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Is Psychoanalysis Universal? Politics, Desire and Law in Colonial Contexts.

Juliet B Rogers

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The presumption of a universal form of desire is an important starting point for the analyst of any patient who arrives on the couch in the psychoanalytic clinic. The psychoanalyst can only offer certain parameters, with all their limitations. The patient, if the analyst allows for an interrogation of their own forms of resistance, however, can speak back to any frame of desire that the analyst presumes or proposes. And the analyst – if Jacques Lacan's thoughts on resistance are taken seriously (Lacan 2007, Rogers 2016) - must listen, attend, learn and adapt. But when the desires of subjects are extended into the political realm; when the wants and needs of every subject are presumed to articulate with a psychoanalytic notion of universal desire, then something is lost. That something might be called the desire of the other, or it might not be called desire at all.

The desire of the other is not easily seen in the wake of European Enlightenment that has engulfed the imagination of psychoanalytic and political theorists and practitioners alike. It is not easily seen and it is not easily conversed with when epistemological work presumes a trajectory of desire and then applies it. In this application there is little space for a radically other performance of politics as action or imagination to appear. The subject who is subsumed into this imagination - the subject Gayatri Spivak describes as 'the Other of Europe' - has little opportunity to do more than 'utter' (1996)[1] under the weight of its imagined subjectivity. As Spivak says:

> in the constitution of that Other of Europe, great care was taken to obliterate the textual ingredients with which such a subject could cathect, could occupy (invest?) its itinerary – not only by ideological and scientific production, but also by the institution of the law. (1999:266)

Psychoanalysis is as guilty of exercising such a form of 'great care' as many of the occupations of French intellectuals that Spivak has criticised for doing so. Psychoanalysis, with its attention to the many forms of the unconscious, can appear

[1] Spivak makes the distinction between utterance and speech, the former being a kind of inaudible babble, and the other being a kind of speech that can be recognized in the political space (1996).

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otherwise than guilty of this. It can appear more open, generous and curious about the many forms that desire can take. In its later forms of attention to a politically constituted 'symbolic order' under the guidance of Lacan, it can also appear more attentive to the particularities of desires informed by a politics of the time (2007). I argue here, however, that attention is already constituted by an imagination of a subject who wants, who needs, who desires objects, things, rights, in a mode which cannot *not* start from a point of origin, and a particular political form of origin which then precludes the recognition – in both the clinic and in political analysis[2] - of *other* forms of desire, 'with which such a subject could cathect, could occupy (invest?) its itinerary'. When practices such as political psychoanalysis presume a particular form of desire what is at stake in this constitution of desire is the political subject or the Other of Europe who cannot 'speak', in Spivak's terms. What is lost might be called radical desire; it might be an itinerary which is cathected or invested otherwise, and, as such it might not be recognisable in psychoanalysis or in contemporary political psychology at all.

The non-recognition of the Other of Europe, in her many forms, is a consistent political problem - documented often and insistently by critical race and postcolonial analysts such as Spivak, but also Sanjay Seth, Leila Gandhi, Chandra Talpade Mohanty, Aileen Moreton-Robinson, Elizabeth Povinelli, Ashis Nandy, Christine Black and Homi Bhabha. Such non-recognition, however, when repostulated in political psychoanalysis has another effect. The trajectory of the symptoms of political practice – including desires for law, justice, particular election outcomes, rights, socio-economic configurations, or even for the formation of political structures themselves (democracy being only one) – presume a form of desire that refers to, and endures in its constitution. As Spivak notes in her critique of power and desire as universal:

> so is "desire" misleading because of its paleonomic burden of an originary phenomenal passion –from philosophical intentionality on the one hand to psychoanalytic definitive lack on the other. (Spivak, 1999:107)

The psychoanalytic definitive lack she speaks of refers to the Lacanian configuration of desire as always attempting to recover, to master, to instantiate an identity that is

[2] This is Spivak's particular concern with psychoanalytic theoretical applications that recruit Freud's gender theories (1999:284)

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supposedly interminably lost as soon as language acts upon the subject. This lack is inaugrated through the subjects relation to what it cannot have, or, in Spivak's terms, the 'originary phenomenal passion' refers to the oedipal scene, which is presumed to be the origin of desire for all. This configuration of desire renders all subjects desiring of overcoming that lack, but it is a particular form of desire and a particular quality of lack. The presumption of this quality – the presumption about what and how people desire - I argue here, must be accountable to the politico-historical configurations which have produced it.

Politico-historical configurations, by definition, are not universal. That is, contra Zizek (2006), I argue that not all the world is a symptom, but that any psycho-analysis of a political symptom, of a political subject, or of the desires examined through psychoanalysis as they emerge in a political arena, assume a particular formation of desire. And that such an analysis operates within the parameters and employ the understandings of the oedipal scene, or, simply of a subjectivity split by language, including the language of law. As Lacan says 'language begins along with law' (2006: 225). While this split subjectivity may *appear* to be universal – and is convincingly employed as such by psychoanalytic and political theorists, and often philosophers (Butler 1997, Epstein 2013, Zevnik 2016, Zizek 2006) this splitting refers specifically to an oedipal lineage, as a particular instantiated of Oedipal Law, and, as I argue positive law as a liberal law concerned with rights and with what once can or cannot have from the polis as much as what one can take from the father. Thus the 'originary phenomenal passion', which a psychoanalysis of the political engages, always refers back as I will explain, to a (primal) father, as a sovereign in a wrangle with his sons, a scene which itself cannot *not* be understood without its resonances with the French Revolution.

In the manner of the French Revolution the wrangle between father and sons can readily be understood as first the killing of the primal father, and then the re-instantiation of the relationship between the sons as law. This politico-legal configuration gives us 'guilt' as the foundational symptom of political psychoanalysis, displayed as law. Law, doctrine, legislation, judgments and legal rhetoric speaks to the life of the polis and displays the symptomology of subjects for whom, in Douzinas terms, 'every desire is a potential right' (2002:8). William

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MacNeil has articulated precisely this entwining of rights and desire as what he calls the *psychomachia* of the liberal subject.

> the *psychic conflict* which industrialisation (and its fellow travellers, Enlightenment, Romanticism, modernity, etc.) installs in the liberal subject as both the master and slave of the law, the possessor and the possession of rights, now redefined by Capital as the fetish of property and contract rights. (2012:90 my emphasis)

Simply, I suggest that the psychoanalyst – including politico-psychoanalytic theorists, respond to this *psychomachia* as the question of rights *qua* desire. Or, as I will explain, once the king was beheaded, once the 'right' of the king was removed, then each subject had to wonder what it could have, whether it could take from another and if so how much? Could it take property? Life? And how were these constituted as such? This is the story of liberal law that would exemplify the trajectory from Freud's 'Primal Horde' (2001a) to contemporary political organisation. Understanding that political organisation - understanding the wants and needs of the subjects of such a polis through psychoanalysis - necessarily means presuming that *all* subjects are constituted in their desires, through the guilts of the primal horde. Or, in short, that psychoanalysis speaks to, and can be applied to all political societies, as opposed to my contention here: that psychoanalysis emerged in the wake of particular political symptoms, and can therefore only be applied to societies whose trajectory emerges with these symptoms and which exhibits a particular form of a political unconscious. In contenting this I do not only mean to critique a particular form of *the* political – as some theorists would add as critiques of psychoanalysis and politics (Craps 2013, Fassin 2007, Derrida 1998), but to step back a little further and critique a particular *idea of an unconscious* that can only be understood in relation to the subject of rights, the subject who is presumed to desire in Douzinas terms above (2002:8). For psychoanalysts and psychoanalytic theorists we cannot pretend that that very understanding of desire – and particularly neurotic desire, as a form of the subject's experience - is not understood, analysed and then represented by a psychoanalysis that itself was a product of an Enlightenment history; or, as I will argue, was a product of the idea of a subject wrangling with rights and the question of what it can have, since the French Revolution. But, of course, not everyone is this.

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In this paper I take the nation known as "Australia" as my case study precisely because Australia is one place where not everyone *feels* an affinity with liberal law or the language and political promise of rights. Australia has a particularly heritage; one that certainly emerged in the wake of the Enlightenment and the formation of rights doctrine in the form of statute – in the French *Declaration of the Rights of Man and of the Citizen* (1789) and the *Bill of Rights in the United States* (1789) – and one which is experienced radically differently by many of the people who inhabit its lands, its nations (Watson 2013). It is this heritage in Australia that allows us to think psychoanalytically, of the practices of *some of* its subjects, the practices of its policies – both past and present - and, specifically its practices of law and policy as symptoms of its own foundational violence. Positive Australian law – as it is documented in statute and in judgements - has a very recent history and a ready (and also symptomatic) mapping from the time of invasion by the British in 1788. While it has some resemblance to other colonial landscapes – South Africa, America particularly – it departed from these in significant ways (Wolfe 2014). These departures also offer us points of comparison and analysis of the desires and choices of the last 240 + years. The violent history of these years, the legal and moral contortions around this violence, together with the subsequent incessant references to the founding moment of violence, in policy and public dialogue, betray a particular wrangling with the guilts of perpetration and the desires for redemption in non-indigenous subjects. The particularities of 'australia' thus allow an access to symptomology that might be denied in other countries.

To say this access is denied in other countries is a tentative assertion. I am not sure. I am also not sure if psychoanalytic understandings of desire might not in fact be universal. What I begin with here is a way of understanding the emergence of psychoanalysis in relation to a particular form of western politics – rights, democracy, recognition (Lefort 1988) with a particular history that I suggest might have produced psychoanalysis. I then show how this form, as it emerged since the French Revolution, offered an uncertainty, an anxiety, a question to which psychoanalysis could develop in relation and then in response. Perhaps this anxiety is the case for all subjects who endure and bind themselves to desire *qua* rights. But what if this is not the case? What if political psychoanalysis is missing or eliding its own violences in presuming universality? What might be, in Sanjay Seth's terms, 'domesticated'

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(2001:75) through the 'great care' that is a psycho-analysis of political organisations, arenas and subjects? What might be left out? And what then are political psychoanalysts left with? My contention in this work is to propose methodological limits to the use of politico-psychoanalysis; that those who use it confine its use to locations where they can trace the trajectory of desires, historically and politically, and that we do not regard the whole world as a symptom, but perhaps understand that law, policy and particular attentions to rights, as well as a particular depiction of history, might well be.

Part I – Is Right in the West the King's right?

> *it is always the limits of this sovereign power [of the monarch] that are put into question*, its prerogatives that are challenged. In other words, I believe that the King remains the central personage in the whole legal edifice of the West. (Foucault 1980: 94 my emphasis)

In this section I will ground my concerns with the universalising of psychoanalysis and its casual employment of state symptoms via a brief politico-historical account of the move of the subject, at least in 'the [Foucauldian] West', to that of *being subject* to the king, to that of a rights bearing subject. Then, using MacNeil and following Epstein (2013), I outline how we can understand this subject as less a rationalist, decision making subject than as one bearing unconscious desires to which psychoanalysis speaks to and of; and finally, I explain how such a subject is in a mirroring relation with not only political desire, but with the production of psychoanalysis.

Here then is the largely uncontested, politico-historical tour through the path of subject formation from Thomas Hobbes (1968) to Jean-Jacques Rousseau to understand a simple progression to the emergence of the anxieties that psychoanalysis would directly address. This emergence evolves from the initial reliance on the Leviathan as that which can decide, arbitrarily. This form of decision – to arbitrarily detain, torture, or kill - is supposedly preferable to the state of nature, or what Freud will describe later, obviously gesturing to Hobbes, as the wolfish qualities of man. In Freud's well known rendition of man's natural qualities:

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> men are not gentle creatures who want to be loved, and who at the most can defend themselves if they are attacked; they are, on the contrary, creatures among whose instinctual endowments is to be reckoned a powerful share of aggressiveness. As a result, their neighbour is for them not only a potential helper or sexual object, but also someone who tempts them to satisfy their aggressiveness on him, to exploit his capacity for work without compensation, to use him sexually without his consent, to seize his possessions, to humiliate him, to cause him pain, to torture and to kill him. *Homo homini lupus. [man is a wolf to man]* (2001:11)

In the face of the fears of each other man turns to the king and gives up individual sovereignty in the hope of protection from other 'wolfish' men. In Carl Schmitt's account of Hobbes:

> The covenant was conceived in an entirely individualistic manner; all ties and groupings are dissolved; fear brought atomized individuals together a spark of reason flashed, and a consensus about security emerged. (1996: 97).

Fear of each other was thus transferred to a fear of the king. In one sense we can say this is an easy fear. It does not promote the psychic conflict, or *psychmachia* that MacNeil speaks of (2012:90). Fear of the king is fear of one who could and would torture, kill, arbitrarily take and punish, certainly. In psychoanalytic terms this surrender of all authority to the king - a king who cannot be reckoned or negotiated with - is a form of relief. There is only one perpetrator and while fear may insist, guilt is only externally determined. Guilt does not appear as an anxiety about *doing wrong,* rather as a fear of being *caught* being deemed guilty of doing something *illegal*.

Before the king there is little a subject can do not to be subject to arbitrary tax, detainment, torture and sometimes death. As Foucault notes 'Right in the West is the King's right' (1980: 94). This form of right is resonant with that of the right of the primal father in the primal horde that Freud describes as the founding myth of law (2001:122-28). The primal father, like the king in pre-revolutionary France, can kill, take, punish, or utilise others in any way he chooses. And while Freud would suggest that this is a right of deprivation for the primal father's offspring – specifically the brothers - it also relieves the brothers *qua* subjects, of the anxieties that will plague them later. These are anxieties which result from the installation of the guilt over the

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murder of the primal father and the possibilities, as what are in fact their desires - codified as 'rights' - that must then be negotiated amongst them.

The journey from king's subject, as a kind of Hobbesian subject of (brutal and wolfish) need, to the subject of rights - who must then, in Epstein's terms, wrangle with language (2013:290)[3] - is mapped thoughtfully in MacNeil's discussion of Mary Shelley's *Frankenstein* as a story of a monstrous body framed in language *qua* desire as rights. It is the body of the monster, for MacNeil, which emblematises the construction, production and performance of the subject in the post French Revolution terrors, including the terrors of anxiety installed as a psychic conflict over being both a master of and subject to law (2012: 90). It is the monster that indicates precisely how the subject emerges out of its very body-ness, as a kind of animalism that resonates, as Epstein has described (2013: 303), as both the Kleinien infant and the Hobbesian protagonist in a 'state of nature', into the world of rights as a world of (liberal) law. In MacNeil's argument the moment in the narrative where the monster enters into the aristocratic house of the de Lacey's - where it first encounters its need for food, then love, then language as the law - is a kind of mirroring of the epoch of nature-to-rights that was 18th century Europe. As MacNeil says of this itinerary:

> [this] virtually Lacanian story of subject formation – from need to demand to desire – resonates not just psychoanalytically but historically, commenting ironically not just upon Enlightenment myth of the 'noble savage' … but the way in which the ancient regime, the society of status, gives rise, through its philosophes, academies and salon culture to its very destroyer, the liberal subject of rights, who will replace the status society with the social contract. (2012: 92)

What he is depicting here, as the de Lacey's house, is the regime of the king – with its appendages of court, salon culture and status – destroyed through the emergence of the speaking subject as an atom of The People. The monster, as Hobbes natural man, emerges in the journey through the house, as the speaking subject, with its own

[3] Epstein elaborates the overlapping coordinates we are working with here in a condensed fashion:

> At the individual level, the Symbolic is the Other without which the self cannot become a self in the first place—an autonomous, functional member of the polity. It is the psychic instance that "hooks" the individual to the collective. It regulates the individual's relationship to language and the polity. The function that the Leviathan performs at the individual level is akin to that of Lacan's Other. (2013:290)

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desires and confusions over what it can have and what it cannot. What it can touch, own, and destroy in the newly created jurisdiction of The People, or simply, what is protected and enabled by rights. These confusions are the monster's confusions, who, explained by MacNeil, kills as a method of performance of its own autonomy; autonomy being the newly minted desirable form of subjectivity for enlightenment man.

Autonomy, or in Rousseau's terms being 'the only judge of the best means to preserve [the self]' or being the subject who 'becomes his own master' (1968: 50) cannot help but be a recipe for anxiety, in psychoanalytic terms. The being in communion with other subjects, at the same time as being one's own master, demands a straddling of what we can think of as victimisation and perpetration. Being one's own master requires being a master over something, even if it is only one's own body. But the desires of that body – for food, for company, for sex, for love – require a wrangling with what can be taken from others. And this is not only a question of action, of choice – although it is also that – but it is a *recognition* of that action as perpetration, or not; in the terms of liberal law, as harm, or not. In this sense it becomes squarely a concern with the recognition of the political world *as such* – as what constitutes property and whose property it is. It is this recognition that refers crucially to a *location* for political recognition *of the subject of that world*.

In Schmitt's terms this location is inhabited by the 'sovereign-representative-person' (1996:97), whose decisions are arbitrary, exceptional and crucially unknowable (1985:4). In Lacan's terms this is the location populated by what he comes to call the (big O) Other whose location, knowledge and wishes are never completely able to be ascertained.[4] The Other is both 'whimsical' and yet 'omnipotent', a terrifying combination, but one which determines how 'desire begins to take shape' (2006:689). What is thus created in the moment of acquisition of language and rights is not simply a body who is protected and prosecuted by The Rule of Law, but a designation of the importance and impossibility of *recognition* which will supposedly account for the now uncertain representation of what a subject should be or do before the newly emerged possibility of recognition as a political subject.

[4] The concept of the Other is articulated throughout Lacan's work, most helpfully for out purposes in *The Other side of Psychoanalysis,* Chapter One (2007).

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MacNeil's use of Shelley gives us a way of understanding the subject as a subject mired in the confusions of rights and the performance of itself as recognisable. But his account also gestures to the birth of a psychoanalysis which is devoted, in one reading, to assisting the subject with the management of its own desire to kill that which it loves; to own – and thus contain - that which it would see thrive; and in the slogan-like manner of the (Rousseauian) social contract - to allow control over itself in order to experience freedom (1968:50). How are these to be accommodated in a body, let alone a political body? Certainly this is the question to which Rousseau would respond 'the social contract provides the solution' (1968: 60) in a political form, but a psychological form requires a wrangling with the losses and the gains in all their griefs and potentialities. As MacNeil says comments on the dramatic end of the novel:

> [it] gestures towards a psychoanalysis of liberalism; that is, its subject – the subject of rights – is, above all, the split subject, the divided self conflicted over, and ultimately undone by the binaries of individualism and communitarianism, autonomy and connection, the 'me' and the 'not me' of the specular imago. (2012: 95)

To be split in the binaries of individualism and communitarianism is precisely Rousseau's notion of alienation (1968:54,69,74). The social contract – in the mode in which the freedom to contract is taken up in democracy as a kind of fantasy of autonomy - is also the inauguration of anxiety, in psychoanalytic terms. To 'alienate' 'power', 'goods', 'liberty', in Rousseau's terms (1968:74), in the contract to which one is bound and recognized as a subject with desires *qua* rights, is precisely what it means to be split, divided, conflicted, to be the subject of/to rights. Rousseau, and in part Hobbes, see the alienation of the subject's desire as a 'surrender' in Rousseau's terms, to the sovereign's desire. It is an acceptance of the king-like status of the desire of the sovereign, even if only for a moment. The split as alienation is also one way to summarise Epstein's careful argument against the rationalist decision making actor-subject of political science, (2013) and to point to the precise symptom that would emerge from 'the speaking subject' (of rights), anxiety.[5]

[5] Renata Salecl has elaborated these overlapping concepts on several different levels (1994, 2004, 2010)

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The oscillating work of democracy - as a text of recognition of the desire/s of the polis in The People's policies, law's and covenants - ensures that it is also, in one reading, a belief that Foucault was right and we have not cut off the king's head (1980). The king remains as a body to be made, remade[6] and also deferred to, and not only in the mode of the rationalist subject, but as a desiring subject for whom much of our desire is unconscious. This is precisely what it means to say, as Lacan does, that 'god is unconscious' (1992:174),[7] that there is an orientation – albeit an unconscious one – to a god, or in Lacan's terms, to the Other.[8] We can consider two parallel lines of thought at once here, and it is important to bear them in mind together. In one trajectory, we move toward a more comfortable analysis of *The political* in a post-Rousseau configuration, as the reflection of the desire of a *particular* subject – the western subject of reason. In this analysis there are simply those whose desires are recognized and those for whom their particular desires are unreognisable. This is postcolonial analysis - that is done so comprehensively by many, such as Gandhi (1998), Spivak (1999), Black (2011), Povinelli (2002), amongst others. But it is also crucial to complement this form of critique with a consideration of the understanding of desire *qua* desire itself, as a kind of circular product; caught in the loop of desire as rights, as a product of the split of the subject before the sovereign, and thus to understand the form of the sovereign-relation as one recognized and framed in the forms of psychoanalysis. That is, I will move here through a concern with *inclusion* – as problem of *representation* of multiple desires - to a concern with a radical impossibility of recognizing desire *at all,* or specifically recognizing that there might not simply be a plurality of 'desires' but that desire itself might be constituted through a politico-psychoanalytic idea of what happens to the subject of rights, and then to understanding how this is fed back into ideas of political subjectivity and its *desires.*

Part II – the monstrous body of Australian (primal) law

What we must remember in the use of psychoanalysis as a tool to analyse states or political imaginaries, is that its capacity to analyse symptoms relies on those symptoms emanating from the trajectory of desire noted above. That is, those

[6] Kantorowitz (1957) and Santner (2011).
[7] Specifically he is gesturing back to his earlier work in *Seminar VII* on Freud's discussion of the killing of Moses. (Lacan 1992: 174)
[8] This is what Epstein might call an orientation to the desire of the political. (2013:305).

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symptoms rely on an acceptance of the split in the subject which is only inaugurated via an oedipal trajectory; or, symptoms emerge from an oedipal origin. In groups this is no less true, although Freud makes a helpful distinction between the primal scene of the subject, which is oedipal, from the primal horde as the mythical foundation of law. Both scenes work to return us to the scene of castration and the accompanying guilts of the desire to kill the primal father. As Lacan says of *Totem and Taboo* 'with its obscene, ferocious figure of the primordial father, who is inexhaustibly redeemed in the eternal blinding of Oedipus'. (2006:432). Remembering that to a child their father (figure) *is* the primal father because for them they only want one woman, precisely the one that the father is believed to possess.[9]

In the event that was the colonisation of Australia the resonance of the myth of the primal horde is startlingly easy to trace. In Freud's account of the myth there exists a primal father who owns all – women, property, (women as property) – and it is he who can decide who lives and who dies. The sons of this father refuse this situation and kill the father; law is the result, precisely because the sons now require recognition, and their anxiety demands coordinates for achieving that recognition or in Lacan's terms that 'the Other be bridled by law' (2006:689). The sons who kill the primal father – also so resonant with the repeated trauma of the Great Terror of revolutionary France[10] - then organise themselves around the guilt of that original violence or the question of "how much can I have *now*?" It is this question which displays guilt in its response to the act of taking too much as well as the sensation of desiring too much. This form of guilt and the confusions of acquisition are again reiterated with Freud's account of the formation of 'god' as that which can forgive the killing of the Moses. This is of course why Lacan will say 'god is unconscious' because the installation of the guilt of the murder of the father, as well as the murder of Moses, renders the subject oriented, always, to the forgiveness of the Other. And forgiveness is a crucial dynamic to hold in play here.

[9] In later Freud and certainly in Lacan the father 'figure' is better understood as dispersed into locations, and the father themselves represents something other than primordial, but this does not detract from the position of the father-figure as the 'location' in Lacan's terms, of knowledge and therefore as the arbiter of judgment. It is precisely this role which emerges as the Other in Lacan, and why language is organized through, as Lacan says 'the names of the father'. (See Zevnik's discussion of this 2016: 164-73). However, the key point is the capacity for judgment tied to desirability that is so clearly articulated in essays such as Freud's 'child is being beaten' (1919), then even in later works on 'female sexuality' (2001b, 1950).

[10] See a critique of this in Flower-MacCannell (1991)

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Forgiveness here being the experience of knowing that who one is, and what one wants is desirable to the Other, or, in political form, is recognisable in the gaze of the political order. This is a form of forgiveness, resonant with the seemingly more benign formula of Hannah Arendt's when she says one acts on the assumption that one will be forgiven (1998: 237-8). It is the idea of identity as perpetration.[11] Remembering that guilt is also a relation of judgment (and thus recognition) in which the Other is imagined to deem the subject 'guilty' (this is precisely why the language of law infuses the language of affect) where the subject/sons do not know whether what they did was right, and their actions thus become organised around trying to re-deem themselves as good communal citizens. But this redemption takes place in the space of recognition - political recognition - in which the sovereign-representative-person *qua* Other, can supposedly recognise or re-deem the brothers as good citizens, or in Arendt's idiom, as forgiven.

In Lacan's terms the subject is endlessly asking "*Che vuoi?"* ["What does the Other want from me?"] (2006:690). In Australia we can clearly see how this question becomes not only a question to the Other, but in parallel, as a question to those that had to be killed upon invasion in order for a *particular* ordering of law to be instated, and ultimately a demand for forgiveness. In the context of Australia the population of the particular 'unconscious' of non-indigenous subjects is readily constituted by those who might accuse the subject of wanting too much from the other and from the land - of killing too much of destroying too much - and hence producing particular symptoms to overcome these accusations in policy and in law. This is specifically because of Australia's recent history as an internationally sanctioned nation. The nation called "Australia" is a recent invention which enjoys legitimacy as a nation state because of the "success" of invasion and then of genocide by the British, commencing in 1788, and the subsequent nullification of a history of that 'invasion' as a history of 'settlement'.[12] Few non-Indigenous people, both domestic and

[11] see also Berghoffen (2006:51)

[12] There is substantial work on the narration of this history. For the most widely cited see Reynolds (1972), and also a close reading of the documents of the explorers of that time by Pasco (2014), but it is worth noting that the use of terms such as 'invasion', 'massacre' or 'genocide' are contested and became the focus of what is called in Australia's political history, the 'history wars', which were encouraged, to some extent, under the conservative leadership of Prime Minister John Howard in the later 1990s.

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international, doubt any longer the violence of colonisation – even if they doubt their responsibility for that act, or the need to use the term 'invasion'.[13] What was called '*terra nullius*' [empty land] that supposedly allowed the British to settle rather than invade, was forcefully denounced by the High Court of Australia in what is known as the *Mabo(2)* case of 1992; a case which received ferocious public attention because of its evocation of both the question of 'ownership' of land, and of genocide (Rush 1997, Tehan 2003).

In *Mabo(2)* and responses, we see the symptomology of non-indigenous Australia writ large; a symptomology that is then reiterated in policy, statute and public debates which refer interminably back to the scene of invasion, massacres and the *question* of what is fiction. I focus here on the manner in which the *Mabo*(2) case highlighted, and re-presented the symptoms of originary violence, in judgment, policy and in the popular reinterpretations of both, and I then consider how this originary violence maps so readily onto the myth of the primal horde. The *Mabo* case, as read by numerous legal scholars (I'll rely here particularly on Rush 1997, 2005, Tehan 2003, Dorsett and McVeigh 2002, 2012) brought to non-indigenous consciousness, what is described in Brennan J's judgement in *Mabo(2)* as 'the fiction of terra nullius' and went some way to populating what has been called 'the great silence' (Stanner 1968) surrounding the violence of invasion and subsequent practices of genocide. The doctrine of terra nullius at the time of invasion, allowed for colonialists to deem the land colonisable. The land, however, was not empty. It consisted of over 250 separate Indigenous nations and language groups, who employed their own systems of law and life (Pascoe 2014, Watson 2013). In the 100 years that followed invasion the number of Indigenous inhabitants would be reduced to approximately one third, their lands removed and their language and law decimated (Watson 2013, Reynolds 1972). This, in the *Bringing Them Home Report* (1997), was carefully analysed under the doctrines of international law, and deemed to be genocide.[14] Genocide was thus the founding doctrine of the nation called "Australia" and the subsequent legal terrain was and is haunted by this reality.

[13] See Cook (2016).
[14] Moses (2008, 2011); Watson (2014),

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Indeed, all legal practice and policy in Australia exists under the spectre of this knowledge because the instantiation of British law in Australia was so clearly founded on the illegal violences of the past. In Rush's analysis of the Mabo judgment's conundrum:

> For the majority of the High Court, what remains unassimilable in and unassimilable to the body of the common law was the founding moment of settlement. (2005: 759)

The unassimilable quality of the 'founding moment of settlement' is then reiterated in confusions of law that ensue in Australia throughout the 1900s. Efforts to *assimilate* the knowledge of the past with the authority if the present (and the future) appear in, what we might call lateral symptomology in relation to Australian public policy. 'Assimilation' becomes clear public policy in the latter parts of the century (Reynolds 1972); policy which can be summarised as the efforts to turn black bodies into white bodies; to effect the psychic changes that Fanon so voraciously criticised (1967); to effectively erase any of the 'itinerary' that Spivak notes (1999:266). But assimilating black bodies into the body of "Australia" is also a legal *effect* which displays the confusions of law's authority. The official 'Assimilation' policies, and the difficulties of assimilating 'the founding moment of settlement' are intensively interrelated in Australia's political symptomology.

One register through which we can understand this symptomology is to consider the resonance of policy and legal practice with the myth of the Freudian primal horde insofar as the myth itself is a story of assimilating guilt into political and legal practice. This myth is a story of how a society tries to *come back, recover from or forgives itself* for the perpetrations of the past in order to create what is supposedly an orderly or indeed a *just* society. And this is (non-indigenous) Australia's question: how to be a "good" nation after the violences of the past? (Muldoon 2017). The killing of the primal father is precisely what is unassimilable in the psyche of the group, and an industry is initiated which then organises the practices of the group around new prohibitions and regulations which ensure that the subject/sons know how to behave. But the knowledge of the killing is never assuaged. Indeed, if it was, there would be no need for law.

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The guilt which emanates from the killing of the primal father is readily embodied in the guilt of the 'invasion' of "Australia" and it is then articulated through subsequent policies and practices of genocide, including policies of 'Assimilation'. This is not only in its first perpetration as a supposed 'settlement' upon empty land, but then in re-presentation of the land as "Australia", and the jurisdiction of "Australian law" upon the land as if there was *no before*.[15] What characterises the fundamental symptom of the work of the primal horde – the killing – is denial, 'fiction', 'silence', as if there never was a body, as if there never was a father in fact; a kind of naturalising of the existence of life without the time before its existence. As with the guilt which is repressed, but inevitably returns, the knowledge of the killing – in Australia the knowledge of the genocide – organises politico-legal life and becomes the very symptomology of/as politics.

Resurrection Policy

In Australia the form that guilt *qua* political symptomology takes is further evident in policies which demand the resurrection of the bodies of Indigenous people as biological entities. After the invasion of 1788 the subsequent massacres and then 19th and 20th century policies of Australian governments from the taking of (whiter) children from Indigenous parents in the interests of salvation (Barta 2008), through to the current collection of policies known as 'Close the Gap' (as a means to increase life expectancy of Indigenous people within the vicinity of the life expectancy of Australia's non-indigenous population), can be understood as attempts at *resurrection* of the one who can forgive; the primal father; specifically as a resurrection of the body *qua* biology that can forgive.[16] This production of the body who can forgive is a response to guilt, certainly, but one with a nuanced texture. Resurrection policy particularly evidences this because the rhetoric around resurrection of "the indigenous race" is not so much 'biopolitical' in the Foucauldian sense (although it is certainly that – see Harris 2016, Foucault 2007) as it is simply biological. It is the body - the corpus of Indigenous people - that is required (and not their laws or/as political life). That is, the policies have historically and contemporarily attempted the destruction of the laws of Indigenous Peoples, while resurrecting "the indigenous race". The will to

[15] This concept has been developed in collaboration with Mark McMillan and will be discussed in depth in forthcoming work (McMillan and Rogers 2018)
[16] Rogers and Ghumkhor (2014) and Sheshadri-Crooks (2000)

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resurrect is also inflamed by human rights rhetoric on the saving of the flesh,[17] and the preservation of culture, except that culture becomes an archaeological artefact rather than political life in the form of recognition and obedience to Indigenous laws. Indeed, the erasure of Indigenous laws and the concurrent resurrection of the bodies of Indigenous people, are the most pronounced symptoms of a return of the repressed in the political symptomology of Australia, and they also offer an entry into the further problem of the universalising psychoanalysis. I'll start with the problem of the return of the repressed as the erasure of other law, or what McMillan and I refer to as the erasure of the before.

Part III - The time before

Genocide, when it is the founding moment of law, bears the quality of the prologue to the primal horde in its particular efforts at an attempt to nullify, not only life for the living, but the histories of life and the possibilities of it being inherited. That is, genocide, unlike acts of even mass killing, seeks to destroy both the future and the past. It is not simply an act of destroying life in the present. It destroys culture and allows for an understanding of the particular history before the deaths, to remain as artefact signified only through the memory industries – archaeology, history, art and indeed medical science - of the colonisers. Genocide, in this form, thus seeks to colonise history. I'll not re-iterate the full extents of the genocide in Australia here, but to say that 1788 was the beginning of a foundational and mythical belief in the settlement of a land as if there was no *before* and the practices of genocide would attempt to seal this condition.

It is not that the admittance of the 'fiction of terra nullius' in 1992 did not have an effect, particularly on memory enshrined in pedagogy. Certainly this admittance, accompanied by many arguments, as politico-anthropological comments, assisted in countering an idea of terra nullius upon invasion, and opened the space for non-indigenous people to understand that the people who lived already in Australia had and have their own cultures, laws, practices (Pascoe 2014, Watson 2013). To say that they existed as people before colonisation, however, is not to say that the before had

[17] I have developed this idea in more depth in Rogers (2013)

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substance beyond the collection of particular and stagnant imaginations; as an artefact. The *before* of non-indigenous memory insists as if there was only one day before colonisation. This collapse of time is crucial to our understanding of the aggression of theories of desire that can only be understood in its imagined pluralities before different forms of, what Rousseau calls 'the natural' family (1968:50), specifically because the eradication of *the before* points to the radically inconceivable conception of the primal father, or rather to the possibility of other myths and thus other configurations of subjectivity that do not articulate with any ideas of desire *per se*.

I want to here briefly populate this claim with one example of the psychic, political and legal industry devoted to erasing any itinerary of memory of the *before.* What we need to bring to bear on questions of guilt and the struggle with the instantiation of the primal horde over all memory, is the question of jurisdiction in Australia and arguably in all colonies that override prior practices of law and, not mutually exclusively, prior relations to land.[18] In Australia the question of jurisdiction – as the question of to what or who could law speak - was elided by the 19th century when land became tied to law (Dorsett and McVeigh 2012). At that point all bodies *on that land* became subject to the 'law of the land' (Dorsett and McVeigh 2002), in Australia that was British law. But this is, in one reading, a violent killing off of the authority of the law before as an eradication of the existence of radically other subjectivities (including those with desire invested otherwise). In the case known as *Murrell* (1836) - in which one Indigenous man, Jack Congo Murrell, killed another, Jabbingee - we see the move from the moment when Indigenous people were previously not protected by British law (and any acts of violence between them were a concern of their own legal mechanisms) to the moment that all bodies living on the land called Australia, white or black, were subjected to (we can't say protected) British law. Judge Forbes C.J comments' on this case:

> …where lands were so taken possession of, the King was bound to protect by his kingly power all parties living in it, or who came to visit it … He, the Attorney General, stood there to protect the whites from the blacks,

[18] As Tehan writes so succinctly 'Land is at the centre of the discordant and legally-endorsed relationship of dispossession that marks the landscape of settler societies.' (2003: 523). Later work by Wolfe substantiates this in multiple colonial jurisdictions (2014)

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> *and the blacks from the whites;* the colour made no difference to him (1836).

This was a foreclosure on the reality of a genocidal past, of course. In cases prior to Murrell the killing of one Indigenous person by another was not deemed 'murder', it was a concern of Indigenous peoples to manage any deaths which did not involve white people, and the deaths of Indigenous people, executed by white people, remained unpunished if not unnoticed. Murrell is a crucial shift when all "murder" comes under the jurisdiction of British law and it is at once an erasure of Indigenous subjectivities insisting from a time before, as well as the production of the body to forgive.

For Dorsett and McVeigh *'Murrell* commenced the process of erasing any legal memory of a time in which the common law's jurisdiction was anything other than complete and unified.' (2002: 296) The case erased, in this sense, the fragmented status of common law in Australia which only spoke to acts between bodies and not acts on land. I suggest, however, that the representation from Forbes CJ above also indicates that that erasure was of any itinerary of Indigenous subjectivity embodied in Indigenous laws, and, at the same time it resurrected Jabingee as now a newly minted legal subject whose death needed to be avenged through British justice.[19] This resurrection offers another resonant moment with the primal horde in which, quite obviously, the before is erased, and the figure of Jabingee hovers like the accusing father whose death must be assuaged. Guilt for the killing of many Indigenous people, with impunity, resurfaces, like the killing of the primal father and law is the answer. But not only any law, a form of law which represents the desires of its subjects as desires (for vengeance). Or, we can say, relations of life to law from the before are obliterated. Jabingee in this legal scene, is invested with, in Spivak's terms, the 'libidinal economy' of all subjects who demand 'justice' as incarceration for the taking of their lives (1999:261).[20] Once this debt is acquitted Jabingee is then – as

[19] When a subject is killed under Australian Criminal Law it is not a crime against the person, however, it is a crime against the state. In this sense it is the state that requires vengeance, but the slippage between the use of the victim and that of the state to legitimate the violences of judgment and sentencing is mapped thoughtfully by Sarat (2002).

[20] Spivak's analysis of the presumed desires of others in philosophy brings these threads together when she says:

> contemporary invocations of "libidinal economy" and desire as the determining interest, combined with the practical politics of the oppressed (under socialized capital) "speaking

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with all recipients of proper justice - the figure who forgives. Jabingee is resurrected in order to forgive British law, that *now* enacts justice in his name. Thus, in making the killing of Jabingee worthy of punishment the sons as colonialists, who have killed so viciously, are re-claiming their own innocence.

If we bring MacNeil's previous discussion of the monstrous body of the law to this idea of the resurrection of "the indigenous race", including Jabingee, we can see how the body of the law – which is also Rush's term for the body of Australian law (1997:146) – wishes to return itself whole with the return of the prosthetic. In this case the prosthetic is that of the Indigenous body. Remembering that the monstrous body of Frankenstein's monster, brought into the terrain of the speaking subject and then finding himself lacking, seeks to perform as the perfectly recognisable subject of rights – the autonomous contracting and consenting subject – by performing perfect autonomy. Death. Death being the perfect performance of identity without lack. But death offers us two modes of understanding subjectivity (if nothing else); it is both the subject of rights' act of perfect recognisability as autonomous, and it is the showing of the subject as biological. Biology here is a grounding (we can't say performance) for the subject who wishes to be recognised beyond its perpetration. Perfect recognition is, in fact, a form of forgiveness by the Other, an absolution from the guilt of the past death – both enacting revenge upon the self and autonomy in doing so – self revenge. Indigenous people in Australia are also, I suggest, thus objects to be brought back – resurrected – in order to produce recognition/forgiveness. Indigenous people must be resurrected as an effort to assuage non-indigenous guilt. Indigenous people in Australia must be re-created in order for non-indigenous people to be redeemed. What is obliterated in this creation is obvious, of course. The monster is only a product of the master and cannot hope to occupy or invest its itinerary otherwise.

Here then we have the emblematic indication of the problem of diagnosing the symptomology of states. This problem goes beyond the usual problems of inclusion of all under the diagnoses. It is not a horizontal problem of endlessly collecting the polis into the new horizons of policy, of reform, of progress. The problem is, we could say

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for themselves," restore the category of the sovereign subject within the theory that seems most to question it. (1999: 261)

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vertical insofar as it is a question of depth and it points to the problem of time. Time here is not only trying to think of what happened before, to imagine before, but to imagine that we can't imagine. And this is not only the impossibility of imagining another desire, it is of imagining another ontology *other than desire as lack, desire as potential right.* It is to believe that the primal scene, the myth of the primal horde, is not *always* the fantasy that grounds the subsequent practices and policies insofar as we must imagine that it does not ground desire itself, or rather that it can only ground *desires* understood through a particular familial relation which implies, in Spivak's terms, a 'paleonomic burden of an originary phenomenal passion' (1999:105), the oedipal scene.

Conclusion

We can say that in the context of Australia the symptomology of law and thus the policies that emanate from its statute and constitutional frame, *are* indeed founded on a very alive primal myth, or rather that in the context of Australia the myth is true. The *before* was not so much annihilated – as it certainly lives in Indigenous, cultures, nations, bodies and laws (Pascoe 2014)– but the subsequent policies are grounded in the reality of a myth being instantiated over the before. That is, the before was subject to the killing off of the father to the primal father. In this context we can understand that non-indigenous Australia's symptomology – British law and its vicissitudes – are very much products of the passions and guilts of the post 1788 invasion. The language is crucial here, as is the identification of the subject as being in identification at all. "Australian-non-Indigenous-desire", or the desire of Australians, is a desire founded on the myth, but it is not everyone's myth. That is, not everyone is "Australian". Indigenous journalist Stan Grant commented recently that he did not feel Australian (2015), Indigenous footballers, commentators more broadly and activists are refusing the identity and the opportunity for participation as rights-bearing subjects.[21] Can we then question whether for those people, who *do not* ground their identities on a subjectivity founded on the myths which permeate liberal law, do they experience "every desire as a potential right?" do their desires articulate with rights at all? or do they experience desire otherwise? This is not to say that they have *different desires*,

[21] see http://theconversation.com/refusing-to-play-the-race-game-66043

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but to say that there may be something which is not called 'desire' at all and therefore something which might have another itinerary, one which should not be obliterated in any analysis of the political.

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