different times, and the same time connects different time-spaces: the here with the there, the now with the then, a space-time-encounter.⁹⁰

For Ettinger, not all art provides routes of access to the time-space-event of trauma across the passage of time. Only art that can evoke a 'memory of oblivion that cannot otherwise

87. Judith Butler, "Rethinking Vulnerability and Resistance," unpublished lecture given at the Universidad Complutense de Madrid (2014).

88. Ettinger, *The Matrixial Borderspace*.

89. Bracha L. Ettinger, "Matrixial Trans-Subjectivity," *Theory, Culture & Society* 23 (2006), pp. 218–22.

90. Bracha L. Ettinger, "Fragilization and Resistance: Neighbourhood and *Schechina*," *Studies in the Maternal*, p. 8. http://www.mamsie.bbk.ac.uk/back_issues/issue_two/documents/Bracha1.pdf (accessed 5/10/2012).

be processed can link ‘the time of too-early to the time of too-late’ and plant ‘them in the world’s time’.^{91,92} *The Touching Contract* facilitates an aesthetic process of working-through trauma that is stuck between the time of too-early and too-late. Rather, here, trauma is understood both in relation to the trauma of past time, the persistent continuance of the affects of that trauma in present time and the weight of that traumatic material as it presses upon the further traumatic affects in our time. As Griselda Pollock observes, psychic ‘trauma knows no time. It is a perpetual present, lodged like a foreign resident in the psyche. Trauma colonizes its host by its persistent inhabitation of the subject who does not, and cannot, know it’.⁹³

The Touching Contract enlivens the possibility to work-through traumatic material by way of an affective engagement with those histories that have hurt the Irish female body in the past and recorporealising them in the present through the expression of touch, intersubjective connection and gestures of sonic touch.⁹⁴ Exposure during the performance to past traumatic, affective memories (of obstetric and gynaecological violence or the absence of reproductive rights and bodily autonomy, for example) within this reinvestment may generate certain transformative effects for traumatic affects that are still present and pressing upon the female body in contemporary Irish society. This exposure to the potential of psycho-corporeal traumatic affects, without their actual realisation or enactment, potentializes affective reinvestment through performative processes that facilitate a certain working-through of trauma. Kinsella’s term, the ‘affectosphere’, speaks to the ways in which a participatory, relational, creative practice, such as *The Touching Contract*, can provoke unsymbolised or unsymbolisable traumatic affects and move this uncognised psycho-corporeal material towards communication through the performative process of working-through. This is the very essence of the performative, as Butler configures this term, which denotes the production of subjectivity and, thereby, agency.

The affectosphere is an aesthetic process of working-through which facilitates the passage of unsymbolised material into some form of symbolization during which residual affects are transmitted, transacted and transformed in the present. *The Touching Contract* links the traumatic affects and effects of historical time to the residue of trauma in the present time by way of ambiguous tactile and sonic gestures exchanged throughout the participatory performance. These non-linguistic expressions of touch, sound and bodily proximity lean upon and enliven our vulnerability to law through time within the specific context of the foundation of the Irish State and the injustices and violences it inflicted upon the female body. Trauma moves from the state of unutterable affective experience towards cognitive communication and recognition, allowing us to reweave and reconfigure the ethics and the politics of the social so as to resist the operation of state directed norms that have situated the body, and the female body in most particular ways, as a repository for the state’s repressed desires and hidden histories.

91. Bracha L. Ettinger and Akseli Virtanen, “Art, Memory, Resistance,” *Ephemera: Theory and Politics in Organisation* 5 (2005), pp. 690–702.

92. Ettinger and Virtanen, “Art, Memory, Resistance,” p. 8.

93. Pollock, *After-Affects After-Images*, p. 2.

94. Kinsella, “Reconsidering 1916” (2016).

V. Connective Affectospheres and Agential Affectivism: The Transmission of Memory and Its Social and Political Consequences

In *The Touching Contract*, this enlivening of a primordial vulnerability to law, and exploitation under law, is understood as the capacity to feel more which, from Ettinger's perspective, produces the possibility of response to unknown and previously unrecognizable others. Marianne Hirsch's concept of postmemory⁹⁵ is also deployed to consider how the affectosphere produced by *The Touching Contract* can be used to explore how others' past traumatic experiences may be accessed and transmitted through the encounter with this participatory performance so that 'more distant social/national and archival/cultural memorial structures' are reactivated and re-embodied.⁹⁶ Memory is a mutable patchwork of recollection and association, which is often difficult to bring to language or communicate with one another. For Hirsch, postmemory 'describes the relationship that the "generation after" bears to the personal, collective and cultural trauma of those who came before - to experiences they "remember" only by means of those stories, images, and behaviours among which they grew up'⁹⁷. We are shaped by 'traumatic fragments of events' that, precisely because they are traumatic, defy narrative reconstruction and exceed comprehension, even for those who experienced them directly.⁹⁸ In the gestural and sonic touches exchanged and experienced during *The Touching Contract*, fragments of trauma, resistant to cognition and memory, are transmitted and recreated, not by rational, conscious recall, but by 'imaginative investment, projection and creation'.⁹⁹ In relation to *The Touching Contract*, the residual traumatic effects enacted through and upon the female body are no longer a past catastrophe, but rather a series of affective events that bear upon the present: the aftermath of these affects do not necessarily have to reproduce trauma in this moment. This an experience of what Lauren Berlant calls 'crisis ordinariness' – a chronic condition of trauma's embedding and unfolding in the prosaicness of the everyday that involves processes of adaptation and attachment that facilitate living on and bear with the effects of trauma in the production of life.¹⁰⁰ Once traumatic affects mutate from the critical to the chronic condition of 'crisis ordinariness' they are made 'everyday'. In this sense, the affectosphere that *The Touching Contract* potentialises affords an aesthetic structure by which traumatic affective material can be explicitly rewoven back into a present encounter, become more amenable to working-through, and thereby be brought forward to metamorphosise into more effective modalities of communication and further expanded conditions for recognition. This is a movement that brings previously unsymbolisable material into symbolisation processes and presents a possibility for the unrecognisable

95. Marianne Hirsch, *The Generation of Postmemory: Writing and Visual Culture after the Holocaust* (Columbia University Press, 2012).

96. Kinsella, "Reconsidering 1916," (2016).

97. Hirsch, *The Generation of Postmemory*, p. 5.

98. *ibid.*

99. *ibid.*

100. Lauren Berlant, *Cruel Optimism* (Oxford and New York: Duke University Press, 2011), p. 352.

to be recognised or, at least, affectively and aesthetically acknowledged. The affectosphere produced by *The Touching Contract* enlivens those past traumas which, in Ettinger's terminology, are memories 'of oblivion that can't be otherwise processed', but which can be offered passage through processes of working-through that are affective, aesthetic and profoundly performative if one can place oneself in a 'position of proximity and fragility vis-à-vis the other and the world'.¹⁰¹ Such an encounter with an artwork is a 'move toward the dispersal and loss of the self that results in becoming sub-subjective and momentarily border-less' which is the 'temporary relinquishment of self-identity'.¹⁰² Participation as a fragilisation of the unitary self with, in this case, a participatory performance art work such as *The Touching Contract*, can activate affects as effect, which 'are a still-working trace of an aesthetic working-through on the border of the psycho-ethical, and the healing is a still working string of an ethical working-through'.¹⁰³ To access a psycho-ethical basis for responsivity to traumatic experiences, that may not even be one's own, requires aesthetic working-through that cannot only rely on the intellectual faculties with cognitive recognition as the basis from which to re-apprehend one's corporeal vulnerability and ontological relationality. Rather, the affectosphere, activated by *The Touching Contract*, provides routes of access to the proximity, fragility and responsivity that is required for accessing the trauma of others. This trauma, Ettinger argues, operates on the subsubjective level of being and communication: such trauma thereby requires a 'temporary relinquishment of self-identity'.¹⁰⁴ Through such relinquishment, as participation with an artwork, trauma is donated the possibility of affective transmission of, and aesthetic communication with, other non-traumatic affects, such as primary compassion and primary awe, which operate from the 'feminine kernel of the ethical sphere' that is first revealed through and in 'the presubject's transconnectivity to its m/Other as a subjectivizing agency'.¹⁰⁵ Ettinger's conceptualisation of a subsubjective layer of subjectivity is foregrounded in the proposition of the concept of the affectosphere. Providing a theoretical structure by which to understand affective, aesthetic and affiliative processes of working-through trauma that is not necessarily one's own, the affectosphere draws upon Ettinger's articulation of our trans-connectedness to the m/Other as unknown, yet subjectivizing, agency. By way of this primordial connectedness to an unknown other in our nascent subjectivisation, we retain the capacity to connect with both the trauma of unknown others in the future as well as maintaining access to the past by virtue of our continuing connection to the feminine kernel of ethics this layer of our subjectivity donates to us. Ettinger argues that this feminine kernel of ethics persists in each and every subject (regardless of sex and/or gender and whether cognitively apprehended or not). The possibility of access to this

101. Bracha L. Ettinger, *Fragilization and Resistance* (Helsinki: Kaiku-Gallery, Finnish Academy of Fine Arts) (2009).

102. *ibid.*

103. *ibid.*

104. *ibid.*

105. Bracha L. Ettinger, "From Proto-Ethical Compassion to Responsibility: Besidedness and the Three *Primal* Mother-Phantasies of Not-enoughness, Devouring and Abandonment," *Athena* 2 (2006), p. 100.

feminine kernel of ethics moves us towards aesthetic processes of affective working-through in the encounter with art as traumatic material is now shared and dispersed, without abandonment, without shame and without retraumatisation.

On these readings, the affectosphere of *The Touching Contract*'s supports our capacity to be affected that which does not belong to us, and yet to which we can affectively respond. Such affective response can move us towards what Kinsella terms 'affectivism': an agential activism informed by affect and aesthetics, that produces transitive passage for postmemory.¹⁰⁶ Affectivism is the production of a particular subjectivity and agency that signifies a capacity for transformative, rather than simply reactive, response: where transactive affects are prioritised over communicative effects. The distinction between transactive affects and communicative effects comes from Jill Bennett who suggests communication as a modality of language, signifying and representational apparatuses that can easily be appropriated, reduced or mimicked.¹⁰⁷ Transactive affects do not rely on the 'transcription' of experience through the conveyance of 'the "secret" of personal experience', but rather on the production of affect 'within and through an artwork with regard to how that artwork might be experienced by an audience coming to it'.¹⁰⁸ This production of affect could be understood as a coming-into trauma which does not itself convey the condition of trauma. Rather, this production of affect heightens responsiveness to the still traumatizing after-affects of trauma. This is something like the condition Berlant gestures towards with her concept of 'crisis-ordinariness' as a chronic condition that lives with, and bears with, the affects of trauma in our ongoing attachments and commitments to the production of life itself.¹⁰⁹ Affectivism also speaks to the production of alternative social realities and imaginaries through affective engagement and imaginative investment by gesturing towards the capacity for response as a form of *feeling-more* that does not result in inaction due to being overwhelmed by the weight of such a feeling-response. Affectivism is a capacity for response rather than reaction: it is an implicated criticality/critical positioning and agency, on behalf of the activist, practitioner or participant, in an aesthetic process, such as the participatory performance discussed in this work, that may provoke political consequences through the activation of affective material. As a capacity for response, rather than reaction, affectivism signals towards the production of affiliative and relational containing structures capable of provoking the possibility of resistance to the structures of the state which operate upon us and are instrumentalised through us.

VI. Conclusions

Legal interpretation, Robert Cover wrote, takes place in a field of pain and death.¹¹⁰ These disappear where law is understood as immaterial; a set of abstract reasons, beyond

106. Kinsella, "Reconsidering 1916," (2016).

107. Jill Bennett, *Empathic Vision: Affect, Trauma, and Contemporary Art* (Stanford: Stanford University Press, 2005).

108. Bennett, *Empathic Vision*, p. 7.

109. Berlant, *Cruel Optimism*.

110. Robert M. Cover, "Violence and the Word," *The Yale Law Journal* 95 (1986), pp. 1601–29.

touch.¹¹¹ *The Touching Contract* makes law palpable again. Crucially, it re-materialises law on the body. In place of the inert law of the proclamation, *The Touching Contract* puts bodies in motion. In its re-embodiment of law, *The Touching Contract* enables us to dwell on law's relationship to violence, suffering and vulnerability, and moves us to act upon it. The affectosphere of *The Touching Contract* addresses the ways in which affects can be enlivened and activated by our experiential and corporeal encounter with art to produce effects in and for our political and social imaginaries and realities in the present. Affectivism relates to the crossing-over between artistic production as a mode of 'aesthetic thinking' and activism as 'political and imaginative resistance' that is activated by affective modes of knowing and experience.¹¹²

The enlivening of traumatic affects, and their recorporealisation in the present through an encounter with an artwork such as *The Touching Contract*, produces the possibility of empathic response now and in the future. This affective and imaginative investment in the future is important. Imagining a yet-to-be realised future, through affective investment in the present, produces a futurity that can be affectively and imaginatively inhabited in the present. *The Touching Contract*, as a relational and participatory artwork, enlivens our aesthetic and affective capacities and provides the conditions for response and recognition of those traumatic affects that may not belong to us individually. This capacity for response, rather than reaction, provokes the possibility of resistance to the structures of the state which operate upon us and are instrumentalised through us. To resist state and/or institutional violence requires us to countenance aesthetic modalities for resistance through the foundation of non-violent, connective, relational, affective and aesthetic structures, which facilitate processes of working-through those 'histories that hurt'. We are condemned to repeat any traumatic material which we cannot bring to symbolisation and to thought. As we live in bonds of relation and obligation to others, 'histories that hurt', hurt us all. The affectosphere that may produce affectivism in the encounter with an artwork, such as *The Touching Contract*, resonates with what is unarticulated in law, and about law, in textual discourse. By way of an approach towards what is unavailable to language and resistant to symbolisation process, *The Touching Contract* supports an aesthetic transmission of traumatic material that allows us to speak to law from the position of a reconceived agency that is not dependent upon language and that produces new forms of symbolisation and recognition. Facilitating access to what is unavailable to language – the aftermath of intergenerational and intergenerational/transgenerational traumatic affect – *The Touching Contract* produces aesthetic, affiliative and relational affects that allow us to reweave and reconfigure the ethics and the politics of the social. Resituating law itself as trauma, *The Touching Contract* incites the production of an alternative foundation of law based in mystery, corporeal relationality and intragenerational solidarity in the production of healing affects that resist the operation of state directed norms that have situated the body, and the female body in most particular ways, as a repository for the state's repressed desires and hidden histories.

111. Andreas Philippopoulos-Mihalopoulos, *Flesh of the Law: Material Legal Metaphors* (Rochester, NY: Social Science Research Network, 2016).

112. Kinsella, "Reconsidering 1916," (2016).

Acknowledgement

Our thanks to Jesse Jones and Sarah Browne, and to the anonymous reviewer for *Law Culture and the Humanities*.