

# **POLITICS BEYOND OEDIPUS**

**An alternative ontology of subject and law and the  
study of world politics**

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## Chapter 1

### The Guantánamo Effect: Introduction

‘And now up that hill and we are there’. ‘Alright,’ I thought, ‘a few more minutes and we are there’. I was glad I had not listened to other travellers who advised against ‘the adventure’. We were making our way towards the top of the mountain range surrounding the US military base at Guantánamo Bay. When we were approaching the top, I remembered the warnings we got from the other travellers: ‘It’s too dangerous. The humidity is going to kill you. It is unbearable’. As we were reaching closer and closer to the top I thought that the adventure was neither difficult nor dangerous.

Back then I don’t think I had any particular reasons for passionately pursuing the goal to see the Base. I remember hearing a lot about the situation there: the detainees, the abuses etc.; but that probably wasn’t what triggered such urge to see the Base. In the summer of 2002, when I visited Cuba for the first time, I was not ignorant of the conditions in which these people were held. So, as many youngsters of my generation who can vividly remember 9/11 and are somehow critical and sceptical of the role of the US and its supremacy in the world, I was somewhere inbetween. I was not sure what to think of Guantánamo. I believed the US government that most individuals held in Guantánamo are fully-fledged terrorists, captured on the battlefield by the US; yet I remained doubtful about the necessity of harsh conditions in which they were held. But back then, that was before the allegations of the detainees’ abuse by the US government reached the public eye, I had no idea I was in fact missing an important part of the Guantánamo puzzle – the abuses, and the psychological and physical treatment that all involved in Guantánamo had to go through. As the years have gone by I have learnt more about Guantánamo and it has become clear to me that the guards, the lawyers and the military personnel, all in different ways related to Guantánamo, suffered and were traumatised by what they experienced or saw just as much as the detainees.

At the time I probably wanted to see the Base because I thought it would be ‘cool’ to be able to say I had actually seen where the Al-Qaeda terrorists and Taliban fighters are



being held. And so on a Wednesday morning, there I was, walking towards the top of the hill, not knowing what I was about to see, and unaware of the impact this will have on me. ‘A few more steps and we are there’, Alessandro, our local guide, told us. ‘Alright, I can’t wait’, I said to myself. ‘The best view is just around that rock. I will show you’.

‘Right’, I thought, ‘so this must be it then’. We were standing on top of the hill, still some miles from the Base, but this was as close as you could get, or so Alessandro told us. ‘We’d better not try to get closer; there are still landmines in the ground.’ This remark brought us back a sense of perspective and made us aware of the risks we were taking just by standing on the top of that hill. And that, I believe, also silenced some of the co-travellers’ complaints about the ‘restricted view’. I looked around. I still have a very clear picture of it in my head. You could see the border between the Cuban territory and the American base, and in-between the minefield. You could see the fence and every now and then a watchtower only occasionally visited by US military patrols. Below them, there was ‘an American dusty road’, and a few miles to the right ‘Cuban road blockades’. And then, in the distance, there were some buildings. The X-Ray Camp made of open cages could be seen very clearly as it was closest to the ‘border’. The detainees were held there in the first few months after the opening of the facility; later, more permanent facilities were built further down, closer to the sea. Alessandro passed me his binoculars and pointed. ‘Look, something is going on’. ‘Let me see’, I said eagerly, and took a look. I saw grey and white containers that were part of the detention blocks, or so I thought; they all consisted of a number of detention cells (approximately twenty-four in each block I learned later).<sup>1</sup> There was some movement in the Camp: you could see people and vehicles coming in and out, and then there they were, ‘the worst of the worst’, as Dick Cheney called the detainees of Guantánamo Bay.<sup>2</sup> They were out there, some motionless, a few others ‘in transit’ – being taken for interrogation or a two-minute shower, I don’t know. Only then did I realise that I was not supposed to see this, and that the images were not news reports, but in fact ‘real’. I was looking at Camp Delta.

The images I saw that day were not extraordinary; but the entire situation, what we had to do to arrange the trip, the impressions I had about Cuba and Cubans, their relations

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<sup>1</sup> Global Security, Guantánamo Bay – Camp Delta, July 17 2009 [http://www.globalsecurity.org/military/facility/Guantánamo-bay\_delta.htm]. Accessed January 21 2011.

<sup>2</sup> Msnbc.com, Cheney: Gitmo holds ‘worst of the worst’, January 6 2009 [http://www.msnbc.msn.com/id/31052241/ns/world\_news-terrorism/]. Accessed: January 21 2011.

with the United States, and my knowledge of the war on terror and International Relations, which I just began to study earlier that year left me very puzzled. I started looking for answers. A few months later I attended a talk in my hometown, Ljubljana. It was a talk by Giorgio Agamben. The talk was organised to promote his book *Homo Sacer*, which had just been translated into Slovene. In the question and answer session, Slavoj Žižek and Agamben started discussing the importance of philosophy in the time of ‘the war on terror’. Of course, they ended up talking about the Bush administration and the state of exception. One of the things Agamben or Žižek mentioned (I no longer remember who it was) was precisely that Guantánamo detainees resemble what Agamben in his book calls ‘bare life’.

That observation came to me as a moment of realisation: that was exactly what I saw from the hills surrounding the Base, and that is precisely the reason why I was left so puzzled. On one side of the fence, the Cuban people full of life, emotions and pleasure (I know I have a very idealistic image of Cuba and the Cuban society), and on the other, a motionless, life-less life in the camp. A few months later, I attended my first conference and presented a paper on the Guantánamo detainees, with an argument that, of course, saw the detainees as bare life. And so, I thought, my ‘Cuban trauma’ was solved. I continued following the situation in Guantánamo and subsequent events kept confirming my earlier observations; or so I thought, until I dwelt on it a bit further and decided to include Guantánamo in my doctoral project. After a few months and a number of conversations I had with various individuals closely involved with the situation, I realised Guantánamo was not what I initially thought it was, in fact, I was wrong in my observations. More importantly, I also realised that the problem I had with Guantánamo does not derive from Guantánamo itself, but again, at least for me, from a fundamental theoretical problem concerning the question of the relationship between being and existence, the role of law and what is emerging as the (im)possibility of resistance in current political and social imaginaries. In this thesis, however, I decided to leave the aspect of resistance behind; that is not because I do not find it interesting or important; in fact in the spirit of the time in which this thesis is being finalised – the student protests against the funding cuts in higher education, people’s uprising against the austerity measures and policies and the ‘revolutions in Egypt and across the Arab world’ – I think resistance has become central, and hence should have a role in the thesis. It is, to my

great disappointment, however, impossible to extend this thesis to an additional level and include questioning of resistance in a more explicit way.

## **Theoretical Scope of the Thesis**

However, despite not being able to explore resistance in more depth here, my personal experience and activist difficulties/impossibilities in engaging with and breaking away from the theoretical, political and market-economy logic governing the reality of our everyday life; the constant commodification of every sphere of our lives and the difficulty in creating autonomous spaces and maintaining the autonomy of the space motivated me in engaging with the questions of being and existence. I see ideas of being and existence crucially connected to questions of resistance or ‘individual freedom’, hence my engagement with Guantánamo.<sup>3</sup> What connects different forms of resistance and spaces of independent political actions is ontology of being and existence. The way I see this relationship is that initially to locate the conditions of ‘successful resistance’ one has to look outside political or revolutionary practices, outside activist movements. The conditions determining the possibility of resistance are not to be found in diverse political actions or policies, rather they emerge from our perception of boundaries, limitations, or what we perceive as possible and how we relate to that possibility. Thus, they are embedded in ontology and in questions such as: What does it mean to exist? How do we relate to one another? How is the world represented? How can we exist without a particular hierarchical or paternal notion of authority?

My frustrations, and my experiences of the inability to think of acts of resistance which ultimately does not turn around and (even unintentionally) begin to support the dominant logic, become manifested in various ways. They are reflected in reasons for my engagement with Guantánamo as well as in dissatisfactions with the way International Relations deals with the ideas of the ‘subject’, and understand the subject’s place in ‘world affairs’. For that reason, the main aim of this project is to engage with an ontology of being that institutes different forms of existence and to explore the implications of a

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<sup>3</sup> I use the term ‘being’ to refer to ontological state. It is written without an article ‘a’ or ‘the’ firstly, to emphasise that in the context of this thesis ‘being’ is not (necessarily) essentialised or materialised entity; and secondly, to distinguish the Deleuzian and Spinozian understanding of ‘being’ that this thesis adopts from the Heideggerian understanding of a being.

different Deleuzian, and *last* Lacanian (monist) ontology of being for the understanding of law, the political and international politics in general.<sup>4</sup>

The international as we know it today does not exist as such, rather, it is as all modern political concepts grounded in a very particular line of thought that has emerged as dominant at the particular juncture in history. The international is a product of a particular understanding of time, space and ‘humanity’ (or existence). To challenge what is perceived as ‘the international today’, one should not only explore the questions of e.g. rights, obligation, law, norms, states, international order or how all these come into existence; rather, the starting point should be placed at the level of the ‘individual’, ‘human being’ or, in other words, in ‘the subject of law’, ‘the subject of the political’, or for that matter, ‘the subject of the international’.<sup>5</sup> To go further, one should not ask whether, what or who constitutes ‘the subject’ of e.g. the political or the law, but what forms of existence get recognised as the subject of e.g. the law, the political or the international, which get excluded and why. Here, the political questions are no longer structured around one’s rights or duties; rather, ‘new’ questions that emerge are placed around the ‘ontology of the political’, e.g. what it means to exist in a political sense, what happens if one’s existence remains unrecognised within the current political or legal discourse, and how one can think ‘the political’ where rights or duties are not exclusive to one’s citizenship or rationality, or how one can think of being – in a way where the existence does not ‘predetermine’ its political capabilities. The last question is particularly pertinent for a rethinking of the political and international today, as it demands a critical intervention into the relationship between what is perceived as a paternal logic of law constituting the social, and the form of existence that emerges from it – ‘the subject’.<sup>6</sup> A critical intervention in this relationship, I argue, demands more than just a rethinking of

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<sup>4</sup> The term ‘*last* Lacan’ or ‘*last* Lacanian’ I refer to the last few years of Lacan’s teaching. These years (post-1968) are most significant for the discussions in this thesis.

<sup>5</sup> Despite having made distinctions between the subject of the political and that of the international, I argue that there is no difference between these kinds of subjectivity. They might well exist in different spaces or temporality, but they still derive from one particular notion of being or existence. That is, however, if one recalls Martin Wight’s text ‘Why is there no International Theory?’ (Martin Wight, ‘Why is there no International Theory?’, in Martin Wight and Herbert Butterfield, eds. *Diplomatic Investigations: essays in the theory of International Politics*, London: Allen & Unwin, 1966, 17–36), not to say that e.g. political theory or international theory are the same; rather I argue that they share the same understanding of subject or ‘being’.

<sup>6</sup> In psychoanalytical discourse the common argument is that what is perceived today as a philosophical idea of ‘the subject’ derives from a particular ‘paternal’ logic of subjectivation (ways in which an individual or a child enters and becomes part of society). This paternal bond also determines one’s relation to the law (how one is to become the subject of law), and the other (the social) order. I will say more on the paternal logic in Chapters 2 and 6.

the subject and the forces creating it. What is more, one ought to challenge the basic assumptions of western metaphysics that reaffirm the subject as the dominant form of existence.

This thesis engages with metaphysical questions of existence and suggests an alternative understanding of being – the relationship between being and different forms of existence and consequently an alternative understanding of law. In other words the thesis aims at thinking political in a way which does not *a priori* exclude any form of existence, and explores the implications such thinking has for the understanding of law and the understanding of international politics in general. To do so, I adopt a different philosophical understanding of being, the one that derives from the philosophy of Gilles Deleuze and the *last* works of Jacques Lacan. Their work offers an alternative to predominantly Cartesian accounts of being-ness and western metaphysics for two reasons: 1) Their work can be situated within a monist account of being-ness, which contravene Descartes' body and mind divide, and instead, in Spinozian fashion, sees being as deriving from one single immanent essence, one single immanent force; 2) As a result of such account of being, Deleuze's and *last* Lacan's philosophy no longer revolves around the subject or being, rather it is a philosophy of becoming, a philosophy of flows and movements in which the subject is only one amongst many other forms of existence created in this eternal and contingent process of realisation and dissolution. A departure from a Cartesian subject indicates that the logic of the 'philosophy of becoming' operates on different assumptions.

As I will explain later, different notions of existence and law are interconnected so that a particular embodiment of being corresponds to a particular logic of 'law-making'.<sup>7</sup> In other words, if being or being-ness is seen as an immanent plane, a reservoir of force facilitating the possibility of existence, then existence is a transcendent embodiment of being. Depending on the legal structures or the ordering logic, being can be embodied in many different forms of existence. It is not that being allows for only one account of existence, e.g. being does not directly facilitate the emergence of the subject as the one and only form or the embodiment of being, instead there are many ways in which being

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<sup>7</sup> 'Law-making' should here be understood in critical legal fashion. What I mean by this is that law and law-making do not signify a particular legal order or legal practice, but rather a way of thinking about society, and the relationship between law and being-ness, and a form of being *as such*. In other words, 'law-making' here refers to 'the logic of the world' or 'an ordering principle'.

can be embodied, the subject merely results from a particular ordering logic being ‘imposed’ on the process of being’s transformation into existence. It is then not the character of being that determines the quality and ways in which being is expressed; rather it is the ordering logic, or ‘the logic of law’ that determines particular embodiments of being. The process of creating different forms of existence and ways of being in the world is what I after Deleuze call ‘the becoming’. A philosophy of becoming operates as a contingent flow of events, situations and beings with no determinate order or end, which as such makes it adopt a rather non-hierarchical multitudinal form. Similarly, the logic of law-making then has to correspond to the contingent and fluctuated form of being-ness, which ultimately challenges the concept of law and the set limits of the process of law-making and legal procedure. In the thesis I explore a monist and contingent conception of being and law within the framework of Guantánamo detention facility.

### **The Limits of the Thesis: what the thesis does and does not do**

Discussing the ideas that arise from a different monist ontology and that shape the understanding of being and existence, their relationship with law as an ordering principle and their potential implications for the understanding and the study of political situations is a task that as such stretches beyond the scope of the thesis. A different ontology – or a monist understanding of being – demands a radical re-thinking of ways in which we understand, represent and study the world, as well as of our own place in the world and the relationships we form with other forms of existence. Hence some radical limitations to the scope of this thesis had to be imposed.

Firstly, I do not fully explore the origins of monist ideas of being and existence; I mostly ignore Duns Scotus and to a large extent Spinoza, both seen as the founding fathers of this particular thought, and start the discussion of new ontology of being with Deleuze and Lacan. To an extent some justice is still done to the two medieval and early modern thinkers, as Deleuze and to some degree Lacan recognised their centrality for understanding being in such a way.

Secondly, law is discussed as an ordering principle, e.g. as paternal law structuring the logic in which being is embodied as a particular form of existence. With the exception of a brief discussion of exceptionalism, law is not associated with a particular legal order or rules of positive law as such. Some parts of Chapter 4, however, are an explanation of this. A discussion of the American Criminal Justice System in relation to the Habeas Petitions, and the Military Commission Trials is central to the chapter. However, that is a reading of the existing legal provisions and practices and its implications facilitated by a different logic or law-making or ordering.

Thirdly, the thesis is also limited in terms of observations it makes in relation to Guantánamo. It is not the purpose of the thesis to provide a coherent reading of Guantánamo or make prescriptions on what should be done to change the situation. On the contrary, the situation in Guantánamo offers an opportunity to explore a theoretical account of being and forms of existence and their relation to law through examining a practical political problem.

The thesis aims to provide an alternative reading of particular situations – alternative images, representations, ways in which detainees behave, are treated, or ways in which law operates and ‘captures’ individual’s life – or highlight aspects of situations which would otherwise remain hidden, ignored or are even deemed as irrelevant. Sometimes, a great effort has to be put into seeing the full implications of an alternative reading of a particular situation. That is because we are unaware of the structures that create what we consider to be a ‘common’ or an ‘ordinary’ representation of the situation. We see and perceive the world in a certain way because we are taught to see it in that way – the rationality or ‘common-sense’ supporting the observations is legitimised by dominant structures that embed and socialise individuals, turning them into its subjects. Some might call this ideology; I refrain from using this word, as I believe the structures imposed on the processes of subjectivation are grounded in metaphysical and political choices which the common understanding of ideology tends to ignore. My understanding is in full agreement with Louis Althusser’s observation on ‘ideology’ in which he said that ‘ideology’ works best when we are not aware of it, in fact when we live in a belief that our lives are independent of all ideological structures or influences.<sup>8</sup> The ordering logic (ideology), however, stretches beyond individuals; all other social or political processes

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<sup>8</sup> Louis Althusser, *On Ideology* (New York, London: Verso, 2008).

and representations which are dependent on language or linguistic representations fall in the same trap. For example, legal process creates a particular representation or an image of a situation in question; the image of that situation is being translated into law, and transferred into a pre-existing common legal language. However, the singularity of the situation is lost in such a process, as the legal framework which creates a legal image of the situation in question does not facilitate for the singularity of the situation; instead the pre-existing legal language manufactures all legal situations into these unifying legal images. Although they might have the potential to invoke different laws and call upon various practices, the structure of the image and what is important remains undistinguishable from all other cases.

Fourthly, this thesis is not a critique of Guantánamo or various readings of it, and neither is it a critique of ways in which the subject and law are being understood in mainstream and also some critical literature. On the contrary, the thesis aims to address the most persistent critique of postmodern and poststructural thought: that it ‘only’ critiques the existing situation or ways in which this has been addressed. Rather this thesis attempts to create an alternative; an alternative that addresses questions of being and existence and their relationship to law as an ordering principle. The thesis provides an alternative reading of forms of being and law by firstly looking and exploring the possibility of an alternative within the ontological framework and the philosophy of Deleuze and Lacan; and secondly, by speculating on the implications these ideas have for a representation of the world. It aims to offer a productive reading of situations emerging in Guantánamo and contributes towards the creation of an alternative representation and ordering of political and social phenomena on a broader scale. Here, it is important to acknowledge two things: firstly, the thesis represents a step towards an alternative understanding and ordering of the world and political phenomena, yet the alternative as such is not prescriptive, it does not offer a mechanism leading towards an alternative representation or a community, as such activity would defeat the nature of the ontology discussed. Despite that, however, some observations of what such an alternative would be in practice can be still be made, and this thesis aims to at least indicate what these alternatives would be. And secondly, Guantánamo is only a space demonstrating the implications that a different ontological understanding of being has on issues of everyday politics or political issues that emerge as being of great importance.



For that reason, and fifthly, the starting point of the thesis is an assumption that the response to 9/11 and the managerial and bureaucratic politics of liberalism created conditions as a result of which *nomos* or the hidden truth of the existing political and legal system emerged. As a consequence of this emergence, the system has lost its validity and authority, hence it has to be changed, and that change has to be radical.<sup>9</sup> It is then not in the interest of the thesis to discuss how this *nomos* emerged, why it got revealed and what the consequences are of its revelation – that would be the job of critique; but rather starting with the assumption that the *nomos* is revealed, what then is an alternative that would radically challenge the existing notions around and relationships between the three central concepts – being, existence and law – and what further implications the alternative bears. Those changes in particular concern the alternative notion of a political community and the ideas of who or what is the legitimate bearer of ‘human rights’.

### **Monist Ontology: philosophy of becoming, philosophy of nothingness**

The idea of a monist ontology goes to the heart of the relationship between essence and existence, and consequently to the heart of ‘the question of materialism’ in postmodern thought. Commonly, those opposing postmodern and poststructural thought usually make a critique that these theories do not deal with reality, or that its primary interest is discourse, which is in no relation to the material or ‘actually existing reality’. Lacan and Deleuze both seem to be aware of this unfounded critique. Not only that they refute the critique – for example the idea of the body is essential for Deleuze’s thought – even their metaphysical commitments go against claims of non-material ‘foundations’. To explain this further, the starting point very much ties existence to essence. Thus existence is no longer a separate realm to essence, but rather only something that can be added to essence. Such a statement has two different aspects; firstly, non-existence does not result from a lack of essence, on the contrary, non-existence *as such* only falls within a different imaginary, and at the end comes secondary to essence. And secondly, nothingness has essence and out of that also comes existence.<sup>10</sup> Such thinking, I believe, implies that

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<sup>9</sup> I will further elaborate on the role of exceptionalism and how it serves as a starting point of the thesis later in the chapter.

<sup>10</sup> Another way of understanding the interplay between essence and existence is through a relationship between body and mind – a Cartesian dualism determining the modern account of existence/subjectivity. Both Lacan and Deleuze depart from this Cartesian dualism. Lacan for example, does not deny the existence of both categories; however, he does not see them as embodying two different realms (Descartes

nothing can ever disappear, and also, that everything is thinkable or comprehensible in one way or another.<sup>11</sup>

A very good discussion of the ‘nothing-ness’ discussed above or what is also known as ‘minimalist metaphysics’, is provided by Sam Gillespie. Gillespie, a very lucid commentator of Alain Badiou’s ‘minimalist philosophy’, for example, writes that one requires ‘an ontology to be founded on nothing [which] would presume that existence can follow from non-existence, at the same time as it assumes that something can happen on the basis of nothing/being nothing more than a subjective ability to respond to the existence of the inconsistent nothingness that is being’.<sup>12</sup> As I understand Gillespie, the ‘inconsistent nothingness that is being’ implies an immanent idea of being constituted as a pure force or a drive for self-preservation. Spinoza and postmodern readers of Spinoza such as Antonio Negri might call it *conatus*.<sup>13</sup> That same contingency or the possibility of ‘the new’ emerging out of an immanent force described above is what, I think, one can locate in Deleuze and Lacan’s later thought. Their commitment to conceive of the new comes through in their discussion of desire and *jouissance* as a positive force, and alternative ordering principles or ways of understanding the world that derive from a different ‘becoming’ of the forms of existence, and different relations between these forms. One could argue that if Deleuze and Lacan’s ideas of existence and forms in which being gets expressed are interrogated to its limits, they encounter ‘nothing’. Such nothingness is not nihilistic; rather it implies that the limits of what one can comprehend and understand are set by language and by other forms through which one can be cognitive of the world. If those limits are pressed and pushed for long enough, they reveal that there is nothing inherently supporting these limits apart from a particular logic of ordering the world. Nothing exists in the materiality that inherently directs forms of knowledge and nothing steers the understanding/comprehension towards the existing ends.

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might call them *res cogitans* and *res extensa*) or as opposing one another. Instead, for Lacan, body and mind are in ‘open-ended dialectical relationship’. (Paul Verhaeghe, ‘Lacan’s Answer to the Classical Body/Mind Deadlock’, in *Reading Seminar XX: Lacan’s Major Work on Love, Knowledge, and Feminine Sexuality*, Suzanne Bernard and Bruce Fink, eds. (Albany: State University of New York Press, 2002, 109–10).

<sup>11</sup> That does not mean that *all* can be perceived within the order of language or discourse, but rather that *all* is in one way or another explainable or graspable – even the Real. This is also Spinoza’s position.

<sup>12</sup> Sam Gillespie, *The mathematics of novelty: Badiou’s minimalist metaphysics* (Melbourne: re.press, 2008): 146.

<sup>13</sup> See for example: Antonio Negri, *The Savage Anomaly: The Power of Spinoza’s Metaphysics* (Minneapolis: The University of Minnesota Press, 1999).

In other words, there is no being beyond its material instantiation that provides a support or principle for how it comes to be organised in various situations that comprise the world. The image one has about political and social phenomena, or for example of law, is not an image as such, but only a representation or an embodiment of one organisational principle dominating the ordering discourse of the world. The image of a thing in question would be understood or cognised differently under a different ordering principle. Ultimately, there is nothing in the 'image' itself that facilitates and conditions a particular understanding or comprehension of it. Similarly to Gillespie I would argue that the ultimate ontological support of the world is 'nothing';<sup>14</sup> or a positively charged void facilitating an ocean of possibilities and forms in which things can emerge or can be embodied. Thus, the nothingness or the void represents the minimal ontological form of being. As such the void is the embodiment of the Real – of the space in the face of which language and existing ordering principles that bring being into existence collapse – it is inhuman and a-subjective.

Such minimalist metaphysics or minimalist ontology of being 'founded' on the concept of nothingness, as I will further elaborate in this thesis, allows for a construction of a new 'humanity'. What is at stake in a new humanity is according to Jean-Luc Nancy: 'Another life, another respiration, another weight, and another humanity is in the process of emerging. [...] Faced with the "Indian" of the discovered "Caribbean" we wondered: Is it another man? Is it other than man? [...] Today] we understand that he is a variation of the same, of ourselves. [...] But at the same time it is another question: Up to what point can the same, distinguishing itself from the same, take its sameness with it?'.<sup>15</sup> The question Nancy has in mind addresses the limits of 'humanity', or who is 'same' enough to belong to this category? In his observations he starts stretching the notion of the 'same', yet questions the limits of how far this challenge can go. I would suggest that minimalist metaphysics is capable of taking the notion of 'sameness' to the very 'end'; to a state in which sameness convolutes into a force shared by all inhabiting a particular space, inhabiting this world. On a political scale, Antonio Negri presents the idea of 'the common' or 'a common name'. In *Time for Revolution* he writes: 'the common name can therefore be defined as the exposition of the common quality of things and, at the same time, as the constitutive projection of being into the to-come. It is on the one hand a

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<sup>14</sup> Gillespie, *The mathematics of novelty*, 139.

<sup>15</sup> Jean-Luc Nancy, *Dis-enclosure: the deconstruction of Christianity* (New York: Fordham University Press, 2008): 160.

survey of the multiplicity of being, and on the other – “at the same time” – a powerful *kairòs* that constitutes the common in the to-come.<sup>16</sup> The common Negri has in mind here is not a static category, rather it is a category that is to-come, that is emerging and that is inherently, in its very being, constituted on the premise of *kairòs*, namely a potentiality, or a time when something special can occur – ‘time for revolution’. The common as I understand it in this thesis is then a potentiality of something new to occur; yet this disruption is ‘common’ to or ‘inhibits’ the entire being. Negri and Nancy here present two very similar ways in which one can think of an immanent minimalist ontology of nothingness (or monist being); the distinction I would however impose here, is that Nancy remains focused on the notion of humanity, whereas perhaps Negri has no reservations in leaving it behind and opening the limits of the common, in a Spinozian fashion, to all. In this thesis I am following Negri’s example and explore the possibility and political and legal implications of monist being as a potentiality or a force common to all animate and inanimate forms of existence.

## Thesis Question

I hope by this stage in this introduction it has become clear that the main questions this thesis ask *how to think alternative notions of existence* and *what their political, social and legal implications are*. To explain these two questions and ways in which they are addressed in the thesis further, I am interested in how a different ontology – what has so far been discussed as monist ontology or a minimalist metaphysics based on the idea of nothingness – impacts on ways of thinking about different forms of existence, how the ‘passage’ from a particular ontological notion of being to ‘its’ transcendent embodiment in a particular form of existence takes place, and what the implications are of those forms of existence within a legal and political scope. More particularly, the scope is limited to the portrayal of legal and political images of Guantánamo detention facility and practices related to it. There is an additional aspect to the questions described here: that is the legal aspect. In Lacanian psychoanalysis, which is central to the discussions in this thesis, a form of existence is negotiated or dependent upon a particular ordering principle commonly understood as ‘law’. For that matter no discussion of a different ontology or forms of existence can be made without re-considering the logic according to which law

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<sup>16</sup> Antonio Negri, *Time for Revolution* (London, New York: Continuum, 2005): 148.

orders social and political realm. A minimalist metaphysics and monist ontology requires what is in psychoanalytical language known as the 'law beyond Oedipus'. In other words, this is a law that no longer operates on a hierarchical basis with one paternal figure or the figure of authority that proclaims laws and prohibits pleasure and enjoyment. It is also an order (ordering logic) that facilitates openness and allows for constant change, transformation and deviation.

## **Placing the Thesis into the Context: being and existence in the legal and the political**

The questions central to my thesis, for example, what alternative notions of existence can be facilitated by a different ontology of being and what form of law is congruent to such alternative understanding of being, are neither new nor distinct to philosophy. They have been addressed by scholars in the field of international politics broadly defined, as well as a number of other humanities and social science disciplines, perhaps most notably law. In international politics, questions of the 'split or decentred political subject' are central to poststructural approaches to international politics. The 'poststructural scholars', most notably perhaps David Campbell, Michael Dillon, Jenny Edkins, Véronique Pin-Fat, Diane Rubenstein, Michael J. Shapiro and R. B. J. Walker<sup>17</sup> developed their own

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<sup>17</sup> David Campbell *Politics Without Principle: Sovereignty, Ethics and the Narratives of the Gulf War* (Boulder, London: Lynne Rienner Publishers, 1993); *National Deconstruction: Violence, Identity and Justice in Bosnia* (Minneapolis: University of Minnesota Press, 1998); 'Beyond Choice: The Onto-politics of Critique' *International Relations*, **19**, no.1 (2005): 127–34; Michael Dillon, *Biopolitics of Security in the 21st Century: A Political Analytics of Finitude* (London: Routledge, 2010); 'Governing Terror: The State of Emergency of Biopolitical Emergence', *International Political Sociology* **1**, no.1 (2007): 7–28; *Politics of Security: Towards a Political Philosophy of Continental Thought*, (London: Routledge, 1996); Jenny Edkins, *Poststructuralism and International Relations: Bringing the Political Back In* (Boulder, London: Lynne Rienner Publishers, 1999); *Whose Hunger? Concepts of Famine, Practices of Aid* (London, Minneapolis: University of Minnesota Press, 2000); Jenny Edkins, Nalini Persram and Véronique Pin-Fat eds. *Sovereignty and Subjectivity* (Boulder, London: Lynne Rienner Publishers, 1999); Jenny Edkins, *Trauma and the Memory of Politics*. (Cambridge: Cambridge University Press, 2003); 'The Rush to Memory and the Rhetoric of War'. *Journal for Political and Military Sociology* **31**, no.2 (2003): 231–50; Jenny Edkins, Véronique Pin-Fat and Michael J. Shapiro eds., *Sovereign Lives: Power in Global Politics* (New York: Routledge, 2004); Jenny Edkins and Véronique Pin-Fat, 'Through the Wire: Relations of Power and Relations of Violence'. *Millennium: Journal of International Studies* **34**, no.1 (2005):1–24; Jenny Edkins, 'Whatever Politics' in Matthew Calarco and Steven DeCaroli, eds. *Sovereignty and Life: Essays on Giorgio Agamben* (Stanford: Stanford University Press, 2007); Véronique Pin-Fat, *Universality, Ethics and International Relations*. (London: Routledge, 2010); Michael J. Shapiro *Violent Cartographies: Mapping Cultures of War* (Minneapolis: University of Minnesota Press, 1997); *Cinematic Political Thought: Narrating Race, Nation and Gender* (Edinburgh: Edinburgh University Press and NYU Press, 1999); *Moral Spaces: Rethinking Ethics and World Politics* (Minneapolis: University of Minnesota Press, 1999) co-edited with David Campbell; *Deforming American Political Thought: Ethnicity, Facticity and Genre* (Lexington: University Press of Kentucky, 2006), *Cinematic Geopolitics* (New York: Routledge, 2009); R. B. J. Walker, *After the Globe/Before the World* (London: Routledge, 2010), *Inside/Outside: International Relations as Political Theory* (Cambridge: Cambridge University Press, 1993), 'Conclusion: Sovereignities, Exceptions, Worlds,' in Jenny Edkins, Veronique Pin-

distinctive approaches to explain the relationship between ‘the subject’ and ‘the political’.<sup>18</sup> More particularly, they reconsider the relationship between the subject and the sovereign (the sovereign power). These approaches are not homogeneous, for example, if one takes a look at the theoretical side, one can see that a number of different philosophical approaches, such as the theories of Giorgio Agamben, Alain Badiou, Jacques Derrida, Gilles Deleuze, Jacques Lacan, Jean-Luc Nancy, Jacques Rancière, Ludwig Wittgenstein, Slavoj Žižek, are being brought into the study of ‘the international’.<sup>19</sup> Equally, there are different approaches to the ‘international’ as such. Shapiro, for example, explores the different relationships between the subject and the sources of (sovereign) authority by engaging with cinema and an ‘ethnographic’ study of cities and places; such a study shatters the limits of representation or the conditions of one’s existence. Walker and to some extent Dillon refer heavily to classical political theory and draw out implications from it. In contrast Edkins, for example, brings in ‘the personal’ and recognises one’s personal experiences and motivations in engaging with the problem.<sup>20</sup> To a large extent my project is a hybrid between some aspects of Dillon’s and Walker’s approach and some aspects of Shapiro’s and Edkins’ approach. By focusing on political theory and philosophy I develop a monist understanding of being informed by a different ‘philosophical logic’ – the philosophy of becoming and the philosophy of

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Fat and Michael J. Shapiro, eds., *Sovereign Lives: Power in Global Politics* (New York: Routledge, 2004): 239–49, ‘Polis, Cosmopolis, Politics,’ *Alternatives: Local, Global, Political*, **28**, no. 2, (2003): 267–86, ‘On the Immanence/Imminence of Empire,’ *Millennium: Journal of International Studies*, **31**, no. 2 (2002): 337–45.

<sup>19</sup> To mention a few most inspiring works: Giorgio Agamben, *The Coming Community* (Minneapolis: University of Minnesota Press, 1993), *Homo Sacer: Sovereign Power and Bare Life* (Stanford: Stanford University Press, 1998), *State of Exception* (Chicago and London: University of Chicago Press, 2005); Alain Badiou, *Deleuze: The Clamor of Being* (Minneapolis: Minnesota University Press, 2000); *Infinite Thought: Truth and a Return to Philosophy* (London: Continuum, 2003), *Being and Event* (London, New York: Continuum, 2005), ‘Towards a New Concept of Existence,’ *Lacanian Ink* 29 (2007): 63–72; Gilles Deleuze, *Spinoza: Practical Philosophy* (San Francisco: City Lights Books, 1988), *Expression in Philosophy: Spinoza* (New York: Zone Books, 1992), *Difference and Repetition* (London: Continuum, 2008); Gilles Deleuze and Félix Guattari, *Anti-Oedipus: Capitalism and Schizophrenia* (New York, London: Continuum, 2007), *A Thousand Plateaus: Capitalism and Schizophrenia* (New York, London: Continuum, 2008); Jacques Derrida, *Politics of Friendship* (London, New York: Verso, 1997), *Rogues: Two Essays on Reason* (Stanford: Stanford University Press, 2005); Jacques Lacan, *Seminar XX (1972 – 1973): Encore: On Feminine Sexuality, The Limits of Love and Knowledge* (London: W.W.Norton&Company, 1999), *Écrits*, translated by Bruce Fink (London and New York: W.W. Norton & Company, 2006); Jean-Luc Nancy *Being Singular Plural* (Stanford: Stanford University Press, 2000); Antonio Negri, *The Savage Anomaly: The Power of Spinoza’s Metaphysics and Politics* (Minneapolis: University of Minnesota Press, 2008), *Subversive Spinoza: (un)contemporary variations* (Manchester: Manchester University Press, 2004); Jacques Rancière, *On the Shores of Politics* (London and New York: Verso Books, 2007); Slavoj Žižek, *The Sublime Object of Ideology* (London and New York, Verso, 1999), *The Ticklish Subject: the absent centre of political ontology* (London, New York: Verso, 2000), *The Parallax View* (Cambridge MA: MIT Press, 2006), *Violence: Six Sideways Reflections* (London: Profile Books Ltd., 2008).

<sup>20</sup> Also see, for example: Elizabeth Dauphinee, *The Ethics of Researching War: Looking for Bosnia* (Manchester: Manchester University Press, 2007).

‘nothingness’. Both Dillon and to an extent Walker inform their work with a similar Deleuzian stand.

However, with the work I do on psychoanalysis, and the combination of psychoanalysis and representation or ‘the philosophy of expression’, my project equally relates to Edkins’ ways of exploring the question of ‘personhood’ in international politics, and Shapiro’s interrogation of the subject and its forms of expression and representation. In a similar way to Edkins and Shapiro, I am exploring representations of being and its different forms of existence and way of thinking that allows seeing what Edkins and Shapiro still call ‘the subject’ in the Real or the traumatic. However, *last* Lacan’s thought, which strongly influences my work allows me to conceive of a form of being in the immanent, beyond or outside the paternal and linguistic formations. This is something neither Edkins nor Shapiro address (or perhaps such interrogation falls outside the scope of their interest). Also it is not always clear what they mean by ‘subject’: to my mind the subject is only a particular embodiment – a form of existence – that derives from a Cartesian metaphysics that emphasises the dualism between body and mind. I am aware such a narrow definition of what the ‘subject’ is, is not what they always have in mind when discussing the ‘subject’; their work challenges dualist notions and common representations of existence which sees human being as central. Despite posing a challenge to Cartesianism, to my mind, they do not or are unwilling to entirely embrace a monist stand. That is, it seems that their thought is still very much reliant on Heidegger; whereas what I am trying to do in this thesis departs from Heidegger’s philosophy and seeks an alternative in a ‘return’ to Spinoza. They try grasping the existence in ‘the beyond’, ‘the Real’ or in the non-discursive; however, they persist on the term the ‘subject’ when referring to a particular kind of existence. I try avoiding the term as much as possible, because it convolutes the representations and arguments I am making in relation to being (as a different ontology) and new forms of existence. The term ‘subject’, I believe, also brings into the discussion too much philosophical and theoretical baggage one needs to clear before a discussion is even possible. That is not to say that existence and being are neutral expressions. Far from it, if both – being and existence – are understood in the light explained earlier they suit the purpose of this thesis and its arguments best.

Particular ideas of existence and being are not only bound to specific understandings of the political, but also to particular ideas of law or ‘political ordering’. By this I do not mean that different communities have different legal principles, that is taken for granted, but rather that a different idea of being inherently grounds a different understanding of what law as an ordering principle is and how different forms of existence internalise law and relate to it. This means that a particular understanding of being relates to a particular logic of law-making. Thus, ‘the law’ becomes inherent to the constitution of a particular form of existence, and once the logic of law changes, so does the form of existence. It is then the ‘character’ of being that determines the logic of the ordering – law – inscribed in different forms of existence. In other words, the immanent logic of law that orders the character of being determines the form of law in the transcendent, and ways in which different forms of existence come about. To illustrate, some argue that, for example, the split subject of the Other derives from an understanding of law as the Oedipal law. Such a form of law, in the psychoanalytical sense, represents a way in which we relate to law, and also a way in which law nowadays constitutes society. In its structure, the Oedipal law is the law of the father with an imaginary – mythical – and never attainable authority.<sup>21</sup>

Many critical legal scholars devoted to Lacanian thought and psychoanalysis make similar observations.<sup>22</sup> They are mainly concerned with explaining ways in which the subject relates to law; or how the subject becomes the subject/object of law and legal practice. Critical legal scholars do not merely challenge the legal personhood as it exists within the frames of positive law, rather they pose a critique to ways in which law relates to and frames the existence of subjects and the society. In other words, as Costas Douzinas and Adam Geary observed, the main task of critical legal scholars is a critique of a society as a

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<sup>21</sup> In Chapter 2 I will engage with Oedipal law in more detail.

<sup>22</sup> Most notably for example: David S. Caudill, *Lacan and the Subject of Law: Towards a Psychoanalytical Critical Legal Theory* (New Jersey: Humanities Press, 1997); Costas Douzinas, ‘Psychoanalysis Becomes the Law’, *Legal Studies Forum* **XX**, no. 3 (1997): 323–36; Phillip Dravers, ‘The Segregate Effect of Discourse’, *International Journal for the Semiotics of Law* **15** (2002): 293–311; Ari Hirvonen, ‘Celan and the Heart Cry’, *Liverpool Law Review* **23** (2001): 273–9; ‘The Problem of Evil Revisited’, *NoFo* **4** (2007): 29–51; Pierre Legendre, ‘The Lost Temporality of Law: An Interview with Pierre Legendre’, *Law and Critique* **1**, no. 1 (1990): 3–20, ‘The Other Dimension of Law’, *Cardozo Law Review* **16**, no. 3–4 (1995): 943–61; Dragan Milovanovic, ‘Rebellious Lawyering; Lacan, Chaos, and the Development of Alternative Juridico-Semiotic Forms’, *Legal Studies Forum* **20** (1996): 295–321; Jamie Murray, *An Erotics of Law: Lacanian Psychoanalysis and Legal Theory*, PhD Thesis (London: University of London, 1999); Alain Pottage, ‘The Paternity of Law’, in *Politics, Postmodernity and Critical legal Studies: The Legality of the Contingent*, Costas Douzinas, Peter Goodrich and Yifat Hachamovitch, eds. (London and New York: Routledge, 1994); Véronique Voruz, *Psychoanalysis and the Law Beyond Oedipus: a study in legal fictions*, PhD thesis (London: University of London, 2002).



whole, with an emancipatory aim.<sup>23</sup> With this in mind, it is clear that critical legal scholars think that positive law or in fact any aspect of the modern study of law – law as a discipline – lacks a proper scope in order for it to be able to address the permanent problems of justice and ethics in the world. Instead, critical legal studies approaches law in a distinct way. They take political wisdom as a way of thinking about the law. Moreover, critical legal studies is drawn towards ‘practical reason’, as a form of reason that cannot be reduced to ‘an abstract set of principles or goals because it recognises that each situation calls for a different response; a different assessment of the forces that are playing themselves out, of strategic possibilities and limitations’.<sup>24</sup> And finally, the ethical concern of critical legal studies recognises that we are all ‘hostages to the other’.<sup>25</sup> That does not take away the possibility of ‘emancipation’, as some might observe, rather critical legal studies imposes a demand on ‘us’ to respond to the suffering of the other with a political action, which is not conceptualised or technologised and does not result in a political programme. It is as Douzinas and Geary write: ‘a thinking of the response as the grounding of the social world, as the very opening of the political’.<sup>26</sup> Here, precisely, critical legal studies meets the main purpose of my thesis, that is to explore the possibilities of new legal orderings and forms of existence that derive from the above described contingency of thinking. It is, to refer us back to earlier discussion of ontology, the ‘nothingness’ or the constant probing and challenging of boundaries that determine critical legal thinking and its approach to law. The law, for critical legal scholars, is then always also a (encounter with the) trauma, and hence bears the capacity to radically change the formation of the social and the subject.

Central to a psychoanalytical understanding of critical legal studies of law is the Name-of-the-Father as a central logic ordering the social and the subject. This ‘paternal law’ (also known as the Oedipal law) is essential for the subject and social formation, as it constitutes the relationships of one’s notion of the self and of ways one internalises the law and its prohibition. Some, however, try to think beyond this paternal politics of law and being, and their hierarchical account of law. This is precisely the path this thesis is taking. Instead of the ‘authoritarian’ and hierarchical Oedipal logic of law, the post-

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<sup>23</sup> Costas Douzinas and Adam Gearey, *Critical Jurisprudence: the political philosophy of justice* (Oxford and Portland: Hart Publishing, 2005): 39.

<sup>24</sup> Douzinas and Gearey, *Critical Jurisprudence*, 40.

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*

Oedipal law is dispersed and ‘ordered’ as a multitude or contingency.<sup>27</sup> One scholar engaging with post-Oedipal law is Véronique Voruz. Voruz follows the theory of *last* Lacan and talks of law in relation to desire and *jouissance*.<sup>28</sup> The desire, in particular as a desire of the analyst, and *jouissance*, in particular women’s *jouissance* as Panu Minkkinen also argues,<sup>29</sup> offers an understanding/explanation of law and forms of existence that are no longer bound to hierarchical structures of paternal authority. In the thesis I make a similar move to Voruz and Jamie Murray; Murray came up with the idea of *sinthome law* as a form of Post-Oedipal law. I turn to the *last* Lacan’s thought and the ideas of *jouissance* and the *sinthome law*.<sup>30</sup> By opening up the law to ideas of desire *as such* and *jouissance* I try to illustrate a type of law that can facilitate for the radical contingency of the Real within the law itself. In other words, in this thesis I argue for radically unstable structures of law and ethical principles that no longer correspond or formulate categories resulting in particular political programmes or pre-determined legal practices. I aim to think of law as a multitude or a network instead of a hierarchical institution. By combining *last* Lacan’s theory with Deleuze, I – with the example of Guantánamo – try to describe a type of law that is congruent with a monist ontology of being or the philosophy of nothingness. In this way my approach combines Murray’s and Voruz’s thinking and, by adopting the framework of Guantánamo, takes it beyond purely philosophical/theoretical discussions.

## A Brief Reflection on the Theoretical Foundations of the Thesis

There are different understandings of the way life, subject and order get constituted and represented in the modern political arena. Not only is life a product of currently existing social forces, it is also a product of different historical developments and shifts in ways human beings comprehend the world. Michel Foucault, for example, acknowledges this

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<sup>27</sup> Jamie Murray, *An Erotics of Law: Lacanian Psychoanalysis and Legal Theory*, PhD thesis (London: University of London, 1999); ‘Sinthome Law: Theoretical Construction upon Lacan’s Concept of the Sinthome’, *Law and Critique* 16 (2005): 212–22; ‘Deleuze & Guattari’s Intensive & Pragmatic Semiotic of Emergent Law’, *International Journal for the Semiotics of Law* 20 (2007): 7–32.

<sup>28</sup> Véronique Voruz, ‘Acephalic Litter, as a Phallic Letter’, in *Re-inventing the Symptom: Essays on the Final Lacan*, Luke Thurston ed. (New York: Other Press, 2002): 111–40; ‘The Topology of the Subject of Law: The Nullibiquity of the Fictional Fifth’ in *Lacan: Topologically Speaking*, Ellie Ragland and Dragan Milovanovic, eds. (New York: Other Press, 2004): 282–313; and Voruz, *Psychoanalysis and the Law Beyond Oedipus*, 2002.

<sup>29</sup> Panu Minkkinen, *Sovereignty, Knowledge, Law* (New York: Routledge, 2009).

<sup>30</sup> *Sinthome law* is an alternative to Oedipal law; it is a logic of law-making that no longer subscribes to paternal hierarchical or authoritarian notions of authority. I will elaborate on this type of law in Chapters 2 and 6.

in his book *The Order of Things: An Archaeology of the Human Sciences*. In this book he challenges the predominant, and what he calls classical discourses of representation of life and being by showing ‘the logic’ of how these discourses came to life. He aims to demonstrate this not by separating between animate and inanimate things, but by seeing the world as interconnected, almost as a radical unity between human beings, animals, plants, body and soul, sky and the stars.<sup>31</sup> Foucault in his genealogical study of the human sciences acknowledges the existence of many discourses that determine and shape our comprehension of the world. By that he does not mean only our understanding of the world ‘around us’ but also the understanding of ourselves, and relationships between us and other forms of existence. For that matter, Foucault argues that the modern conception of the world is the same as political theory, dependent on a sovereign or a dominant discourse. There have been many sovereign discourses in the past, and many more that have been silenced or unrecognised. The representation of the world today is therefore a product of particular sovereign discourses and representational practices that shape forms of being, and the relationship between these beings in a way which corresponds to a sovereign discourse dominant in that particular time.

To focus only on the conception of being, one can observe today that only particular embodiments of being get instituted as dominant or are recognised as having a valid existence within a sovereign discourse. What Foucault observes, and is crucial for my investigation into this topic and for the scope of the thesis, is that the existing conception of being ignores forms of existence not directly in possession of being-ness or life, yet these alternative forms are not invisible. On the contrary, these alternative forms of existence are present and can be made visible (despite being excluded from the sovereign discourse) by being approached or represented by a different ordering discourse or by being ordered by a different ordering principle.<sup>32</sup> Such practice would of course challenge the sovereign discourse because, as a dominant form of discourse, it aims to destroy these deviant forms of existence. Yet its actions are normally futile as being can emerge in multiple formations.

What Foucault acknowledges here is precisely that ‘an existence’ is only one way out of multiple ways in which being is ‘embodied’; it is only one representation of being – its

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<sup>31</sup> Michel Foucault, *The Order of Things: An Archaeology of Human Sciences* (New York: Vintage Books, 1994): 18–9.

<sup>32</sup> Foucault, *The Order of Things*, 278.

closure. The multiplicity of possible representations and embodiments of being are made impossible by the sovereign discourse, only the 'human' exists, whereas all other forms are either unacknowledged or reduced to language that makes sense to humans. In other words, as Foucault writes: 'modern thought is advancing towards that region where man's Other must become the Same as himself'.<sup>33</sup> In this way, my investigation into this topic aims precisely at the liberation of being – or some would also say life – from a sovereign discourse, which embodies being as a subject. This challenge to anthropocentric representations of the world opens up the possibility for cognition; it is no longer merely that words, discourses, things or even man etc. that have a history, but rather also that man itself is his own historicity.

What is then at stake in the proposed investigation concerns the 'limits of thought'. I argue that Lacanian psychoanalysis and in particular its focus on desire/*jouissance* – essential features constituting man as a social being – are ideas that can take this project further. By seeing desire and *jouissance* not as features directing the behaviour and the existence of man, but as forces bringing particular beings into existence, I argue, one can explore and speculate what alternative forms of being exist or can be brought into existence. However, exploring how *jouissance* and desire *as such* act outside the scope of the social and the symbolic/representational order to which we have access to, is not straightforward for at least two reasons. The first reason concerns Lacan's terminology, which is at best intentionally illusive. The terminology and the meaning changes as his teaching develops, and equally, the same terms adopt different meanings depending on their 'surrounding'. Lacan's commented on his discourse: 'My discourse proceeds in the following way: each term is sustained only in its topological relation with the others'.<sup>34</sup> The second reason concerns the social conventions, hierarchies, representations, discourses and the logic 'directing' the flows of desire *as such* which are radically different from those determining desire in the social field. Deleuzian 'nomadology' (as a logic of philosophical-making) is a good example of such philosophical thinking, as it represents an anti-sovereign embodiment of existence.

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<sup>33</sup> Ibid., 328.

<sup>34</sup> Jacques Lacan, *Seminar XI: Four Fundamental Concepts of Psychoanalysis* (London: Hogarth Press and Institute for Psychoanalysis, 1977): 89.

Nomadology is a way of thinking based on flows, unexplained and open assemblages of *whatever* things or individuals. It is, as Deleuze argues, the opposite of a history.<sup>35</sup> Unlike history, nomadology traces assemblages, but not those which assemble with a purpose to produce or imitate something. It is a philosophy of constant becoming, tracing and reaching beyond the boundaries, outside the space and the limits of representation.<sup>36</sup> Nomadology stands for many things; it is a way of thinking that no longer complies with models, roles or expectations. It is manifested in different ways and in different concepts. Deleuze, for example, talks about the war machine and the rhizome as being part of or a result of nomadology.

Central to understand nomadology is thinking of philosophy as a flux of constant movements rather than static points. The nomads reflect the fluidity. In their actuality, they have no points, paths or land, even though they seem to by all appearances.<sup>37</sup> Their relation to the earth is constituted through the processes of deterritorialisation; it is the earth that deterritorialises itself in a way that provides the nomad with a territory.<sup>38</sup> In other words, the earth knows no boundaries or territory to provide the nomad with a particular location for a meaning. With this philosophy Deleuze sets the path of exploring the ‘thought of the outside’, and determines a way of how one might go about pursuing this task. In my project nomadology, as well as genealogy, are taken as guidance as to how and where one could find the fragments of the outside thought; whereas, on the contrary, psychoanalysis (with the realms of the Real, the Symbolic and the Imaginary) and its ideas of desire and *jouissance* are central to how I go about thinking existence in the immanent.

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<sup>35</sup> Deleuze and Guattari, *A Thousand Plateaus*, 25.

<sup>36</sup> Here it is worth emphasising that *last* Lacan’s thought follows the same logic of ‘fluidity’ as Deleuze’s nomadology; an example of such fluidity is Lacan’s description of the ‘sexual relationship’ as a form in which different forms of existence are being instituted into social formations. Verhaeghe (2002: 114), summarising Lacan, writes: ‘The other *jouissance* can only be defined in a negative way: it neither concerns gender, nor the Other of the signifier, nor being. [...] it is in this whole not-whole that it flourishes. [...] Its elaboration takes place within the dialectics of corporeal contingency (“to stop not being written”), necessity (“it doesn’t stop being written”), and impossibility (“it doesn’t stop not being written”).’

<sup>37</sup> *Ibid.*, 421.

<sup>38</sup> *Ibid.*

## The Contribution of This Thesis

Ultimately, then, what are the main contributions this thesis is making? The starting point for determining the contributions of this thesis is the following observation by Rob Walker: ‘contemporary world politics must be addressed at the level of basic ontological assumptions’.<sup>39</sup> I take Walker’s observation as a call to engage with political issues from as broad a perspective as possible. In other words I aim at looking at the problem of global politics from outside of the working framework the discipline of International Relations has created. I believe this thesis is an attempt in that direction. Therefore, the thesis aims to make contributions to different aspects of the study of world politics. Most notably, the thesis aims to demonstrate how a different non-anthropocentric view on world politics can be presented and what is entailed in such a view. In this respect, the thesis contributes to the philosophy of international politics – more particularly– it challenges its basic ontological assumptions of ‘subject’ and ‘law’. Similarly, due to a rethought relationship between ‘the subject’ and ‘other forms of existence’, the thesis also challenges the ‘levels of analysis’ within international politics and hence makes another contribution to its philosophy.

The thesis discusses an alternative ontology of being and law in relation to the situation in Guantánamo and human rights discourse. As such, then, the thesis contributes to the literature on Guantánamo. In particular it provides for an engagement with Guantánamo that is beyond the discourse of exceptionalism. Perhaps, then, the most important contribution of this thesis is its engagement with Guantánamo in the light of alternative ideas of being and rights. The thesis constructs images of how an alternative idea of being can be manifested in the political; and how these forms can re-shape and become part of a new legal discourse. Within this scope, the thesis contributes to a number of aspects and fields of study within international politics and critical legal studies. Through a discussion of forms of existence and law, the thesis addresses normative and ethical questions in the fields of both international politics and critical legal studies. In addition, the approach of this thesis – a combination of a Lacanian psychoanalysis and Deleuzian philosophy – makes three contributions. Firstly, it makes a counter-argument to a rather

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<sup>39</sup> Walker, *Inside/Outside*, 32.

dominant view that Deleuze's and Lacan's theories are incompatible, even opposing; secondly, the thesis makes one of the first interventions into international politics with 'last Lacan'; and thirdly, it makes an intervention into the recently opened space between politics and clinical psychoanalysis.

Lastly, to return to the Walker's observation, the thesis aims to demonstrate the importance of engaging with ontology; yet the thesis does not aim to do this only through philosophy or theory, but also by challenging what many postmodern thinkers believe to be an artificial divide between the academic or scientific and personal discourse.<sup>40</sup>

## **Guantánamo: from Exception to *Nomos* and Truth**

After discussing all theoretical and philosophical aspects pertinent for the understanding of the task I have set for this thesis, some attention has to be paid to the political framework within which this thesis is situated. I have already explained in part how I became interested in Guantánamo, what is here left to do is to explain the role it plays and set out the initial assumption behind this project. As it will be further elaborated below, this thesis starts by assuming that exceptionalism is not the most productive way of how could one think of US policy endeavour post 9/11, and more particularly, the situation in Guantánamo. Instead of seeing the situation as something extraordinary, as most of the literature in international politics addressing the issue of war on terror and Guantánamo does, I take the position that the situation and the US response to 9/11 is symptomatic of the nature of the modern political. This is not a new claim; some poststructuralist writers in international politics and political philosophy have made a similar observation.<sup>41</sup> It is also worth noting that both positions are being constructed and put for a public debate by academics and other intellectuals, thus political actions and US political discourse are not necessarily reflected in academic or public discourse.

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<sup>40</sup> For example see: Foucault, *The Order of Things, Archaeology of Knowledge* (London: Routledge, 2002).

<sup>41</sup> Claudia Aradau, 'Law Transformed: Guantánamo and the 'other' exception', *Third World Quarterly*, **28** no. 3 (2007): 489–501; Bruno Bosteels, 'The Obscure Subject: Sovereignty and Geopolitics in Carl Schmitt's The Nomos of the Earth', *The South Atlantic Quarterly* **104**, no. 1 (2005): 295–305; William Connolly, 'The Complexity of Sovereignty', in Jenny Edkins et al, *Sovereign Lives*, 23–41; Costas Douzinas, *Human Rights and Empire: The political philosophy of cosmopolitanism* (Abingdon: Routledge Cavendish, 2007); Oren Gross, 'What "Emergency" Regime?', *Constellations*, **13** no. 1 (2006): 74–88; Fleur Johns, 'Guantánamo Bay and the Annihilation of the Exception', *European Journal of International Law*, **16** no. 4 (2005).

What I mean by this is that the ‘exception’ is not grounded in the ‘sovereign decision’; or a sovereign right to proclaim the exception. President Bush never declared the exception, which would abrogate existing laws and made him the sole legal authority in the State.

Some might find this statement contestable and refer to President’s Bush address to the Congress on September 20<sup>th</sup> 2001. At the time, the Congress indeed gave the President powers to do whatever was deemed necessary and appropriate to fight ‘against nations, organisations or persons who planned, authorised, committed, or aided the terrorist attacks’.<sup>42</sup> The wording of the Congressional resolution that authorised the use of the US Armed Forces against those responsible for the attacks on the United States did not stop here. It also gave the President the powers to use force against all those who harboured terrorist organisations or persons, to prevent any future attacks of international terrorism against the US.<sup>43</sup> Although this resolution granted almost unlimited powers to the President, or the use of all powers that are deemed to be appropriate, as such the resolution did not proclaim the exception and neither did Bush. Instead, Bush’s speech at the Congress can be seen as an official declaration of war; it is an undisputed sovereign right to declare war against the aggressor, in particular, as international law states, when the state is under attack. Therefore, the Congressional resolution and Bush’s declaration of war cannot be seen as a proclamation of the exception. The act in which the sovereign declares the exception is important, as most theoretical discussion of America’s exceptionalist politics after 9/11 derives from the theory of Carl Schmitt for whom only the sovereign has the right to declare the exception and hence remains the sole legislator and guardian of the constitution.<sup>44</sup>

Nevertheless there is an aspect of ‘exceptionalism’ present in the US response to 9/11 and Guantánamo. It has to do with a ‘different’ or alternative law the government tried to legitimise and put into practice in situations such as detention, interrogation and the conditions of a legal trial. According to Eric Lichtblau’s analysis, the main purpose of the so-called ‘Bush’s law’ which had been carefully crafted by Vice-President Dick Cheney with his team of lawyers was precisely to create the state of justice and law that would

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<sup>42</sup> Congressional Joint Resolution, S.J. Res. 23, to authorise the use of US Armed Forces against those responsible for recent attacks launched against the US. <http://www.law.cornell.edu/background/warpower/sj23.pdf>; accessed: July 30 2009.

<sup>43</sup> Congressional Joint Resolution, S.J. Res. 23.

<sup>44</sup> Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (Chicago and London: University of Chicago Press, 2005): 5.



enable the government to do whatever is necessary to extract the information, to protect its citizens and to hold detainees indefinitely without any charges or a legal trial.<sup>45</sup> By creating such space or a legal black-hole, the US government tried shifting the debate on the status of Guantánamo detainees from the legal to the political arena. Such a move would avoid the interference from US courts and enable the government to manipulate people's emotions and fears for the security of the nation. The government adopted a logic in which an emergency as a political issue (unlike a legal one) is best handled with military means.<sup>46</sup>

Another distinct reading of exception in which exception becomes the norm is that of Giorgio Agamben.<sup>47</sup> In contrast to the legal discussions, here the focus, in particular amongst scholars of international politics, is on a portrayal of the detainees as bare life.<sup>48</sup> A bare life is a life that is stripped of all the rights that belong to a person as a human being; it is also a life left to the mercy of the sovereign power to decide upon its fate.<sup>49</sup> The readings of Guantánamo as a legal exception and the detainees as bare life become problematic in the light of further understanding of political and personal struggles. Some readings of bare life and the exception tend to portray the detainees as having no power or potential for a (successful) political struggle. Commonly those arguments place the detainees at the margins of the political, or even see them as non-political entities.<sup>50</sup> In contrast, others almost glorify their status as being the only form of existence with the possibility of a successful challenge or resistance to the sovereign power.<sup>51</sup> This is the interpretation that derives from a particular reading of Agamben where bare life is understood as a by-product of sovereign power over which sovereign power is no longer

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<sup>45</sup> Eric Lichtblau, *Bush's Law: The Remaking of American Justice* (New York: Pantheon Books, 2008).

<sup>46</sup>George P. Fletcher, 'Black Hole in Guantánamo Bay', *Journal of International Criminal Justice* 2 (2004): 121.

<sup>47</sup> Agamben, *State of Exception*.

<sup>48</sup> See for example: Costas Douzinas, *Human Rights and Empire: The political philosophy of cosmopolitanism* (Abingdon: Routledge Cavendish, 2007); Derek Gregory, 'The Black Flag: Guantánamo Bay and the Space of Exception', *Geografiska Annaler B* 88, no.4 (2006): 405–27; Cristina Masters, 'Body Counts: The Biopolitics of Death' in Elizabeth Dauphinee and Cristina Masters, eds., *Living, Dying, Surviving: the Logics of Biopower and the War on Terror* (New York: Palgrave, 2007): 43–58; Claudio Minca, 'The Return of the Camp', *Progress in Human Geography* 29, no. 4 (2005): 405–12; David Mutimer, 'Sovereign Contradictions: Maher Arar and the Indefinite Future' in *The Logics of Biopower and the War on Terror*, Dauphinee and Masters eds., 159–81; Nick Vaughan-Williams, 'The Generalised Border: Re-Conceptualising the Limits of Sovereign Power', *Review of International Studies*, 35, no.4 (2009): 729–49.

<sup>49</sup>Agamben, *Homo Sacer*.

<sup>50</sup> See for example: Judith Butler, *Precarious Life: the Powers of Mourning and Violence* (London and New York: Verso, 2004); William Connolly, 'The Complexity of Sovereignty', in Edkins et al, *Sovereign Lives*, 23–41; Dauphinee and Masters, *Living, Dying, Surviving*, 2007; Edkins et al, *Sovereign Lives*, 2004; P. Kumar Rajaram and C. Grundy-Warr 'The Irregular Migrant as Homo Sacer: Migration and Detention in Australia, Malaysia and Thailand', *International Migration* 42, no. 1 (2004): 33–64.

<sup>51</sup> See for example: Edkins and Pin-Fat, 'Through the Wire', 1–24.

able to exercise its power.<sup>52</sup> In this thesis I depart from such explanations of Guantánamo, I do not see Guantánamo as a Schmittian exception nor do I engage with the readings of detainees as bare life. Of course I do not deny the situation was abused and manipulated in ways, which served the goals – whatever those were – of the US politics. However, what I argue is that if one rejects the exception as the best explanation of the situation then the situation can be read much more productively, as a potentiality in which something new can emerge. Such a reading can provide fruitful grounds for the development of alternative political imaginaries, in particular it can facilitate alternative explanations of how different forms of existence get embodied and what alternative logics of law exist. I regard exceptionalist readings of Guantánamo as creating a deadlock. I read the situation differently; I will show how Guantánamo offers a possibility, an opening, for theorisation and experimentation, which take political struggles onto a different level. Guantánamo does not require further explanations and classifications of what it is or can be, rather, it calls to be theorised as something new, and also offers that possibility.

### Guantánamo and *Nomos*

Guantánamo, as my starting assumption goes, opened the system up to the challenges and redefinitions of the limits of existing political imaginaries. It has done so through the emergence of *nomos*, or the truth of the system, which takes away the legitimacy of the existing political and legal system. In other words, seeing the situation in Guantánamo as being symptomatic of post-1945 Western liberal democracy exposes this system's hidden truth. That truth is that the Western liberal democratic system is in fact fascistic, as it knows only one response to the challenges – that is violence. For Alain Badiou, whose philosophy I follow here, the emergence of the truth calls for a change in the system.<sup>53</sup> The system can no longer operate, as its underlying truth, e.g. oppression, hypocrisy, violence etc., has come out. The nature of the US response to 9/11 indicates that the truth that emerged has to do with a historical political practice, that which still draws lines not only between friends and enemies, but also more widely between 'us' and 'them', between the civilised and the barbarians.

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<sup>52</sup> See for example Edkins and Pin-Fat's discussion of bare life and Agamben in: Edkins and Pin-Fat, 'Through the Wire', 1–24 or Vaughan-Williams, 'The Generalised Border', 729–49.

<sup>53</sup> Sam Gillespie, 'Beyond Being: Badiou's Doctrine of Truth', *Communication & Cognition*, special issue 'The True is Always New', ed. Dominiek Hoens, 36 no. 1-2 (2003): 5–30.

So what exactly is the truth that emerged? By understanding the politics of the war on terror and Guantánamo through the perspective of *nomos* or the emergence of truth, one could make an observation that what the US has done as a response to 9/11 is to redraw the old colonial lines that determined who is a legitimate opponent with rights that have to be respected, and who is not. A retreat to the politics of drawing lines between barbarian and civilised nations re-invoked a discourse of colonialism and imperialism that has, or so it was thought, long been left behind (at least since World War II). The principles upon which the international community is based today precisely deny any division or asymmetrical power relations based on the colonial past and advocate universal human rights for every living person. After World War II when the discourse of colonialism was still very much alive, the principles of international society were translated into different legal mechanisms and international institutions such as the United Nations, with one purpose, to prevent the same atrocities from happening again. The principles of international law and a process of decolonisation have removed the discourse of colonialism, which can be seen as the major factor in the events that led to World War II, from the political arena. New mechanisms, or so it was thought, no longer divided states along the colonial divide (something that remained present in the period between the World Wars), where some states were privileged and legally allowed to do more than others, even to decide on the fate of another states. International law and the international society that emerged as a result of World War II were perceived as being freed from the old colonial divides.

However, the US with their response to 9/11 attacks questioned the universality of these principles and cast a shadow of doubt over their validity. In doing so, they did not only question the validity of the principles, but most importantly they uncover the hidden truth of the system, which is that the validity of the principles is based on hypocrisy and that the equality between nations and individuals, which was deemed to be essential for the working of the international society after World War II, is in fact only a façade. In this respect the US response to the war on terror has made the system to face its inner truth, or as Lacan would describe it, to face the traumatic or the Real.

Some, and I would concur, argue that Schmitt's *nomos* in fact stands for the Real of the law or for a type of command that is in Lacan's terminology known as a *superego*. Lacan, in his first seminar on Freud's technique, explains *superego* as both 'the law and its

destruction. In this, it is the word itself, the law's commandment, insofar as only its root is left. The law is entirely reduced to something that cannot even be expressed, like the *You must*, which is a word deprived of all meaning'.<sup>54</sup> Thus the *nomos* and the *superego* are of similar nature; they both facilitate authority by representing the 'reverse' or the hidden side of law. The *nomos* is the reverse of the hidden authority of the existing legal system, whereas the *superego* the reverse side or the prohibition subject internalises. The similarity between the two types of law then consequently imply that the structure of individual psyche and the nature of the legal system share the same legal principle – the *nomos* that is embedded in the Oedipal law or the law of the Name-of-the-Father.<sup>55</sup>

The *superego* has a particular function in society. It is what Žižek calls the unwritten law that is in a direct opposition to the positive law of society. It represents the exceptional and the traumatic whereas the positive law calls for unification and universalisation.<sup>56</sup> However, the identification and universalisation seen as a bond between individuals living in a community is only possible on the presumption that the 'law of *superego*' exists. Positive law in itself does not carry enough authority for it to be followed and respected. Žižek explains the role of the *superego* in a community or within a group of people by referring to a film *A Few Good Men*. Rob Reiner's movie is a court martial drama about two marines accused of murdering one of their fellow soldiers. In the movie the defence tries to dispute murder charges by claiming that the defendants were just following the 'Code Red' orders that authorise a clandestine night-time beating of any soldier whose actions are not in line with the United States Marine's ethical code.<sup>57</sup> As Žižek argues, the double function of 'Code Red' is extremely interesting, 'it condones the act of transgression – illegal punishment of a fellow soldier – yet, at the same time, it reaffirms the cohesion of the group, calling for an act of supreme group identification. [...It] represents the community spirit in its purest form [...]; yet simultaneously, it violates the explicit rules of community life'.<sup>58</sup> As such 'Code Red' embodies a double function of law – it demands to be obeyed, yet at the same time there is an equally strong demand to break the very same law; to transgress its limits. With an act of transgression those who break the law reaffirm the identity and the unity of the community in question. Because

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<sup>54</sup> Jacques Lacan, *Le séminaire I: Les écrits techniques de Freud* (Paris: Seuil, 1975): 164–5; passage translated by Bruno Bosteels.

<sup>55</sup> I will further explain the character of the Oedipal law in Chapter 2.

<sup>56</sup> Slavoj Žižek, *For they don't know what they do: Enjoyment as a political factor* (London: Verso, 2002): 30.

<sup>57</sup> Slavoj Žižek, 'Superego by Default', *Cardozo Law Review* 16 (2005): 925.

<sup>58</sup> Ibid.

of the double side of law and its perverse demand to break the rules, the accused marines when faced with charges did not know what they did wrong, as they were simply following the orders. The idea of *nomos* as a *superegoic* function with a revival of the impossible decision reintroduces the contingent in the idea of law. It allows us to test and re-consider the limits of a legal and social framework.

However, to take a step further and grasp the full potential of seeing *nomos* as a *superegoic* function, one needs to dig deeper, return to Badiou and turn to the understanding of *nomos* as truth. Badiou sees truth as fundamental ontology. By this he means that the truth, similarly to ontology, tells us about what is. The truth, like ontology, is a demonstration of an indeterminate existence, or a subsequent and retroactive determination of the event.<sup>59</sup>

The truth has a particular function – it demonstrates or points to the existence of something that, in a particular situation and up to a point in time, has been fundamentally unknowable. It has to point to something that is, like *nomos*, new and transformative for the system. Another characteristic of truth is that it is constituted by an infinite procedure for those situations in which it appears. Unlike Schmitt's *nomos*, truth cannot be isolated in a single proposition or historical moment, although it is embodied in a particular situation in which it has had transformative effects. Similarly it cannot relate to anything that is verifiable within the situation – it does not coincide with any logic or the situation. Furthermore, the truth has to be external to the logic that signifies a particular political situation. The truth signifies something that is present, but not represented or in fact acknowledged.<sup>60</sup> In the context of the war on terror, one could argue that Guantánamo detainees have been present but not represented and acknowledged by the system,<sup>61</sup> but also, and perhaps more importantly, one could say that the *nomos*, in the form of a divide between the civilised and the barbarian, is in fact the present but unacknowledged aspect of the respective post-World War II political and legal system.

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<sup>59</sup> Gillespie, 'Beyond Being', 5–30.

<sup>60</sup> Ibid.

<sup>61</sup> A more detailed explanation on the relationship between detainees' life and the law in Guantánamo will be given in Chapter 5. For now it suffices to say that the detainee's life – despite being discussed at the courts and has been brought to face the law – in fact remains 'unregulated'.

The unacknowledged yet present features emerge in the system in extreme situations or in situations of struggle as a form of a truth. A response to such ‘truths’ should then be a transformation of a system or its radical change. That does not mean the assimilation or the accommodation of new situations, something liberal and democratic societies are drawn towards, but in fact a radical change in the logic of the way the system functions. It is then not only that the truth, whatever it is or whatever it reveals, gets its share in the system, rather the truth transforms and changes the logic by which the system operates. To do justice and fully embrace the truth *nomos* revealed, I would assume that the change has to tackle the most fundamental aspects of the system, namely the ontology of being and the ordering principles of law.

The above discussion of the exception and *nomos* in relation to Guantánamo and the broader US policies post-9/11 set the foundations for the discussion of alternative being that follows. Exceptionalism, as it is understood in the thesis, is not a productive way of thinking about Guantánamo because it limits the debate to a critique of the system and the situation in question. Instead, following the idea of *nomos* as ‘ontological truth’, this thesis sees the situation in Guantánamo as a potentiality or a situation where new forms of existence emerge and new ordering principles take place. Working on this assumption, the thesis firstly develops theoretical expositions of ordering principles, explains the relationship between being and law, and forms of existence; and secondly, it makes an attempt to illustrate how some aspects of these ‘new forms of existence’ and new logics of law or ordering principles are manifested in Guantánamo. The thesis concludes with a speculation on the broader implications such new orderings and forms of existence might have for the notions of the political and the political community, and ways in which one understands the idea of ‘human rights’ or who is seen as a legitimate possessor of ‘rights’.

## **Thesis Outline**

The main questions addressed in this thesis are: How does one think alternative notions of existence? What are their political, social and legal implications? To explain these two questions and ways in which they are addressed in the thesis further, I am interested in how a different ontology impacts ways of thinking about different forms of existence,

how this passage from a particular ontological notion of being to ‘its’ transcendent embodiment as a particular form of existence takes place, and what the implications are of those forms of existence within a legal and political scope. More particularly, the scope is limited to the portrayal of legal and political images of Guantánamo detention facility and practices related to it. As it can be seen from the discussion above, the questions are rather complex and need some further explanation regarding the scope and the context they address and refer to. In this introduction I have outlined the background and the context of the thesis; I have also explained the logic this thesis adopts. I engage with some of the main ideas – such as monist ontology, philosophy of nothingness, ontology of being – which the thesis examines. I also identify the fields – international politics, politics and critical legal studies – where the thesis is situated. Moreover, the introduction has a role of explaining why these alternative accounts of being, law and forms of existence are required in the first place. The above discussion of exceptionalism and *nomos* introduces the idea of the emergence of the truth of the system; a truth that reveals the actual nature of the system and that shatters the foundations of its legitimacy. As a result of this revelation, law requires a different or new grounding; a new logic which structures the law and according to which the law operates. The exposure of the truth, as we have seen by acknowledging Badiou’s idea, calls for a new ordering principle or a new logic or ordering of the world. The old has been exposed, discredited, and is no longer valid hence a new (less oppressive) ordering needs to come in the place of the old one. The need for something new to emerge is also the starting assumption of this thesis. The chapters that follow explore this possibility in theoretical and practical ways.

The discussion of an alternative ordering principles starts in Chapter Two. The chapter is dedicated to the discussion of the (psychoanalytical) foundations of law. It explains how law binds the subject – and how law frames and determines the structure and the operating principles of a particular form of existence, such as ‘the subject’, as well as of different social and political institutions. The argument of the chapter is that the law ‘imprisons’ life because only particular forms of existence are recognised as legitimate in the face of law. The chapter also shows how law determines the limits according to which social and political institutions develop and work. The first half of the chapter discusses how this relationship worked out according to the Oedipal logic of law. The logic is Oedipal because it is a predominant, and exclusionary ordering principle which

limits desire and closes down a range of variation through which life or being can become embodied. The second half of the chapter discusses the account of law that is different from the Oedipal account. Here, in the 'post-Oedipal' logic of ordering, the relationship between the law and a particular form of existence remains open and is hence impossible to be pre-determined. The chapter as such has two roles: it discusses how law becomes inscribed on the 'human body' and thus orders the workings of social and political institutions; and it explores an alternative ordering of law – that is the logic of the *sinthome* or desire *as such*.

The discussion of the alternative is further developed in relation to a different ontology of being – that is a monist ontology primarily presented through Spinoza's idea of *conatus*. In Chapter Three the focus of the discussion is 'being' or a question of how the philosophy of becoming/philosophy of nothingness works in the immanent and how it becomes manifested in the transcendent. The chapter starts with a brief engagement with the origins of monist ontology – Duns Scotus' explanation of essence and existence and finite and infinite thought, and Spinoza's immanent philosophy grounded within the image of *conatus*. The *conatus*, as an immanent force present in all animate and inanimate forms of existence, serves as a foundation for thinking the political and the notion of community and rights within a different non-hierarchical monist ontology. Such immanent and monist thought sets foundations for the philosophy of Gilles Deleuze, in particular his account of immanent life or life *as such*. The chapter discusses the potentiality of life *as such* and the implications it could have for different political and social thinking. As a force that has no ethical or normative qualifications attached to it, the idea can facilitate the emergence of alternative political and social understandings. However, as it is only an immanent idea, its implications remain insignificant without being understood within a transcendent social and political sphere. Hence the last part of the chapter discusses transcendent images of immanent thought. It looks at the idea of 'becoming', the body, desire, language and an alternative ordering principle (*sinthome*). These images are then embodiments of an immanent notion of being in a political and social field. All these ideas embody a different ordering principle and logic of law, and hence, order and represent 'reality' differently. The two theoretical chapters, Chapters Two and Three on law and being, then introduce the philosophy that is central to the discussions in the thesis. The chapter on law starts with an explanation of the current paternal logic of law, and, before moving to an alternative logic of law, explains how



paternal law frames desire and constructs a particular notion of existence. The chapter on being explains the philosophical foundations of this logic of ordering, places it within the immanent realm and then moves on to explore the implications of these immanent ideas in the transcendent political and social realms.

The following two chapters then continue exploring the alternative logic of being and law, only this time this is done by discussing political and legal images in relation to Guantánamo. The images explored here and in the following chapter are significant, because they (more or less successfully) pierce the existing dominant symbolic ordering, and hence point out its fragile and insufficient nature. It is important to note at this stage that the two chapters benefited immensely from field work, in particular the interviews I have conducted with former detainees and guards at Guantánamo, military commission personnel (both defence and prosecution side), retired Army Generals, lawyers of Guantánamo detainees and a number of NGO personnel. Although the chapters might not do justice and testify to the value these conversations have, they had an important impact on my understanding and awareness of the situation and power relations in Guantánamo.<sup>62</sup> The chapter illustrates how particular images of Guantánamo can be read differently by following each of the transcendent representations of immanent thought (the becoming, the body, desire and language) explained in the previous chapter. The purpose of the chapter is to show that these alternatives exist in the here and now, and that they can shed a different light on the situation in question. The discussed Guantánamo images primarily serve as a demonstration of the theory. The chapter also serves as an illustration of how what is considered to be ‘the subject of law’ gets dispersed and no longer makes sense in a different ontological framework. The images represented no longer support the limits within which the predominant idea of the ‘subject’ exists; equally they challenge the existing hierarchies, orderings of the political and social, spatial and temporal organisations and discursive representations. Although they do not portray a full image of what an alternative being – or a particular form of existence in which being is manifested – in social, political or legal realms of Guantánamo is; the chapter gives an account of the practices and moments in which the alternative challenges the existing dominant discourse.

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<sup>62</sup> A full list of interviewees can be found in the Appendix.

The following chapter, Chapter Five, aims to provide an alternative conception of law by following the thought of Deleuze and Lacan. The first part of the chapter is a Deleuzian re-reading of law and Guantánamo legal cases – this serves as a response (and contrast) to the brief legal analysis of exception in Chapter One. It also demonstrates how the limits of the existing law can be opened up, and explains cases addressed by the existing laws and ordering principles differently. The discussion offers an alternative within the existing law. The first part of the chapter re-frames the limits of law, while the second half, following Lacan’s ideas, speculates on an alternative ordering principle of law. This logic of law no longer requires closure, instead – as already indicated in the discussion in Chapter Two – persists in the contingent realm of the Real. The second part of the chapter focuses on Lacan’s different ordering principles and combines them with Deleuze’s ‘transcendent images’ to provide a different account of how law can be ordered, what kind of logic orders such new law, and how the law, as a result of that, (re)acts. This chapter follows the logic by which the ‘subject and law’, or a form of ‘existence and law’, are inherently interrelated – they both work according to the same logic (by which if the logic ordering one changes, so does the logic and the ordering of the other). The images of Guantánamo discussed here have to do with legal discourse capturing the situation in Guantánamo – the focus is particularly on the habeas corpus petitions and the military commissions cases. The discussion focuses on the idea of life and how these different legal discourses capture and represent the life of detainees. On the one hand I discuss how a particular notion of life is inscribed in law, and what limits such inscription brings to the notion of life it inscribes; on the other hand, I discuss the potentiality of a different inscription of life into law. In other words, how a different logic of law orders life differently and provides for its different expression.

The role of the last chapter, Chapter Six, is to further elaborate on the image of alternative – *sinthome law* – and bring together discussions from Chapters Two to Five. The chapter reflects on what it means to think being/being-ness and law differently, particularly what implications this has for the political realm. Most importantly, the issue of ‘being and law’ is discussed, as are the origins of a new legal subjectivity (a new being of law/and a new existence of law), human rights and a possibility of the emergence of a political community that is grounded on the philosophy of becoming discussed throughout the thesis. Chapter Six then offers a synthesis of what the examples and

theoretical foundations discussed through a perspective of a different ontology can tell us about the realm of the political.

To summarise then, the thesis starts with an introduction of a practical political problem – Guantánamo and US politics post 9/11 – which can be most fruitfully addressed theoretically by discarding explanations based on exception. Instead, the assumption is made that the situation in question is not an exception, rather it uncovered the truth of the system; and hence requires the system to rethink its foundations. To do so, the thesis brings in a different ontology, which ultimately facilitates a different understanding of being (and forms of existence) – and law – as an ordering principle of ‘reality’. The following chapters explore this different ontology and the relationship between being and its forms of existence and law. Chapters Two and Three explain the alternative logic and the relationship within the philosophical and theoretical domain by drawing on the philosophy of Gilles Deleuze and psychoanalysis of Jacques Lacan; while Chapters Four and Five introduce political and legal images of Guantánamo – the situations that challenge or pierce the consistency and logic of representation of the existing symbolic order and hence pose a challenge to it. They do not provide a coherent picture of a new ordering principle or an alternative representation of existence; rather these images and their explanation offer an interpretation and explanation of how they challenge the existing dominant discourse and how they – in some cases – create an alternative representation. The last chapter is then a synthesis of all the discussions from previous chapters – and makes an attempt to construct an alternative representation or form of existence and logic of ordering within the political and legal discourse. This is attempted by looking at human rights discourse and forms of existence, and the possibility of creating a new form of community. The conditions for the emergence of alternative representation lie on the ontology that derives from *last* Lacan’s ideas of *sinthome* and its topological representation – the Borromean knot.

## Chapter 2

### Oedipal Law and the Idea of Alternative Legality

Central to this chapter is a discussion of the idea of law as an ordering principle that governs all forms of social exchange in the world, including all forms of existence and communication. The chapter explains how law, as such, is inscribed on particular forms of existence and what effects such inscription has on one particular form of existence. Initially I discuss the subject of Oedipal law as the main form of existence; while later in the chapter LOM of the *sinthome* (*sinthomal* logic) become central to the discussion. The chapter discusses a psychoanalytical understanding of law, and starts with an Oedipal idea of law or an Oedipal logic of ordering that determines the limits and understanding of ‘the subject’ as a particular form of existence, or a particular embodiment of being.<sup>63</sup> I explain what Oedipal logic of law is, what its origins are and what its impact is on the subject. This is done through the discussion of the relationship between law, life and institution. In this discussion it is explained how law limits the subject and makes it conform to a particular understanding and ordering of society. In the second part of the chapter I move away from explaining the origins of the existing predominant ordering and instead speculate on the possibility of an alternative ordering to that of the Oedipal logic. In psychoanalytical literature which is central to discussions here, the Oedipal law, as Sigmund Freud would argue, commonly corresponds to modern law, or the law of modernity that emerged after the medieval times with the emergence of modern science and the modern scientific subject.<sup>64</sup> This corresponds to the emergence of capitalist liberal societies.<sup>65</sup> The alternative logic, that opposes the ordering of modern capitalist and liberal societies, is introduced through a discussion of desire and *jouissance*, which

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<sup>63</sup> In this chapter I will also use the term ‘life *as such*’ to refer to the similar idea of ‘being’ or being-ness. I will try to be consistent and use only ‘being’; however, occasionally due to the literature I refer to I will also use ‘life’.

<sup>64</sup> See for example Lacan’s *Seminar XI* and *Seminar XX*.

<sup>65</sup> Sigmund Freud, *The Complete Psychological Works of Sigmund Freud: Totem and Taboo and Other Works, Vol. 13* (London: Vintage, New Ed edition, 2001); *The Complete Psychological Works of Sigmund Freud: The Future of an Illusion, Civilization and Its Discontents and Other Works Vol 21* (London: Vintage, New Ed edition, 2001).

constitute two different ways of ordering and making sense of the world and of forms of existence. The alternative logic is the logic of the *sinthome*, which in Lacanian psychoanalysis stands for an alternative way of making sense of reality and organising existence. In the following discussion, the notion of law in question is not positive or natural law, or any kind of legal order, but rather again, as in the discussion on Oedipus, a logic, which in the first place constitutes or shapes forms of existence – e.g. why the ‘subject’ or any other form of existence is understood the way it is understood, or how law limits and shapes desire.

Central questions addressed in this chapter are: how does law order society? Where does law get its legitimacy from? These two questions are pertinent for the understanding of ‘what is to come’ – the final part of the chapter where I explain which other ways of thinking law or legality exist, other than the logic of paternity upon which current positive law is built. In other words, the chapter examines the relationship between the law, society and form of existence; and within this, in particular, how ‘the idea of law depends on the idea that our societies make themselves out of their own notion of life’.<sup>66</sup> As the quotation suggests, it is then not that society creates and moulds life in accordance with its social and legal principles, but rather that a particular embodiment of being (form of existence) is characteristic of a particular society. The subject as a category is then characteristic of a postmodern paternal and Oedipal social ordering.

## **The Psychoanalytical Origins of Modern Legal Authority**

Before I can engage with an alternative to the existing ideas of law or obligation, I need to excavate the origins of the existing system of legal authority. Thus, the chapter starts off with a brief discussion over the notion of life and the form of existence instituted in the modern Western conception of legality. There are different ways of exploring the sources of existing legal authority. I rely on psychoanalytical and anthropologic investigations. Alain Supiot, for example, in his book *Homo Juridicus: On the Anthropological Function of the Law* undertakes an anthropological study of the origins of modern Western law.<sup>67</sup> He argues that the study of Western law has to acknowledge three major elements

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<sup>66</sup> Legendre, ‘The Other Dimension of Law’, 943.

<sup>67</sup> Alain Supiot, *Homo Juridicus: On the Anthropological Function of the Law* (London, New York: Verso, 2007).

shaping the character of this law:<sup>68</sup> firstly, the existing idea of law as enigma with dogmatic or mythical origins is a typically Western idea; secondly, the notion that the human body is the site on which the law should be inscribed was one of the breaking points between the Jewish and the Christian tradition (particularly in relation to the question of circumcision, the law had to be inscribed on the body by physically making a mark on it, the body had to be visibly marked to qualify for ‘full membership’ in a particular community or an idea); and thirdly, the Western mind has always been fascinated by the thought that the literal incarnation of the law could lead to a form of revelation. In other words, invoking the mytho-Christian origins of Western law, it has always been hoped that law will reveal itself in something more than just a pure letter of law.<sup>69</sup> As Supiot acknowledges, a pure letter of law is not powerful enough to facilitate and impose the authority of existing and future laws; it needs a mythical foundation or a form of prohibition or threat of punishment with which it gains legitimacy.

The psychoanalytic engagement with law explores these three aspects; in particular the mythical foundations of law and law’s relation to the body.<sup>70</sup> There are at least two ways in which legal myth institutionalises the life of individuals (by limiting and determining forms of existence). Firstly, a particular idea of law relates to a particular notion of ‘life’ (or form of existence), which is instituted in a legal system as a result of the particular idea of law. However, the characteristics of a system that derives from this particular interpretation of life and law are not set in stone. Any change in the understanding of life, or in psychoanalytical terms, in the subject’s unconscious and its relation to its self, the other and the authority (or the law), gets transformed at the level of the symbolic order which consequently influences the political, the social, the content and the logic of the law. In other words, forms of existence (or life) and social and political structures are inherently linked. The collapse of this bond disintegrates a (paternal) social bond which could lead into a collapse of the symbolic order, and from that, the collapse of normative, political and legal order we know today. Pierre Legendre, French psychoanalyst and legal theorist, conducted a study of legal texts by Glossators from the medieval times onwards to trace the origins of the modern paternal structure of law and the limitations and prohibitions it imposes on forms of existence that eventually become fully recognised by law. In his work, he explicitly writes that ‘the principle of paternity is

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<sup>68</sup> Alain Supiot, ‘Ontologies of Law’, *New Left Review* 13 (2002): 107–24.

<sup>69</sup> Supiot, ‘Ontologies of Law’, 108.

<sup>70</sup> I will explore and further explain both aspects, the role they play etc. later in this chapter.

essential to the symbolic survival of Western culture'.<sup>71</sup> For psychoanalysis then, one can speculate that the character of modern Western culture is a product of paternal/Oedipal logic.

Secondly, 'psychoanalytic law' is most importantly the law of a *superego*,<sup>72</sup> or in the discourse discussed in the previous chapter, the law of *nomos*. As such, psychoanalytic law rather than constituting or directly influencing the substance of positive law represents the basis, or the underlying logic of law. In other words, *superego* gives positive law – as an artificial system of rules and obligations according to which societies live – its legitimacy, determines its framework as well as enables (and in fact even calls for) the subject's transgression of law. The *superego*, in this sense, has a double role: it provides unconscious orientation for the law, or the spirit of the logic in which laws should be made; as well as acting as its reverse – the other – side, for which law cannot account, and which is, in fact, outside the principles of positive law. Thus, the *superego* embodies the source of authority that the subject internalises once it became part of a society.<sup>73</sup> In Legendre's thought, that source of authority is associated with the figure of the 'imaginary father' (origins of the idea of the Name-of-the-Father) that entered the discursive and legal practice of the Western juridical order through medieval legal writings and the official institution of legal interpretations or a legal interpreter – a judge or a sovereign. On a psychoanalytical level, in contrast, 'the father' became part of the subject's unconsciousness in the moment of child's separation from the 'mother' – in the moment when the prohibition of incest – and from that the Oedipus complex – enters the picture. I will elaborate on how Oedipal law functions and how it gets inscribed on different forms of existence later in the chapter.

In the above paragraphs I have – in a rather dense fashion – explained the main aspects of psychoanalytical engagement with law. The two most important aspects, the relationship between law and form of existence, and the paternal or Oedipal idea of law will be further elaborated below. In the following section I take a particularly Lacanian approach to the understanding of law and combine it with both Supiot's anthropological

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<sup>71</sup> See for example extracts of Legendre's work in: Véronique Voruz, 'Review Essay: For the Love of the Law', *International Journal of the Semiotics of Law* 21 (2008): 74.

<sup>72</sup> See for example: Žižek, 'Superego by Default', 924–42; see also: Bruno Bosteels, 'The Obscured Subject', 295–305. The concept has also been briefly discussed in Chapter One.

<sup>73</sup> Also see our discussion of Žižek's reading of *A Few Good Men* from Chapter One (also see: Žižek, 'Superego by Default', 924–42).

and Legendre's psychoanalytical/historical readings. Whereas Supiot's reading reinforces Lacanian psychoanalytical interpretation of the (Freudian) origins of law, Legendre does something rather different. He takes on board psychoanalytical ideas of paternal or Oedipal law and traces them in legal writings and ways in which law has been conducted in the past. Particularly interesting are practices – most commonly sexual practices – that contributed towards the formation of a closed image/narrow conception of legal existence that is nowadays seen as a subject of law or a possessor of rights.<sup>74</sup>

### Law and the body

Jacques Lacan in his *Seminar XX* addresses the subject of law in a provocative yet very incisive way. He writes: 'I won't leave this bed today, and I will remind the jurist that law basically talks about what I am going to talk to you about – *jouissance*'.<sup>75</sup> Lacan's statement indicated that, ultimately, law relates to individuals by means of *jouissance*; and it does so in two distinct ways. Firstly, law limits desire or 'socialises desire' in ways which correspond to the limits of social norms within a particular community. Secondly, law makes a 'mark' on the body at the moment of its entrance into society; that mark (in some cultures law even leaves a physical trace on the body with rituals such as, e.g. circumcision) binds the body to a particular understanding of legal norms and rituals and to particular ways of enjoyment. In such a way, law intervenes twice. Firstly it determines the character and the limits of one's existence, and secondly it marks the body as a sign of possession, almost like saying 'this body now belongs to me, and the body has to obey the rules I set'.

Such a way of marking the body is not particular to law; language, as Lacan reminds us, signifies its subjects in a similar way. In fact law is inscribed on the body in the same way as language is inscribed on the body. Language makes a mark on the body by introducing and imposing linguistic structures onto it.<sup>76</sup> These structures determine what can and what cannot be expressed, limits and introduces logic into expression. Ultimately, one is then only capable of expressions that are within the framework of imposed linguistic rules and the limits of the known language. There are things that are not expressible in

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<sup>74</sup> See for example: Pierre Legendre, 'The Masters of Law: A study of dogmatic function', in *Law and the Unconscious: A Legendre Reader*, Peter Goodrich, ed. (Basingstoke, London: Macmillan Press Ltd, 1997): 98–133; Legendre, 'The Other Dimension of Law', 943–61.

<sup>75</sup> Lacan, *Seminar XX: Encore, On Feminine Sexuality*, 2–3.

<sup>76</sup> See for example: Jacques Lacan, 'The Function and Field of Speech and Language in Psychoanalysis', in *Écrits*, Bruce Fink eds. (London and New York: W.W. Norton & Company, 2006): 197–268.



language, that go beyond the language and communication. What is inexpressible remains outside the imposed logic of expression. Often the 'inexpressible' is excluded for a reason; as its presence has the potential of being disruptive to the existing system of social conventions. The same applies to law. As it has been mentioned earlier, law imposes a particular order. However, there is always something that escapes the law or that goes beyond the law. That is the other side of law, which has a potential to facilitate changes in law, or even only by the mere fact that it exists indicates that law is made in one way, but it could equally be made in another. There is nothing natural or material that pre-determines the existing structure of law.

Both language and law then make a mark on the body and determine its social context, e.g. acceptable ways of behaviour, conduct and enjoyment into which a particular body belongs. Law and language determine a way in which the subject – a particular form of existence characteristic to a particular paternal structure of order – sees the social, and equally ways in which it relates to the social. In other words, law and language capture, almost imprison, being into a form of existence common to particular social norms, making a subject a product of a particular expression of being, and that expression is conditioned upon the existing symbolic order of paternal/Oedipal law. Ultimately, there are various different representations or images of being 'out there' yet only those that fit the forces of the symbolic order are eventually materialised and 'brought' into 'political' existence. A force that determines forms of existence realised in the political, and that enables their coexistence and reproduction, is precisely law.

There is no one way of understanding how law gets manifested on one's body. One explanation derives from psychoanalytical and anthropological studies of medieval legal writings. These writing offer a set of very interesting observations on how the body should behave, but perhaps the most interesting observation is made again by Legendre. He explains how a medieval notion of 'repressed sexuality', manifested through the prohibition or the limitation of the enjoyment rather than the limitation of sexual intercourse, gets internalised in the individual's psyche, and frames a particular modern understanding of law.<sup>77</sup> This observation bears more value that is perhaps first apparent. Recalling Lacan's definition of law introduced at the beginning of this section; *jouissance* again emerges as the central idea determining the scope and the limits of law. In the

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<sup>77</sup> See for example: Legendre, 'The Masters of Law', 98–133.

context of medieval legal writings, the law does not punish the practice or the conduct of sexual intercourse; but rather the *jouissance* one gets from it. In psychoanalysis *jouissance* is closely related to desire, hence situations limiting or prohibiting *jouissance* also limit desire. The prohibition of *jouissance* then limits desire, and with that determines what is socially acceptable, what is the permitted object of desire, and ways in which one can desire.

### Oedipus and the origins of legal authority

The previous section addressed how authority of law is inscribed on the body and indicated the kind of legal writing that initially instated the prohibition of *jouissance* into law. In this section I continue exploring the origins of law, yet here the focus is on the so-called legal myth.

Freudian psychoanalytical and anthropological explanations of the authority of law are central in understanding the myth. Freud, for example, in his books *Totem and Taboo* and *Civilisation and Its Discontents*, addresses the problem of law in modern society by focusing on law's inscription on the body and the prohibition of incest and murder.<sup>78</sup> Freud argues that it is only by means of prohibitions, such as for example the prohibitions against incest and murder, as the two 'primordial' prohibitions, that the structure of society and modern form of coexistence of individuals is imaginable.<sup>79</sup> Although Freud's explanation is no longer entirely valid, it is worth a look. In the two works mentioned, Freud explores the genesis of law by studying the transformation of the primal hordes as the first form of human organisation.<sup>80</sup> In the centre of the organisational structure was a band of roving males ruled by a jealous father who kept all the females for himself and drove his sons away. The sons hated their father and one day they banded together and murdered him.<sup>81</sup> The murder satisfied their hatred, yet they were not liberated and free to do whatever they desired. Instead a sense of remorse and guilt overtook them. In this story two laws of totemism are born: the laws prohibiting murder and incest.<sup>82</sup> For Freud these two laws, with both of its myths, lie at the very foundations of the evolution of society and form a precondition of civilisation. The story nowadays has a limited value; it is problematic, as for example, Costas Douzinas observes. Douzinas speculates on

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<sup>78</sup> Freud, *Totem and Taboo, The Future of an Illusion, Civilization and Its Discontents*.

<sup>79</sup> Freud, *Totem and Taboo*.

<sup>80</sup> Freud, *Totem and Taboo, The Future of an Illusion, Civilization and Its Discontents*.

<sup>81</sup> Freud, *Civilization and Its Discontents*.

<sup>82</sup> *Ibid.*, 119–23.

whether a murder could lead to the principles of morality while at the same time causing regret and remorse in those committing it.<sup>83</sup>

Despite the shortcomings, however, Lacan saw value in Freud's observations. For Lacan what was particularly ground-breaking about these ideas was a discovery of a structuring principle of subjectivity and the social bond which explained why every attempt to establish successful universal moral codes or acceptable ethical practices failed.<sup>84</sup> What is more, Lacan saw the value of Freud's explanation for the contemporary period, because it transfers the otherwise mythical or divine origins of legal authority into a 'dead person' – onto an 'empty place' that (according to the myth) should remain empty. Lacan writes: 'The myth of the origins of law is incarnated in the murder of the Father; it is out of that that the prototypes emerged, which we call [...], the more-or-less powerful jealous god, and, finally, the single God, God the Father. The myth of the murder of the Father is the myth for the time for which God is dead'.<sup>85</sup>

If the prohibition of murder explains very nicely how the law makes society possible, incest, in contrast, at least equally enables the internalisation of law that prohibits sexual intercourse among members of a family, and allows for the emergence of what is today known as the idea of modern political community.<sup>86</sup> Incest operates as the ultimate prohibition. It inscribes the instance of law on the body that is, subsequent to prohibition, internalised in one's unconscious. It is important to fully grasp the extent to which the inscription of law on the body is manifested in the unconscious. The internalisation of law determines the formation of a particular type of subject that relates and understands law in a particular way. The incest does so not by the prohibition it carries, the prohibition of incest, but rather by its logic.

The logic of the incest is the logic of the Name-of-the-Father (the murdered father whose position of authority remained empty, or has been substituted by a name/a

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<sup>83</sup> Costas Douzinas, *The End of Human Rights: Critical Legal Thought at the Turn of the Century* (Oxford and Portland: Hart Publishing, 2000): 301.

<sup>84</sup> Jacques Lacan, *The Seminar of Jacques Lacan, Book VII: The Ethics of Psychoanalysis* (London and New York: Routledge Classics, 2008): 216.

<sup>85</sup> Jacques Lacan, *Seminar of Jacques Lacan, The Ethics of Psychoanalysis, Book VII* (London: Routledge, 1993), 176–7.

<sup>86</sup> Within political theory one could perhaps draw an analogy with the social contract seen as an act in which an individual gives away some of its freedoms in exchange for security and a place in a political community. In a similar sense, incest provides an 'anthropological contract', by which individuals recognise who are 'socially acceptable' sexual partners, and with that give away part of their personal freedoms.

metaphor). It stands for a particular way of getting law inscribed on the body. In traditional psychoanalytical discourse, the Name-of-the-Father is associated with the intervention of the father in the union between mother and child.<sup>87</sup> The father, by intervening into the bond between mother and child, introduces prohibition. It prohibits the child to enjoy or see the mother as a sexual object or an object of his desire. This intervention is also known as the Oedipus complex. Such prohibition of sexual intercourse between a child and a mother manifests itself in a child's unconsciousness, in the realm Lacan named the Real. Yet the prohibition it imposes is not only a prohibition of incest, but also and equally important, a prohibition from encountering an absolute *jouissance*, this leads to the repression of desire.<sup>88</sup> A child before the father's intervention knows no limits to its enjoyment or to its body. The father then imposes the first prohibition, a sexual prohibition that limits *jouissance*. It does so by marking some objects unacceptable as the objects of desire. A child, by being prohibited from enjoying the mother's body, experiences a first repression of desire, with that, the child becomes subjected to social laws. That of course, does not mean that the child/one has no access to *jouissance*, or enjoyment, but rather that the enjoyment is limited. One can only encounter enjoyment in parts and can never enjoy fully. Similarly, due to repression of ultimate desire, one can never experience a pure desire, or desire *as such*. All desires are social desires compatible with socially acceptable objects of desire. In such a way, law's inscription on the body disciplines the body and limits or represses desire. One no longer experiences pure desire; all cravings and ways of enjoyment one experiences are within the limits of society. All that is outside, and occasionally some actions and desires stretch beyond the imposed social limits, represent a transgression of law. In such a way, the limits imposed by incest and repression not only institute law and its limits, but equally enable transgression and the subsequent imposition of penalties for acts of transgression.

The two totemic laws then build the foundations of modern society, and the figure emerging from these two laws that becomes central to life in society is that of the father. This is a basic law, which creates humanity and imposes rules of language and legality on the subject. From what has been discussed so far, it follows that the subject by becoming the subject of language internalises the rules of society, these rules frame the subject's

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<sup>87</sup> Jacques Lacan, 'The Subversion of the Subject and the Dialectics of Desire', in *Écrits*, Bruce Fink ed. (London and New York: W.W. Norton & Company, 2006): 671–702.

<sup>88</sup> Jacques Lacan, *The Seminar of Jacques Lacan: The Other Side of Psychoanalysis, Book XVII* (London and New York: W.W Norton & Company, 2007): 123.

desire and perceptions of what is right or wrong, acceptable or prohibited.<sup>89</sup> In such psychoanalytical legal realms, the law does not require nor does it seek legitimacy; it becomes a social face of the inter-subjective contract of speech. To an extent, and this takes us back to the discussion of language and law and their relation to the body, one could comment that the legal constitution is here only to guarantee the ‘contract of speech’, and thus provide the symbolic figures such as the Sovereign, the Legislator or the Law with authority that must be obeyed.<sup>90</sup> Nevertheless, as Lacan claimed, the idea of the father, its name, is here to substitute the real authority of God in a period when God is dead. Lacan does not detach sources of law from the Symbolic, not even material power, and hence suggests that every legitimate power, even the police, rests on the symbol – that is the language or the name.<sup>91</sup> The impact such origins of laws have is that each action or a signifying articulation that includes the very existence of anything, including the articulation of the subject, cannot occur outside the legislative function.<sup>92</sup>

This comment on the legal field being the only space where subject can be articulated, is what becomes most interesting when one moves to the realms of existence and articulation of different forms of existence. Here, the law again has a double function. What it does is impose and frame a particular understanding the subject, as a particular form of existence, has of the social and the symbolic order. Equally, it also enables a particular form of reasoning which determines the subject’s relation to authority. Under such reasoning the subject only has ‘freedoms’ that are within the limits of a particular conception of law and the symbolic order. It is in this act of law – the inscription of law on the body – that the freedoms the subject enjoys get determined. As Supiot writes, ‘the subject gains this freedom in so far as it [is...] a being subjected to the observance of laws [...], whether the laws of the polis or the laws of science’.<sup>93</sup> This is a way in which being gets instituted as the alleged ‘autonomous’ subject of law – the authority of law guarantees the existence of the ‘I’.<sup>94</sup> That, however, does not mean that if the ‘subject’ were not subjected to law, it would be free or would enjoy absolute freedom. On the contrary, in a similar observation in relation to prohibitions deriving from the source of God, Žižek writes that if God does not exist, one could be lead to believe that everything

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<sup>89</sup> Lacan, ‘The Function and Field of Speech and Language in Psychoanalysis’, 66.

<sup>90</sup> Douzinas, *The End of Human Rights*, 309.

<sup>91</sup> Jacques Lacan, *The Seminar of Jacques Lacan, Book II: The Ego in Freud's Theory and in the Technique of Psychoanalysis, 1954-1955* (W.W. Norton & Co., New York, 1988): 201.

<sup>92</sup> Lacan, *Seminar XVII: The Other Side of Psychoanalysis*, 125.

<sup>93</sup> Supiot, *Homo Juridicus*, 21.

<sup>94</sup> *Ibid.*

is allowed; yet, as Žižek explains, the opposite is the case. If God does not exist, everything is prohibited.<sup>95</sup> If there is no framework to which prohibition applies or no limits to the law, then the subject, perhaps similarly as in the state of nature, no longer knows the limits and capacities of its actions; and no longer knows the limits and the conditions of its existence.

This paternal or Oedipal aspect of law also has a broader legal and political dimension. In the centre of Lacan's examination the law is the authority deriving from the Real, the primordial father or God. It is an authority that is at the same time a product and a creator of a particular logic of law ordering individuals and the Symbolic. To that extent, authority is not outside the system, it is a force creating it and at the same time being created by the very same force. The embodiment of these powers, however, is not a fictional entity, but rather a metaphor of the father, the Name-of-the-Father, which culminates in the 'phallic' figures such as the Sovereign, the Father, the King, God or the Pope. In the scope of political theory, Carl Schmitt's concept of the sovereign as the one who can decide on the exception is a very obvious example of the logic of paternal law being translated into 'positive law'.<sup>96</sup> In the realm of the political, the sovereign is the one who can abrogate the existing laws and set the new ones or persist in the exception. Similarly, in theological terms, God embodies the image of the paternal law to an even greater extent. By suspending the law that he himself has confected, God acts as a 'sovereign'. However, his act of suspending the law is fundamental, it 'pre-exists' the exception of the Schmittian sovereign; it is not merely new, but by violating the pre-existing legal core, it becomes antinomian. God's suspension of law does not derive solely from the sovereign prerogative of exception, but is, as Kenneth Reinhard writes, 'an act of politico-theological creation of *ex-nihilo*, truly a polemical miracle'.<sup>97</sup> In other words, it is an ontological exception that creates the condition for all later forms of exception called upon by the figure of, for example, a Schmittian sovereign.

This section explored the mythical origins of legal authority. As it has been explained, the two laws of totemism, the prohibition of incest and murder, create the conditions for the emergence of society and one's existence in it. The law emerging from the two totemic

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<sup>95</sup> Žižek, *For they know not what they do*.

<sup>96</sup> Schmitt, *Political Theology*, 5.

<sup>97</sup> Kenneth Reinhard, 'Toward a Political Theology of the Neighbour', in *The Neighbour: Three Enquiries in Political Theology*, Slavoj Žižek, Eric L. Santner, Kenneth Reinhard, eds. (Chicago: University of Chicago Press, 2005): 18.

prohibitions and which governs society is the Oedipal or paternal law. The idea of paternal law is central for understanding the role law has in society and the ways in which it limits one's existence. The paternal or Oedipal law limits the idea of desire as such and transfers it into socially acceptable and socially productive forms. Such limitation of desire (on both anthropological and metaphysical planes) impacts forms of existence; the limitations imposed on desire by the order of the Oedipal or paternal law produce the subject. In this section two important ideas have been mentioned, one is desire and the other superego; both will be addressed later as they indicate a way in which the legal system can be challenged, or how a different ordering is possible, and in fact present. Both ideas are also crucial for the understanding of legal function in society, and will be explained further in the following section. The purpose of the following section is then to further elaborate on legal authority, in particular how myth relates to institutional legal authority, and explain what the relationship is between the subject and a particular form of legal institution.

#### Desire, institutions and legal authority

As has been referred to earlier, law inherently marks being on the level of desire. Desire and the way particular legal or symbolic systems frame or determine desire, creates a distinct image of being resulting in a particular form of existence. The subject, as the earlier discussion on the Name-of-the-Father could suggest, results from a paternal ordering principle. Thus the idea of existence and the institution of law follow the same paternal logic. The institution and the subject embody the same paternal myth. On the one hand, the Oedipal myth determines a way in which the subject enters the realm of speech, and on the other hand ways in which it constitutes the social bond – the bond with the institution. The social bond here refers to the way one's body is linked or subjected to the existing social and political formations and ethical or normative principles. The law determines various ways in which this bond is being constituted and manoeuvred. According to Legendre, the main task of law is the introduction of 'human beings' into a space of lack by extracting them from the desire of the mother; [and that is done] by means of fundamental prohibition'.<sup>98</sup> To elaborate, the space of lack Legendre refers to is the primal/first prohibition by which the mother becomes the prohibited object of desire. With this prohibition, the subject/the child experiences the lack or

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<sup>98</sup> Legendre, 'The Masters of Law', 117.

castration, as it can never attain its true object of desire. This prohibition is central for living in a political community or a society, as the law of the mother, or mother's desire, is inherently violent and disruptive. It operates according to a different logic and hence challenges the existing ordering of law and one's form of existence.<sup>99</sup> This constitutes law as a principal function of the father. The logic of the father within law then operates as a hierarchical model, where one internalises authority by it being represented as a 'primordial prohibition' (of incest).<sup>100</sup>

The entire structure of legality, as Legendre would argue, with principles of authority and legitimacy, is built upon these foundations. Legal institutions form relations with mechanisms of desire as it is represented in law. In other words, legal institutions resemble the structure and internalise the limits of either one's desire or socially predominant form of desire. Such mutuality and interdependence between desire, the body or the subject and the institution is essential if we are to understand not only the extraordinary flexibility of law throughout the history of the West, but also that this history is a structural phenomenon.<sup>101</sup> Legendre, in his genealogical study of the origins of institutions and authority emphasises this particular interdependence. He claims that the 'history' of Western legality and subjectivity is in a particular way continuous. The origins of power and Law are inscribed in a set of vital social representations, as representation is the only mode of 'knowledge transference'.<sup>102</sup> He takes this further by arguing that:

[T]he discourse of legitimacy remains an unavoidable precondition of sociality. [And as in nuclear 'medieval' family], everything to do with law has to do with paternity. There is a paternity of institutions because Law needs a legitimate author. The mythological order of the West is founded on a living Writing which acts as the sign of a place, that of reference to pure power. [In Lacanian language] this place can be occupied by any signifier capable of

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<sup>99</sup> More will be said about mother's desire later on. It is a very important idea for thinking alternative ordering principles.

<sup>100</sup> However, the mother-law does not disappear from the subject's psyche; it has its place in the unconscious, from where it is able to re-emerge at any point. Various structural and institutional mechanisms are put in place (rituals, various legal and linguistic practices, norms of society, and even positive law) to prevent the re-emergence of mother-law; however, mother-law operates on a different level of thought and structures individuals and the social according to a different ordering principle – logic. Its re-emergence therefore calls for a radical change in the way life and law relate to one another, and in the way each of the two is structured. I am going to return to an alternative understanding of law, though not in the form of the mother-law, later on in this chapter.

<sup>101</sup> Legendre, *The Masters of Law*, 117.

<sup>102</sup> *Ibid.*, 118.



guaranteeing the Law, whether be it Justinian, science or the class struggle.<sup>103</sup>

Here, Legendre again reaffirms what has already been discussed in relation to the relationship between law and the sources of authority. The empty place Legendre refers to here is a place of a murdered father; that place is at least in an imaginary way filled by a signifier or an image of authority. It does not matter what that signifier or what the image in question is, whatever occupies that space should automatically come into possession of authority pertaining to that place. At least that is the case in a paternal logic of law. The question of the subject and its relation to law then gets played out on the field of authority. These powers of authority represent a reference point in relation to which the subject is created and introduced into the field of language and legal rules. It is for this reason that the subject does not question the legitimacy of social rules as such; the subject is being subjectivised in the order by these very same rules, and therefore does not know anything else, any other form of organisation, or anything different to which it can compare the existing rules. The subject and the institutions belonging to a particular logic are then trapped in the existing order of social rules. In the contemporary period, for example, the character of the dominant capitalist logic still backed by paternal legal structures makes it easier to imagine the end of the world, than it is to imagine the end of capitalism or the existence of any other type of order. Arguments about the end of ideology or modernity as a post-ideological epoch, if read in the above explained position, are absurd.

Yet, a problem appears when the mythological foundations of authority are questioned. The mythological foundations of legal authority are crucial for the functioning of society. Legendre reiterates the importance of mythological foundations by claiming that ‘what matters in the political destiny of the societies is not the scientific genealogy of their institutional development, but the mythological narrative which mobilises unconscious beliefs and binds them to a discourse inspired by the mystical truth of the all-powerful signifier.’<sup>104</sup> An obvious question is how do the institutions mobilise mythological discourse, make it their own and sell it as the story that legitimises them? One such institutional discourse is for example the discourse of human rights, which promotes rights based on universality, shared responsibility, equality and dignity. There is nothing

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<sup>103</sup> Ibid.

<sup>104</sup> Ibid.

inherently in the idea of rights as such (no material or natural instantiation) that would determine or call for the existence of such institutions. Instead particular mythical foundations combined with political desires call them into existence.

However, in ‘the modern world’, mythical authority is questioned by a scientific discourse, in particular legal scientific discourses embodying rational and faultless authority.<sup>105</sup> To take another excursion into the political sphere, the domination and yet failure of legal scientific discourse is visible in the way the US dealt with its post 9/11 policies.<sup>106</sup> Particularly interesting is the need to back up legally actions the US was taking. Conduct was either to be legitimised within the existing law, or a new law was drawn to legitimise it. Two very interesting aspects about the nature of legal authority get revealed in these actions. One is that the ‘mythical authority’ of the sovereign no longer suffices – the sovereign despite occupying the position of authority no longer possesses that authority; and secondly, the authority of written law is always sought; a word or a decision without any legal underpinning is no longer acceptable. However, as mentioned earlier in the thesis, a drawing of new laws or a re-drawing of the old ones did not work. The scientific legal discourse on which the sovereign relied to grant the new laws the authority they lack failed. The new laws lacked ‘mythical origins’. They were incomplete. This character of incompleteness of the legal field of public law implies that explicit, public rules do not suffice; they need support from the “unwritten” code aimed at those who, although they violate no public rules, maintain a kind of inner distance and do not truly identify with the ‘spirit of community’.<sup>107</sup> The example of the Code Red order discussed in the previous chapter fits perfectly with this observation. One could speculate on what caused this lack of authority and the mythical origins; it is fair to say that as mentioned in the previous chapter the truth that exposed the true hypocritical foundations of the existing order shattered the legal authority. The legal scientific discourse that aimed at amending the situation lacked strength to bind the subjects into a homogenous political formation. What the two totemic laws succeeded doing cannot be repeated by a scientific legal discourse. The answer to the question of whether the scientific and industrial discourse has the power to reform the unconscious and reinvent

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<sup>105</sup> Neil Duxbury, ‘Exploring Legal Tradition: psychoanalytical theory and Roman law in modern continental jurisprudence’, *Legal Studies*, vol. 9 (1989): 93.

<sup>106</sup> By legal scientific discourse I mean the foundations of positive law that lay amongst others also in utilitarian practices and what Jeremy Bentham saw as legal fictions.

<sup>107</sup> Slavoj Žižek, *Metastasis of Enjoyment: Six Essays on Women and Causality (Wo Es War)* (London and New York: Verso, 1994): 54–5.

legal authority on a different set of myths is then negative. A change or a modification of legal mythology requires nothing less but a propagation of a new faith. Thus in the example of post 9/11 US politics, once the US uncovered the hidden truth, *nomos* as a mythical foundation of law, it could no longer retreat from its actions and follow the law that existed before the collapse of *nomos*. The new ‘myth’ the US aimed at creating was not strong enough to bear the weight of legitimation for the entire legal system. It was purely scientific.

Here one might legitimately ask, what does it mean to change faith? Faith can be changed with transgression and through a particular relationship transgression has with *jouissance* (or enjoyment) and law that is being constituted in the existing legal system. The law limits one’s *jouissance* – desexualises libido – to fit the limits of societal libido. Changing faith then means posing a challenge to the limits of *jouissance* and continuously transgressing and testing its limits. In such a way, the ordering could eventually give up and re-frame its attitude to *jouissance* and its limitations. To found law on a different set of myths, or indeed on a scientific discourse, as is the case in the current legal system, requires a rethinking of an entire legal spectrum; in particular of the way the subject is brought into law – how one becomes the subject of law – and what the predominant new form of desire is.

In this section I have explored how the law functions on the level of society and where the institutions gain their legitimacy. Throughout the discussion I have indicated the main problem institutions face in search of their authority – that is the interplay between the mythical and scientific sources of authority. The section concludes by explaining how scientific legal discourse alone cannot facilitate the legitimacy of the institution. In the following section I will continue discussing the role institutions play in legal sphere, only this time, the discussion will be focused on their relationship to the subject as a particular form of existence.

### Institutions of authority and ‘double birth’

The law, to be poetic, is ‘a force of love’ that carries subjects from birth to death.<sup>108</sup> In the face of law, one is an image born twice; the first time in nature and the second time

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<sup>108</sup>Voruz, ‘For the Love of the Law’, 74.

in law. The becoming of the subject of law is a reductionist operation as it closes down the palette of forms in which being could emerge. The subject is only one representation of being, one fixation of identity, one form of existence. This closing down of being is something that is quintessentially the role of law. Law captures various forms of existence and limits them to a very narrow representation, which ultimately represents the 'subject of law'. It is wrong to assume that law captures life as it is, being-ness in its pure immanent sense. Instead, to look at ways in which law works, an Oedipal law for example constitutes a subject of law and it does so through a process of a double birth. The subject of the Oedipal law is then born in the discourse of science and in the institution of law.<sup>109</sup>

Arguably, subjectivation is not a process completed in one act; instead, the subject is created in two different stages. The first stage relates to the subject's birth into nature, which corresponds with paternity and the logic of prohibition and repression of desire explained earlier. In contrast, the second stage has to do with the institutionalisation of law. The latter birth occurs at the level of the institution. The subjection of the subject to the forces of law in the society should be studied accordingly to these two stages. That is, both stages are of the same importance for the understanding of the subject's relation to law and its own understanding. The two stages are indistinguishable, as the paternal stage does not exist *per se*; instead it is determined by a particular legal discourse that gets further internalised and structured in the institutional phase. The relationship between both stages is interesting, as the paternal stage inscribes a particular ordering principle on the individual and law, and hence makes the subsequent institutional phase only one part of a paternal phase.

The problem of institutional law for psychoanalysis is in its origins – the foundations of paternal law are instituted upon the authority of the Freudian myth of the dead father, and so are the foundations of institutional law. They both derive from traumatic violence, the presence of which cannot be made absent from the field of the social, and indeed the law. The myth basically addressed the foundation of the community or communal living in which the sons collectively murdered the father, the leader of the horde, out of their envy. With this murder the place of law the father occupied remained empty. The problem is that institutional law cannot openly acknowledge its mythical

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<sup>109</sup> Ibid., 75.

origins and traumatic foundations. Instead, to create an image of institutional law gaining its authority from scientific sources, this law has to actively provide a denial of its traumatic mythical foundations associated with Freud's analysis of the origins of civilisation and the totem and taboo. Zizek has an answer to this problem again in the story of Code Red. He writes: 'the illegitimate violence [such as the Code Red order described earlier] by which the law sustains itself must be dissembled at any price, because the dissemblance is the positive condition for the functioning of the law. The law functions in so far as its subjects are fooled, in so far as they feel the authority of the law as "authentic, eternal" and do not feel the truth of usurpation'.<sup>110</sup> Thus, as Zizek continues, the dissembling by which the institutional law seeks to assure its legitimacy is always a failure. In splitting the function of legality, the law returns in the obscene *superegoical* register that is grounded in a voice ('paternal' authority commanding what is one to do) that commands and produces violence or punishment.<sup>111</sup> By departing from social 'reality', institutional law become obsolete and distant from society – laws, instead of reflecting society, become an artificial device for governing it.

However, ignorance towards the mythological origins of legal authority is not left without consequences. Problems such as traumas and disputes emerging in the social field cannot be left unaddressed; instead, to mediate the risk suddenly embedded in the social field, something else has to succeed institutional law. Ultimately, for Zizek, the written public law as such carries no source of authority, as is otherwise commonly perceived. Rather as one aspect of institutional law, its authority emerges out of the superegoic and obscene authority either of (legal) fictions or of the father, and moulds social bonds accordingly with these laws.<sup>112</sup> In that sense, legal institutions must be left in charge of one's life. Institutional law, as a special kind of social force, ultimately institutes one's life.<sup>113</sup>

Law, as I have argued earlier, on the one hand, 'relays the desiring subject to the montages of culture',<sup>114</sup> but on the other hand, it provides answers to questions such as what is 'humanity' or 'human being', as well as creating the very conditions and

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<sup>110</sup> Slavoj Zizek, 'The Limits of the Semiotic Approach to Psychoanalysis', in *Psychoanalysis and ...* Richard Feldstein and Henry Sussman eds. (New York: Routledge, 1990): 5.

<sup>111</sup> Zizek, 'The Limits of the Semiotic Approach to Psychoanalysis', 97.

<sup>112</sup> Slavoj Zizek, *Enjoy Your Symptom: Jacques Lacan in Hollywood and Out* (London and New York: Routledge, 2001): 182.

<sup>113</sup> Anton Schütz, 'Sons of Wrath', *Cardozo Law Review* 16, no. 3–4 (1994–95): 995.

<sup>114</sup> Pottage, 'The Paternity of Law', 149.

characteristics of the present culture.<sup>115</sup> Subjects and subjectivities are here essentially juridical, the subject or the person/role with which the subject identifies – the father – is merely valorised accordingly to juridical reason. As Pottage explains, ‘these juridical categories are not only cognitive categories – ways of knowing the world – but also existential categories – ways of being in the world. Subjectivity is defined, communicated and lived through a language of law and lineage’.<sup>116</sup> Juridical reason, as Pottage continues, is then the progenitor of institutional lives, and thus claimant to a status of paternity – in psychoanalytical sense, of the Name-of-the-Father.<sup>117</sup> Whilst the first birth of the subject occurs upon the subject’s encounter with the paternal metaphor, the signifier of the Father, the second birth appears in the subject’s encounter with the ‘institution of law’, which is a result of the transference of desire. Here, the transference of the subject’s desire from the mother to the figure of the father, guarantees the subject its entry into culture.

According to Pottage and Legendre, current Western liberal society has filled the place of paternity – a place which was emptied after the symbolic murder of the Freudian Father, and was meant to remain empty to enable the existence of the unattainable yet necessary consideration of justice – creating the inequalities and disparities within and among societies. It is in the present world that striving for global equality and common legal grounds enables and creates injustices and a technocratic politics unable to deal with emergency, exception or account for the presence of contingency in the realms of the social and the political. That is so because ‘scientific laws’ that account for a search for ‘universal’ or ‘global’ equality subject our relations with the world to rational principles, repressed desires, pre-existing frameworks of subjectivation, which all exclude the possibility of the emergence of something new. In mythical and religious language the possibility of something new emerging means an openness towards the possibility of a miracle or divine intervention.<sup>118</sup> However, it is not that one could simply do away with the scientific legal discourse and reintroduce ‘a human law’ – laws of desire *as such*. Scientific discourse is based on the logic of human reason; therefore it ultimately lies in the mind of man.

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<sup>115</sup> Ibid., 151.

<sup>116</sup> Ibid., 151–2.

<sup>117</sup> Ibid., 152.

<sup>118</sup> Supiot, ‘Ontologies of Law’, 114.

The inability to think ‘meaningfully’ about life/being-ness outside technocratic, scientific and mechanistic terms returned the Western institutional order to the primordial stage. Despite its attempts to reclaim the sources of authority, discourses of science have not undone the traditional patterns of subjectivation. Rather they have colonised ways of subjectivation or one’s entrance into law and the formation of the subject. This can be explained through a relationship between an idea and its substance. Through history ideas maintain their names or signifiers, while the substance of the idea alters radically. What do I mean by this? If we look at, for example, Carl Schmitt’ in the early twentieth century he criticised modern liberalism for doing precisely this with the idea of sovereignty. Whereas one could argue that the material idea of the sovereign – sovereign’s role in the sphere of politics – has remained unchanged from medieval to modern times, its substance, in particular the sovereign’s power, has diminished. The sovereign is no longer capable of making exceptional decisions and abrogating laws; the idea of sovereignty as such, has therefore lost its mythical component upon which it grounded its authority. As a consequence of the situation, the Oedipal structure of law started to unravel at the level of the institution. It is not that the father has lost his place as the guarantor of this world, as Pottage argues, but rather that his authority is denied.<sup>119</sup> In other words, the father, despite his inability to provide adequate authority of law, acts as if nothing has changed and is still the central legal figure, the sole provider of sovereign authority.

In this section I have looked at the psychoanalytical origins of modern legal authority. I did so by looking at ways in which law gets inscribed on the body, by exploring the mythical origins of authority, the Oedipal and paternal law, and the role they play in the constitution of the subject as the subject of law, and the legal institution. I have discussed the relationship between mythical and scientific foundations and speculate on whether scientific discourse is enough to secure the foundations of legal authority, and lastly I have explored the relation between the legal subject and the legal institution. In discussing these aspects of psychoanalytical law I aimed at showing the role law plays in psychoanalysis and ways in which it influences and determines social and political spheres. The logic presented here is Oedipal logic, a logic which is still predominant today. It is also a logic that imposes limitations on desire and *jouissance*. This logic facilitates paternal law, and has failed, as discussed in Chapter One, or can no longer

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<sup>119</sup> Pottage, ‘The Paternity of Law’,155.

provide for the needed legitimacy. The task of the remaining part of this chapter is then to move towards alternative orderings. Before introducing an alternative logic, one aspect of psychoanalytical law is left to be discussed; that is the process of subjectivation in relation to law. This is the task of the following section.

## **The Legal Subject and the Institution of Law**

In this section I look broadly at the construction of the Oedipal subject, and the consequences of Oedipal logic. In Oedipal logic the subject is seen as a dual construction where one always requires the other for its formation. Viewed through an alternative logic of ordering, which I will discuss later, this account of Oedipal subjectivation gains in importance. A legal subject is not just any form of existence; rather, as discussed in previous sections, only a very particular embodiment of the self experiences the second, the institutional birth, and begins to count as a subject of law. In such a way, a legal subject is limited to only particular experiences of the world,<sup>120</sup> those that correspond with the discourse of paternal logic embodied in institutional law.

The problem with such Oedipal legal subjectivity is twofold. Firstly it is exclusionary as only a very limited embodiment of being is recognised as a full subject of law. The legally recognised notion of existence derives from a Cartesian idea of a human being capable of reasoning and making rational decisions. Such exclusionary character of legal subjectivity implants a contradiction in the very heart of the discourse of universalism of human rights and equality in the face of law. Secondly, the Oedipal logic still ordering current legal discourse is no longer predominant. Rational Cartesian subjectivity has been challenged by postmodern notions of the de-centred subjects whose relation to authority is no longer hierarchical, and whose ways of subjectivation are no longer paternal; moreover mythical foundations of law on which Oedipal logic rests are also no longer valid. They have been challenged and destroyed by a range of events – such as for example the US politics after 9/11 to which I refer in Chapter One – where *nomos* or the myth grounding authority has been exposed. When such exposure of the myth is recognised there is no way back. No new laws or rules can resurrect the mythical foundations once they have been exposed. The only option left is either a creation of a

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<sup>120</sup> Here we should again remember that law and language get inscribed on one's body in the same act. The language – similarly to law – limits ways in which one can express itself.



different myth or a complete ‘ontological’ reconsideration of ways in which one thinks and relates to law and legal subjectivity. I will elaborate on these two aspects further.

The fact that we consider societies to be comprised of human beings endowed with reason and subjected to inalienable and sacred human rights should not be taken for granted. The statement might seem to be commonsensical; yet, it is such because of a particular scientific reasoning, initially invisible, yet seminal for modern notions of the self. The images of the subject pictured here are rational and scientific, and subjective and mythical. Both images play along various dualisms prominent in modern thinking of the self: body – mind, person – thing, mind – matter; all these dualisms construct a way of reasoning that legitimises the existence of ‘one’ in relation to the existence of the ‘other’. In other words, ‘one’ is conceived only in relation to the ‘other’.<sup>121</sup> The implications of such reasoning, and the conception of what is ‘human life’ and how it exists and consequently how the subject gets constituted, are immense.

However, the dualism does not only operate on the level of the self (the way it is ‘internally’ perceived), but also on the way the subject is constructed. Being faithful to dualism and modern Western metaphysics based on the Cartesian thought implies that the subject, aside from ‘internal forces’, equally requires an external impetus for its formation. That does not mean that the subject needs an external impetus for it to be able ‘to form itself’, but rather that the external impetus is essential for it ‘to be constructed’. A subject as a particular embodiment of being, in the process of subjectivation, loses its agency. Instead of being free and capable of taking control of social and political fields, the subject is subjected to rules and freedoms associated with a particular order and dominant social conventions.<sup>122</sup> For reasons of order and one’s own security, a subject abandons its freedoms and subjects itself to the rule of a rational power and law. The law, being a combination of biological and symbolic aspects, connects the subject’s infinite mental universe – or all possible ways of existence or embodiments of being-ness – with its physical existence and institutes us as rational beings.<sup>123</sup> Yet, such act does not only institute the subject as a rational being, but also institutes an institution of ‘subject-hood’, which is specific to a particular society and

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<sup>121</sup> Supiot, *Homo Juridicus*, 11.

<sup>122</sup> See for example: Georges Canguilhem, ‘Le problème des régulations dans l’organisme et dans la société’, in Georges Canguilhem, *Écrits sur la médecine* (Paris: Seuil, 2002): 108.

<sup>123</sup> Supiot, *Homo Juridicus*, ix.

mode of existence in the society. It institutes a particular law that brings these subjects together; and, as a final outcome, such institution of 'subject-hood' and of a particular form of life with its distinctive laws of how one relates and 'belongs' to another subject within a community, transgresses the finitude of the subject's life and operates as a force of continuity. It facilitates the reproduction of the same legal subjects. The 'subject-hood' then operates in a similar way to Kantorowicz's idea of the king's two bodies. The continuity of the king's powers are insured by the eternal and infinite institution of sovereignty. It is here then that the role or the institution of sovereignty is eternal and after the death of one sovereign, the body of sovereignty is merely transferred to another sovereign. In the same way the institution of a (political) community exists to provide continuity of relationships between the sovereign and its subjects. This 'unifies' subjects into one 'collective subject', which as such bonds and is governed by the institution of the sovereign.<sup>124</sup>

The logic which is associated with the rational representation of a legal subject derives from the Oedipal law discussed earlier. As such, the legal personality does not address the needs and the changes that appear in the modern social, legal and political realm. With changes in the way a subject relates to authority and the disappearance or a denial of a mythological foundation of law, Oedipal law and the paternal function law symbolises no longer accurately represent the subjects within the law, and cannot account for their legal subjectivity. Instead, they veil the reality of their incompetence and inability to remain main guarantors of legal authority. As I will explain further on in the thesis, if we are to understand law no longer as an abstract and universal discourse but rather from the perspective of the effects it has on the subject, we ultimately have to rethink the bond law creates with the form of existence. As Véronique Voruz in her psychoanalytically influenced comment writes: 'not only is there no law without a subject – for law only exist in the moment of its inscription onto the subject – but also the subject is the primary instance of all discourses, that of law included'.<sup>125</sup> The subject does not come into being but is instituted by way of an affective – or libidinal – binding between life and the social,<sup>126</sup> thus the change of legal subjectivity reflects a change in the libidinal bond, or in the way a being relates to its desire. To be a legal subject then means

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<sup>124</sup> The notion of the 'unification' of individuals into one subject that creates a bond between two institutions departs from Hobbes's ideas of the state of nature or social contract that were briefly discussed above.

<sup>125</sup> Voruz, *Psychoanalysis and the Law Beyond Oedipus*, 28.

<sup>126</sup> Voruz, 'For the Love of the Law', 75.

nothing else but to exist for and in the law, or as Neil Duxbury writes, ‘to be displayed as this thing in existence, referred to primarily in relation to idols’.<sup>127</sup> In other words, to be a legal subject means to exist not only for the law, but also for those who interpret and make law.

With the structure of Oedipal law being shaken by the emergence of the truth or *nomos* – as discussed earlier – or by the de-centralisation of the ‘subject’ in Western culture, a search for an ‘alternative law’ has begun. According to Lacan, Legendre and many other critical scholars who engage with the origins of law and its problem in postmodern Western society, an alternative formation of law should arise from the conditions that exist before the initial intervention of the Father – before or at the moment of subject’s first birth. As already pointed out, such conditions correspond to the pre-social ‘laws of maternity’ or the desire of the mother present before the intervention of the father, and suppressed in the unconscious after the intervention. In Lacan’s colourful expression, the mother’s desire is fundamental, because ‘it is not something that is bearable just like that, that you are indifferent to. It will always be a weak havoc. A huge crocodile in whose jaws you are – that’s the mother. One never knows what might suddenly come over her and make her shut her trap. That’s what mother’s desire is’.<sup>128</sup> What is Lacan saying in this metaphorical expression is that departing from the legislative function of the father and going back to the very roots of subjectivation and the emergence of society, leaves us with uncertainty and with no guarantee of a ‘positive’ outcome. Though what one can be certain of is that the outcome would be different and that the order arising from this would be subjugated to different rules and laws, and therefore worth trying out. Voruz, for example, fully acknowledges the importance of such ‘trying out’. She writes:

[I]n the absence of a ready-made mode of instituting the necessary separation between language and *jouissance* – separation also being Legendre’s version of the paternal function in his later work [...] – we have to refuse the comfort provided by the horizontal mode of identification [...] and learn to recognise the absolute singularity of each subject’s mode of inscription in the social.<sup>129</sup>

What Voruz is advocating in the above quotation is precisely the need to try out different organising principles – principles in relation to which ‘beings’ form different ways of

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<sup>127</sup> Duxbury, ‘Exploring Legal Tradition’, 93; summarising Pierre Legendre, *Jour du pouvoir: Traite de la bureaucratie patriale* (Paris, 1976): 188.

<sup>128</sup> Lacan, *Seminar XVII: The Other Side of Psychoanalysis*, 112.

<sup>129</sup> Voruz, ‘For the Love of the Law’, 82.

existence. One is no longer the subject – as the ‘external’ reference point in relation to which the subject is formed no longer exists – but rather a different form of being that connects to a particular understanding of law differently. From the passive external creation of the subject, the being has to be left to its own capacities to create and re-create itself in different forms of existence, and law has to be there to facilitate this openness.

Before moving to alternative orderings, it is useful to reflect on what has been discussed so far. The discussion addressed two major aspects of psychoanalysis and law: the first part addressed the relationship between law, subject and society, whereas the last section dealt with subjectivation in Oedipal logic. The first section is significant for its discussion of Oedipus. Oedipus embodies a paternal logic of authority grounded in the mythical foundations of law. It is authority (as a figure of authority – sovereign, God, judge etc.) and the authority of law (as a legal system) that is being determined by this Oedipal logic. Such logic shapes individuals and societies, and allows for different classifications of what it means to belong to law and how one relates to authority. The subject of law and society is then a subject whose desires correspond to the predominant logic of ‘legal’ Oedipal desire (suppression of mother’s desire and a recognition of paternal authority). In terms of legal subjectivity, this means that a being to be recognised by law has to be born twice, first in ‘nature’ and secondly in the realm of ‘institutional law’. Both births shape forms of being in ways which correspond to the recognised Oedipal legal ‘subjectivity’. Hence, only a very narrow expression of being-ness, or one form of being is recognised as a subject of law. As a consequence, all other forms remain outside the limits of law, often without rights, duties or in fact even without any kind of acknowledgement of their existence.

While these two sections dealt with the role law plays in the current Oedipal legal ordering, the following section takes a step forward and considers how such Oedipal ordering can be challenged. In places I have already indicated that the alternatives lie in different framings of desire – to leave desire to play its role more freely – and in what has been discussed as mother’s law, or a primordial law, that is repressed with a paternal intervention because, as such, works according to a different non-Oedipal ordering principle. The next section will primarily address the notion of desire, and then move on

to alternative ordering principles found in *last* Lacan's thought. In this section, Deleuze and Guattari, despite being central to the thesis, remain in the background.

## **Desire, *Jouissance* and Law**

As has been discussed, desire is essential in understanding one's relation to law. Not only in that law, as Lacan emphasises in his lectures, refers to the subject, but also, by means of *jouissance*, law directly links one's body to the 'materiality' of the symbolic order.<sup>130</sup> Law, as has been discussed, does not embody desire as such; by imposing the limits to desire, it determines what is a socially acceptable desire, specific to that particular society and its predominant form of social interaction. As mentioned in the previous sections, when we enjoy we never do so spontaneously, in a form that is particular to each and every subject. Instead, we all enjoy in the same way, and we do so because of the limits law imposes on subjects when they enter into society.

However, if we are to think and discuss the possibility of alternative ordering, the question is what happens if, for example, one gives way to mother's desire, and let its logic of ordering take over and construct the new 'social'? Or what happens if the position of the Father – paternal authority – fails? Can the existing social with Oedipal law persist without mythical support? The answer to the latter question as we know is negative; without mythical foundations paternal function cannot exist; whereas the answer to the former two questions are less obvious and will be addressed here. Mother's desire is placed in the Real – the unconscious – which is repressed to enable the functioning of the social field. That much we already know. However, this repression is never entirely successful; what is repressed erupts and intervenes in the subject's acts and decisions without the subject's knowledge or recollection. The symbolic produced in repression is therefore an imperfect order that is constantly being pierced by the unconscious interventions of repressed desires. This makes the symbolic or the Oedipal law an incomplete system, and only one out of a range of possible orderings of one's consciousness and social reality. There are other orderings of desire, some less repressive, allowing desire to pertain in 'the social realm' more freely than in the existing Oedipal organisation. Resistance against Oedipal law – or laws of oedipisation – is the birth of a

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<sup>130</sup> Lacan, *Book XX: Encore, On Feminine Sexuality*, 2–4.

new way of thinking, feeling and living as something different than the subject, or as a different embodiment of being.<sup>131</sup> Some, such as Douzinas, Gearey and Žizek, would argue that this way of thinking, ‘plays together a Marxist and a psychoanalyst register: desire as production and the production of desire. The subject does not realise itself through a humanistic self-discovery of an inner essence, or through the awareness of self as a reflective process, a creation of personhood’.<sup>132</sup>

A way of thinking alternative framings of desire or ordering principles of the social is offered by thinkers such as Lacan, Deleuze and Guattari and some others. This alternative, in itself, is not something external, rather one has, as all of them would agree, an inherent responsibility to oneself, to one’s unconscious. This should mean that the order created by law is only the order that functions on the ‘surface’ – in one representation of reality; whereas, what in fact goes on and drives the subject’s acts and decisions is hidden in the unconscious or in what the order aims to repress. ‘Legal desire’ or a desire cultivated by law is radically different from the desire facilitating the possibility of alternative ordering. Legal desire is not a mechanism facilitating the subject’s freedom; instead it is its oppressor. Anton Schütz comments on the oppressive role of desire by saying that: ‘[b]eing subject to what you are not proprietor, possessor, or capitalist of, namely your desire. That is what the desire is about. Being subject, in precise sense of the inability to choose, to change its desire, against another desire, that would be more fitting, more desirable’.<sup>133</sup> It is then that the subject once instituted in a particular social and legal framework has no power over its desire; the idea that one can choose and desire freely is simply an illusion. The subjectivised desires operating in the legal field then have nothing in common with ‘transformatory desires’ or a desire as such.

In contrast to the oppressive form of desire within law, desire *as such* acts as a power or a force. That is, there is nothing in the power of desire itself, yet it can produce an effect and order relationships. For Deleuze power is not an essence but an operation; power creates singularities that are not necessarily ‘material’ but the relationships of force.<sup>134</sup> Such a power or force is not destructive or the ultimate source of violence but creative as it creates the social. However, it is not that desire as such is non-violent; it can also be

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<sup>131</sup> Douzinas and Gearey, *Critical Jurisprudence*, 306.

<sup>132</sup> Ibid.

<sup>133</sup> Schütz, ‘Sons of Wrath’, 1011.

<sup>134</sup> Douzinas and Gearey, *Critical Jurisprudence*, 329.

violent, as Deleuze reminds us; yet the violence, depending on the nature of law, can in fact be creative. This means that illegalities penetrate the existing law on particular occasions, in specific cases, in determined legal questions, and in that way reframe the existing law.<sup>135</sup> At this point, the question that persists is how does desire *as such*, as a pure idea, influence or shape an alternative ordering? One answer to this question is Lacan's idea of the *sinthome*. Below I will explain what *sinthome* is and how Lacan came to think about it.

### ***Sinthome* as an Alternative to Legal Oedipal Ordering**

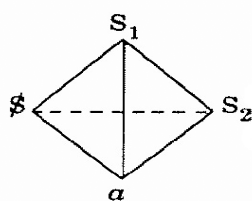
Before explaining the logic of the *sinthome* I will briefly elaborate on the structure of legality discussed above (Oedipal legality) and the problem one faces when trying to think of an alternative logic of ordering legality. The function of the father is based on the myth of a dead/murdered father; subsequently this myth enables the emergence of dogmatic law and legal authority grounded in dogma. In itself, perhaps, this is a sustainable but vulnerable system because the mythical foundation of law can be easily shaken to its core by exceptional situations or situations such as for example also the US policies after 9/11 I discussed earlier. When something of this kind takes place, the foundation of law – the dogma – disappears, and law is left without foundations. Reading Schmitt's critique of liberalism through Lacan and Žižek, it is not difficult to see how the US model of government (as all other 'Western governments' of liberal kind) falls into the same dogmatic model. The sovereign – be it the US President or the Law – in liberal societies is only a symbolic figure without real powers to abrogate laws or exceptions. The actual 'master' in liberal societies is in fact an interpreter of law – a lawyer or a judge. Both these figures are what is in psychoanalytical terms often referred to as perverse figures – they possess no legal force or authority; yet the 'sovereign-like' power is granted to them by social conventions deriving from a particular Oedipal form of desire. The fact that this is the case, and that the 'untouchable' power in liberal society is in fact law, remains hidden. Only once the sovereign called upon the exception and started rewriting the laws, 'the emptiness of its symbolic position' got revealed in full. It had no power to institute and legitimate the new laws, yet the old ones whose mythical

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<sup>135</sup> I will return to different ways in which law is penetrated by different illegalities or situations outside the law in Chapter 5. There I will explain on the example of a range of images from Guantánamo how the il/legalities penetrate and mould the existing law in interesting and unexpected directions.

foundation was exposed became ‘inoperative’. Consequently, laws – mythical paternal law – as well as subjectivities constituted through or in relation to the identification with the ‘father’ collapsed. The reason for this collapse lies in the basic fact that the validity of law remains dependent upon the subject’s identification with it or with its source of authority.<sup>136</sup> In democratic societies the process of the subject’s identification with the law derives from the subject’s suppression of its own split or desire; thus leading the subject to identify with the social ideals portrayed in and as legislature.

The question Lacan posed is then how to challenge the mythical artificial discourse of legality. The answer is that society, the state, as well as the subject has to go beyond the existing dominant discourse and language of subjectivation and law-making; and one does so by transgressing one’s own unconscious. That is necessary because, as Lacan states, the unconscious is not entirely free of symbolic or social interventions; quite on the contrary, unconsciousness is structured like a language.<sup>137</sup> It operates on the same Oedipal logic as language. Ignoring the unconscious, then, as Phillip Dravers writes, enables us ‘to ignore the fact of discourse itself.’<sup>138</sup> Lacan in his later teaching reconsiders alternative orderings of ‘the self’ – how different formations of existence make sense of their own existence outside or in opposition to the dominant discourse. As a response, he constructs an alternative idea of law and an alternative form of existence out of the debris of Oedipal structures.



Schema 1: A Representation of the Master Discourse in a tetrahedron<sup>139</sup>

<sup>136</sup> Murray, *An Erotics of Law*, 117

<sup>137</sup> Jacques Lacan, *Seminar of Jacques Lacan, Seminar XI: The Four Fundamental Concepts of Psychoanalysis*, (London and New York: Karnac, 2004); ‘The Mirror Stage as Formative of the I Function as Revealed in Psychoanalytic Experience’, *Écrits*, Bruce Fink ed. (London and New York: W.W. Norton & Company, 2006): 75–81; ‘The Instance of the Letter in the Unconscious, or Reason Since Freud’, in *Écrits*, Bruce Fink ed. (London and New York: W.W. Norton & Company, 2006): 412–44.

<sup>138</sup> Dravers, ‘The Segregative Effect of Discourse’, 297.

<sup>139</sup> Roberto Harari, *How James Joyce Made His Name: A Reading of the Final Lacan* (New York: Other Press, 2002): 85.



This alternative legal framework emerges with a reconsideration of *jouissance* and its relation to authority. *Jouissance*, in its unlimited ‘pre-social’ and ‘pre-legal’ form, represents realms that are beyond social formations and logic of paternal legal discourse. For Lacan the relation between *jouissance* in its pure form and authority seen as a sovereign or a legislator resembles the relationship between the realms of the Real and the Symbolic.<sup>140</sup> Hence a relationship between authority and *jouissance* embodies a direct link between the Symbolic that orders social representations, and the Real that determines the unconscious and enables the place for desire *as such* to flourish. This is the link that is missing in paternal structure or ordering. Without going into great detail here, Lacan illustrates the link between the Real and the Symbolic by referring to the schema of the Master discourse that also represents the paternal structure (Schema 1). In the common version of the schema, the link between authority –  $S_1$  – (the Symbolic) and the excess – *object a* – (the Real) is missing. Such absence of an important aspect of the social order suggests that paternal discourse is unwilling to engage with the truth of the system. Leaving the Real – in the way it is defined it always represents the uncomfortable, unsettling, non-discursive and unrepresentable – ‘outside’ reveals the nature of the order. It demonstrates that firstly, the logic operates on grounds of exclusion, and secondly, that the logic is structured around the Real in way which prevents the very emergence of that Real. If we recall all that has been discussed in this chapter, it is not too difficult to acknowledge the resemblance. Hence, the new space created with the bonding between authority and *jouissance* produces new forms of representation; forms that no longer belong to the existing Symbolic order through which one is commonly actualised in law. Lacan calls this new bonding the *sinthome*. The *sinthome* is a new ordering principle that substitutes Oedipal law.<sup>141</sup>

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<sup>140</sup> In Lacanian psychoanalysis the three realms of the Real, the Symbolic and the Imaginary are central explanatory tools. Every psychoanalytical concept in fact, each existing idea, has its Real, its Imaginary and its Symbolic aspect. It is difficult to put an uncontested definition of each of the three realms, as their role and Lacan’s focus on them changes throughout his teaching. For example, in Lacan’s early teaching the focus is on the Symbolic order. The Symbolic is a realm of language and the law, which regulates desire in the Oedipal logic. It is, as such, also a representation of the unconscious, because, for Lacan, the unconscious is structured like a language. The Symbolic, as Evans (2001: 201–2) explains, is also the realm of radical alterity or the Other. In contrast to the Symbolic, the Real is where the focus of *last* Lacan lies. The Real stands for the absence and undifferentiation. It represents ruptures and errors of the Symbolic order. It resists symbolisation or any kind of language or linguistic rules. It is an impossibility and thus essentially traumatic (Ibid. 159–60). Finally, there is the third realm, the Imaginary, which lies in exact opposition to the Real. Lacan was always sceptical towards the Imaginary, as it is too strongly associated with ego and ego psychology. Ultimately, the Imaginary stands for one’s identification and the process of subjectivation. For example, the mirror stage in which one recognises the image of its own body can be seen as the ultimate Imaginary dimension. (Ibid: 81–2) Dylan Evans, *An Introductory Dictionary of Lacanian Psychoanalysis* (London, New York: Routledge, 2001).

<sup>141</sup> Harari, *How James Joyce Made His Name*, 86–7.

As a consequence of the *sinthome*, Lacan has to rethink the legal function of the Name-of-the-Father or the foundations of Oedipal law. In his seminar on the *sinthome*, Lacan explicitly writes that the Name-of-the-Father is not the only or the necessary way by which the subject enters society and manages a social bond. The *sinthome* is one of the alternatives. It relates to desire in a way which facilitates new forms of existence with the ability to knot together all three registers of social reality (the Real, the Symbolic and the Imaginary). The knotting of three registers enables a form of existence to structure and understand reality in distinct ways. Paternal logic knots the three registers in a particular way giving ‘the image of reality’ a particular paternal character. The *sinthome* does the same job as paternal logic, with one difference: the knotting of these realms is done with a different logic and has a different effect. However, a difference between a *sinthomal* knotting and paternal knotting is that the *sinthome* enables these forms of existence to form social bonds in ways that are particular to that form. This particular *sinthomal* form of existence – LOM – then institutes its own relation to the social through means of non-ordered or non-paternal *jouissance* or desire *as such*.<sup>142</sup> LOM no longer requires the paternal signifier to ‘bring LOM to life’, instead the *sinthome* tied to a particular discourse can perform this role.<sup>143</sup> The *sinthome* then not only provides LOM with the means of creating its own singular bonds with the social, but also to do so through a different ‘discursive or expressive frame’. The *sinthome* then allows each LOM to perform this knotting differently and to relate to the social in a different way.<sup>144</sup> Bonds that an LOM forms with the social are singular and characteristic to each LOM; there is no overarching paternal metaphor or order to which all LOMs belong or that all resemble. The *sinthome* with singular bonds and different discursive formations acts as a logic enabling the existence of a new LOM, a LOM *as such* which appears in the order that is no longer paternal or hierarchical but inherent to *jouissance* and the Real (to that which is beyond discourse and representation).

To understand the formation of a different form of legality and from that also a different understanding of existence, one has to take a closer look at Lacan’s theory and

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<sup>142</sup> Phillip Dravers, ‘In the Wake of Interpretation: “The Letter! the Litter!” or “Where s the Waste in the Wisdom”’, *Re-Inventing the Symptom: Essays on the Final Lacan*, Luke Thurston, ed. (New York: Other Press, 2002): 148.

<sup>143</sup> The meaning of LOM and ways in which it comes into existence will be explained towards the end of Chapter 4.

<sup>144</sup> Jacques-Alain Miller, ‘Le sinthome: un mixte de symptôme et fatasme’, *La Cause Freudienne* 39 (1998): 15.

interrogate the logic which enabled Lacan to think outside the limits of existing ordering principles of the symbolic order. To illustrate the formation of a new form of existence, Lacan introduces a topological concept – the Borromean knot.<sup>145</sup> Used as a methodology, the Borromean knot firstly tackles the possibilities of an alternative existence. One of such alternatives is a form of existence emerging at the end of analysis. At that point, the subject (or what used to be the subject) is liberated of the constraints of the Other. Secondly, the Borromean knot is an effort to think the structure or the Symbolic without reference to the Other.<sup>146</sup> The aim of the Borromean knot is then to bring into existence a particular type of thought, which aims at engaging with what is considered to be ‘the thought of the outside’ or thought that is incomprehensible to language and the symbolic or socially discursive means.<sup>147</sup> In other words, this is also the thought associated with the logic of *not-all*, or a supremely ‘feminine’ way of identification.<sup>148</sup> The thought Lacan is engaging with here is the thought he himself initially deemed incomprehensible – that is the thought of the Real, or the thought of ‘what she does not know anything about’.<sup>149</sup> This reaching beyond symbolic and discursively expressible realities collapses perhaps the most prominent distinction in the political, social as well as philosophical realms; namely a distinction between the inside and the outside.<sup>150</sup> Lacan aimed at thinking a form of existence that in its actualisation aims at alleviating the realms of the Other. An outcome of such thought is that the spatial distinctions determining ‘the self’ and ‘the other’, or ‘the inside’ and ‘the outside’,

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<sup>145</sup> In technical terms, the concept of the Borromean knot derives from medieval theological manuscripts. In this form, Saint Thomas Aquinas used the knot to explain the mystery of the Holy Trinity and how its three separate aspects, each defined as ‘equal and eternal’ in Christian doctrine, come together to form a principle of unity which is obtained only at the level of the knot that they form (Jacques-Alain Miller, ‘Milanese Intuitions 1’, *Mental Online: International Journal of Mental Health and Applied Psychoanalysis* 11 (2002): 14). A closer look at the above representation of the knot reveals three separate rings or three zones of intersection, and a single central zone where, according to Lacan, the mystery of the Trinity resolves itself in the unity that is formed from the very particular manner of their knotting. The fourth ring that binds the orders of the Real, the Symbolic and the Imaginary together is the *sinthome*, which has the role of naming or nomination (Pierre Skriabine, ‘The Clinic of the Borromean Knot’ in *Lacan: Topologically Speaking*, Dragan Milovanovic and Ellie Ragland, eds. (New York: Other Press, 2004): 255). In general, as Ragland-Sullivan explains, the *sinthome* can then be ‘a word, sound, event, detail, or an image that acts in a way peculiar to given subject’s history’ (Ellie Ragland-Sullivan, ‘Counting from 0 to 6: Lacan, Suture and the Imaginary Order’ in *Criticism and Lacan*, Patrick C. Hogan and Lalita. Pandit, eds. (London: University of Georgia Press, 1990): 58). For a more detailed explanation and a schematic representation of the Borromean knot, see Chapter 6.

<sup>146</sup> Skriabine, ‘The Clinic of the Borromean Knot’, 252.

<sup>147</sup> Michel Foucault, *Maurice Blanchot: The thought from outside* (New York: Zone Books, 1990).

<sup>148</sup> I return to this in the next section and in Chapter 6.

<sup>149</sup> Lacan seriously embarks on the task of exploring the thought of the Real only in *Seminar XX*. The following seven seminars further engage with that problematic.

<sup>150</sup> In International Relations perhaps the most prominent book interrogating the inside/outside problematic is Rob Walker’s book: *Inside/Outside*, 1993. The inside/outside distinction however, does not challenge spatiality or territory or the way subjects are formed. Similarly to Walker’s inside/outside, *last* Lacan’s thought also challenged self/other division.

no longer exist, or are at least no longer prominent features of social and political discourse.

The *sinthome* and the logic of *not-all* then seemed to be the two logics Lacan arrived at when thinking of an alternative to paternal structures. Before explaining the consequences *sinthome* introduces in social and legal thinking, I will turn to the logic of *not-all* that underlies the *sinthome*. This logic refers to a feminine way of subjectivation.<sup>151</sup> Unlike the male way, which is constructed around one singular and totalising way of enjoyment, the feminine side knows two ways of enjoying. One way is phallic, hence the same as the male way, and the other is the ‘un-known’ or *not-all*.<sup>152</sup> The *not-all* stands for a particular type of enjoyment which ‘women’ do not know much about save for the fact that it exists. However, the presence of this type of *jouissance* is very significant. It signifies that there is something that escapes the discourse or that can only be grasped within a different ordering principle, or within a different way of comprehending and relating to the social.<sup>153</sup> The logic of *not-all* is congruent to the *sinthome*, because similarly to the *sinthome* it allows for singular hence distinct formations of social bond. Moreover, those operating under the logic of *not-all* have nothing in common save for the pure knowledge of their existence. As there is no commonality uniting ‘all’ who experience or possess the *not-all*, the logic has a similar effect on the social as the effect of the Real: more precisely, the Real’s intervention in the social. The logic of *not-all* destabilises existing social discourses and power formations with its interventions. Moreover, because the logic of *not-all* is not totalising, it does not allow for the existence of the exception; the *not-all* does not know totality, there is always something missing from it, hence whatever emerges, even if different from other existing formations, simply adds to the existing picture and does not form an additional category or an exception. The *not-all* logic grounds a different understanding of not only identification and being-ness, but also of law-making. The logic of law deriving from *not-all* cannot recognise exceptions, and neither can it form a closed set of rules and procedures pertaining to a particular social or legal order.

Similarly to the *not-all*, the *sinthome* make grounds for identification to occur in the realm of the Real. The *sinthome* enables a different embodiment of being *as such* – LOM. It is a

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<sup>151</sup> In Lacan’s theory a feminine way of identification and consequently a paternal or male way of identification have nothing to do with biological sex. Instead they are concepts referring to forms of sexualisation where ‘men’ can sexualise as ‘women’ or vice-versa.

<sup>152</sup> Lacan, *Seminar XX: Encore, On Feminine Sexuality*, 78–83.

<sup>153</sup> *Ibid.*, 78–89.

form of existence that is singular and otherwise unthinkable in the existing symbolic order and ordering principles of reality. As such *sinthome* operates as the ontology of the Real, which links the Imaginary and the ‘real’ body of the LOM, and with this act prevents the LOM becoming subjugated to meaning/language and thereby complying with paternal metaphor.<sup>154</sup> Here, one should not forget earlier discussion where it was explained how language is the ultimate force by which one is subjected to Oedipal laws.<sup>155</sup>

A result of this move, however, is not solely reflected in a topological representation of thought, it also rethinks the understanding and the place of a ‘human being’ in the world and the dependence of its constitution/emergence on the Other. As Voruz acknowledges, Borromean topology ‘focuses on the subject by taking its bearings from each subject’s [or LOM’s] particular *invention* [self-identification] – or *fiction* – for the treatment of *his* real’.<sup>156</sup> It constitutes the subject around sexual *jouissance*, which is as such forbidden to the speaking being, the being that accounts for phallic *jouissance* and *joui-sens* [enjoy-meant]. Removing LOM from language allows LOM to create a different relation to desire. The desire LOM embodies is no longer repressive. The new being creates its own relation with *jouissance* as a way of treating his Real. Instead of social norms and structures, the *sinthome* allows for a singular – ‘case-by-case’ treatment of the Real. That becomes possible because the new existence – LOM – ‘knows what to do; it does with the bond whatever it is necessary or whatever LOM pleases to do. It is then that one’s own dealings with the Real are non-discursive or non-representational because here discourse is no longer used to convey the meaning or to transmit the message. Linguistic rules no longer serve the structuring of LOM’s unconscious and hence its functioning in accordance with those rules. Instead, a LOM is inscribed in letters or mathemes – signs that cannot convey meaning, they stand and represent themselves for what they are – pure signs, expressions of ‘pure being-ness’.

For Lacan Western civilisation is structured according to the paternal hierarchical function, which determines the dominant cosmology, its structures, discourses and consequently social relations and social bonds. By introducing Borromean topology,

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<sup>154</sup> Skriabine, ‘The Clinic of the Borromean Knot’, 260.

<sup>155</sup> I will say more on the role of language and its relation to LOM and *sinthome* in the next chapter, Chapter 3.

<sup>156</sup> Voruz, ‘The Topology of the Subject of Law’, 284; and *Psychoanalysis and the Law Beyond Oedipus*, 198.

Lacan aimed at breaking away from such paternal-centric order and exploring ways of subjectivation that do not rely on the intervention of the Other. As Lacan wrote in *L'Étourdit*, such a move is attainable; one can do without topology on condition one makes use of it or if one knows what to do without topology.<sup>157</sup>

### *Sinthome Law*

The remaining question is how does the new form of existence – LOM – and ordering principle play out in law and legal discourse. In other words, what is the new form of legality that orders and institutes 'legal existence'? One of the ideas that embody an alternative law or legality is that of the *sinthome law*. The *sinthome law* orders legal subjectivity and its desires in a particular way, which is most commonly manifested on the level of discourse. Yet, this discourse is different from Oedipal discourse as it no longer serves communication and the transference of meaning.<sup>158</sup> Although Lacan never claimed to hold the keys to all the secrets and discomforts of modern civilisation, he did say that the subject complies with certain laws and rules which reflect its unconscious, while, at the same time, there is a certain topological continuity between the structure of institutional discourses – laws – and that of the unconscious. In psychoanalysis, language or discourse with its linguistic rules represents a logic of ordering one's psyche or understandings of the social world, rather than being a means of communication and transference of meanings. That switch in the purpose of language is precisely what many argue law requires if it is to be thought differently.<sup>159</sup> In the light of this one has to explore the organisation of the unconscious and innovative ways of using language or letters to deal with and alter institutional and legal discourses; the *sinthome* as a logic that no longer calls for meaning or sees language as a communication device is one way of doing this.

The *sinthome law* seems to be the obvious choice for an alternative legality. At this point it is important to also remember that *sinthome law* – in the same way as Oedipal law – is only an organisational logic, ordering one's unconsciousness and hence also institutional discourse. It has to be thought of as Lacan's second theory of law (the first is the law of

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<sup>157</sup>Jacques Lacan, 'L'Étourdit', *Scilicet* 4 (1973): 5–52; Unofficial English translation at: <http://web.missouri.edu/~stonej/L'Etourdit.pdf>.

<sup>158</sup> I will say more on language under sinthomal logic in the next two chapters.

<sup>159</sup> See for example: Murray, 'Sinthome Law'; Dragan Milovanvic, 'Borromean Knot, Le Sinthome, and Sense Production', in *Lacan: Topologically Speaking*, Ellie Regland and Dragan Milovanovic, eds. (New York: Other Press, 2004).

the Name-of-the-Father). As such, the *sinthome law* has a different character to Oedipal law. It has to be thought as a contingent process or a problematic and not an object, which has to be addressed and answered. The *sinthome law* is inscribed in the Real and not in the Symbolic, it is immanent not transcendent, singular not particular, chaotically dynamic not predictable or stable and it has to subscribe to a-signifying discourse formations instead of command-order words.<sup>160</sup> In other words, *sinthome law* embodies everything that Oedipal law is not, or everything the Oedipal law left out. In particular, the legal language of *sinthomal law* no longer orders and commands, instead it enables individuals to flourish and make use of *sinthomal language* (meaning-less language) in ways which escape any kind of rigid social ordering; it is a form of law that suits the singular embodiment of being. In such a way the *sinthome law* can provide an anomalous legality that is a response to and in opposition to the theory of law based on the logic of the Name-of-the-Father. Whilst the first theory of law knotted together three orders of the Real, Symbolic and the Imaginary and hierarchically structured the organisation of subject's desire and the social; the concept of the *sinthome* can be understood as a *suppletion* of the Name-of-the-Father, as a solution to the problem of which the current (insufficient) solution is the Name-of-the-Father. The concept of the *sinthome law* opens up the problematic status of the Name-of-the-Father and its knotting of the three realms.<sup>161</sup> Thus, by opening the knotting of the three realms to the potentiality of different knottings, it offers the structure of the Real, Symbolic and the Imaginary a different character.<sup>162</sup> As a result of a different knotting, the ordering of the registers alters and facilitates a different representation of 'reality'. As Jamie Murray further elaborates:

Sinthome Law as a virtual singularity operates on all scales of the dynamic system, bringing individual and social as a universal topological invariant. It would act in the manner of a strange attractor producing effects of organisation between three orders [the Real, Symbolic and Imaginary] and within each of the orders. It would be a law that is outside the meaning and not directly linked to the signifying chain, but which nonetheless produces effects within the symbolic order and the signifying chain.<sup>163</sup>

The idea of *sinthome law* is rather new, and its implications for the understanding of law and legality today remain largely unexplored. On a wider scale, the idea of the *sinthome law*

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<sup>160</sup> Murray, 'Sinthome Law', 223.

<sup>161</sup> This is the same knotting of the three registers as the one mentioned in the previous section.

<sup>162</sup> Murray, 'Sinthome Law', 224.

<sup>163</sup> *Ibid.*, 224–5.

also influences the way social bonds between subject and the social are understood and translated into law; how new legal existence emerges and what it is. Following Dragan Milovanovic's work, Lacan's ideas of the Borromean knot and the *sinthome* are unique as they offer an entirely new exposition of how mechanisms 'by which agency in relationship to social structures could be understood.'<sup>164</sup> On the level of legal ideologies, these juridical structures get translated into juridical forms through a master discourse, which uncovers the perverse disciplinary mechanisms operating upon subjects and creating their illusively rational images. Once the illusive character of reality is uncovered, the *sinthome* performs as a mechanism, an additional bonding – *suppletion* – which secures the existential bond instituting a legal existence without the Father. The singular character of the *sinthome* and its inscription in the letter and chaos, uncovers the fundamental agency behind the replacement of phallogocentric discourses that is the desire. To find desire in the centre, as the main agency of alternative legal thinking is unsurprising; even Lacan on the one side and Deleuze and Guattari on the other side, despite their alleged confrontation, see desire *as such* as the central force moving social, legal and political realms and pushing the limits of ways of being in the world.<sup>165</sup>

In a similar way, Voruz highlights the importance of the *sinthome law* as it breaks from the paternalistic and phallogocentric organising principles. She writes that Lacan's theorisation offers the necessary support to understand that juridical enunciation can but fail for the subject, for it is taken up in the circuits of the subject's interpretation of what he or she is for the Other.<sup>166</sup> An alternative means of being with 'the subject' and law then has to be devised, because the main function of paternal law is to keep the subject at its door (objectify the subjects, bar them the access to the Real, and prevent them from ever acknowledging the actual nature of the system). One of the alternatives is the aforementioned *sinthome law* and its focus on the letter and desire as constitutive parts of a new 'chaotic' legal discourse. All in all, for the *sinthome law* to work it has to facilitate the following: firstly, to reduce fictional universality upon which the paternal law relies. In doing so, the subjects will not be objectified, 'condemned' to paternal interpretations, meanings and subjectivation, and will be granted the access to the realm of the Real. And

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<sup>164</sup> Milovanovic, 'Borromean Knot, Le Sinthome, and Sense Production', 379.

<sup>165</sup> Those who believe Lacan's theories to be incompatible with those of Deleuze and Guattari's are misguided, as many scholars have turned to Deleuze and Guattari to understand Lacanian *sinthome* (law.) Murray, for example, rethinks the idea of the emergent law first in Lacanian terms, and then also using the work of Deleuze and Guattari. See for example: Murray, 'Deleuze & Guattari Intensive & Pragmatic Semiotic of Emergent Law', 7–32.

<sup>166</sup> Voruz, 'The Topology of the Subject of Law', 306.



secondly, the *sinthome law* has to provide means for forms of existence to de-eroticise their relation to the law (law frames existence on the basis of their relation to *jouissance* and desire), which could then be returned to the simple truth that the law otherwise tries to conceal, namely, that it is an apparatus which serves a purely regulating function in the service of those in power, and that it does so with a view of perpetuating an entrenched status quo.<sup>167</sup> Lacan's logics of *not-all* and the *sinthome* offer an alternative account of thinking about law and being. Such thinking no longer meets the limits of language's social function – namely the production of meaning, and neither is it framed in accordance with social and symbolic norms. All these different accounts facilitate a possibility for the existence of the thought of the outside, the beyond or the Real and 'there' enable the flourishing of desire *as such* or *jouissance*.

## Conclusion

The thesis began with an introduction that opened the discussion on the ideas of law and forms of existence in a modern social and political ordering. With a brief explanation of the nature of the US foreign policy post 9/11, in particular Guantánamo, the need for an alternative ordering was stated. The old logic of ordering no longer suffices. In contrast to the introduction, this chapter then began the search for a new alternative ordering. Whilst the problem of Guantánamo and post 9/11 US politics has to do with the legitimacy of the order (*nomos*), the search began with a reconsideration of the sources of legal authority before moving on in an attempt to draw out an alternative.

This chapter had two purposes. The first purpose is to explain the sources of existing legal authority and how it influences forms of existence and makes them its subjects of law; and second one is to indicate an alternative. In light of where the chapter ended – *sinthomal* logic of ordering – the beginning was rather conservative. The chapter started with an outline of the relationship between law and the body and how law – in a similar way to language – is inscribed on one's body. The purpose of this explanation is to show that law makes a 'material' mark on one's body – actively turns someone into its subject. From that followed a discussion on mythological sources of law, where Freud's two laws of totemism as the basic conditions for the constitutions of society were explored; and

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<sup>167</sup> Ibid., 308.

then there was a discussion on ‘subject’s double birth’. The main purpose of what has been covered here is to demonstrate that law is not an artificial concept that works independently of social and political structures. Rather, the logic according to which law operates – today that is the paternal or the Oedipal logic of law – is present in ways being enters the transcendent or the legal discourse, ways in which its cognition is framed, as well as in ways in which social, political and legal institutions work. Ultimately, what I aim to show is that there is a link between the logic organising the subject’s unconsciousness and the logic ordering institutions/institutional discourse. In such a way the chapter covered the origins of Oedipal authority as well as ways in which Oedipal logic frames the subject and determines its subjectivation. The latter point will become particularly important in relation to Chapter Three.

As discussed in the chapter, Oedipal law frames desire and limits one’s *jouissance*; hence if one is to think an alternative logic of ordering the social, legal and political sphere, one has to break away from the limits imposed by these ideas. An alternative discussed in the chapter that allows for such move is the logic of the *sinthome*. The *sinthome* represents a different logic to that of the paternal or Oedipal law, in particular it forms a different relation to desire and *jouissance* as it allows for desire *as such* to find its place in the realms of the social and the political. The logic as such is immanent, non-discursive and placed in the Real. The implications of this logic are many and they will be addressed in the following chapters. At this point it suffices to say that *sinthome* gives LOM – a particular form of existence related to the ordering principle of the *sinthome* – the power of self-constitution. LOM no longer needs the ‘Other’ or an external force for its emergence. This aspect of the *sinthomal* logic is particularly important as it breaks with Cartesian form of subjectivation through the Other or an external instance; hence the *sinthome* belongs to a different ontology of thinking and making philosophy. What this philosophy is, and its implications for the way in which we think about being in the world will be addressed in the following chapter.

## Chapter 3

### Immanent Being and the Limits of Transcendental Representation

As I say, I didn't understand every word but when you're dealing with such ideas you feel as though you were taking a witch's ride. After that I wasn't the same man.<sup>168</sup>  
Bernard Malamud, *The Fixer*

Questions concerning being and forms of existence are central to any political or philosophical discussion. They are also pertinent when invoked in relation to human rights abuses, invasion of personal freedoms or any other form of personal harm. The situation in Guantánamo, on which this thesis draws in particular, is a demonstration of the limited conceptions of being and subject recognised by law. These two ideas – being and the subject – are central to modern political thinking, yet they are politically abused. What exactly do I mean by this? When, for example, considering the situation of Guantánamo detainees it is possible to argue that legal discourse and political strategies addressing the situation are not by coincidence of such degrading form. I would speculate that degrading practices slackening the norms and legal frameworks derive from politics defining what or who the subject of law is, and what or who is outside legal categories or law. These definitions are political only to an extent, equally important are the philosophical ideas supporting, even allowing, for particular often exclusionary political claims over the state of someone's relation to law and its rights.

In the previous chapter I have discussed the sources of legal authority in the currently predominant logic that orders legal and political imaginaries. Those mythical foundations of law go hand-in-hand with the Oedipal or the paternal logic of law.<sup>169</sup> I also introduced a discussion about the form of existence – the subject – that corresponds to the Oedipal logic of ordering law. The discussion is important as it indicates a way in which Oedipal

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<sup>168</sup> Bernard Malamud, 'The Fixer', in *Spinoza: Practical Philosophy*, Gilles Deleuze (San Francisco: City Lights Books, 1988): 1.

<sup>169</sup> The mythical foundations of law can refer to different aspects of law; the myth can be represented by *nomos*, it can represent the psychoanalytical foundations of authority, or for positive law, it can also refer to utilitarianism and legal fictions.

law creates a particular form of existence – the subject – and recognises it as the sole legitimate subject of law. Equally, the discussion outlined a particular way of subjectivation the ‘subject of law’ goes through – that is recognition through the Other or an external instance. Central to such legal subjectivity is then the notion of a rational subject. ‘Rationality’ here refers to a philosophical idea of a Cartesian subject endowed with reason that consequently constitutes a rational or a reasonable member of a community. Ultimately, this Cartesian notion stands as only one philosophical representation of being – that of the rational subject – determining one’s status within the social realm. Cartesianism then is not an abstract idea but a philosophical legacy that is reflected in political and legal conceptions focused around the notion of a human being, and that indirectly enabled exclusionist political and legal thinking. Of course, there is nothing wrong *per se* with Cartesianism, apart from that by its focus on ‘reason’ it allows for exclusionist claims. By exclusionist I mean that not everybody, although they might be human beings, is a subject of law. To be recognised as a subject of law, at the very least one has to be rational and not an inmate of a psychiatric institution, and one has to be capable of making his/her own decisions. In the political realm, one has to be a citizen of a particular state. If one falls outside this scope then the legal subjectivity and a legal protection one normally receives is scrutinised or at least put under question. Such exclusionist character of legal subjectivity corresponds with Oedipal or paternal logic.

The link between the two logics – Cartesianism and the Oedipal subject – might not be straightforward; however, essential for making this connection is the observation one can make about the nature of Lacan’s theory. Throughout his teaching Lacan is everything but consistent in his understandings of different ideas and concepts. It is not that he used many different understandings at the same time, rather his thinking about, for example, ‘the subject’ or a ‘form of existence’ has changed through time. There are at least three different explanations of the subject in Lacan’s thought all outlining his engagements and preoccupations in certain periods of his life. The Cartesian notion of the subject is predominant in his early thinking and writings, while the idea of LOM corresponds to the very last years of his life. Whereas the link between LOM and the *sinthome* is straightforward (Lacan made it himself), the other connection between Cartesianism and the Oedipal law was never made by Lacan personally. Yet, due to the shared temporality of both ideas, one can safely assume that Lacan indeed thought of the Cartesian subject and the Oedipal/paternal logic of law-making as complementary. Another indicator

supporting the correlations above has to do with the nature of Lacan's thought. There is a visible and significant shift in *last* Lacan's thought; no longer does he talk of 'human beings' as such, rather the focus is on representations, ways of thinking that he initially thought were impossible.<sup>170</sup> The characteristics of this new thought are all represented in the idea of the *sinthome* we have already mentioned. For those reasons, *last* Lacan's thought also comes very close, in my opinion, to the immanent philosophy of Gilles Deleuze, and as such represents a major departure from the logic dominant in his earlier work. All these observations, I trust, support our assumption that *last* Lacan's theory represents a departure from his earlier reliance on the Cartesian subject, and hence facilitates the emergence of a new theory and consequently also a new idea of being and its forms of expression.

I started the discussion of alternative thinking by problematising legal discourse in relation to the question of who is recognised as a subject of law, or a form of existence relevant to the law. The philosophical discourse that dominates legal practice today prioritises a rational Cartesian idea of the subject. This has been briefly flagged up in a discussion of a relationship between Lacan's ideas of Oedipal/paternal sources of authority and the notion of subjectivity Lacan subscribed to at a time when he was discussing Oedipal forms of authority. The purpose of this chapter is then to arrive at an alternative conception of being and 'legal existence' by looking at alternative immanent conceptions of being and how they get embodied in transcendent forms operable in social, political and legal spheres. The central conception of being discussed here no longer distinguishes between animate and inanimate forms of existence; also it does not rely on reason. The alternative I have in mind here is a monist understanding of being that has its origins in medieval and early modern thinkers such as Duns Scotus and Spinoza, and that was taken up and further developed by Gilles Deleuze and Jacques Lacan. Although an alternative idea of being and existence are here represented in an almost 'history of ideas' fashion, my intention is not to make such an argument. It is however important to acknowledge, as Deleuze himself did, that Duns Scotus and Spinoza inspired him to develop a philosophy grounded in an immanent idea of life. It is also true, however, that Deleuze's reading of Scotus is a particular reading, emphasising certain aspects of Scotus' thought and ignoring others. The account of being-ness I will discuss represents a particular way of thinking about the form of existence that is often

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<sup>170</sup> See for example: Lacan, *Seminar XX: Encore*; or Bernard and Fink, *Reading Seminar XX*.

characterised as being 'beyond the subject' because it alleviates the central relationship of subjectivity, that of the self and the other. Instead the form of existence emerging has a force in itself that enables it to actualise itself.<sup>171</sup> The monist ontology is then manifested in the political and the social through different practices or orderings of its forms of existence. For example, 'subjectivity' no longer emerges as a dual process of recognition (the self and the Other) or through a working of the body and the mind as two different essences; instead the immanent monist ontology is manifested in the political and the social through a range of processes, intensities and expressions. These are, for example, desire *as such*, the impact of the body and traces it leaves behind, the affect, and all other forms of change and transformation embodied in the becoming. Monist ideas are presented here in such a way that they not only depart from 'the subject' and reason as two central features determining one's 'activity' in the situation, but also facilitate a possibility of a non-anthropocentric thinking of existence.

Deleuze and Lacan, the way I read them, offer an alternative non-anthropocentric understanding of being-ness that is worth exploring in the context of alternative legal and political subjectivities. Their thought, as it challenges the limits of thinking about 'the self' or how one can understand and capture one's own 'thought' and existence, is commonly referred to as 'the thought of the outside' – as a thought that aims to comprehend and engage with what escapes discourse, what is left outside or beyond discourse, the non-representable. In this chapter, most attention is given to Deleuze, who perhaps has most wholly and meticulously developed the thinking of 'the outside'. Unlike Lacan who arrived at 'the thought of the outside' late in his teaching and left some ideas unexplored or under-developed, Deleuze's opus builds on this idea from the very beginnings and gradually explores its implications in various fields (philosophy, psychoanalysis, politics, film etc). Although, as already said, a major part of this chapter is 'Deleuzian', my reading of Deleuze is very much influenced by Lacan's ideas which remain central to my philosophical position.

In this chapter I therefore focus on the notion of being and existence that is inherently immanent and that hence alleviates the problem of reproducing an anthropocentric discourse. The chapter starts with a rather brief discussion of Duns Scotus's and

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<sup>171</sup> Giorgio Agamben, 'Absolute Immanence', in Giorgio Agamben, *Potentialities: Collected Essays in Philosophy* (Stanford: Stanford University Press, 1999): 220–39.

Spinoza's ideas that influenced Deleuze and Lacan the most. That is followed by an exposition of the immanent thought of Deleuze – particular attention is paid to notions of immanent life. The chapter then concludes with a lengthier yet extremely important discussion of 'transcendent images of the immanent thought'; in other words I look at how and in what ways Deleuze's and Lacan's ideas could influence political, social and legal thinking. The section explores concepts of becoming, desire, body, language and the organisation of the self. These concepts represent ways in which being gets transformed or is embodied in the transcendent. All these ideas represent a different logic or ordering of being and hence produce a different representation or image of being (or a force) in the transcendent. In the light of Deleuze's philosophy, all ideas are radically contingent – or in constant process of change – hence it is impossible to talk about the body without understanding or having in mind the becoming or desire; or in fact about language without seeing it as an embodiment of existing forms. The representations all these ideas or orderings create have nothing or very little in common with the currently predominant ontology of being which sees being through a duality of body and mind, or of which central feature is reason. Within the scope of the thesis, this chapter takes the discussions of Chapter Two on a higher level, as it engages with the nature or the philosophy underlying the logic of the *sinthome* and LOM discussed earlier. In itself, the chapter offers a discussion of Deleuze's and Lacan's alternative thought and provides for a theoretical or a philosophical background for the following chapter, Chapter Four, where images of this thought are discussed in relation to a political problem, within the context of Guantánamo to be explicit.

## **The Thought of the Outside: Life as a Force**

What is at stake in thinking an alternative to the existing form of existence – the subject, and further, to existing comprehensions and understandings of the relations between beings and forms of existence, and their role in the formation of the world, is ontology. This 'alternative ontology', however, is not concerned with possibilities of different understandings of being-ness within the political and social realms; rather it pre-exists both realms and, on the assumption that all forms of being and 'being-ness' share or have something in common and are therefore equal, think the possibility of relations and logics that order the alternative political and social realms. There are two aspects of this

alternative ontology; which Deleuze calls *the ontology of the virtual*,<sup>172</sup> whereas Lacan would see it as the ontology of the Real. Its transcendental part, as Eric Alliez a discussant of Deleuze's work explains, talks about the power of 'neutralisation' of being as an abstract concept, and from that creating a transcendent forms of existence.<sup>173</sup> The immanent part, in contrast to the transcendent, is the power or *puissance* generated in the transcendent. It is abstract yet real and common to all forms of existence – souls, bodies, and non-formed elements. As a result of such immanent power all forms of existence are capable of persistence and self-preservation as well as of singularisations on the plane of immanence.<sup>174</sup> Even though the power or *puissance* is shared amongst all different forms of existence, it is particular to each and every embodiment of that being. This observation takes us back to the discussion of LOM. It is precisely this immanent form of power that gives LOM the power of self-constitution and self-realisation. It is on these immanent grounds of omnipresent power that different forms of existence gain the capacity of self-singularisation.

What we have in mind when speaking of power on the immanent level is, as Spinoza would agree, nothing less than the essence that is common to all. Thus power – often also read as desire *as such* – facilitates the presence of immanent being and its expression in various transcendent forms of existence. For example, power as essence enables being its own preservation, its striving for life, its fight for its own expression of being-ness and a demonstration of its own singular expression. Ultimately such positioning of being implies that all forms of existence initially derive from, possess or share the same essence. The essence is then common to all, and everyone or everything relates to it in the same way. This essence or potentiality is in Spinozian terms also known as *conatus*. Eric Alliez, a commentator of Deleuze's ontology and philosophy, observes that such immanent ontology directly concerns the practice of one singular essence, an individuating force that is in relation to infinity.<sup>175</sup> This observation brings in an interesting aspect of the discussed thought: it indicates that not only is it an ontology of power and potentiality present or common to all forms of being in an equal way, but also that this ontology of power and potentiality is also an ontology of the one and the multiple. It is the ontology of essence common to all animate and inanimate forms of

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<sup>172</sup> What the ontology of the virtual entails will be explained in the section on Deleuze, later in the chapter.

<sup>173</sup> Eric Alliez, *The Signature of the World, Or, What is Deleuze and Guattari's Philosophy?* (New York and London, Continuum, 2004): 26.

<sup>174</sup> Alliez, *The Signature of the World*, 26–7.

<sup>175</sup> *Ibid.*, 27.



existence; in other words it is a power that each and every form existing in the world possesses to at least a certain degree. If such thought makes no distinction between the amount of power particular forms of existence possess, then ultimately, this thought results in the system of thought where no hierarchies between different forms of existence, e.g. humans, animals, rocks, plants, bacteria etc. exist. In this thesis I see such ‘all-encompassing’ understanding of power in a productive way as it allows me to rethink spectrums of the political and the social and the notions of duties and rights.<sup>176</sup>

The account of ontology described above is then a monist account, as it does not distinguish between essence and existence; and neither does it condition the existence of one with the existence of the other (that is so because *conatus* is a power of self-preservation or self-actualisation that is constituent of being and its forms of existence). It is possible to say that this account also does not differentiate between the inside and the outside, between nature and God, and creation and the creator. The origins of this philosophy can be found in medieval and early modern writings; in particular in the ideas of Duns Scotus and Spinoza.<sup>177</sup> Their thinking is crucial for contemporary thinking about monist being, and Deleuze acknowledged that. Particularly important is the aspect of their work that develops a notion of being-ness and existence that is different from that of Descartes. Unlike Descartes who grounds the foundations of his thought in a radical duality between the body and the mind, and the centrality of reason, Duns Scotus and Spinoza are capable of thinking being-ness independently from such a distinction. Duns Scotus represents the first step in a Deleuzian ‘monist direction’. He starts with a discussion of essence and existence where he does not explicitly deny the existence of the mind or the body. However, he recognises that the relationship between the two is problematic. In contrast to Descartes, Scotus claims that although a difference between the body and the mind might indeed exist, this difference is not a result of two or more different substances, but of variations in the same substance. With this move, Scotus reduced the conception of being and brought it down to a pure fact of existence, rather than to the qualities determining the value of the existence.<sup>178</sup> Such move suggests, as Catherine Pickstock – perhaps the most prominent commentator on Duns Scotus’

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<sup>176</sup> Here I prefer the term ‘all-encompassing’ to ‘universal’, as the term ‘universal’ implies an external component which unites and creates universal, and which determines its character. Universals are commonly determined by what is excluded.

<sup>177</sup> See for example: Deleuze, *Expressionism in Philosophy, Spinoza: Practical Philosophy*; Negri, *The Savage Anomaly*.

<sup>178</sup> Alliez, *The Signature of the World*, 16.

thought in radical orthodoxy – argues, a radicalisation of the modern in a more anarchic direction; that, she continues, renders all possibilities and their limitless range equally valid.<sup>179</sup> The substance, the species, the individuality or any other ‘specific’ differences such as passions or other ‘transcendentals’ are all virtually included within this being. In other words, Scotus ‘unites’ the idea of being in one essence with potentiality to be or to develop into whatever it is to become. As such, he ‘constructs’ the idea that does not refer to anything else or anything more but being-ness itself. He constitutes an immanent idea of being determined upon the assumption that everything, any kind of difference, or categorisation that is ‘added to’ being is always already included in the being. In this scope there is no transcendental aspect of being. The idea is ‘neutral’, empty and abstract. It is neither a singular or a unified existing being, nor a universal or logically distinct intellectual being of reason; it is neither being nor a Being, neither particular nor universal, neither wholly real nor wholly ideational; Scotist being is, to reiterate, pure potentiality or power.<sup>180</sup>

In addition to conceptualising being in a purely immanent way, Scotus determines the temporality of being or sets the foundations of how the immanent idea acquires a political and social (transcendent) dimension. This is something Deleuze takes advantage of when talking about ‘the becoming’, the body or desire as the transcendent images of immanent thought. Scotus battles out the difference between infinite and finite being on the distinction between the identity and the non-identity. The non-identity is the immanent realm, which can by virtue of power bring together the identity and the difference without the formation of hierarchies between beings.<sup>181</sup> Hence, the non-identity is an infinite power that is common to all forms of existence. It is being as an infinite category (like an immanent idea); but with a possibility of turning finite by acquiring identity. However, the becoming of being into finite existence is a process of pure chance or an act of a free will.<sup>182</sup> As such it has nothing to do with a materiality of being, it is only a pure idea. After the immanent idea of being acquires identity it becomes finite; yet it is interesting to see what happens to power or the potentiality that is then embodied in such a finite being. As such, of course, it continues to persevere, but

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<sup>179</sup>Catherine Pickstock, ‘Duns Scotus: His Historical and Contemporary Significance’, *Modern Theology* **21**, no.4 (2005): 545.

<sup>180</sup> Catherine Pickstock, *After Writing: On the Liturgical Consumption of Philosophy* (Oxford, Malden: Blackwell Publishers, 1998): 124.

<sup>181</sup> Éric Alliez, *Capital Times: Tales from the Conquest of Time* (Minneapolis, London: University of Minnesota Press, 1996): 233.

<sup>182</sup> Pickstock, ‘Duns Scotus’, 557.

in the moment one form of existence dies, it is transformed back into the realm of immanence and pure potentiality. In such a logic of the world, no power can ever be lost or go to nothing.

The account of being Scotus offers radically determines further thinking of being and existence. His ideas of one unifying essence, a temporal division of being based on a distinction between the identity and the non-identity, and an act of free will potentially leading to the emergence of a form of existence all testify to the revolutionary potential Scotus's ideas had at the time. Although his explanations do not become predominant, they make a significant impact on the way Spinoza reasons the described concepts. The monist notion, which does not determine the essence and the existence as two radically different aspects of being-ness, and a notion of power common to all forms of existence continue occupying a central place in the emerging thought of Spinoza.

### Immanence, *Conatus* and Desire

How is a Scotist idea of power as an immanent force then understood by Spinoza? Spinoza makes a radical intervention into the notions of being-ness that existed in his time. It is safe to say that Spinoza's being is no longer solely dependent on and subordinated to God; instead the independence of being derives from human reason. By that Spinoza did not deny the existence of God, instead God or Nature, which are directly or indirectly the cause of all things, are self-created.<sup>183</sup> To articulate this differently, as main creators, they are immanent to the creation or the system (this is something arguably taken from Scotus).<sup>184</sup> The origin of things, as Stuart Hampshire – probably the most prominent commentator on Spinoza's work in British philosophical circles – explains, is not to be found in an act of will, but rather in a rational order, which constitutes God or Nature.<sup>185</sup> For Spinoza then, as Hampshire observes, God or Nature represent an infinite substance, which within itself includes everything that exists.

Of course one has to acknowledge that there are limits in Spinoza's thought that might be preventing us from extending the notion of omnipresent power beyond human being. However, it has to be acknowledged that Spinoza's thought does not focus on human

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<sup>183</sup> Stuart Hampshire, 'Introduction', in Benedict de Spinoza, *Ethics* (London: Penguin Books, 1996): vii.

<sup>184</sup> Hampshire, 'Introduction', vii.

<sup>185</sup> *Ibid.*, viii.

being alone. In fact, Spinoza does not know the distinction between animate and inanimate things.<sup>186</sup> For this reason human beings might indeed be more complex, yet as such they are no different from any other form of existence. What makes such a claim possible is Spinoza's metaphysical position, by which all forms of existence share the same essence, the same being. Spinoza of course creates a hierarchy within an idea of being, yet despite the hierarchy, Spinoza's beings have all one commonality, from top to bottom of the scale of complexity, all forms of existence strive to preserve themselves.<sup>187</sup> This perseverance or a striving for life – Spinoza calls it *conatus* – becomes essential in understanding the less 'human-centred' readings of Spinoza. There are different interpretations and takes on whether Spinoza can be read in a non-humanist way; different answers are given. Etienne Balibar, for example, would argue that a non-humanist reading of Spinoza is false; whereas Antonio Negri embraces the non-humanist potentiality in Spinoza. I go with the latter – Negri's position. This non-humanist reading sees striving or *conatus* as central to the forms of life or being-ness in the world.

*Conatus* is a very important, yet equally peculiar idea. Spinoza sees it as a force of being, or the actual essence of the thing.<sup>188</sup> This makes it a force inherent to every form of being-ness. It is nothing substantial or material, but a pure force or a form of existence. In some readings of Spinoza, such as for example those of Balibar and Negri in particular, *conatus* relates to desire;<sup>189</sup> not as a desire for something, but rather as desire *as such*, desire in its purest sense. This is also an interpretation adopted by Deleuze. *Conatus* seen as a desire is then something present in all forms of existence and hence enables the persistence or particular expressions these forms of existence embody. Yet, the persistence is not absolute, as no form has the power to preserve itself in the infinite. Thus, desire is also an expression of one's finitude. However, there is a catch. If desire is thought in its pure immanent form, a form that goes above the plateaus of 'individuation'/subjectivation or coming into existence, it can also be seen as an infinite force that is in a constant process of change. This notion of desire demands a particular non-humanist reading of Spinoza. Here 'essence' no longer relates solely to the general idea of humanity as an abstract concept under which all individuals are subsumed and their differences neutralised. Neither does it refer solely to the power that singularises

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<sup>186</sup> Ibid., ix.

<sup>187</sup> Ibid., x.

<sup>188</sup> Negri, *The Savage Anomaly*, 146.

<sup>189</sup> Etienne Balibar, *Spinoza and Politics* (London, New York: Verso, 1998); Negri, *The Savage Anomaly*.

each individual determining its unique destiny, though it comes closer to that latter formation. The expression of an anti-humanist reading of desire gets manifested in the immanent, where a pure idea of life or being-ness, in whichever form or however it is perceived and later expressed, is preserved. These notions, however, do not imply universal ideas of life or essence. Every form of existence, although part of some larger idea of the world or the ordering of the world, is a result of its own singular desire. Yet, that particular force – *conatus* – powers desire. This, however, does not mean that all forms of existence should be the same or that all should desire the same thing. On the contrary, it is, as Balibar writes, ‘the relationship of each individual to other individualities and their reciprocal actions and passions which determine the form of the individual’s desire and actuate its power’.<sup>190</sup> From such an interpretation it becomes clear that one always strives towards one’s own self-preservation, own desires or goods. While one can desire cooperation with others, as Balibar explains, one does not desire others to be the same, to have the same desires, to act, think and behave like you.<sup>191</sup> In fact, no other can have the same desire as you. What one desires is the difference in others; to develop one’s own powers and know what is of use to the self.<sup>192</sup>

It is then precisely from such a notion of desire where all desires are different and where one desires the difference in others that the idea of freedom is born. For Spinoza the possibility or the idea of freedom is inherently connected to the nature of existence. In Antonio Negri’s reading of Spinoza freedom takes the form of singular being.<sup>193</sup> It is, as Negri continues, ‘the form of the singularity of man, insofar as it is the practical essence of the mind, in so far as it is the capacity to construct being. The mind and the will, intuition and freedom are the solutions to every antinomy of the absolute’.<sup>194</sup> Yet, the level of freedom is determined by one’s power measured not in their material possessions or social relations, but rather by their ability to self-preservation. The condition for freedom is then one’s self-preservation. The source of one’s strength is to persist in one’s desire (which is equally essential to Lacanian position); yet the desire can also be read as love or *cupiditas*. The presence of love will gain in importance later in the thesis, but for now it suffices to mention that Spinoza saw *cupiditas* as a constructive force, stronger than any other form of desire. It derives from joy, and as such ‘liberates’

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<sup>190</sup> Balibar, *Spinoza and Politics*, 108.

<sup>191</sup> *Ibid.*, 110.

<sup>192</sup> *Ibid.*

<sup>193</sup> Negri, *The Savage Anomaly*, 83.

<sup>194</sup> *Ibid.*

one from the dangers of servitude. *Cupiditas* is a force that persists in the open, and allows beings to flourish and develop in their own distinct and singular ways. *Cupiditas* facilitates the change of the metaphysical order. As such then, Spinozian understanding of being-ness in relation to the capacity or the ability to possess power, becomes central if one is to re-think the ‘human subject’, challenge the hierarchies between different forms of existence, and think being-ness within a different ‘ordering principle’.

Central to Spinoza’s thought is that being and existence no longer result from materiality or a form of physicality, but from power. The essence of man and all other beings is defined in relation to power. Deleuze takes Spinoza’s views and, because existence is being quantified in relation to power and to a degree of power defining it, he claims that power determines different ways of existence.<sup>195</sup> Spinoza, with his non-materiality and logic of thinking being-ness in relation to different degrees of power, opens an entirely new domain of how to relate and engage with the political and philosophical problems of existence or being-ness. It is their notion – power in the immanent – that inspired Deleuze (and Lacan) to first redefine those terms within a modern political imaginary, and later also develop transcendental images (the expressions of such power or intensities leaving traces on the political and the social) embodying this immanent thought for political and social action. After shedding some light on the background of Deleuze’s (and Lacan’s) immanent philosophy, I will move on to discuss political power formation, and the role power plays in Deleuze’s immanent philosophy – what then is the immanent idea of being for Deleuze?

## The Immanence of Life

Everything differs from us, and it is for this reason that everything exists.  
Fernando Pessoa, p. 223 (1995)<sup>196</sup>

It has become evident that the relationship between freedom and power is essential when thinking about being and other forms of existence. However, this relationship does not determine the capabilities, set the limits or a framework of what is one allowed to or capable of doing. Instead, it constitutes a particular yet different idea of being or being-

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<sup>195</sup> Gilles Deleuze, *Spinoza: Power and Classical Natural Rights*, Lecture from 8<sup>th</sup> December 1980, [[www.webdeleuze.com](http://www.webdeleuze.com)]. Accessed: 26 March 2010.

<sup>196</sup> Fernando Pessoa, *A Centenary Pessoa*, Eugénio Lisboa and L.C. Taylor, eds. (Manchester: Carcanet, 1995): 223.

ness in the world and indicates ways of how the idea of being makes an impact on the existing political and social.<sup>197</sup> To an extent this represents a detour from the way in which power and freedom are negotiated in current political discourse. Instead of power being commonly perceived as sovereign power, determining the extent of individual's freedom; when embedded in the very formation of being, power determines the essence of that being and the extent to which it can act. Clearly the view promoted here is in an opposition to the way sovereign power relates to its subjects. The relationship of sovereignty is a relationship in which the subject element is almost never an individual body. What I mean is that the character of this relationship either applies, as Michel Foucault would say, to multiplicities and not to somatic singularities, or to a specific aspect of individuality or singularity.<sup>198</sup> In other words, sovereignty either functions in relation to a community or orders a particular aspect of one's existence. In this way the sovereign power puts political power in contact with the body. It does not individualise bodies – see them one-by-one for what they are – but rather the sovereign outlines the individuality and preserves the multiplicity of bodies (a crowd).<sup>199</sup> This means that the sovereign power determines a relationship in such a way that one's freedom is determined by the amount of power the sovereign exercises or by the amount of power given out for an individual to possess.

An account of being-ness of the kind discussed here would of course pose particular challenges to the existing account of sovereignty. Deleuze, for whom it can be said to have pushed these ideas of being-ness furthest, developed alternative conceptions without directly challenging existing ideas of sovereign power. He has been able to do so, I would argue, because of a different form of engagement and thinking that he undertook when exploring alternative accounts of being-ness. That is not to say that those alternative accounts do not exist within and in the existing power relations, ideas of sovereignty or legal frameworks. They do, but despite holding a potential for alternative actions they remain insignificant or overshadowed. One way of uncovering those shadowed practices and exploring different ordering logics or forms of existence is through writing. It should not be surprising to learn that Michel Foucault, Jacques Lacan, Gilles Deleuze and Maurice Blanchot all produced studies of somewhat 'eccentric'

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<sup>197</sup> Being-ness is understood as a state of being.

<sup>198</sup> Michel Foucault, *Psychiatric Power: Lectures at the Collège de France 1973 – 1974* (New York: Picador, 2008): 44.

<sup>199</sup> Foucault, *Psychiatric Power*, 45–6.

literary figures such as Fernando Pessoa, James Joyce, Jorge Luis Borges, Samuel Beckett and William Faulkner. Their work breaks rules of language with one purpose in mind: to test the limits of reality and to think what is ungraspable or unthinkable in the existing dominant discourse.

That which cannot be comprehended within existing language rules, or in one way or another transgresses the limits of representation is known as the 'thought of the outside'. The thought of the outside and with that also an alternative conception of being-ness and law depart from the common narrative. The 'representation of the outside' is dense, intertwined with speaking, observing. It is a disjunction between speaking and seeing, and it has no particular order, with no clear beginning or end, inside or outside, or firm form of representation.<sup>200</sup> The 'thought of the outside' in fact creates the possibility of life in two ways. It is an expression of being and a form of existence present in that particular moment, as well as an idea of life in its purest form (prior to the intervention of law or any other form of social convention or subjectivation). The intervention of law 'closes down' the unlimited possibilities in which being can develop, and closes down the ocean of expressions in which being can be manifested or which can represent the being within a particular context. Once the law is present, Foucault argues, the subject of law becomes life, and in political realms this life was replaced by man, then man was subjugated to law, and law enslaved the right to life, to one's body, to health and to happiness.<sup>201</sup> As a result of this suppressive logic of subjugation of being/life, Foucault calls for a liberation of life, which is enslaved by law and man.<sup>202</sup> The life/being is like a rainbow; it is power resisting situations in which the sovereign order takes life for its object. When power takes over all aspects of life/being, when it turns into a bio-power, in that moment the only resistance left is the power of life/being, a vital power that cannot be confined within species, the environment or the paths of a particular diagram.<sup>203</sup> The line of the outside towards which life/being strives, is a line determined when life/being can no longer be 'gauged by relations between forces'.<sup>204</sup> At the place of this fissure, Deleuze writes:

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<sup>200</sup> Gilles Deleuze, *Foucault* (London, New York: Continuum, 2006): 72.

<sup>201</sup> Deleuze, *Foucault*, 75.

<sup>202</sup> Ibid.

<sup>203</sup> Ibid., 77.

<sup>204</sup> Ibid., 100.



The line forms a Law, the “centre of the cyclone, where one can live and in fact where Life exist par excellence”. It is as if the accelerated speeds, which last only briefly, constituted “a slow Being” over a longer period of time. It is like a pineal gland, constantly reconstructing itself by changing direction, tracing an inside space but coextensive with the whole line of the outside. The most distant point becomes interior, by being converted into the nearest: life within folds. This is the central chamber, which one needs no longer fear is empty since one fills it with oneself. Here one becomes a master of one’s speed and, relatively speaking, a master of one’s molecules and particular features, in this zone of subjectivation: the boat as interior of the exterior.<sup>205</sup>

For Foucault a being that frees the life/being within itself and is opened to all possibilities and permutations, is called a ‘superman’.<sup>206</sup> The superman is then a compound and a result of forces within man and new forces from the outside. It is, as Deleuze summarises, ‘much less than the disappearance of living man, and much more than a change of a concept: it is the advent of a new form that is neither God nor man and which, it is hoped, will not prove worse than its two previous forms [God and subject]’.<sup>207</sup> As such, superman is not a being or a life to come. It operates in the time of now, it is present and attainable to everyone. A ‘superman’ represents an alternative conception of existence. It departs from ‘traditional’ conceptions of existence and in particular the subject seen as a form of existence always already embedded in political and social frameworks. A superman is most visible when life and traditional forms of subjectivity are put under question and challenged. Foucault, Deleuze and Lacan would say that the new form of life/being is something capable of an error.<sup>208</sup> In other words, it is something that can transgress the limits of its existence – frameworks which the dominant discourse set upon life or being – yet remains what it is, a form of existence. To push this further, one could see this being-ness to be inherent in any kind of theorisation and the interplay between the political and social discourses. No matter what circumstances or changes appear, or how they determine and reshape the world, this being-ness is always already present. In the context of political struggles such ideas imply that no matter what the situation is, everybody and everything ‘embodying’ this immanent form of life/being cannot be degraded from positions, duties and rights that it holds. In this sense, the social and the political status of such forms of existence, their duties and rights are inherent in their existence as such, and their existence as human beings, citizens or subjects of law, or plants, rocks or animals (although here distinctions

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<sup>205</sup> Ibid., 100 – 1.

<sup>206</sup> ‘Superman’ is an alternative form of existence, similar to LOM.

<sup>207</sup> Ibid., 110.

<sup>208</sup> Agamben, ‘Absolute Immanence’, 220.

between these different forms of being based on biological characteristics no longer apply).

### The immanent conception of life<sup>209</sup>

Thinking life/being along the lines described above and banning distinctions between different species cries for a rethinking of the 'genesis of thought' or a rethinking of the questions of what it means to exist. This is not a question of what it means to exist as a human being, or one's existence in the social and political realm, but rather what it means to exist *as such*. To relate this discussion to the previous section, this also raises a question of the type of being embodied in the form of a superman? The question of existence is here clearly central. Deleuze addressed it in a very interesting way when discussing micropolitics. As such micropolitics combines all pre-human forces and 'intensities' that make up the image of man. Life, in this context, is not a human life but a force or a desire that make something to persist in its current form. Deleuze's life/being is similar to Spinoza's *conatus*. It is a swarm of intensities and numerous possibilities from which we order and understand things. Our perception of a certain thing, or even of a person or their individuality, is nothing other than a combination of intensities from which we order and perceive things.<sup>210</sup> In this context, the way we perceive another person depends on our ideas and character, on the way that person walks, speaks, behaves etc., and not on their 'life' or on their 'body' *as such*. Thus, we do not see others for what they are, rather our perception of them is limited to the pool of experiences and ideas we have on offer. If a particular social context offers only two possibilities, i.e. to see the sky as white or blue, we are inevitably incapable of seeing the sky as anything else but white or blue; that regardless of the fact that the sky occasionally might be yellow, grey or of any other colour. In this context life is not seen as an immanent force underlying forms of existence, but as a particular conception of life, expression of life, embodied in a transcendent body.

A particular form of life embodied as a modern subject relates to the Oedipal form of desire discussed in Chapter Two.<sup>211</sup> Deleuze aimed at liberating life from Oedipal desire

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<sup>209</sup> Here, due to Deleuze's own terminology, I often talk about 'life' instead of 'being'. However, both terms are describing the same concept.

<sup>210</sup> Claire Colebrook, *Understanding Deleuze* (Crows Nest: Allen&Unwin, 2002): 85.

<sup>211</sup> It is worth noting that Deleuze opposed traditional Freudian psychoanalytical theory of Oedipus, hence his book *Anti-Oedipus*.

by exploring life in a purely immanent way. As Deleuze writes, absolute immanence in itself: ‘is not in something, to something; it does not depend on an object or belong to a subject’.<sup>212</sup> When immanence is no longer immanence to anything other than itself, then as Deleuze would argue, we can speak of pure immanence.<sup>213</sup> This is similar to life; when life ‘exists’ only for itself. When life is no longer a life for something, a form of life embodied in a particular being, but a life in itself, then and only then, we can speak of a pure life or a life *as such*. Pure immanence, in that sense, is life and nothing else. ‘It is not immanence to life, but the immanence that is in nothing is itself a life. A life is the immanence of immanence, absolute immanence: it is complete power, complete bliss’.<sup>214</sup> To illustrate this rather complex point, when talking about the abstractness of pure life Deleuze uses the example of death. He writes that between life and death there is a moment that is only that of a life playing with death.<sup>215</sup> For example, when someone’s life is in danger, it is its life people try to save and not that person’s body, personality, subjectivity or behaviour, despite that those are the characteristics we associate with that person’s life. In the moment of ‘death’ those characteristics become irrelevant, it is only life that is put on the line. In the language of life there is no good or evil, bad and good, it is only pure absence or presence of life. Deleuze wrote: ‘the life of such individuality fades away in favour of the singular life immanent to a man who no longer has a name, though he can be mistaken for no other. A singular essence, a life...’.<sup>216</sup> Here it is crucial to acknowledge that for Deleuze life is separated from the body, subjectivity or individuality – it is a force of de-subjectivation and de-individualisation; it is ‘what is most peculiar or singular about us’.<sup>217</sup> Life is not placed in any moment in time or particular embodiment; it can be seen everywhere – ‘in all the moments that a given living subject goes through and that are measured by given lived objects: an immanent life carrying with it the events of singularities that are merely actualised in subjects and objects’.<sup>218</sup> In such de-subjectivised and de-individualised movement, life shines in all its glory. In a living being, life is either present or absent. It functions as a force, self-preservation, without characteristics, outside social obligations or norms. It is an immanent force, a flow fluctuating between the immanent and the transcendent. On the

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<sup>212</sup> Gilles Deleuze, *Pure Immanence: Essays on Life* (New York: Zone Books, 2002): 26.

<sup>213</sup> Deleuze, *Pure Immanence: Essays on Life*, 27.

<sup>214</sup> Ibid.

<sup>215</sup> Ibid., 28.

<sup>216</sup> Ibid., 29.

<sup>217</sup> John Rajchman, *The Deleuze Connections* (London: The MIT Press, 2000): 84.

<sup>218</sup> Deleuze, *Pure Immanence: Essays on Life*, 29.

occasion of death, life does not disappear; the force persists in another, different shape. It is not lost; it only transforms into a different expression.

Such conceptualisation of life is ‘metaphysical’ as it places life outside social conventions and power relations. It is understood as life *as such*, as a force or a power in itself. The life of this kind is then exempted from the ‘social’ realms of the Symbolic or the Imaginary. In Deleuzian terminology, life contains only the virtual, in Lacanian terminology the Real. By the nature of the Real then, life in the Real is seen as a flow (or line of flight); it can actualise itself in an infinite number of ways.<sup>219</sup> There is nothing limiting life’s expressions or its embodiments. The life of the Real/virtual is a singularised life; it is particular to that each and every embodiment. When actualised in a particular form, it remains singular, as it belongs to that particular embodiment of being only. It gives being its singularity/specialness and reality – it brings being into life for what that being is, without attaching any kind of personality or quality to that being or life.

So, how then is one to think of our pre-individual or pre-social being in terms of space and time? What are the implications of such thought for the realms of the social and the political? These are, I suppose, the most important questions. By posing these questions, we transfer from the one side of Deleuzian thought, which deals with the idea of life or being *as such*, into a part that aims to read life/being within a community or within a particular social and political context. The representation of this idea of community is particular and distinct from any existing form of sovereign power; this is so because as such the new idea of the social, the political and the form of community has to facilitate for the ‘coming-together’ of the aforementioned ‘singular selves’ and let them exist as such without imposing common ‘representations’ or ‘imitations’ of one (sovereign) power to which all need to subjugate.<sup>220</sup> Spinoza’s idea of a community of these singular essences is a multitude, whereas as John Rajchman suggests, Deleuze found a solution in the idea of an ‘Earth’. For the Earth, Rajchman argues:

is supposed in thinking of ourselves as singular modes of being that are not localising and identifying, but on the contrary, something formless, uncentered, subsisting within the borders of our ‘territorialisations’. To make it the source of an ‘ethos’, to learn to be ‘at home’ in it, then, is to see oneself as native of it prior to the identifying territories of family, clan,

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<sup>219</sup> Slavoj Žižek, *Bodies Without Organs: On Deleuze and Consequences* (New York and London: Routledge, 2004): 3.

<sup>220</sup> Rajchman, *The Deleuze Connections*, 94.

nation, and so to see oneself as a kind of stranger to the 'self' given by such identifications. It is to learn to be at home rather in 'a life' – in one's splendidly impersonal unconscious – developing a sort of *savoir faire* with it.<sup>221</sup>

Such 'belonging' to a pre-personal community is not an impossibility, yet it requires external strategies as to how one is to speak about 'I' or 'we' in ways that do not rely on identification or representation.<sup>222</sup> The temporal dimension of such existence, or life/being, is 'the time of the city' or the time of Aion – the time of now.<sup>223</sup> I argue that life/being negotiated within different forms of existence can justly be represented only in moments of enquiry; and that a wider transformation, justification or generalisation do injustice to life and effectively lead to the disappearance of its singular status. In this section, I therefore presented one way of how one is to think life as an immanent force inhabiting and constituting each and every expression in the world. Life is a force which is singular and multiple at the same time, in the same way as the philosophy and type of ontology to which the conception of life belongs.

The final and most difficult question we need to face now, as indicated in the final aspects of this section, is how one is to talk about such open expression of life and living in common, in the transcendent and hence in the political, legal and social realms. How is one to talk about the 'I' and the 'we' justly in the transcendent? So far in the chapter we have dwelt on an immanent idea of being. The most important lessons taken from that discussion are: that such immanent monist being no longer knows the difference between the body and the mind – both categories might well exist, but they are only different variations of the same essence; that the essence common to all forms of existence deriving from the presented conception of being presented is power or *conatus*; and that power is infinite until it acquires an 'identity' or other qualifications. The Deleuzian idea of an immanent life as well as Lacan's notion of desire resemble the very same characteristics of this immanent and monist thinking. The next step – the construction of an alternative account of being – is then how to think this immanence in the transcendent; in other words what intensities determine the new being and how it is expressed in its forms of existence. In the next section I will theoretically address this

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<sup>221</sup> Ibid., 95.

<sup>222</sup> Ibid., 97.

<sup>223</sup> Ibid., 111.

transformation from immanence to transcendence, before broadening the scope of discussion in a political context in Chapter Four.

### **‘Transcendental’ Images of ‘Immanent Thought’**

There are many different ways one can write about being and existence. The account presented here is only one amongst many, but it is certainly also one that is in stark opposition to the commonly prevailing idea of *cogito* and the body/mind division common to the Cartesian subject and the notion of subjectivity within current legal discourse. Deleuze (mostly in his writing with Guattari) and Lacan provide us with ideas which give a thorough account of ‘immanent ontology’ and ‘being’ whose forms of existence are left in the realm of the Real or the contingent. By this I understand that being is not determined by social practices, social and political identifications, desire, ordering principles and normalising categories. Such being, however, might indeed be best theorised in the immanent, yet as I am about to show, it can also be conceived of in political and social realms. In order to comprehend this being in ‘the actual world’ one has to let go of the constraint and normalising practices that being encounters or is subjugated to when it ‘enters’ society; or when it becomes ‘one amongst many’. Such being, or in Deleuzian terms ‘a becoming’, can be thought on a number of different spectrums. For the purpose of the arguments made in this chapter, I will discuss how ‘new being’ is expressed as the becoming, the body, desire, language, and notions of the self. These are all alternative ordering principles. The ideas mentioned make for a transcendent embodiment of immanent being. Each of them represents its own logic of ordering a particular expression of an immanent idea. It is impossible, however, to draw lines between these different forms of ‘expression’. In the fashion of the philosophy discussed – the philosophy of becoming or nothingness – all these expressions are in a constant process of transformation; in one moment they appear as a body without organs, later as a particular embodiment or expression of desire. The ideas discussed here all embody a different ordering principle and equally facilitate different forms of expression. In the following discussions, I will, however, emphasise one aspect of the work they do. The focus in discussions of becoming, the body and desire is on the embodiment of a different ordering principle, whereas the discussion of language and the

*sinthome* leans towards/or focuses on different forms of expression. This is an important distinction, albeit one which is difficult to make.

### The becoming

The discussion of a Deleuzian immanence of life pointed to the direction in which one should be thinking about the embodiments of new being. The 'logic' and ideas presented are immanent, thus, the question is how one can think these immanent ideas in the transcendent. Deleuze and Guattari offer one answer in their book *A Thousand Plateaus* where they discuss ways of being, belonging and relations between one another and the society in the idea of 'becoming'.<sup>224</sup> The idea of becoming as such facilitates many practices that all work in the space between immanence and transcendence. The idea can also be seen as a 'master signifier' or an 'overarching category' for all the processes, ways of thinking and orderings that are common to the thinking of being and law discussed in this chapter and the previous one. In the light of the ontology discussed earlier – one of being singular and multiple at the same time – the becoming can be understood as a multiplicity. In fact Deleuze and Guattari argue that multiplicity and becoming are the same thing.<sup>225</sup> For example they argue that: "The ontological priority of becoming [...] is reflected in the fact that assemblages are defined not by their forms of conversation but by their forms of modification or metamorphosis, by their "cutting edges of territoriality".<sup>226</sup> In other words, it is not a relation that determines being and its structure, but rather various modifications and repetitions that occur on a being's 'life-path'. Paul Patton discusses these transformations of beings. For him differences emerging in the process of becoming are a result of a constant testing of boundaries and the limits of subjectivity – these differences result from constant territorialisation, reterritorialisation and deterritorialisation. Everything – being, form of existence and society – is in constant process of change; nothing and no-one is exempted from this change. Hence, as Patton argues, 'there is no person and no society that is not conserving or maintaining itself on one level, while simultaneously being transformed into something else on another level'.<sup>227</sup> Clearly, this suggests that becoming affects being and

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<sup>224</sup> Gilles Deleuze and Felix Guattari, *A Thousand Plateaus: Capitalism and Schizophrenia* (London, New York: Continuum, 2008).

<sup>225</sup> Paul Patton, 'Becoming-Animal and Pure Life in Coetzee's *Disgrace*' [<http://ariel.synergiesprairies.ca/ariel/index.php/ariel/article/viewFile/3891/3828>]: 103. Accessed: January 24 2011.

<sup>226</sup> Patton, 'Becoming-Animal and Pure Life in Coetzee's *Disgrace*', 103.

<sup>227</sup> Ibid.

its forms of existence on different levels and associations. The two most common levels are the molar and the molecular. The molecular is the level expressing how different forms of existence come into existence in the first place; whereas the molar is the level of society or multiplicity. Thus, forms of existence, the social and the political (and also the subject) consist of a multiplicity of constantly changing and reshaping molecular formations. Radical changes therefore occur on the molecular level; on the level in which the becoming (as well as the body or desire) operate. The changes here are, as Deleuze and Guattari point out, simultaneous 'to the eruption of events, which inaugurate a new field of personal, social or affective possibilities. These are turning points in individual lives or in history after which some things will never be the same as before'.<sup>228</sup> All these turning points shaping different expressions and different forms of being are spaces where changes to the forms of existence, the social and the political occur. There is no stopping for change; the question, however, is whether these changes have the power of manifestation on the plane of the social and the political. Some do, while others remain locked in molecular realms.

When thinking of becoming, it is most important to acknowledge that becoming does not grade different forms of existence, identities or formations resulting from the becoming. In *A Thousand Plateaus* Deleuze and Guattari write that: 'A becoming is not a correspondence between relations. But neither is it a resemblance, an imitation, or, at the limit, an identification. [...] To become is not to progress or regress along a series'.<sup>229</sup> There is no hierarchy in the becoming, nor is there spatial or temporal direction. In this context becoming has to be seen as a pure process of change and transformation without a sense of direction or a purpose of achieving a better or a higher form. Whilst no identity or qualitative category can be associated with becoming nevertheless, becoming is understood as a positive force travelling from one transformation to another while lacking anything that is or can be distinct to it.<sup>230</sup> Only that which is in the immanent, of course, can have such transformationist and non-determinist characteristics. The becoming then forms bondages, or constructs affiliations or alliances with a range of different even incommensurable beings. Plants, animals, micro-organisms, mad particles, galaxies etc. are all put together with no particular logic, order or hierarchy.<sup>231</sup>

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<sup>228</sup>Ibid., 103–4.

<sup>229</sup>Deleuze and Guattari, *A Thousand Plateaus*, 262.

<sup>230</sup> Ibid.

<sup>231</sup> Ibid., 275.



The 'co-existence' of many dissociated aspects or the symbiosis of unrelated particles on the grounds of radical equality is what Deleuze and Guattari have in mind when writing of the becoming. However, there are a few major and important differences between the current order and community and what Deleuze and Guattari have in mind. For them the 'communities' or 'cosmos' of different becomings are not based on common identities, imitations or subjugation to one sovereign power or ordering principle. Rather, as they write, 'starting from the forms one has, the subject one is, the organs one has, or the functions one fulfils, becoming is to extract particles between which one establishes the relations of movement and rest, speed and slowness that are closest to what one is becoming, and through which one becomes'.<sup>232</sup> In this sense, the becoming is nothing less than a process of a constant invention and reinvention of 'the self'. The difference created in this process, or the force facilitating this process, is then also precisely what facilitates the possibility of a community between such dissociated particles. Central to the constant movement and change is then the force or desire. Yet, this is not a desire for something or for some particular object or person, but desire *as such*, as an ordering principle, as a positive force making the world. It is a desire that as its philosophy is one and multiple at the same time; it is an ordering principle and a force behind one's expression of being-ness. Desire *as such* strives towards making 'one/person' nothing more than an abstract line, or a piece in a puzzle that is itself abstract.<sup>233</sup>

It is in this sense that becoming-everybody/everything makes the world a becoming, is to world, to make a world or worlds, in other words, to find one's proximities and zones of indiscernibility. The Cosmos as an abstract machine, and each world as an assemblage effectuating it. If one reduces oneself to one or several abstract lines that will prolong itself in and conjugate with others, producing immediately, directly *a* world in which it is *the* world that becomes, then one becomes-everybody/everything. [...] One is then like grass: one has made the world, everybody/everything, into a becoming, because one has made a necessary communicating world, because one has suppressed in oneself everything that prevents us from slipping between things and growing in the midst of things. One has combined everything (*le "tout"*): the indefinite articles, the infinitive-becoming, and the proper name to which one is reduced. Saturate, eliminate, put everything in'.<sup>234</sup>

We have encountered such exposition of the world where everything derives from one idea of being in the previous section. A world of this kind is a world dominated by life as

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<sup>232</sup> Ibid., 300–1.

<sup>233</sup> Ibid., 308.

<sup>234</sup> Ibid., 309.

a potentiality, or life *as such*. It is life – as it is being – that is not ‘the lowest common form of life shared by all living things, but rather “a principle of virtual indetermination, in which the vegetative and the animal, the inside and the outside and even the organic and the inorganic... cannot be told apart”’.<sup>235</sup> Here life is seen as a potentiality – a metaphysical opening, being-ness, a positive force – rather than as a ‘simplest form’ of biological life (bare life) shared with all forms of existence.

To speculate on the broader impact of this idea of becoming; for example, the subject of human rights or the subject of law in the current political and legal imaginary, with characteristics (such as being rational, responsible, as well as male, straight, Western, and white) common to political and legal discourse, is a fantasmatic construction. The Deleuzian idea of ‘becoming’ refers directly to such fantasmatic constructions and challenges their supremacy, but not by directly opposing them, but rather by creating another being, a form of existence that is no longer a subject frozen in a particular moment with all its stable characteristics, but rather being that is in constant process of becoming, e.g. becoming-minor, becoming-child, becoming-women, becoming-animal etc. As Patton in his thought on becoming-animal and pure life writes: ‘In so far as the subject of modern European society and political community, the subject of rights, duties and moral obligations, is human, adult, male and mostly white, then animals, children, women and people of different colour are minorities. Moreover, it follows that becoming-animal, becoming-child, becoming-women and becoming-coloured are potential paths of deterritorialisation of the “majority” in this non-quantitative sense of the term’.<sup>236</sup> In other words, becoming-animal/child/women/minority opens up the possibility of a different ordering of the world. The becoming makes molecular changes possible on the molar scale. It opens up closed forms of existence, e.g. the subject, the animal, the human etc., to the potentiality of becoming something else; of transforming their existence again and again; and of reinventing themselves as a new form of existence. Being in such becoming then escapes any attempt of being determined by the law or an ordering of any other kind. Being in this mode of becoming is a way of escaping any attempt to be determined by the law or by an ordering of any other kind.

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<sup>235</sup> Patton, ‘Becoming-Animal and Pure Life in Coetzee’s *Disgrace*’, 101–2.

<sup>236</sup> *Ibid.*, 104.

## Body

‘I must have a body, it’s a moral necessity, a “requirement”. And in the first place,  
I must have a body because an obscure object lives in me’.<sup>237</sup>  
Patton, p. 101–2 (n. d.)

Apart from the becoming, what other ‘transformative ideas’ represent being in the transcendent? One of them is the body. The above quote is Deleuze’s observation of Leibniz’s thought on the body and ‘the fold’. From reading this passage, it becomes clear that the body and ‘the obscure object inside me’, i.e. the mind, form a particular mutually dependent relationship. However, as Deleuze points out, in this relationship the body does not serve as a representation or an embodiment of the mind.<sup>238</sup> On the contrary, the quotation indicates an important shift in the representation of being, in which mind is seen as an object inhabiting the active agent of the body. The notion of the body that is in question here concerns two major aspects: What is the body? (Or, to put it another way, what constitutes the body?) What is the thought about the body? Both aspects demand a new way of thinking and understanding the body, its environment, relationships and its potentiality.<sup>239</sup>

How then is one to think of the body in such a different context? Firstly, the body is always of the order of becoming. It is not something ‘given to us’, but rather something ‘one becomes’ or something that is always in a constant process of becoming. It is essential to understand the role becoming has in the thought of the body; that is because becoming indicates two major shifts in ways in which the body is perceived and expressed. The first shift has ‘metaphysical’ origins, whereas the second concerns political aspects. I shall elaborate on the metaphysical aspect first. A metaphysical manufacturing of the body as a becoming takes us back to Spinoza and the limitlessness of his thought. Spinoza said that we cannot know what a body can do;<sup>240</sup> perhaps a simple statement, but one of major significance. To fully understand the implications of the statement one has to recall the discussion of Duns Scotus and Spinoza made earlier in this chapter. There I observed that Scotus’ and Spinoza’s monist thought – that there is one single essence – allows for an anti-Cartesian thinking of the self. Despite that

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<sup>237</sup> Gilles Deleuze, *The Fold: Leibniz and the Baroque* (London, New York: Continuum, 2006): 97.

<sup>238</sup> Deleuze, *The Fold*, 97.

<sup>239</sup> For a very interesting discussion of body and war see: Laura Guillaume, *War on the Body: Dramatising the Space of the Unknown*, PhD thesis, Department of International Politics, University of Wales, Aberystwyth, 2009.

<sup>240</sup> Deleuze, *Expressionism in Philosophy*, 255.

everything originates from one substance that is not to say that all things in the world are the same. On the contrary, there is a great variety of things in the world. In fact each and every thing is different from another, yet the difference does not derive from their essence, but from their ‘expression’, mode of existence or their embodiment.<sup>241</sup> Earlier I noted that this has to do with a particular ‘individuating desire’. According to this logic of individuating desire, the body has multiple expressions. Its expressions are constantly changing depending on the various forces determining the body; and making it impossible to determine the character of the body. Moreover, it is not only the expression of the body that is multiple, but such is also its character. The body, for Deleuze and Guattari, is ‘a space’ of intensities, ‘only intensities pass and circulate. [...] It is not space, nor is it in space; it is matter that occupies space to a given degree – to the degree corresponding to the intensities produced’.<sup>242</sup>

The body Deleuze and Guattari talk about here is not a body with organs and materiality. The organs in the body never work in ways which would transform body into an organism where each part – organ – does its assigned function. For Deleuze and Guattari, ‘the body is the body. Alone it stands. And in no need of organs. Organism it never is. Organisms are the enemies of the body’.<sup>243</sup> Clearly Deleuze and Guattari’s ideas of the body depart from any common understanding of the body. Instead of it having a material form serving a purpose of the mind or performing particular physical functions determined in advance – for Deleuze and Guattari the body is only an expression of ‘something’ that is not necessarily material; it is a presence measured by effects it can produce (measured by the impact it has on bodies or other forms in its surroundings). The body in question cannot be a ‘human body’ or any other type of body, but a range of expressions, effects operating under no particular logic. Of course this body can come in a form of a human body or an animal body or a machine; however, the form in which the body comes is unimportant, what matters are the effects it produces and the impact it leaves behind. The more the body comes closer to Deleuze and Guattari’s understanding, the representation of what makes for a body, or what creates a body becomes more abstract, more uncommon, more unstable and more un-like the body.

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<sup>241</sup> See for example: Deleuze, *Expressionism in Philosophy: Spinoza*, *Spinoza: Practical Philosophy*; Negri, *The Savage Anomaly*.

<sup>242</sup> Deleuze and Guattari, *A Thousand Plateaus*, 169.

<sup>243</sup> *Ibid.*, 176.

A 'political' metaphysical aspect of becoming transgresses determined categories constituting the body, its capabilities and its functions. The categories determine what constitutes a body of a particular category and gives judgement on whether this is a normal body within a particular category or a deviant body. For example, the category of a human body determines which bodies fall short of attributes necessary for a body to be seen as part of a human category. Yet, it is not the body as such that is enough of a qualifier. There has to be something 'more' that determines 'the fully human' category. That 'more' no longer makes distinctions between species: animal-body, cosmic-body, dog-body etc., rather it operates within its category of for example human, animal, cosmic etc. However, there are always bodies that are not fully part of one category because there is something in that body that transgresses the category or that does not quite fit into its limits. For example, bodies that are not fully human bodies are women-body, child-body, schizo-body etc. Those bodies are deviant bodies, determining the limits and falling outside the limits of the 'fully-human' category. It is through deviant bodies, or bodies that are not fully part of their category, that one can think outside or beyond categories. A way in which one does that is precisely by seeing the body and the becoming as one; as becoming-women, becoming-child, becoming-animal. That does not imply an actual resemblance of an animal, woman, or a child, but rather a becoming that is manifested as a sensibility for these minoritarian representations. The becoming asks that the body do away with categories and internalised practices, and becomes itself, to find its own mode of expression in every given moment of time.<sup>244</sup> This process of becoming never ceases under time and events call for constant variations in bodily expression.

Apart from metaphysical becoming, the second shift portrays a political aspect of the body; an act which makes the body political. The body is not a playground for the political and 'power politics', although prevailing comprehensions of the body might lead us to believe it is. On the contrary, the body is a product of the political and its manifestations of power. The structure and ways in which we understand and go about understanding our own bodies is a product of political and social formations one is part of. To think body as a primary agent, one has to give up on categories and normalising practices that determine socially and politically acceptable, normal or healthy bodies and their place in the political realm.

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<sup>244</sup> Ibid., 262.

However, this is easier said than done. For Deleuze and Guattari, identities alongside political, social and power relations are inscribed on bodies. Bodies make these relations real. Bodies embody ideas of domination, repression, control or subjugation.<sup>245</sup> Yet, in modern societies bodies are so well self-regulated that they no longer need violent, external pressures ensuring their compliance. The internalisation of laws and regulations does the job sufficiently. Ultimately, such internalisation of norms and practices constructs a category of what is a normal image of the body. This has two consequences; firstly, as a result of the internalisation of social and political practices and norms, the body is not ‘a product of nature’ or a materialised embodiment of the mind, but ‘a social construct’; and secondly, the body has to be of a particular kind, or within certain limits in order to fall within the framework denoting ‘the normal’.

The implications of both consequences explained above are significant. The first consequence questions the old Hobbesian divide between nature and artifice. If politics with all its social and legal institutions and practices is perceived as a social construction or an artifice, then logically, the object of this politics should be something from the ‘natural spectrum’. However, assuming that Deleuze and Guattari are right in their analysis of the body as a social construct and a product of ‘the political’, the body as such cannot be of the order of nature, but belongs to the same category of the artifice. The problematisation of the relationship between the body and the political then reopens the old Hobbesian – essentially political – divide between nature and artifice. Similarly, if the body is seen as the embodiment and product of political and social forces and principles, it can no longer be ‘a private intimate body’, but is a social and political body. The body as a social construct then equally reopens the Aristotelian question of the private and public domain. Moreover, it questions the relationship between biological, social and political life. If the body is a social construct, then biological life is no longer a life *as such*/being, or a life by itself, but always already a life in the realm of the political (a form of existence).

Thirdly, the body is always an empty body. A political body is the unreachable body or a body without organs (BwO). It is a site of political struggle and resistance. It represents a

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<sup>245</sup> Gilles Deleuze and Felix Guattari, *Anti-Oedipus: Capitalism and Schizophrenia* (London, New York: Continuum, 2007): 205–10.

limit to one's transformation. The body without organs captures individual struggles in which bodily organs resist their normal functioning. These acts of resistance are acts of freedom.<sup>246</sup> What do Deleuze and Guattari mean by such resistance? As the body is no longer a playground of political power struggles, but the product of these struggles, the body is an actual embodiment of sovereign practices, and normalising and ordering processes. So, to dismantle oneself from these sovereign practices, one has to find one's own 'body without organs'. These are practices which oppose larger social and political conventions, as well as practices which challenge the functions concerning the behaviour or presence/absence of the body, or oppose the simple tasks the body is thought to perform. Deleuze and Guattari write:

Why not walk on your head, sing with your sinuses, see through your skin, breathe with your belly: the simple Thing, the Entity, the full Body, the stationary Voyage, Anorexia, coetaneous Vision, Yoga, Krishna, Love, Experimentation. [...] Substitute forgetting for anamnesis, experimentation for interpretation. Find your body without organs. Find out how to make it.<sup>247</sup>

Ultimately, the body without organs is a site in which the body is used against common sovereign practices and against normal 'human instincts'. In the political, a body without organs can also be seen in resistance such as suicide bombing, manipulating behaviour, various culturally specific practices such as *ubuntu*, or hunger strikes.<sup>248</sup> In this context, 'body without organs is what remains when you take everything away. What you take is precisely the fantasy, and significances and subjectifications as a whole'.<sup>249</sup> The power of the body without organs derives from its partial objects. These partial objects can also be organs that do not create the (functioning) body; instead they refrain from performing functions they were supposed to perform. For example, food and the consummation of food preserves the body; yet any other use of food or its refusal works against the normalising principles determining what the body should or should not do with food. The resistance of the body to the functions it is taught to perform on the one hand, and a new ordering and the use of body on the other side are then the two ways which most significantly determine and work towards an alternative logic or representation and an alternative ordering of forms of expressions.

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<sup>246</sup> Deleuze and Guattari, *A Thousand Plateaus*, 166–84.

<sup>247</sup> *Ibid.*, 167.

<sup>248</sup> I will say a few words on *ubuntu* in the last chapter, Chapter 6.

<sup>249</sup> Deleuze and Guattari, *A Thousand Plateaus*, 168.

## Desire

The BwO is desire; it is that which one desires and by which one desires. [...] Desire stretches that far: desiring one's own annihilation, or desiring the power to annihilate. Money, army, police and State desire, fascist desire, even fascism is desire.<sup>250</sup>  
Deleuze and Guattari, p. 183 (2007)

As above quotation indicates already, the becoming, the body and desire (and all other orderings discussed here) are related – a body without organs can equally turn into desire or into becoming. The interplay between these various concepts makes for a prime example of the fluidity of Deleuzian thought. The role of desire then has to be understood on the back of what has already been said in my earlier discussions of the body and the becoming. Desire is crucial when thinking of different ordering principles. By now, I trust, it has become clear that desire is not a desire for some particular object or thing; its role in the social and the political is of much greater importance. Although at first Deleuze and Lacan's theories might appear to be contradictory, they both fully acknowledge the importance and the limits of desire. They both argue that desire embodies the ordering principle of reality; in other words, desire is a reflection of what is allowed or permissible and what is not. Most importantly, by setting or embodying the limits of a particular symbolic order, desire maintains and constantly reproduces existing reality.

Two questions become relevant in the context of our discussion here: the first concerns the limits of desire, or how it is played out in the political; and the second question concerns the transformation of desire, or how one is to think desire differently, or a desire that, as Deleuze and Guattari would say 'ceases to worry about the fitness of things, about the behaviour of his fellow-men, about right or wrong or justice and injustice'.<sup>251</sup> The first 'political question' has been partly discussed in Chapter Two and will again receive a lot of attention in the next chapter (Chapter Four), where I will try to discuss both questions in a 'Guantánamo framework'. Here it suffices to say that desire does not produce fantasy but reality or the symbolic order, which the subject and the institutions desire. As indicated in the opening quotation, the institutions are not produced by desire or do not produce a desire, rather desire is essential to their

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<sup>250</sup> Deleuze and Guattari, *A Thousand Plateaus*, 183.

<sup>251</sup> Mark Seem, 'Introduction', in: Gilles Deleuze and Felix Guattari, *Anti-Oedipus: Capitalism and Schizophrenia* (London, New York: Continuum, 2007): xxv.



functioning, and is immanent to their existence. They exist because desire produces a reality in which they play an important role, and they function in accordance with the rules corresponding to the ordering principle embodied in the desire constituting the institutions in question.

The second question directly concerns the transformation of desire and a move away from repressed desire. This move is often associated with ‘going through the fantasy’<sup>252</sup> or ‘letting life live’.<sup>253</sup> In both cases, one is to think life or desire *as such* – pure desire – that is not attached to any form or repression, fantasy or institution. Such desire, rather than embodying a different ordering principle, provides life or being with a set of its own expressions. Deleuze and Guattari write: ‘if desire is repressed, it is because every position of desire, no matter how small, is capable of calling into question the established order of society. [...] Desire] is explosive; there is no desiring-machine capable of being assembled without demolishing entire social sectors’.<sup>254</sup>

How does one do away with a repressed desire? This is now the obvious question. Lacan in *The Ethics of Psychoanalysis* writes about the end of analysis and going through the fantasy. This process, as Žižek explains, entails: ‘the desire with regard to which we must not “give way” [...] [This desire is also] not the desire supported by fantasy but the desire of the Other beyond fantasy’.<sup>255</sup> In other words, in the social and the political desire is always conditioned by fantasy – it embodies the limits imposed on the existing political and social by fantasy – so when one should not ‘give way’ to desire one resists the limits and ordering principles otherwise imposed on the subject by fantasy. Going through fantasy involves identification with the *sinthome*; a form of identification that is often described as ‘what is in me that otherwise remains unrecognised’. To an extent this alludes to one’s identification with the Real – or with what is in me that is more than me, hence it is unbearable to me. To illustrate, the going through fantasy would mean our identification or recognition of the very thing that is central to the constitution and the existence of our society, but it is excluded from it. Or to put it in more individual terms, it means identification with something that is radically opposite to my ‘identity’, yet constitutive of it. To recall the discussion of exceptionalism in Chapter One, one can

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<sup>252</sup> Lacan, *Seminar VII: The Ethics of Psychoanalysis*.

<sup>253</sup> For example see: Deleuze and Guattari, *Anti-Oedipus*; Lacan, *Seminar VII: The Ethics of Psychoanalysis*.

<sup>254</sup> Mark Seem, ‘Introduction’, xxv – xxvi.

<sup>255</sup> Žižek, *The Sublime Object of Ideology*, 118.

suggest that going through fantasy for ‘the Western civilised world’ would entail the identification with its truth – with the barbarian other in the war on terror represented by a ‘fundamental Islam’. In the same context Žizek, for example, identifies the ‘question of the Jew’ or ‘Jewishness’ as being central to the constitution of European identity or to the values and way of life that ‘Europe’ stands for.<sup>256</sup>

Indeed, as it has already been suggested, ‘going through fantasy’, is at least disruptive if not fatal for the existing order. It presupposes ‘the identification’ with what is otherwise hidden, traumatic and disruptive to the ordering of the individual and society. To this extent then, desire, as a pure desire, is what ‘emerges’ after the voyage through the fantasy, the pre-subjective and the pre-symbolic. It is, as Lorenzo Chiesa puts it, ‘an absolute condition which is without measure with respect to any particular need. [...And it] should be regarded as a positivisation of the lack’.<sup>257</sup> Desire *as such* then lacks a fixed subject as an agent of desire. Pure desire does not need a subject to be brought into existence, it is always already here as a force enabling the existence of ‘reality’. It is a ‘set of passive syntheses that engineer partial objects, flows and bodies, and that function as units of production’.<sup>258</sup> The desire is a ‘desiring machine’<sup>259</sup> producing the social, the political and subjective reality, and enabling something (not a subject) to escape its limits and – from the place of escape – facilitate resistance. This is precisely the point of political desire *as such* – a desire I will say more about in Chapter Four – which does not seek an alternative ordering but instead identifies resistance in different practices of representation and expression of ‘reality’. In this context, resistance is an escape from a rigid Oedipal desire. It is like an island that escaped the continent – like a deviant body resisting the ordering principles produced and reproduced by desire.

### Language

With language, another transcendental ‘image’ of immanent thought, we move from different expressions of the body or ‘embodiments of desire’ to different expressions of ‘the self’. At first glance such a move could suggest a return to the same questions of the

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<sup>256</sup> Slavoj Žizek, *The Sublime Object of Ideology* (London, New York: Verso, 1999): 114–7, *The Parallax View* (London, Cambridge, MA: The MIT Press 2006): 288–308; *Living in the End Times* (London: Verso, 2010): 48–9, 135–54.

<sup>257</sup> Lorenzo Chiesa, *Subjectivity and Otherness: A Philosophical Reading of Lacan* (Cambridge, MA and London: The MIT Press, 2007): 154.

<sup>258</sup> Deleuze and Guattari, *Anti-Oedipus*, 28.

<sup>259</sup> *Ibid.*, 325.

forms of existence and problems associated with a subject, as a particular form of existence within a particular social and political context. However, expressions I have in mind here are different from ‘everyday language’ and representations which serve only one primary purpose – which is to transfer representation and produce meaning in accordance with the existing rules of language.

At this stage it is helpful to recollect what has been discussed in the previous chapter, Chapter Two, regarding the *sinthome*. Firstly, language is an ordering principle that subjugates bodies into a particular logic of thinking and ordering; and secondly, language within Oedipal ordering is represented as a neutral means of communication. The *sinthomal* alternative ordering exposes language’s alleged neutrality of representation and its communicative function. The *sinthomal* nomination abandons the idea of language as a communicative device and sees it purely for what it is, an ordering principle. It is an expression of social institutions, a gesture of conformity with social structures and social rules. Oedipal language is not a ‘living thing’ as Deleuze and Guattari argue it ‘is not life; it gives life orders. The life does not speak; it listens and waits’.<sup>260</sup> Hence, social institutions enslave the body; they make it express what the social order desires it to express and in a way which the social order determines to be acceptable. Hence, the order of language is inscribed, to use Lacanian terms, on the body and makes the body act in accordance with the existing orders.<sup>261</sup> Any deviant action or bodily expression is then perceived as out of the ordinary.<sup>262</sup> Refusing to use ‘language’ as a social institution means to resist existing social institutions embodied in language, as well as to resist the socially accepted reality of the body.

Deleuze’s *schizo-language* and Lacan’s *lalangue* are languages that transgress existing ordering principles and linguistic rules embodied in language, and that allow for deviant expressions. Apart from ‘inventing’ a new language that can provide existing forms with some means of communication – albeit one which is different from or deviant to the dominant representation of language – there is another way of deviant expression; namely a representation of something that is not supposed to be represented or is impossible to represent; e.g. feelings such as pain. A representation of such ‘phenomena’

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<sup>260</sup> Deleuze and Guattari, *A Thousand Plateaus*, 84–5.

<sup>261</sup> Lacan, ‘The Subversion of the Subject’, 671–702.

<sup>262</sup> Deleuze and Guattari, *A Thousand Plateaus*, 91.

also challenges the limits of representation and orders determining what can be shared, and ultimately, also, what actually exists or gets represented in a desired reality.

Whereas the first strategy of 'language resistance' and creating an alternative formation of existence has to do with a multiplicity of ways in which one makes sense of the self and the world – not only how one writes about it and represents it, but also how one relates to it – the second strategy relates to becoming and inventing. Not by inventing a completely new 'self', as perhaps the first strategy strives towards, but by introducing aspects of the existing 'self' that are deviant or challenge the ordering principle. In terms of becoming, for example, tracing that becoming and acknowledging the changes occurring on the level of one's form of existence is of the outmost importance. For the existence in question, such tracing might provide meaning or uncover one's deviancy. Both aspects could provide an existing form with some notion of 'the self' and hence make him/her able to function in the existing order. But what these can also do is to uncover what has remained hidden in the expression of one's existence; equally it can trace one's deviancy, not with a purpose of 'normalising' it, but by creating the conditions for one to be able to continue living through it – to persist in its abnormality. Patton, for example, reaffirms the importance of writing in becoming. He says:

[W]riters portray life as a process of self-transformation or escape from established identities in favour of flight towards another world. For them, writing is a matter of tracing lines of flight or processes of becoming which have the potential to lead to the creation of new forms of life. Such creation only occurs when existing forms of life break down and the individual in questions gains access to the primary and transformative power of pure life: "writing does not have its end in itself precisely because life is not something personal". Or rather, the aim of writing is to carry life to the state of non-personal power.<sup>263</sup>

### The logic of *sinthomal* nomination

Taking language to a new level is then seeing it as a *sinthomal* nomination. An interesting account of how language becomes central in resisting dominant forms of subjectivation and communication can be seen in Lacan's study of James Joyce and his novel *Finnegan's Wake*. In the novel, written as a long unconscious flow of thoughts while breaking linguistic rules and syntax, Joyce challenges the basic function of language which is to

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<sup>263</sup> Patton, 'Becoming-Animal and Pure Life in Coetzee's *Disgrace*', 102.

facilitate meaning. Yet, despite breaking linguistic structures and rules, Joyce still managed to retain two aspects of language that are deemed to be its most important functions; that is, he still manages to convey some kind of meaning, and as ‘a subject’ or as its own form of existence, Joyce managed to function within society. This observation needs some further unpacking. Language, as mentioned a few times now, is inscribed on the body and directs the body into behaving in ways which are in line with acceptable social and political norms. It does so through linguistic rules, syntax and representation. It is because of language that we see some things as active, and others as passive; some gendered in one way and others in another; it is because of language that we see and internalise certain hierarchies and authorities; nevertheless every situation has a particular code of language. One of the first steps, if one is to think of an alternative ordering, is then to abandon language – which would be difficult if not impossible; or make it work for ‘you’ by introducing particularities specific to ‘your existence’ or way of thinking, relating to and understanding the world. Sometimes merely abandoning minor language rules, gender divides, word-order etc. can already facilitate a change that dominant discourse/representations of language cannot accept without seeing it as a misrepresentation. In this way, by not following linguistic rules, the novel, *Finnegan’s Wake*, embodies Joyce’s state of existence. Equally, the novel is a demonstration of how one can create an alternative idea of ‘the self’, for the existence of which one no longer needs external recognition. The novel perhaps did not make much sense for readers, yet for Joyce it performed the function language needs to perform – and that was the primary function of the novel. The novel was meaningful for Joyce as it embodied Joyce’s form of existence. As such then, the work in itself is a representation of an alternative logic of how being can be constituted. Lacan named this alternative logic the *sinthome*.<sup>264</sup>

How did Lacan see these two aspects – a different form of language and the *sinthome* – working together for Joyce? As has been discussed in Chapter Two, *sinthome* departs from the Imaginary and the Symbolic identifications, identifications with the name or/and language/Other that initially in the Oedipal structures form the subject. Instead, the *sinthome* stands for a Real identification, embodied in a number of infinitely different ways. The *sinthome*, as such, to use a Lacanian language of topology, is capable of tying a

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<sup>264</sup> Jacques Lacan, *Seminar livre XXIII: Le sinthome*, 13 April 1976 (Paris: Éditions du Seuil, 2005); Jacques-Alain Miller, *Joyce avec Lacan* (Paris: Navarin Editeur, 1987).

knot between the realms of the Real, the Symbolic and the Imaginary and different types of identification without the intervention of the Oedipus.<sup>265</sup> The *sinthome* then ties the three realms together in a way which maintains the singular/multiple character of being. Moreover, the *sinthome* ‘comes to life’ as something undiscovered, unconscious and mysterious.<sup>266</sup> It has to do with impulses that are unobserved by Oedipal language or a symbolic order; instead of representing the symbolic order of Oedipal language, the *sinthome* exposes what does not function in the symbolic order – language – and demonstrates how the symbolic order restricts the freedom of a speaking-being.<sup>267</sup> The main purpose the *sinthome* has then is an exploration of ways of going beyond the domain of fantasy and relations with the Other.

The essence of the *sinthome* is set in a particular form of writing Joyce developed. This style of writing nevertheless has to stand for a Real identification – for a new representation which resist structures of language, yet still introduces some level of order on one’s body and forms of expression. His style of writing resists the Symbolic. It interweaves sounds and letters, avoids meaning, and creates so-called ‘epiphanies’ – little tales, ‘knitting’ and easy wordplays. The epiphanies are most significant as they represent moments when being gets revealed. It is a sudden spiritual manifestation that elucidates no meaning and appears as an enigma – it is incorporated into a writing experience, and gets manifested as puzzling moments with a kind of resolution.<sup>268</sup> Lacan reads Joyce’s epiphanies as moments in which the unconscious is knotted to the Real.<sup>269</sup> In other words, the epiphanies connect the body with its own singularised form of existence. They create namings – *sinthomal nominations* – that alleviate the Oedipus. Such *sinthomal nomination*, instead of imposing itself on the being is now inherent to being’s existence. In the *sinthome*, nomination is present in the being *ab nihilo*, though it remains latent, until it is invoked by being’s own invention. In other words, being is capable of self-realisation, of self-subjection, it no longer requires the Other or a signifier. Instead, what names being is of the order of an act.<sup>270</sup> In this process of self-naming, ‘being’ constitutes itself,

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<sup>265</sup> Harari, *How James Joyce Made His Name*, 7.

<sup>266</sup> *Ibid.*, 120–1.

<sup>267</sup> *Ibid.*, 129–39.

<sup>268</sup> James Joyce, *Stephen Hero* (London: Cape, 1969): 188.

<sup>269</sup> Lacan, *Seminar livre XXIII: Le sinthome*, 143–54.

<sup>270</sup> Voruz, ‘The Topology of the Subject of Law’, 290.

it creates its own singular modes of existence and its own particularities and differences from others; being recognises that the Other that names does not exist.<sup>271</sup>

The *sinthomal nomination* that Joyce created follows a particular logic different from the Oedipal logic; hence the *sinthome* results in being (and a form of existence) different from that of a modern Oedipal subject. Lacan names a form of existence deriving from the *sinthome* and self-identification (identification with the one or the multiple, but not the Other) LOM.<sup>272</sup> LOM comes out of Lacan's wordplay of *l'homme* (man) or '*hommelette*' (omelette) and questions the classical divided subject. LOM is a particular form of existence. Roberto Harari, one of the most important commentators on Lacan's last seminars, explains that Lacan's work on LOM no longer revolves around the question of the torn, divided, broken or barred out subjects.<sup>273</sup> Instead LOM aims at demonstrating a particular structure emerging in the *sinthome*. LOM is not passive, it can invent things, yet its acts remain unconscious – LOM is not aware of its doings. If someone wishes to give meaning to LOM's acts – they can, but such meaning is of no interest to LOM, it does not implicate LOM. As Harari writes 'you can give it what name you like, for what belongs to me is another story. Thus there can be no effects of identification'.<sup>274</sup> This aspect is crucial for any further political or social understanding of existence, LOM, or community. It signifies the emergence of a form of existence that is inherently free from any external political or social conventions; the ordering according to which it operates is the ordering that is particular to that form of existence; of course it can derive from the broader spectrum of political and social identifications, or is its hybrid, yet it does not belong to that identifying form. The commonality between the singularised and the common form can exist, hence the singularised form is largely undisruptive, yet again it does not fall under the ordering and is hence not subjected to it. It can exist alongside the dominant ordering without being impregnated in it. The implications of LOM can therefore be immense – a being that is able to refrain from the whims of the Other, or in political terms – of the sovereign, can potentially ground entirely new political imaginaries. LOM exists outside the binaries of, for example, the universal and the particular, or outside symbolic determinations, outside time and space, even outside law.

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<sup>271</sup> Ibid., 295.

<sup>272</sup> Harari, *How James Joyce Made His Name*, 227–30.

<sup>273</sup> Ibid., 229.

<sup>274</sup> Ibid., 232.

## Conclusion

In this chapter I discussed an alternative way of thinking about being and forms of existence. The first part of the chapter explored an alternative idea of being-ness within an immanent framework, whereas the second part does the same by interrogating the images of immanent thought in the transcendent. The alternative challenges the predominant account of a Cartesian subject grounded in reason; or a rational subject that predominantly engages with ways in which being is subjectivised and socialised in a particular social and political discourse. The alternative I have explored here represents a monist account of being, which is based on a metaphysics different from that of a Cartesian subject. There are many implications of the 'shift' in metaphysics from Cartesian to Spinozist; one of them being that the discourse and the logic that orders the world, the relations and interpretations within it changes accordingly. The ideas presented here belong to a different way of thinking, making sense of reality and philosophy-making. The subject or being in the alternative represented here is no longer in the centre of philosophical investigation. That place is now left empty or filled by practices and different chaotic movements and flows. As a result, not only philosophy, but also politics changes. Here politics is no longer concerned with the good life of individuals living in a community, rather politics is about the coexistence of everything possessing life *as such* or being; it is about the interaction of movements and 'organisational principles' ordering life/being-ness *as such* and its transcendent forms of embodiment. The philosophy and politics of the alternative being is the politics or philosophy of what Deleuze calls abstract machines and regimes of signs that reject the idea of signification and language. In *A Thousand Plateaus* Deleuze and Guattari address the issue of language and abstract machines. They write:

Regimes of signs are not based on language, and language alone does not constitute an abstract machine, whether structural or generative. The opposite is the case. It is language that is based on regimes of signs, and regimes of signs on abstract machines, diagrammatic functions, and machinic assemblages that go beyond any system of semiology, linguistics, or logic. There is no universal propositional logic, nor is there grammaticality in itself, any more than there is signifier for itself. "Behind" statements and semioticizations there are only machines, assemblages, and movements of deterritorialisation that cut across the stratification of the various systems and elude both the coordinates of language and of existence. That is why pragmatics is not complement to logic, syntax or



semantics; on the contrary, it is the fundamental element upon which all the rest depend.<sup>275</sup>

What is at stake in thinking an alternative notion of being is then a different abstract machine or an ordering principle of the world that ultimately determines the production of meaning and the logic of law-making. Such philosophy constitutes a way of understanding and ordering being that is open to change and as such able to recognise a common force or desire that institutes being as a particular form of existence, and is common to all forms of existence, both animate and inanimate. In other words, force or *conatus* for Spinoza, or life and desire for Deleuze and Lacan is common to all forms of existence and no longer reserved only for human beings. This is a conception of being that is not bound to any particular material form. It is being *as such* or desire understood in its purest sense; it does not exist for something or as a result of something, rather it is in itself and for itself, immanent.

Such immanent ideas challenge existing dominant accounts of being-ness; yet the question that remains is how one is to think such immanent ideas in the political and the social, or in the transcendent. The second part of the chapter therefore addressed this aspect. The transcendent images of this thought – the becoming, the body, desire, language and the self – gave a more elaborate account of the changes in question. This different ontology together with its transcendent images challenges legal discourse, as these images no longer operate on the premise of a rational subject that is deemed central to discourse or rights and duties, and further to the constitution of a legal subject. The impact of such thinking in the context of the political and the social will be discussed in the following three chapters. However, one can already acknowledge the potentiality of such thinking. Not only does it open a possibility of alternative understandings of the subject or law, it also allows for a possibility of thinking a community that is based on a principle no longer associated with nationality, religion, race, class, culture or identity. These aspects of new being and law, and the possibility of a new community will be discussed in this order in relation to Guantánamo in the following chapters.

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<sup>275</sup> Deleuze and Guattari, *A Thousand Plateaus*, 163–4.

## Chapter 4

### Guantánamo and Images of Alternative Being

With Chapter Four this thesis moves away from theoretical and philosophical discussions dominant in the previous three chapters and instead aims at engaging with particular situations in Guantánamo – images of Guantánamo – that can illustrate aspects of theoretical and philosophical ideas explained earlier. However, before engaging with political aspects, I will take a look back and revisit the discussions so far. I believe this is of great importance as it places the following discussion in its rightful context.

The thesis started with a brief discussion of US policies post 9/11, more particularly with the nature of the US response to 9/11, which due to its ignorant or malevolent attitude towards – amongst others – the (international) legal provision caused the emergence of the truth. This truth lays (at least mythic) foundations of the system's legitimacy. The thesis then introduced an alternative logic of ordering, a logic that is radically different from the one exposed.

Chapter Two represented the beginning of the debate on an alternative logic of ordering. However, the chapter started by elaborating on the existing ordering principle – Oedipal and paternal law – and ways in which it facilitates legitimacy, legal authority and how it subjectivises individuals into its 'subjects of law'. This was done as an illustration of how the current logic works, how well embedded in the system it is, and to acknowledge the full scope of the role the alternative has to take up. The chapter then continued with an introduction of an alternative logic – the *sinthome*. The focus was on its legal side, as a logic of alternative law-making.

Chapter Three then took on board this alternative logic and started with a discussion of what made that kind of thinking possible in philosophical terms. The ideas of Duns

Scotus and Spinoza were introduced; in particular their monist ontology of being, which is, as discussed, essential for the radical thinking the thesis tries to put forward under the idea of immanent ontology or ontology of nothingness. In fact Scotus' and Spinoza's immanent philosophy and monist understanding of being manufactured possibilities for the philosophical and psychoanalytical ideas of Jacques Lacan and Gilles Deleuze which are central to the thesis. Deleuze's immanent philosophy that is represented in the image of life *as such* became central. However, at this stage in the thesis the main question is one of how these immanent ideas are represented and how they get expressed in the transcendental. The last part of Chapter Three addressed these questions. It discussed how being in the immanent can be embodied in the transcendental without losing its 'being-ness' (indeterminacy and openness to change). The transcendental ideas facilitating such representation of immanent thought are the becoming, the body, desire, language and a different idea of 'the self'.

After discussing the theoretical framework of these ideas, they will be further utilised in this chapter – Chapter Four – where they will be explained again within the political context of Guantánamo detention facility during the Bush administration. As such then, these ideas illustrate ways in which particular political issues can be explained within a different ontology. The examples – the images of Guantánamo – are accounts of everyday life in Guantánamo by one of the groups present there or involved in the process of detainees' litigation (the representation of legal images of Guantánamo will be the subject of discussion in Chapter Five). These accounts might not be anything extraordinary, yet because of a different reading – a different ontology underlying the reading and a different logic or ordering within which the theoretical ideas e.g. the body, desire etc., lie – they either challenge the dominant discourse in different ways, order themselves around the dominant discourse, or generally provide a different understanding of the situation in question.

The immanent ontology discussed in Chapter Two then ultimately enables the creation of the images that are being discussed here. It has to be remembered, however, that as discussed in all previous chapters, the alternative ontology of being is present in the here and now. However, it is not dominant and hence only pierces the existing dominant discourse, penetrating the symbolic order with its radical interventions. These interventions destabilise the order and reveal its incompleteness and proneness to

change. The images discussed here represent those moments in which the intervention appears. Hence, all images discussed have their ‘commonsensical’ explanation – the explanation given to them by the dominant discourse to cover the split in the dominant order caused by their intervention. The discussion of images in this chapter will unveil this split by providing a different explanation. Discussing political or any other situations within a different ontology of being is always a great challenge, as a different ontology – as demonstrated in the introductory discussion of Chapter Two when we talked about paternal logic and ways in which it frames the social and the political – implies a different ordering of literally every aspect of social, political and legal domain. Equally, it brings changes to language; hence it is often impossible to do justice to these alternative conceptions if one is caught in existing language structures and syntax. However, this chapter attempts to do precisely that; and hence engage with alternative ideas in the political context of Guantánamo, and explain the challenges they pose to the existing order. I start the discussion with images of ‘the becoming’ – how those examples contribute towards an alternative representation of existence, and challenges ‘the becoming’ poses to the dominant discourse; this is followed by the discussions of the body, desire and the role of language or writing and explore how they destabilise the dominant discourse and/or create an alternative. The discussion of the last idea – the notion of the self or LOM – will be left for Chapter Six as LOM brings together all these practices contributing towards an alternative form of existence, and hence works as a form of conclusion to the discussion of an alternative ontology of being and its alternative transcendental orderings.

### **Towards the Emergence of New Being in Guantánamo: becoming-minoritarian, becoming-animal, becoming-Western, becoming-detainee**

By this stage in the thesis, I trust, it has become clear why ‘identifying deviant bodies’ and tracing certain practices of resistance is crucial in our attempt to think and ultimately construct the image of a new being in the political and social realm. However, the practices of resistance or alternative representations we are trying to trace here are ‘minoritarian’. By ‘minoritarian’ I mean two different things: firstly, these practices – although they exist – are hidden and in a minority when put in relation to the dominant discourse; and secondly, those practises will also always remain ‘minoritarian’, as there

are always some, or there is always something that is inferior or ‘minoritarian’ in relation to someone or something else. Moreover, the nature of alternative ontology is one of a logic of constant movement and change, hence the process of becoming and transformation can never stop, not even when the existing paternal dominant discourse is replaced with something else.

How then is the idea of becoming played out in a political situation, and what implications does this have for a wider conceptualisation of rights? In other words, how does the idea of becoming change and transform what are commonly perceived as static categories of humanity and human subjectivity? The transformation of one’s identity and forms of existence are central to becoming. Everyone in Guantánamo – the detainees, the guards, the lawyers etc. – had their own ‘assigned identity’. By that I do not mean to refer to individual political and social identities, but rather to the image these groups have of one another, or the image one group was supposed to have of the other group. For example, the US government represented the detainees as ‘vicious killers ready to harm another human being at any time’;<sup>276</sup> the detainees automatically associated the guards with the US and hence saw them as torturers, imperialists and enemies. The lawyers, in contrast, were perceived as suspicious – the detainees saw them as potentially working for the US government, and trying to represent the government’s interests and tricking the detainees into co-operation; whereas the guards and the military saw them as collaborators of the detainees and potential traitors of the US.<sup>277</sup> This is of course not to say that the detainees, the guards and the lawyers in fact saw *themselves* in such a way; however, in terms of the social and political institutions present in Guantánamo, this is how they were treated. For everyone in Guantánamo, becoming meant ‘breaking out’ of those imposed identities and resisting by consciously or unconsciously doing something that was perceived to be outside the scope of the assigned identity, or in opposition to the established order or to the dominant reasoning informing political and legal decisions. This ‘breaking out’ either meant an identification with or a recognition of the other group, or a different relation to ‘the self’, and hence a re-questioning of what that ‘self’ was supposed to stand for.

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<sup>276</sup> Donald Rumsfeld, Defense Secretary. Speech on January 27 2002.

<sup>277</sup> See for example: Clive Stafford Smith, *Bad Men: Guantánamo Bay and the Secret Prison* (London: Weidenfeld & Nicolson, 2007); James Yee, *For God and Country: Faith and Patriotism under Fire* (New York, Public Affairs Books, 2005).

### Becoming-Animal in the Face of Rights

This section will focus on the detainees. The status of the detainees in the facility was determined by a number of different rules, procedures and classifications. As ‘unlawful enemy combatants’ - under ‘the laws and customs of war’ they may be detained for the duration of the armed conflict – they were stripped of the rights of prisoners of war and could not benefit from international human rights and laws of war provisions.<sup>278</sup> Initially they were prohibited from communicating, moving, writing, praying, socialising or even making eye contact with military personnel present in the Camp. They were supposed to sit still in an open-air cage and sleep on their backs with hands outside the blanket. These were, as the US government claimed, the necessary measures needed in the treatment of the ruthless killers, who were either members of Al-Qaeda or those responsible for 9/11 attacks. Equally, the detainees were seen as those who do not care about the Western way of life, Western values and the rule of law. In other words, they were barbarians in both a cultural and political sense. They were emotionally and psychologically unstable, often perceived as mad and hence detained for their own interest.

For the detainees ‘the becoming’ had an important role to play. It did not facilitate the breaking of the rules imposed by the Camp Commander only. The ‘becoming’ was the detainees’ source of a different image of the self, or a different form of identity. What do I mean by this? The detainees, in a way, were from the beginning seen as a minority. Yet, they were not a minority because they were outnumbered, but rather because of their underprivileged, discriminated status. Their place in the political arena of Guantánamo sustained no political power. Thus any activity coming from the detainees that could pose a challenge to the Camp Command already suggests the breaking of the Camp rules and should be seen as an expression or an act whereby detainees (re)-gained political power. The hunger strikes, suicides and fetishisations of the body were all attempts to regain the political power. Equally, these actions indicated the detainees’ identification with the rules of the Camp, and a subsequent search for practices that challenge these rules and imposed identities. For example, the detainees requested to be treated humanely; yet this request was denied, as the US always claimed to be treating them humanely. The claim for humane treatment in this context did not pose a serious challenge. However, the real power struggle became visible when detainees demanded to have the same rights

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<sup>278</sup> William Haynes, ‘Enemy Combatant’, Council of Foreign Relations, 12 December 2002. [<http://www.cfr.org/publication.html?id=5312>]. Accessed: 21 December 2010].

as dogs in the Camp or iguanas living in the Base. As some detainees said, they demanded ‘dog-rights’ because a dog in the Camp had a house, water, food, shade and grass to exercise on. Of course there is a sense of irony in these demands, yet the detainees were serious in voicing them. What is significant is the realisation the detainees had about their own position, that is that a dog is treated better than they are; hence they associated themselves with the status of a dog in order to live a better life. In this sense they were willing to give up their ‘humanity’ (which was no doubt already questioned by their treatment), depart from what in a legal discourse of rights is inherently seen as a ‘higher form of life,’ a human life, and thus abandon ideas one has about a human life in order to live better as ‘a dog’. In their claims of becoming something else – something that is in the existing dominant legal discourse a lower form of life – they challenged the dominant discourse on the grounds by which the ‘detainees’ rights’ in Guantánamo were determined. The challenge is significant because the US Command were able to explain why the detainees cannot possess or be subjected to international human rights conventions or the laws of war; however, they were unprepared for receiving demands for rights belonging to ‘other forms of existence’. The detainees’ claim was made for something that was outside what was considered to be normal or relevant to the situation in question. Equally, the claim made was outside the representation of the situation that the legal and political discourse aimed to create. The detainees were capable of voicing their demands, while they should not be in a position to do so if the political and legal discourse was successfully put in place. The detainees were lesser humans, yet – for the official discourse – they were a form of human that was removed from existing legal mechanisms; but they were not thought of as or associated with any other form of existence. The claim for animal or dog-rights on the one hand poses an effective challenge to the dominant discourse, while on the other hand also demonstrates the detainees’ willingness to detach their existing form from what is seen as a higher form of life. The willingness to do so is in opposition to the dominant discourse which has a strong hierarchy between different forms of life. The request to be associated with a different form of life – and its rights – also opened up the notion of legal subjectivity and confronted the dominant order with a question of who is the rightful possessor of rights. The challenge the becoming posed exposed the limited conception of ‘legal subjectivity’ and voiced a call for its radical reconsideration.

### Becoming-Animal in the Face of Animals

The becoming, I argue, constitutes a central force in the transformation of detainees. It embodies a process or a transformation of the detainees' selves, which did not occur overnight; only gradually did the detainees acknowledge the limbo of their existence. As Murat Kurnaz in his memoirs writes:

There was no cell where you could be alone. There was no privacy, no protection from the watching eyes of the guards or the cameras, not even for a second. The cages were so small that it drove you to desperation. At the same time, nature – and freedom – were so tantalizingly close it could make you go crazy. An animal has more space in its cage in a zoo and is given more to eat. I can hardly put into words what that actually means.<sup>279</sup>

Kurnaz gives accounts of communication and the relationships he nurtured with the animals while imprisoned in Guantánamo. He writes of them as his only friends; friends that have what he does not have, freedom. The animals represented one way with which the detainees battled with the reality of everyday life in the Camp. It gave the detainees the hope of being free again one day. For example, Kurnaz writes: "The tarantulas were black and covered in thick fur. We became good friends. The guards had no objections to us being visited by spiders. Family visits weren't allowed, but spiders were. I didn't care".<sup>280</sup> Or: "The animals I liked best were the iguanas. I always kept some of my slice of bread to feed them. [...] They looked like tiny dragons. Some of them were too big to slip into the cage. But they came anyway. I would flick breadcrumbs through the chain link. They got used to it".<sup>281</sup> The detainees' relationship with the animals did not only reflect their immediate situation, but also made them reflect on their past. How did they become who they are now? It made them think about their childhood memories and past actions. In a way this encounter mirrors their current experience of living in a cage with the experience of the animals. Not only did this make the detainees sensitive to the conditions in which they and the animals lived, but it also made them realise the form of life they, as inmates of the institution had been turned into. Kurnaz remembers: "I thought about birds I had kept as a boy. Sometimes, I felt sorry for them in their cages. In Camp X-Ray, there were always birds. I had fed them with breadcrumbs I concealed from the guards under my clothing and my mattress. At first the birds were shy, but gradually they came to trust me. [...] I used to talk to the birds about how strange the

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<sup>279</sup> Murat Kurnaz, *Five Years of My Life: An Innocent Man in Guantánamo* (New York: Palgrave Macmillan, 2008): 99.

<sup>280</sup> Kurnaz, *Five Years of My Life*, 112.

<sup>281</sup> Kurnaz., 113.



world was. They used to be in the cage, and I would visit them, and now the situation was reversed'.<sup>282</sup> The encounter detainees had with the animals in the camp highlights the peculiarity of relations embodied in the artificial categorisation of different forms of life. As seen from the quotation above, the detainees vividly remember how they used to limit the movement of animals, lock them into cages etc., yet now they were in 'their place' – locked in a cage and unable to move. Acknowledging the similarity of their position was striking for detainees; it was a realisation of who, by being locked in a cage, they had become and also of what they had done in the past. They were able to 'sympathise' with the animals and envy them their freedom.

The discussion above aims to outline more than a simple recognition of different forms of life, and how the animal form of life detainees previously saw as inferior now became dominant, even a form of measurement in relation to which they compared their own existence. The discussion most importantly aims to challenge the rationale upon which distinctions between various forms of life are being made, as no inherent 'safety' derives from being human, the category of human or animal etc. The example of claiming 'animal rights' is important from the standpoint of the becoming. The detainees had realised that they were better off turning into something else and rejecting their humanity. In addition, by claiming animal rights, the detainees also challenged the dominant political and legal discourse that was unprepared for demands of this kind. Whereas the first example discussed here challenged political and legal discourse from a position that should not have posed any resistance, or has no political rights; the second example that focuses on personal relations between the detainees and animals reflects the state of the detainees' existence and the value system they subscribed to. Within the dominant discourse, animals are seen as an inferior form of existence, hence can be placed in cages, killed or kept as a pet. The experiences detainees had in Guantánamo challenged these value systems, as it made them reflect on their treatment of animals in the past. Yet what triggered this reflection was the difference between the living conditions of detainees and those of animals. Unlike the detainees, the animals are free to move and in the detainees' view, are free from suffering. Those observations, at least to an extent shattered the view detainees used to have of the animals, and acknowledged that the hierarchy between forms of life is not (always) a representation of an actual situation. As such then, one could observe, that though highly valued in the Western

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<sup>282</sup> Ibid., 160.

world, the category of 'human' in Guantánamo is empty; in the personal struggles behind the fence, the category lost its meaning. No rights or privileges arose from it. Nothing sacred came from one's 'belonging' to human beings; in fact one is better off by constantly becoming, turning into something else.

### Becoming-Western in the Face of the Law

The detainees' 'becoming-animal' or in general terms 'minoritarian' is also very significant from the standpoint of law. It is rather interesting how, when one considers this, the distinctions between different forms of existence deriving from Western metaphysics and part of the Western legal system no longer make sense. Humans are not humans by virtue of their biological characteristics, but by virtue of their citizenship, class, nationality, ethnicity, and religion etc. Universal human rights are then only a construction, an illusion, that exist not to guarantee rights but to legitimise Western ideas of thinking and living. In situations such as Guantánamo where foreign 'non-Western subjects' realised that their 'humanity' is not sufficient for their enjoyment of rights, the detainees had to find refuge in something different from humanity – and 'animalisation' was one answer. At the same time, however, the detainees, at least the majority of them, were never subjected to the Western legal system or Western ideas of justice. Hence their encounter with the 'American legal system', be it in the form of the habeas petitions, the military commissions, or the Enemy Combatant Status Review Boards, introduced them to a type of justice or legal system they had not encountered before. The 'American treatment' hence 'Westernised' detainees – made them 'objects' of a type of Western law. What is more, the detainees' presence and active engagement in the system in fact facilitated another transformation. The detainees were not only 'becoming-animals', but in the logic of the ontology discussed earlier, they had multiple becomings. They were also 'becoming-Western'. By preparing their defences in language they know, they found a way of engaging with Western legal discourse on their own terms. These terms were not common to the Western legal system and the Western legal system did not know how to engage with them. Yet, with their own ways of engagement the detainees addressed the law in ways in which the law could recognise parts of their discourse. This, at least partial recognition, was all the detainees asked for; they had, within limits, an opportunity to be heard by the law. This was something the US government did not anticipate. They were convinced the conditions they created would prevent detainees from having any interaction with the existing legal discourse; but they were wrong. As

Flagg Miller, in the preface to a book of poems detainees wrote in Guantánamo observes:

At Guantánamo, detainees are preparing their arguments not in sophisticated legal terminology, which most of them lack knowledge of, but rather in the familiar idioms and vocabulary of their youth. Whether describing scenes of nurturing parents or destitute children, of valiant siblings bound by fate or worldwide victory for the oppressed, the idioms most apt for the detainees are those drawn from populist discourses of Arab national liberation.<sup>283</sup>

In the process of writing the detainees stumbled upon something that made the existing order open up, and – at least to an extent – hear their side of the story. Such intervention not only changed the existence of detainees in that particular context, but also, it changed the law within the same parameters. With this identification and transgression of a particular form of the detainees’ selves, the detainees challenged the existing legal discourse. Despite radical opposition from the legal quarters, the law opened up to the detainees’ demands and gave in to the detainees’ requests to be given a voice. They challenged the existing legal parameters and called for their re-negotiation. In such a way, the detainees’ ‘becoming-Western’, destabilised the foundations of the legal discourse addressing their detention and situation in Guantánamo.

The detainees’ ‘becoming-Western’ posed a challenge to the legal system as a whole and acted in exactly the opposite way to that planned by the US – namely to deny the detainees the right to have their cases heard at the courts, or to have the right to challenge the conditions of their detention. Contrary to the plans of the US government, by ‘becoming-Western’ the detainees engaged and challenged the conditions of their detention as well as disturbing the legal process. They have done so by creating the conditions for their involvement in the discourse that was supposed to exclude them, and by recreating the discourse and tailoring it to the knowledge and language they are familiar with. In doing so they challenged dominant legal discourse, as this discourse found it difficult to accommodate the detainee’s way of engaging with the law, and equally it challenged the dominant sovereign practice, which anyway aimed at a complete exclusion of the detainees from existing legal frameworks.

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<sup>283</sup> Flagg Miller, ‘Forms of Suffering in Muslim Prison Poetry, A Preface’ in Mark Falkoff, *Poems from Guantánamo: A Detainee Speak* (Iowa City, University of Iowa Press, 2007): 16.

### Becoming-Detainee

On the other side of the fence a similar process of becoming was taking place. The guards and military staff involved in the running of the facility were in contact with detainees on a daily basis. Therefore it would have been difficult to remain immune to what they saw. All personnel working in Guantánamo went through military training involving some kind of instruction on the Geneva Convention and humane treatment of the enemy, prisoners of war etc. These rules, as many of the former guards and military personnel have mentioned, are central at least to some of their training.<sup>284</sup> In the case of Guantánamo, however, guards were expected to treat detainees in a more violent way than is otherwise common, despite, as they have claimed, receiving no special training.<sup>285</sup> The governmental reports on the detainees were that these are extremely dangerous people, born killers and those responsible for the 9/11 attacks.<sup>286</sup> This categorisation served as an impetus for the military and guards to persistently mistreat the detainees or deliver a treatment that is outside the framework of traditional military training based on the Geneva Conventions. The government clearly used fear and condoned for the 9/11 attacks as ways of getting guards worked up and prepared to resort to harsher techniques in their dealings with the detainees. It was not hard for the government to stir the emotions of normally very young and inexperienced group of soldiers; not only did the soldiers fear the detainees, but they also remembered the sorrow, the pain and the disbelief of the nation after the 9/11 attacks. In this context, the government's instructions concerning verbal humiliation of the detainees, their animalisation and humiliation on the one side and prohibition of communication and fraternisation between the detainees and the guards on the other side, were put in place not only to isolate and break the detainees, but also to help the guards keep up distance from the detainees and ensure the 'continuation' of harsh treatment. Such tactics are not new, in concentration camps during World War II, as for example Bruno Bettelheim remembers, the guards kept humiliating and degrading prisoners, as this was how they distinguished

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<sup>284</sup> For more see Karen Grenberg's interview with Brig. General Michael Lehnert in: Karen Greenberg, *The Least Worst Place: How Guantánamo Became the World's Most Notorious Prison* (Oxford, New York: Oxford University Press, 2009).

<sup>285</sup> Specialist Brandon Neely, *Testimony* Center for the Study of Human Rights in the Americas [<http://humanrights.ucdavis.edu/projects/the-Guantánamo-testimonials-project/testimonies/testimonies-of-military-guards/testimony-of-brandon-neely>]. Accessed: July 29 2010.

<sup>286</sup> Cheney, 'Cheney: Gitmo holds worst of the worst'.

themselves from the prisoner population.<sup>287</sup> In situations such as in prisons and detention camps, the relationship between the guards and the detainees can easily cross the enemy-friend divide. Therefore the rules guards had to follow and the environment in which the two groups lived had to be severe enough to ensure the preservation of this distinction.

In Guantánamo, however, the detention rules, humiliations etc. ‘were not sufficient’ to maintain effective separation between the detainees and the guards. The guards and the rest of the military personnel in daily contact with the detainees acknowledged a huge gap between the image of the detainees portrayed by the government and the experience of ‘the guards on the field’. Specialist Brandon Neely, for example, remembers:

[David] Hicks did not come across as the cold-blooded killer we were told all these guys were. He was a normal guy like me. And not much older. He would sit there, crack a joke, and make small talk. Just like any other normal person would. During these times is when I really started to look at the detainees as real people and not just monsters, as I had been told they were. This man had a family and people that loved him as I had. And we both missed them greatly and we both wanted to return back to our families as soon as we could.<sup>288</sup>

The guards’ experience of the detainees went against official governmental representation of the detainees upon which the rules about the treatment of detainees were drawn. The clash between the two representations and the rules determining the treatment made abuses or harsh treatments even more psychologically demanding. A number of guards while still on duty in Guantánamo found it hard to comply with the Camp rules on the detainees’ treatment; some regretted their harsh treatment while still on duty. The testimonies of former guards bear witness to their gradual identification with the detainees and their living conditions. To take this observation further, with a slight exaggeration, one could say that the guards were becoming-detainees.

There was a good rapport between some of the guards and the detainees; of course those detainees who spoke English were advantaged in fraternisation. Spending time in the same place, every day for many hours, meant that the detainees and the guards got to know each other to the extent that they started exchanging life experiences, childhood anecdotes, memories and even discussing personal problems. One could say that despite

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<sup>287</sup> Elaine Scarry, *The Body in Pain: The Making and Unmaking of the World* (New York, Oxford: Oxford University Press: 1987): 58-9.

<sup>288</sup> Specialist Neely, *Testimony*.

the difference in roles both groups had, there were a lot of personal similarities, respect and even sympathy between the two groups.<sup>289</sup> Specialist Neely remembers his conversations with Rhuhel, one of the Tipton Three, a British group of three former Guantánamo detainees from Tipton:

We also talked about normal stuff guys our age did. Everything from girls, to what we did when we went out on the town. Many times, while working Alpha block, if I didn't understand someone, or wanted to know what was going on, I would ask him for help. I was actually older than he was by a year. And I was only 21 at the time. I could not imagine at that age suffering what he went through. The Rhuhel Ahmed I saw and spoke with was just a normal, every day young guy like I was. If I had seen him walking down the street or at a bar I would not think twice, and I definitely would not have thought he was a terrorist.

I know that being in the position I was in as an active duty military police officer guarding the MOST dangerous men in the world that I was not supposed to really interact with the detainees. But it's hard. Especially when you realize that some of these guys are no different than yourself. The military trains you not to think and just to react and not feel any compassion for anyone or anybody. And do what you are told. No questions asked.<sup>290</sup>

In the case of Guantánamo, sympathy or some kind of identification with the 'other side' was therefore central to the process of 'becoming-minoritarian'. In Moazzam Begg's memoirs one can read that the guards, once they became comfortable, often included him in their conversation. The guards dreaded the situation they were in, they hated Guantánamo, and they hated being in the army, yet that was either their only choice or they were unable to leave.<sup>291</sup> In the context of Guantánamo, some of the guards, one could argue, went through a transformation and 'became-detainee'. Not in a literal sense, yet their actions made them question their own humanity, their own 'self' and the position in which they found themselves. By questioning the rightfulness of the situation and US endeavours, they directly put under scrutiny their own humanity, which made them the prisoners of their own conscience. This was something they could not resolve for years to come. For example Brandon Neely and Christopher Arendt, after their deployment in Guantánamo found it difficult to return to normal life. The experience of being in Guantánamo made them not all that much different from the detainees. They might have seen the situation from a different side of the wire, yet their experiences and

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<sup>289</sup> See for example: Moazzam Begg, *Enemy Combatant: A British Muslim Journey to Guantánamo and Back* (London: Pocket Books, 2006); Abdul Salam Zaef, 'Testimony', in *My Guantánamo Diary: The Detainees and the Stories They Told Me*, Mahvish Rukhsana Khan (New York: Public Affairs, 2008): 137–41; Kurnaz, *Five Years of My Life*.

<sup>290</sup> Specialist Neely, *Testimony*.

<sup>291</sup> Begg, *Enemy Combatant*, 221.

problems arising from these experiences were very similar – coming back home after the time spent at the Base was difficult. Becoming-detainee demonstrates the struggle some of the guards went through; it signifies the initial collapse of the guards' ideas of 'the self', their sense of humanity and, as a result of the abusive treatment they delivered, their belonging to the category of human. 'Becoming-detainee' equally represents the guards' experiences after they returned from Guantánamo; these are not all that different from the experiences of the detainees. They had to re-assemble their identities, they went through traumatic disorders, depressions, attempted suicides, or they re-questioned their relations with a fellow human being, their humanity and nonetheless also their life choices. In this way guards were in fact hardly in a better place than detainees; their becoming-detainee made them sensitive to the injustices and grimness of detainees' lives in the Camp and equally reminded them of the misery of their life in the Camp. The becoming then uncovers processes of identification, recognition, resistance or expression, which are shared between or common to the detainees and the guards.

### **Hunger Strikes, Suicides and Testing the Limits of the Body**

In addition to becoming, another important form of expression is the body. Although the body is an expression of one's existence, it is also a space for political action, and is as such, to recall the theoretical aspects discussed in the previous chapter, similar – if not the same – to becoming. In Guantánamo bodies are central political tools; for detainees they are tools of resistance and manifestations of demands, for the guards they are objects of surveillance and political power. The situations in which the body reacts against the way in which it was supposed to react or is programmed to react perhaps bear the greatest importance. In other words, the situations in which the body resists or ignores 'what the body should do' are situations worth exploring further. For the detainees such situations emerged in particular in relation to the hunger strikes, suicides and torture. The body in those situations acts against the way it is programmed to act – against 'the instinct' of self-preservation. To provide a sense of what is being discussed here; Guantánamo witnessed a very high number of 'bodily actions' such as suicide attempts or hunger strikes. In 2006 the number of suicide attempts reached 350, most of those were attempts by hanging. I will begin the discussion of the body with attempted

suicides; this will be followed by hunger strikes and lastly I will engage with the notion of pain.

### Attempted Suicides

The US soon became aware of the effects suicide attempts might have on the situation in the Camp and outside it. They were in no doubt that if information about this was let out of the Camp, there would be a large public outcry. They were right; so in an attempt to lessen the impact and ‘mis-represent’ the gravity of the situation, the government decided to change and re-classify suicide attempts and call them ‘events of severe self-harm’. This requalification was made on the back of a very interesting argument. As Rear Adm. Harry Harris Jr. explained, the suicides or attempted suicides are not detainees’ ‘cries for help’ because of severe conditions in which they live, neither are they signs of depression; instead the attempts are acts of asymmetric warfare against the United States.<sup>292</sup> This change of narrative essentially bought into and supported the initial US narrative about the Guantánamo detainees, that is that those imprisoned at the Base are ‘born killers’, ‘the worst of the worse’. Such a change of narrative was made in the hope of changing the statistics and avoiding public outcry.

However, it is interesting how information about suicides causes extreme and unfavourable public reactions. The need to regulate the category of a suicide derives from a common perception of what the body should do, how it should react and what ‘it contains’. In other words, life in that body is perceived to be sacred, otherwise any decision to commit a suicide harms the institutions in which the suicide happens, as that institution, in particular if it is a prison or a detention centre, is supposed to limit, secure and hence protect life. What is unacceptable in the act of a suicide is then not what the body does or what happens to it as such, but what it does with life instituted in the body. The need to preserve life not the body is then central in the existing dominant discourse that condemns any suicide actions. The need to preserve life is also strongly present in the relationship between the lawyers and their clients (in this case the detainees). Joshua Colangelo-Bryan, a lawyer of Jumah al-Dossary, who has attempted to commit a suicide on countless occasions, was deeply distressed by his client’s actions. As he said in the interview I conducted, he was concerned about al-Dossary’s life; he wanted to save him,

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<sup>292</sup> Mahvish Rukhsana Khan, *My Guantánamo Diary: The Detainees and the Stories They Told Me* (New York: Public Affairs, 2008): 154.



bring him some light of hope, yet there was not much he could do. This inability to do much about the conditions in which al-Dossary lived was a demonstration of Colangelo-Bryan's inability to make a change and improve al-Dossary's life by reuniting him with his family. Colangelo-Bryan admits that he spent hours trying to convince al-Dossary that he shouldn't kill himself.<sup>293</sup> 'I'll tell him that he'll go home one day and be with his family again. He asks when that will happen, and, of course, I have no answer. He reminds me that he has lived for years alone in cells... and has been told by the military that he will live like that forever. All he can see is darkness. For me, his words bring on a feeling of crippling powerlessness'.<sup>294</sup>

The purpose of suicide is multiple: it makes the body go against what it was taught to do or what it is expected to do – to preserve itself – and what is more in 'it' than that 'it' that is 'the self'. Suicide liberates the body from the tyranny of the existing social and political institutions enslaving the body; yet at the same time, it questions the effectiveness and the role of many other institutions, procedures or individuals responsible or in close contact with the person committing suicide. Suicide in this sense is a rejection of moral or ethical values dominant in society – values that keep life sacred and its preservation in whatever shape or form above the actual quality of the life itself. Suicides when looked at outside the existing moral and ethical order can be seen as a liberation of an enslaved form of life; something the one who is 'in possession' of that life desires. Or equally, suicide can be seen as a liberation of the body from being only an object facilitating the conditions of one's life. In this context, suicides are bodily actions against life or against the logic that makes the body operate as an organism. Perhaps – one could speculate – precisely because of such attitudes towards the body and life, the US government began labelling the detainees as being mentally ill and unable to make rational decisions on the status of their lives. Such labelling, on the one hand again acknowledged the deviancy of the detainee's body and its attitude towards life, yet on the other hand it portrayed detainees as being in need of hospitalisation. As Alison Howell argues, detainees had to be either imprisoned or hospitalised, but not for the protection of a wider community, but primarily for protection against themselves<sup>295</sup> – in other words, for protection against their bodies. This of course portrays detainees as not only dangerous, mentally ill etc. but

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<sup>293</sup> Interview with Joshua Collangelo-Bryan, New York, September 2009.

<sup>294</sup> Khan, *My Guantánamo Diary*, 221.

<sup>295</sup> Alison Howell, 'Victims or Madmen? The Diagnostic Competition over "Terrorist" Detainees in Guantánamo Bay', *International Political Sociology* 1, no.1 (2007): 29–47.

also as irrational and hence unable to decide and acknowledge what is in their best interest. Such positioning of detainees gives the government, or anyone assuming responsibility over these people, the right to 'take care of the detainees' and do whatever it is necessary to keep them away from further endangering others and themselves. In other words, they denied the detainees the right and the ability to reason and responsibly decide on their actions, and equally they prevent their bodies reacting in any way that would endanger their lives. The ultimate goal of the US practice was then to disable the body and discredit the mind all in order to paralyse life and 'reduce' it down to a form of 'mere presence' without any further qualities.

The suicide attempts can then be seen ultimately as attempts to reach freedom and liberation of the body and/or of the notion of life. They have to be carefully reinterpreted and addressed by the existing dominant forces, because if untreated they can challenge existing social and political institutions as well as ethical and moral standards. No doubt, any suicide attempt touches upon the core ethical values of society and ultimately tests the limits of societal ethical and moral standards. What is more, they also suggest that if someone is to resist, the only real act of resistance is an ultimate act of violence against oneself. However, having to resort to such violent acts equally highlights the violence that is inherently present in the system itself. Namely that the system basically reduces the range of choices one has down to two: one is either part of the system, or one does not exist at all. An option whereby one is excluded from the system yet still 'present' is not amongst available possibilities.

### Hunger Strikes

Another form of bodily resistance that questions the main purpose of the body – self-preservation – is the hunger strike. In the case of hunger strikes we revert to the old body-mind divide. Here the 'mind' refuses the intake of food, hence the body and life cannot be preserved. The body simultaneously when starved enough performs functions it is not suppose to perform, and can reject the food even when the mind agrees the food is to be consumed. In such a way hunger strikes, again, lead to a disintegration of the body as an organism performing functions, which preserves life and is otherwise in line with what a body as an organism should do.

Hunger strikes as political actions were present in Guantánamo from the very early days. Unlike the suicides through which the detainees sought escape from the situation in which they were in, the hunger strikes were political actions in a broad sense in which Guantánamo detainees did not call for major political actions, political goals or demands with a clear political end (as for example was the case in Northern Ireland in early 80's); rather they kept their demands focused on the everyday life in the Camp, their treatment and most importantly the guards' treatment of the Koran. As Kurnaz notes, the first demands were that the guards were not allowed to handle and search Korans, that the detainees' private parts were not to be searched and that the female guards no longer frisk them.<sup>296</sup> One of the reasons why the detainees initially focused their demands on everyday life in the Camp, one can speculate, was that the detainees were of very different nationalities and hence probably found it difficult to make a common demand after only a short time 'living together'; what is more, the detainees were rather successfully kept in isolation from each other and the rest of the world, and thus did not know of their whereabouts or whether anyone in fact knew of their situation. Only after lawyers and the International Red Cross Committee started with regular visits, the detainees realised the amount of public and media attention their situation received. A relationship between the number of hunger strikes, media attention and the detainees' knowledge of the attention they were receiving can also be established. Looking at the available information on hunger strikes in the years between 2004 and 2006, when Guantánamo was very much at the centre of media attention, the number of hunger strikes peaked.<sup>297</sup> This information, however, should in no way undermine the actual struggles, the sincerity of the demands and the severity of detainees' conditions against which they protested against.

The hunger strikes, as Kurnaz remembers, gave the detainees a sense of power.<sup>298</sup> The detainees went on their first hunger strike after the guards abused the Koran, and not, as many have thought, because of mistreatments and abuses. Kurnaz describes the situation after the first assaults on the Koran:

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<sup>296</sup> Kurnaz, *Five Years of My Life*, 153.

<sup>297</sup> Andy Worthington, *NCIS Statement on the Guantánamo Suicides of June 2006*, August 25 2008. [<http://www.andyworthington.co.uk/2008/08/25/ncis-statement-on-the-Guantánamo-suicides-of-june-2006/>]. Accessed: September 15 2009.

<sup>298</sup> Kurnaz, *Five Years of My Life*.

The following day some of the prisoners refused to take their breakfast. Others accepted the paper plates but didn't eat anything. When the guards came to my cell I shook my head. [...] By noon, no one in Charlie was eating anything. That afternoon we heard from Bravo that all of the blocks were on hunger strikes. In the morning, at noon, and in the evening, the guards came with paper plates and Emeries,<sup>299</sup> but we all refused to take them.<sup>300</sup>

The reaction of the detainees to the abuse of the Koran was something the US military did not expect. The detainees were prepared to put their own lives at risk for the purpose of preserving the holiness of the Book. Although they knew that they would be punished for their behaviour, they proceeded with their conduct. These acts, however, were not only a demonstration of the respect the detainees had towards the Koran, but also an indication that the US failed in their plan to demoralise detainees, break communication and shatter the strength of their faith. The detainees' faith in Allah did not weaken; quite on the contrary, it grew stronger. Kurnaz describes: "They ridiculed our faith and tried to separate us from Allah to make us give up any hope of ever getting out of that hell. We were to be made as weak and as small as possible so that they could get something out of us in interrogation or at least break us. I didn't give up hope: It is part of my faith never to give up hope. If Allah was willing I could be released any moment."<sup>301</sup>

With the hunger strikes the detainees managed to reclaim some of their 'humanity' and political power. Clearly, the US did not want the detainees dying while in their custody. Kurnaz vividly remembers a visit by the camp general, Major General Michael Lehnert, on the fourth day of the strike. He writes:

The general who was in charge of Guantánamo in the early days arrived and talked with one of the English-speaking prisoners. The prisoner refused to stand up in the general's presence. The general took his cap off and sat on the ground in the corridor in front of the cage. At that moment I realised that we were not utterly powerless. We could bring them to their knees if we all went on hunger strike! They didn't want us to die.<sup>302</sup>

However, the triumph of this success was short, as Kurnaz soon observed: 'I realise that we didn't have any real power. It was just an illusion. It was up to the General alone whether or not there would be negotiations. He was the first and last camp commander with whom we could at least negotiate religious issues. He kept his word. But this general

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<sup>299</sup> Emery is a nickname for 'Meals Ready to Eat' – meals that are commonly used in US army.

<sup>300</sup> Kurnaz, *Five Years of My Life*, 150.

<sup>301</sup> *Ibid.*, 187.

<sup>302</sup> *Ibid.*, 151.

was replaced, and everything changed overnight'.<sup>303</sup> Soon after, the detainees realised that even if they performed collective hunger strikes, the new command under Major General Geoffrey Miller will leave them on strike for a certain number of days for which it is believed that someone can survive without food or water. When the length of hunger strike came close to that number of days, they were taken to the hospital and force-fed. Sami al-Haj in an interview describes in great detail the ordeal a hunger striker had to go through. A few years into the existence of the camp, the hunger strikes became an everyday event and the Camp Commanders no longer paid much attention to them. When a detainee reached a limit, around 20 days without eating, the guards would come and take the detainee to the hospital where he would be force-fed.<sup>304</sup> Al-Haj describes the ordeal:

They slam the prisoners into the chair. They tighten the straps so they cut into us. [...] They begin with the feet first, then the waist. Then, they do one wrist at a time. There is one band around each shin. One on each wrist. One on each elbow. One strap that comes down over each shoulder. Three on the top of the head, so that the head can't move. The ankles are shackled to an eye of the chair. [...] They pull a mask over your mouth, apparently to keep people from spitting. In the morning they use my left nostril, in the afternoon, my right. The pain of putting the tube up my nose depends on the shift. As it goes in, at first you are gagging on it. As it goes down, they blow air into it to hear where it is.<sup>305</sup>

The entire process of force-feeding was a demonstration of the guards' attitude towards the body – the body is only an object that has to be immobilised to enable the feeding, and while doing so, it also has to be punished, hence the infliction of pain. The process was there to undermine detainees' dignity while serving one purpose, that is, again, to preserve life as such. In no way does this preservation of life concern the quality of life or consider reasons for which one decided to go on a hunger strike. In a similar way suicides discussed earlier, the hunger strikes are seen and dealt with only one purpose in mind namely to preserve life – to insure that 'the body' or the 'irrational mind' inside the body does not end, thereby killing life.

Both the hunger strikes and the suicides discussed above challenge the existing symbolic order and social and political institutions by representing a radically different 'social ordering'. Both practices challenge the existing orders not by directly opposing them, but

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<sup>303</sup> Ibid., 154.

<sup>304</sup> Sami al-Haj, 'Testimony', in Khan, *My Guantánamo Diary*, 185–91.

<sup>305</sup> Ibid., 189.

by introducing a different ‘meaning’ or ‘ordering’ of the body and the value system the body subscribes to. Not only has the function of the body changed – no longer is the preservation of life its main purpose – but also the ordering of the body: it no longer acts as an organism. The behaviour of the body has also changed: the body becomes a deviant body that needs to be healed. These new functions and practices that the body performs inevitably lead into a conflict with the dominant order. This conflict, however, does not derive out of the urge to oppose the dominant discourse; on the contrary, the detainees aimed at a different ordering or way of making use of their body. Such actions aimed at reclaiming at least a small amount of freedom or the ability to do something that is outside the strict and rigid rules of Guantánamo. Such practices, despite perhaps having no intention of challenging the existing sovereign order, of course, end up doing precisely that.

### Deviant bodies

Another way of challenging the existing social institutions is again by making the body do what it is not supposed to do; but this time the meaning is literal. There are many ways in which Guantánamo detainees used their bodies to do things the body was not supposed to do. By being locked in small iron/steel cages the body had very little space to do much else but sit, sleep and pray. Perhaps the most innovative way of how the body expresses itself is by making it ‘extend’ beyond the physical limits of the body, and placing itself where it is not supposed to be placed. Excreta was used to protest, stir trouble or draw attention. The detainees could not reach out of the cell or have much contact with another person; however, to perhaps channel their anger and frustrations, they made ‘cocktails’ and throw them through the cell mesh in hope of hitting a guard or a passing general. Kurnaz remembers an occasion when General Geoffrey Miller was visiting the block: ‘General Miller had come to inspect Oscar Block. Another general or high-ranking officer and several captains were walking by his side. When they reached the middle of the corridor, the first prisoner threw a mixture of water and faeces, collected in a bowl or in an Emerie packet, at the general. He hit the target.’<sup>306</sup> This act of ‘body-extension’ might be seen as irrelevant; yet, I think it challenges an important spatial ordering of place. The Guantánamo detention facility, like all other places, embodies a particular spatial ordering. In that ordering the body or those ‘imprisoned’ are put in cages or

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<sup>306</sup> Kurnaz, *Five Years of My Life*, 192.

behind bars with a purpose of limiting their mobility and space for ‘personal freedom’. On a bigger scale this placing of the body in the cell divides a space between those who are inmates and those who are not. Such delineation is also performed in relation to security. The individual cells are seen as insecure spaces, as they are inhabited by the detainees; whereas the corridors on the prison blocks are safe spaces that guards use to maintain the normal running of the facility. By throwing faeces and extending the body to what is otherwise known or understood as a safe place, the detainees intervened into the dominant spatial ordering of the facility. The corridors on the prison-blocks are no longer safe spaces as they can be invaded by prisoners’ bodies; and the cells and the bars used to limit the movement of the detainees no longer suffice in containing the detainees’ bodies within the assigned space.

The actions through which detainees extended their bodies were a reaction to the treatment of their bodies; every time the detainees were moved from one prison-block to another the guards thoroughly examined and checked them for possessing any kind of weapons or dangerous objects. Such examination was disrespectful, and forcefully intervened into what is not only in the Muslim world but also in ‘the West’ deemed as a distinction between the private and the public domain. As all former detainees and guards report, the detainees’ private parts were checked on a regular basis; the detainees were also stripped naked, photographed, shaved and initially prohibited from growing a beard.<sup>307</sup> Nakedness is a particularly delicate issue for a Muslim person. The detainees, by being stripped naked, abused and photographed, were deeply offended.<sup>308</sup> Begg writes:

I was then moved under a wooden shelter, and sat down so they could take portrait pictures for their detainee album: one with all my hair, and one after it was shaved off. The barber sadistically enjoyed his job. [...The barber] knew the beard was an important symbol of Muslim identity, particularly in this region. He’d obviously seen plenty of distressed reactions from others. [...] I felt that everything sacred was being violated, and they must have felt the same.<sup>309</sup>

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<sup>307</sup> Begg, *Enemy Combatant*; Kurnaz, *Five Years of My Life*; Shafiq Rasul, Asif Iqbal and Ruhel Ahmed, *Composite Statement: Detention in Afghanistan and Guantánamo Bay*, Center for Constitutional Rights [http://ccrjustice.org/files/report\_tiptonThree.pdf]. Accessed: 12 August 2010; Andy Worthington, *The testimony of Guantánamo detainee Omar Deghayes: including allegations of previously unreported murders in the US prison at the Bagram airbase*, August 28 2007 [http://www.andyworthington.co.uk/2007/08/27/the-testimony-of-Guantánamo-detainee-omar-deghayes-includes-allegations-of-previously-unreported-murders-in-the-us-prison-at-bagram-airbase/]. Accessed: November 20 2009.

<sup>308</sup> The idea of ‘purenness’ is extremely important for Muslim men.

<sup>309</sup> Begg, *Enemy Combatant*, 112.

The treatment of the detainees clearly challenges the limits of what is perceived as private and what as public. It also challenges one's integrity and one's image of the self. The detainees were of Muslim religion where the relationship between the private and public is set even more delicately than in the West. The treatment that challenged the limits between the two realms had two main purposes: one is a degradation of the person in question, whereas the other has to do with the perception of power. By degrading the detainees and interfering with their private sphere – a sphere that is supposed to provide some kind of comfort and shelter – the guards and consequently the US imposed themselves as the masters of all aspects of the detainees' lives. For that reason, the detainees' private sphere collapsed, consequently reducing the detainees' sense of protection and security. The intervention into the private radically disturbed the psychological structure of the detainees' life and their notion of the self.

### Pain

Perhaps the most radical intervention into the detainees' private sphere or their comfort zone is torture or a threat of torture that involves physical pain or deformation of detainees' bodily organs.<sup>310</sup> The pain or the act of inflicting pain is of course always highly political, in particular when its source is directly or indirectly related to sovereign power. However, pain can also be disruptive to the symbolic order and social and political institutions from which it derives. What I mean by this is that, unlike in some understandings of pain, where pain or the 'unusual' behaviour of the body is used to disrupt the existing symbolic order, another understanding of pain points to how pain or the body actually disrupts its own symbolic order. The best examples are war injuries or post-traumatic stress disorders which the state fails to recognise and properly treat. History is full of examples where injuries gained in war or while helping in another national calamity remain untreated or even entirely ignored. Such are the examples of many Vietnam War veterans, or even former Guantánamo guards who returned home and are unable to readjust to 'a normal way of living'. These cases in fact represent a disruption to the existing symbolic order, as they challenge the official story, and point out the inability to treat or take care of the individuals they have sent to the battlefield and who got injured, lost a limb or an organ while serving and defending a particular understanding of life. In the film *Born on the Fourth of July* Tom Cruise as Ron Kovic, a

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<sup>310</sup> I will elaborate on the role torture has in the next section.



Vietnam War veteran, is paralysed from the waist down and is treated inadequately medically and psychologically. He becomes alienated from his friends and family, and turns violent and ‘eccentric’.<sup>311</sup> This state of madness is his refuge, his island of freedom, where he can say and do whatever he wants in a way he wants. He is no longer pitied or bound to social norms that imply what he, as a Vietnam War veteran, should or should not do, and what the limits of the capabilities of his ‘incomplete body’ are. In contrast, however, this ‘eccentricity’ label is not only Kovic’s path to freedom, but also the Government’s means of escape from having to take Kovic’s actions and words seriously. His critique of the Government and the workings of society are discredited by being seen as eccentric. In Deleuze’s words, ‘madness’ does not represent a breakdown, but rather a break-out in so far as this deformed body escapes from the restraints of the organised body. ‘Madness need not be all breakdown’, as Deleuze and Guattari write, ‘[i]t may also be a breakthrough [...] The person going through ego-loss or transcendental experiences may or may not be in different ways confused. [...] True sanity entails in one way or another the dissolution of the normal ego’.<sup>312</sup>

Some of the former Guantánamo guards, although they did not suffer physical injury, who without attaining physical injury cannot return to their normal life without making some kind of symbolic closures, they are in a similar position as Ron Kovic. Many of them in fact came to the United Kingdom to meet with former detainees and apologise for what they did or their government has done. One of them, Christopher Arendt, for example, talked about his experience in Guantánamo and after, when he returned home. He talks about his drug abuse, trauma and suicide attempts. As he said, he no longer felt like a human being.<sup>313</sup> The experiences of many other guards to an extent literally match the experience of detainees. Although they were able to move freely within the Base and were not put under any other movement restriction or interrogations, the guards’ experience of Guantánamo is not all that much different from the detainees’. The suffering the Guantánamo guards are going through challenges the existing symbolic order in at least two respects. Firstly, it exposes the state’s inability to treat its own people and provide for their ‘normal return to everyday life’; and secondly, it exposes the truth of the system: namely that is the system in itself is no different from the system it is

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<sup>311</sup> *Born on the Fourth of July*. Motion picture. Directed by Oliver Stone. Universal, 1989.

<sup>312</sup> Deleuze and Guattari, *Anti-Oedipus*, 143.

<sup>313</sup> Interview with Christopher Arendt, Former Guard at Guantánamo Detention Centre, London February 2009.

fighting against. Its people are experiencing similar if not the same problems; in the conditions it provides – the Guantánamo detention centre – everyone irrespective of their nationality is being dehumanised and mistreated.

The practices of resistance emerging from bodily actions then either directly oppose the system, or oppose it through being different by subscribing to a different (symbolic) order or to a different political and institutional order. In general, however, most bodily interventions do not happen in order to directly – or with a particular purpose – challenge the existing system; in fact they do not challenge it at all. However, because of their presence, the bodily actions cannot do much else but automatically represent a challenge to which the existing system has to react. These new orderings and uses of the body (or bodily organs) lead to disruptions and to openings in existing social and political practices. They penetrate, as has been mentioned in the introduction, the symbolic order and disrupt its working. As such they do not trigger anything extraordinary, but by virtue of their pure existence highlight the incompleteness of the existing order. The system, however, cannot be recognised as incomplete or vulnerable – that would undermine its legitimacy – therefore various rationalisations of or absorption of interventions into the limits of the system have to be put in place. For example, in the discussions above, the body in the hunger strikes and the suicides embodies a different attitude towards life. The life, for the body, no longer needs to be preserved no matter what it takes; instead, if that is what the body desires, or if that is what frees the body, then the body can refuse to maintain and preserve life. Yet, such a narrative about life is unacceptable within the existing symbolic order and has to be devalued and eradicated from existence.

## **Torture and the Perverse Workings of Desire**

The move from the becoming and the body to desire signifies a change in representation. Although the becoming and the body produce and order reality, they were primarily discussed as forces representing the body, bodily actions or transformations. Desire, in contrast, is about perceptions of the ‘self’, and the ‘world’ surrounding us; and, importantly, about the logic or ordering of the notions of ‘the self’ and the ‘world’. As it has been discussed in the previous chapter, desire does not produce fantasy, rather it

constructs or is the maker of reality – reality is what desire is.<sup>314</sup> In the political arena, then, democratisation, peace processes, wars, intervention, torture or even international institutions and cooperation do not happen as such, or because this is the nature of the system, but because there was a desire for that particular phenomena to happen. This can easily be understood when these activities are of peaceful nature; yet when there is talk of war and violence, it is often difficult to accept that those are equally desired.<sup>315</sup> However, it is not only that there is no difference between a peaceful and a violent desire and that both are equally valid, but also all realities are, in the same way as desires, ‘subject-specific’. In other words, we are all ‘governed’ by a different – to us specific – desire (a variation of one desire); hence we all have different or distinct realities. Of course, it would be impossible to study all specificities and differences between particular singular desires producing ‘subject-specific’ realities, thus the discussion here needs to focus on ‘common desires’ ordering a particular situation or a relationship. These are desires that ‘govern’ or are specific to a particular group, e.g. the detainees, the guards, the media, the NGOs or the US government. In this section of the chapter I will show how reality does not exist *per se*, but is rather desired. Desire then sets or embodies the limits of a particular symbolic order, and maintains and reproduces the existing reality. This is desire’s task on a societal as well as an individual level. Therefore, if one is to think of an alternative, one has to break away from the practices and the representations embodied in such desire. In the previous chapter I mentioned that this has to do with ‘going through the fantasy’, or allowing desire *as such* the entry into a social and political field. In this chapter, I will not discuss the latter form of desire; however, throughout the discussion I will identify practices or events which disrupt the working of desire as a reproducing power of reality and hence indicate ways in which one could go beyond the desire. The latter – emancipatory – forms of desire will be discussed in Chapter Six together with LOM as an alternative form of existence.

In the light of reality being nothing more than a representation of desire, the situation in Guantánamo becomes extremely interesting. This observation inevitably implies that Guantánamo and the practices associated with it did not take place by chance, but because someone created the conditions of their emergence; in other words, a desire for such practices and a ‘new order’ of detention, war and policy-making had to be brought

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<sup>314</sup> This desire is not desire as such; rather, for Deleuze, desire is what constitutes reality.

<sup>315</sup> Deleuze and Guattari, *A Thousand Plateaus*.

into existence. This desire is inherent to decision-makers in the US government who created the new system. By observing the decision-making processes and discussions regarding the appropriate location for the ‘detention centre’ and laws that apply to detainees, one can note that the decision to open the facility in Guantánamo Bay, to adopt ‘Gitmo laws’, to accept special guidance on the treatment of detainees, etc. was a conscious decision, ordered accordingly by a logic embedded in a desire to create a new system of detention and warfare against those excluded from the ‘Western system of values’. This desire for an alternative system to be launched in the symbolic order did not stop with the new security and legal policies towards Guantánamo; it also implicated the media and the general public. The picture I am trying to put forward here is that the new order the US aimed at establishing was an order that concerned all aspects of society, not only those fighting the war on terror, and the detainees in Guantánamo. It was an order that was desired and hence had to address every aspect of one’s existence. As it is impossible to engage with every aspect of society and explain the role the new desire promoted by the US government plays, I will focus only on one aspect. I have discussed the hunger strikes and the suicides earlier in this chapter; hence to maintain consistency, I will ‘remain’ in Guantánamo and explain how the relationship between the torturer, the tortured and the government is played out on the grounds of desire. The explanation of the desire within these relationships is rather more complex than the one set out in the discussion so far. What I have in mind by this is that in the act of torture, desire does not only create reality, but also acts as a demand imposed on either the tortured or even on the torturer.

### The Reality in the Act of Torture

Elaine Scarry, in her book *The Body in Pain* reminds us of the significance of torture:

For what the process of torture does is to split the human being into two, to make emphatic the ever present but, except in the extremity of sickness and death, only latent distinction between a self and a body, between a “me” and “my body”. The “self” or “me”, which is experienced on the one hand as more private, more essentially at the center, and on the other hand as participating across the bridge of body in the world, is “embodied” in the voice, in language. The goal of the torturer is to make the one, the body, emphatically and crushingly present by destroying it, and to make the other, the voice, absent by destroying it.<sup>316</sup>

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<sup>316</sup> Scarry, *The Body in Pain*, 49.

This representation of torture reinstates the central idea of subjectivity in Western metaphysics. That is, that a human being consists of two parts: the body and the mind. In this ordering the mind is commonly superior to the body, and the body, in the act of torture, serves only one purpose – that is to cause enough pain to crush the mind. This indicates that ways of torturing human beings, the torture techniques etc. are always focused on the breaking of the body, which would as a consequence lead to the breaking of the mind. Thus, the act of torture is not neutral; rather it embodies the same ‘dualist logic’ as is the one according to which one thinks about oneself. The two examples of torture from Guantánamo directly allude to this distinction. The first one concerns the new definition of torture, which no longer sees psychological pain as constituting torture. The new definition of torture considers as torture only practices that ‘lead to an organ failure, impairment of bodily function, or even death’.<sup>317</sup> Therefore psychological pain or mental distress is no longer explicitly considered as torture. The second example is even more illustrative as it discusses torture techniques allowed in interrogations. These include:

Category I included an initial comfortable environment but if the detainee was determined by the interrogator to be uncooperative, could include 1) yelling (but not loudly enough to cause physical pain), and 2) techniques of deception including multiple interrogators and misidentification of the interrogator as a citizen of a foreign country "with a reputation for harsh treatment of detainees."

Category II, which required the permission of the General in Charge of the Interrogation Section, included "...the use of stress positions (like standing), for a maximum of four hours," the use of falsified documents or reports, solitary confinement for up to thirty days, interrogation in other than the standard interrogation booth, sensory deprivation, hooding with unrestricted breathing, "removal of all comfort items (including religious items)," feeding cold Army rations, removal of clothing, "forced grooming (shaving of facial hair etc.)," and "use of detainees individual phobias (such as fear of dogs) to induce stress."

Category III techniques include the use of "scenarios designed to convince the detainee that death or severely painful consequences are imminent for him and/or his family," "exposure to cold weather or water (with appropriate medical monitoring)," "use of a wet towel and dripping water to induce the misperception of suffocation," and use of "mild, non injurious physical contact such as grabbing, poking in the chest with the finger and light pushing."<sup>318</sup>

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<sup>317</sup> US Department of Justice, Memorandum for Alberto R. Gonzales, Counsel to the President, Re: Standards of Conduct for Interrogation under 18U.S.C. §§ 2340-2340A, August 1 2002.

<sup>318</sup> Interrogation Techniques Requested by Joint Task Force, 11 October 2002.

Category I and II were fully approved by Secretary of Defence D. Rumsfeld, as was the fourth technique under Category III – mild, non-injurious physical behaviour. The use of death threats to family, exposure to cold weather and water, and simulated drowning was not approved although Department of Defence General Counsel advised that they may be legally available.<sup>319</sup> As it is well known today a number of these techniques were used despite not being formally approved; also the extent or the extremity of those techniques approved might have gone beyond what is suggested in the document.<sup>320</sup> The drawing up of the new definition and the new manual of techniques for use in interrogation procedures falls under the scope of a new desire or a new reality that the US government aimed to instate. However, the problems concerning interrogations in Guantánamo were many. Some had to do with the desire of the interrogators or of the government. According to that desire, the starting point of the interrogations was that the detainees had the information, all one had to do was to learn how to attain it. That could be done either peacefully or by force. A clear demonstration that the government was convinced detainees hold valuable intelligence information was the speed with which the interrogations in Guantánamo started, and the constant demands passed from the Government to SOUTHCOM (the United States Southern Command for all US military activities – Guantánamo Bay falls under SOUTHCOM) to provide more and better intelligence.<sup>321</sup>

On a different level, the failure of interrogations was also due to the structure of interrogations and the structure of interrogation techniques.<sup>322</sup> Based on different ideas

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<sup>319</sup> Memorandum for Chairman of the Joint Chiefs Staff, Washington, DC 20318-9999, Counter-Resistance Techniques, James T. Hill, October 25 2002; Action Memo, Counter-Resistance Techniques, from William Haynes for Secretary of Defence, December 2 2002.

<sup>320</sup> On 22 June, 2004, the office of the DOD General Counsel released a document entitled GTMO Interrogation Techniques.

[http://www.washingtonpost.com/wp-srv/world/daily/graphics/interrogation\\_062304.htm](http://www.washingtonpost.com/wp-srv/world/daily/graphics/interrogation_062304.htm).

That document identifies Category I and II techniques used between December 2002, and 15 January, 2003. They include under Category I yelling (not directly into ear) and deception through introduction of a confederate detainee and "role playing by interrogator in next cell". Techniques listed under Category II include removal of social support, segregation, isolation, interrogation in a different location (still at Guantánamo), deprivation of light (using a red light), introducing stress through use of a female interrogator, interrogations up to 20 hours, removal of all comfort items including religious items, serving MREs instead of hot rations, forced grooming (to include shaving facial hair and head), and use of false documents. (Source: [http://www.lawofwar.org/interrogation\\_techniques.htm](http://www.lawofwar.org/interrogation_techniques.htm)). Accessed: August 4 2010.

<sup>321</sup> See for example: Greenberg, *The Least Worst Place*.

<sup>322</sup> Here one must remember that interrogation techniques and understandings of what is likely to break a detainee correspond to particular understandings of personal integrity and how one relates to the body and the self. These understandings are the product of dominant philosophical ideas about 'the self' and 'the body', which in modern Western world, commonly relate to Descartes. Thus, on occasions in which one's understanding of the body or the self is different from the ordering/understanding instituted in the

of desire, the techniques were determined on the assumptions of what breaks ‘a Western subject’. However, the question remains whether the same techniques break a Muslim subject whose perception of ‘the self’ and the public/private divide are at least partially different.<sup>323</sup> There is something to this observation, as a number of testimonies speak about the admiration guards had towards the detainees and their resilience. This admiration commonly concerns the strength that the detainees gain from faith; as the guards often admit that they could not have survived the same treatment or would have lost their mind.<sup>324</sup> Although the detainees suffered immensely from isolation, sleep deprivation and stress positions etc. that was not what they found most humiliating. From conversations with former detainees, one can get the impression that what was most humiliating was the guards’ abuses of the Koran, and followed closely by the shaving of detainees’ facial hair, nakedness and strip searches. However, all these techniques are ‘external’ to the individual, and although they concern their religion or who they are (including the humiliation of the body) the techniques could hardly be controlled or intensified. There were limits to these abuses. For example, if the Koran was abused more often, the facility would break out into constant riots – hence maintaining any kind of order would become virtually impossible. Also with the regular presence of the International Committee of the Red Cross (ICRC) such practices brought trouble to the Camp Command. Equally, shaving off hair and nakedness were something the ICRC could have observed, and ultimately it is not all that often that one was able to shave off the detainees’ facial hair. For these reasons, detainees, although going through immense pain and agony, maintained some stability in their subjectivity.

### Torture and a Perversion of Desire

In addition to the two forms of the relationship between torture and desire described above, there is third form, in which desire plays a different role. Whereas in the previous two examples, desire constructed a particular notion of reality or ways in which torture or resistance to torture was conceived, desire in this third example concerns the relationship between the torturer, the tortured and the demand (for information). With this example of ‘the relationship of torture’ we will return to the discussion of law in

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techniques, then this techniques could have a lesser effect on the detainee than expected (which might enable the detainee to enjoy some form of freedom or could represent at least a small source of resistance).

<sup>323</sup> For example, Sufism – for many understood as a inner, mythical or philosophical foundation of Islam – has a very different and less stable understanding of ‘the self’ and of the forces that constitute the self and of the relations ‘the self’ forms with its environment.

<sup>324</sup> Begg, *Enemy Combatant*; Kurnaz, *Five Years of My Life*, 193.

Chapter Two and revisit some theoretical discussions in relation to Lacan, the law and the *superego*.

The logic of torture or interrogation techniques in Guantánamo can be seen as a twisted version of the Kantian moral imperative. As Zizek writes in *Kant avec Sade: The Ideal Couple*: The truth within Kant's work is that 'the sadism of the Law, i.e. the Kantian Law is a *superego* agency that sadistically enjoys the subject's deadlock, his inability to meet its inexorable demands, like the proverbial teacher who tortures pupils with impossible tasks and secretly savors their failings.'<sup>325</sup> What is put under question here is the relationship between absolute moral law and individual action, and how these two can lead to secret enjoyment of torture. Zizek argues that ultimately the Kantian moral absolute law is the *superego* or a radical traumatic Real imposing impossible demands on its subjects (at least this is Lacan's interpretation of a perverted Sadean representation of Kant). It is then not too difficult to see the link between the absolute demand imposed on the interrogation teams to produce intelligence without any major consideration of the means used on the path of doing that. The victim – the detainee – is here only an object on the path of satisfying 'the masters' orders. It is not that torture happens to please the interrogator (neither does it satisfy him to hurt the detainee or to inflict pain on him) but rather to satisfy the desire of the master – that is, to provide intelligence information. The master's pleasure, which is produced not by inflicting pain but by providing the information, is the ultimate goal of torture. This goal, then, has nothing to do with the breaking of the detainee.

In such a way, the limits of torture are not the limits imposed by the techniques approved by the Secretary of Defense; rather the limits were 'Sadean limits', which say that: "I have the right to enjoy your body" anyone can say to me, "and I will exercise my right without any limit to the capriciousness of the exactions I may wish to satiate with your body".<sup>326</sup> Why this turn to the limits? The example alludes to the classical Sadean/Kantian dilemma of the limits of moral action; or how to satisfy the master's desire when the desire inherently demands a transgression of the limits imposed by that same master. The situation of torture in Guantánamo comes very close to this dilemma.

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<sup>325</sup> Slavoj Zizek, 'Kant avec Sade: The Ideal Couple', *Lacanian Ink* 13 (1998); [<http://www.lacan.com/zizlacan4.htm>]. Accessed: January 23 2011.

<sup>326</sup> Jacques Lacan, 'Kant with Sade', in *Écrits*, Bruce Fink ed. (London and New York: W.W. Norton & Company, 2006): 648.



The interrogators cherish the master's desire, masked or supported by claims of working for the good and the security of the entire American nation or even for the 'civilized world' as a whole, more than the limits within which this desire should be satisfied. It is here that the interrogator's ego collapses and gives way to the desire of the master that by this point already transforms into the desire of the interrogator. For Lacan, one's desire is always a desire of the Other – the master.<sup>327</sup> This 'breaking-down' ultimately leads to the situation in which limits of 'artificially' approved interrogation techniques are outdone by a much stronger desire to satisfy the master. The logic of the interrogator is that the ethical commitment to the limits of interrogation techniques is far inferior to their commitment to the 'universal good', which ultimately provides peace and security to the nation and consequently satisfies the master. Any ethical concerns the interrogator might have break under the unbearable responsibility not only for 'the self' but most importantly, for the security of the entire nation.

Here one can even speculate that although the detainees experience pain and humiliation, and are or ultimately possess the object of desire, the interrogator is the one who is most subjugated to 'torture'. He is the one that loses 'the self' entirely. As Scarry argues, the relationship between the interrogator/torturer and the detainee/tortures is played out on the level of the body and of the mind. The interrogator and the detainee experience their own body and the self as opposites; the detainee's experience of the two is the inversion of the torturer's.<sup>328</sup> The torturer turns his body into an object of master's desire – he is the actual embodiment of the desire, whereas the detainee subjugates everything to the materiality of its own existence – to the pain the body experiences. The interrogator is reduced to a pure mechanism of the master's desire, it is an object, a pure force executing commands. On the one hand the interrogator is only an object – a link between the master's demand for information and the 'actual object' possessing it; on the other hand, the interrogator is the 'sadist' inflicting the pain. As such then, for the detainee the interrogator is the ultimate embodiment of absolute law; for the interrogator, that is the master's desire for information, and for the government desiring the information, the detainee's knowledge is the ultimate possession. In the act of torture, the relationship between these three groups is ultimately 'sexual';<sup>329</sup> no one desires each other's bodies;

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<sup>327</sup> See for example: Lacan, *Seminar XX: Encore, On Feminine Sexuality*.

<sup>328</sup> Scarry, *The Body in Pain*, 46.

<sup>329</sup> The logic of Kantian moral imperative explained in a Sadean way is ultimately a formula for explaining sexual relationships, and subordination.

rather the government desires truth, the interrogator desires information of any kind, yet the detainee desires to be left alone. The only body in question here is the body of a detainee who is the receptor of pain; hence his desire is different from the nature of the other two (one) desire(s).

Most importantly, whilst the detainee is reduced to pure bodily existence, it is a particular image of the detainee's body that torture takes into account. In other words, the detainee has other ways of expression and representation, which are not negotiated and invaded by torture. For some such claim would be a complete exaggeration; however, there must have been something that went beyond the image the torturer had about the detainee, as that 'beyond', which is not captured in the political and social institutions facilitating interrogation techniques, allowed the detainees to survive the ordeal. The role of desire in the understanding of the situation in Guantánamo is, I believe, sufficiently explained and in itself demonstrates its importance. On the one hand, desire roots and facilitates the new order that the United States aimed at establishing; on the other hand it explains an intriguing relationships between the detainees, the guards/interrogators and the US government. Such a discussion of desire explains why thinking differently about being and this new order very much requires a new set of principles, and a new ontology. The working of desire demonstrates where passages and slips are possible and how one can escape the social and the political institutions ordering a particular representation of being or its expression. So far I have discussed the process of becoming, the body and desire, I will move on to language and explore how examples of escape from the symbolic orderings of political and social institutions work within the context of this form of expression.

## From Language to *Lalangue*, from *Litter* to Literature and from Poems to Freedom

Just as the heart beats in the darkness of the body,  
So I, despite this cage, continue to beat with life.  
Those who have no courage or honor  
Consider themselves free,  
I am flying on the wings of thought,  
And so, even in this cage,  
I know a greater freedom.<sup>330</sup>  
Abdul Rahim

Language, as a spoken word or as writing, is of extreme importance for understanding life in Guantánamo and forms of detainees' existence. It comes in many forms: as poetry, diaries, accounts of everyday life, or even as memoir written by those that left Guantánamo some time ago. Language can be a justification of actions, or an account of experiences, thoughts and struggles. It can also be a way of torture – the detainee can experience both a prohibition against speech and the unbearable demand of speaking. As has been discussed earlier in the thesis, language is not an impartial set of rules put in place to accommodate and enable communication and transmission of information. Even though, language might in fact transmit information, what language represents and expresses is not impartial or dependent on one's personal decision. Instead language is an order, it embodies the logic of political and social institutions and transfers it on its 'subjects'. Language is inscribed on one's body and orders it accordingly to existing institutions. Thus writing is ultimately not an expression of 'the self' *as such* (being), but an expression or a representation of 'the self' within a particular symbolic order. One could say that most writing that serves communication is not genuine writing, but work that produces and reproduces the symbolic order, and ensures its consistency and permanency. In contrast, writing that transgresses the common function of language is often found in art or in forms of expression that in one way or another depart from the linguistic rules.<sup>331</sup>

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<sup>330</sup> Abdul Rahim, in Khan, *My Guantánamo Diary*, 252.

<sup>331</sup> Probably the most important contributions to this type of literature are, amongst others, the works of Samuel Beckett, William Faulkner and James Joyce. Most notable are perhaps the following works: Samuel Beckett, *First Love and Other Novellas* (London, New York: Penguin Books, 2000), *Three Novels: Molloy, Malone Dies, and The Unnamable* (New York: Grove Press, 2009); William Faulkner, *Light in August* (London: Vintage, 2000), *As I Lay Dying* (London: Vintage, 2009); James Joyce, *Finnegan's Wake* (London, New York: Penguin, 1992), *The Dubliners* (London, New York: Penguin Books, 2000).

In situations such as Guantánamo, however, not all writing should be seen in the ‘conventional’ light explained above. Some indeed serves communication, whereas others have a different purpose. It does not exist for others to see it or understand it, but rather its task is a reproduction of ‘unity’ for a suffering individual. This, for example, applies to all the literary work of the detainees and the guards. The literature or the spoken word, language/word games and resistance to speak are all expressions of ‘the self’ that transgress one symbolic order and emerge in another, different one; or that challenge one symbolic order by bringing in elements of a different order. These linguistic practices enriched resistance practices in Guantánamo because – depending on the situation – at one time resistance might have laid in the rejection of dominant forms of language, when on another occasion through persisting within the dominant discourse. To expand on what I mean by this, I will explore aspects in which language appears in Guantánamo; and I shall start with poetry.

### Poetry Detained

‘Poetry is born of suffering’,<sup>332</sup> an old Arabic saying goes. And poetry is also, as Flagg Miller points out, understood ‘to be a vessel of insight and perception, one whose rhythms are attuned less to measured thoughts than to wellsprings of raw human feeling’.<sup>333</sup> Poetry holds a special place in Muslim culture and thus in the life of every detainee. The verses that were written on small pieces of paper, Styrofoam cups, toiletries or Red Cross stationery, were passed around the Camp, and read by other detainees. They brought a ray of hope, light or encouragement into the everyday struggles of detention. These poems are an expression of detainees’ hopes, fears and desires for freedom, some, though not many, also condemned the US.<sup>334</sup> Perhaps the most interesting and significant aspect of these poems is the kinds of relationships they reveal; the first is relationship between the detainees and God. Many testify to the deep faith and the trust the detainees have in Allah. They trust Him in the path he has chosen for them and they trust that, the suffering, the pain and the humiliations will eventually end, and they will be reborn.<sup>335</sup> This relationship between the detainees and Allah cannot be understood in a pessimistic way; it is not surrender, but a source of hope, that one day

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<sup>332</sup> Miller, ‘Forms of Suffering in Muslim Prison Poetry’, 7.

<sup>333</sup> Ibid.

<sup>334</sup> See for example: Begg, *Enemy Combatant*, 299.

<sup>335</sup> See for example poems collected in: Mark Falkoff, *Poems from Guantánamo: A Detainee Speaks* (Iowa City, University of Iowa Press, 2007).

something will change. Osama Abu Kabir, as many others, dreams in his poems about his home and meeting with his family whom he has not seen in years; this is the second relationship. He writes:

[...] It is true. This is true. These are the miracles.  
But is it true that one day we'll leave Guantánamo Bay?  
Is it true that one day we'll go back to our homes?  
I sail in my dreams, I am dreaming of home.

To be with my children, each one part of me;  
To be with my wife and the ones that I love;  
To be with my parents, my world's tenderest hearts.  
I dream to be home, to be free from this cage.

But do you hear me, oh Judge, do you hear me at all?  
We are innocent, here, we've committed no crime.  
Set me free, set us free, is anywhere still  
Justice and compassion remain in this world.<sup>336</sup>

In the poems Kabir questions the conditions in which he lives and what has brought him to a place like Guantánamo. He dreams of his home, and life in freedom; and believes that one day he will be free and returned home to his family. The tone of the detainees' poems is neither sad nor optimistic. Yet, one finds strength in it, one finds and sees the will to survive, a light at the end of a tunnel that makes them go on and not surrender. Ultimately, the will to survive or the image that one day they will be freed is precisely what detentions of this kind try to address. Unlike detentions of prisoners of war (POWs) where it is clear the POWs will be released at the end of the conflict, the detainees of the 'war on terror' cannot see the end of their detention and do not know of the terms and conditions of their detention. In poems then, the detainees seek a ray of hope that will give them strength to persist in their struggles. It is, as many detainees report, unbearable not to know what determines the end of the conflict. In a 'normal combat/war situation', the POWs are often driven by the hope that the war will be over soon, one side will win, and they will be released. This, of course, is not the case in Guantánamo, thus the detainees used poems as one of the ways through which they expressed and embodied their suffering – making the suffering real.

As a result of such an undetermined situation the detainees searched for 'alternative sources' of hope. They should have been able to see their interrogators as individuals

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<sup>336</sup> Osama Abu Kabir, 'Is it true?', in Mark Falkoff, *Poems from Guantánamo: A Detainee Speak* (Iowa City, University of Iowa Press, 2007): 50.

who could contribute immensely towards their release. Yet, it was not an interrogator that was a detainee's best friend and that would or could have send them home; detainees had no hope in them, neither did they have trust in the legal system. The 'Judge' to which Kabir refers is not necessarily a judge at the US Criminal Court or the Court of the Military Commission; it is more likely that the Judge is Allah. Their faith and dreams were then located where the detainees found hope and strength. The poems the detainees wrote were not just poems in themselves; they were expressions and representations of their 'selves'. The detainees had nothing else that was theirs; the poems and writing were all that was not invaded by the Camp Command, interrogators or 'the sovereign demand'. Poetry, as Khan writes, 'was a lifeline to sanity for many detainees; it allowed them to express the suffering and confusion they felt'.<sup>337</sup> The poems were part of the detainees; they were their life and the embodiment of all they were at the time of writing. Thus their demand to reclaim the poems after they were released from Guantánamo should be perfectly understandable. Badr Zaman, one of the poets in Guantánamo, explains: 'I wrote from the core of my heart in Guantánamo Bay. In the outside world, I could not have written such things. [...] If they give me back my writings, truly I will feel as though I was never imprisoned'.<sup>338</sup> This statement by Zaman suggests exactly what has been discussed above, that is, that poetry was one of the few, if not the only way, in which detainees could preserve their 'humanity' or the sense of who they were at the time of suffering. For Zaman, the poems are more than just words on paper, or words describing feelings; on the contrary, these poems are the only part of him that was 'alive' in the camp. Being re-united with his work would be like being re-united with part of himself; a part of humanity that was maintained despite efforts to take it away. When Zaman said that the poems would make him forget ever being in a prison, he alludes to the aspect of poetry that is beyond poetry. When he wrote the poems Zaman did not only write words, rather he invested part of the self in those words, those words embodied what was left of him, in order to maintain and later reclaim that remnant. It is like dividing oneself up into a number of small pieces, each containing part of what 'the self' used to be in hope that one day 'the whole' can be reunited.

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<sup>337</sup> Khan, *My Guantánamo Diary*, 251.

<sup>338</sup> *Ibid.*, 260.

The Pentagon rejected detainees' claims for poems they wrote, despite strong arguments in favour of doing so. The Pentagon argues that the poems could be made public, and potentially constitute 'a risk to national security because of its content and format'.<sup>339</sup> The Pentagon's fear is that the detainees, especially those still imprisoned, would smuggle coded messages out of the prison Camp. For this reason, hundreds of poems remain suspended and will likely never be returned to the detainees or be seen by the public.<sup>340</sup> Although the public aspect in the case of reclaiming a part of 'one's being' – who one once was – is insignificant, it is still important. The poems, if nothing else, are a rich representation of detainees' life in the Camp, their hopes, fears and everyday thoughts. No doubt, they represent an invaluable first account of the situation.

### Memoir and a Search for a Lost Humanity

As already suggested, the detainees were not the only group writing poetry in the Camp. As Moazzam Begg mentions in his memoirs, the guards also wrote poems about their problems and the people they missed. In comparison to that of the detainees, this type of writing is much less publicised or accessible. Perhaps the most significant pieces of writing by the guards or military was written after their release. Many of them wrote memoirs of their experience in Guantánamo, or had the need to testify and give their account of events they experienced. This is also a type of writing that either preserves or reclaims part of a person's humanity. In Guantánamo, poetry maintained 'humanity' or the sense of 'the self', whereas after Guantánamo, the writing of memoirs is a way of reclaiming one's humanity. The purpose of writing, however, depends on the group. Former guards and military normally write to maintain or reclaim a sense of humanity; their writing serves either as a way of surviving the trauma of realisation of what had been going on in Guantánamo, or to come to terms with what they did and the abuses they took part in. The writing, in that sense, is about reclaiming 'who you once were' – before the 'Guantánamo experience' – and 'who you are now'. It is also a reassurance that nothing has changed, that you might have done some terrible things for which you are genuinely sorry, yet at the moment of writing you are the same person as you were before committing the abuses. Such writing is also a way of reassuring someone that he has made the right life decisions, and not everything he ever was should be put under

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<sup>339</sup> Mark Falkoff, 'Notes on Guantánamo', in Mark Falkoff, *Poems from Guantánamo: A Detainee Speak* (Iowa City, University of Iowa Press, 2007): 4.

<sup>340</sup> Falkoff, 'Notes on Guantánamo', 4.

question because of some action he took. In this sense memoirs are a kind of closure with the part of life one no longer wishes to be associated with.

In contrast to this, writing memoirs has a different role in detainees' lives. As I have claimed earlier, it captures and preserves part of the humanity that they were otherwise stripped of. The writing is therefore detainees' embodiment. It is in a way a manifestation of what was discussed earlier as the 'becoming'. It captures the transformations of different forms of existence; and only by having these poems back – the only part of their humanity – could the detainees fully acknowledge their transformation and the becoming into a new form of existence. The detainees do not deny being different from what they were before the detention, hence only the writing they did while detained can provide them with a unity and represent a story of their becoming. Without that fragment they are in flux. They cannot make sense of who they are now, as there is no account of how detention affected them – there is no account of trauma, apart from the one experienced when they encountered changes in the 'home environment'. These pieces of writing by both groups are then representations of the breaking moments in one's personal history. Guantánamo, despite the Government's best attempts, it did not silence detainees. On the contrary, they made them speak in the most profound way – by embodying what supposedly had no place in Guantánamo – the detainees' humanity. Guantánamo also made guards and military speak of actions taken there and abuses they did or took part in. These situations questioned the humanity of guards and military to the extent that they had to write about it to ensure it was/is not gone.

### Language and a Sense of 'the Self'

Writing is a different way of making sense of 'the self' – it is the making of an ordering principle that is particular to the author and hence different from the principle embodied in the symbolic order. Although the detainees use language that is inscribed within a particular symbolic order, the representation the language produces has nothing or very little to do with that order. The reason for this is the context in which this representation was made. The language used represents something that was not supposed to be represented, that is in fact excluded from the symbolic order, namely the existence of the detainees' humanity. Speaking, in contrast to writing, does not trace the becoming of the detainees. Yet, it challenges the symbolic order with its voice, its presence when silence is what the order desires. Many situations in Guantánamo were played out on the



relationship between silence and speaking, or absence and presence. It is not that the detainees were not allowed to speak at all; the rules were much more complicated. On the one hand, the detainees were not allowed to remain quiet; when arrested no-one read them out their rights, and neither were they told that everything they say could be used against them. Such overlooking of the basic rights of every prisoner or detainee was very intentional, and it came through in interrogations where the detainees were forced to speak and threatened with force if they refused to do so. On the other hand, the detainees were prohibited from speaking or effectively communicating on the prison-blocks. At least initially they were not allowed to make any conversation whatsoever with fellow detainees. To prevent communication, the detainees were also allocated to the cages in ways which separate nationals of the same country. This, the Camp Command thought, should not only discourage but also physically prevent the detainees from talking. However, the detainees learned different languages in order to be able to communicate effectively with one another. The detainees were teaching each other a number of languages; most commonly, Arabic, Pashto and English. Murat Kurnaz, for example, who only spoke German and Turkish before being detained has learned Arabic and English.<sup>341</sup> The extent of the detainees' knowledge of languages was sufficient for them to play tricks on guards or created word-games.<sup>342</sup>

From this analysis of language one could conclude that the detainees used language in its written and spoken form to resist the rules of the Camp: they resisted by either entirely reinventing themselves through the process of writing, or by directly opposing the rules inscribed in the relationship between silence and speaking. This positioning gave the detainees some political power. Although they experienced pain, discomfort and abuse, for as long as they maintained and were able to create alternative expressions of the self or representations of who they were, the detainees had some political capacity and power to intervene into the politics of the Camp. Language provided Guantánamo detainees with means of representation and expression that led them to make sense of 'the self' outside the existing symbolic order or symbolic representations; at the same time, as a form of speaking, language gave the detainees a capacity to directly challenge and disrupt the symbolic order. The former aspect contributes towards an alternative understanding

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<sup>341</sup> Kurnaz, *Five Years of My Life*; Cem Ozdemir, 'A Visit with a Man Wrongly Detained at Guantánamo, *Spiegel Online International*, 14 September 2006.

[<http://www.spiegel.de/international/0,1518,437087,00.html>]. Accessed: August 6 2010.

<sup>342</sup> Kurnaz, *Five Years of My Life*.

of being, whereas the latter represents a disruption or a discontent that the symbolic order needs to address if it is to continue operating in the same way.

## Conclusion

Writing about an alternative logic and ‘placing it’ within a particular discourse ultimately represents a problem in itself. The images or expressions seen as being an alternative in different ways transgress or go beyond the existing symbolic order. In this chapter I focused on what I called the ‘images of Guantánamo’, the occasions or situations which disrupt the existing dominant order or discourse and can be read as transcendental embodiments of a new immanent ontology of being. The discussion in the chapter commenced with the ‘idea of becoming’ and how different groups in Guantánamo became ‘sensitive’ or transgress the limits of their ‘kind’, their representation or a form of existence. ‘Becoming-animal’ and ‘becoming-detainee’ was mentioned in particular. The process of becoming traces a transformation of subjectivity or being-ness and places it within alternative imaginaries. Whereas the becoming relates to a sensitivity or an acknowledgement of the other, a transformation, the discussion of the body referred to the orderings and the limits of the body. On the one hand, the body is a form of resistance when it does not perform functions it is supposed to perform, or when it goes against the central ‘institutional desire’ of self-preservation. On the other hand, the body is a place of freedom which is gained precisely by the practices that resist those symbolic practices that place limits on the capabilities of one’s body.

Desire and language are the latter two aspects on the path towards alternative being. To an extent, they are related yet at the same time very different. Desire facilitates the new order that the United States aimed at establishing. It demonstrates how the practices, events and the situations produced in the war on terror and Guantánamo are no coincidence; rather they are in fact desired by different groups of individuals.<sup>343</sup> In addition, desire also explains an intriguing relationship between the detainees, the guards/interrogators and the US government. This discussion of desire explains why thinking about being and a new order differently very much requires an entirely new set

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<sup>343</sup> The desire I am referring to here is the common Deleuzian understanding of desire which argues that desire produces reality – i.e. reality is desired. This form of desire is different from the desire *as such*, or from a form I refer to in relation to torture.

of principles, a new ontology. The working of desire demonstrates where passages and slips are possible and how one can escape the social and the political institutions ordering a particular representation of being or expression of the body. This is then precisely the point where writing as a form of expression, or one expression of 'the self', the embodiment of the self, comes into play. The writing on Guantánamo serves as a preservation force, or a space where part of the self is preserved. This is where the detainees find their dignity, where the guards find their sense of humanity, or where retroactively, traumas are resolved or closures with the past are made.

When all four aspects are read together, although I do recognise it is difficult if not impossible to locate an image in Guantánamo that would embody all these four aspects, they represent an idea of alternative being embodied as a particular form of existence. The one form that is not only imaginary or immanent, but an 'actual' transcendent being, inhabiting spaces of the contingent political and social realms, is LOM. The becoming, the body, desire and language together work towards the emergence of LOM, a representation of being that challenges the recognised limits of political and legal actions; a form of existence whose identification is no longer transferred through the other, whose body is no longer a place for orderly actions of organisms, and whose language and writing are no longer communication devices, but expressions of parts of the existing form itself. Guantánamo itself provides aspects, yet not full embodiments, of a transcendent image of such alternative being. In the next two chapters I will explore further the limits of such alternative thinking within the law, and the embodiment of an alternative being – LOM – as being of law and a member of a particular community.

## Chapter 5

### Fragments of a New Law in Guantánamo

Before continuing our discussion it is important to reflect on what I have covered so far and what job this chapter, Chapter Five, does for the thesis. The main focus of this chapter are the practices of law that challenge the existing legal system. In other words I will look at ideas that challenge the existing ‘paternal’ legal discourse and, following that, identify and discuss legal practices in Guantánamo that correspond to these ideas. In this sense, with one difference, what I will be doing in this chapter is similar to what I did in Chapters Three and Four. There the main focus was the idea of being and its different forms of existence that challenge the dominant ordering of existence; whereas here, the focus will be on law. This chapter is then a continuation of the debates we had in Chapter Four – only that it is presented within a different framework of ideas. But also, it is a direct continuation of the discussions presented in Chapter Two. I will return to the relationship between Chapters Four and Five a bit later, but first I shall clarify the link between Chapters Two and Five. Chapter Two gave an explanation of the workings of the paternal or Oedipal law; in particular it discussed how law frames and limits the range of possibilities of one’s form of existence; how it limits being’s forms of existence through the workings of desire and *jouissance*. What one is then required to do in order to liberate being from the constraints of law and think an alternative ordering principle is to liberate desire. By following Lacan’s thought, the chapter saw a way out in the idea of the *sinthome* working as an alternative ordering principle. This was the point at which we left the discussions of law, and continued with the excavations into the philosophical origins of this different logic (the main focus of Chapter Three), and ways in which such immanent philosophy can be embodied as a form of existence in the transcendent political realm (Chapter Four). What we have learned from these two chapters is that a symbolic order or dominant paternal (legal) discourse is not ‘whole’ but is constantly pierced by and challenged by various practices, events or associations. In other words,

the dominant discourse is constantly penetrated by interventions from the Real. These interventions have the potential to destabilise the order, hence the order has to respond to it by violently suppressing the practices or constantly re-enforcing its role as the primary and sole law-giver or law-interpreter. The moments in which the dominant logic is challenged, when the Symbolic order is put under threat, are precisely the moments we are interested in.

In Chapter Four, for example, these moments were represented in the form of theoretical ideas of ‘the becoming’, the body, desire, language or the alternative orderings of the self; or as political practices of becoming-animal, becoming-detainee, becoming-Western, hunger strikes, suicides, deviant bodies, writings and poetry and so on. These practices indicated the weaknesses of the dominant order and ways of existing in it, while at the same time they were not being entirely subjugated or ‘subjected’ to it. While these different practices or challenges have been discussed, the full effect of the alternative logic of being and law has been – for the time being – left out. This will also remain the case in this chapter, yet in a manner similar to Chapter Four, I will finish with an indication of where the alternative logic of ordering law lies and the impact it potentially has on the understanding of law. In this sense, there are two rather distinct engagements with the dominant discourse of law: one challenges the existing dominant discourse through a range of legal practices, whereas the other builds up an alternative logic separate from the dominant ordering. In this chapter I will explore this first approach, while the second will be amongst others addressed in the last chapter, Chapter Six.

In this chapter I will then talk about legal practices that challenge existing paternal discourse, and that do so within existing legal parameters or limits of the dominant discourse. I will continue the theoretical debate by mainly focusing on the philosophy of Gilles Deleuze. The reason I focus on Deleuze is that – unlike Lacan, to whom we will return in Chapter Six – he had no intention of breaking the existing ordering, instead he wished to work within it, by opening it up to contingency/openness, radical ethics, or the possibility to adapt and ‘justly’ address the situation put in front of the law.<sup>344</sup> This is not a common universalist stance. As we shall see, Deleuze is referring to something rather different. To give an example; although his political remarks were never made for

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<sup>344</sup> Gilles Deleuze, *L'Abécédaire de Gilles Deleuze, avec Claire Parnet* (Paris: DVD Editions Montparnasse, 2004).

anything more than a passing reference, Deleuze had nothing against (humanitarian) interventions as such. However, what he found appalling was that interventions happen in order to protect rights instead of creating them. Although this might look like a small and unimportant detail, it actually requires a radical change of perspective. It acknowledges the position of the other – the one in ‘whose name’ we intervene – and creates space for the emergence of new rights, whatever those might be.<sup>345</sup> It also changes the ‘perspective’ of those in the name of whom ‘we’ intervene; as they are no longer the objects whose life has to be protected, but in fact become the main protagonists, the creators of the rights particular to them. This position wipes out all liberal and universal principles that are lingering in the background of modern (humanitarian) interventions. For that matter, to return to Deleuze’s attitude to law, and the role it plays in this chapter, the practice of law discussed here resembles Deleuzian ideas of becoming discussed earlier. The becoming constantly transgresses and transforms legal categories and their limits, while operating with existing legal terms and institutions. To illustrate what Deleuze had in mind with the becoming in the legal practices, I will firstly look at the limits of the case in Deleuzian theory. I will consider the case as an image (the representation of the case), as a pure past of law (the content of the case – the law) and as the nature of the judgement. And finally, at the very end, I will point in the direction of an alternative logic of law, by discussing the idea of life within law.<sup>346</sup> Of course, the chapter will not be limited to theoretical explorations; I will consider the three parts of ‘the case’ within the context of Guantánamo. In particular I will look at the habeas corpus petitions and, more or less in passing, mention the military commissions. If one compares the scope of discussions here with the one in the previous chapter, at first, perhaps, one might note and find awkward the switch from a rather broad spectrum of discussion in Chapter Four to a rather narrow one in this chapter. There are a few reasons why I decided to make such move and narrowed the scope. Firstly, the logic discussed in Chapter Four is a logic of alternative being that is embodied in all forms of existence. Also there are many forms of existence in which being can be embodied in the transcendent, and I wanted to emphasise this. Secondly, the nature of law in Guantánamo is different to the exceptionalist discourse through which

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<sup>345</sup> Ibid.

<sup>346</sup> Let me now refer back to the discussion of law and life in Chapter 2; where I explained how law embodies a particular form of life, and frames it and its desires according to the logic of law. The life that is embodied in law is then not a ‘free life’ but rather its closed conception. The aim in this thesis then is to gradually develop an idea of law that does not imprison or limit the conception of life with which it operates, but instead allows it to flourish freely and take on various forms.

Guantánamo is commonly explained. While on the one hand there are numerous legal and political practices ordering the situation, on the other hand, there are only a handful of examples in which law actually gets a voice. What is more, a legal study of becoming is a very delicate process as one has to note the transformation of the legal cases, the ‘evolution’ in rules, the (re)interpretations of court rules etc. For these reasons I decided to limit the scope of the enquiry. The habeas corpus cases will then demonstrate how the dominant discourse of law has been challenged, and how it reacted to and facilitated some of the changes, and also how it could have reacted or what the potentiality is of the changes that occur in the order. I will not, however, make judgements on whether those changes were for the better or for the worse. To an extent then, Chapters Four and Five reflect a Deleuzian distinction between micro- and macro-politics or molar and molecular politics I have mentioned briefly. In this case micro- or molecular investigation occurs on a legal plane, whereas molar or macro- is an investigation into being and ‘body politics’ in Guantánamo.

This chapter then discusses alternative law-making by posing a challenge to the existing dominant discourse; and it does so with the example of legal practices dominant in Guantánamo. Before I conclude this already extended introduction, I need to clarify one additional aspect of the chapter. Regarding Guantánamo: unlike in Chapter Four where the discussion of ‘body politics’ and the logic of existence needed no extended prior knowledge of the situation, this chapter, I believe, requires an exposition of the legal situation in Guantánamo. Particularly important is the knowledge about the three landmark Supreme Court decisions in habeas corpus cases and the reasoning of Justices at the District Court of Columbia. To get a better grasp of the challenges these ideas pose to the dominant discourse on the case of Guantánamo, I will firstly set out the legal context of Guantánamo, and only then start discussing the theory on the legal discourse of Guantánamo. The chapter will therefore start with a theoretical exposition of the ideas challenging the dominant paternal discourse; this will be followed by an introduction into Guantánamo’s legal context, before moving on to the discussion of these theoretical ideas within Guantánamo’s legal – mostly habeas corpus oriented – discourse.

## Destabilising the Paternal Image of Law

The theoretical ideas with which I address the legal situation in Guantánamo are by no means the only existing ideas that pose a challenge to the logic of paternity ordering legal discourse today. Arguably there are different practices and ways of perceiving and understanding law that as such challenge either the notion or the understanding of what law is or the limits of the legal framework. For example, many modern political and social practices challenge the process of law-making by testing the limits of the trial, by contesting the sources of law or the substance of law. As a point of interest, for example, two practices that within different contexts challenge the existing limits of legal framework are *ubuntu* and ‘righting’ or ‘the politics of righting’. These two practices come to challenge law from radically different positions. Whereas *ubuntu*<sup>347</sup> with its traditional cultural and ethical practice brings in a spirit of postcolonialism, ‘righting’ emerges from a purely philosophical idea of ‘thinking rights’, whereby one no longer claims or possesses rights, but rather embodies rights by pure virtue of the existence of rights.<sup>348</sup> Although I will not describe both practices in more details it is worth noting that both in a similar way to the ideas discussed in this chapter challenge and shatter the existing dominant legal ordering. In this section I will move into theoretical discussions of how practices that challenge and penetrate the existing symbolic order can be conceived of and how they come about. I start by explaining the logic according to which such philosophy works and continue with an exposition of an alternative understanding of a case, of how the ideas embodied in a legal case can challenge that particular case from within.

### Encounter, Problematisation and Conceptualisation

What is the purpose of law if not social control? It is often argued that law functions as a force of reproduction. It reproduces its subjects, its cases, the images of the trial, and ultimately also itself. This reproduction of legal images resembles the process of repetition; the law constantly repeats itself, it gets invented and reinvented. However

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<sup>347</sup> *Ubuntu* is a cultural and ethical philosophy and practice which focuses on people’s allegiances, ancestral relations and relations with each other. For many, *ubuntu* is the essence of being human. It is one of the founding principles of the new republic of South Africa. As a result of this, *ubuntu* is seen as one of the sources of customary law in South Africa. See: Drucilla Cornell and Karin van Marle, ‘Exploring *ubuntu*: Tentative reflections’, *African Human Rights Law Journal*, no.5 (2005): 195–220.

<sup>348</sup> See for example: Douzinas, *The End of Human Rights*, 216; Illan rua Wall, ‘On Pain and the Sense of Human Rights’, *Australian Feminist Law Journal*, 29 (2008): 53–76.



there is something fraudulent in this process of invention and re-invention. The law should be fundamentally rethought and repeated in each situation that is placed in front of it. This should happen, yet in reality, in this process of repetition the law does not get rethought and reshaped in order to accommodate the specificity of each and every legal situation put in front of it. Instead the laws and the legal system brings the otherwise varied situations to one common denominator; that is, the law orders all situations according to one logic and brings them within the limits of one legal framework. In the process of translating situations into the discourse of law, the singularities, specificities and particularities of the situations are often lost. The law does not address the situation as it is – in terms set by the situation – rather the situation gets addressed in ways that are known to the law. For example, the judge, the lawyers and the legal subjects, when at the court, are always already within the limits of the existing legal framework, they behave and act in accordance with the role they have. The question that is asked here then is how it is possible to (re)think the limits of law so that they remain contested and open to the particularities and specificities of the situations encountered.

One way to go about this is to rethink the limits of law along the lines of encounter, problematisation and conceptualisation. What do I mean by this? Every single situation that the law aims to place within the limits of its framework is potentially an encounter. If the law takes the situation as it is, in the terms of the situation, then the encounter represents a disruption to the dominant discourse. A metaphysical violence occurs when conventional forms of presentation, accounts, categories or habits are no longer sufficient to act/react or think within a particular situation.<sup>349</sup> In terms of a dominant legal discourse, the encounter breaks with dogmatic thought – a dogmatic nature of law pointed out in Chapter Two – and liberates the conception of the limits of the existing legal thinking. In such a way, the encounter represents everything that is radically new or what the existing legal framework is unable to deal with. Once the encounter opened up the thought it is up to ‘problematisation’ to represent it. However, and this is the most important aspect, problematisation does not represent the problem or set the limits of the problem in such a way that the problem can be solved. If that was the task of problematisation nothing would have ever changed, because a representation of a problem that culminates in an answer to the problem is a closure. It represents a

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<sup>349</sup> Alexandre Lefebvre, *The Image of Law: Deleuze, Bergson, Spinoza* (Stanford: Stanford University Press, 2008): 71–4.

(re)emergence of one dominant discourse.<sup>350</sup> What one can do to embrace the encounter is to take the problem further by remaining faithful to its essence – to its uniqueness. One way of doing so is for a problem to invent its own mode of existence, a mode of expression. Effectively, this means that every time the law is faced with a situation, the law has to reinvent itself. It has to change its logic, its limits and take into account all singularities and particularities specific to that situation. It is not enough that the law looks into ‘its past’ and digs out similar cases, readjusts decisions and limits within which a particular situation was brought in front of the law; rather the law has to challenge its own framework. In a way, each time the law is faced with a situation, one concept of law has to die and another has to be born. It is in this sense that law resembles philosophical concepts; like philosophical concepts, also legal concepts are born, they all live and die in the wake of a new concept. This logic of thinking about law takes us back to the discussions in the previous chapter; ‘the becoming’ yet again resembles the logic of law I present.

This idea of how to think law and challenge its paternal legal discourse is of course not unique to law. The triad of the encounter, the problematisation and the conceptualisation represents a logic of philosophical thinking to which, for example, both Deleuze and Lacan subscribed. This is also the logic that describes the inconsistency of the symbolic order, and exposes its vulnerability. In other words, it describes actions that pierce and destabilise the paternal discourse. In the following section I will look at how such destabilisation can be worked out with the example of a (legal) case; in particular how it challenges the case’s image, the content and its judgement.

### Challenging the Legal Case from Within

#### *A Case as an Image*

Perhaps a very particular way of thinking about law comes from seeing legal order as an image. Particularly significant is the image of the case or a trial. Its significance derives mostly from the fact that the case, which is being performed at a trial, comes closest to the actual embodiment or expression of law. The images are then not representations but

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<sup>350</sup> For more on the problem of faithfulness to the event/problem etc. see: Alain Badiou, *Ethics: An Essay on the Understanding of Evil* (London, New York: Verso, 2002); *Saint Paul: The Foundation of Universalism* (Stanford: Stanford University Press, 2003).

expressions of the ordering principles, which order laws but also bodies, thoughts, actions and any other expression or bodily experience. There is then more to an image than just providing representation. As Henri Bergson writes: [...Images] send back, then, to my body, as would a mirror, its eventual influence... The objects which surround my body reflect its possible action upon them'.<sup>351</sup> Through images, as Bergson indicates, we express and conceive of things. However, what can be known is not an actual image, but only one part of it; the part one can comprehend or the part that leaves traces on the bodies/objects surrounding it. Therefore, what is left outside of the representation or our cognition of the image is in fact the very essence of the image; or what is in the image that belongs 'to the outside' and is not representable in the existing forms of expression. In this sense, there is always something that goes beyond or that escapes our cognition of the image. This is not because inherently that part of the image does not exist, rather, if we are to conceive the rest, we have to change the symbolic order or modes of representation and comprehension.

In law, images have a similar role. They represent what is in law comprehensible or most expressible; they stand for a case. A case might be seen as the least complicated expression of law. Yet, following the duality of what can and cannot be comprehended in our cognition of the image, that claim no longer stands. Deleuze stresses an important difference between a case that is not yet represented – a case as an event or a pure image of the world, and a case after it has been represented. The difference between the two representations – the image as an event and the image as a perception – is in fact a difference between immanence and transcendence.

As has been discussed in the previous chapter, the image in the immanent is similar to being; the immanent offers countless possibilities and forms in which the image can be expressed; whereas the image in the transcendent is a particular representation of the immanent image. It picks up one representation out of the infinite number of possibilities. The transcendent image of the case, the perception of the case is, as Alexandre Lefebvre explains, 'limiting and subtractive; only certain crucial points are advanced and construed into legal argument, but underlying these points is the case in itself'.<sup>352</sup> There is nothing inherently new in this observation; every judge or lawyer

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<sup>351</sup> Henri Bergson, *Matter and Memory* (New York: Zone Books, 1988): 20-1.

<sup>352</sup> Lefebvre, *The Image of Law*, 123.

knows that the further along the legal process we go, the more distance we put between the origin of the case in its raw state and the case considered by law. But as Lefebvre elaborates with regard to the pragmatic nature of the process of perception as it applies to law: '[s]omething happens in the world, a case as raw event, and this event – this image – is subsequently apprehended and represented according to interest, that is, according to what is legally important and relevant. [...] The legal case is constituted through a process that drops and subtracts everything except for a few salient aspects. And this process is repeated over and over'.<sup>353</sup>

What Lefebvre observes in this quotation is that not only is a case only one possible representation of a legal image; the actual image of a case is even more impoverished. In a legal process, legal images are not re-invented from the pool of infinite possibilities; instead they are a constant repetition of that one and the same transcendent image of law. There is of course nothing inherently wrong with the transcendent representations of the image, it is ultimately impossible to represent all aspects of the image and make justice to them while doing so. Yet, what is of the utmost importance is that the logic lying underneath these expressions is not absolute or deterministic. With this I allude to two things. Firstly, it is important for the law to always look for alternative images of the situation, which need to be turned into a legal case. Each time, then, that law is faced with a situation, it has to consider all possible representations, especially those that are immanent or in the sphere of the incomprehensible. And secondly, one case is the embodiment of certain images. What these images are depends on the nature of the case, the parties involved, the questions under review or the struggles that have to be recognised. Yet, these expressions and images must be specific to that case, and that case only. Moreover, even for the case in question, the images can change through time, with new evidence or by a reformulation of the existing problem. Inherently there should be no limits to how far the case could go, what it could touch upon or what evidence or representation it could invoke. It is then this openness to the image of the case that gives law its particular contingent character and that becomes capable of challenging/piercing the dominant legal discourse. Within this scope, although what has happened in the past – a legal precedent – is important, it in no way limits the framework within which a particular case is heard, or determines the outcome of the case.

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<sup>353</sup> Ibid., 123–4.

The main task of the image of the case is then to introduce the actual events to the rule of law and search for relevant laws that could adequately represent the situation. Here, however, lies another trap. The search for laws cannot be done within or only within the existing framework of laws. Rather one has to look beyond these frameworks, and if the case demands new laws or new ways of looking at the event, the judge has to facilitate these new representations. The laws can come from the outside, as an encounter, and disrupt the existing legal framework, they can push parts of the existing legal framework to its limits, or even bring it to full collapse – death; and hence facilitate a birth of a new concept of law. With this last observation, we have already ventured into the question of the substance of law, which will be discussed next.

#### *The Pure Past of Law*

While the image concerns the case or representation of a trial, the pure part of law is concerned with the content of a case, and with the laws the judge can rely on. The pure past of law comes in two different forms of existence; it can be found in books, hence it has actual existence, or it can exist in or as a pure past of law, hence virtual existence.<sup>354</sup> Here, again, we are faced with the by now already well-known dichotomy of immanence and transcendence. While the laws ‘written in books’ lean on the side of transcendence, those of the ‘pure past of law’ are of an immanent nature. This double existence has implications that are not entirely straightforward. The existence of the pure past of law as the immanent idea is clearly important as it enables the existence of a legal case and law, and it also explains why the case in question leads to one rule and not to the other. In this sense, similar to the image of law, the pure past of law connects the raw event to the law. It translates the situation brought in front of the law into the law. In order to do so adequately, the pure past of law has to be understood as an immanent idea, which can facilitate the emergence of an infinite number of laws. As Deleuze reminds us, the pure past of law in the immanent does not resemble a static pool of laws; quite on the contrary, the main practice of the pure past of law is not to search for past laws and apply them to present cases, as perhaps one would do within a common understanding of law; rather, the pure past of law invents and creates new laws that derive from either preceding law (that is if the source is the transcendent written past of law), or an immanent ordering principle. The relation between both laws – the one that died and

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<sup>354</sup> Ibid., 145.

the other that was born – in both an immanent and transcendent scope is nonexistent, because they both address or are relevant to entirely new sets of situations, legal concepts or legal subjectivities.

In addition, it is not only that we have these two immanent and transcendent ‘pasts’ of law with their distinct pools of new laws, but also both ideas coexist. In fact, the immanent pure past of law needs the transcendent past of law to become actualised. As Lefebvre explains:

[t]he pure past of law [...] coexists alongside the present that actualizes it. As in paradoxes, the pure past of law is contemporaneous, coexistent, and pre-existent to the present case: [...] It is simultaneous with, exists virtually alongside, and is the condition for the case at hand. It is within this legal past that the judge searches for appropriate rules to make the case perceptible and to adjudicate it.<sup>355</sup>

The temporality of rules is then literally indeterminate; they exist in the past as actual precedents and also as transcendent embodiments of a larger immanent idea of law. Their role is double; on the one hand they embody a static law, which we try to transgress, while on the other hand they draw their images from an infinite range of legal images.

This aspect of law-making demonstrates that if one is to think of law as a contingent and unstable force, the living conditions under such law do not need to be anarchic or ‘chaotic’. The ‘invented laws’ should resemble the decisions: the conditions of decision derive from its past, yet its embodiment changes every time the decision is actualised. This process of inventing and re-inventing laws demands creativity and experimentation on the part of the judges. The pure past of law challenges the existing dominant legal discourse by constantly demanding that the pool of possible laws remains open to its immanent part. In other words, the pure past of law requires from law to remain in a process of constant change and re-invention. This makes legal precedence impossible, one reinvents laws for each particular situation. Even if the two situations are at first glance similar or of the same kind, the law has to look for differences and then represent those differences within the law, by pushing and stretching the limits of the existing legal framework. If the law is to take up the idea of the immanent pure past of law, then with

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<sup>355</sup> Ibid., 147.

each situation the law is faced with the openness that could lead to the collapse of that particular idea of law. With each situation put in front of the law then, the paternal logic is challenged and splits wide open for its radical rethinking.

The pure past of law provides the basis for making a legal decision; it guides judges and equally provides frameworks or origins of law that get embodied in a particular decision. Potentially the idea of a pure past of law makes for an open and contingent aspect of law, allowing for an innovative, experimental and indeterminist or non-systematic conception of law. At the same time, it acknowledges law's historical development, the importance of history for the understanding of law and judgements; yet in this process, it does not close the law down to these historical limits. It is not that such law recognises new subjects, problems and situations which the law need to address, but rather that each situation, no matter whether old or new, can take up any aspect of the pure past of law, and it does not have to do so in the form inscribed by a particular past decision, rather it can take full advantage of the differences created in the process of repetition, of the births and deaths, of these past laws.

### *Attentive Judgement*

I spoke of ways in which the image is represented in law, and then moved on to the 'sources' of law and what relation they form with the judgements. The attentive judgement is a way of law-making that brings together these aspects of law (e.g. the image and the pure past of law), and challenges the dominant discourse, calls for its change or even threatens it with collapse. The attentive judgement has many characteristics. In this section I will look at these characteristics in order to sketch the nature of the judgement. The attentive judgement occurs when faced with the encounter, which requires a new form of a legal response. The response the judgment creates is a response that finds its sources in the pure past of law. It is creative and draws from the immanent legal sources.<sup>356</sup> Yet, as the attentive judgement is an innovation, one does not get the feeling that the judgement actually draws from the pure past of law. It does not repeat the existing laws, but rather recreates them in ways which facilitate a new legal creation. The attentive judgement is also experimental and cumulative. What I mean by this, following Deleuze's thought, is that the experimentation is understood as a cumulative process. Despite having difficulties or being unable to conceive of the full

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<sup>356</sup> Ibid., 182.

image of these encounters, every time we make an attempt to conceive or express the encounter we discover something we did not know before.<sup>357</sup> It is through this accumulation of representations or expressions that we learn of the encounter and make it into a singularity. And lastly and very importantly, the attentive judgement is creative. Through the encounter attentive judgement produces unique products, novelties or composites of recollection and perception.<sup>358</sup>

Deriving from these characteristics, the attentive judgement then embodies a connection between the past and the present of law, between the actual and the virtual, the immanent and the transcendent side of law and allows for the undetermined expressions of law. The attentive judgement juggles between perception and memory. It constantly moves in time, between the past and the future to create and recreate different legal representations. A perfect example of the judgement is, for example, the figure of a judge who is asked to make excursions into the pure past of law and invent different laws to facilitate the requirements of a perceived case. In the attentive judgement it is then the judge who bears the responsibility of transferring the ‘knowledge’ of a pure past of law into the actual case, and to recognise the encounter and represent it in a viable manner. To do justice to the actual case, the judge has to create a legal concept that adjudicates the encounter; thus the components of the conception that adjudicated a similar legal situation up to here gets differently re-inscribed into the new concept. The ‘dead concept’ then does not disappear entirely; instead it is embodied in parts in a new conception. Again, as Lefebvre acknowledges, this leads to ‘an experience and a duration of judgement, wherein a new rule is created piece by piece as its various elements or components are actualized into unprecedented relationships’.<sup>359</sup>

This section pointed out ways in which one can challenge the existing dominant legal discourse. The discussion of the encounter, the problematisation and the conceptualisation represents foundations for thinking either an alternative ordering or a challenge to the limits of the dominant discourse. In this section I focus on the challenges ‘the legal case’ can pose to the existing discourse. The discussion of the representation of the legal case, the content or the substance of law and the nature of the legal judgement challenges the paternal laws from within. What do I mean by this? The

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<sup>357</sup> Ibid., 183.

<sup>358</sup> Ibid., 184.

<sup>359</sup> Ibid., 216.



practices that emerge either in the process of translating a situation into a legal case or in the process of making a judgement, test but do not break the limits of the existing law. These particular practices or situations – if they are to be properly addressed by law – demand changes in law, in the way the law works or addresses its subjects. Not all situations have the capacity to test the limits of law, but some do. And those practices are present in the here and now, and they challenge the dominant legal discourse and make it change. These are the practices that, as we indicated earlier, disrupt the smooth flow of the symbolic order and the working of the legal system. However, the challenges these practices pose are not fatal for the existence of the order, instead the order remains capable of addressing the challenges by readjusting its limits. I will look into how the law gets re-adjusted in the next section. There I will explore how various practices and situations in Guantánamo posed a challenge to the existing legal system and made it change or re-adjust. My primary focus will be the logic driving the habeas corpus petitions cases. However, before embarking on this analysis, I need to briefly explain the exposition of the legal discourse made in relation to Guantánamo with a particular focus on the habeas corpus decisions made by Justices at the US Supreme Court as well as at the District Court of Columbia.

## **Understanding Guantánamo: an exposition of Guantánamo’s legal discourse**

It is important to remind ourselves that the detention facility at Guantánamo Bay was opened as a response to the US intervention in Afghanistan, and only subsequently became an institution providing a ‘secure environment’ for the interrogation, and for gathering of intelligence of those who were – as the US claimed – picked up from the battlefield.<sup>360</sup> The US administration decided to open such a facility at Guantánamo Bay, Cuba – the oldest US military base overseas.<sup>361</sup> Since its opening on January 11 2002, when the first group of detainees arrived on the Base and were accommodated in a temporary facility called Camp X-Ray, the camp has held hundreds of detainees; up to

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<sup>360</sup> For more on the discussion of the relationship between the battlefield, law and the US political discourse see: Mark Denbeaux, Joshua Denbeaux, R. David Gratz, *The meaning of ‘Battlefield’: an analysis of the Government’s representations of ‘battlefield’ capture and ‘recidivism’ of the Guantánamo detainees*, Saton Hall University, School of Law. December 12 2007 [[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1089475](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1089475)]. Accessed: March 13 2009.

<sup>361</sup> Defence Department Policy, Guantánamo Bay [GTMO] – ‘GITMO’, [<http://www.globalsecurity.org/military/facility/Guantánamo-bay.htm>]. Accessed: July 21 2009.

780 at its peak in 2005. It is estimated that the facility as of January 2011 still holds 174 detainees.<sup>362</sup> The fate of those remain unknown. The day after US President Barack Obama took Office, he signed the order to close Guantánamo within a year, by January 2010, and ordered a stay on all military commission cases.<sup>363</sup> A few months later, in a speech at the National Archives in Washington DC, Obama presented his first remarks on the emerging policy on detention. Obama divided the detainees into five groups: the first group are those who violated American criminal law, and they will be brought to the US and tried in federal courts. In the second category are those who violated the laws of war and are therefore best tried through the military commissions. In the third category are the detainees who have been ordered a release by courts, such as for example in the case of the Uighur detainees. In the fourth category are those who can be safely transported to another country for further detention and rehabilitation. The final category consists of those who cannot be prosecuted yet pose a danger to the US.<sup>364</sup> So far these remarks indicated the most systematic engagement with the problem of detention in Guantánamo, although, as such they do not enable the closure of the facility, and are far from conforming with the human rights standards demanded by a number of non-governmental organisations fighting for the closure of Guantánamo.

To understand the complexity of the situation one has to learn more about the facility that has been from its very early days seen as a black spot on US history. The purpose of the facility that nowadays consists of eight camps of different security levels has been to facilitate the conditions for good and fast intelligence gathering. The detainees were initially supposed to come directly from the battlefields in Afghanistan and Iraq; however, as it turned out, Guantánamo became a new home for individuals who were picked up in the Middle East, Africa and the Balkans, altogether nationals of 52 different countries.<sup>365</sup> Most detainees were transported to Guantánamo after being held in severe conditions in either Kandahar or Bagram prisons. It was only here that the detainees went through a systematic process determining whether they were enemy combatants or

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<sup>362</sup> Andy Worthington, 'A List of Remaining Guantánamo Prisoners' [<http://www.andyworthington.co.uk/category/a-list-of-the-remaining-Guantánamo-prisoners-new/>], November 17, 2010. Accessed: January 7, 2011.

<sup>363</sup> Human Rights Watch, US: Obama Calls for 120-Day Halt to Guantánamo Military Commissions, 21 January 2009 [<http://www.hrw.org/en/news/2009/01/21/us-obama-calls-120-day-halt-Guantánamo-military-commissions>]. Accessed: August 10 2009.

<sup>364</sup> President Barack Obama, Speech 'Protecting Our Security and Our Values', National Archives Museum, Washington, DC, May 21 2009.

<sup>365</sup> Swivel Preview Database, Guantánamo Detainee Nationality Summary [[http://www.swivel.com/data\\_columns/spreadsheet/2043914](http://www.swivel.com/data_columns/spreadsheet/2043914)]. Accessed: October 10 2009.

not. The Combatant Status Review Tribunals were held between August 2004 and January 2005, almost two and a half years after the arrival of the first detainees. That, as many would argue, was the detainees' first encounter with the law. The fact that this was the detainees' first encounter with the law should not be surprising. The Government kept the detainees away from the law on purpose; in fact they created conditions by which the detainees should only be subjected to laws that apply to their situation or to the space of Guantánamo. For example, the Government decided to transport terrorist suspects to Guantánamo Bay, Cuba, only after they secured legal argumentation justifying the legal and spatial 'exceptionality' of the Guantánamo Base. By claiming that the Base is American only on the grounds of a lease agreement signed between the two governments of Cuba and the United States in 1904, the US government attempted to argue that the detainees had no right to appeal to the US courts on the conditions of their detention. The US are not the sovereign on that territory, therefore the US courts have no jurisdiction over it.<sup>366</sup> However, this argument did not hold. Soon the Government had to introduce Combatant Status Review Boards, and with a decision in *Rasul v Bush*, the lawyers received the right to visit the detainees in the camp.

There are many legal milestones in the short history of Guantánamo detention facility. I will address those that I consider to be of most importance by firstly looking at the official discourse of the US government and then the Supreme Court decisions in the cases of habeas petitions.

### Guantánamo's Legal Framework in the Eyes of the US Government – the exclusion of domestic and international law

It was in 2002, a few months after the opening of the facility that the mission of Guantánamo officially changed. Lawyers in Washington and the Office of Legal Council provided enough legal cover for the Government to commence the interrogations. Guantánamo was therefore no longer a detention facility, but primarily a centre for gathering intelligence information through coercive measures. At that time it was also

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<sup>366</sup> See for example: Frederic L. Kirgis, *United States Charges and Proceedings Against Two Guantánamo Detainees for Conspiracy to Commit Crimes Associated with Armed Conflict*, The American Society for International Law (ASIL) [[http://www.asil.org/insigh126.cfm#\\_edn11](http://www.asil.org/insigh126.cfm#_edn11)]. March 2004. Accessed: August 10 2009; Supreme Court of the United States, *Rasul et al. v. Bush*, June 29 2004 [<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=000&invol=03-334>]. Accessed: August 2 2009; Gary L. Maris, 'International Law and Guantánamo', *The Journal of Politics*, 29 no. 2 (1967): 261–86.

<sup>366</sup> Detainee Treatment Act, December 31 2005. [<http://jurist.law.pitt.edu/gazette/2005/12/detainee-treatment-act-of-2005-white.php>]. Accessed: October 10 2009.

made public that Guantánamo detainees were not the prisoners of war but enemy combatants. Unlike prisoners of war, those categorised as ‘enemy combatants’ do not fall under the provisions of the Geneva Conventions. However, the US administration made public their intention that despite removing the enemy combatants from the laws of war, they would act in the spirit of the Conventions and treat the detainees humanely. The meaning of ‘humane treatment’ has been stretched. This is obvious if one only looks at, for example, the torture memos. Those authored by John Yoo and Jay Bybee in August 2002, in particular considerably redefined the definition of torture. Torture now meant the infliction of pain ‘of an intensity akin to that which accompanies serious physical injury such as death or organ failure’.<sup>367</sup> Everything else, including the psychological torture, no longer constituted torture. This position further led to the development of 18 new interrogation techniques that were outside of those allowed by the military interrogation manual.<sup>368</sup>

Such action clearly indicated that the US administration aimed at establishing a new legal system to deal with the detainees in the so-called war on terror. At the same time, however, the US government tried hard to justify their action within the existing legal discourse. What I mean by this is that the lawyers at the Department of Justice were asked to provide legal support for every decision taken. If one is to take a look at Guantánamo, for example, the Department of Justice eventually provided a very clear and detailed explanation of why the detainees at Guantánamo should not be subjected to the Geneva Conventions, as well as why Guantánamo was the most appropriate place for holding these individuals. I address these two justifications below.

To discuss the application of the Conventions regulating conduct in times of war, the Bush administration claimed that these rules do not apply to Al-Qaeda and the Taliban fighters, because only states can be the parties to the convention. The convention also assumes the existence of regular armed forces fighting on behalf of the state. Al-Qaeda (to a lesser extent the Taliban fighters) are neither state nor a regular army. For these reasons, according to the US government, the Geneva Conventions should not apply to them. However, Article 4 of the Third Geneva Convention determines the criteria for non-state combatants to be able to claim the status of the prisoners of war. They have to

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<sup>367</sup> Jay S. Bybee, memorandum for Alberto Gonzales, Counsel to the President, August 1 2002.

<sup>368</sup> For further discussion of how the decision on these techniques was made see: Philippe Sands, *Torture Team: Rumsfeld's Memo and the Betrayal of American Values* (London: Palgrave Macmillan, 2008): 45–8.

be commanded by a person responsible for his subordinates; they need to have a fixed distinctive sign; they have to carry arms openly, and they have to conduct their operations in accordance with the laws and customs of war.<sup>369</sup> Neither Al-Qaeda nor the Taliban comply with these standards. To that end, the Bush administration concluded that they are not making an exception when they do not apply the provisions of the Geneva Conventions to ‘the war on terror detainees’. In fact, subjecting Al-Qaeda and the Taliban fighters to these rules would constitute a legal exception. What was uncommon, and perhaps also exceptional, however, was the fact that the US administration also exempted the detainees from US criminal law. Before the war on terror was declared, it had been common to try terrorists for their acts within the criminal justice system. For example, this was the case with the World Trade Center bombing in 1993, when eventually seven people were convicted. This is only one example of what had been a standard practice before the war on terror.

To justify the decision for exempting the detainees from the PoW provisions as well as the US criminal justice system, President Bush declared that the war on terror was not like any other war. It is a war against an enemy that is highly mobile and cannot be tied to or associated with one state only. For these reasons, he said, the US needs to recognise that a new paradigm of terrorism and warfare has emerged, ‘that requires new thinking in the laws of war, but thinking that should nevertheless be consistent with the principles of Geneva’.<sup>370</sup> Of course there are legitimate doubts over whether the treatment of Guantánamo detainees (or the detainees in the war on terror) was humane. The US government in fact admitted to a few cases of mistreatment, but maintained the position that they do not mistreat or torture detainees. It can also be argued that the cases of mistreatment were a consequence of the absence of rules or clear guidance, rather than the proclamation of the exception and the abrogation of the standards of humanity. It is however unlikely that the Government would let either the status or the handling of the detainees be unregulated for a long period of time, as it is also unlikely that they would publicly admit a breach of human rights. However, for example, Major General Michael Lehnert reports that in the first few weeks after the opening of Guantánamo there was no guidance from Washington on how to treat the detainees. There were rumours that

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<sup>369</sup> Third Geneva Convention: Geneva Convention Relevant to the Protection of Civilian Persons in Time of War, Article 4, 12 August 1949  
[<http://www2.ohchr.org/english/law/civilianpersons.htm>].

<sup>370</sup> Memo 11, ‘Humane Treatment of Al-Qaeda and the Taliban Detainees, from President George Bush to Vice-President et al, 7 February 2002.

the Geneva Conventions did not apply, but that was not confirmed until some time later, when the Department of Justice backed the claims.<sup>371</sup> To put the question of whether the detainees of the war on terror are entitled to the rights of prisoners of war or not, in the context of Article 5 of the Third Geneva Convention, some standards of humanity and humane treatment should be guaranteed to the detainees as this Article determines that the detainees, regardless of their status, should enjoy humane treatment. Similar standards apply to detainees of any kind by virtue of numerous human rights conventions, including a convention against torture.<sup>372</sup>

### Challenges to Guantánamo's Legal Framework – Supreme Court decisions and habeas petitions

As seen above, the US government provided a rather strong legal reasoning in support of their position regarding the treatment of the detainees. The bulk of their argument however, addressed international law. It is then perhaps rather surprising that the main challenge to the Government's legal endeavours explained above came from domestic and not international law. As one of the governmental branches, the Supreme Court played a very significant role in limiting the powers of the Bush administration, and that, despite, as many civil lawyers *pro bono* litigating Guantánamo habeas corpus petitions would point out, that the Justices at the Supreme Court were rather conservative in their decisions.<sup>373</sup> The Supreme Court heard many important cases; the most significant cases concerning the situation in Guantánamo are *Rasul v. Bush* in 2004, *Hamdan v. Rumsfeld* in 2006 and *Boumediene v. Bush* in 2008. All these cases challenged the detention of individuals in Guantánamo or the lawfulness of the enemy combatant classification. For the purpose of the argument I will briefly address the subject of petition and the impact the decisions had (or rather should have had) on governmental policies.

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<sup>371</sup> Greenberg, *The Least Worst Place*, 55–7.

<sup>372</sup> See for example: The Universal Declaration of Human Rights, United Nations, General Assembly, December 10 1948 [<http://www.un.org/en/documents/udhr/>]; International Covenant on Civil and Political Rights, United Nations, General Assembly, December 16 1966 [<http://www.hrweb.org/legal/cpr.html>]; Convention against torture and other Cruel, Inhumane or degrading Treatment or Punishment, United Nations, General Assembly, December 9 1975, Resolution 3452 (XXX) [<http://www.hrweb.org/legal/cat.html>].

<sup>373</sup> Interview with Douglas K. Spaulding and Allison M. LeFrak, Attorney of Guantánamo Detainees, ReedSmith Law Firm, Washington, DC, October 2009.

The first Guantánamo case that made it to the Supreme Court was the 2004 *Rasul v. Bush* case.<sup>374</sup> The case asked one question, which was whether foreign nationals held in Guantánamo Bay may invoke the right to habeas corpus. This right is commonly attached to the court's jurisdiction and to those with US citizenship. In the case of Guantánamo detainees, who were not supposed to be US citizens (the 'enemy combatant' label can only apply to non-US citizens) the main issue was whether the US courts have the jurisdiction to hear habeas cases. Despite the Government's argument that the US possesses Gitmo on the basis of a lease agreement, the Cuban government therefore preserving sovereignty over the territory, the Supreme Court decided in favour of the petitioners and proclaimed that the US court has jurisdiction over the territory and can therefore hear the cases. The Supreme Court decided that the jurisdiction is not determined on grounds of the legal subjectivity of the petitioner, but rather on ground of the custodian. In the case of Guantánamo detainees, the custodian is the US government, which is a subject of US laws. As such the US government is then within the jurisdiction of the US courts. Thus District Courts have the jurisdiction to hear and make decisions in habeas cases. The second case, *Hamdan v. Rumsfeld*,<sup>375</sup> contested the legality of the military commission set up by the Bush administration to try the detainees at Guantánamo. The petitioners argued that the commissions cannot proceed because they violate both the Uniform Code of Military Justice and all four Geneva Conventions from 1949. The Court decided that President Bush did not have the authority to set up the war crimes tribunal. They also found out that the special military commissions were illegal under both the military justice law and the Geneva Conventions. As a result, the Bush administration proposed a Military Commission Act to the Congress and the Congress accepted it a couple of months after the Court's decision on Hamdan.<sup>376</sup> With the Military Commissions Act the Bush administration re-established legal grounds for the military commission trials and sought suspension of habeas corpus right.

As a result of this action, the Supreme Court in 2008 was asked to make a ruling on the *Boumediene v. Bush* case.<sup>377</sup> The petitioners this time again addressed the habeas corpus

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<sup>374</sup> *Rasul et al. v. Bush*, June 29 2004. Supreme Court of the United States, [<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=000&invol=03-334>].

<sup>375</sup> *Hamdan v. Rumsfeld*, June 29 2006. Supreme Court of the United States, [<http://www.law.cornell.edu/supct/html/05-184.ZO.html>].

<sup>376</sup> Military Commissions Act, October 17 2006 [[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109\\_cong\\_bills&docid=f:s3930es.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_bills&docid=f:s3930es.txt.pdf)]. Accessed: July 28 2009.

<sup>377</sup> *Boumediene et al. v. Bush*, June 12 2008. Supreme Court of the United States, [<http://www.supremecourtus.gov/opinions/07pdf/06-1195.pdf>].

right and contested the legality of the military commissions. The Supreme Court decision recognised that the prisoners had the right to habeas corpus under the US Constitution and that the Military Commission Act, although passed by the Congress, was an unconstitutional suspension of that right. This decision then finally determined that all the detainees held at Guantánamo have the right to challenge their detention in front of the US courts.

As a result of the Supreme Court decisions, the habeas corpus petitions started to be filed at the District Court of Columbia. The judges at the District Court have so far reached a decision on no more than 60 cases.<sup>378</sup> There are many complaints on the part of the judges and the attorneys of Guantánamo detainees about the intentional delays the Government is making in the procedures. In particular Judge Houvelle noticed that after years of court battles the government decided to withdraw the case and abandon allegations on the eve of the hearing.<sup>379</sup> Complaints not only address the intentional prolonging of the cases, but particularly the substance of allegations, which are for many unreasonable and surprisingly weak. This goes for charges in habeas petitions as well as for those in military commission cases. As a result of this, out of 60 cases upon which a decision has been reached, only 22 decisions were in favour of the Government.<sup>380</sup> In the remaining 38 cases, the court ordered an immediate release of the detainee. However, so far only 24 have been released, the remaining detainees are still in Guantánamo waiting for their release.<sup>381</sup>

As can be seen from the discussion above, the legal situation in Guantánamo is rather complicated, as it requires one to consider its domestic as well as international aspect. Domestic law, despite being the most interesting of the two, and critical of both the Bush's and Obama's governments, is largely overlooked in international politics literature. Without going into great detail, I have outlined the legal aspects of

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<sup>378</sup> As of January 2011.

<sup>379</sup> Del Quentin Wilber, *The Detention Charges are Far off for many*, Washington Post, July 31 2009 [<http://www.washingtonpost.com/wp-dyn/content/article/2009/07/30/AR2009073004116.html?wpisrc=newsletter&wpisrc=newsletter&wpisrc=newsletter>]. Accessed: August 2 2009.

<sup>380</sup> Andy Worthington, *Guantánamo Habeas Results: The Definitive List*, September 2010. [<http://www.andyworthington.co.uk/Guantánamo-habeas-results-the-definitive-list/>]. Accessed: October 25, 2011.

<sup>381</sup> Center for Constitutional Rights, *'Guantánamo Habeas Scorecard'*, November 2010. [<http://www.ccrjustice.org/files/2010-11-02%20Habeas%20SCORECARD%20Website%20Version.pdf>]. Accessed: October 25, 2011.



Guantánamo – the Government’s justifications for their actions and the challenges to these justifications coming from the criminal justice system. In the next section, I will then focus on some of the aforementioned aspects – in particular the broader scope of habeas petitions and to a lesser extent the military commissions and look at how in the legal process, the existing dominant framework of law was challenged by uncommon situations, how it responded and whether it managed to adjust so that it took full advantage of the opportunities created by the challenges. In other words, the next section discusses some of the situations that, in the discourse used earlier, pierced or at least unsettled the dominant legal discourse and called for it to change. These challenges, unfortunately, do not always result in a change of even a small aspect of the system.

## **Taking Guantánamo Piece by Piece**

We approached the theoretical discussion on ways in which the dominant legal discourse gets pierced and shattered by the situations it encounters by discussing the broader framework of how change in philosophy and law comes about in a triad of encounter-problematisation-conceptualisation. That was followed by a representation of a legal case through another triad of the image, pure past of law and attentive judgement. In this section I then explore how these ideas challenge the dominant legal discourse on a larger and also limited scale, and how – if at all – these challenges find their own place within the legal discourse. As only a few practices challenging the dominant discourse get actualised, I also consider reasons why there is such resistance/reluctance towards the change. I will start the discussion with the encounter, continue with a joint discussion of the image, pure past of law and attentive judgement; and finish with a short discussion of problematisation and conceptualisation. The conclusion of this section and the chapter will take us a step further in the direction of an alternative logic of law-making.

### Encountering Guantánamo

There are three different ways of discussing the encounter within a legal situation in Guantánamo. One has to do with the creation of a new law to prevent the encounter; the other is the actual encounter with the existing legal discourse, and the last has to do with the jurisdiction and the representation of the detainees within the legal discourse. Here I will focus on the first aspect, whereas the second and the third will be discussed in more

depth in relation to the image of law or a legal case. As will become clear throughout this debate, all the ideas discussed here are very much interrelated and in the spirit of the philosophy of becoming, they constantly change shape, so it is often impossible to draw clear lines between, for example, representations of the legal image and the encounter.

Within the legal framework of Guantánamo, the encounter signifies situations in which no group of laws can automatically be applied to the statute under review, or to the situation in question. In itself the Guantánamo situation cannot be dealt with through existing concepts of either common, international or human rights law. This, however, is not to say that no interpretations exist of why the detainees should be put under and protected by either or all of these set of rules. However, by looking at the official discourse, a range of mechanisms were put in place in order to prevent the situation from being handled by any type of law that was outside the one specifically drawn to accommodate the situation. In other words, the Government aimed to remove Guantánamo from the existing discourse, and hence prevent it encountering the existing legal discourse. This endeavour, as has been seen from the discussion above, was in vain. The situation in Guantánamo made its way if not into the discourse of international law at least into the framework of US domestic law.

To look at the encounter from this first perspective – a perspective in which the Government creates new laws to prevent the encounter between the situation and the existing legal discourse – we need to return to the relationship between the detainees and various sources of legal order; and equally we need to return to the intentions of the US government to deny the detainees access to legal counsel. In other words, to deny the detainees the possibility of an encounter with the dominant legal system. That denial and the urge to come up with a new category with new, less clearly-defined rights is in fact an act that constitutes the encounter. Under the new official legal framework, the detainees have no rights under the laws of war, the Geneva Conventions or universal human rights declarations. However, that technically did not leave detainees in an entirely lawless situation. Under the Military Order drawn by President Bush on November 13 2001, the detainees under Section 3 should be subjected to the following treatment and should enjoy the following privileges:

- (a) detained at an appropriate location designated by the Secretary of Defense outside or within the United States;

- (b) treated humanely, without any adverse distinction based on race, color, religion, gender, birth, wealth, or any similar criteria;
- (c) afforded adequate food, drinking water, shelter, clothing, and medical treatment;
- (d) allowed the free exercise of religion consistent with the requirements of such detention; and
- (e) detained in accordance with such other conditions as the Secretary of Defense may prescribe.<sup>382</sup>

This, as the US government stipulated, indicates that the detainees are not subject to international conventions, or indeed international law as such, yet the US still promises to treat them in a humane way.<sup>383</sup>

The military order does not only determine the detainees' relation or exclusion from international law, but also their relation to US domestic law or criminal justice system. In Section 4 (a), the President proclaims that the detainees, when put on trial, shall be 'tried by military commission for any and all offences triable by military commission that such individual is alleged to have committed, and may be punished in accordance with the penalties provided under applicable law, including life imprisonment or death'.<sup>384</sup> In such a way it is explicitly determined that military commissions are the only forums with the jurisdiction of hearing these cases. The situation is further specified in the Order's Section 7:

- (1) military tribunals shall have exclusive jurisdiction with respect to offenses by the individual; and (2) the individual shall not be privileged to seek any remedy or maintain any proceeding, directly or indirectly, or to have any such remedy or proceeding sought on the individual's behalf, in (i) any court of the United States, or any State thereof, (ii) any court of any foreign nation, or (iii) any international tribunal'.<sup>385</sup>

In support of this proclamation on the treatment of detainees, the Government also changed the US Federal Statute concerning the power to grant writ, i.e. habeas petitions. In 28 U.S.C. §§ 2241 of February 1 2010 it is declared in section (e) that 'no court, justice or judge shall have jurisdiction to hear or consider an application for a writ of habeas

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<sup>382</sup> Presidential Military Order: Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism, November 13 2001 [<http://georgewbush-whitehouse.archives.gov/news/releases/2001/11/20011113-27.html>]. Accessed: August 12 2010.

<sup>383</sup> The humanity of the treatment has been largely disputed, and serious claims of abuse and torture have been investigated; some were proven to be correct.

<sup>384</sup> Presidential Military Order, November 13 2001.

<sup>385</sup> Ibid.

corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination'.<sup>386</sup> Within the legal constraints determining who has the authority to try the detainees, the US government not only limits the jurisdiction of international law, and US domestic and criminal law, but also the jurisdiction of other states. That is, for example, even though Guantánamo or Bagram are within (arguably) Cuban or Afghan territory, the United States is the only state with the right to bring these individuals to the court. In such a way, the United States tried to first create a new legal framework within which these individuals can be tried and hence to exclude or prevent them from encountering and engaging with the existing legal system. If this had worked, the US government would have become the sole authority determining the limits and the framework of the newly established law; this would have disadvantaged anyone engaging or being subjected to such system.

#### Guantánamo: images, contents and judgements

So how is then the situation in Guantánamo represented as a legal case (and as the second form of encounter whereby detainees encounter law)? The starting point has to be the already acknowledged problem, that the situation presented a possibility to the law to face an encounter; yet the law was unable to properly respond and acknowledge the particularities of the situation which it encountered. However, by exploring the image of the law – or how the situation has been translated into law – one might be able to point at the places where the legal discourse failed. The ultimate problems of Guantánamo to which ‘the answer’ or a response is sought are the abuses of human rights and mistreatments of detainees – this represents one point of failure. This was the situation that was brought in front of the law; and the starting question was how to stop these mistreatments and with what legal means. A way forward in the situation was through the habeas petitions.<sup>387</sup> This is in many respects a very peculiar way of addressing the abuses and mistreatments, as ultimately the pain and misery of the detainees is dealt with by means of writ commonly used to test the conditions of detention or to provide legal means by which a person can be brought to face the law.<sup>388</sup> This is already a major step

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<sup>386</sup> US Federal Statute 28 U.S.C. 28 §§2241; Power to grant writ.

<sup>387</sup> 28 U.S.C. §§ 2241

<sup>388</sup> See for example: Stewart Motha, ‘Guantánamo Bay, Abandoned Being and the Constitution of Jurisdiction’, in *Jurisprudence of Jurisdiction*, Shaun McVeigh ed. (London: UCL Press, 2006): 63–83.

away from the starting position, namely the abuses. The law with regard to Guantánamo then does not deal with suffering, but rather with the conditions under which detainees are detained.

The representation of the actual situation through the legal mechanisms such as the habeas petitions is problematic. It moves the focus from the abuses to the practical or technical problems of detention. Such ‘discrepancy’ already causes a misrepresentation of the situation. This misrepresentation points towards the problem raised earlier, that is that the situation is translated into law not for what it is, but for what it can be within the existing law. The situation in the form of a legal case is then no longer the same as the situation before it was translated into the legal case. With the example of Guantánamo, the question is then no longer about suffering and the abuses of the detainees, but rather about the conditions of their detention. There are different explanations for such a difference in representation. One can be that within the existing law the present situation of addressing the problem is the only one possible. The law is unwilling to change and seek a representation that would address the situation more accurately. Using the terminology of the pure past of law, the law is unwilling to return to its immanent sources of law, instead it interprets the situation – translates it into a legal case – consulting only its written transcendent side. The other explanation could be that the human rights organisations knew that trials of this kind would bring publicity to Guantánamo, putting extra pressure on the US government and hence benefitting the detainees the most. And the third explanation could be that not only is the current way of handling the situation the only available way of dealing with issues of suffering, but it is also the only appropriate, as law has no (and should not have the) capacity to deal with one’s pain and suffering. Whichever explanation one takes, it is clear that the legal representation of the situation is radically different from the situation as such. The legal case then takes the situation and instead of exploring the possibilities in which it can represent the problem of the detainees’ suffering, it resorts to the existing knowable and written laws, which have nothing to do with the detainees and their situation.

However, to depart from the representation of the situation as a legal case and focus on the image of law *as such*, one can observe another ‘discrepancy’. As discussed above the habeas petitions concern the conditions of detention and the right of a detainee to have his case heard by the court. In the case of Guantánamo’s habeas petitions, the court

reinterprets the purpose of these petitions. They no longer question the conditions and the detainees' right to be heard by the law, rather they turn the case into a problematisation of the territoriality and the question of jurisdiction. It is then up to the Court and the US Supreme Court to decide whether Guantánamo Bay in fact falls under the jurisdiction of the United States – whether the US is a sovereign over the territory – or whether this is not the case. In 2004 the Supreme Court ultimately made a decision in the *Rasul v Bush* case that the US courts have jurisdiction over Guantánamo and can hear habeas cases,<sup>389</sup> and in the 2008 *Boumediene v Bush* case reaffirmed that decision and further declared the military commissions unconstitutional.<sup>390</sup> However, the basis on which the decision in *Rasul v Bush* was made is often overlooked. It is not that a detainee has the right to test the conditions of his detention and hence become the subject of law; quite on the contrary, the right belongs to the custodian. In other words, the territorial question of the jurisdiction relates to the location of the custodian and not to the location of the detainees. 'Within their respective jurisdiction' then does not refer to the detainees in Guantánamo, but rather to the detainees' custodian; they have to be within the jurisdiction of the respective Federal Court.<sup>391</sup>

A move from the detainee or the petitioner to the custodian is more significant than perhaps at first imagined. Up until now, the right was always tied to the location of the petitioner himself and required the petitioner's presence within the district court's territorial jurisdiction. However, with Guantánamo this is no longer the case. As Stewart Motha, for example, further explains: '[t]his interpretation created a "statutory gap" whereby, if the petitioner was not present within the court's territorial jurisdiction, the court would not be able to grant the writ'.<sup>392</sup> In *Rasul*, it is specifically stated that the prisoner's presence within the territorial jurisdiction is not necessary because the writ of habeas corpus 'does not act upon the prisoner who seeks relief, but upon the person who holds him in what is alleged to be unlawful custody'.<sup>393</sup> It is then the location of the US government that matters in whether the detainees have the right to habeas corpus. This also alludes to something else. It means that the actual 'subject of law' is not the detainee, but rather the custodian. The detainee remains unrecognised and exempted from law. Again Motha asks: '[i]s it the "life" of the detainee that is being mediated by

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<sup>389</sup> *Rasul v. Bush*

<sup>390</sup> *Boumediene v. Bush*

<sup>391</sup> *Rasul v. Bush*

<sup>392</sup> Motha, 'Guantánamo Bay, Abandoned Being and the Constitution of Jurisdiction', 70.

<sup>393</sup> *Braden v 30<sup>th</sup> Juridical Circuit Court of Ky* 410 US 484, 495 (1973): 494–5; *Rasul v. Bush*, 10.

law, or rather is it the authority of the custodian that is being regulated?<sup>394</sup> I believe it is perfectly viable to say that the law does not focus on the detainees' life in the case of Guantánamo's habeas petitions. What is being decided at the courts does not in fact relate to the detainees as such; their life, although discussed and brought to court, is not fully part of the court and hence not fully considered by the court. This representation makes an additional step away from the central question identified earlier, that is the detainees' mistreatment in relation to the law. The detainees are heard by the court not for what has happened to them, in their own right; rather, their presence at the court is negotiated through the Government. It is then that through the legal process the image of law gets turned around. The law does not represent the detainees, but rather the Government.

There are at least two significant consequences of this flipping-over of whose life is being regulated by law. The first has to do with intent. As Deleuze said, the image is always a reflection of the intention. It is then perhaps possible to speculate that there is a political reason behind the human rights organisations' discourse continuously addressing the situation in Guantánamo with legal means (Center of Constitutional Rights in particular). What I mean by this is that such legal engagement with the problem of Guantánamo detainees has more to do with governmental actions and perhaps the political promotion of the organisation rather than the 'wellbeing' of detainees. As many lawyers involved in Guantánamo litigation testify, it was rather obvious that not much would be achieved through these legal means, and that if the process started, it would take years to go through all the appeal procedures and eventually get 'a green light' from the Supreme Court.<sup>395</sup> This is precisely what has happened; ultimately it took six years from the initial filing of habeas petitions until the first cases were heard at the District Court of Columbia. Awareness of the inefficiency of this path was apparent at the time, as almost all the detainees (with very few exceptions, most notably David Hicks and the two American 'enemy combatants') were released on grounds of political agreements and behind-the-scene negotiations. Tina Foster, the Director of the International Justice Network, speculated that the legal path was only taken to draw media attention to human rights organisations and subsequently trigger public outcry that would shame the

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<sup>394</sup> Motha, 'Guantánamo Bay, Abandoned Being and the Constitution of Jurisdiction', 70.

<sup>395</sup> Interview with Baher Azmy, Attorney of Guantánamo Detainees, Seton Hall University, New York, September 2008; Interview with Tina Foster, the founder of International Justice Network human rights organisation, New York, September 2008; Interview with Lt. Col. David Frakt, Military Commissions Attorney at Guantánamo Bay, US Air Force Reserve and Professor of Law at University of California, Irvine, Irvine September 2009.

Government.<sup>396</sup> The explanation of the image as a reflection of intentions in law alludes to one of the three possible reasons of why the situation in Guantánamo was misrepresented. According to this reasoning, there was no sincere attempt to translate the situation as such into the limits of law; instead the law was abused for political means, which ultimately helped to improve the situation of the detainees. That by itself is not a problem; however, the situation testifies to the inability of the law and the practices surrounding the creation of legal cases to automatically translate the situation by maintaining all its particularities. In addition, this attitude is also problematic as it leaves the security laws and the ‘war on terror’ legislation – all drawn up to fit this particular situation – uncontested. Thus, these laws can make for a dangerous precedent in the future.

The second consequence bears significance for the process of law-making and legal procedure. The habeas corpus hearings, it has to be acknowledged, managed to disrupt the normal flow of justice and court procedure. They demanded a rethinking and a rewriting of the legal framework and the limits determining a just process. Because of the particularity of the situation and what was at stake politically in the process, a number of adjustments to the legal process were put in place. For example, the Justices had the right to hear confidential information or information that is classified when the hearings were closed for the public; the Justices allowed hearsay evidence; the petitioner can be absent from the court; the Government does not have to prove beyond any doubt that the petitioner is the enemy combatant, rather a reasonable suspicion or a proof of ‘material support’ was enough.<sup>397</sup> These aspects to an extent facilitate Deleuze’s idea of what happens to the law when it is met by the situation that is radically different and that requires a rethinking of the existing limits of law. The limits and the concepts of law changed in the light of these alterations. In a way one could argue that one concept of law in Guantánamo died and another one was born, alluding to the kind of experimentation with and within law Deleuze favours. I think experimentation is favoured, and Justices should be encouraged to experiment. This observation is then a testimony of how the limits of the law examined here should be tested and adjusted in relation to the challenge the law faces. However, one should remember that those changes happened on a small scale, on a particular aspect of a legal process. The image of

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<sup>396</sup> Interview with Tina Foster.

<sup>397</sup> District Court of Columbia, *In Re Guantánamo Detainee Cases*, Cite as 355 F. Supp, 2d 443 (D.D.C. 2005): 443–81.



law – or the case of Guantánamo – as a whole, despite this, remains far from the actual problem.

However, although only a small number of changes caused by the Guantánamo interventions have made it into the existing legal system, there is an important lesson to be learned. That is that any kind of innovation – or, one might even say, judgement – can occur only when there is a disturbance in the process. In other words, changes can only be actualised when the legal situation in question does not fall clearly within the legal framework available to the judge. When this happens, the judgement represents an opening of the system. The Guantánamo situation is in some respects potentially almost a perfect example of the ‘inbetween-ness’ that the law faces. The territory of Guantánamo together with the already discussed situation of the detainees and their exclusion from existing legal practices lingers between different aspects of international, domestic and human rights law, law-making and legal precedence. The questions regarding the conditions of the detainees’ detention and treatment could be quite easily placed within the human rights provisions concerning the laws of war or protection of the prisoners of war; equally the detainees could be tried under US criminal law. In contrast to the available legal resources, the US government at the time refused these options and on grounds of exceptionality of the war on terror argued for the exclusion of the detainees from the existing laws.

The final aspect in this discussion of the encounter with the image of law – the legal case – is the judgement. The situation in which either new laws are created or where ‘new practices’ and situations challenge the legal procedure alludes to the importance of the judge and the judgement. Ultimately, it is for the judge to decide how the law is going to be influenced by the new situation; and it is within this scope, that the encountered situation is going to change existing laws. There are two main settings in which judges can play a role – the habeas petitions and the military commissions. The habeas petitions were already discussed in some depth, thus here I will only briefly address the role the judge has in them. The habeas petitions, as already said, are in a way a response to the Government’s attempts to exclude the detainees. Albeit for the wrong reasons, petitions are invoked in order to reintroduce the detainees to the rule of law and to enable them to challenge the conditions of their detention. Taking the situation from here, a judge has a responsibility to engage with the status of the detainees, learn of the context of their

status, its history as well as the history of dealing with similar situations. For example, the Supreme Court in *Rasul v Bush* overturned the decision by the District Court of Columbia regarding the question of jurisdiction. They did so by going against what was historically the only legally comparable case, *Johnson v Eisentrager*.<sup>398</sup> Going against a historical precedent had two major consequences; the first one is the continuation of the habeas petitions hearings at the District Court of Columbia. The court, however, cannot determine the guilt or innocence of the detainees, as their jurisdiction only extend as far as determining whether someone is justifiably recognised as the enemy combatant or not. The second consequence has to do with a recognition that those held by the US on what is arguably at least at the present time US territory cannot be exempted from the US laws that otherwise apply to all other ‘inhabitants’ of the Guantánamo Base (namely either the Court Martial law for the members of the US Army on duty, or the US criminal justice system for the family members of the military personnel stationed at the Base for a longer period of time, the refugees and mostly Cuban and Haitian asylum seekers working at the Base or other civilians present in Guantánamo). By taking a closer look at the decision, the acknowledgement of the Justices that there is ‘life’ in Guantánamo – the detainee’s life – that cannot remain unregulated by the legitimate laws, is an important step away from official governmental discourse. One could argue that the Justices in habeas petitions in fact made an ethical rather than a procedural decision and went against the Government’s position, but also, and perhaps even more importantly against historical practice. As such then a particular practice that challenges the dominant discourse left a mark on the existing discourse and forced it to divert from the well-paved path of case law.

The second situation in which the jurisdiction has an impact is regarding the military commissions. The military commissions are the outcome of the Government’s response to the question of how to deal with the detainees within some kind of law that is in line with the Supreme Court decisions. It is here then that the process of making a judgement

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<sup>398</sup> *Johnson v Eisentrager* (1950) 339 U.S. 763 is a decision of the US Supreme Court regarding German war criminals held in a US-run German prison. The Court decided that US courts cannot hear their cases because they lacked jurisdiction. The prison, despite being run by the US, was outside the American sovereign territory. The case has been invoked by the Government in relation to Guantánamo habeas petitions. The US Supreme Court decision dismissed *Eisentrager case* and claimed to hold jurisdiction. A similar claim has been made by Judge Bates in the *Boumediene case* in relation to prisoners held in a US-run prison in Bagram, Afghanistan. However, the decision of the District Court has been reversed by the Circuit Court in the *Al-Kagaleh v Gates* case, again by invoking *Eisentrager case*. It is believed that the detainees in Bagram who are not prisoners of war – who were brought to Bagram from other locations – still preserve the right to habeas petition.

appears as a way of addressing the problem of how to deal with the detainees so that they do not acquire the status of prisoners of war. As such the military commissions are in no way unproblematic. I will look briefly at probably the most prominent military commissions case at the moment of writing. This is the case of Omar Khadr.<sup>399</sup> The role of the judge in Khadr's military commissions trial is interesting as he has to juggle between many opposing views and legal and political issues relating to the case. It is not that the judge, Army Colonel Patrick Parrish, has to 'excavate' or 'read into' the text or the spirit in which these laws and rules concerning the military commissions were made (this is what the Justices in the habeas petitions needed to do); rather he has to juggle between a range of opinions and political positions tainting the case. The most notable are two: Omar Khadr was only fifteen when captured by the US military in combat and then sent to Bagram and Guantánamo. Effectively this makes him a child and hence a victim in the conflict, not the aggressor. Human rights organisations and the United Nations Section for Children and Armed Conflict argued that the military commissions for Khadr can make for a very problematic and dangerous precedent. The US government's view of the situation is of course exactly the opposite of the view of the UN and human rights organisations. The Government has persisted in putting Khadr on trial. He is accused of a murder and an attempted murder and the violation of the law of war, providing support for terrorism, conspiracy and spying. The requested punishment if Khadr is found guilty is life imprisonment (initially the prosecutors demanded a death penalty). The Obama administration, despite an immense public outcry and concerns over the state of Khadr's mental health maintained the former President Bush's government's position that it is in the interest of the US for the trial to go ahead. The US Supreme Court, for example, refused to block the trial, and the US District Court of Columbia refused to lift a stay on Khadr's habeas corpus petition pending the conclusion of the military commissions trial. It was then upon the judge and the jury of the military commission to make a decision after hearing all the evidence at the trial. Ultimately, the judgment had the full capacity to be an attentive judgement, yet because of the high national security importance of the trial and other political and personal pressures (for example, a wife of the killed US Marine Sergeant Christopher Speer was present at the hearings) the judge did not remain faithful to the event (the encounter of the situation with the law) and hence consider ethical principles supporting Khadr's case. As it turned

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<sup>399</sup> Omar Ahmed Khadr, Military Commissions, United States Department of Defense. [<http://www.defense.gov/news/commissionsKhadr.html>]. Accessed: January 11, 2011.

out, the judge and the jury of military officers did not take into account Khadr's age and sentenced him to 40 years of confinement.<sup>400</sup> Unlike in the habeas petitions cases, the judge at the military commissions (although he has to rely on laws the validity and the legitimacy of which is anyway questioned) did not challenge the limits of the military commission and its legal framework. Instead, when met with unregulated situations, he postponed the procedures and hearing until he received further governmental instructions or advice on how to proceed.

There is a puzzling conflict between international human rights laws and the Government and the military commissions, which to an extent try to find a way around international norms. These human rights provisions are central to having a just and a fair trial. The Government by trying to downplay them and hence also discredit the dominant legal discourse placed the judge – a central figure in the existing legal system – into a very interesting position. This again takes us back to the question of the image of law, and which parts of law get represented and which do not. In the case of the military commissions, what gets represented is the law sampled on the past military commissions; whereas the international provision regarding the protection of children, prevention of human rights abuses, or legal standards preventing the use of evidence gained under coercion are being neglected. Under such representation of law, central to attentive judgement is the judge's faithfulness to the encounter or the raw situation, and hence ethical concerns. It has been seen in the past that in similar cases to that of Khadr, (one example is the case of Mohammed Jawad, who was captured at the age of twelve),<sup>401</sup> the leaders of the military commission's prosecution team have resigned for ethical reasons. According to one of Jawad's military commissions prosecutors, Army Lt. Colonel Darrel Vandeveld, the prosecution of Jawad put too much pressure on the prosecution team. In his testimony Vandeveld reveals that being asked to go against the ethical principles one is taught as a lawyer when there is no evidence of the detainee's misconduct went against his moral and ethical beliefs, hence he resigned.<sup>402</sup> To put this in the context of

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<sup>400</sup> U.S. Department of Defense, DOD Announces Sentence for Detainee Omar Khadr-Value Detainees, No: 1002-10; [<http://www.globalsecurity.org/security/library/news/2010/10/sec-101031-dod01.htm>]. October 31, 2010. Accessed: January 11, 2011.

<sup>401</sup> The Case of Mohammed Jawad, Human Rights First [[http://www.humanrightsfirst.org/us\\_law/detainees/cases/jawad.aspx](http://www.humanrightsfirst.org/us_law/detainees/cases/jawad.aspx)], Accessed: January 11 2011; Major David J.R. Frakt, 'Closing Argument at Guantánamo: The Torture of Mohammed Jawad', *Harvard Human Rights Journal*, vol. 21, no. 1: 1–23

<sup>402</sup> Lt. Col. Darrel Vandeveld, *Testimony before the Constitution, Civil Rights, And Civil Liberties Subcommittee of the House Committee on the Judiciary*, Hearings on Legal Issues Surrounding the Military Commissions System,

the judgement and the relationship between the existing laws and the military commissions laws; the role of the prosecutor has not changed under the military commissions. Their role is the same as the role they have under the existing dominant legal discourse, but with one difference. The new military commissions laws are not supported by or in accordance with the principles of human rights and ethics; in fact they go against them. Hence the pressure of being asked to go against the principles of prosecution, yet continue in the same role was too much of a burden for Vandeveld. This was not to be expected in the Khadr's case, hence the decision on how to juggle the existing laws remained with the judge. It is then, I believe, clear that again the judge had the opportunity to exercise the right amount of creativeness when dealing with this situation if he was to facilitate justice. On the one hand, he dealt with rules that are 'invented' primarily to 'misrepresent' the encounter of the detainees with the law; on the other hand, he had a range of procedures that derive from the military commissions practices, the war crime trials and the Government's new guidance on the military commissions. Everything then depended on judge's creativeness and his faithfulness to the original encounter/situation. The judgement unfortunately followed the letter of the military commission and the Government's guidance during the process itself.

If the judgment is a true process, it will never end up where it started. Even if repeated several times, new aspects will always be revealed because with each encounter the new situation will demand that the law retreat to the pure past of law and create its unique representation. Therefore, under the attentive judgement no military commission case will be the same as the other, despite the rules directing it being the same. The judge will always have an opportunity to represent the different aspects of law, and different aspects of law will reveal themselves without any conscious intervention on the part of the judge. The military commissions, if they follow attentive judgement, have potential to reach the stage of the habeas petitions. There the aim was to regulate the detainees' life and conditions of detention, yet as it was indicated earlier, the process ended up limiting and regulating the Government's practices.

### Guantánamo as an Open Legal Concept

So far in this section I have looked at how encounter is represented in Guantánamo and

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July 8 2009 <http://judiciary.house.gov/hearings/pdf/Vandeveld090708.pdf> ]. Accessed: September 11 2009.

what changes it facilitates. I reflected on the prevention of the encounter with the creation of new laws, the actual encounter between the situation in Guantánamo and the existing dominant legal discourse, and lastly the encounter as a question of jurisdiction and the representation of the detainees within the legal discourse. With the discussion I presented all major legal issues were addressed, such as the relationship between Guantánamo and different sources of law, as well as the representation of Guantánamo as a legal case. What I have been doing up to this point is discussing Guantánamo as an encounter; in other words what effects or consequences the situations in Guantánamo have on the dominant legal discourse. In this (and the next and final section) I will slowly move towards a different/alternative representation of Guantánamo. Firstly, in this section, I will explore how Guantánamo can be seen as an open legal concept; and in the next section I will further interrogate the possibility of an open legal conception through the idea of life.

The legal discourse of habeas petitions follows one particular logic that is promoted by the various human rights organizations and habeas petition lawyers. The logic is the common liberal logic that addresses (legal and political) problems of uniting everything under one ‘universal concept’. In other words, everything that is excluded has, under the universalizing logic, to be re-included under the dominant legal discourse. This logic follows the liberal democratic logic of propagating the Western legal system, and by following the logic of the developmental, humanitarian and poverty discourse aims at bringing ‘in’ what has been excluded from the law, and what has in any case always been excluded from Western law. In the context of Guantánamo that always already excluded category comes in the form of a ‘Muslim subject’. The desire to include the category that is anyway always already excluded is based on the need to pursue and project our desires onto the subjects that are inherently different. Inevitably this logic fails because it is unable to grasp the fact that a ‘life’ of a ‘Muslim subject’ cannot be brought into ‘Western law’. This failure is demonstrated with the example of the life of Guantánamo detainees. As already mentioned, the legal discourse is incapable of grasping their lives for what they are, hence they remain unregulated and as such ‘free’. Indeed they might as well be subjected to the scammed law of the military commissions, and provisions and limitations deriving from the conception of ‘enemy combatant’; yet the credibility of that law and its actual effect remain questioned and domestically and internationally disputed.

The idea that the detainees' life in Guantánamo is free is rather interesting. The potential implications of such status, one could speculate, create the basis for an open legal conception of Guantánamo. I will discuss this open conceptualisation on the habeas petitions granted to the detainees on the grounds of the custodian's territoriality. Motha, for example, suggests that perhaps in situations like the one in question, the law has been called forward not to invoke the rights of the detainees, but to limit the potential transgression of existing norms by government officials.<sup>403</sup> I will toy with this observation a bit further. What changes does this view bring to the understanding of the relationship between the law and the detainees? Does it not free the detainee's life? Does it not leave the situation in question open to its potentiality? In other words, doesn't this allow for the development of multiple ways through which individual could potentially create and make sense of its life within or outside the law? And does it not potentially facilitate for a different logic of law-making and understanding of life? It might be possible to speculate that life that remained unregulated in Guantánamo is in fact the true face of law and a new potentiality for the emergence of a new concept; it can be seen as an image of a radical openness associated with life *as such*. In the case of Guantánamo detainees, with slight over-idealisation, one could argue that life, once in the camp, remained untouched; in fact, it became protected from the whims of the sovereign power. The habeas petitions limited the sovereign not the detainee; it made the sovereign the subject of law, not the detainee. The detainee's life is mediated by the sovereign, and not directly by the law; hence the detainee's life is left to unregulated orderings, developments and creations of social relations (within certain limits). To an extent, the habeas petitions allowed the detainees to ignore the law; whereas the law, in fact, felt responsible for the detainees without actually having the detainees as its subjects. This protection, however, was within the existing framework of human rights and 'our' projections of desire along the lines of what we would desire if left in a similar situation to that of the detainees. Yet, because of the inaccessibility of the detainees – they were locked in Guantánamo and away from the public eye – and the sovereign's control over them, the rights negotiated at the court never really came to life in the camp. The rights the detainees had come out of their negotiation with the guards or the Camp Command, not the courts. However, it has been the court's illusion that the rights negotiated at the court have in fact been implemented, and that this has also created standards upon which Guantánamo was assessed, and the treatment of the detainees and

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<sup>403</sup> Motha, 'Guantánamo Bay, Abandoned Being and the Constitution of Jurisdiction', 71.

the breaches of rights evaluated. In a sense then, I think one should be allowed to speculate on an idea, that in fact the assessments and reports on the human rights abuses, the mistreatments in Guantánamo are not telling the right story. They focus on what perhaps is of least importance to the detainees, while forgetting or not even acknowledging that which the detainees value most. From this perspective, the role of the courts was only to keep the sovereign at bay and make sure he does not transgress all the norms.

The open legal conceptualisation of life then focuses on ordering or bringing within law that which is of lesser importance – the sovereign, while leaving outside and directly unregulated by the law that which is of primary importance – the life of a detainee. This conception allows the life of a detainee to create its own representations and social relations within certain limits. The law does not regulate life, yet it protects it from the absolute whim of the sovereign power. Of course, what one might consider as a potential problem is the fact that this opening of life to law can go both ways. It can benefit the life that remained unregulated, or it can equally leave it to the mercy of the sovereign power. It is impossible to determine beforehand which way the situation will go. Yet, as this thesis argues, it is always worth trying to remain open to the potentiality of change.

The positioning of the detainees' life in the habeas corpus cases then embodies an opening or a potentiality for life. The life here is not subjected to law, yet despite this the law is not ignorant of it. It assumes responsibility for life, although for all the wrong reasons and in the wrong ways. However, precisely this placing of life at the edge of the legal order enables life to explore its potentiality and become embodied in various different structures and ideas. In the next section I will discuss the idea of life as a force that commences a challenge to the legal discourse, which demands a radical change in the logic according to which the dominant legal discourse operates. The idea of life stands as a metamorphosis between the two challenges to the law mentioned at the beginning of this chapter: a direct challenge with practices that shatter the dominant discourse – which has been discussed here, and a 'challenge' that is based on an alternative logic – which will be discussed in the next chapter.



## Law as Life or Life as Law

What is then the face of this new law and how does it capture 'life'? Life within law, as Deleuze and Lacan acknowledge, strives towards closed sets – in other words, life strives towards comfortable, certain, fixed and stable symbolic orders. However, these orders inevitably lead to domination, exploitation, and suppression at least by law if from no other source. The law, as we have learned in Chapter Two, orders ways of being and living, as well as reproducing social and political power relations; and thus limits different forms of existence to one particular representation. Yet, the striving of life towards closed sets can be understood differently if looked at from a perspective of wholeness embodied in a universe. What do I mean by this? Deleuze, for example, writes 'For, if the living being is a whole and, therefore, comparable to the whole of the universe, this is not because it is a microcosm as closed as the whole is assumed to be, on the contrary, because it is open upon a world, and the world, the universe is itself the Open'.<sup>404</sup> Thus, life as openness is a force striving to transgress the boundaries of the limited, closed sets created by forms of life that are subjugated to law. Life, then, has to take up movement, it has to pass from its current forms to those other forms – placed outside – which ultimately when faced with legal concepts create encounters. The life of society or the 'life' of life itself (in the immanent) then pulsates between openings and closings. It is not the underlying law that determines whether life is going to be opened or closed, but its embodiments, representations and cognitions. It is a matter of how life gets embodied that determines whether that life is closed or opened. Moreover, it is on the image or a representation of the cosmos, or the ontology governing the political, the social and the legal institutional orderings, that the representations, absolute or not, are determined. If the ontology is closed, the representations and embodiments of life are fixed, they only serve one particular purpose – the reproduction of the existing relationships of power and domination. However, if that ontology allows for a multiplicity of representations and experimentation then it is opened and hence creative. The aim of the new laws and new forms of existence is to work on the openness and invent as many different perceptions, images and recollections of the same things as possible (a multiplicity of representations, expressions and embodiments). It is then upon life to produce difference within repetition of the same. It is upon life to explore what else can come out of the open, rather than lingering on the closed. It is, as Deleuze and Lacan would both

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<sup>404</sup> Gilles Deleuze, *Cinema I: The Movement-Image* (Minneapolis: University of Minnesota Press, 1989): 10.

agree, impossible to entirely do away with the dualism between openness and closure, hence it is of even greater importance to explore and make use of the openness, the encounters and the events, and expand their influence beyond its boundaries. It is important to persist in this movement between openness and closeness, in the constant pulsation between the two poles. We do not know what is to come from the experimentation, but as Deleuze wrote: '[n]o one knows ahead of time the affects one is capable of; it is a long affair of experimentation, requiring a lasting prudence, a Spinozian wisdom that implies the construction of a plane of immanence or consistency'.<sup>405</sup>

The forms of experimentation do not only apply to society and representations of who 'we are', equally, if not even more importantly, they apply to law. The requisite legal institution is always experimental, and as Deleuze acknowledges: 'in this way, [one] can acknowledge creativity while simultaneously exhorting prudence'.<sup>406</sup> This, I argue, applies even to the judges and the law. For Deleuze, I believe, judges are equal to all other forms of existence, hence they are equally bound to experimentation, while remaining prudent. In their case, prudence for judges suggests that they should never forget the actual nature of the encounter or the problem set before the law – 'before the law' here does not refer to the occasions when the case is heard at the court, but to the space when the 'occurrence' is not yet represented by the law. When it has not yet acquired its image within the law. The law is like a philosophical concept – it is a combination of components, which are disturbed when faced with the encounter. The leading figure in the construction of the legal concepts is not some metaphysical force, but the judge. It is the judge who frames the encounter and makes it into a problem and then into an image of the law. It is then equally important to understand that it is upon the figure of the judge to determine whether there is only one possible representation of the case, or whether there is, by form of experimentation, space for many. As Lefebvre puts it: 'an encounter shocks the law and initiates the uncovering of the problem that will establish the facts of the situation. Only by experimenting with common law concepts – by recreating them through the problem – can the basic facts of an encountered case be resolved'.<sup>407</sup> Here one should pause, as it is important to note that when talking about alternatives to law-making, it is not necessary to scrap the entire system of law, rather what is important is to allow the modification of these rules, their development rests on

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<sup>405</sup> Deleuze, *Spinoza: Practical Philosophy*, 125.

<sup>406</sup> Lefebvre, *The Image of Law*, 238.

<sup>407</sup> *Ibid.*, 237.

the ability to transgress or became reborn in something that is different from what they are now. Being open to movement leads to an exposition of facts and problems, and thus making visible things that otherwise remain hidden.<sup>408</sup> Moreover, it is essential to remember that these mutations, or repetitions, are not universal; quite the opposite, they are singular and apply only to a particular situation or a legal case – often even to a minor detail in that particular case.

## Conclusion

At the beginning of the chapter I identified two different ways of challenging the existing dominant legal discourse. One way is by exploring the events or situations that penetrate and destabilise the existing symbolic order (one's perception of reality); the other way is by inventing an entirely new logic of ordering the self and consequently also of law-making. In this chapter, I have engaged with the first challenge, while the second is discussed in the next chapter. The framework within which the practices challenging the dominant discourse were discussed is the same as in the previous chapter – Guantánamo. However, the scope of the investigation in this chapter is narrower than the previous chapter. I focus only on legal aspects of habeas petitions and to a lesser extent the military commissions and explore ways in which the detainees' life was captured in a legal discourse, how the situation in Guantánamo was being represented or portrayed in the face of the law, and what legal arguments were made in order to accommodate the situation, or to prevent it from encountering the existing legal discourse (the US criminal justice system).

The situation in Guantánamo has been discussed on the grounds of the three main philosophical ideas; these were legal images, the pure past of law and judgement. To provide a context for the discussion I have also discussed the triad of encounter-problematisation-conceptualisation, which more than anything else indicates the conditions for thinking an alternative. The chapter then by exploring different forms of encountering – in other words, the impact the situation had on the dominant discourse. The practices that challenged the dominant discourse (such as the demand for recognition of the detainees as legal subjects or a creation of a new law, the military

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<sup>408</sup> Gilles Deleuze, *Negotiations, 1972 – 1990* (New York: Columbia University Press, 1995): 127.

commissions law, to address the detainees' status) had a different impact on the dominant discourse. Some practices managed to change the limits or the frameworks of the system – commonly these were procedural changes in relation to court hearings; others did not – for example the nature of the judgement in the military commissions. However, what has also emerged from these discussions is the observation that the legal reasoning of the Justices at the US Supreme Court in the habeas petitions departed from previous decisions in similar situations. One of these decisions determined that the US Courts have jurisdiction over Guantánamo and hence can decide on Guantánamo's habeas petitions. But because the jurisdiction was given on the grounds of the custodian's instead of the petitioner's territoriality, one could argue that the petitioners – the detainees – in fact were not subjected to law. Instead, the habeas petitions further limited governmental conduct in Guantánamo. The 'exclusion' of the detainees' life from the dominant legal discourse, and at the same time (if one follows the Supreme Court decision which proclaimed the military commissions unconstitutional) from the military commissions law, meant that the detainees' life remained unregulated by the law. Let us stop here for a moment and remember what has been discussed in Chapters Two and Three; there it is specifically claimed that the condition for thinking an alternative ordering of law and the political is a conception of life that does not fall under any particular logic of law. If we idealise the situation in Guantánamo, one could argue that Guantánamo detainees, in particular moments are a political embodiment of such forms of life.

This chapter then identifies practices that challenge and disrupt the existing dominant order and on grounds of these practices construct a way of alternative law-making; an alternative image of law. The new law then has to facilitate the encounter, in other words, the situation brought to the face of law has to be translated into law in such a way that its essence – uniqueness – is preserved. The law that is capable of preserving such singularity has to be invented for each and every case separately. There are no laws that exist as such and that can be applied to the situations; instead each case has its own laws. And once the case makes it to the court, the procedures and the judgement have to be made in a way which recognises the particularities of the situation. The Judge is then called to experiment while remaining vigilant. The legal process that follows this representation disrupts the existing order; ultimately it ends up with a different conception of life captured and ordered by the law. In the next chapter I focus on the

alternative logic of ordering. Therefore I return to the ideas of law and being and create a more comprehensive picture of an alternative law-making and forms of existence captured in such law-making. However, I do not stop there; rather I add another level to these discussions of an alternative by speculating on the implications the new ordering principle of law and being could have on notions of the political and community.

## Chapter 6

### *Sinthome Law: Being of Human Rights and Community as Two Images of New Ontology for World Politics*

Not only can man's being not be understood without madness, it would not be man's being if it did not bear madness within itself as the limit of his freedom.  
Jacques Lacan, *Écrits*, p.215 (1977)<sup>409</sup>

The above quotation was chosen to start this very last chapter for a particular reason. It draws attention to the core of my thinking throughout the thesis; that is that the limits of the symbolic order or the legal and the political frameworks I have written about can only be broken if one is willing to engage with what in the 'normal' discourse proclaimed as 'madness'. Here, by 'madness', I mean it literally – to be psychotic (or schizophrenic). What does it mean to be psychotic or what is the potentiality of psychosis? I will address the issue of psychosis on its most famous psychoanalytical case – the case of President Schreber.<sup>410</sup> As Lacan (and Freud) explains, the main characteristic of psychosis is the absence of the Name-of-the-Father represented as a master signifier or logic ordering reality.<sup>411</sup> The absence of the Name-of-the-Father inevitably implies that what is missing in the structure of the subject is the hierarchical ordering of reality, the institution of paternal law, and an understanding of one's place within it. When the key element determining the nature of the system and a 'normal' way of cognition and the understanding of the reality is absent, 'the subject' behaves differently. It operates according to a different order. In practical terms, however, the subject – as for years

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<sup>409</sup> Jacques Lacan, *Écrits: A Selection*, Alan Sheridan trans. (London, New York: Routledge, 1977); see also: Jacques Lacan, 'The Direction of the Treatment and the Principles of Its Power', in *Écrits*, Bruce Fink ed. (New York, London: W. W. Norton & Company, 2006): 489–542.

<sup>410</sup> Schreber was a respected judge in Austria who in his middle age turned psychotic. His 'illness' – amongst other things – made him believe that God was turning him into a woman. Sigmund Freud provided an interpretation of Schreber's case based on Schreber's personal writings. Later, Jacques Lacan revisited the case developing his own theory of psychosis on this grounds. For more see: Sigmund Freud, *The Schreber Case* (London: Penguin Classics, 2003) and Jacques Lacan, *The Seminar of Jacques Lacan, Book III: The Psychosis 1955 – 1956* (New York, London: W. W. Norton & Company, 1997).

<sup>411</sup> Jacques Lacan, 'On a Question Preliminary to Any Possible Treatment of Psychosis', in *Écrits*: Bruce Fink ed. (New York, London: W. W. Norton & Company, 2006): 445–88.

Schreber was – is heavily deluded. However, and this is the most important aspect, through time Schreber gradually remedied the consequences of the foreclosure of the Name-of-the-Father; he did so by developing his own grammar. It is characteristic of psychosis that the symbolic function embodied in the father is missing, hence the grammar or language that Schreber developed substituted that lack and enabled him to start functioning in the existing symbolic ordering of the world.<sup>412</sup> He was capable of functioning in the world despite not ‘operating’ in accordance with paternal logic. In psychoanalytical discourse Schreber managed to pass from the Real to the Imaginary without submitting his Symbolic dimension to paternal laws operating in it.<sup>413</sup> A similar example where the subject functions in the existing reality despite not operating according to paternal logic is that of James Joyce. Joyce was schizophrenic not psychotic, yet language or a ‘self-invented’ grammar played a similar role to that of Schreber.

So, what are these examples of psychosis and schizophrenia telling us about the alternative law and logic of ordering? Primarily, they demonstrate that there are different psychological orderings or logics of one’s being in the world; and although on the outside, perhaps, these individuals seem to internalise paternal logic, they in fact embody a different one. Thus, there are different ways of existence and being in the world; the logic of psychosis explained here is an indication of the *sinthomal logic* Lacan developed in his later teaching. While in his early years Lacan tried to treat psychosis, in his later years he studied it instead and observed how patients develop different mechanisms for coping with ‘the problem’. These coping strategies inspired Lacan to develop an alternative logic of ordering, that of the *sinthome*. And the *sinthome* is the other challenge posed to the existing dominant and paternal legal and political ordering. It is a logic, as already explained, that independently of the logic of the Name-of-the-Father operates and creates different realities, forms of existence and relationships between these different forms. Inevitably then, to return to the introductory quotation, ‘madness’ is a way out or a form of escape from the existing dominant discourse; simultaneously, it is also a challenge to the dominant discourse as it rejects its logic of ordering and its production of social relations.

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<sup>412</sup> It is worth reminding ourselves that the Symbolic order (and Oedipal law) is a representation of language; thus, Schreber, by developing his own grammar also constructs his own particular relation to the Symbolic order, his ‘own’ Symbolic order.

<sup>413</sup> See: David S. Caudill, *Lacan and the Subject of Law: Towards a Psychoanalytical Critical Legal Theory* (New Jersey: Humanities Press, 1997): 101–5.

This chapter represents a final part in the search for an alternative representation of the world. I have discussed the psychoanalytical origins of paternal logic, philosophical accounts of alternative notions of being and law, before turning to Guantánamo and exploring the implications or the impact these new ways of ordering or representing have on various situations or conducts occurring in Guantánamo. This last chapter addresses the second challenge to the dominant (legal) discourse by drawing on the logic of the *sinthome*, already discussed in Chapters Two and Three. However, the chapter does not stop here; instead it takes the logic further by speculating on the implications such logic could have on the thinking about a legal subject, a subject of human rights and a notion of human rights *as such*; and further the implications it could have for a broader political context, in particular for the way in which community is being thought. In the context of community, the idea of love is discussed as a theoretical concept that corresponds to *sinthomal* logic and facilitates a different conception of unity and the ‘coming-together’ of the various forms of existence. To look at this chapter as a whole, the *sinthomal* logic of ordering is not only one possible representation of law, rather it has the same effect as the paternal or the Oedipal logic; it orders all social, political or legal aspects, all levels of existence as well as all levels of analysis. The *sinthomal* logic is then a new ontology. And in this chapter, the discourse of human rights and the alternative community serves as an image upon which the logic of the *sinthome* is read out. Before moving to the main discussions in this chapter, I first need to elaborate on the notions of community and ontology, as it is necessary to determine the nature of discussion and its philosophical context. I will start with the nature of ontology.

When one searches for new or different representations or worlds in which we exist, one commonly engages with various aspects of ontology. This is particularly the case when one is to speak about being or different forms of existence. In the thesis so far I have talked about different forms of existence as well as different forms of being. These two aspects are, however, not the same. Jacques Lacan clearly states this in one of his essays from *Écrits*. He writes: ‘whether it is a question, indeed, of being oneself, being a father, being born, being loved, or being dead, how can we fail to see that the subject, assuming he is the subject who speaks, sustains himself there only on the basis of discourse?’<sup>414</sup> Only ‘a being’ as a human being or ‘a being’ with certain characteristics is, as Lacan

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<sup>414</sup> Jacques Lacan, ‘In Memory of Ernest Jones: On His Theory of Symbolisation’, in *Écrits: the first complete edition in English*, Bruce Fink ed. (New York, London: W. W. Norton & Company, 2006): 594–5.



suggests in this quote, then part of a discourse constructing the symbolic order. The obvious question following from the quotation is what happens to being or those forms of existence that are not represented by/in the discourse? Surely, things must exist outside the symbolic order or outside our capabilities to represent and most importantly order things. Yet, how is one to attain that which is beyond the symbolic discourse or that which escapes it. Or to what extent can one think of these practices as challenges to the symbolic order and to the embodiments of a potentially new or radical politics?

Alain Badiou in *Logics of Worlds: Being and Event II* explores precisely the connections between being, existence and ‘created worlds’ – in other words ontology.<sup>415</sup> The first step in discussing new ideas or ontology contains, for Badiou, a step away from Heidegger where existence is a name for a human being, for a historical destiny of thinking, for a crucial and creative experience of the becoming of being itself.<sup>416</sup> Instead Badiou proposes: ‘a concept of being-here and of existence without any reference to something like consciousness, experience, or human being’.<sup>417</sup> Being *as such* is for Badiou a pure metaphysical concept ‘embodying’ – similarly to Deleuze or to Lacanian schizophrenia – a multiplicity. Although being remains central to such thought, it is not that its transcendental embodiment is a subject; on the contrary, being is manifested in many functions, flows, representations or various forms of existence (as a degree of something’s identity in the world).<sup>418</sup> Ultimately, what Badiou discusses as part of a new subject-less and non-anthropocentric existence in this concrete world is the level of identity or the extent to which things are similar or different from one another.<sup>419</sup> Existence is about appearing and about ways in which things appear. It is, as Badiou writes, ‘a transcendental degree which indicates the intensity of appearances of a multiplicity in a determined world and this intensity is in no way prescribed by the pure multiple composition of the being in consideration’.<sup>420</sup> The difference between existence and being is then that existence expresses the appearance or the expression of a thing – a degree of identity; whereas being is a form of being in the world – ontology.<sup>421</sup> One can exist in many worlds, and can have many expressions. For example, as discussed in Chapter Three, the question of life and death is not a question about existence or non-

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<sup>415</sup> Alain Badiou, *Logics of Worlds: Being and Event II* (London, New York: Continuum, 2009).

<sup>416</sup> Badiou, ‘Towards a New Concept of Existence’, 64.

<sup>417</sup> Ibid.

<sup>418</sup> Ibid., 65.

<sup>419</sup> Ibid., 67.

<sup>420</sup> Ibid., 70.

<sup>421</sup> Alain Badiou, *The Second Manifesto for Philosophy* (Cambridge: Polity, 2011).

existence, but rather a question of different forms of existence. Life in the same way as death is only one expression of being (in the world) – one form of existence. When dealing with an alternative ontology, different modes of being refer to transcendent ideas of existence or ways in which immanent being is expressed. Yet, because being can only be expressed in the transcendent, the concept of being in the transcendent is existence. I dealt with the metaphysical questions of being mostly in Chapter Three, whereas Chapter Four discusses different expressions or representations (e.g. the body, desire, pain) of that immanent being.

The alternative ontology directing the understanding of being and law, and ultimately the relationship between the two, has a major impact on ways in which we understand and think about (political) community. As was mentioned in the previous chapters, the logic ordering or determining the structure or law and the representation or the expression of being in the transcendent equally determines ways in which forms of existence relate to one another and ways in which communities or ‘coming together’ are being ‘formed’. In this context I explore the following ideas that lead to a form of ‘community-making’ that is no longer based on common identity, religion, nationalism, culture, language etc., but rather stems from a pure idea of being-ness or belonging/sharing something that is common to all – namely the world, life or the force of self-preservation. I explore these different ideas of community by looking at conceptions of radical ethics, ethical subjectivity, communism, and ideas of love. In particular the last aspect I find to be of the utmost importance.

All the aspects of alternative thinking about the law, the subject and community discussed here, with the examples from the previous chapters, serve one main purpose; that is to illustrate what an ‘alternative ontology’ of world politics could look like, and if one is to think about alternative ways of being, forms of existence, law and community what these possible alternatives could be. These various aspects – law, being, community – provide an image of how an ontology of international or global politics can be studied or explored differently. By no means, however, is this chapter capable of providing a coherent picture of the workings of the new ontology. Alternative accounts of being, forms of existence and law here also sketch the limits of resistance to the existing symbolic order and the existing sovereign ordering. In the manner of recent discussions of economic, environmental and social crises, many philosophers have acknowledged

that it is not enough to resist sovereign power; what used to be radical a few decades ago, is no longer radical enough to challenge the existing power structures and world orderings. What worked in 1968 or 1989 will no longer work today. Hence it is upon each and every one of us to challenge the order not only by opposing it, but primarily by transforming ourselves in ways in which ‘the order’ of liberal modernity will no longer holds power over us. The examples provided in this chapter and the thesis in general try to indicate what practices enable such escapes.

## Law and Being Without the Name-of-the-Father

After initial remarks on ontology and community, I will start the main discussion in this chapter by exploring a Lacanian take on law that operates without the Name-of-the-Father; the second ‘challenge’ to the dominant legal discourse, which instead of directly engaging with it, operates on a different – *sinthomal* – logic to that of paternal laws. In this chapter I will firstly look at a more detailed explanation of the *sinthomal* logic before moving to the limits of its working in Guantánamo and its application to ideas of human rights, legal subjectivity and community.

In commentaries on *last* Lacan’s teaching, Jacques-Alain Miller makes the following observation:

Without the Name-of-the-Father there is only chaos. Chaos means outside law, a chaos of the symbolic. Without the Name-of-the-Father, there is, properly speaking, no body, there is only corporeal, flesh, organism, matter, image. There are body events, events which destroy the body. Without the Name-of-the-Father, there is a without-the-body. It is only with the Name-of-the-Father that there is body and outside-body.<sup>422</sup>

Lacan’s *last* work clearly took a departure from the language and the formations of the subject through language. Although language is still important in the formation of the ‘social self’ and for the placement of desire, it is the body, which, Lacan claims, becomes the site of real political battles. The body Lacan is referring to in the quotation is not a Deleuzian body (a site of all political struggles and alternative modes of expression) as we have discussed in Chapter Three; rather, it is a body that dutifully performs its functions.

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<sup>422</sup> Jacques-Alain Miller, ‘Lacan’s later teaching’, *Lacanian Ink* 21 (2003); [<http://www.lacan.com/frameXXI2.htm>]. Accessed: August 21 2010.

It is not a body whose organs are ‘taken away’ or employed to do different ‘order-less’ things (as for example the hunger strikes, suicides, becomings etc. I have discussed earlier); rather he means ‘a normal body’ inscribed under the Name-of-the-Father.<sup>423</sup> It is then the task of the organs or of the ‘without-body’ to perform actions that opened up and put further distance between the authoritarian logic of the Father, and a different principle of ‘ordering’ the world and (human) beings. As has been discussed in Chapters Two and Three, an alternative logic of ordering that is as ‘comprehensive’ as the one of the Name-of-the-Father is called the *sinthome*. The *sinthome*, in the same way as the Name-of-the-Father, binds the three social registers of the Real, the Symbolic and the Imaginary into a unity of some form. The character of the binding of the three registers then organises reality according to the principle embodied in that particular ordering of the registers. However, the logic upon which the binding of the three registers occurs is radically different from the one based on the Name-of-the-Father. The main difference is that the *sinthome* is a logic that is not deterministic. In other words, it allows for the openness of the relationship between the three registers as well as of the ways in which the logic operates on different forms of existence. These forms no longer internalise law as a prohibition that excludes the Real – or the Real essence of law; instead the *sinthome* in fact embodies the Real logic. It allows forms of existence to encounter the Real and consequently potentially transform their being-ness.

Within the scope of Guantánamo one can observe two major aspects leading towards the *sinthomal* logic of ordering. One has to do with resistance, and the other, as it will be discussed later, is about questions of the subject of human rights and legal subjectivity. Here I will engage with the aspect of resistance. Throughout the analysis of resistance practices of Guantánamo detainees and an alternative way of being, one could see that the detainees, although always already portrayed as victims, were in fact strongly rejecting this position because it implies a level of surrender. Surrender was, despite the circumstances they encountered, very rarely in their minds.<sup>424</sup> In fact the detainees were irritated by the victimhood representation because it striped them of their agency. It was not that the detainees desired to be represented as victims; on the contrary, their desire was to be seen for who they really are. For example, in such situations resistance, as Alain Badiou writes, ‘lies not in his fragile body but in his stubborn determination to

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<sup>423</sup> Jacques Lacan, *L'Étourdit* [<http://web.missouri.edu/~stonej/L'Etourdit.pdf>], 6. Accessed: August 21 2010.

<sup>424</sup> Interview with Baher Azmy; see for example: Murat Kurnaz, *Five Years of My Life*.

remain what he is – that is to say, precisely something other than a victim, other than a being-for-death, and thus: *something other than a mortal being*.<sup>425</sup> The Western political, the human rights, humanitarian and legal discourses devalued detainees by reducing their life only to a level where life without any characteristics is being preserved. As it has been mentioned in Chapter Four, this is precisely the problem of Western legal and political discourse. In a moment when something is wrong or when suffering enters the picture, the person in question loses their subjectivity and agency; they no longer have what otherwise makes them who they are. Thus, the detainees in Guantánamo, to oppose such treatment and a decline of ‘agency’ resorted to practices that gave them most strength – namely God and word/mind games played on the guards.

The detainees resisted being seen and treated as victims. This is significant as it opposes the logic of their treatment, and also the logic of Western legal and political discourse. As a response, the detainees found refuge in a different, much less authoritarian ordering, which sees them for who they are. In other words, the way in which the detainees went about their life in Guantánamo and communicated with each other, their lawyers, the guards and the interrogators, and nevertheless, the way in which they expressed their feelings and thoughts resembles what was in Chapters Two and Three discussed as the *sinthome*. On the one hand then, there is the pure survival of the detainees, which is facilitated by a force such as *conatus* that is making them persist in a form of existence they are familiar with. Whereas on the other hand, there is an entirely new logic of making sense of or ordering what they are accustomed to or what they create anew. The intersection between a force to survive and a new ordering principle, as well as their transformation in the ordering principle is central for our discussion here. It is rather obvious that in moments when one’s subjectivity is tested to its limits, those in question persist in it, and even retreat back into more conservative forms. Such is, for example, the role of religion in Guantánamo. The detainees refused to give up their religion and their religious rituals, in fact religion becomes a ‘battleground’ in the sense that the detainees persisted in performing their religious practises in order to create a space within which they could enjoy at least some degree of freedom and see themselves as being in control of the situation. Religion, of course, is in psychoanalytical discourse one of the main embodiments of the Name-of-the-Father authority, where the authority figure is central and relations of power and control are hierarchical. In such orderings

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<sup>425</sup> Badiou, *Ethics*, 11–2.

one gains the notion of the 'self' from its relation with the Other – the source of authority. The notion of the 'self', the detainees gained from their religious faith, reminded them of the relationships, the experiences, and the positioning within a society they knew before being detained. To an extent then, the persistence in traditional forms of authority and relations to 'religion' allowed the detainees' body to remember the times before it was detained. The logic of survival teaches the body how to react; while the religious services and practices that they knew from their previous life (a life of the time before Guantánamo) and that they preserved in Guantánamo only served to activate their bodies' memory.

The logic of the *sinthome* contrasts with the first drive for survival. It also concerns the ordering of the form of existence, yet this logic is of a different ordering – it binds the realms of the Real, the Symbolic and the Imaginary in a different manner. The logic of the *sinthome* concerns three major aspects: again the body, *jouissance* and language. This triad when represented in the schema of the Borromean knot can be seen as: the body belonging to the Imaginary, language belonging to the Symbolic and *jouissance* to the Real domain of social ordering.<sup>426</sup> However, with *sinthomal* logic, one can 'cut out' one realm and still be able to comprehend the world. This is important as often when one discusses various different orderings of an individual's psyche (as I did in the introduction to this chapter in relation to psychosis) and ways in which one can make sense of the world, one is faced with a critique of advocating psychological states seen as 'not normal' or deviant. Such is not necessarily the case with the *sinthome*. For example, in the case of Guantánamo detainees, one could argue that their use of language as 'writing' is a substitute for the missing link to one of the realms. To explain what is at stake here, I need to dwell on Lacan's theory of the *sinthome* a bit further. Lacan argues that all major psychoanalytical aspects always come in threes – they have three embodiments or expressions: one is in the Imaginary, one is in the Symbolic and the last one in the Real. This Trinitarian logic also applies to the concept of *jouissance*. *Jouissance* comes in the form of a *jouissance* of the Other (located in the intersection between the Real and the Imaginary), *joui-sense* or enjoy-meant (located in the intersection between the Symbolic and the Imaginary) and finally phallic *jouissance* (located between the Real and the Symbolic).<sup>427</sup> All three aspects of *jouissance* are tied together by the *object a* or *plus-de-jouir*

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<sup>426</sup> I will explain the logic of the Borromean knot later in the chapter.

<sup>427</sup> Philip Dravers, 'Joyce & the Sinthome: Aiming for the Fourth Term of the Knot', *Psychoanalytical notebooks of the London Society of the new Lacanian School, Lacan with Joyce*, no. 13 (2005): 9.

located in the intersection of all three realms. In the *sinthome*, however, one of the realms can be missing. I argue similarly to Lacan's analysis of James Joyce that what is missing in the case of Guantánamo detainees is the Imaginary domain. Why is this so, and how do detainees make up for the lack of the imaginary domain?

The Imaginary domain commonly belongs to the body and the sense or the 'making-sense' that is an ultimate product of a particular ordering principle. For example the logic of the Name-of-the-Father orders expressions of the Real and the Symbolic in ways that produce a meaning of a particular thing that is in order with the logic of the Name-of-the-Father. Writing in such a way is then only an expression of the order one belongs to. In the logic of the *sinthome*, writing maintains that very same role; in fact the task of writing becomes even more important. As I discussed in relation to Schreber's psychosis and the writings of James Joyce experienced, the logics operating in the two conditions requires writing (or grammar) to function as a substitution for a 'missing link' between e.g. the Real and the Symbolic, or the Imaginary domain. The writing in these conditions covers the error of one's psyche, and makes it capable of operating within the dominant discourse of existing reality. However, such writing does not serve the production of meaning, instead it facilitates a form of existence. The writing in the *sinthomal* logic lacks the imaginary domain; hence its product is not in line with the common outcome of the Imaginary realm. In the context of Guantánamo detainees – to take this discussion further – the suffering of the body, the pain etc. has nothing to do with meaning or language; in fact pain is non-representable by language (as has been mentioned in Chapter Four). The pain and the lack of language inhabit spaces of the Real and the Symbolic, but because the detainees exclude the Imaginary from the new ordering and the body, the body can go through pain without suffering significant impact on the 'self'. The body operating in the Imaginary is the body that has been taught how to recall memories and feelings that religious practices inscribe on it at some point in the pre-Guantánamo past. By abandoning the body in the new logic, the 'old' order of the Name-of-the-Father loses the site in which it is normally inscribed on individuals; namely through the body. To recall what has been discussed in Chapter Two, the law always orders and disciplines individuals by its inscription on their bodies. It is then between the Real and the Symbolic to 'battle out' ways in which the detainees will make sense of 'the self' without having it tied to the presence of the body, and how they are to consume their enjoyment. To reiterate this in Lacan's words: 'Far from the body there is the

possibility of what I referred to last time as resonance, or consonance. It is at the level of the real that this consonance can be found. Between these two poles constituted by the body and language, the real is what makes accord'.<sup>428</sup>

This is the moment when language comes into the picture. Language or in the example of the detainees, writing, no longer serves the purpose of producing meaning or bare communication. On the contrary, the detainees write in order to recall memories and to serve 'the self' to constitute 'the name' for 'the self'. In other words, writing leads to the constitution of 'the self' without the Other. This logic goes against the entire structure of communication and making sense of 'the self' and the world as explained by the Oedipal logic. The *sinthomal* ordering breaks with the core communication formula, a relationship between the signifier and signified. So how does one then operate according to a different logic that creates 'self-nominated' names? Lacan – as already indicated – finds the answer in the work of James Joyce. Joyce battled out the relation between the Real and the Symbolic through the notion of *jouissance* that is placed not in the phallus (the Symbolic domain that otherwise also facilitates the meaning), but in the process of writing itself. A particular role in this writing is given to what Joyce called 'sudden spiritual manifestations' or epiphanies. Epiphanies, as Dravers explains, 'appear as revelations of structure which provide the quite singular testimony of an experience of the knot in which the Symbolic and the Real have become directly interlinked without the mediation of the imaginary'.<sup>429</sup> To elaborate on this rather condensed explanation; epiphanies are those language figures that reveal the logic on which one makes its naming. They are like miracles that open up and reveal the structure or the system; or like a clue that solves a riddle. They cannot be identified beforehand, but once noted, they expose the writing and its hidden logic. Dravers beautifully describes the role of epiphanies when he writes: 'it is as if language suddenly voided itself of all meaning and reference to the phallic function that organises its effects'.<sup>430</sup> These epiphanies have nothing to do with the production of meaning. In fact they cause a lack of signification and meaning, and their presence is solely to facilitate the knotting between the Real and the Symbolic. To give an example, in the case of the detainees' poetry and writing in Guantánamo, epiphanies that occur in these writings are not here to actually facilitate meaning – they are not here to tell the world what is going on or to transmit a message, a

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<sup>428</sup> Lacan, *Seminar Livre XXIV, Le Sinthome*, 40.

<sup>429</sup> Dravers, 'Joyce & the Sinthome', 19.

<sup>430</sup> Ibid.



story; rather their main task is to embody what escapes the signification or meaning. Namely the actual suffering, the pain, a pure desire and a need to write not to communicate, but to rebuild, recover or remember what the detainees' self or dignity is. Epiphanies, if one speculates, are the reason why the detainees are persistent in claiming back the poetry they wrote while in captivity. When separated from their poetry, they claim it is like leaving part of them/their 'self' behind: 'I will be a different person when I get them back', or 'only after I am reunited with my poetry I can forget what has happened to me'. The encounter with epiphanies can later facilitate – knot – the relations between the detainees present and their past existence that might have been lost in years of detention. The poems embody a part of the detainees; in fact they have a life of their own by 'embodying' what remained human in them in that particular situation or that particular context of writing.

Language in Oedipal logic has two different ways of expression, it is written and spoken. In *sinthomal* logic, language maintains both forms of expression. Speaking – in exactly the same manner as writing – becomes disentangled from meaning. Lacan does this with wordplays. The reader has to read out letters rather than words to grasp the meaning of what is being written. In other words, by following common pronunciation rules one will be unable to grasp what is written. It is a sort of rupture or decomposition of language to the level of it no longer holding any phonetic identity.<sup>431</sup> The letter or a written word here becomes a supplement for a third realm (the missing realm). This is where *lalangue* enters the picture. As such *lalangue* writes a phonetic representation of a 'written word'. It is a representation of a speaking being. As Lacan writes: 'the drive is the echo in the body of the fact of speech',<sup>432</sup> and if, as Dravers continues, one 'is prey to this echo insofar as it resounds, not in the body, but in the world, then his solution lies in writing the speech of the world in an art of the letter which aims to support the whole polyphony of voice'.<sup>433</sup> The quotation above points to a segment in the process of the self's self-creation; that segment is the voice. The presence of voice in psychoanalysis is of extraordinary importance and precedes any written word. However, I will not engage with the voice in any detail, primarily as the practice of *lalangue* goes beyond the practices explaining, embodying or preserving 'the self' of Guantánamo detainees. Whereas one can argue that

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<sup>431</sup> Lacan, *Seminar Livre XXIV, Le Sinthome*, 96.

<sup>432</sup> *Ibid.*, 17.

<sup>433</sup> Dravers, 'Joyce & the Sinthome', 21.

their writing serves other purposes than that of signification; the way it is done often does not transgress the functions of signifiers or challenge the set borders of polyphony.

The Real and the Symbolic then provide for a new logic that allows for one's own ideas of the self – it produces names and makes sense of what or who the detainees are, and how they interact with the world around them and 'the self'. As we have seen, the logic excludes one realm, it is then also the logic capable of isolating or alleviating the problems that occur, or simply that which is not working, or is damaging for one's existence. With the example of the detainees, what does not work is the imaginary domain which makes sense and interacts on the level of the body. The 'sense' and 'the body' are precisely the two domains through which the detainees suffer or make contact with pain. The logic of the *sinthome* allows them to alleviate this realm, yet despite having a different notion and relation to 'the self' and authority, they remain capable of participating in the social. Through writing they regain the sense of the 'self'; yet as this is done through writing, 'the self' regained has very little to do with the Other or in fact with the larger logic of the world. The 'self' of the *sinthome* is a 'singular self', belonging only to a particular situation and a particular context. It is no longer then that the detainees, or who ever it is in question, become part of a society through the inscription of law on the body; on the contrary, the link to the social and the image of the self is based on an exclusively 'self-made' way of seeing and interacting with one's surroundings. The Real and the Symbolic are tied together in ways which are particular to each and every form of existence. As such the logic that 'orders' these different forms of existence is a 'universalist' logic to an extent that it is shared amongst everyone; yet it is a logic that is also highly singular and unstable as it does not determine ways in which different forms of existence should negotiate the relationship between the Real and the Symbolic or the outcomes (in the form of inscription of the language and *jouissance*) of this relationship.

### *Sinthomal Law: approaching Guantánamo*

We have discussed above the working of the *sinthomal* logic as the logic that underlies the second challenge to the dominant discourse. Now the question remains what impact it has on the actual legal workings. As has been discussed in Chapters Two and Three, the idea of the *sinthome* transgresses subjective or societal orderings. It concerns the orderings or logics of worlds in which everyone participates, or by which 'human beings' are

ordered to the same degree as all other forms of existence participating in the ‘world’. Hence, the *sinthome* as a new form of being is only one embodiment of a different logic. This is similar to the way that different forms of existence ‘participating in the world’ (including ‘the law’ as a legal system) are influenced by a different logic. Thus, the *sinthome law* – as the law corresponding to the *sinthomal* ordering principle – needs to be thought along different lines than the existing law ordered by the Oedipal logic of the Name-of-the-Father. As mentioned in the previous chapters, law has to be thought of as: ‘a problematic and not an object; real and not symbolic; immanent and not transcendent; a singularity and not a generality/particularity; chaotically dynamic and not predictably stable [...]’.<sup>434</sup> What is suggested in this quotation? The *sinthome* law or a logic ‘ordering’ law that is different to that of the Name-of-the-Father is immanent, as it does not embody any particular rules or legal principles. It only determines ways in which these rules get created and the nature of the relationships they tend to create. The *sinthomal* logic addresses law and the legal situation as a problem – it does not require or aim at finding a solution, rather it conceptualises the problem only after it is properly problematised and can thus be adequately addressed.<sup>435</sup> The logic of problematisation addressed here resembles the encounter-problematisation-conceptualisation triad that has been discussed in the previous chapter. A solution to the problem, as it has been emphasised on a number of occasions, is singular or particular to the situation and not universal or determinate. The logic of the *sinthome* then facilitates the conditions upon which a new law can be conceived of. This implies that rather than determining the substance, the *sinthome* logic gives character to the law and law-making. That, to refer to another characteristic of the *sinthome*, does not mean that nothing can be said about the substance, it can be determined too, but it will apply only to a particular situation in question. In such a way, the *sinthome law* is open or Real. It creates the conditions for an ‘eternal’ openness of the system or the symbolic order. This implies that in no situation does one know of the exact limits of the legal framework in advance; no two situations are the same or have utterly different solutions.

The logic of the *sinthome* is then clearly a move away from paternalistic notions of law and the authority. In his seminar on the *sinthome* (*Seminar XXIII*), Lacan explicitly writes that the Name-of-the-Father is not the only or the necessary way by which the subject

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<sup>434</sup> Murray, ‘Sinthome Law’, 223.

<sup>435</sup> We have discussed the nature of problematisation as part of the encounter-problematisation-conceptualisation process of alternative thinking in the previous chapter.

(as one form of existence) enters society and manages 'its' social bond. The *sinthome*, whose main characteristic is a different formation of desire, or the way in which the *sinthome* forms desire, enables a particular form of existence to knot all three registers of social reality (the Real, the Symbolic and the Imaginary) differently. A *sinthomal* knotting is different in that it enables a particular form of existence a formation of a social bond that is particular to that form.<sup>436</sup> In the context of law, this implies that a particular legal situation sets its own limits and interpretations of laws. This is not to say that laws do not exist, they do; yet the situation itself determines which laws apply, how they relate to one another and where their limits are. The law, ultimately, no longer requires the paternal signifier to 'bring it to life'; rather the *sinthome* tied to a particular discourse can perform this role. The *sinthome* then not only provides different forms of existence with means for creating their own singular bonds with the social, but also to do so within a different discursive frame.<sup>437</sup>

How then is the *sinthomal* situation played out in Guantánamo? To an extent Guantánamo makes for a good example upon which alternative legal orderings can be discussed. The 'nature' of Guantánamo resembles the nature of the *sinthome* law. Murray explains that *sinthome* law is 'useful in legal institutional settings that resemble the chaotic and unbound context [...]. A sinthomatic concept of law answers to a problematic of legality in open, chaotic, complex dynamic systems where principles of organisation emerge in intensive immanent processes'.<sup>438</sup> Looking at the Guantánamo situation through a prism of human rights laws and the consequent treatment of the detainees, it seems that legal practices in Guantánamo resemble the '*sinthomal*' situation. On the one hand, there is the existing law whose limits are set too narrowly to accommodate the Government's treatment of the detainees and their practice of human rights; on the other hand, the situation is too chaotic and 'disordered' to create conditions for the existence of a system that is at least as coherent as international human rights law. Hence, in dealings with Guantánamo the existing dominant legal discourse operating on the Oedipal logic is insufficient. However, because of the practices it aimed at establishing – the military commissions trials and less strict provisions on the nature of the evidence and evidence gathering – the existing legal discourse is also undesirable. What is more, being incapable to operate with the existence of the exception (as a result

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<sup>436</sup> Dravers, 'In the Wake of Interpretation', 148.

<sup>437</sup> Miller, 'Le sinthome: un mixte de symptôme et fatasme', 15.

<sup>438</sup> Murray, 'Sinthome Law', 225.

of the liberal system),<sup>439</sup> it has a tendency to address the exception with emergency laws, which are not temporal, but rather set in stone legal procedures creating precedence for future judgements. Understanding Guantánamo within the *sinthomal* logic then seems to be a more productive way of thinking about the situation. The question of the *sinthome* law in Guantánamo is multi-layered; it concerns dealings with the situation as it is – the existing new laws; the work of the American lawyers and the criminal courts to bring the detainees within the existing criminal justice system, as well as potential development of an entirely new legal framework. These are also aspects, let us remind ourselves, that correspond to the existing dominant legal discourse. In the next two sections I will give some attention to these three aspects.

### Guantánamo in the Face of Governmental Laws

Guantánamo puts under question many legal procedures and laws relating to human rights and conduct of war. It also poses an interesting dilemma over the jurisdiction between domestic and international law. In such a context, the main significance of the *sinthome law* is the ‘nomination’ or practice of ‘giving names’ with legal consequences. The label of ‘enemy combatant’ is one of such names. Within the scope of law (be it international or domestic), the ‘unlawful enemy combatant’ was supposed to be the only operable name within the newly established legal framework. In contrast to, for example, ‘prisoner of war’, the label of ‘enemy combatant’ bears stronger legal and political implications. It is – irrespective of their legal contexts or international, legal or political significance – placed above all other names. The name ‘unlawful enemy combatant’ embodies a logic of the political discourse that emerged after 9/11 and that was ignorant of any legal constraints emerging around the battle with opponents. The name was a product of the emergence of the truth of the system – the underlying logic – which with the post 9/11 actions of the US government uncovered the old, in the discourse of human rights already forgotten, divide between the civilised and the barbarian. The

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<sup>439</sup> For Carl Schmitt’s critique of liberalism see: David Dyzenhaus ed. *Law as Politics: Carl Schmitt’s critique of liberalism* (Durham and London: Duke University Press, 1998); John P. McCormick, ‘The Dilemmas of Dictatorship: Carl Schmitt and Constitutional Emergency Powers’, in *Law as Politics: Carl Schmitt’s critique of liberalism*, David Dyzenhaus ed. (Durham and London: Duke University Press, 1998): 217–51; Carl Schmitt, *The Crisis of Parliamentary Democracy* (Baskerville: The MIT Press, 2000), *Legality and Legitimacy* (Durham and London: Duke University Press, 2004), *Political Theology*; Jeffrey Seitzer, ‘Carl Schmitt’s Internal Critique of Liberal Constitutionalism: *Verfassungslehre* as a Response to the Weimar State Crisis’, in *Law as Politics: Carl Schmitt’s critique of liberalism*, David Dyzenhaus ed. (Durham and London: Duke University Press, 1998): 281–311.

naming is a representation of how the system operates, rather than a representation of authority or a 'sovereign will'. This represents a move away from the national or domestic system. Its implications are greater as it turns 'the entire world' into a playground where the name operates – the category has a universal application despite existing only in the discourse of the US government. The label of 'enemy combatant' then works as a supplement to the logic of the Name-of-the-Father as well as its exception. It is not that the logic the label represents entirely substitutes the 'Oedipal logic'; what it does is it intervenes in it only when it seeks its exception, when it desires to transgress the Oedipal framework.

In other words, the relationship between the Oedipal and the *sinthomal* logic is such that the Oedipal logic structures the dominant discourse, whereas the practices and the situations creating an encounter with the dominant order stand for *sinthomal* logic, seeking authority and legitimacy in it. On grounds of these observations one could say that the *sinthome* determines the logic that underlies the practices piercing the symbolic order, whereas the Oedipal logic determines the substance and the nature of the existing order. Another way of looking at this relationship is that the Oedipal logic is the logic of the dominant discourse; and when the Government cannot do what it desires, it retreats to a different ordering – the *sinthome*. This way it avoids the 'new situation' creating the encounter with the existing order and potentially destabilising it. Thus, we have two orders almost running in parallel. In this context an alternative logic is deployed in support of the Government's actions.

Ethically, of course, the second example is problematic, as it combines both ways of doing law, the Oedipal and the *sinthomal*, where the *sinthomal* is called upon when the interpretation of the Oedipal legal framework or a transgression of the existing legal framework is needed. The role the *sinthome* plays in this context departs from the role the *sinthome* has in psychoanalysis. As we have seen, the *sinthome* intervenes when the Oedipal logic fails. In the situation of Guantánamo and post 9/11 politics the Oedipal logic failed yet this was not recognised by the Government. Hence, the Government resorted to what is here named the *sinthome* to try and hide the failings of the existing law. They resorted to *sinthome* not to create a new law based on radical ethics – the primary objective of the *sinthome* logic – or fidelity to the event, but to enable the exception; to normalise the exception for the dominant order. In this context, while its ethics is indeed

questionable, the military commissions as an idea, embody one way of making laws that is particular to the situation and hence resemble *sinthomal* logic. The military commissions are as such *sinthomal* because of the openness of the legal system they facilitate, the contingency of rules and the creativeness the role of the judge potentially embody. It is a system created to address a particular situation, which rules change in accordance with the nature of the case put before the law. But to take the example of the *sinthomal* logic further; laws that could also adopt the *sinthomal* logic are those negotiated on the international level.<sup>440</sup> These laws are the most fluid as they arguably have no overarching authority; they are a set of rules or moral principles existing independently of situations which then get framed so as to address a particular/singular situation. They are not applied to the situation nor do they presuppose how one situation should be addressed or dealt with. In such a way a *sinthomal* logic of law, similarly to the pure past of law or the attentive judgment I have discussed earlier – does not prescribe what a proper response to the situation is, but rather calls for a reconsideration and a rewriting of laws in ways that address the situation effectively, and are in sync with radical ethics or the fidelity to the event. But what is a legal framework that is in sync with the two ideas (radical ethics and the fidelity to the event)?

### Bringing Guantánamo In: human rights discourse

What is then at stake in such ‘radical ethics’ or in ‘fidelity to the event’? Central to the ‘ethics’ the *sinthomal* logic addresses is the discourse representing and describing the problem. In Guantánamo this problem is human rights discourse. The problem of representation here is that the detainees are ‘being brought’ into what is a peculiar Westernised notions of human rights. This is not to say that the *sinthomal law* is against human rights; not at all, it is against the discourse of human rights or its representation. What is the significance here? If human rights in Guantánamo had been problematised in a way which would have created a new category for the detainees or a new framework of protection, then this would not be a problem. The problematic part in this discussion is that the human rights organisations and the detainees’ lawyers instead of creating a framework for the detainees, tried to bring them within a spectre of rights they do not

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<sup>440</sup> Here I do not discuss existing international law, but rather speculate on the image of laws existing on the level of the international that could adopt *sinthomal* logic.

belong to, and they themselves do not want to be part of either.<sup>441</sup> Hence, the desire of lawyers and the human rights organisations to promote their cause and ways of solving the problem (with legal or political means), the detainees' attitude to this approach and the Government's legal frameworks opposed each other and created absurd situations. The legal basis – the jurisdiction based on the territoriality of the custodian – on grounds of which the detainees' habeas petitions can be heard by the US criminal courts is only one of such absurdities. So, what is it that I then have in mind when talking about a different human rights discourse or by problematising human rights discourse? The two aspects that I will draw from and will help to illuminate the *sinthomal* logic of law-making are Deleuze's discussion of human rights discourse, and Badiou's take on ethics, and consequently, the ethical/legal subject.

To start with Deleuze; Deleuze perhaps most prolifically problematises human rights discourse in *Abécédaire*. It is worth quoting this discussion at length.

I'll take [...] Armenia [...] What's the situation? [...] There is an Armenian republic, there is an enclave. There is this massacre [by] some Turks, those pretend, those pseudo-Turks. [...] The Armenians flee to their republic [...] and, on top of all that, an earthquake. Well, we'd think we're in the Marquis de Sade. Those poor people went through the worst, the possible ordeals, and the moment they get shelter nature butts in. We say human rights. But finally these are discourses for intellectuals, and for odious intellectuals at that, for intellectuals without ideas. First, I remark that these declarations of human rights are never made in conjunction with those concerned, with Armenian societies, with Armenian communities, etc'.<sup>442</sup>

Here Deleuze makes a specific reference to the impotence of human rights conventions and international legal documents, which instead of problematising each and every situation as it is, in their particularity, simply create a context for an interpretation of the situation with a purpose to protect what they understand are the limits of humanity; and to facilitate their needs rather than the needs of those individuals in peril.<sup>443</sup> This is an important remark. Deleuze, then, continues:

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<sup>441</sup> This aspect of human rights law in Guantánamo was discussed in relation to the habeas petitions in Chapter 5.

<sup>442</sup> Deleuze, *L'Abécédaire*.

<sup>443</sup> What Deleuze has in mind when talking about law is commonly associated with jurisprudence, but as Lefebvre (2008: 55–6) observes, Deleuze never writes about jurisprudence, though he uses the term often in his interviews (*L'Abécédaire*). Thus, it is rather difficult to define what exactly Deleuze meant by the term since he has never defined it. However, it can be observed that while Deleuze commonly refers to jurisprudence when talking about the system of case law and the nature of its working – Deleuze has an appreciation for the case that he sees as a legal singularity. Thus, 'Deleuzian jurisprudence' can be understood as a combination of rights and principles with cases and singularities. It is then focused on how



But it's funny, the problem is not human rights, it's not about human rights. What is it? [...] what are we going to do? [...] What can we do] to make this enclave liveable? [...] It's not a question of human rights, it's not a question of justice. It's a question of jurisprudence. All the abominations people suffer are cases. These aren't elements with abstract rights, they're abominable cases. We might say that these cases resemble each other, but these are situations of jurisprudence. [...] What to do to save the Armenians and how can they save themselves from this crazy situation they're in? [...] It's not a question of a right to this or to that. It is a question of situations and situations that evolve, and to fight for liberty is in fact to do jurisprudence. [...] Human rights...you invoke human rights... what does this mean? It means, "Ah Turks have no rights to massacre Armenians." OK, [...] then what? And then we're supposed to have advance with that? They're really idiotic. Or, I think they're truly hypocrites, all those who think human rights. [...] Its philosophically null, just null. And the creation of law [...] it's not declaration of human rights. Creation in law, it's jurisprudence. Only that exists. So, to fight for jurisprudence, indeed.<sup>444</sup>

Throughout the quotation, I believe, it became clear that the problem of human rights is its discourse and ways in which they get implemented and not the ideas as such. Instead of being created through the process and therefore inherent and singularly specific to one particular situation, the rights are taken as universally applicable, enabling a kind of identification of the occurrences where human rights are breached, yet impotent when it comes to actually impacting on and improving someone's life, and end the suffering. What facilitates the universal recognition of the human rights breach is precisely suffering and the evil. Thus, the subject has to be a victim in the face of evil. Whether the subject actually agrees to be victimised and hence stripped of agency is not at all important. As we have mentioned earlier, the Guantánamo detainees, seen as victims in need of help, yet unable to determine what kind of help they need, is precisely the point that re-emerges here. The help the detainees or survivors of humanitarian disasters, genocides etc. need is not determined on the basis of these peoples' needs, no-one asks them of what they want; rather the needs are constituted on the grounds of what those providing help see as lacking. The agency of 'the victims', as has been mentioned in the previous chapter, is not taken away with a disaster or a situation, instead, it is taken away by ways in which these 'victims' are 'helped'. What facilitates this 'taking away' of agency is in fact law itself. In the face of evil law has the automatic authority to intervene and protect those facing it. Law, as Badiou writes:

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particular situations get translated into legal cases, and how, consequently, these new and singular situations impact the existing legal rules. See also Lefebvre, *The Image of Law*, 54–9.

<sup>444</sup> Ibid.

[A]lone authorizes a space for identification of evil [...] and provides the means of arbitration when the issue is not clear. [...] Whatever evil befalls [the subject] is universally identifiable [...], such that this subject is both, on the one hand, a passive, pathetic, or reflexive subject – he who suffers – and, on the other, the active, determining subject of judgement – he who, in identifying suffering knows that it must be stopped by all available means.<sup>445</sup>

Yet, what gets identified as evil is always in the hands of the law and legal discourse.

In the situation I have discussed earlier the main question concerns actual suffering. For example, Deleuze asks questions such as: ‘What is one to do to make a particular situation liveable?’, ‘How do we create rights and which rights would these be?’ As Lefebvre explains, these questions address the situation on two levels. On the one hand: ‘rights would have to be tailored to this problematic situation, and on the other hand, the situation must be constructed, and hopefully ameliorated, through jurisprudential intervention’.<sup>446</sup> Here rights do not exist before or independently of a particular case or a situation, rather ‘the situation is an encounter that forces the law into the intervention on a problem, which creates rights to modify and to improve that situation’.<sup>447</sup> The nature of these rights, as Lacan would argue, is emergent. As such, this law allows for amelioration of the situations and for change in order to improve conditions and address the case better. The old dogmatic discourse of human rights, instead of addressing the situation and allowing the modifications and changes that are particular to that singular case, aims at preserving the pre-existing categories whose implementation can barely clarify or impact the situation in question.<sup>448</sup> Instead of recognising the singularity of a particular situation and seeking its best solution, the dogmatic discourse of human rights aims at bringing all aspects of the situation under the umbrella of general laws that universalise the situation. In this sense, the existing human rights discourse is effectively not about solving the problem, but about bringing the situation into a pre-existing normative framework. To avoid the problem of ‘bringing in’ or ‘including’ those facing evil and suffering, one does not need to abandon discussions of human rights; on the contrary, any kind of discussion is pertinent yet it has to address the issue of rights at its core. The core questions then are who or what is recognised by law and how to deal with extreme situations. The answer to the latter has been already indicated throughout the thesis. Ultimately, one could say that what matters is that when faced with the possibility of

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<sup>445</sup> Badiou, *Ethics*, 8–9.

<sup>446</sup> Lefebvre, *The image of law*, 84–5.

<sup>447</sup> *Ibid.*, 85.

<sup>448</sup> *Ibid.*

intervention into problematic situations the intervention occurs in order to create rights rather than to protect them. This is more than a semantic shift in the purpose of the intervention, as it marks the genesis of rights and the way they are conceived and created.<sup>449</sup> The answer to the first question – who is recognised by the law and how does this facilitate an alternative legal framework – will be addressed below.

## Legal Recognition or What is the New Legal Subjectivity

In this chapter I have so far discussed the logic of the *sinthome* and its workings within a legal discourse of Guantánamo. In particular I looked at human rights discourse, ways in which human rights should be problematised and the nature of a new law. Now, I have arrived at the stage where I need to take this debate to another level and discuss the implications of the *sinthomal law* on the nature of law *as such*; and following that, how it affects the Guantánamo situation, in particular in relation to the LOM (in this chapter seen as alternative form of ‘legal subjectivity’). The situational or the event(ual) account of law I tried introducing by drawing on the logic of the *sinthome*, brought in front of us a demand for not only a new way of law-making but also a new ‘legal subjectivity’ or a form of existence that finds its place in law. The process of introducing an alternative ‘legal subjectivity’ is rather complicated, as it requires knowledge of everything that was discussed so far in this thesis. I will address this in two ways: through a discussion of Badiou’s ethics and Lacan’s *sinthome*/LOM.

Firstly, I will draw on Badiou’s discussion of ethics and evil to demonstrate the nature of the existing subject of law; the issue of evil was already brought up in part in the previous section. To move away from the existing subject, I draw on Spinoza, Lacan and Badiou. Badiou is important because rather than linking the term ethics to abstract categories (Man or the Human, Rights or the Law, the Other...), he argues that ‘ethics should be referred back to particular situations. Rather than reduce it to an aspect of pity for victims, it should become the enduring maxim of singular processes’.<sup>450</sup> This statement captures the gist of our discussion of the making of the new forms of law and a new idea of the subject which should not be seen as a victim, but rather should be created and re-created in the context of the situation. Existing human rights discourse goes against the

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<sup>449</sup> Ibid., 87.

<sup>450</sup> Badiou, *Ethics*, 3.

situational creations of legal subjectivity. Instead it bases its claims on a notion of the universal human subject capable of reducing ethical issues to matters of human rights and humanitarianism. In other words, it means we first get to know the set of rights belonging to someone seen or conceived as the subject and only secondly are we concerned with who that ‘subject with the rights’ actually is. Such an understanding of ethics and the subject implies the subject’s identification with another universalising principle, which enables the recognition of evil in the first and ‘ethical actions’ only in the second place. Evil is of particular importance, because, as Badiou acknowledges, the subject recognises the universal evil done to him on the grounds of his identification with the universalising principle of evil (or what is thought to be a universal principle of evil).<sup>451</sup> Human rights are rights, as Badiou writes, ‘to non-Evil: rights not to be offended or mistreated with respect to one’s life (the horrors of murder and execution), one’s body (the horrors of torture, cruelty and famine), or one’s cultural identity (the horrors of the humiliation of women, of minorities, etc.)’.<sup>452</sup> Ultimately, human rights discourse, or the entire discourse of rights, then sees a man as a victim; or teaches a man to recognise himself as a victim.<sup>453</sup> In such a discourse of victimisation, three important aspects of (human) rights are embedded. The first two at least are symptomatic of modernity. The first one is the question of life, where the discourse of human rights is created to save life *as such* and preserve it in such a form. The second has to do with the distinction between the civilised and the barbarian, which is deeply rooted in human rights discourse, and which rather recently became transformed into discourse portraying the Third World as a ‘needy still childish-like space’. And the third aspect has to do with the question of universality and singularity, where universality prevails and prevents singularity – the faithfulness to the event as a practice that pushes the rights to its limits – fully coming to life as an alternative.<sup>454</sup> With such an understanding, one can conclude that most of the problems human rights face today has to do with the discourse of human rights, rather than the rights themselves. The discourse that facilitates the understanding of rights and breathes life into the subject of rights has an inherent flaw; it in itself creates the possibility of saving only life as such (life and nothing more), with no other quality, and preserving it in such a condition, and hence re-enacting the traditional divide between the civilised and the barbarians.

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<sup>451</sup> Ibid., 10.

<sup>452</sup> Ibid., 9.

<sup>453</sup> Ibid., 10.

<sup>454</sup> Ibid., 13–5.

To break away from such discourse and the notion of the subject grounded in a universal conception of evil one has to make a number of steps. Badiou, for example, proposes the following path. He suggests that man identify its affirmative thought, which does not stop man identifying evil, but it facilitates a positive capacity for Good and thus for humans' boundary-breaking treatment of possibilities which are no longer universal but particular to each and every situation. There 'is no ethics in general, there is only – eventually – ethics of processes by which we treat the possibilities of a situation'.<sup>455</sup> In such a way, ethics becomes open to the Other and hence shifts the ethical subject who was based on the closed ethics deriving from a relationship with the Other. A notion of a 'legal subjectivity' of this kind opens the subject (as one form of existence) to the contingency or openness of situations; no longer is there a pre-existing framework constituting a 'legal subject'. The new legal subjectivity – LOM – whoever or whatever it is, is created in the situation, and it also bears responsibilities for the decisions taken. LOM or a new legal subjectivity is, in Badiou's thought, of course, mostly still human centric; Badiou does not deny this; however, the radical change/alteration is made in the framework of legal subjectivity and its responsibility.

However, there is another way of thinking an alternative to predominant 'legal subjectivity', one which in fact incorporates a non-anthropocentric aspect. Not only is such subjectivity created in a legal situation, and this creation is contingent depending on the form of existence and the situation in question; but also the form of existence is no longer 'the subject' (no longer is the subject dependent on the relation or the existence of the Other), and it is no longer human. Of course, it can be human, but humanity is not a category that determines 'belongingness' to this legal discourse. Going back to Spinoza's idea of *conatus* or Deleuze's life *as such*, one could argue that what facilitates a new belonging to the law, is in this context, a persistence or a force present in all animate or inanimate beings. Setting up foundations as grounds for thinking of human rights through *conatus* would then imply that no matter what the situation or the conditions are, nothing and no-one – as they possess *conatus* – could ever be excluded from any kind of legal framework within which rights are sought. Rights would not be simply applied, as 'the application of rights' would in this situation again indicate the existence of a set framework of rights, which get applied to various situations. If the minimum condition

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<sup>455</sup> Ibid., 16.

of having rights is *conatus*, then the rights negotiated in specific situations would have always been particular to the situation and the form of existence in question. How could one facilitate this? How is such notion of rights and legal subjectivity attainable?

To take this discussion further – the second aspect of legal subjectivity debate – in Lacan’s *sinthomal* logic all forms of existence are part of law of some kind. In psychoanalytical discourse, no matter what the situation, it is impossible not to be subjected to law. This does not only apply to individuals with an unconscious, but also to everything that has its representation in the symbolic order. It is not that only humans with an unconscious create the symbolic, rather all other representations in the Symbolic become an equal in the face of law. However, only considering the Symbolic – or the representation in the Symbolic – is not enough. Lacan specifically acknowledges the existence of things in the Imaginary order, or those whose representation is materially impossible. What Lacan has in mind here are, for example, relations formed between two or more beings, or artificial beings created as a result of merging of the two forms. For Lacan, such is for example, the relationship of love, where the two forms of existence when in love create an artificial being – the one.<sup>456</sup>

All these orderings or belongings to law have a different internal structure and are hence far removed from the laws constituted by the Oedipal subject and the laws of the Name-of-the-Father. All these formations and ways of belonging to the law are contingent and dependent upon situations in which they are found. In two ways they also represent a significant ontological break. Firstly, they challenge the ontology of law-making; the new ontology is an open ontology; rather than only a framework applied to the situation. It is either a pool of possibilities which can impact the legal framework of the situation discussed, or have no impact on the situation at all. The other aspect, in contrast, is the nature of the ‘being of law’ or the ‘being of rights’. The *sinthomal* logic, drawing on Spinoza and Deleuze’s ideas, provides an account of ‘belonging to law’ that is no longer human-centric. Instead, central to such belonging is the force common to everything around us. The law no longer fixates life on one transcendental representation of the self – the subject; instead it leaves life *as such* to flourish freely in all possible directions and dimensions and, as such, depending on the situations, gets embodied in different ways. A being of law breaks out of the interplay between law and life in which law triggers, as

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<sup>456</sup> Lacan, *Seminar XX: Encore, On Feminine Sexuality*.

Badiou explains, ‘the death of life [that] is the Self.’<sup>457</sup> In such a way, law in its open – the Real – form becomes embodied in everything around us; but in contrast to the Oedipal law, it recognises its scope of applications and is aware of the ethical relationships arising from such positioning. The law in this mythical Christian representation as life *as such* changes dramatically in the face of alternative notions of ‘being of law’; what I will do next is then to try and speculate on the forms of law or logic of law-making that within the framework of the *sinthome law* illustrates as clearly as possible what is entailed in the logic of new law.

### Images of a *Sinthomal* Logic of Law

Thinking a new law as a *sinthomal* logic means taking the ontology of law along the lines of repetitions of difference, contingency, openness, event(uality), singularity and beingness. These are all ideas discussed in previous chapters. They all indicate that the law is no longer a facilitator or a reproducer of existing power relations and political and ethical values. Instead, it enables ethical values to develop singularly in each and every situation. As discussed above, it also does not necessitate the presence of ‘a human subject’, or someone who is sufficiently present in law to bring ‘the case’ to court. As such then, the law in *sinthomal* logic is no longer universalising. It does not need principles or provisions which should apply universally to all, or should bring all human beings – the citizens of nation states – under one umbrella; instead there can be parts over which law has no control or that can develop in ways different to the existing legal framework without challenging or opposing it. What is actually gained by such de-centred understanding of ‘the universal’ principle of law, one might ask. It is the notion of law that no longer determines what one should do, or how one should act, but rather how one should start addressing or problematising the situation. This is a move from a prescriptive law to the law that creates possibilities. By introducing such contingency into the scope of law, one inevitably places the law in the realm of the Real, something many theorists and philosophers suggested should be done if one is to theorise law as a force of ‘justice’ instead of a conservative force of the status quo.<sup>458</sup>

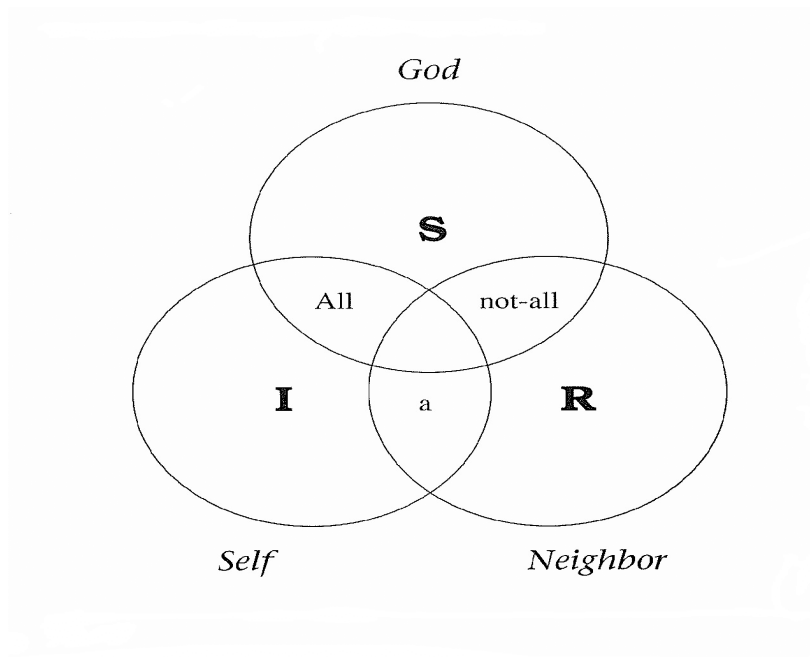
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<sup>457</sup> Badiou, *Saint Paul*, 82.

<sup>458</sup> See for example: Hirvonen, ‘The Problem of Evil Revisited’, 29–51; Murray, ‘Sinthome Law’, 202–22; Minkkinen, *Sovereignty, Knowledge, Law*; Voruz, *Psychoanalysis and the Law Beyond Oedipus*; Alenka Zupancic, *Ethics of the Real: Kant and Lacan* (London, New York: Verso, 2000); Žižek, ‘Superego by Default’, 925–42, *The Sublime Object of Ideology*, *The Ticklish Subject*.

How then can we conceive of an image of law then? How can we constitute our understanding of law; and how the law interacts with other aspects contributing to legal and political life? Lacan would suggest that the most appropriate representation of the images alternative idea of law creates is through the structure of the Borromean knot (see the figure). The Borromean knot is a Trinitarian structure joining together the realms of the Real, the Symbolic and the Imaginary. These three realms do not just hang together, rather their knotting is secured by the forth ring – in Oedipal logic the fourth ring is the figure of the Name-of-the-Father, under the *sinthomal* logic, it is the *sinthome*. Oedipal logic, for example, gives structure to the three realms and determines the meaning of ‘reality’. Commonly, under Oedipal law, the image of law is hierarchical, with prescriptive legal rules as ordering principles being the most important representation of law. The Borromean knot is a scheme that allows us to read the structure of the law (or any other idea) and examine what aspects of law fall within what realms, and what implications this has for the idea of law. For example, there is a difference between the Real representation of justice and the effects it has, and the Symbolic representation. Justice in the Real is unattainable, yet it is the form that comes closest to radical ethics, whereas justice in the Symbolic is not absolute, but only an approximation of some sort of an artificial standard deriving from the Oedipal laws. If one is to look at the structure of Oedipal law within the Borromean knot; what one can see in that Oedipal law, with all its principles and provisions belongs to the Symbolic realm. The realm of the Imaginary belongs to the sovereign power for the reproduction of which the law works; hence it is the ‘Imaginary’ aspect of the law that facilitates legal authority. The Real segment of the Oedipal law, however, belongs to what is not supposed to be uncovered or known (the hidden dimension of law), the Oedipal law that is the truth of the system. As we have learned, the truth of the system is based on a reproduction of old divides between the civilised and the barbarian; thus in times of crises, the system will always retreat to the hidden truth, and work in favour of ‘the civilised’. Or, for example, in situation of a humanitarian peril, the system will always intervene with a purpose to protect and reproduce ‘Western values’ embodied in notion of the universal rights with the citizens of nation states as its only legal subjects.





Scheme of the Borromean Knot with all realms and the logic of universality<sup>459</sup>

The same structure can also be read as creating spaces for innovations and creativity within the law. If the whole structure is read as a Borromean representation of a *sinthomal* logic, then the discussion of the relationship between the Real and the Symbolic is central, and the space where these two realms overlap. In the context of the representation offered by the Borromean knot, the realm of the Real in *sinthomal* logic no longer belongs to the hidden truth, but to the law. However, this law is no longer about written legal principles but rather about justice – or a constant search to come as close as possible to justice (it is impossible to attain justice *as such*). The law in the Real is then about the open, situational logic of law-making, which cannot determine in advance how the search for justice will turn out or what form the pure past of law will take in its new form of ‘repetition’. Authority, be it political, legal or of any other kind, is embodied as a Symbolic dimension and is central. This ultimately, strips authority of the capacity to possess any significant amount of power. The symbolic order provides it with ‘means of existence’; yet as such it is ‘castrated’/emptied because it has lost its mythical authority legitimising its actions. As a consequence, the authority is void; it can be replaced or it can indeed fluctuate between different representations and institutional structures. Without the legitimating power, whatever the authority does is of no real significance. And the final aspect – the Imaginary – belongs to the ‘self’, or to forms of existence that

<sup>459</sup> Reinhard, ‘Toward a Political Theology of the Neighbour’, 74.

no longer depend on the authority. They are self-sufficient and operate on nominations or names that derive from (pre-social immanent) being, rather than from the transcendent identification with the Other as a source of authority. This form of legal existence is LOM.

The openness of this system is apparent, the law is determined only by ways of law-making and not by its substance; LOM that is central to law can emerge in legal discourse in many different forms. They are all inherent to law. Furthermore one could say of this system that it is not totalitarian or even anarchic. Quite on the contrary, the norms or values driving the system are much stronger than those of Oedipal law. This should not be surprising, as the *sinthomal* system cannot rely on the written representation (the Symbolic authority is missing). In *sinthomal* logic, the values are not external but inherent to the structure of the system. They enable the system to preserve itself in this radical openness. This openness is manifested in the system through fidelity to the event, or in the truth to which one strives. On the path of this striving, it is 'the form of existence' – whatever that is in a particular moment of the legal discourse – that is responsible for all the actions, those taken and those not. This system leaves a greater moral responsibility on forms of existence creating it (e.g. LOM), as it provides no guidance for what is to be done in a specific situation. All decisions have to be taken as such and their fairness is to be judged on the outcomes of the situation that is addressed.

On a micro level, if one looks at the structure of the parts constituting the *sinthomal law*, it is justice that is placed in the Real, the legal provisions (in the form of a pure past of law) that are in the Symbolic, and LOM or the forms of existence in law that are in the Imaginary. Placing justice in the Real again indicates an eternal striving towards a just decision; equally it signifies the impossibility of ever attaining justice. Despite this impossibility, it is still important to persist in this pursuit and have justice placed in the centre of the legal ordering. The legal provisions or the pure past of law are here in the place of the Symbolic. That is not to say that they are irrelevant, far from it, rather they represent a potentiality, a pool of possibilities. What I mean by this is that legal provisions as such are of no use for as long as they are not used to pursue justice, or for as long as they do not go through a re-embodiment in the permanent process of repetition. The Imaginary then indicates a range of possible embodiments of a 'being of law'/LOM. In a sense, the Imaginary domain also demands a place for itself. This implies

that LOM is either represented in law such as it is, or it is not represented at all. With the example of Guantánamo, this would suggest that the detainees are represented by law and within law for what they are, namely detainees; and what law would deal with are not claims over the detainees' legal subjectivity, but rather problems and miscarriages of justice that they face. The law would be the law in the face of which the detainees are equal and fully subjected to law. The cases heard would address what the detainees desire to be addressed, the treatments or the conditions they themselves find problematic. Equally, there would have been no discussion over the framework within which the detainees fall, the only question would be over what (out of the pure past of law) creates and problematises their situation in the best way, and hence is of some use when addressing the case. As such, to an extent, there is no distinction between domestic or international law, the sole guidance in addressing situations and representing problems is the pursuit of justice. In such an account, law loses its character as an ordering force dividing and determining the limits of legal acts; in contrast, law remains without content or consistency. It is without measure, end or limit.<sup>460</sup> It is a type of law that is only effective in the absence of all obedience, in occasions when everyone/everything really is free.<sup>461</sup> As in the case of love, this law can bind different forms of existence together when there is nothing else to keep them together. Ultimately, this form of law brings us back to the very notion of being; namely a being of law such as LOM that has changed its relation to the self, that is, being of law of such kind is LOM that has changed its relation to the self; in other words, being that has reinvented itself through the process of becoming (minoritarian or nobody).

## **Love as an Image of an Ethical Community**

Above we have discussed images of an alternative *sinthomal* law. LOM as an embodiment of these images and being derives from an ontological standpoint embracing openness, contingency and innovativeness. The presence of these images in the Symbolic order is enabled by a form of writing and 'making sense' of the 'self' that no longer derives from an external source. The type of law – the *sinthome* law – is no longer prescriptive but open to innovation; while legal subjectivity is no longer a static conception of a 'human being' whose rights are determined in relation to the pool of existing rights; rather the legal

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<sup>460</sup> Badiou, *Saint Paul*, 14, 89.

<sup>461</sup> *Ibid.*, 89.

subjectivity of LOM derives from ethical considerations of each and every situation *per se*. As a result of these changes in the understanding of being and law, the entire legal and political sphere undergoes a similar rethinking of representations. In this section I take a step further and speculate on the possibility the alternative *sinthomal* logic opens for the understanding of political community. The *sinthomal* logic, however, facilitates many different representations or ways of going about de-centring the existing Oedipal structures. The way I chose to go about this relates to the *sinthomal* accounts of law and being I have explained earlier. Thus, the starting point in this discussion is the idea of community based on belonging or coming together of singularities that do not have much in common but their ‘shared being-ness’.<sup>462</sup> The question one might ask here is why the ‘coming-together’ of such singularities and how it relates to the *sinthome*. A short answer would be that the *sinthome* with its logic of self-nomination cannot facilitate for any other form of existence but ‘the singular’. Unlike in Oedipal logic, where the paternal master signifier directs meaning and forms of external identifications, in *sinthomal* logic, as discussed earlier in the chapter, this identification is always internal and self-constitutive. The only commonality between these entities is then the shared being-ness, the desire from these different self-driven forms of identification. The question, then, is how to make sense of this shared being-ness; what kind of community, and which ordering principles create it? I will try to illustrate how ideas of love, communism and ethics create foundations for such an alternative *sinthomal* community of being-ness where forms of existence have nothing in common but their own ‘being-ness’/sustenance. As such I will indicate ways in which one can think of an ethical being relating to others and creating a sense of community grounded in the idea of love and communism. While ‘ethics’ directs the nature of ‘moral claims’ (how one is an ethical subject) the idea of communism represents an ontological starting point. It signifies an alternative ontology by which beings ethically share their life in common, thus the organisation of this ‘life in common’ is precisely what is put under question in the idea of love.

Up to this point – despite it featuring very prominently in critical philosophical thinking – I have not given much attention to the idea of love *as such*. This will change in this section. I will not give an overview of ways in which the idea has been used so far;

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<sup>462</sup> Although I use the same or a very similar terminology as Jean-Luc Nancy and Giorgio Agamben, I do not necessarily mean the same thing. See for example: Agamben, *The Coming Community* or Jean-Luc Nancy, *The Inoperative Community* (Minneapolis: University of Minnesota Press, 1991), *Being Singular Plural* (Stanford: Stanford University Press, 2000).

instead the focus will be on how it could provide for an image of a ‘*sinthomal* community’ different from the existing discourse. I will start with the idea of love as it features in the work of Jacques Lacan. He spent a good part of his last years of teaching discussing the idea of love as a *force* of love. For Lacan love has a number of functions and is embodied in a variety of ways. Perhaps its most important function is that it enables changes from one discourse – or ordering principle – to another. Lacan’s theory of discourses does not refer to the study of the discourse; rather the discourse represents an ordering principle of the society. In such a way the master discourse should stand for a paternal or even feudal political ordering; the discourse of the hysteric for a revolutionary or a capitalist political system; the discourse of the university for an authoritarian or again capitalist ordering, whereas the discourse of the analyst is the only non-political discourse. However, the role of the discourse of the analyst is rather disputable as this discourse embodies the *sinthomal* logic, and could in fact present an alternative (political) ordering.<sup>463</sup> The characteristics of the discourse depend on the positioning and the relationship the four elements – authority, knowledge, the subject and *jouissance* – form between each other. The changes in the relationships between the four elements of the discourse are then facilitated by love. For example, love facilitates changes between the Oedipal or the *sinthomatic* principle, or as is the case in Lacan’s theory of four discourses, between the discourses of the master, the university, the hysteric and the analyst.<sup>464</sup> In this context love is a force facilitating change and a shift in the ordering and understanding of the social sphere. Love is also represented in all three different imaginaries (in the Borromean knot): Imaginary love (love in ‘traditional sense’) is the interplay between identification and the object (one always loves one’s own image in the other not the other as such); Symbolic love is linked to the symbolic order/Other and represents the love of knowledge, sense and meaning; but love in the Real is the love ‘that makes *jouissance* condescend to desire’.<sup>465</sup> And as such, love is also the force that can make the unconscious fail.<sup>466</sup>

The previous discussions probably already indicate that the type of love having the greatest influence is love in the Real. Love in the Real refers to desire without the Other or the Symbolic order – desire in its purest sense. As such, the Real has to be a failure.

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<sup>463</sup> See: Lacan, *Seminar XVII: Four Discourses of Psychoanalysis* .

<sup>464</sup> Ibid.

<sup>465</sup> Voruz, ‘Acephalic Litter as a Phallic Letter’, 133

<sup>466</sup> See for example: Jacques Lacan, *Seminar XXIV: L’Insu-que-sait de l’Une-bévue*, 1976 – 1977, unpublished seminar.

That is not to say that it does not reach its object of desire – that is not its goal – rather its function is to prevent beings from subjectivation and actual loving. The love of the Real is then a force defeating the unconscious.<sup>467</sup> To explain this a bit differently, the becoming of a particular form of being is determined by the unconscious that is structured like a language.<sup>468</sup> As such it is always already historically and culturally situated. When Real love intervenes, it breaks off existing social and symbolic structures (the Real is incapable of bearing any meaning), it defeats the unconscious, prevents the becoming of the subject, and consequently gives birth to a ‘new form’ of Being.<sup>469</sup> It is the presence of becoming in the intervention of Real love that enables the emergence of new being that is no longer the self, but rather a self-less formation that tests the very limit of one’s existence. This is how the idea of love feeds back into the *sinthomal* being and an alternative ordering of the world.

Looking at the schema of the Borromean knot and the three registers in which love gets manifested; there is another significant ordering one can observe. Love in the Real can be associated with the Neighbour, love in the Symbolic with God and love in the Imaginary with the Self. This is a similar representation of the knot as the one explained in the *sinthome law* where authority – the God – is in fact void; yet what drives the ordering is the eternal struggle of how to attain justice, ethics or how to form ethical relationships. In the representation of the ‘theological images of love’, as Kenneth Reinhard argues, the Neighbour becomes a central figure of discontinuity and radical ethical questioning of ‘the self’.<sup>470</sup> The Neighbour becomes such a prolific figure because of its theological roots; it embodies the most traumatic aspect of every individual, that is the question of the treatment of the Other, and the positioning of ‘the Self’ in relation to that treatment.<sup>471</sup> Ultimately, the Neighbour embodies *das Ding*.<sup>472</sup> ‘The unbearable law of

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<sup>467</sup> Voruz, ‘Acephalic Litter as a Phallic Letter’, 134.

<sup>468</sup> Lacan, ‘The Function and Field of Speech and Language in Psychoanalysis’, 197–268.

<sup>469</sup> Voruz, ‘Acephalic Litter as a Phallic Letter’, 134.

<sup>470</sup> Reinhard, ‘Toward a Political Theology of the Neighbour’, 71–5.

<sup>471</sup> See for example: Badiou, *Saint Paul*; Lacan, *Seminar VII: The Ethics of Psychoanalysis*; Antonio Negri, *The Labor of Job: The Biblical Text as a Parable of Human Labor* (Durham & London: Duke University Press, 2009); Jacques Derrida, *The Gift of Death* (Chicago: University of Chicago Press, 1996).

<sup>472</sup> *Das Ding* is a Lacanian concept. Lacan defines it as something that is beyond the signifier, and thus non-representable. Many things can be associated with *das Ding*; for example, in the Oedipal logic, the principle of ‘the mother’ can occupy the position of *das Ding* as she is placed outside the Symbolic order and, thus, is external to the dominant ordering logic. *Das Ding*, Lacan writes, ‘is at the center only in the sense that it is excluded. That is to say, in reality *das Ding* has to be posited as exterior, as the prehistoric Other that it is impossible to forget – [...] something strange to me, although it is at the heart of me, something that on the level of the unconscious only a representation can represent’ (Lacan 2008: 87–8). *Das Ding* represents

the Real' or an ethical principle that cannot be attained but is always already part of the subject's unconscious; that is what *das Ding* is. The Neighbour is the perfect image of one's ethical dilemmas. It is the embodiment of our 'fellow-man' who is different from us precisely and only in *das Ding* (which is exactly what makes the Neighbour so frightening to us, and, consequently, what makes us so frightening for the Neighbour). It is the Neighbour, which, as Lacan recalls in *Seminar VII: The Ethics of Psychoanalysis*, we have to love as ourselves: 'Thou shalt love thy neighbour as thyself.'<sup>473</sup> Lacan writes:

If we take the symbolic as playing the role of the means [*moyen*] between the Real and the Imaginary [...] we are thus at the heart of that love which I just spoke about under the name of divine love [...] The symbolic taken as love [...] is under the form of this commandment, which praises to the skies being and love. Insofar as it joins something as being and as love, these two things can only be said to support the Real on the one hand and the Imaginary on the other [...]. This is where the dimension of *love your neighbour as yourself* comes from.<sup>474</sup>

In the above quotation Lacan suggests we understand the biblical ethical demand of love as an interplay between the Imaginary and the Real domain, hence as an interplay between the love of the Neighbour and 'the Self' appearing in the face of God. The divine or love in the Real which I identified as essential in thinking about a *sinthomal* community then appears on the spectrum or as a negotiation between the unbearable demand of the Other and 'the self' upon which the demand is imposed. Facing the Neighbour, seeing it for what it is or recognising 'its face' and then consequently getting to terms with it, necessitates the overcoming of social structures, historical and temporal embeddings on the one hand, and consequently the emergence of new relations and communities on the other hand. In other words, embedding Neighbourly love, demands a new ontology and ways of thinking about 'intersubjective' ethical relations. Such love or form of community has nothing to do with liberal ideas of multiculturalism, in which 'the neighbour' or the other different from us is not being recognised for what it is; it is merely – if at all – tolerated for as long as it is not too different. Zizek, for example, calls the politics of multiculturalism the politics of de-caffeinated others.<sup>475</sup> With this

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itself at the level of unconsciousness as experience. For more see: Lacan, *Seminar VII: The Ethics of Psychoanalysis*, 41–104.

<sup>473</sup> Lacan, *Seminar VII: The Ethics of Psychoanalysis*.

<sup>474</sup> Jacques Lacan, *Seminar XXI, Les non-dupes errent*, December 18, 1973 (unpublished); quoted and translated in: Reinhard, 'Toward a Political Theology of the Neighbour', 72.

<sup>475</sup> See for example: Slavoj Zizek, 'Liberal multiculturalism masks an old barbarism with a human face', *The Guardian*, online edition, 3 October 2010

expression he aims to point out the truth of multiculturalism, which is that ‘I’ will tolerate the ‘other’ but only for as long as ‘the other’ is not too different from ‘me’, does not live next to ‘me’, interfere with ‘my’ life and ‘my’ desires, or take ‘our’ women or men.

The *sinthomal* community then has nothing to do with the recognition of the Other, instead it is grounded in love in the Real that intervenes in the structure of the subject. This intervention prevents a form of existence – LOM – relating to another form of existence for what it is – the self. The self is reduced to a limited range of ethical possibilities; as it has been mentioned earlier, the self is in fact a closure of life or of a range of possible embodiments of beings and ethical relationships. For Real love to come to life then, LOM – or a form of existence – has to ‘return’ to its ‘pre-Oedipal structure’, it has to uncouple its desires from drives or other identifications. The subject has to give up on ‘the self’ to become LOM. In Badiou’s reading of St Paul, the subject gives up on its ‘self’ when it identifies with the Neighbour’s demand.<sup>476</sup> That identification occurs in Real love, which concerns only desire *as such* or being-ness at its purest. For Eric Santner, similarly, such love is ultimately ‘love in the third person, love understood as the giving of one’s individuality over to a higher unity, a cause, an ideal, or a totality, the love as an immersion of self into some sort of greater, more beautiful whole or ‘universal’.<sup>477</sup> The concept of such Real love is ‘the singular, the event, not beginning or end, but center of the world’.<sup>478</sup> From this it follows that every social structure similarly to every form of existence is bound to a particular type of love.

If we take the Neighbour’s and LOM’s task to disentangle its ‘being’ from desire as the starting point of a radical *sinthomal* rethinking of a community, then the discussion would direct us to an ultimate ‘return’ to discussions about the immanent being-ness present throughout the thesis. In the example of Neighbourly love, ethical relationships are determined in the light of *sinthomal* laws. There is no predetermined structure directing individuals towards the right ethical decisions; ultimately ethical judgments are left to each and every one of us. What directs us in our judgements is the ethical process

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[<http://www.guardian.co.uk/commentisfree/2010/oct/03/immigration-policy-roma-rightwing-europe>]. Accessed: 18 January 2011; *Living in the End Times* (London, New York: Verso, 2010).

<sup>476</sup> Badiou, *Saint Paul*, 80–9.

<sup>477</sup> Eric Santner, ‘Miracles Happen: Benjamin, Rosenzweig, Freud and the Matter of the Neighbour’, in *The Neighbour*, Slavoj Žižek, et al., 124.

<sup>478</sup> Franz Rosenzweig, ‘“Urzelle” to the Star of Redemption’, in *Philosophical and Theological Writings*, 57; quoted in: Santner, ‘Miracles Happen’, 124.



directed only by the fidelity to the event we speak about. Only one's fidelity to the event or the encounter, by knowing what the original situation and the problem was, can determine and direct the ethical decision. Once that decision is made, it is upon the one who made it to assume the consequences for it. Taking *sinthomal* nominations as the starting assumption for a new conception of community would imply that there is no distinction between different forms of existence. All forms possessing *conatus* or the power to persist in the world are those who should be considered to have agency and the right to ethical considerations. A starting point of such kind implies that not only are all humans, regardless of nationality, ethnicity, religion, gender, language, class etc., ethical subjects that are equally included in a community, but also so are all other embodiments of life. In fact to take a step further, what this notion of a community based on *conatus* and a force of love implies is that one can no longer speak of these different forms of being, one can no longer make distinctions between various forms of life such as humans, animals, plants, rocks etc., to an extent these are all different forms of existence, yet the same beings in the world. In a community of such forms of existence, ethical relationships are governed by the force of love, whereas social or political demands are expressed on the grounds of one group interest; yet the group is not bound together by the characteristics or the nature of their members, and not even by a common demand; rather the group expresses their demands as a group and as singularities, for what they are in their own being-ness. In such a way *sinthomal* political communities remain fluid; in the case of Guantánamo, for example, one detainee although in the same situation can have a different demand or priorities of demands than another detainee. Yet, that difference does not affect or destabilise the notion of community in Guantánamo.

But where is one to find this community or how is one to think about it in a rather more practical way? Badiou suggests that a community of forms of being that have given up on the self, or that have changed the relations they have with the self – hence altered their desire – is to be found among those that are excluded or marginalised.<sup>479</sup> Those on the margins embody the nothing-ness or the nobody-ness of 'becoming-nobody' by giving up on their identity. It is those that are excluded from all communities that present the possibility of foundations of thinking a community that does not exclude anyone.<sup>480</sup> Why is this the case and how is one to achieve this? Badiou and Mika Ojakangas in their

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<sup>479</sup> Badiou, *Saint Paul*, 80–9.

<sup>480</sup> 1 Corinthians (1:27)

respective discussions of St Paul argue that the excluded can form a community of such excluded entities precisely because they themselves already are those ‘nobodies’; they in the process of becoming-nobody formed a different relation to the self, one that makes them insignificant.<sup>481</sup> The source of their insignificance is not their complete resignation or a giving up of their identity, but rather a radical encounter with love. What do I mean by this? Love makes one insignificant as it makes one weak and vulnerable; it opens one’s heart to the other, it changes one’s egoistic identity and eventually it turns one into nothing.<sup>482</sup> It is then the ‘nothingness’ that everyone shares that creates grounds for the emergence of a community not of peoples with identity, but of those nobodies, ‘whosoever’, that are without community, law, identity or even name.<sup>483</sup>

A community of such nobodies takes us back to the ontological position from which we started the debate on the community – that is ideas of communism as the idea of an ethical sharing of life in common. The community of this nobodies enables such sharing of life in common, because it unites various forms of existence on the level of their being; before any form of identity gets attached to the being-ness. In the next section I will further explore the nature of this ‘ethical sharing’ and community by examining the logic of ‘association’ from a larger (worldlier) perspective.

## **‘Not-All’ as a New Political Ontology**

In this thesis, by discussing and invoking alternative notions of being and law, and hence alternative notions of political and legal imaginaries or community, I followed a *sinthomal* ontology, which is an ontology of a radical openness and creativity. If this ontology is seen in the light of community – a community of nobodies – then one can also call this an ontology of nothing-ness. In other words, it is an ontology of ‘not-all’. I have discussed images of such ‘not-all’ ontology, images that touched upon both legal and political spheres, and concerned the two aspects of law, that of law-making and that of justice. What is left to do here is to perhaps give a more over-arching picture of the *sinthomal* ‘not-all’ ontology and draw out some general political implications.

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<sup>481</sup> Mika Ojakangas, ‘Becoming Whosoever: Re-examining Pauline Universalism’, paper presented at SGIR 7<sup>th</sup> Pan-European IR Conference in Stockholm, September 9 – 11 2010.

<sup>482</sup> Ojakangas, ‘Becoming Whosoever: Re-examining Pauline Universalism’.

<sup>483</sup> Ojakangas, ‘Becoming Whosoever: Re-examining Pauline Universalism’; see also Giorgio Agamben, *The Time that Remains: A Commentary to the Letter to the Romans* (Stanford: Stanford University Press, 2005).

Jacques-Alain Miller argues that both the modern political and the social, abandon the Father – an image of the Oedipal structure – as a central figure, and, as we have argued, have moved on to different organising principles. The Father, or the ‘all’ is being substituted by the logic of ‘not-all’. Miller writes:

[T]he structure of the all has given way to that of the not-all: the structure of not-all implies precisely that there be nothing left that serves as a barrier, that is, in the position of what is forbidden. [...] The structure of the not-all is what is described at the special and political level by Antonio Negri as *impero*, as the empire that develops precisely without meeting up with a limit. This is what corresponds for us to the structure of the not-all, deported to the level of what we can call a social organisation.<sup>484</sup>

The ontology of the ‘not-all’ is ultimately based on the idea that something can remain missing or outside the system, but the system will remain capable of functioning along its principles. On an organisational level one entire imaginary/realm (either the Real, the Symbolic or the Imaginary) can be missing; or on a smaller scale, a particular aspect of society or the political can be left out. For example, as discussed in relation to Guantánamo detainees, an entire realm – the Imaginary domain representing the relation between the self and the body – is missing in their alternative *sinthomal* bonding. Similarly, in the political and the social domain, the ‘not-all’ ontology implies aspects of the political that can remain unregulated, without sovereign power; or that enable communities or even states to remain outside particular ordering principles. In the context of a modern capitalist system and in the context of globalisation, this would suggest that states can persist in their own different forms of existence or functioning and do not need to subjugate themselves to the logic of ‘the market’.

Lacan introduces the ‘not-all’ in the text *L’Étourdit*.<sup>485</sup> There he responds to critiques of Deleuze and Guattari, and argues that the function of the Father is in effect linked to the structure of masculine sexualisation, which unlike female sexualisation, is whole or one.<sup>486</sup> ‘A

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<sup>484</sup> Jacques-Alain Miller, *Milanese Intuitions [2]*, L’orientation lacanienne, course given by Jacques-Alain Miller in the Department of Psychoanalysis at the University of Paris VIII, May 22, 2002: 9.

<sup>485</sup> Lacan, *L’Étourdit*.

<sup>486</sup> The term ‘sexualisation’ refers to a Lacanian theory explaining the way men and women are sexualised or turned into particular sexual subjects on the grounds of different forms of *jouissance* or pleasure. As such, ‘sexualisation’ is different from ‘sexuality’. For more see: Lacan, *Seminar XX: Encore, On Feminine Sexuality*, 78–89; Suzanne Bernard, ‘Tongues of Angels: Feminine Structure and Other Jouissance’, in *Reading Seminar XX: Lacan’s Major Work on Love, Knowledge, and Feminine Sexuality*, Suzanne Bernard and Bruce Fink, eds. (Albany: State University of New York Press, 2002): 171–86; Bruce Fink, ‘Knowledge and Jouissance’, in

structure that comprises an ‘all’ with a supplementary and antinomic element that poses a limit, and which allows the ‘all’ to be constituted precisely as such, which poses the limits and thus allows for organisation and stability. This structure is the very matrix of the hierarchical relation’.<sup>487</sup> The masculine structure of the ‘all’ resembles the Oedipal structure, in fact it is the Oedipal structure, by which everything and everybody should fall under one umbrella; this does not mean that all should be part of one as such, but rather that all should be ordered in the same way, and have an identical relation to authority. In a way, I believe, the logic of ‘all’ is even worse than a logic striving towards actual sameness. What the Oedipal ‘all’ has in mind then is the inclusion of all under the same system disregarding actual differences.

The interplay between both logics opens a very interesting political question; that is how to understand the politics of globalisation. Is it that the logic of globalisation strives towards the ‘all’, or is it rather leaning towards the ‘not-all’? In terms of how the logic of globalisation should be viewed, one could argue, globalisation is about the ‘not-all’. Miller, for example, writes in support of this thesis. He says:

The not-all is not an all that includes a lack, but on the contrary a series in development without limit and without totalization. This is why the term of globalisation is a vacillating term for us, since it is precisely a question of there being no longer any all [...] What is called globalisation is a process of detotalisation that puts all the ‘totalitarian’ structures to the test. It is a process by which no element is provided with an attribute it can be assured of by principle and forever. [...] The not-all implies precariousness for the element.<sup>488</sup>

This indeed is the case; however, globalisation can equally be viewed as a striving for the logic of ‘all’ (although, it in itself functions on the assumption of having something always already missing). This aspect is more disconcerting, as it does not allow for different organisational principles, because it is not concerned about the variety, the inequalities or disunities within the system itself. The logic of ‘not-all’ as a force of globalisation allows for individuation. What is impaired though, as Miller argues, is the

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*Reading Seminar XX: Lacan’s Major Work on Love, Knowledge, and Feminine Sexuality*, Suzanne Bernard and Bruce Fink, eds. (Albany: State University of New York Press, 2002): 21–46; Genevière Morel, ‘Feminine Conditions of Jouissance’, in *Reading Seminar XX: Lacan’s Major Work on Love, Knowledge, and Feminine Sexuality*, Suzanne Bernard and Bruce Fink, eds. (Albany: State University of New York Press, 2002): 77–92; Slavoj Žižek, ‘The Real of Sexual Difference’, in *Reading Seminar XX: Lacan’s Major Work on Love, Knowledge, and Feminine Sexuality*, Suzanne Bernard and Bruce Fink, eds. (Albany: State University of New York Press, 2002): 57–76.

<sup>487</sup> Miller, *Milanese Intuitions* [2].

<sup>488</sup> *Ibid.*, 9–10.

mode of living together, the social bond that exists under the form of unified, dispersed subjects, and which induces, for each one, both a social duty and a subjective imperative to invent.<sup>489</sup> However, I argue that globalisation should not be seen within the logic of ‘not-all’. This is not because of the principle that drives globalisation, but rather because of its actual embodiment. It is not that everyone is free to express everything, to be embodied in all shapes and forms, and that difference is flourishing; rather the logic implies that something is still missing from the system (Third World countries, etc.) and has to be brought in or included, yet not on equal terms. Thus the system strives towards totality instead of preserving diversity. Equally, it strives towards individualisation, and hence cannot form collective organisations. The formula of ‘living my own life’ – my own life precisely by its difference from others – highlights the decadence, the decline of collective organisational models, and places the form of existence in the face of a demand – that it takes as its own – and hence invents and enhances its own singular style of life.<sup>490</sup> This is indeed the structure of globalisation, yet because of its expansionist tensions on political, social and economic planes, I argue, it cannot take part in the logic of ‘not-all’.

In contrast to this, I agree with Lacan that feminine sexuation is the embodiment of the ‘not-all’ logic mentioned in Chapter Two.<sup>491</sup> Yet, contrary to Miller, I would argue that it does not come through in globalisation or globalisation processes.<sup>492</sup> The logic of ‘not-all’ is embodied in political realms, yet its influence is not yet as effective as one of globalisation. It promotes diversity within disunity, and is perfectly capable and willing to let aspects of the political and the social flourish on their own terms, but when these groups call upon the system, it is there to offer help. Ultimately, what this means is that community is based on a system that is not closed down. On the global scale, such a community would operate according to principles I have discussed earlier, like the pure past of law, but it would not be pre-determined in what forms these principles are, if at all, employed. These frameworks would merge, change, become reinvented, re-evaluated and ultimately would be enriched with aspects coming from entirely different logics or orderings. Thus, in such a community different ideas and laws are born, live their life and die; they give character to the community, yet after their death, they remain there,

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<sup>489</sup> Ibid., 11.

<sup>490</sup> Ibid.

<sup>491</sup> The logic of ‘not-all’ as a feminine logic has been discussed a bit further in Chapter Two.

<sup>492</sup> Miller, *Milanese Intuitions* [2], 10.

without any mourning or reflecting that perhaps one should return to the past formations and organisations. The process of becoming and constant change simply continues and never stops in its movement of invention and re-invention.

The organisational logic guiding *sinthomal* community is fluid, contingent and creative; and the ‘essence’ of a community, in other words, the constituents of community are similarly diverse. No longer can one make differences between humans, animals, plants or rocks. Everything that is in possession or that embodies *conatus*, has the right to life and the right to equal participation in a community. A *sinthomal* organisational logic of ‘not-all’ then allows for the existence of radically fluid entities constituting a community, as well as radically different orderings between communities. A new ontology then concerns two levels; it concerns the nature of the organising principle in and between communities, as well as the nature of parts constituting community and their inner ordering logic. The ontology on all these levels is radically open and fluid. It enables the preservation, continuation and flourishing of contingent structures and processes in ways which do not lead to chaos or unsustainable and unbearable living conditions.

## Conclusion

The purpose of this last chapter of the thesis was to bring together some of the debates central to the thesis and to further speculate on possible developments or changes in the understanding of the political if the existing political is thought along the lines of an alternative *sinthomal* logic. Therefore, the chapter started with the challenge to law that was already mentioned in Chapter Five, but then left for further discussion in this chapter; namely the indirect challenge of law that comes in the form of an alternative logic. This alternative logic is the *sinthomal* logic, the workings of which are explained through the idea of a different form of writing in the first part of the chapter. This logic is then first adopted within the framework of Guantánamo, in the context of which I discussed some of the governmental practices – how the *sinthome* can explain what the Government was trying to do, and also how it can provide alternative laws within the existing legal framework, as well as develop an alternative/new framework. Aside from discussions of the Government’s legal discourse, the most important contribution of this chapter is the development of the *sinthomal* logic on the structure of the Borromean knot.

The combination of the two ideas allow us to think and reconsider the positioning of various elements constructing either the paternal legal discourse, or the *sinthomal* law, either the ‘existence’ of Guantánamo detainees or the internal working of the *sinthomal* law. Throughout the discussion, the structure of an alternative law and its characteristics is revealed, and so is the working of the new form of legal existence – LOM. Both concepts, the *sinthomal* law and LOM, are radically open, and hence are unable to be captured within a static system or a community with rigid frameworks and limitations. Thus in the last part of the chapter, I take a step further and speculate on the community that would facilitate such conceptions. The idea of community I propose is based on the idea of communism – as a sharing of life in common – radical ethics, and love. Here love is understood as a force, or *conatus*. Everything existing or present, animate and inanimate, possesses *conatus*, and is hence an equal part of the political community. A community of such kind no longer knows borders or groups that are excluded from it. In other words, community is no longer based on common identity, race, language, religion, ethnicity or nationalism. It is a fluid concept, open to different possibilities and permutations, it includes everything and everyone, and it is up to the community as a whole and on each and every being to do with it whatever it pleases.

In this chapter then, I drew out different logics that order politics, law, community and being. What is inherently common to all these aspects is the way one thinks of them. Hence, what is in common is their ontology, which is radically open, immanent and capable of changes, innovations and permutations. Thus, the proposed open ontology should be the basis for the understanding of the world and for the study of world/international politics.

## Conclusion

The (subject of) right is established—or declared—  
on a nothingness of being and nature...<sup>493</sup>  
Jean-Luc Nancy, p.39 (1983)

The six chapters through which I have addressed the central question of this thesis have now been presented. They each contribute an important part in the overall narrative constructing a particular image of the problem of alternative thinking this thesis aims to create. The image is of course facilitated by the main two questions, which are: *How to think alternative notions of existence*; and *What are the political, social and legal implications of such an alternative?* I will re-engage with the chapters of the thesis and explain how each of them fits into the story I am trying to create and what part of the question they are addressing or contributing to. But before I re-examine the chapters in the light of the two central questions, it is necessary, I think, to briefly elaborate on the two questions, and to an extent determine their limits.

The two questions indicate my interest in ontology; more particularly, how a different ontology, which has also been discussed as a monist ontology and in the introduction as minimalist metaphysics, impacts ways of thinking about different forms of existence, and more broadly, about social reality as such. The aspect of this ontology I am most interested in is the notion of being as an immanent force. How is it possible to think such being in the immanent and what are its social or political (transcendent) implications? In other words, what interests me is how a monist and immanent idea of being is embodied in the transcendent; and what impact it has on the political and legal imaginaries. More particularly, the scope is limited to the portrayal of legal and political images of Guantánamo detention facility and practices related to it. To address these questions the thesis has two starting points; one refers to theoretical foundations of the thesis and the other to the legal-political foundations. The theoretical foundation of the

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<sup>493</sup> Jean-Luc Nancy, *L'Impératif Catégorique* (Paris: Flammarion, 1983): 39.



thesis is the psychoanalysis (and anti-philosophy)<sup>494</sup> of Jacques Lacan and philosophy of Gilles Deleuze; both approaches facilitate a particular way of thinking about the world that is associated with the term *beyond-Oedipus*. *Beyond-Oedipus* signifies a particular non-hierarchical logic of thinking about the social, political and legal relations that not only determine ways of association, but most importantly also ways of being in the world. I see this logic to be of most significance when thinking and engaging with imaginaries that are an alternative to the dominant paternal and exceptionalist legal and political discourse. The other, starting point in the legal-political realm, refers to the situation of post 9/11 and Guantánamo detention facility. In particular, the thesis starts with the assumption that the post 9/11 managerial and bureaucratic politics of liberalism created conditions as a result of which *nomos* or the hidden truth of post-1945 system was revealed. As a result of the emergence of such truth the existing paternal legal and political ordering lost its legitimacy and authority, and hence had to change. The two starting assumptions are related as the theoretical aspects aim to overcome the paternal ordering that is embedded in exceptionalist legal and political discourse whose truth was revealed in the immediate and more long-term political reactions to 9/11. The discussions in Chapter One in addition to providing the introduction to the thesis also explain both theoretical and legal-political aspects in some depth and draw out the connections between them.

Whilst the first chapter of the thesis serves as an introduction to the thesis as well as its 'grounding text', the second chapter, Chapter Two, discusses Oedipal law and alternative ideas of law. The purpose of this chapter is to explain the three aspects of law and their relation to forms of existence and institutions. The first aspect concerns the origins of legal authority; the second how a particular ordering principle – the paternal Oedipal logic – is embedded in legal thinking and legal institutions, and the third how it limits being to a particular form of existence. Particularly essential is the discussion of the limitations of being, which occurs through a process of framing desire on subjective and institutional levels of a legal framework. By drawing on psychoanalysis, the chapter demonstrates how Oedipal law influences a form of existence – the subject – in such a way that the subject internalises the legal order as hierarchical and functioning on penalty

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<sup>494</sup> Alain Badiou, 'Lacan and the Pre-Socratics', *Lacan.com* (2006) [<http://www.lacan.com/badpre.html>]. Accessed: January 21 2011; Bruno Bosteels, 'Radical Antiphilosophy', *Filozofski Vestnik* **XXIX**, no. 2 (2008): 155–87; Adrian Johnston, 'This philosophy which is not one: Jean-Claude Milner, Alain Badiou, and Lacanian Antiphilosophy', *Journal of the Jan van Eyck Circle for Lacanian Ideology Critique*, **3** (2010): 137–58; Jean-Claude Milner, *L'oeuvre Claire: Lacan, la science, la philosophie* (Paris: Éditions du Seuil: 1995).

and prohibitions. The origins of such paternal law are not to be found in the legal order as we know it, but in ways in which each individual is brought to society. The chapter demonstrates how law influences spectrums of social orderings that are much broader than the law we commonly associate with the legal system. The chapter outlines a way of thinking about law that this thesis is trying to discard. Thus, an alternative to the Oedipal ordering – the *sinthomal* logic – is introduced and partly discussed towards the end. By demonstrating how the subject is entangled into social and political structures, this chapter addresses the foundations of the first question – how to think an alternative notion of existence. It shows that what is at stake if one desires to think of law or politics differently, is the ontology and re-thinking of social relations, and more widely, the entire political and social imaginary.

The last section of Chapter Two introduces the discussion that follows on Chapter Three. Although Chapter Three departs from legal discussions, its focus remains similar to that of the previous chapter. The main task of this chapter is to introduce and further discuss the ontology that supports the alternative *sinthomal* ordering. The way the chapter goes about pursuing the task is to firstly identify this ontology as a monist ontology that has its foundations in medieval and early modern writings of Duns Scotus and Spinoza, and in discussions on the question of the relationship between essence and existence. After a brief introduction of these themes the chapter makes a temporal leap from the 15<sup>th</sup> and 16<sup>th</sup> century to the 20<sup>th</sup> century and the philosophy of Gilles Deleuze (and here to a lesser extent Jacques Lacan). The chapter then discusses the two most crucial aspects of this thesis; namely the emergence of a monist and immanent being – examined primarily through a discussion of Spinoza and Deleuze; and ways in which this immanent being affects the transcendent. In other words, practices such as the becoming, the body, desire, language and the *sinthomal* logic of nomination are discussed as practices, which enable the transcendent embodiments (forms of existence) of immanent being. Hence, the chapter directly addresses and answers the first question on the possibility of thinking alternative notions of existence. The alternative is a monist and immanent conception of being that no longer distinguishes between animate and inanimate forms of existence, and whose essence and condition of existence is a possession of power or a force of persistence/preservation. This immanent being is embodied in the transcendent by, amongst others, the five above-mentioned practices.

These five practices through which being is manifested in the social, political and legal imaginaries continue to be central in Chapter Four, which discusses the images of alternative being in the context of Guantánamo. The chapter clearly represents a move from theoretical and philosophical discussions to how they function within the political and legal context of Guantánamo. The focus in this chapter is on the political with a particular focus on the forms of existence within it; while the legal aspect is discussed in the following chapter. The chapter as such is rather particular, as it does not have a distinct argument. Instead it operates as a demonstration of the impact philosophical ideas have on the political issues. For example, the chapter discusses the transformation of the detainees' and the guards' forms of existence, 'identifications', 'acknowledgements' or 'fusions' with positions or the 'social status' they should not identify with – e.g. what I classified as 'Becoming-Animal', 'Becoming-Western', 'Becoming-Detainee'. The discussion aims to demonstrate how these practices challenge the dominant discourse which sets and determines the limits and frameworks of different forms of existence e.g. animals, humans, rocks, the West, the barbarian etc. To draw on one representation, the becoming, as an example: here the guards and the detainees transgress the limits of their existence, their assigned categories and related conceptions of rights and duties, by assuming the positions and the rights pertaining to a different form of existence. On a broader scale, such actions also challenge the limits or the frameworks constituting legal subjectivity (i.e. the ideas of rights or human rights belong to a particular group of people with particular characteristics; with becoming one changes the category to which one should belong and hence also challenges the group of rights one should be entitled to).

The following chapter, Chapter Five, continues with similar challenges to the existing dominant discourse; only that this time they address the legal aspect of Guantánamo. The chapter identifies two different ways of challenging the dominant legal discourse; one is by posing a direct challenge to legal practices, and the other by developing an alternative logic of law-making (the *sinthomal* logic). The discussion here focuses on the direct challenges to the dominant discourse, while the alternative logic is left for discussion in Chapter Six. This chapter addresses some of the legal implications these challenges pose for the working of the law. For example, the image of the case or how the situation is translated into law gets problematised, and so does the content of law, the role of the judgement and the conditions under which it is being made. By focusing primarily on habeas petition cases and partly on military commissions, the chapter, for

example, points to the flaws of the dominant discourse when translating the actual situations into legal cases. With the example of habeas petitions, the detainees do not become the subjects of law despite having their cases heard by the US Courts. That is for the reason that their cases are heard by the court only because the US government – their custodian – is within the court’s jurisdiction. Equally, the courts are not receptive to the suffering of the detainees, their mistreatment or other human rights abuses, but rather decide only whether the Government has the right to detain them or not. These two examples show the inability of the dominant discourse to handle the situation; yet equally they demonstrate how in fact the life of the detainees remains unregulated and hence free from the whims of the dominant discourse. The issue of life is precisely where this chapter finishes; the discussion of life is an indication of a move from the challenges to the dominant order to the construction of an alternative logic. The alternative logic is embodied, just to give one example, in the life that remains unregulated by the law.

The last chapter, Chapter Six, continues the legal debate, yet it does so by doing two things: it explains the *sinthomal* logic of ordering by discussing forms of existence and the role of writing; and takes the *sinthomal* logic of law to a different level and discusses it in relation to the new legal subjectivity, an alternative conception of human rights, or who is the LOM of human rights and an alternative idea of a community. In doing so, the chapter brings together the discussions in the previous two chapters and again reflects on the political, social and legal implications initiated by the alternative notion of existence – a monist and immanent idea of being. The chapter argues that the *sinthomal* law initiated by the alternative logic is an open and contingent concept, facilitating the particularities of each situation and creating laws that are specific only to that particular situation. This is also a law that pursues justice and ethics, and hence is always able to address the actual problems, rather than being limited to the pre-existing frameworks and laws that are in the process of a legal case and a hearing only applied to the situation. The alternative logic also facilitates a new legal subjectivity that, as mentioned in Chapter Four, abandons the conception of a white male rational human being that is not an inmate of any closed institution as its main subject of rights and duties. Instead everything and everyone by pure virtue of *conatus* or a force of preservation have the right to rights specific to the situation to which the rights refer. And finally, the chapter also speculates on the possibility of an alternative community by combining the *sinthomal* logic with the idea of love *as such*. Again, the argument is made that the alternative community in

question is bound together only on grounds of sharing the very essence of being-ness – *conatus*. No other identities, or any kind of religious, linguistic or nationalistic forces create or rule the *sinthomal* communities. These are also communities functioning on the principle of not-all; which implies that these communities are not hierarchical, their structures and belongings are fluid; members of one community can also be members of a different community; or the demands voiced by ‘singularities’ belonging to a community have no need to be unified or the same; thus disunity in one part does not endanger the existence of a community as such.

The ideas discussed in this thesis and wrapped up in Chapter Six have a much greater potential than what has been demonstrated here. However, what is being dealt with in this thesis is the theorisation of what Lacan calls the Real, or others named it ‘the beyond’; hence as we have acknowledged there is no discourse by which one could do justice to this order and its representations; it is a logic and ontology operating on an entirely different plane; in fact it might be a plane that is precisely the opposite from the dominant discourse as what is being central to the alternative – the Real – is precisely what the dominant discourse aims to avoid or foreclose. This can be clearly seen if one returns to the explanation of the Borromean knot. However, before continuing the discussion of the arguments and their implications for a broader understanding of the social and the political sphere, I would like to briefly reflect on the limits of this thesis.

### **A Reflection on the Limits of the Thesis**

The thesis takes for granted quite a number of theoretical or philosophical positions and interpretations of political events. To reiterate the starting assumption of the thesis: the theory of Deleuze and Lacan is adopted without extensive explanations of why this is the alternative; this is equally the case with exceptionalist interpretation of 9/11 and US politics that I offered. Although these assumptions were made without much discussion, they of course rest on a vast literature on both of the two aspects of engagement. One has to say though, that ontology and the understanding of being was at least partly discussed in relation to the Cartesian subject and the origins of immanent and monist thought. The situation in Guantánamo, however, has not been discussed in detail and its exceptional argument properly explained. The line of reasoning leading to the understanding of post 9/11 politics and the managerial and bureaucratic politics of

liberalism as conditions that created the possibility by which *nomos* or the hidden truth of the system was revealed, relies heavily on the theory of Carl Schmitt and his critique of liberalism and parliamentary democracy. In fact a response to 9/11 and post-9/11 foreign policy endeavours are symptomatic of Schmitt's critique of the liberal system and its powerlessness to cope with the exception. The decision to overlook the discussions of the origins of alternative ontology (we should also remember that the very beginnings of monist and immanent philosophy have been dealt with very quickly) and the conditions allowing for the emergence of the truth had to be taken in order for this thesis to be able to engage with an alternative ontology in more depth, and explore its workings further. If my focus had been primarily on aspects mentioned above, this thesis would have been a critique of current or post-9/11 political practices and ontological assumptions made about the world politics instead of being what it is, namely a search for an alternative representation and understanding of the world. What is more, if I had not taken those assumptions the thesis would have been another work in the firing line for a common critique of post-structural and postmodern work; which is that such approaches tend to criticise yet they have very little to offer in the place of the critiqued ideas. Of course, the alternative I tried putting forward in this thesis might be seen as problematic for some; in particular because it does not offer definitive answers to how to address questions, rather its contribution to the understanding of the social and the political sphere comes at a different level – at the level of ontology or different ways in which the world can be expressed. Equally, the proposed open and non-deterministic account is not bound to any universal ethical good, which indeed if it is abused, it could lead to the exact opposite – mistreatment of life. For this reason, the role of different forms of existence and their 'self-reflection', and challenges posed to their own existence or sensitivity is of great importance.

For these reasons, and in particular because the starting points of the thesis are asserted rather than thoroughly argued, this thesis can do very little if the reader does not agree or is not at least sympathetic to these assumptions. If this is the case, the discussions of alternative being and forms of existence – the alternative ontology – make very little sense. Mostly this would be the case if the reader assumes that no major problems arise from the current system, or at least the problems are not of such kind that would demand a radical rethinking of the system as a whole and our place within it. In this

sense the thesis demonstrates new ontology and its workings; rather than being engaged in a discussion of the failings of the existing order.

## **Going Beyond the Scope of the Thesis**

So, what do these alternative ideas of being and the logic of law-making do? Whilst the main contributions of this thesis – if one was to focus solely on the issues discussed in International Relations or the study of global politics – are towards the broader literature on the study of subjectivity (or forms of existence), law, a wider understanding of the community, and events such as Guantánamo; there are other aspects to which this thesis contributes but that remained outside the scope of the thesis. In particular I would like to mention three: community (which was briefly discussed in the last chapter), resistance (which was one of my main motivations for engaging with this type of philosophy and questions of existence) and ontology (which is the underlying theme of this thesis, yet it could be brought up in ways not yet explicitly discussed). After a short elaboration on being and existence I will discuss how the discussions in the thesis refer to resistance and ontology.

The monist and immanent idea of being discussed in this thesis challenges the dominant discourse in many ways. It challenges its political and legal aspects as well as the positioning of ‘the subject’, its main agent, within the order. The political and legal aspects refer to what we have discussed under the various ‘namings’ or nominations by which the dominant discourse aims to control and determine the place of different forms of existence; such as for example the category of the subject of human rights or the naming of ‘the detainees’ or ‘unlawful enemy combatant’. The challenges posed to these categories and namings derive from the logic ordering the nature of being and forms of its existence. This logic is no longer hierarchical or paternal, but rather nomadic or multitudinal; it is open, contingent and ‘process-like’. It thinks of its existence as being in the constant process of change, of invention and re-invention, of becoming. The logic of this being and its forms of expression either challenge the static nature of legal and political categories or the namings it produces. Through either of the two challenges the logic of being transgresses the dominant order. In addition to the challenges to both orders, the becoming or the forms of existence equally transgress the place of agency in

the dominant order. Under the new logic, agency is no longer placed in the 'human subject', rather what is central is the process itself, the becoming as such. While the processes of (*sinthomal*) law-making are capable of facilitating the process of becoming, the new logic of ordering and new forms of expression (the body, desire and language); the fluidity and chaotic character of these very same practices challenge the dominant discourse.

There has been a lot of talk about practices and ways of expression that challenge the dominant discourse; and commonly these are the practices that are associated with the act of resistance to the dominant sovereign order. However, the resistance I have in mind and that has sent me on this theoretical journey is not of this kind. As one would perhaps remember, the practices that directly challenge the dominant order do not have much success; if they are violent and manage to provoke violence from the government, then at best they expose the true nature of the 'democratic regime' – its opposite fascistic side. However, what I find more interesting are forms of resistance that as such do not resemble forms of resistance. Rather they are simply different forms of being in the world; and a pure presence of these forms represents a danger for the dominant order. There has been some work done in international politics on such forms of resistance, yet largely the potentialities of such practices remain unexplored.<sup>495</sup> The main reason, I suppose, for the lack of engagement with such practices is that although they exist, they are not commonly visible and are often covered up by the dominant order. Also their problem is that the moment they engage with the dominant discourse, they lose their singularity or the power of maintaining their position outside the order. Some practices like asylum seekers sewing together their lips and eyes,<sup>496</sup> or aspects of the protest in Tiananmen – particularly the instances when the demands that were coming from the protesters were not unified demands (what as a consequence made them impossible to be addressed by the government); at the same time these demands addressed almost the same issues the government anyway proposed to reform in their documents, all come to

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<sup>495</sup> Edkins and Pin-Fat, 'Through the Wire'; Andreja Zevnik, 'Sovereign-less Subject and the Possibility of Resistance', *Millennium: Journal of International Studies*, **38** no. 1 (2009): 83–106.

<sup>496</sup> Mehmet al Assad, 'Asylum', *borderlands e-journal* **1**, no. 1 (2002). [<http://www.borderlandsejournal.adelaide.edu.au>]. Accessed: January 12 2011; Sam Azad, 'Abbas Amini Gets Leave to Remain But Continues to Protest', *Independent Race and Refugee News Network*, 29 May 2003 [<http://www.irr.org.uk>]. Accessed: January 12 2011; Maryam Namazie, 'Abas Amini is Granted Leave to Remain in the UK', *Hambastegi: Paper of the International Federation of Iranian Refugees*, 29 May 2003 [<http://www.rowzane.com>]. Accessed: January 12 2011.



the form of resistance I have explained.<sup>497</sup> These practices gain powers of challenging the order with their bare existence which could not be tolerated by the sovereign order. Similar, for example, are some of the practices of Guantánamo detainees; most notably, for example, those that are performed by the body – the hunger strikes and the suicides – where the actions of the detainees challenge central ethical values of the order and hence by virtue of the presence of these practices discredit the sovereign discourse. Perhaps an even better example is the practice of writing and language, which literally creates a form of expression that is unattainable by the dominant discourse, or that facilitates its functioning within the dominant discourse yet in an entirely different way and by being inscribed into an entirely different ordering logic. This form of resistance is most interesting as it poses a challenge to the dominant discourse that, unless attention is paid to the form of existence producing ‘deviant’ writing and language, the dominant discourse has no way of finding out about the alternative.

For two reasons writing as a form of resistance brings us to the doorstep of ontology. The first reason is that writing as a form of resistance (with some other forms mentioned above) in fact functions as a new ordering principle; hence it derives from a different ontology and, if taken on board, demands a radical rethinking of the existing social and political relations in forms that are radically different and often unimaginable or incomprehensible within the discourse with which we operate. For this reason, these practices often remain unexplored. And the second reason is precisely the writing itself and how it interacts with the process of becoming. I will spend some time discussing the second aspect as the source of a new thinking about ontology.

The discussions of ontology in this thesis have so far focused on philosophical ideas – the notion of being and its transcendent expressions. We also talked about the *sinthome* and becoming as two ‘open ontologies’; thus the main discussions focused on the transference between being in the immanent and its transcendent embodiments. However, there is an additional aspect in the transcendent embodiment that equally concerns ontology and forms of expression, and that is precisely the practice of writing.

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<sup>497</sup> Wu Hung, ‘Tiananmen Square: A Political History of Monuments’, *Representations* **35** (2001): 84–117; Andrew J. Nathan, ‘The Tiananmen Papers’, *Foreign Affairs* **80**, no. 1 (2001): 2–50; Andrew J. Nathan and Perry Link, *The Tiananmen Papers: The Chinese Leadership Decision to Use Force against their own People – In their own Words* (New York: Public Affairs, 2001); Cheng Zen, ‘Tiananmen Remembered, Personal testimonies’, *BBC News* 2 June 2004 [<http://news.bbc.co.uk/1/hi/world/asia-pacific/3769371.stm>]. Accessed: August 12 2008.

What I have been trying to implicitly demonstrate in this thesis is how, for example on the idea of the becoming, the artificial line between ‘scientific’ or academic discourse or scientific investigation, and ‘personal discourse’ disappears. Events that at times seem to be banal gain in importance. For example, the poems of Guantánamo detainees written in a highly political context embody the most personal aspects of their existence. Another example is the detainees’ personal engagement with Western legal discourse; or their reflection on the past and their ‘being-ness’ before they were captured, which on the one hand facilitated the transformation of the way their being-ness is explained, and on the other provided space for the detainee’s claims for rights from the position of an animal. The forms of expression are not particular to the detainees; equally, as occasionally demonstrated, the guards, the lawyers or the military commission personnel went through a similar experience. This open ontology that facilitates different forms of expression then tests the boundaries of what is a ‘scientific discourse’ or how to think about ‘scientific investigation’. Ultimately, in such ontology, one can no longer draw lines between personal and ‘scientific’ expressions of the self; in the constant process of becoming both aspects are equally present and contribute towards an alternative expression of existence. The challenge of this kind – testing the boundaries of academia and personal representation – is of course rather significant.

Within the discourse of international politics an ontology of this kind opens up new fields of investigation. Literally all aspects of international politics can be rethought along the lines of an open ontology. Such reconsideration would involve a radical change in perspective; as for example Louiza Odysseos notes, usually discussions of ontology in International Relations and international politics too commonly address the level that philosophy would no longer treat as ontology,<sup>498</sup> but as *post-ontology*. This is because the agency/structure debate might indeed be in the core of IR,<sup>499</sup> but the terms with which IR operated on that level are already determined by a particular dominant ordering. IR

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<sup>498</sup> Louiza Odysseos, *The Subject of Co-Existence: Otherness in International Relations* (Minneapolis: University of Minnesota Press, 2007).

<sup>499</sup> For more on agency – structure debate in IR see: Roxanne Doty, *Aporia: A Critical Exploration of the Agent – Structure Problematique in International Relations Theory*, *European Journal of International Relations* 3, no. 3 (1997): 365–92; Alexander Wendt, ‘Anarchy is What States Make of It: the Social Construction of Power Politics’, *International Organisations* 46, no. 2 (1992): 391–425; *Social Theory of International Politics* (Cambridge: Cambridge University Press, 1999); Colin Wight, ‘They Shoot Dead Horses Don’t They?: Locating Agency in the Agent-Structure Problematique’, *European Journal of International Relations* 5, no.1 (1999): 109–42; *Agents, Structures and International Relations: Politics as Ontology* (Cambridge: Cambridge University Press, 2006).

and international politics, then, if they desired to engage with ontology and make a significant change in ways they conceive its subject would need to engage with ontology of being in the world *as such* before any further observations can be made. Or to turn the story around; if world politics and international politics are to make space for the personal investigations, changes and becomings – and this is the only way if the system is to change and take a more ethical approach to its existence – then the system has to first reconsider its ontology and the nature of scientific discourse, its disciplinary boundaries, before it will be able to facilitate any change or become sensitive to various forms of expression and representation.

To an extent the discussion above takes us way beyond the scope of the thesis. This, no doubt, is something worth exploring in the future; yet implicitly the thesis challenges the boundaries and frameworks of legal and political scientific categories all along. It does so in two ways, by combining and challenging the common scientific discourse with ‘the personal’, and by making the personal central to the challenges and changes of ‘scientific’ discourse. The ‘personal’ I am talking about here is not a personal story, but rather a self-reflection on one’s own being-ness and how it inhabits its current form(s) of existence. Often examples that trigger self-reflection are entirely banal – insignificant occasions – that somehow manage to re-interpret particular situations, grasp their new meaning and ‘re-locate’ one’s form of existence or mode of expression. Such dislocations, relocations in the expressions of being challenge dominant static categories and make them irrelevant and redundant. With the following section, which reflects on my own role – my own becoming – in this thesis, I would like to further challenge and demonstrate the irrelevancy of disciplinary or discursive boundaries. With this I also conclude the thesis.

## **A Return to ‘Guantánamo’**

And here I am, standing on the top of the hill, again. All is quiet now; only mist surrounding me. The people have left. What some years ago many wanted to see is no longer of anyone’s interest. Such is the faith of to ‘events’ in the modern world. They lose public attention at least as quickly as they gain it. I am staring in the distance, but I cannot see a thing. I close my eyes and take a deep breath – the air is moist but fresh, nothing like it was eight years ago. I take myself back in time, try to imagine how it felt

the first time I was here, what I saw and what made such an impact on me. Yes, I returned to the hills of Guantánamo where my journey on the path of self-exploration, academia... – I did not know – at the time unknowingly begun.

The ideas of alternative forms of existence and practices leading towards or indicating such forms of existence were in this thesis discussed in relation to the context of Guantánamo. Many images of Guantánamo have emerged, and equally many ideas or practices that enabled the emergence of these images were discussed. However, there were some discussions that touched on the state of one's existence; on its most 'personal' or intimate level. On the site, this is ignored by social, legal or political structures because its machinery is dismissive of or simply too big to address such particularities. Rather than engaging with the very being-ness of one's existence, those machines operate by universalising its subjects and conform them into established representations and social roles. Yet, if one is to look at practices that stand out of such social and political machines, one can see why those singularities cannot be subsumed into the system, or why such giant social machines fail in addressing them. The images of the detainees are those that often fell outside of the dominant social, legal and political structures. Yet, that was not because these structures refuse to accept them – in the case of Guantánamo, the Government in fact created special structures for the detainees – but because there was something in the detainees – the writing, the resistance practices, the body etc. – that was 'ungraspable'. Thus, what made the detainees unattainable was 'the becoming', which cannot be pinned down or caught within the boundaries of existing social structures and categories.

Taking a step back and looking at the idea of becoming, I realised, it is not that the becoming is particular to the detainees; not at all, we all are constantly in becoming; the question is only if we are capable of acknowledging it – or to have courage to self-reflect on our own positioning in the world in a particular temporal and spatial dimension. In these last few paragraphs I would like to discuss the becoming as it happened to me; in those nine years since my trip to Cuba. There was no opportunity earlier to address this, hence I would like to finish the thesis the same way I started it, with a personal note that figuratively speaking takes me back to the hills of Guantánamo.

I still do not know what it was that triggered what has been started when I visited those hills; I think, ultimately, it had very little to do with Guantánamo as such, at least the way it is represented in the discourse of exception and abuse. But whatever it was it set me on a trip of self-invention and a search of who I am and how I could exist or understand the world differently. Not in classical Marxist revolutionary or activist terms (which is what I was before), but rather philosophically, how one can imagine a different reality. An illusionist's task, I know. Did I fail in it? I have no answer to that yet – it is an ongoing project; but in the past year or so I re-encountered my 'revolutionary-self' I thought was dead by now. How is that significant?

After returning from those hills I started seriously engaging with philosophy and psychoanalysis; and testing the boundaries or the limits of my own existence. It is intriguing how banal things or entirely unrelated events reveal so much about oneself. I guess language is one of such 'banalities'. We have discussed language and how it enables and shapes different forms of existence in this thesis to a great extent. Hence, I believe it is obvious if I say that language expresses us and not the other way around; it creates an image of who we are, and how we understand and relate to the social sphere. Hence, moving to a different country and operating in a 'foreign' language that in time becomes your not-quite-yet-first language changes your expression. Not only for the 'outside', but mostly for yourself as you relate to yourself differently. It is as if a foreign language requires you to re-invent yourself, create yourself anew, a new and your own form of expression, as the social relations embodied in language you knew before make no sense in a new context; perhaps you even invent your own grammar in which the social reinvents itself and in its own way starts to make sense. The same process goes on in writing; of course the writing changes with the language; but there must be something else that impacts writing. Isn't writing your very own form of expression? Isn't this the writing in which you invest part of your 'self' and which testifies of your presence in a particular spatial and temporal ordering? Isn't it a testimony of one's environment, emotions, feelings, thoughts and situations? Isn't it the state of the self? Isn't this what makes encounters with one's writing so traumatic with time? Why is a return to your own writing particularly if from a while ago so painful? Isn't the outcome of the encounter with your writing always disastrous? Isn't it almost as if you are reading somebody else's words – as if that is not (any longer) you? As if a gap between your own self now and the self invested in the writing is so deep you no longer see any relation. I do not know,

these are speculations; I suppose each of us experiences writing differently. Yet, no matter whether it is writing in your mother tongue or not, the encounter is always traumatic.

My moving to the UK came as liberation and a challenge. A liberation as I was able to re-frame my relation to language and the social structures around me, to ditch my previous selves and invent new ones. Yet, it was also a challenge as the language, at least at the beginning until I created my own 'grammar', was foreign to me. Was this a form of becoming or a reinvention? Perhaps it was, as it allowed me to create, invent and reframe my relations with the self and the social structures. Though, perhaps, writing this thesis and reflecting upon the environment and forms of existence I might have gone through, in fact gave me the perspective that enabled me to reflect on the self and acknowledged the changes. Ultimately, this is the banality of language, it as such serves no purpose, is taken for granted, and commonly thought of as a communication device; yet when employed as a means of self-reflection or when it is an embodiment of one's own self, then it becomes probably the most traumatic expression and testimony of one's self in a particular moment in time.

Equally important to the experience of language was the experience I had of my fieldwork. Meeting many fascinating people involved in the situation in Guantánamo definitively opened my eyes and made me understand and appreciate what I have never even thought of paying any attention to or giving any importance. I started the project with the intention to look only at the Guantánamo detainees – those orange spots I saw through binoculars while standing on the hills around the Guantánamo Base. After spending some time in the US on the fieldwork and rather unexpectedly had an opportunity to speak to a number of former guards and Military Commissions personnel in Guantánamo I realised that there is a different side to Guantánamo; yet rather surprisingly perhaps the experiences of these groups are not much different from the experiences of the detainees. Was that a becoming? No. But what has changed and had an influence on me were the interviews I did with these individuals; the struggles I had to turn into the role of the interviewer and be able to fully accept that those who agreed to give an interview were here to answer my questions. Again, banal, yet at first a challenge that required me to work on a presentation of the self, the role I was to play and the commitments and responsibilities that come with the role. It became easier; but it helped

if I was treated as an interviewer worthy of an answer, than as a nobody coming in with some questions. A banal reflection? Perhaps. But on a second thought, perhaps I felt so uncomfortable because I did not want my interviewees to tell me of their work or the work of the organisation as such, pure facts I could find on the internet etc. I wanted them to reflect on what they did, how they fitted into the situation in Guantánamo, how what they saw changed or impacted them. I wanted part of their personal story, to learn about them, to see – if at all – they had changed or struggled with their own position throughout the situation. Did I get this information? In a few interviews – no doubt – I did. Surprisingly perhaps, those were the interviews with the Military Commissions personnel, a couple of civil lawyers and on one occasion with a director of one of the smaller human rights organisations involved with Guantánamo detainees. In fact that account was particularly striking as the interviewer literally confronted me with the entire reasoning of how and why they took certain decisions, what they struggled with, how they saw their situation now and how it changed their life. Nevertheless, as a result of their involvement in Guantánamo that person had an FBI van parked on their street, watching their moves. Was my experience of the interviews a becoming? No, but it made me reflect on the purpose of the fieldwork and the importance of learning how to adopt the role of the interviewer.

However, there was something that happened at my fieldwork that completely unexpectedly but fundamentally changed the way I looked at the thesis and the issues or problems I picked up for discussion. Those issues reflected my interest and my struggles. What is more, this random coincidence sent me on a trip into my past and explained how certain decisions I took in my life were not coincidences, but responses to what I at first thought were completely insignificant details from my childhood. During my fieldwork trips I was staying with a psychoanalyst. One day Jude asked ‘a simple question’ – ‘why are you interested in what you do.’ A question I dreaded as I felt I needed a convincing answer – my interest in philosophy and theoretical questions of existence in the world on the one hand and my memory of observing the Base on the other hand were not convincing enough for me. I mentioned these two aspects, but ultimately admitted that both reasons do not satisfy me. ‘There must be something else.’ I said to her. Her reply was most interesting, yet when I think of it, so very banal. She said: ‘if you were in my office, I would ask you what your earliest political memory is.’ I was a bit surprised by the questions, and of course asked for an explanation of what she meant by ‘political’.

‘Whatever you think is political’, she replied. So I thought for a bit and said: ‘Well, there was a war and I remember independence. I guess those were significant memories. But I am not sure I was passionate about them. I was scared at some point, for sure, but I was 7, too young to be aware of the significance.’ And then I thought again, and it just came crashing down on me. ‘You know what Jude, I think I know what was my first real political memory; I was 11 and we had Parliamentary elections. I remember watching all the debates and being frustrated that I couldn’t vote until the age of 18. I thought this was absolutely preposterous. I think I even said to my mum, that it feels as if I don’t exist. And what is more, my parents never told me who they voted for; I was allowed to join them when they went to cast their vote, but that was it. The conversation stopped before we even started it. It felt as if politically I don’t exist for them either. I remember being very frustrated. It was then that I decided which political party I would support, and I counted down the days until I was old enough to become a member. My position hasn’t changed since’. I was saying everything I could remember about how I felt about not being able to participate at the elections, the frustration with my parents etc. This was also the time I decided to study politics. I said to Jude: ‘in the mid-nineties politics was interesting in Slovenia and one day I wanted to take part in politics – especially foreign affairs/international relations – more than anything; so that is why I decided to study IR. Although by the time I actually went to university, politics has changed, it became boring. I still wanted to do IR more than anything else, but realised that actual politics is not for me’. This conversation went on for the entire day, Jude cancelled her appointments; I didn’t go to the library; we first sat at home and then drove to the beach at Coney Island and just talked. Through a conversation I encountered parts of myself I forgot ever existed, acknowledged the importance of events I never thought were relevant. I experienced the same feelings of anger, joy, frustration, hopelessness, excitement I did when those events happened. All in all it was an amazing experience. It felt as if I had literally re-invented myself. I remember speaking to my parents a few days later – after the Parliamentary elections, what a ‘coincidence’ – and the whole story of not telling me who they voted for, although I knew anyway, was repeated. This time I could not care less; it was for the first time that I did not feel disappointed, or that I was not trust-worthy; none of the feelings I used to experience every four years – after each election – came over me at the time. I was happy. Was this a becoming? Yes, undoubtedly it was. And what is more, the conversation turned my attention to perhaps the most significant aspect of the detainees’ becoming, self-nomination and alternative



existence, the aspect I probably would otherwise ignore, which is writing and how existence is manifested in the writing. Reflecting on this strange connection between personal experiences and my work, and acknowledging how language is a reflection of the ‘us’ and ‘we’ in language, how then can we still maintain the distinction between the realms of academic or scientific writing and personal experience?

In the past eight years, and in particular in the last four, much has changed. I could write a similar account of becoming to that of the detainees if I looked at those changes in more detail, but this thesis is not the place where one should do that; such analysis belongs to the couch. I realise though that the reflections above give away part of my becoming and thus belong to the couch too. However, the coincidences that occurred during the fieldwork – including the random nature of how I actually decided to leave for fieldwork – changed the thesis drastically. Despite that not many interviews feature in the text itself I cannot imagine what the thesis would be like without them. Not only that I cannot see much resemblance between the ideas at the start of my PhD and now – that is rather common; I also see very little resemblance between the notion of my own ‘self’ back then and now. Was Guantánamo my epiphany? Thus, much has changed for me – but, I wonder, what in fact has changed for many of those we were ‘staring at’ eight or nine years ago.

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## Appendix

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