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LAW'S CUT ON THE BODY OF HUMAN RIGHTS

Female circumcision, torture and
sacred flesh

Juliet Rogers

ROUTLEDGE

Law's Cut on the Body of Human Rights

Scenes of violence and incisions into the flesh inform the demand for law. The scene of little girls being held down in practices of female circumcision has been a defining and definitive image that demands the attention of human rights, and the intervention of law. But the investment in protecting women and little girls from such a cut is not all that it seems. *Law's Cut on the Body of Human Rights: Female Circumcision, Torture and Sacred Flesh* considers how such images come to inform law and the investment of advocates of law in the imagination of this scene. Drawing on psychoanalytic and postcolonial theory, and accompanying ideas in political theology, Juliet Rogers examines the language, imagery and excitement that accompanies recent initiatives to legislate against what is called 'female genital mutilation'. The author complements this examination with a consideration of the scene of torture exposed in images from Abu Ghraib and Guantanamo Bay. Rogers argues that the modes of fascination and excitement that accompany scenes of torture and female circumcision betray the fantasy of a political condition against which the subject of liberal law is imagined; this is a subjectivity in a state of non-mutilation, non-prohibition or, in a psychoanalytic idiom, non-castration. To support the fantasy of this subject, the mutilated subject, the author suggests, is rendered as flesh cut from the democratic nation state, deserving of only selective human rights, or none at all.

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For Michelle.

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Fantasies of the cut

We must see right away how crude it is to accept the idea that, in the ethical order itself, everything can be reduced to social constraint . . . as if the fashion in which that constraint develops doesn't in itself raise a question . . .¹

Scenes of torture and of female genital mutilation² are imagined as scenes of pain and of incisions into the flesh. Both are scenes where someone is described as being held down. Both are scenes where flesh is manipulated, stressed or cut and both are scenes that have attracted the specific attention of human rights advocates, of domestic laws and of human rights doctrine. The flesh of the so-called 'mutilated woman'³ is imagined to require protection from the cut. And the flesh of the tortured is often sacrificed to the flesh of democratic polis: The People. The value of the flesh – how much can be cut and what remains – is a measurement which employs doctrines of biomedicine, law, human rights and political theology. Flesh is worth something in the domestic and universal *polis*, but not all flesh is equivalent, not all bodies are uncut, not all humans are sacred.

The imaginations of female genital mutilation and of torture offer a way of trying to understand the disparities in law's attention and the modes through

1 Lacan (1992), 225.

2 I will use the term 'female genital mutilation' or 'fgm' when referring to the event that the laws, or the western discourses on 'female genital mutilation', mean to describe. I will use the term 'female circumcision' when referring to the practices described as such by the communities who practice them. The terms 'infibulation', 'pharaonic circumcision', 'clitoridectomy' and 'sunna' are also used to describe the practices in English-speaking countries and I will use these terms where they function as helpful descriptions. I have not used the names for the practices in the relevant languages because I am not describing the practices in those contexts, but in the contexts of their perception in western discourse. The practices are, of course, diverse, far more diverse than these names suggest, but I am not talking about their diversity. I am talking about the fantasy of their sameness as the monolithic practice 'female genital mutilation'.

3 This is the term used by the Family Law Council in Family Law Council (1994b).

which law regulates life. The scenes are not the same – although female genital mutilation is often described as ‘torture’ – and they attract very different investments. Both practices evoke comment, but the violent outrage against female genital mutilation is certainly disproportionate to the quiet, and usually scholarly, objections to torture. About torture, the western subject is arguably ambivalent; about female genital mutilation . . . we are (almost) passionately united in a fight for the good, a fight, as Gayatri Chakravorty Spivak has described, to ‘save brown women from brown men’.⁴ Subjects of western democracy, who identify with the values of liberal law, are rarely ambivalent about little (Muslim) girls being held down, while about the holding down of brown (Muslim) men . . . we’re not so sure.

This book is a meditation on the scenes that have come to inspire law on the practices imagined to be female genital mutilation, and on torture, imagined to be interrogation. It is an examination of the fantasies that underpin these scenes as the political, legal and popular commentary on the practices and their products. In this book I contest that every law comes with an image. How else would we know what to constrain? Or why it need be constrained? But these images are not self-evident representations of cultural or legal practices: they are scenes which provoke rage, pain and excitement, and they are scenes which demand intervention, as the cut of law and the care of human rights. These scenes are particular, invested and haunted by the ordinary anxieties of subjects before law; anxieties that I will discuss as political and psychological. These anxieties can be understood, in a psychoanalytic idiom, as anxieties about castration, which are then heightened by the cuts of law: the cutting off of the king’s head, the increased aggressions in democratic sovereigns (since 9/11), and even by the assertion of a universalism of human rights. The particular representations of scenes of female genital mutilation and torture alleviate some of these anxieties by turning the cuts toward another, but these scenes also announce the possibility of the cut arriving on the subject of liberal law. The scenes thus serve, like all scenes in a psychoanalytic idiom, to thwart castration, but these scenes are also legal scenes that announce the cut as prohibitions and, sometimes, arbitrary incursions of law. They are scenes which promote a demand for sovereign attention – as the attention of liberal law – and they are scenes which serve to thwart and announce law’s cut: announcing a very violent cut, indeed.

There is a familiar scene of what is termed female genital mutilation. It is of a child held down, her legs parted, she is screaming while she is being cut with an unidentifiable piece of metal. This image is familiar because it is repeated. It is not easily forgotten for this repetition and for its disturbing motifs: the pain of a child, the loss of innocence and the loss of desire. It is the image presented as the justification and imperative for action on female

4 Spivak (1999), 284–7.

genital mutilation and, like most images presented as violence, it is effective. More than that, it is seductive. It seduces us into believing the constraint is required, the prohibition is necessary. Something is being done, someone must be stopped – a child is being mutilated.

The call of mutilation is the call to law. The call to apply the law is not all that it seems, however. This is not simply a statement about the political investments and excitements that infiltrate and inform the processes of law's production. These exist, and they influence process and product, often in equal measure. The constraint of law, when accompanied by the images of violence, such as those that accompany initiatives to legislate against female genital mutilation, betray investments in the violence itself, or more precisely, in the scene of violence: the scene of the little girl being held down. This scene, I suggest in this book, is only part of the story. Just as the military and legal rationales for contemporary scenes of torture – in Abu Ghraib, Guantanamo Bay, and in black sites we can only imagine – are only parts of the story of why torture is accepted in liberal societies.

The stories of legitimation that surround the prohibition of female genital mutilation and the lack of objection to contemporary practices of torture offer insight into the ambivalences of a legal subject before liberal law. These are ambivalences about where and when the cut can and will arrive, about who deserves the cut and about what will protect the subject from the sovereign's displeasure. The stories of torture and female circumcision embody these ambivalences and are therefore not as simple as the books on airport shelves,⁵ as the legal and political rhetoric would suggest. These are stories of confusion and doubt about, what I discuss in this book as, the freedom from the cut, as a freedom from the mutilations and prohibitions of law. Specifically these are stories that are less about the necessity of anti-fgm law or indeed the necessity of torturing the terrorist, and are more about the fear of law's mutilation of the imagined sovereignty of the democratic subject before liberal law.

The confusions about the mutilations of the liberal subject, in the case of stories of female genital mutilation, are soothed with an image of the violence done to little girls. Similarly, the confusions about the reality of torture's potential cutting of the liberal subject are foreclosed by the imagination of the violence of the terrorist – his inherent badness – and the urgency of the 'ticking time bomb'. Both these scenes present the viewer with a scene of cutting that exemplifies the reality of law's capacity to cut, if not now, then later; if not later, then elsewhere. But in the rubric of cosmopolitanism and progress, in the context of a universalism of law and human rights, in the condition of a demand for the universalism of the human, these cuts represent the possibility and potentiality of mutilations before law for everyone. And

5 I am gesturing to works such as Dirie (1998).

these cuts must be reckoned with. This book is a discussion of the means and methods applied to this reckoning as the aggressions and fantasies that accompany the fear of law's cut. This book is therefore a story of violence and a story of loss.

The fantasy of female genital mutilation

The story of female genital mutilation is represented in liberal discussions of law and violence as a story of loss. This is less the story of the practices of female circumcision, clitoridectomy, circumcision, sunna – or the many other practices that have no English names – as it is the story of the subject, or subjects, imagining the loss. From this perspective it is not self-evident as to what loss means. The stories of legislating against these practices in countries such as England, Australia, Scotland, Ireland, Italy, the United States and Egypt are infused with notions of what loss is: as the loss of desire, the loss of innocence and the loss of the freedoms of a little girl. This story of loss is a political story, a legal story and a psychoanalytic story, that is, it is a story where a number of images convene to produce law as an effort to produce a *self-evidence to loss*, and an effort to stem the loss announced by an invocation of law's prohibition. The story of female genital mutilation is therefore no innocuous story: someone is being held down, someone is being prohibited and someone is being cut. But the answers to who this *someone* is, and who is performing the cut, are not so clear, however. The story of legislating against female genital mutilation is a story of questions, precisely the kind of questions which are difficult to ask when presented with images of screaming children, walls covered with blood, and uncaring perpetrators. In this book I suggest that the answers to questions are not as obvious as anti-fgm advocates would have us believe, and they are the very ordinary questions which not only need to accompany initiatives to legislate against female genital mutilation, but need to accompany all law.

The fantasy of female genital mutilation which promotes law's intervention is well illustrated in dubious and not so dubious research, documentaries, best-selling autobiographies, consultation papers, public documents, and in the commentary in most seminars and classrooms dealing with law, human rights and gender in the West. This fantasy is perhaps never quite so well illustrated than in the photographic essay *The Day Kadi Lost a Part of Her Life*.⁶ This is a text published internationally and cited as a very important anti-female genital mutilation text.⁷ It is a beautifully photographed coffee table book,⁸ readily consumed through its black and white glossy pages.

6 Manresa and Ramos Rioja (1998).

7 Bone (1999), 19; Kissane (1993), 16; Manresa and Ramos Rioja (1998).

8 See Szorenyi (2006) for discussions of the coffee table book as humanitarian porn.

In this book the authors work hard to cultivate the identification of the readers looking onto the scenes of Kadi. The first half offers scenes of Kadi's life on one particular day: *the day*. In the many glossy photos in the opening few pages the reader sees Kadi waking, Kadi playing, Kadi working. The book initially elides any foreignness of Kadi's experience by offering her in poses with which a western reader can identify. The opening photographs – as what might be called the 'before shots' – depict Kadi, as Australian journalist Pamela Bone describes – with 'flashing white teeth, laughing, unaware'.⁹ On these pages Kadi wakes, dresses, 'flirts', plays and does her daily tasks. Kadi could be any of us as a child, or she could be our child.

In the middle pages of the book the mood changes. The glossy black and white pages turn briefly to enamel red, and the authors introduce the upcoming pages as 'Ritual of a Sacrifice'. From this moment the images are, at least for this viewer, difficult to look at. But the authors do not spare their viewers. The ceremony is shown from the most intimate angles. The viewer is offered images of the 'mutilation' of Kadi through close ups of her genitals, her legs, her tears. Kadi is screaming, bleeding and straining while the reader looks on. Kadi's experience appears to be excruciating and, for the reader looking on to these scenes, it is difficult not to imagine the practice as one of enormous pain and sadness. This is pain we can only view after it has happened, sadness we can only empathise with, not prevent. As if to illustrate the feelings of impotence, on the back cover of the book is the 'after shot'. Kadi is 'defeated, sad', alone. She 'stands forlornly with a blanket wrapped around her'.¹⁰ It has happened. Kadi has lost a part of her life. After the loss Kadi no longer resembles a western child. Her mutilation introduced both an obstruction into our identification – an impossibility, a 'horror'¹¹ – and it has exposed a definitive point of departure between Kadi and us. Kadi has changed and, as the authors describe, 'she will never be the same again'. We are not Kadi. We don't want to be Kadi, and for that matter, we don't want Kadi to be Kadi. We don't want this state of sadness, of defeat, of aloneness.

The book's repetition and forceful illumination of the practice is telling. The authors repeat and repeat the image of cutting and screaming in close up, wide angle and framed in red – as if we might have not absorbed the scene. The story of Kadi is then repeated *and repeated* by the commentators on the book. Pamela Bone describes her initial reaction to the book:

It is the sad, defeated expression on Kadi's face after her initiation, even more than the photographs of her agony as the razor blade cuts, again and again, through the tender innocent flesh, that makes me angriest.¹²

9 Bone (1999).

10 Ibid.

11 Mullally and Mhuirthile (2010).

12 Bone (1999).

The image of Kadi being cut *again and again* is disturbing, to Bone and to myself. It is difficult to look at, and the pain, the cut, and the result is hard to imagine for most western readers. It makes them angry, repeatedly. For Lacan, repetition is performed because one 'can never be careful enough' in ensuring *correct* signification.¹³ Indeed, great care is taken to ensure the viewer does not miss a moment of Kadi's pain, but why must the viewer absorb this pain? What is this pain communicating? Few viewers would not have seen children in pain, during immunisations, medical procedures or even when they are denied having all that they want, but while these are sometimes hard to watch, they rarely make us angry. What is so special, so particular, so infuriating about this pain? Why is it that it requires repeating? Or in a psychoanalytic idiom, what is the repetition concealing?

Kadi has 'lost a part of her life'. It is this missing part that, supposedly, makes her different to the reader, and it is the imagination of this loss that produces legislation. It is, for Bone, 'the sad, defeated expression on Kadi's face' *after* the ceremony that makes her 'angriest'. But I want to suggest that it is this loss, and this image, which signifies the very possibility of loss before another, and indeed before law. And it is *this loss*, the loss inaugurated by prohibition, that the violence and repetition of the image is attempting to conceal from the anti-fgm activist, the activist so rageful about the practices. The image of Kadi's loss, I suggest, signifies the possibility of being held down, in short, the possibility of being the same as Kadi, and this is what the repetition attempts to foreclose, and at the same time, announces. The repetition and the heightened violence of the image draws us to an anxiety in the viewer looking on. And this anxiety, I argue in this book, is about the *impossibility of no loss before law*, or, in practice, the impossibility of a location before law that can assure the subject will not be held down.

In its most obvious form Bone's rage, and the rage of many anti-fgm advocates, about such things as the 'loss of the femi-nine personality',¹⁴ 'horrors of the procedure' and the 'sad, defeated' state of the child or woman after the ceremony suggests that the body, if not the personality, of Kadi and of many women and girls who experience female circumcision, has changed. As the authors of Kadi suggest, she will 'never be the same again'. But the evocation of the idea that Kadi, or indeed any woman, child or subject, could be protected from 'never being the same', or more precisely from the loss of what they had before, helps to understand the rage against female genital mutilation as a rage, against loss. What, for psychoanalysis, can be understood as a rage against the indeterminacy of the cut – a rage against castration. At the point of this rage, law is evoked, and not innocuously as a self-evident altruistic gesture. The demands for law to prevent female genital mutilation in

13 Lacan (1977b), 61.

14 Hosken (1982).

western countries, as I will explain in this book, have been assertive, rash, and have been instituted with little or no consultation and often over the wishes of the communities who want to adopt more dialogic methods to eradicate the practices. In short, the instigation of anti-fgm law, in most English speaking countries, has suffered from an urgency that often accompanies calls to protect the little children at the expense of consultation with the communities who might be best placed to think about these issues. A child is being mutilated. Law, it seems, must do something.

The perception of something fundamental being lost, and the importance of law preventing this loss, does more than place a faith in law as the preventer of mutilation. The calls to law to protect little girls mobilises and arguably enables a belief that the prohibitions of law produce a constancy of Being – what, in female genital mutilation literature, becomes a constancy of desire – no loss, no change. It is the presumption of a fundamental object, which can be lost, or indeed retained through the promise of law, and it is the assumption of the worth of this fundamental particle, that often distinguishes discussions of female circumcision and female genital mutilation from male circumcision, or from other surgeries including cosmetic procedures. The precise concern in female genital mutilation literature is with the *quality* of the object lost, with what it is that Kadi lost. Her innocence? Her desire? Her enjoyment of life? Her childhood? Her agency? Her clitoris? In the fantasies, which permeate anti-fgm discourse, it is some or all of these things. The object that Kadi has lost is not simply flesh, or one could argue, it is infused with the significance that flesh often harbors. Flesh as desire, flesh as mind, body, essence. Flesh as magic,¹⁵ as fantasy.¹⁶ The pound of flesh.¹⁷ Flesh as covenant, pact, symbol in exchange.¹⁸ The flesh of my flesh, blood of my blood.¹⁹ In short, there is nothing simple about flesh and nothing simple about its loss, but this obvious complexity is elided, suspiciously, in calls to legislate against female genital mutilation. Something specific, something significant, something *known*, is imagined lost in the fantasy of Kadi's life and perhaps in the fantasy of all girls and women who experience female genital mutilation. I will suggest in this book that the flesh lost is infused with an imagination of the loss of what the liberal subject never had. An enduring sovereignty before the sovereign; a consistency of what can be called 'rights'; an experience, we have come to call, even more confusingly, 'freedom'.

Freedom has no more accurate a definition than what we can attribute to 'desire', to 'harm' or indeed to 'flesh', but this is precisely why it serves to

15 Santner (2011).

16 Idol (1983).

17 Shakespeare (2011).

18 'Genesis' 17:19-14, trans. R. Alter, *Five Books of Moses* (London: W.W. Norton and Company, 2004).

19 'John' 6:53-57, *Holy Bible*, King James version.

harness the fantasies which are female genital mutilation. Freedom lost is devastating, in the liberal world, in a world of human rights, in the Free World, although it is hard to name what is actually thought to be lost. What we can say is that the negative of freedom might be the experience of being 'held down', the loss of what we have come to call autonomy or agency. But this condition of loss, of being mutilated or held down – and I suggest, especially this condition – resonates with the fears of a liberal subject before law; fear, in Giorgio Agamben's idiom, of political abandonment.²⁰

The rhetoric of particularly one anti-fgm advocate in Australia offers a clear indication of this concern. In the call for *Discussion*²¹ on female genital mutilation in Australia, one respondent comments on his objection to the practices where 'the child has no say and is quite at the whims of parent, guardian or doctor . . . [this is] repugnant and unacceptable for Australia'.²² For this commentator, children, such as Kadi, are subjected to the 'whims of parents or guardians', that is, they have no *say* and things are done to them at the whim of others. For this commentator the flesh they lose in the moment of female genital mutilation is invested with the notion of a loss, say, of influence over those with some form of authority over them, a loss of freedom from the whims of others, including the cultural practices and laws of their community. That is, what they lose is a freedom from prohibition, without 'say'.

This commentator clearly believes children should have a say in what is done to them. They should have an influential capacity over those who exercise authority. In this book I suggest that this is the kind of say that the subject imagines it has in democratic countries, and that its loss is 'repugnant and unacceptable' to subjects of liberal law because it resonates with a condition of political abandonment. The condition of this child being held down and having no say is precisely an allegory for the loss of freedom before a sovereign who sees the subject as irrelevant. This is a sovereign who can decide, without consultation or consideration, on the condition of the subject – the extent of its freedoms, its restrictions, its mutilations, its life. It is a sovereign who can decide what it means to be treated 'humanely' within the context of torture.²³ In short, this commentator evokes a subject for whom it is 'repugnant and unacceptable' that a sovereign can decide exceptionally.²⁴

20 Agamben does not discuss the *fear* of this condition, only its existence for us all before the Schmittian sovereign. See Agamben (1998).

21 Family Law Council (1994a).

22 In a submission to the Family Law Council (1994b), 17.

23 George Bush gestures in an abstract manner to the necessity of 'humane treatment' of 'unlawful combatants' without specifying what that might mean in conditions such as Guantanamo Bay. See 'Military Order no. 1', 13 November 2001.

24 Schmitt (1996).

The depiction of female genital mutilation as an image of being held down, cut without one's opinions being relevant – without influence of the say in the decisions of the sovereign – is a portrait of the abandoned subject. It is this portrait, as resonant with the political condition articulated by Agamben, which explains why, I am wagering in this book, the image of female genital mutilation is so seductive. The particular *fantasy of freedom*, as a freedom from the whims of others, a freedom from being prohibited, cut or held down walks alongside the liberal subject's relation with the democratic sovereign. Freedom of choice, freedom of desire, freedom from fear and want, freedom of association, freedom of speech, 'our nation's freedom' is enshrined in political speech, in human rights and in the potential purchase of freedom perfumes, freedom jeans and freedom fries.²⁵ I blame Jean-Jacques Rousseau and his (often misread and misunderstood) emphasis on a (free) social contract for such a fantasy of freedom. The fantasy that, as he says, 'all being free and equal surrender their freedom *only when they see advantage in doing so*.'²⁶ This fantasy of a *free* social contract is then compounded by such vagaries as those that front human rights – that we are all born 'free and equal'. With the goal being that we should remain so – free from 'fear and want'.²⁷ Through these articulations of a condition of *almost always potential* freedom, the subject in the democratic world came to believe in a possession of the freedom *to contract*; a fantasy of never being held down (unless we wanted to be); a fantasy that the say would influence the *sovereign's desire* so s/he would never compromise the *subject's desire*. This is a fantasy of an *all-responsive* version of The People, with many 'says', but one desire: *mine*; what I will explain as the fantasy of an all-loving maternal sovereign, one which is the very anti-thesis of the violently cutting sovereign portrayed in female genital mutilation imagery.

The scene of fantasy

The image of female genital mutilation, I argue, is a fantasy in a psychoanalytic sense. It is a fantasy infused with the uncertainties of law where the desire of the sovereign comes to stand in for the paternal function and the scene of female genital mutilation screens the subject from the arbitrariness of this desire. Female genital mutilation is not, what we might call, a Disney-like fantasy as a child's creation. But it is an *infantile creation* in the terms of psychoanalysis. The fantasy of female genital mutilation is, in a sense, precisely the child's creation as an effort to hold onto that which we cannot relinquish before the Lacanian law-of-the-father, the certainty of the image of

25 See Rogers (2005).

26 Rousseau (1968 [1762]), 50–51 (my emphasis).

27 The Universal Declaration of Human Rights (UDHR), *United Nations Online*, available at <http://www.un.org/en/documents/udhr/index.shtml> (accessed 30 November 2012).

ourselves. Fantasy, in psychoanalysis, is the creation of a scene to screen the traumatic effects of another scene: the scene in which the child's desires come to mean nothing, the scene in which the mother's desires for another (the father) mean everything. This is the scene of castration: the primal scene. In this scene the whims of another are first announced. They appear in the realization that the mother – who previously was imagined to love all and only the child – is *seen* to love another.²⁸ The child realizes, at this point, that the unconditional love that was previously experienced (one cannot say 'understood' for a child) is conditional and is, in fact, inconsistent. That is, the mother has other interests – the father, other mothers, other people, work, hobbies, even other children – and the child is prohibited from having all that s/he wants. While this seems ordinary to most of us, as a child it is a seismic change. We are not all for the mother, and hence, we are not all. We cannot have what we want, we are at the whims of the love of others, or more precisely and as I will explain throughout this book, we are at the whims of the sovereign-Other's love.

Fantasy is the collection of images, which overlay the trauma of the experience of the primal scene. These are the images which come to stand in for the ordinary traumas of being ignored, being held down, our say being disregarded – all that evokes the original trauma of the primal scene. This is the trauma of our desires and our say having little or no influence; the trauma of being prohibited from getting what we want. Fantasy thus comes to stand in for the reality of not having the freedoms a child desires. In a sense fantasy is like the scenes evoked in Maurice Sendak's famous children's book *Where the Wild Things Are*;²⁹ the scenes of monsters, as friends and comrades, against the adult order, the prohibition on being a wild thing. These are exciting scenes from a child's mind that emerge in the face of prohibition; scenes where the child (Max) becomes the wielder of *his own* authority, his own law; king of the wild things, where all others are subject to *his law*. In Max's dominion a wild rumpus commences when *he says*, and it only ends when *he says 'no'*. The wild things are subject to his whim, to his say, and where the wild things are Max is never held down. The scene of female genital mutilation, like the scene of the wild things, is the image which indicates an anxiety over prohibition. Max's wild things, and the image of a land over which he presides, point to his experience of the 'no'; they betray his anxiety over the rejection from his mother and her prohibition on his wildness: just as the violent imagery, the repetition and the absences of consultation to enable the fantasy of female genital mutilation points to the fear of being

28 'Seeing' is a misnomer here because the scene produces a seeing only in the sense that the scene itself, although rarely seen, comes to produce a particular type of seeing for the subject; a seeing through the fantasies that protect the child from the knowledge of not being seen, of not being desired *solely or completely*.

29 See Sendak (1963, 1984).

mutilated. For Max of course it is the wild things who emerge when he is prohibited, his mother's 'no' and his lack of supper are the opposite of freedom, of wildness – the wild things are a relief from this prohibition (at least for a little while). An understanding of this lack of freedom for Max has been called 'justice'.³⁰ Indeed, justice might be understood as an experience of ambivalence which comes with the infant's understanding of the frustration of limits; the limits of another's desire. The limits, as knowledge, dissent or even a desire for dialogue are what introduces the desire of an-Other in fantasies of female genital mutilation. These other desires disturb the persistent calls for law, the aggressive insistence over the need to save little girls and the framing of the practices as a mutilation. But the desires of another are also what cannot *not* persist in discussions on female genital mutilation and in discussions in this book. The desires of others culminate in the flesh of others as the figures of justice discussed in Chapter 8.

The limits introduced by others are always on the horizon of law and of relationship. Some things cannot be done. In the fashion of J.S. Mill, harm to others and often to oneself is not tolerated,³¹ like Max we cannot eat our mothers (or anyone else),³² we cannot override the will of others, and mostly we cannot (afford to) acquire all that we want. Others have desires that intrude on the liberal subject's, and the knowledge of human rights remind the democratic subject that all subjects have desires, and as I discuss in Chapter 6, these subjects supposedly all have a say. Hence, human rights, while they may not be as *universal* as is claimed, they may well be competitive. And, of course, the sovereign too has desires which evince prohibition, desires over which, sometimes, we have no say. Despite the overt promises of capitalism and the implicit promise of liberal law – we must accept the 'no'.

The knowledge of the 'no', the limit or the prohibition – both politically and in the realm of the liberal subject of democracy – is often hard to bear. Even more so when political whims become less predictable, prohibitions increase through anti-terrorism initiatives, sovereigns can incarcerate, kill and torture their own citizens.³³ Limits are not only a reality but an

30 Desmond Manderson has offered a formula for Max's plight and called it 'justice'. I am not unsympathetic to this reading, what I am interested in is the refusal of justice in the interests of maintaining the fantasy. See Manderson (2003).

31 J.S. Mill thought that one should have the freedom to harm oneself – utilitarian arguments, such as Bentham's, curbed this as a cost to the community, and arguments for a lack of ownership of oneself – in the fashion of early sovereign relations and some contemporary relations to God similarly thwarted such freedom. See Mill (1863).

32 And even consent is of course not a defence – consider the case of Armin Meiwes in Germany in 2003. See Harding (2003).

33 G. Agamben, 'The State of Emergency', available at <http://www.generation-online.org/p/fgagambenschmitt.htm> (accessed 30 November 2012); 'Military Order No. 1 Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism', *Presidential Documents*, 13 November 2001, available at <http://www.fas.org/irp/offdocs/eo/mo->

inevitability, and sometimes brutally so. More than that, multiculturalism introduces others whose practices are baffling at best, beyond the colourful outfits and spicy foods, they make no sense to 'us', or we could say, they make *their own* sense. What then of what we believed was right? What would protect us, what would keep us safe and loved by law? A law which we know is not without desire, but whose desire we had imagined was *our desire*, a desire that reflected our say.

The desires of law

In the terms of Peter Goodrich, the law is *supposed* to be without desire.³⁴ This is sometimes claimed as law's objectivity or more enthusiastically as the Rule of Law. A rule which will arbitrate consistently, which will reflect the interests of a society, given enough consultation. A rule which, since we (supposedly) removed the king's head,³⁵ is not (supposedly) arbitrary or indeed whimsical. This is the rule of The People, and desire does not appear on the surface of such a rule. But, as Goodrich notes:

It is not the surface but the depth, not the apparent but the hidden, not the obvious but the arcane that prescribes the meanings and indeed the loves of a law that is paradoxically without desire.³⁶

The law loves and it certainly has desires. What we don't know is precisely what these desires are and where they will arrive, but we know they will arrive somewhere. At some level – at some depth of knowledge in the subject – of course we know the desires of law exist and that their arrival is imminent. And when they arrive, they have effect: someone is prohibited, someone is loved; the sovereign does, indeed, have *wants*. As Rousseau illuminated this arbitrary condition of the desire of The People: "The sovereign might say: "What I want is precisely what this man wants . . ." but no sovereign could say: "What this man is going to want tomorrow I too shall want".³⁷ Neither sovereign nor subject's desires are guaranteed to align beyond a moment, a vote, a referendum, a law that can be repealed or reformed, or even removed in the honeymoon of a revolution. Time, as I discuss in

111301.htm (accessed 30 November 2012); J. Burke and P. Harris, 'Osama bin Laden Death "justifies" torture of suspects, former Bush aides claim', *The Guardian*, 3 May 2011; Rogers and Rush (2009); US Department of Justice, Bybee's Zubaydah memo of 1 July 2002.

³⁴ Goodrich (1995).

³⁵ Foucault's dispute of this is well taken in this work, but I am concerned with the imagination of the product of this removal. See Foucault (2008).

³⁶ Goodrich (1995), 32.

³⁷ Rousseau (1762, 1968), 69–70.

Chapter 7, compounds the uncertainty of sovereign desire. The wager of this book is that the knowledge of this uncertainty in the flesh of The People, is, at some level, terrifying and must be defended against. Law must be redeemed from its reality, as ultimately whimsical, in order to function. The sovereign's desire must reflect the subject's desire, its say, and indicate that it is doing so. Anything else, some might say, 'is repugnant and unacceptable'. Female genital mutilation law, as I will explain in this book, and the use of the name Female, Genital and Mutilation, as I specifically discuss in Chapter 4, is one indication of a fantasised alignment between the liberal subject's desire and the liberal sovereign's desire. At the same time, however, the imagination of the practices is indicative of the arbitrariness of the sovereign's desire; the practices indicate that an-other's law exists and that other desires exist in law. It is the anxiety of this arbitrariness – so present in the aggressive repetition and excitement over the images of 'mutilations' of little girls – that is represented through articulations of the scene itself. A scene of an abandoned, mutilated, neglected subject; a subject uncared for; a subject whose part – *the part* which is represented as the very location of desire – has been cut, tossed away and, as I discuss in Chapter 3, is now lost. All that remains is a mutilated subject, a subject alone, and in this sense, perhaps not a subject at all.

Torture, paradoxically, is the experience of not being alone. Far from irrelevant or abandoned in the scene of law the tortured subject could not be more significant – *as a subject*, the tortured, in this sense, are precisely relevant. The tortured, as Elaine Scarry suggests, is required by the regime to secure its 'swelling sense of territory'.³⁸ In Chapter 7 I suggest that the tortured receives a good deal of attention and – in perhaps the most contentious statement I make in this book – a good deal of love. The love of the sovereign in the scene of torture is, on the surface, not a love we want. But, like all scenes of law's cut, a fantasy is produced in the subject looking on. In the scene of torture this fantasy is also of alignment; for the subject, fascinated with the scene of torture, this is a desire to align with the love of the sovereign who tortures. It is the desire for this love, and the confusions and aggressions it produces toward another being loved, which, I suggest, in part explains the lack of passion in objections to torture. In the story of the scene of torture, like the story of the scene of female genital mutilation, there is more going on than is immediately apparent.

Scenes of the cut

The contention of this book is that the loss and injury imagined incurred through the practices known as female genital mutilation and in the practices

38 Scarry (1985), 36.

of torture, signify more than is immediately apparent, and that the assertive legislative responses, and the lack of curiosity and consultation with the communities in western countries, points to a particular and invested imagination of the practices called female genital mutilation and what they signify. It is, I believe, helpful to imagine the call for anti-fgm law and its accompanying fantasies – associated particularly in western initiatives – alongside a strange apathy toward the contemporary sanction of torture in western countries. I do not suggest that these practices are the same, but that the scene of torture, as it appears in images of Abu Ghraib and in commentary about practices at black sites and in Guantamano Bay, has some resonance with the scene depicted as female genital mutilation. Both these scenes, I suggest, provoke fantasies of docility, and obedience enforced through a violence to the flesh. A 'violence' that is often referred to as a 'cutting' in more thoughtful discussions of female circumcision debates, and what can easily be rendered a cutting in scenes of torture – whether that is a cutting of time, space, speech or flesh. Both of these scenes are scenes of subjection to another and to law.

While imaginations of torture and of female genital mutilation point to the cut of law in particularly western countries and a construction of others that are helpful to consider through the lens of theories of encounter, the tenor of this book is not a cultural relativist or culturally sensitive approach that an ethics of alterity argument about female circumcision might demand; nor is it a concern with the ethics of torture. Many authors have tackled these concerns with varying degrees of rigour and ethical engagement.³⁹ The concern of this book is how the recruitment of law, its belonging to particular people and its infliction on others was – and still is – particular, invested and arranged around fantasies of a mutilated subject, while the subject of liberal law is imagined to exist in a state of non-mutilation, non-prohibition or in a psychoanalytic idiom non-castration.

Mutilation, I explain in the first three chapters, is not simply a condition of the body, as a remnant of female genital mutilation. Mutilation is a political condition. It can be understood as not dissimilar to Agamben's discussions of abandonment.⁴⁰ It is a condition to which we are all subject before a sovereign who decides exceptionally, that is, a sovereign whose desires do not and need not align with that of the subject. The calls to law and the imagination of the other's mutilation acts like a salve to this reality. Similarly, deferrals to principles of human rights and the protection of flesh, through the instruments of human rights evoke the soothing pretence of universal desire and indeed universal judgement. This is opposed to the notion of

39 See Shweder (2000); Manderson (2004); Mendelsohn (2004); Ahmadu (2007); Boddy (2007); Boddy (1998); Hernlund and Shell-Duncan (2007).

40 See Agamben (1998).

a respect for self-determination, or indeed the determination of one's own democratic sovereign. As I discuss in Chapter 5, this determination, when it represents the values of another sovereign-Other as legitimate, is anxiety provoking and must be denigrated, or in Foucault's terms delegitimated in the West through the representation of other subjects as lacking in the *qualities* of the right subjects of human rights. In Chapter 6 I take this discussion of human rights and develop it through a discussion of how the supposed omnipotence and legitimacy of human rights, and its accompanying doctrines, might be a relief from the sovereign's cut at one level, but they also evoke the possibility of the other's desire being the same as mine: a universal desire. This is not only an idea of universal humanity, but of a human as competitor for the objects of my desire. And this too can evoke anxiety, making the other difficult to love.

While this book, in totality, is a concern with the flesh of human rights, any flesh cut from the body, in instances of torture or circumcision evokes the limits and jurisdictions of a universal human rights as a universal representation of desire. In the last chapters I am specifically interested in why human rights can be overlooked or selectively applied. This discretionary capacity, I suggest, is more than a positioning of the non-human, in the usual Agambenian rhetoric, as *bare life*, or even as non-human. It is less about recognising humanity than about fearing the full force of that humanity, in all its liberal rhetoric. The selective application of human rights is, in part, a product of an enjoyment of the cut on another and about a punishment of that other for a breach of primal law. This breach, I explain in Chapter 6, is a punishment for trying to reinsert flesh back into the body of the state, as the body of The People.

The sovereign is unconscious – Introduction part 2

Before I enter into the psyches of those who desire law and desire an alignment with the sovereign's desire, I am anticipating a criticism, and a worthy one – how can I employ psychoanalysis to those who object to female genital mutilation and to those who are ambivalent or even enthusiastic about torture? My response is twofold: firstly, I believe there is something politically and psycho-dynamically particular and invested in those who demand law in the West, such as some (and not all) of those who advocate for anti-fgm. This particularity emerges in the gestures – as absences, inclusions, excitements and repetitions in texts and in imagery – of those who speak in a particular way and betray a particular investment in an identity and in a relation to the sovereign who can offer them freedom, and who can take it away. Secondly, those who accept laws which are involved in the subjugation of flesh of others indicate thematic investments – or what I call *alignments* with the sovereign, that betray a political and psychic relation – not mutually exclusive – to a particular form of authority. It is an authority that can be understood to

map onto the authority and alignments that psychoanalysis has long been concerned with.

This mode of depicting the symptomatology of the contemporary liberal subject is different from Slavoj Žižek's belief that 'all the world is a symptom' and therefore it can be analysed.⁴¹ The whole world is not a symptom, but I suggest that since the king's head was literally (and not metaphorically) cut off, the question of where effects, decisions and decrees of sovereignty appear – and where limits therefore appear – is a concern of the liberal subject and a concern to which psychoanalysis responds. Hence, I say, the world is not a symptom, but law and anti-fgm law – and what I will call pro-torture law – may be particularly.

To understand law as a symptom and the application of psychoanalysis to those who advocate for, or align with law, we need to understand the particular heritage of psychoanalysis and its relation to – and production of – psychologies in the West. Psychoanalysis began as a discourse of what I am loosely calling (largely for lack of a better word and to appeal to convention) the West,⁴² and its fundamental texts mirror western concerns with the relation of the subject to the sovereign, or the individual to its freedom to *be*, through its capacity to reason and thus make free choices *before the sovereign*. Quite simply, the concerns of law and the concerns of psychoanalysis are both – 'How much freedom can we have once the king's head is cut off?' Or in social terms, 'how much freedom can we have before another?' These are the questions of both jurisdictions. Both are concerned with limits and where those limits arrive.

The cutting off of the head of the sovereign – and the subsequent question of how much freedom (how much *right*) can the liberal subject have? – can be seen to inaugurate the conundrums of 'psychoanalytic man' struggling under the rules of the oppressive 'primal father', in Freud's myth of the origin of law, a century later.⁴³ In this discussion Freud suggests that society existed *originally* in a form where the 'primal father' could do as he pleased. His freedom included sexual access to his daughters, to his son's wives, to his sisters. Indeed, the condition of the father in this originary scene is that of limitless freedom to satiate his desire. The sons however, unhappy with this situation, killed off the father in order that they may have a kind of sovereignty, one could say, over their own possessions, including wives, children, etc. The

41 See Žižek (2011).

42 This is always going to be inadequate, and certainly geographically incorrect when speaking of Europe, the United States, South America and Australia collectively. I might have used 'North', as Gayatri Spivak has come to do. See Spivak (1999). But this is disorientating when writing from Australia. 'West' will have to do for the moment. And what we can say is the psychoanalytic subject, far from being universal, can be seen as 'culture specific' to the West insofar as the concerns of Sigmund Freud, his peers and inheritors, articulate the political discourse emerging in the previous century in Europe.

43 See Freud (2001); Freud (1918).

'limit' must then be imposed on all the (other) brothers – in the fashion of the Millian 'harm principle'⁴⁴ – so that no individual had limitless access, but no individual (man) could be usurped of his possessions by another. The brothers were thus engaged in a form of contract. This is a myth of origin, and of course it is a myth,⁴⁵ but it is also a myth of sovereignty. This is a myth about the position of the king, head of state, feudal lord, etc. and 'his' access to the other (man's) property. This is a myth about the limits on 'man' in his access to the sovereign's property, that is, his capacity to inaugurate, endure and surpass his own, or another's laws.

While Freud's myth suggests origin and resolution, the subject (as man) has always had to struggle with the prohibitive demands of the sovereign. The French *Declaration*⁴⁶ offered in legal discourse the possibility that s/he could thwart the limitless freedom of the sovereign and thereby the absolute prohibition on his own sovereignty. The *Declaration* suggested that it was not a sovereign right to utilise one's subjects arbitrarily; that the rights of the sovereign and that of man were in dialogue, or at least in relation. In this *Declaration* we have the possibility of killing off the oppressive father of the primal horde – perhaps not always, or absolutely, but sometimes in the interest of the political and what has come to be 'human' rights.

Human rights suggest that the desire of the subject can be articulate in law. Human rights presume to turn the desire of the human into a right so that the subject can imagine itself subject to its own desires: as Douzinas puts it, 'every desire is a potential right'.⁴⁷ The aftermath of the killing of the king and indeed of the father of the primal horde – the confusion of what to do with this new egalitarian freedom and how much desire can we *have* before others and before law – requires some psychoanalytic assistance. This is precisely because *desire* was and is not so easily rendered outside the subject and before another. And here is the rub. What psychoanalysis precisely speaks to is the question of what is to be done with this freedom? How much can we have? Who can we harm to get it? What then constitutes harm? And then, crucially, what responsibility do we have to those we harm (or want to harm)? These questions emerge because the killing of the primal father, performed by the brothers in the 'primal horde' – like the killing of the king – suggests that the subject can have freedom to supposedly do as they please, but not freedom to *feel* as they please – or as Lacan would have it, *imagine* as they please. It is because desire is mediated through an imagination of what the

44 Mill (1863).

45 Otherwise there might be some confusion about the position of the primal father's father.

46 Rousseau's meditations on the 'social contract' found a sympathetic legal voice in the French *Declaration of the Rights of Man and of the Citizen* in 1789. I'll subsequently refer to this as the '*Declaration*', or '*French Declaration*'.

47 Douzinas (2002), 30.

other – and The People *qua* sovereign-Other – wants, that we can say that desire (as a relation with limits) is defined by the codes of the unconscious. Hence, Lacan would say in his *Seminar XI* commentary on the killing of the primal father that God is not dead, ‘*God is unconscious*’.⁴⁸

God is unconscious, because the brothers – as liberal subjects wrangling with their freedom before the desires of others – must now produce and perform their own limits, and this they do because of unconscious guilt. Thus, their feelings (of guilt) inhabit their desires, and hence their freedom. Whether the subject is doing the ‘right thing’, or perhaps that they might be doing the ‘wrong thing’ in the gaze of the sovereign-Other – who ‘alone is the judge of what is of concern’⁴⁹ regarding the limits of freedom – evokes this guilt. The sovereign/father is not dead but implanted, if you like, and from this position, dictates the subject’s (supposedly) free choice. This paradox of dictation and freedom is precisely why Lacan speaks of the subject in its ‘imaginary servitude’.⁵⁰ The subject serves his/her own imagination as an imagination incorporating the guilt of killing another, and this is a cruel service indeed. We might therefore say that guilt is there *a priori* in the liberal subject who has freedom to choose within the limits of the law, but whose choice is now limited by not only positive law’s limits – proscribed by the desire of The People, but (not mutually exclusively) the limits of their own desire.

For Eric Santner, and for myself, the relation of the subject to The People is a flesh relation⁵¹ which captures the Rousseuan formula and that of Schmitt via a psychoanalytic articulation of sovereignty. The killing of the primal father does not only destroy the flesh of the father, but re-invokes him as a source of guilt; God is unconscious, for Lacan, because God is imagined to judge the worth of the subject’s actions. For Santner, the primal father is not only an unconscious figure, but a fleshy one. This is because the band of brothers who killed him also eat him. As Santner says: ‘The state of exception would seem, then, to mark a space of indistinction between *symbolic fiction* and *fundamental fantasy*, a space where the primal father refuses to be refused and returns in all his fleshy excess and overproximity.’⁵² The fantasy father is present through the law – that which proscribes what the people are guilty of – as the ‘sovereign enforcer of the social contract’.⁵³ However, while this is true of the primal father, the will of The People is ideally a relief from the ‘overproximity’ of prohibition and punishment. Further, human rights evoke the fantasy of a guaranteed uniformity of the desiring trajectory of the will of The People and thus a shield (of flesh) against the violence of a primal father.

48 Lacan (1977b), 59.

49 Rousseau (1968), 74.

50 Lacan (2006), 80.

51 Santner (2011).

52 Santner (2011), 26.

53 Santner (2011), 26.

This belief in a shield is a relief which is short lived, however, because human rights also announce the possibility of bringing all subjects into the realm of the sacrificial; that no one can be killed with impunity (which is not to say they cannot be killed at all). As I will explain in Chapter 6, *the threat of the return of those which can be killed, into the realm of The People*, reignites the taboo that is so violently pronounced in the actions of a sovereign who can enforce the ban; who can torture, disregard and thus split the pieces of the subject.

The promise of boundless rights as an articulation of desire and as a shield against the sovereign specifically enhances an anxiety about what can be cut and what is protected because these gifts of liberalism introduced what Santner has described as a 'surplus of immanence'.⁵⁴ As he says: 'the bodies of the citizens of modern nation-states take on a surplus element, one that actually challenges the entire ideology of disenchantment and secularization and that introduces into immanence an excess it cannot fully close in upon.'⁵⁵ It is this surplus that is the very source of anxiety described in psychoanalysis in which the potential sanction of all desire, in the form of rights, evokes not a delight in boundless recognition, but a terror of the unknown limit of this recognition, a terror of arbitrary prohibition and punishment for the excesses the subject cannot fully close upon.

Immanence can be read alongside the psychoanalytic understanding of desire – as that which emerges in the relation of the cut – insofar as what is enabled beyond the Other's desire is always *unknown*. That is, the Other's desire is that which cannot be secured with law, knowledge of the (exceptional) decisions of the sovereign and has no transcending meaning for the subject. Or in Lacanian terms 'there is no other of the other'.⁵⁶ For Lacan the desire of the subject is always the desire of the Other insofar as one's desire is bound and arranged as a desire for recognition from that Other, but the organisation of that desire, and its nuances and excesses, always exceed symbolisation and the desire of the Other is never certain. Texts of law and indeed the Rule of Law suggests a certainty, one which is often passionately clung to by the subject's wrangling with anxiety about its immanence. Thus, while these excesses are *imagined* to be known, read and understood transcendentally (in law), they cannot be absolutely signified in language by any figure, transcendental or otherwise. But this does not mean that the subject doesn't try to symbolise them in their entirety, and law is imagined as a profound tool for the achievement of a totality of symbolisation.

54 'Surplus of immanence' is Santner's terminology; however, I am utilising Douzinas's discussion of 'rights as desire' to better frame the anxiety which emerges through a lack of limit on the immanence of the subject. See Douzinas (2000).

55 Santner (2011), 98.

56 Lacan (2006), 689.

The end (of universal satisfaction)

It is the impossibility of absolute signification which both equates desire with the surplus of immanence and which evokes the Lacanian Real for the subject. Immanence and desire, I suggest, are both the remnants of what cannot be symbolised and they are both sources of anxiety. This anxiety is produced through the introduction of lack or the margin that appears with the instantiation of language. As Lacan describes:

Desire begins to take shape in the margin in which demand [language] rips away from need, this margin being the one that demand . . . opens up in the guise of the possible gap need may give rise to here, because it has *no universal satisfaction* (this is called 'anxiety').⁵⁷

The margin that appears and inaugurates desire in the subject causes anxiety precisely because it cannot offer 'universal satisfaction'. This kind of satisfaction can only be secured in the manner of transcendental signification, or in language which harbours no uncertainty as to its meaning. An alignment with the language of law, as the desire of the sovereign, offers the (false) promise of universal satisfaction. And it is this promise, reified in human rights doctrine on the good, and the universal, that is both evoked in the presence of the mutilated subject and is betrayed by her presence. The mutilated woman's flesh, like the tortured flesh, indicates that there are other *satisfactions*, other laws that challenge the possibility of alignment. Psychoanalysis is both a salve (a therapeutic experience in the clinic) for those wrestling with this anxiety, and it is a discourse which assists in understanding how the subject, wrangling with its guilt – its desire and its freedom once the sovereign's head was cut off – plays out this anxiety in law and on the body of others. As Lacan so forthrightly offers: 'psychoanalysis alone – recognizes the knot of imaginary servitude.'⁵⁸

It is this servitude I am depicting when I employ throughout this book the idea that *the sovereign-Other is unconscious*. Imaginary servitude, as a state of the unconscious, prompts a series of confusing and confused conditions for the liberal subject, and indeed liberal politics. I am asking in this book: what specifically is invested in the relation with the sovereign who decides on torture, a sovereign who decides on what is to be called 'harm', a sovereign who decides where law arrives on the body of its subjects? Through an examination of the scenes of female genital mutilation and of torture, I try to

⁵⁷ Lacan (2006), 689.

⁵⁸ Lacan is speaking of specifically the nature/culture debate which speaks directly to the concerns of the subjection of the subject's *desire* before law. As he says: 'At this intersection of nature and culture, so obstinately scrutinized by the anthropology of our times' (Lacan (2006), 80).

understand both how we can use psychoanalysis to examine particular psyches, and the symptoms they manifest, as well as particular events of law which articulate those symptoms, including anti-fgm legislation and pro-torture legislation in the West. Both these events are accompanied by an imagination of the imperatives that surround them as popular imagery, both these images evoke the freedom of the subject and both these events involve the cutting of the flesh before the sovereign. Through a psychoanalytic discussion of the scenes which inform the calls for law, we can see something of what is invested in these calls as precisely law's cutting of the flesh. Thus, while I share Gayatri Spivak's concerns about using psychoanalysis 'that is so culture specific in its provenance'⁵⁹ as a method of understanding the psyche, or, in my project, to consider the symptoms of the liberal subject. However, I am examining a subject that has long been produced through the discourses of psychoanalysis and whose production in psychoanalysis is mirrored in the political configurations and concerns with contemporary democratic sovereignty, including a concern with the limits of liberal law. This is a psychoanalysis that has precisely responded to (been afforded by) the psychotic, neurotic and perverse subjects of Europe, and later the Americas and beyond.⁶⁰ That is, the founding and developing premises of psychoanalysis speak of, and to, a European and English speaking world; a world that has been grappling with what it means to have liberty before law and what it means to be subject to law's cut.

59 Spivak (1996b), 177.

60 See Derrida (1998).

The making of a fantasy – the image of female genital mutilation

I cannot tolerate this. I find it impossible, indeed absurd, to work for feminist goals, for human rights, for justice and equality, while ignoring the senseless attacks on the essence of the female personality.¹

White men [and women] are saving brown women from brown men.²

The fantasy of female genital mutilation, and the demand for an accompanying law, is the result of the production of an image. Every law comes with an image and the image comes with a story – a symbolic frame to which the tropes and emblems, the icons and gestures of that image, can be attached. The image of the practices of female circumcision, as the violently opposed crime ‘female genital mutilation’, is a product of an industry; an industry which accompanies the image of a little girl being held down. The work to produce this image, and indeed to produce anti-fgm law, is not innocuous and it involves the suppression of other stories which may contradict or compete with the overarching image of a child held down. The work to produce this image entails a foreclosure on the ordinary curiosities about other stories which usually, or at least *should* usually, accompany any encounter with others, and particularly any encounter with the cultural difference of others in a democratic nation-state. Female genital mutilation or even female circumcision or female genital cutting – as the practices are often termed – is not a fact, it is a product of an adherence to a particular idea, an anecdote or a story which is generally only once described or once read, but is nevertheless adhered to with a conviction that defies debate. The idea of female genital mutilation *is* a singular anecdote which is heard or seen and repeated in ignorance of any other interpretations. It is an image which has come to take on the qualities of an object and a particle which neither challenge nor contradiction can erode.

1 Hosken (1982), 14.

2 Spivak (1999), 284.

Every object is accompanied with a story; an object does not speak for itself, but is spoken for and about. Female genital mutilation is an object whose story is defined and refined through an emphasis on the freedom of the liberal subject, the mutilatory practices of another's law, the crucial importance of the clitoris, and the supposed ignorance of 'mutilated women'³ everywhere. The image of female genital mutilation, as the object I discuss in this chapter, is particular, invested and measured against the supposedly 'harmless' practices and rituals in the West, and against the western subject, with its supposedly non-mutilated⁴ body.

The instantiation of female genital mutilation law has been achieved without any evidence of the practices occurring in countries such as Australia, Scotland or the United States,⁵ and with little or no consultation at all with communities who experience the practices.⁶ The law has been implemented in the face of community objection to the use of law as a method of 'eradication',⁷ and despite the existence of research – performed by women from practising communities – which suggested that the implementation of legislation is detrimental to achieving an eradication of the practices.⁸ Legislative initiatives and the research which justifies their implementation

- 3 As I mentioned in the last chapter, 'mutilated women' is the term used by the Family Law Council in Australia in their 'consultation', not the practices. It is not intended here to describe the women themselves, but the fantasy of these women by anti-fgm advocates.
- 4 My use of the term 'non-mutilated' refers to the Family Law Council description of women who have not experienced the practice of female genital mutilation as 'non-mutilated women'. See Family Law Council (1994b), 22–3.
- 5 See Family Law Council (1994b).
- 6 In Australia, the Family Law Council's document entitled *Female Genital Mutilation: A Discussion Paper* and the report were published only in English. Community groups, individuals, and government and health organisations were offered two months to respond to the initial call for discussion. The report stated that it had received 64 responses from 'government departments' and 'concerned doctors', and 12 responses from 'communities concerned'. Only one of the comments from the 'communities concerned' was documented in the report. This came from the Eritrean Community in Australia (ECA), which stated that the two months allocated to respond to the *Discussion Paper* 'essentially prevented adequate community consultation from taking place'. (See Family Law Council (1994b), 2.) In the United Kingdom, the Prohibition of Female Circumcision Act 1985 (UK) c.38 was amended to the Female Genital Mutilation Act 2003 (UK) c.31, relying on a single research paper and debate in parliament to suffice as 'consultation'. See Sleator (2003). While many people talk of support by the communities who practise, this is highly debatable. In my home country of Australia I was able to get close access to the debates which went on, and the lack of support. This lack of support – as I explain in this book – was suppressed in favour of a more government-supported, anti-fgm plan, known as FARREP (the Family and Reproductive Rights Education Plan). Communities then felt they could not challenge any further without endangering their employment opportunities. My wager here is that something similar has occurred in most western countries.
- 7 African Women's Working Group on Female Circumcision (AWWG) (1996).
- 8 Family Law Council (1994b), 4–7; evidence of lack of support for the legislation is in AWWG (1996).

are plagued with the uncritical citing of highly controversial and contested data about the actual harm of the practices, the employment of fictional literature to inform the public about the practices, and the citing of unsolicited, inflammatory public comment in reports and research.⁹ It is this form of implementation of law, seemingly in contradiction to its purpose and utilising a convenient version of democratic practice, which indicates a more than tilted production of this *thing* called female genital mutilation and its apparent effects on women and little girls.

Anti-fgm legislation, I argue, is based less on comprehensive empirical evidence that determines its irrefutable factual status as a harm to women and little girls, than on an anxiety to do something, to say something to the imagined child being mutilated. As Baroness Masham of Ilton stated passionately in the UK *Hansard* debates of the mid 1980s:

My Lords, it has been said over and over again that all noble Lords who have taken part in these stages of the *Prohibition of Female Circumcision Bill* are against this cruel and mutilating practice, and this has also been stressed by the noble Lord, Lord Hatch of Lusby, tonight. Many people are amazed that your Lordships are still discussing this horrific custom, which appalled most people in Britain when they realised it was practised here even though by a small minority of people.¹⁰

This image of cruelty, of horror, and indeed of mutilation, is a fantasy in a psychoanalytic sense – an urging and urgent fantasy. It is usually singular and monolithic, and usually dominating all other evidence to the contrary. There are many examples of the domination of this fantasy that I will articulate in this book, but one example of significance was the case of the instigation of anti-fgm law in Egypt. In 1994 at the UN International Population and Development Conference (IPDC) in Cairo, the Egyptian Government was challenged as to its lack of action concerning the practice of ‘female genital mutilation’ in Egypt. When the Egyptian Government objected to the claims about the extent and brutality of the practices,¹¹ a Cable News Network (CNN) documentary was shown to the participants as evidence of an instance of female genital mutilation in Egypt. Commentators have described ‘a scene with a screaming little girl being pinned down to the ground before being cut open’.¹² After this screening the Egyptian authorities

9 Steer (1994), 36.

10 UK *Hansard* (1985).

11 World Health Organization (WHO) statistics state that there is 97 per cent circumcision of women in Egypt. Both anti- and pro-fgm advocates in Egypt have repeatedly questioned this statistic. See WHO (2008).

12 Tadros (1999); Manderson (2004), 292. Civil legal action over the documentary was later initiated by the Egyptian Government due to the film’s racist depiction; however, the anti-fgm law, in the form of a ‘ministerial decree’, remains.

were pressured to initiate legal action to eradicate ‘female genital mutilation’, but perhaps more significantly, Egyptian representatives were required to accede to demands to instigate steps toward legislative intervention to legitimate their presence at a health conference. The inference here being that a country that practises female circumcision is not a country which can represent itself at a health conference. This single film dominated the terrain of representation for Egypt.

As Carla Obermeyer has noted, much of the research on female genital mutilation is based on ‘singular anecdote’ – such as the one scene shown in Cairo – but is represented uncritically as scientific research. She says that ‘[d]espite their deficiencies, some of the published reports have come to acquire an aura of *dependability* through repeated and uncritical citations.’¹³ The image or scene, such as the one in the Egyptian example, becomes the evidence and the call to action. That is, not only have uncritical citation of ‘published reports’¹⁴ come to represent knowledge of female circumcision, but images, anecdotes and films are represented as more than dependable evidence of the practices.¹⁵ These singular images and scenes of screaming little girls become uncritical evidence of the ‘cruelty’ of, as Baroness Masham of Ilton calls it – a ‘horrific custom’, and they justify the call to law.¹⁶ The scenes, the documentaries, the coffee table books, the airport shelf biographies and even the fictional stories offer an uncritical account of female circumcision as female genital mutilation. It is not, as the documentaries and the autobiographies will testify, that the image does not reflect what has happened somewhere to someone, but we can understand this image as a fantasy because *it cleaves reality to a traumatic moment*, re-membered in legal discourse, and spoken as law. The trauma, however, is not only or even not necessarily to little girls, or women,¹⁷ but can be readily understood as a trauma to the identity of the anti-fgm advocate. The advocate, who feels so passionately, so vociferously and so aggressively, that female genital

13 Obermeyer (1999), 92.

14 Obermeyer (1999), 92.

15 As I write this, another singular anecdote was cited as evidence of the cruelty and ‘torturous’ nature of the practices in Australia. See Caro Meldrum (2012).

16 It is perhaps important to note that WHO statistics indicate that 97 per cent of women are circumcised in Egypt. I am not suggesting that one girl being circumcised, as depicted in the film, was enough to inspire a demand for legislation (although I am not saying it wasn’t), but it was the showing of *a singular circumcision*, without considering the experience of other women or children, that promoted the call to law. See WHO (2008).

17 The assumption that little girls and women are ‘traumatised’ by the practices denies the reality of many women, and assumes that cut flesh and pain equal psychological trauma. This is not only in sharp contradiction to a psychoanalytic understanding of trauma – as a trauma to identity – but also to a biomedical understanding of psychological trauma which often requires the infliction of pain and the cutting of flesh. But we will get to the biomedical concerns with ‘fgm’ shortly.

mutilation is what she believes it to be, and, in a kind of ecstasy over the righteousness of this belief, forecloses on information to the contrary.

In this chapter I will evoke the fantasy of female genital mutilation through the examination of several iconic moments in anti-fgm discourse produced in, and of, the West. These moments are acts of speech, as the commentary on the legislating of the practices in Australia. They are complemented by imagery, legal gesture and public comment in England, Canada, Scotland, the United States and mirrored in conversations held *in* Egypt (if not with Egyptian representatives). These moments offer the *reality* of female genital mutilation as a coupling of an image of a child being mutilated with the rage of western anti-fgm advocates, and accompanied by the legal speech on female genital mutilation.

The speech on female genital mutilation recruits the tropes of a western subjectivity that sports freedom, choice, desire and an agency defined by sexual freedom, and frames the subject of mutilation as lacking in these capacities through her lacking of a clitoris. In the beginning of this chapter I discuss the intimate arrangement of the mutilated woman and the texture of this intimacy as the imagination of the function of the clitoris. This is not only its function as an object of sexuality, but – and not mutually exclusively in the West – as an object of agency. I then consider what cannot be ignored in the representation of ‘mutilated women’, that is the overlapping discourses of salvation of the Muslim women – in the recent decades of western initiated wars in the Middle-East – and the supposed salvation of these women. Both the Muslim woman and the mutilated woman are historically, and perhaps increasingly, texts for salvation, but this salvation, I suggest in this chapter, is linked to a desire in the western subject to recoup the missing piece that indicates their own mutilation. A piece which, in the mode of psychoanalytic discussions of castration, can never be recovered. Finally, I consider the aggressivity in framing this arrangement of the mutilated (Muslim) woman and the adherence to the image of her that functions, in a psychoanalytic sense, as an identification. I look at the tropes of this identification and what they speak to and I discuss the representation of mutilated women as childlike and unable to choose and consent. Specifically, I consider why it is that women without a clitoris are not Woman (yet).

An intimate arrangement

The focus on ‘female genital mutilation’ as a practice that offends western sensibilities is not new. In the 1920s when western women were struggling for the vote at home they were spreading their missionary texts across Africa and objecting to the mutilation of their sister-subjects.¹⁸ In the following

18 Boddy (1998), 77.

half a century the practices were largely unnoticed or uncared about in the West. In the 1970s, however, when western women (re)discovered their own clitorises, they found to their horror that their black sisters seemed to be missing something¹⁹ – and not just their clitorises. It seemed to many western feminists that their black sisters could neither vote nor orgasm, and that this should be corrected, if not surgically, then certainly politically.

To view the mutilated woman as lacking – either politically or sexually – requires a particular arrangement of bodies and of information; a particular and invested construction of the terrain in question and the capacity of its constituents. One that I suggest is extremely intimate. The assumption of this arrangement is to say little more than Edward Said's early statements about the arrangement of the oriental other through the methodologies of 'orientalism',²⁰ or than Gayatri Chakravorty Spivak's comments on the 'brown woman'²¹ who is often 'curiously sewn together' but strangely always resembles the inhabitants of the 'exploiter's side of the division of labour'.²² In the commentaries on female genital mutilation this sewing becomes an arrangement of flesh, however; an *intimate arrangement* in its referencing of the desire, the pleasure, the pain and even the mental capacity of the mutilated woman. The mutilated woman is, seemingly, intimately known by those who speak against female genital mutilation, but I would argue this *knowing* is invested with the tropes of a western subjectivity and the fears which accompany the fragile condition of this subjectivity, including the possibilities of its subjugation and its castration. Specifically, the possibilities of subjugation are represented and disavowed in constructions of female genital mutilation as the loss of the clitoris.

In the fantasies of female genital mutilation, the quintessential loss, imagined incurred by the mutilated woman, is the loss of desire via the severing, cutting and removal of the clitoris. The clitoris has taken on significance as the flesh of authority in the debates largely because of its symbolic equation, in western feminist discourses since the 1960s, which have refracted women's – and by extension the subject's – capacity to desire through their genitals. Desire is defined by what the genital wants, and it is against the capacity to desire, and to acquire the object of desire – including products and rights – that the freedom of the subject is measured. In this section I will first deal with the question of what are represented as the 'facts' of sexual

19 Hosken (1982); Daly (1978).

20 See Said (1978).

21 Spivak (1999), 284.

22 Spivak is specifically referring to the 'brown woman' of 'gender and development discourse', of which women who are said to have experienced fgm are the beneficiaries *par excellence*. See Spivak (1999), 265. Mohanty's 'third world woman' is also represented in this way. See Mohanty (1991), 51–80.

desire in the mutilated woman and then consider the representation of the clitoris as the divining rod of desire *per se*.

Pre-empting those who might call the loss of the clitoris *qua* loss of sexual desire a fact I would note that women who have participated in the research on female genital mutilation discuss differing experiences of sexual enjoyment. In 1967 Abu-el-Futuh Shandall's study of over 4,500 Sudanese women found that few had experienced orgasm,²³ but in 1989 'through interviews with 300 Sudanese Women, most of them infibulated, [Hanni] Lightfoot-Klein . . . found that nearly 90% regularly experienced sexual climax or had done so at some time in their marriages'.²⁴ Fuambai Ahmadu states that her research of excised women in Sierra Leone, and her own experience, confirms that sexual pleasure is not diminished but may be heightened after excision.²⁵ Ahmadu's citing of the *Hite Report*, which states that the 'external clitoris constitutes a small fraction of the total nerve endings which account for the entire appendage',²⁶ defies standard beliefs about the presence of the clitoris as essential for sexual enjoyment. And, while the *Hite Report* does suggest another 'fact' about the truth of *the* clitoris, its presence in Ahmadu's work and absence in calls to legislate against female genital mutilation emphasise the industry which produces a particular arrangement of the image of mutilated woman.

The contradictory descriptions of experiences of sexual pleasure suggest very simply – and we should not be surprised, since Alfred Kinsey gave us a similar understanding some 60 years ago²⁷ – that it is problematic to say that sexual pleasure is a universally measurable phenomenon. Sexual enjoyment cannot be universally quantified or understood in terms of a standard response to standard stimulation – as if there ever was such a thing. The biological 'facts' about sexual pleasure serve only to compel a type of hysteria in western readers, about what Nahid Toubia describes as the 'mutilated woman's' 'minimal capacity for sexual response'.²⁸ Pleasure is not a universal experience. As Boddy suggests, experiences of sex and pleasure can be produced within a system that exists already to inscribe notions of pleasure with culturally contextual symbols.²⁹ In anti-fgm discourses pleasure is made sensible, however, as Vicky Kirby notes, in a mode through which the West can 'dissolve the difference between women and between cultures into a nonsense,

23 Abu-el-Futuh Shandall (1967).

24 Lightfoot-Klein (1989), cited in Boddy (1998), 88.

25 Ahmadu (2000), 520.

26 Hite (1976).

27 Kinsey *et al.* (1953).

28 Toubia (1993), 40.

29 For further discussions on this, see Grosz (1990); Grosz (1987); Butler (1990); specifically in relation to infibulation, circumcision, clitoridectomy and sunna, see Boddy (1998); and Kirby (1987).

which the West alone can reinscribe with sense'.³⁰ The *sense* of the clitoris for western women is produced through the imagination of what it may mean to lose a clitoris. One body, *with a clitoris*, identifies with another body, *without a clitoris*, and equates their own sense of pleasure, sexuality, with a particular object which is imagined to function in a particular way.³¹ In representing women who are supposedly 'mutilated' as commensurably *sexually the same* as those who are 'non-mutilated', anti-fgm advocates ignore the contextual differences of women's embodiment. They regard women's bodies as universally blank pages that can be read *accurately*, and are able to be universally interpreted in relation to experiences which are nothing less than profoundly socially symbolic and therefore rendered only contextually meaningful, even in one's own physiological experience.

The contextual location of embodiment – and read through psychoanalysis as the organisation of the subject's desire, that is, precisely sexual embodiment – is a difference in the texture of bodies.³² Bodies are not transparent pages upon which universally meaningful social markings are inscribed. The difference in *texture* means that the writing is read differently by both reader and writer, and comprehended in a way that positions the subject according to the way they are defined by what we can call social markings, so that, as Elizabeth Grosz has described, 'culturally specific grids of power, regulation and force condition and provide techniques for the formation of particular bodies'.³³ The particular body being marked will therefore adopt a specific position within the society where the markings have cultural significance. Placed in another culture those markings take on another significance. Hence, we can argue, as Ahmadu has about her own circumcision, that circumcision may enable *more* pleasure, but we cannot separate that pleasure – her pleasure – from its context, or, in short, we cannot separate her pleasure from *her desire*, which is culturally if not individually specific.

What we *enjoy* and how we enjoy is, as psychoanalysis has been reminding us for over a century, dependent on one's own arrangement of desire, and that arrangement is tied intrinsically to the symbols which provide such enjoyment. Indeed, as any person who has moved beyond the sexually frenetic experience of adolescent hormones will tell you, desire and pleasure are absolutely contingent on location, environment, relationship, performance of one's partner and the quirks of fantasy – most of which are representations of one's past experiences, including (but of course not exclusively) of pain,

30 Kirby (1987), 44.

31 Suggesting that sex could ever not be about the imagination of pleasure, perhaps, although not certainly, in relation to physical stimulation. Without wanting to assert yet another fact about sexuality, it is hardly contentious to suggest that stimulation can occur without physical activity more than looking at or reading a scene or another image.

32 Grosz (1995), 70.

33 Grosz (1995), 65.

discomfort and fear – including fear of castration. When we then come to understand the sexual pleasure of women who have been circumcised, we can only theorise in the most abstract of ways about *why they enjoy*. When Mansura Dopico completed her study of sexual enjoyment of Eritrean women in Australia, who had been infibulated, she found the results to be inconclusive about the impact of the practice on sexual enjoyment. As she said, women would say things to her such as ‘of course I orgasm, my husband is very skilled’.³⁴ Thus, not only redefining the common sense presumptions about women’s pleasure after infibulation, but confounding the many feminist commentaries that assert that female genital mutilation is a product of ‘patriarchal social relations’³⁵ or men’s desire to rid their women of pleasure. Again, one can suggest that the imagination of what women (and indeed men) want, or specifically of the significance of ‘social relations’, is informed by particular and arguably invested feminist concerns, such as – as Spivak has so succinctly described the western feminist (development) agenda – the need to ‘save brown women from brown men’.³⁶ Equally, the significances of female circumcision are informed by feminist imaginations of the, often unfounded, significance of particular practices, including the removal of the clitoris.

The iconic clitoris

Of course there is good reason for the domination of the significance of the clitoris – as well as the significance of its removal – in representations as well as perceptions of female genital mutilation. The clitoris may not be the source of all pleasure, but nor is it simply an insignificant piece of flesh. It is not a fingernail, as it were.³⁷ The clitoris in the West is infused with narratives of choice, desire and individualism, and as such the clitoris offers the specific text for the fantastic liberation of woman’s desire. *The clitoris is the location from which desire is imagined to emanate* and therefore the location from which a woman can orient her subjectivity. Read in this light the clitoris has become analogous with constructions of the penis as the object that harbours the desire of the subject. As Janice Boddy suggests, both are marked by presence, ‘creativity, agency . . . which made this body part a powerful symbol of women’s emancipation’.³⁸ This articulates with Michel Foucault’s arguments on the focus on sexuality *as* subjectivity in contemporary western history, or

34 Dopico’s research is published as Dopico (2007); but this comment comes from personal communication with the author.

35 Family Law Council (1994b), 9 (comments by the ecumenical migration centre).

36 Spivak (1999), 284.

37 This is a facetious point, but I don’t want to say that all flesh is *the same*. Equally, what psychoanalysis has taught us is that even a fingernail may be ferociously significant if equated with a symbolic cutting.

38 Boddy (1998), 89.

in Kirby's terms that 'the "truth" of the individual in western societies has gradually been constructed around a libidinal economy of self'.³⁹ Truth, in a capitalist economy of self, is precisely an ontological affiliation with desire as the knowledge of what one wants. Spivak takes this understanding further in her suggestion that: 'invocations of "libidinal economy" and desire as the determining interest . . . restore the category of the sovereign subject . . .'⁴⁰ and the clitoris is understood – certainly in the West – as the location from which desire, and indeed determination, emanates.

In Spivak's analysis the necessity of a presence to desire – a libidinal economy, which I suggest is embodied in the clitoris – secures the 'category of the sovereign subject' as privileged in both social and political discourse. What is lost in the mutilated woman, however, is imagined to be possessed by the non-mutilated. So, while in fantasies of female genital mutilation the mutilated woman is represented as lacking the essence of a sovereign subjectivity – or in the terms I've been discussing as the essence of a desiring subjectivity (in capitalist discourse these are the same) – the non-mutilated woman is able to imagine herself as the one who determines desire – the sovereign subject – by presenting the clitoris as the source of sovereignty. The clitoris becomes the object to override the lack of sovereignty or of sovereign certainty, what I will explain in later chapters as the Lacanian *objet petit a*.

While it is impossible to say what the clitoris is (or indeed what it does), what we can say is that both the penis and the clitoris are marked as the site of sexual liberation and as harbouring a libidinal economy without which what is imagined to be a 'sovereign subjectivity' is lost. In a colloquial sense, anti-fgm advocate Fran Hosken states unequivocally that the genital *is* 'personality'. In Hosken's terms, the clitoris is universally commensurable and intrinsic to subjectivity, or specifically as she says earlier in her 'report', to one's 'worth as a woman and as a human being'.⁴¹ Without it women, and girls, lose, for Hosken, the very 'essence of the female personality'. What remains of the mutilated woman is, as Hosken says, only 'the capacity to learn'⁴² the lessons of western feminism and indeed of law.

We can see this form of representation of mutilated woman illustrated in recent anti-fgm posters published by the organisation CAGeM. In one poster this understanding of the mutilated woman as without desire *qua* subjectivity is particularly painfully displayed (see Figure 2.1).

The caption reads: 'Every day over 6,000 around the world are condemned to feel nothing.'⁴³ What is not qualified is that this non-feeling is supposedly

39 Kirby (1987), 43.

40 Spivak (1999), 261.

41 Hosken (1982), 2.

42 Hosken (1982), 2.

43 Images from CAGeM website, 'White Plains'.



Figure 2.1 'FGM and misogyny'

© CAGeM 2012

about sexual enjoyment. What the caption betrays, however, is that feeling *nothing* is the anti-fgm advocate's assessment of mutilated women *in totality*. They apparently feel nothing about their children, their partners, their world. The mutilated woman, in this scene, is devoid of effect, of activity and of any sense of the world around her. And in this scene – with its very telling caption – we can say that effect equates to agency.⁴⁴

The super saving self

The imagination of the mutilated woman, depicted in images such as that publicised by CAGeM, is a refraction of the (self) image of the anti-fgm advocate. Anti-fgm advocates such as CAGeM and its followers imagine themselves *whole, sovereign, non-mutilated*, as a woman with agency, with desire and with 'feelings' because they have their clitoris. There is an aggressive narcissism at work here of paranoid proportions. An industry is applied to the mutilated woman which is profoundly invested in imagining itself otherwise than mutilated, or in the terms I have been discussing, in imagining

⁴⁴ My thanks to Sahar Ghumkhor for directing me to these images and for her inspiring thoughts, and to Cara Brough Rogers for her thoughts on the nuance of this caption.

the significance of the objects in question – desire, pleasure, the clitoris – as infused with the (scientific and common sense) knowledge that allows no dispute, no complexity and indeed no dissent.

The liberal subject identifying, aggressively, with the anti-thesis of the image of the mutilated woman imagines herself⁴⁵ otherwise, however, than dependent upon the assent of others. Indeed, such a subject imagines that institutions, such as law, reflect her desire, not the other way around. A relation of dependence, with law or with others, is particularly antagonistic to an image of the self as the free individual of capitalism *qua* freedom, which promotes individual authority as the vote and the choice. This dependence is even antagonistic to the specifics of human rights which adhere to an individualism beyond the confines of community.⁴⁶ In anti-fgm discourse, however, there is a specific and arguably violent disavowal of this condition of dependence. In another image from CAGeM's folio, we can see the representation of the independent western individual to the point of the ridiculous, except there is no irony in this image (see Figure 2.2).

The super hero is seemingly not a real person, but she is intended to evoke these attributes in the anti-fgm advocate. The western woman who imagines she is free of mutilation. Of course super heroes are generally represented as not only free of injury or harm; they are free of gravity, of need, indeed of relationship. The super heroes' only weakness, if we follow the plot-lines of the likes of Batman, or Superman, is that they must save humans. Hence, in this image I suggest that the capacity to save (brown women from other brown women) is linked to the capacity to be free of worldly needs.⁴⁷

In female genital mutilation discourse we can imagine the irreconcilability of the sovereign-self as *free self* to be otherwise if we understand the liberal subject's desire to be (mis)recognised as what the mutilated woman does not have, and thus something which can be *had*. She is represented as if she could choose freely if only she were not subject to mutilation, that is, she could evince desire if only she had the capacity to *feel it*. What she has lost is more than pleasure, of course, it is represented as the capacity to feel desire at all, and thus to authorise desire, and she has lost the capacity to save herself through any political will or agency.

The capacity to desire is the capacity to consent insofar as consent is linked to *what one wants*. The subject is a subject to the extent that it can authorise its own desire: this is precisely why children are subjects to be protected, they

45 I'm using the feminine here because the most passionate and outspoken anti-fgm advocates tend to be women, but not always.

46 Brown (2004).

47 Image from CAGeM website. There is a great deal to be said about this image which exceeds the boundaries of this book, although I will return to it later. For further discussion on this form of image, see Ghumkhor (forthcoming).



Figure 2.2 'FGM superhero'

© CAGeM 2012

cannot consent because they *do not know what they want*. In that sense their subjectivity is conditional. Their rights – and particularly their human rights – are those they inherit from another's desire or another's imagination. Similarly, female genital mutilation represents the reversal of one's capacity to authorize consent or desire, for without the clitoris the mutilated woman is represented, in a sense, as *not yet Woman*.

The representation of mutilated women as not yet *Woman* is at its most obvious in its comparison to the tolerance of male circumcision in western countries. Seen in the ever-present context of the rarely challenged legality of male circumcision,⁴⁸ the assumption of *injury* defers insistently to two

48 It is worth noting that a large number of letters to the editor in *The Age* emerging in response to the articles on the 'child abuse/infibulation' case in 1993/94 specifically addressed the 'harm' of male circumcision. See Harford (1994); and Tropp (1994).

Also of note is the recent discussions of the criminalisation of male circumcision in Cologne, Germany, which I will discuss in more depth later.

repeating logics: that there is more ‘cut off’ in female genital mutilation, and that the cut impairs the capacity of women to desire. It is these intersecting discourses of teleological impairment and trauma which form the basis of rationales for both legal intervention and the representation of mutilated women as more than just women to be saved. Women who are mutilated are represented as lesser political and social agents, indeed in the same vein as children.

The first logic of substantive trauma to the flesh, in competition with practices such as male circumcision, is addressed by Boddy when she states that to be concerned with ‘how much’ engages a capitalist system of equivalence.⁴⁹ Simply, more flesh equals more harm. Hosken, assertively engaging this economy, directly equates female genital mutilation to castration rather than circumcision – the part for the whole. For Hosken, the removal of the female essence is equivalent to the whole penis being removed. This is both in terms of quantity and quality for Hosken, and, as we will see shortly, this has resonances with psychoanalytic discussions of agency. Hosken’s logic is reproduced in recent objections to moves to allow a more ‘minor’ cutting of the women’s genitalia in the United States and in Italy⁵⁰. Despite these recent calls for practices of ‘nicking’ or minor incisions to the clitoris to be sanctioned in law, anti-fgm advocates continually object to the practices *in any form*. This strange seeming hypocrisy in anti-fgm advocates – who are so concerned with impairment and injury, but completely unassuaged by a lack of both – is because the injury imagined by the anti-fgm advocate is not to the skin, it is to the subject *as subject*. Female genital mutilation is castration of the most profound nature. Thus we can understand that female genital mutilation cannot be circumcision no matter how small is the flesh removed. Female genital mutilation, irrespective of quantity of flesh, is symbolic of total castration.

In Boddy’s terms, as I have mentioned, the quality of the penis is its capacity to indicate presence, creativity and agency, and while it can apparently incur a nick or cut without disturbing this capacity – man can apparently be Man when his foreskin is removed⁵¹ – the practice of female circumcision (even when supposedly more *economically* minor than male circumcision, a nicking for example) renders the woman mutilated in her capacity as a Woman. The intolerance to female circumcision and legitimization of male circumcision can be read as a concern with the clitoris’s particular relation to the teleology of women, which defers to the second logic of the loss of the

49 See Boddy (1998).

50 Italy, and in the United States, Belluck (2010).

51 There is a complexity to this argument which is the well-documented construction of Jewish men as less than men. See Rheinhard Lupton (1998), however: in anti-fgm discourse men are represented as whole irrespective of the act of circumcision. See Family Law Council (1994b).

clitoris, as denoting teleological impairment. The import of the second logic recruits the legal discourse of injury. In legal texts such as the Crimes Act 1958 in Australia, 'injury' is 'unconsciousness, hysteria, pain and any substantial impairment of bodily function'.⁵² The link with hysteria gestures disturbingly to the feminine hysteric of earlier centuries. Both the truths of the hysteric and that of the mutilated woman are delegitimated in the fashion of the mad.⁵³ This would then lend weight to the status of female genital mutilation as an 'injury' to the mutilated woman's capacity to speak as a 'reasonable person',⁵⁴ or more accurately, to authorise expertise or even significant opinion; in Spivak's terms, to have her speech recognised *as speech*⁵⁵ rather than as the murmurings of the incomprehensible.

The representation of mutilated women in the mode of 'mad' women besieged by their biology and emotions has very real political significance which can be understood through a particular incident during the consultation process in Australia into the question of the need for anti-fgm law. In 1996, the Melbourne-based African Women's Working Group (AWWG) was contracted by the Office of Women's Affairs (OWA)⁵⁶ to produce a report on the impacts of anti-fgm legislation on Horn of African communities in Australia. After completion and submission of the report by the AWWG, the OWA released its own *Summary* (1996). The *Summary* was deemed inaccurate and inadequate by the AWWG, because it 'did not have adequate and sufficient information about the Legal Education Project, as presented by the initial Project Report . . . [It] also makes some inaccurate statements about the project.'⁵⁷ The criticisms of the *Summary* were presented to OWA representatives at a meeting in October 1996. The OWA did not alter their summary, and responded negatively to the request to release the original report. Their justification for not releasing the report was that it would implicate and thereby potentially harm the 'individuals' who made 'personal comments'.⁵⁸ Of course, the report was full of 'personal comments' made by women who were personally affected by the practices and indeed would be personally affected by the imposition of a law, which would define them as victims of a crime. The comments in the report were, according to standards of confidentiality, noted anonymously and they specifically documented the experiences and beliefs of the circumcised women. Indeed, their inclusion

52 Crimes Act 1958 (Vic), s.15 (Definitions).

53 Foucault (1973); Herman (2001).

54 The notion of the 'reasonable person' is the fiction of common law by which people's responses, capacities and injuries are measured.

55 Spivak (1996a).

56 This is an office of the Australian Government set up to consider issues related specifically to women.

57 AWWG (1996).

58 Office of Women's Affairs (1996).

in this report and in the broader consultation in Australia might have afforded a level of expertise to the debates which had been lacking. But the comments were not constructed as 'expertise'.

The concern for the individuals, who made 'personal comments', represents the group as a collection of individuals, rather than as a professional body representing their communities. That is, individuals who relate *personally* to the practices – insofar as they have experienced them – are without foundational authority from which to claim expertise. Their language secures no symbolic resonance with expert legal or medical evidence. This incident can be read against the wielding of expertise by another group who spoke on female genital mutilation in the 1990s in Australia. A group describing themselves as Women Lawyers Against Female Genital Mutilation (WLAFGM) were non-circumcised, female lawyers who informed on the practices in a court case in 1993. In this case, the WLAFGM were described as 'friends of the court'⁵⁹ and were allowed to give expert testimony on the practices, their effects and the experience of women who were 'mutilated'. The positioning of the AWWG as a collection of individuals and the WLAFGM as a group of experts suggests that the experience of female genital mutilation renders the speaker not only sexually, but politically and intellectually, mutilated. It is the very injury to the 'essence of their personality' which renders their comments personal and without the authority of a personality which is able to absorb and reproduce valid knowledge; indeed, for Hosken, women such as members of the African Women's Working Group can only be taught.

The representation of women not knowing the significance of the practices, the law or their bodies is painfully reiterated in contemporary incidents of requests for re-infibulation by women who have been de-infibulated for the purposes of childbirth. Women who request to be re-infibulated are having their requests to be 're-sewn' denied by health professionals. Instead they remain de-infibulated – with the explanation being that re-sewing will contravene anti-fgm laws,⁶⁰ the same laws that were supposed to protect women's 'rights' (including presumably the right to chose) in the first place. The practice of refusing to grant the wishes of infibulated women confounds assumptions about the importance of freedom of choice and consent that is said, often by western feminists, to be denied women who experience female genital mutilation. Further, it reiterates anachronistic feminist arguments about women who *choose* to be re-infibulated having 'false consciousness' and not knowing what they want. This is despite desire itself being precisely the emphasis in question in anti-fgm discourse. In this contradictory logic

59 Pegler (1993).

60 The laws in every English-speaking country include the clause of 'medical necessity', but this is without definition – as I will discuss in depth in Chapter 3. But suffice to say here the laws do not prohibit such an operation.

appears the confused desire of anti-fgm advocates and the aggressivity in the fantasy of female genital mutilation that not even the anti-fgm advocates' own contradictory opinions can displace.

The mutilated Muslim woman

Women being unable to have their desires recognised, indeed of being relegated to the status of children – of 'not really knowing what they want' – is the form that western feminists' benevolence has assumed toward brown women for some years. Female genital mutilation thus fits into a larger picture of western attitudes toward the capacity of brown women that not only recruits the historical tropes of colonialism, but is part of the current legitimacy for the 'war on terror'; with the (saved) Muslim woman appearing as trope and trophy in the war. The image of female genital mutilation as an injury to the mental capacity of women, and their capacity to authorise desire and knowledge about their bodies, is complimentary and complimented by contemporary enthusiasm about Islam as a religion from which women should be saved.

Female genital mutilation, we are told, is not a Muslim practice.⁶¹ But while the validity of this assertion is a theological debate in many Muslim communities, the practices are often tied to Islam and I don't think I would be overstating it to say that there is a common sense perception in the West that Islam and female genital mutilation are synonymous (otherwise why would it need to be denied so often?).⁶² This conflation facilitates a further adherence to the image of female genital mutilation as damaging, as oppressive, and as dangerous to women everywhere. Islam since the Kuwaiti war in 1991 is represented as the enemy of democracy, of freedom and of justice.⁶³ And it is crucial to appreciate the timelines here. Initiatives to legislate against female genital mutilation in the West were almost unanimously inaugurated in 1993–94, with legislation in most states of Australia, the United States and Egypt passed or decreed in 1996. In part this is a story of migration and the increasing visible presence of Horn of African communities in western countries since the late 1980s, but these initiatives were also hastily initiated after the First Gulf War. And in this war the liberation of Muslim

61 The Family Law Council exhaustively asserts the importance of not regarding female genital mutilation as a Muslim practice; however, the associations are enduring in discussions of the oppression of Muslim women. See Family Law Council (1994b), esp. 2, 8, 32. And I would add that from my own experience of presenting and discussing this work that there are few times that the concern with 'fgm' does not quickly *progress* to a concern with what happens to women under Islam.

62 See Porter (1993); Family Law Council (1994b).

63 Of course this representation began with the crusades, but I'll confine myself to recent history.

women from Muslim men (including Sadaam Hussein), and from Islam itself, figured dominantly as an imperative for combat.⁶⁴ The link between Muslim and mutilated – Islam and mutilation – underpins the intersection of discourses of freedom, choice and the need to release women from the violence of their oppressive law. The image of the lacking Muslim woman has been historically repeated in western discourse particularly during and after the First Gulf War, and is part of the current rhetoric of the ‘War on Terror’. The respective wars on areas of the Middle-East have enhanced the altruistic image and moral currency of western military intervention, through enlisting women’s liberation as a necessary infliction of human rights. The liberation of Muslim women from Muslim men is a prominent victory in the War on Terror. In representations of her need to be liberated, the veil becomes what must be removed, and her flesh revealed – in the same vein as her flesh must be restored in anti-fgm discourse. In both these representations it is the body of the Muslim woman that requires liberation. The cloth which covers her body – the *burkha* or *bijab* – hides her liberal identity *in potentia*. In 2002, *The Age* newspaper in Melbourne offered this image as a front-page view of the marriage of the ‘war on terror’ and ‘women’s liberation’ – as the uncovering of the Muslim woman’s body (see Figure 2.3).

This image was portrayed as a testament to the success of *Operation Afghani Freedom* in 2002, and Afghani women were pronounced as liberated. The headline announces ‘A Liberated Kabul’ and the subheading reads ‘shows the world a new face’.⁶⁵

The unveiled face, like the clitoris, becomes a signifier, in Sahar Ghumkhor’s terms, of the violence done to Muslim women, her *old face* is a face which is *in a state of violence*. As Ghumkhor notes, the veil and violence are synonymous in western representations of Islam,⁶⁶ and the Muslim woman, as veiled – and I suggest, as mutilated – becomes the site of the salvation from a violence which is infused with the imagination of what skin – and exposed skin in the context of the veil – can provide. The *new face* and the clitoris become the objects which provide not only pleasure, but desire, that is, the desire which is necessary to the functioning of a western subjectivity.

A functioning western subjectivity was illustrated in a similar fashion in 2002, when US interests were assuming a firm hold in a ‘democratic’ Iraq.

64 See Abu-Lughod (2002). For a discussion on the use of imagery of Muslim women under threat during the Gulf War, see Shirazi (2001).

65 Meek (2001). The world which is to be shown her face here is not the world she inhabits. For Muslim women are always able to show their faces to other women, to their children and to their husbands.

66 See Ghumkhor’s (forthcoming) discussion of the veil and the representation of ‘Aisha’ in *Time Magazine*, 2010. On the issue of the compromise of Muslim women’s speech, see Hussein (2010).



Figure 2.3 'Liberated Kabul'

© Picture Media 2002

Time Magazine offered the image of women in *burkha*⁶⁷ in Saudi Arabia standing at a 'McDonald's' counter. The caption read: 'Saudi women, who must remain cloaked in public, are strangers to western liberties.'⁶⁸ Choice, fries and the free market⁶⁹ are assumed to be what the Muslim women are wanting and waiting for. Images of Muslim women turning toward the western light with beaming uncovered faces, *choosing* their fate, their fries and their accessories, are not mis-truths in the construction of 'what women want', they are merely a particular representation that offers an image reflecting western ideals of women's desire. Muslim women suffer twofold under this construction. Firstly, under the shadow of the 'isolationist admiration'⁷⁰ of the west the Muslim woman is constructed as *a priori* passive, waiting. She does not offer, she receives – freedom, democracy, human rights and a western education; in a similar mode to the Hosken's frame – she does not teach, she learns. Secondly, the Muslim woman is further inscribed with a desire to have what the western woman is constituted as wanting, or indeed as supposedly already having.

67 *Burkha* generally refers to the complete, or almost complete, covering of women in a veil.

68 Ratnesar (2002).

69 I have discussed the strange psychosis of freedom and choice in the West – specifically in relation to fries and choice. See Rogers (2005).

70 Spivak (1985), 246.

The representation of Muslim women needing to be saved from their supposed lack of desire infuses the body of the Muslim woman isomorphically with the desires of the liberal subject, and attributes her with the empty flesh upon which these desires are imagined. The Muslim woman has thus been represented as an empty vessel ripe for the democracy, rights, education and financial incentives that a western 'Coalition' victory will bring.⁷¹ Liberating the Muslim woman becomes the trophy of a western victory in the War on Terror, and representing her as needing western freedoms – including a freedom from mutilation – legitimates the war, and the war against Islam's oppression of women legitimates the fantasy of female genital mutilation. The mutilated woman as a Muslim woman is represented as the passive, waiting, unspeaking receptacle of education and salvation. She is the silent stone-like creature waiting for her feelings, her agency, to be restored through the heroic efforts of white men (and white women). This Muslim woman – like Spivak's 'brown woman' or the 'third world woman', discussed extensively in feminist literature, neo-liberal feminist journalism⁷² and the 'gender and development' discourse that informs policy and practice of global financial initiatives – cannot speak.⁷³ But more than mute, and more than misheard, she is regarded as unable to desire. Thus, what she speaks has no legitimacy, in a western vocabulary, and no place in the debates on female genital mutilation.

An aggressive identification

Behind the depiction of women's agency, desire and freedom, which accompanies anti-fgm commentators informed by a *particular* depiction of Islam, there is, as I have mentioned, an imagination of what women experience. The process of imagining others requires an identification with an image one can equate with the qualities of the self. This is obvious in authors such as Hosken, who state openly about female circumcision that she 'feels that [her] own personal sense of dignity and worth as a woman and a human being is under attack by these mutilations'.⁷⁴ This sense of 'dignity' and experience of being 'under attack' is not something Hosken simply believes, however: she *feels* it, as if she can feel the cut herself. She is under attack by a practice she has never experienced. Similarly, when Pamela Bone writes, with more than

71 Bone (2001).

72 See specifically the work of Brooks (1995).

73 Spivak's reference to 'Gender and Development' discourses is throughout 'Chapter 3: History' in Spivak (1999), 198–311, particularly 200, 252 and 259.

74 Hosken (1982), 14. Hosken may be an extreme example, although my conversations with students and audiences lead me to think otherwise; furthermore, she is, as Kirby describes, 'the source most relied upon by other writers on this topic' (Kirby (1987)). And she is certainly relied upon in the Family Law Council's *Report*.

graphic excitement, of the child in Ramos Rioja's book to which I referred in the last chapter, *The Day Kadi Lost a Part of Her Life*, of Kadi's 'agony as the razor blade cuts, again and again, through the tender innocent flesh',⁷⁵ it is as if it is Bone's flesh, her agony. And we can see this identification in the image above of the non-veiled woman who (apparently) experiences *unveiling as freedom*. The depiction of what another experiences goes even further with the representation of what another *is* in the Australian example of the Family Law Council's *Female Genital Mutilation: A Report to the Attorney-General*, which unproblematically depicts a 'normal adolescent vulva'⁷⁶ as the sketched image – complete with tagged taxonomy – of a 'non-mutilated' genitalia. In the Family Law Council's sketch, in Bone's repetition of the scene of the cutting, in Hosken's *sense* of attack, and indeed in the imagination of the experience of *all* women who have undergone any number of variety of the practices, we have the image which one can identify with – or identify with viewing – between the legs of Woman.

The Family Law Council's vulva, like the non-mutilated woman herself, is an Ideal in the sense that Lacan makes of the Ideal-I represented in the image.⁷⁷ It is the image which one sees in the mirror and adheres to, despite all imposition of differing representations of the self, despite the disruptions that fragment our sense of self.⁷⁸ For Lacan this adherence to an image is the very beginning of subjectivity insofar as the infant-self recognises an image of itself as *itself* in a reflection – via mirror, or via the gaze of another. The recognition of oneself is through the identification of itself as that image. As Lacan says: 'It suffices to understand the mirror stage as *an identification*, in the full sense analysis gives to the term: namely, the transformation that takes place in the subject when he assumes [*assume*] an image . . .'⁷⁹ Of course, anti-fgm commentators do not *see* themselves as a mutilated child, or as a mutilated woman for that matter, but the identification is *in the experience* of the mutilation; it is with *the feeling* of mutilation: the cut, the agony, the sense of attack and, of course, the imagination of a lack of sexual pleasure, of an experience of *feeling nothing*.

75 Bone (1999).

76 Family Law Council (1994b).

77 Lacan (2006), 'The mirror stage as formative of the function of the I as revealed in psychoanalytic experience'.

78 Notably in 2007 an exhibition of plaster statues of over 100 women's vulva, entitled 'Cunts', was shown in the back allied galleries of Melbourne. The artist noted that despite being depictions of 'real women', no one 'cunt' resembled another (personal comment with the artist), thus making it hard to know which one was 'normal'. Notably, the poster, which advertised this exhibition, was banned, while the Family Law Council's *Report* received no such criticism, and *Kadi* was printed and distributed by a feminist located in the same local municipality under the jurisdiction of the authorities which banned the 'cunt' posters.

79 Lacan (2006), 76.

These imaginations – of what the other woman feels – are posited through the lens of what the subject identifying *recognises* in another. The feelings are recognised because the subject recognises them in the self, or as Lacan says, misrecognises (*meconnaissance*) – because they are no more true of the self than they are of the other. What we see in the other is what we *imagine* the other is, through what we recognise in ourselves. Every recognition of another suffers from identification, but it is not always so aggressively adhered to. When it comes to encountering others we do not know what another feels, but we can postulate through an identification, that is an imagination of what the *I* might feel if in this situation. This is an ordinary process such as that engaged in the act of empathy.⁸⁰ Empathy always requires some degree of narcissistic identification; the ‘how-would-I-feel-in-their-shoes’ form of empathy, which always requires self-reference. But there are degrees to this identification, indeed to this narcissism, and in relation any mistakes one makes about assessing what the other experiences can be corrected with simple curiosity about whether the mode of identification is accurate or whether the assumption is more of a presumption, or colloquially, a misunderstanding. Ordinarily, curiosity generally presides and intervenes to displace the assumption, but not always. Sometimes consultation, research or simple dialogue intervenes, it may not refute the presumption but it may problematise, complicate or displace the assumptions, but not always.

The aggressivity of a particular form of identification in female genital mutilation texts, the lack of citing, or indeed reading, of comprehensive research, the lack of consultation and the presumption about the meanings of pleasure, desire and the significance of the practices recruited from singular images, indicate that something is amiss in the ordinary relations between people. One can be curious about others, even foreign others,⁸¹ if the stakes are not too high, if the investment is not in the preservation of one’s own identity – one’s own image in the mirror. But it is precisely the treatment of knowledge on female genital mutilation with such aggressive narcissism – to the point of paranoid responses to information, which contradict the

80 Empathy is one description for forms of identification and Freud did apply the term in his earlier work (Freud (1905, 1989). But he did not use it technically and the main translator of Freud, James Strachey, has given it no specific translation in Freud’s work because its application is contextual and generally speaks to other (psycho)dynamics in relationship. Lacan does not use the term, but speaks only of identification, *Écrits* ‘mirror stage’ or, indeed, the ‘mutilation’ in *Seminar XI*; he also refers to the aggression in adhering to this identification in *Écrits* in the chapter ‘Aggressiveness in Psychoanalysis’ (Lacan (2006), 82–101).

81 The tropes of multiculturalism and ‘tolerance’ of others tend to be emblematised in innocuous practices of cooking, dancing and the wearing of traditional clothing. What Žižek discussed as a decaffeinated other, an other without its otherness, where liberal multiculturalists selectively tolerate/identify cultural aspects of the other and reject the rest. See Žižek (2002).

presumptions about it⁸² – that indicates a betrayal of the desire of the subject who imagines. In this desire we can see an aggressive investment at work. An investment that I suggest is less than altruistic.

The aggressive identification at work in anti-fgm imagery and knowledge is because the practices are framed in not only a discourse of pleasure – as if that weren't important enough in a world where sexuality is ever-referenced – but because female genital mutilation imagery offers fundamental points of identification as a subject in the western world. Female genital mutilation imagery is replete with concerns for consent, choice, agency and the sexual liberation promised through feminism, precisely because these are points for identification for the self in the West. Many postcolonial feminists have written on such an imagination.⁸³ For Spivak, it is an imagination of admiration for 'isolation',⁸⁴ or we might call this the supremacy of the individual who can authorise her own decisions independently of community, of family and indeed of historical influence. This fantastical image of the self is enshrined in a capitalist discourse which advocates *being oneself* and the 'right to choose', as a choice of an infinite supply of products in an endless multiplicity of colours and sizes. This right of choice is similarly enshrined in brands of feminism which have historically revelled in notions of women's 'freedom to choose', and 'pro-choice' movements.⁸⁵ But the self who can choose endlessly can never be reconciled with the reality of a life limited by resources, laws and the needs (and rights) of others. What we imagine we are – in a liberal society which professes freedom of choice and of desire – is never reconcilable with our reality.

In a specifically psychoanalytic formula, we can understand the impossibility of this reconciliation as directly antagonistic with the subject's formation of self. As Lacan says: 'the "ideal-I" . . . situates the agency known as the ego, prior to its social determination, in a fictional direction, that will forever remain irreducible for any single individual.'⁸⁶ It is not that others are required, but that the other and the sovereign-Other's gaze is taken into account. We are never *free* to be ourselves simply because the self we imagine we are is already sanctioned by another. In Lacan's terms, 'the total form of his body, by which the subject anticipates the maturation of his power in a mirage, is given to him only as a gestalt, that is, in an exteriority'.⁸⁷ In the case of the infant, the exteriority, which *gives* the image, comes from the gaze of the mother, but then later on by the teacher, the law or/as the sovereign,

82 See Lacan on aggressivity and paranoia: Lacan (2006), 85–110.

83 See, particularly, Mohanty (1991). But also the discussion of postcolonial feminism in Gandhi (1998).

84 Spivak (1985).

85 See Gandhi (1998).

86 Lacan (2006), 76.

87 Lacan (2006), 76.

the gang leader, the cause, or even by the rhetoric of disobedience which speaks to our earlier imaginations of self. In Lacanian parlance, as I discussed in the last chapter, it is given by the (big O) Other, what I refer to as the sovereign-Other, and the sovereign-Other's recognition of us is precarious.

Identity is precarious. An aggressivity in particular forms of identity in others points to the particular politics – the particular qualities of subjectivity – that are tentatively aligned with the sovereign-Other who is imagined to be able to sanction or secure our sense of self image. The qualities that one (mis)recognises in the self and holds aggressively to, are the qualities in the other that reflect our tentative hold on our own identity. They are the most precarious of our certainties about ourselves. These are the fragments that seem to slip away, to break apart, or are unable to be sutured with certainty to the image of ourselves. What is so tentative in the liberal subject is what is precisely pointed to and held onto in the imagination of the mutilated woman. Freedom. Sovereignty. Agency. Desire. Through the aggressive representation of her – in the image of a mutilated (Muslim) woman – we can depict the most unassured qualities of the subject in identification. Hence, we can say that agency, freedom, choice, autonomy and desire are qualities of precarious certainty in the liberal subject. It is those attributes of subjectivity – (mis) recognised by the anti-fgm advocate – that are then held onto, aggressively, and depicted as lacking in the imagination of the mutilated woman.

Conclusion

The image of female genital mutilation I have suggested is a product of an industry which adheres to this particular significance of sexuality, of desire and of the clitoris as signifiers of non-mutilated subjectivity. The significance of these conditions, as objects of fantasy, is represented as essential to the 'essence of the female personality' and indeed to the performance of a free, Western subjectivity. This rendering is enhanced by the association of Islam to female genital mutilation and the accompanying tropes which depict the Muslim woman in need of salvation. Under the weight of the multiplicity of investments in these discourses, curiosities about what the practice female genital mutilation means, what it is and what the practices signify are almost impossible. Opportunities for consultation or conversation with communities disappear, dialogue turns into education, and the law is evoked, urgently. The calls for law to intervene in English-speaking countries are passionate, powerful and persuasive: a child is being mutilated.

The aggressive construction of mutilated women as in need of education, law and the 'return of their clitoris', together with the denial of their opinions, researched and documented dissent, their presence in the debates and the reliance on singular imagery as the facts of female genital mutilation, suggests more than a desire to save little girls. Indeed, the interest in the use of law to prohibit female genital mutilation suggests white men (and women) are

invested in more than saving brown women from brown men. In psychoanalytic terms, as I have argued, the aggressivity with which the fantasy of female genital mutilation is adhered to suggests that something other than, or perhaps more than, a factual account is going on. The wager of this chapter is that contemporary discourse on and of female genital mutilation can be understood as the production of an image of the *feelings* of the western subject. I am not suggesting that something *does not* happen – indeed something even happens to *little girls* – but that that ‘something’ does not stand as empirically, universally irrefutable. What occurs is a collection of stories, pictures and conversations that offer an assemblage to the fantasy. The fantasy is more than an innocuous account of a cultural practice; it is an image of mutilation, but of whose? The question, and indeed the curiosity, about what is lost and what it signifies is one that must be defended against. That defence occurs as an adherence to the image and the presentation of that image as the very image of subjugation. But, as I will discuss in later chapters, the image also evokes that very possibility. And then the anxiety appears, only to be defended against again, aggressively and with the certainty of knowing who is *really* subject to mutilation, *how* they are subject and what should be done about it. And (like law) the anxiety returns again and again and again.

'I love you . . . I mutilate you': the remnant of the (mutilated) flesh

Every male among you must be circumcised. You shall circumcise the flesh of your foreskin and it shall be the sign of the covenant between Me and you.

Genesis, 17:10–11

I love you, but, because inexplicably I love in you something more than you – the *objet petit a* – I mutilate you.

Jacques Lacan¹

In the discourse on female genital mutilation, in its published and popularised imagery – present in both law and literature – the desire of the anti-fgm advocate appears, as I have suggested, aggressively. It appears in the cut, suffering and loss that are the tropes of the popular imagination of female genital mutilation. The imagery of this imagining is horrifying, indeed it inspires anger, even outrage and often calls to criminalise.² But it is these calls and the production and proliferation of the imagery which betray a particular type of horror that accompanies the imagination of female genital mutilation. This horror might easily be thought of as the horror of castration, indeed in this text even a horror of the castration of the mutilated woman. In this chapter I suggest that this horror is precisely the horror of one's own castration, a horror which is displaced, disavowed or foreclosed through the use of the texts on female genital mutilation.

I will argue in this chapter that the horror of castration, as it appears in the texts of female genital mutilation, is represented through a disavowal of subjugation before the law. What imaginations of female genital mutilation – as the name, the law and the commentary – present are fantasies of a practice of definitive and decisive subjugation. In their evocation as subjugation, they point to the subject's own lack, what the subject cannot capture or cannot

1 Lacan (1977b), 263.

2 For examples of this outrage and calls to criminalise, see Kissane (1993); Bone (1993); Hosken (1992).

retain before the law. Female genital mutilation, I suggest, far from pointing to what the other supposedly lacks, points to what the liberal subject – and particularly the anti-fgm advocate fantasising the practices – cannot have before the law, the certainty of the sovereign's desire. From this position of uncertainty one is always potentially lacking; always potentially subjugated, or politically irrelevant.

In the effort to produce the self as non-mutilated, the mutilated woman becomes the object of a narcissistic kind of love, as the intimate arrangement I discussed in the previous chapter. The lover of this mutilated woman – the one who imagines who the mutilated woman is, and what her mutilation signifies – is a subject who imagines him/herself free of mutilation. This is not only of psychic significance, however: the demands to inscribe a law against female genital mutilation announce the investment in a particular juridico-political relation for the one demanding, a relation in which the subject, who experiences the prohibition of the law of the sovereign as castrating, can fantasise that they defy this possibility by rendering another, not only psychically and physically castrated, but also politically mutilated. Hence, I suggest that the desire of anti-fgm activists emerge as an effort to counter the reality of their own politically precarious relation to sovereign desire through the imagery and articulation of female genital mutilation as not only cruel and barbaric, but as a condition of abandonment before the law. This imagination counters any arguments that practising communities may voice about the social, religious and cultural significance of the practice with its own thoughtful parameters, with its own law, with its own ceremonies.³ The binary opposition set up between what is cruel and barbaric⁴ and what is social and religious custom is crucial to the efforts to represent female genital mutilation as a mutilation, and not – as with male circumcision – as an acceptable, cultural practice in which flesh is removed with care, in ceremony and to form a pact; a ceremony that offers a return, a covenant or the protection of an all-powerful deity.

In the anti-fgm advocate's imagination the practices of female genital mutilation are part of custom or ritual only to the extent that this ritual is sadistic or torturous, and the remnant of the 'ritual' is the body of the child or woman who is nothing without the clitoris. In this representation, the flesh of the woman/girl that is cut – the piece that is animated in the law, literature

3 See Shweder (2000); Dopico (2007); and more generally Shell-Duncan and Hernlund (2000); The Public Policy Advisory Network on Female Genital Surgeries in Africa (2012).

4 It is worth bringing to mind here that the etymology of 'barbarism' or the 'barbaric' comes from the depiction of foreigners whose words to Europeans sounded like 'bar bar bar', and rendered unintelligible. See Boletsi (2013).

and documentary 'evidence'⁵ on female genital mutilation – functions as that which she cannot do without and that which, once removed, renders her body a mutilated and insignificant remainder. It is this fantasised remainder of female genital mutilation – as the body of the mutilated woman, and indeed as the 'mutilated communities' themselves – that I am concerned with in this chapter. And I elaborate here how the clitoris, like the phallus, functions as more than an ontological signifier – one which offers desire as I discussed in Chapter 2 – but as the piece of the other which must be either narcissistically animated, or rendered inanimate, to enable relief from the liberal subject's own subjugation, relief from an imminent relegation outside the *polis*.

The clitoris, I suggest, represents the promise and the fantasy of an enduring contractual enjoyment with a sovereign who is always potentially performing the cut as prohibition – mutilatory or otherwise of his or her subjects. In the images of female genital mutilation, the clitoris, as the flesh removed, becomes the significant symbol that can elide the violent subjugation that is sovereign prohibition. Specifically, the imagination of the significance of the flesh that is cut produces this *flesh as a salve for the loss* inaugurated by the sovereign's mutilation. The clitoris, in fantasies of female genital mutilation, is *the piece* that can save the subject from subjugation. To enable this production the mutilated subject is encountered through precisely the Lacanian formula for love: 'I love you, but, because inexplicably I love in you something more than you – the *objet petit a* – I mutilate you'.⁶ The mutilated woman's flesh is the *objet petit a*, which is extracted from her fantasised body and animated as the object which will fill the anti-fgm advocate's loss. The animation of the flesh cut from the genitals of women is thus a form of capture in which the one imagining can feel certain of the significance of their own flesh and of their own cut. From this position the women who experience female genital mutilation can be rendered mutilated and the one imagining can view themselves – having retained their clitoris – as non-mutilated, or, of course, in a psychoanalytic idiom, non-castrated.

In this chapter I am concerned with the anti-fgm advocate's fantasies and fictitious renderings of the flesh of the clitoris – both psychically and politically – as fantasies of return. These are renditions of the story of circumcision, indeed of God's promise in *Genesis*; a covenant where a severing of flesh guarantees that one can be returned whole to the polis, through ceremony or through covenant; through the exchange of flesh. The flesh, whose return promises protection, is not the flesh of the clitoris, however, it is not the flesh of the mutilated woman. Indeed, precisely not. In this chapter I explain how imaginations of female genital mutilation invert the theological

5 The 'evidence' of what occurs to women/girls in the research on female genital mutilation has been highly contested. For an excellent discussion of the problematic assertions of the research and their methodologies, see Obermeyer (1999).

6 Lacan (1977b), 263.

logics of circumcision. These imaginations promote the idea that the severing of flesh in practices of female genital mutilation offer no promise or protection; they offer prohibition in its most violent form: mutilation.

To understand this production I embark on a complex genealogy in this chapter. Firstly, I explain how the mutilated subject is required as the subject 'being beaten'. This requirement I explain through Freud's essay on a 'child is being beaten',⁷ in which the one beaten takes the displeasure of the parent, or, as I explain, the sovereign. I then discuss the production of this mutilated subject as flesh *to be beaten* through an examination of the imagined trajectory of the flesh of the practices of mutilation. In several anti-fgm texts we can see a particular fantasy of this flesh, which I note functions in sharp contradiction to the flesh of circumcision, the flesh of *Genesis* which provides covenant or pact as a protection against being beaten. Finally, I consider the animation of the flesh of the mutilated woman in the flesh of *The People* and how her body, once circumcised from the polis, enables a pact with international human rights law for the nation *as a whole*.

The love of the sovereign

Female genital mutilation discourse always functions as a tripartite relation in which there is the law, the advocate and the one who must receive the law. The one receiving, I suggest, is the politically mutilated subject: the remainder of castration. During the debates in Australia in the 1990s, we can readily see the articulation of the tripartite relation through the comments of Karen Kissane, a Senior Editor for *The Age* newspaper in Melbourne. In December 1993, Kissane stated: 'genital mutilation should be criminalised if migrants are to get a clear message about how serious a practice it is'.⁸

'Migrants' – who require law's message – are to be informed, not to inform on the practices which they, in Kissane's words, do not know are 'serious'. The grouping of the informants suggests that there are those to whom the message is clear, clear to those who are against female genital mutilation – like the group Women Lawyers Against Female Genital Mutilation mentioned in the last chapter. And there are those to whom the law needs to be *made clear*: migrants, the mutilated, and we might say those who do not know what aesthetic pleasure is. The three figures of 'law's message', provided in Kissane's statement, offer the coordinates which frame the juridico-political fantasies of female genital mutilation and the *seriously* mutilated subject.

The law, its belonging to particular and invested people and institutions, and its requirement to promote understanding in an ignorant and empty body, is the fantastical trope of colonialism. This ignorant, empty body serves

7 Freud (1919).

8 Kissane (1993).

as a helpful vessel for the superiorities of the West – as Edward Said has told us well – but it also serves to displace the anxieties of the subject imagining itself potentially subject to law's mutilations. This is because the third is a significant figure in any formulation, but particularly in a psychoanalytic formulation of love, loss and prohibition. We can read Kissane's formulation through Freud's discussion of his patient's accounts of imagining 'a child is being beaten'⁹ and understand the political and psychological requirement of positioning another as in receipt of law's prohibition, or in Freudian terms, a beating. Freud's patient's imagery speaks precisely to the position of all subjects before law, or indeed before a parent or even a sovereign, whose desires are defined by both love and displeasure. In the essay of the same name, Freud suggests that the imagination of a child being beaten – a common fantasy for his patients – is not a fantasy which enables concern for the beaten child, as we might expect, but a fantasy of the deferral of the parent's displeasure.¹⁰ As Freud suggests of the child's recruitment of this image: 'One soon learns that being beaten, even if it does not hurt very much, signifies a deprivation of love and a humiliation.'¹¹

The fantasy of another child being beaten enables *another* child, somewhere, to be taking the parent's displeasure; the other child is being beaten, while the child imagining this occurrence can be eternally, *and only*, loved. The necessary replacement of the parent's possible displeasure onto another child occurs in the face of the realisation that the parents do not give *only* love. The *displeasure* is a metonymic affectation, if you like, for the parent's prohibition – the 'no'. Parents, as most of us understand, do more than love, they prevent, discipline and prohibit. The parents make the rules and mete out punishment for disobedience. It is the rules that denote where the punishment or displeasure may occur – the rules which disallow the child's pleasure, and indeed its freedom. The rules, if they are completely understood, if they are unchangeable, if they do not reflect changes in mood, knowledge or influence, if they are constant and pre-known, cause minimal anxiety, if any. But this constant state of being before the rule or indeed before the law is never the case – either politically or parentally. The sovereign's desire – like that of the parents – is never constant. As I have noted this formula in Chapter 1 and Rousseau so succinctly captures: 'The sovereign might say: "What I want is precisely what this man wants" . . . but no sovereign could say: "What this man is going to want tomorrow I too shall want."¹² The rule of the parents, like the Rule of Law, reflects reforms, changes in social mood and mores, and the influences of other cultures and international demands. Legislation and even constitutions are amended, international law trumps

9 Freud (1919).

10 Freud (1919).

11 Freud (1919), 187.

12 Rousseau (1762, 1968), 69–70.

domestic statute – sometimes even retrospectively – sovereigns are voted out, overruled or displaced, police attention is arbitrary and certainly judges disagree.¹³ The Rule of Law, like the rule of the parents, will change. Human rights can be recruited in the subject's imagination as a kind of maternal presence to assuage the beating – as the severity of the message. With its attempts at universalism and an underpinning assumption of reflecting the principles of natural law, through such rhetoric as the right to privacy (of the body), freedom (from fear and want) and freedom (from persecution), human rights suggest a sacredness to the flesh of the subject that a liberal subject may believe is secure, even enduring. The subject – of human rights – may believe that it will not be beaten. However, universal human rights, as I will discuss further in Chapters 5 and 6, introduces the reality of a validity of other subject's desires. And this introduction, rather than soothing the anxiety about violent prohibitions, further increases an anxiety about the arbitrariness of the sovereign's desire, or more specifically about the arbitrariness of the location of the beating. In short, human rights cannot save the subject from the beating either.

Changing rules and changing desire is of itself innocuous. It is the repercussions, the displeasure and the beatings, which result when the subject transgresses the changing rules, which are of concern to the child and to the subject. But when another child is imagined to receive the beating, as not only the recipient of law's serious message but as a subject emptied of knowledge and indeed of desire, then the anxiety of an imminent beating from the sovereign is soothed. From the position of looking on to the subject being beaten, the anti-fgm advocate can imagine that the sovereign '[He (my father)] loves only me, and not the other child, for he is beating it.'¹⁴ Hence, the subject's position as loved is assured.

The mutilated status of flesh

The mutilated woman in Freud and Kissane's formula functions as a subject to be beaten by the sovereign for the subject 'looking on', but her position in this configuration extends into a representation of her as a subject worthy of being beaten. The rendition of her as what I call a remnant of her own mutilation ensures that she is not only represented as beaten, but as one whose ontology proscribes that she is the figure *to be beaten*. The mutilated woman to be beaten is the flesh as remainder of the lost clitoris, and the construction of her, as this remainder, is produced through an animation of her flesh and the imagined trajectory of the clitoris. The fantasies of what the clitoris means, where *it* came from and where it is going, provide the frame for producing this flesh as both *insignificant* to the mutilated woman, but *wholly significant* to

13 Some of the problematics of fantasies of law's consistent authority I have discussed with Peter Rush in Rogers and Rush (2009).

14 Freud (1919), 189.

the subject imagining the status of the mutilated woman before God and/or law. To this subject the capacity to signify the cut flesh as *beyond relation*, or precisely as the remnant of castration – or the subject to be beaten – enables the fantasy of non-castration for the non-mutilated subject¹⁵ through a particular animation of the clitoris; an animation of both what it is and where it is going.

The clitoris of the mutilated woman is *the piece* which is imagined taken from her without ceremony, and ceremony is the point here. In the covenant with God, articulated in the Old Testament, male circumcision enables a particular and arguably special relation with God. As God is said to state: 'Every male among you must be circumcised. You shall circumcise the flesh of your foreskin and it shall be the sign of the covenant between Me and you.'¹⁶ The mutilated woman's flesh as represented in anti-fgm literature and law, however, does not enable her to form a pact with God or law; her lost flesh does not inaugurate her as a subject in relation. The mutilated woman is not in this pact, she is imagined beyond the economics of God and law. Indeed, this is precisely what it means to be mutilated. Her flesh is imagined and then represented as destroyed, flung away, discarded or simply lost, and the subject that remains is rendered outside political and legal relations.

We can see this animation in one of the more popular texts, which contribute to the fantasies of female genital mutilation and the imagination of lost flesh. This is the text discussed in Chapter 1: Kim Manresa and Isabel Ramos Rioja's photographic essay of a circumcision of a girl in Africa, entitled *The Day Kadi Lost a Part of Her Life*.¹⁷ In this essay the child Kadi is represented as without relation or certainly beyond the care or concern of her community. The essay, showing multiple images of Kadi's 'life' and her circumcision, offers the reader a subject who is alone and whose needs are seemingly insignificant. In the early photographs she is shown as a child enjoying her family, her friends and the attention of the camera. In the post circumcision shots, however, she is represented in a state of seeming dejection.¹⁸ She has apparently been left in the hostile care of women who are represented as having little or no regard for her physical pain or emotional experience. The women who assisted with, or performed, the circumcision – their status is not clear – are represented as indifferent toward Kadi. They are in the background of images of Kadi and she is alone; they are in her proximity but their attention is elsewhere. In one photograph Kadi is crying with her hands

15 In the Family Law Council's report, the term 'non-mutilated woman' was commonly used to indicate those who had not experienced the practices (Family Law Council (1994b)).

16 *Genesis* 17, 10–11, trans. Robert Alter, *Five Books of Moses* (London: W.W. Norton and Company, 2004). In older translations, such as the King James version, the 'sign' is translated as a 'token'.

17 Manresa and Ramos Rioja (1998). Pagination is not noted in this book.

18 Manresa and Ramos Rioja (1998), 44.

between her legs, as are two other smaller children next to her, and all the viewer sees is a large hand protruding from the edge of the frame, pointing at her. In every other way, she is alone. In Manresa and Ramos Rioja's representation of female genital mutilation there is no communal (or legal) recognition of Kadi's experience. Kadi is looked at by no one. She is received by no one. She forms no pact with God or law. This is the claim of mutilation *qua* castration in western representations of the practices. The clitoris is removed and only the mutilated flesh remains.

Contrary to much of the testimony of women who have experienced the practices – and often talk enthusiastically of the elaborate ceremonies and rituals that accompany their circumcisions – and contrary to many non-circumcised anthropologists who have written extensively on the practices, the practice is represented in anti-fgm commentary as socially and culturally insignificant.¹⁹ In texts such as Kadi neither the act, nor the body, nor the removed flesh is represented as retaining any social, religious or legal significance. The flesh in imagery – such as that of Kadi – holds no significance for the body that endures the mutilation, or to the community which performs or sanctions the cut. The flesh is supposedly nothing, as the body that remains is nothing, to the community who mutilates.²⁰

The depiction of an absence of cultural significance of the practices is heightened by a particular animation or in-animation of the flesh cut from the mutilated woman in anti-fgm stories. In *Possessing the Secret of Joy*, Alice Walker portrays an account of a woman's experience of mutilation, as testimony to the fantasy of the non-contractual status of the mutilated woman's flesh. Cited as a frame for some legal understandings of female circumcision,²¹ Walker's (fictional) description of the journey of the flesh of the 'mutilated' protagonist, Tashi/Olivia²² and her sister, illustrates graphically the clitoris rendered insignificant in socio-political relations. Tashi's condition in the novel is of a woman who has endured a 'circumcision', but appears to be suffering, both physically and mentally, from the experience. She is unable to *settle* in the community in which the practice occurred, nor in the United States, where she has migrated. In her distress she enters into a therapeutic relation with what appears to be a Jungian therapist (if not a fictional representation of Jung himself) and the novel focuses, in the latter parts, on the

19 Dopico (2007); Ahmadu (2000); Ahmadu (2009); Johnson (2000).

20 This logic also props up some feminist arguments against female genital mutilation, as discussed in Chapter 2, where the woman herself can then be represented as being nothing in her culture and community.

21 The Family Law Council in Australia, when researching the issue of 'fgm', referred to Walker's novel (Walker, 1992), in its *Report* (FLC (1994b)). Walker's account of seeing a 'circumcision' is referenced in the *Report* (FLC (1994b), 5).

22 In Walker's narrative, the protagonist's name is Tashi in the first part of the book, but she assumes the name Olivia when she moves to the United States. I'll refer to her as Tashi for the ease of the reader.

repetition of a singular image of a 'cock' (rooster) that appears as a significant memory for Tashi. In the novel it is this figure that represents God or law, but it is precisely this figure that proves not to exist for Tashi once she recalls the violence of mutilation.

As articulated by Walker, the cock represents the memory of the moment for Tashi when her sister experiences 'mutilation'. In a recounting of Tashi's experience of the mutilation in the book the journey of the flesh cut is described by Walker as finding its way into the mouth of the figurative 'cock', but once Tashi *really* remembers the event the cock transforms. Walker writes of the memory:

... it was so insignificant and unclean that she [the midwife M'Lissa] carried it not in her fingers but between her toes. A chicken – a hen, not a cock – was scratching futilely in the dirt ... M'Lissa lifted her foot and flung this small object in the direction of the hen, and she, as if waiting for this moment, rushed toward M'Lissa's upturned foot, located the flung object in the air and then on the ground, and in one quick movement of beak and neck, gobbled it down.²³

The flesh is flung, not toward the grandly significant 'cock' described in the book, but toward a hen. Instead of being celebrated and grieved over, and thereby holding Tashi's sister in relation to the event, the flesh is signified, in Walker's imagination, as unclean, as insignificant, as *meaningless*. It is not part of a ritual. The flesh is flung into the air from a foot and 'gobbled down' by a hen, of which there is no more to be said.

In Walker's narration, at the point of recognition of what happened to the flesh, the cock, previously significant to the story, becomes insignificant as a hen, an animal which seemingly signifies neither political nor legal ritual in the story. The flesh, if it were to be eaten by the dominating cock, might be understood to hold significance as an important object in a ritualised pact, a contractual relation. Indeed, the cock dominates the story and Tashi's imagination. The cock is a figure that hovers over Tashi, mediating her relations. Perhaps not God, but certainly a spectral master, the cock – if it were to receive the flesh – might have signified the ritual *as ritual*, as akin to that of circumcision described in *Genesis*. The hen, however, returns nothing to the mutilated subject. There is no covenant or pact that the animal can honour, and the flesh itself is represented as unworthy. In Walker's imagination there is no sacred ceremony, no cultural relationship that can assist with Tashi's pain or joy. Like Kadi, in Manresa and Ramos Rioja's photographic essay, Tashi is the mutilated remainder, alone and unable to find her place in any culture.

23 Walker (1992), 73.

We can understand in Walker's rendition that for Tashi the cock is an omnipotent figure. Drawing it over and over again until it covers the walls of her room as a gigantic hovering presence, the cock is what remains in her memory supplementing what she has lost, making it significant. What she remembers is the entity which received her flesh. In its grotesque covering of her wall it is larger than life. But from this spectral height it suggests that it is not in relation to her, it is not in relation to *her life*. Hence, while the cock can be seen as representing an omnipotent figure, its potency is not directed at, or not in relation to, her. In the imagery created in Walker's novel, we can imagine a great cock gazing from the walls of Tashi's room in her therapist's house. But she looks to the therapist, perhaps precisely because the cock is not looking at her. Tashi, in her room with the cock, is alone. For the authors of *Kadi* there is a similar emphasis attached to the remainder of the lost flesh, or perhaps more specifically the loss of self for Kadi that can never be returned. The author's claim in the title of the book – *The Day Kadi Lost a Part of Her Life* – is that the flesh lost is not the *whole body*; however, the depiction in the book is of a young girl who has lost everything she was. The authors of *Kadi* state that Kadi (post mutilation) will 'never be the same again', and in this statement we can read the melancholic's lament that she cannot return to where or who she was. As if this were ever possible for any subject.

In the photographic essay it is precisely the whole body of pre-mutilation Kadi who functions as a melancholic figure. What she will never be ('the same') can be read as a desire – what I read as the anti-fgm advocate's desire – to be the same *again*, to return to the place where there was no loss, a desire for a temporal stagnancy that assures an enduring presence. In Lacan's terms a *gestalt* of the self, as a mastery over the image of the self which bears no fragmentation, no cut. This is emphasised again by Australian journalist Pamela Bone's comments mentioned in Chapter 1. As Bone exclaims: 'It is the sad, defeated expression on Kadi's face after her initiation, even more than the photographs of her agony as the razor blade cuts, again and again, through the tender innocent flesh, that makes me angriest.'²⁴ It is the scene of Kadi *after* she has lost a part of her life that makes this commentator angry – not the repeated shots of Kadi being cut, or crying. It is the very scene of a child changed, a body altered, a subject who will never be the same again, that produces the rage.²⁵ In this sense the fantasy of what Kadi experiences begins to emerge. The implication is that, of course, we all want to be Kadi pre-mutilation, we all want to be non-mutilated. We all want to be what we were before the cut, or we all want to experience no loss.

24 Bone (1999).

25 This is a similar logic to that iterated by supporters of the criminalisation of male circumcision in Germany, who repeatedly state the unacceptability of the change to the flesh of the child.

The acceptance of flesh

In English-speaking countries, in the anti-fgm legislation that emerged (mostly around 1996), there appeared a politico-legal category that offered the promise of a contractual relation, as the promise of the sovereign's acceptance of the flesh removed *necessarily* from the subject. That is, a loss of flesh, without the loss of relation or of sovereign love. In anti-fgm law the category of 'medical necessity' – the condition in which the subject can be cut, but still sanctioned by the law enables – in the vein of circumcision before God – a salve for the loss. The name 'medical necessity' offers the promise of a status where the lost flesh holds *political and social significance* and in this legal capture it can be imagined to be no loss at all.

In anti-fgm law the qualification of types of the practices being medically necessary, on a simply legal level, allows for the possibility that there are practices that are able to be performed upon the genitals of women without fear of prosecution. In the New South Wales anti-fgm legislation:

- (3) It is not an offence against this section to perform a surgical operation if that operation:
 - (a) is necessary for the health of the person on whom it is performed and is performed by a medical practitioner, or
 - (b) is performed on a person in labour or who has just given birth, and for medical purposes connected with that labour or birth, by a medical practitioner or authorised professional, or
 - (c) is a sexual reassignment procedure and is performed by a medical practitioner.
- (4) In determining whether an operation is necessary for the health of a person only matters relevant to the medical welfare of the person are to be taken into account.

Or under the Prohibition of Female Genital Mutilation Act 2005 (Scot):

- (3) No offence under subsection (1) is committed by an approved person who performs an action mentioned in subsection (4).
- (4) Those actions are –
 - (a) a surgical operation on another person which is necessary for that other person's physical or mental health; or
 - (b) a surgical operation on another person who is in any stage of labour or has just given birth, for purposes connected with the labour or birth.

Offering a specifically aesthetic sanction in 1994, during the popular furor over the practices in Australia, the President of the Royal Australian College of Obstetricians and Gynaecologists (RACOG) suggested that sometimes it

was 'medically necessary' to alter women's genitalia to enable 'the wearing of tight jeans'.²⁶ This kind of requirement, which pronounces a necessity to the practices within western health-aesthetics, suggests that of course it is perfectly *acceptable* for one to 'never be the same again' if the flesh removed offers an instantiation for the subject of the cut as articulating with the social, health and legal values in the West. What is cut off – if it is medically necessary to cut it off – has a trajectory that returns the subject *necessarily* to the embrace of the sovereign-Other. Medically necessary cutting is thus a kind of economic circumcision in the terms of God and in the terms of western biomedical aesthetics – you give a little bit but you get a lot back.

The parameters of this necessity not only comprehensively determine the significance of the flesh, but of the body, and indeed the community, that remains after mutilation. A community which adheres to the ideals of western medicine – as either health aesthetics or biomedical categories of health – reinforces its capacity to accept the flesh in a logic which determines its capacity to accept. Thus doctors become omnipotent Others, not necessarily in the vein of *Genesis*, but certainly in the mode of Tashi's (or Walker's) larger-than-life 'cock'. The one who has the capacity to judge the significance of the flesh. It is worth remarking on the fluctuating biomedical opinion on male circumcision which has suggested that the practice is *for or against* 'medical necessity' at different times and with different opinions. Nevertheless, even beyond the sanction of God, the circumcision of men/boys for health reasons enters the male child into a pact with western biomedicine that renders the circumcised subject a 'healthy subject', a subject depicted positively in relation to the authority of biomedicine. This is a position which is denied that of the mutilated subject.

The impossibility of an alignment with the sovereign for the mutilated subject and mutilated community is articulated with startling aggressivity in the Prohibition of Female Genital Mutilation Act 2005, with this condition:

- (6) For the purposes of determining whether an operation is necessary for the mental health of a person, it is immaterial whether that or any other person believes that the operation is required as a matter of custom or ritual.²⁷

It is hard to reconcile this notion with that of the President of RACOG and the idea of the 'wearing of tight jeans' being neither custom nor ritual. Wearing tight jeans might not be a ritual (although some groups might make it so), but custom? Certainly, and this has been the case for some generations. The seeming contradiction indicates obviously that the rendering of the

26 Graham (1994), 126.

27 Prohibition of Female Genital Mutilation Act 2005 (Scot).

significance of the practices is less an issue about the *reality* of the flesh than the reality of who speaks to this status. Similar to the position of the Eritrean Women's Group, discussed in Chapter 2, it is the retaining of the clitoris which can enable the speaker to signify the flesh. Thus, 'custom or ritual' sits beyond the parameters of medical necessity because those who believe female circumcision to be so – to be a circumcision of women, in fact – are relegated outside the parameters of consultation or outside the parameters of significance themselves. The trajectory of the flesh of the woman²⁸ who believes the practices necessary for custom or ritual is rendered 'immaterial'. Similar to section 6 of the Scottish legislation, the Family Law Council in Australia suggests that any beliefs in the health or aesthetic benefits of the practices are 'myths'.²⁹ The council goes as far as to suggest that one of the myths is that the practice improves the 'aesthetic condition of female genitalia'.³⁰ And here we have the positioning of communities who practice these 'mutilations' as not only unable to assess their health or social significance, but apparently unable to *really* know what they think is aesthetically pleasing in a woman's body.³¹ Neither the women, nor the men, of circumcising communities are represented as having a significant capacity, or indeed any capacity at all, to authorise their own desire in terms of aesthetic enjoyment.

The Scottish legislation simply disables any comment. However, what the Family Law Council in Australia has done is apply a credibility contingency to the rationale for any beliefs held by those who might comment. The rendering of the mutilated woman's – health or aesthetic – signification of her flesh as mythological, and her (or any other person's) opinion as 'immaterial', seals the significance of the practice for her not as circumcision, but as mutilation. Her comments, questions and concerns are simply rendered illegitimate, her knowledge, as discussed in Chapter 2, in the matter of her body is of no consequence. And it is in this context that we can see the parsing of the 'say' in democratic politics into the categories articulated by Gayatri Chakravorty Spivak. The say of the subject in democratic politics is either a speech act which promises to allay castration, or a speech effect which is relegated to the condition of utterance.³² For the non-mutilated subject, however, the out-clause of 'medical necessity' enables a fantasy that there is a position in which one can be cut, but still receive the sanction of the sovereign, in the mode of God's pact in *Genesis*. In this sense the cutting of flesh still

28 Of course any men who might also believe the practices necessary are rendered similarly immaterial.

29 Family Law Council (1994b), 9.

30 Family Law Council (1994b), 9.

31 This also recalls the reference I made in the last chapter to Afghan women represented as 'turning their face to the world' as if those who could look upon the unveiled faces in the home or had no status as those who looked.

32 Spivak has continuously avowed the distinction between speech and utterance as issues for political recognition – most specifically in Spivak (1996a).

announces the ordinary anxiety of castration, but the promise of a juridico-political position before a sovereign-Other, whose desire aligns with that of the subject, relieves this anxiety and offers the promise of non-castration as non-mutilation. It offers the promise of relevance or significance as the flesh of the polis, that is, as one who still experiences the love of the sovereign and whose position as *not being beaten* is not quite *not* secured before the law.

The flesh of the state

The positioning of the authorising capacity of some subjects as legitimate while others are not points to the constitution of the flesh of the polis. That is, in a democratic nation, as the body of the state, some subjects can have their bodies recognised as *lovable* even if they are cut, while others can be beaten. This arrangement determines the constitution of the state beyond the boundaries of citizenship or even of belonging,³³ but configures the arrangement of the body of the polis as a flesh-like body which can endure certain cuts – and I suggest must endure these cuts – while still remaining a whole body. Where law and prohibition emanate from the sovereign, some limits must be drawn as to who and what constitutes the sovereign body as subject with relevance to the decisions of the sovereign, that is, as subject who can have a say. Determinations are then required as to who and what can be cut from this body; and what is the significance of that which is cut and that which remains. In the terms I am discussing here these are questions of what flesh can be circumcised, what flesh can be mutilated? But here I will explain this cutting of flesh as the arrangement of the body of the polis, or more precisely who is *of that body*, and who is not.

In Australia in 1994 we can see an arrangement of the flesh of the nation before the Australian sovereign and a particular cutting of the body of the Australian nation in order to preserve the fantasy of a whole body and of another child being beaten. In 1993, the Australian Attorney-General Michael LeVarch summoned the Family Law Council³⁴ to research female genital mutilation. In January 1994, the council published *Female Genital Mutilation: A Discussion Paper*. In June 1994, it released *Female Genital Mutilation: A Report to the Attorney General*, which recommended legislation. In the *Report* the council commented that it had received 64 responses from 'government departments' and 'concerned doctors', and 12 responses from the

33 In the distinction made by Ghassan Hage between either the subject belonging to the nation or the nation belonging to the subject, the position of being mutilated aligns more closely with the former, but even then I would suggest that belonging to the nation is not a sufficient category for those that are cut from the polis. See Hage (1998).

34 For a description of the purview see Family Law Council, Australian Government Attorney-General's Department (2006).

'communities concerned'.³⁵ Only one of the comments from the 'communities concerned' was printed in the Report, however: this was a 'concern' from the Eritrean Community in Australia (ECA) stating that the two months allocated to respond to the discussion paper 'essentially prevented adequate community consultation from taking place'.³⁶ Despite this comment from the ECA, the Family Law Council stated on the next page of the report that it is 'in no doubt that the Australian community's view *as a whole* on the issue of female genital mutilation is clear'.³⁷ In the next chapter I'll discuss this notion of *clarity* which permeates discussions of female genital mutilation in the English-speaking world, but finally in this chapter I want to consider this notion of a *whole* political body and its relation to the idea of the *necessity of mutilated flesh* for the nation and for The People.

In the Family Law Council's terms, the whole body of the polis does not require an inclusion of some of its bodies. The whole is maintained, in a similar logic to the cutting of flesh, while pieces can be cut from it – for medical necessity, or for religious purposes. The whole remains as such and the pieces cut from it circulate to reinforce the whole *political* body. The political body is a body of flesh, in Eric Santner's terms. This body, since the focus on flesh in seventeenth-century Europe, is a conglomeration of subjects in the space where the king once was. For Santner, this is embodied in Jacques Louis David's painting, *Death of Marat*, where the space above the 'assassinated' Marat is representative of a location where the political body takes its place, or takes place. What Santner calls 'the spectral and visceral dimensions of the flesh'³⁸ are embodied in the space above the slain Marat. David's painting, for Santner, utilises the figure of Marat because he was a figure who could not be agreed upon – but was considered as Lucifer or Jesus – and therefore he is a figure who embodies disagreement in the political body once the head of the king is cut off. However, in the contemporary polis of refugees and migrants vying for human rights and a recognition of their practices and the virtue of their flesh, I suggest that Marat does not fully capture the contemporary political body after the cutting off of the king's head. The political body, like the space in the *Death of Marat*, is cut (or framed) and some things cannot enter the frame. Beyond the metaphorical frames of art, the constitution of that which is cut, and the representation of that cut, is generally topologically framed in terms of land mass, in terms of borders. What is outside the body of the polis is standardly the other nation, the other state.³⁹ However, in an

35 Family Law Council (1994b), 62–3.

36 Family Law Council (1994b), 2. The *Discussion Paper* was published only in English and communities were given two months to respond. See Family Law Council (1994a).

37 Family Law Council (1994b), 3 (their emphasis).

38 Santner (2011), 92.

39 In Carl Schmitt's terms, 'the enemy', although there are resonances for Schmitt's enemy in the mutilated woman. Schmitt (1996).

ever-insistent cosmopolitanism and when nation-states ascribe to, or even acknowledge, multiculturalism, the political body increasingly takes on a *texture* which goes beyond disagreement between rights-bearing subjects. Subjects appear more or less relevant and are required to maintain the constitution of the political body *as a whole* insofar as they are cut from it in the mode of circumsised flesh. And this is a complex equation.

The body of the sovereign as The People, for Santner,⁴⁰ enjoy a 'surplus of immanence' after the transcendental figures have been removed, but this enjoyment, I suggest, is contingent upon precisely a recognition of *the capacity to enjoy*. This capacity is represented *against* the (lack of) enjoyment of the mutilated woman and her supposed lack which indicates the point of severance at which a body must be cut from The People. Her articulation as the point of severance is precisely because she does not *enjoy* in the right way, or we could say that, without a clitoris, she supposedly enjoys a biopolitical framing *too much*.

To say that the mutilated woman enjoys her biopolitical framing in this manner is to suggest that she is only a product of the categories which produce her docility for *being saved*. Recalling that the mutilated woman is supposedly unable to feel, or certainly to enjoy at all, she is thus unable to authorise knowledge, to know what is aesthetically pleasing or to appreciate the status of her own flesh as destroyed through the practice of female genital mutilation. The figure of the mutilated woman – without a clitoris which might enable her to participate as a political subject, as a political agent – is a figure of supreme docility in the face of the biopolitical emphasis offered by Foucault as a rendition of contemporary subjectivity.⁴¹ The mutilated woman is swamped in the categories of hygiene and health, sexuality and gender, pleasure and performance of her desire. And her lack of enjoyment is made recognisable through the biopolitical codes embodied in human rights rhetoric, specifically (and dominantly) the Universal Declaration which articulates the need for freedom from fear and want, ability to speak freely, and the need for food, protection and shelter. But in a psychoanalytic understanding of enjoyment, as *jouissance*, the body enjoys *against the limits* of the wash of biopolitics, and this is precisely a bodily enjoyment.⁴² If the biopolitical can be understood as a mode of producing supreme docility, in which one could languish – as man, woman, healthy, sick, mad, insane, straight, gay⁴³ – then enjoyment as *jouissance* requires a push against the limit of that languishing, a move to the threshold of enjoyment; to move *beyond the*

40 Santner (2011), 28–61.

41 Foucault (2008).

42 Lacan (1975), 23–4.

43 These are not directly Foucault's categories of biopolitics, but they articulate a contemporary discourse of an arrangement of the self which categories of human rights, domestic law, and public policy readily employ in the English speaking world, and beyond.

pleasure principle.⁴⁴ The mutilated woman, with her clitoris removed, is a body which a human rights rhetoric – which privileges protection of the body – is flesh that submits and does not enjoy its surplus, as a surplus of that which reaches beyond the transcendental rhetoric of human rights that articulate a biopolitical frame for the subject. That is, the mutilated woman does not enjoy in the mode of The People who demand a sovereignty *against* the universalism of human rights and a recognition as individual subjects in the flesh of The People.

The mutilated woman is a bodily target of human rights, as a body isomorphically entwined in the discourse of *international* human rights, not, as in Santner's idiom, 'jostling for recognition' as the flesh of The People; not with an immanence that must brush up against the limits of The People, that is, against the limits of others. As a subject who does not desire, she is a subject who *lives* without negotiating with the desires (rights) of others. She is pure pleasure principle. From the position as simply flesh that does not enjoy, she can be cut from the body of The People to serve as flesh in the covenant with international human rights law. And here is where she serves as circumcised flesh of the whole body of the polis.

The body which enjoys as pure pleasure principle is the flesh that functions as an object in exchange in an international covenant. The mutilated woman, as an object of protection – but protection without desire – functions like the refugee who is the subject as not quite *not* the subject of rights. The mutilated woman, like the refugee, can circulate internationally as a body that requires the attention of international law, but it is precisely because of her mutilation – as that which makes her deserving of this protection – that she cannot function in the domestic polis, she is not of The People. As such she is the almost ethereal figure in the gaze of the transcendental Other—she is a figure who allows The People to enjoy their immanence while she is sacrificed to the transcendental logics of human rights, as the logics of natural law.⁴⁵ She must be allowed her teleological fruition, but not her political voice.

Here appears the logic of *Homo Sacer*, so well captured by Agamben,⁴⁶ and the relevance of contemporary political theology to our discussion of female genital mutilation. The body of mutilated communities (or communities who mutilate, which signifies the same thing in onto-political terms) is *cut from the polis*—but s/he is not without relevance to its constitution (as a whole), and its justification as a sovereign jurisdiction in relation to international law. In Agamben's configuration, where *Homo Sacer* is s/he who

44 Jouissance's relation with the pleasure principle is articulated by Lacan in Lacan (2007).

45 For discussions of the teleological elements of natural law in human rights rhetoric and doctrine, see Douzinas (2000).

46 Agamben (1998).

'can be killed but yet not sacrificed',⁴⁷ mutilation signifies the possibility of being politically killed – flesh that is alive only to be killed or not – and circumcision can mean sacrificed. The body of the polis has sacrificial subjects, those that must be prohibited but are still subject to the sovereign's rights. And there are those bodies which are killed, politically – bodies without relevance – pieces of flesh in the polis whose presence is one which does not circulate, contractually. Homo sacer is *required* in the body of the polis, however, to indicate the point of (in)distinction that means that subjects hover in this position in their relations with the sovereign. The mutilated communities, as the cut flesh of The People, assuage the anxiety of the hovering cut of the sovereign of international law, however, because it is their flesh that *can be cut*, because it is their bodies which *do not enjoy* in the right way, or enjoy too much in the gaze of international human rights law. Their form of biopolitical docility produces them as flesh which can be cut from the polis to enable a deference to the transcendental of international law, but it also indicates the coordinates of *the right enjoyment*, what we can think of as a *jouissance of rights* where a brush with the will of The People – the prohibitions announced by the desire of others – assist in the arrangement of the surplus of immanence. An arrangement which is crucial to understand so as not to render oneself mutilated.

The mutilated subject is thus flesh which indicates where enjoyment occurs. But not too much. The biopolitical arrangement of the flesh of the mutilated woman, projected into the images of ceremonies in which she is abandoned by her community, but collected by the body of human rights, enables a particular international contract for nations (for The People) who require a circulation of flesh to seduce the Other of human rights into a covenant. A deal which will not render them killed with impunity, as I will explain in Chapter 5, or as a 'rogue nation',⁴⁸ subject entirely to the (wrong) transcendental. The mutilated women are not outside the polis, however: they are rendered in the vicinity of law's jurisdiction, but subject to the judgment of what constitutes the community 'as a whole'. The mutilated subject *within* the polis is thus cut from the body 'as a whole' in the mode of a circumcision. A cut that renders the flesh relevant in a global social contract that recognises *all* humans as with rights, but not with the capacity to constitute the whole. Thus, the mutilated subject is flesh which brings The (democratic liberal) People into a global community, while sacrificing a part of its flesh to the covenants of international law.

47 Agamben (1998), 8.

48 Rogue nations are the current term for disobedient nations who do not adhere – or do not pact – within the terms of international law. This is political rhetoric, but for a discussion of this, see Derrida (2005).

Conclusion: I love you, I mutilate you

The mutilated child, woman, girl, subject is rendered alone in the fantasies of female genital mutilation. These women and girls, far from announcing difference, are aggressively relegated to the status of politically mutilated before an uncaring sovereign. They are the epitome of the remainder of castration. This is precisely what it means to be mutilated. But now we can understand the mutilation as the desire of the anti-fgm advocate *qua* liberal, democratic subject. As Lacan says: 'I love you, but, because inexplicably I love in you something more than you – the *objet petit a* – I mutilate you'.⁴⁹ What is it that the anti-fgm advocate loves in the other? It is precisely her – what we might call pre-emptive – mutilation. Her mutilation is not only the product of, but the inspiration for, the love. For she takes the heat, as it were, of the sovereign's displeasure, of the law's force; she is loved precisely for her mutilation, a mutilation that the law has inscribed as reality. This then might be the desire for an anti-fgm law framed in the fantasies that accompany it – that the mutilated woman, far from embodying a pluralistic difference, is precisely the *objet petit a* for the anti-fgm advocate. She is represented as what the subject needs to secure his/her place as non-mutilated, as one who is significant to the sovereign as The People. But her role does not end with enduring the displeasure of domestic law.

In Santner's terms, The People jostle for a 'modicum of recognition'⁵⁰ as the effort for the flesh of the people to gain a status as The People. This status denotes the relevance of the subject and defends against the anxiety of the sovereign's desire turning to displeasure, less love, or mutilation of the democratic subject. But when the very people who might speak knowledgeably/progressively on the practices cannot speak, then those people become remnants of the flesh themselves and their remains are constituted as to retain the fantasy of relevance of The People's relation to a global polis. The flesh and the mutilated woman are in this sense both *the objet petit a* – represented as not only the circumcised flesh, but as the body of those whose relevance is as necessary objects (I would not say subjects) to the constitution of the polis. Without the clitoris the subject is nothing. Without its articulation of human rights and an adherence to some form of the transcendental – at least at the natural law of human rights – the polis is nothing; it would endure the beating of international law (of the Security Council, perhaps). The mutilated woman circulates as silent flesh in the covenant between international and domestic law. Hence, we can say that the mutilated other is loved *and* mutilated for the piece that is required to constitute The People as sovereign and the sovereign as The People.

49 Lacan (1977b), 263.

50 This is Claude Le Fort's term, which Santner puts to good use in this dynamic.

Chapter 4

The clear message of law

Is it with these gifts, or with the passwords that give them their salutary non-meaning, that language begins along with law?¹

In Jeanette Winterson's novel on flesh and love, *Written on the Body*,² the protagonist chains herself to a chair in a library in order to restrain herself from going to her lost lover. From this position, she reads volumes of medical texts on anatomy and the narrative of the novel circulates around descriptions of body parts, skin and fluids. The protagonist is attempting to quell her love, and therefore her pain over the love lost, through a capture of an image of the lover's body in symbolic form. She is re-animating her lover's flesh in the language of the biomedical clinic in order, it appears, to fill the place of mourning with an economic version of flesh, an economic exchange – the name for the lost love.

The flesh is named – 'epidermis', 'muscle', 'tissue', 'cells', 'bone', but this naming does not comfort Winterson's protagonist;³ in fact, and not surprisingly from a psychoanalytic perspective, the naming does precisely the opposite. The name heightens her anxiety. Like all of us Winterson's protagonist has no certainty of the capture. The flesh and indeed the word belong to another. In this loss of authority over the word and in this lust for capture inheres a similarity between the protagonist in Winterson's novel and advocates for anti-fgm law. These advocates, both directly commenting on or simply enthusiastic about the law's condemnation of female genital mutilation, are those who imagine and mobilise the language of law, seemingly in an effort to eradicate the practices. The effort only *seems* to be intended to eradicate the practices because the intentions are never transparent, never so self-evident or altruistic as to be able to conclusively announce the desire of anti-fgm advocates as a desire to eradicate female genital mutilation. As

1 Lacan (2006), 225.

2 Winterson (1992).

3 The gender of the character is never mentioned.

Lacan says: 'We must see right away how crude it is to accept the idea that, in the ethical order itself, everything can be reduced to social constraint . . . as if the fashion in which that constraint develops doesn't in itself raise a question . . .'⁴ Indeed, we must see right away that the desire to institute social constraint around female genital mutilation, and the fashion in which this is initiated and legitimated, raises a question as to the desire of the advocate of such constraint.

In this chapter I will again discuss the desire of the anti-fgm advocate and specifically the presentation of this desire in language. The use of particular language on female genital mutilation, I suggest, is an effort to animate the flesh of the anti-fgm advocate in economic exchange with the sovereign. It is an effort to grasp the parts of the other – as the mutilated woman – whose very difference as her mutilation announces the presence of *that which cannot be captured*. Here I will explain how the flesh of the mutilated woman suffers a similar animation to Winterson's protagonist – the naming of the flesh, and the sanction of this name in law, is an effort to defy the experience of mutilation as the experience of loss.

We can see this defence against mutilation through the use of the name female genital mutilation and its attempts to align with the desire of law. The use of the name, precisely when that name is so contested by the communities who practice, articulates a desire on the part of the anti-fgm advocate to attract a desire from the sovereign. It is a desire to be seen, a desire to hold the potentially fragmenting pieces of the subject (in the Lacanian mirror) together in the gaze of the law. An alignment with law draws the sovereign's gaze toward the anti-fgm advocate and attempts a securing of her or his sense of their own reflection as non-mutilated. The name, like the gestalt of the self, is imagined *easily seen* in the gaze of the sovereign-Other, in this case specifically through the gaze of law.

The name Female Genital Mutilation is a phrase intended to offer a commonality or a *clarity* in the one who sees and the one who *knows* the significance of language, in Lacanian terms, the Other – and precisely the sovereign-Other. The effort to grasp the desire of the sovereign through the use of the name Female Genital Mutilation is described as the possibility of 'clarity' in the recipient of the law (the mutilated woman or woman intending to mutilate). But the notion of clarity, I argue, betrays the fantasy of an isomorphic alignment of desire between speaker and speech, or between advocate and sovereign through the effort to provide, what Lacan calls, 'universal satisfaction'⁵ to the signifier. That is, no lack, no loss and thus a consistent sense of what the subject *is* in its representation, its imago, in the gaze of the sovereign.

4 Lacan (1992), 225.

5 Lacan (2006), 689.

To understand the fantasy of an isomorphic alignment of desire between sovereign and anti-fgm advocate, I examine the political and legal discussions in England, Scotland, Australia and the justifications in the United Nations which resulted in the use of the name 'female genital mutilation' as an effort to promote *clarity*. This chapter is specifically a discussion of how the choice of name – 'female genital mutilation' – and its evocation in law positions the subject (imagining itself non-mutilated) as sanctioned as such by a sovereign whose desire appears also to be against female genital mutilation. If clarity is the promise of universal satisfaction – as the possibility of meaning being clear to all parties – then the choice of name is crucial in this equation.

The name female genital mutilation offers a point of identification as one who is firstly non-mutilated – once the physiognomy of that condition is established – and as one who can identify as *potentially* mutilated, that is one who has something which can be cut. Thus, the name signifies more than a description. What occurs, we could say, is certainly 'female genital mutilation', but this phrase must not be thought of as a series of words which accurately name an event. The name occurs *a priori* the event and the images ply the phrase with legitimacy. Using Michel Foucault's discussion of sex and sexuality⁶ as a starting point to understand the impossibility of the naturalness of the name, I consider the terms Female, Genital and Mutilation as always impossibly attached to their supposed universal referents, and I examine how the politics of this attachment produces a relief from anxiety.

The problematising and politicising of the name is usually limited to the use of the term 'mutilation'.⁷ However, I argue that the ascription of the terms 'female' and 'genital' are similarly problematic for their assumptions of universal gender binaries and sexual signification, and that their employment, as neutral categories: firstly, further deligitimates the speech of the migrant communities; secondly, assigns a scientific objectivity to the speaker of these categories; and, thirdly, aligns the speaker in intimate relation with the sovereign's anti-fgm speech.

This chapter therefore employs an understanding of *the use* of the name female genital mutilation, but also the use of all names which speak to the sovereign, that is, names which speak within the codes of law. The names, as the speech of the anti-fgm advocate, are part of this thing that is called free speech and/or democratic practice, which contributes to the subject's fantasies of progress within law and of his/her own beliefs, opinions, feelings being relevant or significant to the sovereign. From this position of supposed significance, the subject can imagine s/he might be out of reach or beyond sovereign prohibition, or, as I explain, beyond mutilation.

6 Foucault (1978).

7 Shweder (2007).

The significance of the say

In the example of an anti-fgm advocate who responded to the Family Law Council's consultation in Australia, we can see the importance of a belief in the significance of the subject's speech. As I cited in Chapter 1, in the Family Law Council's *Report* a concerned citizen was quoted as saying: 'the child has no say and is quite at the whims of parent guardian or doctor . . . [this is] repugnant and unacceptable for Australia.'⁸ This commentator believes, evidently, that children should have a 'say', and not be at the 'whims' of the parent or guardian. The *rights of the child* discourse presented here seems to deny the necessity of children, firstly and importantly, not getting all that they 'say' they want, and the importance of parents making the rules. Parents can and need to assert a limiting 'no', even if it is (mis)taken by the child and perhaps by those who might witness the prohibitive gesture, as displeasure or less love. What is specifically 'repugnant and unacceptable' to this author, however, seems to be that these rules are a 'whim'; the rules are what we might call, arbitrary. The arbitrariness of the authoritarian *whim*, in this configuration, is precisely a disavowal of the 'say' of the child. What is 'repugnant', then, is that the say does not influence the whim, or that the whim *does not go the child's way*.⁹ The 'say' implies a relation to what we might think of as the *law* of the parent, guardian or doctor. This commentator is having his say and he is speaking to those who can exercise their power 'whimsically' over him. That is, he is precisely having a 'say' in his conversation with whimsical law in the hope of influencing the prohibition, or more specifically in the hope that his wishes will articulate with the message of the law.

Imagining one is *in conversation* with law, or agreeing with law's whim, or imagining one has a say, legitimates law as *not* whimsical. This is a necessary condition of maintaining the fantasy of the democratic Rule of Law. If, as I discussed in the last chapter, the liberal subject must accept that the law does change, reform happens, sovereigns make *new* decisions or are overthrown, then, to curb the anxiety over the pending exceptionality of a sovereign decision that may *mutilate* the subject (even, or perhaps especially, in a democratic nation), law must be seen to be a product of having a 'say'. That

8 Family Law Council (1994b), 17. This concern with the 'rights of the child' was articulated repeatedly in recent discussions of the statement by the German courts that male circumcision is 'grievous bodily harm', which I discuss further in Chapter 7. Comments such as 'No child should be given food, medicine or immunisation jabs without their consent' highlight, with some irony presumably, the litany of comments made about consent in respect to this issue. Such comments were articulated in response to articles on the issue. See Fraser (2012).

9 The irony of this author's submission, or 'say', being published in the Family Law Council's *Report* while so few members of 'relevant communities' have their 'say' should not be overlooked and particularly because his statement refers specifically to parental law.

is, it must recognise the impact of the practice and the substance of free speech, as it is enshrined in human rights.

The fantasy of rights or even human rights – such as that embodied in the Rights of the Child or the Universal Declaration and its reference to ‘freedom of expression’ – that might protect the subject from these whims is as jurisdictionally debatable as it is psychically ambivalent. Lacan’s comments on this could not be more accurate: ‘If we consider human rights from the vantage point of philosophy, we see what, in any case, everyone knows about their truth. They boil down to the freedom to desire in vain.’¹⁰ Everyone knows that the child can be held down. Everyone knows that the sovereign can disregard the ‘say’, that The People are only partially influenced, if at all by the say, that recognition is arbitrary and contingent. What we all know – at some level, in the democratic polis – is that to believe in the absolute relevance of one’s own desire is to desire in vain. But here I am concerned with at what level this is known and what is done in the interests of disavowing or even foreclosing on this knowledge. In Peter Goodrich’s idiom I am interested in the ‘other scene’ of law in which the fantasies of the advocate are portrayed and the law’s desire appears as a product of these fantasies.¹¹

The fantasies that insist in anti-fgm commentary are of a location that exists beyond the whim, the law and beyond castration. The fantasy of this location, in a juridico-political scene, can be seen in the quote of the anti-fgm advocate above, to tie precisely to language. The commentator above requires that the say inform the whim. This appears as a simple formula in a democratic society – free speech, one person, one vote, consultation on law reform, referendums on constitutional amendments – but the relation is not so simple precisely because this commentator imagines a scene in which language and the law coexist without lack. This is precisely what the call to rights demands, or perhaps promises – a say which elides prohibition; the fantasy of a say which points directly to a speech act that denies the lack in language.

There is no texture to the lack in language – in a psychoanalytic sense – but there is a texture to the fantasies of what form of say can elide the lack in sovereign subject relations. The form of say is a concern with precisely *what the say says*. In the jurisdiction of anti-fgm law, the fantasy of language without lack is played out specifically in the call for a law that articulates with the already existing desire of the sovereign for law. But agreeing with the targets of and the need for a specific law goes only part way to articulating with the desire of the sovereign. Isomorphic alignment of desire requires *aligning with the significance of the name*, it involves the imagination of choosing the perfect symbol; a symbol whose perfection is articulated in the categories and terms

10 Lacan (2006), 661.

11 Goodrich (1995).

already applied in law. It is a *say* in Lacan's terms, which hopes for recognition through proffering 'what was only in view of what will be';¹² by proffering terms which are already sanctioned as truth in law. This is what we might call a *perfect choice* of symbol. It is the fantasy that the subject can overcome castration with a symbol that is *clear* to both subject and sovereign; the symbol called female genital mutilation.

What the say says

In the last 40 years the concern about female genital mutilation in English-speaking countries, in which populations of migrants from particularly the Horn of Africa became increasingly visible, prompted a series of legislations and policies. In these countries anti-fgm legislation was discussed as a strong message, a message to promote clarity and as something which could be 'commonly understood'. But these ideas pretend to a universal satisfaction which can be achieved in the name, when the name is far from universal. The use of the term female genital mutilation is less than conducive to producing dialogue with the practising communities. In a 'community consultation' in Australia with the State Attorney-General of Victoria, a Horn of African woman stood in the auditorium and shouted 'I am not mutilated'.¹³ Communities who perform the practices mostly prefer the term 'female circumcision' rather than female genital mutilation, as female circumcision is more neutral and descriptive of the practices. In short, the name fgm or female genital mutilation begins with the presumption of an antipathy toward the practices, and thus resists dialogue. As Richard Shweder states:

'Female genital mutilation' is an invidious and essentially debate-subverting label. The preemptive use of that expression is just as invidious as starting a conversation about a women's right to choose by describing abortion as the 'murder of innocent life.' Pro-choice advocates rightly object to the presumptive disparagement implied by that label; many African women similarly object to naming a practice which they describe in local terms as 'the celebration' or the 'purification' or the 'cleansing' or the 'beautification' as 'the mutilation'.¹⁴

To employ terms such as female genital mutilation or fgm to inspire discussion, consultation or even comment from communities who practice could be generously described as ambitious, and more accurately described as an effort to promote a particular type of discussion. Certainly, the emphasis of

12 Lacan (2006), 247.

13 This is from personal communication from members of the African Women's Working Group, 1 March 2002. This comment was not noted in the minutes of that meeting.

14 Shweder (2007).

any discussion which begins with female genital mutilation can be presumed to be negative.

Australia is not alone in its use of the term female genital mutilation. In 1990, the United Nations condemned female genital mutilation in the Convention on the Elimination of All Forms of Discrimination against Women.¹⁵ In 1996, as recommended by the Family Law Council in its *Report*, the Crimes Act 1958 (Vic) was amended (adding sections 32 and 33), thereby legislating the Crimes (Female Genital Mutilation) Act 1996 (Vic). Similar legislations with similar 'consultative' mechanisms were enacted in 1996 in the United States¹⁶ and Canada.¹⁷ England had previously developed the Female Circumcision Prohibition Act (UK) in 1985, but would amend this in 2003 to the Female Genital Mutilation Act (UK). In 2005, Scotland would create the Prohibition of Female Genital Mutilation Act 2005 (Scot) in response to a consultation that documented no comments from practising communities. In most countries the practice imagined as female genital mutilation would already have been criminal under existing legislation, prior to any specific anti-fgm law. As Siobhan Mullally stated: 'At present, the practice is clearly outlawed as a matter of Irish law, coming within the scope of both domestic criminal and child protection laws.'¹⁸ This is also true in Australia under the Crimes Act 1958, in all states of the United States and in the United Kingdom. Female genital mutilation could readily be termed an 'assault' or 'grievous bodily harm', depending on one's perception. However, most anti-fgm legislation has a specific purpose, well described by Baroness Trumpington in *UK Hansard* in 1985 when she stated that: 'The whole purpose of the Bill is to make the law crystal clear.'¹⁹ In 2003, in England, the legislation would be revised to emphasise its *clarity* by changing the

15 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981). CEDAW states:

2. Violence against women shall be understood to encompass, but not limited to, the following:

(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry related violence, marital rape, female genital mutilation and other traditional practices harmful to women.

See also CEDAW Committee, General Comments, UN Doc. A/45/38, 2 February 1990, recommendation 14.

16 See Mendelsohn (2004), 1014–15; Kratz (2007), 167–201.

17 An Act Respecting the Criminal Law, RSC 1985, c. 46, s. 273.3, The Canadian Criminal Code.

18 Mullally and Ní Mhúirthile (2010).

19 UK Hansard, 'Prohibition of Female Circumcision Bill', *UK Hansard*, vol. 465 cc. 207–24, 1985, available at <http://hansard.millbanksystems.com/lords/1985/jun/18/prohibition-of-female-circumcision-bill> (accessed 1 December 2012).

name of the Female Circumcision Prohibition Act to the Female Genital Mutilation Act (UK). This was specifically done to achieve clarity and send a 'strong message'. The strong clear message encompassed in the name and the law was articulated in 1993 in Australia, as I mentioned in the last chapter, by journalist Karen Kissane when she stated: 'genital mutilation should be criminalised if migrants are to get a *clear message* about how serious a practice it is'.²⁰ The name, female genital mutilation, serves, in the Australian Family Law Council's terms,²¹ precisely to 'embrace all types of the practices'.²² And, the imagination of *aligning with* the sovereign is the imagination of a *perfect embrace* which is able to capture all that might escape symbolisation. Indeed, it is the imagined *clarity* of the name female genital mutilation as one which describes the practices *accurately*, which serves as a fantasy of embrace between sovereign and subject and holds the promise of an isomorphic alignment of desire.

The embrace points to my first interrogation of a text that articulates an intimacy between the liberal subject and its sovereign. In 2003, when Britain's Female Circumcision Prohibition Act 1985 was amended to become the Female Genital Mutilation Act 2003 (UK), the term female genital mutilation was employed in the revised *Act* to 'describe more accurately the prohibited acts'.²³ The research that justified the change in name, by Nahid Toubia, stated clearly that: 'the practice of female circumcision . . . [is] now commonly known internationally as female genital mutilation . . .'.²⁴ In the terms of anti-fgm activist, Toubia, the name female genital mutilation is both collective of the practices, but also given by the collective, it is in the 'common knowing' that the name is collected. As she states: '[female genital mutilation] is the *collective* name given to several different traditional practices that involve the cutting of the female genitals.'²⁵ The name is collective for the practices grasped under the signifying capacity of the sovereign in the form of Jean-Jacques Rousseau's 'common ego',²⁶ in which there are those inside and outside the 'common', as there are those inside but cut from the body of the state – as discussed in the previous chapter. The 'international' collective articulated in the UK research also extends the global promise of a common ego into human rights and development doctrine that expresses a *particular* common (and indeed a particular desire). The name female genital mutilation

20 Kissane (1993) (my emphasis).

21 For a description of the purview see Family Law Council, 'Australian Government Attorney-General's Department', Family Law Council – Homepage Attorney-General's Department, 2006 <http://www.ag.gov.au/flc> (accessed 23 January 2007).

22 Family Law Council (1994b), 5.

23 Ann Clwyd MP, cited in Sleator (2003), 9.

24 Sleator (2003), no. 52 ('Summary of Main Points').

25 Toubia (1993), 9.

26 Rousseau (1762, 1968), 62.

is now dispersed in legal and health discourse through the United Nations (UN),²⁷ World Health Organization (WHO)²⁸ and the many franchised legislations that prohibit the practices in the West.

In its commonality exists a *communal* where, in Benedict Anderson's terms, subjects experience a 'communion'.²⁹ Such a communion is embodied in the recognition of a particular iconography or gesture. In Goodrich's similar emphasis of this relation enjoyed as the relation between subject and the speech of law:

the legal speech or text had to identify its audience or constituency, and provide that audience or those hearers with such symbols, images, icons or figures as would allow communication in its classical or at least etymological sense of communion.³⁰

Articulated through this communion is a common *knowing* that tolerates no dispute. This knowing is, in its most ordinary – but no less persuasive – articulation 'simply common sense'. From the standpoint of common sense it is a small leap to the status of fact and of accuracy. The 'common sense' or accuracy³¹ of the term 'female genital mutilation' suggests that a presence can be referred to, rather than deferred, in the name; that the term reflects nothing beyond, or outside the name; there is no alterity to the symbol. Indeed, one could say there is a communion between symbol and what is depicted as the *reality* of the practices. As accurate, the name would point directly to the 'thing in itself'.³² The term female genital mutilation, however, neither

27 See particularly the Declaration on the Elimination of Violence Against Women, GA Res. 48/104, UN GAOR, sess. 48, UN doc. A/Res/48/104 (1993), s. 2. Cited in Family Law Council (1994b), 26, with its emphasis added:

2. Violence against women shall be understood to encompass, but not limited to, the following:

(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry related violence, marital rape, *female genital mutilation and other traditional practices harmful to women*, non-spousal violence and violence related to exploitation.

See also Toubia (1993), 9.

28 See WHO, 'Female Genital Mutilation' (26 January 2007), available at http://www.who.int/topics/female_genital_mutilation/en/ (accessed 21 February 2013).

29 As Anderson says: 'an imagined political community . . . imagined as both inherently limited and sovereign. [. . .] . . . *imagined* because the members of even the smallest nation will never know most of their fellow-members, meet them, or even hear of them, yet in the minds of each lives the image of their imaginary communion.' Anderson (1983), 6.

30 Goodrich (1994), 110.

31 I'll discuss the use of a premise of accuracy in relation to the name female genital mutilation further in Chapter 6.

32 Derrida (1974); Derrida also states: 'ah, the things themselves!' to comically refer to the very possibility of naming things at all (Derrida (1995), 699).

describes accurately nor inaccurately the practices that the term means to 'embrace'. Female genital mutilation can better be thought of as a name which refers back to the fantasy of clarity and sovereign alignment as the anxiety of the advocate in relation to the sovereign. This anxiety is betrayed in each signifier respectively.

The Female of female genital mutilation

'Female' – the gendered signifier in the name – allocates a decisive being of the address of law and offers a point of identification for the sovereign-subject. It is a code which draws on science as biology, and in common parlance is recognised indisputably as proscribing the possibility of being 'female'. The signifier 'female' demands a gendered *presence* to the name, and acts as a vehicle for assuring a common known. Gender as sex alerts the reader to a 'libidinal economy',³³ whose sovereign presence is verified in legislation, in administration, and in prolific judgments and their accompanying investigations which seek to distinguish between one gender and another.³⁴ The name 'female', as both adjective and noun, assures the ontological capture of the subject of address – 'It's a girl!'. In so doing, the term ascribes to the speaker identifying – and this could be as 'female' or 'male' – a mastery over the category.

As with the assertion of a libidinal economy that, in Spivak's terms – discussed in Chapter 2 – invokes a sovereign presence, the circulating economy of the name Female returns the sovereign status to the speaker. The name may fall upon an elusive subject in address, but its utterance affirms the alignment of the speaker with the science of gender categories, with law, indeed with liberalism and certainly with a liberal, feminist agenda. Allocating the practices to the Female assures an isomorphic alignment with feminist objections, but also a retroactive attachment to the body: female. This attachment is apparent in the identification with the female body articulated in the sentiments of the anti-fgm advocate Fran Hosken: 'I feel that my own personal sense of dignity and worth as a woman and a human being is under attack by these mutilations, inflicted on helpless children for no other reason than that they are female.'³⁵ For liberal anti-fgm feminists, gender dictates their experience. 'I am woman' asserts a being to the presence and a

33 Spivak (1999), 284, 299.

34 There are countless examples of this address, but many of them directly concerned with gender in relation to discrimination in the United States these are seen in cases such as *United States v. Virginia*, *US Supreme Court*, 1996, and in relation to gender reassignment debates in Australia, see *Re. Alex: Hormonal Treatment for Gender Identity Dysphonia*, 2004, Family Court of Australia, 297. And of course the current debate over 'gay marriage' in democratic countries could not be more concerned with the issue of gender.

35 Hosken (1982), 2.

truth in the narrative of self, aligning with the sovereign's name. The anti-fgm advocate may agree or not with the use of law to prohibit the practices, but rarely do they dispute the terminology, and never its gendered address.

While in many cultures the practices are said to be performed to *make* the child 'woman' or 'female',³⁶ Hosken and feminists who rail against female genital mutilation assume gender exists *prior* to its performance. For Hosken it *is* because *they are* female, thus establishing an essential – prior to any performativity – sex, which is 'under attack'. Indeed, in feminist readings and portrayals of the practices, such as in the CAGeM pictures displayed in Chapter 2 female genital mutilation is commonly considered to be an 'attack' on women. Since its separation from the legal status of male circumcision and the alignment of the practices with the image of 'helpless children' experiencing the practices 'for no other reason than that they are female', the rhetoric guarantees that no one can deny the importance of gesturing to the gendered nature of female genital mutilation. Even its allocation under the UN Convention on the Elimination of Discrimination Against Women ensures the retroactive trace-effacing-significance of the category Female in the gaze of the (international) authorities. Female genital mutilation happens to women!

An identification with this category, or indeed, with its binary (Male) ensures mastery over the castrating intrusion of the heterogeneity of signification. Indeed, to displace signification of two genders would be precisely an instance of heterogeneous signification. Just as Lacan offered, 'there's no such thing as a sexual relationship'³⁷ and, in a different form, Luce Irigaray informs us of the *Sex Which is Not One*,³⁸ the heterogeneity of signification is embodied in the *impossibility* of a two-gender distinction. In a Lacanian configuration it is not that there are not two, but that there are no genders, *per se*. There is no such thing as a sexual relationship, precisely because signification cannot overcome the Real that declares the heterogeneity of signification (or the other way around: the Real instantiates the heterogeneity of signification). Sex, as a quality of gendered subjectivity, is interminably *heterosexual*; that is, there is no sexual relation understood as an isomorphic relation between the symbol (Female or Male) and this thing we call reality. What this effectively means is that the symbol (Female or Male) never effectively describes the thing in itself; the sexual relation does not exist as perfectly signifiable, because it can never accurately fit.³⁹ There is no 'embrace' through the

36 See Judith Butler's discussion of 'performativity' in Butler (1990). And for a discussion of the practices as producing gender, see Ahmadu (2000), 283. Butler also offers insight into this production in Butler (2001).

37 Lacan (1975), 34.

38 Irigaray (1985).

39 This is, of course, precisely why desire exists: because there is always more to be had, because there is no perfect fit. Such a fit, while it sounds good, would be death, if you accept Lacan's configuration of desire.

name – female genital mutilation or otherwise – because that embrace, like the sexual relationship, always fails.

The reality of the impossibility of a perfect embrace is, of course, also the reality of castration. One cannot align with the name-of-the-father, the symbol, or even the sovereign's categories, absolutely, perfectly or completely, because of the heterogeneity of signification; one cannot *be Female*, no matter how much one feels under attack 'as a woman'. The subject can adopt the attributes aligned to women, but can never be *The Woman*. The heterogeneity of signification guarantees the impossibility of an alignment with the sovereign for anti-fgm advocates, humanitarian sympathisers or the rest of us. No matter how aggressive the attempt to master the signifier, something will be cut off by the sovereign. Castration, in a psychoanalytic sense, is the loss of the thing that would make the subject whole and wholly identified.⁴⁰

For Lacan, this impossibility is guaranteed through the intervention of the law-of-the-father as effectively the severing of the name from the object; hence it is called the name-of-the-father because these names are not *our names*. They belong to *no one* but circulate in the symbolic order, suffused with signification – cultural, biological, visceral signification – and are available for the subject's identification. An identification, like that in the mirror, which always fails because of the impossibility of a *full recognition* of the self. But this is an identification which *feels* guaranteed through the assurances of law and of science. Science, particularly as biomedicine, describes the (proper) gender, and law recruits this name to propagate the proper gender relation – through discourses of marriage, sexuality and the organisation of space (bathrooms, clubs, workplace relations). Thus, names – like those advanced in the texts of law – and law, like that advanced through the *proper* naming of things, emerge as descriptions of *reality* and come to be taken as a common knowing of the things to which they refer.

The Genital

The scientificity of the name 'Genital' reaffirms the sexed status of being and heralds the place of being in contemporary western discourse. The name, Genital, again assures the possibility of identification and iteration for the western subject asserting its mastery through identification as being (fe)male and 'anti (against)-female genital mutilation' before the law. Genital, as the defining location of gender, retroactively affirms the sovereign function of Female as a category worthy of identification, but its place in the phrase

40 It is only when the child requires language to describe what s/he wants, what is lost, missed or desired that language emerges. One speaks in order to *get back* – both the thing lost and the state of being all (for the mother). Prior to this loss there is no law of the father, and there are no names (for the infant). See Lacan (2006) – particularly in his essay, 'The and Function and Field of Speech and Language in Psychoanalysis', 197–268.

female genital mutilation also offers a metaphoric location for the arrival of the signifier.

The genital, between the categories 'female' and 'mutilation', assures that the subject's gaze is turned precisely toward the anxious place where flesh is 'under attack' and the place where Being is inaugurated. It is worth remembering in this context that the practices of circumcision on men are not referred to as 'male genital circumcision'. The location is not asserted because there is no need to gesture to the place of economic return in male circumcision. While it is the flesh exchanged in this contract, the *whole body* is in contract in discourses of male circumcision – as I discussed in the last chapter – not just the genital. The flesh of the whole body of the man, or boy, of male circumcision is ontologically present insofar as he is rendered into being as a 'Jewish man', in western fantasies of the practices. This is irrespective of whether this rendering is 'good' or 'bad', whether he is persecuted or not from this location. The circumcision makes him who he *is*.⁴¹ Whereas in 'female genital mutilation' the body is a remainder of castration as I discussed in the previous chapter, and now we can say that the body of the woman of female genital mutilation, in the inverse of logics of male circumcision, is rendered secondary to the Genital.

The genital, in psychoanalysis, is also precisely the location in which castration is to be *felt*, and indeed, denied, disavowed or foreclosed. It is disavowed through imagining that *the name, qua* speech, returns to the liberal subject as mastered and freely given. The assertion of Genital, in the speech of female genital mutilation, reproduces Lacan's 'mistake' (according to Derrida⁴²) of iterating castration as an impossible heteronomy through the representation of its return as whole, that is in our idiom here, as a truth that is 'commonly known', or in Lacan's term as 'the letter'. This is the letter, as speech and flesh that promises the possibility of a return to being whole. As Derrida has eloquently described Lacan's problematic reading of Edgar Allen Poe's *The Purloined Letter*,⁴³ it stages the possibility of economic return:

We have read: the signifier (in the letter, in the note) has no place identical to itself, it *is missing from its place*. Its meaning counts for little, it cannot be reduced to its meaning. But what [Lacan's] Seminar insists upon showing, finally, is that there is a single *proper* itinerary of the letter which

41 This point deserves some further extrapolation, particularly in reference to the 'circumcised *qua* castrated' representations of Jewish men. The arguments I make here in relation to 'mutilation' may well articulate with the position of the Jewish man. See Boyarin (1998), 211–40, for further discussion of the position of Jewish men as castrated and for a consideration of the figure of the muselman as similar to the 'mutilated figure'.

42 See Derrida (1975/87).

43 Lacan's readings of *The Purloined Letter* are in Lacan (2006) and Lacan (1978).

returns to a determinable place that is always the same and that is *its own*; and that if its meaning (what is written in the note in circulation) is indifferent or unknown for our purposes . . . the meaning of the letter and the sense of its itinerary are necessary, unique, and determinable in truth, that is, as truth.⁴⁴

Lacan's *Seminar* on the 'purloined letter', 'insists', as the name female genital mutilation insists, 'upon showing that there is a single *proper* itinerary of the letter'; an itinerary assured as – and in – the name Genital. For Lacan, the letter returns to its place, which is the hole, the place of lack, and assures the truth of signification – which I have described here as a *common sense reality*. The hole is *plugged with truth* we could say. Thus, although we can see it as a letter of infinite topological meaning, it is not represented as a heterogeneous letter. Genitals may differ in size, colour, even sensation, but they are still *recognised, depicted* and thereby *known* as 'genitals'. Genital is a letter which suggests a return to a *proper place* as perfect signification.

The place that the Genital of the other *fits* as if there is indeed 'a sexual relation'. This place is the location from whence the phallus came – psychoanalytically this does not differ for men or women or anyone else – it is the location of castration for all. Lacan's efforts to make the letter 'return' suggest an engagement in a process of *circulation*. An economy – an *oikos nomos* in Derrida's terms, the definitive constitution of the objects in the master's house – the subject of 'economic calculation', all that he *owns*.⁴⁵ As Derrida discusses, the place of return is '*its own*'; both the place where it belongs and the place it owns, if you like. It is the location of identification in which the subject's certainty of the return of Genital, as the letter, is an economic equation in which the subject who possesses the genital, and the capacity to recognise it (as opposed to misrecognising it and therefore missing the mark), possesses the signifier. This subject is not subject, but master. For the subject before the law – attempting to assert mastery through identification with the categories 'female' 'genital' 'mutilation' – the letter, Genital, has arrived.

In this economy, the retroactivity of the final signifier in the chain, 'mutilation', performs, for the subject in identification – a determinate identification – as non-mutilated, or rather as voluntarily circumcised authorising the terms of the flesh cut off. For if one is – in terms of identifying as – Female (or even Male) and with one's Genital in the *proper place*, then one is already affirmed as master over the letter as the language of the law. From this position the liberal subject is in a condition to name the thing to be cut off. Truly a state of autonomy, not subject to the name-of-the-father, but able to authorise one's own names – *auto nomos*, self law.

44 Derrida (1975/87), 436–7 (his emphasis – but important for my purposes).

45 For a discussion of this formula of the economic, see Derrida (1992), 7–8.

Mutilation

Mutilation, the final signifier in the name, returns us to the Australian context where one anti-fgm commentator indicated an assertive disavowal of her subjection to law's prohibitive whim while betraying an anxiety about the mutilation, or unloving capacity of law and the significance of a whole body in which the flesh is non-mutilated.⁴⁶ Louise M. Steer wrote:

In Australia, we are free of many malignant cultural practices endured elsewhere – such as the stoning of adulteresses . . . amputation of the hands of thieves, flogging and caning, the death penalty, polygamy and polyandry, slavery and inherited bonded servitude . . . If it is necessary to remind parents not to leave their children in locked cars by enshrining this in legislation, why should we not use the same means to remind parents to refrain from mutilating their children in the name of cultural practice?⁴⁷

This comment calls upon the reader to consider female genital mutilation in relation to flogging, caning, the amputation of hands and slavery. The relationship suggested by Steer proposes a resemblance between the practices which are already illegal in most western contexts, all have been condemned in the strongest terms in human rights rhetoric,⁴⁸ and all have profound historical meanings associated with the supposed *development* of a western subjectivity, western law and the practices of female genital mutilation. This progress narrative gestures both to a progression from a 'malignant cultural' past and from the law of a 'malignant cultural' sovereign. The images evoked offer both the commonly iterated tropes of *Sharia* (Islamic Law)⁴⁹ and invoke the histories of a British colonial past: 'flogging and caning', a motif commonly associated with the colonial imaginary of settler Australia and its

46 Steer is an Australian subject of no particular expertise, but her comments on female genital mutilation appeared in the *Sydney Morning Herald* and were recruited by the council.

47 Steer in Family Law Council (1994b), 5. In the United States there have recently been links with female circumcision to such practices as 'wife beating, slavery and child abuse', as if they are the same thing, see comments by G. Chapin, executive director of an advocacy group called Intact America, in Belluck (2010).

48 See Sleator (2003) Universal Declaration of Human Rights, available at <http://www.un.org/en/documents/udhr/index.shtml> (accessed 2 December 2012).

49 Stoning of women has often been the image utilised to justify Western intervention in Islamic countries and to inflame and incite feminist support for a 'war on terror'. Several videos have emerged in the past decade as 'proof' of the violence done to women in countries like Afghanistan, Iran, Sudan and Pakistan. See, e.g. 'Afghan woman reportedly executed by Taliban on video', 7 October 2012, available at http://www.huffingtonpost.com/2012/07/09/afghan-woman-executed-by-_n_1659115.html (accessed 2 December 2012).

convict past, the United States and its treatment of slaves, as well as Europe's regimes of public punishment; 'slavery and inherited bonded servitude' evokes the Civil War narratives of the United States, and 'the stoning of adulteresses' is the trope of *Sharia* regimes and their treatment of women. A treatment which, in its biblical reference, is known to be overcome by a progressive and compassionate Messiah (as opposed to a 'barbaric' Prophet).

The violence of Steer's imagery and the significance of the pieces of flesh removed are not to be underrated. The metonymic associations of hands as clitoris, of flogging as cutting, of slavery as subjection offer an imagination of amputation, flogging and slavery as violence represented as equal to that of female genital mutilation. These are illegal practices in Australia, Britain and the United States (although the inclusion of the 'death penalty' is a notable equivocation about law's *development* in the West.)⁵⁰ The subject who imagines that these 'malignant cultural practices' are elsewhere disavows both that these practices are a figure of its own cultural heritage and its contemporary condition. As with Australia's colonial past, and certainly with that of an England and United States that condoned slavery or flogging, and with the US cultural present that speaks fluently of the need for administering capital punishment and legitimacy of information gained through torture,⁵¹ the law's violence is hovering. It is only, indeed precisely, the sovereign's changing desires which is able to alter the situation of the liberal subject before the law in contemporary times. The sovereign's desire for beatings and mutilations that Steer is pointing to are part of a western cultural past that only changed *because of* law's changeable desire, that is, the sovereign's capacity to exercise his or her displeasure about particular laws and about who deserved a beating, and who did not. The anxiety about the knowledge that the sovereign can beat, flog, cane, stone and enslave the subject, and that his/her desire to do so is changeable, requires an arrangement of reality that returns the subject – imagining itself safe from such sovereign desire – to a tripartite relation in which, in Freud's terms – the other subject is being beaten, because the sovereign 'loves only me'.⁵²

The law's mutilation deferred onto another is clearly betrayed in Steer's taxonomy, where the other has the death penalty as 'malignant cultural practice'. In this configuration Steer extends her comment toward a kind of foreclosure⁵³ on the reality that it is the sovereign who can decide on

50 The death penalty is, of course, a current whim of some liberal sovereigns in the United States and President Barack Obama's assassination of Osama Bin Laden might have given Steer pause to think, but perhaps not. For an excellent discussion of the conundrums and enthusiasms for the death penalty, see Sarat (2001).

51 See Military Commissions Act of 2006, 10, USC, 2006.

52 Freud (1919).

53 Foreclosure is a diagnosis of psychosis assessed in the clinic and cannot be technically applied here; however, Spivak's use of foreclosure as wild psychoanalysis I find appealing

the exception⁵⁴ as both state-sanctioned killing, troops to war and polygamy, bigamy or monogamy as necessitated; these are rendered criminal at the law's 'whim'. That they might be *reasonable* in the terms of the other's law, or even considered decisions *qua* whims does not detract from their mutilatory status. Indeed, Steer is not concerned at all with the reasons for flogging, caning, slavery, etc. This is because their status as mutilatory is affirmed in the alignment between the sovereign and the subject. This is precisely what it means to *recognise* them as mutilatory. It is to recognise their *true* meaning, their common sense meaning, in communion with the sovereign.⁵⁵

Speech made law

The *desired* effect of pronouncing the truth of the signifiers Female, Genital and Mutilation is the unification of desire through the production of the truth of female genital mutilation *as* Female Genital Mutilation. As Lacan explains:

Truth is nothing other than that which knowledge can apprehend as knowledge only by setting its ignorance to work. A real crisis in which the imaginary is resolved, thus engendering a new symbolic form . . . This dialectic is convergent and attains the conjuncture defined as absolute knowledge. As such it is deduced, it can only be the conjunction of the symbolic with a real of which there is nothing more to be expected . . . What is this real, if not a subject fulfilled in his identity to himself? . . . this subject is already perfect in this regard . . . He is named . . . he is called the *Selbstbewusstsein*, the being conscious of self, the fully conscious self.⁵⁶

and iterate here. She suggests, using Lacan, 'what has been foreclosed from the Symbolic appears in the Real'. Thus, foreclosure relates to a Freudian 'primary process' embodying two complementary operations: "the *Einbeziehung ins Ich*, introduction into the subject, and the *Ausstoßung aus dem Ich*, expulsion from the subject." The Real is or carries the mark of that expulsion.' Spivak (1999), 5. The Real of the sovereign decision seems to be completely foreclosed by Steer, particularly when she references the death penalty.

54 This is Carl Schmitt's rendition of sovereignty as 'the sovereign who decides on the exception' in Schmitt (1985), 4.

55 It is worth noting here the parallel argument as Ghassan Hage's discussion of *spatial management*. For Hage, the national subject, feeling that the nation belongs to him/her, exercises the management of the other. I'm elaborating on the location from which the subject feels the 'nation belongs' and suggesting that this belonging requires an identification with the language of the law. And that the management of the other is an authorising of speech. See Hage (1998).

56 Lacan (1977a), 296. I am referring here to the Sheridan translation, rather than Fink and Grigg's (Lacan, 2006), because it represents, at least in quotation form, a better expression of the concepts I am discussing.

This being, this '*Selbstbewusstsein* . . . fully conscious self', is the being of non-castration. We might call this being, in Costas Douzinas's terms, *subjectum*:⁵⁷ a subject who is imagined to be able to freely contract with the sovereign; a truly non-mutilated subject – subject beyond castration. The namer, the author who 'engender[s] the symbolic form', this fantasised *subjectum*, achieves this mythical status before the sovereign through utilising the legal, scientific truth of female genital mutilation as a truth through a knowing which references the 'thing in itself' (Derrida), or 'the conjuncture of the symbolic with the real of which there is nothing more to be expected' (Lacan). And the function of what we can call a fulfilment of expectation – that is, no expectation at all – is the promise of no loss.

The experience of no loss can be understood as the conjuncture of language with truth or common sense; a 'truthful' status to speech that helps us see why castration, mutilation and sovereign prohibition convene in the terrain of female genital mutilation law, and indeed in possibly all calls for law in which the imaginary (of the violence) is in Lacan's terms 'resolved'.⁵⁸ For Lacan, 'the realization of the signifier will never be able to be careful enough in its memorization to succeed in designating the primacy of the significance as such.'⁵⁹ Hence, we could say, this is why law repeats itself in futurity; this is why it is (now) the terrain of writing – a jurisdiction of the pen – in which the stating and re-stating (the cutting again and again) ensures the *care* of the law.

Conclusion: the return

In the inauguration of the subject into speech – when it begins to speak *fort*, *da*⁶⁰ – the subject is attempting to overcome a form of mutilation, a fundamental loss. This is the first moment of speech, as the first moment of loss before the Other. In the stories of psychoanalysis loss is explained through the child's relation to the mother via the cotton reel and the instantiation of the game *fort da*, as the inauguration of language. The child, once his mother has gone, begins to utter the sounds 'o-o-o' along with the action of throwing the cotton reel from its cot. When the reel is brought back by the child – pulling the thread to bring it back *himself* – the child utters 'a-a-a' indicating,

57 Douzinas (2000).

58 We can speculate on two forms of resolution here: firstly, of that between the symbolic and the Real in which the imaginary of the primal scene is soothed by the meeting of symbol with no-thing. Secondly, the resolution of the anxiety over the image of violence. Of course, in psychoanalysis the direction of one's speech toward any violent scene – no matter the social justice imperative one recruits – is an effort to resolve the anxiety of the primal scene.

59 Lacan (1977b), 61.

60 Freud (2001).

in Freud's interpretation, the use of the terms *fort* (gone), *da* (here). The child *feels a momentary mastery* over the loss of his mother, or at least his immediate feelings of loss, through the use of language. As Lacan says: 'This reel is not the mother reduced to a little ball by some magical game . . . it is a small part of the subject that detaches itself from him while still remaining his, still retained.'⁶¹ This is the case with not only a contemporary loss of the m/other, but of a future loss of sovereignty over its world. This lack of sovereignty is the imminent feeling, or fear, of castration. The words serve to try and capture the piece that has been lost.

The token, symbol or word chosen is particular. The child, stating *fort! da!*, is attempting to describe a reality; a reality imagined *known* to the Other. As Lacan suggests of reality, it is precarious⁶² and invested. The choice of the symbol attempts an assurance, or legitimation, of the reality spoken. The subject speaking reality is a subject whose 'say' is recognisable to the sovereign. An authorising of reality is precisely a belief in the authoritative *capture* of the thing lost sanctioned in the gaze of the Other and, in my terms, the sovereign-Other. Language, legal speech or 'the say' is the effort to match the symbol with the thing. An effort to articulate language with the common and to articulate terms of the sovereign; a communing that would assure the symbols of language *said it all*. What is articulated in the discourses of female genital mutilation, as a function of the imaginary of the subject, is a kind of faith in this promise as possibility via an alignment with the categories employed by the sovereign on the topic of female genital mutilation.

My concern in this chapter is particularly with the notion of this fantasised clarity as it functions as reality and as a fantasy of non-castration. Naming female genital mutilation as accurate suggests this possibility and the identification with the 'truth' of the name, as the truth of law, effects an alignment with the sovereign through an agreement not only with the acceptance of the categories instantiated by the law. The partitioning of signification through the signifiers Female, Genital and Mutilation authorises the accuracy of the term through law's regulation of recognisable categories. Agamben puts it this way: 'The law has a regulative character and is a "rule" not because it commands and proscribes, but because it must first of all create the sphere of its own reference in real life and *make that reference regular*.'⁶³ In female genital mutilation legislation, the sphere of law's reference is made regular through the use of the categories which retroactively signify the reality of female genital mutilation as regular, and the law as instantiated to

61 Lacan (1977b), 62.

62 As Lacan states: 'reality isn't just there so that we bump our heads up against the false paths along which the functioning of the pleasure principle leads us. In truth we make our reality out of pleasure' (Lacan (1992), 225).

63 Agamben (1998), 26.

regulate.⁶⁴ This is a different state of 'regularity' than that which Rousseau describes as the impossible futurity of the sovereign decision. It is a regularity which enables its identification as 'common' to the subject, and any gap or alternate desire, any threat to a communion with the sovereign, is obscured, denied as simply foreclosed.

64 This could well be configured as similar to Foucault's 'truth/right/power' triangle, but the relevance of 'regular' rather than 'right' is crucial, as will be discussed in the next chapter. See the chapter 'Two Lectures' in Foucault (1980).

The violence of the Other's law

We are all used to ritual in your Lordships' House, but ours is harmless and hurts no one.¹

Freedom and the clitoris are what the (mutilated) woman wants. Apparently. If only Freud had known this when he asked the infamous question 'what does woman want?'. But his ignorance is pertinent to our discussion precisely because *the condition of uncertainty* is the condition evoked, not only by the knowledge of an arbitrary sovereign desire, but also by an encounter with another's law. Indeed, the other's law draws our attention to the possibility of arbitrary judgment. The other's law, in the era of cosmopolitanism, self-determinations and domestic multiculturalisms – which demand equal recognition and, what is termed, 'respect for diversity' – mean that other decisions, other laws cannot easily be rendered illegitimate (derived from no father worthy of the name). The other's law evokes the problem that there are other desires and other codes of being. That is, the other's law could be, in Lacanian terms, the Other's law.

The other, the migrant on our shores, introduces this uncertainty at the same time that her presence and her practice offers the objects precisely suited to the arrangement of a fantasy that promises to point to knowing. As discussed in Chapter 2, we do not know what the mutilated woman wants; we are, like Freud, looking at a culture that embodies radical difference. This condition of not knowing, at the level of the unconscious, inures the anxiety that we do not know what will fill the lack introduced by castration, a condition resonant with not knowing the (un)certain desire of the sovereign-Other. *Knowing*, common or otherwise, offers the conjoining reference point for the condition of the subject before the law of the state (of the sovereign) and the condition of the subject before the law-of-the-father. If the subject knows what the sovereign wants of him/her – now and in the future – then s/he can obey, agree or align, as discussed in the last chapter. From this position the

1 Baroness Masham of Ilton, *UK Hansard*, 18 June 1985.

sovereign and the subject have no lack, and agreement, even obedience, assures a continued position of subjection as opposed to subjugation – what Douzinas calls *subjectus*.² Similarly, if the subject of castration can *know* the desire of the Other, as the one who can sanction the Ideal image in the mirror, then the love of the Other – or we might say, the position of being all that one imagines oneself to be – is secured. In both these positions there is no lack. However, the condition of subjectivity – the condition before law – is not this. One cannot know the desire of the Other. As Collette Soler explains of ordinary subjectivity:

There is a twofold lack: a 'lack of knowing' and a 'lack of being'; a 'want-to-know' and a 'want-to-be.' The neurotic subject [as an ordinary subject] seeks an answer to these questions by way of the Other's desire . . . In the Other of the signifier, the Other has a locus.³

And this, for Soler, is precisely why 'fantasy is always linked to angst . . . angst is caused by the Other's desire . . . Because the Other's desire is an x , and an x , an unknown, always produces anxiety.'⁴ The Other's desire, like the sovereign's, is an x . In the mode of Rousseau, one cannot know the enduring desire of the sovereign.⁵ In the mode of Schmitt, the sovereign's decisions⁶ – his wants – cannot be known beyond a moment's reading of legislation, beyond the definitive limits of the Rule of Law. Thus, even a knowledge of contemporary legislation will not save us from the angst. Legislation is subject to reform, overhaul, election, exceptional decisions and may even be subject to the life of the sovereign.⁷ The other's presence, other laws, other sovereigns, even other gods announce the presence of the x .

In this chapter I discuss the presence of the x as the absence of knowing, and the effort to quell the anxiety announced through multiculturalism and the pluralities of sovereigns, and indeed of values. I argue that the effort to produce certainty in the symbolisation of the flesh of others is both an effort to produce the other's Other as violent and as not knowing the *real, true and correct* codes of being. The fantasy of *real* codes signifies what we have come to call, in the mode of political theology, the sacred of western democracies, and in this chapter I discuss how the characteristics of the sacred – linked to that of the Lacanian *objet petit a* – are represented as what *cannot* be harbored in the flesh and speech of an other who articulates the values of an-Other's law.

2 Douzinas (2000).

3 She is speaking here of the 'neurotic' which I am extrapolating as the 'ordinary subject'. Soler (1996), 262.

4 Soler (1996), 268.

5 Rousseau (1762, 1968).

6 Schmitt (1985).

7 Rogers and Rush (2009).

Another's Other

If we take the example of the category of 'medical necessity' in female genital mutilation legislation, as discussed in Chapter 2 we can see that there is a tension in the promise of a place in which to align with the sovereign; even in legislative terms one can never be certain. In a modernist world in which biomedicine is *the only* science,⁸ it might be easy to accept that an affiliation with the category of medical necessity renders the subject – who is cut – safe from mutilation *qua* castration. In a multicultural, postmodern landscape it is possible, however, to doubt that biomedicine or medical necessity cannot readily be re-defined; what is medically necessary at one time may differ at another, or indeed may differ between experts, or between sciences.⁹ The myths *qua* facts of biomedicine that have defined what should or should not be cut out, into or off the body of the subject, have been prolific since scientific discourse first came to acquire the status of truth production.¹⁰ The uncertainty of the status of these truths, and indeed of any truths, leaves the subject open to the anxiety that the definitive parameters of *the right* ontological condition might shift, indeed they might be wrong and – here is the rub that difference announces – another sovereign-Other might be right.

Of course, there is no right or wrong to the perceived codes of an imagined Other; the *x* is indeed an *x* that cannot be known or judged to be correct or true, but the subject makes every effort to achieve or acquire that *x* as a protection against castration, and, as I have explained in previous chapters, as a protection against the displeasure of the parent or sovereign. What multiculturalism, as a policy that encourages cultural pluralism, evokes is the presence of another who might affiliate with the values inherent in an-Other's law. The presence of other subjects – others whose ways and bodies respond to different treatments, whose opinions and values hold the status of truth in their cultures, whose clothing and behaviour articulate with different laws – suggest that there may simply be another way to live that is legitimate,

8 I refer to biomedicine as the 'only science' in the sense of it being both dominant and privileged in the context of any contest over legitimacy. In this sense, it is the 'only science' that qualifies as a science in the context of medical discourse.

9 There is heated debate about the biomedical benefits of male circumcision currently in America, particularly San Francisco. As one article notes: "The foreskin is there for a reason", says Lloyd Schofield, who spearheaded the San Francisco anti-circumcision bill. Speaking to ABC News in May, Schofield called circumcision an "unnecessary surgery" with no "sound medical evidence" behind it. Recent studies suggest otherwise, (Drs.) Gray and Tobian argue, "The evidence for the long-term public health benefits of male circumcision has increased substantially during the past five years," the authors write. "If a vaccine were available that reduced HIV risk by 60 percent, genital herpes risk by 30 percent, and HR-HPV risk by 35 percent", as recent studies have shown, "the medical community would rally behind the immunization." Hutchinson (2011).

10 Foucault is of course the best writer on this condition: see Foucault (1973); and Foucault (1965).

and even beneficial, to the populace. The narratives of 'progress'¹¹ suggest a filtering of these practices into an end point that will be 'right', but history proves this narrative problematic and the presence of others – and particularly Indigenous others in nations such as Australia – can draw attention to the impossibility of a point of reconciliation¹² or co-integration of cultural practice. Some practices can be conflicting *and* right,¹³ and this can enhance the anxiety of subjects from cultures which look to positive law, and its accompanying scientific truths, to provide the codes which promise protection from the prohibitions and mutilations of law.

The anxieties of pluralism, and of the legitimacy of an-Other's law, are similar to those which haunt the global presumption of humanity inherent in human rights and the evolving generations of these rights – particularly embodied in the now third generation of rights such as 'group rights' or 'green rights'¹⁴ in the form of the International Convention of Civil and Political Rights, and Rights for Indigenous Peoples. Even the presence of the United Nations Education, Scientific and Cultural Organisation (UNESCO) and its recognition of such things as *Intangible Cultural Rights* evokes the presence of the Other's law. Multiculturalism, as a domestic policy, attempts to hold this presence in check with the qualifiers that the migrant, refugee or even the Indigenous person must live 'under shared laws',¹⁵ and recognition of practices as *Intangible Cultural Rights* by UNESCO is always subordinated to the values articulated in the Universal Declaration of Human Rights, which are famous for their articulation of *specific* cultural values – as western values – or in the terms I am discussing here, the values of a specific singular Other.¹⁶ And, of course, the condition of sovereign recognition itself that often defies the doctrines and demands of human rights, suggests a prioritising of a particular and definitive status to how *one should be* – in Australian and

11 Here we can note what we might call a *desperation* in this narrative, emblematised in a poster for Amnesty International which depicts women in the burqua and a title 'Human Rights for Women and Girls in Afghanistan'. The subtitle offers the frame of desperation, however, with 'Nato: Keep the progress going!'. For a discussion of this image, see Ghumkhor (forthcoming). For a discussion of the narratives of progress and violence, see Reemtsma (2012).

12 I am referring to the reconciliation of the signifier with the desire of the Other, but this also points to the problem of reconciliation discourse in the political. See Schaape (2005).

13 In Australia, the debate about practices such as 'payback' in Indigenous law and its conflict with human rights speaks specifically to this problematic, and causes extensive debate. There have been attempts to reconcile the two laws, but most of these have failed abysmally, and are viewed as detrimental to both populations. See Australian Law Reform Commission (1986); Zdenkowski (1994); and Rose (1996). This has prompted some to talk about an idea of 'agonistic reconciliation', and while this may be politically helpful, it is likely to enhance the anxiety of a population who looks to law for the codes of being.

14 Douzinas (2000), 115.

15 Multicultural Victoria Act 2004, version no. 005, no. 100.

16 See Brown (2004); Douzinas (2000); and Spivak (2003).

American terms, a particular 'way of life'. Despite these out-clauses of recognition, the migrant's desires and indeed her/his call to rights are endlessly under contestation. There will always be future generations of UN conventions, and law will always change and (mis)recognise the desires of the Other. This is perhaps why borders shift, policies are revoked and laws are aggressively asserted continuously over and above the knowledge and values of minority communities – as calls to legislate female genital mutilation attest. The other's desire, while subject to the law, is as uncertain as the terrain of law itself, and at any moment it may overtake *us*.¹⁷

If the subject who aligns with a national law – as a means of identifying him/herself in the speech of the Other – is confronted with a subject whose identification and desire lie beyond the gaze of that subject (the good nationalist,¹⁸ let's say), then there is likely to be a traumatic fracture in the nationalist's affiliation. This fracture must be reconciled. As Ghassan Hage has discussed, these kinds of fractures are overcome by strategies of management of others.¹⁹ Reconciliation of such fractures is performed at the level of an imaginative rendering – a management²⁰ – of the flesh of that other as a remnant of mutilation flung into non-relation, but it also requires the construction of the Other of the other as an abhorrent sovereign, as a sovereign whose language offers no reflection – and therefore no solace – to the good, nationalist, obedient subject. This is the construction of the other's law as emanating from the wrong sovereign, and thus not able to harbour the significance of *the* (big O) Other.

In the fantasies of female genital mutilation, the anxiety over the possibility of another Other is announced in the presence of the midwives, *buankσίας*, *dayas* or doctors who perform the circumcisions. It is these figures who embody the law and the violence of mutilation. Any concern over the legitimacy of this mutilation, however, is swiftly reconciled in the presentation of the people who perform female genital mutilation as heinous, cruel barbarians – the mignons of the wrong sovereign. These practitioners are never represented as simply benign entities performing their work with thoughtfulness, consideration, care or even indifference. They are portrayed as cruel, selfish women working only for money, status and a kind of sadistic pleasure, aligning only with their own interests. As Ramos Rioja describes the *buankσία* who circumcises Kadi: 'Like any other of the many vultures flying around, the old woman even took some of the sweets which had been brought for Kadi.'²¹

17 The management of multiculturalism and its uncertain parameters that are constantly being overrun by the migrant, together with the 'white' subject's terror of being overrun by the other's desire, are well documented in Hage (1998).

18 I am using Ghassan Hage's idiom here (Hage (1998)).

19 Hage (1998), particularly Chs 1 and 2.

20 I have discussed the management of 'mutilated women' further in Rogers (2007a).

21 Manresa and Ramos Rioja (1998).

And again, these sentiments are mirrored in Alice Walker's novel through the representation of the midwife, M'Lissa – who circumcises Tashi's sister – as particularly harsh and uncaring about Tashi or her sister's experience. This depiction continues throughout the novel as M'Lissa is characterised as without any regard for any of the young women she circumcises or their pain. M'Lissa's cruelty is so definitive in the novel as to warrant her being killed by Tashi, not as a murder, in the novel, but – in the vein of capital punishment – as judicious retribution. Similarly, research into female circumcision carried out in Italy does not discuss the midwives as women who perform a trade with degrees of care or even disinterest, but hypothesises that there is only one woman who moves from region to region performing mutilations unchecked by law. This singular figure bears the sinister marks of a serial killer or a dark shadow who roams the land plying her vile trade.²² In recent commentary on female genital mutilation in Australia, derogatory comments were made about the midwives being paid for their work, as if being paid for work is something that defines the women as uncaring or perhaps as mercenaries. These midwives were also referred to as 'unqualified' without any reference to what that lack of qualification might be, and in whose regard one could be qualified to circumcise.²³

It is perhaps Manresa and Ramos Rioja's comments on *buankias* in general and the *buankia* who circumcises Kadi in particular that portray these women as particularly cruel and unaccountable to God or law. In the opening preamble to *Kadi*, Ramos Rioja writes her 'Chronicle of a Sacrifice' in which she offers this emotive account: 'In the chronicles of the Rwanda massacres, it was said that it seemed as if African children didn't know how to cry. Kadi's cries went from weeping to barely a whimper: the *buankia* . . . didn't give it a thought.'²⁴ The (unreferenced) links with the Rwandan genocide in 1994 are particularly significant here as they offer a picture of what is often described in the West as the senseless violence that Africans enact on each other in the name of . . . what? And here is precisely the point: the description of the Rwandan genocide as 'frenzied killing' and 'mindless violence' point to an animalistic need that references no law.²⁵ There is no direction, no code, no sense that can be made of what is done to Kadi. In the place where we might understand the law, politics or religion to be referenced, a *senselessness* apparently prevails – at least for Ramos Rioja and Manresa. These *buankias* operate without reference to a morality or ethics that harks from the imagined place of the Other; they are animals, indeed vultures, who require no sanction. Even if they were to have beliefs about the practices, these beliefs are regarded, as I discuss in previous chapters, as 'myths' and delegitimated,

22 Grassivaro (1999).

23 Caro Meldrum (2012).

24 'Chronicles' in Manresa and Ramos Rioja (1998).

25 Anan and Thompson (2007).

in the fashion of the words of Koso-Thomas in *Kadi*, who suggests: 'Those who die [of complications from mutilation] are termed as wicked witches whom the community are [sic] glad to be rid of, hence the killing of chickens as sacrifice to appease the ancestral gods.'²⁶ Such gods and practices of witch-killing are long gone in western cultures, and the reference here points to a kind of *non-sense* with which these practices are now regarded.

Their gods and their beliefs summarily dispensed with the *buanksias*, *dayas* or midwives are rendered 'primitives' without any *real* codes or beliefs. They have no Other, as it were; in the vein of the trajectory of the flesh discussed in Chapter 2, there is no cultural sanction, no relevant ritual, no pact or covenant that legitimates the practices. The *buanksia* practices alone for her own animalistic needs. The mutilated woman/girl is left alone with no community to welcome or regard her. This is a horrific fate it seems – indeed this is what makes the readers of *Kadi*, such as Pamela Bone cited earlier, 'angriest' as I have suggested. But the possibility of the mutilated girl or woman left alone is perhaps less horrific to the anti-fgm advocate, affiliating with liberal law, than the imagination that the *buanksia* might be sanctioned by another, *legitimate* law. This possibility would testify to the uncertain position of the subject affiliating enthusiastically with liberal law, it would announce the presence of another Other. And it is this possibility, so horrifying in a pluralist nation, which would propose a question as to the mutilated status of those experiencing circumcision. More than that, however, it would propose a question as to the security of the position of the non-mutilated subject before a sovereign-Other, and the security of that sovereign's desire, as well as his/her endurance as a sovereign.

The terrorist(s) Other or unqualified democracy

The production of another's Other as less than worthy of authority – as 'unqualified', sadistic and frenzied – enables a delegitimation of the other's codes of being, but in an imagination of the practices of female genital mutilation this is not a difficult rendition. The mutilation, once constructed as mutilation, is always already a very different practice from western practices – even if the practices involve cosmetic or biomedical cutting. Further, the condemnations of domestic law and human rights conventions enable the *buanksia* to be easily rendered criminal, an outlaw in her interpretation of the law-of-the-father; her meaning is no meaning at all, her practice is merely mindless, vicious violence for her own gain. But when the recipients of the violence exercise either consent for – what is perceived to be – a harm, or engage in practices which both mirror western practices, it is not the practitioner which is rendered unaffiliated with an Other or 'unqualified', it

26 Koso-Thomas's 'Prologue' in Manresa and Ramos Rioja (1998).

is the subject that is *unqualified to be subject*; unqualified to consent, to desire or to engage in the practices of the West. And this points to the specific fantasies of the subject in the practice of democracy.

Democracy is one coordinate which enables a sanction of a particular sovereign's law, as the sovereign-Other's law, because the trope of democracy is the professed *recognition* of its subjects in their desires and their say. That is, the relevance of its subjects as subjects.²⁷ This recognition is insufficient, as a determination which relieves the anxieties of the contradictions in another's Other, however, particularly when that sovereign-Other behaves *too* differently from western sovereigns. It is then that the question, in Santner's terms the question of '*existential legitimacy*'²⁸ of the subject in the parameters of international foreign policies – of nations such as the United States and Australia – emerges as a question. The subject who chooses a sovereign who is *not the correct sovereign* is not a subject at all. Democracy, at this point, is declared as not *real* democracy because the subject who elects — like the *buanksia* of female genital mutilation discourse — is an 'unqualified' subject. But the sovereign too is rendered unqualified as one who could articulate the correct mode of political being for his/her subjects.

The representation of other sovereigns as unqualified comes generally as accusations of corruption — as with the incessant representations of former Palestinian leader, Yassar Arafat, or of abuses of human rights, Saddam Hussein being the obvious candidate — but when those accusations are less available and are unable to be applied, then the subject (and we could say citizen here) itself is rendered corrupted. And, like the subject of mutilation, the corrupted citizen does not know what s/he wants. Even if the subject chooses democracy, democratic choices which do not reflect the codes of the "western subject's sovereign-Other become 'bad democracies'. These are democracies which are said to engage in 'terrorism', they are 'rogue states' or — and this is my particular concern — they are influential of their subject's choices. It is this last activity — in a psychotic rendering of *free choice* — that is depicted in western representations of these states, to disable the capacity of the subject to choose the right sovereign.

Bad democracy is represented as performed in the election and rule of Hamas in Palestine and the presumption of the exercise of a violent sovereignty. The badness of an inferior non-western democracy is underwritten, not by the lack of democracy *per se* — the event in Palestine was certainly represented as an election by The People — but by a problem with the *quality of the people*, that is, by the lack of freedom of choice they were able to exercise due to the

27 I rely here on the representation of democracy through the work of C. Lefort and re-represented *in the flesh* in the work of E. Santner, but it is precisely Lefort's concern with 'regional ontology' that is pertinent to this discussion. See Lefort (1989); and Santner (2011).

28 Santner (2011), 3.

colonisation of their minds. And this is depicted as a colonisation through and with (terrorist) ideology. Ideology always underwrites the decisions of the people, and indeed their participation in democracy. The fantasy that this can be otherwise is the foreclosure of the liberal subject on its/his/her own influences of ideology, the subject who presumes ideology (and indeed the violence of law) to be elsewhere. It is worth noting an example of this foreclosure in the consultation in Australia on female genital mutilation, when an objection was articulated by 'One member [of the Council, who] . . . sees [anti-fgm] legislation as a form of cultural imperialism.'²⁹ This objection, which we might see as admirable in postcolonial terms, denies the reality that all law is an imperialism enforced with violence from the (domestic) empire. The disavowal of the force of *all* law, in the mode that has been well illuminated by Derrida,³⁰ being enforced as a violence upon the subjects of democratic nations suggests that there is an imagination, at least in this advocate, that law can exist with consent, without force and without the necessary violence of sovereign decisions.

The instantiation of democracy however, or indeed of freedom, is always the instantiation of force. As Renata Salecl so succinctly offers:

The invention of democracy brought with it the notion of a forced choice and a sacrifice the subject has to make in order to become a member of a community. The social contract, which incorporated the subject into symbolic community, is linked to the subject having to make a choice. The subject has to choose freely to become a member of the community, but this choice is always a *forced choice* . . .³¹

The apparent problem of the election of Hamas as a democratic authority is represented as a problem with the *interiorising of this force*, however: that the people who endure this violence are not able to surrender their freedom in the same manner as liberal, democratic subjects. The problem is that they are imagined to be unable to freely contract with the sovereign. And this freedom is represented as tied to a supposed free subjectivity that exists prior to the forms of violence that are inherent in the production of the subject.

The emphasis on the supposed non-freedom the subject of bad democracy has to contract with the sovereign is particularly evident in the repeated representation of young people as brainwashed, or what we can think of as psychologically colonised by the ideals of Hamas.

29 Family Law Council (1994b), 47.

30 Derrida (1990).

31 Salecl (1994), 126. Salecl explains that 'if the subject does not choose community, it excludes itself from the society and falls into psychosis'.

As one *YouTube* address to Ban Ki-Moon suggests, Hamas children are being 'indoctrinated' and 'brainwashed' to be violent, military martyrs.³² This address shows scenes of children in military dress carrying weapons and marching to 'Islamic music'. The marching music is repeated over and over, loudly, distorted by the sounds of marching feet. The bodies of the children respond, rhythmically, to the marching music of war. The music appears as a permeating violence of the children, instituted *in the flesh*. The children's bodies *are Hamas's*, supposedly violent, agenda. The ideals of Hamas are represented as cut into the subject that ensures these children will 'never be the same again'. Once cut, these children then grow up lacking in the capacity to exert agency free of the indoctrination inserted through the cut. Indeed, they are then the subject of human rights – saved from their choices rather than applying them. These children are represented as lacking in a sensibility that would enable them to evaluate, and, in Rousseau's terms, 'see advantage' in 'relinquishing their freedom'.³³ Of course, these children do not *relinquish their freedom*, they, like children everywhere, are subject until they are deemed, within their own cultures, to be able to decide. The process of *growing up*, however, is elided in representations of a terrorist ideology and these children remain as children, unable to decide for themselves – forever. The incision of Hamas's values thus remains *in the flesh*, like the cut of castration, but unlike the psychoanalytic formula for neurosis, the Hamas children do not wrangle with the cut, but remain severed from adult sensibility.

This version of the endless child or what we can call 'false consciousness' is similar to the construction of mutilated women in Australia who, having been de-infibulated for the purposes of childbirth, then ask to be re-infibulated.³⁴ These women, despite exercising their adult consent and determined choice to be re-infibulated are deemed not to be able to decide, somewhat ironically in this terrain, *what they want*. This is because, imagined as severed from the freedoms of western children to be uncut, they are unable to exert an adult agency. In short, having surrendered at an early age – to either mutilation or to 'brainwashing' – they do not grow up at all. The people of Palestine, like

32 In a deliberately casual internet search in which I typed into Google 'Hamas brainwashing children', I located multiple stories and *YouTube* clips to emphasise the plight of children in Palestine. One such clip was this one, entitled 'Children of Hamas: where is Unicef?', *YouTube*.

33 Rousseau (1762, 1968), 51.

34 This request is denied to then with the unfounded explanation that this process is 'criminal'. The Royal Women's Hospital in Melbourne is continually engaged in battles with advocates from Horn of African communities who try to assist women who want to be re-infibulated. The hospital's claim is that the re-infibulation is criminal under the Crimes (Female Genital Mutilation) Act 1996. This claim is unfounded and re-infibulation would readily fit into categories of 'medical necessity' in the same manner as the sewing of the vagina after episiotomy is constantly practiced.

the mutilated women, are imagined as childlike; they do not *develop* in Rousseau's image, they do not 'reach . . . the age of reason and become the only judge of the best means to preserve [themselves]'.³⁵

This is a similar dynamic, discussed by Spivak as applied to the 'third world woman' in her relation to narcissistic desire as her determination as interminably pre-oedipal. The third world women of gender and development discourse, like the Hamas adults, never reach the 'age of consent', but are endlessly sentenced to *echo* the sensibilities of a western political and psychoanalytic construction of the subject.³⁶ It is not that these subjects do not age, it is that they do not *age freely* – that is, they do not age with the capacity to develop reason; a *particular and invested reason* as ideology has already been inserted into them.

I have elsewhere linked the problematic, represented as the *interiorising* of the ideals of the sovereign in the infantile flesh, to the rather bizarre plot in *Matrix Reloaded*.³⁷ Specifically the narrative device in which the (evil) Mr Smith's repetition of himself *inside* the other characters is seen as something which must be countered by the messianic figure of Neo. In the second film of the trilogy the evil Mr Smith seems to be able to colonise the bodies that inhabit the matrix (the programmed world). This would not, on the surface of it, seem a problem for those who inhabit the matrix program since they are already colonised, literally in the flesh, through their suspension in battery-like jars. The bodies colonised by Smith are computer-programmed images and, indeed, the Smith-figures seem even to retain some of the knowledge or characteristics of those he inhabits. What's the problem? Why does this warrant Neo's, or even 'the machine's', attention over and above releasing the bodies from jars?

The problem hinted at in the film is simply that the programs cannot *be themselves*. They cannot be their own masters. Like the children colonised by the ideals of Hamas, or indeed those of Islam, as is often discussed about Islamic schools (*madrasa*) who 'recruit' innocent, young people to suicide missions, the subject must be free to choose his/her ideals. To be the self it *wants* to be beyond the colonising ideological *programs* of any politics. This is, of course, Neo's position in the film and it is worth considering this character in relation to the super-hero figure of anti-fgm initiatives, such as CAGeM, discussed in Chapter 2. However, the capacity to be the (super hero) self prior to politics is no more possible under the tenets of liberal ideals learnt in western schools or consumed as a diet of western products and productivity, than it is under the influence of Hamas welfare. But the function of the concern with 'brainwashing' Arab children³⁸ offers a sinister text

35 Rousseau (1762, 1968), 51.

36 See Spivak (1996b).

37 Rogers (2007b).

38 And the colonising of the characters in the *Matrix Reloaded*; written and directed by A. Wachowski and L. Wachowski, 1999.

against which to measure the possibility and representation of freedom for the western subject.

Innocence as ideology

In the *YouTube* address to Ban Ki-Moon (mentioned above), the Islamic music periodically interrupts the repeated rendition of the children's song 'Twinkle Twinkle Little Star', as if this anthem of innocence is what is preferable and appropriate to children's ears. We can read this interruption as a suggestion that the innocence of children is severed by the music, just as the anthem is drowned out by the Islamic melodies. 'Twinkle Twinkle Little Star' is not free of ideology, of course, or one could say it is riddled with the ideology of non-ideology. The lyrics 'up above the world so high, like a diamond in the sky' sets the world as a place from which all children can (or should) be able to look above and see the stars that other children see. A position from which all children 'born free and equal, surrender their freedom only when they see advantage in doing so'. The point of *surrender* is, precisely the contested site, and the lens through which they see advantage in doing so deserves exploration. Without wanting to be trite about the comparatives,³⁹ the ideologies which are disseminated among children in the West can be read as not un-aggressive in their indoctrination. Children in the US public schools are required to recite the 'Pledge of Allegiance' to the American flag every morning while standing with their hands over their hearts. Not dissimilarly, children in public schools in Australia are also regularly required to sing the Australian National Anthem, which states: 'Australians all let us rejoice because we are young and free'. The insidious violence inherent in this anthem is not to be underrated. Nor is the Indigenous and non-Indigenous objections to its presumptions.⁴⁰ The notion that Australia is 'young and free' denies the reality of many Indigenous nations in Australia being regarded as the oldest

39 There is a difference between asking children to shoot guns or become child soldiers than to sing songs or to pledge allegiance. But the militarisation of small children in the West is not unapparent, but largely evades criticism because these children are not *immediately* engaged in a war. Therefore, to pre-empt the criticisms I may get about the militarisation of Hamas being different from that of children in schools in Australia and America, I will direct readers to sites for private boys' schools in Melbourne which offer images of 'cadets' training in military uniform and excursions for junior students to military facilities. Presumably these children are aware that air force planes drop bombs on people.

40 One of the most poetic and emotionally evocative – perhaps, particularly, for an Australian – objections to this 'anthem' is articulated in the popular Tiddas song of the mid-1990s 'Anthem'. In this song the lyrics stress the problems of describing Australia as 'young and free' and note the absurdity of this assessment of subjectivity for Indigenous Australians. As the lyrics go, 'we might have been born here, but we're not young and free . . . don't sing me your anthem, when your anthem's absurd'. See L. Bennett, 'Anthem', *Tiddas* (1996).

living peoples in the world,⁴¹ and the Indigenous rates of incarceration in Australia being the highest in the world.⁴² Indeed, to say Australia is 'young and free' is to repeat the violence of colonisation in Australia that depicted and acted as if Australia was *terra nullius* – empty land – before the British arrived in 1788. This is supposedly a concept that has been retracted and regretted in Australia,⁴³ but the anthem remains.

In both these nations freedom is positioned as what the child has despite the infringement of an ideology about that freedom. The Australian and American children are represented in a paradoxical frame in which innocence is the state of the child – and ideology is a violence. But the very freedom that these children are being instructed that they have (particularly in the Australian case) is an ideology that indoctrinates them with the belief that they are innocent of ideology. Thus, innocence itself becomes the ideology that pretends to the foundational ingredient of being able to be free of ideology.⁴⁴ And, crucial to this fantasy of western freedom, the colonisation of the children of Palestine is radically opposed to the rhetoric of western democracy. The violence of the law of western democracies may be inflicted, certainly – as prohibition, arrest or imprisonment – but its perpetration is represented as *outside the body*. It is apparently only inflicted because the subject, having chosen to participate in the democratic *polis*, then *freely chooses* to do 'wrong', to commit a crime. The democratic subject of the West is represented as able to remain free beyond the necessary infringement of law's force as a method of order, not a method of thought (or subject) production. In this condition of freedom s/he can choose to participate in the social contract with the good, democratic sovereign-Other. This is the condition of his/her flesh as non-mutilated.

The condition of freely choosing the ideologies, values or indeed contracts one is offered is paradoxical, precisely because the desire for a particular choice is inherent in the experience of becoming a subject. As Judith Butler explains models of power, which suggest an outside to the experience of power, they

41 There is very little in contemporary Australian politics that could be more violent than suggesting that Australia is *young*. Indeed, when the child in the Hamas *YouTube* clip states that he thinks Jews are shooting at him because they are animals, this recruits a similar logic to Indigenous and settler relations in Australia, which are haunted by the histories of *terra nullius* that suggested Indigenous people were not 'people' (worthy of the name) before white people arrived in 1788. Indeed, before 1967, Indigenous people in Australia were recognised under the Flora and Fauna Act. This is a method of recognition which is disturbingly replayed in the Australian anthem's suggestion of the youth of the Australian nation. See *Mabo and Others v. Queensland*, no. 2, 1992, 175 *Commonwealth Law Reports*, 1.

42 *Aboriginal Deaths in Custody*, Royal Commission and its Records 1987–91.

43 *Mabo and Others v. Queensland*, No. 2, 1992, 175 *Commonwealth Law Reports*, 1.

44 For an excellent discussion of the ideology of innocence in America, post 9/11, see Bergoffen (2006).

are represented as an imposition 'on us, and weakened by its force, we come to internalize or accept their terms', but this representation she explains 'fails to note . . . that the "we" who accept such terms are fundamentally dependent on those terms for our existence.'⁴⁵ In responses to the declaration of male circumcision as criminal in Germany, we can see this paradoxical status played out in the debates which largely extol the values of *choosing to be circumcised once you are old enough to choose your culture*.⁴⁶ The objections to circumcision itself (and this is often the objection to female circumcision) are that children should be free to choose their culture. As if that very premise isn't a cultural product in itself, and as if children are not cultured from birth – including into gender, race and nationality, but beyond that into ideologies of law, order, manners and, in the contemporary West, even into the discourse of human rights. The ideologies of choice, freedom, agency and the impetus to surrender that freedom (or not) do not pre-exist the production of the subject. In Butler's terms, we are 'passionately attached' to our own subjection and, in the West, we are also passionately attached to ideologies which represent this attachment as a choice; so attached that these ideologies *feel* as if they are part of us, like skin; like flesh which has never been cut.

Giles Fraser, writing in the objections to male circumcision in Germany, puts the notion of pre-culture-agency nicely with regard to faith when he says:

[O]ne of the most familiar modern mistakes about faith is that it is something that goes on in your head. This is rubbish. Faith is about being a part of something wider than oneself. We are not born as mini rational agents in waiting, not fully formed as moral beings until we have the ability to think and choose for ourselves. We are born into a network of relationships that provide us with a cultural background against which things come to make sense. 'We' comes before 'I'. We constitutes our horizon of significance.⁴⁷

In a Lacanian idiom we can explain Fraser's critique of 'mini rational agents in waiting' as a critique of the fantasy that the subject comes before the Other. For Lacan, this is an impossibility. There is no subject before the Other. The subject is constituted in the discourse of the Other.⁴⁸ The subject is born into

45 Butler (1997b), 2.

46 As if the notion of choice wasn't already an ideology. For an excellent discussion of the notion of choice in Western culture, see Salecl (2010).

47 Fraser (2012).

48 In the extended explanation by Lacan of this situation, he locates the unconscious – that which is inaugurated through language and thus through the instantiation of the law of the father as 'the beyond in which the recognition of desire is tied to the desire for recognition'. Lacan (2006), 436.

a network of signifiers, a symbolic order, through which all acts, marks and even body parts take on a significance that is already proscribed through the cultural significance of those parts. The subject is thus constituted or recognised through this lens: 'boy', 'girl', 'black', 'white', 'poor', 'rich', 'Jew', 'gentile'. This constitution, its manner and its acceptance, is a matter of violence as a circumscription of flesh in (biomedical) categories which demand their performance. The site and manner through which, in Fraser's terms, these 'networks of relationships' come to take on significance forms precisely the framework for understanding the significance of what we can call *the cut of culture*, or in a psychoanalytic idiom, the cut of the Other; what I am calling law's cut.

The cut of the Other

The demand for law or international intervention is informed by opinions – scientific, biomedical, political – on whether the cut is one of violence or culture, circumcision or mutilation, brainwashing or education, and – what we will get to shortly – torture or interrogation. These opinions are answers to the question: how far can you cut into the body of the subject before subjection becomes subjugation? When Baroness Masham of Ilton says 'our rituals are harmless and hurt no one', she is deferring the liberal uncertainties that haunt the question of harm. These uncertainties – and their accompanying rhetorical contortions – enable circumcision to become mutilation, torture to be defined as causing pain rather than 'severe harm', protest to be deemed terrorism,⁴⁹ or free choice to become a forced choice and vice versa. These concerns are not really about how much is cut – which is the economic logic that tends to frame female circumcision (as opposed to male circumcision) as mutilation – it is a question of what is sacred to the body and what is sacred to the polis.

In the next chapter I'll discuss the ambivalence of the sacred in Giorgio Agamben's terms, but here, I'll consider a *specific valence* of the sacred as a quality that remains *in tact* in the face of the other's Other. That is, what cannot be signified otherwise. In reference to the sacred we need only evoke the Islamic definition of God as 'there is no God but God' and apply it – not heretically – to the Lacanian Other as 'there is no Other but Other', and extend this formula as the function of denoting a definitive reference to the sacred object. What is perceived, culturally, to be without question, doubt or, in a Lacanian sense, without the insistence of the Real, is what remains non-eroded by time, progressive investigation, democratic consultation or

49 This is particularly significant in Australia in relation to the Anti-Terrorism Act 2005 and its inclusion of notions of 'sedition'. These measures were strongly objected to by many comedians and public commentators: see Martin (2005); and Williams (2007).

the perspective of others. What I discussed in the last chapter as that which is *clearly understood or commonly known*. The sacred is that which is imagined to endure beyond the pluralities of meaning that emerge in the face of multiculturalism or cosmopolitanism. The sacred offers the promise of 'universal satisfaction'⁵⁰ in the gaze of *all*. This thing without doubt and without interpretation is what is both defined by the imagined Other and assists in the definition of the *true and correct* Other. And it is embodied in the flesh.

What is rendered sacred in the gaze of the Other cannot be harmed, corroded or assaulted. It is the object which, in Lacan's terms, the subject sacrifices of him/herself to the social – to be in the symbolic order. This is a sacrifice which articulates with both Lacan and Agamben, as precisely that which inaugurates the subject in law into language and into the polis. Lacan explicitly speaks of this 'sacrifice' as the 'choosing of the mark'⁵¹ which we can understand to be the choosing of the object of language. Certainly, in this choice is a loss – for Lacan, a sacrifice – but this loss is 'veiled' for Lacan by the imaginary function as the imagination of no loss. That is, the choice of words, of language, of that which is spoken denies the possibility that there is alterity to this choice of mark. For Lacan, this lack of alterity can be understood as an object having no 'specular image'.⁵² In ordinary relations between ordinary (neurotic) subjects, the mark chosen has an alterity at any given time. It can be argued against in discussion, and it can differ in interpretation and certainly in translation. But in the discourse on female genital mutilation, the object which is cut has no specular image. The object means specifically what the anti-fgm advocate says it means. The clitoris, as I explain in Chapter 8, is The Clitoris.

The narcissistic aggressivity attached to the meaning of The Clitoris and the meaning of the practices mean that this flesh, like the *objet petit a*, has no alterity in anti-fgm representations. This (lack of) representation is a violence that ensures 'there is no Other but (western) Other', and it is the same dynamic which is applied to those which *send* the *clear* law to the migrant other. The law in this dynamic embodies the fantasy of the certainty of the sovereign's desire, what we could call a non-specular desire. The production of the non-specular is thus a production of certainty, where what the woman, the migrant or even the terrorist wants is know. A function of the Freudian reality principle that utilises the death instinct to *kill off* alterity; to produce a singular reality, what I will call a *sacred reality*. The violence of this dynamic can be seen painfully executed, in the flesh, through acts of violence which endeavor a production of the sacred as the imagination of non-sacrifice in the choice of the mark, or in their choice of act.

50 Lacan (2006), 693.

51 Lacan (2006), 696.

52 Lacan says specifically, 'a common characteristic of these objects as I formulate them is that they have no specular image, in other words, no alterity' Lacan (2006), 693.

I'll elaborate here what might be thought of as an allegorical account of the violence of subject production – as the production of violence by the terrorist subject. However, what I want to suggest is that the work of acts of terrorism - such as that of Mohamad Siddique Khan, one of the London Bombers of 2005 – both mirrors the mechanics of violence that are the work of subject production, and that forms of so called 'terrorist violence' also speak directly to the dynamic of an aggressive subject production which allows for no question to the Other. That is, the efforts of subjects, such as Siddique Khan, are of course a violence, but they are a particular violence which embodies the end point of what we might call individuality, as a fantasy of not being *cut* by the Other and of being directly in relation to *The right Other*. In this sense Siddique Khan endeavors to make his *say*, as his violence, sacred to The People, through inscribing his flesh, his blood, his life into The People of London (if not the West).

We can begin to understand these efforts through a slow reading of Mohamad Siddique Khan's video statements as to his rationale for participating in the London Bombings. As he says:

I'm going to keep this short and to the point because it's all been said before by far more eloquent people than me. But our words have no impact upon you therefore I'm going to talk to you in a language that you understand. Our words are dead until we give them life with our blood . . . This is how our ethical stances are dictated. Your democratically elected governments continuously perpetuate atrocities against my people and your support of them makes you directly responsible . . . Until you stop the bombing, gassing, imprisonment and torture of my people, we will not stop this fight. We are at war and I am a soldier.⁵³

What Siddique Khan's statement points to is the use of flesh as an attempt to render the *say* sacred in the terms of the Other. His words are 'dead', but his blood animates them, 'gives them life'. Like the *objet petit a* – which falls from the orifice of the Other – the bodily fluid, urine, voice, gaze, which cannot be captured in language but is that which comes from the cut (the cut of castration), these are the pieces one imagines could fill the hole. In Siddique Khan's rendition, we could say that the flesh of the dead (including himself) as the remainder of the blast are the objects that fall from the hole made by the bomb blast. This is not an effort to only make himself heard, but to first make himself *significant* as one who can speak. To do this he must redefine the codes of the Other, that is, reposition the Other as his Other.⁵⁴

53 Govan *et al.* (2005).

54 It is, of course, erroneous to speak this way, but the crassness of violence lends itself to a crassness of analogy – there is nothing subtle about Siddique Khan's act, but there is a great deal that is *spoken in it*.

Siddique Khan's reference to 'ethics'⁵⁵ helps us to understand his efforts. Ethics points us to the Lacanian discussion of ethics as the activity of producing the Good. The production of the Good, for Lacan, is achieved through an arrangement of goods, in this case the goods as flesh. The Good is the jurisdiction of the Other insofar as the gaze which is imagined to emanate from the Other points to the value of objects and words. As Lacan says, 'the question of the good is articulated first of all in its relationship to the Law nothing is more tempting than to evade the question of the good behind the implication of some natural law'.⁵⁶ Siddique Khan's words, or indeed his death, can be understood as a desperate attempt to evade the question of the good *as a question*. For Siddique Khan, there is no question – as there is no God but God. And in evading the question he attempts to produce the Good without question.

Despite the representation in the West of most terrorist acts as either 'mindless violence' or a violence sanctioned in the terms of a bad Other (bad god) – similar to the positioning of the acts of the *buanksia* or *daya* in female genital mutilation discourse – Siddique Khan's efforts are no simple destructive or even vengeful act. It is not a question of him simply wanting to cause pain, although pain may be part of the equation. He explicitly states that he wants to make himself understood (we can say make himself *clear*). For Siddique Khan, his act does not constitute a *harm*, but a political exercise, *a desire for recognition*, what he describes as 'impact'. His act, like most acts which defy positive law's doctrines, is a correspondence that aims at the Other,⁵⁷ and in the extreme violence that is death – one's own and many others – we can understand the correspondence to be an effort to define *the texture and text of the Other*; Siddique Khan wants his Other to be *The Other*.

The (objective) goodness or badness of Siddique Khan's acts is not my concern. I am concerned with the effort to claim a definitive message and a definitive location for the receipt of the message. In the terms I used in the last chapter, to make the message clear: violence, particularly in its deathly forms we could say, is an effort to *define definitively*. The Freudian death instinct is specifically related to the reality principle because death is the very end point of definition, *it attempts to make of reality an object*.⁵⁸ That is, it makes

55 For an excellent discussion of the 'ethics' of Siddique Khan's act read through E. Levinas, see Pugliese (2010).

56 Lacan (1992), 221

57 Salecl on violence as an address in Salecl (1994). See Lacan (2006), specifically, 'A Theoretical Introduction to the Functions of Psychoanalysis in Criminology'. As Salecl suggests, 'He wants the Other, the symbolic order, to respond to his crime by giving him an identity he did not have before.' Salecl (1994), 102.

58 Lacan articulates this relation in Lacan (1977b).

reality real to all;⁵⁹ to erase all that may undermine the significance of the act, as *his significance*.⁶⁰ In Lacan's terms, the injury to the pieces of the body in an act of violence, and the rendering of them as inanimate, resonates with the pieces that fall from the Other's cut as an object that has no question. In the fantasy of cutting off these parts of the other's body, there is the promise of no alternate meaning. More than that, the act of cutting them – the 'terrorist's' act of violence – is the fantasy of producing meaning in the mode of the Other. Siddique Khan elevates himself to the author of death as the author of meaning,⁶¹ and not only the meaning of his act, but the meaning of the conditions in which it is committed.

Allen Feldman and the violent struggles in Northern Ireland can help with this understanding of violence in relation to the attempts to define history as memory, or as reality. As Feldman says: 'In the ecozone of violence, such regulatory memory is both constitutive of the self and a mark of personal finitude. Finitude affects not only personhood but collective memory – violence renders everything repeatable in its own mechanical reproduction and everything finite in its defacements.'⁶² Finitude is precisely the effort of the death instinct. An effort to define the end point of meaning of which there is nothing more to be said. This is because meaning sits in the terrain of language, in the symbolic order. Feldman's point about the capacity to author reality can help us with understanding Siddique Khan's ('ethical') efforts because 'the historical event is not that which happens but that which is narrated.'⁶³ Actors of violence may be understood as all acting in a way that claims to define meaning. This is distinct from those who enact 'violence' as participation within a symbolic order in which the meaning is clearly described by an-Other – that is, they might not care if they are defined as 'criminal' or not. One might be thought of as acting within the principles of law (as a criminal), the other as acting *as the Law*, as the effort to proscribe who and what is criminal.⁶⁴

59 Importantly, this is different from the Lacanian Real. It is an acceptance of reality as truth.

60 This is an attempt to erase the Real itself, an attempt to erase all that signifies speech as such.

61 It is in this sense that we can see violence of this nature as the act of the psychotic in a Lacanian sense, an effort to reduce the other (and the self) to the condition of signification without paternity, or signification only through the meanings inscribed by the perpetrator of the violence.

62 Feldman (2003), 60.

63 Feldman (2003), 61.

64 We could make some parallels here with the Lacanian discussion of the *passage à l'acte* and performing as both an object of law's address and as the law, both falling and being the object that falls as discussed in Lacan (1994); S. Freud, 'The Psychogenesis of a Case of Homosexuality in a Woman' in Freud (2001).

The non-sacred say

Finally, here, I want to begin a discussion I will continue in later chapters, on the ramifications of the non-sacred status of the subject, or specifically, the non-sacred status of the subject's 'say'. While Siddique Khan may want his words to be regarded as – what I am calling – sacred, the say of those described as 'terrorist' (or even suspected terrorist), represents precisely the other valency that can be attributed to the sacred. A say which can be, in Agamben's terms, killed and yet not sacrificed.⁶⁵ Which is a say, as I will explain, that is represented as that which can be extracted from the 'terrorist' through torture, without (supposedly) causing the body of the tortured 'harm'.

The 'say' is that which inhabits the body of the qualified political subject, the one who freely surrenders, from a position of informed consent, without apparently enduring the pain of subjection to culture. This subject's say falls from the mouth of the subject into the ear of the Other and then falls again, as sacred, into the body of the polis. The say is the non-specular flesh that signifies and symbolises the flesh which makes up the body of The People. In this vein, we can say that the desire, will, opinion or 'say' of those in bad (Arab) democracies is not sacred because the say of the subject of bad democracies is no 'say' at all. Their unqualified bodies cannot produce a say worthy of the status of sacred speech. Their say has an alterity, a specular image insofar as it can be produced with alternate meanings. Their say is deemed to be dictated *to them*, not *by them*. We can understand this as a similar condition for the suspected terrorist or detainee⁶⁶ who is deemed to be worthy of interrogation as torture.⁶⁷ The detainee's body cannot emit qualified speech, it must be qualified in the language of *our* regime, *our* Other, not theirs. Sacred speech is that which falls from *our* Other.

To understand the status of the speech of the detainee as non-sacred and therefore able to be extracted through torture without causing harm, we need to understand the condition of speech in democracy. Free speech is that which is imagined to be *given freely* in the face of the sovereign. The detainee, however, is first constructed as one whose speech is extracted by *his own* sovereign – in the mode of the brainwashed Palestinians. His vote or opinion reflects the ideologies of a bad democracy and therefore needs to be understood thus. The extraction of his voice, his speech through torture therefore can be constructed as doing no damage because, in the mode of the mutilated,

65 Agamben (1998), 8.

66 For simplicity I will refer to this person as the 'detainee'.

67 Despite the formal objections to the use of practices of interrogation in Guantanamo Bay, Abu Ghraib and in black sites around the world as 'torture', I will refer to the practices of waterboarding, the use of stress positions, sleep deprivation, confinement in small areas (with insects), and others listed in the 'Bybee Memo', as torture. US Department of Justice (2002).

this extraction is potentially corrective. The cut to the body of the detainee is one which produces a *say*, in Elaine Scarry's terms, in the mode of the regime. As she says: 'World, self and voice are lost, or nearly lost, through the intense pain of torture.'⁶⁸ But the loss of this self is precisely the correction that a 'terrorist' requires. The self that remains from the cut of torture, like the self that remains from 'corrective de-infibulation', is the self recognised in the gaze of the good Other, and of the good sovereign. Thus, de-infibulation, like torture, is no harm at all; indeed, we could say it is medically necessary and it leaves the body only with sacred flesh, or flesh worthy of sacrifice.

68 Scarry (1985), 35.

The sacred flesh of human rights

My neighbor's *jouissance*, his harmful malignant *jouissance*, is that which poses a problem for my love.¹

Why must we follow the Golden Rule (the basis of human rights) finds an answer: because the other calls us. But it is never a fitting answer, it is not continuous with the question. Let us then call this a relationship, a discontinuous supplementary relationship, not a solution.²

What renders a body unworthy of human rights? Universal human rights, despite their apparent design and the seeming desire of the United Nations, are far from applying to the human universally. Their goal and their rhetoric lays claim to a definitive method for bringing all of humanity into the protection of humanity's law. But their very promise of success, and thus the closure of a model of law for global society, has produced a closure of thinking. As Costas Douzinas so eloquently offered in the last lines of his much cited *The End of Human Rights*: 'When the apologists of pragmatism pronounce the end of ideology, of history, or utopia, they do not mark the triumph of human rights; on the contrary they bring human rights to an end. The end of human rights comes when they lose their end.'³

A belief that we are at the end of human rights is a belief that we are at the end of thinking about how and indeed why societies and individuals should be saved from violence, despair, hunger and political repression. There is, as Douzinas implies – and the critical projects on human rights testify – a good deal more to be thought about in respect to human rights, their practice and ideological dominance. This chapter offers something to the loss of the end of human rights, so that we may think again (and again) on how this global movement, which promises all, has failed so spectacularly to offer all.

1 Lacan (1992), 187.

2 Spivak (2003), 531.

3 Douzinas (2000), 380; cited as a beginning to his *Human Rights and Empire* (2007), 4.

The distinction in the application of human rights to some and not to others is a fundamental paradox in respect to universal human rights. Theories on why some human rights are upheld while others are put aside, or why some humans are deemed 'worthy' of human rights while others are not, collate theories on colour, race, intelligence, religion or capacity alongside critiques of economics, convenient allocation of resources or the dominance of a particular world order.⁴ There are few of these theories with which I do not find resonance. There is, however, a limit in many of them which does not account for the particularities of the application of some human rights and not others; an application which recruits subtleties of preference which include and go beyond race, class, culture, crime or economic convenience. For example, while I think it a matter of cultural dominance that the US foreign policy deems it essential for countries to adopt anti-fgm law before they receive financial assistance,⁵ a critique of cultural dominance does not account for the particular targets of such policy – why, if there is so much care for the plight of women, do they target female genital mutilation and not pernicious child birth – which kills far more women than female circumcision?⁶ There is a subtlety to the (mis)application of human rights which benefits from some psychoanalytic interrogation; an interrogation which may offer another idea on the broader problematics of the application and indeed the model of universal human rights.

We must first understand human rights as a relationship between humans. All relationships are characterised by ambivalence. The ordinariness of neurosis in the subject enables an 'affective ambivalence',⁷ a negative transference of feelings from one to another 'found side by side with the affectionate transference'⁸ in relation to others. In the case of relationship with another, this can be characterised as a 'battle between love and hate'.⁹ This is true of ordinary relationships as much as it is of those which are distant from us – on television screens, billboards, documentaries. Others are foreign and embody characteristics which we both love and hate, both want and despise, find disgusting and desirable. The rhetoric of human rights, however, suggests, and even demands, that subjects which require human rights are regarded without ambivalence but as wholly *deserving* of human rights – 'all human beings are born equal in dignity and human right', and I suggest this is intended to apply to both *all humans* and the *all of the human*.¹⁰ In short, the rhetoric and

4 See Brown (2004); Corradetti (2012); Douzinas (2007); Spivak (2003), 524–81.

5 Female Genital Mutilation, 22 USC 262k-2.

6 Boddy (1998).

7 Laplanche and Pontalis (1973), 26.

8 Freud (1912), 3.

9 Freud (1912), 5.

10 'Dignity', in its vagueness, gestures to the all of the human precisely by a process of elimination, what, of the human, we could ask, does not deserve dignity? Nothing. In a

doctrine of human rights demands that the human of human rights be viewed as sacred – in the mode I discussed in the last chapter, as whole and without erosion. But this demand denies that there is any ambivalence to the sacred.

What is now well established through the work of Giorgio Agamben is that there is and has always been an ambivalence to the sacred.¹¹ The sacred, for Agamben, is characterised by a taboo, in the Freudian sense, which acknowledges both the *value* of the object in the law, and holds it beyond the polis as an object of disgust, horror and abjection. The sacred, as Agamben says repeatedly, ‘can be killed and yet not sacrificed’, but the impunity attached to the destruction of the object does not deny that it has worth to the polis, but that it sits in *relation to the polis* albeit an ambivalent relation – to law. In Agamben’s terms, it is both inside and outside the law. And we might say, both loved and hated by the law.

I want to explain in this chapter that the condition of the sacred is the condition of the subject of human rights. This is to take the arguments, which are well rehearsed in critical theory, on the condition of subjects which require human rights as *homo sacer*,¹² into the scene of relationship. The taking of *homo sacer* into the scene of relationship is not to suggest that relationship is outside the political, but that the application of human rights always requires an assent by The People, an acknowledgment, a willingness to see, that the subject of human rights is deserving of our love. This is a willingness to see that the subject of human rights could be a neighbour, a colleague or a relation; a recognition of what has come to be called ‘the humanity in the other’. But it is precisely this status – this recognition of humanity – which provides a problem for the application of human rights.

The application of human rights requires a relationship in identification. The giving of, or the assent to, The People’s government giving of money, food, aid or even military assistance requires an identification with the plight of another. What I will explain in this chapter is that this identification is often characterised by feelings of betrayal, even pre-emptive feelings on the part of the subject who gives, when the subject of human rights falls from their position as idealised, that is, when they fall from their position as all deserving. At the moment of this fall – and through subsequent impoverishments – we can see the flip side of idealisation begin to characterise the relationships. Contempt seeps in, and sometimes characterises the relationship pre-emptively, and the victims of human rights abuse – the asylum seekers, the tortured, the detainee – are (re)positioned as deserving

complimentary manner Austin Sarat suggests of dignity that ‘[it] is to argument as cotton candy is to food, its sweet but in the end not very nourishing.’ see Sarat, (2001).

11 See Agamben (1998).

12 Douzinas (2000); this argument is also made by Agamben in ‘Means without End. Notes on Politics’ (2000).

of little but contempt. In Agamben's terms, *this* is the paradox of human rights: 'that precisely the figure that should have embodied human rights more than any other – namely, the refugee – marked instead the radical crisis of the concept.'¹³ This crisis is not only of the concept, but not mutually exclusively, it is a crisis of relationship in which the figure of human rights becomes the figure of contempt, of disregard and certainly not of love. From this position s/he is worthy of only selective human rights. S/he, as I will explain, is worthy only of a stagnancy of her flesh; a *being alive*, an existence *on the side* of the political, without status, without speech and without effect.

Speech and flesh

The reasons why our relationships with others are characterised by ambivalence is, in part, because of the competitive desire of those others. Freud offered the characterisation of the neighbour's desires in unequivocal terms:

Man tries to satisfy his need for aggression at the expense of his neighbor, to exploit his work without compensation, to use him sexually without his consent, to appropriate his goods, to humiliate him, to inflict suffering on him, to torture and kill him.¹⁴

On the surface this would seem to indicate a reasonable explanation for why we allow human rights abuses at all and even why we sanction, or do not enthusiastically object to, their perpetration – as in the case of torture. But a belief that we may *want* to abuse the other is not the whole story. We must remember that the subject of human rights is a neighbour to us, who, at some level, is believed to desire as we desire – to want to kill, exploit and use us sexually, as we would use him or her. The desires of the subject of human rights, particularly in its relation to the law – in terms of what can be given and what is prohibited – poses a problem for a non-ambivalent application of human rights because *these desires are competitive with our own*. That is, the love for the neighbour, as the subject of human rights is compromised by its desire to have those rights which are ours. As Lacan says, 'my neighbor's *jouissance*, his harmful malignant *jouissance*, is that which poses a problem for my love'.¹⁵ The neighbor has desires which are different and similar to mine. Similar, in the sense that human rights rhetoric announces, that 'all are equal' and then further demanded in the sense that these rights – as the very

13 Agamben (2000), 189.

14 Freud (1961), iii.

15 Lacan (1992), 187.

embodiment of desire – are universal; they are the neighbour's desires as well as mine. Thus, s/he is a competitor in my relations with the sovereign-Other. And then her/his difference further complicates my love, as I discussed in Chapter 5, because her/his foreign desires render the universalism (and thus righteousness) of my own in question. Specifically, however, my concern is with this *similarity as competition*, or what we can understand as a problem with the rhetorical demand in human rights as a recognition of humanity in the other, precisely because this humanity is one which harbors competitive desire. And it is this recognition, I suggest, which is the greatest problem for a generous or benevolent effect of human rights.

The problematic of the *jouissance* of the subject of human rights is specifically embodied in the articulation of its wants. As a silent, stagnant human with pleading eyes, open mouth and an easily accessible website, the subject of human rights is readily rendered lovable, and in such a position she can confidently be saved without posing a threat. The desires of such a human do not compete with my own. Hence, the representation of the deserving figure of human rights is almost always portrayed as silent – as in images of hungry children – or if s/he speaks, this subject speaks to *her own people* in a language we cannot (and need not) understand.¹⁶ Like CAGeM's stone-woman of female genital mutilation imaginations discussed in Chapter 2, the human of human rights is properly a subject in (silent) subjection, not one who articulates specific desires to participate in defining or acquiring the rights. It is when s/he speaks, and speaks her/his desire to be a subject, that s/he poses a problem as an object of love. Speaking as a subject is to be demanding rights, or we could say that speaking is putting language to the experience of need. The human of human rights can only be loved in silence, or the voice – that desiring demanding voice, the voice as a 'say' rather than as a mournful cry – must be severed from the object of my love.

The split between the lovable subject and s/he who is a competitor for *jouissance* is a split between the body and the voice. It is when the flesh speaks and attempts a recognition of its speech that it becomes a subject with desires that compete with, or question the validity of, my own. The voice must be removed from her in order to make her lovable, or we might say, *savable*, and thus deserving of human rights. This splitting of the voice from the flesh is illuminated in the specific and selective application of human rights, and the privileging of the savable flesh over the demanding voice. Anti-fgm initiatives in human rights specifically privilege the flesh over complex

16 This is commonly seen in children speaking in schools funded by aid programs, or requiring further aid to buy materials or to build more structures. In a recent American World Vision plea, there was a small departure from this where the children do speak directly about their needs. The non-competitiveness of the needs is highlighted through the advertisement, however, as it suggests that the donations are a surplus of what the American people have. See 'World Vision, One Life', *YouTube*.

values – which are necessarily articulated as demands – such as the ‘right to participate’ in public life, and complementary to this the ‘right to cultural integrity’. In their evocation in domestic consultations on the legislation, we can see the demoting of the right to speech, as what can be understood as the right to flesh; a right to maintain uncut flesh.

The violence of female genital mutilation, as a cutting of flesh, is succinctly articulated in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and in documents such as the Family Law Council’s *Report* on female genital mutilation in Australia, in which Articles 10, 12 and 16 are quoted as general statements about the importance and obligation of nation-states to ‘eliminate discrimination against women’.¹⁷ It is perhaps, however, in the UN General Assembly’s document, the Declaration on Violence Against Women, adopted in December 1993 and also cited by the Family Law Council, where the position of anti-fgm advocates recruit their most specific support through the association with the beating of women. This Declaration states:

2. Violence against women shall be understood to encompass, but not limited to, the following:
 - (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.¹⁸

This definition of violence to women seems unequivocal in relation to the matter of female genital mutilation. In the light of this violence, however, we can recall the forgotten words of the woman unequivocally stating ‘I am not mutilated’, and the speech of members of practising communities such as the Eritrean Council Australia, the African Women’s Working Group and the Eritrean Women’s Group in Australia who specifically objected to the use of legislation and the mode of consultation. Or we could even recall the words of ‘human rights warrior’¹⁹ Michael Ignatieff, who says that human rights are a: ‘*shared vocabulary* from which our arguments can begin, and the *bare human minimum* from which differing ideas of *human flourishing* can take root’.²⁰ The condition of the ‘differing ideas of human flourishing’ as the

17 This is the general principle in respect to education, health, family relations: CEDAW, Arts 10, 12 (1), 12 (2) 16 (1), cited in Family Law Council (1994b), 24–5.

18 ‘Declaration on Violence Against Women’, s. 2, Family Law Council (1994b), 26.

19 This is Anne Orford’s helpful term for Michael Ignatieff, which captures so nicely the aggression in his determination to adhere to human rights.

20 Ignatieff (2001), 95 (my emphasis).

speech of communities who practise female circumcision, its receipt and lack of recognition in policy and practice needs to be considered in the frame of a section of CEDAW. Article 7 states:

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women on equal terms with men, the right: . . .
 (b) *To participate* in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government . . .²¹

Participation is the performance of a speech act worthy of the name; to have a *say* in the 'formulation of government policy'. The need for a say is of course complemented in human rights rhetoric through the Articles of the Universal Declaration of Human Rights (UDHR), including the right of 'freedom of expression'.²² But *flesh comes first* and the body of the human of human rights is split into the need for an integrity of flesh against the need for, what we might call, an integrity of speech.

On the surface this privileging would seem an understandable hierarchy: physical violence can itself prohibit the capacity to speak or indeed to think – as we know well from Elaine Scarry.²³ However, in considering the privileging of one human right over another, we must recall that assumptions about the 'violence' of female genital mutilation are made possible through the exclusion of the speech of the communities in the first place. As Spivak says, 'the UN must first rationalise "woman" before they can develop her.'²⁴ And this too applies to the mutilated woman first rationalised *as mutilated*. The unproblematic representation of female genital mutilation as an injury to the flesh of women is enabled through subjugating the rights to self-determination,²⁵ to cultural integrity and to participate in government policy, to the image of female genital mutilation, as the image of a woman or a child being beaten.²⁶

21 CEDAW, Art. 7 (my emphasis).

22 Sleator, UDHR, Art. 19, United Nations website, available at <http://www.un.org/en/documents/udhr/index.shtml> (accessed 2 December 2012), which states: 'Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.'

23 As Scarry notes of the experience of pain, 'the contents of consciousness are, during those moments, obliterated' (Scarry (1985), 30).

24 Spivak (1999), 243.

25 Art. 1 of the International Convention on Civil and Political Rights (ICCPR) iterates the importance of 'the rights of people to self-determination'.

26 In the Family Law Council's 1994b report in Australia, the link is immediately made between female genital mutilation and such practices as torture through the citing of

The rendition of the flesh

Torture and female genital mutilation are often placed on the same page. In a recent article in the *New York Times*, Nicholas Kristof wrote:

People usually torture those whom they fear or despise. But one of the most common forms of torture in the modern world, incomparably more widespread than waterboarding or electric shocks, is inflicted by mothers on daughters they love.²⁷

The similarity between torture and female circumcision is constructed, I suggest, to enable a particular rendition of flesh: silent tortured flesh that utters only assent to the desire of The People. This is not a say, but a scream and a plea for salvation. In this way the privileging of the body over the speech of the subject in torture is also split. That is, the voice of the tortured is severed from its flesh. This split appears in the Military Commissions Act, passed in 2006 in the United States Section 948r specifically speaks to this split when it states:

- (c) . . . A statement obtained . . . in which the degree of coercion is disputed may be admitted only if the military judge finds that –
 - (1) the totality of the circumstances renders the statement *reliable* and possessing *sufficient probative value*; and
 - (2) the interests of justice would best be served by admission of the statement into evidence.²⁸

That is, the degree of coercion to the point of torture is acceptable because the speech extracted is *acceptable*. It is not that the tortured speaks its desire for human rights, freedom or participation – in (perhaps) the mode of the mutilated woman – the tortured, in Scarry's terms, speaks the language

UDHR, Art. 5, which states: 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.' UDHR cited in Family Law Council (1994b), 24.

²⁷ Kristof (2011).

²⁸ Military Commissions Act of 2006 10 USC, 2006 Sec. 948r, (my emphasis). This legislation would enable a 'degree of coercion' to be applied to those described as 'unlawful combatants', which would include waterboarding, sleep deprivation, pushing, hitting, physical exertion to the point of exhaustion, containment in spaces in which people could neither lie down nor stand. See US Department of Justice (2002). These methods have been confidently described by many as 'torture', despite the denials of George W. Bush, Dick Cheney, Donald Rumsfeld and many others. See Hitchens (2008); Sands (2008) for a comprehensive discussion of the legal sanction of the practice (not) known as 'torture' by members of the US Government and their legal representatives.

of the regime.²⁹ The speech is extracted for the purposes of its *probative value*, not for its *participatory value* in the polis. The speech of the tortured, as Clemens and Grigg discuss, is thus precisely not free speech.³⁰

The speech of the tortured is extracted for its value to the regime, and the body, subjected to torture, is extracted from this speech, and subjugated to *the right of the polis* – as The People – to its speech. In what, on the surface, appears to be an inverted mode of the split that occurs in human rights rhetoric on female genital mutilation, the speech is split from the body of the tortured so that the flesh remains *torturable* and the speech functions in the mode of a sacrifice. But it is crucial to recognise that the speech which is extracted from the tortured is not the ‘say’ of the tortured, it is the say of the regime. Similarly, that which is *said* by the mutilated women only functions as a ‘say’ when it speaks in the terms of the regime. In both these conditions the flesh of the mutilated/tortured is severed from its capacity to authorise speech.

The crime of speech and flesh

In images of female genital mutilation, as discussed in previous chapters, the *objet petit a* is signified as the flesh which falls from the cut. The flesh becomes significant while the body becomes only a remnant, and in the embrace of human rights we can say it becomes a remnant to be saved. In Lacanian terms this significance of the flesh is true also of the voice, the blood, the bodily fluids and even the gaze which falls from the body of the (deserving) figure of human rights.³¹ The body is separated from these products. And here we can understand that the body is severed from these products to enable a particular production of the relationship between the *worthy* recipient of human rights and The People who give these rights.³² Similarly, in the case of torture the flesh is split from the speech of the tortured. Both relations produce definitive, or non-ambivalent, products. One product is the flesh and the other the speech. One product is sacrificed while the other can be neglected in the jurisdiction of human rights. The deserving figure of human rights is split into these two *bearable* categories – speech that is emblematic of the horror and disgust of the sacred, and flesh that is loved. But there are remnants of this split.

29 Scarry (1985).

30 Clemens and Grigg (2006).

31 Lacan (2006), 693.

32 This is a relationship which Felicity Grey has helpfully characterised as a relationship of ‘benevolence’, what we can think of as the stagnancy of the sacred (Grey (unpublished thesis)). Benevolence is one distinct side of the position of ambivalence: see Laplanche and Pontalis (1973), 27.

The products rendered loved by the law are not enabled to be, *in anyone's reality*, removed from the remnants left behind. The body of the tortured remains, the speech of the mutilated woman lingers. But it is these very insistent remainders, I suggest, that enable the selective application of some human rights, because *these remainders deserve punishment*. When the mutilated subject demands their speech be recognised in law, or when the tortured subject demands their flesh is recognised in law, a crime is committed of the highest order, a primal crime which breaches primal law.³³

In an ordinary sense the punishment of the body, as the taking away of selected rights, is accepted in a democratic society – subject to the prohibitions and punishments of liberal law – on the basis that that body has committed a crime. Like the criminal, *some* – and in the case of capital punishment we can say *all*³⁴ – human rights are denied the body after it has harmed the state (or its subjects as subjects of the state). The protection of human rights is denied readily to the prisoner or the criminal, because they have breached the social contract and thus *chosen* to be denied their human rights.³⁵ The prisoner, in any democratic liberal society, is rendered without the right of movement, despite the universal emphasis in Article 3 of the UDHR that states ‘Everyone has the right to life, liberty and security of person’; or to privacy, ‘No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.’ (Article 12); to property ‘No one shall be arbitrarily deprived of his property’ (Article 17.2); and a variety of other rights – including Articles 23, 24, 25 and 26 – which are compromised by imprisonment itself. These rights are specifically withdrawn through subjection to the prohibitions of the laws of that state. Indeed, this is what it means to have, as Article 6 of the UDHR

33 Of course this is done by law itself, and this forms a problem for the psychoanalytic taboo.

Kalpana Seshadri-Crooks notes the problematic of the Freudian taboo in law and the subsequent paradox that this leaves for the subject of law through an account of the condition of the slave owner in the eighteenth-century United States. The slave owner was at once allowed access to the flesh of the slave, to do with the slave as he pleased, in the mode of the primal father. The *opportunity* to kill, dispose of, rape or in any way destroy the flesh of the slave *with impunity* was, however, both sanctioned in law, and because of the existence of law, so too exists the incest taboo. That is, the primal father can be no primal father because of law, and yet he is sanctioned as such through law. Seshadri Crooks (2000).

34 We can debate whether the body of the capital punishment has enjoyed the right to be a subject before the law, but this is a temporal concern: after it is killed, it enjoys no such right.

35 My most compelling evidence for this articulation is the chant of my 400 first-year Criminology students (as an annual cohort for the past 10 years), who consistently use this language to explain their comfort with imprisonment as a practice of the state. The ‘choice to give up rights’ is also commonly articulated as that performed by homosexuals who do not have the right of marriage or to other commonly enjoyed rights in a liberal society. See Editorial ‘Gays “have no right” to marry’ (2006); and Wroe (2005).

states, 'the right to recognition everywhere as a person before the law'. The removal of these rights is rarely contentious, short of concerns over political repression and excessive punishment for sexual acts that may offend a given national population.³⁶ Imprisonment and the withdrawal of human rights are acceptable because the body has *done something wrong*, it has breached the law, it has harmed the body of the state. And this same logic is what enables the detainee to be tortured and the mutilated woman to have their human rights removed or selectively applied.

The detainee is easily rendered *deserving* of punishment if we accept that those detained are 'suspicious' and that the qualities which render them suspicious are in themselves a crime.³⁷ This 'suspiciousness' is precisely the rationale for their detainment. But torture, in the current rhetoric employed to justify its application, is not (intended to be) a punishment. It is an act performed to acquire information; it is to stop the 'ticking time bomb'; it is to save lives, apparently.³⁸ However, even if we don't completely accept Scarry's assertion about torture *not* being about information gathering, in the West we have been subjected to an ever-increasing amount of evidence that torture is *not* about interrogation, and even when it is, it *does not work*.³⁹ What has historically legitimated torture – in the mode of Damians the regicide,⁴⁰ is the need for punishment, spectacular or otherwise, *for a crime*. And I suggest that it is no grand leap to suggest that this is still the case.⁴¹

36 These may be regarded as ordinary or at least tolerable in the nations in which they occur. Note – for recent condemnation over Russian women's punk band see Heritage (2012); also sentences under Sharia for adultery, etc. There is, of course, a good deal of activism against removal of rights when it is imposed *harshly* through the death penalty or indeed through prolonged imprisonment. See Sarat, 'When the State Kills' in Sarat and Ogltree (2012).

37 Of course, this logic is legally (and we might say ethically) fallacious. The presumptive guilt of supposed 'terrorists' and suspicious persons has been well documented and critiqued from both legal and ethical perspectives. See Hocking (2004); Pugliese (2010); Williams and Lynch (2006); Williams et al (2010); Williams et al (2007) – and, in the concerns of this chapter, arbitrary detention without trial is a breach of UDHR, Arts 9 and 10.

38 Bagaric (2005); Manningham-Buller (2010).

39 In the West there have been many popular books and movies on the use of torture and its ineffectiveness coming from people who are supposed to know. See Carle (2011); Gardham (2011); and Soufan (2009).

40 See Foucault (1977); and Rejali (2007). Rejali also debates the acceptance of torture in the United States in the past 10 years. His statistics are unclear, but notably even in this debate he regards an acceptance of torture as being indicated by less than 50 per cent of US citizens. See Gronke and Rejali (2010).

41 I am currently involved in a project to establish the proof for this assertion through understanding why we accept torture since 9/11, entitled *Torture? Why Not!*. The impetus for this project is based on the same evidence for this argument – that 400 undergraduate students over the past 10 years have increasingly been enthusiastic about torture, not for interrogation reasons, but for the purposes of punishment.

Accompanying the problematic of legitimating torture as punishment is the obvious legal point that the tortured subject has not been charged, tried or convicted of a crime, and simply saying that Guantanamo Bay detainees are 'the worst of the worst'⁴² may be comforting to those who are squeamish about detaining people without trial, but it is less than legally convincing. What then is the crime the tortured has committed which enables them to be tortured? And even more confusingly, what is the crime the mutilated woman is deemed to have committed that renders her rights negligible? In the following section I will explain that the crime is the attempt to return the voice as flesh to the body of the state, and the potential permeation of the body of universal human rights.

Permeating the body of the state

The state, as I discussed in Chapter 3, is a body of flesh. This is not only in Rousseau's terms when he describes the collective flesh of the contracting parties as:

. . . an artificial and corporate body composed of as many members as there are voters in the assembly, and by this same act that body acquires its unity, its common *ego*, its life and its will . . . the public person . . . in its passive role is called the *state* . . .⁴³

It is convincingly articulated by Eric Santner as 'the peculiar substance that ultimately *drives* the political theologies of sovereignty'.⁴⁴ To revisit the discussion of Chapter 3 briefly, this flesh, in its passive form as the state, comfortably retains its borders and territories as the body of the state, but as this body it harbors a community. This is a community which imagines itself, in the mode of Benedict Anderson, in communion.⁴⁵ The boundaries of this community in communion must not be penetrated in a mode that disturbs the fantasy of *communing flesh*. As Spivak notes: 'with reference to Anderson in particular, accounts of coding cannot account for excess or "incommensurability"'.⁴⁶ That is, like the maternal psychoanalytic figure, the state is the bearer of its children's desires and this is a flesh-like image which must not be penetrated by (other, incommensurable) desires which disturb the unified bearing of those desires.

The bearing of the child's desires is not an unnuanced condition, however. These desires, as the say of the subject, are supposed to permeate the body of

42 Seelye (2002).

43 Rousseau (1762, 1968), 61.

44 Santner (2011), 19.

45 Anderson (1983).

46 Spivak (1999), 247, fn. 76.

the state. Indeed, the lack of capacity to inform policy, practice and prohibitions exercised by the sovereign is deemed, at least by one commentator on female genital mutilation in Australia, as 'repugnant and unacceptable'. And, as I noted in Chapter 5, the bearing of desires is part of the *jouissance* of the biopolitical that brings one *up against* the law of the state as a proper exercise of subjectivity. In respect to human rights, Spivak has captured the effort of that attempt as an exercise of global subjectivity as follows:

The seventh article of the Declaration of the Rights of Man and of the Citizen . . . says that 'the law is an expression of the will of the community.' Among the rural poor of the global South, one may attempt, through that species of education without guarantees, to bring about a situation where the law can be imagined as an expression of a community, always to come. Otherwise the spirit of human rights law is out of their unmediated reach.⁴⁷

This is not to say that the will of the community does not or should not attempt that reach. Speech, including voting, is the mechanism through which 'the will of the community' is articulated. The mutilated woman, as explained in Chapter 5, is *supposed* to, even required to, speak as The People and perhaps even in the realm of the international. But the speech itself becomes the crime, not because of what it says, but because of its trajectory and its quality – that is, because of its disturbance to the communion.

The speech of the mutilated woman attempts a return to the body of the state when that body has already severed it from its own. In this sense its reinsertion into the *polis* breaches the fundamental taboo, that of primal law. This attempt at insertion is a crime against the primal law – because it disturbs the arrangement of bodies before the sovereign. We can understand this breach through an analysis of *the ban* by Agamben:

The analysis of the ban – which is assimilated to the taboo – determines from the very beginning the genesis of the doctrine of the ambiguity of the sacred: the ambiguity of the ban, which excludes in including, implies the ambiguity of the sacred.⁴⁸

The ban is what enables the placement of the human as sacred – as both a product of law and as outside law. This is the condition of those subject to human rights as flesh. The human of human rights is the one who hovers in the ambiguity of the taboo as the flesh of the Father (of primal law), but as flesh which does not return to the Father. That which is completely

47 Spivak (2003), 550.

48 Agamben (1998), 77.

discarded – killed with impunity – is that which the (Schmittian) sovereign has deemed beyond the application of rights. The point is not the killing itself – with impunity – but the importance of rendering this flesh non-sacrificial. That is, that the body *cannot* be sacrificed, or the flesh cannot be returned to the polis in the sense that it cannot be redeemed through the investitures – including rights – of the state. But what happens when the body wants to recoup its rights – or wants a unity of flesh? This is a crime against the cut – a reinsertion of flesh back into the body from whence it was cut, a crime against the taboo of primal law.

The mutilated woman is both forms of flesh: her voice discarded with her clitoris (killed), but her body remaining as a figure for human rights protection (sacrificed). It is when she wishes to animate her own flesh, to signify it in her own terms, that her crime manifests. In order to understand the crimes of the mutilated woman and of subjects of torture, we need to see that in both scenes the speech of the subject is signified by the regime. The tortured subject, as Scarry has analysed, speaks as the regime.⁴⁹ And the mutilated subject can speak only her mutilation, all else is silence, or we might say in both cases, all else is configured as only the sound (and in both scenes these are presented as screams) of voice.

The torture scene and the scene imagined as female genital mutilation have a similar signifying value in human rights rhetoric. The torture scene is understood as one in which the voice becomes subsumed in the unfurling of a map of the world, as the speech constructed by the torturer. As Scarry says:

The display of worlds can alternatively be understood as a display of selves or a display of voices, for the three [worlds, self, voice] are close to being a single phenomenon . . . the question and answer also objectify the fact that while the prisoner has almost no voice – his confession is a halfway point in the disintegration of language, an audible objectification of the proximity of silence – the torturer and the regime have doubled their voice since the prisoner is now speaking their words.⁵⁰

Voice becomes speech in the torture scene when the torture – the cut – removes the regime's speech from the tortured and leaves the body in silence or screaming. The body of the tortured may utter again, but their *voice* has become an unrecognisable scream and the words of the tortured *are the speech* of the regime. This speech is crucial to bolster the sovereign authority of the regime. In Scarry's terms: 'It is only the prisoner's shrinking sense of ground that wins for the torturer his swelling sense of territory.'⁵¹ Territory

49 Scarry (1985).

50 Scarry (1985), 36.

51 Scarry (1985), 36.

is what provides The People (or a regime) with an image of itself. As discussed in previous chapters, the mutilated woman also provides, and sometimes unwillingly, but in a different sense – the significant object that bolsters the regime's territory as an image of itself. More than simply a regime of protection – as we might similarly see the torturing regime rendered in today's climate of anti-terror anxiety – the regime which gathers the significant flesh, and re-inscribes the mutilated body as mutilated (through the Female, the Genital) increases its own territory. And again we see this territory grow through what we could describe as the mutilated subject's 'shrinking sense of ground': its capacity to participate as a speaking subject.

Worlds, self and voice are the same phenomena for Scarry insofar as they become all made in the image of the regime. In psychoanalysis, and in Spivak's comments on the capacity to represent oneself in a world of human rights, however, the distinction needs to be made between voice and speech; between voice and, in Spivak's terms, the capacity to make the world.⁵² Speech is that which registers *with*, and for Scarry *as*, the regime. These are at the one time what can be heard and what can be said – the answer to the torturers' question. But voice is not always speech insofar as the presence of the voice cannot be represented. In a specifically psychoanalytic logic, what remains of the voice which falls from the tortured, and from the mutilated woman, is the body which too has no specular image – what I will call the 'self', as opposed to the subject. That is, in Agamben's terms, what can be killed, yet not sacrificed. And it is this self, in its presence as flesh from which the *objet petit a* falls, which must be punished and is, therefore, only a recipient of selective human rights (and sometimes none at all).

The texture of this crime is similar for the mutilated woman and for the tortured. The mutilated woman, speaking against her mutilation and even by virtue of speaking (which is effectively the same thing if you follow Hosken, Kissane and Ramos Rioja's logic of mutilated women only being silent or only able to be taught), is trying to return the *objet petit a* back to the orifice from which it fell in a mode that alters the configuration of the cut, that is the configuration of law. Her words, her voice, even her removed flesh is a crime by virtue of not only what she says, but because she speaks *against* the categories of law. This is a different texture than requiring *more rights*, which would be to speak the categories of law and affirm the legitimacy of its force. To speak *against* the categories of law – to say 'I am not mutilated', to say female circumcision is not *done to women*, but produces women, to challenge the category Female, Mutilated and indeed the omnipotent significance of the Genital, is to insert a piece of *oneself* into the communion of The People. This is more than just re-arranging the desire of The People: it is to problematise

52 As Spivak specifically says in relation to gender and development discourse and the capacity of the subaltern to 'speak', 'what is at stake is a worlding'. See Spivak (1999), 228.

the terms upon which that desire is founded. Literally, it is to insert oneself into the *communion of the flesh* in the primal scene. It is to commit a primal crime.

The (good) People

This insertion is difficult to recognise in a political sense; what can be said is that it always *feels* violent – and indeed it may be violent in the flesh. It disturbs the terms upon which the subjectivities of The People are premised. It is, in this sense, always a terrorist act because it articulates an attack on the foundations of law, and must therefore be deemed *more than criminal*. For the tortured, the wish to get their speech back – in their own terms – will always be deemed terrorist intent. Hence, even those who have been released from places such as Guantanamo Bay are required to keep their silence. The speech must remain the property of the state. For the mutilated woman, it is less obvious. What we can say is that any attempts to use terms other than Female Genital Mutilation are often felt as an attack on oneself – Fran Hosken feels herself under attack by the practices themselves and I would suggest this is a common feeling for many women who understand themselves within the categories that abhor female genital mutilation. In one example of this *feeling* – in an undergraduate course in which I was teaching one week on ‘Female Circumcision’ and the problematics of the legal and scientific categories Female, Genital and Mutilation, while the students were – as always – very receptive and thoughtful, a number of students said, at the end of the course, that they felt ‘traumatised’ by the week on ‘Female Circumcision’. This was probably not too surprising except for the fact that they did not note being traumatised by any other area of the course. The week that followed my own lectures was on the Holocaust and the concentration camps. The destruction of 6 million Jews seemed to be less traumatic to the students than the problematising of legal and scientific categories to do with freedom, sexuality and health.⁵³ We can understand this example as a mode of identification: that the students were not traumatised by the Nazi Holocaust because they did not identify with Nazis, but they did *identify* with the categories which produce female genital mutilation as a mutilation. Thus,

53 University of Melbourne, undergraduate Arts course ‘Self and Other’, semester 2, 2010. I have encountered many examples of this type of trauma in presentations I have given about the problematic categorisations, understandings and activism against female genital mutilation. In some forums people have stood and shouted ‘but it’s barbaric!’; others have condemned everything Muslim, and of course Muslim men are usually the targets of great vitriol. The war on Iraq has been justified in these forums because of female genital mutilation – even though Iraq has no history of the practices, and when I have talked of women who have experiences of the practices I have been greeted by statements about them ‘not knowing any better’. In case there is accusation about my mode of presenting these issues being traumatic, I would say I also often present on torture and have had no such reaction.

the trauma was to their own identification of themselves – in Lacan’s terms the ‘I [they] take themselves to be’ – as an I which is on the side of *the good*, and to be against female genital mutilation – similar to being against the Holocaust – is a definitive good.

The identifications against Nazis and against female genital mutilation are both with the bearer of human rights as the bearer of the good. Few of those who are against female genital mutilation do not evoke human rights as a reason to prevent the practices. Similarly, few who are against the Holocaust do not see that the order of the world has been set straight since 1948 through the application of human rights. This identification, on the side of the good, is not easily displaced because it is a global communing of The People, and specifically *the good people*. Believing in human rights offers identification as not only a subject who believes in the categories of law, but who believes in the categories of good law. However, this is not an innocuous belief or identification. The identification with the good and an alignment on the side of the wielding of good law is to participate in a communing which produces from it only good products. As Lacan says of the good:

The good is at the level where a subject may have it at his disposal. The domain of the good is the birth of power. The notion of control of the good is essential . . . To exercise control over one’s goods is to have the right to deprive others of them.⁵⁴

This goes part way to explain why, as I discussed in the last chapter, Mohamad Siddique Khan wished to articulate his act in the domain of the ethical – to define it, in a not uncommon understanding of the ethical, as *the good*. To be on the side of the good is therefore to set the terms which must be administered to produce the good. Without wanting to equate the mutilated woman with those described as ‘terrorist’, I want to suggest that an effort to change the terms of the good is experienced as a violence precisely because it disturbs the communing of the flesh of The People.

Conclusion

Speech is distinct from voice, in the manner in which Spivak distinguishes utterance from speech.⁵⁵ Not only is the speech important to bolstering the ground of the regime – in both instances – but the voice, as non-speech – the garbled non-recognisable screams that we imagine emanate from the mutilated child and the tortured detainee – is essential to the production of human rights and, more disturbingly, to their (mis)application. Both the scenes are a

⁵⁴ Lacan (1992), 229.

⁵⁵ Spivak (1996a).

production of speech as *commonly known* or *in agreement* with the regime. The flesh cut from the tortured signifies only what the sovereign wants it to signify: the perfect Shakespearean justice as the precisely weighed 'pound of flesh'.⁵⁶ The flesh imagined cut from the mutilated child/woman is a flesh which has no probative value, but whose value is *known* by virtue of what it signifies *not to have* the clitoris. As a savable object of human rights, the mutilated woman's flesh signifies her scream (for law). Flesh, voice and scream are signified without alterity in the mode of the non-specular object.⁵⁷ That is, there can be *no other representation* of them, hence the flesh is all for the state. The flesh here, like the speech extracted from the tortured in Scarry's depiction of the scene, speaks the regime and bolsters the force of law, or for Scarry it *doubles its voice*, and in Spivak's terms, turns voice into recognisable speech.

The tortured and the mutilated want *their own* speech back, however. That is, to return the flesh to the place from which it was cut from them. But their body *is*, in Scarry's definition, law's body. They *are* the ground of the regime. Indeed, in the mode I discuss in the next chapter, the pure subject of torture *is* the regime. The crime that deserves the selective application of human rights is the crime that indicates otherwise; the crime of trying to put speech back into the mouth of the polis, inserting flesh into the communing of The People. This is to breach the taboo. In Freudian terms, taboo is required to enable a mode of (re)production that sends the child forth into the world to reproduce.⁵⁸ An insertion in the scene of reproduction makes of oneself a parent to oneself, and this is an impossibility (although it may be a helpful impossibility as I discuss in Chapter 8). But more than that, the effort to perform this impossibility is traumatic to The People basking in a communion of the good. This communion requires impermeable parameters and the sanction of the good by the sovereign.

That which is sacred – the flesh and the speech – must be administered and appropriately discarded. As Lacan says: 'this function of the good engenders, of course, a dialectic . . . the power to deprive others is a very solid link from which will emerge the other as such.'⁵⁹ The other as mutilated woman and as tortured exists as remnant of the good, a good dictated in the terms of the Other of human rights. The sovereign-Other who determines the administration of flesh. Sacred flesh cannot be put back into law. The object cannot return; the flesh and voice must remain separated; human rights commands it.

56 Shakespeare (2011); for a discussion of this in relation to justice, see Davies (1994).

57 Their 'objective' status, as something that is *known by all*, is what it means in psychoanalytic terms to speak of the absence of a specular image. As Lacan says of the *objet petit a*: 'These objects . . . have no specular image, or, in other words, alterity' (Lacan (2006), 693).

58 Freud (1918).

59 Lacan (1992), 229.

The torture of the good

Let us return here to these children who are held down in Australia – no matter how repugnant and unacceptable.¹ Of course, the commentator who wrote this would be unlikely to believe that children should not be immunised, operated on in the interests of ‘medical necessity’ or prevented from drinking harmful chemicals, etc. – at least that’s what we would assume he would think acceptable. The response to the court in Germany’s decision to determine male circumcision as criminal – specifically as grievous bodily harm – suggests that this acceptance is more complex than we would have thought.² The sovereign, doctor, guardian, parent even, can hold people down for their own good. But *their own good* is a confusing matter, just as we might say, so is the ‘good of the people’, the utilitarian good which suggests that the other’s good can be disregarded (I won’t say sacrificed for it was never in the realm of the sacred) for the maintenance of the good of all.

Torture is surely one of the most audacious of the utilitarian practices – perhaps trumped only by capital punishment. But in this chapter I want to consider the rationales for torture that go beyond the imagination that torture is saving others, and enter the realm of the sadistic. Far from arguing the leftist point that torture simply ‘doesn’t work’, I want to consider how it *works for the enjoyment* of the liberal subject looking on to the scene of torture. Again, as I considered the idea of female genital mutilation, I want to consider torture as a scene, specifically as a scene of relation in which someone is being beaten and someone is being loved, and how the figures in this scene are arranged – intimately arranged – to provide the excitement which accompanies the looking on. In the next chapter I’ll ask the question that should so obviously emerge throughout this book: why do we, in the liberal West, (largely) accept torture, but so aggressively condemn female circumcision? But here I want to consider one likely rationale for the lack of

1 Note that a version of the argument in this chapter was published as ‘Torture: A Modicum of Recognition’ (see Rogers and Rush (2010a). Reproduced with kind permission from Springer Science and Business Media B.V.

2 See Fraser (2012).

objection to the fairly blatant practice of torture in the United States and the other enthusiasms for torture which emerged in countries such as Australia. Here I want to consider torture in its relation to the subject of these nations as the subject looking on.

In considering the enjoyment of torture I read again Freud's essay on the fantasy of 'a child is being beaten'³ to challenge the assumption of the acceptance of torture as about the positioning of the tortured as less than deserving of human rights. I then discuss a moment of existential wrangling performed by Donald Rumsfeld in his annotation of the 2002 'Action Memo'. Finally, I consider the fascination with the scene of torture and employ a psychoanalytic reading of this scene. This scene, I suggest, is seductive, and it reinforces the role of the transcendental sovereign in satiating the subject's desire for what Santner calls a 'modicum of recognition'⁴ in the current climate of anti-terror.

The acceptance of torture

In 2006, George W. Bush signed the Military Commissions Act⁵ into law, sanctioning the use of coercive force to obtain evidence from military detainees. Prior to this, in 2002 Donald Rumsfeld had signed, and annotated, an 'Action Memo' which authorised torture in the United States.⁶ In 2002, the 'Bybee Memo' to the Central Intelligence Agency in the United States stated that the use of 'waterboarding' and 'stress positions' were acceptable and indeed necessary practices to employ upon Abu Zubaydah.⁷ Between these markers were the incidents and images of torture emerging from Abu Ghraib and the stories, then retractions, then more stories of torture that occurred at Guantanamo Bay, and many nameless sites around the world. George Bush has said that the 'United States does not torture, it is against our values'. But something was done to detainees such as Mohammed al-Khatani, Abu Zubaydah, Mamdou Habib and David Hicks at Guantanamo Bay and elsewhere, and to detainees nicknamed 'Gilligan', 'Shitboy' and 'Gus' (the man on the end of Lynndie England's leash), at Abu Ghraib.⁸

The practices performed on these people resulted in a significant lack of protest (and judicial prosecution⁹) from the liberal left in the United

3 Freud (1919).

4 Santner (2011), 3.

5 Military Commissions Act of 2006, 10, USC, 2006.

6 General Counsel of the Department of Defense, 'Action Memo', 27 November 2002.

7 US Department of Justice (2002).

8 Gourevitch and Morris (2008).

9 Editorial 'US Officer Cleared Over Abu Ghraib', *The Guardian*, 11 January 2008, reported that: 'The only officer who faced a court-martial over the torture at Abu Ghraib has been cleared of all criminal wrongdoing. The BBC reports that Lt. Col. Steven Jordan was convicted in August of disobeying a gag order, but that decision was annulled and his

States and in the rest of the English-speaking world. As Costas Douzinas has noted: "Torture has become a respectable topic for conferences on practical ethics and the "ticking bomb" hypothetical offers entertainment at dinner parties."¹⁰ In Australia, as in Britain, the debates about whether to torture, or not, whether to close Guantanamo Bay, or not, and whether to torture – and indeed the underpinning rationales for the torture of – detainees at Abu Ghraib were hinted at (Gourevitch), but largely ignored. War is war; boys will be boys. Interrogation should be enhanced; the bomb is ticking!

Despite the outrage over the incursion into the flesh of the subjects of democratic nations, the holding down, waterboarding, humiliation and beatings of detainees in the war on terror, received what we could only see – in light of the outrage over female genital mutilation – as a surprising lack of objection or even energy.¹¹ I suggest that the apathy against, or even enthusiasm for, torture, which ensued after their implementation of the Military Commissions Act became public knowledge, indicates more than a strategic military *need* for torture in the current climate of the 'War on Terror', and even more than a desire to punish the tortured – as discussed in the last chapter. The resignation about the Military Commissions Act, the fascination with the images and the practices that became known at Abu Ghraib and Guantanamo Bay, and even the enthusiastic journalistic and scholarly engagement with questions of whether torture is necessary¹² indicate a particular enjoyment, on the part of the subject, with the extremes of sovereign prohibition and punishment. This is not only an excitement about the spectacle of punishment, which has been dormant or at least suppressed since the public drawing and attempted quartering of Damians the Regicide,¹³ but an excitement, with accompanying anxieties I have highlighted in previous chapters, about the position of oneself before the sovereign. An excitement over the tension about what being a subject means before the violent extremes of law.

When torture disappeared from England in the seventeenth century it was 'above all because of a concerted political struggle against the arbitrary power of the king'.¹⁴ At this time the legal exercise of, and legal capacity for, torture, under the Stuart monarchs, signified: 'that the people were entirely subjected to the arbitrary will of a monarch who believed himself above the law; [and

record is now clean. No officer has been dismissed or faced any direct charges for the Abu Ghraib scandal, although 11 lower-ranking soldiers have been convicted.'

10 Douzinas (2007), 5.

11 Of course there are exceptions to this; books emerged: articles in objection – objections came largely over the rationales rather than the injury. See Sands (2008).

12 Bagaric (2005); Joseph and Smith (2005).

13 Foucault (1977).

14 Clemens (2008).

that] *torture was the emblem of this arbitrary tyranny . . .*¹⁵ Judicial torture was then not to be seen in the English-speaking world until after September 11, 2001. The condition of its return is not because it is necessary to deal with a new kind of enemy, but precisely because the liberal subject denies the arbitrary quality of its application, and more than that, there is – in a psychoanalytic sense – an enjoyment of its application.

The subject's enjoyment about the application, as an enjoyment of the image of torture, is I suggest, because the sovereign's violence against the subject evokes the question of whether one is recognised as deserving or otherwise, or whether one is recognised at all. In psychoanalysis, recognition as the self of one's own imagination¹⁶ is a prized and exciting event. Torture signals the particular form of that recognition of the subject in the sovereign/subject relation. One can be recognised either as a subject of civil and political rights, who enjoys the protection of the law, or as one who needs to be subjected to the violent extremes of law. The acceptance of torture, however, requires a contortion in the subject's perception of the sovereign/subject relation to enable a foreclosure on the possibility that s/he too could be tortured.¹⁷ As I have discussed earlier in relation to mutilation, to secure a belief in a freedom from torture (or mutilation *qua* prohibition), or certainly a freedom from potential torture, the subject must believe in the significance of their own flesh, or own mind, as ideally intact in the gaze of the sovereign.

As an alternative to the ideal condition of the citizen's/subject's flesh, the subject who is tortured must be imagined, in this political fantasy, as the subject who deserves torture, or not a subject at all. The belief in the tortured subject as a non-subject and complementarily the citizen/subject as one who will and must remain beyond the infliction of torture is the fantasy of the subject of liberal democracy. This subject imagines s/he views the scene of torture from a secure position, from the position of being aligned with the sovereign and not subject to her/his violence. This belief employs an imagination of the value of the self as firstly the ideal political subject in the gaze of the sovereign, and secondly as a subject who can know the mind of the sovereign, who can know – in an inverse of Rousseau's formula – what the sovereign wants yesterday, today and tomorrow. In these fantasies – like

15 Clemens (2008) (my emphasis).

16 The dynamic of recognition as *meconnaissance* is most obviously explained in Lacan's essay on the 'mirror stage': 'The mirror stage as formative of the function of the I as revealed in psychoanalytic experience' in Lacan (2006).

17 In psychoanalysis foreclosure is the condition of the psychotic, and while I am not suggesting that all subjects who perform in this way are psychotic, I believe that a psychotic contortion emerges under the extreme anxiety which accompanies the presence of torture in one's social and political landscape. This is more in line with the notion of the 'paranoid/schizoid' position elaborated by Melanie Klein than the Lacanian notion of psychosis as a structure. See Klein (1986); and Lacan (1993). For a thoughtful discussion of the paranoid/schizoid position in relation to anxieties after terrorist attacks, see Cash (2009).

the fantasies of anti-fgm advocates – the sovereign's desire and the *good* subject's/citizen's desire are the same. And this isomorphic overlay of desire could not be a more important ingredient in the acceptance of torture in contemporary liberal democracies. The subject who encourages, agrees with or even accepts torture – like the subject who demands the law send a message to the migrant – employs a political fantasy that s/he is the absolutely loved object before the sovereign and that the other, the tortured, is deserving of a form of punishment that the loved subject will never warrant. This fantasy requires that the other subject be positioned as enacting a different form of subjectivity than that of the loved subject. In this condition the other subject can be relegated to less than human or certainly not achieving the politico-legal status ascribed to the loved subject. While the rendering of the other subject in the politico-legal rhetoric as 'enemies of the state', 'unlawful combatants', 'the worst of the worst',¹⁸ or now simply as 'terrorists', assists with the acceptance of their deserving of torture – as I discussed in the previous chapter. This rationale goes only half way to understanding an acceptance of such an extreme form of sovereign violence, however. We can better understand the relegation of people to the category of deserving torture through the *fascination* with the practices and images of torture that have emerged since the beginning of the War on Terror.

The fascination with these images is not simply the satisfaction of a vengeance¹⁹ fantasy after the injuries to life, loved ones and national imagination since 9/11, but illustrates an excitement about the pain and humiliation that the other subject sustains. We can understand some of this excitement using, again, Freud's analysis of his patients, and their ubiquitous imagination that 'a[nother] child is being beaten'. In Freud's analysis, the patient believes that s/he is the lovable object for the father, and that the other child is 'hateful' and deserving of a beating.²⁰ We can easily map this fantasy onto a sovereign-subject relation in which 'the head of the state bears the image of the father, the people the image of his children'.²¹ Furthermore, the sovereign-subject relation maps easily onto the paternal relation precisely because the orientation one has to love becomes an orientation to acceptance and acceptability. In this configuration the tortured subject, as the other child, is deserving of the 'displeasure' of the sovereign and the subject becomes the child enjoying a guilty pleasure, which is both sadistic and exciting. The subject becomes the child who is 'probably looking on'. As Freud says: 'The idea of the father beating this hateful child is therefore an agreeable one, quite apart from whether he has actually been seen doing so. It means my

18 This was Donald Rumsfeld on detainees at Guantanamo Bay in Associated Press (2009); see also Seelye (2002).

19 Vengeance as opposed to punishment, as I shall discuss shortly.

20 Freud (1919), 187.

21 Rousseau (1762, 1968), 51.

father does not love this other child. *He loves only me.*²² But this is only part of the equation, just as the construction of the tortured as less than human is only part of the reason why the subject accepts that the sovereign can torture. The production of the tortured subject as hateful does little to relieve the anxiety of the subject who knows that the sovereign's love, like that of the father, is arbitrary. What the loved subject, like the loved child, knows all too well is that if another subject can be tortured, then s/he too may lose the sovereign's/father's love in the future. This tension can be partly relieved, in the mode of the anti-fgm advocate, if the subject believes s/he is able to align with the sovereign's desire and thereby remain the loved object in his gaze. But even that partial relief cannot last, and the subject knows that the condition of the tortured is potentially always the condition of every subject.

The loved subject

The anxiety about the position of loved subject was illustrated on 2 December 2002 by one of the sovereign's more loved subjects, Donald Rumsfeld, when he signed the 'Action Memo'. This memo, on the back of the 'Bybee Memo' two months earlier, would herald the irrelevance of the Geneva Conventions, and introduce a new standard in the violence of interrogation by condoning physical coercion toward detainees at Guantanamo Bay.²³ The reading, signing and disseminating of this memo indicated not only an open enthusiasm for the infliction of torturous practices on detainees at Guantanamo Bay, but also a significant moment of anxiety for Rumsfeld himself, which points to his own concerns with his position before the arbitrary will of the sovereign. Alongside his signature, Rumsfeld wrote: 'However, I stand for 8 to 10 hours a day. Why is standing limited to 4 hours? D.R.'²⁴ Rumsfeld declared that the detainees can of course be subject to torture, but the annotation suggests more than that they will be tortured: it announces an identification with their condition. Rumsfeld's annotation denotes a calculated measurement of the experience of standing – under conditions of torture – with his own experience of standing in the everyday. He imagines himself tortured – the feeling, the position and the experience – as if it were he standing on a box in a dark room. Further, his identification is evident in the question *qua* demand that detainees might need *more torture*, as he says: 'why is standing limited to 4 hours?' Rumsfeld's push for more torture insists that the tortured reflect the precise condition of his life, a life where he stands for 8 to 10 hours. For Rumsfeld, the conditions of torture and that of his own life are the same: in what might only be a fleeting moment, he sees the tortured in his own image.

22 Freud (1919), 187.

23 General Counsel of the Department of Defense, 'Action Memo', 27 November 2002.

24 Annotation added, 2 December 2002.

Rumsfeld's representation of torture as simply standing in the everyday obviously denies the reality of torture as something which is designed not to be *withstandable*. In the suggestion that torture is similar to the work commitments engaged by Rumsfeld, we can see a foreclosure on the actual experience of torture and any effect which identifies with the tortured *as tortured*. This identification is too dangerous for Rumsfeld, but rather than deny the similarity and acknowledge that standing on a box – wired with electrodes, in a state of uncertainty, terror and potential violence or death at any time – is very different from his life, Rumsfeld cannot help but see the similarity and be nervous about it. In this moment of alarming peripheral vision, Rumsfeld responds with a disavowal we can read as: 'torture simply isn't that bad, and/or torture is the condition of my life.' The contradiction betrays the anxiety insofar as it leaves Rumsfeld with a question as to 'what does the similarity mean?'

For Lacan, speech always asks a question of the Other: 'what do you want?' (*Che Vois?*).²⁵ This is a question to the one who is imagined to be able to say: 'This is what I want from you.' The question at issue here is not about the torturous conditions of office experienced by Rumsfeld, but whether the tortured are as loved, or as lovable to a liberal sovereign, as those who are looking on. What I am suggesting Rumsfeld is anxiously gesturing to is whether he can or will be recognised as a lovable subject, as a subject with rights that protect him from the sovereign's violent displeasure – a displeasure that can force him to stand for 4, 8, 10 hours or more. Rumsfeld's annotation, read not only as a statement about how long he can stand, is a question about what can be done to whom and for how long. The introduction of time into the asking of a question to the sovereign betrays the knowledge that everyone knows at one level, that even if there were a possible answer to the question, that that answer is fleeting.

In the context of torture inflicted through a regime or by a sovereign that has decided – one might say exceptionally – on a change to the status of the subject before law (even if that be a global subject), time becomes of the essence. And Rumsfeld, as an elected official of that regime, must certainly be aware of this. What Rumsfeld would have seen, read and approved in the signing of the Memo is the fine print, the clause of time that comes with every sovereign decision.²⁶ The memo signed by Rumsfeld states that 'a blanket approval of Category III techniques is not warranted *at this time*'.²⁷ In the world of current shifting legal sands, where the Geneva Conventions can be arbitrarily discarded, where historical struggles against the violence of the sovereign no longer herald 'progress', but simply a blip in the sovereign

25 Lacan (2006), 690.

26 For further discussion of the function of temporality in relation to sovereignty, see Rogers and Rush (2009).

27 'Action memo' (my emphasis).

subject relation, and when heads of state can be arbitrarily removed, tried and sometimes executed,²⁸ Rumsfeld is all too aware that he too might be subjected to Category III Techniques at another time. This then is Rumsfeld's anxiety – the knowledge, buried in an obscure and confusing annotation to an Action Memo on torture – that he too could be tortured *at another time*.

The scene of enjoyment

It is time that announces the gap in the recognition of the subject by the sovereign. It is precisely time that suggests that no signature, words or actions are indelible before a sovereign who sits above this fabled thing called the Rule of Law. As we now know when in Rousseau's illumination of the condition of sovereignty as a temporal concern.²⁹ Neither sovereign's nor subject's desires are guaranteed to align beyond a moment, a vote, a referendum, a law that can be repealed or reformed, or even in the honeymoon of a revolution. The practice and products of torture, however, are both symptoms of this and instances of a particular kind of alignment that, in its most perverse form, promises a kind of enjoyment for the subject looking on. This enjoyment emanates from an imagination of the scene of torture as promising an obliteration of the unlovable aspects of the self. In this scene there are three figures – the tortured, the sovereign (or torturer employing the desire of the sovereign) and the subject looking on. It is this third subject whose gaze, whose desire and whose enjoyment of the scene promotes the acceptance of torture. This figure is the citizen/subject – the Donald Rumsfelds – whose participation in the scene of torture is as the one who enjoys and the one who sanctions. This enjoyment goes further than an identification with the tortured, however. It is an enjoyment as an excitement about the obliteration of the self, while the subject is kept alive.

Torture is a practice which can simultaneously obliterate the self, while the subject exists as a remainder of the tools of subjection. This obliteration of the self is precisely what we might understand as a relief from the anxiety of the Real. The Real is 'that which always comes back to the same place – to the place where the subject in so far as he thinks, where the *res cogitans*, does not meet it'.³⁰ In the circumstance of sovereign-subject relation, the Real can be understood as the difference between the sovereign's desire (at one time),

28 I am thinking of Saddam Hussein, and it is likely this wouldn't be far from Rumsfeld's mind either in this context. For a discussion of the issue of recognition in relation to the trial of Saddam Hussein, see Rogers and Rush (2009).

29 With the phrase that I have discussed many times in this book. 'The sovereign might say: "What I want is precisely what this man wants" . . . but no sovereign could say: "What this man is going to want tomorrow I too shall want"' (Rousseau (1762, 1968), 69–70).

30 Lacan (1977b), 49.

and his meeting with the subject's desire at another time. The Real is the impossibility of this meeting of desire. The sovereign's desire is potentially always different from that of the subject, but in a particular imagination of the scene of torture, this difference is overcome by removing the desire of the subject from the scene altogether.

Far from torture being the very scene of the Real, as one might immediately suspect, torture, at least for the onlooker, can be imagined as a primal scene which stages a relation of desire where that of the tortured and that of the sovereign are the same. The organisation of desire, in torture as well as elsewhere, is played out through the particularities of language. In the context of torture, however, that organisation is dictated, if only for the duration of the scene, by the sovereign, or in Scarry's terms, by the regime.

For Scarry, the language of the tortured and that of the regime align in the signification of life, flesh and objects as weapons against the tortured. This is, for Scarry, precisely why the regime's power is doubled through torture. As I discussed in the last chapter, the objects are signified as only and absolutely what the regime dictates. The flesh of the tortured becomes a vehicle for the pain the regime inflicts upon him, stress positions render the body only pain, domestic appliances become objects that injure, loved ones are only people to be betrayed – all the world becomes a weapon of the regime. It is in the status of the object as weapon of the torturer against the tortured that signification aligns. Pain, more than obliterating the body of the tortured, obliterates his/her own experience of the object, or indeed of reality. As Scarry states: 'World, self and voice are lost, or nearly lost, through the intense pain of torture.'³¹ What is lost, or certainly obliterated in the event of torture, is the organisation of desire unique to the self. When this is lost it is replaced by the desire of the regime, spoken as the language of the torturer. This then produces an *isomorphic alignment of language between the sovereign and the tortured subject*. This is a similar alignment to that of the anti-fgm advocate, but in the scene of torture we can say that there is no anxiety because the alignment appears complete.

This form of complete alignment with sovereign desire is well illustrated in George Orwell's scene of torture in *Nineteen Eighty-Four*, when the protagonist, Winston, learns the pain of the existence of his own desire in the face of the desire of Big Brother. In the screenplay of one scene of torture, the danger of Winston's desire is well articulated.

Obrien: Do you remember writing in your diary: 'Freedom is the freedom to say two plus two equals four?'

Winston: Yes.

Obrien: How many fingers am I holding up?

31 Scarry (1985), 35.

Winston: Four.

Obrien: And if the Party says there are not four, but five, then how many?

Winston: Five.

Obrien: No. That's no use. You're lying. (dials lever, Winston screams) How many fingers, please?

Winston: Four. What else could I say? Five, or anything you like. Will you please stop it? Stop the pain. How can I help it? How can I help what I see in front of my eyes? Two and two makes four.

Obrien: Sometimes, Winston. Sometimes they are five, sometimes they are three. Sometimes they are all of them at once . . . Again. (dials lever, Winston screams)

Winston: No.

Obrien: How many fingers, Winston?

Winston: Four. Four, I suppose there are four. I tried to see five. I wish I could.

Obrien: Which do you wish? To persuade me that you can see five, or really to see them?

Winston: Really to see them.

Obrien: Again. (dials lever, Winston screams) How many, Winston?

Winston: I don't know.

Obrien: Better.³²

For the tortured subject there is no longer the experience of what Scarry calls 'self', there is only the experience of the body in subjection to the language of the regime. In the case of Winston, the experience of self is an experience of what he understands to be reality – the reality of two plus two equalling four. Torture, however, is the production of *the reality* of the sovereign in the mind of the tortured. In the film, Smith remarks:

Neither the past, nor the present, nor the future exists in its own right. Reality is in the human mind not in the individual mind which makes mistakes and soon perishes, but in the mind of the Party, which is collective and immortal . . . Again (dials lever).'

In this scene the protagonist-subject Winston comes to accept all and everything told to him by his captor; numbers have no *objective* signification, but have only the significance dictated by the regime.³³ For Winston, the regime's language and all that it signifies are the same. There is no gap,

32 *Nineteen Eighty-Four*, directed by M. Radford, Atlantic Releasing Corporation, 1984.

33 This is of course exactly what it means to say 'truth is subjective'. The truth of the regime is a product of pure subjection.

no confusion and no uncertainty in Winston's cognition of signification. Signification aligns absolutely with the desire of the regime. In Scarry's terms, Winston's *self* is lost, but in so being, so too is the threat of any difference from the desire of the sovereign. In the scene of torture the Real of signification between sovereign and subject is relieved when this self is lost. What is lost is the difference, the mismatch in understanding, which evokes the Real. When both parties understand the whole world in the same way – as a weapon of the regime – the anxiety of the Real disappears. And this is the case illustrated in one of the final scenes of the film, *Nineteen Eighty-Four*. In this scene Winston sits in a bar opposite his former lover, Julia. It is apparently the first time they have met since they were both brutally tortured by representatives of Big Brother. Winston comments:

Winston: Are you worried about the African front?

Julia: The news is disquieting in the extreme.

Winston: I've been worrying about it all day. It's not just a question of losing Africa. For the first time, the territory of Oceania itself is threatened by invasion.

Julia: It's inconceivable.

Winston: It must have been possible to outflank them in some way. I have an instinct. There's bad news on the way.³⁴

Formerly Julia and Winston had been mutually aligned in skepticism about the truthfulness, or even the existence of the war. Winston's *instincts*, however, now align with the propaganda of Big Brother. Julia, similarly, is completely in step with the concerns of the Party. Their 'individual minds' have been replaced by 'the mind of the party'. Far from a distressing condition for Winston, or for Julia, they display neither anxiety nor concern about the loss of their prior feelings for each other, or against the regime. The dialogue above is, in fact, abruptly followed with:

Julia: I told them all about you. I'm only thankful they got me before it was too late.

Winston: Yes, I told them about you, too. Thoughtcrime, sexcrime, all your treachery.

Julia: I have a meeting to go to. We must meet again.

Winston: Yes. We must meet again.

This is an exchange devoid of anxiety or indeed of any effect which indicates more than a passing concern for the plight of their community 'Oceania'.

³⁴ *Nineteen Eighty-Four*.

What is removed here is the danger of the self; a danger which produces so much anxiety in the subject looking on to the scene of torture. The anxiety is of the presence of a self which has a desire which may run counter to that of the sovereign (the Party); a self which may perform gestures, speech or any behaviour which evokes the displeasure of the sovereign. But torture, ironically, removes this possibility. In the torture scene, and in the post-torture scene illustrated above, there is no Real.

It is because of this anxiety that the subject looks to the scene of torture as a scene of the perfect emission of the sovereign's desire. As Žižek has remarked on the lesson of Marguerite Duras:

... the *only* way – to have an intense and fulfilling personal (sexual) relationship is not for the couple to look into each other's eyes ... but, while holding hands, to look together outside, at a third point (the Cause for which both are fighting, in which both are engaged).³⁵

The way to have a sexual relationship through the gaze toward a third point is because, for Lacan, 'there's no such thing as a sexual relationship',³⁶ that is to say that it is impossible to achieve an alignment of desire between two parties whose organisation of desire is unique and particular. It is this particularity (in Scarry's idiom, this 'self'), as a never completely knowable quantity, that produces anxiety in any personal (sexual) relationship in which one never knows what the other wants. And this again evokes the desire of the mutilated woman as the other who affiliates with another Other's desire.

The 'sexual relationship' here is also a sovereign-subject relationship. It is the particularity of the sovereign's desire non-aligned with the particularity of the subject's desire, which produces anxiety in the subject. And this anxiety is perhaps heightened when the desire of the sovereign can result in the decision to torture. Winston and Julia embody the possibility of an *ideal subject position* before this reality. They are the perfect subjects whose desire has aligned with that of the sovereign. Neither are looking into each other's eyes, both are looking outside 'at a third point'. It is the imagination of this position of non-anxiety and, indeed, of safety *from* torture, that cleaves the subject looking on to the scene of torture. Where the subject looking on can never know the precise desire of the sovereign, the subject of torture not only knows, but also, in the extreme example of Winston, embodies this knowledge. The subject of torture thus becomes the pure subject of sovereign desire. And, although this may seem an unenviable position, in a psychoanalytic sense, it is precisely a desirable position, or we might say an *enjoyable* position – one

35 Žižek, 'From Homo Sucker to Homo Sacer' in Žižek (2002), 83.

36 Lacan (1975, 1998), 34.

which evokes both excitement and relief for the subject anxious about the sovereign's desire.

The anxiety of immanence

While Scarry (and Orwell) remind us that there is nothing enjoyable in torture itself, the imagination of the one looking on inscribes the scene with a different significance. What is enjoyable for the onlooker about the scene of torture is precisely the potential loss of self and the tension about that loss. On the one hand that loss – as the loss of the desire for the subject of torture – can signify death itself. For Lacan, desire is precisely what enables life, and the death of desire can be lethal. However, the loss of the self also promises a perfect union with a sovereign whose powers of signification are rendered God-like, and hover in the realm of the transcendental. The sovereign who can authorise torture and the obliteration of the self while keeping the subject alive is more than the liberal sovereign of popular democracy, in which everyone has a stake in his whims and desires. The sovereign who tortures is to be exalted beyond regional politics and revered as the figure from which absolute authority can emanate, and from this position only he can provide the recognition required by the subject.

In this political and military landscape, in which the questions of political and existential legitimacy can mean the difference between torture, or not, the subject's desire for absolute signification could not be more pressing. The sovereign who is able to authorise the torture of his/her citizens, and those who are deemed to be a threat to life and liberty, achieves an element of transcendental elevation; s/he becomes a seductive site for a definitive presence to the Other. This then is why the scene of torture can be overlaid upon the infantile scene for the subject in which desire only begins to take shape in a margin made precarious through the imagination of an omnipotent Other. For Lacan, this is:

A margin which . . . allows its vertiginous character to appear, provided it is not trampled by the elephantine feet of the Other's whimsy. Nevertheless, it is this whimsy [this decision] that introduces the phantom of Omnipotence – not of the subject but of the Other in which the subject's demand [language] is instated.³⁷

The phantom of the Omnipotence of the Other is easily mapped onto the real omnipotence allocated to the transcendental sovereign who decides arbitrarily (whimsically) as to the status of the subject. From this position s/he assumes the position of a sovereign-Other who can author the reality of the

37 Lacan (2006), 689.

subject – as one deserving of torture, or not. Further, as the figure who dictates the speech of the torturer, s/he is able to obliterate the Real for the tortured and is imagined to be able to do so for the subject looking on. This is precisely what it means to provide ‘universal satisfaction’.

In the context of the current ‘War on Terror’, the elevation of the sovereign to a transcendental figure could not be easier to achieve. Terror of being beaten causes one to look for protection, if not love. When that terror is doubled from within, there is little choice but to align with the desire of the arbitrary sovereign. The scene of torture provides the formula for this alignment and, paradoxically, ensures that this alignment is essential for the subject looking on. Because of the psychic and political union for the contemporary liberal subject before the sovereign who tortures, the subject is compelled to relinquish its own desire and substitute it with that of the omnipotent sovereign-Other. This unified desire is, as I have stated, emblematised in the imagination of a language which we can say promises what Lacan calls ‘universal satisfaction’,³⁸ or a relief from anxiety.

Conclusion

The many films that have captured public interest, from *Marathon Man*, *Slumdog Millionaire*, *Reservoir Dogs* to *Rendition*, the proliferation of the images of torture in Abu Ghraib, the attempts to reproduce torture that appear endlessly on *YouTube*, and perhaps even the popularity of Scarry’s book itself, testify to a fascination with the scene of torture that cannot be overstated. The loss of oneself in the context of torture is traumatic, and I wouldn’t want to suggest otherwise. However, while it is obviously impossible to say that torture is an experience of being loved, the imagination of torture and the identification with the tortured – for Rumsfeld, but also for those who enthusiastically download images, documentaries and movies – suggests a reinvention of the scene of torture that produces excitement and a roadmap for securing the *unquestionable* love of the sovereign.

The scene of torture for the onlooker becomes a scene in which the tortured subject is receiving *not only* a beating from the sovereign, but a form of recognition in which their desire aligns. The scene of torture, to the ones looking on, holds the promise of a relief of uncertainty and a relief of the anxiety of whether one is or isn’t loved by the sovereign. In this scene, the words of the subject secure more than a modicum of recognition from the sovereign: they *become* the sovereign’s desire and thus they signify the place of ontological certainty of transcendental signification. This relieves not only the ordinary anxiety announced by language, but it offers a haven from the

38 Lacan (2006), 689.

anxiety of whether one can be tortured, or not. This relief is achieved only on the condition of the sovereign performing in a tyrannical form – as a God-like sovereign – whose words and actions hold no question. Hence, the dynamic of acceptance of the decision to torture can only occur toward a sovereign who tortures, a sovereign whose decisions instantiate certainty, as obliteration, in the flesh of the subject.

What remains of the tortured subject is a pure subject, a subject which has nothing which cannot be recognised by the sovereign; in Freud's idiom, nothing which cannot be loved. What remains is the bland, lifeless body, so well illustrated by George Orwell in *Winston* when he sits before his beloved and says 'I told them about you, too' in response to her saying 'I told them about you', and neither feel love, betrayal, pain, loss or any trace of anxiety. Nothing else exists outside what is inscribed in the scene of torture: the anxiety of the Real has disappeared and all that remains is a pure subject.

Woman does not exist in human rights

... knowledge must suppress difference as well as difference, that a fully just world is impossible, forever differed and different from our projections, the undecidable in the face of which we must risk that we can hear the other.¹

What remains of the tortured and the mutilated is *cut flesh* from which the speech is extracted and the voice, their own voice, falls. This voice or scream is no speech at all in the sense that the remnant of the self cannot speak a language that can be understood by The People of the liberal polis. The self that remains of the cut is in the proximity of silence as language disintegrates. This is both the condition of the tortured, as the application of pain destroys the 'self' in the sense of a self that has any *relation* or *association* to the world, and the condition of the mutilated woman, not in her experience of the practices, but in her experience of what the practices signify in the world – that is, in her experience of *voicing outside* the categories of law attached to Female, to Genital and to Mutilation. The mutilated woman, who might not experience herself as such, cannot attach or associate her experience to the language of the state or to the language of human rights – which is isomorphic with the liberal state's representations of female genital mutilation. But there might be some solace to this position.

At the end of these cuts is the remnant of an object who only *speaks for itself*. Not a pure subject at all, but one whose self contaminates a relation with the sovereign.

There is little political power in this position; little, if any, recognition of the speech of such a subject; little, what can be called, *naming power*. As Butler says: 'we may understand something of linguistic vulnerability through a consideration of the power to name. Lacan writes that, "the name is the time of the object."' But it is also the time of the Other.² That is, it is, the arrival

1 Spivak (1999), 199.

2 Butler (1997a), 28–9.

of the name as truth, or as speech which is understood to declare a truth, and the *time* of that arrival – as when it can be declared legitimate – that is the jurisdiction of The People, as the sovereign-Other. The mutilated subject is like the subject as subaltern illuminated again and again by Gayatri Spivak as the subject who cannot speak. But there are reasons for Spivak's revision of this position.³ That very lack of *recognition of speech* may offer a place from which to experience the empirical beyond the categories that proscribe an onto-political pureness to subjectivity. The lack of recognition may enable an indulgence in immanence from which something unrecognisable may come to disrupt the political or the biopolitical arrangement of power and desire.

In this final chapter I want to consider how the voice (and not the speech) of the mutilated woman can displace the primacy of a universal human rights that privileges body over speech and education over dialogue. To do this I discuss the Lacanian *passage à l'acte* as one mode of understanding a voice that *falls* from the cut of law. While this discussion is metaphoric, and cannot reproduce a political platform from which the mutilated woman can speak, it can offer a way to think what cannot be thought, or in Spivak's idiom, to encounter what cannot *not* be known: that the mutilated woman disobeys the teleological limits which frame her experience and organise her desire. To explore this form of *knowing* I begin with Freud's discussion of the 'The Psychogenesis in a Case of Homosexuality in a Woman'.⁴ It is from this essay that Lacan took his inspiration for the *passage à l'acte*. And from here I take inspiration to consider the unlikely figure of Lynndie England – one of the torturers at Abu Ghraib, the woman on the (other) end of the leash attached to the detainee nicknamed 'Gus'. England's position, in the media that accompanied her act, and in the scenes of Abu Ghraib, offers a way of thinking what cannot be thought. She, as an enigmatic figure, disturbs both an identification in the scene of torture and in the primal scene. She offers another location before the sovereign. Her desire, like Spivak's discussion of that of the 'third world woman', is incommensurable with that of the subject desiring law and desiring the love of the sovereign. England, like the mutilated woman who refuses to be so, is she who cannot be assimilated. She is the Lacanian woman who does not exist.

3 While Spivak's statement about this condition in 1988 in 'Can the Subaltern Speak?' was utterly compelling, she qualifies this statement in 1999 as an 'inadvisable remark' and suggests that not being able to speak may be a less comprehensive condition than she originally proposed. But nevertheless in 1999 she stated: 'If, in the contest of colonial production, the subaltern has no history and cannot speak, the subaltern as female is even more deeply in shadow' (Spivak (1999), 274).

4 Freud (2001).

The fall of flesh

In Freud's discussion of 'The Psychogenesis of a Case of Homosexuality in a Woman', we observe an act of law beyond the law-of-the-father. An act which exhibits more than what Žižek has called an 'acting out'⁵ of the sovereign's desire, but the production of the *passage à l'acte* as an unassimilable act. In Freud's description of this case, a young woman throws herself from a bridge before her father. This, in Freud's terms, 'homosexual young woman', has fallen in love with an older woman. The young woman's parents despair of their daughter's homosexuality, and specifically her obsession with this particular older woman (who is considered a lady of ill-repute), and send their daughter for psychoanalysis. In the critical incident that brings her to Freud, the young woman is walking with her 'lady' in the street; her father sees them together and gives the daughter an 'angry glance', the lady (of ill-repute) asks who this man was and when the young woman informs her that it is her father, the older lady demands that the 'affair' end immediately. Along with this demand, she insists that the young woman's attentions cease and that all contact between them end. The young woman promptly throws herself off a bridge. She survives the fall and her parents send her to Freud, ostensibly to cure her sexuality.

For Lacan, the fall from the bridge is the *passage à l'acte*.⁶ This is not only the act as an attempt at suicide – for a suicide (or even suicide bombing) is not enough in itself to disturb the symbolic order – the *passage à l'acte* is the performing of an act *not in relation*. It is the killing of one's self *beyond* the parameters of the law – or in this instance, not in relation to the father's angry gaze. In Lacan's terms, it is the being – if one can call it being – not in relation to the symbol. In the case in question, the young woman does not attempt to kill herself as a subject; she attempts *not to exist as a subject*, or – in the explanation of psychoanalysis – not as a subject of the law of the father, but as the object that the law instantiates.

To understand this non-existence before law, it is crucial to remember that she is her father's daughter, and that the fundamental tenet of the law is an oedipal prohibition as the oedipal law. By making herself fall from the bridge, Lacan and Freud concur she is enacting a condition of pregnancy *and* infancy simultaneously. 'To fall' is to fall pregnant, only she is the *falling object* and the *fallen woman* – that is, she is the infantile product of an impossible oedipal relation. To make herself thus requires a dual effort (albeit an unconscious one) in which she both attempts to kill herself *and* make the father's law – in which she was moments before in relation (or in which she was the *self* instantiated by the law-of-the-father) – not exist. In Lacan's description:

5 Žižek (2007).

6 Lacan (1994).

It is just a matter of a counter-aggressive phenomenon, of a return onto the subject of aggression towards the father, combined with a sort of crumbling of the whole situation on its primitive givens, which symbolically satisfies what is at stake by a precipitation, a leveling of objects that are truly at play. In short when the young girl falls to the bottom of the little bridge, she accomplishes an act, which is nothing other than the *neiderkommen* of a child being born. It is the term used in German to say that one is 'dropped'.⁷

For Freud and for Lacan, *neiderkommen* – in the German colloquial – means to fall in the same sense as to fall pregnant, or indeed to drop a baby. The young woman, in making of herself the baby who is dropped, is not subject to the law-of-the-father because it is the law-of-the-father which precisely denies her the baby from the father. That is, she is the object of the breach. She is performing as if she falls, for herself. In this sense she is the object and not the subject. She becomes what she cannot have, according to oedipal law – the child from herself birthed from a union with the father – that is to say she becomes the impossible.

The impossible is both what cannot be produced in a political discourse – which thrives on narcissistic recognition of the desire of the subject – and it is that which is the excess of justice present in every act before the law. Spivak, employing Derrida's many discussions of the figure of the impossible describes the subaltern as 'the figures of justice as the experience of the impossible'.⁸ We can think of these figures as an enigmatic excess of justice's determination to represent, to categorise, to adhere the subject to the names-of-the-father, as the names of law. These figures are enigmatic because where their voice *falls* it points to all that is *unrepresentable* in the symbolic, and before law. An enigma, in this sense, is the body of the subject *as* the Real. I have noted the disturbing quality of this subject's desire over the pages of this book, and the aggression to produce her in a state of closure. Here I'll illuminate both that aggression and the impossibility of closure in the scene of torture through the disturbing presence of Lynndie England, who did, we might describe, fall metaphorically pregnant to her father as the parodic figure of sovereign desire.

Lynndie England does not exist

The mutilated woman who speaks, like Lynndie England in the scenes of Abu Ghraib, interrupts the promise of *universal satisfaction* – in the terms I have discussed throughout this book – for the subject looking on to the scenes of

7 Lacan (1994), 113.

8 Spivak (1999), 246.

torture and to the scenes of female genital mutilation. Figures like England, and the mutilated woman who speaks, introduce an anxiety for the subject looking on to these scenes through their expression of a desire that does not articulate with that of the sovereign, but nevertheless does not quite *not* articulate. That is, it is a desire, and in England's case, an identification, that expresses the possibility of isomorphic affiliation – or in Spivak's terms, commensurability – but also points to the excess of the scene of desire, an excess to the possibility of this desire being represented in the scene of law.

England's presence in the torture scene, and the accompanying public vitriol she endured, can be read in several ways. Firstly, she is the one who is getting the love of the sovereign's representative – in this case the 'father figure' of Charles Graner. She, if we follow her gaze in the infamous photograph of her holding the 'dog leash' tied to the prisoner nicknamed 'Gus', is precisely looking on. Hence, in one sense, to the viewer looking on, England either represents an enigmatic fourth figure in the scene of torture, or takes the place of the one looking on; the one imagined getting the love of the sovereign. If we read the torture scene through an oedipal lens, we can perhaps explain the vitriol which has been hurled at England, and arguably the relatively harsh prison sentence she incurred,⁹ as a desire to position her as the *other* one being beaten rather than the one receiving love. We can suggest that England is denigrated in an effort to position her as an unloved child of the father, so that the position of onlooker and good child is still available to the viewer of the images. But I also want to suggest that this vitriol points to a deeper imagination of her place in the scene of torture, a place which defies the allocation of a woman's desire – and the subject's desire – and places it, in a Lacanian idiom, to that of Woman. That is, the vitriol toward and the fascination with England is because her desire cannot be symbolised and thus reminds the subject looking on that a perfect alignment of desire in the sovereign-subject relation – like that in the sexual relation – does not exist.

In the interviews with England, her explanations of her role, rationale and relationships in the scene are banal and largely unsatisfying to her interviewers. She was a young woman with little education in a small town in the United States; there were few job prospects in her town, so she joined the army. In Abu Ghraib she fell in love with Charles Graner because he was 'fun'. She didn't work in the prison in which the torture occurred, but she was there because she loved Graner and it was a long walk back to her barracks at night in the open while there were mortar attacks. She didn't like what was going on at Abu Ghraib, but her superiors told her that it was an important practice.

9 England received a 3-year sentence of which she served half, but she was not proven to have touched the prisoners. Roman Kroll received only 9 months for throwing objects at them, including a nerve ball which, by his own admittance, was 'likely to hurt'. From his comments in the documentary *Standard Operating Procedure*, directed by Philip Gourevitch and Errol Morris, 2008.

She was in the photos because Graner asked her to be there and she loved him. No matter her explanations, however, the interviewers rail against these answers with repetitive determination, asking her in every way they can – ‘why did you do this?’¹⁰ In the interviews she is described as an unknown, precisely as an ‘enigma’. As one reporter says: ‘England remains a mystery. Is she a torturer? A pawn? Another victim of the Iraq war?’¹¹ But England has no further response that can offer relief. She was simply obeying the emotional orders of Graner and the military orders of her superiors.¹² She didn’t want to be there, but she did not *not* want to be there.

England is precisely enigmatic in her responses insofar as her motivations and desires cannot be readily comprehended. The incomprehension is further compounded by her appearance which defies the simplest of gender categories, and is consistently commented on in the reports. As one reporter describes: ‘She wasn’t the only woman soldier in the photographs – Sabrina Harman and Megan Ambuhl were both court martialled for their roles – but England was the most arresting looking, like a 14-year-old boy who shouldn’t have been there in the first place.’¹³

England’s own description of her rationales for joining the army even further compound the defiance of her position, and indeed any identification of her as Woman. As she says:

I always wanted to be in the military. My whole life. I just didn’t know what branch – Navy, Army, Coast Guard, Marines, Air Force. I just wanted to serve my country and be a patriot, I guess. As a child I mainly grew up on military gung-ho movies so that’s where I got the idea. Old Chuck Norris movies, ‘Delta Force’, ‘Rambo’, ‘Missing in Action’, ‘Platoon’.¹⁴

These are, however, films in which women play almost no military role; their function is to be saved, killed or to act as the receptacle of the (military) man’s desire.¹⁵ One could argue that this offers some explanation as to the role she found herself in with Graner: that an identification as being a receptacle for men’s pleasure is precisely what she saw in those films. But, while pleasing Graner is her repeated justification for her actions, this is not her stated identification. She identifies as serving her country, not

10 Anderson (2009), interview with Lynndie England. It is one version of the question repeatedly asked of her in every form interviewers can manage.

11 McKelvey (2009).

12 Anderson (2009).

13 Brockes (2009).

14 England (2008).

15 In one of the ‘Rambo’ films there is a Vietnamese female soldier, but her role is fleeting and she is killed.

serving a man. She is the patriot – Chuck Norris, Sylvester Stallone, Charlie Sheen.¹⁶

England's ambiguous gender – to herself and to the viewer – together with her capacity to gain the love of the torturer (the 'ringleader')¹⁷ Graner, offer a confusing point of identification for the subject looking on to the scenes at Abu Ghraib. Every woman, according to psychoanalyst Collette Soler, wonders what it is to be a Woman.¹⁸ The precise characteristics of gender, or the coordinates which produce one as desirable as a Woman (or indeed as a Man),¹⁹ are not known. There are no 'individual words that can ground the signifier'.²⁰ For Lacan, 'Woman does not exist'²¹ precisely because Woman cannot be symbolised completely in the order which allows for the communication of gender and indeed of relationship across referents. Woman – as opposed to women – if one could symbolise the position of being Woman, would allow for a knowledge, and perhaps for knowing the coordinates, which might enable a mutually aligned relationship. What we think of as *knowing oneself* – as knowing the coordinates of one's desire – enables the communication of one's desire to another, and indeed vice versa. But this knowing is little more than a capitalist fantasy that is employed in advertising to suggest that the object on display is precisely what one wants.²² [w]omen – as opposed to Woman – are, like any subject, the locations of largely unknowable desires which inhabit the unconscious.²³ Desires which cannot be symbolised and which are epitomised in enigmas like the not completely Woman: Lynndie England. And like the not completely Woman: the mutilated woman.

In the sexual, and indeed in the sovereign relationship, the subject can fool itself that the coordinates are knowable, fixed; that law is in fact Law, just as we believe there is a definitive symbol for Woman. But because desire, including the sovereign's desire, is never completely known, Law is only ever law and Woman is simply *women*. As Lacan says: 'what characterises the relationship between the signified and what serves as the indispensable third party, namely the referent, is precisely that the signified misses the referent.

16 Perhaps ironically from England's position all of these films are about defying legitimate military authority in the interest of performing acts of 'real patriotism'.

17 Brookes (2009).

18 Soler (2002), 99 at 103.

19 Man for Lacan is the symbolic: see Lacan (1975, 1998).

20 Lacan (1975, 1998), 18.

21 Lacan (1975, 1998), 7.

22 Epitomised and parodied helpfully for my purposes here in the recent viral Old Spice commercial 'The Man Your Man Could Smell Like', when Isaiah Mustafa gestures to 'two tickets to that thing you love', *YouTube*.

23 Jeffrey Prager's statement on trauma and the unconscious is helpful here when he says 'the unconscious is the "site" where trauma defies personal wishes and expectations' (Prager (2008), 405 at 409). Even irrespective of trauma, the unconscious defies *what we imagine we know* as our personal wishes and expectations.

The joiner doesn't work.²⁴ As I have said over the course of this book, the law doesn't work as a mode to define the sovereign's desire. Even anti-fgm law doesn't work as a coordinate to define desire – of either the mutilated woman or the anti-fgm activist as the one looking on. England is one form of evidence of this guess missing the mark – that the joiner between signified, and thus between desires, does not work. She is not Woman and she epitomises the impossibility of anyone ever being so. From that position she is another example of the impossibility of the existence of a sovereign-subject relationship aligned with mutual desire. Further, she shows to the one looking on the reality of desire being fleeting – Graner's desire, the torturer's desire and the sovereign's desire. England obeyed orders, she did as she was told, she attempted an alignment with her lover, the torturer and her sovereign, and yet she was punished. England is the epitome of the non-aligned and non-alignable relation between sovereign and subject, and as such, she shows us the reality of torture that we cannot *not* know – that it is not only another subject receiving a beating, but that we all could be tortured and that there is no constancy in the love of the sovereign.

England, like Woman, does not exist because she cannot capture all the symbols under the name 'Woman'. That is, women dwell in the realm of the imaginary because the symbolic order does not *speak*, if you like, to all that comes with that imagination. Women exceed symbolisation.²⁵ But in the mode of female genital mutilation discourse this configuration is imagined as overcome and the clitoris becomes *the* symbol. The (re)capturing of the clitoris is thus the symbolic acquisition of all that is Woman.²⁶ We can understand the conflation of these thematics to indicate that Woman – with clitoris, or 'non-mutilated' – is the image of the sovereign subject – in a political sense, and a *whole* subject – in a psychoanalytic sense. Indeed, it would have been less problematic for feminists, and equally as indicative in post-enlightenment times, to utilise Lacan's statement to say 'there is no such thing as the Sovereign Subject', for it exists in imagination, or in Lacanian terms, in the realm of the imaginary. In this realm, items such as the clitoris come to function as the object which will restore the subject to the (psychotic) level of sovereignty or, rather, in this terrain, of non-paternity – to the status of a subject which imagines itself without lack, which imagines itself beyond castration. But as I have said, this position is impossible and exists only in the symbolic.

If we conjoin the *passage à l'acte* with the dis-identification with England's role in the scene of torture, we can see some possibility for a speech beyond the realms of law.

24 Lacan (1975, 1998), 30.

25 This is of course true of men also; it is arguably not a question of gender, but phallic significance in the symbolic. This can then be seen as precisely a question of gender, but this debate is extensive and exceeds the parameters of this chapter. See Copjec (2002).

26 Lacan (1975, 1998).

As if to punctuate the role of England as a parody of the pure subject of the torture scene, England fell pregnant to Graner. She now has a young son, but Graner denies that the child is his. He has married Megan Ambuhl – another woman in the scenes of Abu Ghraib. The child of England has no paternity to Graner in the conventional sense. The child is an *illegitimate* child with no name-of-the-father. Of course the child has a name, but it is not the name-of-his-father. Thus, the very act of coupling with Graner produced of it a body outside the law – both illegitimate and dispossessed of such a name. This, however, may be an ordinary blessing for such a child whose paternity emerged from torture. We can speculate that the continued production of the child through such parentage would leave little room for the child *speaking outside the law*. Thus, in an allegorical – although perhaps very real – sense, the fall of such a child, outside of law, may enable a disruption or at least distortion of the aggressive symbolisation that is the product of torture.

The speech of the clitoris

What is it that *falls* from the mutilated woman? More than her clitoris cut and signified in the image of western desire, what drops from her is a voice which is first (and I cannot not say foremost) signified as the speech of a mutilated subject adhering to the production of her in the image of the western subject. And this is even when that subject desires to produce otherwise. As Spivak says so succinctly:

It is impossible for contemporary French intellectuals to imagine the kind of Power and Desire that would inhabit the unnamed subject of the Other of Europe. It is not that everything they read, critical or uncritical, is caught within the debate of the production of that Other, supporting or critiquing the constitution of the Subject as Europe. It is also that, in the constitution of that Other of Europe, great care was taken to obliterate the textual ingredients with which such a subject could cathect, could occupy (invest?) its itinerary – not only by ideological and scientific production, but also by the institution of the law.²⁷

But where Spivak points to obliteration she also, and perhaps accidentally, points to 'care'. Again, I cannot not evoke Lacan's comment on care that casts repetition as the effort 'to be careful enough' to obliterate the Real which insists in signification. But there is something which exceeds the care as obliteration, something that exceeds the economic reproduction of the clitoris and of the mutilated woman's desire in the narcissistic image of the western women's desire. If there were no excess to this representation – no excess to

27 Spivak (1999), 265–6.

the aggressive, narcissistic economics that returns the image of the Subject of Europe to itself, then, as Spivak notes herself, 'why speak of "the gift" at all?'.²⁸ The madness of the gift in Derrida's configuration of its economic structure in relation is madness as the *aneconomic*.²⁹ That which falls from the mutilated woman may, indeed, be the figure of justice as the impossible, and by this I am referring to that which is impossible to represent in the symbolic: clitoris as Clitoris.

The excess of that which drops (falls) from the mutilated woman is the gift of uncertainty and *aneconomic* signification of the clitoris. This is the excess of the biopolitical signification of bodily function as desire. In Lacanian terms, it is the excess of symbolisation that conjoins 'need' with 'demand' in which the excess is an insistent and insatiable *desire*. Thus, what persists in discussions of female genital mutilation is the question as to 'what does Woman want?', framed as 'what does Woman feel?'. The question persists, however, because it is unanswerable, insatiable – there can be no universal satisfaction to the desire of women. The feelings of *women* are the imaginary to 'women' as opposed to that which is symbolisable as Woman. There is no *knowable* Clitoris; there is only flesh which we focus on again and again and again. Indeed, there are studies which appear repeatedly as to what women feel in the act of sex – from Kinsey, through Lightfoot Klein, Shere Hite, Shandall, to Dopico. But the repetition announces the confusion and the absence, the place that may be traced by women, who do not exist, but cannot be ignored.

The unknowability of the clitoris is then perhaps the excess of the gift as that which falls from the mutilated woman: the gift to the western woman. This is a gift to Spivak's Subject of Europe, who *cannot not* 'unlearn our privilege as our loss'.³⁰ For Spivak:

Part of our 'unlearning' project is to articulate our participation in that formation – by *measuring* silences, if necessary – into the *object* of investigation . . . when confronted with the questions, Can the subaltern speak? and Can the subaltern (as woman) speak? Our efforts to give the subaltern a voice in history will be doubly open to the dangers run by Freud's discourse.³¹

However, these are not only the dangers to these mutilated woman – the dangers of theorising her unconscious (which I have hopefully avoided in this book) – but the danger – as 'unlearning' – of observing the unconscious

28 Spivak states: "This, too is a rewriting of accountable responsibility as narcissism, lower case; perhaps we cannot do otherwise, but one can tend. Or else, why speak of "the gift" at all?" (Spivak (1999), 251).

29 Derrida (1992), 7.

30 Spivak (1990), vii.

31 Spivak (1999), 284.

of the anti-fgm advocate. And this is an unconscious that, as I have suggested in this book, is profoundly traumatised by both the presence of the mutilated woman and by the sense of difference and of similarity that she provokes, as a similarity in her supposed position as abandoned *qua* mutilated before law, and as difference in her evocation of an-Other's law.

The welcome trauma of loss

If we follow the trajectory of Spivak's unlearning of privilege and the ambiguity of what is lost, then let us call the unlearning that I have mapped here *a welcome trauma*. Psychoanalyst Dori Laub's explanation of what occurs in trauma helps us to understand what occurs for the anti-fgm advocate. As he says:

The traumatic event, although real, took place outside the parameters of 'normal' reality, such as causality, sequence, place and time. The trauma is thus an event that has no beginning, no ending, no before, no during and no after. This absence of categories that define it lends it a quality of 'otherness,' a salience a timelessness and a ubiquity that puts it outside the range of associatively linked experiences, outside the range of comprehension, of recounting and of mastery.³²

Torture is such a trauma, but in response to those who might say that 'female genital mutilation is also a trauma', it is important to understand that trauma is more than pain and more than the cutting of flesh in what we think of as *reality*. Trauma is the disintegration of one's world, a trauma to the 'I' I understand myself to be, the 'I' in the mirror. It is that 'I' which disintegrates when the tortured lose their sense of self, but the inverse is also traumatic. The loss of 'associatively linked experiences', which render one's experiences witnessed outside the parameters of language – and indeed the parameters of law – is itself traumatic. Hence, when the woman in the 'consultation' with Attorney General Jan Wade in Melbourne says 'I am not mutilated', she may be attempting to recover her flesh in language, but she also inaugurates a trauma in those present; those who would have her mutilated; those who would identify with the non-mutilated in the scene of (sovereign) beating; those who would identify as female soldiers, or male patriots (not both); those who would identify with the heterosexual form of oedipal law that is sanctioned as the law-of-the-father. To see the subject of female genital mutilation as not mutilated sits outside the parameters of 'associatively linked experiences outside the range of comprehension, of recounting', but

32 Laub (1992), 69. I have also expanded this sense of trauma in relation to law in Rogers and Rush (2010b), 30–4.

also outside 'of mastery'. This seeing of the mutilated woman beyond associatively linked experiences, I suggest, is not only of being outside of mastery of the self, but sometimes of the mastery of others, of the symbolic order and of law – outside of mastery of the law-of-the-father. This outside, however, might be the trauma of the anti-fgm advocate as a witness to the *passage à l'acte*. Thus, the trauma of that which is dropped from the mutilated woman may function as a gift to the subject of law because it inaugurates what cannot be named, and thus opens possibilities for rendition beyond law. This is the gift of the 'homosexual woman' in Freud's case. I am not suggesting that heterosexuals cannot participate outside the categories of law, I am suggesting that the gift of the supposedly mutilated woman, or let us call it the excess of that which falls from her, is the possibility of dis-identification, the possibility of identifying with the fall of what cannot be signified.

Conclusion?

She 'spoke' but women did not, do not, 'hear' her.³³

For feminists and for leftist intellectuals, one of the tragedies of human rights rhetoric is its all-encompassing formula for salvation and for politics. Its production and privilege of particular types of flesh demands a split in the identification of the critics into those who wish to critique beyond the biopolitical and those who want to *keep people alive*. These need not be mutually exclusive, but the seduction of human rights, as an effective advancement for those who might otherwise be *killed* through starvation, transportation, the effects of enslavement torture or capital punishment, is a seduction which disables a politics beyond the body, or beyond the body of human rights and its ever-accommodating generations. These generations of human rights cannot help but magnify the discourses of salvation that produce the silences of what Spivak calls the 'Other of Europe'. This is not because human rights activists do not desire the speech of the mutilated, as Spivak so sharply describes '[t]he ventriloquism of the speaking subaltern is the left intellectuals stock-in-trade',³⁴ but because she is always *a priori* mutilated in a discourse that splits flesh and speech under the rubric of the good. From this position, 'the protection of women (today the "third world woman") becomes a signifier for the establishment of a *good* society (now a good planet)³⁵ and the mutilated woman is forever caught in the good of human rights.

I have argued in this book that the production of the female genital mutilation as a mutilation of the mutilated woman enables a selective

33 Spivak (1999), 247.

34 Spivak (1999), 255.

35 Spivak (1999), 288.

application of human rights and that this may be, in keeping with the logics of liberal law, because the targets of those rights have committed a crime. Their crime, however, is a primal one; it is the crime of trying to put the flesh back in the cut from whence it came. The crime of trying to insert the self into the speech of human rights, or of trying to speak one's voice. It is the crime of trying to *get back in*, and permeate the body of human rights.

Returning flesh hurts. It may proffer a particular kind of enjoyment for the torturer, for the sadist and perhaps even for the state, but in its figurative status as trying to insert speech *which does not fit* into the place where it is already signified otherwise, it may be traumatic. Perhaps this is why the affect of those who believe deeply in human rights becomes so violent, so red faced, so rageful when their benefits are questioned or contradicted. Perhaps this is why the speech of the mutilated woman is foreclosed upon when she says she is not mutilated. Perhaps this is why she cannot be heard above the cacophony of pleas to save her. The mutilated woman, who claims she is not mutilated, injures the consciousness of the human rights advocate; and pain, as we know from Scarry, obliterates thinking. But the obliteration of thinking may be precisely what is required in the terrain of human rights and in discussion of female circumcision. Thinking on female genital mutilation, by the Subject of Europe, has produced little reflection on the categories that perpetuate the political mutilation of 'mutilated women'. These women are relegated children, non-agents, non-subjects, as I have discussed in this book. And this production enables an affinity with the codes of law that emanate from a sovereign-Other whose desire is unknowable. But these codes have not served the interests of social justice well – which is not to say they do not serve the propagation of a hierarchy of categories that enables the management of migrants in western countries. This is what Spivak describes as the 'left-intellectual's trade on an investment in *more rights* for the subjugated using the categories I have discussed in this book. These categories ascribe privileges to gender, pain, fear and trauma. They are categories that reduce all humans to the level of flesh. From this position, the political can only thrive on trading on more or less flesh, more or fewer cuts. The significance of the cut, its investments and its aggressive articulations must be interrogated if a politics beyond biopolitics is made possible; a politics beyond the keeping alive of the human and relegation of life to more or less bare life.

When Renata Salecl asked 'Why is Woman a symptom of Human Rights?'³⁶ and articulated this production as that of the abstract, but with the infiltration of desire, she did not consider specifically the desire that was already traced by the advocates of human rights. An interrogation of desire *as desire* with all its investments – in the good, goods and an identity of being

36 Salecl (1994).

good – cannot *not* produce an excess of the trajectory of the Good of human rights. More than that, it cannot not produce *places of non-naming*, even if those persist only in the unconscious of the Subject of Europe. As Spivak says: ‘the only figure of the unconscious is that of a radical series of discontinuous interruptions . . . the epistemic story of imperialism is the story of a series of interruptions, a repeated tearing of time that cannot be sutured . . .’³⁷ These places of non-naming as interruptions may be traumatic for those aggressively attached to the names as repetitions of identity and of law, but these may be the only places from which conversation – I do not say speech – can take place. This is conversation as dialogue, as listening, and sometimes as silence. Only from these conversations can the categories of the biopolitical be displaced or dislodged by the voice of those who cannot name. Only from these positions can the flesh fall and, at least in part, be received as and in the flesh of The People.

37 Spivak (1999), 208.

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