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Neighbourly Injuries: Proximity in Tort Law and Virginia Woolf's Theory of Suffering

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Abstract 2012 marks the 80th anniversary of *Donoghue v Stevenson*, a case that is frequently cited as the starting-point for a genealogy of negligence. This genealogy starts with the figure of the neighbour, from which, as Jane Stapleton eloquently describes, a "golden thread" of vulnerability runs into the present (Stapleton 2004, 135). This essay examines the harms made visible and invisible through the neighbour figure, and compares the law's framework to Virginia Woolf's subtle re-imagining and theorisation of responsibility in her novel *Mrs. Dalloway* (1925). I argue that Woolf critiques and supplements the law's representations of suffering. Woolf was interested in interpreting harms using a framework of neighbourly responsibility, but was also critical of the kinds of proximities recognised by society. Woolf made new harms visible within a framework of proximity: in this way, we might think of Woolf's work as theorizing a feminist aesthetic of justice, and as providing an alternate genealogy of responsibility to *Donoghue v Stevenson*.

Keywords *Donoghue v Stevenson* · Virginia Woolf · *Mrs. Dalloway* · Feminist ethics · Feminist aesthetics · Middle-distance responsibility

> "… I want to criticise the social system, and to show it at work, at its most intense."
> —Virginia Woolf[1]

[1] Woolf 1977, 248.

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"I do not think so ill of our jurisprudence as to suppose that its principles are so remote from the ordinary needs of civilised society and the ordinary claims it makes upon its members as to deny a legal remedy where there is so obviously a social wrong."
—Lord Atkin[2]

"I am very poor, and am not worth in all the world the sum of Five Pounds …."
—Mrs. Donoghue[3]

Introduction: Re-imagining Responsibility Through a Feminist Aesthetic of Harm

There is a strange English case, one that is also a quintessentially modernist text, that is central to the development of tort law, and which has had a hold on lawyers' imaginations since it was heard in 1932. 2012 marks the 80th anniversary of *Donoghue v Stevenson*,[4] in which the House of Lords reformulated the responsibility owed by one person to another in civil society. The case is significant to the law, as it established negligence as an independent tort; it is frequently cited in both case law and scholarly commentary as the starting-point for a genealogy of negligence. This genealogy starts with the figure of the neighbour, from which, as Jane Stapleton eloquently describes, a "golden thread" of vulnerability runs into the present (Stapleton 2004, 135). The case is also important to cultural understandings of responsibility. At the time this case was being decided, the novelist and essayist Virginia Woolf had recently finished writing about the relationship between suffering, vulnerability and social responsibility in her novel *Mrs. Dalloway* (1925). In fact, there are significant connections between *Donoghue v Stevenson* and Woolf's novel, as both texts are interested in making visible responsibility for harms that had previously been invisible. This essay focuses on the innovations of *Donoghue v Stevenson*, in re-imagining responsibility, and on Woolf's more subtle imaginings, which critique and supplement the law's representations of suffering.

Cultural understandings are central to the law's conceptualisation of responsibility. There is a middle, neighbourly distance between people that produces a sense of responsibility, a relation in which events are perceived to be neither too distant as to seem outside our control, nor too close to seem beyond inspection. This perception of neighbourly distance is an act of imagination, an act which Lord Atkin made part of law in *Donoghue v Stevenson* through his introduction of the figure of the neighbour, and which Woolf made apparent to readers through multiple metaphors of proximity and affinity in her novel *Mrs. Dalloway*. In this essay I argue that Woolf was concerned with questioning the kinds of representations that lead to social responsibility, and was interested in making sense of society's

[2] *Donoghue v Stevenson* [1932] AC 562 at 583.

[3] Affadavit sworn by Mrs. Donoghue on February 16, 1931 and attached to petition for leave *Journal of the House of Lords* 128, 251 cited in Taylor 1991, 19.

[4] [1932] AC 562.

aversion to responsibility for both the epic devastation of the Great War, and for the private injuries of sexual abuse and familial violence. Woolf queried the social understanding that positioned these harms as either too close, or too far way, to generate social responsibility: that is, in ways similar to Lord Atkin's focus in *Donoghue v Stevenson*, Woolf was interested in interpreting harms using a framework of neighbourly responsibility. Lord Atkin's framework of the neighbourly was innovative in making available a mechanism to recognise new relationships of responsibility; it was also important in making the specific relationship between manufacturer and consumer subject to legal scrutiny. But Lord Atkin's framework was also limited in its selection of harms, which ultimately relies on dominant legal and cultural frameworks of recognition. The difference between Lord Atkin and Woolf is that Woolf was critical of the kinds of proximities society perceived to exist, and was interested in bringing new harms and responsibilities within the framework of the neighbourly. Woolf, in both her aesthetic and thematic concerns, was interested in making visible previously hidden harms, thus questioning the law's selection of harms in its administration of justice, and challenging legal and cultural understandings of whose suffering counts.

Such aesthetic considerations are bound up with the thematic questions of justice that have been pursued by legal feminists in the area of tort law. The interconnectedness between legal and cultural domains is a key insight of the law and culture movement: legal and cultural domains are mutually constitutive, and the test of law's justice relies at least in part on its cultural effects. As Guyora Binder says, "The process by which we represent our society's will and welfare in the medium of law is an imaginative and expressive one … informed by aesthetic judgment as well as instrumental reason" (Binder 2007, 105). Such an analysis is especially pertinent to tort, as extra-legal considerations are central to tort's processes of adjudication: it is, according to Jane Stapleton, both "open-textured" and "voracious" (Stapleton 2004, 135) and so its interconnectedness to the cultural domain is more apparent here than perhaps with other areas of law. Scholars such as Rita Felski have denied the possibility of a feminist aesthetic, arguing that it is not appropriate to develop a "unifying theory" to judge representations (Felski 1989, 2). However, the goal here is not so much to arrive at a universal aesthetic that may be termed 'feminist', but rather to contribute to a flexible series of analytic approaches that can guide critical examinations of practices of representation in both legal and cultural domains. These analytic and aesthetic practices form part of a method aimed at evaluating both legal and cultural effects of the law from a feminist perspective.

In her recent work on the relationship between proximity and responsibility, Judith Butler has argued that proximities create ethical demands, "which do not require our consent, and neither are they the result of contracts or agreements into which any of us have deliberately entered," (Butler 2011, 2). This point is also made by Desmond Manderson specifically in relation to tort law, through the philosophy of Emmanuel Levinas. Manderson describes tort as giving rise to a "personal responsibility" that raises "in a distinctly personal way, one of the oldest questions of law itself: 'Am I my brother's keeper?'" (Manderson 2007, 5). Butler asks, "whether any of us have the capacity or inclination to respond ethically to suffering

at a distance" (Butler 2011, 1), and finds that events that occur at either polarity of closeness and distance seem to be outside the domain of responsibility: "Is what is happening so far from me that I can bear no responsibility for it? Is what is happening so close to me that I cannot bear having to take responsibility for it?" (Butler 2011, 3).

Tort scholars have tended to take neighbourhood and the responsibilities arising from it for granted. Woolf offers us an alternative theory of relationality, one that interrogates our seemingly natural perceptions of this distance—as well as assumptions about neighbourliness, proximity and responsibility. Woolf's work reveals that the middle-distant suffering with which we feel most comfortable, states that we usually tend to accept might give rise to forms of responsibility, are the effect of perceptions and representations that are contingent and malleable. That is—there is an aesthetic logic to proximity and the neighbour figure, as well as the responsibility seen to arise from this logic, which can be re-ordered and re-imagined so that we can "re-see" both closeness and responsibility differently. Woolf's work theorises new modes of responsibility by deploying particular practices of representations—metaphors, frameworks, narratives—that re-organise our perceptions.

Woolf shows that neighbourliness is a practice of seeing and of representation, and argues for a re-framing of neighbourly distance, so that both epic and too-close distances are both seen to generate responsibility. Woolf employs practices of representation to bring certain kinds of suffering into a civil framework, which is also a middle-distant framework, and offers an alternate genealogy of civil harm to that of *Donoghue v Stevenson*. This alternative genealogy corresponds to feminist legal thought, and also contributes to an understanding of what a feminist legal aesthetic might mean in the area of tort law. My argument here is not only that Woolf pre-empted some of the insights of feminist legal scholars and trauma theorists made later in the twentieth century and into the twenty-first, but also aestheticised the relationship between suffering and responsibility in ways that show the significance of representation to the perception of responsibility. As feminists have noted, the suffering of women has sometimes been "dangerously easy" to make visible, (Enloe 2000, 109), but the problem lies in the *means* of visibility, and stakes of this visibility, rather than the face of visibility per se. However, before we explore Woolf's aesthetic practices, and the ways in which they challenge the legal status quo, we first need to look at the law's story of social responsibility. Like all good stories, this one starts with a journey—Mrs. Donoghue's tram trip from her tenement in the heart of Glasgow to the Wellmeadow Café in Paisley.[5]

[5] In the legal pleadings, judgments and in subsequent commentary, Mabel Hannah has been referred to as Mrs. Mary Donoghue, Mrs. May Donoghue and Mrs. M'Alister. Following her divorce from her husband in 1928, she reverted to her maiden name of McAllister, but was actually known as 'Mabel Hannah' (Rodger 1988, 1, 3–9, 5). Hannah was her mother's maiden name and Mabel was the name of her daughter, who died as an infant (Rodger 1988, 8). In the House of Lords decision, and in most tort textbooks (where most of us encounter her), she is known as 'Mrs. Donoghue'.

Mrs. Donoghue's Story

It was ten to nine at night on the 26th of August, 1928, when Mrs. Donoghue, a Glaswegian shop assistant, arrived by tram at the Wellmeadow Café, to meet a friend. Soon after she arrived, this friend ordered and paid for an ice-cream and ginger beer. The ginger beer arrived in an opaque bottle and the proprietor of the Wellmeadow, Mr. Francis Minchella, poured some ginger beer over the ice-cream, which Mrs. Donoghue drank.[6] Some time later, according to the pleadings:

> Her friend then lifted the said ginger-beer bottle and was pouring out the remainder of the contents … when a snail, which had been, unknown to the pursuer, her friend, or the said Mr. Minchella, in the bottle, and was in a state of decomposition, floated out of the said bottle. (Art. 2 of Cond., cited in Taylor (1991, 16))

Seeing the snail caused Mrs. Donoghue immediate shock and illness, and over time her condition became worse. On 29th August 1928, she consulted a doctor and was found to be suffering from gastroenteritis caused by the snail-infected ginger-beer. Her condition further worsened and on 16th September 1928, she received emergency treatment at the Glasgow Royal Infirmary, suffering repeated vomiting, acute pain in her stomach, and mental depression. She was rendered unfit for her employment. She lost wages and incurred expense as a result of her injuries and sued the manufacturer of the ginger beer, Mr. Stevenson, an aerated-water manufacturer, for £500 damages for her suffering.[7] The only legal recourse open was to sue Mr. Stevenson in negligence, but at that time, no relationship between manufacturers and end consumers was recognised by the law.

How did these inauspicious, somewhat ridiculous facts change modern personal injury law? In the end, the House of Lords found a new relationship of responsibility in law—not between Mrs. Donoghue and the proprietor of the café, but between her and the manufacturer of the ginger beer. The most important judgment in the case was given by Lord Atkin, who held that although he had no contractual connection to her, Mr. Stevenson ought to have had someone like Mrs. Donoghue "in contemplation" when producing his ginger beer.[8] The decision produced a new duty of care between manufacturer and consumer, a relationship which, despite being central to the burgeoning market society of the early twentieth century, had not previously been the subject of tort law. Before this case, manufacturers could send harmful products out into the world with impunity except towards the limited class of people with whom they had a contract. But the case is important beyond the introduction of this specific responsibility relating to the consumer relationship, since Lord Atkin's 'neighbour principle' was a formulation of a general duty of care, which redefined responsibility between individuals in civil society. Negligence law became adaptive and opened up new categories of injury and relationship that

[6] For details of the facts of the case, see *Donoghue v Stevenson* [1932] AC 562, 562, and the judgment of Lord Buckmaster, 566.

[7] See *Donoghue v Stevenson* [1932] AC 562, 562, and the judgment of Lord Buckmaster, 566.

[8] At 580.

had previously not been imagined by the courts, thereby "increasing social obligation" (Stapleton 2004, 138), the "radiating effects" of which continue to resonate into the present (Warner 1990, 75). This mode has an inherently expansive quality—Patrick Atiyah has referred to the historical expansion of the scope of negligence as a process of "stretching the law".[9] The new possibilities were not welcomed by everyone, as demonstrated by Lord Buckmaster's dissenting judgment, in which he predicted the development of law in new, terrifying directions, with unknown limits.[10] Lord Buckmaster was critical of the social and economic consequences of this new flexibility, highly aware of the creative potential of Lord Atkin's reasoning: "If one step," he said, "why not fifty?".[11]

The Work of Proximity: Making Neighbours Out of Strangers

Tort law has been thought of as a kind of moral praxis—as the real-world, textured complement to philosophical abstraction, and as a key site in which civil norms are produced. As Peter Cane argues, "outside of the law, there are relatively few norm-enforcing institutions in civil society" (Cane 2002, 25). *Donoghue v Stevenson* reconfigured this civil obligation, and increased the significance of tort in determining social obligation. Proximity was central to the most important judgment in the case, given by Lord Atkin, who stated that tort law was not merely a constellation of individual rules but had an underlying rationale, one that was based on imagined relationships. In producing this concept of neighbourhood, Lord Atkin began by quoting Lord Esher in *Le Lievre v. Gould*,[12] who used a spatial metaphor to frame responsibility:

> If one man is *near* to another, or *near* to the property of another, a duty lies on him not to do that which may cause a personal injury to that other, or may injure his property.[13]

Lord Atkin combined the spatial framework of Lord Esher's dictum with the parable of the Good Samaritan, imagining neighbourhood as a mental as well as a spatial relationship:

> The rule that you are to love your neighbour becomes in law, you must not injure your neighbour; and the lawyer's question, Who is my neighbour? receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law is my neighbour? The answer seems to be—persons who are so closely and directly affected by my act that I ought

[9] See Atiyah 1997.

[10] Lord Buckmaster at 578.

[11] At 578.

[12] [1893] 1 Q. B. 491, 497, 504.

[13] At 504, cited by Lord Atkin 582, emphasis in original.

> reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question. (580)

The neighbourly mind is a pre-emptive, relational mind. Tort law thereby has the potential to produce a strange new intimacy between people, through this pre-emptive consideration for the other. Such a neighbour, so considered, might be someone we have never met—and such strangers must be truly imagined. Future manufacturers in the position of Mr. Stevenson became obliged to imagine consumers such as Mrs. Donoghue; and so are we all obliged, along certain lines and with restrictions, to imagine each other, and the duties that arise from that relation.

The birth of negligence law as we know it also involved the demystification of capitalist processes, and the re-imagination of relationships in the market economy. The law concerning the manufacture of objects up until the case of *Donoghue v Stevenson* held that liability for defective or dangerous products could only be based in contract, with the exceptions of fraud and products that were dangerous-in-themselves.[14] The lower courts considering Mrs. Donoghue's case focused on the issue of dangerousness, but Lord Atkin dismissed this as the central point, choosing instead to focus on the relationship between manufacturer and consumer.[15] Essentially what Lord Atkin was doing was showing that there was a problem with a social order where relations between subjects were broken up by the interposition of objects. Lord Atkin's reinterpretation of the dangerous object thereby connected him to a very unlikely ally—that of Marxism—as Lord Atkin's neighbour principle is essentially a refusal of commodity fetishism, albeit coming at this conclusion from an approach based on a Christian-based *nobesse oblige*, rather than one of class consciousness. According to Karl Marx, "The fetishism of the commodity", lies in the fact that "a definite social relation between men themselves … assumes here, for them, the fantastic form of a relation between things" (Marx and McLellan 2008, 166). In *Capital*, Marx deconstructed the "thingness" of commodities, arguing that commodities obtain their value not from inherent qualities, but rather from their place in interconnected discourses (across economic, cultural and social domains). Marx arrived at this conclusion through his observation that in the nineteenth century, the value of commodities came to exceed their use value; this end value did not arise out of the object itself but rather was an effect of the process of exchange (Marx and McLellan 2008, 165–177).

Lord Atkin swept away the consideration of objects-dangerous-in-themselves as a ground of liability and replaced this question with a very different consideration: the mind of the manufacturer who produced the object. The terms of inquiry shifted from a debate about which objects might be considered dangerous in themselves—an exploding lamp? a cart that was packed unevenly?—to a debate that emphasised the mind and processes that produced the object. The unlikely result of this tension between object and subject is a new ethics based on an act of imagination that focuses not on the relationship between the object and the person injured but on the

[14] See for example Lord Moncrieff, *Appeal Papers* 6.

[15] At 589.

creator of the object and the person injured. The quality of mind in this new formulation is not the wicked mind, as in fraud cases, which required actual knowledge of defectiveness, but the negligent mind, the mind that fails to pay attention.

Mrs. Donoghue, when sitting in her café, had no awareness of how the snail came to be in the bottle. In fact, the inexplicability of the snail probably caused a large part of her shock, which was narrated as a moment of recognition: Mrs. Donoghue's suffering began not when she initially ingested the snail but when the decomposed snail "floated" out of the bottle and she realised what her body had already taken in. In the process of investigating the cause of the accident, Mrs. Donoghue's lawyers deconstructed this shock experience, revealing it to be an effect of a chain of specific events. Mrs. Donoghue's lawyers demonstrated that the shock she experienced should not have come as a surprise, given the careless, even disgusting, methods Mr. Stevenson employed in his manufacturing processes.[16] The writ in the case drew attention not only to the general conditions of the factory, but to the particular, offending snail, with respect to which Mr. Stevenson had specific responsibilities: "the said snail, in going into the said bottle, left on its path a slimy trail, which should have been obvious to anyone inspecting the said bottle before the ginger beer was put into it." (Art 4. of Cond. cited in Taylor (1991, 16)). The pleadings represented capitalism as a constellation of processes, built on the actions of many particular individuals, just as the shock was received by a particular individual. This brought the commodity relationship within the realm of civil ethics—a relationship between people, not things.

But Lord Atkin's principle is not only an assertion of moral value: it is also an instrumental morality that reorganised power relationships. The power dynamic between manufacturer and consumer was reorganised through the duty of care, which, articulated in a moral register, countered the excesses and, to use Walter Benjamin's term, the "amorality of the market society" (Benjamin 1973, 159)—its frequent carelessness and occasional violence—by supporting the claims of consumers. The moral discourse in the case therefore met and superseded another value that had snuck into both culture and law—the unstated but holy value of the bottom line. Lord Atkins opened up a class of potential plaintiffs, consumers vulnerable to harm caused by parties with whom they had no previous relationship but whose products they were now using, which is actually quite an intimate thing to do. The case recognised the new intimacies of consumption and commerciality, and that these intimacies gave rise to new conceptions of injury and harm. The case also created a kind of intimacy between strangers—or rather, made visible the strange intimacy that already existed between manufacturer and consumer through the act of consumption.

Selective Responsibility: The Law's Focus on Particular Harms

Tort law requires us to be thoughtful and responsible towards our neighbour. The accident of Mrs. Donoghue finding a snail in her ginger beer became the occasion

[16] See Art 3. of Cond., cited in Taylor (1991, 17).

for the law to disrupt the (then) normal practices of manufacture. The neighbour principle also asserted vulnerability as a value relevant to commercial practices, by impacting financially on defendants through the language of the bottom line. The kinds of injuries captured by the figure of the neighbour and the relationship of responsibility subsequently made visible new injuries that had previously been invisible to the law—just as the injury to the end-consumer had been, prior to *Donoghue v Stevenson*. The relationship of certain everyday conditions to suffering—those related to acts of consumption—became a continuing question in tort law, Lord Atkin's judgment providing a mode of recognition for new relationships and injuries. As the processes of market society worked to commercialise all spaces, tort law provided the possibility of a civilizing buffer. Following *Donoghue v Stevenson* the twentieth century saw a boom in product liability law, and courts were faced with cases in which consumers had been harmed by somersaulting SUVs, hardening breast implants and carcinogenic medications.

On the face of the text, *Donoghue v Stevenson* is a story of a consumer who was sickened and shocked when she saw a decomposed snail float out of a bottle. The story seems straightforward, and not particularly tragic: there is even something ridiculous about being injured by a snail. But there is also something not quite right about the way in which the law registers Mrs. Donoghue's suffering through the narrative of the snail-in-the-bottle, a dissonance which brings out the contradictions between the ethic of neighbourhood and the power of law. It is clear that Mrs. Donoghue touches lawyers in some way—there is a sense that, at its best, the common law should stand up for the shop assistant who suffers following the ingestion of a snail. In 1990, Martin R. Taylor, a Canadian lawyer and retired judge, organised a "Pilgrimage to Paisley" to honor the role of *Donoghue v Stevenson* in the development of the law of negligence.[17] In 1988, Allan Rodger, now Lord Rodger of the House of Lords, conducted extensive research on Mrs. Donoghue's life, consulting a range of legal and State records. He describes the daily hardship of her impoverished life, casting Mrs. Donoghue as a much more tragic figure than is apparent on the face of the legal text.

Mrs. Donoghue had to gain the status of pauper to pursue her case, since she had no means to put up security for costs. Mrs. Donoghue's petition to appear *in forma pauperis* was supported by an affidavit in which she swore:

> … I am very poor, and am not worth in all the world the sum of Five Pounds, my wearing apparel and the subject matter of the said Appeal only excepted, and am, by reason of such my poverty, unable to prosecute the said Appeal.[18]

Attached to her petition was a certificate of poverty signed by a minister and two elders of her church, attesting to Mrs. Donoghue's poverty (Rodger 1988, 4).

Prior to her case, Mrs. Donoghue had experienced a number of traumatic events. She gave birth to three premature children between 1917 and 1920, all of whom died (Rodger 1988, 5, 18–19). The incidence of premature births is consistent with her poverty, and there is evidence that malnutrition was a factor in the death of her

[17] Taylor is currently in possession of the 'genuine Stevenson bottle' (Taylor 1991, 19).

[18] Affadavit sworn on February 16, 1931 and attached to petition for leave, cited in Taylor (1991, 19).

daughter Mabel in 1920 (Rodger 1988, 1, 5). In 1928, she separated from her husband, and she and her surviving son, Henry, moved in with her husband's family (Roger 1988, 5). In addition to these events, she endured the quotidian shocks and traumas of a working class woman. Following the case, her life continued to be difficult. She carried on working as a shop-assistant, divorced her husband and moved to a Corporation flat. She died of a heart-attack on the 19th of March, 1958, at Gartloch Mental Hospital, outside Glasgow, at the age of 59 (Rodger 1988, 9). Whether Mrs. Donoghue in fact received material benefit from the case is also a matter of contention. Mr. Stevenson died before she was able to complete her claim but the rumor is that the case settled out of court for the amount of £200, which would have been a substantial payment for Mrs. Donoghue, equivalent to 2 year's wages.[19] At her death, her total estate was worth £364 (Taylor 1991, 20).

There is a certain justice achieved in Mrs. Donoghue's case, but if we examine the kinds of injuries Mrs. Donoghue suffered throughout her life, we can see that there is something awry in the injuries the law selects to adjudicate. Mrs. Donoghue is a central figure to tort, and yet lived at the margins of law, power and society. Mrs. Donoghue's legal story connects one small aspect of the everyday hardships of her life to wider social and economic worlds—the case made Mrs. Donoghue's suffering a "social wrong".[20] The power of this narrative should not be underestimated: to frame a person's suffering as a social wrong ends some of the isolation of individual suffering, shifting responsibility from that individual to a wider network, and demonstrating that this suffering is an end effect of processes, rather than a pathology for which the individual should be blamed. This is a story that shifts social and economic costs from an individual to others responsible for elements of their suffering, a potentially world-changing move for those characterised as mad, bad or sad. Responsibility and relationship to suffering under the law have great potential to make social injustices visible. But this requires that the law focuses on injuries that matter; so it is a shame that the law investigates responsibility for Mrs. Donoghue's suffering only at the moment of *Donoghue v Stevenson*, which tells the story of a small, strange incident in Mrs. Donoghue's life, and not of the everyday social injuries that would have daily worn her down. The question becomes then, what counts as a social wrong and *how* does a particular injury come to matter? Whose vulnerabilities matter to the law? Why does the law adjudicate some injuries and not others, and what are the circumstances that determine the intervention of the law? These questions describe the limits of tort law's effectiveness, and the limits, too, of its justice.

It is significant, too, that one of the injuries successfully claimed by Mrs. Donoghue was a "shock". The law responded slowly and in an uneven manner to claims of pure mental injury (originally termed "nervous shock"), making it more

[19] The amount of settlement is noted in *Salmond & Heuston on the Law of Tort* 346, cited in Taylor (1991, 21). There is no information concerning what kind of shop Mrs. Donoghue worked in, but if she had worked in the food or clothes industry, her average annual wage payments in 1932 would have been between 94.6 and 114.9 pounds (De Grazia and Furlough (1996, 252)).

[20] At 583.

difficult for claimants to claim for psychiatric harms, in comparison to physical injuries.[21] Barbara Hocking and Alison Smith argue that the requirement of a discrete event in nervous shock law—which requires that the injury be caused by a sudden, discrete accident and lead to a definable psychiatric injury—especially disadvantages women, since it "completely masks the fact that caring for injured loved ones is a task largely taken upon themselves by women in the community" (Hocking and Smith 1995, 120). This habit of emphasizing exceptionality in the recognition of suffering is not limited to the law. Critical trauma theorists have shown that both critical and cultural practices often privilege narratives of trauma in which trauma is a rupturing, aberrant event, disguising the fact that suffering is pervasive and ever-present in the lives of many people. Accordingly, there has been a recent critical turn to use "the everyday" as a problematic, promoting "an ethics and politics of everyday life that is not simply subordinated to sublime, ecstatic, or peak experiences" (LaCapra 2001, 15). Laura Brown has argued that psychological definitions of trauma that emphasise the irregular and unusual event over the "everyday" has served to obscure experiences such as sexual violence that are not statistically unusual, and which so many women suffer (Brown 1995, 100–101). Hence:

> the range of human experience becomes the range of what is normal and usual in the lives of men of the dominant class; white, young, able-bodied, educated, middle-class, Christian men. Trauma is thus that which disrupts these human lives, but not other (Brown 1995, 101).

Or as Ann Cvetkovich says:

> More so than distinctions between private and public trauma, those between trauma as everyday and ongoing and trauma as a discrete event may be the most profound consequence of a gendered approach (Cvetkovich 2002, 33).

Prue Vines, Mehera San Roque and Emily Rumble raise the question whether, in the Australian context, the "mainstreaming" of psychiatric injury has changed since *Tame/Annetts*[22] and the introduction of the various Civil Liability

[21] For example, feminist legal scholars Martha Chamallas and Linda Kerber claim that the law discriminated against psychiatric injuries because these injuries were predominantly experienced by women (Chamallas and Kerber 1989, 814). See also Graycar (2012, 1992), for an evaluation of the inequities in damages awarded to women. For an overview of the public–private, and individual-collective aspects of tort remedies, see Bender 1990. Martha Chamallas and Jennifer B. Wiggins examine the effects of gender and race (and their intersectionality) in tort law, paying attention to the "social identity of tort victims and to the context of their injuries" in their recent book (Chamallas and Wiggins 2010). See also Conaghan's summary of tort and feminist perspectives (Conaghan 2003).

[22] *Tame v NSW Police; Annetts v Australian Stations Pty Ltd* (2002) 211 CLR 317 (hereafter '*Tame/Annetts*'). Until the *Tame/Annetts* case, a plaintiff needed to establish: that it was reasonably foreseeable that the effect of the negligent act would be a recognisable psychiatric illness in a person of normal fortitude in the position of the plaintiff; that the plaintiff was in a particular relationship to the victim (usually one of parent or spouse), or was a rescuer, or feared for themselves, or was involved in the accident; and that the psychiatric illness was the result of a sudden sensory perception of an actual accident or its aftermath, a requirement extended to include the hospital in *McLouglin v O'Brian* [1983] 1 AC 410 in England and *Jaensch v Coffey* (1984) 155 CLR 549 in Australia. Following *Tame/Annetts,* a plaintiff claiming for psychiatric injury only has to prove that the injury was foreseeable: see Handford

Acts,[23] such that feminist critiques "no longer applied to the reasoning processes in these cases" (Vines et al. 2010, 11). Yet significantly, after a review of recent cases and the civil liability regimes, they conclude that distinctions remain between the treatment of psychiatric injury and physical injury, and that this "can best be understood as flowing from the particular history of nervous shock as a claim that was traditionally associated with women" (Vines et al. 2010, 11) and that "in this area we can identify some of the processes of reasoning that create a situation where the fact that something is identified as female or female-specific reduces its authenticity in the eyes of society and the law" (Vines et al. 2010, 18).

Cvetkovich argues that the way through these problems is not via arguments that equate sexual trauma with other traumas, but rather recognition of "trauma's specificities and variations" (Cvetkovich 2002, 3). That is, we ought to theorise from the specific, rather than use the specific to supplement a "universal" theory of justice. In this way, "trauma challenges common understandings of what constitutes an archive" (Cvetkovich 2002, 7). Woolf's work provides an example of this mode of theorizing from the specific, and also contributes to feminist re-conceptualisations of harm, through its attention to the aesthetics of harm, responsibility and proximity. Woolf's work provides alternative representations that challenge the assumptions about proximity and responsibility that are enmeshed in the practices of representation that describe suffering, and the responsibility that arises from this suffering. Legal feminist scholars have questioned the nature of evaluation of suffering that has tended to be suffered by women—Woolf provides an examination of the stories, metaphors and frameworks employed here, to critique not only legal and social categories, but the narratives and assumptions within which these categories are embedded.

The law as it currently exists would be overwhelmed by the claims of trauma were it to dispense with artificial boundaries and acknowledge the claims of everyday violence, the shocks and tolls of poverty and late-capitalist lives (trauma being "part of the affective language that describes life under capitalism" (Cvetkovich 2002, 19), of endemic sexual and racialised violence). This understanding of everyday violence is particularly pertinent now, as individual responsibility is being increasingly emphasised across political and legal domains, in contrast to corporate or state responsibilities, as part of a neoliberal shift in the conception of the proper role of the citizen-consumer.[24] To take the claims of this suffering seriously would mean a radical re-working of culture, as well as law: we

Footnote 22 continued
2006, [1.180], cited in Vines et al. 2010, 11. The English approach is further complicated because after *Page v Smith* [1996] 2 AC 455, a distinction is drawn between primary and secondary victims, with the latter having to fulfil additional requirements in establishing their claims; see Vines et al. (2010, 12).

[23] Australian Capital Territory Civil Law (Wrongs) Act; New South Wales Civil Liability Act 2002; Tasmania Civil Liability Act 2002; South Australia Civil Liability Act 2002; Victoria Wrongs Act 1958; Western Australia Civil Liability Act 2002.

[24] For examples and critique of the discourse of personal responsibility in the Australian context, see the comments on self-responsibility by Chief Justice Spigelman (Spigelman 2005), the legislative amendments in each State following the "insurance crises" of the 1990s and commentary of Davis (2002) and Vines (2000).

would need to radically change our frameworks of reference were we to admit that "our culture is a factory for the production of so many walking wounded" (Brown 1995, 103). What becomes interesting, then, is law's strategies of refusal, and the crafting of its boundaries in resisting the intrusion of everyday trauma within frameworks of responsibility. An analysis of these boundaries provides us, as critical scholars, with awareness of those points at which we might press a little harder, to open up categories, to question assumptions about proximity, to keep drawing attention to the arbitrariness of the narratives and divisions that assign responsibility for some kinds of harms while ignoring others. We go back to Woolf to tell an alternate genealogy of trauma, nervous shock and injury, and to account for those whose suffering has been excluded—which includes Mrs. Donoghue.

Woolf's Critique of Legal and Social Responsibility

The law's attention to injury is selective. Not only has it ignored the everyday suffering of people such as Mrs. Donoghue, but it has also avoided adjudication of great harms arising out of events such as war. Coming after the horrific physical and psychological injuries of the Great War, this watershed case, which reconceived social responsibility and approved "shock" as a claimable injury, did not address the ongoing problems of war veterans, but the unlikely accident of a café patron finding a snail in her ginger beer. And although the case concerned a woman, it did not redress the selective attention given to injuries and injustices by tort law which, as noted by feminist legal scholars, disadvantage women and the kinds of harms they typically suffer.

In this section, I turn to Virginia Woolf, whose work interrogated the invisibility of certain kinds of harms occurring at the time of *Donoghue v Stevenson*, including harms suffered by women and war veterans. These invisibilities were as much part of limitations in the cultural domain as of the law's selective vision. Lord Atkin's neighbour figure brings the manufacturer into a new relationship of responsibility to the consumer, and opens up the possibility for other relationships to be recognised, but there are limitations to this vision, which exclude "difficult" harms. Woolf reveals the resistances to these hidden harms, and shows how re-imagining proximity leads to a deeper and wider sense of social responsibility. Woolf demonstrates that we can question the ways in which proximity arises, and whose interests these perceptions serve; she also points the way to seeing new proximities and responsibilities. Woolf's work shows that we need to re-think and re-imagine a logic of responsibility that ignores epic events such as the war, on one hand, and private harms such as sexual abuse, on the other. In her work, these injuries are reframed as middle-distance, neighbourly harms, for which we are collectively responsible.

Re-framing Harm as a Neighbourly Concern

Three years before Mrs. Donoghue visited the Wellmeadow Café, Virginia Woolf published *Mrs. Dalloway* (Woolf 1925), a novel that is centrally concerned with the

ways in which suffering is recognised in the social sphere—and the difficulties in achieving some of these legibilities. The novel opens with a figure walking the urban streets but unlike Mrs. Donoghue, Clarissa Dalloway is the very English, upper-class wife of a Member of Parliament, not a poor, Scottish woman who lives in a tenement flat. The novel moves forward through connection, its parts becoming a whole through the proximities and affinities that arise between friends and strangers. Set in June 1923, the novel focuses on a single day in one woman's life as she prepares for a party she will host in the evening. It begins with the point of view of Clarissa Dalloway, who walks through her London neighbourhood, buys flowers, and returns home to find her former suitor, Peter Walsh, unexpectedly returned from India. The point of view then shifts to Septimus Smith, a veteran of the Great War who suffers from shell shock. Septimus and his wife Lucrezia listlessly pass the time in Regents Park, waiting an appointment with Septimus's psychiatrist, Sir William Bradshaw. Peter Walsh, having left Clarissa's house, sees the couple fighting and mistakes them for a couple in love. Later, Septimus and Lucrezia enjoy a moment of happiness together as they await the arrival of Sir William Bradshaw at their home, who is going to take Septimus to an asylum. But when Septimus realises what is going to happen, he throws himself from the window, dying on impact. Peter Walsh hears the sirens of the ambulance as he walks towards Clarissa's party, where the novel's main characters are assembled. As Clarissa crosses London during the day, she contemplates the responsibility that arises through these accidental connections: the "[o]dd affinities … with people she had never spoken to, some woman in the street, some man behind a counter" (153). Clarissa's theory is:

> … that somehow in the streets of London, on the ebb and flow of things, here, there, she survived, Peter survived, lived in each other, she being part … of people she had never met; being laid out like a mist between the people she knew best, who lifted her on their branches as she had seen the trees lift the mist, but it spread ever so far, her life, herself. (9)

As the day draws to a close, friends distant and close, connected by the present and the past—Clarissa's husband and daughter, and her old friends Peter Walsh and Sally Seton—gather at her party. The party also draws in others: the prime minister, an old woman who Clarissa felt compelled to invite, and Sir William Bradshaw, who is late because of Septimus's death. The party is a mixture of strangers and friends, of affinities and random connections.

The most important proximity operating in the novel is the famous doubling of Clarissa with Septimus Smith, who is a young, shell-shocked war veteran of the Great War. Both Clarissa and Septimus are suffering psychological harms, and nursing hidden grief and losses, which are elaborated during the course of the novel. In 1922 Woolf wrote:

> Suppose it to be connected this way: Sanity and insanity. Mrs. D. seeing the truth. SS seeing the insane truth. The pace to be given by the gradual increase of S's insanity on the one side; by the approach of the party on the other. (*The Hours: The British Museum Manuscript of* Mrs. Dalloway 412 (hereafter "*The Hours*") Woolf and Wussow 1996).

Clarissa's and Septimus's stories overlap through the twin climaxes of suicide and the hosting of a party, but they never meet, as Septimus kills himself just before Clarissa's party commences; the only material effect on her is that his death is announced at the party as the reason two of her guests are late: "Oh! Thought Clarissa, in the middle of my party, here's death, she thought" (Woolf 1981, 207).

In drawing the grief of both Septimus and Mrs. Dalloway into the social sphere, Woolf represents these harms within middle-distance frameworks for which responsibility can be claimed, challenging previous representations of the war as a catastrophe that was beyond representation, and also private traumas deemed unrepresentable because they are too private. The literature of modernism is often described as a "literature of trauma" (DeMeester 1998, 649). The scale of injury caused by the Great War was unprecedented: in Britain alone, five million men served in the army, and 700,000 of these men were killed, alongside two and a half million casualties (DeMeester 1998, 651). Literary critics have described the way in which the Great War, as the defining trauma of the period, demanded new ways of representing suffering. Previously established frameworks and metaphors were inadequate, the war "plac[ing] pressure on literary forms, demanding a shift of idiom and representation" (Reichman 2003, 399). The formal structures of modernism were effects of "the perceptual habits appropriate" to the Great War, including "the dissolution of borders around the self, the mistrust of factuality [and] the fascination with multiple points of view" (Booth 1996, 4). Amongst other things, the Great War loosened established ways of thinking about injury and social responsibility. When literary modernists devised new metaphors and forms to represent the suffering caused by the accidents and injuries of modern conditions, they used figures such as gaps, chaos and aporia. T. S. Eliot imagined social life after the Great War as a no-man's land in *The Waste Land* (Eliot 1922). Walter Benjamin argued that, with the changing conditions of modernity, "experience ha[d] fallen in value" (Benjamin 1973, 84), and the Great War produced "men returned from the battlefield grown silent—not richer, but poorer in communicable experience …" (Benjamin 1973, 84). Meaning had been violently disrupted, a change encompassing "not only … the external world but … the moral world as well" (ibid).

In contrast, for Woolf (as, indeed, for Lord Atkin) the hyperconsciousness of the vulnerability of bodies and minds in the new conditions of capitalism and modernity led to an aesthetic not of fragmentation and chaos, but to one of responsibility and relationship. Woolf refused the view of war as an event that was so exceptional as to be removed from everyday society. The crisis in representation that led other writers to focus on gaps and aporia as their defining metaphors, led Woolf to make connections between what was perceived as a division between the everyday and the exceptional. Woolf showed that the everyday and the perceived ruptures of war were actually continuous. In *Jacob's Room* (Woolf 1922), Woolf represented the devastating effects of the war on those left in England; and in *Three Guineas* (Woolf 1938), she implicated patriarchy and nationalism in the rising militarism that led to World War II. In *Mrs. Dalloway*, written in 1925 and set in 1923, 5 years after the end of the Great War, Woolf resituated war trauma specifically in relation to social responsibility, representing it as a middle-distance harm.

Expanding Responsibility: Re-imagining Epic Suffering as Proximate Suffering

A contemporary reviewer of Woolf's, M. C. Bradbrook, called Woolf's style "evasive", since she refused to limit her novels to any single topic, and because she paid attention to parties rather than to the war (Bradbrook 1932, 33–38). But the connections forged between parties and war are exactly the kinds of practices that make a deeper understanding of social responsibility possible. That these new traumas become intelligible as social injuries matters, promoting a new ethics of trauma as well as making possible a call to responsibility. Septimus Smith is important to an understanding of the relationship between individual suffering and social responsibility because he is shown to be both mad and injured—and as the novel progresses, there is a shift from viewing him as a mad individual, to seeing that his suffering is an effect of wider causes. We come to understand that his madness is due to a number of injuries, and of others' failures.

The meaning of shell-shock shifted between registers of madness and injury during the First World War and into the 1920s. The shell-shocked soldier was represented partly as a male hysteric, an abnormal person who had brought suffering onto himself, and historians have noted that the shell-shocked figure was frequently pathologised on the basis of class, race and sexuality: Jews were cast as prone to hysteria (Gilman 1993, 87); Irish and Scottish soldiers were regarded as especially likely to malinger (Bourke 1996, 90–1); and the upper social classes were considered less prone to shell-shock, partly due to the capacity of public schools to produce good character and solid states of manliness (Bogacz 1989, 231). Even a sympathetic military doctor such as W. H. Rivers subscribed to class and gender assumptions, and to a "hierarchical psychology in which a superior value was placed on officers over common soldiers" where "psychiatric assessments were inextricably reflections of moral and social divisions" (Barham 2004, 4).

Competing with these views was a parallel discourse in which the shell-shocked soldier was an ordinary man reacting to an extraordinary situation, and towards whom society was economically responsible. He was, according to a memoir written by Ward Muir, an orderly in an English war hospital, "the man in the street—*any* man in *any* street" (108 cited in Barham 2004, 231, emphasis in original). This narrative of injury began with the term "shell-shock". In a move reminiscent of Erichsen's work on railway spine in the nineteenth century that led to the coining of "nervous shock", when the English physician Charles S. Meyers first treated war trauma in France in 1914, he suggested it was caused by soldiers' physical proximity to exploding shells, thereby downplaying the connotation of psychiatric symptoms with hysteria (Showalter 1985, 72). Soldiers' suffering was available to be interpreted as an injury, rather than madness, although there was significant social resistance to understanding soldiers' experiences. The system was particularly flawed in treating psychiatric injuries, which yielded few pension benefits. Joanna Bourke has described the ways in which, after the war, pension officers gave those suffering from mental illness a hard time, perceiving them to be "liars and malingerers" (Bourke 1996, 63).

Woolf shows the distress caused to Septimus as a result of the absence of social responsibility for his suffering, especially for his psychological suffering. It is

difficult for Septimus to articulate experiences that do not support a heroic version of the war's events. Often what he says is unclear, and his "attempt to communicate" ends in death (Woolf 1981, 139). The novel shows the ways in which his anguish is caused not only by society's resistance to addressing war trauma, but also by the normative violence that obscures his intimacy with Evans, his officer while at war. Society withholds acknowledgment of Septimus's suffering following Evans's death, preventing him from being able to grieve properly. Woolf makes the argument that Septimus's ordinariness includes the experience of having significant intimacies and sorrows lie unacknowledged. This absence is not only about the war, but about the everyday violence of social norms concerning which intimacies are acknowledged, and available to be grieved. Evans's death is Septimus's defining trauma, marking the point after which Septimus perceives he "could not feel" (Woolf 1981, 88). Evans is the partly disguised referent for Septimus's suffering, the object to which his seeming-random thoughts about the "whole world" cohere (Woolf 1981, 70). After hearing birds in the park "sing freshly and piercingly in Greek words," Evans appears "behind the railings" (Woolf 1981, 70). Later, Evans sings from behind a tree, and then Peter Walsh appears, who, according to Septimus, "was Evans!" (Woolf 1981, 70). Septimus *can* feel—if anything, he feels too much. His eyes fill with tears when he looks up and sees:

> … smoke words languishing and melting in the sky and bestowing upon him in their inexhaustible charity and laughing goodness one shape after another of unimaginable beauty and signalling their intention to provide him, for nothing, for ever, for looking merely, with beauty, more beauty! (Woolf 1981, 21–2).

The world seems too exposed, its flesh "melted off", and his own self has been "macerated until only the nerve fibers [a]re left" (Woolf 1981, 68–69). His suffering only seems muted because it is not anchored to any single object: it is expressed as relating to the "whole world" because there is no social form available, with which he might mourn the specific loss of Evans. When suffering is not anchored in social forms it cannot be responded to.

Re-imagining Private Suffering as Neighbourly Suffering

The private traumas of Woolf's life are well known and well recorded. Since Woolf's rediscovery by feminists in the 1970s, a number of scholars have read Woolf's interest in trauma as an effect of her personal experiences, especially the death of her parents and her experiences of sexual abuse. For Louise DeSalvo:

> [Woolf's] life's work—her memoirs and her autobiography, her novels, her essays and biography—is an invaluable missing link in the history of incest, abuse and the effects of family violence. (DeSalvo 1986, 302).

Here I want to propose that Woolf was writing as much about women and madness when addressing the subjects of responsibility and civil society, as when she explicitly addressed the themes of madness or sexual trauma; and that *Mrs.*

Dalloway demonstrates an unwillingness to represent suffering as private trauma in favor of representations in the social sphere.

There are intimations of sexual violence in the novel. Christine Froula emphasises the violence indicated by the "kiss" Hugh Whitbread gives Sally Seton in the smoking room (Froula 2002, 181), arguing that, as "[i]nnocuous as it sounds, the furor around this incident suggests that … it stands in for sexual transgressions ruled unspeakable by actual and internalised censors" (Froula 2002, 154). Further, Froula argues that Hugh is:

> … [a] freehand portrait of the incestuous George Duckworth [Woolf's step-brother] … captur[ing] his smug prosperity, sartorial magnificence, 'little job at Court,' and the 'scrupulou[s] little courtesies & old fashioned ways' that ha[d] kept him 'afloat on the cream of English society for 55 years'—just George's age in 1923. (Froula 2002, 153)

By connecting Mrs. Dalloway to the shell-shocked soldier Septimus, Woolf draws a relationship between their different traumas, and shows that the same social conditions form a significant part of this suffering. Septimus is the double not only of Clarissa, but of Woolf herself. Woolf used her own diary entries as transcripts of some of the sequences of Septimus's insanity:

> S's character. founded on R[upert Brooke?]? … or founded on me? … might be left vague—as a mad person is … so can be partly R.; partly me. (Woolf and Wussow 1996, 418)

Woolf's use of her own experiences does not mean that the purpose of these representations is to access a private truth. Woolf's strategy is not one of revelation, but rather one of connection. *Mrs. Dalloway* is less invested in the 'facts' of incest, violence and mental suffering, than in their frameworks of recognition. The 'facts' can be so easily captured in the wrong way, for example by narratives that make incest visible only to lock the sufferer into the role of victim, or within a story of madness. Woolf was, rather, invested in creating an alternative framework of intelligibility. What the novel does is to start making connections between different kinds of suffering, to remove the isolation of the individual who suffers psychological distress, and to show that suffering that at first glance might seem unconnected (for example, that of a grieving soldier, and a grieving household) is actually brought about by the same repressive social conditions.

The twinning of Septimus and Clarissa brings together a number of hidden losses and harms. *Mrs. Dalloway* demonstrates an unwillingness to represent suffering as private trauma in favor of representations in the social sphere. 'Private' traumas—not only Clarissa's, but also Sally Seton's and those belonging to Virginia Woolf herself—are alluded to, but never elaborated, and never represented as scenes or even as significant fragments. Nor, in a novel focused on interiority, are we given access to characters' opinions and feelings regarding these private traumas. The purpose of these foreclosures is not to mark a gap in the possibility of representation, but rather signifies a refusal on Woolf's part to represent trauma using the usual frameworks that are associated with this kind of suffering, in favor

of connections that mark this suffering as social injuries, rather than individual pathology.

War and normative violence come together, not merely as facts but as a connected and complexly textured structure of feeling, articulated in the social register. *Mrs. Dalloway* is an extended argument for the representation of previously hidden forms of private suffering within the social domain. This is why Septimus, and not Clarissa, must die. Woolf wrote that Clarissa "was originally to kill herself, or perhaps merely to die at the end of the party" while "Septimus … had no existence" (Appendix C, Woolf 1996, 198, cited in Froula 2002, 131). Woolf created Septimus, and his death, in 1922:

> All must bear finally upon the party at the end; which expresses life, in every variety & full of conviction: while S. dies. (Woolf and Wussow 1996, 415)

This change transformed the meaning of trauma in the novel, since Septimus's death is a social death—becoming the occasion for Richard Dalloway and Sir William to discuss the shell-shock bill at Clarissa's party (Woolf 1981, 183)—whereas Clarissa's death would have been perceived as a private, individual tragedy due to her own melancholia or madness. In the 1920s, society was beginning to see the shell-shocked soldier as injured rather than as mad. *Mrs. Dalloway* refuses to represent traumas often thought of as private injuries—such as sexual violence, homophobia and the silencing of particular intimacies and sorrows—in the private sphere, or regard them as being adequately represented through psychological frameworks. These neighbourly affinities give rise to responsibilities, making war injuries and private injuries, social injuries.

Conclusion: Towards a Feminist Aesthetic of Responsibility for Harms

The genealogy of tort law is re-narrated regularly, in cases, policy and critical scholarship, using *Donoghue v Stevenson* as the initiating and emblematic event.[25] These narrations have both rhetorical and substantive effects on future directions of the law. As my reading above has demonstrated, *Donoghue v Stevenson* offered an innovative precedent in tort law, through the recognition of new harms and responsibilities, but it also established a pattern of recognition that has excluded certain harms from the law's view. Woolf offers an alternative genealogy through a differently-imagined neighbour, one who might be closer to or further away than the neighbour currently imagined in law and dominant culture. Woolf's work also contributes to feminist re-conceptualisations of harm, through its attention to the aesthetics of harm, responsibility and proximity. It provides alternative representations that challenge the assumptions about proximity and responsibility that are enmeshed in the practices of representation that describe suffering, and the responsibility that arises from this suffering. Legal feminist scholars have

[25] For Canadian judge Allan Linden, the neighbour principle endures as "a seed of an oak tree, a source of inspiration, a beacon of hope, a fountain of sparkling wisdom, a skyrocket bursting in the midnight sky" (Allen 1983, 67).

questioned the nature of evaluation of suffering that has tended to be suffered by women—Woolf provides an examination of the stories, metaphors and frameworks employed here, to critique not only legal and social categories, but the narratives and assumptions within which these categories are embedded. The relationship between representation and responsibility is key here: the metaphors and symbolic systems around proximity in *Mrs. Dalloway* recognise new responsibilities—illuminate responsibility—and perhaps could be said to produce them. Woolf makes harms that are often seen as very private (too close) or very far (too epic) into middle-distant, social harms, for which society can be held responsible—that is, she makes these injuries neighbourly.

Reading legal, literary and scholarly texts together, we can arrive at an alternate genealogy of harm to tort that is also interdisciplinary, one that pays attention to the interrelationship between legal and cultural domains. More work needs to be done across both legal and cultural domains to challenge existing frameworks of recognition for harms. We need to recognise that "our legal institutions, our social identities and our individual interests are mutually constitutive elements of culture," and that it is this "entire culture" that should be the focus of our critique, not only the legal domain (Binder 2007, 108). Acts of imagination make interventions in legal and cultural structures possible, structures that otherwise foster the continuation of suffering: the "private, secret, insidious traumas to which a feminist analysis draws attention are more often than not those events in which the dominant culture and its forms and institutions are expressed and perpetuated" (Brown 1995, 102). One such intervention is to formulate an alternate genealogy of tort law to that provided by *Donoghue v Stevenson*, one that begins with *Mrs. Dalloway* and other works by Woolf, and continues into the twenty-first century, articulated through feminist legal scholarship on theories of harm and responsibility. This is a genealogy that takes seriously the claims of law and culture scholars who argue for the significance of aesthetic critique to the substantive claims of justice. The role of culture with respect to justice cannot be underestimated: recent research suggests that continuing resistance to successful claims of psychiatric damage (most of which are brought by women) may be due to wider cultural responses to mental harm, rather than legal frameworks alone (Vines et al. 2010, 32). In working on such a genealogy we might consider, alongside Woolf, other representations that evidence "affective experience that falls outside of institutionalised or stable forms of identity or politics" (Cvetkovich 2002, 16), representations that can form the basis of critique of the law, revealing the exclusions of the law's forms of recognition. Reading the law within such a genealogy means opening the law to a new set of questions: whose suffering is made visible (and invisible) in the law's representations? How is this suffering represented, and who seems to benefit from these representations?

Proximity, and the responsibilities that follow it, are in part the effects of imaginary processes. The figures and narratives used in representing responsibility are significant in determining the kinds of responsibilities that become possible across legal and cultural domains. The law demonstrated openness to this act of imagination in *Donoghue v Stevenson*, but it limited its purview to a particular range of injuries, outside of which, no acts of imagination or connection are required. This

has meant that many injuries remain hidden to the law. But acts of imagination in law are always possible—Lord Atkin provoked a kind of legal outrage in 1932 with his neighbour figure and a new trajectory for tort, and yet, far from this rendering the judgment ineffective, the case has had long-lasting effects. So it might be hoped that scholars, legislators, courts and creative writers might create new and radical possibilities of relationship, as a response to the world's present, urgent suffering. In the meantime, as celebrations for the eightieth anniversary of *Donoghue v Stevenson* unfold in 2012, the limitations of tort law need also be considered, for the law as it currently exists selects its suffering and responsibilities, and provides frameworks of neighbourliness that only bring a very narrow ambit of vulnerabilities within the field of adjudication, responsibility and redress.

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