



Luiz Artur Costa do Valle Junior

**Constructing the LGBTI subject of rights:
Subjectivity, politics and identity in human rights discourse**

Dissertação de Mestrado

Dissertation presented to the Programa de Pós-graduação em Relações Internacionais of PUC-Rio in partial fulfillment of the requirements for the degree of Mestre em Relações Internacionais

Advisor: Prof. James Casas Klausen
Co-advisor: Prof. Roberto Vilchez Yamato

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To my mother, Roberta Hilsdorf Piccoli,
for all that I am.

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Abstract

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The dissertation explores the specific forms of subjectivity that are attributed to LGBTI individuals in international human rights law. It takes into consideration 8 rulings by the Human Rights Committee, the UN body charged with monitoring the International Covenant on Civil and Political Rights, and advances a deconstructive reading of the specific articulation of homosexual and transgender subjects contained in them. It suggests that the three representations found, the legitimate gay, the gay activist and the gay outlaw can be understood as an attempt to depoliticize deviant sexualities, subsuming them under neoliberal, heterosexist hegemonic normative arrangements. In view of this argument, it proposes a queer psychoanalytic reading of subjective and bodily constitutions, emphasizing Jacques Lacan's, Judith Butler's and Jacques Derrida's works. In highlighting the contingency and violence inherent to libidinal organization, it paves the way to a radical understanding of the co-implication of subjectivity and community. In light of this co-implication, Jacques Rancière's notion of politics is presented and reworked in light of Lacan's concept of *Sinthome*, in a way that appears to allow for an aesthetic political engagement based on the quasi-substance of the *Sinthome* as a contingent, continuous grafting of Lacan's three metaphysical orders, the real, the imaginary and the symbolic.

Keywords

Psychoanalysis; deconstruction; queer theory; human rights; homosexuality; subjectivity

Resumo

Valle Junior, Luiz Artur Costa do; Klausen, James Casas (Orientador); Yamato, Roberto Vilchez (Co-Orientador). **Construindo o sujeito LGBTI de direitos: Subjetividade, política e identidade no discurso dos direitos humanos**. Rio de Janeiro, 2018. 143 p. Dissertação de Mestrado -- Departamento de Relações Internacionais, Pontifícia Universidade Católica do Rio de Janeiro

Esta dissertação explora as formas modais de subjetividade que são atribuídas a pessoas LGBTI no discurso dos direitos humanos internacionais. Levam-se em consideração 8 vereditos do Comitê de Direitos Humanos, responsável pelo monitoramento do Pacto Internacional sobre Direitos Civis e Políticos, oferecendo-se uma leitura desconstrutiva dos mecanismos que participam da articulação dos sujeitos homossexuais e transgênero aí presentes. Sugere-se que as três representações encontradas, o homossexual legítimo, o ativista gay e o gay fora-da-lei podem ser entendidos como uma tentativa de despolitizar sexualidades desviantes, recobrando-as sob arranjos normativos neoliberais e heterossexistas. À luz deste argumento, propõe-se uma leitura psicanalítica queer sobre a constituição subjetiva e corporal do sujeito, enfatizando as obras de Jacques Lacan, Judith Butler e Jacques Derrida. Ressaltando a contingência e a violência inerentes à organização libidinal, abre-se o caminho para uma compreensão radical da co-implicação da subjetividade e da comunidade política. Sob a égida dessa co-implicação, apresenta-se a noção de política de Jacques Rancière, revisando-a em relação ao conceito lacaniano do *sinthome*, de forma a propor um engajamento político-estético respaldado na quase-substância do *sinthome*, entendido como uma escrita contínua e contingente da intersecção entre o simbólico, o real e o imaginário.

Palavras-chave

Psicanálise; desconstrução; teoria *queer*; direitos humanos; homossexualidade; subjetividade

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It was necessary now to carry everything a step further. With her foot on the threshold she waited a moment longer in a scene which was vanishing even as she looked, and then, as she moved and took Minta's arm and left the room, it changed, it shaped itself differently; it had become, she knew, giving one last look at it over her shoulder, already the past

Virginia Woolf, *To the lighthouse*

Introduction

“Well, then, knowledge speaks all by itself: such is the unconscious”, says Lacan, in his Seminar XXIII. There is, for me, an irresistible allure to this phrase. It tells us that we know much more than we know that we know; it tells us that knowledge speaks in us just as it speaks through us, and just as *we speak it*. So, even those enlightened contemporary Socrates, who consider that we know nothing, know a whole lot more than they’re letting on. It is striking to me that those of us who consider ourselves benefactors of this world, those of us who profess the doctrine of human dignity, those of us whose commitment to human rights is unwavering, can know more than we let on. The same applies to our sexualities. No matter what we identify as -- straight, gay, lesbian, trans, queer, etc. --, we always know much more than we let on. Eve Kosofsky Sedgwick had a whole lot to say about this dynamic of knowing, unknowing and (selectively) speaking. She tells us that

Insofar as ignorance is ignorance *of* a knowledge – a knowledge that may itself, it goes without saying, be seen as either true or false under some other regime of truth – these ignorances, far from being pieces of the originary dark, are produced by and correspond to particular knowledges and circulate as part of particular regimes of truth (SEDGWICK, 2008, p. 8)

So, just as knowing is a function of certain operations of power -- who we are, what places we can and cannot occupy, what we can and cannot know, see or say --, so is *not knowing*. Not knowing, in other words, is a kind of privilege. It allows us to cynically tell our interlocutor that we don’t understand what they are saying, that they need to speak “our language” if we are ever to establish any recognizable form of dialogue. And after both parties to our imaginary dialogue go home, flushed and frustrated from the entirely unproductive exchange they had with one another, they will both muse about a world in which dialogue is the norm, in which people actually try to understand one another and communicate, rather than impose, their knowledge.

This unknowing is an interesting constituent part of law, I think. A perfect legal system knows nothing outside of itself. It does not see, hear or understand that which is not already contained within it. Musing about such a “perfect” system, however, is useless -- a human rights practitioner might say. We have to

know what is happening on the ground, we have to exhaustively document all the violations brought upon people by their own states, by terrorists, by warring state and non-state actors, etc. In other words, we have to know that which is unknown to us, so that the law may be brought to bear upon those who have disrespected its terms. It seems to me that we are saying much more, with this kind of contention, than we let on. What purpose does this exhaustive documenting serve, after all? The case might be made that all these well-meaning efforts -- all the waving around of moral principles, of international human rights, of international humanitarian law, etc. -- have come to represent a paradigmatically modern effort to make society and law indistinguishable. To collapse these two orders of existence within one, big, harmonious whole. It could be said, in other words, that we are attempting to cover up what we don't know -- what we can't know -- with the exhaustive dreariness of knowing everything¹.

And yet, what we don't know seems to insinuate itself everywhere. And that which we don't know can have monumental effects upon the terms of that which we think we *do* know. This is perhaps the central theme of this dissertation. All that we try to know, all that we do not know, and all that we refuse to know are the cornerstones of both modern sexuality and contemporary international human rights law. After all, as we have learned from Foucault's impressive work on sexuality, truth can only be known from within the intricate interplay of knowing, unknowing and pretending not to know. Truth is carved into bodies and minds, it is inscribed into places and positions, it is forcefully extracted from the interstices of (un)knowing. It is always the by-product of an implicit third term, of an inexplicable irruption of violence. Truth, then, is enunciated by a certain someone, in accordance with certain rules and within a certain set of strategic relations.

In that sense, the questions that will weave together the following four chapters can be stated in the following terms: who is allowed to speak the truth of sexuality? Who is allowed to embody that truth? And under what form can this truth be legitimately embodied? This is, by no means, a treatise on epistemology.

¹ Peter Fitzpatrick elaborates this conundrum nicely: "As against the vagaries of an arbitrary and discretionary power, the rule of law clearly marked out an area of calculability in which the individual could now purposively progress. In order for this law, and 'not men', to rule, it had to be coherent, closed and complete. If it were not coherent but contradictory, something else could be called on to resolve the contradiction. If it were open rather than closed, then something else could enter in and rule along with law. If it were incomplete and not a whole corpus juris, and if it were thence related to something else, then that something else could itself rule or share in ruling with law. For all of which, law had to be self-generating and self-regulating because, if it were dependent upon something apart from itself for these things, then, again, those things would rule along with or instead of law" (FITZPATRICK, 2001, p. 71)

It is, rather, an exploration of the imbrication of the ways in which we experience our bodies, of the specific placement and judgment of these bodies within “broader” political community, and, particularly, within our legitimate and illegitimate political aspirations. I say “legitimate” and “illegitimate” because international human rights law seems to have become the very last resort of legitimacy for political demands in the 21st century. Let us take a look at what Jack Donnelly says regarding demands based on international human rights:

One can—and usually does—go very far before explicit appeals to human rights become necessary. The “higher” claims are always available; one still has those rights. In practice, though, they rarely are appealed to until lower level remedies have been tried (if not exhausted). An appeal to human rights usually testifies to the absence of enforceable positive (legal) rights and suggests that everything else has been tried and failed, leaving one with nothing else (except perhaps violence)... If rights are a sort of last resort, claimed only when things are not going well, human rights are a last resort in the realm of rights; no higher rights appeal is available (DONNELLY, 2013, p. 11-12)

Here, Donnelly is telling us the *prima facie* obvious fact that the enjoyment of juridical entitlements should go, as it were, “without saying”. In other words, one only claims a right when there is a disjunction between the positivity of the right, presumably codified in a legal document, and the empirical realities of those who can be considered as rights-bearers. I have a legal entitlement to X, and yet I do not verify the existence of X in my life. Only insofar as I’m a victim do I lay a rights claim; and usually only when I am *not* a victim of a violation of “enforceable positive (legal) rights” do I make a human rights claim. Throughout the process, nevertheless, I am a bearer of human rights, Donnelly says elsewhere, because I am a member of the Homo Sapiens species (DONNELLY, 2013, p. 10). Therefore, my final appeal to human rights presumes that I can prove that I’m a victim of a rights violation, and that this violation is itself a violation of my humanity. How does that leave us if our appeal is not simply made on the grounds of the somewhat undifferentiated reality of “humanity”, but rather if we claim a violation on the basis of belonging to *a certain segment of* humanity?

As we will explore in Chapters 2 and 3, this question is not as simple as it might seem at first. In fact, Donnelly’s characterization of human rights claims as the last resort of rights claims is already symptomatic as a defining characteristic of our thinking regarding international human rights. In Chapter 2, we will explore the organization of the discipline of International Relations (IR), in order to suggest that human rights have been continuously interpreted in IR as

extra-political entitlements to standards of treatment arising from moral sources. We will explore two texts that illustrate this structure: George Kennan's *Morality and foreign policy*, and Michael Ignatieff's *The American Empire; the burden*. The first of these texts exposes a number of characteristic divides established within IR scholarship: morality/politics and national/international. Due to the discipline's Hobbesian heritage, these two dichotomous pairs are generally understood to be correlative to each other. In that sense, morality is interpreted to be strictly within the purview of the national, while politics, understood as that which has to do with power *par excellence*, is restricted to the domain of the international. These divides, and their metonymic relation to one another, establish the distinctive domain of IR as a discipline and a legitimate field of study. They delineate the specificity of the international, an arena in which there can be no morality because there can be no sovereign, unifying power.

With Ignatieff's text, conversely, I begin to sketch the "mainstream" view of human rights from within the discipline. This discussion introduces the cataclysmic dimension of what happens when the borders of the national and the international become blurred. This situation is perfectly exemplified by the events of September 11th, 2001, which need no introduction. Ignatieff's text conforms the tenets exposed by Kennan to a new understanding of what morality can mean when it is shown to also be within the purview of politics; when the sanctity of domesticity, that which is in the purview of the national as opposed to the international, is fractured by an incursion that is inexplicable from the standpoint of the previous axiomatic. After all, the attacks on the Twin Towers were perpetrated by non-state actors, thereby escaping the traditional definition of war, and were motivated by what were perceived to be (a)moral concerns. Ignatieff lays bare the attachment that IR as a discipline maintains to anthropomorphic representations of state and nation, and, as such, he betrays the inevitable co-implication of subjecthood and sovereignty, even if he does so unwillingly.

The following section introduces a new representation of IR, one generally identifiable under the label post-structuralism. Here, I aim to suggest that subjectivity and sovereignty are co-implicated, that wider social arrangements largely set the terms upon which we define ourselves. In this, I come to consider modernity as an economy of power, one that is regulated according to certain specific tenets that define who enunciates legitimate subjecthood, and in what

manner. In other words, modernity, the political regime under which we live, sets the terms for speaking legitimately, for saying what is true and what is not, and what falls into the purview of politics, morality, law, gender, sexuality, etc. In this sense, this section further attempts to delineate how this subject that provides the basis for all the standards mobilized by that modern economy of power is itself based on certain presuppositions that closely follow the prototypical subject of Western, modern law: the white, male, heterosexual property-owner.

This implicit standard is itself exemplary of the dynamic of knowing and unknowing that we have started to delineate above. Modern Western law, and international human rights law with it, does not know itself to mobilize this standard. It is therefore *less* knowledgeable than the subjects that come to it with rights claims, and thus defines the terms of any and all possible exchanges it may have with them according to the common denominator of a masculine standard. Showing the concrete operations of this standard is the main goal of Chapter 3, in which I delineate both a methodological attitude and a critique of the cases analyzed by the Human Rights Committee pertaining to sexuality and gender identity. I conduct the analyses following what I call a “deconstructive attitude”, based on the work of French philosopher Jacques Derrida. There is a number of distinctive features to this deconstructive attitude. First, Derrida considers that meaning is created in the interplay of signifiers, which acquire their meaning differentially within language. In this sense, language does not simply “represent” that which is already given, it continually produces “what is given” precisely because there is no direct avenue to brute, undifferentiated reality. Therefore, there can be no “presence”, in the strict sense of the word. Nothing we say, think or feel can be said to represent perfectly an “outside” object, there is and there can be no “thing-in-itself”. Creating meaning thus appears as a perpetual movement of *sliding*, of establishing both temporal and spatial difference within the text as a precondition for it to make sense.

Derrida refers to this process as *différance*, the permanent, dynamic operation of deferring and postponing presence. Even if, however, meaning is never ultimate, never referring to anything outside itself, there are certain operations that the work of the signifier itself posits as a text’s “basic reality”, the appearance of a justification from within it. Chapter 3 provides an example of this operation, in the form of the modal subjectivities that the Human Rights Committee mobilizes

to characterize, by analogy, the subjects of sexuality. I delineate three of these characterizations, according to the degree to which they are deemed to be legitimate victims on the basis of their sexuality. These are, with due regard to my poor naming capabilities, the legitimate gay, the gay activist and the gay outlaw. What is distinctive about each of these iterations of LGBTI subjectivity is that they are considered legitimate only when they fall within the purview of a recognizable form of heterosexual propriety. The “legitimate gay” type is based on marriage-like romantic and potentially reproductive familial arrangements. Legitimate victims found to be under this rubric are deemed legitimate homosexuals precisely because their sexuality may be gauged from the standpoint of the heterosexual standard of marriage. Stable cohabitation, durable relationships are thus employed as proof of sexuality.

Similarly, the gay activist proves her sexuality by “putting herself on the line” for it. This subject-type is based on the publicity of the sphere of appearance of the victim. This standard is based on a comparative reasoning with the prototypical heterosexual: the publicity accorded to the subject’s homosexuality finally provides the basis for a judgment of the type “if this person were heterosexual they would not be doing this, they would not be advocating for LGBTI rights”. In contrast, the gay outlaw has nothing to show for his sexuality, he is not in a lasting relationship, he does not bear the mark of publicly advertised homosexuality or non-normative gender identity. He is simply a homosexual, one that cannot be understood by any reference to normative kinship arrangements or to presumed moral superiority gauged from public stances on rights. In that sense, he is not recognized as a potential victim by virtue of his sexuality, though he can on the basis of his “humanity”.

The main question that arises from this exploration is how social categories such as LGBTI can enter into human rights law without even a mention of bodily specificity. If we take the surface of the texts analyzed, no instance ever suggests that these subjects even have bodies. Presumably, however, sexuality is pretty evidently a bodily affair. The overt reliance on categories such as privacy and on comparative reasoning, I argue, clearly indicates the Committee’s reluctance to even engage with the peculiarity of homosexuality or transgender identities in modernity. And this reluctance is itself symptomatic of the wide circulation of heterosexual standards to allow for the abstract language of law. If one takes this

to be true, it becomes imperative to ask what alternative representation of bodies would allow them to harness their critical potential, to be taken seriously as a site of inscription of the law, and therefore as a site of resistance to it.

This question is what guides the discussion in Chapter 4, which considers a queer psychoanalytic perspective for understanding bodily organization in a way that resists pulls toward identity or essence. After all, it is not some transcendent, ahistorical presence that qualifies the LGBTI as LGBTI; it is, rather, a specific set of operations that are themselves historically circumscribed. Contrary to the Human Rights Committee's reasoning, no outward set of characteristics could be said to fully describe homosexuality, and much less the implicit category of "legitimate" homosexuality that can be uncovered in its work. I suggest that our current model of identity politics is, rather than an attempt at effecting political change, a retreat unto the putative moral solipsism of the heterosexual capitalist standard.

I suggest, then, that the category of "recognition" suffers from a number of setbacks, not the least of which is the need for an implicit standard according to which this recognition may be granted. One other major pitfall of the concept is that recognition can itself be a kind of abjection; it can always be vertical in nature. In that sense, what is needed is not recognition from within the Master's own implicit standard, but rather a change in the very frame from which recognition becomes possible. This contention implies moving away from a strict focus upon the emancipatory possibilities of law towards an overtly political commitment to change.

To establish the theoretical possibility of this engagement, I turn in Chapter 5 to Rancière's notion of politics as an aesthetic moment of dissensus. Rancière's work is useful because it suggests that politics is always, in principle, possible: it consists on the theatrical staging of a fundamental disagreement, bringing into being two worlds that are to be compared according to a transcendental principle of equality among speaking beings. This conception of politics leads to a consideration of human rights as facilitating a window of subjectivation, in the sense that they can be made instrumental to the construction of the political moment and, thus, to the arising of a political, dis-identified subject. This requirement of dis-identification leads us to Lacan's last Seminar, regarding the *sinthome*. I trace a parallel between this reworking of the traditional notion of

symptom and the disjunction inherent to Rancière's moment of politics. In this sense, I suggest not only that the contingency inherent to any form of subjectivation should be celebrated, but also that it gives rise to an imperative of alliance among the groups that are cast out of intelligibility in order to assure the consistency of the white, male bourgeois standard.

In writing these chapters, I could not help but notice a kind of cynicism pervasive in a lot of what people say about human rights. To return to the beginning of this introduction, reading a verdict of the Human Rights Committee always seems to indicate that it knows much more than it says. In all the cases I analyzed, not once was any definition of the homosexual ever presented. It is hard to decide whether it is better that such uncomfortable assumptions about sexuality be spelled out so we can see them under the harsh light of day, or that they remain unspoken.

But there is perhaps a deeper point to be made about this: maybe we resist naming these characteristics of sexuality because we don't actually know them. Maybe, as Sedgwick might have said, we are made not to know, precisely so we can tell ourselves at night that it is simply a matter of inclusion, of recognition. That there is nothing fundamentally different about homosexuality. This is partly true, of course, but the proliferation of labels we use to describe our sexual identities is perhaps symptomatic of a continuing attempt not to know. Maybe it is traumatic to recognize the challenge homosexuality, trans identities, asexuality, intersexuality, etc., pose to standards of liberal rationality and disembodiment. And if this challenge does indeed exist, do we not have a responsibility to carry it through?

2

International Relations and the subject of human rights

2.1

Morally exempt

The discipline of International Relations (IR) and the institutionalization of international human rights are both recent historical constructs. Although, of course, both their genealogies may be, and have been, traced back even to ancient times -- one might think of Realism's claim to having a pedigree starting with Thucydides, or of those histories of international human rights that see in them an outgrowth of theories of Natural Law -- their modern forms have acquired distinctive shapes and multiple, often competing, interpretations. Even so, according to Sikkink and Schmitz (2013), human rights were only introduced as a legitimate subject of International Relations scholarship in the late 1980s and early 1990s. The idea of human rights, however, has been a (peripheral) part of international relations², that is to say, relations among states, for at least 70 years.

As Donnelly states,

With minor exceptions -- most notably, nineteenth century efforts to end the slave trade and twentieth century work on eradicating slavery and protecting the rights of workers and ethnic minorities -- human rights simply were not a subject of international relations before World War II (DONNELLY, 2011, p. 2).

The 50-or-so years that separate the introduction of international human rights as an International Relations topic and their inception in empirical relations among states is telling both of the disciplinary history of IR and of human rights' historical contingency. We will later focus on the former, but it bears mentioning that the latter is hardly recognizable in the language employed in the founding documents of the international human rights regime. The Universal Declaration of Human Rights (UDHR, 1948), in its article 1, boldly proclaims that "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood", while the document's preamble notes that "...recognition of the inherent dignity and of the equal and inalienable rights of all members of the

² Following the discipline's usual jargon, I will designate International Relations (capitalized) as the scholarly inquiry into international life, while international relations (non-capitalized) will be understood as the empirical realities of international politics.

human family is the foundation of freedom, justice and peace in the world”. No trace of history is contained within these provisions. This fact is rather startling, given that even the notion of rights itself has a relatively modern pedigree (MARSHALL, 1950), and that, even after the triumphant proclamation of the UDHR, international human rights would have to wait yet another three decades to be irrevocably inscribed within international discourse.

In fact, the vagaries of the Cold War would hamper the institutionalization of human rights until at least the 1970s, notwithstanding the wave of African decolonization in the 1960s that would greatly aid in the codification of the human rights regime in the form of the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966), as well as the Convention on the Elimination of All Forms of Racial Discrimination (1963). Indeed, decolonization, aside from democratizing participation in the UN General Assembly, greatly pushed the human rights agenda, albeit, according to Moyn, only through a sharp focus on the collective right of the self-determination of peoples:

It was the process of decolonization that made the fortune of human rights at the United Nations -- albeit with a stark reconceptualization of their meaning, grounded in the collective right of self-determination. Paradoxically, this transformation made rights still less central for international lawyers (MOYN, 2010, p. 195)

Moyn’s observations regarding the discipline of International Law provide a rather interesting standpoint from which to consider the contemporary prominence of human rights discourse in international politics. Far from being unequivocally independent of power politics, as they were intended to be, human rights have historically been espoused -- and academia is not at all exempt from this charge -- largely due to convenient political contexts. As Moyn goes on to state, “[o]nce, skepticism about human rights in the guise of anticolonialist self-determination had reigned. Soon, enthusiasm for human rights as potential interference in sovereign jurisdiction took its place” (2010, p. 208). If this seems like an overtly Realist point to be made, it bears reminding that some distinctive characteristics of the rise to prominence of the human rights regime in the 1970s largely escape the traditional tenets of this school. As Dunne and Hanson (2009) argue, this prominence was propelled by an increasing legalization of international human rights norms, an adoption of human rights tenets in the foreign policy of a number of important states, most notably the United States under Jimmy Carter’s

presidency, as well as a growth in the number and influence of Non-Governmental Organizations (NGOs) in the international arena.

The “golden age” of human rights under which we currently live, however, would only come about in the 1990s, with the fall of the USSR and the closure of the Cold War. As well as inaugurating the era of humanitarian intervention, most notably with the North Atlantic Treaty Organization’s (NATO) incursion into Kosovo, and the public outrage over the Rwandan genocide, the 1990s saw a number of pivotal changes in the *praxis* and reach of the human rights regime. According to Donnelly, the 1990s saw a rise of influence of the United Nations in human rights advocacy, particularly from the newly created High Commissioner for Human Rights, in 1993; an important expansion of human rights as a bilateral foreign policy concern; and an increase in number, scope and influence of human rights NGOs (2011).

If, then, it can now be claimed that international human rights have been an inescapable feature of international relations for at least two decades (as Donnelly himself claims), the discipline of IR has made surprisingly little headway into this subject. As it may be inferred from Schmitz and Sikkink’s (2013) literature review, usual scholarship on this topic revolves either around the role of NGOs in agenda-setting and advocacy, or in state likelihood to repress or uphold fundamental rights. The overwhelming majority of hypotheses the authors consider to have been proved are modest: particularly, a certain correlation between regime type (democratic or non-democratic) and human rights violations; a correlation between perceived internal or external threats and likelihood to suppress rights; and an increasingly overt commitment of states to formal international rules regarding rights. The issue of implementation is also lauded as a new subject of study within the field; recent work within this subtopic has particularly pointed out that domestic factors matter immensely in the phases of implementation and rule-consistent behavior internally (see, particularly, SIMMONS, 2009)³.

The relative lack of theoretical inquiry into the nature, reach and philosophical-historical novelty of human rights within IR, I argue, results from a

³ It is unfortunately impossible to provide a general theoretical review of all that has been written on the subject of human rights and international relations. Particularly, there is a consolidated body of constructivist thought that I will not consider explicitly. I therefore have to defer to Epstein’s critique of the central notion of identity, widely employed in that theoretical tradition, as to ensure the applicability of my own excursion into IR’s tenets (EPSTEIN, 2010).

particular understanding of the relation between politics and morality, one that has been constitutive of IR's disciplinary bounds themselves. Even in more recent incarnations of mainstream-critical scholarship, this dichotomy appears as the founding moment of the expansion and political appeal of human rights. Indeed, as Moyn argues, human rights have been so successful in the wake of the Cold War and its aftermath precisely because they purported to offer a framework of human emancipation that was apparently divorced from politics itself:

The international human rights movement became so significant, then, neither because it offered a rights-based doctrine alone nor because it forged a truly global vision for the first time... As a number of its partisans in the 1970s were well aware, human rights could break through in that era because the ideological climate was ripe for claims to make a difference not through political vision but by transcending politics. Morality, global in its potential scope, could become the aspiration of humankind (2010, p. 213).

In Moyn's argument, precisely because human rights could pose as anti-political, transcending ideology, they came to be viewed as an acceptable normative *telos*. But any moral claim is also simultaneously an intrinsically political claim. Susan Marks (2012) reminds us that there are at least four important myths about human rights that generally permeate mainstream literature and activism on rights: presumptive universalism, deep historical roots, minimalism and the assumption that the most egregious abuses happen "in the dark", away from public eyes. In fact, as Marks' review makes clear, there is no such thing as a purely moral program for human emancipation; there is no such thing as a truly universal framework for human dignity, much less one based on individual rights; human rights as a set of rules and minimal standards for state *praxis* to ensure human dignity is very much contemporary from a historical point of view; and human rights are themselves conducive to particular effects of power, not merely defenses against the hidden abuses of common-sensical state violation.

All these insights require an excursion into IR's disciplinary history in order to understand the current state of thinking about human rights in academic circles. If, as we intend to argue, the common understanding of human rights within Western, mainstream academic circles relies on a particular construction of the binary opposition of politics/morality, what new articulation of these terms and the notion of human rights and the political is required to undertake a principled, radical defense of human rights and their value for LGBTI subjects?

In order to begin sketching an answer to this latter question, I will proceed, first, with an exploration of the theoretical pedigree of the constitutional divide between politics and morality within traditional IR theory. I will analyse two important texts that I take to synthesize the general “common-sensical” view of the role and the possibilities of human rights within IR theory and transnational practice -- Georg Kennan’s *Morality and Foreign Policy* (1948), and Michael Ignatieff’s *The American Empire; The Burden* (2003). I will suggest that these two texts paint the picture of the realist utopian ideal that generally perpasses IR theory. These realist utopias consist generally of three inter-related, implicit claims: 1) that the nation-state defines a cognizable inside that is to be opposed to the international outside; 2) that there is at least a minimal conception of unchanging human nature that is banished to this international outside, all the while defining the struggle contained therein as politics; 3) that the inside heretofore may be designated as the absence of the outside and vice-versa.

I then problematize these claims, with an excursion into what has been termed a now-consolidated “poststructuralist” scholarship within IR. In this section, I attempt to question the realist utopian move, suggesting subjectivity and sovereignty -- and, therefore, what is taken to be a divide between politics and morality -- to be thoroughly interdependent, and regulated according to what may be designated as a modern economy of power (ASHLEY, 1989). In this sense, I will suggest that human rights, rather than moral entitlements to dignity (thereby falling outside the purview of international politics according to the realist utopian ideal), are a distinctive political project that is not itself unproblematic. We therefore make the case that examining the specific contours of contemporary international human rights activism and jurisprudence is of important analytic import for considering their value as normative political commitments.

I then finally move to the order of gender and sexuality, sketching a critique of mainstream theorizing on human rights. In this, I present Wendy Brown’s (2004) own contentions regarding Michael Ignatieff’s scholarship, and attempt to question the terms upon which international human rights ends up being no more than an attempt to create subjects suited to the functioning of neoliberal markets. This final section ultimately represents the goal of this chapter: to establish that human rights cannot be understood simply as minimal entitlements to dignified life, but rather that they have a specific functioning that can be said to be political

in “nature”. In that sense, the realist distinction between morality and politics, in its analogy to the inside/outside of the state and the international, is shown to be thoroughly implicated in the interpretive work of international human rights.

2.2

The utopia of realism

Realism in International Relations has largely defined the terms of our disciplinary bounds. Arguably the most important and forceful exposition of the realist epistemological and ontological tenets are Hans Morgenthau’s (1948) principles of “political realism”, which are essentially that : 1) human nature largely determines international state behavior; 2) state interest may always be defined in terms of accruing power, whatever the latter’s current socio-historical expression or quantitative basis; 3) the pursuit of self-interest is a universal, trans-historical given; 4) there is a fundamental difference between morality and politics, similar to the Weberian (WEBER, 1946) distinction between an ethics of conviction *vs.* one of responsibility, respectively; 5) the self-interest of one state cannot be entirely coextensive with that of another (see, particularly, CARR, 1946); 6) politics is and shall remain a distinctive domain of social action; one that lends itself to properly scientific inquiry.

Aside from some minor reworkings, these tenets still largely represent the state of realist assumptions about the international system today. As Dunne and Hanson remind us, realist arguments about human rights still rely on national interest and on an opposition of morality and politics to reject any possible claim to a primacy of human rights in international practice. Indeed, as they suggest, “when push comes to shove, human rights are very low on the list of national policy goals” (2009, p. 61), and universalist sets of values are both impracticable due to the anarchical structure of the international system and the primacy of state interest in foreign policy, and ethically untenable because of the impossibility of a universal morality divorced from the political domain. What they deem “liberal” arguments similarly start from the standpoint of the intractable character of an anarchical international system with regard to “embedding universal moral principles” (DUNNE; HANSON, 2009, pp. 61-2), but rely on domestic

democratization⁴ and strengthening of international institutions to mitigate this situation.

This confluence of liberal and realist accounts of international reality (see, particularly, WAEVER, 1996) is largely portrayed as a teleological narrative towards scientific propriety and towards a predominance of realist epistemology and ontology in the standard disciplinary history of IR. The standard view is that there have been three major “great debates” within the discipline -- one between realists and idealists; one between positivists and classicists; and, finally, one between neorealists and neoinstitutionalists, with marxist-structural views standing as a third, neglected term⁵. As Duncan Bell (2009) reminds us, this remarkably simplified narrative may be adequately termed a certain “progressivism”, and serves a function of legitimating the discipline of IR as a separate, autonomous field of study, a politically charged attempt at establishing a “myth of origin”. In Bell’s argument, “[a]side from its caricatured view of the past, the progressivist narrative has served as a powerful legitimating device for certain substantive positions in postwar IR (notably political realism) and certain methodological orientations (notably neo-positivism)” (BELL, 2009, p. 6)

This simplified metanarrative notwithstanding, realism lays claim to a long heritage of political and philosophical thought, as well as to a privileged relationship to diplomatic and military history. As Smith argues, realism is a comprehensive approach to the study of international relations, with a “philosophical world view, a framework for interpreting history, and a body of normative thought” (SMITH, 1999, p. 34). Realists lay claim to such distinguished and heterogeneous thinkers as “Thucydides, Aristotle, St. Augustine, Machiavelli, Hobbes, Hume, Rousseau, Burke, and Weber...” (SMITH, 1999, p. 34). According to Glencross, realism further presents a picture of history as “revenge”, the repetition of dramatic, disruptive events that could have been predicted had one simply followed the groundwork laid down by previous historians and statesmen: “...the successful restraint of power is based on the

⁴ This view is largely derived from modern political philosophy -- particularly Kant’s essay on the perpetual peace (2006). Quantitative studies are said to have largely proven the “democratic peace hypothesis” -- see, particularly, DOYLE, 1986. Needless to say, the particular form of data codification within IR scholarship and the endless implicit assumptions implicated in the judgment of whether or not a country is a democracy and whether or not it engages in inter/transnational conflict are themselves politically saturated questions.

⁵ Historiography on this topic is abundant, perhaps overly so. There are, therefore, a large number of ways to characterize each of them, just as there is controversy on whether they should even be designated as debates. In perhaps anecdotal, autobiographical fashion, I have chosen to portray them as they have been relayed to me in my higher education.

existing of enlightened statesmen able to grasp the subtleties of the great game... and not on the fetishization of institutions as ends in their own right” (GLENCROSS, 2015, p. 14).

Politics, then, for the realist, follows a scheme of Weberian conceptuality; politics is that which participates in the division of power within a given social collective, while power is the ability to influence other actors’ behavior according to the detriment of their own interests (WEBER, 1978). Morality, on the other hand, follows a Hobbesian scheme. Politics itself is the condition of possibility of morality, in that morality is not a natural disposition of man, but an artificial construct of sovereignty (HOBBS, 1998). In what is perhaps the most widely read chapter of his *Leviathan*, Hobbes posits this basic structure with characteristic clarity:

To this war of every man against every man, this also is consequent; that nothing can be unjust. The notions of right and wrong, justice and injustice have there no place. Where there is no common power, there is no law: where no law, no injustice... Justice, and injustice, are none of the faculties neither of the body, nor mind. If they were, they might be in a man that were alone in the world, as well as his senses, and passions. They are qualities, that relate to men in society, not in solitude (HOBBS, 1998, p. 85).

And, though this condition of moral neutrality may be characteristic of individual men in their relations to one another in the state of nature, the international bears the distinctive mark of anarchy in an analogous manner. If justice (or morality) is not a disposition, but a sovereign imposition, then a world populated by sovereigns who cannot but relate somehow to one another implies the incessant threat or disposition of violence among them. Again, in Hobbes’ words:

But though there had never been any time, wherein particular men were in a condition of war one against another; yet in all times, kings, and persons of sovereign authority, because of their independency, are in continual jealousies, and in the state and posture of gladiators; having their weapons pointing, and their eyes fixed on one another... But because they uphold thereby, the industry of their subjects; there does not follow from it, that misery, which accompanies the liberty of particular men (HOBBS, 1998, p. 85).

In an important article, George Kennan relays arguments of a distinctively hobbesian nature. He claims that, “[n]o more than the attorney vis-à-vis the client, or the doctor vis-à-vis the patient” (KENNAN, 1985, p. 206), could the state penetrate individual consciousness and deliberately alter or implement “personal”, moral beliefs. In that sense, governmental responsibility is *not* to morality, but to the *interests* this state bears. Interestingly, Kennan claims that government is an

“agent” rather than a “principal”; in government’s consent to rule, sovereignty and the responsibility of maintaining the integrity of political life by means of military security, material welfare and a “reasonable opportunity for... the pursuit of happiness” (KENNAN, 1985, p. 206). These prerogatives and responsibilities are seen to emanate from an extra-moral source. For acting upon them, the state needs no moral justification, nor would it be morally diminished for doing so. From this standpoint, then, the assumption that government provides a certain amount of fundamental goods, goods that are themselves not historically or morally contingent, is made basic precisely on imposing an inescapable divide between the properly political and the properly moral. This divide finds its counterpart on an external vs. internal opposition; that is to say, between national life, and international life:

When we talk about the application of moral standards to foreign policy, therefore, we are not talking about compliance with some clear and generally accepted international code of behavior. If the policies and actions of the U.S. government are to be made to conform to moral standards, those standards are going to have to be America’s own, founded on traditional American principles of justice and propriety. When others fail to conform to those principles, and when their failure to conform has an adverse effect on American *interests*, as distinct from political tastes, we have every right to complain and, if necessary, to take retaliatory action. What we cannot do is to assume that our moral standards are theirs as well, and to appeal to those standards as the source of our grievances (KENNAN, 1985, p. 208).

Let us examine the structure of this argument more closely. Morality in foreign policy does not equal “compliance with some clear and generally accepted international code of behavior”, as such a code does not exist. Political action -- that is to say, the “right to complain and... to take retaliatory action” -- is contingent on the violation of national *interests*, and not national or international “principles of justice and propriety”. These principles, however, do participate in this judgment; they form a supplementary step from which to evaluate the nature and extent of the violation of national interests. They are furthermore consistently contained within a “national” framework -- they are “traditional American principles of justice and propriety”. A solely moral claim, however, cannot be used as justification for an international wrong, as each “nation” presumably holds a different view of “principles of justice and propriety”. There is furthermore a directly proportional relation between moral responsibility and power:

Without the power to compel change, there is no responsibility for its absence. In the case of governments it is important for purely practical reasons that the lines of responsibility be kept straight, and that there be, in particular, a clear association of

the power to act with the consequences of action or inaction (KENNAN, 1985 p. 212).

All the traditional motives of realism are contained in Kennan's argument. The lofty liberal enchantment of U.S. institutions and "proper" international practice (such as open diplomacy, dialogue, and a commitment to democracy) has imperatively to give way to the crude, "purely practical" engagement in foreign policy. The lack of moral concerns in foreign policy is then justified as an ethical endeavor: it is because the U.S. lacks power to single-handedly effect change that it cannot be held responsible for the absence of change in the international arena.

It is interesting to note that the basic structure of contractual engagement in Hobbes is, for Kennan, inverted: for Hobbes, in the state of nature, or in inter-sovereign relations, the fear that he who is contractually obliged to act first will abstain from fulfilling his duty, thus violating the contract, impedes the fulfillment of sociality itself. In the international arena, as in the state of nature, the only insurance of contractual good faith is fear of one of the parties' power. Responsibility, as expressed in the contractual relation, is thus indirectly proportional to power, as it is solely he who lacks power who attains a degree of responsibility in binding himself to another, more powerful, entity. Conversely, for Kennan, power is in direct proportionality to responsibility: he who is the more powerful party in a given relation has the highest degree of responsibility to the moral rectitude of that engagement.

All that notwithstanding, morality still lacks a solid foundation in the crude reality of international life. It cannot be rationalized by non-religious, materialistic logics:

...whether there is any such thing as morality that does not rest, consciously or otherwise, on some foundation of religious faith, for the renunciation of self-interest, which is what all morality implies, can never be rationalized by purely secular and materialistic considerations (KENNAN, 1985, p. 217).

We now have a more complete picture of what realism, as expressed in Kennan's view, requires of the concepts of politics and morality. Morality implies "the renunciation of self-interest", this latter being the basic foundation of politics. As in Hans Morgenthau's *dictum*, self-interest itself is always defined in terms of power, though what power means in a given historical context is always an *a posteriori* consideration. Furthermore, morality is merely epiphenomenal to the crucial, brute truth of self-interest. Only a "purely secular and materialistic"

calculus can express the hidden truth of state interests, while moral philosophers may forever continue to grapple with the nature of metaphysics and ethics without ever engaging with the infrastructural reality of interest-as-power.

What we mean to designate as a realist utopia, in this sense, is a three-step, violent imposition of a worldview that eschews “morality” as all that is contained within what is presumed to be the international’s other. The first operation required of a realist utopia is a rigid demarcation between inside and outside, or the imposition of the framework of the nation-state among other nation-states. The second is the superposition of “human nature” to this framework: the “basic passions” of “humanity” are contained within the nation state, in an operation that naturalizes the historical contingency of existing normative arrangements, glossing over the community’s difference to itself, and over its empirical “internal” divisions. Finally, morality is defined precisely as the *absence of politics*. It is only in eschewing self-interest’s investment in power, that is to say, politics, that morality can carry the day, saving humans from themselves and their fellow men. The international thus becomes coextensive with politics, while the national becomes coextensive with morality.

This, of course, is by no means an unprecedented argument. To a certain extent, it is this manner of critique that Bartelson (1995), for instance, has in mind when he argues against the implicit ethnocentrism and nationalism present in traditional accounts of sovereignty, statehood and their relation to the distinctively “international” realm in IR and in certain strands of political sociology. In his words,

...the question of the social scope of sovereignty, whenever posed within international political theory, is likely to render nationalist, romantic or Eurocentric answers. There seems to be no choice but to abstract from one’s own position within political time-space, an experience which for international political theorists is a predominantly European and American experience of statehood, and to encompass all the ideological answers given to these questions by eighteenth- and nineteenth-century political thought (BARTELSON, 1995, p. 33).

This operation of rendering the international as the national’s other is implicitly also positing that the character of the international -- as an arena of unending conflict, ideological clash, etc. -- manifests what is truly universal to the human. This is why there can be no substantive conception of human rights within a realist utopia: in this dramatic realist genre, morality is the denial of the “natural human”, and the state is at once the human’s emancipation from himself, and his

entry into the order of civilization. As suggested in the quotation of Hobbes above (“[j]ustice, and injustice, are none of the faculties neither of the body, nor mind. If they were, they might be in a man that were alone in the world... They are qualities, that relate to men in society, not in solitude”), the aim of the state in realism is to assure unity, and it appears as the only natural solution to this necessity. It is only as such that Kennan can consider any particular goal of the state -- be it self-preservation, the pursuit of “national interest”, ensuring its subjects’ safety, their reasonable chances at happiness, etc. -- to be strictly extra-moral, solely within the order of practical facticity.

In a similar, more recent essay, Michael Ignatieff (2003) puts forth an analogous question, reworking, to an extent, the traditional notion of Empire towards one of “empire lite”. U.S. empire, for Ignatieff, bears the distinctive mark of human rights and democracy: this empire lite cherishes “free markets, human rights and democracy”, and has “the most awesome military power the world has ever known” to back them. It lacks, however, the knowledge that it is an empire, and thus sees itself as a “friend of freedom everywhere”. In a telling fragment, he continues:

[the, at the time potential, war in] Iraq is not just about whether the United States can retain its republican virtue in a wicked world. Virtuous disengagement is no longer a possibility. Since Sept. 11, it has been about whether the republic can survive in safety at home without imperial policing abroad. Face to face with "evil empires" of the past, the republic reluctantly accepted a division of the world based on mutually assured destruction. But now it faces much less stable and reliable opponents -- rogue states like Iraq and North Korea with the potential to supply weapons of mass destruction to a terrorist *internationale* (IGNATIEFF, 2003)

This fragment frames the entire subsequent discussion. Rather than simply being an issue of “U.S. virtue” against a “wicked world”, domestic morality vs. international mayhem, the September 11th attacks represented a shift towards survival. Responsibility to continue “imperial policing” -- this obviously never ceased being a core part of U.S. foreign policy in the twentieth century -- arises immediately from the somehow striking realization that the U.S. isn’t entirely exempt from (reciprocal) violence inflicted by others. The undertone of Ignatieff’s article is one of mute acceptance of a vengeful fate that needs bearing by the great “American” nation: the “much less stable and reliable opponents”, the “terrorist *internationale*”, in shifting the terms of the game -- they are not state entities, they defy the logic of the proper and dislocate politics into the “domestic” realm of

purported morality -- force empire into a realm of responsibility. As the article's title states, this shift signals the ultimate burden of the "American" empire.

What Ignatieff introduces with regard to Kennan, however, is the idea that human rights violations -- what Kennan would consider morality in foreign policy -- may give rise to a right of forceful intervention. After all, "[t]he [U.S.] choice is one between two evils, between containing and leaving a tyrant in place and the targeted use of force, which will kill people but free a nation from the tyrant's grip" (IGNATIEFF, 2003). But it doesn't stop there: if the U.S. wishes for lasting peace in the region, it must "build freedom" -- an expression Ignatieff often equates with human rights as a whole -- not simply for Iraq, but for the entire region, and particularly a resolution to the Israeli and Palestinian conflict. For Ignatieff, there is no escape from this conundrum: "...half measures are more dangerous than whole measures. Imperial powers do not have the luxury of timidity, for timidity is not prudence; it is a confession of weakness" (IGNATIEFF, 2003)⁶.

This unproblematic anthropomorfization of state -- the U.S. cannot be timid, the U.S. cannot be weak -- and nation in the form of an epic, heroic melodrama is something Ignatieff and Kennan share with most of their realist counterparts. The U.S. may not signal its weakness; once the illusion of its internal realm of cohesive morality has been broken by what its own actions precipitated, it is in the guise of empire lashing out, and potentially crumbling, that history takes its revenge: "America's [sic] very strength -- in military power -- cannot conceal its weakness in the areas that really matter: the elements of power that do not subdue by force of arms but inspire by force of example"; as with Kennan's "...in world affairs, as in personal life, example exerts a greater power than precept..." (KENNAN, 1985, p. 216) or "...in national as in personal affairs the acceptance of one's limitations is surely one of the first marks of a true morality" (1985, p. 215), signal no more than Hobbes' own argument that the sovereign among sovereigns possesses the very same prerogatives as individuals in the state of nature⁷.

Unwittingly, then, realism's utopian melodrama strictly separates politics and morality while at the same time rendering both of them conceptually void, if not

⁶ The discussion slowly drifts toward this heroic resolution of empire's burden, simply another name for the colonial myth of the white man's burden -- ironically, one Ignatieff himself mentions.

⁷ This is most clearly spelled out in Constructivism's "importation" of ego-psychology's notion of a coherent self that poses itself against an inhospitable outside world (EPSTEIN, 2010). The point is that the state is considered to be made in analogy to the individual -- therefore, that it has clear boundaries between what "she" is and what "everything else" is.

with immediate reference to the border that separates them -- implicitly, the blurred notions of sovereignty and subjecthood. This intricate metonymic interplay among inside and outside, human nature and the sovereign, politics and morality, empire and nation, individual and state, frames the very terms of, not only realism, but of IR as a discipline. It is imperative to note the complex metonymic slippages that constitute the “manifest” sense of these texts: states are represented as individuals, bearing responsibilities and moral flaws, nations are given innate senses of morality that should ideally not be imposed upon others, etc.

Let us retrace our steps so far. First, in my exploration of Kennan, I suggest that the realist utopia accomplishes three inter-related movements: 1) a clear demarcation of inside and outside; 2) a subsuming of “morality” to the inside and “politics” to the outside; 3) a sharp contrast drawn between these two poles. My reading of Ignatieff further identifies a move towards a “heroic” conception of the state. This move signals an analogy between the individual (in other words, the hero) and the state (as per Hobbes, defined in analogy to the individual in the state of nature). These two movements largely define the terms of what I suggest is a metonymic interplay between two founding binaries: politics/morality, and inside/outside, which forms the basis upon which IR theory erects itself. These two binaries, as I further suggest, stand also in a metonymic relation to at least two others: individual/state, and subjectivity/sovereignty. The next section will attempt to dissect the relation these binaries establish with one another.

This excursion into realism’s basic tenets, themselves exemplary of (much of) mainstream IR scholarship, ultimately raises the very basic question of “who is the subject of the international?”. Who might even be able to take up such a place if our imagination of international politics is so aggressively saturated with the impossible realist utopia of self-contained units struggling against each other with no regard to sociality as a necessary (and necessarily impossible) bond? The answer to this question is, to a work coming from within the IR tradition, particularly pressing, as it represents a further step towards discovering who the LGBTI subject of international human rights might be. That crucial question is precisely what has been animating much of the work deemed “poststructural” within the bounds of IR, and it is to this body of work that I now turn.

2.3

The subject and the sovereign

Subjectivity and sovereignty -- as we have been suggesting, characteristically realist metonymies for inside and outside, morality and politics -- are, strictly speaking, inseparable. A notable move of realism is to consider “things as they are”, the “immediately given” coordinates of social reality, as trans-historical facts of life. Notions widely employed, such as “human nature”, “anarchy”, “power” or “capabilities”, are all presented to us as timeless realities of humanity. In that sense, it may strike us as nonsensical to advance a claim that there is a fundamental co-constitution of sovereignty and subjectivity; after all, there is the state, and there is the individual -- and discourses such as human rights largely rely, in their current articulation, on this strict separation; the individual *requires* for her flourishing protection from the potentially intrusive state, implying that she herself bears no immediate relation to power if not in a negative sense (BROWN, 2004), and that rights themselves are merely a kind of shelter that enables this pre-social individuality to naturally flourish. Things are, however, not that simple, upon closer inspection. As Walker, in timely manner, reminds us:

The modern subject, the modern sovereign state and the modern system of sovereign states express a very specific accommodation between conflicting principles of political order, an accommodation depending on the articulation of clear boundaries both in territory and in law (WALKER, 2010, p. 29).

This *quid pro quo* among antagonistic principles of politics makes itself painfully apparent in realist theorization; without the shelter of conceptual ambiguity, the realist logic of opposing politics and morality cannot bear its own weight. As Walker continues, many an effort to develop different analytic and normative accounts of political life (and particularly within International Relations) have been dragged into “dualistic choices between realisms and idealisms, politics and ethics, necessities and freedoms or differences and universalities” (WALKER, 2010, p. 30), choices that are ultimately untenable, and that present us inevitably blurry pictures of the possibilities of change in modern politics.

All this suggests that we need to think otherwise about subjectivity, sovereignty, and all their associated concepts -- including our initial targets, politics and morality. A necessary first consideration is Richard K. Ashley's

(1989) notion of the “sovereign man” as constitutive of modernity itself. Ashley, largely following Derrida and Bourdieu, argues that modernity cannot be understood as a monolithic discursive formation; it is, rather, a multiplicity of interpretive techniques, conceptual complexes and practical dispositions that circulate, both spatially and temporally, and generate the contours of the modern subject in her particular freedom, and in her concrete characteristics. This circulation of meaning, furthermore, produces that which we, as modern subjects, take to be self-evident truths -- those irreducible signifiers which ensure the coherence of the modern semiotic complex, best understood as a particular “economy of power”. If this economy determines these signifiers, it also fixates and produces the place from which they are legitimately enunciated. In modernity, Ashley continues, this *locus* of enunciation can be understood as “the sovereign subject”. The distinctive operation of modern discourse, in that sense, is that it conceals that which upsets its balance, that which introduces irreducible difference within it. Therefore, the paradigmatic question that requires answering is precisely

...how, by way of what practices ongoing here and now, is just this sovereign voice of interpretation differentiated, set apart, and empowered so that it may be recognized, despite its historicity, as a pure and extrahistorical presence, a self-evident and identical voice of truth in itself? (ASHLEY, 1989, p. 262)

Many different practices may be said to contribute to the centrality of sovereign man in modern discourse. According to Derrida (1967), a particularly important one may be found in traditional Western metaphysics. Derrida argues that the philosophy that guides us in our practical ways of thinking and acting bears a distinctive logocentric mark. Logocentrism may be roughly described as the practice of assuming self-presence as the defining characteristic of human reason. Logocentric semiotics in modernity take a very particular form, however; they are based on an opposition between the intelligible and the sensible -- that is to say, between what can be thought of and what can be felt or perceived. In such a foundational dichotomy, the first term -- the intelligible -- is enunciated as a pole of pure self-presence, while the second term -- the sensible -- is regarded as its absence. In that sense, a logocentric disposition organizes thought around dichotomical hierarchies such as the original intelligible/sensible, rational/natural, man/woman, sovereign/subject, identity/alterity, etc., congregated around

metonymic slippages that are thereby connected to the presupposed, but unspoken, first term of presence/non-presence.

Derrida proposes, however, to shift our traditional metaphysical logocentric interpretation of the construction of meaning by employing the term *différance* to designate the operation whereby presence is simulated. The term *différance* plays on two senses of the French word *différer*, both to differ, the act of being different, and to defer, to postpone, delay. It is furthermore spelled with an “a”, a move that signals the dynamic character of the operation *différance* accomplishes by alluding to the present continuous tense (RODRIGUES, 2012). In that sense, what we take to be “presence” is actually constituted in the moment it asserts its own impossibility. Considering something to be present, either in words or in ordinary perception, thought or practice, is always already differentiating the “thing-in-itself” and its “representation”, postponing *ad infinitum* the process whereby the thing makes itself present to itself, to us or to the world. The distinctive operation of logocentrism is precisely banishing this inherent impossibility of the “thing-in-itself” to the inferior pole of the hierarchical duality. In that sense, then, the “absent” pole is the condition of possibility for the “present” pole to be recognizable in and by discourse as an intelligible, coherent and present object.

This logocentric disposition bears an immediate relation to historicity and conceptuality. In this regard, Ashley (1989) argues that logocentric, modern discourse tends to view history in the genre of the *monologue*; that is to say, it interprets historical narrative as a single, if complex, truth, enunciated from a place of univocity, which is thus always passively waiting to be interpreted. Furthermore, modern discourse answers the questions it poses to itself following a *narrative* structure. Ashley defines narrative as a modality of interpretation that is linear, requiring a constant simplification towards the least complex tropes it mobilizes, from the standpoint of which all the other elements appear as accidental, arbitrary and contingent. The basic truths of the text thus appear as the least ambiguous, least challenged “constructs, the dominant tropes, the recurringly heroic figures, the modal forms of subjectivity, the conditions that are then and there objectified as the necessary and fundamental structures of life...” (1989, p. 263). Truth (the “fundamental structures of life”), thus construed, is no more than

the sham of presence, uncritically tied to the movement of *différance* according to particular dynamics of the modern economy of power.

But the question remains as to who is the fundamental agent of this truth, the entity that is equipped to enunciate that which counts as legitimately true within the modern economy of power. Ashley's answer rightfully collapses the figures of subjectivity and sovereignty into the category of the sovereign man. In recalling the fundamental limitations that enable man to be reasonable -- in our terminology so far, to enter the realm of possible morality --, particularly the institution of the sovereign as per Hobbes' contractual fiction, and Kant's troubled relationship to authority and critique, he reminds us that it is in and through these fictions that reasoning man enables and participates in sovereignty, and establishes his particular kind of heroism:

The modern construct of sovereignty thus invokes the heroic figure of reasoning man who, by acknowledging those essential limitations he is obliged not to criticize but only to obey, affirms the absolute foundations upon which he shall ground his reason, his will to truth, his courageous struggle to transcend all those historical contingencies that would deny his infinite powers. It invokes a figure of man who recognizes some specific limitations on his doing and knowing, not as external constraints, but as virtually constitutive of his autonomous being as the necessary center of historical narrative (1989, p. 266)

This resonates immediately with what we have been exploring so far: realism's false ontological assumption, the notion that politics and morality are mutually exclusive and coextensive with the international and the domestic (respectively), is a prime example, as Ashley goes on to explore, of the specific conjunction of sovereign man and his limitations, of the way these limitations (otherwise referred to as "human nature" or some analogous term) are banished to the outside of the moral community of the state and come to constitute the international as an arena of perpetual enmity. In precisely this sense, "the state's claim to sovereignty obtains in its establishing as the principles of its law and its violence those historical limitations that reasoning man knows to be the necessary conditions of his free use of reason" (1989, p. 268). Sovereignty and reason (or, in a Kantian reading, morality, metonymically understood as a higher faculty of the human) thus appear as the founding two preconceptions of modernity, and retain their apparent necessary, unquestionable existence from their oppositional relation to their others, anarchy and (human) nature.

In a poststructuralist rendering, then, the apparently unproblematic border between politics and morality founders in the face of the fact that they are conceptually indistinguishable or indeterminate. It is a specifically discursive procedure that allows their separation as two different, opposite even, sites of human action. In a sense, morality has been politics all along, and politics, on the other hand, has been (a certain) discourse all along. It is the particular disciplining of language, by means of an economy of power, that causes modernity to arise as this apparently unquestionable paradigm, a paradigm that informs realist *praxis* and forms the core of the discipline of International Relations. This insight has immediate consequences for the study of international human rights. After all, as Wendy Brown reminds us, if human rights are themselves an indistinguishably political and moral project that competes, or can compete, with other political and moral projects -- ones that may even see themselves as fighting for a substantive ideal of justice --, then “[human rights activism] is not merely a tactic but a particular form of political power carrying a particular image of justice, and it will behoove us to inspect, evaluate, and judge it as such” (BROWN, 2004, p. 453).

One prominent aspect of this fantasy of modern self-mastery and subjective heroism is that the fiction of sovereign man is also implicitly gendered and sexualized. If we follow the realist utopian presupposition that the state assures moral unity against the international’s anarchy, no consideration of the inherent fractures of political community is possible. The state in a realist utopia is always already uniform, always already constituted, always already necessary and harmonious. We are thus finally at a point in which gender and sexuality may be introduced in this inquiry, and particularly from within the idea of law, the paradigmatic means by which the sovereign exerts his dominating influence.

The realist utopian move relies also on the glossing over of civil society’s difference to itself. One important element in this move is precisely the abolition of gender and sexuality as relevant axes of social differentiation. As Carole Pateman (1988) reminds us, the man of classical contractual theory (in authors such as Locke, Rousseau, and, to a lesser extent, Hobbes himself) is not an abstract entity, but an actual man who possesses a penis, and envies women’s possibility of pregnancy, of biological procreation. In her argument,

The story of the original contract tells a modern story of masculine political birth. The story is an example of the appropriation by men of the awesome gift that nature

has denied them and its transmutation into masculine political creativity. Men give birth to an ‘artificial’ body, the body politic of civil society... (PATEMAN, 1988, p. 102)

In that sense, what Douzinas refers to as “the man of the classical declarations [of rights]” (DOUZINAS, 2007) is himself constituted *in opposition to* women, identified as the *locus* of nature within culture. That is why Pateman argues that the first political right is male dominance over women’s reproductive capacity, and why the marriage contract retains a presumptive “natural” character even after the institution of civil society. Pateman’s approach is of particular value, as it refuses to distinguish between the domain of gender *proper* and the domain of sexuality and reproductivity -- what we might consider as the particular realm of bodily organization and disorganization. In that sense, it might be said that she retains a certain psychoanalytic commitment, even if her critique poses itself largely against the *quasi*-contractualist Freudian fiction of the primal horde (FREUD, 1993). It further speaks to what we have been approaching thus far: the origin of a politics/morality divide in the institution of civil society and its international other. In particular, it bears mentioning that Pateman’s argument is that the institution of civil society *masks* the first unspoken, sexual contract that subjects women to men: “[d]uring the genesis of civil society, the sphere of natural subjection is separated out as the non-political sphere... Sex-right or conjugal right... then becomes completely hidden” (PATEMAN, 1988, p. 94). In that sense, the institution of society at least partially functions as a covering up of a first, original alienation, one that is sexualized from the outset (even if that original alienation can only ever be grasped in retrospect, as a kind of *will have been*, in its co-constitution with civil society proper).

This is what Jenny Edkins and Véronique Pin-Fat (1999) show is directly at stake in the mutual founding of the social (which they equate with the Other) and the subject. Contractualist thought experiments rely on a deconstruction of the human within the a temporal frame; that is, they place humans in a place where time has not yet come to be, the state of nature, a kind of suspended space that can only be grasped from within the distance historical time already established. This is precisely the factual relationship we must assume takes place between the subject and the Other: in order for us to come to being as subjects, as legitimate, meaningful selves, we have to presuppose society, and we have to presuppose it demands something of us. This demand is only partially prohibitive, as it also

establishes and determines the “positive” content of our subjectivity. Indeed, “[t]he social order only comes into existence by our positing it in advance, assuming that it already exists, and in doing this we are ourselves constituted as subjects” (EDKINS; PIN-FAT, 1999 p. 5). The communal construction of meaning we designate as “society”, then, necessarily presupposes a foundational act of violence, which establishes the frame from which social reality can come about in subjecthood. In positing the Other, the subject is enabled from within this Other, and relays that foundational violence as the condition of arresting the free-flow of textuality (thus enabling conceptuality, meaning itself). As we will explore further in Chapter 4, positing the Signifier, the material form of incompleteness that paradoxically assures the coherence of the social, demands that this groundless violence be masked from ordinary thought and practice. In modernity, this process assumes a particular form. In Edkins’ and Pin-Fat’s words,

Sovereignty performs this task for the social reality that is taken to be modern politics. It conceals antagonism in a particular way and implicates particular subjectivities. For example, it produces politics as subjection and sovereignty as absolute. Within the legal authority it establishes, violence is concealed. That same violence is banished to the nonsovereign realm of the international. The subjectivities it invokes (or rather, that invoke it) are the irresponsible camp followers of power insofar as they naturalize a particular social order (EDKINS; PIN-FAT, 1999, p. 7)

In that sense, law is not merely the sovereign dictum; there is a previous, more fundamental law that enables this dictum in itself, that naturalizes the Other (in Edkins’ and Pin-Fat’s sense) in the very process we, as subjects, continue to (re)enact in all instantiations of “lawful” actions. If we understand international human rights, with Wendy Brown, as a particular mobilization of political power -- one way of arresting meaning around certain signifiers --, we are thus required to ask: which subjects are brought about and/or presupposed by the workings of human rights, or LGBTI human rights? Or, with Walker, what is the particular accommodation of conflicting political demands that allows human rights discourse to appear to us as this unavoidable stepping stone of the modern political?

Subjectivity thus construed relies on very particular articulations of what realism refers to as the properly political and the properly moral, as we have been exploring. The purportedly common moral ground international human rights

discourse attempts to mobilize to alleviate human suffering is therefore far from politically neutral. The attempts of discriminated populations (racial, ethnic, national, sexual, gender, etc.) to see themselves recognized from the human rights standpoint, in that sense, are not necessarily unproblematic, and generate certain effects that merit consideration.

As Chapter 3 further explores, one such subject is the LGBTI subject in human rights. Framing our demands in terms of what Brown calls the “universal moral vocabulary” (BROWN, 2004, p. 458) of human rights is particularly reliant on a certain articulation of subjectivity -- one, we argue, that requires an essentializing move towards identity, a new rehearsal of the sham of presence as we have designated above. The particularity of sexuality as an axis of relevant social differentiation, from a psychoanalytic standpoint, is precisely that we don’t really know what it is. As Alenka Zupančič reminds us, the Freudian answer to Victorian attempts to maintain sex in the sphere of the unspoken is precisely not that “sex is entirely natural”, but rather a new question: “what is this ‘sex’ you speak of?” (ZUPANČIČ, 2016, p. 87). The coordinates of sexuation (a term we will prefer over the usual “gender and sexuality”), in that sense, are a kind of mystery. That is because they fall within the purview of the Other, and are approached inevitably in the form of an enigma: as Edkins and Pin-Fat remind us, we ask of the Other what it wants from us, and we become that which we assume frames its answer.

Furthermore, in Zupančič’s terms, sexuality, if we now follow Foucault’s characterization⁸, is a distinctive way of glossing over the “non-relation”, a notion we will further explore in Chapters 4 and 5. For the moment, it is enough to say that the “non-relation” is the constitutive basis of sociality itself. It is precisely because individuation -- the process whereby objects and subjects come into being as discrete entities -- precludes true relationality that no coherent body may be said to *exist* in a strict, ontological sense. In other words, the subjects’ fantasy of individuation, of the discreteness of herself and of the objects of her perception and thought, makes it so pure relationality would logically require subjective dissolution.

⁸ Foucault considers sexuality to be an apparatus to ensure disciplining and proliferation of particular forms of medical and legal discourse, with the intent of controlling and producing the “proper” manifestations of the sexual (see, particularly, FOUCAULT, 1976). This will be further explored in Chapter 5.

In this sense, the subject is the result of particular accommodations of constitutive fantasies grounded in discourse. Sexuality, furthermore, is inseparable from the issues of the body and subjectivity itself. Indeed, as Lacan reminds us, “a body, one enjoys it [or it is enjoyed; *un corps, ça se jouit*]” (LACAN, 1975, p. 33), and we can only know anything from the standpoint of this enjoyment and its enabling positioning within discourse, sociality and embodiment. Zupančič makes this point concisely:

...in order to remove enjoyment from the Other one has to remove the Other from enjoyment... Enjoyment is in the Other, and the Other is in enjoyment. This is perhaps the most concise formulation of the structure of non-relation, the non-relation between the subject and the Other. If enjoyment is what disturbs this relation, it does so not simply by coming *between* them (and hence holding them apart), but rather by *implicating*, placing them one in the other (ZUPANČIČ, 2016, p. 93-4)

The Lacanian narrative of subjectivity, in that sense, is a story about human attempts to attain the impossible of sustaining meaning without fantasy. In fact, what enables us to assure our inner and social lives is always already fantasy, and this fantasy itself has political contours. This conception of the political, as that which attempts to cover up community's antagonism to itself, as that which attempts to create bodies of deceptive wholeness, is inherently productive from the standpoint of the LGBTI subject. Indeed, we mean to suggest that slogans such as “gay rights are human rights” or the notion that “love wins” or whatever other politically charged activist stance plays on that very idea of the political, covering over the fact that, strictly speaking, there is and there can be no distinctive or cohesive LGBTI subject.

Let us consider this more closely. When we say that we have no avenue of acceding to social reality if not already through a particular, fantasy-ridden organization of the body, we mean to say that subjectivity is itself derived. It is constituted in the interplay between an emerging subject and the Other, mediated by the proto-subjects' ascension into language. It is instructive to anticipate an argument Bersani makes concisely, one that will be explored further in Chapter 4. Bersani reminds us that, even if the categories we use to designate gender and sexuality -- man, woman, homosexual, heterosexual, etc. -- refer to one another in specific ways, they do not exhaust the extent to which our preferences and interests (what we may designate as our desire) are socially determined. When one claims to be a homosexual man, one claims simply to desire exclusively people

who are socially cognizable and designated as men, and who are thereby at least partially “similar” to oneself. This, however, does not mean that any and all individual men are the object of our hypothetical man’s desire. Neither does it mean that the label describes precisely and exhaustively what that person will or would like to do, sexually, with another. There is always an indeterminable number of other statements that, perhaps even more productively, “describe” or “explain” our hypothetical man’s existence as a desiring subject. In Bersani’s words:

The cultural constraints under which we operate include not only visible political structures but also the fantasmatic processes by which we eroticize the real. Even if we are straight or gay at birth, we still have to learn to desire particular men and women, and not to desire others; the *economy* of our sexual drives is a cultural achievement. Perhaps nowhere are we manipulated more effectively and more insidiously than in our most personal choices or tastes in the objects of our desires. Those choices have cultural origins and political consequences. To understand what might be called the line of constraint running from one to the other is itself a political imperative (BERSANI, 1995, p. 64)

Designating a monolithic LGBTI subject within international human rights, then, is a process of arresting the “line of constraint” running from “cultural origins” and “political consequences” in one particular way, rather than any other. As we will see in Chapter 3, our minimalist, pseudo-scientific category of the “homosexual” -- she or he who desires persons of the same sex or gender -- is not descriptive of any particular homosexual. In that sense, this category is inadvertently “filled”, so to speak, with numerous unspoken assumptions, just as, when we imagine a “homosexual person”, we do not simply conjure up a faceless, aesthetically neutral man or woman holding hands with an equally unmarked person of the same sex or gender (not least because ascribing a gender to someone is already a similarly “marking”, though perhaps “scarring” better describes that process, operation). In other words, in each verdict that we will consider in Chapter 3, a specific representation of “the homosexual” is brought into existence, within the terms of the Human Rights Committee’s own approach to human rights and discrimination.

One reason for (or consequence of) this is that the order of legal discourse (in which international human rights has increasingly become entrenched) is itself implicitly sexuated. Grear (2011) argues that, in its attempt to strip humanity of even the most minute traces of embodiment, legal discourse simply reifies the standard trope of the white male property holder as the baseline against which

equality before the law poses itself: “...as feminists have pointed out, the disembodiment of Western rationalism is far from neutral despite the objectivity it implies. The impulse towards body transcendence is, in fact, irreducibly gendered” (GREAR, 2011, p. 41). That is because the male fantasy of sovereign man relies on a fiction of complete integrity, of presence to oneself in the form of rationality -- in Lacanian terms, Man, he who purports to be the Master in the order of sexual difference, is defined by an impossible longing to be perfectly represented in and by his own signifier. Inevitably, then, the universal moral impulse upon which human rights relies is ultimately to “sanitize” the LGBTI subject, to enact her in the same terms as the paradigmatically male legal subject.

To illustrate this latter point further, let us consider a minimalist, generic claim to non-discrimination on the basis of sexual orientation. Discrimination requires a baseline standard against which to compare the concrete situation presented to a juridical instance. If there is no “normalcy” provided for by law, there can be no deviation from that normalcy, and therefore no illegal discrimination. For one such claim to be successful, therefore, one needs at least to prove that 1) a certain practice unduly differentiates how one is treated, compared to the normal treatment others are given in an otherwise analogous situation, as prescribed in law; and 2) that undue differentiation is motivated by sexual orientation. In order to concede such a claim, a substantive definition of sexual orientation is absolutely indispensable, even if it is only established by analogy (as in, the plaintiff is the same as X or Y homosexual person, or presents certain traits commonly associated with homosexuality) or by comparison (as in, heterosexual people benefit explicitly from the legislation or practice in question, to the discernible detriment of homosexual people as a group; therefore, the plaintiff’s disadvantage with regard to the application suggests he or she was treated as a homosexual). In any and all situations of this kind, a refusal to explicitly define who is designated when ascertaining the relevant aspects of the discriminatory practice simply means that implicit standards and definitions are being made to bear on that decision. We therefore need to be skeptical towards approaches that would have us believe in the “political expediency” of a decision (as in, no matter the legal reasoning behind it, this or that verdict or statement gives homosexuals a previously non-existing legal entitlement), or in the positive

character of any specific decision for the advancement of better standards of living for the LGBTI.

The concrete processes whereby sexuality is represented thus rely on particular textual operations that we will further explore in Chapter 3. As a preliminary indication, however, one may look at the verdict of the first United Nations precedent prohibiting discrimination against same-sex consensual sex in *Toonen v. Australia* (1994). This prohibition is based on the Human Rights Commission's interpretation that sexual acts are (ideally) within the purview of privacy, and that "sex" as a category can be expanded towards sexual orientation. These are not unproblematic moves, even though their immediate effect may seem to be in favor of equality. In fact, banishing sex to the realm of the strictly private can be said to be no more than an accommodation of irreducible bodily difference to the terms of the white, male property owner -- that is to say, to the hegemonic normative arrangements of Western modernity.

As Berlant reminds us, though she speaks of the context of the United States, contemporary citizenship (itself based on the notion of rights and legal and ideological equality) is increasingly expressed as a dead metaphor, a yearning for normative sexual privacy and consumerist belonging that attains the status of the commonplace form of political subjectivity in late capitalist modernity (BERLANT, 1997). Indeed, as the present political climate in many places of the world suggests,

This sentimentality suggests how fully the alarm generated around identity politics in the United States [and elsewhere] issues from a nostalgia or desire for a suprahistorical nationally secured personhood that does not look to acts of history or the body for its identifications (BERLANT, 1997, p. 72)

Here, it must be stressed that the paradigmatic subject of law (and of human rights) bears an immediate relation to capitalism as a mode of (not solely economic) expropriation. As Brown (2004) reminds us in her critique of Ignatieff, the commonsensical articulation of human rights discourse is not a condition for the flourishing of the subject *per se*, but a condition for the smooth functioning of markets, and therefore of a *particular* kind of subject. For this particular subject, it is the markets themselves that are understood as the precondition for dignified humanity: "...Ignatieff argues for human rights as the essential precondition for a free-market order and for the market itself as the vehicle of individual social and economic security" (BROWN, 2004, p. 458).

This retreat into moral solipsism -- the notion that the individual requires solely external protection from interference for her flourishing -- current human rights discourse entails is thus articulated according to the very dictums of realist utopias: politics has to give way to morality, and morality has the potential to be truly universal, insofar as it is contained within a discernible, autonomous and politically regulated interior. This particular “moral” claim, however, neatly coincides with liberal-individualist atomistic accounts of subjective development. If this is the case, this figuration of human rights discourse represents an analogous, but dislocated, instance of the realist utopia: rather than keeping the international out of the domestic, the “next level” of that operation is to transpose politics to the state and morality to the individual. The harmonious coherent whole of morality, in that sense, jumps from the state towards the individual, all the while the anarchic realm of politics is transposed from the international towards the state. With this transposition in mind, it seems that following this particular incarnation of human rights to its logical extreme would entail abolishing sociality itself, an extreme individuation that reminds us of Arendt’s characterization of terror (ARENDR, 1970), with the extra step that individuality itself is to be put to work exclusively under the guise of consumerism.

Let us once again take a step back and consider what we have been saying in immediate relation to international human rights as a minimal set of standards for human dignity. As we have suggested so far, any specific representation of a potentially violated person or group of persons requires it to *appear* as a textually coherent whole -- that is to say, designating, say, a homosexual, requires that signifier to appear as an unquestionable reality. There *is* a homosexual, and she or he is being discriminated against on the basis of her or his sexual identity. It is these bodies of false coherence that “sneak in”, so to speak, potentially harmful representations and therefore potentially insidious political effects into the practice of human rights or activism.

Another example of that attempt to signify wholeness is achieved in the realist utopian narrative: wholeness is ascribed to the state, which is the harmonious *locus* of morality, to the detriment of the international, which is multiple, unequal to itself, the *locus* of politics. In Brown’s designation of Ignatieff’s market human rights, it is the individual that is figured as wholeness, and the state as that which encroaches politically upon her wholeness. Brown

(2004) argues that this figuration has the harmful effect of making the individual thoroughly depoliticized, functioning thereby only insofar as it is a consumer within the market. With this in mind, it is imperative that the LGBTI appropriation of human rights discourse not mimic one such essentializing displacement -- that is to say, we cannot simply tie our claims to legal entitlements to our similarities with the “capitalist straights”, for this would mean that we merely want equal participation in the (already grim) reality of market exploitation.

Framing our politics within the terms of this strand of human rights discourse, therefore, would be just another way of creating yet another body-among-bodies of fictitious wholeness, one equally subsumed under neoliberal capitalist legality. A psychoanalytic interpretation of this scenario might rely on the notion that capitalist-legalistic appropriations of the non-relation build the entire discursive system around the expropriation of the *being* of the proletariat (understood in analogy to the LGBTI), and puts it into the capitalist’s (understood as the “capitalist straights”) service *as property*. In that sense, Zupančič argues, the capitalist “makes himself enriched”: his particular *jouissance* is built into the system by surplus-value as *plus-de-jouir*, the (ex)appropriation of the remainder. As we will further explore in Chapter 4, this is precisely the relation the Master’s discourse establishes in inaugurating the order of sexual difference: “gender” is founded upon the extrication from Woman of that which she cannot have if man is to be represented as fully intelligible to himself⁹, if the non-relation of sexuality is to be “tamed” from the standpoint of heterosexual propriety (which, strictly speaking, is just another name for sexual difference). This is why capitalism *requires* individual “freedom”; if we were to sell our very being, thus becoming slaves, the system would collapse from its own lack of grounding for the production of value, because it is only in expropriating from the worker that which he does not have that value is instituted as a category. In Zupančič’s words,

Labour is a product among other products, yet it is not exactly like other products: there where the latter have a use-value (and hence a substance of value), this particular commodity ‘leaps over’ to the source of value. The use-value of this commodity is to be the source of value of (other) commodities. It has no ‘substance’ of its own. This could also be put in a formula [paraphrasing Lacan’s Woman does not exist]: ‘the Worker does not exist’ (ZUPANČIČ, 2016, p. 98)

⁹ In Lacan’s Seminar XVII, on the *Other Side of Psychoanalysis*, he reminds us that “...the Master’s discourse sets off with the predominance of the subject, precisely insofar as he tends to support himself entirely upon this ultra-reduced myth: to be identical to his own signifier” (LACAN, s/d [1969-1970], p. 40)

Human rights discourse, from this point of view, appears as no more than another attempt to cover up the non-relation, in a way strictly correlative to “traditional” authoritarianism: instead of ensuring the coherence of the “body politic” with a totalizing move such as the realist utopia, it covers up the non-relation by insisting on the subject’s unity and independence from the Other -- therefore designating the subject as the pole of “presence” to the detriment of collective political action. In a sense, the extreme individualist logic of neoliberal capitalism and its associated fixation with negative rights thus represents the most elaborate way of putting the non-relation to work towards the maintenance of the system itself, and therefore towards its superficial de-politization: it denies all claims to form a coherent unity and, as such, assures the universality of the enjoyment it purports to provide.

What, then, of the distinctive ways we, as sexual minorities, tend to advance our claims on the basis of a certain “identity”? It would seem that the recognition we continuously attempt to assure to ourselves relies on a distinctive covering up of all that we actually have to give up to make these claims: the potential of espousing a truly disruptive paradigm of sexuality and politics, the still revolutionary claim of feminism that the personal is political, the *queer* appeal of undoing all that impedes the flourishing of dissidence. To answer these questions, an excursion into the textual constitution of the LGBTI subject within the international human rights regime is necessary.

While the next chapter will attempt to extricate what the human rights establishment means concretely when referring to the LGBTI, it might be useful to remember my framing of these issues. First of all, International Relations scholarship generally relies on the realist utopian move. As I have claimed above, this move consists in establishing mutually exclusive spheres of internal and external coherence which are then made equivalent with morality and politics. This move further requires a definition of the state which relies on an analogy between state and individual. This second analogy establishes the criteria according to which I claim that these definitions establish metonymic relations with one another. These metonymic slippages come to substantiate an artificial separation between subjectivity and sovereignty. I have suggested, however, that these two terms are thoroughly co-implicated.

In that sense, morality has always been inseparable from politics. Therefore, international human rights cannot be considered to be a strictly moral project of providing basic dignity to any and all humans; they represent, rather, a specific political rationale, and a specific set of prescriptions to implement and enforce this rationale. I then suggested that this rationale is itself understood on the basis of the neoliberal prominence of market logics, which are themselves constituted by extricating from the proletariat that which she cannot have, a move that will be further explored in Chapters 4 and 5. For the moment, however, I will turn to the construction of the LGBTI subject from the standpoint of human rights law. Specifically, I will analyze judgments by the Human Rights Committee regarding discrimination on the basis of sexual orientation and gender identity, in order to suggest that there are specific contours to the “legitimate victim” of discrimination on these grounds.

3

Human Rights law and the LGBTI body

3.1

The facts before it...

There are now many international efforts to alleviate discrimination against LGBTI individuals. Large, established international NGOs such as Amnesty International and Human Rights Watch now unequivocally express their allegiance to LGBTI rights in any number of issue areas, including but not limited to what might be termed “sexual and reproductive rights”. The United Nations have also promoted a number of initiatives since the 1990s to end discrimination against sexual minorities, including within the UN General Assembly and numerous treaty monitoring bodies. This, of course, is an evidently welcome fact, but, as we have been exploring, the language of human rights may itself bear some unanticipated effects and presuppositions that cannot be neglected if we are to offer an assessment of the value of universal rights language to political emancipation of sexual minorities.

Aside from regional juridical bodies, such as the European Court of Human Rights and the Inter-American Commission and Court of Human Rights (their African counterpart is, conversely, not well established from an LGBTI rights point of view), and other institutional developments such as the Universal Periodic Review (UPR) procedures within the Human Rights Council, the UN treaty monitoring bodies are arguably among the most important *loci* of juridical interpretation and expansion in international human rights law today (MCGOLDRICK, 2016). The Human Rights Committee, tasked with monitoring the International Covenant on Civil and Political Rights (ICCPR, 1966), has issued substantive decisions on at least 8 cases related to sexuality and gender identity since 1994. As per Optional Protocol N° 1 (1976), individual victims are empowered to present complaints against state parties to the Covenant.

From its first foray into cases pertaining to sexual orientation and gender identity (these terms are preferred by the Committee in its decisions), in 1994’s *Toonen v. Australia*, the Committee has proffered at least partially favorable

decisions regarding discrimination based on sexual orientation and gender identity in the aforementioned *Toonen v. Australia*, as well as in *Young v. Australia* (2003), *X v. Colombia* (2007), *Fedotova v. Russia* (2012), and *G. v. Australia* (2017). Complaints relating to discrimination based on sexual orientation were considered inadmissible, notwithstanding other substantive issues, in *Fuenzalida v. Ecuador* (1996) and *Dean v. New Zealand* (2009). Finally, no violation was found on the merits in *Joslin et al. v. New Zealand* (2002).

In *Toonen v. Australia*, the Committee found a violation of articles 17, par. 1, in conjunction with article 2, par. 1 (respectively, the right to freedom from arbitrary interference with privacy, and the obligation to ensure the provision of the rights contained in the Covenant without discrimination); in *Young v. Australia* and *X v. Colombia*, a violation of article 26 was found (equality before the law and non-discrimination); in *Fedotova v. Russia*, article 19, par. 2 was violated in conjunction with article 26 (respectively, the right to freedom of expression, and equality before the law and non-discrimination). In *G. v. Australia*, the Committee found there to be violations of articles 17 and 26 (respectively, freedom from interference with privacy and non-discrimination). Finally, in *Joslin et al. v. New Zealand*, the Committee refused to recognize a violation of articles 16, 17, 23, par. 1 and 2, and 26 (respectively, recognition of legal personality, privacy, marriage, and non-discrimination).

Taken together, these judgments guarantee a number of juridical entitlements to LGBTI people. In *Toonen*, the Committee assured that prohibition of private, consensual sex between same-sex (the Committee's term) adults is a violation of human rights; in *Young* and *X*, that pensions for same-sex partners should be granted to unmarried homosexual couples whenever there is a similar entitlement for unmarried heterosexual couples and no legal manner of relationship recognition for homosexuals; in *G.*, that a gender reassignment surgery should not entail the dissolution of a previously heterosexual marriage following the legal recognition of gender change; and, in *Fedotova*, that restrictions on the expression of homosexual-friendly information may not be enforced if there is no similar restriction applied to information on other forms of sexual conduct. Conversely, in *Joslin et al.*, the Committee refused to recognize a general, human rights-based entitlement to partake in the legal institution of marriage.

Though these may seem like unequivocally positive developments (with the notable exception of *Joslin et al.*), the legal reasoning behind these decisions is not *per se* exempt from careful scrutiny. In fact, the very terms in which the plaintiffs present their cases is itself constrained by the positive, often implicit content of the rights assured in the ICCPR. The intentionality inherent in the relevant provisions, such as the right to be free from unlawful or disproportionate intervention upon privacy, or the right of men and women to marry, may be confirmed, refused, or reinterpreted in light of the Committee's "living instrument" approach to the Covenant (MCGOLDRICK, 2016). This approach, however, still does not invalidate the central critique we have been attempting to put forth, namely, that the particular textual articulation of the LGBTI subject within human rights law is not entirely unproblematic. In that sense, the main questions we put forth are: who is the explicit or implicit subject that these decisions construct? Who is allowed to legitimately offer him or herself as a possible human victim of discrimination on the basis of sexual orientation or gender identity?

Although there is considerable analytic value to be found in other sources of international human rights law, I will focus on the Human Rights Committee's work for the present purposes, only having recourse to other documents when they are explicitly mentioned in the decisions -- for instance, in the numerous references made to General Commentaries by the Committee itself. This methodological choice can be justified by the explicit focus on issues of homosexuality and the general scope of the interpretations advanced by the Human Rights Committee. As McGoldrick (2016) suggests, the Committee's decisions, along with those of other UN treaty bodies, are considered authoritative, or nearly so, by what may be termed the international community, even though compliance with human rights standards for LGBTI people is somewhat scarce. Furthermore, the ICCPR, with 169 parties, is arguably the most important¹⁰ and comprehensive international human rights document that expressly gives rise to obligations from member states.

The documental analysis will be guided by what Jacques Derrida would likely describe as a deconstructionist *attitude*, rather than methodology. This point

¹⁰ As can be inferred from Chapter 3, this focus on civil and political rights is itself problematic if taken to the detriment of a concern with economic, social and cultural rights, as per Brown's (2004) contention that the mainstream understanding of human rights in the West is that of a set of minimal guarantees for the flourishing of market freedom and representative democracies.

requires further clarification before we can delve more deeply into the cases themselves. From a “social scientific” standpoint, attempting to avoid such labels as “methodology” implies an immediate evacuation of falsifiability and reproductibility, and thus of scientificism itself. In that sense, some specific remarks are in order as to justify this particular “methodological” choice. In what immediately follows, we will attempt to delineate what we mean by a deconstructive attitude, and what this might entail for the analysis of international human rights documents pertaining to LGBTI people.

In the subsequent section, we will delve into the texts themselves in order to attempt an answer to the consequential question of who the LGBTI subject of human rights might be¹¹. We will suggest that the representation of this subject relies first and foremost on a comparative reasoning that takes its basis from an implicit standard: that of the middle-class, white male property owner, as Wendy Brown (1993) argues in her now classic critique of identity politics. The specific procedures by which this standard is implicitly brought into the Committee’s legal reasoning, however, are very interesting, in that they allow us to trace the contours of a certain deliberate (or not) omission of the Committee with regards to explicit definitions of sexual orientation and bodily use. This omission further allows us to sketch out some of the prototypical subjects the Committee brings into being as representing legitimate and illegitimate victims of discrimination based on sexual orientation.

In this sense, I find that the prototypical LGBTI subject, from the standpoint of the Human Rights Committee, is a heterosexualized neoliberal subject. It can only be grasped from the standpoint of hegemonic normative arrangements, particularly those pertaining to the publicity of sex -- that is to say, it is based on heteronormative kinship arrangements such as marriage and family, or the publicizing of sexuality inherent to activist *praxis*. Those subjects who cannot conform to these standards are cast out of propriety and cannot be victimized on the basis of their sexuality. In other words, the Committee describes both a legitimate sphere of discrimination on the basis of gender identity and sexual orientation (its own terms), and an illegitimate one, and the criteria for this

¹¹ This is not to say that this subject has to have definite contours. In fact, this is exactly the opposite of what we mean to do in this dissertation. The point remains, however, that the decisions we consider here do sketch out some prototypical subjects, and that these sketches largely correspond to hegemonic discursive arrangements.

demarcation is itself heterosexualized from the outset. A similar process has been largely described by Jasbir Puar, who terms a roughly similar phenomenon “homonationalism” (PUAR, 2007)

3.2

A note on method

Deconstruction and the facade of presence

In a now famous statement, Derrida presents us with the gist of the deconstructive enterprise: “there is no outside-text [*il n’y a pas de hors-texte*]” (DERRIDA, 1967, p. 227). This is, of course, not to say, as detractors sometimes do, that what we have come to posit as “deconstruction” denies any and all claim to the existence of an empirical reality fundamentally independent of language. It is simply to say that this objection is itself inconsequential, as the *locus* of this empirical reality is always necessarily deferred and dislocated; it can only ever figure as a temporality and a spatiality that are both necessarily implicit and necessarily impossible. In the lines leading to the famous quotation, he reminds us that

...if a reading should not limit itself to redoubling the text, it cannot also legitimately transgress the text towards something other than itself, towards a referent (metaphysical or historical reality, psycho-biography, etc.) or towards a signified outside the text, the content of which might take place, might have had taken place outside language... That is why methodological considerations... are closely dependent on general propositions (DERRIDA, 1967, p. 227)

This fragment is a concise statement of our main opposition to what social scientific standards of objectivity would make sacrosanct as the “scientific truth”. The general statement of an idea is epistemologically equal to the methodological claim to scientific propriety from the moment we recognize that no referent exists if not through its mediation by an implicit third term; it is this third term, to which we may refer as discourse, that assures, in and through *différance*, the facade of presence. It is *différance* that bears the weight of perpetually dislocating presence, thereby ensuring the very possibility of meaning. This does not mean that there is absolutely no possible order to the production of knowledge; it means simply that knowledge itself can never *not* be situated, never *not* be provisional and ultimately arbitrary. The only possible, if partial, referent is the notion that “[e]ven if there is

never a pure signified, there are different relations as to that which, from the signifier, offers itself as the irreducible stratum of the signified [se donne *comme strate irréductible de signifié*]” (DERRIDA, 1967, p. 229). Texts, in this sense, make certain realities basic (MILLIKEN, 1999), and the deconstructive enterprise seeks to expose these realities and the differential relations established within the text that make it so these realities may seem like the “bedrock” of what is “patently signified” in and by the “surface” of the text.

The contention that meaning arises from the differential interplay of signifiers within the text is of particular relevance to the form of legal writing that has historically occupied the place of juridical legitimacy in Western societies. As Derrida argues, “[d]econstruction takes place in the interval that separates the undeconstructibility of justice from the deconstructibility of law” (DERRIDA, 2002, p. 243). Law, as the expression of the sovereign *dictum* under a modern economy of power, is always fallible, and bears no immediate relation to justice -- this latter term, as we have suggested in Chapter 2, being equated or subsumed under “morality” by the realist utopian narrative. This is because justice, according to Derrida, is always an aporetic experience; an act in which justice is substantiated is never an act that can be assured or deduced from any other available maxims. It is therefore strictly correlative of responsibility -- it emerges only when responsibility, in the strictest sense, can be entirely attributed to that sole act, and not to its relation to whatever previous normative or textual arrangement may be said to be in force. In that sense, “[j]ustice remains *to come*, it remains *bycoming*, it *has* to come, it *is* to-come, the to-come, it deploys the very dimension of events irreducibly to come” (DERRIDA, 2002, p. 256)

Undoing this implicit link between law, human rights and justice has immediate consequences for the way international human rights are commonly understood in mainstream academic and media circles. It is no longer the case that we can limit ourselves to noting all the instances in which human rights norms are being disrespected by X or Y country, or the circumstances under which a state is more or less likely to uphold fundamental rights. This reasoning presupposes that the norms are “out there”, and that they are necessary *and sufficient* to building a more just world, or whatever other expression of an ultimate normative *telos* these norms have come to represent. If, then, human rights and justice have to be conceptually dissociated, human rights norms can finally be understood in the

sense we have explored in Chapter 2, as another normative-political project implying a distinctive set of presuppositions and particular operations of power which generate effects that are not negligible from a political-normative standpoint -- not all of which are necessarily conducive to alleviating human suffering, the self-professed aim of human rights practitioners around the world. After all, as Douzinas reminds us,

The radical potential of right, both revealed and concealed in human rights, remains open to the idea of heterogeneous positions and traditions, when the emphasis moves from law's promotion of pacified obedience to that of indeterminacy and openness of self and society, the boundaries of which are always contested and never coincide with the crystallisations [sic] of power and legal entitlement (DOUZINAS, 2007, p. 13)

One such crystallization is the alleged presence that the texts comprising the international human rights regime on LGBTI people purport to represent. As we will further elaborate below, this alleged presence is quite interesting, as it has no defining characteristic if not a particularly “thin” one; the text of the decisions leaves it entirely to their audience to decide who the “homosexual” or the “minority” is, what she, he, they do with, to and through their bodies, and beside what category of individual they “are” and “do”. If this presence does occasionally achieve a certain explicit characterization, it is only following a scheme of comparison: for example, if an unmarried heterosexual couple acquires certain benefits from their union, then non-discrimination demands that an unmarried homosexual couple receive those same benefits if marriage is not an available legal institution for the latter. The implicit scheme takes the form heterosexual/homosexual, where the “/” can only represent the patent fact that these terms have no distinctive meaning of their own, or that these definitions fall outside the scope of international human rights law (a complicated argument to make, as a brief reference to a “medical” or “philosophical” or whatever other kind of definition would be quite simple).

In fact, it is hard to conceive of a different textual avenue for these texts; there is a neverending signifying chain associated with each of these constructs -- as we explore in Chapter 4 -- one that gets even more complicated when read in conjunction with, say, the United Nations High Commissioner for Human Rights' 2011 report *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, in which a further circuit of “discrimination” is advanced in terms of an aesthetics of sexual

or gender identity: as paragraph 1 of this report's introduction states, "[sometimes] *even the perception* of homosexuality or transgender identity puts people at risk" (our italics). So even in those cases where homosexuality cannot be said to exhaust someone's identity for non-discrimination purposes (an extremely problematic claim in itself), that is to say, when that person is "aesthetically" a "potential" homosexual or transgender person, but not "actually" one, the violation they incur on the basis of their sexuation may fall within the purview of human rights LGBTI law.

This (deliberate or not) omission with regards to definition speaks to the enigmatic character not simply of sexuality, but of language and textuality itself -- an enigma that is perhaps productively described as the modern paradigm of law's unspeakable secret. Derrida writes:

Such is the question: the alliance of speech and of Being in the individual word, in the finally proper noun [or name, *nom*]. Such is the question that inscribes itself in the affirmative played by *différance*. It bears (upon) each of the members of this phrase: "Being/speaks/everywhere and always/through(out)/all/language(s)" (DERRIDA, 1967, p. 29)

In this remarkable fragment, Derrida definitively puts into question the alliance of Being and presumptively "authentic" speech, best understood perhaps in the form of the godly injunction of "Let there be X", or of the Human Rights Committee's preferred formula, "the facts before it disclose a violation". It is, in fact, in the interstices, in the unspeakable in-betweens that language and Being find themselves co-implicated, and yet apart. It is in *différance* that what is said constitutes itself precisely from within the distance, both spatial and temporal, that the signifying chain establishes in relation to its impossible signified. The interplay of signifiers that differentially produces meaning blurs activity and passivity, refuses presence while masquerading as a claim to the absolute.

Any universal is, as such, undecidably particular; it does not speak to the order of Being, but is spoken in and by the order of Being precisely in Being's instantiation in language, and in language's (de)constitutive role with regard to subjecthood, to the order of beings (the *étant*). It bears reproducing once again Derrida's fragment: "[e]ven if there is never a pure signified, there are different relations as to that which, from the signifier, offers itself as the irreducible stratum of the signified" (DERRIDA, 1967, p. 229). Something, therefore, of the signifiers thus offers itself as the basic metaphysical reality that purports to leave

the text and inhabit pure ontology -- in other words, something in the signifiers allows them to make sense. The point is that this something is merely a trace, a shadow, a mark left behind by the very working of language and the formal requirements of producing meaning. This is why we have suggested in Chapter 2 that, strictly speaking, there can be no distinctive, monolithic LGBTI, homosexual, transgender, etc., subject. Again, Derrida:

...Being [*être*] never having had a ‘sense’, never having been thought or said *as such* without dissimulating itself in beings [*étant*], *différance*, in a certain, very strange manner, (is) ‘older’ than ontological difference or than Being’s truth” (DERRIDA, 1972, p. 23).

We take temporal difference, the assertion that *différance* pre-dates Being, to be interestingly related to Lacan’s point in *L’écrit*, where he advances the enigmatic *maxim*: “That we say [*Qu’on dise*] remains forgotten behind what is said in what is heard” (LACAN, 2009, p. 33). With regards to law, and particularly human rights law, the point is that the imperative, the normative, the law, require, for their functioning, our (mis)understanding that they come from nowhere, that they have no fallible “agent”. We do not mean to argue, against all common sense, that there is no value in codifying rights in the traditional Western legal form. We hope, rather, to note the pitfalls of forgetting the processes whereby law, in general, and international human rights law in particular, comes to be interpreted as an entirely impersonal *locus* of authoritative enunciation. No rule can ever be made identical to itself, just as no subject can ever become entirely self-present.

If we return to Lacan’s phrase, then, “That we say”, the fact that what can be legitimately stated requires saying *by some-one* before it can be heard and, in being heard, misunderstood, “remains forgotten”. It remains forgotten because it *must be*, by virtue of Being’s own representational impossibility, “behind what is said in what is heard”. The reproduction of whatever discursive system, of whatever puts us in touch with Being’s pseudo-empirical reality, in that sense, requires that we forget the otherwise clear fact that, in whatever judicial decision, there is a particular will working towards particular goals, even if this will or these goals cannot be decisively ascribed to a definite, monolithic subject. There is therefore always more in what is said than simply that which is heard. There is a disjunction between what “is said in what is heard” and “[what it is] That we say”.

With this necessary misunderstanding in mind, it is imperative that we note the remarkable power that has been invested in these instances of juridical interpretation. As we will further explore below, the Human Rights Committee has the prerogative to both name and define who it is that can legitimately enter representation as a victim. In that sense, it performatively constitutes that which may count as discrimination based on sexual orientation or gender identity, and that which may not. The conspicuous absence of a clear definition of sexuality, gender or sex, both in the ICCPR itself and in the Committee's work, is telling of the magnitude of this prerogative.

We must therefore constantly remind ourselves that Being itself does not communicate, it is only *relayed as the unmistakable imperative of an a priori* -- it has no other possibility than to command its own (re)production, its own dissemination *as* presupposition. This speaks closely to the perils, long pointed out by feminist theory, of appealing to the category of "nature", or some correlate of it, such as biology, medicine, psychiatry, and even occasionally psychoanalysis, in order to justify some implicitly political act or decision. Nature, Being, or essence are all, ultimately, "[a] past that has never been present, this formula... with which Emmanuel Levinas... qualifies the trace and the enigma of absolute alterity: another [*autrui*]" (DERRIDA, 1972, p. 22). This, again, is a distinctive mark of the deconstructive project: this project that refuses, or is at the very least highly conscientious of, metaphysical referents that purport to transcend textuality. This is furthermore a tenet deconstructionism shares with Lacan: every thought, every perception, every utterance, by its own nature, can always be referred somewhere else. No interpretive construct is ever complete, just as nothing signifies in and by itself: interpretation and utterance can only convey meaning in their own dynamic foreclosure.

This is where we discover the value of ascertaining *in whose name* the international human rights regime purports to speak. Though it may be true, as in Judge Cançado Trindade's separate opinion in the Inter-American Court of Human Rights' verdict on *Yean and Bosico v. Dominican Republic* (2005), that the potentiality of the "victim" status in human rights law has decisively propelled individual dignity into the sphere of the "possible universal", it is no less true that it is the work of the human rights bodies themselves which designates who is entitled, or not, to be a victim, and on what terms that individual or group fits that

particular label. To what extent, then, can this victimized LGBTI subject purport to represent the presumptive victimization of the metonymically “global” LGBTI subject-hood? How does this very naming come to define restrictive, burdening criteria for identifying those who bear legitimate and illegitimate victimization, or those who bear the mark of LGBTI-ness? Ultimately, the question poses itself in terms of Butler’s (2015) own suggestion that it is not the “rights” themselves that are at stake, but rather the “human” that defines them -- who exactly is entitled to occupying this position within the human rights regime? Which LGBTI subject counts as human, and can thus be victimized on that basis?

The unfolding of the deconstructive process is perhaps the best avenue for inquiry into these issues. A compelling reason for this assertion is simply that deconstruction does not purport to solicit the textual structures with which it engages from an objective “outsider-looking-in” position. That is why Derrida refers to deconstruction as a particular form of *inhabiting* a text, rather than simply “analyzing” it. In his words,

Deconstructive movements don’t engage structures from the outside. They are not possible or efficacious... unless they inhabit these structures. Inhabiting them *in a certain way*, as we always inhabit them, and even more so when we do not doubt them. Operating necessarily from within, borrowing from the old structure all the strategic and economic resources of subversion, borrowing them structurally, that is to say, without the possibility of isolating within it elements and atoms, the deconstructive enterprise is always, in a way, pushed forward by its own labor (1967, p. 39)

Ultimately, this represents the recognition that we simply cannot exempt ourselves entirely from the space we occupy within the endlessly complex and complexifiable fabric of differential, textually charged relations that designate retrospectively who we are, who we have been, and who we can become -- even from within the caveat that this “becoming” is always put forward in the form of the “will have been” (LACAN, 1966a). Deconstruction speaks to the fundamental uncertainty that surrounds any and all textual “monoliths”, the inherent impossibility of fullness and the constant effort through which we must put ourselves in order to establish an illusion of direct relationality to what we have grown accustomed to designating as our “identity”, or to those concepts we often resort to in more “illuminated” forms of discourse, such as reason, progress, objectivity etc.

In that sense, however much we may be personally invested in the idea of equality for the LGBTI, and however much we may have been personally victimized by things such as those that have been addressed by the international human rights regime so far (say, “sodomy laws”, unequal stable partnership benefits, etc.), no amount of cynic pragmatism can alleviate the issues raised by the conceptual vacuity of the definitions of sexuality and the proper domain of the political that circulate within some conceptions of human rights. As unequal, unrecognized subjects within a phallogentric, logocentric modern capitalist and pseudo-democratic order, there is a pressing need to inhabit the painfully apparent ambiguity in the common articulation of identity categories as they pertain to victimhood and the particular dignity the international human rights establishment purports to protect and propagate. This experience of disjunction is central to the deconstructive enterprise: in abandoning the objective “truths” we uncritically take to be central to whatever textual construct, we become better equipped to undermine that construct from the inside, with its own interpretive resources, towards a hopefully more substantively egalitarian textual articulation.

3.3

Producing the LGBTI rights-holder

Toonen v. Australia (1994) is arguably the most important precedent set by the Human Rights Committee in LGBTI issues. This was the first case decided by the Committee on the merits that pertained directly to discrimination on the basis of sexual orientation. The plaintiff, Nicholas Toonen, claimed that Tasmanian sodomy legislation, which, taken in its entirety, prohibited all forms of sexual intimacy between men, as well as some forms of intimacy between men and women and between women, was discriminatory in its content, even if it had not been enforced in over a decade. In his initial petition, Toonen advanced three interrelated arguments regarding the legislation in question: 1) that the relevant provisions failed to establish a difference between public and private sexual conduct, thus giving law enforcement the right to invade someone’s privacy on the mere suspicion that unlawful sexual acts might be taking place, even if between consenting adults; 2) that the prohibition of “sodomy” amounted to discrimination on the basis of sexual orientation, sexual identity and sexual

activity; 3) and that the legislation was in itself discriminatory in the sense that prohibitions were more thorough with regards to male homosexual activity, while only a more restricted set of prohibitions applied to homosexual women or heterosexual men and women. These complaints, taken together with the claim that homophobia was common practice in Tasmania, gave rise, according to Toonen, to a violation of his right to freedom from unlawful interference with his privacy, even though the legislation had not been enforced in a long time. Other factors of Toonen's life take part in his argument; notably, that "because of his long-term relationship with another man, his active lobbying of Tasmanian politicians and the reports about his activities in the local media, and because of his activities as a gay rights activist and gay HIV/AIDS worker, his private life and his liberty are threatened" by the Tasmanian outlawing of "sodomy".

Interestingly, the state party (Australia) itself agreed with most of Toonen's arguments, raising issues solely pertaining to the reasonableness and necessity of the discriminatory nature of Tasmanian legislation. The state party conceded even that if Tasmania claimed that the provisions were aimed at preventing the spread of HIV/Aids, or that the acts targeted by the provisions were morally unacceptable according to the standards of the Tasmanian community, this did not mean that such moral standards were Australia's own, as even in the state's HIV/Aids response plan secrecy regarding homosexuality and one's private sexual conduct was seen as aggravating the crisis, rather than tackling it, and that the community itself had a clear sense that the sodomy legislation was targeted at homosexual men as a distinct societal group. In response to the state party's communication, Toonen further advanced that the existence of the legislation only aggravates the situation of "homosexuals and lesbians" (the author's words) with regards to harassment and discriminatory practices. He claims even to have been fired from his then employment due to the high-profile nature of his activism and of his case against Australia within the Committee.

The Committee did not dispute that Toonen was a victim in the sense of article 1 of Optional Protocol nº 1, thus accepting the communication. The Committee's reasoning was then set forth under quite interesting terms. Regarding sexual activity between consenting, same-sex adults, the Committee claims that "it is undisputed that adult consensual sexual activity in private is covered by the concept of 'privacy', and that Mr. Toonen is actually and currently affected by the

continued existence of the Tasmanian laws”, and that the relevant provisions in Tasmanian legislation interfered with his privacy notwithstanding their application or lack thereof. The “continued existence” of such provisions, then, constituted, in themselves, an interference with Toonen’s privacy. Furthermore, even though, strictly speaking, the prohibition on sodomy was provided for by law, it remained to be seen, according to the Committee’s general views on arbitrariness (set forth particularly on General Comment 16), that the concept of “reasonableness” implied that “any interference with privacy must be proportional to the end sought and be necessary in the circumstances of any given case”.

The Committee noted that, even if Tasmanian authorities considered the legislation to be within the purview of public morality, this alone did not constitute a reason for the Committee not to evaluate potential violations, as accepting that moral issues are not within its purview would “open the door to withdrawing from the Committee’s scrutiny a potentially large number of statutes interfering with privacy”. Even if it did admit a primacy of public morality over international scrutiny regarding human rights practices, the fact that the legislation had not been enforced in a long time itself constituted proof of the spuriousness of the prohibition with regards to Tasmanian public morality. The prohibitions were thus not necessary for the achievement of that particular moral goal. In that sense, the legislation did not pass the reasonableness test, and constituted arbitrary interference with Toonen’s privacy. Furthermore, this was done in a discriminatory manner, as, according to the Committee, even if the state party inquired specifically about the coverage of the notion of “other status” in articles 2 (obligation to guarantee rights without discrimination) and 26 (equality before the law and non-discrimination) of the ICCPR, sexual orientation may be subsumed under the “sex” rubric, rather than under “other status”, necessarily. For these reasons, the Committee found that there had been violations under article 2, par. 1 (duty to guarantee the rights contained in the Convention), in conjunction with article 17, par. 1 (right to privacy). Interestingly, the Committee found it unnecessary to consider whether there had also been a breach of article 26, on non-discrimination, upon asserting the violation of articles 2 and 17. In his concurring opinion, Bertil Wennergren noted the oddity of the Committee’s choice to abstain with regards to article 26, as, in his view, the violation of article 17, and a further violation of article 5, par. 1 (prohibition on acting to the

detriment of any rights set forth in the ICCPR), are rather to be deduced from the violation of article 26.

Two essential movements define the legacy of this precedent: first, the subsuming of “sexual orientation” under “sex” as a ground of prohibited discrimination, and the refusal to espouse “internal” morality as a grounds for inadmissibility of a complaint. However, the Committee’s refusal to entertain a violation of article 26 failed to enact a precedent prohibiting entirely the discrimination entailed by legislation such as the sodomy laws. It is interesting to note that, although Toonen’s argument explicitly mentions the fact that he was in a long-term relationship with another man, the Committee does not mention this fact as relevant to its decision. This stands in sharp contrast to the other communications, in most of which the status of being in a committed relationship or not was explicitly taken into account by the Committee in both favorable and unfavorable decisions.

In *Young v. Australia*, Edward Young, who had been in a stable relationship with another man, who was a deceased war veteran, was refused pension rights by the Australian government allegedly due to the fact that the relevant legislation provided pensions solely for married or unmarried heterosexual couples. The state retorted simply that Young had not substantiated his claim to a pension, as his late partner had not died from a war-related injury, even if Young happened to be a woman in a heterosexual relation. Young further responded that the state bodies seized of his case had expressly recognized his relationship, but denied his pension on the basis of his sex and sexuality. On this issue, the Committee noted that

the prohibition against discrimination under article 26 comprises also discrimination based on sexual orientation. [And recalled] that in previous communications the Committee found that differences in the receipt of benefits between married couples and heterosexual unmarried couples were reasonable and objective, as the couples in question had the choice to marry with all the entailing consequences.

As Young and his late partner did not, under Australian legislation, have the alternative to enter into marriage, the committee, on the basis on the comparison between unmarried heterosexual couples, who could, in principle, be conceded a pension in a similar case, and unmarried homosexual couples, who could not, the Committee decided there had been a violation of article 26, on the right to non-discrimination and equality before the law, on the basis of Young’s “sex or

sexual orientation". The annexed concurring opinion, by Ruth Wedgwood and Franco DePasquale, limits itself to noting that there was no reason for the Committee to have found that the complainant had exhausted domestic remedies (a condition for admissibility), as there was no reason to assume that Australian judicial bodies could not have revisited the constitutionality of pension legislation -- even though Young had provided evidence that the relevant terms, such as "couple", "spouse" or "partner" were, in Australian jurisprudence, considered to apply solely to heterosexual kinship arrangements.

Although *Young* does not deal with articles other than 26, *X v. Colombia*, a very similar case, features further exploration of other provisions of the ICCPR regarding sexuality, pensions and marriage. X., who was in a stable relationship with a now deceased man by whom he was financially supported, lodged a request for pension transfers with the Colombian government only to see it rejected, as his union to his late partner did not constitute *de facto* marriage under Colombian legislation. Differently from *Young*, however, X. claimed to have suffered violations of articles 2, par. 1; 3; 5, par. 1 and 2; 17 and 26. With regards to the alleged violation of article 3 (equality between men and women), the Committee noted that, while it is true that, had a woman lodged the pension transfer request, she would have had it granted, in the case of a woman in a homosexual relation, she might have suffered the same discrimination as the complainant. In that sense, the Committee refused to entertain the violation of article 3, preferring an interpretation that the discrimination had stemmed from X's sexual orientation. The Committee also noted that article 5 did not give rise to a separate right, and refused to entertain that part of the complaint as well.

Regarding articles 2, 17 and 26, the Committee noted that the first two did not warrant further exploration, as it was sufficient to substantiate that there had been a violation of article 26, on the basis of X's sexual orientation. This, again, was achieved on the basis of a comparison between the rights of unmarried heterosexual couplings and unmarried homosexual ones. In the merits, the Committee states:

The Committee also notes that, while it was not open to the author to enter into marriage with his same-sex permanent partner, the Act does not make a distinction between married and unmarried couples but between homosexual and heterosexual couples. The Committee finds that the State party has put forward no argument that might demonstrate that such a distinction between same-sex partners, who are not

entitled to pension benefits, and unmarried heterosexual partners, who are so entitled, is reasonable and objective.

It is interesting to note, from these three cases, that the Committee's reasoning evolves further and further towards a standalone interpretation of the right to be free from discrimination on the basis of sexual orientation. In fact, a disjunction between sex and sexual orientation is made explicit in *X. v. Colombia* that was not necessarily present in its predecessors *Toonen* and *Young*. The reasoning in *Young* gave prominence to a counterfactual thought experiment in which Young, had he been a woman, would have been entitled *prima facie* to his late partner's pension, thus generating a confusion leading to a failure to explicitly circumscribe the violation as one of either sex or sexual orientation. The Committee itself bases its decision on a curious of reading that *both* factors were determinative in the decision. By contrast, the "sex" axis of discrimination was found to be inadmissible from the outset in *X. Toonen*, our inaugurating case, operated a complicated intermingling of the terms, leading even to a refusal of subsuming "sexual orientation" under "other status", the more obvious choice, rather than under "sex"¹². It bears mentioning that this trio of successful cases, as well as *G. v. Australia*, all had demonstrably nuclear couple forms as an at least subsidiary axis of argumentation. Conversely, the sole single complainant that was afforded a favorable judgment was Fedotova, while in the *Dean* and *Fuenzalida* cases, in which the complainants were single men, the Committee deemed the complainants to have "failed to substantiate" their claims of discrimination on the basis of sexual orientation. *Joslin et al. v. New Zealand*, though lodged by a group of lesbian couples, did not give rise to a right to homosexual marriage, from a comparative analysis of the wording of article 23, par. 2.

Fedotova v. Russia is a fairly straightforward case. The complainant, a self-designated lesbian woman, hung posters outside a secondary school saying "I am proud of my homosexuality", "homosexuality is normal" and other homosexual-friendly slogans. In the administrative region she lived, there was in force a statute prohibiting the propaganda of gay male or lesbian sexuality aimed

¹² Though this legal reasoning may seem harmless at first, it inaugurates a certain confusion, as the ICCPR itself designates what we now term "gender" as "sex". In that sense, subsuming sexual orientation under "sex" implies that sexual orientation is integrally covered by gender identity. If employed critically, this definition may prove to be politically expedient and productive, rather than detrimental, but the other cases we analyse generally suggest that this has not been the case.

at minors, in order to “protect their morals” and psycho-social and sexual development. In this case, the Committee found that there had been a violation of articles 19, par. 2 (freedom of expression), and 26. What is notable about this decision is, first, that it does not deal with any matter related to alternative family forms, but rather at what the complainant repeatedly refers to as “neutral information” regarding homosexuality, aimed at fostering tolerance for homosexuality. The Committee recalls a number of times that the complainant’s actions cannot be regarded as “incentives” for a particular manner of sexual acts, but rather an “expression” of her “sexual identity”, in search of “understanding” of others for it. Crucial for the Committee’s argument is the distinction drawn in the legislation between homosexual intimacy and heterosexual (or purely sexual) intimacy. This comparison, along with the change from “propaganda” to “expression in search of understanding”, provide the interpretive keys to the Committee’s decision.

It is interesting to note that, from the outset, the Committee had already acknowledged that the legislation in question was discriminatory. In its final reasoning, however, it takes pains to remind its audience that it was also “ambiguous”, in that there was no way to know whether the legislation referred to sexual *acts* or to sexual *identities*, or to both. This is a very curious conceptual move by the Committee, as presumably homosexuality, understood as a sexual identity, can only really be gauged from the standpoint of one’s sexual behavior or, in some cases, desire, unless the further essentializing step of disjoining one’s “essence” and one’s “public behavior” is implicitly taken. While this distinction is not explicitly referenced in the other communications we have been considering, it bears mentioning that the Committee itself has a troubled relation to this identity/behavior scheme. In *Fuenzalida*, for instance, it refrained from considering the complainant’s claim that he was denied access to judicial representation because of his sexuality, as he had trouble retaining attorneys, or that his homosexuality would have precluded him from committing the crime he was allegedly wrongly accused of -- the rape of a (female) North-American diplomatic agent. In fact, that part of the communication was summarily dismissed due to an alleged failure to substantiate his claims -- a failure that is not at all explained or justified by the Committee. A parallel lack of explicit

consideration is seen in *Dean v. New Zealand*, in which the complainant argued that he was given harsher sentencing due to his homosexuality.

In its final favorable ruling, *G. v. Australia*, the Committee recognized a violation of articles 17 and 26, respectively the right to privacy and to family life and the right to non-discrimination. G., the claimant, was assigned as male on birth, and married a woman, but subsequently went through gender reassignment surgery. Although her “new” identity was recognized in a number of official documents, including her passport, she was denied a change of her sex in her birth certificate, due to the fact that she was married at the time of her transition. The Committee thus found that, by not allowing the change of gender in the birth certificate solely due to her marital status, and given that an unmarried transgender person would have had access to such a change, the state practice “[constituted] discrimination on the basis of marital and transgender status”, and interfered with the complainant’s right to family life. Interestingly, the fact that G. was then technically in a lesbian relationship did not seem to merit explicit scrutiny on the part of the Committee, though it could be argued that sexuality was indeed a further axis of discrimination in G.’s case.

The final case we will consider is *Joslin et al. v. New Zealand*. The complainants in this case, a group of lesbian couples who each raised (biological) children from previous marriages, argued that New Zealand’s lack of recognition of homosexual marriages amounted to a violation of articles 16 (right to legal personality), 17, 23, par. 1 and 2 (right to privacy and family life), and article 26 of the ICCPR. Although declaring the communication admissible, the Committee refused to concede a general right for homosexual marriage to be considered, despite the ample scope of the complainants’ arguments. This is because the relevant provision on marriage in the ICCPR, namely, article 23, is the sole substantive provision in the Covenant that explicitly names “men” and “women” as rights-holders, rather than the general wording usually employed (“everyone”, “all persons”, etc.) by the drafters. This is the sole case pertaining to LGBTI families or otherwise marriage-like relationships in which the Committee did not rule favorably to the complainants.

This consideration of the minutiae of the cases decided by the Committee to the present moment allows us to catch a glimpse of what it means, precisely, to be an LGBTI subject under international human rights law. What must first be noted

is that the legal reasoning behind these decisions seems to be largely *ad hoc* whenever the issue of sexuality takes center stage. The Committee prefers to defer to proxies for the determination of the complainants' sexualities, such as marital status, proof of long-term marriage-like cohabitation, proven track records in gay activism, etc. Conversely, where no such "proof" is available, such as in *Fuenzalida* and *Dean*, the two cases in which the plaintiffs were single, self-identified homosexual men, discrimination on the basis of sexuality seems to be *prima facie* subjected to more constraining standards than in those cases in which plaintiffs' public personae immediately indicate a certain air of homosexual propriety.

Furthermore, there is a patent lack of consideration of the nature of the disjuncture between sexuality understood as an "identity" and sexuality understood as a "practice". Indeed, even when the fluidity of this manner of so-called identity is manifest, such as in *G.*, the Committee prefers to use the least demanding tests possible for ascertaining the precise grounds upon which discrimination is to be condemned. Quantitatively, these amount to mostly *de facto* marriage and sexual orientation -- though, as we have suggested above, the "sexual orientation" test usually seems to amount to ascertaining whether the claimant is in a marriage-like union, or outright dismissing the possibility of discrimination on the basis of sexuality based on other, more patent forms of discrimination; note, particularly, the refusal to consider the full extent of *G.*'s newly affirmed gender identity and homosexuality. It is instructive that the Committee, after *Toonen*, seems to be reluctant to categorize violations in terms of the specific provision for equality between men and women in the ICCPR, even in those cases related to marriage in which the ICCPR itself may be said to be discriminatory, as that would require a lengthy examination of the concept of "sex", an examination that the Committee refuses to carry out even as regards its relatively new engagement in matters of sexuality.

A number of interesting aspects to the Committee's reasoning thus point to some of the specific ways in which sexuation is understood from the standpoint of the ICCPR, and of international human rights law more generally. What is most striking is the outright refusal to attempt any explicit reasoning regarding the central concepts that comprise what we have referred to as the "bedrock" of the realities these texts make basic -- those differential textual relations that allow

certain *strata* of the signifiers to offer themselves in the image of irreducible signifieds. In our present case, it would seem that the basic reality we are meant to accept is that of “homosexuality”; the signifier is employed by the Committee in such a way as to preclude any further criticism of the category. One either is or is not a homosexual, which still leaves open the question of whether one was discriminated against on the basis of that homosexuality. More specifically, however, the figure of the homosexual and of the transgender person have no specific contours if not already delineated in and by their *de facto* marital status or otherwise marriage-like union, or in their willingness to open themselves to overt discrimination in the form of public expressions of tolerance or pedagogic attempts to alleviate discrimination against homosexuals.

In contrast, wherever there is no *prima facie* proof of one’s sexual identity or sexual activity, such as in *Fuenzalida* and *Dean*, the Committee consistently refuses to engage in discussions relating to the claimants’ sexuality, referring to a lack of substantiation. What amount of substantiation, however, would be enough as proof of victimization if there simply is no concrete definition of homosexuality? What forms of subjectivity, then, are textually construed in these decisions, and what do these reveal about the nature of the sexuality that is taken to be properly “human”, in that it can be victimized from the standpoint of human rights law?

3.4

...disclose

Proper victims, proper humans

It seems to be possible to identify at least three tropes generally mobilized by the Human Rights Committee in its decisions regarding LGBTI persons. They are not mutually exclusive, and do not necessarily represent an exhaustive “genealogy” or taxonomy of popular conceptions of homosexuality or transgender experiences that generally permeate the international human rights establishment, or identity politics. They are, nevertheless, illustrative of the current state of international human rights, and of the pitfalls of a human rights-based approach to political activism. We see, first, the unequivocal image of the “sanitized” homosexual, the figure who, *despite* being gay or trans, is in a long-term, cohabiting, stable,

“marriage-like” union, and who only demands that they be free from the undue burdens discriminatory practices place on them -- including, but not limited to, the state’s. This subject is a citizen like any other; she may be married to former military personnel, as in *Young*, or be financially dependent on her homosexual husband- or wife-like partner, as in *X*. For human rights purposes, the sanitized homosexual carries out their lives predominantly in the private sphere, and undue state action, as well as discriminatory practices in general, impinge on her ability to carry out a normal, productive (and possibly reproductive) life.

It is interesting to note that the explicit content of the norm expressed in article 17, par. 1, of the ICCPR is an entirely negative one. In both of these cases, the Committee found there to be a violation of that provision. It states: “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation”. As we have noted, the concept of arbitrariness imposes a test upon the allegedly discriminatory actions or legislation. This test demands that the discrimination in question be both reasonable and necessary in order to assure a legitimate political goal, such as public order, security or morality. There is, of course, no evident standard to which this test may be referred, if not already through a presupposed positive content of privacy (a concept that itself refers to the founding modern distinction between the public and the private spheres).

The Committee notes, in *Toonen*, that it is “undisputed” that “adult consensual sexual activity in private” falls under the purview of article 17, par. 1. In the following paragraphs, it refers to “private homosexual behavior”, “homosexual practices” and “homosexual activity”. It is interesting to note that these terms appear deliberately vague, in contrast with the Tasmanian criminal law provisions that are challenged in the case. These provisions are explored in the author’s arguments, in paragraph 2.3: “...‘unnatural sexual intercourse’ or ‘intercourse against nature’... [and] ‘indecent practice between male persons’”. The Committee’s reasoning, carefully avoiding any conceptual issues, proceeds in the form of deductive and comparative reasoning; Tasmania’s arguments ran counter to Australia’s own HIV/Aids prevention and treatment initiatives, and the fact that the provisions had not been enforced in years was indicative that they were not necessary for preserving public morality.

The Committee's both minimalist and conservative reasoning, in that sense, restricts legitimate sexuality to the sphere of privacy, and shies away from putting in consideration the particularities of the political and social articulation of homosexuality, especially with regards to the global productive periphery, which is generally less (legally) accepting of the LGBTI. The strong and somewhat uncharacteristic focus on comparative reasoning (that is to say, showing the discrepancy between Tasmanian arguments and Australian policy, and also the fact that sodomy laws had already been repealed in most other Australian states, etc.) invites itself to the argument that, if *Toonen* weren't Australian, the verdict might have been less favorable. This, of course, may be countered with the argument that the Committee, for purposes of political expediency, naturally attempts to present its reasoning in the least controversial possible terms. This argument, however, does not necessarily hold against a joint consideration of the cases, as we will further explore.

Fedotova v. Russia, as with certain aspects of the parties' arguments in *Toonen* and *Joslin et al.*, for instance, presents a second, again interrelated, trope of normative homosexuality: the gay activist, who seeks solely to make herself heard, understood and tolerated by society at large, presumably *in order to* carry out life within the same distinctive parameters as the sanitized homosexual. Both of these tropes are construed in such a way that their primary yearning is simply to lead a "normal" life, without being singled out for discrimination based on the people they "choose" to love and, supposedly, fuck.

The plaintiff in *Fedotova* had hung posters near a secondary school, with the intent of advocating for more tolerance towards homosexuals in the community at large. Applicable regional law stated that propaganda of homosexuality, defined as "sexual acts between men" or "lesbianism", was unlawful among minors, in order to protect their psychological and moral development. The Committee expressed confusion regarding whether the statute referred to propaganda with regards to one's sexual *activity* or sexual *identity*, or both, noting that, whatever the answer, *Fedotova*'s freedom of expression was suffering undue restriction. With that in mind, the Committee resolved that the plaintiff did not intend to persuade children to engage in homosexual acts or to "promote" her sexual orientation among them, but simply to express her "sexual identity" and "seek understanding" for it. With that framing, the Committee proceeded, it could not be

said that this restriction on freedom of expression was provided for in article 19, par. 3, according to which such restrictions can only be imposed “for respect of the rights or reputations of others” or “for the protection of national security or of public order..., or of public health or morals”.

It is instructive that, in its (non-)approach to the sexual act/sexual identity binary, the Committee, in refusing to explicitly discuss the difference between the two, ends up resolving this tension upon the characteristically contemporary slide towards identity -- a term that is much easier to subsume under the notions of “sex” or “privacy”, as the Committee does in all its decisions, as it is something that 1) allows the Committee to place both privacy and sex as a fundamental characteristic of the distinctively (and, presumably, biologically) human; 2) allows it to abstract entirely from the concrete ways these subjects experience their bodies as non-normative sexual subjects; and 3) allows it to hetero-normalize these subjects as docile insofar as their deviant bodily uses are never named, and are taken to be conducted solely within the recognizable frame of heterosexualized privacy -- particularly under the couple form.

This is paradoxically reinforced in *Joslin et al. v. New Zealand*, in which the Committee refused to put forth a fundamental right of marriage for homosexual couples. Even though the ruling was negative regarding the claimants’ (two lesbian couples, cohabiting and raising together children from previous, presumably heterosexual marriages) arguments in terms of articles 16, 17, 23, par. 1 and 2, and 26 (respectively, legal personality, privacy, family and non-discrimination), the Committee still considered these arguments, though in a considerably simplified form. Indeed, the plaintiffs’ claims in *Joslin et al.* are comprehensive and categorical, as they put into question the institution of marriage as discriminatory and as denying even legal personality to homosexual persons who wish to see their relationships formally recognized by the state. Despite the wide range of these claims, the Committee noted that the “essential argument” of the parties was that “the Covenant [obligated] state parties” to provide the possibility of marriage between homosexual partners. This undue circumscription of the question therefore defines the Committee’s reasoning, given the specific provision of the right to marriage (art. 23) to “men and women” rather than “to everyone” or “to all persons”, or the other inclusive formulas the Covenant generally employs. The complainants, in that sense, seem to be cast off

in a category of excess; they do not simply wish to see their private lives recognized as livable, but to have a stake in the public sphere, to acquire a positive right to affirm their non-heterosexual lives as recognizable. Thus, as par. 8.3 of the decision puts succinctly, “the Committee cannot find that by mere refusal to provide for marriage between homosexual couples, the State party has violated the rights of the authors”.

While these two tropes are eligible to victimhood, the third and last trope mobilized by the Committee, we argue, is the illegitimate gay. Featuring prominently in the decisions for inadmissibility of discrimination complaints in *Fuenzalida* and *Dean*, the illegitimate gay cannot become a viable victim, in the sense espoused by international human rights law, due to his (we will prefer the male form as the complainants in the relevant cases are self-identified males) non-normative sexuality. The illegitimate gay does not have anything to show as proof of his sexuality; he is not in a marriage-like partnership, he is not a prominent or even outspoken gay rights activist. He is merely a citizen, whose “sexual identity” cannot be invoked to justify his victim status, precisely because that identity is not sufficiently comparable to a recognizable norm from the standpoint of heteronormative discourse.

It must be said that this trope, rather than arising from what is patent in the surface of the decisions, arises from what they refuse to acknowledge. In both *Fuenzalida* and *Dean*, the Committee uncritically accepts the state parties’ arguments (or lack thereof, as in *Fuenzalida*) regarding a failure to substantiate discrimination claims; in *Fuenzalida*, a claim of discrimination on the basis of a failure to retain legal representation due to the complainant’s sexuality, and, in *Dean*, a claim of discrimination expressed in a “clearly homophobic” judicial ruling against the complainant and an unusually harsh conviction for his sexual offenses against adolescent boys.

It is instructive that, in both these cases, the claimants had already been found guilty of common crimes. The Committee restricted itself to analyzing more evident and uncontroversial issues in each communication. *Fuenzalida* was found to be a victim of police mistreatment due to having been shot in the leg without justification or consideration by national courts on appeal procedures; and *Dean* was found to have been illegitimately denied effective recourse to appeal due to New Zealand’s relevant legislation at the time. None of these findings are based

on the attainment of victim status from the standpoint of discrimination on the basis of sexual orientation, sex or gender identity. Both of the cases, furthermore, present difficult questions in terms of legal reasoning. Fuenzalida claimed he was a homosexual, and that he had never had sexual intercourse with a woman, despite having been accused and convicted of raping one. Dean had been repeatedly warned about his inappropriate behavior towards male adolescents (though the specific details of his prior convictions are not mentioned in the decision), which, as the state party's arguments make clear, raises issues as to whether his sexuality even *could* have been taken into consideration: indeed, the state argued explicitly that Dean had not been convicted on the basis of indecency towards minors of a certain gender or sex, but rather towards minors in general.

In that sense, it must be further said that the trope of the illegitimate gay is itself defined in a differential relation to the sanitized gay and the gay activist. It has no content of its own; it is defined solely with regard to the fact that, while he may have a presumptive claim of victimization stemming from his self-declared sexuality, this sexuality cannot be legitimately taken into account since there is no tangible, recognizable proof of his sexuality in the eyes of heteronormative propriety.

Taken together, these three tropes largely describe the attitude of the Human Rights Committee, and possibly of much, if not all, of the international human rights establishment, regarding LGBTI people. It bears reminding, with Chapter 2, that human rights claims to political neutrality in the form of moral supremacy (and, in our exploration, traditional legal rationality) systematically disavow the myopia of human rights to the singularities of sexualized subjectivity. In that sense, it is essential to repeat Gear's (2011) contention that, no matter how much effort is put into masking the embodiment of the subject of Western legal rationality, this subject is always presumptively heterosexualized, whitened, enriched, made male. In that vein, it is evident that the LGBTI subject of human rights, at the very least in the Committee's work, does not bear the distinctive mark of sexualization. She must be seen from the standpoint of Western, heterosexual, racial, etc. propriety if she is even to be considered as legitimately bearing a presumption of victimhood on the basis of her "sexual orientation" or "gender identity. At every turn, the Committee, even in posing the issue of whether discriminatory practices are aimed at "sexual acts" or "sexual identity", sees itself

pulled back to the essentializing idea of “identity”, one that requires, for its smooth functioning, the ultimate *telos* of heteronormative privacy. The sanitized gay and the gay activist, in that sense, inhabit the same heritage: privacy’s claim to occupying the place of “...desire for a suprahistorical nationally [rights-bearing] secured personhood that does not look to acts of history or the body for its identifications” (BERLANT, 1997, p. 72).

Joslin et al. presents the most forceful way this manner of condescending re-framing towards a uniform arrangement of privacy and kinship: the Committee *unfortunately* cannot recognize a universal right for homosexual marriage; if only the Covenant did not express itself so clearly, if only privacy were not therein defined as a purely negative right, *then* it might allow the intrusion of this right, *then* it might allow legal recognition (and all its associated economic benefits) to homosexual partners. Even if marriage itself can be construed as having a strict lineage in heterosexual and heteronormative lines, the plaintiffs in *Joslin et al.*, in exposing *too* forcefully the semi-personhood to which the LGBTI are subjected, in claiming for strict equality, even from within the bounds of quasi-normative kinship, cannot be entertained as bearing the mark of violation. Though they might be admissible victims, they are not legitimate ones, at the very least regarding the recognized rights of the Covenant.

The very selection of what is relevant to any particular decision is, in this sense, also already heterosexualized. It is chosen *precisely* because it *can* be heterosexualized, expressed from a frame of fictitious, modern “universality”. A true homosexual victim must be an ideal modern subject: she must yearn to carry out her privacy unimpeded, she must carry her identity as a transcendental, transhistorical mark of who she is, who she wants to be, who she, ultimately, must be. In asserting this essential difference between her and her “normal” heterosexual peers, she paradoxically subsumes herself to that presumably entirely abstract category. Under the guise of privacy and identity, she evacuates all that can be, or already is, disruptive of the implicit sexualized and commodified statute of heterosexual, capitalist and racial normative arrangements.

This is not to say that human rights law should emphasize and celebrate all that is distinctive about the LGBTI subject, as that itself is an inevitably impossible project. The issue, rather, is that subsuming oneself to the implicit heterosexual, white and capitalist subject of (this particular articulation of) human

rights is renouncing that which may allow us to be politically subversive -- namely, the experience of disjunction that is inherent to the subjective articulation of sexuality. This evacuating of subversive potential is precisely what the Committee does to its paradigmatic LGBTI subjects. In evacuating sexuation as a *locus* for the baring of the disjunction of community, human rights law impedes the signification of bodily uses and erotic economies that are not immediately aligned with the ideals of heteronormative, capitalist privacy.

What, then, if we aspire to build a politics, and a particular articulation of human rights, that allows embodiment to flourish in its immediate relation to subjectivity? What if we demand that legal categories cease to exhaust all that is not evidently amenable to being subsumed under the fiction of legal personhood? Inevitably, answering these questions requires an incursion into theoretical and empirical realities that international human rights language and tradition would preclude us to engage with. I will therefore turn to psychoanalysis and what is commonly termed poststructuralism in order to paint a hopefully more convincing picture of how the body might be represented, not solely in fundamental human rights texts, but from the standpoint of “individual” psyche itself.

4

What body for the LGBTI subject?

4.1

Onanisme à (n+1)

Derrida writes that “the pleasure [*jouissance*] from the thing itself is thus worked upon, in its act and its essence, by frustration. We cannot, therefore, say that [this pleasure] has an essence or an act... It promises itself in its unveiling, it gives itself in displacing something we cannot even rigorously name presence” (DERRIDA, 1972, p. 222). This sentence, regarding Rousseau’s masturbatory *Confessions*, concerns the whole of subjective life for all of us. As Derrida goes on to say, this self-afflicting [*auto-affection*], this pleasure [*jouissance*] that is impossible to experience without mediation, is just as descriptive of masturbation as it is of hetero-afflicting, deriving pleasure from sources other than oneself. It would seem that sexuality can only be said to have an “essence” if it is understood as distance and time; not, then, inhabiting the same place one’s desire occupies.

What does this necessary frustration say about the way we live our bodies, and the way we narrate and historicize our lived experience? What does its lack of ultimate grounding say about our fetishistic fixation with taxonomy, one that allows the already clumped LGBT label to be endlessly expanded to include asexuals, non-binary people, genderfluid people, and whatever other categories have not yet been articulated within late capitalist modernity -- not simply in themselves, but in immediate relation to whatever other axes of identity they might partake in (class, nationality, race, profession, age, etc.)? Finally, what might this lack of sovereign justification and acceptance of our alleged differences tell us about the ways in which we conceptualize and live our own sexed, gendered, racialized and disciplined bodies?

There is, of course, no single answer to all these questions. Within the inflamed battleground between conservative voices and those of marginalized, presumably progressive experience, every statement is a potential polemic. I will choose, therefore, to make explicit that I am indeed invested in this text, albeit as a certain “we”. In the now-traditional identity terms espoused by the international

and transnational liberal establishment, “we” appears as a homosexual, white male from the global productive periphery -- “we” is a gay man, however, who has had sufficient privilege to place himself in a position to write this dissertation, and to envision writing many more texts from the same unstable, contingent historical position. “We”, therefore, cannot claim to speak on behalf of any particular person or group; “we” speaks solely from an ethical position of political solidarity, as “we” can and “we” should.

“We”, still, has a body, and only occupies a position of intelligibility by virtue of that body. As we-without-quotation-marks all do. Our fetishistic attachment to identity categories can never efface the fact that our bodies -- and even our minds or souls, if one espouses a traditionally Western intelligible/sensuous dualism -- are not transparent to themselves, just as their embodiment is only ever provisional and derivative. Derrida reminds us that “[b]etween auto-affliction and hetero-affliction, there is not a border, but an economic distribution” (DERRIDA, 1972, p. 223), and yet we advocate for our rights to have sex unimpeded, we advocate to be free from violence motivated by the manner in which we identify ourselves and are identified by others, we advocate even to partake in the Christian and statist tradition of marriage *on the basis of our identity*. We advocate this from any number of places: LGBT rights are human rights, love wins, gay pride, and all the other endless, familiar slogans. Do we insist on these terms -- on this unsettling drive to establish equivalence to what heterosexuals have had access to from “time immemorial”, legitimate identity, legibility, intelligibility, recognition, etc. -- because of a willful blindness to our own (and that of straights, and that of everyone) externality to ourselves? What purpose, finally, does identity serve, and where is it inscribed within us as this irreducible something-or-other which supposedly justifies our claims to equal treatment under the law?

These questions, and many others, have largely animated what is now generally termed queer theory. Queer theory, somewhere between and beyond feminism and LGBT studies, insists on the contingency of identity, and on the ways identity categories serve simply to mask the naturalized presuppositions that inhabit most, if not all, subjectivities within industrialized, capitalist, modern states. This chapter draws quite a bit from this literature, but retains a certain critical distance in relation to it. It is productive to maintain this intellectual

tension within these fields of study which have tended to be categorized around one presupposition or another, for, as Butler reminds us, “normalizing the queer would be, after all, its sad finish” (BUTLER, 1994, p. 21).

One issue in particular, we believe, merits this critical distance: queer theory’s troubled relationship with psychoanalytic discourse. A number of studies, sprawling from Foucault’s *Histoire de la Sexualité: la volonté de savoir* (1976), have attempted to entirely reject any “psychologizing” aspect to a theory of sexuality (HALPERIN, 2007), while others have chosen to maintain a critical, productive distance *within* this discourse -- I mean to designate particularly Judith Butler’s earlier work, which thoroughly engages the early Lacan and much of Freud’s *oeuvre* (BUTLER, 1999; 2011). Others still wholeheartedly accept psychoanalytic language, to the point of an arguably unsettling orthodoxy (EDELMAN, 2004; BERSANI, 2010). Ideally, this chapter will suggest that we are at least attempting not to fall unproblematically into any of these categories. It remains to be seen, however, whether we can (or anyone could) present one such “uncategorizable” account of sexuation and subjectification.

In this project of avoiding unproblematic categorization, it bears reminding Wendy Brown’s contention that the norms of now-mainstream identity politics require, for their own coherent articulation, a middle-class, white, male standard against which to assert discernible grievances. In her words,

[politicized identities] necessarily rather than incidentally abjure a critique of class power and class norms precisely because the injuries suffered by these identities are measured by bourgeois norms of social acceptance, legal protection, relative material comfort, and social independence (BROWN, 1993, p. 394).

Referring back to Chapter 3, it is immediately evident that the standards mobilized in the judgments we have considered inevitably refer to this very standard -- a conjunction, or an accommodation, of various societal discursive complexes, such as the family, proper sexuality, law, sovereignty, and so on. If, then, international human rights’ application to manifestly disfavored minorities is, in these terms, more of an accommodation of capitalist and normatively hegemonic demands than a truly emancipatory project, what representation of the body and of the political subject (be it collective or “individual”), might better serve our ultimate goal of a political *telos* in our demands for rights, one relatively unfettered by recognizably conservative subjective paradigms?

I mean to approach these questions, first, via an incursion into Lacan's account of bodily organization and of the nature of sexualization. Though most accounts of Lacanian psychoanalysis rely heavily on the earlier Lacan -- that of the name-of-the-father and of the immovable positioning of the phallus as the ultimate guarantor of meaning in sexual difference --, I will attempt to excavate the emancipatory potential of the later Lacan. In his *Séminaire XX, Encore* (1975), Lacan lays the basis for a radical diagnostics of the contingency of sexual difference and the male/female binary, itself constitutive of normative sexuality. In that sense, as we have briefly explored in Chapter 2, the extrication from Woman of that which she does not have, and her constitution as taking part in the Other¹³'s *jouissance*, will be shown to be an eminently political move, one that is therefore never exempt from power.

I then turn to Judith Butler's work on gender and sexuality, in order to suggest a reading more informed by this later Lacan. In doing this, I suggest that Butler's conflation of the symbolic and sovereignty is at least partially misguided with regards to Lacan's later emancipation from structural anthropological presuppositions. In suggesting this disjunction, I attempt to pave the way for a radical understanding of the co-implication (as opposed to co-extensiveness) of sovereignty and subjectivity, of bodily organization and political subversiveness -- a co-implication that I have already briefly, if elliptically, sketched in Chapter 2 with the discussion of post-structuralism in International Relations. Finally, I discuss how this new combination of Lacan's and Butler's works may tend towards a radical politics, against the backdrop of "anti-social" political projects such as that espoused by Leo Bersani.

The relation of this chapter to those that come before it may seem rather tenuous, but I hope to show that this is not the case. It is imperative to keep in

¹³ This term, along with its more explicitly political supplement, the big Other, will be further discussed below. A first indication of definition is apparently quite simple: the Other is all that is *strictly outside* the purview of the subject. The Other is alterity, unqualified. In that sense, one cannot ever be sure of the Other's ontological certainty, but must *presume* that it exists in order to achieve subjecthood. In Chapter 2, regarding Edkins and Pin-Fat's work (1999), we mentioned that some authors equated the Other with the ensemble of social relations "immanent" to a certain arbitrarily defined social group. This is not the main use Lacan prefers; in fact, in typical early-Lacanian discourse, the Other generally designates some incarnation of the Other sex, most notably the mother. However, once we admit sexual difference to be merely contingency, this use no longer holds. In that sense, the Other cannot be *a priori* pinned down to any strict definition; it will be defined in its content solely through referencing specific instances of certain discursive formations, as that absolute outside that must nevertheless be presupposed by the subject in order to assure its consistency. The big Other, by contrast, can designate any recognizable "body" of coherence -- say, God, nation, the people, the proletariat, the LGBTI, etc. -- that cannot in itself be said to unequivocally exist, and is therefore also strictly alien to the subject. Both the Other and the big Other are alterity, but only the second may be legitimately said to be "personified", that is to say, to form a "coherent" whole.

mind that subjectivity is attached to sovereignty and political community by means of a certain “grafting”, an implanting in the subject of a desire for the system itself: for the Other. It is productive to defer to Douzinas in this case:

A human rights claim involves two demands addressed to the other: a specific request in relation to one aspect of the claimant’s personality or status..., but, second, a much wider demand to have one’s whole identity recognized in its specific characteristics... The impossibility of fulfilling desire leads into ever-increasing demands for recognition and every acknowledgement of right leads to a spiraling escalation of further claims. In this sense, the promise of self-realisation [sic] becomes the impossible demand to be recognized by others as non-lacking. Human rights become expressions of the unattainable ‘right to be loved’ (DOUZINAS, 2007, p. 49)

Douzinas decisively propels what commonsense would generally consider individual psychodrama into the realm of law and human rights law. In this sense, we need to be careful not to reiterate those foundational myths of International Relations that we considered in Chapter 2: the realist utopia shares a formal structure with the prototypical subject of neoliberal and legal rationality in that, under this latter’s structure, it is considered to be a self-contained, pre-social unity of the self to its own desires. My exploration of the body and its relation to politics, in this chapter, provides a number of arguments that suggest this is simply not the case. As Lacan might have claimed, the subject ex-sists, it only exists in a qualified way, only ever elliptically, never fully reached. Law and community both provide supports to this manner of ex-sisting, but only ever provisionally. In that sense, we cannot expect full ontological grounding from law. An explanation to this assertion will begin to be sketched here, but the question will propel us into Chapter 5.

Before I finish this not-so-brief introduction to this chapter, it seems wise to refer us back to the problematic attachment of bodily organization and social reproduction. If it is true, as Zevnik claims, that “...the subject is born twice: in nature and in the institution of law” (ZEVNIK, 2016, p. 34), we have to carefully consider how we go about living that which we take to be our innermost desires. Indeed, it is the very interval between these two births, one presumptively natural and another political, that we can begin to exploit the incompleteness inherent to being. It is imperative to not reify the body as though it were just a bundle of nerves attached to a central computer; the way we experience our bodies is both constrained and produced by the organic excitability that is relayed in discourse. This is the Freudian contention at its finest: the organization of our pleasures is

itself a social accomplishment. The intricacies of our erotic economies (how, why and where we feel pleasure and excitement) always already ex-sist in us.

4.2

The bodies of the body

Why is it that, as we claim above, there is an irreducible exteriority to our own bodies? This isn't simply about the external border of what counts as "us" -- this border we might designate as the skin, or the flesh, or the cranium, although that border is itself also, at least to some extent, exterior. We tend to treat this me/not-me dichotomy as a fundamental feature of our own development and, as such, tend to not critically engage it in the manner of the fundamental questions of *why* and *how* we can take this separation for granted. Accounts of psychological development have long grappled with this question, however, and it is with Freud's account of what has come to be known as primary narcissism that the issue first emerged in a psychoanalytic formulation. Freud contends that the infant does not have an innate sense of where it ends and where its other begins until some degree of development is achieved. It is here that we find a first indication that our own interiority is not natural or instinctual, but socially produced and maintained. The infant's dependency on its primary caretakers -- those who feed, bathe, and interact with it daily -- provides, for Freud, the framework of early development (FREUD, 2002).

Lacan elaborates on this insight, positing that, in fact, the sole way the infant can achieve this sense of interiority instead of experiencing the "oceanic feeling" of sameness, as Freud puts it (FREUD, 2002), is through a primary, fundamental, alienation. The infant, in perceiving its image on a mirror, or grasping, for the first time, the unity of its own body by analogy to its caretakers and in contrast to its motor incapacity to properly dominate it, forges a first identification with its own specular image:

The joyous assumption of its specular image by the being still immersed in motor dysfunction and early infancy dependence -- by the little man [sic] at this stage of *infans* --, seems, then, to manifest in an exemplary situation the symbolic matrix in which the *I* precipitates itself in primordial form, before its own objectification in the dialectics of identification with the other and before language restitutes him [sic] in the universal function of subject (LACAN, 1966b, p. 94, our translation)

Here, Lacan is arguing that this primary alienation offers a kind of “prototype” to the one the little person will be subjected after its submission to language. Crucially, he builds on the Freudian intuition that bodily organization is not innate or natural, in order to show that, if that is the case, it is only in alienation, in renouncing wholeness, that we can achieve a meaningful conception of interiority. This interiority, however, is already lived as a kind of frustration, precisely because the infant’s motor control does not yet translate into an intelligible interior life, since its limbs still lack coordination, and since it is still entirely dependent on its caretakers. In this, we come to see that our being only truly arises in its fracture; that we, therefore, have no access to any “essence” deserving of that name.

If it is true, then, that our deceptive wholeness is derived, it follows that it can only be established in alienation. The experience of the body-in-pieces [*corps morcelé*], the inability of the infant to entirely control and individually experience its own limbs, organs, etc., precipitates, then, the formation of the I-ideal, the first expression of the insufficiency of the subject to itself and the circulation of lack as the defining experience of (at this stage, proto-) subjecthood. This is the first instance, according to Lacan, in which the infant can be outwardly observed to meaningfully interact with what us, other subjects, perceive to be its outside. Before this fundamental alienation, the totality of other objects cannot be grasped in meaningful individuality, but solely as unorganized intensity. This alienation is, furthermore, the first violent pull of historicization in individual development. As Lacan further states,

This development is lived as a temporal dialectic that decisively projects individual constitution into history; the *mirror stage* is a drama whose internal thrust is precipitated from insufficiency to anticipation – and that, for its subject, caught in the illusion of a spatial identification, elaborates the fantasies that proceed from a fragmented image of the body to a form we might call “orthopedic” of [her] totality –, and finally to the embrace of the armor of an alienating identity, which will define, in its rigid structure, all of the subject’s mental development (LACAN, 1966b, p. 97, our translation)

This “temporal dialectic”, however, is only the first fundamental alienation that must be achieved for us to obtain intelligible interior and social lives. We see, here, that there is a rather blurry, complicated boundary between the I- and object-functions in psychic development; there can be no meaningful I- before there is a meaningful other. We thus observe the fundamental co-constitution of

internal and external reality, a constitution which is made possible in and by sociality as a regulating and enabling instance. But meaningful integration within sociality can only truly be achieved in symbolization -- that is to say, in language. It is only in acceding to symbolic reality that the subject emerges, and it is only in simultaneously renouncing and creating itself in language that it can achieve a provisional desiring existence.

It is here that Lacan discovers the meaning of the drives. Freud had already designated that there is nothing inherently natural or instinctual about these drives; they seem natural because they arise, for us, in an apparently uncontrollable, more or less unpredictable manner, but their concrete forms are socially regulated to an undeterminable extent. We feel hunger, we feel sexual excitation, and we tend to assume these are simply parts of what it means to be a living organism; they perhaps are, but they represent enigmatic irruptions of the Real¹⁴ only in the terms of the Symbolic, and only become intelligible within the frame of the signifier: “[t]he drive divides subject and desire, a desire that does not sustain itself if not through the relation it ignores, the [relation] between that division and an object that causes it. Such is the structure of fantasy” (LACAN, 1966c, p. 853, our translation). This is the basic structure of desire for Lacan: it is, itself, a hole rather than the body’s privileged mode of self-presence. This is what it means to say that desire, for Lacan, is driven by lack: the subject’s ascension into language, into the symbolic order, severs her “previous” relational modes, which remain inaccessible if not already through the screen of language -- and it is this screen that enables the subject to subsist, to achieve a provisional existence within an order of intelligibility.

¹⁴ There is significant controversy surrounding the exact extent of each of Lacan’s three major metaphysical strata: the Real, the Imaginary and the Symbolic. To our present purposes, a cursory and somewhat inexact definition will have to suffice, as a proper exploration of this issue would require an impractically lengthy excursion. With this caveat in mind, it may be said that the Real is the order of that which resists representation. Though it intersects with the other two orders, and only “truly” exists by virtue of this intersection, it is always only recognizable, in retrospect, as trauma, as an irretrievable and strictly meaningless loss that haunts the boundaries of the other two. In this sense, it may be said that it represents the necessary ontological groundlessness of Being, its inevitable failure of being put into words or images as an un-deconstructible whole. Conversely, the Imaginary is inaugurated upon the prototype of the proto-subject’s first alienation in the mirror stage, the condition upon which its capacity to discern individual objects is erected. In that sense, it might be said that the Imaginary is the order of individuation, of that very first loss of wholeness that constitutes the detachment of the orders of Being and of beings (*Être* and *étant*). Finally, the Symbolic, although this will be further explored below, is the order inaugurated by language. It comes into being by means of the subsequent sacrifice of the (apparent) immediate relation to any given Imaginary object, what we might term “the death of the thing”. Once the (now complete) subject accedes to language, it understands and communicates objectal commensurability (as in, the capacity to emit signifiers), and attains subjectivity by enunciating itself as an “I” function. Contrary to Butler’s Lacan, we don’t take this order to *a priori* “contain” any particular norm, though normativity may be said to be inaugurated within it. These orders are all mutually dependent, and can only be grasped in their confused relations to one another.

This is because language, the symbolic, is an order of objectal commensurability: it is the renunciation of the thing, of any immediate relation to each object's uniqueness and novelty, and its transmutation into the enigmatic orders of the imaginary and the real, that enables intelligibility in language -- and, thus, desire. "...The symbol manifests itself at first as the murder of the thing, and this death constitutes, for the subject, the timelessness of her desire" (LACAN, 1966d, p. 319, our translation). If desire is thus constituted as eternal, it can have no other form than a nothingness, or a speculative object that is irremediably alien to the order of existence. This speculative point is what Lacan terms the *objet petit a*, an impossible point of fullness and self-presence which would enable the subject to satisfy itself entirely -- the cause of desire, the *locus* of lack. This is vastly important, as it already speaks to the fundamental question of sexuality: what is it that I like? Or, the more primitive question: *how* is it that I like? Lacan's answer is that we can only desire elliptically; desire fails, and it is in failing that it can bring the subject into existence.

It is crucial to insist, here, that this "I" and its external world presuppose each other, and it is only in defining outside that the subject can define an inside, and thus refer meaningfully to herself in relation to others -- sexuality itself is derived. The alienation of perceiving a complete, elegant body in contrast with the lived experience of the body-in-pieces thus reappears as the mode of alienation characteristic of embodied phenomenology:

...Psychoanalysis surely implies the reality of the body and of its imaginary mental blueprint. But to recognize their influence in the perspective thereby authorized of [psychic] development, one must realize that the more or less partial integrations that seem to make up its chronological order function here rather as elements of a heraldic, of a blazon of the body (LACAN, 1966a, p. 804, our translation).

Thus Freud's characteristic oral/anal/genital scheme of psychosexual development (FREUD, 1989) is displaced into a more contingent view of the constitution of the organs and of their relation to the drives. The basis of "normal" embodiment, then, is identification with an external object, and a projection of its desired completeness into a surface that will eventually come to represent the sensuous body in its particular historical-social organization. Crucially, this completeness is always already failed, it is only established retrospectively *as an effect of signification*; subjective grounding, were it not for fantasy and language,

would only ever find itself trapped in the primary, narcissistic alienation of the reverse mirror-image:

[a]n effect of inversion [*rétroversion*] through which the subject, at each stage, becomes what he [sic] was before, and is announced only as: he [sic] will have been -- only as future perfect [*futur antérieur*]. Such is the ambiguity of an unknowing [*méconnaître*] essential to the ‘knowing myself’ [*me connaître*] (LACAN, 1966a, p. 808, our translation).

In that sense, the ways in which we experience our bodies are elaborated in and through language, just as their orthopedic totality is based on a fundamental unknowing of the always partial, contingent organization and investment of their organs. What, then, of the concrete ways we *do* experience our bodies? What of the various categories we employ to, presumably, put these experiences into words, circulate them as new standards within the ever-growing category of “normalcy”, or to aggressively cast out of intelligibility and propriety? Psychoanalytic answers may seem, at first, unsatisfactory. In fact, the concepts of male and female, active and passive, have been cornerstones in psychoanalytic literature, delineating two exhaustive poles for the options of “normal” identification and sexuation. It may be said that the early Lacan takes this notion to the extreme in his naming of the phallic function. According to early Lacan, the phallus is an empty signifier, one that assures the coherence of a certain discursive system and the illusion that language may designate anything other than itself. In his words, “[t]he phallus is the privileged signifier of this mark where the role of *logos* merges with the appearance of desire” (LACAN, 1966e, p. 692, our translation). Furthermore, masculinity and femininity are constituted in their differential relation to this signifier. If men stand in a relation of (unfulfilled) possession with the phallus, women stand in one of masquerade, of (not quite) *being* the phallus. In fact, no one possesses or embodies this signifier, because it ultimately demands an endless attempt, on the part of both “sexes”, to establish a relation of ontological complementarity that is, finally, impossible, by virtue of the signifier’s empty grounding. This is the corollary of Lacan’s enigmatic contention that there is no sexual relation.

It is in the phallus’ apparent metonymic relation to the penis that the most compelling arguments against Lacan have based themselves. Judith Butler (1999), for instance, has argued that psychoanalysis’ founding poles of normal sexual development, male and female, are already heterosexualized from the outset,

notwithstanding the Freudian thesis of the polymorphous-perverse character (otherwise referred to as constitutive bisexuality) of infantile sexuality. Summarily dismissing sexual difference, however, may withhold us from engaging thoroughly with Lacan's theorizing on female exceptionality and on the nature of phallicized knowledge and pleasure. We would argue, first, that Lacan's later theorizing is not straightforwardly heteronormative and sexist; it constitutes, potentially, one manner of critique of masculine power (as Butler herself recognizes), and a theorization of the means whereby apparently natural discursive orders are founded upon groundless violence, a point furthermore elaborated upon by Derrida.

According to Lacan, absolute pleasure, what he terms *Jouissance*, would entail a dissolution of the subject. *Jouissance*, with a capital J, represents the ultimate boundary of self-consistence, the condition of transcendence and unmediated relation, a speculative pleasure that could only come about in pure, true relationality -- something that is, under any symbolic order, impossible, only ever approximately and elliptically reached: "[p]leasure, insofar as it is sexual, is phallic, that is to say, it does not relate to the Other as such" (LACAN, 1975, p. 17, our translation). What does it mean to say that pleasure, *jouissance* -- small J --, does not equal *Jouissance*, that all pleasure is inevitably bound to its own impossibility and *becomes possible in that very bonding*? Fundamentally, Lacan's answer is simply that we only have access to the organs -- that is to say, excitable, pleasurable bodily parts -- after their constitution in and through language. Freud had already posited that the entire body is, at the very least in principle, a potential erogenous zone (FREUD, 1989), and that it is only oedipalization and the diachrony of sexual development that organize these intensities towards a genital, reproductive *telos*. In the order of sexual difference, however, this *telos* acquires a new form of presumptive heterosexualization, one that is paradoxically entirely phallic. As Lacan argues,

Phallic *jouissance* is the obstacle that impedes man from taking pleasure of the female body, precisely because what he takes pleasure in is the pleasure of the organ. That is why the super-I [*surmoi*], as I have remarked earlier, that of the [injunction to] "Enjoy", is castration's correlate, the sign that supports the confession that the Other's *jouissance*, the *jouissance* of the sign that supports the confession that the Other's *jouissance*, that of the Other's body, promotes itself solely as infinity (LACAN, 1975, p. 15, our translation).

Phallic *jouissance*, then -- pleasure instated by the discursive order that revolves around the phallic signifier -- appears as the privileged mode of enjoyment, precisely in the impossibility of the attainment of the enjoyment of the Other, capital *Jouissance*. This *Jouissance*, however, does not simply disappear; it is not constituted as this theoretical point of otherness beyond discourse accidentally. It is important to emphasize the enigmatic character of this *Jouissance*, the impossibility of grounding existence in anything other than the non-capitalized *jouissance*, pleasure, that we experience *qua* bodies:

...one doesn't know what it means to be a living thing, except this: a body, one enjoys it [*ça se jouit*]. One enjoys it solely in embodying it in a signifying manner. Which implies something other than the *partes extra partes* of extended substance (LACAN, 1975, p. 33, our translation).

This something other than *res extensa* can be said to be language, perhaps, but, so far, we have only shown that acceding to language implies castration, the murder of the thing. Language, however, and its empty, phallic grounding, are the fundamental support of sociality, and, in being so, are relayed in the form of discourse; “the signifier as such refers to nothing but a discourse, that is to say, to a mode of functioning, to a use of language as [social] bond” (LACAN, 1975, p. 41). If “each reality is founded upon and defines itself by a discourse” (LACAN, 1975, p. 43), then, one might ask about this mode of functioning of a social bond: how does it come to be constituted? How does it relate to the order of sexuation and embodiment?

Lacan intervenes in the Freudian Oedipal scheme in exposing its inherently masculinist character. If, for Freud, the fundamental question was “what do women want?”, for Lacan the question is, rather, the impossibility of woman. Woman does not exist. The beginning of an explanation to this rather startling assertion is set out in the following terms:

If there is a discourse that demonstrates this, it is certainly analytic discourse: that woman will never be taken but *quoad matrem*. Woman doesn't acquire a function in the sexual relation if not as the mother. These are massive truths, but they will take us further, thanks to what? To writing. She will not object to this first approximation, since it is through here that she will show us that it is upon a supplement to this not-all [*pas-toute*] that woman's pleasure [*jouissance*] lies. In this pleasure that she is not-all, that is to say, that makes her somehow absent to herself, absent as a subject, she will find the cork [*bouchon*] of this *a* that will be her child. On the x's side, that is to say, of that which would be man if the sexual relation could be written in a sustainable manner, sustainable within a discourse, man is nothing but a signifier, because at the point in which he enters the game as a signifier, he can only do so *quoad castrationem*, or only insofar as he is related to phallic pleasure (LACAN, 1975, p. 47, our translation).

We see, here, that women only enter the order of signification in the maternal role -- that is to say, the role that speaks most directly to male development. Men, however, are from the start marked by castration, by the murder of the thing and its replacement by the signifier. Interestingly, the intelligible part of woman, that which supplements her as the not-all, as containing a trace of infinity, of the Other, is also castrated from the offset. There is, then, a disjunction inherent to “woman” as a part of phallic discourse; she both is and isn’t, because her very impossibility, her Otherness, her non-castratedness (and thus her particular, inaccessible wholeness), is the condition for the extrication of the signifier from her by “Man”: “...when one is [a] man, one sees in one’s [female] partner that with which one supports oneself, that with which one supports oneself narcissistically” (LACAN, 1975, p. 109, our translation). Finally, “for the soul to come into existence, one differentiates it from her, from ‘woman’, at the very start. *On la dit-femme, on la diffâme*¹⁵” (LACAN, 1975, p. 108, our translation).

Thus, within the framework of binary gender hierarchy, “woman” is only intelligible insofar as she is already “man”, and “man” seeks merely a reflection of himself when pursuing “woman”. The more he comes to see woman as the ultimate alterity that sustains him *as man*, the less he is capable to love: “In such a way that one could say that, the more man confuses woman with God, that is to say, with that which she enjoys [*jouit*], the less he hates [*hait*], the less he is [*est*]... and as, after all, there is no love without hatred, the less he loves [*aime*]” (LACAN, 1975, p. 113, our translation).

This notion, the idea that there is no sexual relation, leads to a certain necessity of *non-writing*. “[T]he sexual relation does not cease to not be written” (LACAN, 1975, p. 121, our translation), because its writing is the impossibility of writing alterity itself. That is to say, the speaking being *requires* the illusion of a certain wholeness *in order to* acquire a bearable existence; the possibility of the relation needs to be posited, at the very beginning, as a necessary deception. Although this may seem both claustrophobic, in a sense, and a rather pessimistic account of the possibilities of affection in world where gender seems to perpass

¹⁵ The French play on words does not translate properly into English. What Lacan means, here, is a play on the word *diffamer*, to defame, to slander. The first instance, *dit-femme*, directly translates to say-woman, while the second, *diffâme*, is a conjunction of the French word for soul, *âme*, *diffamer*, to slander, and the previous *dit-femme*, say-woman. All three forms share the same pronunciation. What Lacan means to say is that the extrication of the soul from “woman” is also an act of abjection, a casting out of that in her which might prove unbearable to the phallic order of discourse -- an act necessary for the founding and senseless grounding of that very order.

all knowledge, it also represents a certain form of liberation: because of this, the phallic function is necessarily contingent on its own continuous writing, its own continuous iteration, its own instantiation in the mode of an illusion of relationality that we establish historically and contextually. As Lacan goes on to say,

[b]ecause of this [the impossibility of writing the sexual relation], the apparent necessity of the phallic function is found to be no more than contingency. Contingency is what expresses that which subdues the sexual relation to the status, for the speaking being, of a [mere] regime of encountering [one another]" (LACAN, 1975, p. 121, our translation).

The sexual relation is, then, rendered possible through a detour: phallic discourse, the establishment of two opposite, hierarchical and mutually excluding poles of gendered ontology, enables the experience of relationality, precisely because that which justifies its violence -- the apparent necessity of the phallic function -- is a lie given shape and meaning in the very act of violently usurping from woman that which she cannot intelligibly have. Absolute alterity exists only in the experience of disjunction, of not being one with oneself, and this experience can only acquire shape through the violent imposition of a certain discourse, of a certain contingent ordering of sociality.

What does this say about the contemporary order of gender and sexuality? What might we learn from attempting to extricate this apparent necessity of the hierarchically ordered, complementary order of gender and reproductive genitality -- in other words, what can be learned from attempting to displace the apparent necessity of sexual difference in Lacanian discourse? The beginning of such an inquiry may be the implicit place of power in Lacan's own theorizing. He states:

[e]very dimension of being is produced in the flow of the master's discourse, the discourse of he who, in proferring the signifier, expects from it an effect one cannot neglect, an effect that refers to the fact that the signifier commands. The signifier is, first of all, imperative (LACAN, 1975, p. 43, our translation).

If we thus assume that phallicized language is one mode of the master's discourse, we may begin to understand how it is that we are all at least partially compelled to identify in relation to it. The hypothetical origin of this language is itself a performative -- that is to say, a linguistic act that constitutes its own referent in its enunciation. As Lacan argues,

The transcendental I is he who, in enunciating a knowledge in a certain way, hides as truth the S1 [function of the signifier], the 'I' of the Master. The 'I' that is identical to itself is precisely that of which the S1 is constituted, the S1 as pure imperative --

that is to say, the S1 where the 'I' reveals itself, since the imperative is always in the second person (LACAN, s/d [1969-1970], p. 28, our translation).

Thus, at the origin of the master's discourse is a simple reality of coercion, an order, an injunction to obey -- in the gendered examples we have been using, Man, as master, becomes identical to its own signifier precisely in constituting Woman as partially lacking, and precluding her own signifier to enter intelligibility. But this injunction is itself masked under a certain knowledge. That is why Lacan reminds us that we cannot ever presume that there isn't at least one knowledge to which we address ourselves in each linguistic act; none of us are ever pure authors, we merely relay the very first injunction to "be-together (as if One)", the very function of domination and authority. For Lacan, the properly political enters into this sphere of discourse as an idea of totality, the notion that there might be such a thing as a "being-together", as harmonious, mutual relationality. The concrete meaning of politics, in that sense, is the constitution of a illusory body; the making of that which does not exist, and yet has a body. Lacan's name for this manner of, so to speak, state-making, is the big Other. In his words,

We are thus brought back to this: that a body can have no figure, as the father or the Other, whatever Other... [he] plays a role here, [a role of establishing] the function, the placing of *jouissance*... he is not even named. A God without a face, certainly, but nevertheless inconceivable if not as a body. What has a body and does not exist? Answer: the big Other. And if we believe this big Other, he has a body, [one that is] inextricable from the substance of he who says 'I am what I am', which is a whole different form of tautology (LACAN, s/d [1969-1970], p. 29, our translation).

It is, it seems, only the ultimate grounding of sovereignty itself that can proffer this manner of tautology, this manner of discursive foundation that contains solely what is already stated in it: "I am what I am" is the privileged form of the sovereign, the big Other. The big Other, in proffering his tautology, constitutes itself *beside* the Master; while the Master's discourse refers tautologically to the totality of discourse, in announcing he *demand*s something, the big Other announces itself rather in a mode of absolute, unjustified presence. He, the Master, is therefore different from it, the big Other, because the Master's injunction is one of power and knowledge, while the big Other's injunction is one of presence and transcendence. If, then, the Other is the *locus* of alterity, the big Other is the embodiment of one-ness, of wholeness and self-presence.

The crucial difference is that, while the early Lacan's Other finds its delegate in the other sex by means of the (phallic) signifier, the (later) big Other can have

no specific delegate, can have no representation, no duplicated body without becoming like the subject and entering signification “*quoad castratinoem*”. The primal father, he whose murder enables sociality (FREUD, 1993), is always already castrated if he is impersonated by someone else -- that is to say, every hierarchical social order is necessarily constituted, enabled, in its very difference-to-itself, in its fracturing and non-wholeness. If there can be such an intimate relation between the order of sexual difference and the order of politics, how might one conceptualize the orders of gender and sexuality in contemporary capitalist representative democracies, in which identity seems to constitute the presupposition of rights-bearing for the “non-normal”, those of us who are cannot be easily assimilated into the Master’s word?

More specifically, if international human rights understand themselves to be ontologically grounded upon the flawed reality of “humanity” -- one potential name for one potential big Other --, what avenue for change is there, if not through a reiteration of the subordination that informs our own starting point? In other words, if all we can legitimately claim is recognition from within big Other in order to become more and more incorporated into the Master’s discourse -- therein losing the very possibility of intelligible difference -- as equals to him, and, therefore, as identical to our signifiers, what future can there be for human rights as a mode of political activism? Judith Butler’s celebration of the instability of identity, and its juridical-normative character from within performativity, provides a useful starting point to discuss these issues.

4.3

The hole on a minefield

Sovereignty and the Symbolic

Judith Butler reminds us that contemporary sexual subjecthood is interpreted by reference to a certain idealized notion of embodiment, individual aesthetics and desire. This idealized notion is based on a politically regulated relation of entailment, one that demands that sex, gender and desire follow strictly from one another. In that sense, sex, understood as anatomical attributes such as having a penis or vagina, visible breasts, etc., or physiological/genetic ones, such as chromosomes, testosterone and estrogen levels, and others, is assumed to be

aligned with gender, the outward behavioral and aesthetic characteristics associated with femininity or masculinity, which, in turn, is related to desire, the capability of being attracted to either one or the other gender.

In that sense, the ideal subjects of sexuality are prototypically either male or female, respectively masculine or feminine, and heterosexual. The unidirectional alignment between these attributes, then, would constitute a fully intelligible person within the contemporary order of gender. Butler, however, goes on to show that sex was always already gender -- in other words, our conceptualization of “anatomical” sex was always already contingent on certain presuppositions as to what constitutes a male or female disposition within a politically regulated order of reproductive complementarity. As Butler reminds us,

The unproblematic claim to “be” a woman and “be” heterosexual would be symptomatic of that metaphysics of gender substances. In the case of both “men” and “women”, this claim tends to subordinate the notion of gender under that of identity and to lead to the conclusion that a person *is* a gender and *is* one in virtue of his or her sex, psychic sense of self, and various expressions of that psychic self, the most salient being that of sexual desire. In such a prefeminist context, gender, naively (rather than critically) confused with sex, serves as a unifying principle of the embodied self and maintains that unity over and against an “opposite sex” whose structure is presumed to maintain a parallel but oppositional internal coherence among sex, gender, and desire (BUTLER, 1999, p. 29)

If that is the case, how is it that the myriad other identities that are frequently evoked in debates about gender and sexuality -- gay, lesbian, asexual, bisexual, transvestite, FtM and MtF transgender, nonbinary, etc., -- influence this order of compulsory heterosexualization, and how might this relate to what we have been discussing about Lacan’s alleged privileging of sexual difference as an axis of social intelligibility? One initial clue may be found in Butler’s notorious notion that gender itself is performative -- meaning, again, that its referent is constituted in its enunciation. Butler presumes that this represents a departure from Lacan, in that psychoanalysis generally understands sexual development to be a teleological process destined to ensure reproductive sexual dimorphism and hierarchical complementarity. Lacan’s emphasis on the impossibility of actually becoming self-identical, of entirely being a woman or a man, in that sense, represents for Butler a departure from the traditional Freudian teleological narrative toward normality in favor of a religious melodrama in which frustration is always incorporated from the outset:

This structure of religious tragedy in Lacanian theory effectively undermines any strategy of cultural politics to configure an alternative imaginary for the play of

desires. If the Symbolic guarantees the failure of the tasks it commands, perhaps its purposes, like those of the Old Testament God, are altogether unteleological – not the accomplishment of some goal, but obedience and suffering to enforce the “subject’s” sense of limitation “before the law”. There is, of course, the comic side to this drama that is revealed through the disclosure of the permanent impossibility of the realization of identity. But even this comedy is the inverse expression of an enslavement to the God that it claims to be unable to overcome (BUTLER, 1999, p. 72)

Butler can make this claim on the basis of her own conception of the symbolic order in Lacan. The symbolic, for her, is an order that is itself self-present, and that exhausts all the possibilities of subjective recognition; in other words, the symbolic would be a single order that compels the subject to be differentiated according to the dictum of the signifier (which she identifies as the incest taboo, ensured in the threat of castration). She thus presupposes the necessity of the phallic function, and ascribes to it an importance that Lacan himself came to posit as only contingency, as we have suggested above. If we assume, in that sense, that the symbolic actually has no definite content -- that it expresses merely the givenness and coerciveness of language itself -- we immediately expose the phallic signifier for what Lacan (partially) recognizes it to be: commandment, violence, the groundlessness of community and politics. In a sense, this reworking is already necessary for Butler to argue, in her analysis of Antigone’s claim to exception, that the prohibition against incest may foreclose non-incestuous love because of the symbolic’s inability to signify singularity outside its supposedly enforced kinship and political forms (BUTLER, 2000). The problem, here, is that, for Antigone to be able to step outside the bounds of the symbolic, one must assume that the symbolic itself commands and assures its deceptive wholeness. Assuming a coextensiveness of the symbolic and the signifier’s command, in such a way, paradoxically evacuates power itself from the equation, as it evacuates the senseless violence that institutes linguistic commensurability in putting into place a recognizable discourse.

Let us assume, in that sense, that language and discourse stand in a mutually dependent, but not mutually exhaustive relation. Particular discourses -- that is to say, specific forms of the social bond inaugurated in language -- thus materialize this language in inevitably particular ways, ones that actualize, so to speak, its inherent violence. If the order of gender and sexuality is one such discourse, how does it relate to the order of identity and subjecthood? Butler argues that it is in

citationality that gender comes to materialize its always vanishing, always *a posteriori* essence. In that way, it cannot be said that gender is somehow “out there”, that it lives in a dimension parallel to its own evocation in the performative acts that constitute it. It is the very possibility of gender’s repetition that assures it can be thought of in terms of essence. This essence, then, is shown to be no more than retrospectively constituted normative content -- in other words, gender is constituted within a juridical-normative paradigm in its very utterance, in the simultaneous expression of its mandatory character for intelligible subjectivity. In Butler’s words,

I would suggest that performativity cannot be understood outside of a process of iterability, a regularized and constrained repetition of norms. And this repetition is not performed *by* a subject; this repetition is what enables a subject and constitutes the temporal condition for the subject (BUTLER, 2011, p. 60).

In that sense, we come to be in and through references to normative content. This formulation closely echoes Foucault’s (1976) notion that power itself -- understood as continuously and diffusely enabling and inscribing individual bodies -- is constitutive of subjectivity, rather than simply limitative of it. What is it that ensures this ritualized repetition of normative content if the order of norms and the order of subjectivity are immanent to one another? How might one understand this relation without reifying, as Butler has to when she confronts early Lacanian theory, the symbolic order according to structuralist anthropological presuppositions such as normative kinship, sexual difference and the prohibition of incest?

Foucault argues that contemporary sexual subjecthood has become a staple for the “inner truth of the individual”: that each of us is compelled to identify as man, woman, homosexual, heterosexual, etc., and that this almost represents a kind of ontology of the modern subject. This operation of reification and naturalization, however, is itself contingent on historical processes, on the flow and clash of discourses relayed in power relations. In that sense, “sex” as a category appears as the most abstract, undefinable element in a veritable complex of shifting and provisional discursive and disciplinary operations:

Sex, this instance that seems to dominate us, this secret that seems to underlie everything we are, this point that fascinates us for the power it manifests and the meaning it hides, to which we ask for the revelation of what we are and for the liberation of that which defines us; sex is certainly no more than an ideal point made necessary by the apparatus of sexuality and its functioning... Sex is, contrary [to what we may think], the most speculative, the most ideal, the most interior element

in an apparatus of sexuality that power organizes in its capturing of bodies, of their materiality, of their forces, of their energies, of their sensations, of their pleasures (FOUCAULT, 1976, p. 205, our translation)

The apparatus of sexuality -- the ensemble of techniques, knowledges, strategies and materials employed to discipline and produce sexual subjecthood -- thus appears as the ultimate grounding for this compelled sexual differentiation. This formulation, however, appears finally tautological (sex forms the basis of a sexuality that was itself no more than sex). It is, we would argue, in the more basic reality of an economy of power that Foucault finds the intimate “knot” of any possible apparatus, and the manner in which this power appears to be so intimately attached to knowledge in history. Interestingly, “sex”, as this “most ideal element”, crucial to the functioning of the apparatus of sexuality, serves a function not entirely unlike that of the phallus for Butler’s Lacan. It is the apparent impossibility of interrogating sex’s existence within the terms of the apparatus that ensures the latter’s continuity and integrity: the very fact that sex ends up being no more than a speculative fiction, hollowed of any inherent, fixed meaning, ensures that it can bind together the non-relation inherent in sociality. It is sex’s metonymic attachment to personhood, human “ontology”, that allows it to be articulated as the ultimate grounding of sexualized discourse, just as the phallus’ metonymic relation to the penis ensures binary sexual identity and linguistic coherence in Butler’s Lacan.

Even if one concedes this analogy, however, the issue remains that the unidirectional alignment between sex, gender and desire in the terms of the heterosexual matrix (BUTLER, 1999) necessarily fails. The possibility of the failure of any discursive order, of the discovery that the Freudian primal father was castrated all along, and thus that the big Other doesn’t exist, can indeed be said to represent the condition of possibility for change, and what allows rupture to be the defining characteristic of the properly historical. This is the reason why Butler can ascribe such an important place to the notion of subversion, of resignification, as an “expansion” of that which is utterable, of what is intelligible. As Butler reminds us, “the resignification of gay and lesbian sexuality through and against abjection is itself an unanticipated reformulation and proliferation of the symbolic itself” (BUTLER, 2011, p. 73). Butler narrates this process as a sort of dialectic negotiation: one claims one’s inherent right to equality as a speaking being precisely in inhabiting this “abject” and claiming recognition from within it.

Every reworking of the discursive order, however, requires the constitution of an outside which ensures its consistency: to each subject, her abject. As she argues,

[t]he normative force of performativity – its power to establish what qualifies as ‘being’ – works not only through reiteration, but through exclusion as well. And in the case of bodies, those exclusions haunt signification as its abject borders... (BUTLER, 2011, p. 140).

However, the abject retains a rather confusing status in Butler’s work. Indeed, its very presence is curiously understood as both thematizable and, in a limited sense, recognizable, rather than as a horizon of otherness beyond intelligibility:

That there are always constitutive exclusions that condition the possibility of provisionally fixing a name does not entail a necessary collapse of that constitutive outside with a notion of a lost referent, that “bar” which is the law of castration, emblemized by the woman who does not exist (BUTLER, 2011, p. 165).

It seems that Butler’s conception of the abject is not precisely a counterpart to recognition; it appears as a sort of failed recognition, one in which the other’s otherness is understood, recognized, but in a negative light, in a relation of subordination to the self, and in a diachrony which does not revolve around a dialectical movement toward “true” intersubjectivity. Still, she posits that it is only in recognition that the subject comes to be: “...paradoxically, the discursive condition of social recognition *precedes and conditions* the formation of the subject: recognition is not conferred on a subject, but forms that subject” (BUTLER, 2011, p. 171). But this recognition is not intersubjective, not even interpersonal: “...the impossibility of a full recognition, that is, of ever fully inhabiting the name by which one’s social identity is inaugurated and mobilized, implies the instability and incompleteness of subject-formation” (BUTLER, 2011, p. 171). Why is it that “full recognition” equals “inhabiting the name” that solicits one’s social identity? Do we, then, see ourselves recognized necessarily in the norm, thereby becoming deceptively identical to our signifier, as with Lacan’s Master? Is intersubjectivity coextensive with the norm (which, in turn, is coextensive with power), and, in that sense, can we only aspire to substitute one Master for another? Butler suggests, in her discussion of Antigone, that

When the incest taboo works *in this sense* to foreclose a love that is not incestuous, what is produced is a shadowy realm of love, a love that persists in spite of its foreclosure in an ontologically suspended mode. What emerges is a melancholia that attends living and loving outside the livable and outside the field of love, where the lack of institutional sanction forces language into perpetual catachresis, showing not only how a term can continue to signify outside its conventional constraints but also how that shadowy form of signification takes its toll on a life by depriving it of its

sense of ontological certainty and durability within a publicly constituted political sphere (BUTLER, 2000, p. 78).

Antigone's attempt to put into the language of sovereignty (according to Butler, the language of Man) the uniqueness of her brother, according to kinship terms that resist resignification, represents a certain faltering of the incest taboo that had already failed for her father/brother, Oedipus, in his relation to their mother, Jocasta. The confusion thus associated with the name "brother" -- her dead, unburied brother, her incestuous father/brother, and her other brother -- places her in an entirely unintelligible circuit of desire (from the standpoint of Oedipal "law"), thus locating her in an impossible position between recognition and abjection, kinship and its dissolution, sovereignty and its other. Butler speaks largely of the way in which kinship structures are politically sanctioned in ways that destabilize certain existences, that prevent them from being recognized, and thus place certain deviant subjects in that "shadowy realm of love", a love that resists representation in publicly sanctioned speech.

In that sense, Butler argues, there is a structural impossibility of conferring recognition on Antigone. She signifies what is not recognizable, she is always already in a position of undecidability, and yet her condemnation -- one established from the outset in Oedipus' curse and confirmed in Creon's sentence that also robs him of his own son -- does not stop her from making her demands *from this position*. Is recognition, then, truly the condition for advancing a political claim to the dignity of grieving her brother? It seems that this particular recognition, were it granted Antigone, would simply allow her to inhabit normativity in an intelligible way, not necessarily representing an expansion of the discursive order, not necessarily representing a subversion of the norm thereby implied. What Butler seems to ignore is that there is no necessary coextensiveness between sovereignty and the order of symbolic law; that the big Other enters signification in (personal) representation as already castrated *in its very redoubling*, in its acquiring another body -- a position that paradoxically allows it the privilege of the contradictory dictum¹⁶. Had Creon, the delegate of the

¹⁶ As we have suggested above, though the big Other can, in a limited sense, enter representation, it only does so in being embodied by a representative that is itself castrated. In that sense, its intelligible form is only "a" big Other insofar as it is already two, as it experiences the disjunction of representing the big Other and of representing itself *qua* subject. This might seem like a strictly theoretical point to make, but one need only look at the legal structure of a representative democracy to immediately understand what is meant here: the nation or the people (a self-present, yet impossible pole, a big Other) authorize a representative to act in their name according to rules that were themselves set forth by representatives of the people. This further

state-as-big-Other at that moment, chosen to allow the burial of Antigone's brother, there would be instated no contradiction, but simply a continuation of the authority presumed in sovereignty's discourse.

Antigone's voluntary martyrdom is thus dramatized by Butler in the same terms for which she reproaches Lacan in *Gender Trouble* (BUTLER, 1999): a negatively charged religious melodrama, with failure being the constituent mark of any and all things she may attempt to signify. She thus comes to bear the mark of an unconscious demand made upon law in every crime, the haunting of a future, scandalous possibility of altered legality:

[s]he acts, she speaks, she becomes one for whom the speech act is a fatal crime, but this fatality exceeds her life and enters the discourse of intelligibility as its own promising fatality, the social form of its aberrant, unprecedented future (BUTLER, 2000, p. 82).

And yet she could hypothetically see her wishes recognized by Creon without any necessary contradiction of his sovereignty, a concession that would ensure she remain unfulfilled and impotent in being forced to continue inhabiting her father/brother's curse -- being thus stripped of the possibility of both martyrdom and proper womanhood.

We would argue, then, that Butler underestimates the extent to which what she terms symbolic law (that is, the articulation of normative kinship and sexuality) and what we might term sovereign law are constitutively dissimilar to each other. If it is true that we can separate these elements both from one another and from the notion of normativity, what might the circulation of power in discourse look like from within such a multiplicity of concurring commandments? What might we, the abject LGBTI, the legitimate and illegitimate victims of human rights abuses, live like, and is there any politics that fits our need for change?

4.4

Abjection and homo-ness

illustrates the tautology implied in the big Other's declaration that "I am what I am": the people does not defer to anyone it hasn't chosen, and yet it had no rules to choose the constituents that established its Constitution. Democracy, in inaugurating its own possibility, lays bare its own difference to itself, its own inevitable (and, it bears reminding, always metaphorical) castration.

In his essay *l'abjection et les formes misérables*, Georges Bataille tells us that abjection, the condition of possibility for the subject and the object to be named, consists of a sovereign act of exclusion. He argues that

[t]he abjection of a human being is negative even in the formal sense of the word, because it has an absence at its origin: it is simply the incapacity to perform with sufficient strength the imperative exclusionary act of abject things (which constitutes the basis of collective existence)” (BATAILLE, 1970 p. 219, our translation).

At the origin of abjection, then, resides a powerlessness, a vacuum defined by its incapacity to assert itself. But this abjective act has to be performed by an empirical agent, a mass of people or a hypothetical individual who has the capacity to assert itself in a sovereign voice: “[t]he exclusionary act has the same sense as social or divine sovereignty, but it is not situated in the same realm: it is located precisely in the domain of things, and not, like sovereignty, in the domain of people” (BATAILLE, 1970, p. 220, our translation). In thus bringing about the realms of the object and of the subject, the sovereign voice asserts itself as the properly human, and posits itself as the self-presence of that “human” to itself; finally, “the oppressors have to be reduced to sovereignty in its individual form: on the contrary, the oppressed are formed by the amorphous and immense mass of the miserable population” (BATAILLE, 1970, p. 217, our translation).

It may be said, then, that the violence at the origin of abjection, the exclusionary act that founds sociality itself, is an act of power, followed by a positing of a basic, rudimentary taxonomy of the speaking beings that, from then on, compose the body politic. In the sovereign/object hierarchical dichotomy thus established, the incapacity of the object to sustain its distance from the domain of abject things ensures its continued reproduction. Reminiscent of the classical Marxist bourgeoisie/proletariat scheme, Bataille’s theorizing suggests that the realm of the object is production itself -- the filth of manual labor, the disgust necessary to the reproduction and maintenance of social hierarchy and the illusion of one-ness of the sovereign body of the only class that holds and maintains its class consciousness with no recourse to explicit political organization. Abjection *proper*, after all, is situated in the domain of things, and not in the domain of persons. But it is a communicable condition, so to speak: “misery does not solicit [human] will, it disgusts both those who live it and those who avoid it: it is lived exclusively as powerlessness and does not result in any possibility of affirmation” (BATAILLE, 1970, p. 218-9, our translation). The impossibility of avoiding the

filth of production for the proletariat, and their reiterated abjection into misery, then, are lived as powerlessness and aversion; and yet this impossibility forms the very basis that erects the body politic. It is precisely in their exclusion that community can attain an illusory status of wholeness, the process that, for Lacan, founds the “properly political” and (one form of) the big Other.

But what of the other dimensions of power in this scheme? If the partitioning of society, and its figuration as a deceptive whole, are the condition of (Lacan’s and Bataille’s) politics, how might one explain the pervasive historical continuity of discrimination against specific racial, sexual and gender minorities? Evidently, there must be at least some degree of particularity that explains these differential axes of subordination within discourse. In order for the Bataillean bourgeois to “recognize himself fully”, as in Butler’s recognition and Lacan’s Master, in the social form of sovereignty into which he is placed, there must be a certain process of identification put in place for that fantasy to be sustained as a discursive reality. If, then, we recognize “discourse” as the form of a social bond, as per Lacan, we might start to sketch a possible answer with a Foucauldian twist.

Foucault considers power to be an all-pervasive reality in social life. It is relayed in social relations, and it is the condition of possibility for the subject to emerge into signification and, thus, intelligibility. Power, in that sense, deviates from the traditionally “negative” conception espoused by legal scholars -- rather than simply prohibiting certain behaviors, power in fact enables them to be meaningfully integrated in discourse. The circulation of power, in that sense, defines the very terms in which communication and subjectivity are possible:

Power relations are not in a position of exteriority regarding other types of relations (economic processes, relations between knowledges, sexual relations), rather, they are immanent to them; they are the immediate effects of divisions, inequalities and imbalances that are produced in these relations, and are reciprocally the internal conditions of these differentiations (FOUCAULT, 1976, p. 123-124, our translation).

If, however, we acknowledge the reality of this form of power, it is necessary to underscore that power is therefrom deduced to be diffuse, ever-shifting, and not ever the “property” of one individual or another. It is, furthermore, and for that very reason, never a completely efficient construct. If power has no definite aim emanating from a single sovereign consciousness, only its *effects* can be meaningfully grasped, and only its *sense* can be devised in the form of its strategic deployment. Distancing ourselves from a monolithic view of power, furthermore,

demands that we posit that it is never unidirectional: power is exerted in “both ways”, is never a zero-sum game, and brings about its own opposition in the form of resistance:

[Resistances] are the other term within power relations; they inscribe themselves therein as the irreducible *vis-à-vis*. They are thus also distributed in irregular fashion... Most of the time, one is dealing with mobile and transitory points of resistance that introduce in a society mobile fractures, destroying unities and bringing about regroupings, shaping individuals themselves, dividing and remodeling them, tracing within them, in their bodies and souls, irreducible regions (FOUCAULT, 1976, p. 127, our translation)

If resistance and power are two sides of the same coin, if all power *demands* resistance, otherwise its consistency might lose its phantasmatic appeal, where might we place discourse and the object in the flow of power? We would advance that it is precisely these “irreducible regions” that are traced in individuals and groups through their mute resistance to the strictures of power that represent the avenue for an answer. If, as we have suggested above, the speculative element of “sex” is that which assures the coherence of the apparatus of sexuality, it represents both the site in which the consistency of the apparatus is located, and the site that ensures the apparatus can be changed, be made to work according to other dictums, to other “sovereign acts”, not only of exclusion, but also of productivity.

Power, language, discourse and violence are thus arranged in a relation of mutual dependence, but are irreducible to one another. It follows, then, that the part of power that remains exterior to discourse is the very trace of the sovereign act of exclusion that founds discourse itself -- and it is this trace, this nagging remainder of the first violent act of linguistic expropriation of another, that constitutes the site of resistance, the irreducibility of any one practice to a definite representation of a discursive order. This trace can be none other than the veiled recognition that the big Other, or that Butler’s symbolic, is itself castrated; that language does not circulate as a full, self-contained ontological order, but is inevitably put in relation with the very Otherness it casts out in its being instantiated as discourse. Castration, powerlessness, the human’s non-identity to itself, language’s empty grounding, all these terms thus appear as the very condition of change, the substrate of historicity itself. Conversely, the condition for discourse’s appearance of wholeness, its apparent possibility of positing itself as truth, is grounded on the signifier’s mandate to simply be, but impossibility to

represent anything in definitive fashion. As we have noted above, “sex”, in Foucault’s characterization, serves a function solely due to its emptiness; the apparent absence of a requirement of deconstructibility, the impossibility of its ultimate definition in language, is precisely what enables the unstoppable proliferation of instances where the “sex” construct is implicated, the means by which all the body of medical knowledge, to name one instance, is made credible in its very commonsensical, unquestionable character.

What, then, ensures the consistency of the many different forms of discourse, if they are all simply instantiations of language coated in power and worked from the inside by resistance and its implied Otherness? The crux of the matter is that this question cannot be answered if not *ex post facto*; that which ensures a certain discourse’s consistency is always to-be-discovered, always a matter of interpretation. If we posit that discourse’s condition of possibility is precisely the exclusionary linguistic act of abjection, we can express the relation thereby established as “Subject/Object”, where the “/”, the border between them, represents the signifier that assures the coherence of the system. This corresponds neatly to the Lacanian order of sexual difference; men and women are only posited *as men and women* in enacting their relation to the phallic signifier, just as the subjects of “sex” for Foucault are themselves barred within the normal/perverse dichotomous order -- it is, indeed, precisely an economic expression of “sex” (having too much or too little of it, or whatever is articulated as “the normal amount”) that assures the coherence of sexuality as apparatus. Both of these orders -- that of sexual difference and that of sexuality-as-apparatus --, furthermore, create their own necessity by standing in a metonymic relation to the “truth of the subject”, its essence -- that is to say, they ground individuals’ illusion of self-presence in their very reference to the bar of the signifier. This operation, however, is marked by its own impossibility by virtue of the big Other’s always-already-accomplished castration -- the incompleteness of every community.

If sexuality has now suffered a number of changes -- the sanitizing of homosexual identity, the endless proliferation of sexual labels describing sexual excitation, or the lack thereof, based on object-choice, etc. --, this implies that we have indeed been “subverting” the terms of the discourse. But to what extent? Can there be said to be a body of the homosexual, or are we merely clinging to an

illusion of recognition-as-propriety in hopes that this might eventually change the way we are treated in society? To sketch a preliminary answer, it bears noting once again Bersani's contention:

The cultural constraints under which we operate include not only visible political structures but also the fantasmatic processes by which we eroticize the real. Even if we are straight or gay at birth, we still have to learn to desire particular men and women, and not to desire others; the *economy* of our sexual drives is a cultural achievement. Perhaps nowhere are we manipulated more effectively and more insidiously than in our most personal choices or tastes in the objects of our desires. Those choices have cultural origins and political consequences. To understand what might be called the line of constraint running from one to the other is itself a political imperative (BERSANI, 1995, p. 64).

Bersani goes on to argue that homosexuality -- the psychic investment in sameness rather than difference, as in heterosexuality -- demands a structural reworking of the terms in which we understand relationality itself. In that sense, gay male sexuality might represent one such normative avenue, as it ultimately advertises a letting go of the self towards a *Jouissance* implied in the very act of renouncing power and self-control -- an operation metonymically ensured by the penetration of the anus: “[m]ale homosexuality advertises the risk of the sexual itself as the risk of self-dismissal, of losing sight of the self, and in so doing it proposes and dangerously represents jouissance as a mode of asceticism” (BERSANI, 2010, p. 30).

Asceticism, here, is understood as a refusal to partake in the greatest good modernity has come to offer: (deceptive) self-presence in the form of subjecthood, the dignity inherent in being a rational human and consumer in a capitalist order driven by scientific progress. As we have suggested in Chapter 3, this is precisely the ideal that jurisprudence regarding discrimination on the basis of sexual orientation seems to espouse with regards to the LGBTI. But does Bersani himself exaggerate the possibilities of sameness in the very terms that feminism has continually criticized as phallogocentric? As we have noted in this chapter, it is the expropriation of woman's Otherness that founds the order of sexual difference, and “sameness” is the very stuff that enables any meaningful relationality -- woman only exists insofar as she is already “half” man, as she participates in the phallogocentric economy of discourse. In that sense, heterosexuality is always already a homosexual affair. It corresponds to men enjoying the fantasy of possessing the phallus in women who are already at least partially male. If this latter point is true, there remains an unavoidable question: can renouncing one's own possession of

the phallus in being anally penetrated be really that liberating? Can we indeed partake in this extreme renunciation of the ego if we insist on the “difference” inherent in an anti-relationality that privileges sameness, and names itself on that very basis?

Bersani’s line of argument on *Is the rectum a grave?* forms the basis upon which a radical denouncing of relationality itself may be advanced from the standpoint of the extreme narcissism of only being capable to love oneself in the projective movement of sameness. Bersani advocates for an entirely different mode of sociality, based on the refusal of any and all terms that ensure any recognizably oppressive sociality as livable. This is what is meant by the notion of asceticism: renouncing one’s ego, renouncing one’s immediate links to society as an oppressive structure, requires homo-ness, metonymically identified with homosexuality, in that it is only a radical narcissistic attachment to one’s body (and, crucially, not one’s ego) that may provisionally achieve the ultimately impossible position of the castoff, the abject of abjects: “In a society where oppression is structural, constitutive of sociality itself, only what society throws off -- its mistakes or its pariahs -- can serve the future” (BERSANI, 1995, p. 180).

It is therefore in the refusal of relationality that lies the ethical imperative of homo-ness; the distinctively homo is she or he or it who refuses to partake in the social. What is hard to digest here is that this argument ultimately relies on the presupposition that both the individual’s ego and subjective positioning rely on a strict recognition of themselves within the dominant normative arrangements of a given community. In that sense, becoming intelligible to oneself *requires* that one see oneself recognized in the norm, and the refusal of that norm is precisely what duplicates, splits the ego/subject system into its revolutionary, non-relational form. By means of that refusal of recognition, the dissolution of the ego/subject “unity” gives rise to this anti-political and anti-communal movement towards radical, narcissistic, ego-less solipsism, and a form of articulating desire that relies on aesthetic proximity and availability that ultimately desexualizes sexuality itself.

While this account of (predominantly male) homosexual exceptionality may seem compelling, if possibly too pessimistic or optimistic (ultimately, it seems hard to decide between one of these options), we must remind ourselves that recognition into the norm can itself be ensured by oppressive practices themselves. Arguing for a particularity of the homosexual position can simply serve the means

of essentializing an inferior social positioning ripe for cooptation by conservative discourse. What Bersani (as well as, we would argue, Butler) refuses to acknowledge is that subjective positioning and psychic life, the ego, are aligned in all those instances in which we are capable of recognizing ourselves at least partially in the norm. It is only in failure that individuality arises; the inevitable failure to conform is the only instance in which the terms of recognition and abjection can be said to shift, can start failing to describe us fully. And failure is, by definition, accidental.

Rejecting these poles ultimately leads to a depoliticizing mode of communal life, an emptying of the very possibility of even limited forms of intersubjectivity. We would argue, indeed, that Bersani asks that we renounce the very status of speaking beings in order to combat oppression; in the end, this anti-relationality relies on a potentially harmful *telos* of retreating from communal life until its very terms spontaneously shift in favor of those of us whose homo-ness has already forced personal withdrawal from meaningful communication -- unless privileging our sameness would somehow place us in the order of divinity, unless, that is, retreating from social relations might enact the sovereign act of exclusion required for re-founding community and meaningful intersubjectivity.

In Lacanian terms, one might say that Bersani opposes sexual difference itself as the basis of communication, not by denouncing its terms -- themselves contingent, as we have seen --, but by insisting in the irreducibility of the otherness that inhabits sameness. That insistence, however, rather than representing an achievement of that temporary suspension of the ego, appears, in Bersani, ultimately as an insistence on the value of *angoisse*, that affect that overwhelms the ego/subject system when it realizes that its misleading misery is not lacking an object (LACAN, 1975b) -- that the *objet petit a*, the cause of desire, is itself speculative, unattainable, and yet exists, just as the *Jouissance* of its ultimate accomplishment. Refusing the grounds of community in homo-ness, in that sense, seems to be no more than a retreat into the powerlessness of the abject itself; a refusal to signify, or an impossible attempt to signify meaninglessness itself. If, then, Bersani's homo-afflicted body represents an attempt to inhabit the final frontier of abjecthood, the outlook for any kind of emancipatory politics seems inevitably bleak.

It may be productive to once again take a step back and reconsider the length of the argument I have been attempting to put forth. There are specific operations to the modern economy of power that limit our thinking regarding ourselves and our relation to that which we commonly term politics -- be they the law, institutional arrangements, electoral politics, the economy, etc. From within the discipline of International Relations, we have sketched out some of the presuppositions this economy carries: states are self contained, just as they contain morality; the international is a place of self-serving unities that fight against each other because of human nature, etc. All of these figures, however, purport to represent a kind of subjectivity that is not, in fact, divorced from these very operations. In other words, we cannot ever suppose the subject if the prior presupposition of its content is posited beforehand.

By disengaging from these presuppositions, we can take a step back -- or, rather, a step in -- and consider the modal subjectivities that are both required and produced by the working of the human rights establishment. I submit that, rather than being the ultimate frontier of morality, human rights is a distinctive political project that gives rise to distinctive subjects and normative structures that are not themselves *prima facie* transparent or clearly spelled out in the letter of the texts that comprise the international human rights regime. One such subject is the LGBTI subject, whose defining characteristics from the standpoint of international human rights law I have attempted to delineate in Chapter 3. If my diagnosis is to be trusted, there is much reason for mistrust of human rights, precisely because the standard to which they are tied is a masculinist, capitalist one. In that sense, it may be claimed that international human rights' political project is itself an attempt at de-politicizing sexuality, and we, as LGBTI subjects, allow it to speak in and through us, without necessarily considering its concrete effects and its operating logic.

Questioning this logic, however, requires the preliminary step of sketching out how this diagnosis is rooted on deeply flawed assumptions regarding subjectivity, law and sexuality. The enormous intricacies of the process of "inhabiting" or, rather, constituting and reconstituting a body, can be explored by means of (a certain) psychoanalysis. I have attempted to excavate a post-structuralist reading of Lacan, one that attempts to do away with the structural anthropological presuppositions often attributed to him. This means

essentially a reinterpretation of the place of sexual difference in his theory. I have attempted to present one such excavation by contrasting Butler's Lacan with "my" Lacan, based on his later works and a somewhat loose interpretation of Otherness and sexual difference as always contingent and contextual. The question remains, however, regarding the possibilities of change opened up by the very fact of the positing of homosexuality as a counterpart to heterosexuality.

This leads me to the main question of Chapter 5: What if the LGBTI subject is indeed capable of erecting a body politic -- or, at least, of changing the terms in which this body is interpreted towards a more egalitarian understanding of community? We would argue that it is precisely in a radical understanding of human rights as politics that lies one possible answer to this conundrum. If, as we have suggested, international human rights as they presently stand represent a depoliticized avenue of advocacy that ultimately fails to question the terms upon which oppression is sustained, how can the idea of human rights be reworked towards a more properly political *telos*? Can international human rights be an avenue of justice for the LGBTI?

5

The politics of human rights

5.1

A deconstructionist's despair

What can we legitimately expect from international human rights, understood from radically political standpoint oriented towards change? What, if any, alternative representation of the LGBTI subject of human rights might better serve purposes of substantial political change? We have, so far, been exploring the inherent limitations of the modern paradigm of human rights law, and those of its concrete articulation in the case of the LGBTI, but we have also deliberately avoided the normatively inclined question of how, or whether, they might actually serve to enact meaningful change under contemporary political climates. Far from arising simply from an issue of lackluster implementation, there are deep-rooted problems with the very concepts mobilized by the international human rights establishment, not the least of which is the widespread notion that they are not only necessary, but also often sufficient for assuring just state and individual practices.

It is interesting to note the terms with which Philip Alston, arguably one of the most prominent advocates and practitioners in the field of human rights today, and current appointed UN Special Rapporteur on extreme poverty and human rights, expresses his dismay at the recent rise of what he calls “the populist challenge” to human rights, with the election of Donald Trump as U.S. president and other, similar developments worldwide. Urging for more openness within the “human rights movement” with regards to internal and constructive critique, he notes that:

Historically, [the human rights movement] has not responded well to criticism. As long as the critics were mainly governments seeking to defend themselves or despairing deconstructionist scholars, it was not difficult to continue with business as usual. Going forward, it will be highly desirable for the movement to be open to reflecting on its past shortcomings and to involve a broader range of interlocutors in its reflections than has been the case in the past (ALSTON, 2017, p. 4).

So, not only is the human rights movement a unified and monolithic entity, it is also self-righteous enough to consider its critics -- and even presumably

sympathetic ones, such as “despairing deconstructionist scholars”, among whom we would very much like to count ourselves -- to be *prima facie* wrong. Though Alston does lay out a somewhat thoughtful account of the challenges posed by this resurgence of “authoritarian populism” -- a distrust on the part of these governments of social convention (by which he means “liberal social standards”), a shrinking or disappearing space of civil society, an authoritarian threat to liberal representative democracy, etc. --, his general attitude is often more worrisome regarding the future of human rights than some of the issues he apparently believes sprung out of nowhere upon Trump’s election in 2016.

As he and other well-intentioned human rights practitioners who follow in his shadow might have learned had they listened to “despairing deconstructionist critics”, the idea of human rights is simply not enough if it considers itself to be a strictly moral concern for governments and, sometimes, for individuals and corporations around the world. As appealing as retaining the moral high ground might seem in our current situation, it is time for us to unwaveringly recognize the eminently political character of human rights and to act upon it in the terms one might expect from a counter-hegemonic political project: strategic struggle. Mobilization, rather than the smugness of an activist posture that, instead of denouncing the capitalization and cooptation of human rights agendas, suggests that one way to move the agenda forward is for private individuals to give more money to human rights organizations (ALSTON, 2017, p. 14).

What further theoretical steps, however, are needed to establish the possibility of this emancipatory project to which human rights may lay claim? How does this project relate to what we have been exploring, and to the particularities of the LGBTI as a potential, ever-emerging collective political subject? As with Chapter 4, there are multiple answers to these questions, and we do not claim any privileged subjective positioning to answering them. That notwithstanding, it is crucial that we keep in mind the risks of falling back into the all-too-easy modern cornerstones of essentializing contingent erotic economies, their relation to wider societal normative arrangements, and the fetishization of human rights law as the ultimate moral commitment to be pitted against the evils of old-fashioned authoritarianism, contemporary “terrorism”, or whatever other entities may eventually come to insinuate themselves as discursively designated enemies of moral propriety. As Andreja Zevnik puts it, our normative projects have to

contend with the various layers and dialectical relations established in the relations between subjects and their Others' laws. In her words:

...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 that law creates with the political being and subject-hood that results from this bond... The subject does not come into being but is instituted by way of an affective -- or libidinal -- binding between life and the social (ZEVNIK, 2016, p. 38).

Though expressing ourselves in terms of psychoanalytic “laws” or juridico-legal orders that seem nearly unchanging may appear a bit claustrophobic and pessimistic, it must be established that a politics of emancipation -- that is to say, an aporetic politics for which no previously established rules can, by definition, exist -- is both possible and necessary, though we can never entirely predict its concrete effects or the subjects it will produce or destabilize. In this chapter, we will, first, attempt to show that this possibility does exist, and can never cease to exist, precisely because subjectivation, what we have generally referred to as sexuation in earlier chapters, can never be a complete process. If subjectivation were ever possibly entirely achieved, the subject who would arise therefrom would, to paraphrase Aristotle, be either a beast or a God; a perfect, identical-to-itself automaton, dissipating itself in perfect recognition in its own signifier. This is especially true from the standpoint of “individually” considered political communities. As we have explored earlier, the very precondition of community is its non-identity to itself. In this chapter's first section, we consider Jacques Rancière's conception of the political and the police orders, in order to show that the possibility of politics is always intrinsically linked to the possibility of creating meaning. It is therefore integral to the condition of what Rancière calls, following Aristotle, a “speaking being”.

In the following section, we will turn to queer theory to delineate how the LGBTI subject may then be always implicated in a *kind* of politics, and how our steps to see ourselves recognized in neoliberal capitalist incarnations of human rights are essentially misguided attempts to be entirely subsumed under previous normative arrangements, rather than adhering to the eminently political possibilities implicit in human rights. This discussion will rely on Edelman's reinterpretation of Lacan's *Séminaire XXIII -- le Sinthome*, and will aim to show how LGBTI-ness bursts open the gates of normative identification, paving the way for a proper dis-identificatory movement towards radical politics.

5.2

Politics and the conjunction of worlds

So far, we have been working within a Lacanian conception of politics, one that posits that politics is the work of building coherent wholes upon incoherent, antagonistic subject-functions. Lacan designates politics in such a way precisely because, for him, there can be no true relationality. The prototypical form of the Lacanian social bond, the sexual relation, is first and foremost the result of an impossibility of enjoying a body that is not one's own -- which, by extension, includes the presumed body of the big Other, be it society, humanity, or whatever other deceptive whole. And, since we cannot know that which we cannot enjoy -- "a body, it is enjoyed [*un corps, ça se jouit*]" (LACAN, 1975, p. 33, our translation) -- there can be no immediate relationality.

We turn, now, to a wholly different conception of politics -- one that puts fracture at the forefront, and posits that politics is itself the forcible exposition of this fracture, faced with a competing image of the community's distribution according to a transcendental principle of equality. According to Rancière, politics is, at its origin, a *form* rather than any *a priori* content. Its first procedural characteristic is that it forces, exposes, bursts open a certain community's fractured character, precisely in showing that the distribution of the "given" -- the division of places, statutes, prerogatives, social goods, etc. -- is a contingent, unequal ordering of the world:

That which constitutes the political character of an act is not its object or the place where it is exercised, but solely its form, a form that inscribes the verification of equality in the institution of a litigation [*litige*], of a community that exists solely through division (RANCIÈRE, 1995, p. 55, our translation).

In a certain sense, then, we are now scrutinizing the other side of Lacan's politics. If, for Lacan, the domain of the political is the glossing over of the empirical community's fracture, the covering up of its difference to itself, for Rancière, politics is the denouncing of this very fact, coupled with a rivaling conception, an entirely new distribution of the community's terms, towards the verification of equality. Therefore, in a certain limited sense, Rancière's politics is a *test* of equality, and is rooted not on the fictitious, seamless coherence of a

Lacanian big Other, but on the performative constitution of an antagonistic, doubled community that will provide the standard for that test of equality.

Furthermore, politics proper arises in and against a given distribution of the sensible, or “what is given”. Any specific distribution of the sensible -- that is to say, of that which offers itself to us as the givens of life, of that which can be seen, heard, understood, obeyed, etc. -- constitutes a particular police order. Police, here, does not mean the repressive institution we are accustomed to, but rather a specific way of “counting”, of taking account of the constituent parts of a certain community, in terms of the position these groups occupy and exclude other groups from occupying within community. In that sense, the operation of counting is a means of designating who and what goes where and to whom; what relations are established between each empirical type of political subjectivation. Therefore, the circumscription of prerogatives, titles, legitimate rights to movement and circulation, the contours of economic production and distribution, the share of common property each one is due, etc., are contingent upon this operation of counting. And any specific manner of counting, in other words, any police order and any axiomatic it establishes to order this counting, is always, in principle, politically contestable.

In this sense, the more characteristic feature of neoliberal modernity is an attempt to exploit the category of consensus, thereby masking the possibility of the fundamental experience of politics, the fracturing practice of dissensus. This practice of consensus, inherent in what Rancière terms the post-democracy, is the extreme manifestation of a police order predicated on a form of counting that is itself totalizing. By means of statistics, opinion polls, and various other disciplinary deployments for cataloguing and ascribing each constituent social group of a given community, as well as reinforcing their differential places within that community, this totalizing procedure effaces the possibility of the fracturing experience of dissensus by coopting and anticipating any and all possible substantial conflicts regarding the community’s distribution. In his words, the post-democracy

[Is] a form of identification between institutional apparatuses and the disposition of the parties and the parts of society, ready to efface democracy’s proper subject and action. It is the practice and the thought of a mirroring, with no remainder, between the forms of the state and the state of social relations (RANCIÈRE, 1995, p. 143, our translation).

In this sense, Lacan's politics, the practice of endowing one Other or another with a seamless, coherent body, ripe for identification and libidinal investment by the subject, finds its extreme double in Rancière's post-democracy. The distinctive operation of the post-democracy is thus precisely generating an institutional and social climate in which there can arise no fundamental disagreement as to the organization of the *polis*, because, from the outset, the distinctive characteristic of the *polis* is that it cannot be figured as strictly separate from the people. It is, itself, an immediate representation of the people in its carefully calculated heterogeneity, a purportedly perfect representation of itself. In that sense, "people" and "state" as purely formal concepts are blurred within their own impossible collapsing into each other. Therefore, what we now term "oppression", or social exclusion, cannot be represented as a fundamental divide within the community, but rather as a quantitative difference, a continuum of inclusion and exclusion that can give rise to no new configuration of the *polis*. Once again, in Rancière's words:

The "exclusion" we invoke today is, on the contrary, the very absence of a representable barrier. It is therefore strictly identical to the consensual law. What, in fact, is this consensus if not the presumptive inclusion of all the parts and of all their problems, an inclusion that forbids the political subjectivation of a part of the part-less, of a counting of the uncounted? Everyone is, from the outset, included, each individual is an atom and an image of the community of opinions equal to each part, of problems reducible to a "lack-of-X" and of rights identical to energies. In this "classless" society, the barrier is substituted by a continuum of positions that, from the higher levels to the lower ones, mimics the simple educational ladder. Exclusion, here, does not subjectivate, it is not therein [in the community] included (RANCIÈRE, 1995, p. 159).

In this dystopian representation of the post-democracy, itself eerily derived from Plato's Republic, there can be no strict political subjectivation because no part of the community can strictly be said to the part-less. This concept of "subjectivation", however, is different from the one we have been referring to as "sexuation" or sometimes even as that same word. Subjectivation, for Rancière, is simultaneously a condition and a by-product of politics. Political subjectivity, the political subject, is itself constituted and made to bear in the test of equality at the eventful moment of politics. In that sense, there is no political subject outside of its own enunciation. It is the terms of this enunciation, the process whereby a part of the part-less declares itself in and through producing a different world according to the transcendental condition of equality, that the political subject

comes to be. Therefore, the constitution of the political subject is itself immanent to politics, and not its precondition.

This “irruption”, then, of the political subject, is one of our sources of disquiet with regards to the current articulation of identity politics. The discussion on homosexual marriage, for instance, or the U.S.-based campaigns for inclusion of transgender people in the army, and many other struggles that have been identified with an alleged emerging LGBTI subject, poses itself mainly from within the post-democratic terms we have discussed so far. The LGBTI present ourselves as part of a continuum of exclusion, rather than as a part-less part of the community. That kind of demand for recognition, therefore, does not put into question the community’s wholeness in exposing its irremediable fractures. It simply demands to be counted from within a police order that did not *prima facie* exclude us entirely in the first place. This also makes itself patently clear in the analysis of the human rights claims made from within the Human Rights Committee. There is a prototypical demand to legitimate homosexuality that has little, if nothing, to do with “actual” sexuality, whatever that might be, but rather with kinship and political activity arrangements from which to disengage the legitimacy or not of a certain kind of sexual subjecthood.

In that sense, it is imperative that we take control of that form of depoliticizing subjectivation, rather than deferring to legal and juridical arrangements in matters concerning sexual subjectivity and political change. What understanding of this process of subjectivation, however, would allow us to understand how to constitute ourselves from within a frame of dissensus and politics? The structure of the political encounter, for Rancière, already posits the incompleteness and relationality of the political subject. In a long, but important, fragment, he states:

Modern politics pertains to the deployment of litigious subjectivation apparatuses that entangle the count of the uncounted to the difference-to-itself of every subject that is apt to enunciate it [modern politics]. It is not simply that citizens, workers or women designated in a sequence of the type “we, the citizens”, “we, the workers” or “we, the women”, don’t identify themselves with any collective, with any social group. It is also that the relation of the “we”, of the enunciating subject that opens the enunciative sequence, to the subject of the enunciated whose identity is declinated (citizens, workers, women, proletarians) is defined solely by the entirety of the relations and of the operations of the demonstrative sequence [itself]. Neither the “we” nor the identity that is ascribed to it, not even their intermingling define a subject. There are no subjects, or, rather, modes of political subjectivation if not in the collectivity of relations that the “we” and its name maintain with all of the

“people”, the complete game of identities and alterities implicated in the demonstration and the worlds, common or separated, in which they [the people] define themselves (RANCIÈRE, 1995, p. 89-90, our translation).

If we consider each of the moments described in this fragment, we learn that the deployment of the litigious subjectivation apparatus not solely represents a hypothetical world populated by a political subject that establishes relations with other political subjects present therein. Not only is this “representation” effectively performative, in the sense that it conjures its own referent, it also enunciates not one, but two worlds, that are superposed in the political moment. There is the performative utterance of the world as it is given -- say, a world dominated by men, in which women are subjugated -- *and* the enunciation of the world in which this is no longer the norm. This utterance constitutes “we, women”, or “we, the LGBTI”, as a coherent political subject, one that, however, only exists in the relations it establishes with the other parts -- that is to say, with other modes of political subjectivation -- of that world.

It is also important to stress that the performative that constitutes these two worlds does not represent the political subject to which it gives rise in any coherent, seamless manner. The subject is, rather, in the relations it establishes with other subjects implied in the system. In that sense, it is not the “we” that enunciates politics that matters, and it is not even the we’s designated signifier, what Rancière refers to above as its “name”, that constitutes it. Again, as stated above, it is not even their intermingling that constitutes the subject. If we juxtapose this to Lacan’s description of the Master’s injunction -- to be identical to his own signifier; or, in Butler’s or Bersani’s term, to be seen himself recognized in the norm, or to “inhabit” the name that inaugurates one’s social position --, it follows that Rancière’s politics do not constitute simply a re-inauguration of the Master under a different name. In that sense, it is possible that the enunciation of the political subject is, for Rancière, a sovereign act that implies no object -- one that does not require for its proper enactment the constitution of an irretrievable Other to be contained within the body of the lower term within the subject/object dichotomy.

This interesting characteristic of Rancière’s politics is immanent to his conception of democracy, one that is not to be confused with what we usually understand democracy to mean in contemporary discourse. In fact, modern representative capitalist democracies would seem to fit much more seamlessly

into the characterisation of post-democracy, as we have explored above. What is it about Rancière's democracy, then, that allows it such a privileged position in terms of political engagement? First of all, democracy is a specific regime of visibility: it requires "...the existence of a specific sphere of appearance of the people" (RANCIÈRE, 1995, p. 139, our translation). Second, the people whose appearance is regulated by the democratic regime is not amenable to definition according to any previously established sociological criterion, be it ethnicity, gender, sexuality, or any other potential axes of social differentiation. In that sense, there is a duality inherent to the "body" of the democratic *demos*: it is composed both of what we might designate as the empirical set of speaking beings who compose the empirical community, and of a body that destabilizes any and all form of social identification. In that sense, the democratic body is "...the duality of a social body and of a body that comes to displace all social identification" (RANCIÈRE, 1995, p. 140, our translation).

The third characteristic of democracy is that it institutes what may be called "polemical communities", ones that materialize the opposition of the police order against the properly political logic of the transcendental principle of equality. In that sense, democratic politics institutes a fundamental divide regarding the legitimacy of the political subject's place of enunciation. It is imperative to note that the political moment does not simply institute a scene of disagreement regarding the distribution of social goods according to material social interests; it is a conflict that puts into question the very terms upon which legitimate enunciation is instated in the terms of a police order. Rancière summarizes these three fundamental characteristics of democracy as follows:

There is democracy if there is a specific sphere of appearance of the people. There is democracy if there are specific political actors who are neither agents of the state apparatus nor parts of society, if there are collectivities that displace identifications in terms of state parties or societal parties. There is democracy, finally, if there is a litigation conducted on the people's scene of manifestation by a non-identitarian subject. The forms of democracy are the forms of manifestation of this appearance, of this non-identitarian subjectivation and of the conduct of the litigation (RANCIÈRE, 1995, p. 141, our translation).

Therefore, democracy cannot be said to materialize within any particular institutional arrangement. It is not the fact of checks and balances, representative government, voting, or whatever other empirical attribute that institute democracy. Rather, democracy is immanent to the political moment itself; it is always, in

principle, possible, even if its irruption can be delayed or made less probable -- as in, for instance, within a post-democratic institutional and social community. In Van Munster's words, "...democracy thus refers to the ever-present possibility of an unpredicted subject emerging that creates a physical space... where the claim of equality can be stated" (VAN MUNSTER, 2009, p. 270). This is because there is something inherent in the capacity of speaking -- making oneself heard and understood -- that always presupposes a trace of equality, a trace that is itself carried in the capacity to emit meaningful sounds. Indeed, were it not so, even oppression would have been made impossible. This can be said to be the "scandal" of democracy: that no specific division of titles, no concrete distribution of the places to which populations and individuals are assigned, can ever eradicate the transcendental equality of masters and slaves within language:

It is this imbrication of equality within inequality that the democratic scandal comes to manifest, in order to make it the very foundation of common power... "nature" doubles itself, natural inequality does not exercise itself if not in presupposing a natural equality that both seconds and contradicts it: impossible unless the students understand the masters, and that the ignorant obey the government of the wise (RANCIÈRE, 2005, p. 55-56, our translation).

In that sense, immanent to language is a transcendental trait of equality. This is especially important to note because of its relation to what we take to be fundamental rights, and, thus, to international human rights law. In *Who is the subject of the rights of man* (RANCIÈRE, 2004), Rancière explores the relation of human rights with politics. He notes the traditional Arendtian argument that statelessness implies the loss of the right to have rights, subsequently transmuted into Agamben's exploration of bare life, in order to remind us that, precisely because sovereignty is not identical to itself, and, thus, not coextensive with a community's composition and power, it cannot represent the precondition for rights to be enforced. What Agamben and Arendt ignore, therefore, is that the moment of politics itself constitutes the political subject as a surplus, as that which is *a priori* excluded from the community. It is precisely in bringing into the fore a part of the uncounted, a part of that which is *prima facie* excluded from the community, that the political subject is substantiated in the democratic ideal. The fracture of community, in that sense, is produced by the impossibility of counting the surplus political subject, as it is by definition excluded from the seamless fantasy body of that community. In Rancière's words:

Agamben's argument is in line with the classical opposition between the illusion of sovereignty and its real content. As a result, he misses the logic of political subjectivization. Political subjects are surplus subjects. They inscribe the count of the uncounted as a supplement. Politics does not separate a specific sphere of political life from the other spheres. It separates the whole of the community from itself. It opposes two counts of counting it (RANCIÈRE, 2004, p. 305)

This is of particular value to what we have been exploring so far, because it insists that rights, or at least the right to appear from within the political moment, is not immanent to any particular instantiation of police orders. Rights therefore cannot be circumscribed to any particular institutional arrangement within any particular community. In that sense, any speaking being is a presumptive rights holder by virtue of the transcendental principle of equality. If we take this to be true, human rights are not simply juridical entitlements to enjoy certain circumscribed social goods, or minimum entitlements required for "human dignity" or to alleviate suffering. They constitute, rather, the immediate expression of the presumptive equality of speaking beings, and can thus be interpreted as an interval of potential subjectivation. It is therefore imperative that we not identify any presumptive subject of human rights. Any claim of victimization is always already an exercise in these rights; human rights facilitate political subjectivation only insofar as they serve as a support for the test of equality, insofar, that is to say, as they are not subsumed to consensus.

Conceptualizing rights in this manner allows us to depart from the view of the LGBTI subject that we have so far been criticizing. Indeed, the commonsensical organization of this subject rests squarely within the post-democratic tradition; a counting of a definite subject that is quantitatively excluded from social goods, but is nonetheless represented within the community as a counted part. True subjectivation, that which would allow the LGBTI to emerge as a political subject in Rancière's sense, would require the institution of litigation, the immediacy of democratic *praxis*, the practice of dissensus. If we, however, seem to be inhabiting the register of abstract critique in this chapter, it bears reminding that the body itself is one privileged means of enacting dissensus. This perhaps strange claim draws on one character of Rancière's politics that we have not so far explored: that the enactment of politics is also an aesthetic procedure. As Van Munster puts it, "[Rancière's] thinking about politics is based upon an understanding of political struggle as an aesthetic moment. Emancipation is the result of a theatrical

staging, where the excluded take the scene and transgress the boundaries between different classes” (VAN MUNSTER 2009, p. 267).

In this “theatrical staging”, it is not solely speech that constitutes the enunciation of the political claim, but also the subject’s body. As Butler puts it:

...when bodies assemble on the street, in the square, or in other forms of public space (including virtual ones) they are exercising a plural and performative right to appear, one that asserts and instates the body in the midst of the political field, and which, in its expressive and signifying function, delivers a bodily demand for a more livable set of economic, social, and political conditions no longer afflicted by induced forms of precarity (BUTLER, 2015, p. 11).

The body in assembly, then, lays claim to a irreducible right to appear. Its aesthetic signifying is always already a kind of rights-claim, a reminder that the uncounted are always in principle possible as a mode of appearance. In other words, asserting the fundamental equality that arises from inhabiting a speaking body is itself an irreducible trace of a basic right to have rights. It is not the sovereign’s self-presence that dictates who is entitled to what within the police order, but rather the order’s incompleteness itself that presupposes its subjects’ equivalence. From within this incompleteness, the political moment can be seen as the inscription of a demand for equality, one that will then be subjected to a test of that equality in the very superposition of the two worlds that are constituted in and by the subject that politics inaugurates.

How are we to understand this potential intersection of the order of sexuality and the orders of politics and rights? After all, this is a necessary step for us to establish the possibility for the articulation of the LGBTI subject as a political entity -- especially if we demand to appear not as monolithic individuals faced with a market and state orders from which we are partially excluded, but as a thoroughly political entity, a politically motivated body. It is particularly interesting that Butler, in her and Spivak’s book *Who sings the nation state?* (BUTLER;SPIVAK, 2011), argues that what we commonly understand as a political demand is also an “incipient” rights demand; that, in this precise sense, we are to understand demand to be a constitutive moment of a rights claim: “The demand is the incipient moment of the rights claim, its exercise, but not for that reason its efficacy” (BUTLER; SPIVAK, 2011, p. 64).

For Lacan, demand has at least two different components: the demand for satisfaction of a need; and an accompanying demand for love. Desire arises in the part of the demand that cannot be satiated; that is to say, in the demand for love.

The crucial question is that neither rights claims nor the radical political claims Rancière describes can be understood in terms of the demand for love, precisely because this is how these demands are delineated from the standpoint of post-democracy. When we ask for rights of inclusion from within the liberal, white, male bourgeois frame, as Brown (1993) describes our attachment to identity politics, we are asking for the community's, the state's, for one big Other's love. From the outset, however, love is offering what one does not have -- it is an attempt at providing ontological consistency by someone who, by definition, lacks it. As Lacan puts it, "love is impotent, even if it is reciprocal, because it ignores that it is nothing more than the desire to be One, which takes us to the impossibility of establishing their relation. Whose relation? -- [that of] two sexes" (LACAN, 1975, p. 14, our translation). If we continue our itinerary of substituting Lacan's "sex" terminology for the name of personified alterity -- Derrida's and Levinas' *autrui*, another --, then we see immediately that the big Other's love, however much we love it back, does not, and cannot, suffice¹⁷.

Lacan's assertion that love is nothing more than the desire to be One can be interpreted in two interrelated ways. The more obvious avenue would be that love implies the desire to merge into another, to lose one's ontological consistency in favor of drowning in the other's love, and thus both having and becoming another's body. The other avenue of interpretation, is that love is, rather, the desire to become complete in and for oneself, through the eyes of another. Love, in this second interpretation, is that unanswerable demand that recognition in the eyes of the other be so complete as to render the self's inaugurating fractures as non-existent or, at the very least, unimportant. The element of impossibility that Lacan introduces into this (non-)relation is that recognition is never strictly inter-subjective, but rather mediated in and by discourse as the instance that inaugurates the sphere of possibility for sociality.

We thus return to the Lacanian narrative of politics as the creation of bodies of illusory wholeness with which the subject can identify and precipitate its existence into history and ontological consistency. This inaugurates a rather confusing conflation of "politics" not as the dynamic theatrical staging of a demand for equality, as Rancière would have it, but rather as the never-ending attempt to love and be loved by the (big) Other. This conflation, one we have

¹⁷ Douzinas (2007) develops this argument at length.

begun to elliptically explore in our discussion of Bersani's anti-social homo-ness, also perpasses the more Lacanian-inclined queer theoretical approach of Edelman. Indeed, Edelman summarizes neatly this nearly dystopian conception of politics, one that we would readily identify with Rancière's post-democracy:

Politics names the social enactment of the subject's attempt to establish the conditions for this impossible consolidation by identifying with something *outside* itself in order to enter the presence, deferred perpetually, *of* itself. Politics, that is, names the struggle to effect a fantasmatic order of reality in which the subject's alienation would vanish into the seamlessness of identity at the endpoint of the endless chain of signifiers lived as history (EDELMAN, 2004, p. 8).

What is bothersome about this conception of politics is not that it may seem conservative, but rather that naming it in such a way that it previously *depends* on the subject's libidinal investment in it requires a totalizing move that Edelman criticizes elsewhere (EDELMAN, 1994) -- that is to say, it depends on the subject's appeal to community to satisfy its more or less intrinsic desire for love. If this is the case, the subject's erotic attachment to forms of communitarian belonging, paradoxically done to ensure its own illusion of ontological consistency, comes to rely on a conception of sexuality understood as essence. If we express this in recognizably Rancièreian terms, the subject's identification cannot remain in the sphere of recognizably countable parts of the community if the subject is to retain the possibility of properly political subjectivation. That is why one of the crucial characteristics of Rancière's politics is precisely that it relies on dis-identification, on figuring oneself and one's "peers" as strictly outside the purview of identities that are recognizable from the standpoint of the police order. Even if we concede this point, however, Edelman's discussion of Lacan's *sinthome* and its possible relation to homosexuality seems to open up the space for a radical politics that is itself saturated, so to speak, in embodiment. We will now turn to this discussion.

5.3

Sinthome and politics

In his 23rd Seminar, Lacan presents a different way of thinking about the co-implication of the three metaphysical strata he posits for the emergence of the subject: the real, the imaginary and the symbolic. Each of these strata should be thought of as co-implicated, and are only partially intelligible for the subject in

terms of one another. In this sense, the real can be understood as the order of that which is strictly unsymbolizable. The real is always that which upsets ontological consistency, it is an enigmatic order that defines itself always as the traumatic encounter with something that cannot carry any meaning. It could be understood as the bare, undifferentiated reality of Being, that which precedes and conditions the creation of meaning. Conversely, the imaginary is the order of objectal consistency; it is inaugurated according to the prototype laid out in the mirror stage, the first moment the infant can be said to understand what it means to perceive a “whole” object, one that is meaningfully separate from all others. Finally, the symbolic is the order of the death of the thing. It is symbolization, language, the commensurability of any and all signifiers. The sinthome, Lacan’s reworking of the notion of symptom, represents a new understanding of the way these different metaphysical orders tie themselves together and thereby give rise to subjects.

This new way of writing the symptom -- evidently, an important term in the psychoanalytic tradition -- has a lot of connotations owing to Lacan’s focus on James Joyce’s literary *oeuvre* in Seminar XXIII. It essentially represents a way to approach the ontological consistency of the subject, a specific manner of tying together of the real, symbolic and imaginary. According to Branco Tavares (2010), the sinthome can be read in many ways: *saint-homme* (saint-man); *sin-t-homme* (sin-man), all of which share approximately the same phonetics. The sinthome’s subject matter, furthermore, the real, imaginary and symbolic, can be represented as the acronym RSI, which sounds like the French word for heresy, *hérésie*. Branco Tavares argues that this is a deliberate subversion, on Lacan’s part, of psychoanalysis’ tendency to repeat its own fixation with the paternal figure by means of a fetishistic attachment to a “founding father”, such as Freud or such as what Lacan was starting to become at the time of Seminar XXIII. In mimicking the patriarchal structure of Judeo-Christian tradition, Lacan’s heresy (RSI) lies precisely in shifting the primacy among the terms of “his” “holy trinity” in adding a fourth term to the topological structure of the subject.

What is distinctive about this new tying together of the RSI is that the sinthome is itself a kind of substance. Among the orders of the RSI, solely the real could claim to any similar status as “substance”, but, by definition, the real is

strictly meaningless, whereas the sinthome is not necessarily. In Edelman's interpretation:

As the subject's "only substance", though, the sinthome, like a catachresis, brings the subject into being at the cost of a necessary blindness to this determination by the sinthome – a blindness to the arbitrary fixation of enjoyment responsible for its consistency. Disavowing the meaningless fiat of such a catachrestic sinthome, the subject misreads its identity as a metaphor instead, one that names its relation to an Other whose positivity seems to guarantee Symbolic reality itself (EDELMAN, 2004, p. 36-37).

It is particularly interesting that Edelman reads the sinthome as the "arbitrary fixation of enjoyment" that ensures the subject's consistency because, in Lacan's Seminar, we are consistently brought to compare the sinthome with an artistic endeavor: with creation, *savoir-faire*, rather than simply *savoir*, knowledge, which would normally be taken to assure the subject's positioning with regards to the Other. Lacan largely expresses this in terms of writing: "[o]ne must write it, one must write it... this borromean knot... A writing, therefore, is a doing that provides support to thinking. Truly, the borromean knot in question completely changes the sense of writing. It gives writing some autonomy" (LACAN, s/d [1975-1976], p. 194-195, our translation). And further:

It is insofar as the sinthome makes a false-hole with the Symbolic that there is any *praxis* whatsoever; that is to say, anything that pertains to saying, to that which I will call the art-saying... Joyce... did not know that he made sinthome. I mean to say that he simulated it. He was unconscious of doing this, and it is because of this that he is a pure artificer, that he is a man of *savoir-faire*, that is to say, that which we also call an artist. The sole Real that verifies anything is the phallus, insofar as I have mentioned that of which the phallus is the support: that is, the function of the signifier insofar as it creates all signifieds. It is further required that there be nothing else to verify it, this Real (LACAN, s/d [1975-1976], p. 160, our translation).

Let us break down these fragments. The borromean knot Lacan refers to is the specific way in which the RSI is tied together by the sinthome. Its distinctive characteristic is that one cannot remove any of its constituent parts without undoing the knot entirely; there is, therefore, no individual consistency to any of these orders if not already with reference to the others. What the sinthome designates, then, is a subject's particular way of tying each of these orders together. However, the sinthome is also, in a certain sense, an irruption of the real, of the strictly unknowable. Lacan's attempt at putting it in relation to the phallus is, in that sense, no accident. The sinthome, as an ultimately arbitrary tying together of the RSI, is the ultimate frontier of phallic signification, the place from which all the metonymic attachments of the signifier arise. What is most striking,

however, is that the place of the phallus is radically denounced in Lacan's reading; indeed, as he says in the end of Seminar XXIII, "[w]e support ourselves *against* a signifier to think" (LACAN, s/d [1975-1976], p. 211, our translation). Art, then, the true process of writing, shifting the terms of a given social relation expressed in a discourse, is always at least partially oppositional; it goes against the terms of the social relation even if it can never be strictly separated from it:

The *I* is not a being, it is a presupposition to that which speaks. That which speaks has to do with nothing but solitude, at this point of the [sexual] relation that I can define only in saying, as I have said, that it can't be written. This solitude, that of knowledge's rupture, can not only be written, but is even that which is written *par excellence*, because it is that which, from a rupture in Being, leaves a trace (LACAN, 1975, p. 152, our translation).

What Lacan designates as "saying", then, is this continuous writing of one's own constitutive impossibility. Saying is *praxis*, insofar as the form of *praxis* cannot be assured by anything prior to its continuous iteration. This form of saying, then, is different from the form of enunciating, representing oneself as an I-function, that is implied in Lacan's notion of the subject. It is also different from the Master's injunction, in that *praxis* does not necessarily demand identification with one's own labor. The Master claims that he is identical to his signifier, and is thus contained within the symbolic's borders, identical to his own verbal product; *praxis*, saying, takes place, rather, in the interstices of the RSI *as* sinthome. If we return to Edelman's contention that the sinthome is the subject's only substance, we can begin to understand that the misrecognition he describes -- that the subject's identity begins to be interpreted as a metaphor, rather than an endless metonymic slippage -- functions rather as a potential beginning for the exposure of the subject's externality to itself and, thus of the community's inherent fracture. Writing relies on this fracture; in fact, it *substantiates* this fracture. Writing, as a saying that leaves a trace, is that which is always already foreclosed when one is subsumed under a signifier. In that sense, the Master does not write; writing is *par excellence* within the purview of the Slave.

Writing, then, is a kind of irretrievable inscription; it definitively changes *something* in the tying together of the RSI complex, even if the concrete effects of writing can only ever be grasped *ex post facto*. It is, after all, still the fact of writing that has inaugurated the phallic order, as it inaugurates any and all social orders; it is not by accident that Lacan states explicitly that "the father is a symptom, or a *sinthome*, as you will" (LACAN, s/d [1975-1976], p. 14, our

translation). The heretical nature of this claim is evident if one considers the veritable theology that psychoanalysis has instituted around the father-function, he whose murder enables sociality in *Totem and Taboo*, or as the prototypical model for the super-ego, etc. That the father is a symptom doesn't simply refer to individual psychodrama, however; it means that any concrete way of embodying "a certain" sexuality in its relation a certain social order is itself a symptom.

Lacan's claim, in one sweep, does away with the normal/pathological divide, and invites us to focus on the arbitrariness of social ordering itself. And it is that division, the immediately given social and the inevitable trace of writing that renders it contingent on its continuous iteration in the sinthomal *praxis*, that inaugurates the possibility of politics. If we take this to be true, heterosexuality can be understood as a kind of lesser writing; it is, the re-writing of the social order of the father; and homosexuality, understood in the sanitizing terms we have been criticizing, represents an attempt to bring this non-normative form of writing *proper* (rather than lesser) under the purview of that social order. Edelman expresses this conundrum in the following terms: "Sinthomosexuality, by contrast, scorns such belief in a final signifier, reducing *every* signifier to the status of the letter and insisting on access to jouissance in place of access to sense, on identification with one's sinthome instead of belief in its meaning" (EDELMAN, 2004, p. 37). Sinthomosexuality, the fusing together of homosexuality and the sinthomal emphasis on *praxis*, signals a form of belonging that attempts to embody meaninglessness. In that sense, it is correlative to Bersani's conception that we criticized in Chapter 4.

We should resist emphasizing any homosexual specificity that would render us somehow "better" political subjects. If anything, the fact of homosexuality may have laid bare the contingency of the political order, but it is not in retreating into circuits of sameness or refusing sociality or meaning altogether that change, both in the hegemonic libidinal organization of subjects and in wider institutional climates, can be effected. If we are to signal any kind of homosexual specificity it is precisely in its always-already-accomplished failure of identification according to the tried and true principles of sexual difference and heterosexual mandates. This itinerary provides also a *locus* of collective political action that does not merely accommodate the LGBTI subjects that are now widely circulated as the

thoroughly sexualized minorities of capitalist neoliberalism. Lacan himself provides an initial basis for this alliance in the following terms:

It is precisely insofar as the Master's discourse reigns that S2 divides itself. And this division is the division between the symbol and the symptom. But this division of the symbol and the symptom, it is reflected in the division of the subject. It is because a subject is that which a signifier represents for another signifier that we are required, by its insistence, to show that it is in the symptom that one of these two signifiers of the Symbolic acquires its support. In this sense, one might say that, in the articulation of the symptom to the symbol, there is nothing but a false hole (LACAN, s/d [1975-1976], p. 18, our translation).

"S2", in this fragment, represents the function of knowledge, of the signifiers to which we refer to make sense of S1, the function of "our" signifier. What Lacan is claiming here is that a parallel operation to that discourse which founds sexual difference occurs within the frame of any Master's discourse. A certain value is created in the dispossession of women, workers, etc., of that which they do not have, in establishing them as Other and only ever intelligible in the terms of the Master. The implication, here, is that the (master) signifier, that empty utterance that assures the coherence of a given knowledge (S2), inevitably fails to exhaust any subject, therefore assuring that our failure to conform enters embodied phenomenology in the form of the symptom. This is the privileged operation whereby discourse determines our bodily organization; it is the beginning of the operation that sutures *jouissance* and language into the lived body. The "false hole" is precisely that necessary misrecognition; it is always filled with something, although anything could in principle "fill" it. The implication is that *sinthome* always varies, that no subjective variation is strictly equivalent to any other, from whence arises the perpetual possibility of change, and the irremediable linkage between subjectivity and the organization of community -- or, as we have suggested in Chapter 2, subjectivity and sovereignty: "S2, here, is the artisan, [it is] the artisan insofar as, through the conjunction of two signifiers, it is capable of producing what I have just now called the *objet a*" (LACAN, s/d [1975-1976], p. 17, our translation).

Can this process not be closely related to Rancière's politics? If, in this scenario, S2 is the artisan, the *locus* of the creation of new knowledge, of change, of expansion of the utterable, if it becomes so in joining together two signifiers, two world orders built around this suturing -- comparable to Rancière's operation of conjuring up worlds in the aesthetic moment of politics -- it follows that the

artificer does not necessarily serve a solely conservative function of maintaining the discursive order as it stands. As with Bataille, the ultimate diachronic support of abjection is the impossibility of distancing oneself from the “filth of production”, from that which communicates misery; occupying the position of the artificer, S2, is not necessarily and immediately related to abjection. There is, in that sense, an intrinsic solidarity among those who would occupy that place, in that their existence -- women, workers, the LGBTI, racial minorities -- publicly embodies the disjunction inherent to the production of value, the *sinthome*.

We take this to be an interesting interpretation of Butler’s assertion that “[f]or those effaced or demeaned through the norm they are expected to embody, the [political] struggle becomes an embodied one for recognizability, a public insistence on existing and mattering” (BUTLER, 2015, p. 37). Note that she does not use the usual terminology of “recognition”, precisely because “recognizability” can be interpreted as either subsuming oneself to that which is recognizable or changing the frame around which the recognizable is itself constituted as such. It is in this sense that we should understand her earlier claim that “[t]he gathering signifies in excess of what is said, and that mode of signification is a concerted bodily enactment, a plural form of performativity” (BUTLER, 2015, p. 8). The gathering signifies in excess precisely because the body, and especially the bodies of they who embody S2, the function of knowledge, of the artisan, signify in excess. In that sense, living out the unpredictability of one’s *sinthome*, allowing its flow and change rather than subsuming it under the norms of the already-recognizable, is also embodying the important claim that “...sexuality does not precede the right; the exercise of sexuality is an exercise of the right to do precisely that” (BUTLER, 2015, p. 57).

If this can be said to be true, and if we are to bring international human rights into their potentially progressive place as an interval of subjectivation, as that which the *sinthome*’s insistent arbitrariness allows us to do as enigmatic knots of meaning and the meaning-less, then a special weight must be placed on Wendy Brown’s assertion:

If every “I am” is something of a resolution of the movement of desire into fixed and sovereign identity, then this project might involve not only learning to speak but to *read* “I am” this way: as potentially in motion, as temporal, as not-I, as deconstructable according to a genealogy of want rather than as fixed interests or experiences (BROWN, 1995, p. 75).

This describes the perpetual movement of the politics of the artificer, of the S2. There is no fixed referent towards which it is perpetually moving; it is, rather, a politics of the perpetual staging of a different world, of a different distribution of the sensible to which no previous formula can assure discernible content. Subjectivation, the movement towards political subjecthood in the enactment of the test of equality is itself the stuff of the moment where S2 and S1, in Lacanian jargon, become indefinite. The moment of politics summons both S1 and S2, coalesced in the figure of the artificer who is both subsumed into S1 and creator of S2, bearer of the Otherness to which we are all always already indebted.

5.4

A brief digression on indeterminacy

In his *La Carte Postale*, Derrida writes, regarding Freud's and Lacan's contention that the libido is masculine in character:

There is but *one* libido, therefore no difference, even less so opposition, in it of the masculine and the feminine; anyway, it is masculine in nature. The "reason for this never elucidated trait" can never be perceived if not "partially" [*ne peut jamais en effet que s'entrevoir*]: because there is no reason to this trait, it *is* reason. Before, during and after Freud. The trait pulled from reason. By it, for it, under it... It hears itself. "The thing talks about itself". It hears itself say that which it cannot hear (DERRIDA, 1999, s/l, our translation)

Though I have continuously, in this dissertation, suggested that it may not be so, Derrida's contention remains extremely valid. What, indeed, is the reason for psychoanalysis' privileging of the penis in the inauguration of the phallic function, the great support of communication? Derrida identifies the reason for this in the very necessity of castration: if the phallic signifier corresponds to a "lack" as a final signified, it is indivisible; it has a path that is unique, that is its own, and that always necessarily comes back to its inaugurating nothingness. Lack refers us back to the irretrievable crossing of death. In that sense, the phallic signifier is no more than another incarnation of *logos*, of the very terms upon which Derrida has long maintained his critique of Western metaphysics. Lack is that ultimate part which is paradoxically present-to-itself. In that sense, meaning, for Derrida's Lacan, has two formal requirements: 1) that it enunciates an original contractual debt (that woman be castrated so that man does not have to); 2) that this contract "restitutes" man of that which symbolization deprives him (the phallus, the penis).

This working of sexual difference unto the basis of meaning is what Derrida will term phallogocentrism. The joining of “phallogocentrism” and “logocentrism” designates the Lacanian fusion of the penis and the signifier, at the same instituting the order of sexual difference.

Here, in the last (or second to last, as it were) section of my dissertation, I would prefer to take a detour from the reportedly dense academic jargon (I have been continuously warned by my advisors not leave my reader drowning in a sea of high theory, though I suppose the vertical metaphor does not adequately describe what I am capable of doing at this point), and explore the process of writing this dissertation (in a sense, always a matter or archive), in relation to all that I have written so far. Just as a consolidated Marxist tradition has continued to reiterate -- I mean to designate the continuous prophecies regarding the demise of capitalism from within its own contradictions --, I seem to be expecting the moment of our politics to arise from the ashes of a world that we, the LGBTI, have long discovered is not our own.

My minor excursion into Derrida’s *Carte Postale* is rather to signal a certain shift in tone. In one of the letters Derrida cites (or annexes) in the beginning of that book, a lover writes “and when I call you, my love, my love, is it you whom I call, or my love? You, my love, is it you whom I name as such, you to whom I address [this letter]?”. There is a message here that resounds in me, now apparently become a writer, that speaks of a certain dissemination. The writer, as Derrida’s lover and his/her own lover, are rendered hopelessly fragmented in that question: is it you I’m calling, or is it some part (of something, of someone) that ex-sists (in) me? This indeterminacy, this endless fragmentation, speaks, in a certain way, to all the lesbians, gay men, bisexual men or women, transgender and intersex people I have come to know, directly or indirectly in literary (re)presentation.

In his exploration of Lacan, Derrida sometimes evokes the distinctively Lacanian positing of the impossibility of the dual relation; the impossibility of “merging”, so to speak, with the mother so as to retrieve the lost object, and the necessity of submitting to the paternal instance of the Law in order to regain a sense of quasi-ontological certainty. Levinas might have strongly objected to this preemptive removal of the transcendental experience of alterity, of responsibility, of the face-to-face -- Derrida himself does so, in questioning the primacy of the

symbolic over the imaginary. As a gay man, however, I feel that this dialogical experience has often been inexistent from the outset; that is, from the moment in which I recognized myself in that signifier: “gay”, “homosexual” or the distinctively Brazilian “bicha”, “veado”, etc. (It bears reminding that Brazilian Portuguese knows a large number of derogatory permutations of those words) -- from that moment I have known and begun to recognize that I would always be divided. From my own *bourgeois* Oedipalization, to my own anxieties regarding not being “man enough” or “gay enough” or simply “enough”, I have always been marked by, in a word, *destinerrance*.

Destinerrance is Derrida’s name for the fact that the place of the signifier, lack and its grounding in the all-powerful Other and in the all-encompassing reality of castration, is not and cannot be indivisible. The instance of the letter, that hole to which we are inevitably referred back in each of our utterances, is not one. So, in each of the anxieties I alluded to above -- man enough, gay enough, simply enough -- the hole is displaced, deferred, postponed. It is disseminated in its very naming. This, in a sense, is the movement of that grafting that I have suggested the *sinthome* accomplishes: every time we ask for the Other’s love we inevitably get a different answer. The letter arrives in not-arriving.

So the politics I continue to expect to arrive does not and cannot refer to any a priori. Though Derrida refers specifically to the psychoanalytic situation -- that of the analyst and the analysand, of “full” speech and the re-enactment of psychodrama --, I do believe this applies to the specific instance of writing to which us, would-be academics, are linked:

If the above is really so, the question of knowing whether or not there is a psychoanalysis (x-ian, his, yours, mine) -- that incalculable, unspeakable, unaccountable, unattributable question -- shifts in proportion to the rate that it deconstructs -- as if by itself, without deconstruction or deconstructive project -- the analytic situation and therefore the analytic institution. As to the relationship between this deconstruction as experience of the impossible and the “there is” (il y a), I have dealt with that elsewhere. It has been archived (DERRIDA, 1996, s/l, our translation).

Just the same, the question of whether there is an LGBTI politics shifts in its very positing. The path of the letter is referred elsewhere, the archive multiplies just as we purport to arrest its movement. There is, then, a curious similarity between deconstruction, the experience of the impossible and the “there is [something]”, and the “instance” of politics. Politics does not have a path of its

own, does not arrive where we want it to arrive, but it arrives nonetheless. This is perhaps the sole value of the analysis I have attempted to put forth here: as we occupy the place of the artificer, that *sinthomal* practice of linking S1, S2 and thereby bringing something into being, we forgo any previous axiomatics that might guide us into the inevitable darkness of the Other.

Conclusion

In this final chapter, we might return to the issue I first expressed in the introductory lines to this dissertation. There is a certain unknowing to the “experience” of knowing, just as there is a knowing to unknowing. Knowledge speaks in and through us, even in those moments when we are most certain that we are in charge of it. If this is the case, who and what are we allowing to speak in and through us? What violations are we willing to make us who we are, precisely at that moment when we presume to be speaking the truth of ourselves? As appealing as the notion of “taking charge” of this process may seem, I feel that Derrida’s perpetually cautious approach to knowledge is always useful: it is not so much that we can “take charge” of who we are, but rather that, with each attempt at arresting our signifiers, we are founded anew. We are (de-)constructed, (re-)constructed, and the process is thereby always reiterated.

An interesting example can be relayed from an autobiographical, anecdotal piece of “evidence”: I once heard from “my” psychoanalyst that the issues I repeatedly brought into words as I lay on her couch weren’t, as I thought, arising from a perpetual, healthy desire to reinvent myself, but rather from the place I accorded to the Other in my own psychodrama. I get the nagging suspicion that everyone has heard, or could eventually hear, something similar from their own psychoanalysts, their friends, their family, maybe even their lovers. Answering the Other’s call is always a kind of work. We have become so hung up on the idea of ensuring that we are indeed who we are “meant to be” -- as so many permutations of the superegoic injunction to “be your best self” in popular media have told us -- that we fail to see that this *praxis* precedes our own meaning. We forget that the place we occupy is the ever-emerging product of what we do and of what others have done before us. We forget that our successive disjunctions, the ever-present experience of not being ourselves -- which we mistake for not being our *best* selves -- means just that: we aren’t ourselves in any substantial, *a priori* way. Just as the Other can only appear as this *a priori*, not truly embody it, in its own perpetual dislocation and deferral.

This forgetting pertains of a lot of things. It is true of how we think of politics and morality, subjectivity and sovereignty, identity and alterity, sameness and difference, etc. We forget the paths each of these words had to cross in order to become what we perceive them to be. We forget all the work done to posit them as such. And, to a certain extent, we have to forget. As Wendy Brown has shown (1993), not forgetting can itself be a mode of arresting change, remembering can also be a forgetting of the *need* to change. In an interview, Derrida once claimed that those who charged him with starting a culture of political correctness with his work “denounced everything that moves” (DERRIDA, 1994). There is something in Derrida’s *j’accuse* that I find appealing. Not simply because context allows us to gauge a certain prescience on his part to the hidden dangers of what we have come to call “identity politics”, but also because it acknowledges that no referent can ever stay still. No signifier can resist the pull of history; and if any of them seems to do just that, we have to pose ourselves the question of “who wills it”. What knowledge is speaking in us, and whose knowledge is it?

Too much of what we have come to demand from international human rights can be summarized by the signifier “inclusion”, or some permutation of it. When we demand inclusion, we are making a moral claim that we should not be excluded on the basis of our sexuality. What we are excluded from, however, remains an open question. I do not mean to simply reiterate the now obvious critique that norms have no definite, self-explanatory content without reference to the context of their application. Nor do I mean simply to suggest that we need to be especially sensitive to the precise articulation of LGBTI subjectivity that allows this (partial) inclusion. I mean to suggest, rather, that no inclusion can ever be enough if the discourse from within which we desire recognition is itself merely another kind of suspended death. Inclusion into neoliberal precarity is itself a kind of abjection.

Perhaps this is the defining contrast of which we have to take heed: not to denounce that which moves, but to help move it ourselves. But moving is always an issue of selection. Moving is always partially an *a posteriori* affair, a *will have been*. In this dissertation, I have attempted to put forth one possible critique of why we seem to not be moving. From within the International Relations tradition, largely established in terms of what we have come to call realism and the “realist utopia”, I have accorded some importance to that attempt to arrest signification

towards a certain representation of the international and its interplay with the national. This representation has conservative undertones; it suggests to us that there is no escape from the Westphalian fiction of self-contained nation states, small pockets of morality, struggling against each other in an anarchic international arena. As I have attempted to show, it is difficult to isolate this representation from the subsequent attempt to delineate the “individual”, or the specific “human” presupposed by international human rights.

Most attempts to do this eventually come to rely on a formally similar dislocation of “wholeness” towards one or another entity. In this sense, some narratives will reify the individual as this moral wholeness, while others will point to community, be it state or non-state, national or non-national. Each of these narratives rely on specific operations according to which the play of signifiers presents us with one “truth”, with one conceptual bedrock that must remain unattended if we are to be referred back to the letter’s original instance. Gender, sexuality, race, class, and many others have come to serve this function of wholeness in the unstoppable dissemination of narratives about social life.

From the standpoint of sexuality, I have noted that there are specific contours, from within the international human rights establishment, that guide the understanding that if the homosexual is to be made intelligible, she or he must conform to certain legitimacy standards. She must be a neoliberal subject, capable of being ascribed the wholeness to which she must be the heiress if human rights can maintain its coherence as the rights of that which legitimately counts as human. This sometimes means having a family, loving like a heterosexual white man is supposed to love. It sometimes means making sexuality public against a cruel, repressive state order. But each of these iterations of legitimate discrimination end up masking the fact that sexuality (or gender) itself is not taken as legitimate proof of victimhood. It does not suffice to be a homosexual or a transgender person to be a proper victim. And this is where the specific contours of the “human” manifest themselves. In their current incarnation, international human rights seem rigid; they seem to go against all that moves. International human rights seem to resist the perpetual movement of the signifier.

However, we must take care not to arrest that movement ourselves. In contemporary political life, we seem to be perpetually stuck in the neverending comings and goings of new and reworked forms of rigid identity. Even the “queer”

label, invented precisely to designate that which resists the arrest of the signifier, has been appropriated as another variation of “the LGBTI”. This is perhaps a legitimate “political” move; “queer” may provide a better basis for the articulation of political demands across identity categories who may not always see eye to eye. And yet, it creates its own effects from within the framework of what we have come to designate “identity politics”. But there is a certain specificity to the displacement of sexuality that has been effected by the strategic processes Foucault describes. LGBTI-ness shows us the endless mystery of sexuality; the complicated intertwining of the social imagery that ex-sists in us, and the effects to which it gives rise. It is no accident that in the *Grammatologie* Derrida speaks in terms of that which from the signifiers offers itself as an “irreducible stratum” of meaning. The play of signifiers produces effects of signifieds, but they are never one, they are never simple and indivisible.

We can perhaps harness this desterrance. Derrida’s insight into the endless proliferation of lack, presupposed in Lacan’s Seminar on the purloined letter, offers itself as an interesting basis upon which to mobilize the kind of politics Rancière describes. After all, Rancière’s aesthetic rendering of the political moment -- the enactment of two worlds that are then subjected to a test of equality, the dramatization of a wrong that a party has suffered in one of these worlds, etc. -- is itself based on a lack inherent to the speaking being: there is nothing outside community. Community, here, is another name for the general heading of “meaning”. Just as we are responsible for conjuring up the reality of ourselves and others, so are others responsible for conjuring up our reality. And this reality is always multiple, always different from itself. Even if the Other is multiple, it is always the seat of *a* lack (as opposed to *the* lack). Fullness is impossible, and this is what allows us to be otherwise. This, indeed, is the movement of politics: showing that, against all odds, things could be otherwise. This is also where politics figures in most prominently in our “own” psychic lives: we could be otherwise. Not through any conscious effort of our own, though change might come about this way, but through the very movement of the text we designate as “things”.

It is perhaps fitting to cede the last lines of this dissertation to another, in recognizing already that these words are mine just as they are (always already)

someone else's. Lacan fortuitously offers perhaps the sole thing I would like to be taken from this dissertation:

All that has been articulated apropos being assumes that one may refuse the predicate and say "*man is*", for instance, without saying what. That which pertains to being is closely linked to this section, the predicate. From then on, nothing can be said about it if not through blocked detours, demonstrations of logical impossibility, paths for which no predicate suffices. That which pertains to being, to a being that would pose itself as absolute, is never any more than the fracture, the breaking, the interruption of the formula "*to be sexuated*" insofar as sexuated being is implicated in *jouissance* (LACAN, 1975a, p. 19, our translation).

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Annex I

List of documents and judgments cited

By chronological order

Universal Declaration of Human Rights, December 1948, United Nations General Assembly (Res. 217A)

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