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RESEARCH ARTICLE

Manifestos as constituent power: Performing a feminist revolution

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I. Introduction

Women use a multiplicity of forms and methods to articulate harms and claim political spaces. Among these are manifestos.¹ Women's manifestos are concomitant with both political convulsion and the enduring, mundane inequalities faced by women; they play a key role in feminist attempts to achieve political and legal ends.² Manifestos are overtly political acts of legal/political performance; they are in dialogue with each other, with counter and anti-manifestos, and with the legal-political infrastructures they inhabit.³ Manifestos seek to fracture traditional understanding and practices of law, often in the guise of claiming constituent power and political space.

Constituent power in contemporary scholarship is understood as the foundation of the modern democratic state. While there are debates about the 'true' nature of constituent power,⁴ two debates predominate within liberal constitutional scholarship: first, that constituent power should be held by 'the people'⁵ and second, that constituent power remains dormant after the constitutional or founding moment.⁶ Usually this pertains to

¹M Katz, 'Ideology and the Status of Women in Ancient Greece' (1992) 31 *History and Theory* 70.

²Sarah Ahmed, *Living a Feminist Life* (2017); Bennett, *Feminist Fight Club: An Office Survival Manual* (2016).

³For example, see Yvonne Rainer's 'No Manifesto' (1965) and Mette Ingvarsten, 'Yes Manifesto' (2006). 'Let's Spit on Hegel' cites Olympe de Gouges' Declaration. Donna Haraway revisited the *Cyborg Manifesto* (1984) in 2004 because the cyborg is not innocent. For a discussion, see Legacy Russell, *Glitch Feminism* (Verso, New York, 2020). Loy's 1914 manifesto 'reads as a forceful critique of Valentine de Saint-Point's' 1912 manifesto: see Natalya Lusty, 'Sexing the Manifesto: Mina Loy, Feminism and Futurism' (2008) 19(3) *Women: A Cultural Review* 245, 254. *Full Surrogacy Now* responds, in part to, *FINRRAGE*: see Sophie Lewis, *Full Surrogacy Now: Feminism Against Family* (Verso, New York, 2019) 38.

⁴See Lucia Rubinelli, *Constituent Power: A History* (Cambridge University Press, Cambridge, 2020); Martin Loughlin, 'The Concept of Constituent Power' (2014) 13(2) *European Journal of Political Theory* 218.

⁵Loughlin (n 4); Mark Tushnet, 'Peasants with Pitchforks, and Toilers with Twitter: Constitutional Revolutions and the Constituent Power' (2015) 13(3) *J•CON* 639.

⁶Ulrich K Preuss, 'Constitutional Powermaking for the New Polity: Some Deliberations on the Relations Between Constituent Power and the Constitution' (1992–93) 14 *Cardozo Law Review* 639. See also Hannah Arendt's theory of constituent power, which is tied to a 'founding act'; Rubinelli (n 4) 194; Jeremy Waldron,

states but the networked scales of governance that (now) operate require a deeper understanding of the role of constituent power not relegated to historicized accounts. Reading feminist manifestos and exploring their complex relationship with ideas of constituent power problematizes these debates. Feminist manifestos disrupt the construction of both the 'we' and 'the people' as constituent power-holders.

With respect to the dormancy of constituent power, some scholars consider the expression of constituent power as a historical moment that, once expressed, means constituent power cannot be reasserted.⁷ This negates the claims to constituent power asserted through manifestos both by those contemporaneously omitted from the constitutional moment and those who come to the governance order afterwards, be that generationally or as migratory additions. They also reduce constituent power to its constitutive power, overlooking its destructive potential. The potential lies in the ability to dismantle a constitutional order before rebuilding a new one.

In this article, we draw on Ewa Plonowska Ziarek's 'right to revolt' and Verónica Gago's *feminist potencia* to offer a feminist approach to constituent power. Ziarek argues that nineteenth-century suffragettes revolted against the constitutional order that excluded them, and in so doing created space for their capacity to be recognized as constituent power-holders.⁸ Gago describes *feminist potencia* as embracing the indeterminacy of what is possible and what we are capable of once we displace limits on how constituent power operates.⁹ Gago includes a desire to be recognized as capable of possessing capacity to attain and wield power, as a feminist mode, that is both individual and collective.¹⁰ For Gago, in ways similar to Martin Loughlin, constituent power can be divided into *potestas* and *potentia*.¹¹ *Potencia* embraces *potestas* and *potentia*, where the former is static and the latter dynamic, and centres on collective and bodily capacity for creation, which includes protest, strike and transformation, and is real and not abstract. Gago's work thus 'seeks to be a manifesto of that indeterminate *potencia*, expressed as the desire to change everything'.¹² The *feminist potencia* heralds a call to rethink the scope of constituent power so as to open up possibilities of acknowledging other ways of claiming constituent power.

Constitutional discourse recognizes the different modalities of constituent power. Hannah Arendt understands revolution and augmentation (reform) as iterations of constituent power.¹³ Nico Krisch discusses the *pouvoir irritant* as the power to contest

'Arendt's Constitutional Politics' in Dana Villa (ed), *Cambridge Companion to Hannah Arendt* (Cambridge University Press, Cambridge, 2000) 214.

⁷Oran Doyle, 'Populist Constitutionalism and Constituent Power' (2019) 20 *German Law Journal* 161, 167 ('As the only thing, however, that the constitution-making power can do is make constitutions, attributing an existence to it at other moments in time is deeply fraught.')

⁸Ewa Plonowska Ziarek, 'Right to Vote or Right to Revolt? Arendt and the British Suffrage Militancy' (2008) 19(5) *Differences: A Journal of Feminist Cultural Studies* 1; Vidya Kumar, 'On Scripts and Sensibility: Cold War International Law and Revolutionary Caribbean Subjects' (2020) 21 *German Law Journal* 1541.

⁹Verónica Gago, *Feminist International: How to Change Everything* (trans Liz Mason-Deese) (Verso, New York, 2020) 2–5.

¹⁰*Ibid.*

¹¹See Martin Loughlin, 'Why Sovereignty?' in *Sovereignty and the Law: Domestic, European and International Perspectives* (Oxford University Press, Oxford, 2013) 39.

¹²Gago (n 9) ix, 3

¹³Hannah Arendt, *On Revolution* (Viking Press, New York, 1965). For a discussion, see Mark Wenman, *Agonistic Democracy: Constituent Power in the Era of Globalisation* (Cambridge University Press, Cambridge, 2013) 3–27.

or reject constitutional or institutional arrangements.¹⁴ *Feminist potencia* entails collapsing the silos between constituent power, constituent moments and *pouvoir irritant*. These divisions within the literature reflect the processes of masculine revolution, constitution creation and ongoing constitutional design, constructed as legitimate and all else is dismissed as mere protest. *Feminist potencia* recognizes these divisions as aspects of the limits that prevent feminist change from being actualized. Gago regards *feminist potencia* as rejecting constitutional limits through strike and protest, but also as the capacity to create anew. Feminist manifestos contest legal orders, and reject social and gender norms, so they are examples of *pouvoir irritant* but within *feminist potencia*.

The absence of analysis of feminist manifestos points to the dearth of manifesto scholarship generally, but also to the overlooking of women's voice in consistently contesting the production and construction of constituent power. Often regarded as non-legal documents, manifestos have long played an important legal function in Europe in the laws of war,¹⁵ in documents issued by sovereigns and into the modern constitutional era, as constituting documents of a state, citizenry and constituent power. Their absence from the scholarship on international law and constitutional law leaves a substantial gap in knowledge.¹⁶ The limited consideration of manifestos – or, where analysis occurs, discounting particular manifestos as irrelevant within constitutionalism – overlooks their contribution to our understanding of constitutionalism and constituent power. Not regarding the French Declaration of the Rights of Man (1789) as a form of manifesto¹⁷ is one reason why Olympe de Gouges' Declaration of the Rights of Woman and the Female Citizen (1791) counter-manifesto is ignored within the scholarship.

Theories of performance and audience are important when it comes to unpacking this intersection between constitutionalism and manifestos. Law gains authority through performance that is both visual and tangible, and this runs alongside the rational justifications for its authority.¹⁸ The performative nature of both manifestos and law is often missing within the analysis. For Julie Stone Peters, 'law unfolds in rites and ceremonies, orchestrations, liturgies, images, staging'¹⁹ and is transformed into authoritative, sometimes constitutional moments. Whether manifestos, including their feminist variants, become constitutive can be traced partly to the social practices that transforms a text into an authoritative source. In this article, we build on existing theories of legal performance to discuss the nostalgizing performances of constitutionalist tropes as well as the (re)performance of these constituent moments through manifestos. Whether a manifesto is authoritative is often linked to how it is (re)performed.

Audience plays a central role in understanding constituent power and also in *feminist potencia*. An exercise of constituent power and the identification of constituent power-holders is often established retrospectively as historians and constitutional lawyers reflect on events and both pinpoint the moments of change and construct the identity of the constituent power-holders. In this sense, the audience is crucial to our understanding of

¹⁴Nico Krisch, 'Pouvoir Constituant and Pouvoir Irritant in the Postnational Order' (2016) 14(3) *I•CON* 657; Gago (n 9) 234.

¹⁵Oona A Hathaway, William Holste, Scott J. Shapiro, Jacqueline Van De Velde, Lisa Wang, 'War Manifestos' Database (2017), <<http://documents.law.yale.edu/manifestos>>.

¹⁶For the argument that ignoring war manifestos creates a gap in scholarship on the laws of war, see *ibid* 1144.

¹⁷Cf Günter Frankenberg, 'Constitutional Transfer: The IKEA Theory Revisited' (2010) 8 *I•CON* 563, 572.

¹⁸Julie Stone Peters, 'Legal Performance Good and Bad' (2008) 4 *Law, Culture and the Humanities* 179, 179–80.

¹⁹*Ibid* 189.

manifesto and of constituent power, as it is the audience that determines what is accepted, who is heard, who is ignored, what is satire and what is truth.²⁰ Feminist authorial voice, understood as both collective and bodily, is often denigrated, or dismissed as an irritant or irrational. Both contemporaneous and subsequent audiences' viewpoints are tainted by broader gendered constructions that dismiss feminist intervention as lacking 'proper' constituent power, as it does not conform to an ideal 'type' of constituent power-holder that was constructed in women's absence. Even when women ape masculine ideas of constituent power, their imitation is dismissed as the wrong form of performance. We are also clarifying that feminist manifestos demand audiences in ways that may be rude, filled with protest and ridicule, or sincere, but that assume the same right to audience that those authoritative manifestos written by men are granted as of right.

In arguing for the inclusion of manifestos within constitutional scholarship, we are mindful that some feminist manifestos are problematic, racist and exclusionary.²¹ An example is Barbara Burris's *Fourth World Manifesto* (1971), which argues against Indo-Chinese – Vietnamese and Cambodian – feminists adopting anti-imperialism in their campaigns.²² Burris argues that they took 'without question' a narrow definition of imperialism from the left and that feminist manifestos should include *all* women, wherever they are from, as all are a colonized group suffering male domination.²³ Eliding the harm suffered by women of the Global South with that of women who benefited from imperialism undermines the former's agency. This is deeply problematic, but also common within transnational feminist interactions.²⁴ Mina Loy's *Feminist Manifesto* (1910) is steeped in the eugenics movement of its era.²⁵ Valerie Solanas's *SCUM Manifesto* (1965), which she denied stood for the Society for Cutting Up Men, and its disputed links to her shooting Andy Warhol, overshadows its radical content. Solanas's manifesto is often proffered as an example of the harm contained in feminist manifestos. Such positions ignore the potential satirical nature of the work and her re-performance of the violence common in male-authored manifestos and in the patriarchal order that perpetuates daily violence against women. Nonetheless, its homophobic and transphobic content deserves condemnation.²⁶

This article begins by setting out the links between manifestos and constitutionalism. It then moves to outline the history of feminist interventions through manifesto, and the ways in which women across the world use manifestos to articulate their demands for space within the political domain and their enunciation of past and ongoing harms. The

²⁰See also Sheri Labenski, 'The World is Not Organised for Peace: Feminist Manifestos and the Making of International Law' LSE Women, Peace and Security Blog, <http://eprints.lse.ac.uk/103106/1/WPS_2019_05_28_the_world_is_not_organised_for_peace.pdf>.

²¹See also the discussion in the Introduction to the special issue.

²²Barbara Burris, 'Fourth World Manifesto' (1971), <http://feminist-reprise.org/docs/RF/FOURTH_WORLD_MANIFESTO.pdf?fbclid=IwAR13Ws5x2ER9_sUFQ8xGbPEJ9ioribi3zsMqBMR_GFn4HV1elrX84jsQHBA>.

²³*Ibid.*

²⁴Jocelyn Olcott, *International Women's Year: The Greatest Consciousness-raising Event in History* (Oxford University Press, Oxford, 2017), as an alternative transnational feminism rooted in 'situated thinking' see Gago (n 9) 3–4.

²⁵Mina Loy, 'The Feminist Manifesto' (1914), in Breanne Fahs, *Burn it Down! Feminist Manifestos for the Revolution* (Verso, New York, 2020) 210; Lusty (n 3); Janet Lyon, *Manifestoes: Provocations of the Modern* (Cornell University Press, New York, 1999) 155.

²⁶Avital Ronnell, 'Deviant Payback: The Aims of Valerie Solanas' in Valerie Solanas, *SCUM Manifesto* (Verso, New York, 2015).

article then examines feminist manifestos as exercises of *feminist potencia* and constituent power. It ends with a reflection on why feminist manifestos are ignored. This article seeks to understand why examples of manifestos such as the American Declaration of Independence (1776) are given an authoritative role in constituting a new state, but feminist manifestos in similar scenarios remain beyond the gaze of global constitutionalism. To not see feminist manifestos (no matter what their form or authorship may be) as calls for fundamental change is to not see how the continuous denial of women's capacity as constituent power-holders is almost definitional to modern constitutions.

II. Manifestos, law and constitutionalism

There is an under-explored relationship between manifestos, constitutions and constituent power. Declarations such as the French or American examples defined their public sphere and their citizens, as well as forming the basis on which constituent power was asserted, including their right of revolution. These are essential aspects of state and constitution formation, and they sit entirely within the definition of manifesto. These documents constitute a key juncture in Western liberal ideas of documentary constitutions and individualized rights, and are calcified as key constitutional moments.²⁷ This section explores the relationship between constitutionalism and manifesto.

In her study of manifestos, Mary Ann Caws outlines the historical connection between law and manifestos. She suggests that the word 'manifesto' derives from a type of court document that set out past acts and outlined the intention behind future actions.²⁸ Hathaway et al. have shown the relationship between manifesto and the mechanisms of just war theory within *jus ad bellum*.²⁹ War manifestos were a common political device that extended beyond Europe through imperialism, with hundreds being issued between 1492 and 1945.³⁰ They were issued by sovereigns and set out the reasons for going to war while counter-manifestos were responses to original declarations.³¹ War manifestos include declarations of independence, such as the Proclamation of the Irish Republic (1916), the US Declaration of Independence (1776) (and a French manifesto justifying supporting that war),³² and the Greek Declaration of Independence (1822).³³ War manifestos are distinctly legal documents; they are highly performative and underpin the relationship between manifesto and law. These war manifestos also hold a dual function, declarative of war and constitutive of new states. Günter Frankenberg categorizes the US Declaration of Independence (1776) and the Proclamation of the Republic of Ireland (1916) as 'manifesto constitutions'.³⁴ Breanne Fahs states that feminist manifestos are declarations of war against the patriarchy³⁵ but, like war manifestos, manifestos and

²⁷For further discussion see Ratna Kapur, *Gender, Alterity and Human Rights: Freedom in a Fishbowl* (Edward Elgar, Cheltenham, 2018).

²⁸Mary Ann Caws, *Manifesto: A Century of Isms* (University of Nebraska Press, Lincoln, NE, 2001) 1.

²⁹Hathaway et al (n 15) 1143, 1145. Counter- or anti-manifesto is also a common element of contemporary manifestos: see Rainer (n 3).

³⁰Ibid.

³¹Ibid.

³²Hathaway et al (n 15).

³³Ibid.

³⁴Günter Frankenberg, *Comparative Constitutional Studies: Between Magic and Deceit* (Edward Elgar, Cheltenham, 2019) 30, 32

³⁵Fahs (n 25) 1.

feminist manifestos might have dual functionality, both acting as a declaration of war and dislodging the limits set on constituting new approaches to governance.

Günter Frankenberg argues that one archetype of constitutions is the ‘constitution as *political manifesto*’ or the ‘manifesto constitution’.³⁶ For Frankenberg, this archetype is characterized by its ‘confessional message’, extolling ‘self-evident truths’ that are ‘beyond dispute’.³⁷ He argues that the French Declaration of 1789, the US Declaration of 1776 and the Haitian Constitution of 1805 are examples of a ‘constitution as *political manifesto*’.³⁸ Frankenberg also argues that political manifesto constitutions ‘as normative speech acts ... turn the performative [e.g. revolution, struggle, catastrophe] into a mere statement by claiming that they do not constitute but only confirm, declare, or reaffirm’.³⁹ They turn revolt into something self-evident, transforming manifesto via performance into being incontrovertible. This ties the revolt, the manifesto, the performance and the resultant constitutional order together as an exercise in constituent power. Theories of performance are essential to unpacking this intersection between constitutionalism and manifestos as it is through performance that they become mere statements and, as such, immutable. Through re-performance, they become unremarkable, evolving into the new norm.

Frankenberg argues that, ‘[d]eclarations and manifesto constitutions are not only constative but also performative acts of world-making’.⁴⁰ Here he is building on Jacques Derrida’s conceptualization of declarations of independence as acts that constitute new political entities, as they cannot rely on prior law to legitimate them.⁴¹ As Fahs and others have highlighted, manifestos claim authority and deny the legitimacy of previous debates.⁴² Partly via performance, the manifesto claims legitimacy and authority for itself.⁴³ Understanding the performative nature of the manifesto highlights the constitutive work done by a manifesto in constituting a group or a constituency. As Janet Lyon and others show, manifestos bring a group into being⁴⁴ – ‘they *create* “the good people”’.⁴⁵

If Frankenberg’s political manifesto is part of the constitution or leads to a constitution, it also evidences acts of constituent power. For Frankenberg, manifestos are ‘rudimentary texts in need of “rounding off” by being inserted into other constitutional documents’.⁴⁶ In other words, claims to constituent power are transformed via a constitutional moment, becoming constitutionalized. Frankenberg’s political manifesto as an archetype demonstrates that political manifestos may represent both a constitutional

³⁶Günter Frankenberg, ‘Comparing Constitutions: Ideas, Ideals, and Ideology – Towards a Layered Narrative’ (2006) 4(3) *I-CON* 439, 452; Frankenberg (n 34) 30–36; Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (Cambridge University Press, Cambridge, 2001) 12 describes the emergence of the modern international legal academic as linked to such a constitutive manifesto.

³⁷Frankenberg (n 36) 452–53.

³⁸Ibid 452.

³⁹Ibid.

⁴⁰Frankenberg (n 34) 33

⁴¹Jacques Derrida, ‘The Force of Law: The “Mystical Foundation of Authority”’, in David Gray Carlson, Drucilla Cornell, and Michel Rosenfeld (eds), *Deconstruction and the Possibility of Justice* (Routledge, New York, 1991) 13. See also Peters (n 19) 186.

⁴²See Introduction to this special issue.

⁴³Fahs (n 25) 9–10.

⁴⁴Lyon (n 25) 14.

⁴⁵Frankenberg (n 34) 33.

⁴⁶Frankenberg (n 34) 37.

moment and a claim to constituent power. While narrower than *feminist potencia*, it recognizes that the barriers between protest, revolt and creation are provisional, and often perception of their substantive constitutional quality emerges via performance. Some manifestos that are characterized as constituent power often conform to particular legitimizing performances that their audience recognizes and validates. The Haitian Declaration of Independence (1804), which established an independent Black republic and Black sovereignty, and abolished slavery, was initially not recognized by France, the United Kingdom or the United States, highlighting the key role played by audience in legitimizing acts of constituent power.⁴⁷

Frankenberg focuses on manifesto authorship, stating that 'manifesto constitutions' are

issued by elected, delegated or, in many instances, self-styled elites, who, generally based on their social status, property, merits or superior knowledge, claim a special mission and legitimacy they express in a language of moral urgency or political necessity – or else refer to an imaginary mandate.⁴⁸

However, this focuses on manifestos already accepted as constitutional moments. Frankenberg highlights how feminist manifestos by Olympe de Gouges and Elizabeth Cady Stanton 'copied, corrected and complemented' the French and American Declaration,⁴⁹ but more generally these feminist manifestos are not given the same attention nor read as having constitutive potential – not least because if, as Frankenberg argues, 'manifesto constitutions' are issued by elected, or property-owning elites, in the history of modern constitutionalism such authors are predominately white men. In response to this form of authorship, feminist manifestos will sometimes maintain a fluid authorial voice, such as that of Laboria Cubonicks, authors of the *Xenofeminist Manifesto* or, as we discuss later, disrupt the concept of 'we' to eschew heroic individual endeavour, to situate in alliance with others, as contingent in time and place, to be embodied but also collective.⁵⁰ Most feminist manifestos are not single authored but written in collectives.⁵¹ This reflects feminist methodologies of collective deliberation, reflection and debate, as women bring their experiences to bear on their form and content.⁵² Yasmin Gunaratnam and Carrie Hamilton argue that collaborative feminist manifestos are 'creating collective feminist subjectivities while interpolating their readers/audiences into co-subjectivity and co-action'.⁵³ Gago writes of 'collective intelligence', which 'weaves together the *time between* one event in the streets and the next; it puts them in a state of continuity and takes advantage of the discontinuities';⁵⁴ as such, individuals are part of a collective idea of

⁴⁷Frankenberg (n 34) 43; R Knox, 'Valuing Race? Stretched Marxism and the Logic of Imperialism' (2016) 4 *London Review of International Law* 81, 90; Susan Buck-Morss, *Hegel, Haiti, and Universal History* (University of Pittsburgh Press, 2009); David Armitage, *The Declaration of Independence: A Global History* (Harvard University Press, Cambridge, MA, 2009) 116–17.

⁴⁸Frankenberg (n 34) 35.

⁴⁹Ibid 36.

⁵⁰Laboria Cubonicks, *Xenofeminist Manifesto* (Verso, New York, 2018).

⁵¹For a discussion, see Jacqueline Rhodes, *Radical Feminism, Writing, and Critical Agency: From Manifesto to Modem* (SUNY Press, New York, 2005) 44.

⁵²Penny A Weiss (ed), *Feminist Manifestos: A Global Documentary Reader* (New York University Press, New York, 2018) 2.

⁵³Yasmin Gunaratnam and Carrie Hamilton, 'Introduction: The Wherewithal of Feminist Methods' (2017) *Feminist Review* 1, 9.

⁵⁴Gago (n 9) 155.

authorship, even if the author is singular. Feminist manifestos disrupt the binary of audiences and authorship as if they are situated in a place and time – they draw on a history of activism and are shared through activism.⁵⁵

Audience is central to understanding constituent power. As an exercise of constituent power, the identification of constituent power-holders is often established retrospectively as historians and constitutional lawyers reflect on events and pinpoint both the moments of change and construct the identity of the constituent power-holders. Constitutional moments are contingent and reliant on an audience – then and now – which plays a role in the ‘legality, justice and legal subjectivity’ that emerges.⁵⁶ For Stone Peters ‘law unfolds in rites and ceremonies, orchestrations, liturgies, images, staging’⁵⁷ and it is these rites and ceremonies that transform (and reaffirm) some manifestos into authoritative, constitutional moments.

The manifesto genre demands an audience. A manifesto’s efficacy is, at times, measured by whether it can successfully command an audience.⁵⁸ Caws argues that manifestos build their ‘own conditions for reception’ by instructing ‘the audience how to respond to what is heard or read’.⁵⁹ War (counter)manifestos speak to other sovereigns, both the aggressor and neutral sovereigns seeking legitimacy for their actions through their audience.⁶⁰ For some manifestos, there may be no external audience, in the sense that a group is talking to itself. Criticisms of the French and US Declarations by de Gouges and Stanton highlighted how those manifestos were examples of the patriarchy talking to itself,⁶¹ recognizing only masculine citizens as ‘real’. It is important to note that the audience for manifestos is contingent: there is an intended audience and there is an inadvertent audience, and this intended/inadvertent audience evolves.

The constitutive nature of manifestos is partly evidenced in their construction of the audience as participant. ‘We’ is used in manifestos as ‘a rhetorical device to evoke audiences, and to mark the distance in ideological ground between those created audiences and their scripted oppressor’.⁶² The ‘we’ in the manifesto also indicates that manifestos can be speaking to the group as well as to an external opposition. Lyon uses the examples of the Levellers (a 1642–51 movement calling for extended suffrage) and the Diggers (a 1649–50 movement that emerged as a response to the enclosure laws in England) and their use of “we” to consider how audience and manifesto interact to create new political audiences.⁶³ The Diggers addressed their manifestos to themselves.⁶⁴ Unlike contemporaneous petitions to a sovereign, the Diggers were talking to their peers, who

⁵⁵Ibid 84.

⁵⁶Austin Sarat, Lawrence Douglas and Martha Merrill Umphrey, ‘Introduction’, in *Law and Performance* (University of Massachusetts Press, Amherst, MA, 2018) 1.

⁵⁷Peters (n 18) 189.

⁵⁸Caws, ‘The Poetics of the Manifesto: Nowness and Newness’ in Caws (n 28) xx.

⁵⁹Ibid. See also Rhodes (n 51) 67.

⁶⁰Hathaway et al (n 15) 1144.

⁶¹Olympe de Gouges, Declaration of the Rights of Woman and the Female Citizen (1791); Women’s Rights Convention, Declaration of Sentiments and Resolutions (Seneca Falls, NY, 19–20 July 1848) in Weiss (n 52) 75.

⁶²Lyon (n 25) 23–24.

⁶³For a discussion of the Diggers and Levellers, see Geoff Kennedy, *Diggers, Levellers, and Agrarian Capitalism: Radical Political Thought in Seventeenth Century England* (Lexington Books, Lexington, KT, 2008). ‘The Humble Petition of Divers Well-Affected Women’ (England, 5 May 1649) was written by women in the Leveller community to call for ‘equal interest and stake in political reforms’. See Weiss (n 52) 33–35.

⁶⁴Lyon (n 25) 19.

were their audience. The Levellers used 'we' collectively rather than as the deferential language that separated sovereigns from the people in previous iterations. The Levellers used 'we' to create a new political voice that made demands and whose audience was both themselves and the sovereign existing on an equal basis, thus pre-envisioning a new unprecedented political subject (and audience), citizens who not only hear/obey the sovereign but also listen to themselves.⁶⁵ Manifestos play a role in the process of change from subject to citizen.⁶⁶ As will be discussed below, feminist manifestos further problematize the construction of 'we'.

In constitutional theory, as part of the debates on the nature and scope of constituent power, some scholars argue for a limited conceptualization of constituent power, understanding constituent power as something limited in time and space. In the 1600s, writers such as George Lawson and John Locke inculcated ideas of constituent power with debates on the right to tyrannicide,⁶⁷ which empowers people to remove tyrannical governments, and the right to bring a tyrannical order to an end by those subject to tyranny.⁶⁸ Under these theories, the people were trusted to identify tyranny and seek change. Aligning constituent power with theories of tyrannicide, rights to revolt⁶⁹ and right to revolution⁷⁰ creates a broader account of the scope of constituent power. In exercising the right to tyrannicide, there are two questions: Is there a tyranny? And who has the duty to remove it?⁷¹ Manifestos can offer evidence of harms, exclusions and tyranny, as well as evidence of claims to have the right or duty to remove the tyranny. In this later respect, manifestos can evidence a claim of constituent power. Reading the constituent potential of manifestos disrupts limited conceptualizations of constituent power.

Understanding the performative nature of manifesto highlights the constitutive work done by a manifesto in constituting a group or a constituency and the audience and/or author. Martin Puchner suggests that manifesto involves the act – performance – of making visible since manifestos do not 'merely describe a history of rupture, but produce such a history, seeking to create this rupture actively through its own intervention'.⁷² Dominant understandings of constitutionalism are insufficiently attentive to manifestos, and where they are attentive, there is limited engagement with how they seek to claim and/or disrupt constituent power. To overlook the relationship between manifestos and constituent power underplays the asserted claim of capacity to have power by declarations of independence and to obscure the possibility of women ever contesting or claiming that power.

⁶⁵Ibid 20–21.

⁶⁶Ibid 20–23.

⁶⁷J Locke, *The Second Treatise on Government* (Tegg & Co, London, 1823), cited in Aoife O'Donoghue, *Tyranny and the Global Legal Order* (CUP, 2021); George Lawson, *Politica Sacra et Civilis* [1660] Conal Condren (ed) (Cambridge: Cambridge University Press, 1992), cited in Martin Loughlin, *Foundations of Public Law* (Oxford University Press, Oxford, 2010) 3 n 7.

⁶⁸O'Donoghue (n 67) 118.

⁶⁹Ziarek (n 8).

⁷⁰Tushnet (n 5).

⁷¹T Paine 'Common Sense' in MD Conway (ed), *The Writings of Thomas Paine Volume I, 1774–1779* (Putman's Sons, New York, 1894) 112; O'Donoghue (n 67).

⁷²Martin Puchner, 'Manifesto = Theatre' (2002) 54 *Theatre Journal* 449, 449–50.

III. Reading feminist manifestos: Reconceptualizing constitutionalism and constituent power

This section discusses four ways in which we can understand the relationship between feminist manifesto and constitutional theory. First, feminist manifestos highlight how constitutional arrangements exclude marginalized groups. Second, feminist manifestos can be constitutive of groups, organizations and spaces. Third, some feminist manifestos can be and should be understood as evidence of claims to constituent power. Fourth, and relatedly, feminist manifestos highlight the limitations of constructions and conceptualizations of constituent power. As protests, manifestos demonstrate how the law and democratic processes can ignore and exclude marginalized people; they can act as evidence for potentially tyrannical governance. They also show the feminist response via a disruptive/constitutive apparatus that incorporates a process of revolt, revolution and tyrannicide as *feminist potencia*.⁷³ These categorizations are not intended as totalizing: manifestos often sit in more than one category, moving across these categories depending on a multitude of geographical, temporal and political contexts.

Failures of law

Natalya Lusty argues in the early twentieth-century manifestos were a male genre; however, this discounts the many feminist manifestos that pre-date the last century.⁷⁴ The rise of feminist manifesto/manifesta/femifesta reasserts a distinctly feminist genre.⁷⁵ This sub-section offers a partial and incomplete history of the genre, which is not intended to be comprehensive or authoritative, but rather to establish the long tradition of women and/or feminists using manifestos to speak and claim power. The historical breadth and depth of feminist manifestos can be seen not just in their form, but in the diversity of women living disparate lives across the world who employ manifestos. Importantly, manifestos are incessantly political, be it on issues shuttered away by the public/private divide such as tampon taxes⁷⁶ or criminalized sexual lives, by conflict where women continue to be harmed but are side-lined post-conflict,⁷⁷ or by homophobia, neo-imperialism, racism and patriarchy, in combination perpetuating state violence – whether slavery or contemporary police violence.⁷⁸ Sometimes the aim of a manifesto is to call for the destruction of the existing order; at other times, it is an attempt to disrupt the

⁷³For discussions of tyrannicide, see O'Donoghue (n 67).

⁷⁴Lusty (n 3) 246. See also Ronnell (n 26). 'Proto-feminist' is often used for works that predate the term 'feminist' to avoid so-called anachronistic discussions. See Mary D Garrard, *Artemisia Gentileschi and Feminism in Early Modern Europe* (Reaktion Books, New York, 2021); Nicola Lacey, 'Bentham as Proto-feminist? Or an Ahistorical Fantasy on "Anarchical Fallacies"' (1998) 51(1) *Current Legal Problems* 441, 446–47. However, this leads to a periodization based on a singular understanding of 'feminism'. This means historical and non-European forms of manifestos get labelled 'proto-feminist' or 'women's' manifestos, while contemporary manifestos are labelled 'feminist'.

⁷⁵Anna Hickey-Moody, 'A Femifesta for Posthuman Art Education: Visions and Becomings', in CA Taylor and C Hughes (eds), *Posthuman Research Practices in Education* (Palgrave Macmillan, New York, 2016) 258.

⁷⁶adee Ax 'Tampax Poem Feministo' (1996) in Fahs (n 25).

⁷⁷For example, Conference of Burundi Development Partners, *Declaration by Burundian Women's Rights Organisations* (2012), Northern Ireland Rural Women's Network *Manifesto for Rural Women* (2015) in Weiss (n 52) 655.

⁷⁸Gago (n 9) 10.

complacency or harms within a system and offer alternative ways of governing.⁷⁹ Manifestos are heralds of potential futures, but also narrators and custodians of past and present harm. They are examples of recognizing that legal as well as political structures form part of the oppression of women and marginalized groups, and are articulating political claims within structures that ignore, exploit and harass them.

Examples of feminist manifestos in the 1600s commence by claiming that it is suitable for women's voices to be heard in the public sphere. This is a small, conservative claim, but nonetheless a claim to be heard.⁸⁰ Plato and Aristotle maintained that women's natural space was one lived under private tyranny, and that is an idea that has negative consequences for the conceptualization of women as active constituent power-holders.⁸¹ Mary Astell's *A Serious Proposal to the Ladies: For the Advancement of Their True and Greatest Interest, by a Lover of Her Sex* (1694) in arguing '[t]he Incapacity, if there be any, is acquired not natural; and none of their Follies are so necessary, but that they might avoid them if they pleas'd themselves', responds in part to John Locke and other early modern constitutionalists' placement of women in the 'natural' state of the private home.⁸²

Other feminist manifestos question further the public/private divide in constitutionalism by taking topics considered private, albeit regulated by the state, and placing them at centre stage.⁸³ The Constitution of the Lowell Factory Girls Association (1836) centres on women as workers, as producers, and led to one of the first strikes in US history. Articulating their right to associate, to fair pay and to be free of 'mean, sordid, dishonourable or unjust' treatment,⁸⁴ they argued they were:

convinced that 'union is power,' and that as the unprincipled consult and advise, that they may the more easily decoy and seduce – and the capitalists that they may the more effectually defraud – we (being the weaker) claim it to be our undeniable right, to associate and concentrate our power, that we may the more successfully repel their equally base and iniquitous aggressions.⁸⁵

They established spaces to speak, articulated their own harms and sought change.⁸⁶

Manifestos written by women of colour highlight how white feminist movements often rearticulate and create similar divides between what is political and what is 'natural'. In 1851, at the Women's Rights Convention in Ohio, Sojourner Truth gave her speech, 'Ain't I a Woman?', in which she calls for the rights of Black women as part of

⁷⁹Stephen Young, 'Judith Butler: Performativity' (*Critical Legal Thinking* 14 November 2016), <<https://criticallegalthinking.com/2016/11/14/judith-butlers-performativity/>>.

⁸⁰One of the earliest modern examples is 'Petition of the Gentlewomen and Tradesmen's Wives' (1642) in Weiss (n 52) 29.

⁸¹L Bradshaw 'Tyranny and the Womanish Soul' in T Koivukoski *Confronting Tyranny: Ancient Lessons for Global Politics* (Rowman & Littlefield, Lanham, MD, 2005) 163; P Springborg, 'Mary Astell (1666–1731), Critic of Locke' (1995) 89 *American Political Science Review* 621.

⁸²Mary Astell *A Serious Proposal to the Ladies: For the Advancement of Their True and Greatest Interest, by a Lover of Her Sex* (Broadview Press, New York, 2002).

⁸³For example, Ti-Grace Atkinson's *Vaginal Orgasm as a Mass Hysterical Response* (1968).

⁸⁴Constitution of the Lowell Factory Girls Association 1836, Weiss (n 52) 53–55

⁸⁵Ibid. See also Eva Gore-Booth, 'The Women's Suffrage Movement Among Trade Unionists' in *Suffragette Manifestos* (Penguin, Harmondsworth, 2020) 54–55.

⁸⁶See also Gina Heathcote and Lucia Kula, 'Abandoning the Idealised Citizen of White Feminism: A Manifesto for Silence'; Labenski (n 20).

contemporary calls for women's rights, and in so doing also exposes the exclusion of Black women by white feminist movements.⁸⁷ In 1977, the Combahee River Collective published their 'Statement'.⁸⁸ The Combahee River Collective, a collective of Black feminists, lesbians, and socialists, showed how 'systems of oppression are interlocking'. In their statement they denounced the racism of white feminist movements⁸⁹ and showed 'both outside reactionary forces and racism and elitism within the movement itself have served to obscure our participation'.⁹⁰

In and since the latter half of the twentieth-century, the use of feminist manifestos has become increasingly diverse. A multiplicity of political-social-cultural perspectives – punk, anarchist, porn, witch, radical, tech/cyber, environmental, Queer, liberal, artistic, sport, artistic, race, refugee, rural and Indigenous – use the form.⁹¹ Feminist manifestos co-opted, inverted and in places invented new forms of speech to 'subvert racist, heterosexist, and imperializing language'.⁹² For example, some manifestos reclaimed words such as W.I.T.C.H. (1968) a term used to torture, imprison and murder women, or BITCH (1968), a word used to dismiss women who assert authority or power.⁹³ Others (such as Riot Grrrl (1991) and Pussy Manifesto (1999)) embraced what Fahs refers to as 'ode[s] to trashiness, low-downness, rudeness, brashness and outrageousness', which women are encouraged to avoid or escape from, or for which they are ultimately criminalized.⁹⁴

Queer and trans manifestos, including the Queer Nation Manifesto (1990), Dyke Manifesto (1992)⁹⁵ and INCITE! Gender Violence and the Prison Industrial Complex (2001),⁹⁶ demonstrate the extent to which binaries, heteronormative regulation and criminalization create harm, but also how the world could be different. The State of the Black Union (2015) and the Mulata Globeleza: A Manifesto (2016) both speak to the ongoing intersection between racism and patriarchy, stating, 'No longer do we accept our body narrated from the point of view of Eurocentric aesthetic, ethical, cultural, educational, history and religious'.⁹⁷ Crystal Zaragoza's 'Manifesto of the Erased: Mujeres, Decolonize El Dios Americano' (2015) is a manifesto for Indigenous peoples erased by constitutional and international law as well as democratic processes.⁹⁸

⁸⁷Women's Rights Convention, 'Resolutions', Akron Ohio: 1851 in Weiss (n 52) 94–95. Heathcote and Kula (n 86).

⁸⁸Combahee River Collective, 'Combahee River Collective Statement' (April 1977) in Fahs (n 25) 271. For a discussion, see Keeanga-Yamahtta Taylor, *How We Get Free: Black Feminism and the Combahee River Collective* (Haymarket Books, London, 2017).

⁸⁹Combahee River Collective (n 88) 280.

⁹⁰Ibid 272.

⁹¹Caws (n 28); Fahs (n 25); Weiss (n 52).

⁹²Weiss (n 52) 12.

⁹³adee Ax, *Tax Poem Manifesto* (1996); W.I.T.C.H., *W.I.T.C.H. Manifesto* (1968); Joreen, *BITCH Manifesto* (1968), in Fahs (n 25) 350, 463, 467.

⁹⁴Bikini Kill Riot Grrrl (1991); Bitch and Animal Pussy Manifesto (1999), in Fahs (n 25) 431, 445.

⁹⁵Act Up Queer Nation Manifesto (1990); Emi Koyama, *The Transfeminist Manifesto* (2001); Lesbian Mafia Lesbian Mafia Manifesto (2007), in Fahs (n 25) 28, 86, 100.

⁹⁶INCITE! Women, Gender Non-Conforming and Trans People of Color Against Violence, 'Gender Violence and the Prison Industrial Complex' (2001), <<https://incite-national.org/incite-critical-resistance-statement>>.

⁹⁷Black Lives Matter, *State of the Black Union* (2015); Mulata Globeleza: A Manifesto (2016), in Weiss (n 52) 642, 659, 662.

⁹⁸Crystal Zaragoza, 'Manifesto of the Erased: Mujeres, Decolonize El Dios Americano' (2015), in Fahs (n 25) 321.

The similarities of concerns across feminist, queer and anti-racist manifestos over time further compound the exclusionary nature of constitutionalism. The grievances outlined in these manifestos underscore the limitations of a legal order that responds only to the concerns, needs and interests of the 'constructed' constituent power-holders. They highlight how the legal order fails to respond to the concerns, needs and interests of groups of excluded peoples. While some manifestos become constitutional texts,⁹⁹ others are discarded and disregarded. Reading feminist, anti-racist and queer manifestos highlight the voices and the demands that go unheard or unacknowledged by the political elites.

Constitutive manifestos

Feminist manifestos can be constitutive of groups, organizations, spaces, moments and political subjectivities. A manifesto can be used to signal the start of a group, its end or its reimagining. For example, the Chicago Women's Liberation Union play *Everywoman, Past, Present and Future* (1969) initiates a new group.¹⁰⁰ The script consists of the words of revolutionary women, distributed to the audience, who read parts aloud, thereby becoming part of the performance.¹⁰¹ The BITCH manifesto (1968) begins 'BITCH is an organization which does not yet exist', indicating the formation of the group as women read and engage with the text. In contrast, the Eva and Co Manifesto – inhabiting the bodily and the collective – signals an end: 'Eva and Co has chosen to take her own life!'¹⁰²

These constitutive manifestos create (new) spaces in which women are heard while also demonstrating the limitations of democratic constitutional processes. The Female Anti-Slavery Society of Salem's Constitution (1832), founded by free Black women, was the first female anti-slavery organization and used manifesto in its 1832 Constitution.¹⁰³ Excluded from male abolitionist societies, and as Black women were not recognized as citizens in the United States in 1832, the Society created its own space and ensured that the privilege of speaking is not limited to a few. These women invented new language to establish their political space, speaking of 'racial uplift' while ensuring all members are heard: 'Any member who wishes to speak is allowed the privilege: when any member speaks, there shall be no interruption.'¹⁰⁴ This calls direct attention to the silences, shouting down and contrived inaudibility of women, particularly Black and subaltern women, in political spheres.¹⁰⁵ When the society became interracial, the new white members changed the group's objectives, a point of early cooption and a failure of white feminism, oft repeated.¹⁰⁶

⁹⁹See, for example, the discussion in Frankenberg (n 36) 439; Frankenberg (n 34) 30–36.

¹⁰⁰Chicago Women's Liberation Union, 'Everywoman, Past, Present and Future', also known as 'The Last of the Red Hot Mammies, or, the Liberation of Women as Performed by the Inmates of the World' (1969).

¹⁰¹Michelle Moravec, 'Looking for Lyotard, Beyond the Genre of Feminist Manifestos' (2013) 2 *Trespassing Journal* 70, 72–73.

¹⁰²Joreen, 'The BITCH Manifesto' (1968), Eva and Co: The Manifesto (1992), <<https://conversations.e-flux.com/t/feminist-art-manifestos-eva-co-the-manifesto/1643>>.

¹⁰³White women were admitted in 1834. See Weiss (n 52) 51–52.

¹⁰⁴Female Anti-Slavery Society of Salem Constitution (1832), in Weiss (n 52) 51–52.

¹⁰⁵Gayatri Spivak, 'Can the Subaltern Speak?' in RC Morris (ed), *Can the Subaltern Speak? Reflections on the History of an Idea* (Columbia University Press, New York, 2010) 33.

¹⁰⁶Shirley J Yee, *Black Women Abolitionists: A Study in Activism, 1828–1860* (University of Tennessee Press, Nashville, TN, 1992) 88–89; Ida Young, 'Keeping Truth on My Side: Maria Stewart', in James I. Conyers (ed), *Black Lives: Essays in African American Biography* (ME Sharpe, Armonk, NY, 1999) 117, 122.

These ‘constitutive’ manifestos at times offer new ways of thinking about the world or new ways of living. For example, the Riot Grrrl manifesto (1991) states that ‘a safe space needs to be created for girls’ and ‘proclaims the politics of an anarchic position using hope as a strategy for engagement’.¹⁰⁷ The use of hope as political strategy and the relationship between manifesto and utopianism are common threads across manifesto studies, but the utopianism of constitutive moments is often dismissed as unfeasible or overly emotional.¹⁰⁸ In that regard, feminist manifestos highlight the limitations of the law and its constructions of constituent power-holders and their intent. Feminist manifestos as examples of *feminist potencia* highlight the need to dislodge what we believe it is possible to achieve through constituent power. The manifesto of the artistic group Eva and Co offers a useful contrast to the constitutive moment as envisaged by constitutionalism.¹⁰⁹ Katy Deepwell focuses on how ‘their only manifesto announced not their [her] beginning but their [her] dissolution’; Eva and Co refused to be ‘co-opted as yet another artists’ group within the art world’, highlighting how the funding structures hindered their work.¹¹⁰ Their manifesto highlights the limitations of the institutional structures within which they were operating, and their rejection of it: ‘The content of art, the subversive, the revolutionary, the questioning is silenced. Instead, formalities, clichés like “freedom of expression”, the art market, etc. are discussed.’¹¹¹

Reading feminist manifestos highlights where systems fail and exclude marginalized groups, problematizing the very act of constituting. Feminist manifestos bring attention to the power exercised within the act of constituting, specifically power to exclude, to subjugate, to disenfranchise in the guise of democracy, equality and traditional understandings of constituent power. They centre the absence of recognition of women as constitutional actors, as well as highlight the removal and assertion of power, all of which (re)occur both within the recognized constitutive moment, but also in the period leading up to and afterwards. Feminist manifestos often speak, across time and geography, of harms often missing from linear histories of progress.

Claims to constituent power

Historically, feminist manifestos have called attention to women’s exclusion from their male counterparts’ calls to revolution, or their claims to represent the entirety of society.¹¹² Feminist manifestos can be claims to constituent power or *feminist potencia* and political space. While often present alongside much more heralded moments, these claims often go unheard within constitutional scholarship. De Gouges’ intervention

¹⁰⁷F Colman, ‘Notes on the Feminist Manifesto: The Strategic Use of Hope’ (2008) 14(10) *Journal for Cultural Research* 375, 381.

¹⁰⁸See the Introduction to this special issue; Phillip E Wegner, *Invoking Hope: Theory and Utopia in Dark Times* (University of Minnesota Press, Minneapolis, MN, 2020) 121.

¹⁰⁹Eva and Co: The Manifesto (1992), cited in Katy Deepwell, ‘Feminist Art Manifestos/Feminist Politics (2018) 11 *Cambridge Literary Review* 110, 112.

¹¹⁰Deepwell (n 109) 112.

¹¹¹Eva and Co: See (n 109).

¹¹²For the idea that radical feminists appropriated the generic elements of the manifesto as a form of historicism that challenged the authority of male history and guided feminist action in response to that history, see Kimber Charles Pearce, ‘The Radical Feminist Manifesto as Generic Appropriation: Gender, Genre, and Second Wave Resistance’ (1999) 64(4) *Southern Journal of Communication* 307.

during the French Revolution is a prime example, as is Eva Gore Booth's *The Women's Suffrage Movement Among Trade Unionists* (1904), which calls on unions to recognize that women are 'to force an entrance into the ranks of responsible citizens, in whose hand lie the solution of the problems which are at present convulsing the industrial world'.¹¹³ Both manifestos assert their power to insert themselves, forcefully, into the political space, and both do so by claiming equality of citizenship and, as such, constituent power to change the constitutional construction of citizenship.

Ziarek explores how UK suffragettes reconceptualized the right to vote as a revolt against an order that excluded women. Demands for referenda in Ireland to reclaim women's bodily autonomy, stolen by a constitution, occupy a similar space (as do feminist movements in Argentina).¹¹⁴ These movements create space for women in the public political sphere and create new political subjectivities. These new political subjectivities demand a reformation of a constitutional order where men were the only subjects. For example, the National Union of Women's Suffrage Societies' 'Fourteen Reasons for Supporting Women's Suffrage'¹¹⁵ states:

2. Because Parliament should be the reflection of the wishes of the people.
3. Because Parliament cannot duly reflect the wishes of the people, when the wishes of women are without any direct representation.

The Lancashire and Cheshire Women Textile and Other Workers Representation Committee (July 1994) reads, 'The one all-absorbing and vital political question for labouring women is to force an entrance into the ranks of responsible citizens, in whose hands lie the solution of the problems which are a present convulsing the industrial world'.¹¹⁶ Building on Arendt's conceptualization of freedom as 'the capacity to create with others new forms of political life',¹¹⁷ Ziarek's right to revolt is both disruptive and constitutive; in negating their exclusion from political life, these feminist movements require positive engagement in a 'new gender politics'.¹¹⁸ This example of *feminist potencia* moves away from seeing women's demands for fundamental transformations as mere irritants. The suffragettes' revolt, expressed in their manifestos, is a claim to be a constituent power-holder, a claim to that capacity; subsequent changes that flowed into the constitutional order is an example of their constituent power. This approach to the right to revolt – as disruptive and constitutive – invokes an understanding of constituent power as both reflexive and continual.

When the rights to revolt and tyrannicide are conceptualized as 'granted', they become racialized and elitist. As Vron Ware explains, within suffrage movements women of

¹¹³ Eva Gore-Booth, 'The Women's Suffrage Movement Among Trade Unionists' in *Suffragette Manifestos* (Penguin, Harmondsworth, 2020) 54–55.

¹¹⁴ Ziarek (n 8). See also Sydney Calkin, Fiona de Londras and Gina Heathcote, 'Abortion in Ireland: Introduction to the Themed Issue' (2020) 124 *Feminist Review* 1, 7; Ruth Fletcher, 'Cheeky Witnessing' (2020) 124 *Feminist Review* 124, 130–33; Máiréad Enright, 'Four Pieces on Repeal: Notes on Art, Aesthetics and the Struggle Against Ireland's Abortion Law' (2020) 124 *Feminist Review* 104; Máiréad Enright, Kathryn McNeilly and Fiona de Londras, 'Abortion Activism, Legal Change, and Taking Feminist Law Work Seriously' (2020) 71(3) *NILQ* 7, 18, Gago (n 9) 105–6.

¹¹⁵ Gore-Booth (n 113) 1–2

¹¹⁶ *Ibid* 54–55.

¹¹⁷ Ziarek (n 8) 7.

¹¹⁸ *Ibid* 13.

colour were subject to racist exclusion, even when their emancipation formed part of the purpose.¹¹⁹ White abolitionist women steering the aims and objectives of the Female Anti-Slavery Society of Salem is just one example.¹²⁰ This highlights how claims to constituent power, within constitutional parlance, are dependent on a listening audience and assumptions of who is capable of political authorship, and how constituted elites (even within the oppressed groups) gatekeep.

In the 1790s, de Gouges' Declaration of the Rights of Woman and the Female Citizen (1791),¹²¹ Wollstonecraft's *A Vindication of the Rights of Woman* (1792), and Hannah Griffiths' *The Female Patriots. Address'd to the Daughters of Liberty in America* (1798) address the revolutions happening in their midst and their exclusions.¹²² As de Gouges states, 'Mothers, daughters, sisters, female representatives of the nation ask to be constituted as a national assembly.'¹²³ These women claimed political space within revolutionary moments and insert women's interests into these proclaimed democratic and equality-based constituent moments.

Choosing to issue a declaration of rights, as de Gouges did, or a declaration of independence is an invocation of previous political claims in that form. The genre's history is invoked by those that choose manifesto.¹²⁴ Lyon argues that manifesto authors are

participating in the transmission of a specific revolutionary discourse that originated in the seventeenth century and underwent iterative transformations during the French and American Revolutions, the Chartist movement, the Commune, and the syndicalist and labor movements.¹²⁵

In that regard, the French Declaration and US Declaration of Independence set the pace and language of political claims – especially those that rely on rights discourse.¹²⁶

In her Declaration on the Rights of Woman, de Gouges mirrors the Declaration of the Rights of Man: 'The purpose of all political association is the preservation of the natural and imprescriptible rights of woman and man. These rights are liberty, property, security, and especially resistance to oppression.'¹²⁷ In so doing, the 'Rights of Woman reframes

¹¹⁹Vron Ware, *Beyond the Pale: White Women, Racism and History* (Verso, New York, 2015) 47–116; see also Ziarek (n 8) 14.

¹²⁰Yee (n 106) 88–89; Ida Young, 'Keeping Truth on My Side: Maria Stewart' in Conyers (n 106) 117, 122.

¹²¹de Gouges (n 61); The French Manifesto of the Society of the Emancipation of Women (1848) continued de Gouges' act of staking a claim at the moment of revolution, while relying on women's difference as mothers and the family; this also addressed the links between political and economic inequality.

¹²²Mary Wollstonecraft *A Vindication of the Rights of Men and a Vindication of the Rights of Woman* (Penguin, Harmondsworth, 2004) 1, 65. As Miriam Brody describes, 'Wollstonecraft is not so much an inheritor of a feminist tradition as she is the writer of a manifesto.'

¹²³de Gouges (n 61).

¹²⁴Janet Lyon, 'Introduction: Manifestoes from the Sex War', in Bonnie Kime Scott (ed), *Gender in Modernism: New Geographies, Complex Intersections* (Illinois University Press, Urbana, IL, 2007), 67, 69.

¹²⁵Ibid.

¹²⁶For a discussion on how the first draft of the Haitian Declaration was inspired by the US Declaration of Independence, see David Armitage, *The Declaration of Independence: A Global History* (Harvard University Press, Cambridge, MA, 2009) 115.

¹²⁷de Gouges (n 61). For a discussion see, Joan Wallach Scott, 'French Feminists and the Rights of "Man": Olympe de Gouges's Declarations' (1989) 28 *History Workshop* 1.

the Rights of Man as a despotic foundational text', which excludes women.¹²⁸ In 1848, following the assembly of feminists, Lucretia Mott, Martha C. Wright, Mary Ann McClintock and Elizabeth Cady Stanton led the collective authorship of the Seneca Falls 'Declaration of Sentiments and Resolutions', calling for equality of all men and women, and women's suffrage.¹²⁹ The 'Declaration of Sentiments and Resolutions' mirrors the structure of the US Declaration of Independence; the 16 'facts' of King George and Great Britain's 'injuries and usurpations' against the states of America, are replaced with the 'facts' of mankind's 'injuries and usurpations' towards women.¹³⁰

Choosing the word 'manifesto' is a clear statement of intent, although there may be political – including satirical – rationales for choosing alternative monikers or for corrupting/adapting the term.¹³¹ Feminist manifestos can therefore mimic and ridicule the historical, political, cultural and economic context in which manifestos operate. Feminist manifestos that parody patriarchal claims of constituting power and law are firmly within a parodic practice.¹³² We can then understand manifestos as examples of citations and recitations. Repetition or recitation is a re-enactment and a re-experiencing of established meanings and could be a form of legitimisation, but repetitions can also be used to undo and challenge established meanings.¹³³ As Sanford Levinson and Jack Balkin explain, we must consider the way legal texts are performed and re-performed, and subsequently interpreted and transformed, transcending their original form.¹³⁴ The mirroring of the French Declaration or US Declaration of Independence by de Gouges and then Stanton disrupts our reading of those texts: we are aware of the other performance and the choices made by the authors of the original and the re-performed claim of constituent power.

Understanding the recitation practices of some feminist manifestos exposes the 'performative founding' of constitutional moments that also brings audience and author(s) into contention. Dramatic legal performances are intended to conceal law's violent origins, its groundlessness and lack of authority with 'ritual splendour', but also law's potential to be a 'primary agent of liberation from authoritarian subjugation'.¹³⁵ Constituent moments are theatrical by nature, declaring independence or marching on sites of governance, be that the Bastille (1789) or the Women's March on Versailles (1789), which often become calcified and nostalgic moments. Nostalgic re-performance of initial claims of constituent power are visible across constitutional sites, be it in oaths, declarations, openings of parliament or sessions, or celebrations of revolutionary uprising, protest and revolt; however, it is also visible in constitutional scholarship that revalidates these moments and places constituent power firmly in the past – if it existed at all. They are also moments of violence, where the violence is constitutive of both a legal

¹²⁸Lyon (n 25) 54.

¹²⁹Elizabeth Cady Stanton, Susan B Anthony and MJ Cage, *A History of Woman Suffrage*, Vol. 1 (Fowler and Wells, Rochester, NY, 1889). See Sarah Tyson, *Where are the Women?* (Cambridge University Press, Cambridge, 2018) Appendix A. Signed by 68 women and 32 men.

¹³⁰Ibid.

¹³¹adee 'Ax Tampax Poem Feministo', in Fahs (n 25) 350.

¹³²Judith Butler, *Gender Trouble Feminism and the Subversion of Identity* (Routledge, New York, 1990) 186–87.

¹³³Ibid 185.

¹³⁴Sanford Levinson, Jack Balkin 'Law, Music and Other Performing Arts' (1991) 139 *University of Pennsylvania Law Review* 1597.

¹³⁵Peters (n 19) 196.

order and state.¹³⁶ Stone Peters argues that founding is always re-founding, while pretending to be a site of origin.¹³⁷ Seeing the performance sheds light on the sources, sites, audience and ‘diverse mechanisms of that construction’ of the constituent power to (re)found the law/state¹³⁸ and the foundational assumptions used to construct constitutions.

Performance also makes ‘authority visual, palpable and bodily’.¹³⁹ Feminist manifestos often occupy this space.¹⁴⁰ As Carla Lonzi wrote in her 1970 manifesto, *Let’s Spit on Hegel*, ‘in the eighteenth century we demanded equality, and Olympe de Gouges went to the scaffold for her Declaration of the Rights of Women. The demand for equality of women with men in the matter of rights coincides historically with the assertion of the equality of men among themselves: ‘Our presence was timely then.’¹⁴¹ De Gouges’ pamphlets were considered so counter-revolutionary that they led to her arrest and execution;¹⁴² her feminism is an important sub-text to her arrest.¹⁴³ Reading feminist manifestos demonstrates that women were not omitted from revolutionary constituent moments by oversight – it was intentional. Women’s claims to constituent power were (forcefully) dismissed and rejected.

Frankenberg’s discussion of political manifestos as an archetype demonstrates that only certain manifestos are recognized as political interventions and seen as claims of constituent power. What is political is what is of interest to those who claimed constituent power already, they have defined its terms. Feminist manifestos – even those, such as de Gouges’ manifesto that directly challenged the French Declaration of the Rights of Man – are not understood or recognized as claims for constituent power occurring alongside claims to constituent power that re-founded the state. Feminist manifestos direct attention to that understanding of constituent power, its covetousness based within masculine tropes of struggle and freedom and its ability to exclude to the point of silencing entire groups within a society.

Problematising constructions of constituent power

‘The people’, as a unified political entity holding constituent power, is a construction. This idea of ‘the people’ is established after the fact, as ‘identifying exercises of the constituent power is possible only in retrospect’,¹⁴⁴ highlighting the potential for elites to demarcate ‘the people’. The anger contained in feminist, anti-racist, workers’ and queer manifestos demonstrates how groups of people are excluded from ‘the people’. On the latency/dormancy of constituent power, feminist, anti-racist and queer manifestos untether

¹³⁶Ibid 180.

¹³⁷Jacques Derrida, ‘The Force of Law: The “Mystical Foundation of Authority”’, in David Gray Carlson, Drucilla Cornell and Michel Rosenfeld (eds), *Deconstruction and the Possibility of Justice* (Routledge, New York, 1991) 23, cited in Peters (n 19) 187–90.

¹³⁸Judith Butler, ‘Performative Agency’ (2010) 3 *Journal of Cultural Economics* 147.

¹³⁹Stone Peters (n 18) 180.

¹⁴⁰Neysa Page-Lieberman and Melissa Hilliard Potter, ‘Feminist Social Practice: A Manifesto’ (2018) 3 *ASP/Journal* 335; see Heathcote and Kula (n 86).

¹⁴¹Carla Lonzi, ‘Let’s Spit on Hegel’, <<http://blogue.nt2.uqam.ca/hit/files/2012/12/Lets-Spit-on-Hegel-Carla-Lonzi.pdf>>.

¹⁴²Lyon (n 25) 51.

¹⁴³Ibid 52.

¹⁴⁴Tushnet (n 6) 647.

constituent power from constitutional moments; these manifestos forefront responsiveness as key to the conceptualization of constituent power. Feminist, anti-racist, workers' and queer manifestos interrupt the notion of the unitary 'people' as constituent power-holders and dismantle the idea that constituent power is fixed and its power extinguished at the point of the constitutional moment.

'We' as performance

'The people' of constituent power is often manifested through the 'we' – for example, the phrase 'We the people(s) ...', which is found in the UN Charter 1945 and US Constitution of 1789. Canonical manifestos are performative in their construction of 'we'. Lyon argues that a manifesto 'seeks to assure its audience – both adherents and foes – that those constituents can and will be mobilized into the living incarnation of the unruly, furious expression implied in the text'.¹⁴⁵ The manifesto form brings a constituency into being. This performative formation of constituency is sometimes critiqued for its exclusion; it makes plain who are 'the people' and, from a feminist perspective, who is clearly excluded – or more likely simply ignored or forgotten. Manifestos thus highlight (often inadvertently) who is excluded and (counter-)manifestos take this exclusion as their starting point. A classic example of this is Olympe de Gouges, who in her Declaration of the Rights of Woman and the Female Citizen states, 'Woman is born free and remains equal to man in rights', laying out that women are intentionally not included as citizens born free and equal in accordance with the Declaration of the Rights of Man.¹⁴⁶ Her manifesto sincerely mimics and speaks to the male manifesto to demonstrate the exclusion; she also performs as the men perform, but does not attain the same legitimacy.

Performances of gender, whether through repetition, citation or iteration, demonstrate how feminist manifestos can disarticulate seamless performance and subvert the meanings with which masculine manifestos are invested, often as of right.¹⁴⁷ Feminist manifestos expose the performativity that occurs around canonical manifestos. While some feminist manifestos re-perform their gendered roles, others subvert them. This is particularly the case in punk, cyber and queer manifestos. For example, for Legacy Russell in *Glitch Feminism: A Manifesto* (2020), a 'non-performance of gender is a glitch, where the glitch is a form of refusal'.¹⁴⁸ Performing one's gender wrong can lead to punitive measures, and some authors of feminist manifestos that did politics and women's role in politics 'wrong' were punished but more often ignored.¹⁴⁹ Some feminist manifestos mimic their canonical counterparts' constructions of authority. In Julian Rosefeldt's 2015 film *Manifesto*, the actress Cate Blanchett, as a woman, performs manifestos mostly written by men, including the Communist, Futurist, Dada manifestos, changing the voice in which they are normally heard, altering and disconnecting them from their authority (including authorial authority).¹⁵⁰ Cate Blanchett reciting a recognized political manifesto in drag as a homeless man through the medium of film displaces the original audience, the manifesto's meaning to that audience, its reception by the audience and the

¹⁴⁵Lyon (n 25) 14.

¹⁴⁶Ibid 53.

¹⁴⁷Judith Butler, *Gender Trouble Feminism and the Subversion of Identity* (Routledge, New York, 1990).

¹⁴⁸Legacy Russell, *Glitch Feminism: A Manifesto* (Verso, New York, 2020) 8.

¹⁴⁹Butler (n 132) 186–87.

¹⁵⁰Several women are included, such as Sturtevant, Olga Rozanova and Yvonne Rainer. Julian Rosefeldt, *Manifesto*, <https://www.julianrosefeldt.com/film-and-video-works/manifesto-_2014-2015>.

audience's interpretation of its meaning.¹⁵¹ The manifesto's first performance as a site of origin had been imbued with authority and sometimes constituent power, which this re-performance disrupts. In so doing, these feminist performances challenge the masculine, patriarchal construction of the 'we' in theories of constitutionalism and show how similar language and claims are legitimized by audiences by virtue of the coded gendered (and class, race, disability) performance of the authors.

'We' as exclusionary

The 'we' of the manifesto, like traditional constructions of constituent power, can be exclusionary. Through the formation of groups, these manifestos construct us/them divisions and other categorizations. For example, note the way that the BITCH manifesto (1968) states that BITCH is composed of Bitches and that it stands for exactly what you think it does, and further that in orientation Bitches identify 'thru themselves and what they do'.¹⁵² In contrast, Fahs argues that 'the sweeping "we" pronoun [within] manifestos imagine *everyone* as a member of their audience: *We need ... We are ... We must ... We require ... We feel*'.¹⁵³ This inclusivity is arguably mirrored through the myriad accessible forms of manifestos. But whether 'we' is inclusive or exclusionary is dependent on the reaction of the audience and on whether those in an audience can locate themselves within the group or not. A point that the BITCH manifesto inhabits in asking the audience to consider whether through themselves and what they do they identify as Bitches.

The exclusion/inclusion binary that haunts feminist manifestos, and arises in constitutions, is explored in Donna Haraway's *Cyborg Manifesto* (1985). Scholars question the audience within Haraway's manifesto when she writes, 'We have all been injured, profoundly. We require regeneration, not rebirth, and the possibilities for our reconstitution include the utopian dream of the hope for a monstrous world without gender.' Does Haraway mean the women engaged in the production of science and technology,¹⁵⁴ or women in the academy, the readers of the *Socialist Review* where the manifesto was published, or the women 'who perform the labor of the "homework economy" in "loneliness and extreme economic vulnerability"'?¹⁵⁵ The ambiguity of the audience for Lyon 'forecloses the possibility of an emergent, active "we"'.¹⁵⁶ However, Kathi Weeks argues that this ambiguity is an attempt by Haraway to 'open up our organizational practices and political imaginations to a model of political agency that depends neither on the unity of the party nor on an identity category to recruit members and provide them an agenda'.¹⁵⁷ Weeks argues that 'the cyborg is elusive insofar as it departs from a traditional model of the revolutionary subject'.¹⁵⁸ Haraway's manifesto 'opens up the possibilities of an inclusive and expansive "we"'.¹⁵⁹ The *Cyborg Manifesto* also demonstrates how

¹⁵¹Rosefeldt (n 150).

¹⁵²Joreen, *BITCH* (1968) in Fahs (n 25) 467–68.

¹⁵³Fahs (n 25) 9.

¹⁵⁴Donna Haraway, 'A Manifesto for Cyborgs: Science, Technology, and Socialist Feminism in the 1980s' (1985) 80 *Socialist Review* 65, 89, cited in Lyon (n 25) 196.

¹⁵⁵*Ibid.*

¹⁵⁶Janet Lyon, 'Transforming Manifestoes: A Second-Wave Problematic' (1991) 5(1) *Yale Journal of Criticism* 101–27, 117–18.

¹⁵⁷Kathi Weeks, 'The Critical Manifesto: Marx and Engels, Haraway, and Utopian Politics' (2013) 24(2) *Utopian Studies* 216, 226.

¹⁵⁸*Ibid* 225.

¹⁵⁹*Ibid* 227.

temporalities impact on the audience and its perception of inclusion/exclusion. In the contemporary era, technological advances – including wearable technology – are such that the assumption of elites could be turned on its head. Haraway's or BITCH's constitutive power – if they ever fully held it – over their audience alters as the notion of cyborg or bitch evolves, but still speaks, in the feminist tradition, across time to other feminists.

For Anne Harris, femifestas include a queering of conclusivity by not 'literalising its constituents' forms', and therein lies a key distinction to the historic male genre.¹⁶⁰ Haraway in the Cyborg Manifesto explicitly affirms the "permanent partiality of feminist points of view," insisting that "the production of universal, totalizing theory is a major mistake"¹⁶¹ Rather, as Gago argues, *feminist potencia* is 'a constant and collective (even when individual) composition, one that assembles experiences, expectations, resources, trajectories, and memories'.¹⁶² She refers to this as 'situated thinking', such that feminist thinking may be internationalist but it is not panoramic.¹⁶³ The dialogues and contestation between feminist manifestos – for example, Mina Loy's critique of the 'social purity movement' that was part of British feminism in the early 1900s,¹⁶⁴ or Sophie Lewis's response to historical feminist manifestos on surrogacy¹⁶⁵ – highlight the need to read feminist manifestos across a range of perspectives. Lyon highlights 'the rapidly splintering "we's" of sixties manifestoes' to demonstrate how manifestos problematize the progress narrative of modernity.¹⁶⁶ These feminist texts dismantle the claims of a singular 'the people' as well as negating the calcification of the 'constitutional moment'.

Lyon explains the relationship between the dominant order and manifestos – 'what the dominant order relies on as "the real"; "the natural"; "the thinkable"; the manifesto counters with its own versions of "the possible"; "the imaginable"; and "the necessary"¹⁶⁷ While the constitutional moment is calcified as 'real', and the idea of 'the people' as conceivable, feminist manifestos expose their mysticism. The hortatory claims and rhetorical assertions of female political (collective and individual) subjecthood demonstrate how feminist political/legal interventions commonly consider constituent power as present, active and evolving, rather than static, nostalgic moments.

These manifestos reaffirm the *pouvoir irritant*; the constitutive element and disruptive aspect of constituent power are not siloed from each other.¹⁶⁸ Rather than dormant, they act as a check on the constituted power-holders. Whether manifestos are constitutive can to some extent be linked to the social and political practices and performances that transforms texts into constitutional sources. Through their claiming of authority and legitimacy, and their claims for new ways of governance, new foundations of the state and ways of life, feminist manifestos question that dormant theory of constituent power.¹⁶⁹

¹⁶⁰ Anne Harris, 'An Adoptee Autoethnographic Femifesta' (2017) 10(1) *International Review of Qualitative Research* 24, 26.

¹⁶¹ Haraway (n 154), 122.

¹⁶² Gago (n 9) 3.

¹⁶³ Ibid.

¹⁶⁴ Lusty (n 3) 252.

¹⁶⁵ Sophie Lewis, *Full Surrogacy Now* (Verso, New York, 2019) 38.

¹⁶⁶ Lyon (n 25) 205. For a discussion about the splintering of radical feminist groups, see Rhodes (n 51) 29–30.

¹⁶⁷ Lyon (n 25) 16.

¹⁶⁸ Krisch (n 14).

¹⁶⁹ Fahs (n 25) 9–10.

Reading feminist manifestos through a constitutionalist lens facilitates the unpacking of the complex relationship between manifesto, law and constituent power. Feminist manifestos problematize constructions of constituent power; they demonstrate how the law's performance of "ideal" constituent power-holder works to exclude groups of people, including women. How feminist manifestos' claims to constituent power are ignored or their redescription of that power as *feminist potencia* raises questions about both the performance of these constituent and constitutive claims and the role of audiences in accepting these claims.

IV. Absence of feminist manifestos

Some text-based manifestos – especially those that are considered to be “theoretical” pieces’ – are recognized as serious political interventions.¹⁷⁰ Manifestos written and performed by men in particular within constitutional history are (harmfully and selectively) nostalgized.¹⁷¹ However, as Penny Weiss notes, feminist interventions are often considered ‘too activist’¹⁷² to be taken seriously. Often, the more marginalized the group utilizing manifesto is, the less likely it is that their work will be received as a meaningful intervention. Feminist manifestos underscore the importance of audience. Manifestos are brought into constitutional being through their performance, making the role of audience essential.¹⁷³ Understanding manifestos through performance highlights why feminist manifestos are sidelined in academic constitutional scholarship. Performance theory demonstrates the accepted role of theatricality in the construction of authority.

Feminist political manifestos are often dismissed for their theatricality, which is tied to gendered and homophobic dismissals of theatricality as fake and lacking the ‘truth’ of masculine political performance. Davis and Postlewait argue that there is a polarity between the natural or real, and the theatrical or artificial, that also distinguishes between masculine and feminine traits or between what is politically legitimate and illegitimate.¹⁷⁴ The inappropriateness of women performing political acts in public spaces is echoed in the Petition of the Gentlewomen and Tradesmen's Wives (1642), which begins, ‘It may be strange, an unbecoming our sex to show ourselves by way of petition.’¹⁷⁵ Tracy Davis and Thomas Postlewait argue that women are portrayed as duplicitous, deceptive, costumed, showy and thus inherently theatrical, so any political performance will accordingly be illegitimate, while natural behaviour and sincere judgement reside with masculinity.¹⁷⁶ The antitheatricality is extended further to include all femininities and sexual identities, rendering them inauthentic.¹⁷⁷ Within constitutional theory, the

¹⁷⁰Weiss (n 52) 1; Julian Hanna, *The Manifesto Handbook: 95 Theses on an Incendiary Form* (Zero Press, New York, 2018) 12–13.

¹⁷¹For example, the storming of the US Capitol Building on 6 January 2021 and the references to 1776 and the Declaration of Independence.

¹⁷²Weiss (n 52); Hanna (n 170) 12–13; Rhodes (n 51) 48.

¹⁷³For example, Chicago Women's Liberation Union (n 100).

¹⁷⁴Tracy C Davis and Thomas Postlewait, ‘Introduction’ in Tracy C Davis Thomas Postlewait (eds), *Theatricality* (Cambridge University Press, Cambridge, 2003) 17–18.

¹⁷⁵Ibid 17–18; ‘Petition of the Gentlewomen and Tradesmen's Wives’ (1642) in Weiss (n 52) 29.

¹⁷⁶Davis and Postlewait (n 174) 17–18.

¹⁷⁷Ibid 17.

inauthentic actor is excluded from notions of an ideal or virtuous citizen and from the capacity to exercise constituent power.¹⁷⁸

Jacques Rancière argues that insurgency is often the appearance of the unqualified people in the wrong places.¹⁷⁹ If insurgency rejects the status quo, that insurgency must be ignored and/or put down;¹⁸⁰ this is especially the case where law is seen as non-political, or where politics disappears. This might explain the rejection of feminist manifestos, as where feminist manifestos are re-citations of constitutional texts and undermining or challenging previous citations as authoritative and final, they are a form of feminist insurgency funnelled through the performance of manifesto. When read alongside Davis and Postlewait's argument that women are portrayed as duplicitous, deceptive, costumed, showy and inherently theatrical,¹⁸¹ then where exclusions or harms are pointed out, women's political performance can be dismissed as overly emotional. To admit the truth of a feminist manifesto would be to undermine the original authenticity of the first constitutive performance. It rebuts the assumption of women as unqualified to occupy the political space.

Jon Erickson posits that both theatricality and ideology are examples of rhetorical apparatus that efface their own performance techniques to present the illusion of 'truth' to their audiences.¹⁸² Performance is present but absent from theoretical or political descriptions. Potentially feminist manifestos find it virtually impossible to efface the techniques they employ because women are intrinsically linked to the negative attributes of both theatricality and ideology (misandry), and because in either earnestly or parodically reciting patriarchal manifestos they are not regarded as representing 'truth'.

This is doubly the case for women from Indigenous or subaltern communities, whose repertoires include 'performance, gestures, orality, movement, dance, singing' – acts that, according to Ryan Hartigan, are historically undervalued, particularly in the legal setting that favours fixed, stable, written cultures.¹⁸³ These Indigenous repertoires are treated as pre-political. In colonial settings, these repertoires were ignored and/or devalued, which undermines and/or nullifies Indigenous political interventions and legal orders.¹⁸⁴ Bernard Hibbitts argues that in the United States, women, African Americans and others by force or choice retain respect for 'performance as a site of identity and resistance', and that respect for performance is growing.¹⁸⁵ Respect for performance as a form of knowledge-

¹⁷⁸See Ann Scales, *Legal Feminism: Activism, Lawyering and Legal Theory* (New York University Press, New York, 2006) 64, cited in Rosemary Hunter, 'Contesting the Dominant Paradigm: Feminist Critiques of Liberal Legalism' in Margaret Davies and Vanessa Munro (eds), *Ashgate Research Companion to Feminist Legal Theory* (Ashgate, Aldershot, 2013) 13; Ngaire Naffine, 'Can Women be Legal Persons?' in Susan James and Stephanie Palmer (eds), *Visible Women: Essays on Feminist Legal Theory and Political Philosophy* (Hart, Oxford, 2013) 69, 82; A Grear, 'Sexing the Matrix: Embodiment, Disembodiment and the Law – Towards the Re-gendering of Legal Rationality' in J Jones et al (eds), *Gender, Sexualities and Law* (Routledge, New York, 2011) 44.

¹⁷⁹N Ridout, 'Performance and Democracy' in T. Davis (ed), *The Cambridge Companion to Performance Studies* (Cambridge University Press, Cambridge, 2008) 11, 13.

¹⁸⁰Ibid 11, 19.

¹⁸¹Davis and Postlewait (n 174) 17–18.

¹⁸²Jon Erickson, 'Defining Political Performance with Foucault and Habermas: Strategic and Communicative Action' in Davis and Postlewait (n 174) 156.

¹⁸³Ryan Hartigan "'This is a Trial, Not a Performance!'" Staging the Time of the Law, in Sarat et al (n 56) 68, 76.

¹⁸⁴Ibid 68, 76, 91.

¹⁸⁵Bernard Hibbitts, 'De-Scribing Law: Performance in the Constitution of Legality', paper for the 1996 Performance Studies Association Meeting.

production alone is not sufficient if, as the history of feminist manifestos shows, it must be the 'right' sort of performance and certainly not insurgent for it to be recognized by constituted power-holders.¹⁸⁶ Hitherto to be recognized, the performance itself must be denied. Feminist and Indigenous feminist groups re-perform, vary and critique constitutional and international legal texts to make their own political 'truth',¹⁸⁷ embracing repertoires that patriarchal constitutional standards will only recognize when they themselves enact them and then deny their import. Constitutionalism decides which are legal and political truth and which are mere insurgency or emotionality or confined to the private sphere. Feminist manifestos disrupt this categorization. Manifestos in these settings disrupt and challenge the 'greatness' of legal orders, particularly in their constitutional form, exported/imposed on others.

Feminist manifestos face difficulties attracting audiences. This might be because they are rejected as the exercises of 'madness'¹⁸⁸ or scorned as a result of the theatricality associated with women in the public sphere. Manifestos that attempt to speak to or alter the perceptions of audiences that accept a 'dominant ideology' as universalized, especially when that ideology labels these manifestos as unintelligible, irrational and possibly immoral, confront these impediments.¹⁸⁹ Lyon argues that this gives rise to the paradox of the manifesto form, which has to balance 'between participation and political marginalization, anger and restraint, threat and argument, mythic time and urgent agendas'.¹⁹⁰ The role played by an audience in historizing, re-performing and constituting the manifesto as 'real' or merely 'theatrical' political performance becomes central.¹⁹¹

Puchner argues that, as manifestos are performance – they are speech acts – a lack of audience means a manifesto fails in its objectives.¹⁹² However, this measure of failure supposes a specific intent and a temporal marker of impact. For instance, the Female Anti-Slavery Society of Salem's Constitution (1832) succeeded in its initial aim of creating their own space and allowing members to be heard by each other, so on their own terms they succeeded.¹⁹³ Puchner's view also excludes the possibility of feminist communication and retrieval across time.¹⁹⁴ Feminist methods of retrieval and communication can interpolate an audience that may be inadvertent but that can respond and point to an assertion of constituent power that was never absent, but rather ignored by an audience hostile towards or cynical about women's political/constitutional value.

Reading feminist manifestos shows us how law is received, acted upon and retold by its audience. They also highlight questions about who the audiences of feminist manifestos are, consciously or unconsciously (then and now) and how audiences' perception of

¹⁸⁶See Sylvia Tamale, 'Nudity, Protest and the Law in Uganda (2017) 22 *Feminist Africa* 52.

¹⁸⁷For a textual example, see the 'Beijing Declaration of Indigenous Women' (NGO Forum, UN Fourth World Conference on Women Huairou, Beijing, People's Republic of China, 7 September 1995).

¹⁸⁸Caws (n 58) ix; Fahs (n 25) 8; Rhodes (n 51) 48.

¹⁸⁹Lyon (n 25) 61.

¹⁹⁰Ibid.

¹⁹¹Sarat et al (n 56) 3.

¹⁹²Martin Puchner, 'Manifesto = Theatre' (2002) 54 *Theatre Journal* 449, 463.

¹⁹³Ibid.

¹⁹⁴Marilyn Booth, *May Her Likes be Multiplied: Biography and Gender Politics in Egypt* (University of California Press, Berkeley, CA, 2001) 90, 102. See Labenski (n 20).

legitimate legal performance impacts the capacity to exercise constituent power.¹⁹⁵ The continued marginalization of manifestos within scholarship reinforces the exclusions that feminist, queer and anti-racist manifestos contest and seek to challenge, but markedly their demarcation of the faults is often the source of their 'failure', and their performance will always be lacking. Feminist manifestos seek to alter the frames of constituent power and collapse its calcified form upon itself.

V. Conclusion

No society has a constitution without the guarantee of rights and the separation of powers; the constitution is null if the majority of individuals comprising the nation have not cooperated in drafting it. A majority, in other words, must participate in the legal codes that guarantee the rights of the new nation; without the inclusion of women in this process, the new nation is in violation of its own principles.

Olympe de Gouges' Declaration of the Rights of Woman and the Female Citizen (1791)

There is a gap in the analysis of constituent power, created by ignoring the many times women have claimed constituent power. These claims are catalogued by manifestos produced by women across the world. These manifestos are often contemporaneous with men claiming their rights, declarations of independence being the key example. *Feminist potencia* does not place constituent power in the past, nor does it create a binary between a singular static form and processes of dynamic change but rather folds them together where protest, revolution and founding are not different claims to capacity but instead iterations of constituent power. In the history of modern constitutionalism, women are claiming constituent power, and this article has retrieved some of these examples, offering audiences a renewed opportunity to consider what these manifestos mean for contemporary constitutionalism and why traditional categorizations of constituent power always excluded them.

Manifestos and law are long connected. But there is a gap in the analysis that needs to be filled. This gap exists within international and constitutional law, and thus global constitutionalism. Constituent power and manifestos are interconnected, but only certain manifestos are considered worth examining, or considered legitimate, and their performances deemed so 'real' as to not be noteworthy. The failure to categorize texts as manifestos, decontextualizes them and sidelines their political interventions, protests and (counter)manifestos as less significant. Ignoring these manifestos constructs a singular notion of 'the people' and a singular notion of the 'constitutional moment' and constituent power.

(Re)reading the feminist manifestos that were rejected and ignored in the past helps constitutional scholars to expose the systems that led to those silencing practices; it exposes how law and legal processes construct idealized notions of constituent power, of performance, and how gendered norms within different societies work to delegitimize some claims to constituent power. Feminist manifestos highlight constituent power's limitations in three respects: first, in relation to the construction of constituent power-holders; second, with respect to the latency or dormancy of constituent power;

¹⁹⁵The Futurist movement utilised the political manifesto form to combine art and politics to emphasize the performative, rhetorical and multimedia qualities, which according to Lusty stressed their art's public emotional impact as paramount to its potential transformative power. See Lusty (n 3) 22.

and third (and relatedly) in the limits they place on the potential for protest, revolt and change.

A multiplicity of manifestos exist, which have a richness and purpose to them. Their lack of purchase within constitutionalism is not a measure of their worth, their (in) sincerity, their emotionality or brashness; rather, it reflects a dominant audience that, through a variety of methods, excludes their possibilities. But just because these texts and performances were ignored by their contemporaries, this does not mean constitutional scholars and international lawyers should overlook their contributions now. Manifestos are an impatient genre, and feminist manifestos often have significant reasons for their impatience.