

**A contextual analysis of law and “the state of exception”:  
Spatialization of emotions and engulfed apathy**

A Dissertation

Submitted to the Faculty of Graduate Studies in Partial Fulfillment of the Requirements for the  
Degree of Doctor of Philosophy

Social and Political Thought  
York University, Toronto, Ontario

Defense Date: October 7, 2024

© Ladan Adhami-Dorrani, 2024

## **Abstract**

In the context of the American War on Terror, the focus of this eclectic text is to traverse between the past and the present and vice versa to argue that law is hegemony, which in the state of exception, transmutes itself into sheer force. Law with its promises of universality, objectivity and impartiality does not lead to a peaceful and sustainable future mindful of diversity and plurality of our common world and the Mother Earth. Law is bound by violence and the sovereign's decision, as well as the complex web of significance that are not meant to protect all in the house of modernity which has predominately relegated emotions to the private realm. However, as Walter Benjamin argues, the state of exception has become the rule and as Giorgio Agamben maintains, a paradigm of government in liberal democratic states. Spaces of exception and exclusion, like Guantanamo Bay Detention Camp (GTMO) testify to how the state of exception has showed the true face of the sovereign in excluding "the other" from the Western juridical field. In other words, GTMO is the epitome of engulfed apathy, and a violent space, where in the name of security and democracy, a 15-year-old Omar Khadr, a Canadian citizen by birth, was held captive and was tortured. The American War on Terror has undermined the democratic principles of liberty, equality and justice for all, heading towards world alienation. This text draws on the literature of Hannah Arendt and espouses her calls for political participation as a way to undermine the violence of the sovereign.

Reason is powerless in the expression of love.

Rumi

Love is not all: it is not meat nor drink  
Nor slumber or a roof against the rain;  
Nor yet a floating spar to men that sink  
And rise and sink and rise and sink again;  
Love cannot fill the thickened lung with breath,  
Nor clean the blood, nor set the fractured bone;  
Yet many a man is making friends with death  
Even as I speak, for lack of love alone ...

Edna St. Vincent Millay, "Sonnet"

## **Words of Appreciation**

It is beyond my capacity to thank many individuals without whom this study could not be realized. I am indebted in particular to Professor Livy Visano, my leading committee supervisor, for his continuous support throughout the years. I appreciate his patience when he provided me with an intellectual space to work independently as well as being there to help, to listen to my thoughts and to give invaluable comments on this project, while being committed to plurality of visions. Many special thanks to Professor Shannon Bell in whose class I gained knowledge about power and violence. I am grateful that she joined my supervisory committee when I needed her gracious support. I thank Professor Lorne Foster for his generosity and trust in me to be part of my supervisory committee without much of knowledge of my work ethic and my passion for knowledge. My great appreciation goes to my first daughter, Bahar, who throughout the years has been patiently there to hear my thoughts and helped me in editing my work, despite being busy with her career building and her young family. Having said that, any errors of judgement and shortcomings in the terms of the context of this study, views and its approach are all mine. Although an intellectual activity is a solitary enterprise, no project can be realized without the support of many kind individuals who are in my thoughts with my immense appreciation, but I am unable to name them all here. My special thanks go to my family, whose emotional supports have been the mainstay of this project. Many, many thanks to my husband, Massoud, whose love and financial help provided me the opportunity to continue my study despite my family responsibilities. As well, my special thanks go to my second daughter, Ava, who stood by me throughout the years and listened to my thoughts which were raw, but she always welcomed them with words of encouragement despite her own study and work. Mohammad and Armin, my sons, were graciously considerate, helpful and supportive of this study. Shahla and Maryam, my dear sisters, and the rest in my family have been there and supportive of my intellectual activities. Jana and Yara, my granddaughters, brighten our days with their liveliness. Last but not least, my special gratitude goes to my late uncle Aflatoun Adhami whose kindness will never be forgotten inviting us to Canada, and my late Mother, Ms. Batoul Adhami, whose exemplary role as a torch-holder in our family reminds me that it is never late to follow your passion, and taking action is the key to realizing possibilities.

## Table of Contents

<b>Abstract</b> .....	ii
<b>Epigraph</b> .....	iii
<b>Words of Appreciation</b> .....	iv
<b>Table of Contents</b> .....	v
<b>Introduction</b> .....	1
<b>Chapter one:</b> “The way must be tried”: The methodology of an amateur.....	9
<b>Chapter two:</b> The unlawful enemy combatant: the 15-year Omar Khadr and the path to the Guantanamo Bay Camp (GTMO).....	34
<b>Chapter three:</b> The hegemony of truth.....	76
<b>Chapter four:</b> Spatialization of emotions.....	110
<b>Chapter five:</b> Modernity and world alienation.....	130
<b>Chapter six:</b> Bureaucratic organizations: Distancing and engulfed apathy.....	155
<b>Chapter seven:</b> Understanding law and the state of exception.....	180
<b>Conclusion:</b> The conclusion of a postscript.....	214
<b>Bibliography</b> .....	220
<b>Appendices</b> .....	241
<b>Appendix (A):</b> UN Convention on the Rights of the Child.....	241
<b>Appendix (B):</b> UN Rules for the Protection of Juveniles Deprived of their Liberty.....	246
<b>Appendix (C):</b> UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).....	249

## **Introduction**

“The way must be tried.” I have been awakened by the privilege of pain to explore the significance of the law, and the state of exception in the spatialization of emotions leading into an existence that thrives on engulfed apathy. September 11, 2001(9/11) opened a new chapter in my life both intellectually and emotionally. It became a contextual foreground for my Master Research Paper in Anthropology where I shed light onto how the tragedy of the attacks on The World Trade Centre in New York and the Pentagon in Washington D.C. was used by President George W. Bush and his administration to demonize “the other”. The dissemination of fear in the American social body, and the body politic, not only infected individuals’ body within the nation, but was also spread around the globe. Fear was used as a political strategy to secure the consent of the ruled who were implicated in the violence against “the other” and the proliferation of US belligerent foreign policies and practices in line with the US power interest and its pursuit for global domination. My Ph.D. project, in Social and Political Thought although derivative of my master research as a preliminary context, tries to understand the law, the state of exception and spatialization of emotions that point not only to the modern existence that thrives on engulfed apathy, but also sheds light onto a systemic crisis within the house of modernity that is anti-pluralistic in its disposition.

My PhD dissertation anchors on the eastern banks of Guantanamo Bay in Cuba, (from now on GTMO), where the American naval base is located. Since 2002, the base has been used as a space of detainment for individuals who have been considered as “unlawful enemy combatants” captured in the American war on terror. It is in GTMO that we hear the call for help from a fifteen-

year-old Omar Khadr, a child soldier captured in Afghanistan, who is a Canadian citizen by birth. Khadr's captivity for ten years in GTMO and being the last Western national to be out of that "hellhole" according to his lawyer, Dennis Edney, undermines the hegemonic claim of the law to universality, objectivity and impartiality. Contrary to the law's symbolic image of a blind maiden balancing the scale of justice dispensing her services with her perfect impartiality, GTMO depicts the transmutation of the law to an exceptional state where in the ocean of other-making, engulfed apathy secures itself in the orbit of law-making and law-preserving violence<sup>1</sup>. In the name of democracy, freedom, and security, the US war on terror not only has evoked emotions of fear, hate, and resentment, but also reverberated the systemic ever-present mentality of "us" vs. "them." In other words, "you are either with us, or against us", in both fundamentalist camps at war. It is in such a submergence of the law and the state of exception in other-making, that one is unable to dismiss the interdependence of the social body, the body politic and the body of individuals under the hegemony of a juridical field.

Law, as this research explicates, is hegemony, which in the state of exception transmutes itself to sheer force. Drawing on a series of texts, this project relies on the breadth of knowledge of many intellectuals as well as draws upon the experiences of many individuals who have been affected directly or indirectly by the prejudicial dispositions of the sovereign, who decides on the exception. Contrary to law's claim to universality, objectivity and impartiality, we can see how

---

<sup>1</sup> In a seminal work, *Critique of Violence* (1978), Walter Benjamin expounds the relationship between law-making violence and law-preserving violence. Accordingly, he maintains that in such a structural setup/predicament there is neither hope for the liberation from bourgeois oppression, nor any salvation from such a ruinous disposition. Given that the state has its hands on monopoly of violence through its laws, the only hope is on the revolutionary forces to bring substantial changes. It is equivocally important to read Benjamin's, *Theses on the Philosophy of History* (1968), for it is complementary to his *Critique of Violence's* argument.

law and the state exception have been the mirror image of society in perpetuation of unequal practices leading into discrimination based on race, ethnic and religious background in the context of the US war on terror. In other words, the focus of this research is on the law and the state of exception and the exclusionary discourses and practices post 9/11, targeting the Muslim “other”. Through a postmodern, critical, interpretive and genealogical approach, this research not only casts light onto the existence of the systemic violence within the law, but also points to the manifest violence of the state of exception that speaks of spatialization of emotions leading to opening spaces of exception like GTMO, the epitome of engulfed apathy. Engulfed apathy in Thomas Scheff’s articulations (1997) refers to one of the bipartite of alienation that consists of engulfment and isolation, far away from a balanced social bond that is emotionally and intuitively mindful of both the “self” and “the other”. Moreover, this study argues that law and the state of exception draw part of their violent power from the historical hegemony of truth which not only invests in the spatialization of emotions to extract power based on violence, but also to set boundaries and draw a line between the Western “civilized self” and the “backward other”, which has been part of the scheme of modernity.<sup>2</sup>

Law as hegemony, whose contradictory and complex disposition cannot be separated from the social body, the body politic and the body of the individuals, is a legitimized form of

---

<sup>2</sup>In *Exceptionalism and the Politics of Counter-Terrorism: Liberty, Security and the War on Terror* (2010), Andrew W. Neil’s points to Hobbes and Kant, the prominent liberal philosophers, whose spatial and temporal approach to politics speak of a great rift between “the Western civilized liberal self which is historically associated with the Western modern “progress” and the “rational” faculty. It was the belief in progress that made the Western subject perceive history as a linear trajectory, a departure from the backwardness to embrace progress, a spatial and temporal line that differentiated “the Western self” from “the barbarian other.” In other words, the non-Western other, has been considered the epitome of backwardness and irrationality whose emotional propensities have not been compatible with Western politics or laws/policies. Thus, there has appeared a perceived fear of contamination with “the backward other,” whose lack of reason/belief in progress, is an impediment to the Western self.

domination, which secures its hegemonic power through consent. Embarking on a genealogical journey and looking into the Western philosophical antiquity and its knowledge-making, as well as the rise of modernity and its apathetic sociocultural, political, economic and organizational structural make-up to name just a few, this research tries to be mindful of the treacherous effects of Western identity politics and its oppressive cultural imperialism. Yet, Audre Lorde's eloquent articulation (1984) is a reminder here to be not engulfed in other-making and reproduce what one strives to be departed from: "For the master's tools will never dismantle the master's house. They may allow us temporarily to beat him at his own game, but they will never enable us to bring about genuine change" (1994, p. 112). Instead of being trapped in a violent cycle of other-making, first it is the care for the other and love for the plurality of the world that this study strategically adopts "the master's" claims of universality, objectivity and impartiality to encounter the law's and the state of exception's exclusionary discourses and practices with his own aforementioned claims to remind him that the legitimacy of the law is at stake. If there is neither care for the other nor for the world, the question remains: Can one feel at home or build a durable dwelling in an apathetic Western modern world, where the legal truth both in its normative form and its states/spaces of exception stands for exclusionary discourses and practices submerged in violence?

Chapter one, The way must be tried: The methodology of an armature, embarks on a brief literature review about method. Adopting a postmodern, critical, interpretive, and genealogical methodology, this chapter begins with my personal and emotional experience on the event of 9/11. While it relies on the breadth of knowledge of many texts in regard to the method, this Chapter's focus is on the importance of emotions/or lack thereof in one's trajectory of perspective and ethical

values. Chapter two, The unlawful enemy combatant: The 15-year Omar Khadr's path to the Guantanamo Bay Camp (GTMO), briefly sheds light onto the apprehension of Omar Khadr in Afghanistan by the US military force on the war on terror, and how his ordeals is tangled with other individuals' sufferings, the historical and political trajectory of the state violence, the hegemony of the law and the transmutation of law into sheer force in the states and spaces of exception. This Chapter is foundational for this project as it provides a space of application and amplification that precedes the subsequent theoretical and genealogical approach in the Chapters that would follow. Not only does it briefly look at GTMO as a space of exception, an epitome of engulfed apathy, a site of humans' suffering, torture, indefinite detention with a minimal care for "the other", but it also sheds light onto this reality that the state of exception is not an aberration for the US body politics.

Chapter three, The hegemony of truth, begins with an excerpt from *The Picture of Dorian Gray* (1985) that from now on to the end of this project appears as a prelude for each subsequent Chapter to personify the law as Dorian Gray, and its effects on the social body, the body politic and the body of individuals and vice versa. Looking briefly at the Western political philosophy traversing between the present and the past, this Chapter strives to show how in the name of truth/reason a particular order has solidified and rationalized itself at the expense of the body and the plurality of existence. In other words, the supremacy of reason owes its existence to the construction of "inferiority" of the body, the seat of emotions and senses, as well as the pursuit for the metaphysical ideals beyond the Earth. Given that the hegemony of "truth" has relegated emotions to the periphery through a rationalization process, the mind has been considered as the seat of reason establishing its superiority and sovereignty by declaring its "truth" claim. Anchored

in Greek antiquity, this Chapter explores the deep-seated mistrust of the body, of the world, of politics and the Earth, respectively. In short, this Chapter points to the hegemony of “truth” and how in the pursuit of “truth” and “transcendence,” emotions are spatialized and engulfed apathy have become part of the social body, the body politic permeating the body of individuals whose existences are subject to the hegemony of “truth” and its myriad configurations such as law and the state of exception spatiotemporally.

Chapter four, Spatialization of emotions, is commenced by an excerpt from *The Picture of Dorian Gray* and its relevant predicament to the theme of this Chapter. After presenting a brief and general theoretical overview of emotions, this Chapter strives to show the significance of emotions/lack thereof in everyday life and on social relations in the Western modern societies. Instead of relying on universal and abstract relations, rendering emotions as subjective within the individual, emotions in many non-Western societies are essential necessities in creating interdependent social relationships. The last part of this Chapter attends to how fear, as an emotion, has been used as a political strategy to control the ruled and in many circumstances has been, in fact, the armature of change at the hands of authoritarian and totalitarian regimes and their violent laws/policies in the West.

Chapter five, Modernity and world alienation, is commenced with Dorian’ agitation and a sense of entrapment in his own apathetic predicaments that are not self-fulfilling as well as devouring and defacing his promised “ideals”. The focus of this Chapter and the next that would follow is a glimpse into modernity’s ambivalent and violent dispositions, and how society becomes the subjects of a rationally bureaucratic setup that apathetically is governed and administered. Drowned in a historical predicament when world alienation has created such a human condition

that is obsessed with order-making, this Chapter points to the prevalence of a systemic and covert violence beside an overt violence that have been legally authorized and abhorrently justified in the name of “reason”, “progress”, and now “security” and “democracy”. In short, this Chapter is a brief look into the house of modernity and its criminogenic dispositions that open the spaces of exception like GTMO where the law transmutes itself to sheer force.

Chapter six, Bureaucratic organizations: Distancing and engulfed apathy, which is the continuation of the contextual analysis of violence of modernity presented in the previous Chapter, strives to show the apathetic nature of bureaucratic organizations and how distancing and engulfment as the bipartite of alienation erect a wall of indifference, in particular in states of exceptions, and in such spaces as total institutions. When fully organized, bureaucratic organizations, in such spaces like concentration camps or any spaces of confinements become efficient forces in administering pain and suffering against “the other”, or even in charge of extermination of “the other” by technological and scientific advancements at the disposal of the state. When love, affection and care for “the other”, are not the required part of the discipline of total institutions like the army, what follows is the proliferation of a “total force” that is consumed in the bipartite of alienation that denotes isolation/distancing and engulfment at the expense of one’s feeling and ethical values, where obedience leaves a very limited space for intuitions, feelings, and learned thoughtfulness.

Chapter seven, Understanding law and the state of exception, begins with the appearance of Dorian Gray with his unabashedly “calm” demeanour that speaks of universality, objectivity and impartiality. Yet, beyond that calm stature, there is the ever-present volatile violence that is contrary to his claims. Thus, the foci of this Chapter are several. At the outset, it argues that law is

hegemony and the state of exception is the transmutation of hegemony into sheer force. Adopting Antonio Gramsci's term, hegemony, this Chapter tries to show the myth of value-neutrality of the law and its detachment from the social body, the body politic and the body of individuals who stand before the law. This Chapter, moreover, presents the opposing theoretical views of Carl Schmitt, Walter Benjamin as well as Giorgio Agamben on the state of exception. Moreover, this Chapter argues that the American war on terror has led to opening spaces of exception, like GTMO, which is not only the epitome of engulfed apathy, but how the hegemony of "truth" has been the historical leitmotif that has run through the past into the present infiltrating the hegemony of law, beneath which a rationalized force is still speaking of "truth" and "reason". This Chapter concludes by pointing to the agonal culture, whose propensities breathe conflicts and antagonisms, and its body politic, its laws and policies cannot be detached from the spaces of confinements and concentration camps. Needless to say, that in such an agonal culture, freedom loses its substantial meaning to the servitude of certitude in post 9/11 era, in Livy Visano's (2013) apt elucidation.

The conclusion of a postscript, begins with Dorian's appearance for the last time to "conclude" his story. While in despair, his story reminds us that a life lived in engulfed apathy and distancing is not a fulfilling existence after all. Perhaps, his trajectory of his existence reminds us that a "reason" bereft of emotional connectivity does not lead us to anywhere but despair and insecurity. Perhaps, one can say, to begin one's journey with this dictum that, "The way must be tried"!

## Chapter One

### **“The way must be tried”: The methodology of an amateur**

The shock of 9/11, as I experienced it, has shaped my life in significant ways. Like many other human tragedies, it was a senseless outcome of violence. I was shocked not only by its enormity, although it was not really the first attack (e.g. 1993), but also by the “shock and awe” of the surprise in timing. After all, my eyes and my ears were used to seeing and hearing violence against the less powerful around the globe on a regular basis. However, as I came to terms with the reality of 9/11 in the days that followed the attack, I found myself in a state of total grief and vulnerability. My emotional reflections were triggered not only by a sense of sorrow for the primary victims of 9/11, but also by my anticipation of how the American body politic would take advantage of the tragedy under the leadership of President George W. Bush. I was concerned about how the seeds of otherness would be spread around the globe and how the media would exploit the event for news production.

For a week, I was in a state of emotional turmoil, and I consumed as much news as I could. It was not long that I found myself in the position of a frightened mother, daughter, sister, partner, friend, and a desperate human being seeking ways to do something for my family, and the human community. My ears were bombarded with “otherness,” “the demonized other,” and for the first time I heard of Samuel Huntington’s clash of civilizations.<sup>3</sup> As well, for the first time in 13 years

---

<sup>3</sup>In response to Samuel Huntington’s *The Clash of Civilizations* published in the summer 1993 issue of *Foreign Affairs*, Edward W. Said not only refutes what has been raised in the aforementioned article, but also points out that Huntington sees the fundamental sources of current conflicts between the “west and non-westerners” as neither ideological, nor economic, but cultural. Huntington argues that in the post-cold war era, war is/will not be over ideological or

since my family and I migrated to Canada to make a home anew, I questioned my own identity. Who was I? And where did I belong? I needed protection, something to assure me that I was at 'home'. Iran was my native land, which my family and I had left behind when it no longer provided us with a sense of belonging. Canada became our home by choice, when we invested our hearts and our hopes in this new country. A home entails a peace of mind, a spatial necessity for physical, mental and emotional well-being; yet it is by no means under one's individual sovereignty. Not only is home subject to her own internal and familial conflicts, but also subject to external social

---

socioeconomic needs of people. Rather wars are as the result of the clash of cultures/civilizations, "of which the conflict between two of them Islam and the West, gets the lion's share of his attention," Said notes (The Nation: 2001 Oct. 22: 1).

Thus, in *The Clash of Ignorance*, Said explains that Huntington's argument is not only essentialist and blind to the diversity within each civilization, but also ignores the internal dynamics and plurality of every civilization. Said further points to inadequate labels, generalization and cultural assertions at the heart of Huntington's view. He reminds us that the terrible attack of 9/11 should be understood as a pathological mass slaughter planned by small group of deranged militants, yet it should not be understood as a proof for Huntington's thesis. Said's main argument is that there is no such thing as a pristine culture immune to the diversity of the global world, whether its name falls under the Westerners or the Muslim taxonomy. He says that the reality of the global world is that Muslims are not in the fringe of the West rather they are at its center. Said concludes his argument by using an eloquent metaphoric articulation when he maintains:

"But we are all swimming in those waters [of tradition and modernity] Westerners and Muslims and others alike. And since the waters are part of the ocean of history, trying to plow or divide them with barriers is futile. There are tense times, but it is better to think in terms of powerful and powerless communities, the secular politics of reason and ignorance, and universal principles of justice and injustice, that to wander off in search of vast abstractions that may give momentary satisfaction but little self-knowledge or informed analysis. The clash of civilizations' thesis is gimmick like "The War of the Worlds," better for reinforcing defensive self-pride than for critical understanding of the bewildering interdependence of our time" (Nation: 2001 Oct. 22, pp. 4-5).

and political forces, whether local, national, or global. The search for home can equally entail a tale of suffering, of waking up into a violent reality that subjects one to new spatial and temporal arrangements. In search of a home, not all are lucky; some can be caught and captured by a violent space, the camp. Overnight, the dream of being at home turns into a space that attests to the ravaged forces of displacement, where the cries of a baby born, or sent to the camp exposes the violent and apathetic reality of our modern existence surrounded by iron bars, meshes, walls or lived in cages.

A week after 9/11, as I gradually heard many voices in the public and media that reflected shared meanings and values, I felt better, sensing I was not alone in my state of disorientation. However, I was left with a question concerning the validity of what I was being exposed to. The discourse of 9/11 could not be understood in a vacuum; rather, it had to be approached as a genealogy of prior to, and after the event. Yet, I had *bought it on the spot*, dislocating it from its history. Thus, unknowingly, I had accepted a power/knowledge which derived from a divisive politics of “us” vs. “them”. In such a dichotomized perspective, “truth” is a matter of side-taking. What was predominately heard from US 9/11 discourses was nothing but the rhetoric of victimhood which saturated the air. There is no dispute for the fallen lives, the victims. But what should not be dismissed is that being a victim can be a result of choice, chance or being caught by hegemonic or counter-hegemonic aggressive forces. What should not be overlooked is how nation states, the sovereigns and their divisive politics implicate victims in the violence of counter-insurgency in the name of democracy, freedom and security. In other words, the victims become the source of reprisal and profits to renew aggression where the license to violence and war get their fuel and legitimacy from the fallen.

I will never forget the early morning of 9/11. Like any other day that I used to turn the

television on to listen to the morning news, while I was cleaning up after I had send my daughters to school, I was struck by seeing the unimaginable. I was numb and could not make sense of what I was witnessing on the TV in our home. It was a surreal image: the burning plane in the middle of the glass tower, and the cloud of dust and broken glasses and people in the frenzy and the media with its endless images of the site of the disaster. Fire, dust, smoke, peoples' screams, the sirens of emergency service vehicles and the assaulted tower with the burning airplane right through its glass indicating a sense of disconnection from the warmth of life, and the hopeful individuals who like every day had departed from their beds in order to start a day anew, instead part of the beginning of a new violent era. As usual when I cannot find an answer for something disturbing, I tried to make myself busy with extra physical activity in order to calm myself. In the subsequent days, there was nothing that has passed my attention. I was restless. The ethical questions that captured my thoughts those days: Were my eyes and ears open for the first time out of self-protection? Moreover, is there a hierarchy even in grief?

There was a new feeling that was developing inside me. I had never felt it before even in those days of our arrival to Toronto when life was more demanding, learning a new language and a new way of life, adopting while preserving what was dear to heart. I had never felt that I was a stranger, "an alien". Toronto had become as dear as my birthplace, city of Kerman. We had breathed the sobering cold, yet my family and I had felt warmth and felt welcomed. Even in those days, when I was unable to communicate in English, I had felt a shared meaning beyond language and a way of life. The welcoming eyes and helping hands were heartwarming. Toronto became our home. I gave birth to our second daughter here.

But now, the rhetoric of other-making was pierced through me and the violent

representations were emotionally-disturbing. While the violent attacks entailed human loss, suffering, and destruction of a landscape that exemplified human industriousness and efforts, what was equally violent was the brooding voices of hatred/contempt and the proliferation of fear wrapped in the patriotic feelings leading into a cycle of fear and hatred/contempt and vice versa, which through time set the foundation for apathy and indifference in the face of subsequent other-making and injustices post 9/11 against “the other”. Guilty by spatial/regional association and implicated by a nasty politics of identity, millions and millions of diversified peoples were lumped together and reduced to “the terrorist other”.

The rhetoric of war on terror testified and still testifies to the omnipresent aggression which not only has undermined the Western ideals of pluralism and human rights, but also the cultural achievements of care across cultures. Instead of calling and approaching 9/11 as a crime, “crime against humanity” as Noam Chomsky refers to Robert Fisk, the war on terror opened Pandora’s Box. It not only led to pre-emptive wars, human loss and suffering, displacement of millions of people who became refugees, but also resulted in the reappearance of the spaces of exception, the camps. Moreover, torture returned into the Western political landscape as an “inevitable”, yet lesser evil in an age of terrorism as Michael Ignatieff maintains. The terror, as we were informed, originated from the Middle East. This “new” faceless enemy was *in a dire need* for the US when the Cold War and the fear of subversion by “the communist other” were over. Yet what should not be forgotten is that the road for US global domination has been accompanied with the rise of religious radicalism, Islamic fundamentalism in response to secular fundamentalism, overt racism, fascism, and ultra-right radicalism to name a few. What have been achieved by insight, tenacity and resilience through continuous struggles both in the West and around the globe, have been

driven to the sacrificial alter to be traded for more material wealth, violent power and nationalistic fervor.

In line with my perspective, I am bound to introduce myself. After all, I am creating a text, a “truth” which stems from a way of life. Peace is my creed, which connects me to a dream of living in a world where violence is not encouraged and glorified. In order to live in peace, one should keep in mind and in heart that peace is neither given nor associated with passivity or lack of power; rather it requires continuous efforts to build and maintain it. Peace needs a vision, and a discipline that can monitor the relation between “the self” and “the other”. Peace is about an understanding that thrives on passion and joyous appetite for life that does not need to injure in order to flourish. Peace is the epitome of an appreciation to see “What is injurious to me is injurious in itself” as Nietzsche celebrates a preventive morality in order to subvert a reactive morality that has historically infected “us” with systemic violence. Nietzsche’s preventive morality, unlike the conventional reactive morality, is based on “... the feeling of plentitude, of power, which seeks to overflow, the happiness of high tension, the consciousness of a wealth which would like to give and bestow ...” (1990, p. 195). The intensity of such joyous existence does not permit a way of life whose sense of plentitude is derived and dependent on the servitude of “the other”. Quite the contrary, as Nietzsche passionately maintains “... the noble human being too aids the unfortunate, but not, or almost not, from pity, but more from an urge begotten by superfluidity of power” (196). In other words, what Nietzsche has in mind is a far-sighted insight. What Nietzsche sees, for example, in pity is nothing but betrayal to freedom and human strength. For Nietzsche, any giving which arises from pity, not only undermines human strength, but also creates dependency, the road to domination and servitude, whether religious, sociocultural, economic, or

political to name a few.

Unlike violence, peace, when energized with passion and joyous feeling of plentitude, is connective, affirmative, creative, and constructive. It can provide a space where the dualistic mentality of “us” vs. “them” is undone. It sees difference and plurality as the core value for a peaceful existence. Peace is not only about continuous struggle to undo what has been learned through a divisive tradition/socialization or what we are born into, but also about developing a positive insight about “the other” and our world. Thus, when conflicts arise and the forces of violence surge, peace does not repel violence with violence. Peace is a form of power which needs to secure itself in each individual and then solidifies itself through a process where individual strengths are transmuted into social and political power. In other words, as Hannah Arendt eloquently points out, power is created when men (individuals) act in concert.

Perhaps the independence of India in 1948 and the peaceful technique of the liberation of the nation from the indirect British colonial rule for two hundred years, has engraved itself as an outstanding example of peace victory. Instead of calling the British colonial forces “the enemy”, Gandhi called them India’s opponents. Gandhi was after peace, a peace that could overcome colonial domination through non-violent resistance. What he had in vision was a simultaneous winning of the minds and the hearts of diversified peoples, something beyond the immediate struggles for liberation. Gandhi’s peaceful legacy was/is to cultivate a way of life that is based on the philosophy that we need to resort to non-violent techniques in order to uproot antagonism without injuring antagonists.

Gandhi’s non-violent technique focuses on antagonistic forces and the world of other-making at their foundations. To Gandhi, living in peace does not implicate sameness; rather it can be

understood as a pragmatic vision that acknowledges that plurality, multiplicity and differences are preconditions of a peaceful existence. Peace starts with an inner conversation with the self and calls for the realization that peace cannot be attained if self is consumed in its own well-being to such a degree that it is oblivious to the well-being of “others”. What Gandhi teaches us, like any other intellectuals and philosophers striving for liberation from domination through non-violent philosophy and technique, is that in the world of other-making one is captured by a reactive mentality, whose parasitic disposition is based on “either”, or “or”

The defining attitude of reactive morality/mentality of either/or is based on engulfed apathy that separates individuals and peoples from one another while engulfing them in a perverted self-love or the love for the familiar at the expense of the exclusion of the unfamiliar “other”. The reactive morality originates from what it must negate and not a morality of simultaneous affirmation of “the other”. In other words, the reactive morality or mentality “first has to have an opposing, external world, it needs, physiologically speaking, external stimuli in order to act at all, - its action is basically a reaction” (Nietzsche, 2000, pp. 21-22). Acting peacefully entails awareness as to how antagonism hardens social conflicts and the will to negotiate. To be out of an antagonistic relationship, it is antagonism that should be the focus of the struggle and not the antagonists. Needless to add, that any belligerent reactive mentality is by nature infected by the pestilence of a combative/agonal mentality of other making, in which disrespect begets disrespect, insecurity breathes insecurity and violence precipitates violence.

However, as days and months passed and I was well into my research for my Master’s project, I came to realize that in the popular understanding, I as an individual constituted “the other”, yet in the deconstruction of “the other” I found myself as part of a counter-hegemonic voice in line

with many voices in the public and my Western and non-Western sources. Through the interactive, empathetic and intellectual understanding that they offered, not only did I gain knowledge, but I was also reminded that shared understanding could not be contained by any spatial boundaries or “identities” whether they be national, racial, ethnic, religious or whether they are based on gender, sexual orientation and class to name a few.

Although the complexity of human existence marked by the plurality of perspectives/interpretations and practices, or in Hannah Arndt’s terms, *the human condition*, does not permit a comprehensive examination, it is therefore dispersion, contingency and eclecticism that identify the character of this interdisciplinary research perspective. Since the aim of this dissertation is to understand how the law and the state of exception have a direct relationship with the social body, the body politic and the body of individuals whose spatialization of emotions have led into an existence that thrives on engulfed apathy, this dissertation goes beyond the *internal perspective* of the law. It does “not privilege the first-person accounts of the officials (judges and lawyers) of the legal system ... [I]t stands in stark contrast to the perspective of Anglo-American legal theory, which tends to adopt an internal approach to the legal system, viewing the law from the perspective of judges and lawyers” (Litowitz’s, 1997, p. 4). In other words, the postmodern, critical, interpretive and genealogical approach that I have adopted in this project not only looks into the divisive dichotomies, but also *goes* to the heart of agencies, cultural values, discourses and practices within the selected cradle of time and space in order to shed light onto how emotions are triggered, manipulated and used by the social body and the body politic (notably by law and the states of exception) affecting the body of the individuals leading into an apathetic existence. Unlike the common understanding, which views emotions as the property of individuals and their

subjective part of their biological existence, emotions/the lack thereof, quite the contrary, have been at work in the modern sociocultural and political landscape including the law and the state of exception. In other words, fear, hatred/contempt and nationalistic fervors are evoked while care for “the other” has been pushed to the periphery and in “exceptional states and spaces” bulldozed by engulfed apathy.

Thus, “the way must be tried”. One may ask: what way/which way? A way that is attentive to the other, which has been historically marginalized and confined to the periphery, but needs to be engaged as an affirmative call for a non-apathetic existence. While I am well aware that my question presupposes the direction of my path, which originates from my view that certain emotions are at work in the law and the state of exception, I am of the belief that the law’s claim of universality, objectivity and impartiality, of separating values from facts in order to attain to “the truth” is a mask to hide the apathetic and alienating values and practices of other-making of the law and the state of exception. Accordingly, a researcher should be mindful of the process of collecting data not according to the conventional and reductionist spirit of “reason”. Rather, in line with a postmodern and a critical approach, a researcher needs to be mindful of the issue of “value-neutrality” in particular “in relation to the exclusion, injustices and prejudices that [one encounters]” (Simon During, 2005, p.1). Research which deals with injustices should be loyal to the spirit of care and not to be blinded by a tradition that carries more care for the preservation of a social, cultural, political and economic order. After all, “reason” as the epitome of “truth” in a genealogical and historical trajectory not only illuminates itself as the opposite of the body and its senses and emotions, but also reveals itself as a significant part in an exclusionary politics whether based on race/ethnic background, religion, class, gender, national or sexual orientation to name a

few.

In *Unnatural Emotions: Everyday Sentiments on a Micronesian Atoll and Their Challenge to Western Theory* (1988) Catharine Lutz's comes forth with ethnographical knowledge to maintain that the ravages of positivism and their effects on Euramerican process of critical understanding cannot be overlooked. She notes, "By splitting the world into objective and subjective domains and into matters of fact and matters of value, and by associating detachment and cognition with the former, positivism eliminates passionate involvement with and commitment to a way of viewing and acting in the world. ... [thus] segregating emotion from the process of critical understanding" (Lutz, 1988, pp 77-78). Lutz, like many anthropologists and many other intellectuals in other fields, renounces a modernist and positivistic approach "with its emphasis on empirical data, evidence, confirmation of hypotheses, and cause and effect relationships..." (Barrett, 1996, p. 141). Through a comparative approach, Lutz's ethnography shows the importance of the cultural contexts and their effects on the formation, expression, articulation and eviction of emotions from everyday interaction in society, and confining it in the individual and the domestic/private domain. Contrary to the Western approach to emotion, on the Micronesian atoll, emotions are significant parts of daily life where indifference to the well-being of others is frowned upon and is considered a life failure.

In *Anthropology: A Student's Guide to Theory and Method*, (1998) Stanley R. Barrett not only leads us to see the interdependence of theory and method, but also shows us how such interdependence is historically context-dependent. Through an introductory approach in the context of an anthropological knowledge, he shows how both theory and method are reflections of changes and perspectives in cultural contexts. What is significant about Barratt's text is how

theory and method are intertwined in one another which shape one's understanding of a sociocultural reality which denotes one's perspective. In other words, method and theory, although considered as two separate entities, both inform the trajectory of one's research and the trajectory of one's understanding. For instance, the reductionist methods of positivism and empiricism point to certain characteristics such as generalization, the pursuit for laws, evidence and verification, which have been criticized, for example, by postmodernists. In this regard, Barrett maintains, "Postmodernists argue that it is meaningless, and even immoral, to search for generalizations, laws, evidence, verification, all of which in their view dehumanize people by objectifying them" (1996, p. 32). In the upcoming Chapters, we can see the effects of Western historical methods, in the realm of knowledge-making, such as rationalization, positivism and empiricism in the development of engulfed apathy. By adopting a postmodern, critical, interpretive and genealogical approach, in regards to the proliferation of engulfed apathy in particular in the house of modernity, we can see how Western philosophical knowledge has influenced the social body and the body politic which have considered emotion as the property of the individual, subjective and idiosyncratic. Needless to mention, that since Greek antiquity, emotion in the mainstream knowledge, has been viewed as the antithesis of "reason", which is the seat of "truth", splitting existence not only into two opposing domains of domestic/private and public, but also alienating the world and the Earth with far-reaching effects leading into the spatialization of emotions, the creation of an existence that thrives on engulfed apathy.

*Spatialization of emotions* cannot be understood without the cultural dichotomization process and its effects on the social body, the body politic and the body of the individuals. We are socialized to understand the world/our existence through an infinite series of dichotomies that not

only affect our understandings, but also engulf us in certain values, behaviors, and “identities.” While the public domain is historically considered as the domain of “reason” and associated with male power (Lloyd, 1984, p. 78), the domestic/private realm has been associated with emotion and female “inferiority.” The predominant effects of such dichotomous thinking, splitting the body from mind, reason from emotion and splitting the public realm from the domestic/private realm, when it is the forefront of theory, leads to an alienating predicament. When philosophical/cultural knowledge has been historically approached in an emotionally vacuumed methodology, what has resulted is a knowledge whose foundation is based on a dehumanization process and a form of discipline that is so obsessed with its method, that it loses sight of its reality and truth of being human beings. Human beings are sentient species, whose emotions testify to being humans. Through the methodological pursuit for “truth”, positive emotions such as the care for “the other,” has been pushed aside from the social body and the body politic in the name of “reason,” and now “security”. Needless to add, that the process of engulfment in one’s research methodology most often reveals itself under the mask of “objectivity” and “impartiality.” Being objective, and being impartial, which are associated with the modern social and political order in the house of modernity, point to the reality that the opposite of love/care, as Eile Wiesel maintains, is not hate, but indifference.

The methodological value of objectivity and value-neutrality, as Stanley R. Barrett explicates, is that they are part of the hegemonic “cultural and gender bias,” serving the Western male. Barrett even points out that even “Science itself [is] dismissed as an ideological mechanism which reinforced hierarchy and capitalism” (1998, p. 32). In line with Barret, Paul Feyerabend’s *Against Method* (2010) also refutes the objectivity of scientific knowledge by stating “science

should be thought as one view among many and not as the one only road to truth and reality” (2010, p. xviii). Feyerabend’s inclusive approach to knowledge that *anything goes* is an invitation *against method* in order to see how science has been historically intertwined with the Western colonial and imperial power. In other words, Feyerabend points to the hegemonic nature of the Western science and knowledge and how in the name of progress, the colonial powers have imposed “their ways of living” (2010, p. xxi). Yet, Feyerabend points out that he is not against science, but he is for a science that adapts those procedures that are in line with “the values of the people they are supported to advise. ... [not those] ideologies that use the name of science for cultural murder” (2010, p. xxii). He further maintains, “It is clear, then, that the idea of a fixed method, or of a fixed theory of rationality, rests on too naïve a view of man and his social surroundings” (2010, p. 11). Hence, in understanding the law, the state of exception and the spatialization of emotions, I adopt a postmodern, critical, interpretive and genealogical approach knowing well that there is no such a *method* that can address the complexity surrounding a research project, nor a truth that can stay intact in the face of various interpretations, turbulent historical forces, counterforces and power interests of sovereigns, great or petite, or any disciplinary powers. Perhaps it is Nietzsche’s understanding that shakes us with his dictum that “he who looks into himself as an enormous universe and carries the Milky Ways within himself, he also knows how irregular all Milky Ways are; they lead all the way into the chaos and labyrinth of existence” (Barsoum Raymond, 1991, p.187). Any research or any method cannot ignore levels of uncertainty of its substance and its methodological approach.

The modern methodological approaches, such as positivism and empiricism, where positivism sees the social world as patterned and orderly, and while empiricism is concerned with

data, facts and “the real and concrete world,” are oblivion to emotion and its role in one’s understanding. What is imperative and cannot be ignored is that throughout these “meticulous” and illusory modern methods, one can see how emotions/lack thereof play a significant role in the perpetuation of a particular social order, domination and oppression. As was mentioned previously, by separating emotion from reason and by splitting the world into objective and subjective domains, and by associating emotion to female and reason to male, Western mainstream intellectual thoughts have not only engendered emotions, but also spatialized them. Metaphorically speaking, one needs to leave the heart in the domestic/private realm, when one enters the public realm, where laws and policies are created, executed or challenged/suspended. The heart is locked either in the vicinity of the individual, or locked in the domestic/private domain. This does not mean that the private realm has been immune from emotional apathy, or male violence against women and children, for example, in the familial/domestic setting. Rather the point is that many men in particular, and now women as well, suspend their emotions while participating in the public realm, for example, as laborers, workers, producers, law-makers, law-officials, guards, military personnel,<sup>4</sup> bureaucrats, administrators and governors. Perhaps, our modern existence notoriously has inserted the process of rationalization into the social body, the body politic and the body of individuals. In Chapter six, we can see how the modern divisions of tasks and bureaucratic arrangements have been in tune with the spatialization of emotions and reproduction of engulfed apathy in particular in states and spaces of exception.

---

<sup>4</sup> Please refer to *KL Auschwitz Seen by the SS: The Autobiography of Rudolf Hoss* (2002). Hoss was the first commandant of Auschwitz from May 1940 to 1943 and from 1944 to 1945. He was a loving individual at home, but the commander of an extermination camp and responsible for the “mass murders of Hungarian Jews in the gas chambers of Birkenau” and hundreds thousands of “others” (2002:7).

The first question, therefore is whether it is ethically sound to maintain value-neutrality in the face of atrocities, of racial, gender, class injustices, inequalities and imbalances of power against the marginalized and the excluded “other”? Is it ethical to be willingly blind to the perpetual injustices that are ingrained in a patriarchal/heterosexual, colonial/imperial and modern social order that sacrifice freedom and equality for authoritarian/totalitarian regimes and a greedy market? After all, a research which is about human sufferings and injustices cannot be objectified for the very reason of being beyond the myth of objectified knowledge. Human existence cannot be approached or understood by a cold method whose concern is far away from care for “the other”. Even research on other species or organic life, should be conducted by a non-apathetic method, which extends its care and respect to the Mother Earth. Moreover, a researcher needs to be aware of layers of dominations and their hegemonic effects on one’s knowledge production. Perhaps, a counter-hegemonic researcher is in fact an activist whose knowledge is meant to undermine the hegemony of the dominant and oppressive social, political, and economic forces with a critical consciousness whose methodologies are also in tune with its counter-hegemonic approach.

As a leading intellectual and revolutionary figure in developing counter-hegemonic strategies, Antonio Gramsci, in his struggles against fascists and capitalist’s economic, sociocultural order and spatial inequalities (“the underdeveloped” South as opposed to the “developed” industrial North in the early 20<sup>th</sup> century) in Italy, differentiated between organic intellectuals as opposed to the traditional ones, who have been the defender of the mainstream bourgeois order. Gramsci believed that, “All men are intellectuals, ... but not all men have in society the function of intellectuals” (Forgacs, 2000, p. 304). Gramsci was well aware that the subversion of the bourgeois economic order and its cultural value system were more than the

political seizure of the state in Italy. As a pragmatic leader, he pointed out that the first thing that the poor working class of the North and the backward peasants of the South needed to do was to develop an alliance against the internal and regional colonial relations between the developed and industrialized North and the underdeveloped colonized South. This alliance entailed revolutionary education in which factory floors needed to become the sites of teaching and training of workers to become not only professionals and skill workers, but also to develop the art of managing and leadership. Gramsci was well-aware that changing the economic order and seizure of the state power were half of the struggle to win the hegemony; the other half of struggle was to develop a new order, a new culture. The organic intellectuals therefore stood as one of the most significant revolutionary forces in Gramsci's legacy for his counter-hegemonic strategies. For Gramsci, what was equally important besides the war of maneuver, the frontal attack, was the war of position, the cultivation and the development of a value system and culture against capitalism. To Gramsci, winning the hegemony needed a change in culture through education. In the context of the Italian struggle against fascists and their ruthless political and economic order, Gramsci was well-aware that hegemony/leadership or the creation of a historical block entailed more than the seizure of power through a revolutionary force. He knew that the oppressed needed to change its subservient composition by developing a culture that could be able to undermine the significant web of domination that had historically brought the oppressed into the cycle of oppression against one's self (consent). The organic intellectuals were men/women of pen and specialization whose knowledge were as mighty as the revolutionaries' weapons to bring awareness and provide a platform over which, the oppressed/ the subaltern classes, claim their voices and get rid of the hegemonic oppressive dominant power.

In his postcolonial struggles, Edward Said, whose many insights are influenced by Gramsci's counter-hegemonic views speaks of the role of intellectuals in uprooting colonial and imperial mentalities and practices. As an unabashed defender of the Palestinian cause dealing with Israel's and US 's exclusionary politics, Said's points to the role of *amateur* intellectuals, whose insights and deeds differentiates them from what he calls *professionals*. Unlike Gramsci who is the proponent of specialization, Said's view as reflected in his text, *Representations of the Intellectual: The 1993 Reith Lectures* (1994) sees in specialization, as I interpret him, a systemic entanglement that would lead into apathy. Said's insistence on amateurism is not about lack of knowledge or naivety of the intellect; rather it is about a consciousness that speaks of sobriety of the heart and mind. Said is appalled by the routinization of intellect which is desensitized and drawn into a dominant system that devours the ethical responsibility and the commitment to the spirit of justice. Thus, he states that, "By professionalism I mean thinking of your work as an intellectual as something you do for a living, between the hours of nine and five with one eye on the clock, and one another cocked at what is considered to be proper, professional behavior – not rocking the boat, not straying outside the accepted paradigm or limits, making yourself marketable and above all presentable, hence uncontroversial and unpolitical and "objective" (1994, p. 74).

By being attentive to the spirit of justice rather than following a set of cold and apathetic procedures that are in line with the dominant social order, it is the amateur intellectuals who talk of risk-taking, of living on the margin/of exile and speaking truth to violence. The amateur intellectual is fearless and knows that those who are the defenders of justice should keep in mind that being in the side of justice not always entails rewards, but sometimes, marginalization, banishment or exclusion. Said points to what he calls amateurism, "the desire to be moved not by

profit or reward but by love for and unquenchable interest in the larger picture, in making connections across lines and barriers, in refusing to be tied down to a specialty, in caring for ideas and values despite the restriction of a profession” (1994, p. 76). In short, amateurism is “literally, an activity that is fueled by care and affection rather than by profit and selfish, narrow specialization” (Said, 1994, p. 82). Said is therefore conscious that care and affection are the twin requirements to undermine the selfish and apathetic behavior ingrained in colonial mentalities/behaviors and practices that are significant parts of the house of modernity.

In addition, and in line with a Nietzschean postmodern critical genealogical pursuit, I adopt a Gadamerian interpretive methodology in this study. Although I am aware of the critique of interpretive methodology as monological (Reck, 1993), and I recognize that I am the *sole* medium, through which all gathered/gained information/knowledge is filtered and interpreted, I still adopt it. For as Gadamer points out, we are all born into spaces and contexts that foreground our understanding. What we say is always *in context* without which there is no way for understanding. However, the monological aspect of interpretation, as I rely on Gadamer’s view in *Truth and Method* (2003) is that, a text is open to interpretation. It therefore cannot stay monological for long, for each single reading of a text offers a potential interpretation that undermines the monological formation of the text producer. Gadamer points to two main elements, language and history which lay the foundation for our understanding. Language is the medium through which we live in, what we are predominantly governed by and where we articulate our constructed meanings, our realities and our experiences. As our world is embedded in language so is our language in history, and vice versa. Gadamer’s interpretive approach pertaining to the phenomenon of understanding is not about the traditional scientific method as such, but it is

an invitation to traverse between the past and present and what he calls *effective history*. Effective history refers to the situatedness of *our* life experiences and how we historical creatures and creators of our historical knowledge, are born into cultures, situations, values, beliefs, and spaces which presuppose our understanding. With such an insight, Gadamer points to the myth of value neutrality or value-free inquiry developed by Max Weber and notes that, “the blind decisionism concerning ultimate ends that Max Weber propagated is unsatisfactory. Here methodological rationalism ends in crude irrationalism” (Gadamer, 2003, p. 560). Gadamer invites us to see how our search for objectivity or the search for a value-free inquiry is also the product of a cultural context. He points out that we should be aware of the fact that even natural sciences “acquire their communicative universality and thereby their social relevance”, in a social context (ibid). In short, Gadamer helps us to see how any said value-free methodologies are interconnected with knowledge and truth. As Gadamer inquires, “But what kind of knowledge and what kind of truth?” (2003, p. xxi).

In *Truth and Method* (2003) Gadamer explicates that truth and method are not equivalent. At the heart of Gadamer’s rich yet very difficult and dense philosophical hermeneutic reflection, there stands his elaborate challenge to the scientific tradition and approach to understanding. Gadamer is neither against science nor against method. What he wants to undermine is a tradition which has been blind to itself and its prejudices. He points out that the Enlightenment’s thinkers came to rise against prejudice. But what resulted was prejudice against prejudice. Unlike our common understanding of prejudice as a negative concept, Gadamer approaches prejudice as an inevitable part of understanding. Prejudice can be positive or negative. Prejudice through my interpretation of Gadamer is interrelated with his concepts including foregrounding and tradition.

Tradition as a condition of one's knowledge can be preserved and can be changed; but it is impossible to know without it. Like prejudice, tradition is the condition of understanding.

Prejudice is the essence of the historical linguistic mediation that not only allows communication, but opens a path towards understanding based on a dialogical predicament. Gadamer's understanding unveils the myth of value-neutrality by paying attention to the fact that we are unable to detach ourselves from foregrounds/backgrounds without which understanding is impossible. After all, what Gadamer calls prejudice and tradition are essential parts of mediation that make the context, or that of the tradition. To reiterate, we are born into values and language that makes the whole issue of understanding possible. This does not mean that we are captured in a static predicament and change is out of reach. Rather, we live and continue to move in a horizon which moves with us. A horizon by nature is an open entity where understanding takes place, but we need to strive to move in order to see the nature of the openness of the horizon.

Beside Gadamer's interpretive approach which does not address layers of domination and struggles in a tradition, Nietzsche with his genealogical pursuit, exposes the process behind the long history of domination within the social body and the body politic influencing individuals' body in the name of truth. Nietzsche points to the hegemony of truth and how it has been damaging to the affirmation of life. Nietzsche's genealogy "aims at unmasking, unearthing, but in an indefinite way ... without ever pretending to lift the last veil to reveal any original identity, any particular foundation. Thus, the method itself manifests a deeply rooted repugnance toward any systemization" as Michel Haar points out (Allison, 1992, p. 7). What Nietzsche, as the unconventional philosopher, is after, is to expose the hegemony of truth, the philosophical truth that has been detrimental to the plurality of existence, action and human beings' capability to be

great. In Chapter three, we can see how the hegemony of *truth* has been significant in the proliferation of certain order that has been at work since Plato's metaphysical Ideas, penetrating Christianity and reaching well beyond, to our scientific knowledge and the modern age system-building with its apathetic dispositions. According to Nietzsche,

our faith in science is still based on a *metaphysical faith*, - even we knowers of today, we godless anti-metaphysician, still take *our* fire from the blaze set alight by a faith thousands of years old, that faith of the Christians, which was also Plato's faith, that God is truth, that truth is *divine*. ... But ...nothing any longer turns out to be divine except for error, blindness and lies ... (2000, p.119).

Nietzsche's subversive genealogical approach sheds light onto the hegemony of truth that renders the apparent world as worthless. What should be appreciated and cherished is despised, including senses, emotions and what belongs to the earthly world, for in the dichotomous world of the mind/reason vs body/ emotion, it is the mind/reason that stands for the truth. Needless to say, that truth is not given, but it is the culmination of creative minds which speak of the will to power at work, a form of affirmation with tremendous power to disaffirm earthly and worldly forms. Consequently, truth is at the basis of power/violence formation and system building with its inevitable exclusionary discourses and practices. So, back to the future, the exclusionary discourses and practices initiated by the US post 9/11 in the name of security, freedom and democracy, and the suspension of individuals' rights by the sovereign's proclamation of a state of exception point simultaneously to a complex process in which the exclusionary emotions of fear, hate/contempt and nationalistic fervors to name just a few, had overcome care for the other leading into engulfed apathy. If revolutions were once considered as the locomotive of history according to Marx, now the aforementioned emotions reverberated in the American states of exception, have

the force of history. They have led the ruled towards adopting neo-imperial<sup>5</sup> agendas in the service of a greedy market that needs militarization and wars to thrive, to divide, to dominate and break and delegitimize the voices and the forces of the oppressed. In other words, Nietzsche's genealogical pursuit, though apolitical, can help unearth the apathetic dispositions of the truth.

Besides method as the content of a trajectory, I adopt method as a concurrent application, micro/macro analysis over macro-analysis, an approach that is celebrated by Thomas Scheff (1997), who looks at the micro cultural script in order to understand the macro level, the part/whole analysis. Drawing on C. Wrights Mills' "sociological imagination", Scheff's interpretive methodology is a journey back and forth from a problem/case to the social structure/context. In the context of my project, looking at Omar Khadr's case leads me to a genealogical historical inquiry, going back to the Greek *polis*, where bare life is differentiated from qualified life and where the demarcation of space by the philosophical knowledge and the body politic of Greek antiquity not only confined natural life to the realm of *oikos* (home), but also shed light on the "original activity of sovereign power" in the production of a biopolitical body" (Agamben, 1998, p. 6). As the modern inheritor of the past, and as the past influences the present, the camp, thus as Agamben points out, is the *nomos* of the *modern*, where the sovereign power spatializes its emotional alienation through its simultaneous political process of production of qualified and bare life, and the production of particular spaces of exception, demarcated, and contained by engulfed apathy.

Since one of the most significant outcomes of the violence of other-making dehumanizes other human beings, I will make use of a literary figure as a point of analogy in the text that I

---

<sup>5</sup> Please see Noam Chomsky's *Understanding Power* (2002) as a pretext to 9/11.

*create*. Given that apathetic dispositions undermine and spatialize our faculty of thinking and feeling without which, we are unable to know and feel what we are doing and appreciate the extent of the damage that we are inflicting on others, it is through the personification of the law and the state of exception that one is able to delve into the *heart* of the law and the state of exception. Thus, Oscar Wilde's Dorian Gray, the protagonist/antagonist in *The Picture of Dorian Gray* (1985) will enter to the scene to provide an insight about the law, the state of exception and the spatialization of emotions. As an appealing image, Dorian captures his societal admiration and trust. Yet, beyond that enchanting societal portrait, Dorian's desire to escape time and decay simultaneously creates a *hidden* picture of his vices and crimes. Law and the state of exception's contradictory natures can be thought as the reflection of Dorian's double picture in a common parlance. The violence embedded in the law and its state of exception is a double-edged sword. The promise that "every law is ordained for the common well-being of men" (Agamben, 2005, p. 25) is coincided with the simultaneous exclusion of those who have not been considered to be included in the first place.

Dorian Gray, a metaphor, helps me in personifying the law and the state of exception through a shade of a person who capitalizes on spaces of exceptions to inflict its violence of domination and oppression. However, due to the highly restrictive nature of the GTMO, where Omar Khadr was captive for ten years and whose controversial case has divided Canadians as either his supporters or opponents, his voice of suffering has been curtailed substantially due to the political nature of the American and Canadian states of exception as exemplified by the Canadian conservative government for many years. Khadr's plea for help was predominately heard by his lawyers, his psychiatric evaluators, and those who could shed light onto his sufferings.

The story of his plights was reported in the news and brought into the public attention by the news reporters, journalists, co-captives, interrogators, guards, documentary-makers, his family, intellectuals, individuals, and organizations concerned about him, backed by Western democratic/ethical values. However, although Omar Khadr has not spoken substantially about his daily sufferings in GTMO while he was captive for ten years, the tale of his sufferings is a simultaneous story of how law, the state of exception and the spatialization of emotions have been at work leading us into the labyrinth of engulfed apathy in the West.

This Chapter began with my personal and emotional experience of the event of 9/11 and its aftermath. This Chapter then provided a literature review about the significance of method in one's trajectory of perspective, and the significance of emotions such as love and care for "the other" as the mainstay of one's ethical values. I asked the following question: is it ethical to be willingly blind to the perpetual injustices that are ingrained in a patriarchal/heterosexual, colonial/imperial and modern social order that sacrifices freedom and equality for authoritarian/totalitarian regimes and a greedy market in the name of value-neutrality or "reason"? It was argued that a counter-hegemonic researcher should be mindful of their methodology that should be in tune with a critical consciousness that does not relegate emotions to the periphery. A counter-hegemonic researcher is an activist whose knowledge is meant to undermine the hegemony of the dominant and oppressive social, political, and economic forces backed up by law and the state of exception. In short, this Chapter spoke about the methodology that is mindful of the power of emotional agency that moves one beyond oneself towards "the other."

## Chapter Two

### **“The unlawful enemy combatant”: The 15-year Omar Khadr and the path to the Guantanamo Bay Camp (GTMO)**

In a US naval base located in Southeastern Cuba in the Caribbean Sea of the Atlantic Ocean, surrounded by the beauty of the nature, the cerulean water and creamy-white sand beaches, where millions of tourists from Western nations spend their leisure time finding a temporary solace from the prosaic modern life, the Guantanamo Bay Camp (GTMO) is a “hell hole” that testifies not only to the US state’s violence, but also how law, hegemony, transmutes itself into sheer force in the state of exception in general and in the space of exception in particular. The juxtaposition of the behavior and treatment with regard to the inhabitants of the Bay and the camp under the sovereignty of the US raise praise and condemnation simultaneously. Where the islands’ iguanas have rights and enjoy US protections, the detainees captured in the American war on terror have not only been subject to indefinite detention, but also have no access to the legal right of habeas corpus. They have been subject to torture, other cruel, inhuman or degrading treatment or punishment such as physical, emotional and psychological abuse. In some cases, the abusive and the vicious treatments of detainees as the result of the declaration of a continuous state of exception in US has resulted in psychological impairments, suicides and death under torture. The British lawyer, Clive Stafford-Smith at the Supreme Court hearings of Shafiq Rasul in 2004, spoke of the jarring reality in GTMO in response to Justice David Souter, who maintained the American law had been applied to all aspects of life in GTMO. Stafford-Smith states:

Iguanas are free enough, and if my escort accidentally runs over, it’s a \$10,000 fine, as US environmental laws apply in Guantanamo. ... On the other hand,

if you feel the need to beat one of the 500 prisoners who are now four years into their captivity it is called ‘mild non-injurious contact’ and there are no consequences. Two years ago in the Supreme Court, we argued that it would be a huge step for mankind if the judges gave our clients the same rights as the animals (Joanna Bourke, 2011, p. 158).

The first-hand experience of the British detainee, Jamal Al Harith, speaks of the same reality in

GTMO when he explains:

[W]e stopped asking for human rights – we wanted animal rights. In Camp X-Ray my cage was right next to a kennel housing an Alsatian dog. He had a wooden house with air conditioning and green grass to exercise on. I said to the guards, ‘I want his rights and they replied, ‘the dog is member of the US army’ (Joanna Bourke, 2011, p. 157).

GTMO exists under the jurisdiction of the US which undermines the US democratic modern principles of equality, freedom and the pursuit of happiness in Jeffersonian proclamations of 1776 and the Universal Declaration of Human Rights adopted by the General Assembly of the United Nation in 1948 whose preamble states that, the “disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind.” Article 2 claims that “Everyone is entitled to all the rights and freedoms set forth in the declaration, without distinction of any kind.” [The rights to] life, liberty, and security of person ... [not to be] held in slavery or servitude ...and not to be tortured” (Joanna Bourke, 2011, p. 135). Despite the proclamation of such binding documents, the US war on terror erodes not only public trust, but also damages what has been historically achieved by firm determination, action, and struggles.

Despite the American resolve of the Declaration of Independence’s principles and the Universal Declaration of Human Rights derived from the first article of the 1945 Charter of the United Nations promoting “respect for human rights and for fundamental freedoms for all without distinctions to race, sex, language, or religion” (Bourke 2011, p. 135), on September 14, 2001, after the terrorists’ attacks on September 11, 2001, which killed 2992 people in the US, President

George W. Bush declared a national “emergency.”<sup>6</sup> President Bush’s proclamation of a state of emergency/exception was the prelude to his war on terror, which opened the door of GTMO to indefinite detention of detainees captured in this war.

In February 2002, after the first men were sent to GTMO, Center for Constitutional Rights filed the first cases to challenge the unlawful detention of the detainees at the base. Shafik Rasul was among the four detainees whom the Center filed a habeas corpus writ on his behalf. The lawyers’ argument revolved around “Whether United States courts lack jurisdiction to consider challenges to the legality of the detention of foreign nationals captured abroad in connection with hostilities and incarcerated at the Guantanamo Bay Naval Base, Cuba” (Center for Constitutional Rights, 2008, August 2). The Center questioned and challenged not only the legality of detainees’ detention, but also how their rights to access to the writ of habeas corpus<sup>7</sup> were infringed upon. Despite being interrogated by US interrogators, the detainees were neither charged with an offense, nor were provided legal counsel, and were not permitted to appear before a military or civilian tribunal to be informed of their legal rights entrenched both in international law and US domestic law. Instead of providing the detainees the right to due process, living in limbo became part of the indefinite detention of the captives at GTMO.

On June 28, 2004, the US Supreme Court in *Rasul v. Bush* rejected the administration’s claim “on the basis that the detainees were not ‘imprisoned in territory over which the United

---

<sup>6</sup> Although the state of emergency and the state of exception, both point to the suspension of the law and are used interchangeably, they differ in terms of their juridical meaning. Please refer to Chapter seven, when I draw on Schwab’s *The Challenge of the Exception* (1970) where he shows the difference between these two terminologies.

<sup>7</sup> Habeas corpus which in Latin Law refers to, “that you have the body” is a “writ employed to bring a person before a court most frequently to ensure that the party’s imprisonment or detention is not illegal (*Black Law Dictionary: Third Pocket Edition* (2006:322)).

States exercises exclusive jurisdiction and control” (Council of Europe, 2007, p. 43). Subsequently, on June 30, 2004 the US Supreme Court ruled that in fact the detainees had the right to challenge their detention in a US court of law. As the result of this landmark decision, GTMO, which was intended to be considered as a legal black hole, had to open its door to legal counsels. Soon, the plights of “the terrorist other”, the detainees, came to be heard by the public. As the Center for Constitutional Rights notes, “We began to learn that most of the men had done nothing more than be in the wrong place<sup>8</sup> at the wrong time, swept up and sold for substantial bounties to U.S. forces. Finally, their stories could be told” (2008, August 2).

In *Guantanamo: Violation of Human Rights and International Law?* (2007) two Council of European bodies, the Parliamentary Assembly (PA) and the European Commission for Democracy through Law, known as the Venice Commission (VC) also elaborate on US and its allies war on terror, and the infringement of the rights of persons in custody captured in Afghanistan, Iraq and around the world sent to GTMO. At the outset, the PA summarizes that:

In this report the Assembly deplores the fate and the treatment of persons, including minors, being held in Afghanistan or Guantanamo Bay, whom the United States designates as “unlawful combatants.” The Assembly believes that these persons should be considered “prisoners of war” or, at least, the United States should allow a “competent tribunal,” with the meaning of the Geneva Convention (III) relative to the Treatment of Prisoners of War, to determine their status. The Prisoners’ rights are in no way guaranteed. ... [the Assembly] considers that the United States are in breach of their obligation under the Committee of Minister’s Statutory Resolution (93) 26 on observer status ... (2007, p. 7).

---

<sup>8</sup> In a US documentary, *Taxi to the Dark Side* (2007) directed by Alex Gibney and produced by Gibney, Eva Orner and Susannah Shipman, a young Afghan taxi driver, Dilawar, an innocent man, finds himself at the wrong place and at the wrong time in 2002. While in US custody in Bagram Base on the assumption that he was a Taliban fighter, he was tortured so severely that after five days of interrogation he passed away due to the vast injuries to his body. One of the salient marks of his injuries were left on his legs because of the profuse kicking during interrogations.

Like many other legal experts/authorities, as the PA elaborates, there is neither such legal term in international law as war on terror, nor such status as unlawful combatants. The PA continues that, “No soldier has ever been prosecuted for being a combatant; even for the purpose of war crimes’ tribunals, it has generally been the officers or those responsible for giving orders that were prosecuted but the individual “foot soldiers” has not been tried” (2007, p. 13). Yet, the US government has argued that the unlawful combatants cannot enjoy the status of prisoners of war (POW), and the Geneva Convention III Article 4 cannot be applied to war against terrorism. The Bush administration’s argument was that the detainees had not met the four requirements for POWs status contained in Article 4 (2 a,b,c,d) of the Geneva Convention. If the first condition requires that in an armed conflict there must be a commander who is responsible for his subordinates, the second condition requires wearing uniform with distinct insignia. If the third condition requires that combatants carry their arm openly, the fourth condition of Article 4 of the Third Convention is about the conduct of combatants’ operation according with the customs and rules of war. Thus, Taliban and al-Qaeda combatants were considered as “unlawful enemy combatants” by the US on the basis of not meeting Article 4 (2 b) provision which is about having a distinctive uniform that could be recognized from distance. Moreover, the Bush administration had first argued that the Taliban was a de facto government which could not enjoy the international rights of a legally-recognized state, or considered as a legitimate high party to an armed conflict, so were the members of al-Qaeda group.

Like the European Parliamentary Assembly, in “Defining the status and rights of ‘war on terror’ detainees under domestic and international law”, the International Bar Association (IBA) pointed out that the US war on terror by no means could/can be considered as a conventional war.

It points out that the International Committee of Red Cross (ICRC) has considered the war on terror not as a legal, but as a political inventiveness. The Bush administration's classification of suspects detainees as 'alien unlawful enemy combatants,' as International Bar Association maintains, in fact refers to "an invention of the government designed to circumvent any legal protection" to detainees (2008, November). Thus, the war on terror opened an unlimited scope for the US government to go after any group or, any state, which was considered as resistant to its global domination. Accordingly, since 9/11, in an arbitrary and haphazard way with no respect for international law on armed conflicts and US domestic laws, according to Lt. - Cmdr. William Kuebler, Omar Khadr's US military defense lawyer, the US "essentially says that anyone in Afghanistan who resisted the U.S. invasion was guilty of a war crime" (Shephard, 2008, p. 216).

Moreover, in response to the Bush administration's rejection of the rights of detainees to have access to a competent tribunal to decide on their status of POW, the PA has come firmly against the US administration's decision. The administration had argued that the US courts did not apply to federal government actions concerning detainees, since GTMO is outside of the US legal jurisdiction. In response to such a claim, the PA points to Article III of bilateral agreement of 1903 between the Republic of Cuba and the US which reads:

While on the one hand the United States recognizes the continuance of the ultimate sovereignty of the Republic of Cuba over the above-described area of land and water, on the other hand the Republic of Cuba consents that during the period of occupation by the United States of said areas under the term of this agreement the United States shall exercise complete jurisdiction and control over and within said areas ... (*Guantanamo: Violation of Human Rights and International Law* (2007, p. 13).

The PA concludes that the US laws apply to GTMO as it is under its jurisdiction and control.

Apart from imposing arbitrary readings of the Third Geneva Convention relative to the treatment of prisoners of war, the US has been in breach of such rules of law including due process, and the infringement upon the rights of those who have been captured in the war on terror. The US government has argued that it would be irresponsible “not to continue to detain the prisoners until the conflict is over (2007: 14).” It is important to note that the war in Afghanistan was in fact over when Mr. Hamid Karzai was appointed as the interim President of Afghanistan by the Americans and its allies in the summer of 2002.<sup>9</sup>

On September 20, 2001, President Bush addressed the Congress stating that, “Every nation, in every region, now has a decision to make. You are either with us, or you are with the terrorists” (Address to the Joint Session of the 107<sup>th</sup> Congress). It was on October 7, 2001, that the US military launched Operation Enduring Freedom in Afghanistan. On the same day, a pre-recorded video by bin Laden, the head of al-Qaeda group, who took responsibility for 9/11 attacks on US, was broadcasted by al Jazeera news network. The same fundamentalist rhetoric was used by bin-Laden. He glorified violence by saying that “These events have divided the whole world into two sides – the side of believers and the side of infidels (Shephard 2008: 80)”. As Afghanistan came under the military attacks of the US, British ships and submarines joined the war on terror, which reopened Pandora’s Box once again.

Afghanistan with a long history of domination by foreign conquerors and divided among

---

<sup>9</sup> Please refer to *Guantanamo: Violation of Human Rights and International Law?* Under the subheading iii. Prisoners-of war status under Geneva Convention (III) legal article number 25 which reads: “The United States continue to say that it would be irresponsible not to continue to detain the prisoners until the conflict is over. However, the conflict in Afghanistan might have ended with the setting up of a provisional administration under the auspices of the United Nations (Afghanistan interim Authority) controlling the whole territory (2007: 14).”

internal warlords, and opposing ethnic factions and political forces, this time faced the American attacks. On October 23, two weeks after the American and the British air strikes, Arundhati Roy with a very moving voice accompanied with the tenacity of resistance writes that, “Nothing can excuse or justify an act of terrorism, whether it is committed by religious fundamentalists, private militia, people’s resistance movements – or whether it’s dressed up as a war of retribution by a recognized government. The bombing of Afghanistan is not revenge for New York and Washington. It is yet another act of terror against the people of the world” (Roy, 2001, p. 1). Roy’s short article, “Brutality smeared in peanut butter: Why America must stop the war now, sheds a brief light onto Afghanistan’s ordeals. In 1979, Afghanistan was occupied and soon became a battle ground between Soviet occupying forces in support of the Afghanistan faltering communist regime and Mujahedeen as a united Islamic force backed by the United States, Saudi Arabia, Pakistan and many other nations against Soviet Union occupying forces. Roy notes that, “in the crumbling crucible of rubble, heroin, and landmines in the backwash of the cold war ... between the Soviet Union and America, over 20 years, about \$45bn ...worth of arms and ammunition was poured into Afghanistan. The latest weaponry was the only shard of modernity to intrude upon a thoroughly medieval society” (2001, p. 3). Roy speaks of atrocities on the body of a nation that has been the site of continuous foreign invasions, strife with ethnic factionalism, extreme religious revivals and Islamic fundamentalism. Afghanistan has not only been branded by the stamp of poverty and the production of destructive heroin, but also faced drought, destruction of human lives, rape of Afghan women by occupying forces and displacement of millions of people who turned themselves into refugees around the globe. Afghanistan has been a tale of human suffering and a grim reality of a nation that has been assaulted by foreign powers

from outside and become prey to divisive internal conflicts, civil wars and Islamic radicalism.

Although Soviet Union forces withdrew from Afghanistan in 1989, after ten years of occupation, a significant number of landmines' disabled victims were left behind as the result of the Soviets' invasion and warring antagonist forces from within. Moreover, as Roy states, "One and a half million Afghan people lost their lives in the 20 years of conflict preceded this new war. Afghanistan was reduced to rubble, and now, the rubble is being pounded into finer dust. By the second day of the air strikes, US pilots were returning to their bases without dropping their assigned payload bombs," (2001, p. 2). The *brutality smeared in peanut butter* points to the President Bush's announcement when he said: "This is our calling. This is the calling of the United States of America. The most free nation in the world. A nation built on fundamental values that rejects hate, rejects violence, rejects murderers and rejects evil. We will not tire" (Roy, 2001, p. 2). As US bombs fell on Afghanistan, the US air-dropped 37,000 food packets. Roy, therefore states, "Aid workers have condemned it as cynical, dangerous ... First, because the food will never get to those who really need it. More dangerously, those who run out to retrieve the packets risk being blown up by landmines. A tragic alms race" (Roy, 2001, p. 4-5). Roy then continues with this statement that the freest nation in the world, the US, outside of its borders, promotes domination, humiliation and subjugation usually in the service of America's real religion, the "free market." With the tenacity of an activist, Roy points out that, "So when the US government christens a war "Operation Infinite Justice, or "Infinite Enduring Freedom" ... we know that infinite justice for some means infinite injustice for others. And Enduring Freedom for some means Enduring Subjugation for others" (Roy 2001, p. 2).

Roy like many of the US opponents who are critical of US foreign policy, is well-aware

that the war on terror not only involves American global domination, but also American economic and power interests in the Middle East. Roy reminds us about the traditional family business-oil in the US --- “Remember, President George Bush (Jr) and Vice-President Dick Cheney both made their fortunes in US oil industry” (Roy, 2001, p. 7). As she elaborates further, Roy explains how Turkmenistan, which borders the north-west of Afghanistan, holds the world’s third largest gas reserve, which can supply the energy needs of America for 30 years. Roy notes, “America has always viewed oil as a security consideration, and protected it by any means it deems necessary. Few of us doubt that its military presence in the Gulf has little to do with its concern for human rights and almost entirely to do with its strategic interest in oil (ibid)”. Roy’s brutality smeared in peanut butter can be considered as a metaphor for the US war on terror and how in the name of security, freedom and democracy, bombs fell over Afghanistan and made finer dust of a nation whose modern history is replete with brutality of any kind either as a result of ethnic factionalism, secular/ideological struggles between the Eastern left and Western right as opposed to Islamic fundamentalism/extremism now brewing in the East. Roy shakes us with the statement as she concludes her text by saying,

And what of the rest of us, the numb recipients of the onslaught of what we know to be preposterous propaganda? The daily consumers of the lies and brutality smeared in peanut butter and strawberry jam being air-dropped into our minds just like those yellow food packets. Shall we look away and eat because we’re hungry, or shall we stare unblinkingly at the grim theater unfolding in Afghanistan until we retch collectively and say, in one voice, that we have had enough (2001, p. 8).

Roy leaves one with a choice, either to be apathetic in the face of atrocities and to buy into the power interests of those who smear atrocities in the rhetoric of security, freedom and democracy or collectively say enough is enough. Roy’s hopeful concluding words speak of dreaming and

reimagining beauty. But, the story of the war on terror is saturated with atrocities that cripple the ability to reimagine beauty. Who can reimagine beauty while being under the fire of violent domination or captured in such a “hell hole” that is called Guantanamo Bay camp whose apathetic propensities breathes nightmares?

In a dry and scorching day in Afghanistan, on July 27<sup>th</sup>, 2002, there was a firefight between American forces and Afghan fighters among whom Omar Khadr was one. Khadr was shot twice, seriously wounded and gradually lost his left eyesight, while Sergeant First Class Christopher Speer was fatally injured by a grenade that was allegedly thrown by Omar Khadr. Later Sergeant Speer died and his First-Class comrade, Sergeant Layne Morris, who was also injured at that firefight, lost his right eye. Khadr was transferred to Bagram Airfield, the US military base in Afghanistan to get medical help. He was only fifteen when he came under the custody of American forces. At Bagram, while his life was saved, he was subject to harsh physical and psychological ill-treatment and torturous interrogations. Damien Corsetti’s, the US soldier acting as an interrogator, who had achieved his two nicknames, “The Monster” and “The King of Torture” on the war on terror speaks of Omar Khadr and his ordeals in the documentary films, *Omar Khadr: Out of the Shadows* (2015), *Omar Khadr: Villain or Victim* (2015) and *The US vs Omar Khadr* (2008) respectively. Corsetti’s recollection of Omar Khadr dates back to 2002 at the Bagram Air Field. When he saw Omar Khadr for the first time, he was fatally injured with two big holes on his chest, *blown up, shot and grenaded*. From the beginning Omar Khadr was called names such as “a killer” and “a succumbed bag.” “He was a 15-year-old child. He was in one of the worst places on earth. How could you not have compassion for that?” Corsetti states. What can be understood

from Corsetti's interviews after interviews about Omar Khadr's captivity under the US military custody is how he was treated inhumanely ... given that he was a child whose age could be a mitigating factor in dealing with his case.

In "The king of torture and the child jihadist" (2010, May 5), Noah Shachtman draws on Spencer Ackerman, the national security correspondent for *The Washington Independent*, reporting and working on Omar Khadr's case. As Shachtman notes, Corsetti, the man who was once called, "the King of Torture," not only regrets his past conducts while serving the US military, but also speaks in defense of Omar Khadr and condemns the US ill treatment of detainees on the war on terror. Despite his regrets, what is important in Corsetti's testimony is the presence of a systemic pressure within the military high commands that provides a fertile ground for abuse and mistreatment of the captives at the hands of those who are at the bottom of military chain of commands. Shachtman explains:

The pressure to acquire intelligence information was the overriding theme of Corsetti's testimony. His unit, Alpha Company of the 519<sup>th</sup> Military intelligence Battalion, then stationed at Bagram, had to file between "20 to 40 reports a week" or hear from the higher command to complain about them Afghanistan war command "stagnat[ing]." That pressure, Corsetti said, came from the Afghanistan war command and the "Office of the Secretary of Defense" – and produced a command environment that encouraged detainees' abuse. "The only clear-cut rules I remember we weren't allowed to strike the prisoners," Corsetti said, and that interrogators couldn't directly threaten detainees. "But we could do what we called 'plant the seed' of threats, and "let their imagination run wild with it" (2010, May 5).

At Bagram, while his wounds were still wet, Omar Khadr was brought to interrogation rooms. His pain medication was withheld to induce cooperation. With unhealed wounds he was ordered to clean the floors with his hands and knees. He was denied access to a pair of glasses for his burning and injured eyes as well as he was denied surgery on his left eye that gradually resulted in losing

his eye-sight. Jeff Tietz notes, “when he could walk again, he was forced to stand for hours at a time with his hands tied above a door frame. Interrogators put a bag over his head and held him still while attack dogs leapt at his chest. Sometime he was kept chained in an interrogation room for so long he urinated on himself” (2006, August 24).

In addition to these harsh treatments at Bagram, we hear from Spenser Akerman who informs us about a story “from the first person who ever interrogated Khadr ... that part of Khadr’s interrogation featured interrogator No. 1 telling the then-15-year-old detainee ... a ‘fictional story’ according to interrogator No. 1 about a different young detainee, who didn’t cooperate with his interrogators, who was taken to a prison in the United States [and] who was raped and ultimately killed” (2010, May 11). It is important to note that “... an historical shift [has taken place] in US interrogation policy—from the highly secretive tortures by the Central Intelligence Agency during the Cold War to an open, even defiant use of coercive interrogation as an official weapon in the arsenal of American power during the war on terror,” as Alfred W. McCoy points out (2006, March).

The new salient features of tortures have resulted in psychological impairments on detainees and in some cases had driven detainees to commit suicide. Moreover, the interrogators have targeted detainees’ cultural values and fears, those of which were used against them in order to extract forced confession. Tietz points out that, “The most effective form of torture turned out to have two components. The first is pain and harm delivered in unpredictable, sometimes illusionary environment. The second is a removal of their comfort of identity – achieved by artfully humiliating people and coercing them to commit offences against their own religion, dignity and morality, until they become unrecognizable to and ashamed of themselves” (Tietz,

2006, August 24). Bagram was just a beginning and a prelude to Omar Khadr's *unending torture*, a predicament coined by Tietz's wordings.

In October 29, 2002, before Omar Khadr was transferred to the Guantanamo Bay Camp, (GTMO) he was dressed in an orange jumpsuit, hog-chained ...shackled hand and foot, hooded and kneeling on the tarmac with other prisoners. Tietz states that "...Omar waited for many hours. They pulled opaque goggles over his eyes and placed soundproof earphone over his ears. They put a deodorizing mask over his mouth and nose. They bolted him ... to a backless bench [on the plane]. Whichever limbs hadn't already lost sensation from the cuffs lost sensation from the high-altitude cold during the flight which took fifteen hours," (Tietz, 2006, August 24). This torturous rite of passage marked Omar Khadr's transition from Bagram Base to the next notorious "extra-legal black hole," GTMO. GTMO has been identified as life *lived* in limbo and the place where the right to due process is forfeited. Behind the suspension and deprivation of the right to due process, the war on terror stood as the epitome of "casting out," the exclusion of the Muslim other from the Western legal protection as Sherene Razach states. So, GTMO became the torturous "home" of Omar Khadr for the next 10 years where he was identified as detainee No. 766. He was among the youngest detainees, but the last Western national to be returned home to Canada.

GTMO, the epitome of engulfed apathy, where sheer force ruled supreme, devoured Omar Khadr, like many other detainees, in its tortuous disposition. Despite the international prohibition against torture defined in Part I Article 1 of the Convention against Torture, the Bush administration's new standard on torture was included in the war on terror on August 1, 2002. However, Article 1 of the UN Convention against Torture, which was signed by the US in 1988 and ratified in 1994 declares that:

...the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, for any reason based on discrimination of any kind, when such pain and suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity... (United Nations/Human Rights, 1984).

In Chapter Seven, we can see how torture becomes a significant part in the war on terror in general and part of the expansion of the US presidential power in particular.

In *Guantanamo’s Child: The Untold Story of Omar Khadr* (2008), Michelle Shephard, the Toronto Star’s National Security reporter, the author and the filmmaker, writes about Omar Khadr, his ordeals and coming to age in GTMO. Shephard’s story of Omar Khadr is simultaneously intertwined with the US war on terror and GTMO, whose notorious reputation has been considered as a “modern day Devil’s Island” and a “hell hole” according to Omar Khadr’s American Navy defense lawyer, William “Bill” C. Kuebler, and his Canadian defense lawyer, Dennis Edney.<sup>10</sup> Before Shephard introduces Omar Khadr as the dutiful and the second youngest son of the Khadr family, she critically questions President Bush’s quest for justice on his war on terror in regard to Omar Khadr’s case. She points out that:

The U.S. administration is determined to try him for war crimes before a military commission, despite numerous court setbacks and a restive worldwide public that has grown weary of President George W. Bush’s assurances that justice can be carried out at Guantanamo. If the case proceeds, it will be the first U.S. war crimes trial since the prosecution of Nazi commanders in Nuremberg. The world is immeasurably different from what it was in 1945, but it is hard to believe that history will equate a fifteen-year-

---

<sup>10</sup> During Omar Khadr’s captivity, Omar was represented by a number of lawyers, Canadian and American. However, two Edmonton lawyers, Dennis Edney as well as Nathan Whitling were the principal defense lawyers in his case.

old Canadian alleged to have killed a soldier with concentration camp commandants who exterminated thousands of innocent civilians (Shephard, 2008, p. x).

Along with this text, and her subsequent texts and films, Shephard undermines the mainstream representation and *demonization* of Omar Khadr by pointing to his personal suffering as a child soldier, his combatant family against American and Western global power, and unfolding the violent exceptional measures triggered by the post 9/11 events that led into a space of exception, GTMO.

Instead of considering him as a perpetrator, or a villain, Shephard (2008) reminds us to consider Omar Khadr as a child soldier, influenced by his Islamic fundamentalist's father and his family. As Shephard informs us about the life history of Omar Khadr, we see how Omar was exposed to bleak realities in Afghanistan and Pakistan from an early age. He was exposed to the teaching of radical Islam and militancy against the Western domination, in particular the US before he was captured by the American forces in Afghanistan; he was a Pashto translator helping the insurgency forces against US and American allies' troops. He and his siblings were visitors along with their mother, Maha el-Samnah to bin Laden family's compound. As the second youngest son in the family, Omar Khadr was born on September 19, 1986 in Toronto; his father, Ahmed Said Khadr, was from Egypt and his mother, Maha el-Samnah from Palestinian ancestry who became Canadian citizens later on. While in the University of Ottawa, Ahmed Said Khadr studied computer programming in late 1970s. It was in there that he joined the Muslim Students Association which was influenced by the Muslim Brotherhood movement which believed that Egypt should be governed by Sharia law.

The story of the ordeals and miseries of Afghans from the battles with the Soviet Unions

and warring forces from within reached Ahmed Khadr in Canada who became concerned about Afghan orphaned and injured children. “He would cry as he listened to stories about the victims, cursing his own inaction” (Shephard, 2008, p. 21). Saddened by the soul-wrenching of minefield victims, Ahmed Khadr spoke of how landmines left by the Soviets were disguised as toys to target children. ““Some of them are quite pretty, particularly ones that look like a butterfly ... They don’t kill the children but they blow off their arms when they pick them up or their feet if they tread on them,” Ahmed Khadr maintained (Shephard, 2008, p. 28). Khadr decided to devote himself for charitable works opening orphanages for children who lost their parents and attending the injured in Afghanistan by fundraising in Canada and abroad. Soon he became involved with Human Concern International, a Canadian charity, and started to fundraise for the Afghan cause. Looking back, when the Soviet Unions’ forces withdrew from Afghanistan, in October 1989, *The Toronto Star* published an article informing the public of Ahmed Khadr’s involvement with Human Concern International to respond to Afghans plights who were seemingly forgotten and unnoticed by the public. *The Toronto Star*’s article wrote that:

Ahmed Khadr is a fighter in a forgotten war, whose living casualties make up almost half the world’s refugee population. The Afghan children he battles to protect have the highest mortality rate in the world, he says. Almost one in three dies ... The never-ebbing human tide had long since engulfed the meager resources Khadr has at hand. “Still, we continue,” he said. “What else can we do?” He was to fly home this past Saturday after almost two weeks in Canada and the United States lecturing on the Afghan civil war and pleading for help. “I’ve had people come up to me afterward and say, “What war? The war is finished,”” he said. “It’s not finished at all. It’s getting worse. It was in the headlines for so long, 1.5 million people killed. Now it’s going unnoticed” (Shephard, 2008, p. 34).

As time passed, Ahmed Khadr’s humanitarian help changed its direction. He became a close ally to bin Laden. In the US’s war on terror, Ahmed Khadr was alleged to be a financier for al-Qaeda’s

organization against Western and Eastern foreign domination.

In 1979, Afghanistan was invaded and occupied by the Soviet forces in support of the Marxist People's Democratic Party of Afghanistan which was in power in the late 1970s. In a series of military struggles to overthrow the Soviet forces from Afghanistan, all Muslims from all over the world were called to join the jihad, the holy war. The Mujahedeen, the militant Islamic believers among whom the Saudi millionaire Osama bin-Laden was one, soon rushed to Afghanistan to take part in the war. The plights of Afghans brought many Muslim warriors, the mujahedeen, either from within Afghanistan or abroad, against the Soviet forces. The helpers and the supporters for Afghans "[m]ost were from Arab states, in particular Saudi Arabia whose government helped finance their travels, but they also came from Europe, the United States and Canada. The CIA covertly provided millions in funding, weapons and training to help support the Afghan Mujahedeen" (Shephard, 2008, p. 21). The Afghan struggle did not end as the Soviet forces were defeated and withdrawn from Afghanistan. There was a civil war between the Afghan warlords, and the forces of Islamic fundamentalism were proliferating in a nation that had been already on the verge of collapse and aiming to create a "pure society ruled by Sharia law." In 1995, the Taliban, the fundamentalist adherents of strict Sunni Sharia law came to power in Afghanistan. On May 16, 1996, Osama bin Laden, who established the al-Qaeda group in 1988 and was a Saudi citizen until 1994, but stateless thereafter, flew to Afghanistan from Sudan. Bin Laden considered the Saudi government as corrupt and tyrannical, under the influence of the US, the enemy of Muslims and the main supporter of the expansion of the "Great Israel" at the expense of Palestinian misery and homelessness.

Bin Laden's anti-American position was the culmination of many factors including his

belief of the Wahhabi brand of Islam. Wahhabism, “is a strict, puritanical faith that emphasizes literal interpretation of the Quran and *sunnah* ...of the Prophet Muhammad and the absolute oneness of God. The Wahhabis denounced other tribes and Muslim communities as polytheists or idolaters” (Esposito, 2010, p. 6). Being the adherents to ultraconservative and fundamentalist views of Sunni Islam, Wahhabism is a conflation of a religious and a political doctrine that originated in the 18<sup>th</sup> century and influenced the 19<sup>th</sup> century’s anti-Western imperialism. Moreover, bin Laden was influenced by the Islamic philosophy of Sayyid Qutb (1950s-1960s), the executed Egyptian scholar, an important member of the Muslim Brotherhood, whose anti-Western, anti-secular and anti-Eastern views prescribed Islamic militancy in response to Westerner and Eastern political, economic and cultural domination in the Muslim world.

In *Unholy War: Terror in the Name of Islam*, John L. Esposito (2010) provides a historical overview of the rise of Islamic radicalism and militancy in order to explain the September 11<sup>th</sup> attacks and the American-led war against terror. Esposito draws on Qutb’s teaching in his text, *Islam and Social Justice*, where he argues that Islam has its own socialism without “both the pitfalls of Christianity’s separation of religion and society and those of communism’s atheism” (2010, p. 57). Esposito then puts his analysis in a contextual and historical background by pointing to the suppressive forces of Gamal Abdel Nasser, the Egypt President from 1954 until his death in 1970, aligned with Russia and secular nationalism, “moving even farther away from the prospect of establishing an Islamic state” (ibid). This was the leading objective of Qutb and many other proponents of having a government ruled by Sharia law. Esposito maintains:

Given the authoritarian and repressive nature of the Egyptian government and many other governments in the Muslim world, Qutb concluded that change from within the system was futile and that Islam was on the brink of disaster. Jihad was the only way to implement the new Islamic order. For Qutb, Jihad,

as armed struggle in the defense of Islam against the injustice and oppression of anti-Islamic governments and the neocolonialism of the West and the East (Soviet Union), was incumbent upon all Muslims (Esposito, 2010, p. 60).

Qutb's revulsion was not only towards communism's atheism, but also capitalism and the Western modern culture with their exploitative make-up, and their negative influences on traditional societies and individuals in general and on the Muslim nations in particular.

As Esposito explicates, Qutb had experienced racism due to his dark skin and ethnic background while he was living in the US for two years in the late 1940s. In the name of individual freedom, as Qutb pointed out, the American society was devoid of human sympathy and responsibility, in particular towards elders in the family. He despised what he called, the evil forces of materialism, sexual permissiveness and promiscuity, use and abuse of alcohol and the prevalence of violence. "His experience in America produced a culture shock that made him more religious and convinced him of moral decadence of the West" (Esposito, 2010, p. 57). However, when he returned to Egypt, Qutb's views of a just society led him to write against the West and the East (the Soviet Union) taking an active role in promoting Islamic Jihad against the oppressive anti-Islamic governments of the Muslim nations as well as the European and Western neocolonialism and their disastrous effects on the modern world. At first, Qutb invested his heart on Gamal Abdel Nasser, the second President after the overthrow of monarchy in Egypt, to bring the nation under Sharia law. When the Nasser regime affiliated itself with the Soviet Union and secular nationalism, Qutb participated in the unsuccessful plot of Nasser's assassination. Qutb was captured, imprisoned and finally was executed in 1966 in Egypt.

Sayidd Qutb's radical and militant views and teachings did not falter with his execution, and had a great influence beyond his time and beyond Egypt, influencing many movements, groups

and individuals, including Osama bin Laden. After the defeat of the Soviet forces in Afghanistan and their withdrawal from the nation (1989), bin Laden, who had fought alongside the Mujahedeen with the support of the US, Saudi Arabia and other allies via Pakistan, learned that “he was among a group of men targeted for assassination by the CIA. He fled back home [Saudi Arabia] only to find himself placed under house arrest. Not surprisingly, perhaps, Osama felt the Mujahedeen had been exploited and cheated by the Americans and deeply resented the fact that the Saudi regime was compliant with the U.S. agenda” (Atwan, 2001).

In *Why bin Laden was radicalized*, Abdel Bari Atwan points out that the US had become concerned about the Mujahedeen possible “blow-back” coming against the American forces and its allies in the region after the defeat of the Soviet forces. Atwan briefly identifies major causes that were significant in triggering bin-Laden’s Islamic radicalism and militancy --- this time against the US and its allies in particular the Saudi regime. In 1990, Saddam Hussein invaded Kuwait. Bin Laden communicated his concern with the House of Saud stating that he could gather an army of ex-mujahedeen in order to repel Saddam’s invasion and libertate Kuwait. As Atwan points out, bin Laden’s “offer was refused and shortly afterwards 100,000 U.S. troops arrived on Saudi soil (ibid)”. To bin Laden, this act was sacrilege, for Saudi Arabia was home to Islam’s two sacred sites, Mecca and Medina and the presence of the non-Muslim in this regard, was forbidden. Instead of getting help from Muslim brothers, the Saudi government relied on the US troops, whom bin Laden considered as “the crusaders.”<sup>11</sup>

Moreover, bin Laden and his supporters and allies were resentful of US foreign policies and

---

<sup>11</sup> The term, crusaders/crusade, was also used by President Bush in the early days after the 9/11 attacks. Yet, it was soon withdrawn from the political scene due to its ultimate insult to many American Muslims’ allies in the region, especially Saudi Arabia.

injustices. In particular, bin Laden was appalled by American supports and aids to Israel, and indifference to the Palestinian plights. Soon, bin Laden left Saudi Arabia for Sudan. It was there that one of his fellow founding members of al Qaeda, the Egyptian Ayman al-Zawahiri, spoke of globalizing jihad. Al-Zawahiri “identified two battlefronts: “the near enemy,” ...the Middle East’s assorted tyrants and dictators ...and the “far enemy,” – the Western powers, in particular the US. The first al-Qaeda attack against the US took place outside New York’s World Trade Center in 1993. There were many other attacks and civilian casualties including the 1998’s bombings of the US embassies in Nairobi, Kenya, and Dar es Saalam, Tanzania, killing 224 people and injuring thousands of others to name a few.

However, when Sudan informed bin Laden of his eviction, he flew back to Afghanistan where the Taliban gave him a refuge. In Afghanistan as well as in Pakistan, bin Laden opened training military camps to train Muslim brothers about how to fight against forces from within and outside the nation, the corrupt regimes in the Middle East as well as the Americans and its allies. Bin Laden’s life experiences along with his fundamentalist views, dividing the world between the polar opposite forces of believers and the infidels, had pushed him to a dead-end. As Shephard maintains:

The Taliban had offered bin Laden’s group sanctuary but the two groups remained wary of each other. Bin Laden didn’t know whether to trust the Taliban and Mullah Omar was nervous about international scrutiny the Saudi attracted. The relation was tested on August 23, 1996, when bin Laden publicly declared war on the United States for the first time. Called the “Declaration of War Against the American Occupying the Land of the Two Holy Places” bin Laden’s diatribe criticized the Saudi ruling family, the United States and Israel and lamented the loss of Muslim blood on the soil of Palestine and Iraq. “The presence of the USA Crusader military on land, sea and air in the states of the Islamic Gulf is the greatest danger threatening the largest oil reserve in the world. My Muslim Brothers: The money you pay to buy American goods will be transformed into bullets and used against our brothers in Palestine ... The wall of oppression and humiliation cannot be

demolished except in a rain of bullets” bin Laden maintained (Shephard, 2008, pp. 60-61).

Bin Laden’s war of “liberation” was contradictory in the sense that even the “liberating” arms used against the Soviets and then the US and its allies were made in the same dominating nations that he wanted to be liberated from. Like the Western rhetoric of democracy, freedom, and security, the war of liberation and the war on terror have been in fact profitable enterprises for the war industries, whose main concerns are far from protecting human life, human rights, and the sanctity of the other species and the environment.

According to Esposito, Bin Laden was so embittered by many violent events and betrayal in many fronts that he did not realize that the battle that he had been drawn into could not foreshadow the dawn of victory. Although the Taliban had given him a base to fight, his Jihadist force could never compete with the violent forces under the leadership of the US and its allies. He had thought and said that “the wall of oppression and humiliation” can be only demolished by a rain of bullets --- underestimating the supports of many Muslim governments in the Middle East for the US and its allies. Moreover, in targeting and attacking innocent civilians, either in the US or abroad, he turned himself into a terrorist and lost the political supports of those who could join him against the US and its allies’ neo-imperial domination and violence. After all, attacking civilians is neither accepted by moral authority in Islam, nor is it sound political strategy. According to Esposito, based on information retrieved from the Islamic Research Council at al-Azhar University, “Islam provides clear rules and ethical norms that forbid the killing of non-combatants, as well as women, children, and the elderly, and also forbids the pursuit of enemy in defeat, the execution of those who surrender, the infliction of harm on prisoners of war, and the destruction of property that is not being used in the hostilities” (Esposito, 2010, p. 158).

Bin Laden had become oblivious to his initial awareness that if the Soviet forces withdrew from Afghanistan, although he and many other mujahedeen were significant players in that battle, it was Saudi Arabia and its allies in particular its patron, the US which pushed the Soviet forces out of Afghanistan. Bin Laden's cry for justice through Islamic militancy not only opened a new chapter in world alienation and the proliferation of neo-imperialism/neoliberalism, but also provided a "justification" for the war on terror and the perpetuation of a new global violence that has targeted the Muslim "other" in particular, and the Western values of plurality in general by the continuous declaration of states of exception by the US. While bin Laden wanted to defend the Muslim world from the corrupt Islamic governments and Eastern/Western domination, he in fact re-solidified the presence of the US and its allies' military presence in the Middle East. Bin Laden was unrealistic in his war against the US and the US allies. In a global world/world system, taking up arms by the wretched is doomed to defeat and therefore breeds nothing but misery and loss of life. Even if one wins the war of maneuver, one cannot win the war of position in such circumstances. In a nation, for example, such as Afghanistan which has been battered by illiteracy, war, succumbed to poverty and religious fundamentalism and many other social and political ills with broken social, economic, and political infrastructures, there cannot be pragmatic hope against the influence of corrupt Muslim governments and Western and Eastern foreign invasions and domination. The question that remains is as follows: whether the change of patrons or dominating powers can be considered as liberation? While one should continue to resist injustices of any kind, one needs to win the war of position in order to bring substantial change respectively.

A dichotomized fundamentalist worldview, uttered either by President Bush or bin Laden

and many others alike, depicts a world that is divided between polar opposites, either you are with “us” or the “terrorists.” Or either you are with “us” or the “infidels.” A black and white perspective is fear and hate-mongering infused with engulfed apathy in such circumstances. In such an alienating world, though with its own ebbs and flows, neither empathy nor the power to act can find a safe place. In *Covering Omar Khadr: Reporter Michelle Shephard on the case, the controversy, and the man he is today*, Ilana Ghosh, the associate producer at *CBC Podcasts*, writes that “Shephard says she was also surprised by the level of vitriol that has followed. And the attacks have not been directed at Omar Khadr alone, Shephard herself has received threats and hateful comments, along with a clipping of her article with what appears to be feces on it mailed to her” (*CBC*, 2017, July 12). Michelle Shephard’s visit to York University and her talk on Omar Khadr’s case, in the first decade of 2000, which I personally attended, also shed light onto her difficult time during the heydays of the war on terror and its exceptional/drastring measures. Shephard talked about Canadian national security authorities, whose concerns threatened her freedom of press, speech and expression at times. What is important to note is that in exceptional circumstances, even speaking of truth in defense of justice entails risk-taking, facing danger, casting-out, ostracism and banishment just to name a few. Moreover, in a state of exception, “security” always trumps liberty as Andrew Neal (2010) maintains.

As the *Toronto Star’s* National Security Reporter, who has covered the story of Omar Khadr since his captivity in 2002, Shephard has brought to the public’s attention what the Omar Khadr captivity and the War on Terror have entailed. Despite frustrations and various obstructions and limitations, Shephard’s work on Omar Khadr’s case resulted in 27 visits to GTMO, none of which ended in a meeting with Khadr himself, due to “security” restrictions. Despite all obstacles

and setbacks, Shephard never gave up and had extensive reporting on Omar Khadr's case, his life, his family and the war on terror's arbitrary *legal* and *political* measures both taken by the US and Khadr's homeland, Canada. As Ghosh states, "She has written over 250 articles on the subject, is the author of a 2008 book on Omar Khadr's case and co-directed and produced the Emmy-nominated documentary *Guantanamo's Child*" (2017, July 12). Shephard's remarkable courage and conviction had a significant role in the public's awareness about Omar Khadr, the 15-year-old Canadian captive in GTMO. Shephard's endeavors can be seen as her respect for human rights, international law in armed conflicts and in this case for a child soldier, and a belief in the value of plurality entrenched in American, Canadian, European and international laws.

Shephard's work on Omar Khadr's case, sheds light on the bitter circumstances of many people whose lives are intertwined. Shephard, therefore, speaks of and is not oblivious to Tabitha Speer, who lost her husband, the father of her two small children. She tells us about the 28-year Sergeant Speer and his dreams of pursuing a study in medicine and becoming a doctor. We hear that Speer was an Elvis fan and a loving and romantic partner for his wife leaving her love notes around their home. In addition to all these loving memories of her husband and the father of her two children, we hear the heart-wrenching emotional loss of her husband and many untold stories of her daily struggles ... struggles we may never be able to face/experience, such as raising two children single-handedly. We also hear from Shephard of Sergeant Morris, Speer's comrade in that battle and his loss of his eyesight that resulted in an early retirement from the US forces and his extinguished dreams.

Yet despite Shephard's attentive sensitivity to the plights of many people whose life circumstances are intertwined in a system of alienation succumbed in engulfed apathy, Shephard's

story is predominately about Omar Khadr's captivity, the cruel, inhuman, degrading treatment and torture that he was subject to at Bagram and GTMO as well as many other factors that aggravated his captivity. Shephard, therefore, tells us about Omar Khadr's family, perceived to many Canadians as both an Al Qaeda family as well as Canada's first family of terrorism, a family whose outspoken opinions on the war on terror had damaging effects on Omar Khadr's case. "My family is very, very opinionated. And that's not always a smart thing. They said things that was not very smart. And they should not have said," Omar maintains at his interview in the documentary *Omar Khadr: Out of the Shadows* in 2015. The defiant behavior and damaging views of Omar Khadr's family, in particular his mother, Maha el-Samnah, and his sister, Zaynab Khadr, stating that if an American soldier could kill, so could Omar Khadr in self-defense, secured Khadr's *guilt* in the eyes of the public. "No one has seen that I have thrown the grenade," Omar Khadr said in the 2015 documentary.

Instead of talking to the Canadian and American people about the plights of Afghans caused by the Soviet invasion, the civil wars and the US and its allies neo-imperial/neoliberal domination and violence in the Middle East which have resulted in plunder and misery in parts of the region, Omar Khadr's mother and sister in their interviews portrayed an asymmetrical war between an elephant and an ant as symmetrical. The portrayal of the asymmetrical power relation as symmetrical in the war on terror has contaminated the Western social body and the body politic. Perhaps, as a reminder, it is important to note that the US "has the largest military and is the largest producer and supplier of military arms on earth, ...[which] continues to profit from destruction" as Claudio Colaguori maintains; and as Livy Visano (1998) points out, the US is the "world's leading dealer in weapons of mass destruction"(Colaguori, 2012, p. 127). When the public

majority is not well-aware of such asymmetrical power relations, engulfed apathy, and casting out of Omar Khadr, like many other captives in GTMO and well beyond from the Western legal protection at both national and international levels set the tone not only for ill treatments, but also damage the universal promise of law to objectivity, impartiality and in accordance with the spirit of justice and human rights.

Being alienated by both American and Canadian authorities for many years, we are informed by Denis Edney, Omar Khadr's Canadian lawyer as well as William Kuebler, his American lawyer, of the conflicted public opinion about Omar Khadr. Some people supported him as a child soldier and many others lacked sympathy because of his family and their defiant behaviors (Shephard, 2008, p. 163). Unlike David Hicks's father whose campaign for his son's release from GTMO gained momentum and earned public support in Australia and the US, Omar Khadr's family's celebration of martyrdom, Islamic fundamentalism and militancy created a reactionary environment that reinforced the violent discourse of "us" vs "them" mentality, undermining an empathetic public support for Omar Khadr both in Canada and the US.

Perhaps the ability to imagine the plight of others is the first step to question and act upon apathetic engulfment and alienating dispositions that divide the world into polar opposites. Yet as Hannah Arendt firmly reminds us, act in concert is the basis of power-making and this entails appearing in the world with speech. After all, rights are not given; rather we should strive for them. However, this acting in concert should entail care for one another through emotional imaginative connectivity and this reminds me of Paul Kennedy's embarkation upon a hypothetical empathic journey with regard to 9/11 and the US preemptive war on terror and its subsequent violence against the Muslim "other". Kennedy opens his conversation in this way when he maintains:

[H]ow do we appear to *them*, and what it would be like were our places in the world reversed. ... Suppose that there existed today a powerful, unified Arab-Muslim state that stretched from Algeria to Turkey and Arabia—as there was 400 years ago, the Ottoman Empire. Suppose this unified Arab Muslim state had the biggest economy in the world, and the most effective military. Suppose by contrast this United States of ours had split into 12 or 15 countries, with different regimes, some conservative and corrupt. Suppose that the great Arab-Muslim power had its aircraft carriers cruising off our shores, its aircraft flying over our lands, its satellites watching us every day. Suppose that its multinational corporations had reached into North America to extract oil, and paid the corrupt, conservative governments big royal-ties for that. Suppose that it dominated all international institutions like the Security Council and IMF. Suppose that there was a special set up in North America fifty years ago, of a different religion and language to ours, and the giant Arab Muslim power always gave it support. Suppose the Colossus state was bombarding us with cultural messages, about the status of women, about sexuality, that we found offensive. Suppose it was always using us to change, to modernize, to go global, to follow its example. Hmm ... in those conditions, would not many Americans steadily grow to loath that Colossus, wish it harm? And perhaps try to harm it? I think so (Esposito 2010, pp. 155-156).

The significant point in Kennedy's empathetic statement, as I interpret, is that violence begets violence.

Kennedy, like Shephard, and many others including myself neither support nor justify terrorism of any kind whether done by a person, a group or a nation state and its government. When put into a historical context of exploitation and domination by the colonial/imperial past into present, we can understand why individuals or groups, who call themselves as believers, men and women of faith, become radicalized and resort to violence. The point of evoking empathy is in fact walking through an open horizon of understanding, where conversations between “the self” and “the other” can be considered as first steps towards a peaceful coexistence that entails patience, emotional connectivity with continuous resolve. The power to imagine the plight of others is the first step in preventing engulfed apathy whose disposition breathes alienation, marginalization/exclusion.

In 2003, Ahmed Said Khadr was killed by the US forces and Omar Khadr's brother, Abdulkareem, at the time 14 years old, was shot in the spine and paralyzed from the waist down. The life of Maha el-Samnah, Omar's mother, as we hear from Shephard, has been engraved with bitterness and struggles. She followed her husband to the Middle East, living in such places like Bahrain, Pakistan and Afghanistan with the hope that she could find a home for her children far away from the influence of the West. Shephard notes that, "she would rather raise her kids in Pakistan than Canada where they could become drug addicts and ..." (2008, pp. xiii-xiv). In between here and there, and despite a great ambivalence in her view towards living in Canada, where she finally returned to and assumed it as her home, we can see how in the pursuit of her husband and her religious beliefs, Maha el-Samnah's life is filled with struggles and agonies. Shephard tells us that Maha prepared her three-year old son's body who had died of heart complication for burial: "[t]he next day, she bathed Ibrahim's body, dressed him in white and left him in the care of her brother at the Jami Mosque, where she had been married a decade earlier. Her brother buried her son as she called the airline to book a flight. The next morning, with Omar in her arms, she returned to Peshawar" (Shephard, 2008, p. 31). Taking care of seven children, five boys including Ibrahim and two daughters between places in particular in war-ridden Afghanistan and politically volatile Pakistan was not easy. Following her husband, and her beliefs ended up in a fate that turned her into a widow at the age of 46, left to care for her paralyzed son from 2003 onwards and a lasting concern for her sons Omar and Abdurahman, both of whom were under the age of 18 when they came into American military custody and sent to GTMO as enemy combatants. The life of Maha el-Samnah in the West has represented a life of an outcast enveloped in perpetual struggles.

If the story of the mother speaks of being an outcast, the tale of suffering of Omar Khadr, the son, a child soldier speaks of physical injuries, loss of an organ, an eye, and psychological trauma incurred in Bagram and GTMO. The controversial placements of detainees in what was called Camp X-Ray was the beginning of bleak/cruel reality of GTMO. Steel meshed cages eight feet long and six feet wide, which included a sink and squat-toilet were constructed for the detainees. The banana rats were the frequent visitors whose shit everywhere affirmed to the indignity that the captors bestowed upon the captives. Beds, sinks and Korans could verify the traces of passing rats over the surfaces. The harsh weather, the heat and the scorching sun and the torturous life on the limbo gradually led into opening the subsequent camp buildings. By the time Omar Khadr arrived in GTMO Camp Xray was closed. He was placed in Camp Three. It was around the midnight that Omar used to be called by a guard, who said, “You have a reservation”, a term used in GTMO for interrogation. Before interrogation, his hands and feet were shackled together chained to an eye bolt in the center of the floor. In a fetal position, he had to wait for his interrogators. The stress position which quickly led/leads to delirium and unconsciousness was accompanied by the “Fear Up” technique. Using fear as a technique was/is to convince the detainees that there was reason to cooperate. Like many other detainees, he was told by his interrogators that he would be sent to Egypt and he could be raped.

When the interrogators were not happy with his corporation, Omar Khadr was left on the interrogator boots for hours in the stress position. There were times when he urinated in himself because of the prolong wait. It was the evening in March 2003 that the guard used Omar Khadr as a human mop:

An hour or two later they came back, checked the tautness of his chains and pushed him over on his stomach. Transfixed in his bonds, Omar toppled like

a figurine. Again they left. Many hours had passed since Omar been taken from his cell. He urinated on himself and on the floor. The MPs [the military police inside the camp] returned, mocked him for a while and then poured pine-oil solvent all over his body. Without altering his chains, they began dragging him by his feet through the mixture of urine and pine oil. Because his body had been so tightened, the new motion racked it. The MPs swung him around and around, the piss and solvent washing up into his face. The idea was to use him as a human mop. When the MPs felt they'd successfully pretended to soak up the liquid with his body, they uncuffed him and carried him back to his cell. He was not allowed a change of clothes for two days. (Tietz, 2006, Shephard, 2008, p. 106).

Along with the torturous and abusive treatments, Omar Khadr experienced isolation when his security level increased. There were times, when he spent a month without human contact in windowless cell at the temperature of a refrigerator. As he moved to Camp Five, the fluorescent ceiling lights were on twenty-four hours and the cold within the cell were inimical to sleep or rest. He cried frequently and his appetite diminished. "He entered what clinicians call a state of hypervigilance: He started thinking he might be attacked at any time – without reason, his heart rate would jump, and he would sweat and hyperventilate" (Tietz, 2006).

In a letter to his family, written in April 2007, Omar Khadr shared in passing about his stage of mind and his bad stomach.

Peace be upon you and Allahs mercy and blessing here i am back on the lines again and writing you with my hopes that this letter will reach you and find you in best health and good feelings and high spirits and every thing is fine and going will, about me nothing really new as they say same old same old except that i'm to dicreas my food i'm not fat but I feel that i'm fat i just think i'm a little paraiode but all is will beside this everything is good my stomach is a little bad its ok and fine and I really miss you and love you all from my heart and wich to be with you soon and my spirits are high praise be to Allah my writing have changed a little as you might have noticed i'm trying to improve my English as you have told me. NOW how are you all and how is life back in canada i hope its fine and that nobody is giving you all hard time and how is Abdullah and did you win the bill i hope so and he is out untel the government want to make its mind on what it wants to do with him i've really lost hope in them and my only hope is in Allah and how is every body school

and life i hope is easy and fine and about my commission nothing is going on theses day i'm waiting and we'll see what they want to do with me but i don't care let them do what they want for Allah is with us and will allwasch be with us if we beleaved in him. Your ever loving son and brother Omar Ahamed Khadr (Shephard, 2008, p. 203).

Despite Omar Khadr's resilience and his religious faith as reflected in the letter, the psychiatrist evaluations of Omar Khadr by Dr. Stephen N. Xenakis, a retired general who had supervised several military hospitals and the son of an Air Force combat veteran, registered that Omar Khadr suffered post-traumatic stress disorder as the result of his captivity.

In an article published by *The New York Times* (2016) titled, "How U.S. torture left a legacy of damaged mind," Apuzzo, Fink and Risen present with evidence that the US treatment of the detainees captured in the war on terror has had long lasting psychological effects. The terrifying method of interrogation, as they argue, has had permanent physical and psychological effects on detainees. Although free from captivity and back to their homes, the indefinite detention without charges by the US during the war on terror, show serious damage on the detainees. Apuzzo et al. explicate that, "some emerged with the same symptoms as American prisoners of war who were brutalized decades earlier by some of the world's cruelest regimes" (Apuzzo et al., 2016, October 8). *The New York Times* interviewed more than 100 people, including former detainees in a dozen countries. Basing their research on a broad sampling of cases, court records, military commission transcripts and medical assessments, Apuzzo et al. state that, "At least half of 39 people who went through the C.I. A.'s "enhanced interrogation" program, which included depriving them of sleep, dousing them with ice water, slamming them into walls and locking them in coffin-like boxes, have since shown psychiatric problems, *The New York Times* found. Some have been diagnosed with post traumatic disorder,

paranoia, depression and psychosis” (Apuzzo et al., 2016). For example, Khaled el-Masri, a German citizen, who was captured by Macedonian authorities while on vacation, was sent to a black site in Afghanistan. Without being charged for months, he now reflects on his captivity that although he is a free man, he still suffers nightmares accompanied with a tightness in his chest ever since his captivity. Thus, he states, “I have been suffering from absent-mindedness, amnesia, inability to memorize, depression, helplessness, apathy, loss of interest in the future, slow thinking, and anxiety” (ibid). Although the majority of detainees were released from captivity, they exhibit long term effects of psychological damage or post-traumatic stress disorder those of which have been denied by the military and states authorities. In Canada, as Samantha Nutt, the Toronto-based founder of War Child Canada and the author of *Damned Nations: Greed, Guns, Armies and Aid* points out, instead of supporting such people like Omar Khadr, the then Minister of Public Safety of Canada, Vic Toews, characterized “Khadr as radicalized, remorseless and still idealizing al-Qaeda-linked father” (Pearce, 2012, October 3).

As Shephard points out, “Canada is a signatory to the Convention on the Rights of the Child (CRC), an international treaty that protects children under the age of eighteen, ... Canadian politicians deliberately steered the public away from that issue in Omar’s case” (2008, p. xv). It is important to note that CRC was ratified by Canada in 1991. Shephard is appalled by the apathetic responses of both Americans military officials as well as the apathetic engulfment of the Canadian top governmental authorities towards Omar Khadr’s captivity at GTMO:

At the Guantanamo press conference, I asked Col. Davis about the fact Omar was only fifteen when he was captured. He answered, “He’s nineteen now.” I thought the reply was outrageous, but Ottawa gave the standard government response that amounted to little more than “no comment” (2008, xv).

Shephard, like many others, considers the infringement of Omar Khadr’s rights not only as

outrageous, but also an apathetic response to a child-soldier in need of special protection. In 2010, the Supreme Court of Canada overturned the Federal Court and the Federal Court of Appeal's ruling to order the government to ask the US for Khadr's repatriation. The Supreme Court of Canada recognized that Omar Khadr's rights under section 7 of the Canadian Charter of Rights and Freedoms, his right to life, liberty and the security of the person were breached by the Canadian Security Intelligence Service. The Canadian officials, back in 2003, had solicited and obtained some evidence from Omar Khadr under "oppressive circumstances" during the interrogation at GTMO. The evidence was then shared with the US intelligence and security officials. Despite the infringement of his Charter rights as a Canadian citizen, the highest court stated that, "We ... leave it to the government to decide how best to respond to this judgment in light of current information, its responsibility for foreign affairs and in conformity with the Charter" (CBC, 2010, January 29).

The ruling invited many voices of dissent including Emmett Macfarlane, an Assistant Professor of Political Science at the University of Waterloo. *Macleans* published Macfarlane's voice of dissent under the title of, The Supreme Court is culpable in the Omar Khadr case: The Harper government is guilty of stonewalling-but that's largely because the Court allowed it. In his criticism of both the Canadian government and the Supreme Court's ruling with regard to Omar Khadr's repatriation to Canada, Macfarlane remarks:

In this case, however, the Court's deference and its failure to provide a meaningful remedy for Khadr's violation was wrong. First, the Court employed shoddy logic: arguing that an order to request repatriation might harm Canada's foreign relations or might not result in success. The justice completely ignored the fact that Canada was the only Western country not to request the return of its citizen from Guantanamo. Indeed, the U.S. wanted (and continues to want) us to take him back (*Macleans*, 2012, July 31).

A click on YouTube reveals Omar Khadr's call for help while captive in GTMO; As Omar Khadr cries, he says "nobody cares about me." Although a Canadian citizen, the government of Canada refused to request for Khadr's extradition to Canada before his conviction and sentencing at GTMO (2008).

If the Harper conservative government and the Supreme Court of Canada alienated Khadr, the University of Toronto's Faculty of Law, launched a Canadian campaign with the support of many individuals and groups including local lawyers, US lawyers, graduate students, NGO advocates to bring awareness to his case. An online Khadr case resource page,<sup>12</sup> initiated by the University of Toronto Faculty of Law provided background information shedding light onto Khadr's ordeal. At the outset, the page maintains that under international and US laws persons under the age of 18 require special safeguard and care. Under the subheading, Omar Khadr as child soldier, the page maintains that "The United States has consistently failed to uphold these internationally accepted standards in the case of Omar Khadr." The aforementioned resource page brings awareness by pointing to several international legal sources as how such laws have been forfeited in Omar Khadr's case including: Convention on the Rights of the Child (CRC art.37(b), 40(2)b(iii))<sup>13</sup>, UN Rules for the Protection of Juveniles Deprived of their Liberty<sup>14</sup>, UN Rules for the Protection of Juveniles, Rules 2, UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules),<sup>15</sup> Standard Minimum Rules for the Treatment of Prisoners

---

<sup>12</sup> Please refer to Bora Laskin Law Library: Khadr Case Resource Page for further information about Omar Khadr's case timeline. <https://library.law.utoronto.ca/khadr-case-resources-page>

<sup>13</sup> Please see Appendix A

<sup>14</sup> Please see Appendix B

<sup>15</sup> Please see Appendix C

(Standard Minimum Rules), and Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles). Notwithstanding that in 2000, the United States signed The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts and ratified it in December 2002. The aforementioned international standards were forfeited and never applied to Omar Khadr's case.

Under American and Canadian legal systems as well as international law, any person under the age of 18 is considered a child. Khadr's right to access to a specialized juvenile justice system has been infringed upon in which rehabilitation and social integration should have been at the forefront and punishment the last resort. Khadr was not only denied access to a juvenile criminal justice system, but was also subject to torture, cruel and inhuman punishment and unlawful deprivation of liberty. His right to the writ of habeas corpus, the legal assistance, and the right to contact his family were amongst his infringed rights. Khadr was not immune from the war on terror's presumption of guilt that had become the rule after 9/11. Khadr did not have access to legal counsel for more than two years after his captivity, until November 2004. In November 2005, after more than three years, he stood in front of a military commission, which neither considered him as a child soldier in an armed conflict, nor treated him as a prisoner of war protected both by the US and international laws. As this online source states, "Khadr [had] been allowed to speak to his family by telephone only once [after many years of captivity in GTMO]. His family [had] never been allowed to visit him" while captive in GTMO, Khadr Case Resource Page<sup>16</sup> (online) maintains.

---

<sup>16</sup> <https://library.law.utoronto.ca/khadr-case-resources-page>

In early 2007, Omar Khadr was charged with the following war crimes - murder in violation of the laws of war, attempted murder, conspiracy, providing material support and spying (Shephard, 2008, p. 204). He was charged under the US Military Commission Act of 2006. Military Commissions as we are informed by legal authorities, should not be confused with military tribunals. “Military commissions lack a jury and other procedural protection that accompany ordinary civilian trials,” Jack Goldsmith maintains (2007, p. 109). Moreover, they are presided not by judges, but by military officers. In retrospect, in June 2006, in *Hamdan v. Rumsfeld*, the lawyers working on Salim Ahmed Hamdan’s case held in GTMO, argued that Bush presidential power enforcing *de facto* rules by presidential decrees, and ignoring the American divisions of powers and system of checks and balance infringed their client’s rights. The US Supreme Court ruled that the military commission process was unconstitutional. The non-affirmative response of the administration that these detainees, including Omar Khadr could be tried by American courts, originated from its stance that GTMO was not part of the American sovereign territory, which as mentioned previously, was refuted by the US highest Court in *Rasul v. Bush*. The US landmark Supreme Court decision in *Hamdan v. Rumsfeld* maintained that:

[T]he administration could not go forward with military commissions without Congress’s explicit approval. And held that the basic legal protections of “Common Article 3” of Geneva Conventions applied in the war against al Qaeda and its affiliates ... And more ominously, the Court’s holding implied that the 1996 War Crime Act, which the independent counsel–fearing executive branch had tried to neuter since 2002, was in play and applicable to many of the administration’s treatment of detainees. (Goldsmith, 2007, p. 136).

The Supreme Justice, Paul Stevens, wrote for the highest court that “the Constitution gives Congress authority to make rules concerning the laws of war, not the president” (Shephard: 195). Despite the US Supreme Court’s ruling on the unconstitutionality of the President Bush’s decision

on the approval of the military commissions without Congress explicit approval, three months later, the Congress, still controlled by the President Bush's party, passed the US Military Commission Act of 2006 on the 27<sup>th</sup> of September 2006 followed by the Senate's approval on the next day, the 28<sup>th</sup> respectively.

In *The Terror Presidency: Law and Judgment Inside the Bush Administration* (2007), Jack Goldsmith, the author and the head of the Justice Department's Office of Legal Counsel (OLC) of US from October 2003 until his resignation in June 2004 maintains:

The Military Commission Act of 2006 explicitly authorized many aspects of the military commission regime that the Supreme Court had invalidated three months earlier. And it gave the much more, including a broadened definition of "unlawful enemy combatant," implicit approval for aggressive interrogations short of torture; immunity from prosecution for those who participated in past interrogations that crossed the prohibited line; narrowing interpretations of the Geneva Conventions and amendments to the War Crimes Act that minimized the impact of the Supreme Court's decision; elimination of judicial habeas corpus review over Guantanamo; and a prohibition on the judicial use of the Geneva Conventions to measure the legality of the Guantanamo detentions (Goldsmith 2007, p. 138).

Goldsmith whose focus in the aforementioned book is about President George W. Bush and his administration's obsession with the expansion of presidential power to minimize restriction on the presidency on the war on terror points to the unnecessary unilateralism of the Bush years. Although Goldsmith does not consider himself as the opponent of the Bush's policies on the war on terror in general, he is critical of how the quest for the expansion of the presidential power landed at the expense of the rule of law, democratic deliberations and legislative power. In Chapter Seven, I will return to this subject when I strive to understand the law and the state of exception and how law as hegemony transmutes itself to sheer force in the states and the spaces of exception.

However, Omar Khadr was among the youngest detainees in GTMO, who was also labeled

as “unlawful enemy combatant.” Given that such a status was neither recognized by US law nor by international law, Omar Khadr and many other detainees captured in the war on terror could not enjoy legal protection.<sup>17</sup> Perhaps one can suggest that the Western law and the state of exception, during the war on terror, demask and reveal their true prejudicial dispositions by casting out “the other” from the juridical realm/protection. As a result, Omar Khadr ended up in a plea-bargain to be out of that “hellhole.” Despite the disproven fact of Omar Khadr’s guilt, Khadr pleaded guilty to throwing a grenade which killed Sergeant First Class Christopher James Speer. On Monday, October 25, 2010, CBC News announced that Omar Khadr pleaded guilty to five charges including murder and supporting terrorism in Afghanistan as part of a pre-trial deal. His Canadian lawyer, Dennis Edney, in a telephone interview from GTMO said to the *CBC News* that the deal was “a piece of paper” and Khadr “would have confessed to anything including the killing of John F. Kennedy, just to get out of this hellhole.” On October 31, 2010, Omar Khadr was symbolically sentenced to forty years in prison, despite serving eight years in the US military detention. He served two more years instead of one at GTMO, before his transfer to Canada. After his arrival to Canada in September 29, 2012, he was held at a maximum-security prison, at Millhaven Institution in Bath, Ontario, and then transferred to Alberta medium security in Bowden Institution to serve the rest of the eight years sentence that he received as part of his pre-trial deal at GTMO.

In 2017, the Canadian Prime Minister Justin Trudeau announced that Omar Khader is entitled to receive a \$10.5 million settlement for the infringement of his rights protected by the

---

<sup>17</sup> The International Bar Association states that, “While the term ‘unlawful combatant’ is not used in the Geneva Conventions, it has been used for the past century in legal literature, military manuals and case law. Such combatants may be entitled to ‘protected person status’ under the Fourth Geneva Convention” (2008: November).

Canadian Charter of Rights and Freedom plus an apology. The public was informed of his sufferings and how the previous Canadian government alienated him for many years. In the *Omar Khadr: Out of the Shadow*, (2015), the film documentary, after a glimpse into the notorious and controversial treatments of detainees at GTMO, Omar Khadr spoke and requested from the Canadians to give him a chance: “I don’t wish people to love me. I don’t wish people to hate me. I just wish people to give me a chance”. On March 25, 2019, the Alberta Court of Queen’s Bench ruled that Omar Khadr’s time on conditional release was counted towards his sentence. Omar Khadr’s captivity finally ended and he is now a *free* man, whose freedom is still and will be entangled with the lingering effects of the war on terror and islamophobia. In 2015, Sgt. Christopher Speer’s widow, Tabitha Speer and special forces soldier, Layne Morris, who lost his eyesight in that firefight brought a civil lawsuit against Omar Khadr. In 2015, a court in Utah ruled a huge civil judgement against Omar Khadr in favor of the plaintiffs. Perkel states that, “The lawyers are calling on Albert’s Court of Queen’s Bench to enforce a US \$134-million judgement against Khadr ...” (Perkel, 2018, January 12). Moreover, Omar Khadr is still waiting for his appeal on his military commission conviction in the US.

Along with the long battle and sufferings incurred on the path to GTMO and well-beyond, Omar Khadr speaks about his ordeal proving himself on a regular basis. The tonality of a normal existence, that for many of us is taken for granted, becomes a wearisome task for him. In an article written by Doucette titled, “You can’t live lightheartedly”, Omar Khadr explicates to child soldiers panel hosted by Romeo Dallaire at Dalhousie University that he always has to behave in a certain way in the public. Khadr notes that, “I have to always be rational. I can’t be emotional because I’m worried if I am emotional people are going to think he’s manipulative, and that’s so

burdensome,” (Doucette, 2020, February 11). What is significant to note is that the prejudicial measurement of judgement is at work which speaks to the ever unfamiliarity of “the other” and the emotional engulfment of those who obstruct the path to the substantive global justice. In other words, fear/hatred/contempt and the obsession with security in the name of democracy and freedom have saturated the social body and the body politic in the West devouring individuals in “either” / “or”, mentality whose truth of engulfment leaves a very limited space for “the unfamiliar other” to have a share of the world without struggles. In other words, a non-alienating and nonapathetic world is about the plurality of existence, far away from a prejudicial one-dimensional mentality submerged in the hegemony of “truth.”

This Chapter acted as an overview into Omar Khadr’s case, the 15-year-old Canadian citizen captured in Afghanistan by the US forces on the war on terror in 2002. The US war on terror has not been recognized as a real war according to the definition of international armed conflicts. The arbitrary and ill treatment of Omar Khadr and many other detainees sent to GTMO and other secret detention facilities, undermines Western ideals/principles of liberty, equality, and just also shows the violent nature of the law and the state of exception in treating “the other,” in this case, “the Muslim other”. As many sources in this Chapter have indicated directly or indirectly, the US has committed acts that can be classified as acts of terrorism at the global level. This Chapter relied on cases about detainees in GTMO that came before the US Supreme Court as well as the Supreme Court of Canada. Many news articles and film documentaries in regard to Omar Khadr and his captivity in GTMO were also employed in this Chapter to present his case.

## Chapter three

### The hegemony of truth

*The Picture of Dorian Gray* (1985), the reification of the double portrayal of a cultural construct, leads Oscar Wilde's readers to the labyrinth of a context that signifies a surface, beyond which self-fascination and desire to stay eternal tragically leads into an alienated life that is engulfed in apathy. Dorian's societal appeal, his sense of courtesy, civility, physical charm and his appealing and sophisticated language and his great admiration for art presents him to "High Society" as an admirable being. Faust-like, yet innocent, Dorian begins his life of violence, which gradually effects his beautiful portrait over which he sells his soul. The inherent alienation of the heartless path that Dorian takes and his violent self-fascination reveals the lonely space of his early years. The callous past comes to a full circle, when the dusted and abandoned room of his unloved childhood, becomes the concealing space of his heinous picture. As the portrait mirrors Dorian's daily deeds, his beautiful image is gradually devoured over the years. Terrified, but unable to ignore his heinous picture, Dorian captures himself in a repository space of engulfed apathy where he not only commits homicide, but also reaps what he has cultivated. The assault to his own picture, is the turning point, by which the picture inexplicably turns into its original state, while Dorian falls, wrinkles, decays and becomes part of the book of history.

*The Picture of Dorian Gray*, like any cultural text, exposes the spatiotemporal context of the text and its significance. So, beyond Wilde's artistic plot in his/this masterpiece, he evokes the emotions of his readers to identify the apathetic characteristic of Dorian. While he represents Dorian as callous and indifferent to the well-being of those, who have invested their trust and love

in him, he points to the dominant cultural context of Dorian. Dorian's imagination is captured by a book of history that celebrates legendary figures who have come to power through their ravaging deeds. Dorian's pompous sense of self-fascination is as much personal as it is cultural. His sense of self-indulgence begins when an artist comes to draw his portrait. Being infatuated with his ability to create a portrait of Dorian's beauty, the artist is as much fascinated with Dorian as an exception, as he is with his own rendition of Dorian on the canvas. The appeal of the copy of Dorian, as seen through the picture and the man himself and how he is seen by others in "High Society," evoke self-fascination in Dorian. After all, one needs to remind oneself that part of our aesthetic appreciation is triggered by the cultural context that we are born into. Neither beauty, nor deformity finds its meanings without cultural values. Thus, the enigmatic appeal at the first encounter simultaneously sheds light into Dorian's social context and highlights steep social stratification. It is physical attributes, class, gender, social standing and sharp spatial divisions that make it possible for Dorian to lead a double life. Needless to say, that such alienating cultural optics, values, practices and spaces not only interpose a new apathetic consciousness in Dorian, but also shape a new being whose self-fascination with his own "original" image and his desire to stay eternal relegates him into despair and self-subversion at last.

Wilde's rebellion against the Victorian ethics and his portrayal of Dorian as an apathetic individual, points to a new form of alienation enclosed in the industrial and bourgeois social order of his time. Being alienated for his views and his lifestyle, *The Picture of Dorian Gray* in some instance parallels Wilde's marginalized stance in society. Although he is praised by his supporters for his brilliant novel, "English readers were not accustomed to such a forceful characterization of their civilization, and Wilde went even further than this; he mocked both the artistic pretensions

and the social morality of the English and some of the most powerful passages in the novel disclose, the grinding poverty and hopelessness against which ‘Society’ turned its face”, Peter Ackroyd maintains (Wilde, 1985, p. xi). Wilde was charged with gross indecency for engaging in homosexuality and this led to a conviction that put him behind bars for two years. It is despair, at the end, that envelopes him in itself. Although he is an artist with innovative insights, he is a man of faith influenced by a cognizance of doom, captured by his religious beliefs. Moreover, his revulsion of the modern industrial society as a dehumanizing cultural context leads him into resignation, and pessimism. In other words, the “decadent cultural universe, in radical opposition to the bourgeois aesthetic and positivist realism of the official ideology” led Wilde into rejection of a dull and commonplace tonality” (Michael Lowy and Robert Sayer, 2001, p.154), a tonality which was emitted from cacophonous industrial chimneys, exhaling soot in the cold and alienated but religiously regimented modern system.

The character of Dorian Gray has a great affinity with the law. Like Dorian Gray, law is a reality whose double disposition sheds light into a contradictory structural process, a pharmakon, both a remedy and a poison. While its enigmatic stature invites trust and speaks of protection, it not only evokes fear, but also points to its apathetic nature that conflates the latent and manifest violence. While the law claims to be universal, it is not applied universally to all. The enigmatic propensity or the hegemony of the law derives its power from its juxtaposing benevolence of a remedy and its inevitable interrelation with a force/poison that is protective of a particular power interest, or a dominant “truth.” It is the benevolent mask of the law that is capable of securing the consent of the ruled with its ever-present possibility of imposing its poisonous propensity when need arises. Given that it is out of the womb of the social body conceived by the body politic, law

as hegemony reifies/rationalizes domination of course with consent, into spaces of exceptions that denote engulfed apathy. However, law's contradictory nature is not merely about two faces, separate from one another; rather it is about an enigma, while it fascinates, its toxic presence takes life away, while it "secures" connections with its mystical language of "reason" and "truth", it opens up battlegrounds, houses of corrections, torture and misery and lack of concern for those who have been captured by its exclusionary disposition. To understand law as *Dorian*, one may start and look into the labyrinth of the Western political philosophy, and then has a brief look at some of the ancient philosophers and intellectuals of the modern age and the modern world. Here the story begins by anchoring itself in the crossroads of the body and the mind/reason in the Platonic metaphysical dualism. As the body becomes the primordial social and political pretext, not only has it been considered a space of representation (the signifier of one's place in the domestic realm or the public realm according to gender, knowledge, status, wealth and ...), but also as a space through which a sovereign and a disciplinary power engenders its subjects.

As Margaret Lock and Nancy Scheper-Hughes (1997) point out, "Cultures are disciplines that provide codes and social scripts for the domestication of the individual body in conformity to the needs of the social and political order" (1997, p. 67). Lock's and Scheper-Hughes' cultural approach to the problem of embodiment can be understood as a critical analysis with a particular focus within the context of modernity. Conflating a phenomenological approach in understanding the individual body as a lived experience, with that of the social body through the analytical path of the social, symbolic and a poststructuralist tradition with a Foucauldian overtone in understanding the body politic as a disciplinary power, Lock and Scheper-Hughes point to the individual body as a paradoxical tool, and a claim upon one's birth that signifies some sort of

entitlement or disentanglement. As they make clear, the individual body emerges as a constitutive and constituted being whose existence simultaneously lays the foundation for a socio-political force through which culture not only constructs itself, but also extracts power. The individual body, therefore, becomes a site of power struggle, a bio-cultural realm, which is capable of power and will, though it is inevitably under the influence of the social body and the body politic. From the moment one is born, one is born into a “proper” context, a multidimensional stratified life of sexed, gendered, familial, classed, racial/ethnic background, religious and national “identity,” to name a few. That is to say, one is born into a preexisting context which may embrace one with a warm welcome and open arm or relegate one to a secondary position/status that by definition points to marginalization and its violent subsequent mistreatments.

Looking into the Platonic metaphysical dualism, it was the inception of law (*Dorian*) within the metaphysical womb of space impregnated with the male knowledge that led to the creation of a superior *space*, a space not only far from carnal and earthly (female) body defiled by “dirt and dust,” but an abstract *space* that was beyond the physical, spatial and temporal reach, where the Platonic free-floating Forms ruled supreme. Plato's awareness of Heraclitus' philosophy of change, everything in the continuous flux of change, however, posed a difficult problem: if everything is in flux, “how can there be such a thing as stable ethical knowledge? ...Aristotle tells us that led Plato to “separate” the forms from sensible things and properties,” Reeve maintains (*Republic*, 1992, p. xi). In other words, the separation of the sensible properties (things and properties perceived by the senses), which were rendered transient and inferior to the Forms that were atemporal/aspatial and superior, provided a power base for the Platonic metaphysical dualism.

Metaphysical dualism, as Fairs explains (1968), refers to Plato's "doctrine which opposes body and soul, flesh and spirit, and views the body not only as an obstruction to knowledge but as the source of all evil and corruption" (p. 19). As the body is perceived as the house of senses and of the "lower" faculties including emotions associated with the Earth and the world, the soul on the other hand is perceived as the house of reason and the polar opposite of the body. As Herbert Marcuse (1966) notes, "The struggle begins with the perpetual internal conquest of the "lower" faculties of the individual: his sensuous and appetitive faculties. Their subjection is, at least since Plato, regarded as a constitutive element of human reason, which is thus in its very function repressive" (Marcuse, 1966, p. 110). Hence what is derived from the Platonic metaphysical dualism has been the spatialization process of the body leading into a textual/abstract formation through which the Platonic body politic secured its power by making use of the body as the first tangible matter through which the pillars of Platonic thoughts have erected its philosophical power politics. Contradictory as it may appear at first glance, despite the Platonic resentment of the body, Platonic thought is dependent on such a dualism of the body and mind/reason/soul in order to secure the hegemony of reason/truth.

The opposition between the body and mind/reason/soul after all sheds light into a political anatomy of power as Elizabeth Grosz draws on Michel Foucault stating that, "It is power which produces a "soul' or interiority as a result of a certain type of etching of the subject's body." Grosz's then continues her critical analysis referring to Foucault who maintains that, "The soul is the effect and instrument of a political anatomy; the soul is the prison of the body" (Grosz, 1994, p. 149). That is to say, the Platonic metaphysical dualism's rendition of the body as the dungeon of the mind/reason/soul thus comes to stand on its head. What has been historically perceived as innate

therefore out of human reach and control comes to light as a part of the anatomy of power that degrades the body and constructs the duality of the mind and the body in order to extract an exclusive power. The degradation of the body in the Platonic metaphysical dualism, in Hannah Arendt's interpretation, yet points to “[t]he Platonic metaphor of a conflict between body and soul, originally devised in order to express the conflict between philosophy and politics ...,” Arendt maintains. (2005, p. 28). In Chapter Five, we can see how Platonic “truth” has been significant in proliferation of the world alienation and apathetic engulfment in the West.

Plato's enigmatic “inclusion” of the body in his doctrine of metaphysical dualism turns into a dualistic/antagonistic approach against not only politics, but also political actions rendering worldly activity as inferior as opposed to philosophical contemplation. This profound sense of somatophobia, however, as Elizabeth Grosz maintains, is found in Plato's *Cratylus*'s, where he “claims that the word *body (soma)* was introduced by Orphic priests, who believed that man was a spiritual or noncorporeal being trapped in the body as in a dungeon (*sema*). ... Grosz maintains, ever since “The body has been regarded as a source of interference in, and a danger to, the operation of reason” (Grosz, 1994, p. 5) the body is rendered as an obstacle that needs to be overcome. The process of overcoming the body, however, is compatible with the Greeks' understanding and differentiation of the two terms for the concept of “life.”

In *Homo Sacer: Sovereign Power and Bare Life* (1998), Giorgio Agamben's embarkation on a philosophical journey also comes to the shore of Greek antiquity. For life common to all beings, including animals, gods or men, the Greeks used the term *zoe*. Yet, the term *bios* indicated the “proper” way of living of an individual or a group. For both Plato and Aristotle, “what was at issue ... was not at all simple natural life but rather qualified life, a particular way of life”,

Agamben maintains (1998, p. 1). The qualified life belonged to the *polis*, since natural life was relegated to the domestic realm, where two thirds of the population including women, children and the slaves were excluded from the *polis*. For the Greeks in antiquity the public realm was the superior one, where men could enjoy their equality. To be a part of the *polis* meant to be qualified, to be a citizen, meaning that one was not a woman, a child, or a slave and of course not an *idiot* within or a barbarian beyond the boundaries of the *polis*. To be a citizen meant to be a man with some sort of qualifications, a man free from the burden of labor, and part of the *polis*, which delimited the Greeks' state from the non-qualified realm of barbarians.

From antiquity up to now, therefore, what is still persistent in the Western philosophical and political mental landscape, beside the power to classify in terms of life qualifications, as Agamben points out is the creation of "... bare life [which] has the peculiar privilege of being that whose exclusion founds the city of men" (Agamben, 1998, p. 6). Bare life, as Agamben explicates, is a life that is identified by the philosophical knowledge and the body politic as a life without a "proper space, "unmarked," "unidentified," therefore unworthy of political protection; it can be killed but not sacrificed. Thus, for Plato the body appears as bare life which is included in his political philosophy and the pursuit of truth in order to be excluded. For Plato, it was evident that reason should rule over the body and over the irrational or appetitive part of the soul. "A kind of natural hierarchy, a self-evident ruler-ruled relation, alone makes possible harmony with the state, the family, and the individual. Here we have one of the earliest representations of the body politic" (Grosz, 1994, p. 5). It is, thus, impossible to read about Plato and his texts and miss his profound fear of body as bare life, framed within a dichotomous perspective whose germinal influence on the Western mental landscape in general and on philosophy in particular can be overlooked. After

all, “[n]early all the themes of philosophizing converge in Plato and spring from Plato, as though philosophy began and ended with him” (John R. Fairs, 1968, p. 19). Yet, the logic for such an arbitrary justification of the platonic truth could be traced to the platonic oligarchy, where the world of philosophy stood as the supreme source of power. It was Parmenides, who cultivated the idea in Plato that truth could be only revealed to a few individuals possessed with the power of *reason*. As reason laid the foundation for Plato’s hierarchical system, the body appeared as the denigrated space of confinement associated with the lower faculties of the man and finally of spatio-temporality of time subject to change and mortality. Thus, it was mind and its superior faculty of reason that could lead man out of the carnal bondage, transcending one towards the *Good*.

In *Escape from Evil*, (1975) Ernest Becker offers a profound insight to interpret not only the platonic contempt of the earthly body in his Theory of Forms, but also to shed light onto many persistent thoughts that have had enduring influence on the cultural and political landscape of the West permeating not only individuals, but also reproducing particular social orders in the name of *truth*. As Becker notes, *man* wants to escape death by his own creations such as cultural symbols, ideas, monuments, proper names and artifacts, which have more durability than man. Becker’s main idea is derived from a psychoanalytic approach framed within a Marxian theoretical paradigm, which considers *man* as *a universal being*, whose footsteps, Becker traces in ancient Greece and Christianity. As a *cursed* animal, man “is conscious that his own end is inevitable ...[yet] his culture gives man an alter-organism which is more durable and powerful than the one nature endowed him with” (1975, p. 3). While death is simultaneously approached as part of the inevitable current of life, it has been considered as an end, a tragic conclusion to a creature with a

creative power that has developed such a consciousness that points to his *powerlessness* and *bound* to a mortal body. Becker's view on fear of mortality and love of perpetuation with significance reminds us of Plato's Theory of Forms, and Nietzsche's subversive genealogical approach that exposes a trajectory of will to power in Platonic thoughts and well beyond, which in my interpretation, shed light onto the hegemony of truth.

After all, it was the body's exclusion with its associates, senses and emotions, that founded the city of *man* in his singularity and not men and women in their plurality of their thoughts/perspectives, emotional experiences, and ways of being and becoming. The life process of truth formation has not been possible, without the simultaneous exclusion of connective emotions from the world. This however does not mean that all emotions are excluded. Contrary to a long history of the Western philosophical and political thought, the next Chapter will shed light onto how fear, hate, contempt, resentment and other emotions have been used as techniques of control, which have had a decisive role in the Western social body and the body politic.

It is therefore not surprising that in Plato's magnum opus, *Republic*, (1992) a key assignment of the philosophers coincides with Plato's consideration of the body as the finite cage, or perhaps the *cave*, capturing the mind/soul within, from where the *prisoners* could be led into the *sunlight*, of course with the philosophers' love of wisdom and their rational power. Needless to emphasize, this profound fear of the body, or in Arendt's interpretation, Plato's revulsion of politics, and the earthly world were instrumental in the Platonic Idea or his Theory of Forms. After all, it was Plato's Theory of Forms, that laid the foundation for his ultra-realist, dualistic and essentialist view that identified the physical world and the earthly reality as inferior, a realm of appearances, a copy of *the original*, subject to impurity, decay and mortality. Although in Plato's

early philosophical work, the body and mind/soul are considered as separate, in his later works, the mind/soul is perceived as a battleground through which a perpetual struggle takes place, a struggle with its inner components: the rational, spirited, and the appetitive forces. To Plato, it is the rational component, the hegemon, whose radiant disposition would enlighten all the way out of “the irrational appetitive part [which feels, senses, lusts, hungers, thirsts, and gets excited],” Socrates’ Plato maintains (*Republic*, 1992, p. 115).

Thence, “In his doctrine of the Forms, Plato sees matter itself as a denigrated and imperfect version of the Idea. The body is a betrayal of and a prison for the mind/soul/reason. For Plato, it was evident that reason should rule over the body and over the irrational or appetitive functions of the soul” (Grosz, 1994, p. 5). While the body was considered as the dungeon and an indication of man’s cursed fate on the Earth, the mind with its innate rational power could save man from the cycle of birth and rebirth. With his rejection of the body and in other words, “his ascetic rejection of sensation, emotion, and everything embodied in time” Plato sets a life of contemplation by which man can achieve a non-mortal existence. “Only in total isolation from the material body, Plato implies, can we achieve the ultimate purification: assimilation to the objects of pure thought, the Forms” (Miller, 2011, p. 92). Yet what should not be overlooked is that, “Philosophy becomes a training for death” ... [for] The ultimate bodily transcendence is death” (ibid). Strictly speaking, philosophy comes to play a pivotal role in worldly alienation that crowns the mind/soul/reason standing in the polar opposite of the body and its associates including senses and emotions on the Earth and in the world.

Therefore, the pursuit for immortality and a life beyond the earthly/worldly body, where the aspatial and atemporal Platonic Forms ruled supreme, enigmatically became part of the

philosophical midwifery and the birth of *kallipolis* in *the Republic* --- Plato's *beautiful city*, and its class division. Through Platonic class division, the philosophers, the lovers of wisdom, are endowed with the highest place in the political and social hierarchy followed by the auxiliary/soldiers and then producers. And since, "Man does not live by words alone; all 'subjects' are situated in a space in which they must either recognize themselves or lose themselves, a space which they may both enjoy and modify" (Lefebvre, 1991, p. 35). *Nature* rather than *nomos* (law, custom or convention) is said to endow these three classes with certain dispositions. From the moment, when social and political arrangements were rendered *natural*, there sprang natural justification for social and political division, consolidating and justifying *natural* inequality. Ruling was the function of the philosophers who were endowed with rational power, while maintaining order and protecting the city was the function of the auxiliary, gifted with the spirited power beneath which the appetitive producers stood as the providers of the means for these other two classes (Plato, 1992, p. 116).

If gold signified the philosophers' class, it was silver that stood for the auxiliary class, while bronze and iron were identified with the producers. Yet, Plato secured a space for exceptional individuals, who were born in different classes, but showed exceptional rational power, and even included some women (Book V of *Republic*), who were also endowed with the same rational power in the *kallipolis*. "Meddling and exchange between these three classes, then, [was] the greatest harm that [could] happen to the city and would rightly be called the worst thing someone could do to it", Plato maintains (*Republic*, 1992, p.109). However, contrary to his insistence on social stratification and the order of the city, Plato valorized city as a space of family connection and brotherhood. "All of you in the city are brothers," we'll say to them in telling our

story, ““ but the god who made you mixed some gold into those who are adequately equipped to rule, because they are most valuable. He put silver in those who are auxiliaries and iron and bronze in the farmers and others craftsmen. For the most part you will produce children like yourselves, but, because you are related, a silver child will occasionally be born from a golden parent, and vice versa, and all others from each other”, Plato states (*Republic*, 1992, p. 91). What safeguarded the whole city and its social and spatial order was avoidance of the meddling, which was justified under the motto of *justice*.

Hence, Plato's *Republic* commences with Socrates's reference to the importance of justice in the lives of citizens and the city, and how unity is safeguarded by justice. Opening dialogue with several male interlocutors, who are in *conversation* with Plato's mentor Socrates, the text, surely and gradually, according to my interpretation, leads into a system-building, the erection of the body politic under the leadership of philosophers at the expense of the individual body. A system equipped with an abstract scheme which not only deemed the Platonic Forms supreme and the epitome of truth, but also with its profound contempt for the body as a transient property servant to the mind/soul-mastership, led to impersonal and alienated political and social implications within, and grave implications beyond the boundaries of the *kallipolis*, *the beautiful city*. Although Plato was after unity and nothing but unity, an enclosed alienating force was ingrained in his metaphysical dualism and even in his Platonic Love separating the mind from the body. Instead of treating the individual body as a unique whole with unique connective powers, Plato's metaphysical dualism separating the mind from the body “leads in turn to the habitual and presumptive extension of distinction into opposition, to an 'alienated form of differentiation”

(Prokhovnik, 2002, p. 25). What follows from such a presumption is Plato's "ascetic rejection of sensation, emotion, and everything embodied in time," and in space (Miller, 2011, p. 114).

A critical glance into Plato's *Republic*,<sup>18</sup> where Plato is in the command of conversations with seven male interlocutors shed light onto Plato's system building and his influence on the Western social body, body politic permeating the body of individuals. One of the significant foci of the text is on Plato's insistence on unity as illuminated in his approach to the concept of *truth*, a single truth that has no place for the plurality of existence. Not only does it devalue the life on the Earth, but also engraves and imposes a dualistic mentality that is based on negation and exclusive way of existence. While Book One of the *Republic* commences with its reference to the old age, its main theme revolves around the concepts of justice: whether justice is the advantage of the strong or whether it is about virtue and a common good. As the *Republic* unfolds its images of spatial and political arrangements as well as its practices, justice means acceptance of one's place. Since, "[f]or Plato, everyone is born with an attribute that fits him her for a particular social order, his or her 'proper' place" (Siedentop, 2014, p. 36). Thus, Book Two locates justice in *kallipolis*. And by the virtue that justice is located in the *kallipolis*, its spatial dimension foreshadows its exclusionary application. Space contrary to Plato's celebration of the universal, abstract and aspatial Realm of Forms emerges as a pivotal tangible element and the foundation through which the Platonic class division secures and justifies its *natural* inequality. Yet by differentiating between a *healthy* and a *luxurious* city, Plato's Socrates points to a constellation of factors that leads into the transformation of the city. Being stratified by the division of labor,

---

<sup>18</sup> Plato's *Republic* is still part of our post-secondary texts in political science, so its significant effects cannot be underestimated in Western social and political thought.

which is credited to birth and individuals' natural faculties, the city comes to being, because no one "is self-sufficient, but we all need many things," Plato's Socrates informs Adeimantus (Plato, 1992, p. 44).

But gradually, this path of needs and the toil of self-insufficiency lead into the luxurious city, for as Glaucon reminds Plato's Socrates has forgotten to mention the need for *delicacies*. It is out of the pursuit of basic needs such as food and shelter that the need to trade arises and it is out of the need for delicacies such as salt, and olives that the door to the expansion of the luxurious city opens. So, Plato's Socrates tells Glaucon, "Then we'll have to seize some of the neighbor's land if we're to have enough pasture and ploughland. And won't our neighbors want to seize part of ours as well, if they too have surrendered themselves to the endless acquisition of money and overstepped the limit of their necessities" (Plato, 1992, p. 48). What is important to note is that Plato's Socrates despite his contempt for the luxurious city abruptly connects the need for *delicacies* to the endless acquisition of wealth in the subsequent passage in the *Republic*. It would be war because of the endless acquisition of wealth and because of war that the city would need a strong army to defend it. Socrates, therefore, informs Glaucon that "Then the city must be further enlarged, and not just by a small number, either, but by a whole army, which will do battle with the invaders in defense of the city's substantial wealth and all the other things we mentioned" (p. 49). What is puzzling here is that in admonishing Glaucon, Plato's Socrates sheds light onto the spatial expansion of the city and its political domination. Although Plato's Socrates differentiates between a healthy and a luxurious city, one can see the seeds of imperial building in Plato's Socrates' conversation with Glaucon. What is bewildering despite Plato's Socrates' admiration for

the healthy city, one can see how the empire justifies its spatial and economic expansions as well as its military force as needs arise.

However, while Book Three of the *Republic* continues with the theme of specialization of the citizens according to their natural ability and physical trainings, it provides justification for the exclusion of *the unfit*, which prefigures the exclusionary politics of the upcoming themes of the subsequent Books in the *Republic*. From Book Four onward the tonality of the *Republic* is majorly changed from a spatial structural construction and expansion to an exclusionary political authority. It explicitly involves order-making and system building. As the text unfolds, one cannot miss Plato's Socrates' insistence on unity and his emphasis on the piousness of the philosophers' kings, who are the *righteous* governing bodies. Yet, a different picture begins to form if one departs from a normative perspective that renders the rationale beneath order-making and system building as somewhat *given* or *natural*.

Perhaps one can point to Fredrick Nietzsche and his influential power in shedding light onto the Platonic rationalism and its profound role in creating an exclusionary power structure in the name of truth, reason and unity. Although critical of Plato in many ways including Plato's insistence on optimistic rationalism as the only path to attain truth, his belief on metaphysical dualism, his celebration of ascetic morality, and his belief in noble lies as a technique of government, Nietzsche's genealogical pursuit simultaneously points to Plato's creative power. (Nietzsche, 1990, p. 10). In *Beyond Good and Evil* (1985) as well as *On the Genealogy of Morality* (2000), polemical contributions to moral and political theory, Nietzsche undermines Plato's metaphysical dualism, yet he, like Plato, is appalled of the mass man, the by-product of democracy, of course in its new version in modernity and its nationalistic perversion. The path that Nietzsche

takes against the mainstream Western philosophy is in line with the order of rank, but divergent from the Platonic elitism in terms of its content and form. While Plato's political philosophy is prescriptive and meant to set measurements in the everyday human affairs, Nietzsche's philosophical view is profoundly apolitical, since he encourages individualism to a degree that turns one to a hermit whose interest or will to independence leads him to self-exile from society. Nietzsche's anti-system sentiments and his celebration of life-affirming perspective, after all, incorporates what has been relegated to the periphery.

Incorporating the metaphor of the *desert*, *On the Genealogy of Morality* (2000), Nietzsche's fresh insights, calls for a space of freedom. His celebration of the desert as he maintains is “A deliberate obscurity, perhaps; avoidance of self-confrontation; an aversion to noise, admiration, news, influence; a small position, daily routine, something that hides more that it uncovers; ... in some cases even a room in some crowded, run-of-the-mill hotel where one can be sure of not being recognized and can talk to anyone with impunity - that is a 'desert'<sup>19</sup>: it is quite desolate” (Nietzsche, 2000, p. 83). Nietzsche celebration of desert, a space that denotes freedom, a space beyond the reach of society, is a space of awareness, self-overcoming, and self-realization. That is to say, he is deeply critical of herd morality and wants to immerse in freedom. In the pursuit of this space, he is neither afraid of the risk-taking, or sufferings that it may entail. Unlike the

---

<sup>19</sup> Although Nietzsche's free spirit is exemplary and his aversion of domination of any kind cannot be underestimated in his texts, he in fact succumbs to world alienation in a different way than the metaphysicians who consider the world and the Earth as transitory and vile spaces compared to the other world, beyond the Earth. In *The Promise of Politics*, Hannah Arendt, while fond of Nietzsche's greatness, is critical of Nietzsche, who thought “the desert is in ourselves” (Arendt, 2005, p. 201). Arendt maintains that although it was Nietzsche, who diagnosed the modern world condition of wordlessness, living in a *desert*, Nietzsche by escaping from the world, became the inhabitant of the *desert*.

slave/herd morality/mentality, Nietzsche is not after certainty; rather he sees greatness in staying solid in the face of uncertainty and the hardships it entails.

What Nietzsche is after is to place the individual over the apex of traditional cultural and political power, pointing to the uniqueness of individuals who cannot be contained by any system, or directed by a metaphysical or worldly centralized or institutionalized power. What is significant is not the majority, but the creative power of individuals who could override and undermine stagnation and decadence within modern cultures embracing “the production of human greatness” (Nietzsche, 2000, p. x). Nietzsche's humanism places human beings at the summit of power rather than considering them as puppets in the hands of a metaphysical, divine, sovereign or any disciplinary power, beyond which there have historically stood, philosophers, archons, priests, kings, queens, professional thinkers and men of commerce to name a few. Being critical of both Platonism as well as Christianity, not to ignore liberalism, for promoting a reactive morality, Nietzsche differentiates between master and slave morality. He maintains that, “the slave morality is not a morality of self-affirmation but is parasitic on what must negate” (2000: xiv). In such a pursuit, Nietzsche not only undermines the Platonic metaphysical dualism, but also with his shrewd ax of intellectual criticism accompanied with his belief in the importance of affects and feelings, sheds light onto the reactive mechanism inherent in Platonism which finds its climax in Christianity's system-building and modern liberal and conservative political order just to name a few. In other words, if Christianity can be understood as Platonism for the people, creating a leveling system, of course under the centralized authority of the church representing God on the Earth, Platonism was an elite system at the hands of philosopher kings or an *enlightened* few.

However, Nietzsche's genealogical torch casts light onto the reactive mentality of Europeans which has been doomed to decadence. Not to emphasize that what Nietzsche is critical of is the parasitic nature of master and slave/herd morality that not only undermines the creative power of individuals, but also devours individuals in its circular logic. Nietzsche's anti-herd morality celebrates human greatness and recognizes that it is impossible to be part of a herd without being implicated in a system of domination. Nietzsche maintains, "When the highest and strongest drives, erupting passionately, drive the individual far beyond and above the average range of the herd conscience, they destroy the self-confidence of the community, its belief in itself, breaking as it were its spine: consequently, it is just these drives which are branded and vilified most. High and independent spirituality ..., the will to stand alone, even reason on a grand scale is conceived to be a danger: everything which raises the individual above the herd and causes one's neighbor to be afraid is called *evil* from now on" (1994, pp. 159-160). What Nietzsche is after is to expose the reactive force behind such a morality/mentality whose disposition originates from the negation and vilification of what cannot be included in itself or controlled. In other words, the slave/herd morality is based upon a relation of domination, a relation of creditor and debtor. It celebrates human dependency at the expense of human greatness and independency. It sacrifices not only the individual for the herd, but also promotes a particular order at the expense of becoming. Since slave/herd fears the uncertainty, it glorifies the servitude of certitude<sup>20</sup> in other words. It sees suffering and weakness as prerequisites for the attainment of salvation for the other world. Thus,

---

<sup>20</sup> I borrowed *the servitude of certitude* from Livy Visano (2013). In Chapter Seven, I will attend to this concept in relation to the post 9/11 effects on enactment of laws/policies and the proliferation of fear in the Western social body and the body politic that not only undermine Western democratic values and human rights, but also create a human condition that submit individuals to the servitude of certitude/certainty in the name of security that forfeits freedom.

in pursuit of such an attainment, existence turns into a project that should be overcome which is predominately based on apathetic engulfment.

However, like any system that cannot be sustained and perpetuated without an educative force, Book Five of the *Republic* is therefore foundational, devising a pervasive formal education with a profound emphasis on the role of the state on children's education, from birth onward. It gradually becomes evident that it is the city rather than their biological parents that should be in charge of children or even the newborns' upbringing and education. Needless to say, that the city's educational system has a direct relation with the preservation and perpetuation of the Platonic political philosophy. Plato believed that a virtuous elite system skilled in a series of educational subjects including philosophy, mathematics, music and physical training to name a few, could rid of what he despised and considered as a form of rules next to tyranny. As Lavine (1984) notes, "Plato rejected individualism and democracy and argued for the subordination of the individual to the supremacy and the power of the state" (Lavine, 1984, p. 64). The justification for such a regimented and totalitarian rule, where all aspects of citizens were subject to the state control, was based on Plato's views that the guardian of the republic were endowed with the rational power and were educated by the state to be virtuous and the gatekeepers of a good society based on their knowledge of truth, a truth that was directed "towards one goal, towards the good, towards 'God'" (Nietzsche, 1990, p. 114).

Along with these totalitarian and exclusionary values within the *Republic*, what is striking is Plato's Socrates' insistence on creating a space that is devoid of particular emotional connections. Perhaps nowhere in the *Republic* this can be best seen than to look into how Plato imposes an emotional vacuum on the newly mother-infant relationship. In order to be connected

to the supreme and abstract realm of Forms and leave behind the inferior human affairs, Socrates's insistence is on the overcoming of personal and emotional ties between the newborns and their mothers. Thus, Plato's Socrates maintains: "And won't the nurses also see to it that the mothers are brought to rearing pen when their breast have milk, taking every precaution to ensure that no mother knows her own child and providing wet nurses if the mother's milk insufficient," Socrates states (*Republic*, p. 135). Behind such an instruction, there lies the pursuit for *purity or Good*, which simultaneously coincides with the development of an emotionally-neutral and impersonal abstract but engulfed rational thought. Sacrificing the mother-infant or the knowledge of knowing one's father or one's son, based on the concern that personal attachments may endanger the unity of the *kallipolis* leading into the factional disputes, has historically entailed alienating implications with devastating results on individuals' emotional needs and well-beings as well as catastrophic implications such as wars of conquests, genocides and the destruction of life in its diverse forms. What is reasoned as a precondition to attain *Good* is the detachment from personal and emotional connections, detaching individuals from other individuals, yet leading and connecting them to the impersonal abstract *truth* towards *transcendence*.

As the inheritors of the *past*, *these* dispassionate doctrines cannot strike us with gross unfamiliarity in our modern understanding of the *Republic* including its cultural and political landscape supported by the law and its states of exception. They are also part of our modern condition, part and parcel of the past that illuminates and realizes itself into this *new* brave modern world, in Aldous Huxley's apt elucidation. Emotionally alienated, individuals produced and reproduced in Ford *hatcheries*, in Huxley's metaphorical articulation, have been implicated in a workout system that is concerned with marginalization of our connective emotions that has had a

great role in such a dehumanization process. Who can deny the trenchant historical ramification of such mentality in the social and political landscape of the West? After all, who can cross out social Darwinism and eugenic doctrines and practices culminated from colonial/imperial race-thinking and their violent ideological implications from our modern history? Hannah Arendt's *The Origins of Totalitarianism* (1976) is a case in point. Her text, which is a vigorous account of the modern rise of anti-Semitism in Central and Western Europe, and the ravaging consequences of racism derived from colonial and imperial powers from the last quarter of the 19<sup>th</sup> century to World War I and the subsequent rise of the two totalitarian governments of Nazi Germany and Stalinist Russia in World War II can testify to our tragic familiarity with the modern and extremely violent versions of totalitarianism.

However, the given logic behind such a call for an impersonal relationship in the *Republic* originates from the perspective that cultivating rational *neutrality* by means of cultivating emotional engulfment to the *abstract Good* from birth onward, is not only considered as valuable, but also a precondition to connect the individuals to “truth” under the leadership of the philosopher kings, the religious and secular men of power throughout the ages. But such a rendition was not immune to criticism even by Aristotle, Plato's prominent disciple. Despite expanding and developing many of Plato's ideas into the most comprehensive empirical accounts of politics in *Politics* (1998) Aristotle, for example, criticizes Plato's prescription for a system in which women and children are to be considered common to all. Aristotle considers such a relationship as “a watery sort.” Thus, he maintains, “a father would be very little disposed to say “Mine” of a son, and a son would be very little disposed to say 'Mine ' of a father. Just as a little sweet wine, mixed with a great deal of water, produces a tasteless mixture, so family feeling is diluted and tasteless

when family names have as little meaning as they have in a constitution of this sort. ... There are two things which particularly move people to care for and love an object. One of these is that the object should belong to yourself: the other is that you should like it. Neither of these motives can exist among those who live under a constitution of this sort” (1998, pp. 44-45). Although Aristotle's reasoning invites criticism based on his appropriation of child-parent/loved-one relationship, and his rationalizing overtone, he touches upon an important point. What is essential is the cultivation and development of emotional relationship, a lived experience of warmth, an early experience on the part of the child and the maintenance of that experience by the adult both at the personal and the social levels. The transformation of warmth, from one generation to the next, leads into a life-time consciousness of connection. After all, who can deny the connective and life-affirming emotional propensities, which is capable of undermining the whole enterprise of truth/other-making? And who would deny the fact that it is through the interpersonal experience of inclusive Love and care for the other that one can break through with the traditional social and political barriers by affirming that one warms oneself by warming the other or vice versa?

In *True to Our Feelings* (2007) Robert Solomon calls for a passionate ethical life while critical of the mainstream philosophy as “the self-appointed discipline of ‘rationality.’” At the outset, in the Preface he maintains that he like Pascal and Nietzsche, argues “that the emotions have their own rationality, their own reasons, their own *intelligence*” (2007, p. x). Referring to Plato's *Symposium* (1999), a text that revolves around the Platonic love and its superiority over *eros* (erotic love) he refers to Socrates' speech on love. As Solomon points out there are two important features to Platonic love which prefigures the teaching of Christianity in the late Middle Ages. Thus, he states that if, “One of the most important features of Socrates' argument is that he

challenges the centrality of sexuality in erotic love (eros) ... [a] less obvious feature of the argument is that it radically depersonalizes love, as the object becomes the abstract Good, the True and the Beautiful rather than the concrete beloved” (2007, p. 59). The depersonalization of love and the celebration of an abstract Platonic love in pursuit of the *eternal divine Good* have been substantial in the creation of a body politic under the direction of philosophers, and later on the religious men of power and the figure authorities of the church and later on the state with an emotionally-alienating way of government on the Earth. As the *ascetic* gate keepers for the abstract realm of divinity, representing “truth” based on their exclusive access to it, what has been in play in the Platonic love has been a masculine force that has mediated between the individual and the abstract *Good*.

Thus, what gradually but surely takes place in *The Symposium* (1999) is akin to the *Republic*, where the simultaneous complex process of emotional alienation at the personal/interpersonal level, coincides with a rationalization overtone which leads to a particular form of emotional connection at the impersonal/abstract footing leading into a said general Love. What follows, as has been noted earlier, is an enigmatic twist that culminates in the inclusion/exclusion of the body pointing to the creation and perpetuation of one of the earliest forms of the body politic which thrives on a metaphysical dualism whose exclusionary logic is based on ascetic inclusion of the abstract at the expense of the concrete realm of senses and emotions ... the body. Thus, it is no wonder that in *The Symposium* men of abstract realm come together to drink in order to warm themselves, reclined on pillowed couches, sometimes in pairs speaking of love and beauty. Yet, as the night grows older, the transcendent journey in pursuit of a general Love grows deeper. Through the words of Diotima of Mantinea, Plato’s Socrates

embarks on his spiritual journey, which begins with the Love of particular, the beautiful person, to moral beauty in general.

*The Symposium*, a dialectical speech among seven interlocutors, is complementary to the *Republic*. If through Phaedrus's speech in the *Symposium* we are said that bravery on the battle field, or men in Love impress themselves by fighting harder, it is Pausanias, who distinguishes between a baser love, sexual gratification, with a nobler love, referring to young men, who honor one's partner. If through Eryximachus' speech we are told that there are two kinds of love occurring in the body, the healthy and the unhealthy which is complementary to what Pausanias has already said, it is Aristophanes, who tells us that we need to be fearful and worship the gods in order to be safe from their calamities. Thus, we are told that it is through this general Love that we find our wholeness, so "love" is the name for the desire and pursuit of the wholeness", Aristophanes maintains (*The Symposium*, 1999, p. 26). Although through Agathon we are informed that Love creates justice, moderation, courage, wisdom and it is the epitome of beauty, it is Plato's Socrates' recollection of Diotima that leads us to the climax of Plato's *Symposium*. Men start to learn to Love with the love of a particular beautiful person in order to be able to Love moral beauty. To Plato's Socrates, it is this moral beauty that leads men out of the body, the prison of soul, into immortality. And finally, Alcibiades, enters the scene and gives his testimony that Socrates' morality is what has inspired him to obedience. If in the *Republic*, Plato attempts to get rid of eros based on his fear of creating factions in the kallipolis, in *The Symposium*, he attends to the cultivation of Love as the basis of unity. Yet, Plato stays consistent to what he idealized in the *Republic*. Yes, men come together to Love, not on the basis of their own choosing or individual love for one another. On the contrary, in the process of attaining general Love, moral beauty, they

are simultaneously turned into the subjects of the body politic, under the leadership of the philosophers' kings, taking the command and social control as Love. Perhaps this resonates with Val Plumwood (1993) who states, "For Plato, it is those who represent reason (the Guardians) who should rule over other elements in the state, just as individual reason itself should rule over the body and passions" (*Australian Journal of Philosophy*, 1993, p. 436). So, the Platonic Love emerges as a mediatory hegemonic force that not only stratifies the *republic* socio-politically, but also reinforces the hegemony of the mind/soul over the body and its senses and passions/emotions in the name of truth.

Books Six and Seven of the *Republic* continue to shed light onto the Platonic education and also to the law as the extension of his philosophy and as co-producers and co-preservers of the Platonic system. Being inspired and navigated by the Platonic Forms, these two Books draw on a literary language using the metaphors of The Sun, The Line and The Cave. At the heart of these interrelated metaphors or allegories, which denote *progress* towards *enlightenment*, one cannot ignore how perception of *progress* resonates with escape from the world and the Earth transcending toward the Platonic metaphysical Theory of Forms. Needless to mention that linearity of time and space, which comes to full bloom in the Enlightenment era and modernity in the name of *progress*, would inflict a fatal blow to the plurality of existence. However, Plato's Socrates points to the role of the Platonic education and its philosophers in leading the people out of the cave of appearances, common illusions and beliefs to the illuminated realm of reasoning and philosophical understanding. Hence, as Plato's Socrates maintains, "The aim of education is to turn the soul around by changing its desire." as Reeve notes (Plato, 1992, p. 186). Yet along with Platonic educational doctrines and institutions, it is the law that is the co-founder and co-preserver

of Platonic system. “Bringing the citizens into harmony with each other through persuasion or compulsion ...The law produces such people in the city, not in order to allow them to turn in whatever direction they want, but to make use of them to bind the city together” (*Republic*, 1992, pp. 191-192). Therefore, what is not internalized or instilled in people by the Platonic education system is subject to the force of law.

While Book Eight's concern is about the decline of the *kallipolis* and the examination of various governments, Book Nine continues on with what is left unfinished by law and its role in the maintenance of *justice*. Socrates's insists on instilling the law on everyone in the city as he maintains, “This is clearly the aim of the law, which is the ally of everyone. But it's also our aim in ruling our children, we don't allow them to be free until we establish a constitution in them, just as a city, and - by fostering their best part with our own - equip them with a guardian and ruler similar to our own to take our place. Then, and only then, we set them free” (*Republic*, 1992, p. 262). The Platonic system, therefore, solidifies itself on a pervasive education scheme and an omnipresent law permitting even capital punishment in some circumstances, namely when justice is in jeopardy, and also on the construction of fear and bad conscience. As a result, what is not captured by the Platonic net either from its educational or juridical system has to face the harsh music of *the other-world* and judgment day. Although those who remain obedient to the system are promised to be rewarded by *transcending* their souls out of the cycle of birth and rebirth and becoming part of the eternal Realm of Forms, those disobedient would be demoted taking their after-life journey to Tartarus, the lowest part of Hades, the pit of hell, facing their punishments. Yet “[o]n the whole, punishment makes men harder and colder, it concentrates, it sharpens the feeling of alienation” (Nietzsche, 2000, pp. 58-59).

Book Ten of the *Republic* through the Myth of Er tries not only to reconsolidate fear in people's conscience, which is also one of the shrewdest techniques of control imposed by the social body and body politic but also to safeguard the *kallipolis* from the creative power of the traditional poets who could evoke thoughts and emotions in their audiences. Given that the Platonic metaphysical dualism is at play throughout the *Republic*, it is Plato's Socrates's insistence that the new philosophy-based education should be aware of the pitfall of the traditional education based on poetry. Hence Plato's Socrates maintains, "If you admit the pleasure-giving Muse, whether in lyric or epic poetry, pleasure and pain will be king in your city instead of law or the thing that everyone has always believed to be best, namely, reason" (Plato, 1992, p. 278). Although Plato's Socrates' argument about poetry is not definitive and leaves the space open for more discussion on the topic, he calls the traditional poets as imitators, so incapable of teaching virtue compatible with the Platonic Forms/Truth.

Looking into *The World of Athens: An Introduction to Classical Athenian Culture* (2008) Greek tragedy, as an art form, was a site of social and political negotiation and contestation when thoughts and emotions were evoked. "The very nature of the material with which the tragedians dealt, and the skill with which they worked it, ensured that tragedy was an emotional as well as an intellectual experience" (JACT, 2008, p. 314). The power of the tragedy was derived from the incorporation of emotions that not only highlighted human creativity, but created a human condition for empathetic interconnection that could undermine the fixity of everyday life. "The power of tragedy lies in the way in which the tragedians, wielding an astonishing sophisticated dramatic skill, subjected this powerful and emotional material to a questioning examination which at times threatened to destroy that understanding. ... It was a consequence of democracy that the

citizen population had control of events put into their own hands” (JACT, 2008, p. 309). Tragedy as an art form therefore played a profound role. It provided a reconstructed platform for individuals not only to experience, but also to be exposed to possibilities of shaping their own destinies despite the fallibility and the limitation of human existence that made the whole experience tragic at times.

This in turn was compatible with the Greeks’ intellectual insistence on the fierce Greek sense of independence. For, “One of the most important contributions of Greek intellectual thought was to minimize the role of gods in ‘explaining’ the physical world or the meaning of life” (JACT, 2008, p. 86). In other words, what was at work was a process of affective arousal and connection between the tragedian and the audience, confirming the creative power of emotional agency at work. As Alphonos Lingis’s interpretation on Nietzsche’s will to power indicates, “the upsurge of life, of power, is also reverberation of happiness, of joy ... or, quite literally, the coming to light, of an impulse, a pulsation of feeling ... to not teach a new way of acting but a new way of feeling” (D. B. Allison, 1992, p. 51). The power of tragedy was in its evocation of affective and imaginative powers that testified to the power of emotional activity and motion. But this could not be fully realized in a system that is based on the insistence of certainty and no-change principle, for the quest for certainty is not compatible with the imaginative and creative power of agency. The world of imagination is about the world of possibilities leading into the fusion of horizons. By its disposition, it cannot be contained by a system whose obsession is with durability/certainty and the reproduction of the system which stands in contrast with the plurality of imaginative power. The plurality of visions and experiences, perhaps, entail open horizons, superseding beyond the dichotomy of *good* and *evil*.

As a “spirited philosopher” a term that he himself uses in his text *Beyond Good and Evil* (BGE 1990) Nietzsche despite his insistence on the celebration of the individual self-mastery, one who is capable of creating one’s own values, sheds light on the pervasive effects of a dualistic thought that renders the world as the site of *good* and *evil*. The text which is written after his magnum opus, *Thus Spoke Zarathustra* (1978),<sup>21</sup> is an eloquent call for the reevaluation of our values and Nietzsche’s love for human greatness. As a critique of modernity, which includes the critique of modern science, modern arts and even modern politics, BGE is a journey back and forth to the Western philosophical and cultural labyrinth to illuminate the inherent decadence at the heart of modernity. As Michael Turner in the Introduction to BGE maintains, from the *Birth of Tragedy* onward Nietzsche’s insistence is on presenting the ever-deepening accounts of the way in which cultures lose their creative power and become decadent. Looking back to the ancient Greeks and pointing to Plato’s Socrates and Euripides, Nietzsche is profoundly critical of the optimistic rationalism that eventually laid the foundation for system-building at the hands of Plato and many others in line with his philosophy throughout the ages. Plato’s insistence on optimistic rationalism, and on a world immune to change were in fact a turning point towards decay and decadence. Hiding in the garment of virtue and the search for *truth*, “we always pursue knowledge, so called in the interests of supporting of a moral order, which is dressed-up version of how we want things to be, or how we want them to be forced to be” (BGE, 1990, p. 14). What Nietzsche is particularly critical of is not the urge or what he calls the will to power. Rather what he is critical of is the

---

<sup>21</sup> In *Thus Spoke Zarathustra’s* Translator Preface (1978), Walter Kaufmann maintains that Nietzsche “is a dedicated enemy of all convention intent on exposing the stupidity and arbitrariness of custom (xix).” One of the foci of the text is about how the belief in God is dead. So, Nietzsche, who believes in human greatness, has invested his hope in an *overman*, who is capable of creating his own earthly values.

insufficient honesty of the philosophers. Thus, he maintains that, “They [the philosophers] pose as having discovered and attained their opinions through the self-evolution of a cold, pure, divinely unperturbed dialectic ... while what happens at the bottom is that a prejudice, a notion, an ‘aspiration,’ generally a desire of the heart sifted and made abstract, is defended by them with reasons sought after the event ...” (Nietzsche, 1990, p. 35). Viewing reality as socially constructed, leads Nietzsche to see facts and values as not opposite. As the creators and interpreters of the facts, which are inevitably passed through the current of our values, Nietzsche points out that we have not discovered them, but rather we have invented them.

Finally, the *Republic* reaches its concluding space, Book X. Trying to consolidate what has been presented throughout the *Republic*, Plato’s Socrates resorts to the enigmatic themes of the soul’s *immortality*, the guilty conscience and the after-life experiences; not short of saying that it is in this Book that one can shed light onto a major contradiction at the heart of the Platonic thoughts despite Plato’s insistence on the principle of non-contradiction. The contradiction illuminates itself when the earthly, *the inferior* and *the evil* body, despite its *erroneous* senses and emotions, is called upon to support Er’s recollection of his after-life story. It is puzzling that despite the pervasive insistence of Plato’s Socrates who commands “to see the soul as it is in truth, ... not study it ... while it is maimed by its association with the body and other evils – but as it is in its pure state ... thoroughly and by means of logical reasoning” (*Republic*, 1992, p. 282), Plato’s Socrates not only relies on the body as his key witness, but also considers it as a chief messenger to convey his message. In other words, although Book X reverberates many significant themes of the *Republic* such as the *irrationality* of the body, its erroneous senses and unruly emotions in contrast to the rationality of the soul which stands for the *eternal truth*, it sheds light onto one of

the most significant impasses at the heart of the Platonic metaphysical dualism. Perhaps nowhere can this be better illuminated than Plato's Socrates' dialogue over Er's recollection about his temporary death and how he comes back to life and Earth to share his after-life story. Er's after-life story resorts to senses such the sense of sight and hearing in order to bear witness of what Er has seen and heard. In a space between Earth and heaven, it is Er who is called upon by the *judges* to observe how individuals take their journey either "upward" or "downward" based on their deeds on the Earth.

Thus, "When Er himself came forward, they [judges] told him that he was to be a messenger to human beings about the things that were there, and that he was to listen to and look at everything in the place. He said that he saw souls departing after judgment through one of the openings in the heavens and one in the earth, while through the other door souls were arriving. From the earth came the souls ... covered with dust and dirt and from the door in the heavens souls came down pure" (Republic, 1992, p. 286). What remains unanswered is the following: if Plato's Socrates' criticism of erroneous bodily senses includes the sense of sight and hearing, how can Book X of the *Republic* resort to the senses to convey the *after-life* messages? If the senses are considered as erroneous and emotions as irrational faculties, how can they bear witness and be the messengers of the Platonic truth?

If Nietzsche challenges the Platonic metaphysical system by his insistence that what lays beyond *good and evil* is the will to power, it is David Hume's empiricism that undermines the rationalistic approach to knowledge which renders reason as given while discrediting the senses and emotions. As T. Z. Lavine (1984) maintains, except in mathematical propensities, "Hume is

making an important empiricist argument here – that we cannot know anything which we have not had a prior impression of in sensory experience. Even in our religious fantasies of a new Jerusalem or in our scientific fantasies of a new world in outer space, we cannot imagine anything which we have not had an impression of in sensory experience” (Lavine, 1984, p. 154). To bring his point across, Hume asks: what is the sensory source where an impression arises? What is important here is that Hume not only undermines the Platonic metaphysical power structure and sees human beings at the apex of power, but also points to the role of senses and passions (emotions) in human understanding and existence. Despite the historical and traditional relegation of the body to the periphery, we can see how Hume resorts to the body in order to subvert the Platonic rationalism. Hume points to the role of childhood and socialization in the perpetuation of metaphysical beliefs. In response to why people believe in the existence of the God, Hume points out that “the origin of belief in God is fear: fear of death accompanied by the desire of immortality, fear of the many forms of human misfortune. The roots of religion are in human feelings” (Lavine, 1984, p. 178). Although Hume does not fully depart from the traditional approach to the body, by shedding light onto the importance of senses and passions (emotions) in substantial way, he subverts the Platonic rationalism. In doing so, he undermines traditional authorities which spring from metaphysical dualism and explicates how passions such as fear have played a significant role in the creation and the maintenance of not only a particular social and political order, but of the proliferation of the hegemony of “truth”.

By personifying the law as Dorian Gray, the protagonist/antagonist, in *The Picture of Dorian Gray*, this Chapter embarked on a journey to Greek antiquity to show how through a dichotomous perspective, Platonic thought secured the hegemony of “reason” at the expense of

the body in the name of “truth.” By considering the body as part of the Earth defiled by dirt, emotions were considered not only as the opposite of reason, but were also gendered. In other words, the deep-seated mistrust of the body and its associates, emotions and senses, and mistrust of human affairs as well as politics, culminated in the development of the Platonic patriarchal/ascetic rulership under the philosopher kings. Moreover, it was reason and the Platonic Theory of Forms beyond the earthly world of appearances that could lead man out of the cage of the body/and the cycle of death towards the eternal rebirth/transcendence. This Chapter argued that Plato’s insistence on optimistic rationalism and a world immune to change, were a turning point towards decay and decadence. This Chapter further explored how ideas and concepts that began in Greek antiquity, have been infused in Christianity and have made their way into the modern age and the modern world.

## Chapter four

### Spatialization of emotions

Being infatuated with his own beauty rendered on the canvas and gaining admiration by the artist, Basil Hallward, who stood him for days as his model, and being influenced by Lord Henry Wotton, a cultural hegemonic force, there appeared a new consciousness in Dorian and a sense of urgency leading him into a Faustian contract. Thus:

Dorian made no answer, but passed listlessly in front of his picture, and turned towards it. When he saw it he drew back, and his cheeks flushed for a moment with pleasure. A look of joy came into his eyes, as if he had recognized himself for the first time. He stood there motionless and in wonder, dimly conscious that Hallward was speaking to him, but not catching the meaning of his words. The sense of his own beauty came on him like a revelation. He had never felt it before. Basil Hallward's compliments had seemed to him to be merely the charming exaggeration of friendship. He had listened to them, laughed at them, forgotten them. They had not influenced his nature. Then had come Lord Henry Wotton with his strange panegyric on youth, his terrible warning of its brevity. That had stirred him at the time, and now, as he stood gazing at the shadow of his own loveliness, the full reality of the description flashed across him. Yes, there would be a day when his face would be wrinkled and wizen, his eyes dim and colourless, the grace of his figure broken and deformed. The scarlet would pass away from his lips and the gold steal from his hair. The life that was to make his soul would mar his body. He would become dreadful, hideous, and uncouth. As he thought of it, a sharp pang of pain struck through him like a knife and made each delicate fiber of his nature quiver. His eyes deepened into amethyst, and across them came a mist of tears. He felt as if a hand of ice had been laid upon his heart [...] "How sad it is!" murmured Dorian Gray with his eyes still fixed upon his own portrait. "How sad it is! I shall grow old, and horrible, and dreadful. But this picture will remain always young. It will never be older than this particular day of June. . . . If it were only the other way! If it were I who was to be always young, and the picture that was to grow old! For that -- for that -- I would give everything! Yes, there is nothing in the whole world I would not give! I would give my soul for that! (Wilde,1985, pp. 30-31).

So it was; Dorian entered a Faustian contract.<sup>22</sup> As days started to unfold, Dorian approached life with a great sense of *civility*, as usual enchanting those around him with his show of meticulous cordiality. His language was indicator of his respect for others, contrary to his apathetic and subsequent violent actions and conducts. At first glance, he was indeed a polished charming gentleman, who invited admiration both in laity, and those in High Society. Yet, beneath that charismatic stature, there laid a *sense* of engulfed apathy. He had everything, except the ability to connect emotionally with others. The soul that he had sold in the Faustian contract was nothing but to abandon *the heart* for the security of the face. The apathetic path that he took started by breaking the heart of the young woman, Sibyl Vane, who he had *fallen in love* with. It was not of course love, since Dorian was infatuated with the beauty of Sibyl singing on the stage and playing the roles of Juliet, Rosalind and Imogen, the Shakespearian legendries. Beyond Sibyl's beauty, there was a life of poverty, necessity, steep social and spatial stratification as well as a grave sense of naivety that had pushed Sibyl and her mother into a false hope for a bright future, not knowing that Dorian was incapable of love and commitment. Yet, it was not Dorian, but the force of Henry Wotton's influence on Dorian which had awakened a new consciousness in him. It was this new consciousness that led to the abandonment of Sibyl, who finally ended her life, opening a new chapter in Dorian's life leading him in the abyss of engulfed apathy. Hence, Sibyl was the epitome, a starting point in Dorian's life of violence, which in turn affected his portrait over which he had sold his soul, giving up on the emotional connectivity for *the other*.

---

<sup>22</sup> The Faustian contract, perhaps resonates with the social contract, the necessary bipartite components of the ruled submission in return for the law's protection. But the historical trajectory of this ideal speaks of *pharmakon*, a substance that simultaneously acts as a remedy and poison. After all, law becomes law with force at its disposal.

It is better now to depart from Wilde's *Dorian Gray*, though the story of Wilde's Dorian comes back intermittently, since it is the personification of the law, and its transmutation into sheer force in a state of exception and the spatialization of emotions opening the door to the spaces of exception like GTMO. Speaking of emotions, in *The Sociology of Emotions* (2005), Jonathan H. Turner and Jan E. Stets examine the theoretical and empirical work on the sociology of emotions. Through an eclectic range of approaches such as dramaturgical, cultural, interaction ritual and symbolic interaction, which all take a social-constructionist approach to the study of emotions, Turner and Stets offer a useful perspective for understanding social realities. Although their focus inevitably relies heavily on the social analysis of emotions, due to their sociological conviction born out of their intellectual discipline, they are not oblivious to the cognitive character of emotions. Turner and Stets fill the gap between the social-constructionist approach and the cognitive approach to emotion by identifying the four primaries (biologically wired in human neurology) emotions of happiness, fear, anger, and sadness. These emotions in turn lay the foundation for the second-order elaborations of emotions such as wonder, relief, pride, (derived from happiness); antagonism, reverence, veneration (fear); rudeness, jealousy, suspicion (anger); discontent, boredom, and grief (sadness). Turner and Stets state, "Most sociologists would agree that emotions are generated by alterations in the physiology of an individual, but social constructionists [Kemper, 1981] contend that this arousal is the outcome of cultural conditioning in which people learn the emotion vocabulary, emotion logics, feeling rules, and feeling ideologies of culture ..." (Turner and Stets, 2005, p. 285). What is significant about Turner's and Stets's sociological study is their all-encompassing approach in understanding emotions. Turner and Stets are therefore sensitive not only to cognitive and constructionist approaches, but also to the

physiological approach to emotions by stating that, “Emotions arise because of the activation of the body systems revolving around the automatic, neurotransmitter, endocrine, and musculoskeletal systems ...but this arousal is very much constrained by social structure and culture” (Turner and Stets, 2005, p. 285). In other words, although primary emotions are biologically wired in human physiology, they are heavily influenced by societal norms; therefore time, space and cultural contexts play important roles in the formation, expressions and understanding emotions. For example, children from a tender age learn to observe gender differentiations between males and females through expression or restraint of their emotions. In particular, in male-dominated societies, boys are historically shamed for crying, as crying is a perceived as characteristic of girls and also a sign of weakness and an indicator of inferiority of the female other based on their “natural” propensities for being emotional/non-rational.

Turner and Stets claim that it is very difficult to separate biology from culture in the study of emotions. As they explicate, one of the most complicated issues in this regard is how emotions are consciously/unconsciously felt/expressed/controlled or suppressed. For example, according to Thomas Scheff’s theory, defense mechanisms have an active role in repressing emotions, which in turn become transmuted into new forms of emotions; therefore, in some circumstances as Scheff states, “... repressed shame leads to a sudden outburst of anger” (Turner and Stets, 2005, p. 287). Yet, Turner and Stets are well aware that most sociological theories and approaches are “...biased toward the analysis of what people consciously feel and express (ibid)”. Turner’s and Stets’ study is in line with many philosophers, cultural anthropologists as well as many feminists, to name just a few. It is no wonder that they, like their counterparts in other disciplines, examine how emotions are under the decisive influence of the social body and the body politic and dependent on the

contexts in which they are organized, expressed or restrained. Unveiling the traditional dichotomy rendering human reason/rationality as the polar opposite of emotion, Turner and Stets affirm that, “Research on the neurology of emotions now demonstrates that the long-standing juxtaposition of emotion and rationality as polar opposites is simply wrong” (Turner and Stets, 2005, p. 21). Turner and Stets are well aware of many approaches in understanding emotions, but their particular focus is on the significance of the sociocultural contexts on emotions.

Unlike, Turner and Stets, who are primarily looking into the sociological approaches to emotions, while attentive to physiological and cognitive approaches in this regard, in *Unnatural Emotions: Everyday Sentiments on a Micronesian Atoll and Their Challenge to Western Theory* (1988), Catharine Lutz argues that emotions are not universal; rather they are sociocultural constructions with particular functions that they respond to the ethos, values and cultural contexts. In other words, Lutz demystifies the Western mainstream approach that renders emotion as the polar opposite of being rational, reasonable, and objective. Adopting a comparative and cross-cultural approach, Lutz’s ethnology points to her stance that emotions are culturally constructed, shared and understood by the people within a spatial and temporal context. At the outset, Lutz maintains that her research’s focus is on the role of culture and its influence on emotions and she maintains that her research does not provide any cognitive approach to emotions. As an American, middle class, young woman and cultural anthropologist, Lutz’s ethnology focuses on the cultural aspects of the Ifaluk’s emotions and their centrality in setting the rhythm of everyday life on the atoll. Her work is a journey between two cultural contexts for a comparative analysis on emotion. In pursuit of knowing “the other,” “the self” becomes the turning point, the ground through which a cross-cultural analysis is possible. Lutz states that this, “at least implies that emotional

worldview of the anthropologist merits as much attention as that of the culture we ostensibly go to “observe.” For it is clearly to this emotional self that we implicitly compare the emotional lives of others” (1988, p. 11). Embracing a comparative approach and keen on the Ifaluk’s cultural vocabularies on emotions and their social relevance on their everyday life, Lutz’s ethnology is a concurrent study of the dominant Western approach to emotion that highlights the intellectual traditional view on emotion. Needless to add, how since Plato not only emotions have been relegated to the domestic realm, but also, they have been considered as close associates to the body as opposed to reason which has stood for the *truth*.

Despite being colonized by the Spanish for three centuries, and then being under the control of the Germans, then the Japanese and finally the Americans, the Ifaluks, who have been subject to the ravages of colonial rule and its policies as well as the constant perils caused by calamities of natural environment, as Lutz’s ethnology reveals, have developed a way of life that challenges the prevailing Western approach in understanding emotions. Lutz explains, “the concepts of emotion can more profitably be viewed as serving complex communicative, moral, and cultural purposes rather than simply as labels for internal states whose nature or essence is presumed to be universal” (Lutz, 1988, p. 5). For example, the centrality of *fago*, which refers to compassion/love/sadness, not only points to the ethical cultural value of these people but also lays the foundation for their social relationships on the atoll. Lutz points out:

In their use of that word [*fago*] people on Ifaluk communicate a central part of their view of human relationships; they impart their sense of the place of suffering in their lives, of naturalness of interpersonal kindness in the face of that pain, and of their feeling that maturity consists, above all, in the ability to nurture others. *Fago* speaks to the sense that life is fragile, that connections to others both are precious and may be severed through death or travel, that love may equal loss. *Fago* is uttered in recognition of the suffering that is

everywhere and in the spirit of a vigorous optimism that human effort, more especially in the form of caring for others, can control its ravages (1988, p. 119).

What is significant about such an approach to life is that it stems from its reliance on human close relationships and the understanding that emotions give strength to relations with others. Lutz draws on Shore (1982), whose stance on “morality is not transcendent but always embedded in the need to sustain relations with others” (Lutz, 1988, p. 77). Instead of relying on universal and abstract relations rendering emotions subjective and within the individual, *fago*, on the other hand, resonates with the reality and fragility of human existence calling for a caring relationship that brings a substantive peace on the atoll.

Moreover, unlike the modern Western understanding of ‘the person’ as autonomous, goal oriented, independent and individualistic and who is constantly encouraged to pursue one’s happiness, the daily life on Ifaluk leads into a different personhood at the center of which *fago* raises its flag. The significant of *fago* lays in its power, which opens a connective space between people. In other words, *fago* is an emotional tie, in charge of social circulation of care that finds its meaning by its connective and moving energy. *Fago* is in between people - socially understood, observed or neglected. As Lutz states, “When conflicts arise over the extent to which the child is fulfilling obligations to an aging parent, however the failure may be discussed by the elder as an emotional failure” (1988, p. 132). The everyday talk of Ifaluks is filled with emotional vocabularies that points to the centrality of emotion in their everyday approach to life, a life that is spatially located in a harsh natural environment exposing them to perils of typhoons which can result in the near devastation of their homes, their food supply and even loss of life. It is the self-

reliance of Ifaluks on care for one another that makes life possible ---notwithstanding that the responsibility of care is hierarchically observed and falls on those who are in the position of power on the atoll. Although the Ifaluks have organized themselves according to a matrilineal system and women have control over the means of production, their gardens and their children, they have a high respect for men. However, *fago* invites a constant awareness and thoughtfulness --- “the person who knows how to *fago* others acts in a calm way which avoids making others *either* frightened or angry” (Lutz, 1988, p. 138). If *fago* is not observed, individuals who have transgressed the boundary of care are subject to *ma*, shame and embarrassment, and *song*, justifiable anger. *Fago* has been central to Ifaluks, for life without *fago* is beyond reach.

If in *Unnatural Emotions: Everyday Sentiments on a Micronesian Atoll and Their Challenge to Western Theory* (1988), Lutz relies on a cross cultural approach in order to have a critical analysis about emotions and the way they are depicted and interpreted in Western theory, in *Language And the Politics of Emotion* (1990), Catherine Lutz and Lila Abu-Lughod, by using four strategies: essentializing, relativizing, historicizing, and contextualizing try to understand how emotions are culturally constructed and how the social body and the body politic play a significant role in such a construction. Through a discourse analysis they “... examine discourses on emotion and emotional discourses as social practices within diverse ethnographic contexts” (1990, p. 1). For example, they show “...how emotional discourses are formed by and in the shapes of the ecologies and political economies in which they arise” (1990, p. 13). For instance, Lutz and Abu-Lughod point to the mother-infant love relation. In the Western mainstream understanding, the motherly love relationship is not only an innate emotion, but is also perceived as a universal emotion shared across cultures. Drawing on the work of Nancy Scheper-Hughes in a

disadvantaged Brazilian community, Lutz and Abu-Lughod demonstrate how emotional discourses and political economy are interrelated. Due to the high rate of infant mortality created by poverty and a radical imbalance in power among the social groups in that setting, the mother-infant love relation stands in opposition to the emotional responses of the essentialized Western mother-infant love relation. As an emotional defense insight there is a waiting period for mothers to develop a motherly love for their infants. Love is not born with the infants; rather, it is a waiting period during which the infants' increasing chance of survival creates the foundation for a love relation. In that Brazilian poverty-stricken setting, infant mortality is seen as the result of "... emotional anxiety and 'nerves' and of individual pathology..." (Lutz & Abu-Lughod, 1990, p. 14). Instead of blaming the high rate of infant mortality on poverty and the unequal distribution of wealth, which have been part of the lingering effects of the colonial past into present, it is seen as pathology.

In contextualizing and historicizing emotions, Lutz and Abu-Laughod refer to Foucault's discourse analysis and his approach to an "effective history." In doing so, they try to trace the genealogy of an emotional discourse within a historical context. Lutz and Abu-Lughod present Good's and Good's (1988) research on the Islamic Republic of Iran and how the state had organized both public and private emotional discourses right after the revolution. What used to be "... central to religious ritual, self-definition, and social understanding, [now is organized] into a sign of political loyalty to the state" (Lutz & Abu-Lughod 1990, p. 6). Hence, the patriotic revolutionary feelings for the new Islamic state were accompanied and marked by the public participation in rituals of tears and grief to bring all believers and supporters of the regime together. Cultivating a sense of national unity through religious emotional expression, thus, was a political

strategy for the infant regime, symbolically perceived and understood as equivalent to Hazrat Ali and Imam Hossein's innocence, the Shia holy figures for self-sacrifice and the symbol of innocence and martyrdom. It was the tears and grief of the participants which were not only considered as signs of loyalty to the state, but also as the symbolic representation of a state in the making by consolidating and winning the *heart and the mind* of the people in Antonio Gramsci's account.

Unlike non-Western societies where emotions are not conceived as being in opposition to reason, emotions in the cultural landscape of the West are not only perceived as universal, innate, subjective and identified within a dichotomous structure, but are also confined within the boundary of the individual that signifies the spatialization of emotion. This does not however mean that emotions are understood in a unified way in the West. Rather, there is an ambiguous view on emotion amidst Western thought. "To say that someone is 'unemotional' is either to praise that person as calm, rational, and deliberate or to accuse them of being withdrawn or uninvolved, alienated, or even catatonic. Emotion is, at one time, a residual category of almost-defective personal process; at others, it is the seat of the true and glorified self" (Lutz, 1988, p. 56). In other words, emotion while appearing as a sign of irrationality, chaos, uncontrollability, danger and vulnerability, is perceived as the basis of ethical values.

Complementary with Lutz's view, in *Emotion, Politics and Society* (2006) edited by Simon Clarke, Paul Hoggett and Simon Thompson, the editors commence their introductory view by stating that "Emotions occupy an ambiguous place in the popular imagination" (2006, p. 3), yet they play an important part in society and the world of politics in the West. As Clarke et al. note, emotions have been viewed as disruptive forces that undermine rules and regulations which are

meant to secure civilization, yet without them one appears as a defective being. Referring to the Star Trek television series' Dr. Spock and Lieutenant Commander Decker for their superb reasoning ability, but with a major shortcoming of being unemotional, Clark and et al point out that, "They, often make elementary mistakes or serious misjudgments since without emotions they lack a capacity for intuition vital to human life" (Clark et al., 2006, p. 4). Clark and et al note that although sociologists are at the forefront of the study of emotions within the social sciences nowadays, and keen to show the dichotomous structure at work rendering emotion as the opposite side of reason or as a part of the nature versus culture debate, "... the academic study of politics is for the most part firmly attached to narrowly rationalist models of explanation and justification which split off head and mind from heart and body" (Clark et al., 2006, p. 8). What Clark et al want to convey is tantamount to what Lutz and many others, including myself, see as a major shortcoming in the rationalistic approach - a short-sightedness that leads into apathy at the expense of living in a passionate and loving mode of existence.

Instead of living with passion and love, I believe, the emotional vacuum that is created because of the pursuit for *truth* and *reason* in fact leads into the formation of a value system that renders emotional alienation and apathetic behavior as somewhat necessary and a prerequisite not only for the scientific realm, but also for the world of politics and law. The belief in reason purged from emotion, in particular from love, and that civilization should be saved from erroneous senses and "disorderly" emotions are part and parcel of the Western cultural and political landscape as well as the modern value system, out of the vicinity of home. Perhaps, Walter Benjamin's keen perspective cannot be missed when he points out that, "There is no document of civilization which is not at the same time a document of barbarism" (Gregory, 2004, p. 46). I, thus, argue that whether

because of the fear of “the other”, or the fear of “contamination”, or whether out of the Western self-interest or the will to domination, fear as an emotion has been a significant player in the social body, and the body politic influencing the body of individuals.

Thus, in *The Politics of Everyday Fear* (1993) Brian Massumi sheds light onto how the Western social body and the body politic are saturated with fear, piercing the body of individuals. “Fear is a staple of popular culture and politics...In fact, a history of modern nation-states could be written following the regular ebb and flow of fear rippling their surface, punctuated by outbreaks of outright hysteria,” Massumi maintains (1993, p. vii). Massumi’s main argument is on how the popular culture capitalizes on fear sprang from the capitalist mode of production with its negative sides on human relations or social bonds, behind the omnipresent insecurity that individuals feel in everyday life in the US. As the social space is saturated by fear, as Massumi maintains, the individual body becomes the target for the associated emotions, in particular, hatred. Hatred as he explicates is conducive in setting social boundaries, erecting and preserving hierarchies for the perpetuation of domination. Massumi considers this kind of capitalist domination as not only ideological, but geographical. It first affects the body of individuals and when it saturates the social space or what I call, the social body, it inflicts its assault on those who have been systemically marginalized in the first place. Thus, it is no wonder, that he refers to racialization of space ... where prisons are over-represented by Afro-Americans men and many others on the margins. Massumi points to the existential imperative of capitalism and the late modernity’s disposition that speak of general disaster in every corner of society, where “unspecified enemy is infinite” and a political opponent is by definition a “terrorist” (Massumi, 1993, pp.11-12). Thus, he points out that, “The capitalist relation produces a subjective sameness,

but not without creating differences. It does not unify without dividing” (1993, p. 20). Moreover, through all sorts of prejudicial divisions, that “[c]apitalist power actualizes itself basically unhabitable space of fear” (Massumi, 1993, p. 23).

If Massumi looks at the everyday politics of fear in the US through a conflation of critical analysis with a political economy with its far-reaching effects on the body/emotions, the social space and the proliferation of fear in the Western philosophical canon dealing with politics, fear has been considered one of the most decisive emotions for social control. Perhaps, nowhere has this been more emphasized than in Niccolò Machiavelli’s popular statement, which jars us with this dictum: “it is far better to be feared than loved” (*The Prince*, 1999, p. 54). In *The Prince* (1999), Machiavelli sustains that although ideally the prince should be both loved and feared, but since this cannot be achieved, it is better to be feared. Machiavelli’s view on the necessity of political fear is partly derived from his experiences in political office and partly from his generalized view on men. Thus, he maintains that men are “ungrateful, fickle, false, cowardly, covetous, and as long as you succeed, they are yours entirely, ...[but when in danger] they turn against you ...because friendship that are obtained by payments, and not by greatness of nobility of mind, may indeed be earned, but they are not secured, and in time of need cannot be relied upon; and men have scruple in offending one who is beloved than one who is feared, ...but fear preserves you by a dread of punishment which never fails” (Machiavelli, 1999, p. 54). For Machiavelli, the significance of fear is therefore remaining in its restricting power, where *agency* controlled by the dread of insecurity, harm or punishment. Unlike his predecessors in the Western political philosophy influenced by the Aristotelian view, Machiavelli takes a different approach to politics. If for Aristotle virtue is the main protagonist in the world of politics, Machiavelli’s keen

anthropological understanding of politics unveils a different picture as how politics is in *reality*. It is political ends, rather than political means that the prince must concern himself with in order to save the state, maintain his power and the social order. Although Machiavelli sheds light onto the instrumentality of fear in the preservation of the prince and his rule, his argument enjoys a complexity that most often is missed by his critics and those rulers whose superficial approach in understanding and enforcing their power have opened the door to national and international hatred, contempt, apathy, and in some circumstances to social unrest and even to war.

Machiavelli's understanding of political fear is elaborate and consistent with his political realism/pragmatism, which is simultaneously forceful and moderate. *The Prince* with its advocacy for a pragmatic politics points to Machiavelli's experiences of imprisonment as well as torture under the turbulent Florentine Republic. Machiavelli's political pragmatism makes it clear that a prince who enters the realm of politics needs to realize that human bonds are fragile and power like any other human creation cannot stay intact. Unlike a rationalistic or an idealistic view on politics, Machiavelli's approach to politics enjoys vibrancy. He is well aware of the role of emotions in politics. For example, in Chapter XVIII of *The Prince*, he allocates the whole chapter to fear and its significance in the social order while he admonishes the prince for the negative consequences of unbridled fear. Hence, if he speaks of fear as an instrument of control, he with no delay warns the prince to be mindful of excess in fear, which can end up in hatred or contempt and loss of power. In other words, as Machiavelli points out, too much of hatred and contempt can lead into social unrest/ revolution, the overthrow of the prince and the subversion of his power.

Speaking of fear as instrument of social control, Hobbes, like Machiavelli, recognizes the importance of fear for the sovereign and his maintenance of the commonwealth. Like Machiavelli's turbulent personal feelings and experiences in the political offices, Hobbes' view of political fear equates with order, unity and peace. In *Leviathan*, Hobbes' revulsion for the English civil war calls for a social contract not only to consolidate a centralized power, but also to bring peace and overcome war. Hobbes, like Machiavelli, resorts to an essentialist view on man, whose existence in a state of nature entails perpetual war. Thus, the fear of a mutual annihilation triggered by the state of nature becomes his initial philosophical stance towards social contract, where the sovereign enters a contract with individuals who give up their ability to act violently in return for the sovereign's protection. For Hobbes, "Fear was not a primitive passion, waiting to be tapped by a weapons-wielding sovereign. It was a rational, moral emotion, taught by influential men in churches and universities" (Robin, 2004, p. 33). Hobbes' political fear, one can therefore suggest, is an index of social solidarity turning individuals into political subjects under the control and *protection* of the sovereign. In other words, individuals who give up their ability to violence and enter a contract with the sovereign's protection not only constitute the body of the Leviathan, but also become the fearing subjects, obedient to the sovereign power. Hence, fear becomes a significant instrument due to its function as a cohesive political and social mechanism; it has a significant role in the constitution of the body politic protecting individuals from one another's capability to violence.

In *Empire* (2000), Hardt and Negri's refer to Hobbes' statement that "the passion to be reckoned upon is fear," as they maintain, "For Hobbes, fear is what binds and ensures social order, and still today fear is the primary mechanism of control" (2000, p. 323). Although Hobbes and

many other like-minded thinkers believe that fear ensures social control, this paradigm implicates forced corporation, conformity and obedience. Relying on fear, constructs a world that is divided between the friend and the enemy dichotomy. In such a world, individuals can come together “to act,” but what they are doing is reacting rather than acting. While acting denotes freedom of agency, reacting speaks of an antagonistic scheme. There is no doubt that fear ‘works’ in maintaining control in many circumstances and it is one of the basic physiobiological defense mechanisms. Yet, the dissemination of the social and political fear is counterproductive to human greatness and counterintuitive to freedom.

In *Fear: The History of a Political Idea* (2004), Corey Robin commences his text and traces fear as the first emotion experienced by figures in the Bible. Adam and Eve experienced a perpetual fear, which originated from their disobedience to God eating the forbidden fruit. What followed was the pain of childbirth on Eve, the compulsion of work on Adam and making them both aware of their final destiny, death. It is important to note that at the outset Robin distinguishes between political fears and private fears. Private fears, unlike political fears, are “artifacts of our own psychologies and experiences, and have little impact beyond ourselves ... arises from conflicts within and between societies” (Robin, 2004, p. 2). While political fear should be considered as the insertion of fear in the public realm and as part of the modern paradigm of government, the private fears deal with individuals’ perceptions and experiences.

One of the significant foci of Robin’s argument is that fear as a political strategy deflects attention from real issues. Thus, he states, “We blind ourselves to the real-world conflicts that make fear an instrument of political rule and advance, deny ourselves the tools that might mitigate

those conflicts, and ultimately ensure that we stay in thrall to fear” (Robin, 2004, p. 3). Moreover, he points out that “we,” as isolated men and women, are convinced, “that we lack moral or political principles to bind us together ...[thus] we savor the experience of being afraid, ... for only fear, we believe, can turn us ... into a united people” (ibid). Notwithstanding that beneath such a unity, there lies societal engulfed apathy. I, like Robin, maintain that instead of bringing individuals and peoples together with sense of trust and respect for plurality of visions and ways of life, “we” resort to fear, hatred, contempt, resentment and other negative emotions which evoke apathy and alienation; this in turns makes individuals further apart from one another engulfing them in exclusionary feelings such as xenophobia and/or patriotic perversion. No doubt, as a temporary resource, fear acts as a cohesive force providing individuals with the illusion of ‘security’ and ‘the pursuit of happiness.’ Yet, living in fear does nothing but to undermine social trust. Fear’s scorching and antagonist inclination portrays the world as a dangerous place, within all its corners lurks enemies, a black and white picture, where either/or can exist, but not plural all. When the seeds of fear spread in the social body and the body politic, the illusion of self-protection leaves a very limited space for the inclusion of “the other.” Being engulfed in one’s excessive ‘love’ for oneself obstructs one’s ability to see and to feel the consequences of such narrow-mindedness of other-making. When the self is devoured by the fear of the other, the self actively becomes the participant in an exclusionary politics or is engulfed in apathy. The grave ramification of such exclusive politics which has turned into biopolitics in modernity, is totalitarian regimes which are anti-pluralistic in nature, undermining freedom and its realization.

However, Robin after contextualizing his argument within the parameters of 9/11 in the US, looks into four political philosophers’ views on political fear in the West. For Hobbes, an

English philosopher from the seventeenth century, fear of *nature*, as was mentioned in the previous passage, ignited the need for a central power, the Leviathan, and was foundational for the emergence of the social contract creating a contractual relationship between the governed and the governing body in exchange for security for the former and the maintenance of a centralized power structure for the latter. Thus, For Hobbes, it was fear that acted as a cohesive mechanism to bring the ruled together under the power of a centralized body politic, the state. For Hobbes, the fear of nature was foundational and needed to be cultivated by the state and its institutions as well as religious organizations for social and political tripartite of control, unity and peace. As Robin maintains, Hobbes' fear of nature did not betray the individual; rather it was his completion. It was not the antithesis of civilization, but it rationalized its fulfillment (2004: 32). Fear was needed in order to preserve men and cultivate a sense of meaning in people's hearts by bringing them together, obedient to the central power that could provide them with security, and bring them peace.

Yet, it was the fear of despotism and its association with the lawlessness and *barbarism* that brought Charles-Louis de Secondat Montesquieu, the French philosopher from the eighteenth century, to advocate for the rule of law. Where for Hobbes, legal repressive actions of the state aroused a sense of fear which led into law-abiding citizens with positive consequences, it was Montesquieu's fear of despotism that stood behind the governing political wheel to resort to the rule of law. As Robin points out, Montesquieu's fear "was not the product of the law, institutions, education, or even elites. It arose instead from a lone despot's use of lawless violence. ... For Montesquieu, [fear] was not the result of moral artifice or political calculation; it was an expression of the despot's distorted psyche, of his lust for destruction and penchant toward cruelty" (Robin,

2004, p. 29). Although Hobbes' and Montesquieu's approaches to fear were different, they were identical in their prescription of the rule of law and the erection of liberal ideological doctrines.

Unlike Hobbes and Montesquieu, for Alexis de Tocqueville, the French philosopher from the nineteenth century, fear was derived from below. With the French Revolution and the age of modern democracy, which disrupted traditional authority bringing the mass man as a political player on the stage of politics, there appeared a new source of fear. What Tocqueville saw in the age of democracy, was a deep-seated anxiety and insecurity felt by the masses. As Robin points out, "Tocqueville argued [that] the mass longed for a firm disciplinarian who might bring some coherence and order to society. From that longing, a new kind of despotism would emerge ... that the anxiety of those on the bottom authorized the repressive acts of those on the top" (Robin, 2004, p. 29). Thus, the development of civil institutions, associations and a cohesive civil society could not only stand against the repressive force of those on the top, but could also curb the masses from choosing a totalitarian force from above as Tocqueville envisioned.

Speaking of an anti-pluralistic mentality and practices in relation to the spread of fear, or terror, Robin draws on Hannah Arendt, the 20th century political scientist's explication on the mass man and the development of totalitarianism. Arendt's perspective not only has a great affinity with Montesquieu, but also with Tocqueville's ideas relating with the rise of modern democracy in America as well as its negative consequences. Free from various social bonds and responsibilities due to the fall of traditional relations and authorities, Arendt, like Montesquieu, saw terror as the product of violence and like Tocqueville she identified in masses a feeling of anxiety and loneliness which triggered totalitarian movements leading into totalitarian rule and

unprecedented violence as exemplified in the 20<sup>th</sup> century's two World Wars and well beyond. In other words, Arendt, like Tocqueville, saw how the modern masses' longing for order was a fertile ground for authoritarian and totalitarian movements/regimes to inflict their violence on society. In the next two Chapters, we can see how modernity provided a spatiotemporal setup in the construction of thoughtlessness. Bureaucracy has been conducive in the administration of distancing and engulfed apathy. In short, the proliferation of bureaucratic organizational tendencies to reinforce the separation of "reason" from emotional connectivity has created unprecedented catastrophes.

The foci of this Chapter were several. Like the previous Chapter, it began from an excerpt from *The Picture of Dorian Gray*. After presenting a literature review about emotions derived from sociological, anthropological, philosophical and political sources, the main argument of this Chapter was about the spatialization of emotions in the West. Unlike the Western mainstream's approach rendering emotion as subjective, idiosyncratic within the individual, in many non-Western communal ways of existence, emotions play an important role in creating interdependent social relationships. The last part of this Chapter briefly looked at fear and how it has played an important role in social control. Needless to say, that in the modern age and the modern world, fear has been used as a political strategy. Not only has it appeared as the agent of change, but also has been considered as an "efficient" strategy at the hands of authoritarian and totalitarian regimes and their violent laws/policies in the West.

## Chapter five

### Modernity and world alienation

As the leprosy of Dorian's deeds had eaten the beauty of his portrait away, Dorian found himself frightened and in a state of agitation, where he was no longer able to ignore his heinous picture that he had already hidden under a purple-and-gold pall as a curtain in the library. There was no way but to move to somewhere more secure than a place that was accessible to others. The abandoned and dusty schoolroom of Dorian's childhood became the final destination of the portrait. He was the only one who had the key to the room and the only one who could see the effects of his deeds culminated from his apathetic and alienating existence over the years. Despite his obsessive attempt at hiding the portrait, there came the moment, when he could no longer do so, at least not to its original creator, Basil Hallward. There was a sense of urgency in Dorian to share what had impacted both his portrait and his inner self. He could not stand the dreadful feeling that had overcome him; yet, he had no sense of regret of what he had done to others with his apathetic dispositions. Instead, Dorian was bothered by the monstrous appearance of the portrait over which he had entered a Faustian contract. He had sold his *soul* in return for keeping his youthful appearance. And this of course was compatible with the spirit of the age, not a state of exception or an aberration to the rule. For:

[there] were times when it appeared to Dorian Gray that the whole of history was merely the record of his own life, not as he had lived it in act and circumstance, but as his imagination had created it for him, as it had been in his brain and in his passions. He felt that he had known them all, those strange terrible figures that had passed across the stage of the world and made sin so marvelous, and evil so full of subtlety. It seemed to him that in some mysterious way their lives had been his own (Wilde, 1985, p. 159).

So Dorian was looking at the book of history to see the alienating effect of it on himself. What was missing and simultaneously augmented in that *marvellous* representation of his *enlightened* time in which he lived, was a great emphasis on a reason bereft of emotional connectivity. There was of course a *civil* show of *care*, but far away from care for one another, or the world. The apathetic spirit of time not only spoke of thoughtlessness, but also of the pervasiveness of a systemic indifference to the well-being of individuals, succumbed in the world alienation.

Speaking of world alienation, perhaps invites a twofold question: what is the world and what is the world alienation? In *The Human Condition* (1998) while Arendt has the totalitarian violence in mind, through a historical and phenomenological approach traverses between the past and the present to explore world alienation. To Arendt, the world is neither natural, nor is the creation of a divine power. Rather the world is created by men (individuals/peoples) in their plurality and acting in concert. While the Earth is our natural home, the world is the dwelling of human beings. Being in-the-world points to a space of in-betweenness where individuals/peoples not only can realize their uniqueness by appearing in the world through speech and action but also realizing their freedom. As Jerome Kohn draws on Arendt, “our natural home may be the earth, but the world is the artifice we weave and unweave on its surface; the world, the space of human appearance in all its variety, is a “web of relations” (2018). Arendt’s reflection on the concept of the world is pregnant with many central issues such as the importance of appearing in the world as opposed to being estranged from the world. Arendt’s advocates for the world where self and others can co-exist and is mindful of the privacy of each individual, and is also mindful of a public space that should be shared among all. Arendt’s reference to Saint Augustin reminds us that the world is man’s home and why the inhabitants of the world are also called the world. Thus, she

quotes Augustin, who maintains “For we call ‘world’ not only this fabric which God made, heaven and earth ... but the inhabitants of the world are also called ‘the world’ ... Especially all lovers of the world are called the world” (Hayden, 2014, p. 54). Yet, as Arendt points out, the modern age and the modern world or what is called modernity, signify estrangement from the world.

In *The Human Condition* (1998), therefore, Arendt, at the outset, not only differentiates between the modern age and the modern world, but also invites us to see how modernity has been detrimental to the world. “...[T]he modern age is not the same as the modern world. Scientifically, the modern age ... began in the seventeenth century; politically, the modern world, in which we live today, was born with the first atomic explosions” (Arendt, 1998, p. 6). As Arendt explicates, one of the foci of her text is to trace the historical and phenomenological appearance of world alienation in the West. “World alienation, and not self-alienation as Marx thought, has been the hallmark of the modern age” (1998, p. 254). With her shrewd analysis, Arendt points out that a significant change took place in the modern age when the belief in a transcendence and hereafter lost their power. What were at the heart of world alienation prior to the modern age, were gradually replaced with the “exclusive concern with the self.” Thus, Arendt refers to Descartes and his influence in this regard that:

One of the most persistent trends in modern philosophy since Descartes and perhaps its most original contribution to philosophy has been an exclusive concern with the self, as distinguished from the soul or person or man in general, an attempt to reduce all experiences, with the world as well as with other human beings, to experiences between man and himself. The greatness of Max Weber’s discovery about the origins of capitalism lay precisely in demonstration that an enormous, strictly mundane activity is possible without any care for enjoyment of the world whatever, an activity whose deepest motivation, on the contrary, is worry and care about the self (1998, p. 254).

If in the pre-modern age, the reason for world alienation was the pursuit of the afterlife, the modern age and the modern world have embraced world alienation for a very different reason. The concern for the self soon turned into appropriation, and expropriation of the communal properties of the other. Thus, the story of other-making through colonial, imperial plunder, genocide, and culturicide became part of the violent history of the West. As Arendt explicates, the process of world alienation also entailed the deprivation of groups of peoples that had lost their place in the world, so subject to the violence of such a world alienation whose God was the apathetic self.

Arendt is not oblivious to the positive sides of modernity for the betterment of human existence. Rather, Arendt is concerned with the systemic crisis within the house of modernity with its devouring dispositions against the plurality of the world. As Siobhan Kattago draws on Arendt, she states:

[a]lienation from the world leads to the rejection of everything that is shared in common – the plurality of languages, traditions, cultures and worldviews. Arendt is interested in how world alienation affects politics and morality. Moreover, world alienation is characteristic of modernity and has great destructive consequences than self-alienation (Hayden, 2014, p. 58).

Although it is in *The Human Condition* that Arendt directly speaks of world alienation as it has been already spoken about, most of Arendt's texts including *The Origins of Totalitarianism*, *Rahel Varnhagen: The Life of a Jewess*, *Between Past and Future*, *On Revolution*, *On Violence*, and *Eichmann in Jerusalem*, her concern is about world alienation in one way or the other. It is through these texts that one can see Arendt's indefatigable intellectual activities that not only testify to her political and ethical convictions against world alienation, but also her insightful awareness about

modernity and the burdens of our time such as totalitarianism, the proliferation of terror, loneliness, and the violence of bureaucratic indifference or what she calls the rule by nobody.

Arendt's love of the world or what she calls *amor mundi* and her life experiences as a Jew and an intellectual experiencing a life on the margin in the *dark times* is a non-reactive exploration to world alienation. If in *The Human Condition* Arendt points directly to the world and Earth alienation, it is in her previous magnum opus' text, *The Origins of Totalitarianism*, that Arendt shows how the twentieth century totalitarian rules of Nazi Germany and Stalinist Russia resorted to terror which culminated in unprecedented violence and a particular modern condition that deemed a violent ideology as a new political morality that considered the world and its inhabitants as superfluous. Arendt's looking into totalitarianism is a reference to what she called "the burden of our times." It is in this tenacious inquiry and at the outset that Arendt states that the term 'origins' does not imply causes or a point of origin, for history is more complex than one can point to certain causes/origins. Rather speaking of the origins of totalitarianism point to elements of totalitarianism. Divided into three parts: antisemitism, imperialism and totalitarianism, the focus of the book, which runs throughout the text, is an illustration into the development of homelessness, rootlessness, isolation and superfluosity without which totalitarian movements and totalitarian governments could not inflict their assaults on the world, its inhabitants and on the Earth. As Arendt expounds, throughout the ages, people lived with a sense of meaning, a sense of tradition and past. When the traditional social bonding as well as the traditional sociopolitical organization of communities started to dissolve, a new consciousness was opening its ways. The modern man as a new phenomenon, whose new faith in progress had awakened him to get rid of oppressive forces of religion, class dogmas and oppressive political authorities to mention just a

few, soon found himself in a state of uprootedness and a purposeless existence which provided a fertile ground for totalitarianism.

While Arendt condemns totalitarianism as a new phenomenon, she considers it as the proliferation of thoughtlessness. She argues that violence, war, massacres had been part of human history, but what is new in the totalitarian violence is that not only is it ideologically driven, rationally and bureaucratically organized and implemented, but also destroys the spaces between individuals, those spaces of in betweenness where freedom can be flourished and realized. As Arendt further argues, both the Nazi and Stalinist<sup>23</sup> movements and regimes were internationalist in nature, so in other words, they were after global domination, while alienating the world and its inhabitants. For instance, and in retrospective, in Germany and many other European nation states, the development of modern capitalism and its bourgeois cultural value system had resulted in reliance on Western colonialism and later imperialism. Soon the ideological struggles between the right and the left and violent competition over appropriation of the riches of the “other” culminated in creating a new era, the “age of extremes,” or the “age of catastrophes” in Eric Hobsbawm’s terms (1994).

Germany, for example, in the thirty years of the imperial era, from 1884 to 1914, had established herself as the third imperial power, after Britain and France. The Cecil Rhodes mentality of expansion, *expansion is everything* was not only the political motto and the reality of the era, but was also the discursive force behind its economic and military power, which made the

---

<sup>23</sup> Although in *The Origins of Totalitarianism* (1976) Arendt embarks on a historical journey to trace totalitarian movements and regimes in the context of Nazi Germany and Stalinist Soviet Union, her focus is predominately on the Nazi totalitarian movements and rule and the significant role of the European colonial and imperial states in triggering unprecedented violence both in Europe and abroad beginning in the 19<sup>th</sup> century well into the 20<sup>th</sup> century.

expansion of Germany outside of its national and political boundaries possible; therefore, Germany acquired “a new empire of a million square miles and 13 million natives” (Arendt, 1976, p. 124). In Germany, as in many other Western nation states, modern man had undergone rapid and drastic sociocultural transformation. From one angle, one felt ‘free,’ capable of realizing an ‘individualized’ dream, or the reward of a higher social status and/or an economic prosperity, which could not have been traditionally achieved by all individuals in a social setting --- since social status was predominately based on ascription, rather than achievement. If the positive side of this modern condition was the realization of individuality, the negative side of this phenomenon was the dissolution of the classes and the creation of a mass population which soon found itself in a state of social *loneliness* or *political isolation* as Arendt’s explains.

This state of loneliness reached its climax, for example, in the Nazi totalitarian rule, where all aspects of society came under the state’s power initiated by its state of exception enforced by its notorious police control. From the onset, terror became the main contender in the social and political landscapes of Germany against the ruled. It was under the motto of security that on February 28 1933 that Hitler as the Chancellor of Germany proclaimed the Decree for the Protection of the People and the State, “which suspended the articles of the Weimar Constitution concerning personal liberties. The decree was never repealed, so that from a juridical standpoint the entire Third Reich can be considered a state of exception that lasted twelve years” (Agamben, 2005, p. 2). In Chapter Seven, I will expand on the state of exception and its relationship with the law and the juridical field. However, controlled and maintained by such a political system, where terror and fear were instrumental for the state power, the social loneliness or political isolation of Germans reached its climax. One lost intimacy with the world, a world which was no longer

capable of providing one with a sense of security and certainty. It is important to mention that this state of loneliness resonated with the Abrahamic religions, since one had learned that such a state of loneliness was part of one's religious destiny after man was expelled from the Garden of Eden for committing the original sin. Consequently, such a state of loneliness was one's inheritance, a worldly punishment for the disobedience and the transgression of the Divine.

In such a social and political climate and with such religious beliefs as Arendt points out, "selflessness in the sense that oneself does not matter, the feeling of being expandable, was no longer the expression of individual idealism but a mass phenomenon. The old adage that the poor and oppressed have nothing to lose but their chains no longer applied to the mass men, for they lost much more than the chains of misery when they lost interest in their own well-being: the sources of all the worries and cares which make human life troublesome and anguished was gone" (Arendt, 1976, p. 314). Accordingly, in almost all of her texts, Arendt's revulsion and her fear of totalitarianism and her belief in human capacity to begin anew marks her call for political participation. In this call, she never gives up on the promise of politics, while being well aware that within Western thought there had been a deep-seated feeling of tension between philosophy and politics, a tradition that had been commenced from Plato up to Marx, separating thought and political action. In Chapter Seven, we can see how the deep-seated conflict between philosophy and politics, since Plato, and the inclusion of bare life in order to exclude it from the city of men have had damaging effects on the social body, the body politic and individual bodies resulting in the proliferation of an apathetic and world-alienating existence in the West and well beyond.

Although Arendt's foci in both *The Origins* and *The Human Condition* include several significant factors that have led to the proliferation of world alienation and the demise of the political, it is *On Revolution* (2006) that while Arendt expands on the assault of the social on the political, she simultaneously speaks of acting in concert which reminds us of the ever-present possibility of individuals'/peoples' power to act politically. To Arendt, both The American Revolution and The French Revolution were the examples of how men (individuals/peoples) through acting in concert uprooted the tyrannical and oppressive regimes. In other words, her admiration for both the American Revolution and the French Revolution, points to the capability of men (individuals/peoples) to act politically liberating themselves from oppression. Yet, Arendt is critical of the aftermath of the revolutionary trajectories. Although she regards both revolutions as epitome of political zeal to uproot the absolute monarchy in the French case and the colonial rule in the American case, Arendt sees how the promise of the universal right to equality, liberty and fraternity turns into suspicion, terror, and xenophobic nationalism.

In the case of the French Revolution, the revolutionary dream, as Arendt explicates, turned into a different mode of oppression when it was derailed from its mission. Arendt's critique, therefore, touches upon several issues including Rousseau's general will, how the men of revolution came to confuse violence with power, unable to distinguish between strength<sup>24</sup>, power and violence whose differentiations were essential for the creation of a political power structure; and the social question at the expense of the political. The social question, as Arendt points to the French Revolution, refers to the allocation of revolutionary efforts and zeal to respond to the

---

<sup>24</sup> Please see Hannah Arendt's *On Violence* (1970), where she differentiates between strength, power and violence.

prevalent poverty in France. Instead of directing all revolutionary efforts on freedom, the focus of the revolution thereafter was directed toward responding to the economic needs of *Les Misérables*. Moreover, Rousseau's general will, which was supposed to liberate, in practice undermined human beings' plurality and acting in concert toward freedom and living in an inclusive world. Soon, the general will's reliance was on a common enemy that had to be first cultivated in each individual and then become part of the body politic. As Arendt further explains, at the heart of Rousseau's general will there was an antagonistic worldview that by its disposition not only was not liberating, but also alienating and apathetically engulfing. "If only each particular man rises against himself in his particularity, he will be able to arouse in himself his own antagonist, the general will, and thus he will become a true citizen of the national body politic" (Arendt, 2006, p. 69). Arendt's critique of Rousseau is to shed light onto how the general will is disabling – standing against the plurality of men (individuals/peoples) and their distinctness from one another. In other words, "The 'general will' does not refer to what individuals usually will but to what they would will if they acted as virtuous citizens. The general will can only express the will of the people as a singular, undivided and unreflective entity: a multi-headed monster, a mass that moves as one body and acts as though possessed by one will" (Arendt, 2006, p. 84, Fine, 2014, p. 223).

To Arendt, in order not to succumb to violence, we should rely on politics which "deals with the coexistence and association of different men" (Arendt, 2005, p. 93) and be mindful of the fact that being different is the essence of human beings' plural existence in the world. In other words, it is politics that can call for a plural existence without succumbing into the modern nasty politics of identity-making/of othering by the force of a monological and one-dimensional mentality. While Arendt recognizes the uniqueness of all human beings, she resorts to politics as

a medium between peoples and individuals and invites them to act in concert creating a polity which in turn protects the world; a world that is of their own creation ...neither is God-given, nor naturally has been around. Unlike her contemporary, Carl Schmitt, the German legal jurist, Arendt's understanding of politics or being political does not capture itself in such a dichotomous differentiation between friend and enemy. In Chapter Seven, I draw on this point when we see the effect of the Hobbesian and Schmittian outlook in the proliferation of politics whose strive for *unity* is founded upon *either/or* leading into world alienation. Arendt's view on politics not only discerns between power and violence, but also points to the promise of politics to facilitate coexistence in the world. As Jerome Kohn maintains:

For Arendt, all destructive force, even when it is unavoidable, is in itself anti-political: what it destroys is not only our lives but also the world that lies between our lives and makes them human. A human and humanizing world is not manufactured and no part of it has been destroyed can ever be replaced. To Arendt, the world is neither a natural product nor the creation of God; it can only appear through politics, which in broadest sense she understands as the set of conditions under which men and women in their plurality, in their absolute distinctness from each other, live together and approach each other to speak in a freedom that only can grant and guarantee each other (Arendt, 2005, p. xxx).

What Arendt is keen to convey is how modernity's historical assaults on politics and the political realm have had a significant role in the spread of violence in general, and catastrophes in the 20<sup>th</sup> century in particular. This however does not mean or ignore the violence of the premodern era as orchestrated by the tyrannies of the church and royalty. Rather the foci of this Chapter and the next are on the downsides of modernity.

Despite modernity's ideals of the separation of the state and religion as well as its power to shatter the well-established dogmas and dictatorial forces of traditions whether cultural, political and economic arrangements, needless to add, the fatalistic worldview that left a very limited space for the individuals' power to be realized, modernity from its inception was structurally setup in a way that was violent and criminogenic. It is important to note that in the context of this study, the focus is on how nation states and their systems of power including their laws, military force, police force in its all varieties, bureaucratic organizations and administrations have had a significant share in committing crime against *the other*. It has been in their alienating orbits that the spread of a *legitimized* violence become a common place and part of the Western governing body politic and its social body permeating the body of individuals. If in the pre-modern era violence was part of a pre-destined and traditional authority, modernity secured and legitimized violence by its modern legal authority.

Moreover, in the name of national unification with the help of omnipresent *reason* that the proliferation of rationalization of order-making and the dehumanization process accomplished by technological advancements in science, in warfare, and the bureaucratic way of distancing, modern nation states and their apparatus of control and discipline had at least two salient overlapping macro-management plans in mind. The first was to overcome and to have a mastery over nature; while the other plan was to eradicate the existential uncertainty and ambivalence in the Eurocentric/anthropocentric mentality that was ignorant of inherent plurality of the world and its inhabitants and of the nature. The obsession with order and control was (still is) to bring not only the unfamiliar *other* into the familiarity of the Western self, but also to overcome the forces of nature under its control with at least two overlapping *reasons*: first to eradicate difference in

general, and second, to appropriate what meant to be used by the other resulting in plunder, genocide and a pervasive violence that was also destructive of nature and other species. In the name of reason, science, purity, freedom and for the betterment of human condition, modernity euphemized its overt, covert and systemic violence. Perhaps, the colonial and imperial histories can testify to the violence of modernity which from its inception has been about domination, marginalization and exclusion supported directly or indirectly by the Western philosophical, political/legal, sociocultural, economic and religious institutions, implemented by colonial/imperial administrators and many natives collaborating with such forces. Yet, it is important to note that the inflicted damage of colonialism as well as imperialism against the plurality of the world and nature have been a dual weapon of ferocity where in the dehumanizing of “the other”, the Western aggressive self and his/her collaborators have dehumanized themselves. They proved to be the most violent and calculative being among human species and other species on the Earth. As Zygmunt Bauman draws on Arendt, he states that “openness to others is the precondition of ‘humanity’ in every sense of the word” (2003, pp. 150-151), which stands against an alienating and apathetic mode of existence which modernity has been predominately about.

In *Modernity and Ambivalence* (1991) and *Modernity and the Holocaust* (1989), Zygmunt Bauman, whose attention is on the Western modern thoughts and practices, with a particular sociological and philosophical focus, sheds light onto the systemic and inherent violence against *the other* within the house of modernity. At the outset, in a footnote in *Modernity and Ambivalence*, Bauman shares his view on modernity and its birth, although he points out that there are contentious views among intellectuals about modernity. Accordingly, he states:

I wish to make it clear from the start that I call ‘modernity’ a historical period that began in Western Europe with a series of profound social-structural and intellectual transformations of the seventeenth century and achieved its maturity: (1) as a cultural project – with the growth of Enlightenment; (2) as a socially accomplished form of life – with the growth of industrial (capitalist, and later also communist) society. Hence *modernity* as I use the term, is in no way identical with modernism. The latter is an intellectual (philosophical, literary, artistic) trend though traceable back to many individual intellectual events of the previous era reached its full swing by the beginning of the current century, and which in retrospect can be seen (by analogy with the Enlightenment) as ‘project’ of *postmodernity* or prodromal stage of the postmodern condition. (1991, p. 4).

Bauman, after briefly speaking about his view on what modernity is, explicates how modernity from its inception has been a quest for *order* and to get rid of the ambivalence in the world and overcome the nature. Drawing on Stephen L. Collin’s text, *From Divine Cosmos to Sovereign State: An Intellectual History of Consciousness and the Idea of Order in Renaissance England* (1989) Bauman states that, according to Collins, modern “Consciousness ...appears as the quality of the perceiving order in things” (1991, p. 5). In other words, it was in the quest for order that those who were behind the wheel of modernity embarked on their obsessive/illusive rational plan of categorizations, of drawing lines between inside and outside, inclusion and exclusion and in short, developed a way of consciousness that was violent by its structural makeup from the beginning. As Bauman explicates further, he points to the significant collaboration of modern nation states with modernity’s overall scheme which led to the exclusionary ideas and practices in the name of order. Bauman, therefore, quotes Collins who states that:

Hobbes understood that a world in flux was natural and that order must be created to restrain what was natural ... Society is no longer a transcendently articulated reflection of something predefined, external, and beyond itself which orders existence hierarchically. It is now a nominal entity ordered by the sovereign state which is its own articulated representative ... [forty years after Elizabeth’s death] order was coming to be understood not as natural, but

as artificial, created by man, and manifestly political and social ... Order became a matter of power, and power a matter of will, force and calculation ... Fundamental to the entire reconceptualization of the idea of society was the belief that the commonwealth, as was order, was a human creation (1991, p. 5).

Bauman, whose all attention in *Modernity and Ambivalence* is to take the veil off from this illusive project of modernity, argues that human existence as well as nature cannot be controlled and the road to certainty is nothing but an illusion, a dangerous one. Rather, contingency, ambivalence and uncertainty are characteristics of human beings and their world and of course of the nature. In other words, the project of modernity from its inception was a self-defeating quest accompanied with violent sociocultural as well as economic *ideals* supported and implemented by nation states and its apparatus of force, rational power, *scientific* and bureaucratic organizations as well as the corporations of the masses. Although Bauman's focus is on modernity in general, his examples are predominately derived from the Nazi Germany. Referring to Fredrick the Great, whose wistful desire for breeding, was inspired from the Enlightenment's illusive ideals to treat humans as if they are bananas and pineapples, Bauman quotes the Nazi Minister of Agriculture, R.W. Darre in 1930s. Euphemizing his violent views by using the metaphors of breeding and weeding, Darre revibrated the Nazis' violent mentality of exclusion of "unwanted elements" in society including the disabled, the Jews, homosexuals, Gypsies and their political opponents. To articulate it differently, the unwanted elements in society were considered as weeds in a garden which had to be removed by the gardening state. Darre prescribes that:

He who leaves the plants in a garden to themselves will soon find to his surprise that the garden is overgrown by weeds and that even the basic character of the plants has changed. If therefore the garden is to remain the breeding ground for the plants, if, in other words, it is to lift itself above the harsh rule of natural forces, then the forming will of a gardener is necessary, a gardener who, by providing suitable conditions for growing, or by keeping

harmful influences away, or by both together, carefully tends what needs tending, and ruthlessly eliminates the weeds which would deprive the better plants of nutrition, air, light and sun ... Thus, we are facing the realization that questions of breeding are not trivial for political thought, but that they have to be at the center of all considerations ... We must even assert that a people can only reach spiritual and moral equilibrium if a well-conceived breeding plan stands at the very *center* of its culture ... (Bauman, 1991, p. 27).

Bauman's aim is to illustrate how modernity has been engraved with violent ideological views ending up with the unprecedented acts of barbarisms in the 20<sup>th</sup> century which, as he argues, should not be considered as the aberrations in the house of modernity. Rather, they are part of the same coin, modernity.

If in *Modernity and Ambivalence* (1991), Bauman's focus is on the misguided nature of modernity and its quest for order, in his previous text, *Modernity and the Holocaust* (1989) while Bauman sheds light onto modernity's endeavors and achievements such as individual freedom, democratic efforts against oppressive forces of tradition, scientific achievements in combating diseases and technological advancements in responding to human needs to name just a few, Bauman speaks of modernity's exclusionary side. Bauman quotes Richard L. Rubenstein who reflects upon these two contradictory sides of modernity:

The world of death camps and the society it engenders reveals the progressively intensifying night side of Judeo-Christian civilization. Civilization means slavery, wars, exploitation, and death camps. It also means medical hygiene, elevated religious ideas, beautiful art, and exquisite music. It is an error to imagine that civilization and savage cruelty are antithesis ... In our times the cruelties, like most other aspects of our world, have become far more effectively administered than ever before. They have not and will not cease to exist. Both creation and destruction are inseparable aspects of what we call civilization (1989, p. 9).

Bauman's particular focus on *Modernity and the Holocaust* is on the monstrous side of modernity. Callously invested on ideological rationalization, scientific, industrial, and technological advancements, the nation states by taking advantage of their monopoly on violence, unleash their vicious force either against *the other* from within or outside their national boundaries. Bauman points out that what is peculiar about such violence is how it separates reason from emotions, rationality from normative pressures and how it promotes indifference to the plight of *the other*. Contrary to Norbert Elias, who envisions modern civilization as a departure from the wild passion of barbarism towards progress by the gift of reason and rational thinking, Bauman speaks of a different reality. He maintains, "[if modernity] is indeed antithetical to the wild passions of barbarism, it is not antithetical to efficient, dispassionate destruction, slaughter, and torture ... As the quality of thinking grows more rational, the quality of destruction increases. In our time, for example terrorism and torture are no longer instruments of passions: they have become instrument of political rationality" (Bauman, 1989, p. 97). What Bauman wants to convey, which is horrifically alarming, is how violence loses its abhorrent feature by entering to a rationalist scheme of operation. In other words, what invites human beings' disgust is digested as normal, without evoking any emotion that can inhibit violence.

Contrary to the popular understanding that the Holocaust belonged to the violent past, an aberration in the house of modernity, Bauman maintains otherwise when he argues, "Modern civilization was not the Holocaust' *sufficient* condition; it was, however, most certainly its *necessary* condition. Without it, the Holocaust would be unthinkable. It was the rational world of the modern civilization that made the Holocaust thinkable. "The Nazi mass murder of the European Jewry was not only the technological achievement of an industrial society, but also the

organizational achievement of a bureaucratic society” (Bauman, 1989, p. 13). As a modern drive getting out of control and going wild, Bauman warns of the omnipresent possibilities of other grave violence like the Holocaust...violence at mass scales. An unimaginable violence that lurks everywhere and can create catastrophes where and when it finds a fertile ground under the state and declaration of a state of exception, and potent factors such as rational, planned, scientifically informed, expert-oriented, efficiently managed, and bureaucratically coordinated by the social production of indifference while having an obsession with order and control in order to reach an ultimate power which is violent.

In a complementary text to Bauman’s, in *The Origins of Nazi Violence* (2003) Enzo Traverso points directly to the violent disposition of modernity in the context of the Nazis’ violence through a historical perspective. At the outset, Traverso makes it clear that he, like Arendt, looks at the *origins*, “seeks not ‘causes’ in a deterministic perspective but rather ‘origins’ in the sense in which Hannah Arendt uses this word – elements that become constitutive in a historical phenomenon only after being condensed and crystalized within it” (2003, p.17). By taking such a historical approach, Traverso looks into the cultural, political, economic practices and value systems of the West, in the European industrial capitalism, colonialism, imperialism, the rise of the modern science, technology and bureaucratic organizations, the Europe of eugenics and social Darwinism, the Europe of the 19<sup>th</sup> century and how exclusive discourses and practices of race-thinking and superiority value judgment of Europeans towards *the other* in Asia, Africa and many other places around the world, derived from colonial mentality culminated in World War I and finally world War II towards unprecedented violence. Like Horkheimer and Adorno, Arendt, and Bauman, to name a few, Traverso shows with elaboration that modernity, despite its civilizing

process, has not been able to reduce or wipe out violence. Quite the contrary, violence has been the significant force behind Western civilizing mission and the justification for colonial and imperial domination and the world alienation, the mainstay of the house of modernity. Traverso's expedition to the labyrinth of Western modern civilization, like Bauman, speaks of a double picture, a picture with multiple depiction of *civility, charm, sensibility and care*, yet it is systemically violent in its disposition that is both part of the picture and its framework.

With compelling examples, Traverso shows how modernity opens its way accompanied with a new sensibility, where modern individuals gradually lose their appetites to witness brute violence or to show any excitement, for example, towards such acts as public executions, which were once part of the public occurrences. In other words, seeing and taking part in witnessing the exercise of sheer violence, as Traverso argues, becomes abhorrently unacceptable; thus, the overt acts of violence administered by the states are moved to the backstage of public places, and committed behind closed doors. As Traverso maintains, since the mid -19<sup>th</sup> century, there has developed a new sensibility and intolerance towards external manifestation of violence in everyday life.<sup>25</sup> . To support his argument, Traverso refers to the anthropological ethnographic data of Alain Corbin, who has documented how the public realm in the West, has been subject to the symbolic sanitization and euphemizing process. Words/acts which evoked abhorrent feelings have been sanitized; for instance, the traditional slaughterhouses' name not only changed to abattoirs, but they were also relocated outside of town centers. Such a shift “describes as a transition from the

---

<sup>25</sup> If there is no public execution or there is no tolerance for seeing the butchering of animals in public, or in other words as Traverso maintains there is intolerance towards external manifestations of violence, the entertainment industry/media, including video games to name just a few, have created an imaginative space for the enactment of violence on a regular basis with devastating effects on society, as violence is desensitized and apathy is proliferated.

dionysiac impulses” of traditional slaughtering to the “pasteurized carnage” of the modern age”, as Traverso points out (2003, p. 35). In other words, the sentiments of *civility* leave very limited place and are considered incompatible with individuals’ sentiments witnessing the external manifestation of violence. Accordingly, the spectacle of public executions, as Traverso maintains, is replaced by secret executions behind closed doors of prisons, barracks and extermination camps.

In *Domination and the Acts of Resistance: Hidden Transcripts* (1990), James Scott, like Traverso, though from a political and anthropological perspective, argues that this modern scheme of withdrawing overt violence from the public space by the state, and trying to either sanitize or euphemize discourses or acts of brute violence, are in fact techniques of domination. Scott, therefore, points out these techniques have become part of the Western states’ transcripts as well as those holders of power. As Scott maintains, “The imposition of euphemism on the public transcript plays a similar role in making the many nasty facts of domination and giving them a harmless or sanitized aspect. In particular, they are designed to obscure the use of coercion” (1990, p. 53). Adopting Bourdieu’s term of “euphemization,” Scott provides us with many examples such as *capital punishment* which stands for state execution, *pacification* for armed attack and occupation, and *trade in ebony wood* for eighteen-century traffic in slaves. As Scott navigates through these euphemized acts of domination either by the body politic and the social body, he elaborates on what he considers a euphemism.

Euphemism in the broad sense I am using the term – the self-interested tailoring of descriptions and appearances by dominant powerholders – is not confined to language. It may be seen in gestures, architecture, ritual actions, public ceremonies, any other actions in which the powerful may portray their domination as they wish. Taken together they represent the dominant elite’s flattering self-portrait (1990, p. 54).

Both Traverso's historical, and Scott's anthropological and political accounts point to the same phenomenon sprang from modernity, although their intellectual focus is derived from different but complementary perspectives in this regard.

After creating a historical context for his primary argument, Traverso maintains that the Nazi violence was in fact an adaptation of the already existing vicious elements within the Western social body and the body politic. As Traverso explains, all ingredients of the Nazi violence were derived from these already established forces such as colonialism, imperialism, pan Germanism, nationalism, eugenics and anti-Semitism from the German and European culture of the 19<sup>th</sup> century while anti-Bolshevism had been added to this list later on. Traverso's argument is in line with many aforementioned intellectuals in this study who have maintained that the grave violence of the Nazi regime and many current acts of violence of our time by nation states should not be considered as aberrations in the house of modernity. In other words, the majority of the modern world's exclusionary discourses as well as practices have been already anchored in the social body and the body politic of the West from the past into present.

Speaking of the past into present, in *Liquid Love* (2003) Bauman speaks about the current modern condition where human bonds suffer frailty and where the feeling of insecurity evokes anxiety, fear and paranoia. If in *Modernity and Ambivalence* (1991) Bauman looks into what he calls "solid modernity," the stage of industrialization, drastic changes from the traditional into the modern condition, quest for order and discipline through a rationalistic mode of order to get rid of the inherent uncertainty in human existence to name a just a few, in *Liquid Love*, Bauman attends

to the current state of modernity or what he considers as *liquid modernity*. One of the salient characteristics of the latter, as Bauman explicates, is the hyper-individualism of liquid modernity which is well-in tune with the market driven value system and consumer mass society. In such a state of late modernity, social trust is an elusive and fluid concept that is very difficult to flourish. Those on top of the liquid social hierarchy, as Bauman expounds, literally allocate a big share of wealth for themselves and gate themselves into gated communities. It is the fear of the poor and/or racial/ethnic other that those who gate themselves live in a perpetual feeling of insecurity and danger, a state far from a common world that is about commonality and plurality within the ocean of differences and alterity. The fear-mongering characteristic of this stage of modernity in particular points to systemic disparities within society, with a treacherous chain effect that drive people out of the world into either their private domains or marginalize or relegate *the other* to exclusionary predicaments and places of confinements. Instead of addressing systemic social, political, economic ills, governments welcome harsher laws and policies that are in fact abortive in finding solutions that perpetuate the old into the new hegemonic and exclusionary discourses and practices.

Where the fear of the other saturates the social body, the body politic permeating the body of individuals, as Bauman points out, social distrust leads into the dissipation of social skills; there are many public spaces; there are many gatherings, but human interaction is shrinking. People appear in the public spaces, no doubt ...but not only are they indifferent to one another, but also incapable to act with others in a meaningful human interaction. Moreover, they predominately *appear* in the world with their ever-insatiable appetite to consume far away from act in concert. “The fading of sociality skills is boosted and accelerated by the tendency, inspired by the dominant

consumerist life mode, to treat other humans as objects of consumption and to judge them after the pattern of consumer by the volume of pleasure they are likely to offer, and in a ‘value for money’” (2003, p. 75). Liquid modernity or in other words late modernity can be considered as “ultimately deficient on account of its indifference to difference” (Gandhi,1998, p. 39). The mixophobia, the fear of plurality and xenophobia, the prejudicial tendencies to fear and dislike the unfamiliar, are in fact triggered by the crisis within the capitalist system and mass consumer society. After all, in a saturated world of other-making, human bonds are weak. When the plurality of human existence is shattered, what appears is not a common world, but an alienated world, where in the process of other-making, the Western self falls into a state of perpetual insecurity. Instead of looking at the world, moving towards its open horizon and accept that plurality is the law of existence, indifference to difference has created such a human condition that engulfed apathy not only raises its flag, but also proliferates fear and anxiety where the call for security trumps liberty.

In line with Arendt’s and Bauman’s understanding of modernity and its destructive rationalized forces implemented by a bureaucratic structural make up that has accelerated the production of social and moral indifference that led into the dehumanization process triggering violence beyond our imagination in World War II, Traverso points to Max Weber whose understanding of the modern bureaucracy and its direct effect speak of nothing but a systemic violence that thrives on emotionally vacuumed system. Traverso points out that in *Economy and Society* (1978), Max Weber maintains that ““When fully developed, bureaucracy also stands, in specific sense, under the principal of *sin ira studio*. Bureaucracy develops the more perfectly the more it is ‘dehumanized’ the more completely succeeds in eliminating from official business

...love, hatred and all purely personal, irrational, and emotional elements which escape calculation” (Traverso, 2003, p. 42). Traverso then explicates that bureaucracy was the instrument of Nazi violence. It was the by-product of the civilizing process. It contained “the sociogenesis of the state, administrative rationalization, state monopoly over the means of coercion and violence, and drives control. This is why Adorno regarded Nazism as the expression of a barbarity “written into the very principle of civilization” (Traverso, 2003, p. 44). In other words, stripped of emotional interdependence, modernity in the name of *reason* opted for a calculus rationalistic way of existence that from its inception has been at the service of alienating forces whether the bourgeois value system, capitalism, colonial and imperial mentalities, having destructive effects on the world and well beyond.

In the next Chapter, we can see how modernity in all its stages whether in its solid form or is its liquid form, has opened its way and proliferated its violence through the whims of nation states’ sovereignty, their laws/policies, their states of exception and of course by the supports of those whose apathetic engulfment have implicated them against the other by its *meticulous* and abhorrently rationalistic way of organization and implementation that have led into a workout system that has breathed apathy in the face of human beings’ sufferings and the destructive forces effecting nature and Mother Earth. Engulfed in apathy is in fact the most potent and the mightiest forms of violence, where and when one is implicated in such an apathetic predicament that no one is incapable of thinking, but also of feeling; in other words, one is not moved by the suffering of others. Thus, the common world, which could provide a space of plurality and togetherness turns into an assaulted place, an alienated space, vanquished by the spell of indifference. In other words, the space of freedom to think, to feel and to relate to others becomes so tight and suffocating that

one loses one's active role in the world. The individual, the bearer of rights and duties, appears as if one is an inmate in a total institution with no say, but obedient to a system whose surface is punctuated by the stamp of *autonomy* and *independence*. Instead of relying on humans' interdependence and respect and care for the other and nature as well as investing on meaningful relationships, the system creates competitors in a market society that its religion is inspired by a zero-sum game mentality. Although individuals in such a system collaborate to do a task, they are predominately apathetic to one's well-being. Even though individuals are in the vicinity of one another, the scorching *spirit* of distancing is so strong that one is drowned in the ocean of indifference to appreciate what one is doing. And this is the salient disposition of modern bureaucratic organizations that systemically rob individuals of their ability to think, to feel and to act in concert.

This Chapter began with Dorian's agitation and a sense of estrangement from the world caused by his own apathetic predicament. Dorian evolved in the house of modernity, and modernity was backed up by his monopoly on violence. While modernity appeared as an anti-hegemonic force against the tyranny of tradition to address political, sociocultural and economic ills, it became obsessed with order-making in the name of "reason," "progress," and "the civilizing mission." The enigmatic and ambivalent nature of modernity can be considered as an enchanting beautiful mask, beyond which the colonial and imperial past perpetuated itself into present with its apathetic force. However, this Chapter predominately relied on the breadth of knowledge of intellectuals such as Hannah Arendt, Zygmunt Bauman and Enzo Traverso to cast light onto the violence of modernity and its entanglement with world alienation and vice versa.

## Chapter six

### Bureaucratic organizations: Distancing and engulfed apathy

So, Dorian led Basil to the unloved schoolroom of his childhood. With a flickering lamp at hand, Dorian opened the abandoned space, where the monstrous portrait was solidly placed against a wall as its mainstay. And there Dorian exposed the portrait to Basil. A sense of horror enveloped Basil. "I worshiped you too much. I am punished for it. You worshiped yourself too much. We are both punished," said Basil to Dorian. Yet, Basil was hopeful that as Dorian's pride had been fulfilled by his wish and prayer, that had retained his youthful and beautiful appearance, so would be his pray for repentance. As usual Dorian was consumed with his apathetic thoughts, so he did not heed to what Basil was telling him. He was lost in state a of engulfed apathy. Embodied by a sense of spatial security, Dorian's agitation turned into a sudden hate to get rid of the artist who not only had created the beautiful portrait of him, but also who had evoked a sense of exceptionalism in him. He reached for a knife nearby and stabbed Basil to death. There was a hidden anger and helplessness that had driven him to despair. His double life and his pursuit for *security* in his appearance were by no means fulfilling. It was not a beautiful life after all; it was by all means a repetitive, dispassionate and decadent existence free from love and care. It was a life of apathy and secrecy wrapped in the garment of *civility*. He could not stand the demise of himself even on the picture. It was true that his face was still beautiful, innocent looking and ageless, contrary to his thoughts and deeds which were reflected on the monstrous *hidden* portrait that was only apparent to him. The portrait had become the true reflection of what he was --- an

inmate captured by his decadent imagination and his deeds, which had gradually devoured his beauty by his apathetic dispositions on the canvas.

That night, Dorian slept untroubled. When his servant came to wake him up, he had to “touch him twice on the shoulder before he woke, and as he opened his eyes a faint smile passed across his lips, as though he has been lost in some delightful dream. Yet he had not dreamed at all. His night had been untroubled by any images of pleasure or of pain” (Wilde, 1985, p. 178). The night before, he had told his servant to wake him by nine o’clock in the morning for he had to take care of something. Before breakfast, he spent a great time in dressing himself up, with meticulous attention to his attire, to his necktie and scarf-pin. Dorian was charming as usual. After breakfast, he wrote a letter to a bygone friend, Mr. Alan Campbell, who was a scientist. And then he lit a cigarette and started to sketch and draw flowers, architecture and then human faces. But each sketch of human faces resembled Basil, whose lifeless body was in that abandoned space upstairs ready to be disappeared from the face of the Earth.

Mr. Alan Campbell finally arrived. Nobody knew what went wrong and why Campbell avoided Dorian at the social gatherings and why he was reluctant to play music anymore. There was no favorable sentiment, despite the amorous relationship they had at first. Alan showed up by his request. He was informed that there was something urgent - “it was a matter of life and death” Dorian had written to Alan (Wilde, 1985, p. 183). Alan’s call to the house with such urgency was to get rid of the lifeless body upstairs. Dorian was counting on Alan’s scientific expertise. “Alan, you are scientific. You know about chemistry, and things of that kind. You have made experiments. What you have got to do is to destroy the thing that is upstairs – to destroy it

so that not a vestige of it will be left,” Dorian told Alan (Wilde, 1985, p.184). To bring Alan into cooperation, Dorian intimidated Alan and threatened to expose their past relationship to his family. He was bringing Alan into his horrible scheme to vanish the lifeless body by fear. And Alan complied while he was disgusted by Dorian’s apathetic disposition which had finally led into crime. “I have done what you asked me to do,” Alan said to Dorian and left. “There was a horrible smell of neritic acid in the room. But the thing that had been sitting at the table was gone” (Wilde, 1985, p. 191). Basil Hallward, the artist, the creator of Dorian’s beauty on the canvas, was vanished from the face of the Earth. What remained was an ephemeral smell of crime in the air, renewing the room’s spatial characteristics. The space was cold and free from care where the hideous portrait had stood motionless reflecting Dorian’s violent daily deeds, contrary to his charming stature and his meticulous civility in appearance and rhetoric. Who could indeed believe that beyond that charming and fair stature that spoke of a legitimate claim, there was an ever-present viciousness? And here he was. Dorian could neither carry the heavy burden of looking at his heinous portray, which was the reflection of his apathetic daily deeds, nor he could ignore the fact that without a fair mask his existence would lose its legitimacy. Yet he was assured by the spirit of time and space that he could rely on those implicated hands that could save him by becoming accessories to his crime to vanish *the other* from the world on the Earth.

Although Dorian will appear in the next two Chapters to *conclude* his story. Back to the present, the xenophobic discourses and practices post 9/11 have led to the marginalization and the exclusion of the ethnic/racial *other*, in particular the Muslim *others*, from the Western social body and the body politic. The tales of suffering heard from GTMO and many other “black holes” cannot be understood without looking briefly and dispersedly into the house of modernity’s production of

distancing, engulfment and their effects on bureaucratic organizations. The apathetic bureaucratic structural/organizational makeup and the modern scientific and technological advancements in the hands of so-called engulfed or isolated/distanced individuals whether sovereigns, stakeholders and those whose conformity is necessarily needed as part of driving forces to either marginalize or exclude *the other* by a rationalistic bureaucratic way of organization; or, in short “doing their jobs.” Perhaps our modern ears and eyes have been accustomed to hearing and seeing these words, “just do your job.”

However, if in *The Origins of Totalitarianism* (1976) Arendt traverses between the past and present in order to point to the /origin of the unrepresented violence against *the other* as exemplified in The Great War and World War II rooted in the European and colonial/imperial violence against the racial and colonized “other” and the treacherous unison of race and bureaucracy under colonial and imperial regimes at the end of 19<sup>th</sup> well into the 20<sup>th</sup> century, in *Eichmann in Jerusalem: A Report on the Banality of Evil* (1994), Arendt’s major foci are to shed light on the modern bureaucracy and its significant role in the Nazi genocidal machine, its rationalized and exclusionary logic and apathetic organizational make-up, and the banality of evil which in some ways resonate with our current modern world. Arendt’s view on the violence of the modern bureaucratic organizations in the context of state violence is complex. Apart from ideological and exclusionary worldview and many forces from within and outside Germany, the modern bureaucracy was (and still is) an apathetic context in tune with systemic engulfed and exclusionary practices. Looking into the Nazi violence, there was task and labor division, social and moral distance as the result of the entrenched hierarchy within the system where criminal intents were diffused and separated from the horrible acts. Moreover, obedience to the authority

whether to the state or its laws were considered part of one's duty to one's nation and patriotic feelings as a sign of loyalty at the expense of the excluded *other*. Needless to say, that such patriotic feelings organized according to an "either"/"or" mentality that is bound by an emotionally vacuumed mentality that has had no space for both.

Before, I explicate further on the Nazi crime or in other words, the state criminality as still is with us, it is of significant importance to have a brief look at Thomas J. Scheff's *Emotions, the Social Bond, and Human Reality* (1997) where he sheds light into how emotions are not only part of an everyday life, but how their lack thereof plays an important role in the construction of reality influencing human relations. Drawing on Spinoza's insights, Scheff maintains that "human understanding requires knowledge of the "least parts and the greatest wholes" and relationship between them" (1997, p. 11). The interconnection of the smallest parts to the greatest wholes, which has not been in the forefront of sciences whether in social sciences or psychology, as Scheff maintains, needs to come to the fore. The link between the least parts to the greatest wholes as Spinoza points out, yet he does not specify what he means by the least parts, but Scheff interprets them as "the words and gestures of dialogue. The greatest wholes would be the larger system in which any dialogue is embedded, starting with the entire history of the particular relationship, and ending with the civilization in which the dialogue is occurred" (Scheff, 2016, p. 160). Although Scheff considers words and gestures in a dialogue as small parts, one can suggest that he implicitly includes emotions, thoughts, values, actions and practices as expressed by words and gestures in his small parts/greatest whole analysis. Nonetheless, Scheff's referral to Kundera's (1995) comments on Thomas Mann novel bring to our attention that: "we think we act, we think we think, but it is another or others who think and act in us; that is to say, timeless habits, archetypes, which

...carry an enormous seductive power and control us (says Mann)...from the well of the past” (Scheff, 1997, p. 221). In other words, Scheff points to what Elias and Bourdieu refers to as *habitus*, the attitude of everyday life that each society develops in the course of its history. It is not the whole culture, but it is part of it; it is not static, but it changes according to spatiotemporal changes.

This does not mean that we are passive beings, for Scheff is attentive to such a reality that we live in a world that it is of our own creation, but we are oblivion to its *nature*, or it is invisible to us, until we question this *life world* that we are submerged into it. Habitus is “our second nature, the mass of our conventions, beliefs and attitudes which each member of a society shares with every other member. The habitus is not the whole culture ...[it is] virtually invisible to its members” (Scheff, 1997, p. 219). Accordingly, one of the main foci of *Emotions, the Social Bond, and Human Reality* (1997), which precedes and is complementary to Scheff’s almost a decade later book titled, *Goffman Unbound* (2006) is to examine the complex human relationships in the world and the important role of emotions in familial settings as well as in the sociopolitical setting involving collective violence against *the other* within, or outside of the modern national boundaries. Because of the limitation of space here I briefly look at Scheff’s particular attention to the bipartite of alienation that includes engulfment and isolation as opposed to a well-balanced relation of solidarity between the self and *the other* toward cooperation and away from insecure/violent relations in any spatiotemporal boundary. It is important to note that this bimodal of engulfment and isolation as well as solidarity are influenced by our emotions including fear, shame, pride and love in a complex way.

Drawing on Bowen (1978), Scheff differentiates between two opposite relationships at the end of the spectrum of human bonds; those relationships that are too distant and cold are considered as “cut off” or isolated; while those relationships that are too close and suffocating are marked as engulfed and fused. What Scheff wants to convey is that both engulfed and isolated *relationships* denote alienation. Pointing to Buber (1958) and Bowen (1978) Scheff while avoids simplification, refers to human bonds, which are based on mutual identification, *I-thou* relationship, and *I-it* relationship, or *It-I* relationship. In *I-thou* relationship each party to the relationship endows the other with the same humanity pointing to a mutual identification. While in *I-it/It-thou* relationship, both *I* and *It* place themselves as the foreground and treat the other party as the object in the background.

These human bonds that push the other to the background, in my interpretation, speak of *invisible* bondage in extreme cases, when an imbalanced relation speaks of sheer domination. For example, in a traditional marriage, the husband expects the subordination of his wife to his will with force. In a common parlance, as Scheff explicates, “It-thou involves subjugation of self, one’s own, needs, feelings, and point of view, to the other person, or to the group. Blind patriotism provides another example. I-it means that one’s own needs, feelings and points of view are dominant over those of the others’, but in it-thou, they are swallowed out of a sense of loyalty, or because of fear” (Scheff, 1997, p. 79). Whether engulfed or isolated, not only individuals in such circumstances/human condition are implicated in a system of domination, but they either isolate themselves from the world, from any meaningful or a balanced relationship, or are engulfed “by blind obedience and conformity, by relinquishing ... curiosity, intuition, or feelings” (Scheff, 1997, p. 77). Although Scheff commences his two complementary aforementioned texts by

looking at family systems theory, he gradually applies such rich findings in his analysis of greatest whole, like a nation and how it is perceived by the citizens or the subjects, who in some circumstances, are engulfed by patriotic feelings that barre the mutual identification of humanity between people of diverse ethnic or national backgrounds.

Referring to Kennan (1984) whose views enjoy a great affinity with Scheff's study in regard to the link between the specialization of the professional establishment, in particular the military establishment where the flag of nationalism is moved with the vehemence of engulfment, Scheff quotes Kennan in length, who states that:

The nation as distinct from the dynastic ruler of earlier times, is even in theory – a secular force. Ready as to invoke the blessing of the Almighty on its military ventures, it cannot claim the divine right of king or recognize the moral limitations that right once implied. And it is outstandingly self-righteous – sometimes to the point of self-adoration and self-idealization – in its attitudes towards any country that appears to oppose its purposes or threaten its security. The kings and princes of earlier times were cynical, indeed; but their cynicism often related, in a disillusioned way, to themselves as well as to their rivals. The nation-state is cynical, too, sometime pathologically so, but only in relation to opposing military-political force. In the view it takes of itself it is admiring to the point of narcissism. *Its* symbols always require the highest reverence; *its* cause deserve the highest sacrifice; *its* interests are sacrosanct. The symbols, causes, and interests of its international rivals are, by contrast, unworthy, disreputable, expendable. Once involved in a war, regardless of the specific circumstances that gave rise to the involvement, the nation-states fight for vague, emotional, essentially punitive purposes. *They*, the opponents, must be punished, made to regret their recalcitrance, made to be sorry. *We*, on the other hand, must be vindicated by victory (1997, p. 144).

Scheff draws on Kennan and speaks about the nation as a secular force, whose heart beats and gets its fuel from self-adoration and self-idealization to the point of narcissism testifies to a process of engulfment, rendering the nation oblivious to a balanced relation that is mutually and inclusively set-up.

Engulfment, as Scheff explicates, may appear as a form of solidarity between parties; yet, whether in a familial setting or at a national level, engulfment is “a type of false solidarity.” Scheff’s referral to the *I-thou* relationship acknowledges the same humanity that is shared and appreciated as a mutual identification, but cannot be confused with engulfment. “In engulfed relationships, one or both parties subordinate their own thoughts and feelings to those of the other(s). In solidarity, each party recognizes the sovereignty of the other, but balances respect for the other’s position with respect for one’s own” (Scheff, 1997, p. 101). If human relationships are based on mutual identification, cooperation and care, then social bonds would enjoy security, where solidarity would overcome the bipartite of alienation, engulfment and isolation, those of which can yield nothing but a sense of perpetual insecurity.

If in *Emotions, the Social Bond and Human Reality* (1997), one of the main foci of Scheff’s text is on engulfment and isolation, in *Goffman Unbound* (2006), Scheff while attends to Goffman’s contributions to sociology, namely in the study of threatened and insecure bonds, Scheff brings to light that although Goffman’s portrayal of the social and urban/industrial societies is predominately a fair representation of such structural dispositions, what is missing in Goffman’s study is love or solidarity in the world around him. I believe Scheff rightly sees the issue in Goffman’s ethnographic data, but the most important indication of solidarity away from the bipartite of alienation, is the subject and the focus of Goffman’s ethnographic research in *Asylums* (2017) namely the structural makeup of institutions like a mental health hospital or a prison, or what he considers as *total institutions*.

Total institutions such as the military, prisons, concentration camps, boarding schools, institutions for mentally disabled and convents, though they share things in common, they differ

from one another. To Goffman, a total institution is a space cutout from the wider society, a place of confinement, of treatment, a residence or work, enclosed and formally administered by rules, authority-bound where obedience is required and boundaries are created and set by role-taking and observation of such roles that separates the inmates/patients, or those committed voluntary, for example to a covenant, from the staff, doctors, guards, managers through a bureaucratic way of organization. Goffman, who considered himself as a structuralist, was interested in the social control in such institutions. As William B. Helmreich in the Introduction to *Asylums* points out, the main objective of total institutions, like prison, is to strip individual inmates' former identity and then re-socialize him (2017, p. X). Yet, what is interesting to note is that despite the inevitable command of authority, control and inflexibility of total institutions in treating inmates, human beings are adoptable to such environments and institutions. Yet, Goffman at the outset reminds us that his explication on the characteristics of total institutions is general. While his focus is on the involuntary membership in such total institutions as mental hospitals as well as prisons or POW concentration camps, he briefly and periodically points to, for example, to religious total institutions, like covenants, as a voluntary commitment/membership where members opt for such re-socialization as opposed to the mental hospitals or prisons/concentration camps where re-socialization is imposed and involuntary.

From the moment one enters such total institutions like prisons, one is processed through what Goffman calls the mortification rituals where the body is the first target of a dehumanizing process to mark its loss of autonomy subject to a strict discipline where all aspect of one's life is

under surveillance and control<sup>26</sup>. One is stripped, dispossessed, photographed, assigned to a serial number and one is ordered to change to a uniform of conformity, robbed of the concept of choice or social mobility. Moreover, social mobility between the two strata, the inmates and the guards, as Goffman points out, “is grossly restricted; social distance is typically great and often formally prescribed” (*Asylums*, 2017, p. 7). It is not only the physical walls of the cells and the prisons that separate, but it is the role-taking and task-performance that divide a world that is shared not in its commonality but governed by mutual distrust, antagonism, and distance. In such a space, under such a roof, human bonds are not meant to be close; rather they are engulfed in antagonism and fear at worst or apathy at its *best* where the self is pushed backed to the periphery or the background under a ruled-based domination and in some circumstances subject to sheer violence.

Deference, as Goffman points out, is characteristic of every organization, so the total institutions are not an exception. Yet, in such spaces, it is the inmates who are the givers of deference, while guards/staffs/mangers are the receivers. If such a rule of deference is not observed, the force of deference confronts inmates with severe punishment in respond to their acts of insubordination. In this regard, Goffman points out that:

Expressed attitudes such as indolence will be explicitly penalized. Staff partially protect themselves from this altered relation to deference by some standard devices. First, to the degree that the inmates are defined as not-fully-adults, staff need not feel a loss of self-respect by coercing deference from their charges. Second, we sometimes find, especially in the military, the notion that it is the uniform, not the man, that is saluted (so that the man is not demanding that deference for himself); linked with this we find the notion that “it does not matter what you feel as long as you don’t show it”.

---

<sup>26</sup> At times, Goffman’s argument in regard to total institutions resonates with Foucault’s *Discipline and Punish*. Although Goffman’s ethnographical data is focused on the aforementioned institutions, Foucault’s focus is on modernity and how since the 18<sup>th</sup> century, discipline has become part of the state’s project for its scheme of governmentality of the population where the body and mind are subject to the state’s oppressive surveillance.

Third, the lower level of staff can perform the training, leaving the higher levels free to receive personally uncoerced grants of deference (2017, pp. 115-116).

What Goffman, in my interpretation, wants to convey is that in total institutions, in particular those of which are set-up for involuntary commitment, human dignity is the first thing that needs to be stripped of and replaced by an imposed discipline that is after breaking and degrading the self of the inmate by setting up a code of deference that normalizes the feeling of helplessness and abjection, so that one begins to dissociate oneself from one's being, and one's feelings. Moreover, those who are in charge of governing the inmates and implementing the rules in these spaces are implicated in such dehumanizing process of coercive discipline, and they themselves are either part of a thoughtless and apathetic process devoured by the structural setup of total institutions, or being indifferent to such a disciplinary setup by creating a mental and emotional separation between the total institutions, i.e. their workplace and from their homes and private lives.

Let it be as it may and combine Goffman's anthropological and sociological knowledge with that of Arendt's in *Eichmann in Jerusalem* (1994) vis a vis bureaucratic organizations' thoughtlessness/engulfment and the violence of distancing. As was mentioned briefly in previous passages, Arendt arrived in Jerusalem as a reporter for *The New Yorker* to attend the trial of Otto Adolf Eichmann in 1961. Her observation of the court procedure and her brilliant analysis of the law and many significant issues led into a book years later. *Eichmann in Jerusalem* was not merely a report in a traditional approach, a series of verbatims for a legal court procedure. Rather, it was and still is a critical analysis shedding light onto the nature of the law, *the state of emergency* (the state of exception) as well as what she always referred to as the human condition. Thus, at the

outset, Arendt reported that Eichmann was on trial in Jerusalem, the court of the victor, “on fifteen accounts: “together with others” he had committed crime against the Jewish people, crime against humanity, and war crimes during the whole period of the Nazi regime and especially the period of the Second World War” (Arendt, 1994, p. 21). In response to all these charges, Eichmann’s lawyer, Robert Servatius, responded on behalf of his client that “Eichmann feels guilty before God, not before the law” (ibid). Eichmann never disputed the fact that he *facilitated* and organized the mass deportation of Jews to ghettos to extermination camps; yet Arendt reported, [a]s for the base motive, he was perfectly sure that he was not ... a dirty bastards in the depths of his heart; and as for his conscience, he remembered perfectly well that he would have had a bad conscience only if he had not done what he had been ordered to ...to ship millions of men, women, and children to their death with great zeal and the most meticulous care” (1994, p. 25). Servatius’ defense had relied on a shrewd, yet bitter historical reality that Eichmann “had committed acts” for which you are decorated if you win and go to the gallows if you lose” (1994, p. 22). Arendt’s portrayal in *Eichmann in Jerusalem* is complex, for it simultaneously delved into the intricacy surrounding many issues such as loyalty, obedience, law, the state of emergency, bureaucratic organization, modern technology, modern conditions, agency, power and violence. In the context of the Nazi regime, Eichmann was a normal man with a great loyalty to Fuhrer, Hitler. Not to mention, Eichmann obeyed a regime, which although morally perverted, was legal. Thus, as Arendt maintained, “Eichmann ... at least dimly realized that it was not an order but a law which had turned all into criminals” (Arendt, 1994, p. 149). But this obedience and loyalty to such perverted law originated from an apathetic sense of engulfment that was prevalent in Germany. It resonated with the modern condition infiltrating those who were drowned in its current. However, this sense

of apathetic engulfment was not accidental; rather it was the consequence of historical forces and circumstances.

Although the court heard that it was Eichmann who transported six million Jews to the machinery of the Final Solution, Eichmann was an ordinary man with no sadistic disposition and he did not hate the Jews as the court heard in Jerusalem. Eichmann was a bureaucrat, whose desire for a better position in Germany's social hierarchy had engulfed him to develop an apathetic predicament, which Arendt calls thoughtlessness. Arendt speaks of Eichmann's thoughtlessness as not something rare but commonplace, banal --- in other words, an evil phenomenon, which by no means was radical, but superficial. It was this thoughtlessness and "the narrow-mindedness of subordinate creatures like Eichmann, who took their job seriously" that made him one of the greatest criminals of our modern time (1994, p. 143). Notwithstanding that the court in Jerusalem, as Arendt points out, had identified "that such a crime could be committed only by a giant bureaucracy using the resources of government" (1994, p. 289). Arendt came to conclude that Eichmann was the creature of a totalitarian government and its bureaucracy that "make functionaries and mere cogs in the administrative machinery out of men, and thus to dehumanize them" (ibid). The administrative massacres, as Arendt had already explored in *The Origins*, this new phenomenon, which was originally proposed and practiced by the Indian bureaucrats in British India, had sailed to Europe and was spread with full force and with its own banal disposition.

In the *Postscript* of *The Eichmann in Jerusalem*, Arendt makes it clear that she was well aware of the bitter criticism raised by her critics against the subtitle of her text, *A Report on the Banality of Evil*. In response to such a criticism, Arendt states:

I also can well imagine that an authentic controversy might have arisen over the subtitle of the book; for when I speak of the banality of evil, I do so only on the strictly factual level, pointing to a phenomenon which stared one in the face at the trial. Eichmann was not Iago and not Macbeth, nothing would have been farther from his mind than to determine with Richard III to “prove a villain.” Except for an extraordinary diligence in looking out for his personal advancement, he had no motives at all. And this diligence in itself was in no way criminal; he certainly would never have murdered his superior in order to inherit his post. He merely, to put the matter colloquially, *never realized what he was doing*. It was precisely this lack of imagination which enabled to sit for months on end facing a German Jew who was conducting the police interrogation, pouring out his heart to the man and explaining again and again how it was that he reached only the rank of a lieutenant colonel in the S.S. and that it has not been his fault that he was not promoted. In principle he knew quite well what it was all about ...he spoke of the “revaluation of the values prescribed by the [Nazi]government. It was sheer thoughtlessness—something by no means identical with stupidity – that predisposed him to become one of the greatest criminals of that period (1994, pp. 287-88).

Eichmann was a leading figure in the Nazi administrative massacres where he and thousands of others were involved in the exclusion of the other without thinking or feeling ... engulfed by the Nazi bureaucratic system. Soon, Arendt unabashedly and open-mindedly changed what she had argued in *The Origins* with regard to the loss of self-interest and the nature of evil in totalitarian regimes.

In *The Origins* Arendt had argued that the disappearance of social classes, transformed into masses was not only the significant force responsible for creating a state of loneliness, but was also a mighty force that turned the ruled into participants and privy to the totalitarian violence. “Evil, she wrote to Gershom Scholem, did not belong to a netherworld: it was very much a part of our world, the outgrowth of mundane compromises and human, all too human, vices” (Robin,

2004, p. 125). Thus, in changing her view in *Eichmann in Jerusalem*, Arendt striped the Nazis of radical evil; "... that evil is never 'radical,' that it is only extreme, and that it possesses neither depth nor any demonic dimension.... It is 'thought-defying'" (Robin, 2004, pp. 125-126). Arendt's earthly revelation was not accidental. Rather it was the culmination of her court attendance in Jerusalem combined with her critical analytical insights.

Sitting in the Jerusalem court in fact was a simultaneous historical awareness of Arendt in regard to Germany's spatiotemporal context both nationally and internationally. In understanding Eichmann, one can suggest that Arendt could not dismiss the Germans' nostalgia for the by-gone imperial power, the defeat of Germany in World War I and the imposition of the treaty of Versailles by the victors, the economic depression, the political instability of the Weimar due to its non-functioning parliamentary system, the development of an impersonal bureaucracy, and finally the appearance of a charismatic leader, Hitler, who had secured the consent of the masses towards an imbricated coordination of the other-making.

If the story of this imbricated coordination were to be told to a child of a tender age in the simplest way possible, part of the tale would contain these lines: The commander in chief obeyed his superior, who in turn obeyed the charismatic leader. The mailman delivered the order to the headman of the ghetto to prepare the list of the shipment to the camp. The cook prepared the food for the commander, who ran the camp. The commander's wife greeted her husband when he came home from the camp. The husband felt proud as he heard from his wife that she never felt so content in life as she did when her husband was the commander of that concentration camp. The prisoners arrived by speedy trains, nearby the commander's house, and were sorted out by the guards and physicians, who believed in their administrative fanaticism, *scientific endeavors* and their

great service to their nation. Those victims, who were weaker and at the bottom of the social hierarchy of the victimhood, were placed to do the *dirty* job. The butcher, whose sheep were fed by his wife and tended by his son, brought the meat. His son was lulled into sleep by his pious grandmother, who murmured into his ears, ‘You must obey your father.’ As the son attended school, he learned there was a virtue in obedience as well as rewards, as there was punishment for disobedience. In between home, and school, the son passed by the shutting windows which testified to the dictum that “the opposite of love is not hate but it is indifference.” Not to forget, that there were only a few houses that gave refuge to those who were about to be sent to the camps. Between home, school and church, the son learned about the greatness of his nation, its unique history and about a dream to *purify* his nation in order to make it supreme. As he walked by the court, he heard the jurist who said, ‘there is no higher value than unity,’ and unity cannot be achieved unless by the differentiation of friend and enemy. Who can deny that in such an imbricated task division engulfed by exclusionary values, one is able to see the effects of a systemic crisis that envelopes individuals to such a degree that makes them unable to relate to the plight of others, or to realize their own participation in crimes?

Arendt’s revision of thoughts in *Eichmann in Jerusalem* culminated in an insight. Instead of seeing a *selfless* person that she had previously identified in *The Origins*, Arendt “was struck by a manifest shallowness in the doer [Eichmann] that made it impossible to trace the uncontestable evil of his deeds to any deeper level of roots or motives. The deeds were monstrous, but the doer—at least the very effective one now on trial – was quite ordinary, common place, and neither demonic, nor monstrous” (Arendt,1977, p. 4). There was no sign of particular moral conviction in Eichmann, nor any particular evil motives. Arendt was right that there was nothing

but a sense of shallowness, pointing to a simultaneous engulfed-self-interest wedded in blind-obedience and loyalty to the Fuhrer. Arendt's keen observation and insightful analysis led to a new discovery in the modern condition with regard to a thoughtless character whose mechanical and routine obedience to the law was not only banal, but significant for the Nazi's genocidal machine, or any totalitarian violence of our time. As Arendt points out while thoughtfulness lays the foundation for creativity and liberty from servitude and violence, totalitarian regimes are about imitation and the loss of creativity and are far from freedom. In such a context, the loyal *individual* is the one whose loyalty to the spirit of totalitarian dogmatism leaves no place for *one* to feel or realize that plurality is the law of existence, and anything that goes against this principle is nothing but violence engulfed in apathy.

However, the court in Jerusalem heard that it is not always the motive to do evil that turns one into a criminal; rather, as was previously mentioned, crime of obedience or state crimes of such nature that Eichmann was exemplary of, was originated from sheer thoughtlessness that predisposed him to become one of the greatest criminals of that period. Arendt's court attendance and observation and her critical examination of Eichmann's prosecution pointed to the "strange interdependence of thoughtlessness and evil ..." (Arendt, 1994, pp. 287-288). What Arendt identified, with her genius sensitivity with regard to these new categories of crime and criminals, was a great force of engulfed apathy devouring individuals in itself. There was no hate beyond the wheel of violence, at least not in Eichmann's case as the court had heard but there was a sense of indifference to the well-being of others, the victims. Arendt's report maintained clearly that there was no sadistic act or behavior in Eichmann and many like him, since they were normal in the context of Nazi Germany. Arendt maintains that, "From the viewpoint of our legal institutions

and our moral standards of judgement, this normality was much more terrifying than all the atrocities put together, or it implied – as has been said at Nuremberg over and over again by the defendants and their counsels – that this new type of criminal, who is in actual fact *hostis generis humani*, commits his crimes under circumstances that make it well-nigh impossible for him to know or to feel that he is doing wrong” (Arendt, 1994, p. 276).

Beyond this thoughtless and torpid repetition and divisive task performance, Arendt depicted alienation, the alienation of man from man, his thinking ability and from a meaningful existence and alienation from a common world towards world alienation. As a result of such alienation or in other words, this captivating apathetic mode of existence, Eichmann, like many others, was an accomplice to the Nazi violence, for he and many others like him were implicated in a law-maintaining violence, where they lost not only how to feel, but also, they were engulfed in an imitative cycle. Perhaps, it is Rene Gerard’s insightful view on mimetic structures of social life, in this context, violence, that can eloquently elucidate Eichmann’s apathetic disposition. The court in Jerusalem heard that Eichmann was impressed by Hitler’s political achievements and power, since for many individuals he had become a role model, whose lead turned them into followers, whose desires for climbing up the social ladder made them accomplices behind the wheel of the Nazi genocidal machine. Eichmann maintained that there was one thing beyond dispute about Hitler; he had made it ““from lance corporal to the Chancellor of the Reich”” (Arendt, 1994, p.149). As Arendt explicates further, Eichmann had a great admiration for Hitler and this was the main reason to subordinate and implicate himself in the Nazi genocidal machine. Accordingly, a major component of Hitler’s *power* derived from his ability to fascinate and his charismatic leadership in evoking desires in those beneath him who were engulfed by his *grand*

stature. After all, with the help of The National Socialist German Workers' Party (the Nazi Party), Hitler's political *power excelled* and incorporated nationalism, populism and biological racism.

As Arendt elaborates further, "[Eichmann] had never harbored any ill feelings against his victims" (Arendt, 1994, p.30). "With the killing of Jews, I had nothing to do. I never killed a Jew, or a non-Jew, for that matter – I never killed any human being," Eichmann had responded to the indictment of murder (1994, p. 22). "What Eichmann failed to tell the presiding judge in cross-examination was that he had been an ambitious young man who was fed up with his [previous traveling] job" (1994, p. 33). As a matter of fact, Eichmann always maintained that he was a law-abiding citizen who did his duty with utmost *care*. And the court, of course, could not dispute Eichmann's statement, for it was his law-abiding violence that culminated in the transfer of millions of innocent people to their *final destination*. Eichmann's *meticulous* task performance was part and the parcel of memetic structure of violence consolidated by the law-maintaining violence. Although Arendt never used or articulated her argument in the language of mimesis, her examples of totalitarian violence are complementary and in conversation with the mimetic structure of violence.

In *Violence and the Sacred* (1972), Rene Girard points out the structure of violence has a great affinity with the ancient notion of mimesis and has a direct connection with our desire; "that desire itself is essentially mimetic, directed toward an object desired by the model. ...Adult desire [like children] is virtually identical, except that ... the adult is generally ashamed to imitate others for fear of revealing his lack of being" (1972, p. 146). Yet, Eichmann did not have any trouble in confessing that he was the admirer of Hitler and his *success*; for his loyalty to Hitler originated

from his aroused sense of awe overcoming his moral feeling. In such a structural violence, one can see how mimesis refers to a closed, confining, acquisitive system, which is apathetic and decadent by nature. Accordingly, thoughtlessness, the incapability neither to think nor to feel, overcomes one's judgements. But this incapability has been the predominant part of the modern condition, whose disposition led (and still is leading) modern individuals to violence without necessarily evil motives in such cases. Arendt's views on the effects of Nazi violence on individual bureaucrats or many others who were part of this Nazi's genocidal machine was neither to trivialize the violence against the Jews and many others, nor to absolve individuals from criminal responsibility towards their heinous crimes. Although Eichmann was a cog in the Nazi criminal machinery, he was responsible for his criminal act. What is important to note and has wide application in regard to Arendt's recognition of such criminals anywhere in the world, is the appearance of a type of criminal whose obedience to a violent law, authority and organizational bureaucratic settings complicates the traditional approach to the issue of criminality which is based on both criminal intent and criminal act.

In the context of bureaucratic organizations in regard to the state violence against the other from both within and beyond national boundaries, Zygmunt Bauman (1989) explicates that how the modern bureaucratic organizations have played an important role in the social production of distance, moral indifference, and dehumanization process, where moral responsibility is either suspended or diminished. When a government's political values are based on totalitarian and exclusionary politics and when a government takes the task of a gardener to uproot what it considers as weeds or unwanted elements in its racial garden, it becomes genocidal as Bauman explains. The ambition of such a government, clashes "with the pluralism of the human world"

(Bauman, 1989, p. 93). The Nazi regime and its body politic were not only delusional in their ideal vision of purifying a nation from alterity, but proved to be the most ruthless, yet the most efficient by using a bureaucratic system to exclude and exterminate *the other*. Bauman explains further that bureaucratic organizations recruit individuals with such a rational tendency to see a job as just a job. It is in the enigmatic command of authority and the task-performers' obedience that the caldron of indifference comes to boil and burns everyone. Making an income, seeking a promotion or having ambition, to mention a few, are the driving forces that make such abhorrent and violent deeds possible in these engulfed apathetic settings/contexts and processes.

To apply his theoretical and sociological knowledge to reality, Bauman presents us with an example. He therefore points to chemical plants producing napalm bombs which killed so many people in Japan in World War II and the subsequent US warfare against Korea and Vietnam. Napalm was originally developed in a secret and scientific laboratory. It was through distancing and division of labor, as Bauman explicates, that individuals, who were working in the chemical plants never questioned the violent nature of their work or what they were part of. Bauman states, "Remember as well that it is chemical plants that produce napalm, not any of their individual workers" (Bauman, 1989, p. 100). As he continues further, "Once isolated from their distant consequence, most functionally specialized acts either pass moral test easily, or are morally indifferent" (1989, p. 101). Here Bauman, like Arendt, Goffman, Scheff and many other intellectuals, points to a violent, but banal process where moral responsibility is not only diminished, but where individuals are reduced to cogs in a violent process incapable of thinking and feeling, or of what they are doing.

As harsh critics of the modern age and the modern world, constituting the house of modernity, all these intellectuals presented in this Chapter not only point to the dehumanizing aspects of modernity as was exemplified by the rationalized bureaucracy, but also consider such an anti-pluralistic mechanism against human freedom, action and creativity. Arendt, in almost of all her texts, and in *On Violence* (1970) reminds us of a new form of modern domination, bureaucracy. Thus, she maintains:

...[B]ureaucracy or the rule of intricate system of bureaus in which no men, neither one, nor the best, neither the few nor the many, can be held responsible and which can be properly called rule by Nobody. ...[W]e identify tyranny as government that is not held to give account of itself, rule by nobody is clearly the most tyrannical of all, since there is no one left who could even be asked to answer for what is being done (Arendt, 1970, pp. 38-39).

Moreover, what Arendt conveys is that the impersonal system of the modern mass society through its bureaucratic organization “excludes the possibility of action. ...Instead, society expects from each of its members a certain kind of behavior, imposing innumerable and various rules, all of which tend to “normalize” its members, to make them behave, to exclude spontaneous action or outstanding achievement (Arendt, 1998, p. 40). Moreover, the modern mass capitalist society<sup>27</sup> has provided a fertile ground for the conflation of scientific and technological proliferation, of course under the state’s control as well as the power interests of a few in power protected by the law-maintaining violence. Instead of providing a life condition that is in line with close human relationships, care, and

---

<sup>27</sup> Please see Jan Pakulski’s *Bureaucracy and the Soviet System*’s text (1986), where he through a comparative approach refers to Neumann’s categorization of ‘totalitarian bureaucracy’ as was termed by Arendt in *The Origins*. What is interesting to see is how the mode of government effects the predisposition or the characteristic of its bureaucracy and how it is implemented. While the Weberian type of monocratic bureaucracy, within the capitalist system, puts a great emphasis on the importance of organizational hierarchy and specialization, the communist systems are “sovereign bureaucracies ... , so that a communist state becomes one single bureaucratic system extended over the entire society, or bureaucracy writ large,” as Alfred Meyer maintains (Pakulski: 4).

reducing the unnecessary tensions for individuals in bureaucratic organizations, the modern world has emphasized consumption and made that the source of happiness. What is limited is the emphasis on care and respect for our existence without which a common world cannot be realized. However, falling into thoughtlessness, engulfment and distancing have become the hallmark of our modern world. If the motto of the modern age and the modern world exemplified in the Enlightenment was, “Dare to know,” that refers to daring as being bold, impudent, defiant, audacious in the exercise of knowledge, the poststructuralist/postmodern motto should be “Care to know.” As Leela Gandhi notes, “Let us end with Levinas who maintains, “It is in the laying down by the ego of its sovereignty (in its “hateful” modality) that we find ethics ...” (1998, p. 41). Speaking of sovereignty, then, leads us to the next Chapter in understanding the law and the state of exception.

This Chapter, Bureaucratic organization: Distancing and engulfed apathy, as the title reveals its content, dealt with the administration of modern bureaucratic organizations. Setup according to the division of labour and specialization, the bureaucratic organizations are hierarchal and rules-based. As was discussed in the previous Chapter, in the name of “reason” and “progress,” modernity from its inception has ‘thrived’ on a rationalistic force that is more concerned with order-making and the proliferation of efficiency than the well-being of nature and human beings. When fully developed, bureaucracy is a fertile ground in inflicting pain and suffering against “the other” in particular in total institutions such as concentration camps. In such spaces, individuals, like guards/interrogators, or those in charge of such places are strictly distanced from the captives under their ‘care.’ Being under the spell of rational authority, individuals who are capable of love and care in the private realm, become so engulfed in the preservation of the system, that they are willingly to participate in/are indifferent to the violence

to “the other,” in the public realm. Through a process of distancing and engulfed apathy, bureaucratic organizations are capable of committing sheer violence against the other in spaces of exception, supported by the law.

## Chapter seven

### Understanding the law and the state of exception

That evening, at eight-thirty, exquisitely dressed and wearing a large buttonhole of Parma violets, Dorian Gray was ushered into Lady Narborough's drawing-room by bowing servants. His forehead was throbbing with maddened nerves, and he felt wildly excited, but his manner as he bent over his hostess's hand was as easy and graceful as ever. Perhaps one never seems so much at one's ease as when one has to play a part. Certainly no one looking at Dorian Gray that night could have believed that he had passed through a tragedy as horrible as any tragedy of our age. Those finely shaped fingers could never have clutched a knife for sin, nor those smiling lips have cried out on God and goodness. He himself could not help wondering at the calm of his demeanor, and for a moment felt keenly the terrible pleasure of a double life (Wilde, 1985, p. 192).

The tale of Dorian's double life, although articulating itself in fiction, resonates with a reality that is called law, hegemony, which opens the way for the state of exception to become a paradigm of government in modern democratic societies as Giorgio Agamben maintains. Since, or at least in the context of this study, no exception is possible without a normative juridical framework, this chapter will shed light onto an enigma where an exception becomes a rule according to Walter Benjamin's enunciation, though contrary to Carl Schmitt's approach to the state of exception, which is part of the juridical order. When the sovereign decides on an exception transmuting law, hegemony, into sheer force, the sovereign undermines law's claim to universality, objectivity and impartiality. The promise of the law that no one can stand above it turns into a forceful/violent predicament, where the sovereign not only decides on the exception, but also *suspends* the law in order to outlaw the *other* by his *laws/decrees*. When the sovereign reverberates the drum of otherness with piercing vibrations differentiating between friend and

enemy, he redraws the spatial and temporal line between the *rationalized* and the *civilized* Western self and *the other* which has been part of the tale of modernity as well. The sound of the drum of otherness is a performative act of the sovereign who is after the “consent” of the ruled by spreading fear, hatred, and contempt, on one hand, and his simultaneous promise of security and freedom on the other. When fear, hatred, and contempt *of the other* saturates the landscape of being, law, as hegemony, whose disposition is derived from the social body and the body politic permeating the body of individuals turns into sheer force, where engulfed apathy not only raises its flag but also devours the most cherished ideas of Western liberal democracy such as liberty, equality and justice for all.

Since this chapter’s foci are on the law and the state of exception in the context of 9/11, I would like to apply the concept of hegemony, which I borrow from Antonio Gramsci (1891-1937) without categories of class, ideology, revolution and socialist utopia, to law and the state of exception. In other words, I make use of Gramsci’s concept of hegemony beyond its Marxist application. Yet, I am not only grateful of Gramsci’s breadth of insights, but also obliged to introduce him briefly and his usage of hegemony in order to provide a framework for my case. In *The Antonio Gramsci Reader: Selected Writings 1916-1935* edited by David Forgacs (2000), Gramsci as a neo-Marxist political philosopher, anti-fascist activist and communist party leader in Italy, considered hegemony as a fundamental power needed to be won by the working-class alliance of the developed North of Italy with the underdeveloped peasants of the South; those of whom had been subjugated by the bourgeois colonial mentality. It was through such a great rift between the developed-industrialist North and the undeveloped-peasants of the South that the Fascist regime had founded its violent power base. To Gramsci, hegemony, which denoted

leadership of the mainstream order accompanied with the consent of the ruled, had to be won. To Gramsci, hegemony signified a form of *soft* power that secured itself by the winning of the hearts and the minds of the ruled by implicating them in a sphere of domination with their consent, despite the presence of a systemic/latent violence, and of course an overt form of violence at the disposal of the state's apparatuses of power, in Louis Althusser's articulation, and well beyond that lurked within this hegemonic sphere. Instead of relying on a revolutionary violence, which Gramsci called the war of maneuver/the frontal attack, he invested in the war of position to educate the factory workers, the poor peasants, the masses with the help of the organic intellectuals in order to create a cultural/political context to bring substantial changes against the Italian bourgeois and Fascist order that had become commonsensical in the Italian cultural, political, and economic context. Not only was Gramsci well aware of the economic reductionism of traditional Marxism, but also well-aware of the importance of cultural and political contexts and their substantial role in winning hegemony. Yet, as Stuart Hall maintains, Gramsci saw himself as, "principally, working within the broad parameters of historical materialism, as outlined by the tradition of Marxist scholarship defined by the work of Marx and Engels" (1996, p. 411). Through a comparative theoretical approach, Gramsci pointed to Russia in 1917 when the war of movement/the frontal attack to the state resulted in victory, yet this strategy was not appropriate, for example, in Italy, in the West. In Russia, "the state was everything, civil society was primordial and gelatinous", Gramsci pointed out. In the West, as Gramsci noted further, the state is, "only an outer ditch" behind which a solid civil society stands. (Forgacs, 2000, p. 222). Accordingly, Gramsci invested his energy and political activism on the war of position over the frontal attack, so he

envisioned a new order that needed to be developed --- a new culture that was essential in creating new values against bourgeois' hegemony and steep inequalities in Italy.

Instead of reducing all sources of social inequalities and oppression in society to the economic structure, he looked at the cultural values derivative of the political economy. He understood the importance of an overarching hegemony that gradually had become a historical bloc, a union of forces, with an omnipresent force that was anchored in society's cultural, political and economic values, practices that had been normalized and legitimized by bourgeois hegemony impacting social relations. In other words, the commonsensical proclivities of this soft power/leadership, as a process, as internalization of values into practices transformed to lived experiences had been deployed and infiltrated groups in such a way that most often have robbed the oppressed from their ability to question or formulate counter-hegemonic forces against their sources of oppressions and those institutions that were responsible for the reproduction of the bourgeois hegemonic order including the family, the church, the education system, and the media. Gramsci's dream of creating a new order in Italy to overthrow the bourgeois value system, capitalist mode of production as well as overthrowing the Fascist regime was not realized. He was captured and sentenced to a long-term imprisonment (1926 -37) by the Fascist regime under the leadership of Benito Mussolini's totalitarian government. Although he lost his political battle and died because of his poor health aggravated by his captivity, Gramsci's contribution to critical analysis cannot be overlooked.

Gramsci's keen insights derived from his particular attention to the cultural context and its relationship vis-a-vis the economic, political and dominant and oppressing forces and practices, which had implicated the ruled in a hegemonic field of submission, conformity and cooperation

with consent. Gramsci's elaborate view on hegemony as leadership, as a form of *soft power* which was different from mere domination due to the construction of consent was superb for many reasons such as not reducing hegemony to a form of totality to prevent political actions, not losing sight of counter-hegemonic strategies to combat oppressions, or to giving up on the power of agency in bringing substantial changes despite the presence of an overarching hegemony in a cultural/political and economic sphere. Yet, what is mind-blowing about the construction of consent and securing hegemony in most cases is not about the winning of hearts and minds of the ruled in an optimal way. Rather in many historical circumstances, it is about breaking the hearts and defeating the minds of so many people for the benefits of a few. Perhaps, David Harvey's *A Brief History of Neoliberalism* (2005) is a case in point as how consent is being constructed in the context of the neoliberal hegemonic order in several nation states since 1970s.

Contextualizing his main argument through a Marxist perspective in general, but through a Gramscian approach in particular, Harvey presents a very dynamic, yet brutal and oppressive application of how hegemony of neoliberalism was *won* and consent was constructed in such countries as Chile and Argentina in 1970s and in Britain under Margaret Thatcher's and in US under Ronald Reagan's lead after 1979. At the outset, Harvey points out that the hegemony of neoliberalism was established by brute force in both Chile and Argentina by a military coup supported by the traditional upper classes as well as the suppression of all labor solidarities; needless to add the support of the US government in this regard. On the other hand, the construction of consent and securing the hegemony of neoliberalism in Britain and US had to be achieved by *democratic* processes. Perhaps, the first question that comes to mind is: what is neoliberalism? Neoliberalism as Harvey maintains,

...is in the first instance a theory of political economic practices that proposes that human well-being can be best advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets, and free trade. The role of the state is to create and preserve an institutional framework appropriate to such practices. The state has to guarantee, for example, the quality and integrity of money. It must also set up those military, defense, police, and legal structures and functions required to secure private property rights and to guarantee, by force, if need be, the proper functioning of markets (Harvey, 2005, p. 2).

Neoliberalism, in other words, rests on strong private property rights, individual freedom and by design it cannot be in line with social solidarities; needless to add it is about deregulation and a free-market capitalism which stands for individual freedom, far away from equality/equity, and social justice issues after all.

Harvey in the beginning of his argument reminds us that one of the most foundational elements in the construction of neoliberal consent has been derived from Western cultural values of individualism and individual freedom sanctified by law. When conflated with competitive mentality of the market, neoliberalism has proved to be a violent force which has sacrificed the well-being of the majority at the expense of a few, or in a Marxist terminology, the upper classes and the elites in the name of the individual freedom. Neoliberalism, as Harvey explicates further, is a counter-hegemonic force from the above in response to the social justice and solidarities that had opened their way in the West to create an equitable and less exclusive society as early as 1930s. Yet, forty years later, neoliberalism had become a hegemonic contender that in the name of individual freedom started to inflict its assaults. The entangled/engulfed sources behind such assault were too many which are beyond the capacity of these passages to be explored here. However, as Harvey points out, the role of such economists, legal theorists and philosophers such

as Fredrick Hayek and Milton Friedman, who believed in free-market capitalism cannot be underestimated. Picked up and supported by governmental states' authorities like Margaret Thatcher and Ronald Reagan after 1979, neoliberalism achieved its force of law gradually but surely. Influenced by thinktanks influencing corporations, the media as well as such institutions like universities, and professional associations, religious groups, the family, to name just a few, neoliberalism consent was achieved and its hegemony was established, although its power waned after 2008 in the US for example.

As Harvey has already reminded us that the construction of consent is context-dependent and varied, it is striking to see how in the case of Britain under Thatcher and the US under Reagan the construction of consent, although did not entail frontal attack, it was gradual, yet brutal. In the US, the road to neoliberalism, which had opened its way before Reagan came to power, was cleared for instance, by the alliance of financial institutions, redistribution of wealth to the upper classes by cutting taxes, the role of the bankers in restructuring the city, for example, in New York city to create a business climate, the demise of local unions and the role of government in protecting the businesses over the well-being of the citizens and the US Supreme Court decision in 1976, granting the right of a corporation to make unlimited contribution to political parties.

Accordingly, the stake holders in favor of neoliberalism had dire effects on politics and democratic values such as equality, where wealth, money, and religious values could change the result of a Presidential election. As Harvey explains, although the Democratic Party had a popular base, the Republican Party in 1978 needed a solid electoral base to enhance its effective power. The Republican Party, therefor, sought an alliance with powerful financial institutions, the elites and the upper classes, as well as with the conservative Christian-right, whom were in the pursuit

of moral majority. The Republican Party appealed to the cultural nationalism, for example, of the working classes whose economic sense of insecurity was aggravated by affirmative actions and other state programs (created to support Blacks, ethnic and racial minorities, women and many marginalized groups) and also the upper classes, elites and evangelical Christians. And from then on, as Harvey points out,

...the unholy alliance between big businesses and conservative Christians backed by the neoconservatives steadily consolidated, eventually eradicating all liberal elements (significant and influential in the 1960s) from the Republican Party, particularly after 1990, and turning it into the relatively homogenous right-wing electoral force of present times (2005, p. 50).

The construction of neoliberal consent in the US was primary, as Harvey explicates, won by aggregating and collaborating forces and the simultaneous demise of, for example, social solidarities in the name of individual freedom, deregulation of the market, the enactments of The Tax Act of 1981 and The Tax Act of 1986 respectively to consolidate neoliberalism.

Unlike the US, the construction of neoliberal consent, although had the same brutal effects, was different in Britain. Given that the cultural and political traditions of Britain differed from the US, and given that there was no Christian right to mobilize the support of moral majority and given that Britain had developed all-encompassing welfare state, as Harvey maintains, “[s]ocial solidarities constructed through the union movement and municipal governance were strongly in evidence” (Harvey, 2005, p. 55). Yet, not all were happy with the welfare state and oppressive side of unions’ power, because of curbed individualism and the assault to individual freedom and liberty widespread in Britain during the 1960s. However, in 1975, inflation surged to 26 per cent resulting in high interest rates as well as high unemployment.

When Thatcher came into power with a significant majority and the Labor government was defeated, she began her term with “a clear mandate from her middle-class supporters to tame public sector trade union power,” (Harvey, 2005, p. 58) Harvey points out. Thatcher’s road to neoliberalism began with the adaptation of monetarism and strict budgetary control to curb inflation. Draconian budgetary cutbacks in welfare expenditure, as Harvey indicates, were implemented. Not only Thatcher provoked miners’ strike in 1984, which lasted for a year with their final defeat, but demolished major traditional British industries (e.g., the steel industry, the shipbuilding industry and automobile industry) in 1980s. What followed was the opening of the door to the global market, for example, replacing British automobile industry with the Japanese automobile manufacturing. Moreover, Thatcher was a force behind neoliberalism in the making. She was significant in the proliferation of an entrepreneurial culture with great emphasis on individual responsibility beyond which was the intent to undercut state responsibility for the social welfare. In other words, as Harvey concludes, “Thatcher forged consent through the cultivation of a middle class that relished the joys of home ownership, private property, individualism, and the liberation of entrepreneurial opportunities” (2005, p. 61). In all her efforts, Thatcher, like Reagan, was not only supported by businesses and corporations, but she had a great role in writing legislation, determining public policies and setting regulatory framework to consolidate neoliberal agendas by the force of law.

The role of the states, whose monopoly on violence, lays the foundation for the laws, whose mutual interrelation is both constitutive and constituted of such a relation between the states and their laws/policies cannot be underestimated given that we the moderns, the subjects/citizens living in democratic or undemocratic societies are engulfed in such a juridical sphere. Perhaps, Douglas

Litowitz's approach is a case in point. In *Gramsci, hegemony, and the law* (2000), Litowitz reformulates Gramsci's concept of hegemony by affirming its core idea while severing its outdated Marxist concepts. Litowitz explicates that Gramsci was correct in identifying how "the mass of people willingly consents to a system that renders them alienated and disempowered" (2000, p. 550). By replacing the hegemony of a class with the hegemony of a dominant code, Litowitz points out that Gramsci was wrong to reduce hegemony to identifiable class dominators since as he states, "the hegemony that exists today is more diffuse, decentralized, and insidious than domination at the hands of a ruling class" (ibid). Although "Gramsci wrote almost nothing about the law in *The Prison Notebooks* [where the concept of hegemony appears in his writings for the first time] but his few comments can be seen as moving toward an understanding of the dual status of the law, corresponding to the two axes of power, namely physical force and hegemony", Litowitz maintains (2000, p. 530). As Litowitz further explains, Gramsci was correct to consider the role of the law in securing consent. Given that we live in a modern legal culture and almost all of our significant aspects of our lives are constituted, instituted, regulated, monitored, controlled and enforced by the law, I, like Litowitz, argue that law is hegemonic and in fact it points to the dominant hegemony of such juridical sphere with its overarching power and its dual disposition accompanied with a complex process that derives its power from myriad forces including sociocultural, economic, political, and prejudicial values such patriarchal, racial, religious and so on that have been engraved within the social body, the body politic and the body of the individuals who stand before the law.

From the moment that we are born into the social body and the body politic in a nation state, we are legally identified as subjects or citizens; notwithstanding that in exceptional

circumstances we are stripped of our legal status and become an outcast, a bare life, who can be killed but not sacrificed as Agamben points out. Yet, from birth to death, making substantial decisions such as marriage or divorce or ... buying a property, paying taxes, getting licenses, getting verification of skills or degrees, being subject to mandatory education according to the state criteria, or being accountable to the law and the state's apparatus of power, like, the police, courts and so on, and finally upon death being registered for a death certificate ... we are in a juridical sphere that have engulfed us. Yet, law as a dominant hegemony, is neither a totality, nor a static being. Its insidious power lies in its dual propensity of protection/inclusion and harm/exclusion accompanied by a pervasive regulatory and disciplinary power that is constitutive of not only the legal subjects/citizens with rights and duties, but also protective of the states and their juridical sphere.

Law, as a dominant hegemony, reminds me of the Greek *pharmakon*. The Greek *pharmakon* refers to a substance that acts as both a remedy and poison. In other words, while law's remedial proclivities have been in the pursuit of justice and rights, we cannot deny its poisonous inclinations that divides, marginalizes, outcasts/excludes, alienates and even annihilates. Looking back into the history of nation states as well as modernity, we can see the contradictory and ambivalent role of the law, which from one angle has opened the way for individuals to realize their creative potentialities, and to some degree has opened knots of domination imposed by the force of tradition, customs, religious dogmas, and traditional political authorities and many other forces like patriarchal value systems. Yet, from a different and contradictory angle, no one can deny how the modern Western law, for example, has been in conversation and protective of demands of anthropocentric/Eurocentric philosophical, economic, sociocultural, political, and

needless to add protective of a certain religious values which inevitably have been responsible for casting out of those who have had no desire to be implicated in the scheme of modern nation states in general and in the neoliberal/neoconservative orders and the capitalist market economy in particular.

Perhaps Zygmunt Bauman's apt elucidation is a case in point in his text, *Modernity and Ambivalence*. As Bauman has explicated in the previous Chapters, modernity has been a forceful project, enrooted in the Enlightenment's faith in *reason*, an anthropocentric/Eurocentric reason that was engulfed by such a misguided perception to bring clarity and transparency to human existence. In the quest for order and riding the world of the inherent uncertainty in human existence as well as the nature that the modern *democratic* legal authority, the dominant hegemon of the juridical sphere springing from the modern nation states replaced the communal/indigenous authorities and uprooted their particularities. According Bauman maintains:

Equality before the law meant after all, the sapping of communal autonomy, discreditation of communal authority, undermining the centrifugal influences of communal and cooperative elites; it was indispensable part of the process which led to the institution of modern state power with its monopoly of law-making and coercion (1991, p. 111).

Thus, by contextualizing the law within the institution of the modern state in alliance with modernity's rational schemes, Bauman sheds light onto how nation states appropriated plural and communal powers in order to pacify communal conflicting and competing authorities within modern national boundaries and well-beyond. In the process of nation building, legal rational authority overthrew communal authorities considering such forces as obsolete and part of an outdated history of backwardness that the West needed to be liberated from. In other words, the cultural, political and economic makeup of modernity needed a juridical platform/sphere to spread

its overarching domination to construct and solidify its legitimacy in order to secure the consent of the ruled under the leadership of the dominant hegemon, the law. When domination becomes hegemony through *consent* and when the ruled is implicated in oppressive and exclusionary forces that strive to become rules, what follows is a process of engulfment that opens the way for an enigmatic process of faith, of acceptance, of cooperation, of conformity and of obedience, needless to add, pregnant with the ever-possibility of counter-hegemonic resistance and contestations as well. When it *wins* the hearts and the minds of the ruled, or all who are parts of this dominant hegemony in what Gramsci calls *political society* as he distinguishes it from what *civil society* is, hegemony is formed and secured. If the former is predominately located in the public realm under the state power with its monopoly of violence, the latter points to voluntary associations such as religious groups, economic corporations/institutions, and so on, which are part of civil society. The important point to note is that Gramsci considers both the political society and the civil society as interdependent that reinforces each other resulting in the perpetuation of hegemony.

The complexity of this dominant hegemony, law, should not be underestimated, for law enjoys an enigmatic resilience capable of regeneration and perpetuation of itself by a dynamic force. As Raymond Williams (1977) points out hegemony is always a process. Thus, he states:

A lived hegemony is always a process. It is not, except analytically, a system or a structure. It is a realized complex of experiences, relationships, and activities, with specific and changing pressures and limits. In practice, that is, hegemony can never be singular. Its internal structures are highly complex, as can readily be seen in any concrete analysis. Moreover (and this is crucial, reminding us of the necessary thrust of the concept), it does not just passively exist as a form of dominance. It has continually to be renewed, recreated, defended, and modified. It is also continually resisted, limited, altered, challenged by pressures not at all its own. We have then to add to the concept

of hegemony of counter-hegemony and alternative hegemony, which are real and persistent elements of practice (Williams, 1977, p.112)

If I agree with Williams that hegemony is so dynamic that it continuously in the process of renewal, recreation and so on with the ever-present contestation of counter-hegemonic forces, I disagree with him when he maintains that hegemony challenged “by pressures not at all its own”.

Quite to the contrary, there are circumstances that the counter-hegemonic challenges are well-rooted in the very hegemonic claims that have created a great rift between what has been said and what the reality has had in its hold. In other words, as Litowitz refers to E.P. Thompson, he touches upon a very important point as how counter-hegemonic challenges spring from the dominant hegemony of the law itself. Accordingly, Litowitz quotes Thompson who maintains:

If the law is evidently partial and unjust, then it will mask nothing, legitimize nothing, contribute nothing to any class's hegemony. The essential precondition for the effectiveness of law, in its function as ideology, is that it shall display an independence from gross manipulation and shall seem to be just (Litowitz, 2000, p. 548).

Litowitz then explicates that for Thompson “the essential precondition for the effectiveness of law” is that it must appear as neutral, universal and objective. If not, “[s]ubsequently, the dominant class gets trapped in its own rhetoric of equality and universality, thereby opening up grounds for contestation: the much-vaulted rights to equality ...and security that protect ... [the dominant *identities*] can be invoked by those who are treated shabbily”, Litowitz maintains (2000, pp. 548-49). Thus, Litowitz by drawing on Thompson, touches upon a significant point about how counter-hegemonic responses, in many instances, are formed from within the law itself. If the universal promise of the law is to treat everyone with impartiality, when the law acts differently from what

it has promised, a counter-hegemonic claim comes to the fore questioning and challenging the law on the basis of the discrepancy of what is promised and what has been done.

Accordingly, law as the dominant hegemon must strategically appear as just, for part of its legitimacy owes itself to the magnificent portrayal of benevolence of universality, of impartiality, and being objective. Lord Hewart, the Lord Chief Justice of England in 1924, so aptly maintained on this point: “Justice must not only be done, but must be seen to be done”. The enigmatic play of benevolent appearance and the violent reality, the scenic picture or the mask and what stands behind it, is essential not only in securing the consent of the ruled, but also significant in the perpetuation of the law as the dominant hegemon; needless to add, the simultaneous formation of the juridical counter-hegemonic contestations in some circumstances respectively. Given that *we*, the moderns, in popular understanding, have perceived the law as a *truth* claim, as a remedial source that can respond to social conflicts and wrong-doings, as a mechanism of social control and so on, we have been engulfed not only by such a juridical sphere, but also by such a human figure, the sovereign. Thus, the ever-present possibility that the sovereign decides on the exception in the name of security, should not be forgotten. In the following passages, we can see how since 9/11, there has been a continuous renewal of states of exception in the US in the context of the war on terror, despite the change of presidency<sup>28</sup>. It is interesting to see that these *benevolent* sentiments of sovereigns in the US in the name of security, democracy and so on have

---

<sup>28</sup> The US declaration on September 14, 2002 of “national emergency with respect to certain terrorist attacks,” pursuant with section 202 (d) of the *National Emergency Act*, 50 U.S. C. 1622 (d), “provides for the automatic termination of a national emergency unless, prior to the anniversary date of its declaration, the President publishes in the Federal Register and transmits to the Congress a notice stating that the emergency is to continue in effect beyond the anniversary date” (The White House, September 12, 2002). Since the 9/11 attacks and President George W. Bush’s declaration of the state of emergency in regard “to certain terrorist attacks,” the subsequent Presidents, including President Barack Obama, President Donald Trump and President Joseph Biden Jr. have annually continued the renewal of the national emergency provisions.

simultaneously accompanied by the proliferation of fear, hatred and contempt of *the other*, transmuting the dominant hegemony of the law into sheer force. To articulate it differently, if law is the dominant hegemon, the state of exception, which is related to the juridical sphere, provides such authority to the sovereign who not only decides what are the exceptions, and transmutes the law into sheer force in *exceptional* circumstances according to which the state of exception becomes the rule in Walter Benjamin's apt elucidation.

In *Political Theology: Four Chapters on the Concept of Sovereignty* (1985) Carl Schmitt, the German jurist, political theorist and later on a prominent member of Nazi party at least for a few years, commences his text by maintaining that, "Sovereign is he who decides on the exception" (Schmitt, 1985, p. 5). Schmitt argues that no exception can be codified in a legal order given that the nature of exception evades any normative framework due to the very nature of exception itself that in many circumstances politically charged. Moreover, Schmitt explicates that:

... every legal order is based on a decision, and also the concept of the legal order, which is applied as something self-evident, contains within it the contrast of the two distinct elements of the juristic – norm and the decision. Like every other order, the legal order rests on a decision and not a norm (Schmitt, 1985, p. 10).

For Schmitt there is no legal order which can conceal its source of origin in a decision. Moreover, Schmitt is well aware that at the time of crisis, it is the sovereign's decision not a legal norm which can maintain order, peace and stability. In holding such a perspective, Schmitt stands against such legal philosophers, as Hans Kelson, the Austrian jurist, as well as his precursor, the Dutch jurist, Hugo Krabbe, who were committed to a normative and positivistic approach to legality or pure law. Kelson had argued that, "Ideals of justice must be a matter of political science. A pure theory of law must be uncontaminated by politics, ethics, sociology, history" (Schwab, 1970, p. 48).

Moreover, if Kelson had conveyed “that all personal elements must be eliminated from the concept of the state (Schmitt, 1985, p. 29); Krabbe, as Schmitt points out, had articulated that, “[t]he modern idea of the state ... replaces personal force (of the king, of authorities) with spiritual power. “We no longer live under the authority of persons, be they natural or artificial (legal) person, but under the rule of laws””, Schmitt quotes Krabbe (1985, p. 22). In other words, and contrary to Schmitt’s idea and his insistence on the primacy of decision over legal norm, in particular in a state of exception, Kelson’s as well as his forerunner, Krabbe’s views originated from a legal positivist approach that was after the curtailment of the personal and its lingering subjectivity in order to promote the rule of laws in their *pure* and *objective* spirit.

Despite his opponents’ views, Schmitt concluded that, “What matters for the reality of legal life is who decides” (1985, p. 35). To Schmitt, the sovereign, who decides on the exception and whose decision resonates with the theological monism, is capable of miracles at the time of crisis or exceptional circumstances. Yet, both schools of thoughts, the legal positivists who insisted on the pure theory of law and Schmitt and his followers, who insisted on decisionism as well as the power of sovereign to decide on the exception suffer the same engulfed and reductionist logic. If the former insists on the *purity* of legal norm far away from historical, political, cultural, economic, ethical, or the spatiotemporal factors and their influences on the law which resonates with a mythical perception of the law rather than the reality of the law, leaving no place for the possibility of exceptional circumstances, the latter as Schwab maintains, is ignorant of the role of sovereign in normal times as well as the legal norms. Perhaps, in normal times the sovereign is “slumbering, and he is suddenly awakened at a crucial moment ...” Schwab maintains (1970, p. 50). If Schmitt’s faith in *pure* decisionism leads into sheer violence as we can see in the following

passages and equivocally flawed in terms of its logic and it is in contradiction with Schmitt's views on man as a dangerous being, Kelson's and Krabbe's views, and their insistence on their *pure* approach to law, is structurally defective and logically impossible. If man is dangerous as Schmitt maintains, how can he invest his faith in the sovereign, who can go astray much easily with such an unbridled power than a constitutional legal framework that is based on the division of powers and congressional inputs that can inhabit the sovereign from arbitrary rules derived from his potential dictatorial propensities? It seems as if Schmitt, despite his pessimism on the nature of the man, has an absolute confidence on the nature of authority in general and the sovereign in particular. To me, this is a major problem in Schmitt's approach to the issue of authority as well as his presidential/presidential decisionism vis-à-vis man's nature. To Kelson and Krabbe, who were greatly influenced by Kant and his rejection of exceptional circumstances and his rigid belief in a system that applies equally everywhere, one can suggest that that there is no way to see law in a vacuum. After all, as positivists who consider laws as human beings' creations, how can they ignore that human beings' values, their power interests and more importantly the whole process of lawmaking is about deliberation, contestation and interests? Moreover, how can a *pure* approach to law ignores this human figure, who is there to implement the law? And upon disputes/contestations who is there to interpret, decide and sit on the seat of judgement and make legal decisions?

Schmitt's plea for the expansion of the presidential power or the sovereign was originated from his efforts to save the Weimar Republic from collapse. Given that Schmitt was in a time when the extreme clashes of various political parties, in particular between the extreme left and the extreme right were not getting anywhere but aggravating the political and social unrest and

when the German liberal parliamentary system as well as the Weimar state were not strong enough to bring order (because of a heightened sense of political participation which can be interpreted as a true democracy in action, but unable to function effectively), and with the economic depression of interworld wars and the social and political pressures for stability, Schmitt invested his faith on traditional authority, that in a Weberian classification is one of the tripartite of authority<sup>29</sup> whose focus is on authoritarian order. Schmitt, whose Catholic faith had a role in his political and intellectual views not only considered man as evil,<sup>30</sup> but also was inspired by the Catholic church's organizational doctrine of centrality. Rather than upholding the 'genial' I,<sup>31</sup> Schmitt invested his intellectual energy in advocating for a strong state. Moreover, Schmitt was neither of the belief that all people could participate in all aspects of decision making, nor was he optimistic in the educability of the people, as Schwab points out (1970, p. 26). Schmitt's only hope was to create a

---

<sup>29</sup> Please refer to Tony Waters' and Dagmar Waters' *Weber's Rationalism and the Modern Society: New Translations on Politics, Bureaucracy, and Social Stratification* (2015), where in pages 137-138 of the text, Weber speaks about three major types of authority: traditional authority, charismatic authority and rational legal authority.

<sup>30</sup> Schmitt's reference to evil was not meant in a moral sense, but rather in perceiving man in terms of being dangerous as opposed to being undangerous/good.

<sup>31</sup> Please see Carl Schmitt's *The Concept of the Political*, written in 1932 (1996). The text is complementary to his earlier text, *Political Theology: Four Chapters on the Concept of Sovereignty* written in 1922 (1985) which is a strong critique of liberalism. To Schmitt, "the political is the authoritative." Unlike liberalism, Schmitt argues that the concept of the political is the core base of the state, which demands that individuals sacrifice themselves for the well-being of the state. The political is not about being moral, or having anything to do with the aesthetic or the economic. Rather, the political secures the life of the ruled which is the objective of the state. However, to Schmitt, liberalism has failed. It negated the political, which for Schmitt revolves around the differentiation between friend and enemy, and enemy is always the public figure, who undermines the unity that is needed for the creation and maintenance of a strong state. As Leo Strauss maintains, Schmitt was of the belief that, "Liberalism negated the political; yet liberalism has not thereby eliminated the political from the face of the earth but only has hidden it" (Schmitt 1996: 84). Schmitt's criticism on bourgeois/liberal politics is that it rests on compromise and considers politics as a process. So, liberalism's solutions are temporary, occasional, and never decisive as, Tracy B. Strong refers to Schmitt in the Forward (xv). Moreover, Schmitt saw in the bourgeois/liberal universalism/humanity a duality, a mask, whose surface is about universality, humanity, while its predispositions speak of a different reality. For example, instead of respecting the enemy, as a totality against another totality, liberalism "degrades the enemy into moral and other categories and is forced to make of him a monster that must not only be defeated but utterly destroyed," Schmitt maintains (1996: 36).

total state that could end all these political, economic and social frenzies of his time. Like Hegel as for Schmitt the state was a sphere of objective reason, so it was superior to all other human associations. According George Schwab states that:

Hegel's belief that the state is a sphere of objective reason and as such an entity superior to all other human associations is shared by Schmitt. In Schmitt as well as in Hegel civil society exists, but in both it constitutes only one moment in the state's structure. The difference between Hegel and Schmitt, however, that to the former the state was a means to realization of the highest form of existence, while Schmitt was mainly concerned with rescuing the German state of his time from the encroachments of civil society, and consequently also maintaining it as a powerful entity in the international relations. Schmitt may be classified as a Neo-Hegelian in so far as he believed that the Weimar state – and particularly, the president, the officialdom, and the *Reichswehr* [the German Armed forces from 1919-1935] – constituted a sphere of objective reason in comparison with the egoism of pluralist groups (1970, p. 28).

Schmitt's main discontentment, therefore, was toward liberalism whose core values revolved individuals whose various alliances/divided loyalties could have dire effects on the German national unity and the state. Yet, Schmitt had pointed out that only strong states could be liberal, for the weak states were prey to individualist tendencies undermining national unity. "By implication, therefore, weak states must be authoritarian to be able to distinguish friend from enemy and assure domestic order", Schwab draws on Schmitt (1970, p. 57).

Schmitt's political as well as his legal stance not only stood in a direct opposition to Harold Laski's pluralism, and John Lock's individualism, asserting to subjugate the sovereign power to legal limitation, but also to Montesquieu's prescription for the separation of constitutional, executive and judiciary powers. In line with Thomas Hobbes and his precursor, Jean Bodine, Schmitt's sovereign was equipped with two fundamental complementary powers, one of which was potestas/the power of coercion and the other was auctoritas/authority itself. In other words,

force was the basis of and the most potent element at sovereign's disposal, in particular at the time of crises/or exceptional circumstances. Consumed with this thinking, Schmitt invested his hope on Article 48 of the Weimar Constitution (1919-1933) which granted such power to the President of Germany to act as "the guardian of constitution". Though Schmitt supported this firmly, he later acknowledged in 1925 that, "no constitution on earth had so easily legalized a coup d'état as did the Weimar Constitution" (Agamben 2005, p. 15). It did not take long that Schmitt's hope for the Weimar Republic to turn into a nightmare for millions within and well beyond Germany when Hitler legally came to power and "from a juridical perspective, the entire Third Reich can be considered a state of exception that lasted twelve years", Agamben points out (2005, p. 2).

Article 48 of the Weimar Constitution, therefore, had authorized the President to decide, "If security and public order are seriously ...disturbed or threatened in the German Reich, the president of Reich may take the measure necessary to reestablish security and public order, with the help of armed forces if required" (Agamben, 2005, p. 14) The heads of the state, the German sovereign, consequently could suspend fundamental individual rights in Articles 114 ( the right of habeas corpus),115 (the right to privacy of home), 117 (the right to privacy of correspondence), 118 (the right to freedom of opinion and expression), 123 (the right to assembly),124 ( the right to form clubs, or societies without regards to political, socioeconomic or religious goals and the right to property). These articles were protective of fundamental individual rights and community. Needless to add that Article 153 prohibited the expropriation of property, unless for the public welfare or under the basis of the law. What is important to note is that although Article 48 had specified that there would be laws which would provide details and limitation to the Article 48,

Germans never saw such laws/provision that could have put restrictions on the sovereign and his executive body in this regard.

However, in the *State of Exception* (2005) a treatise, the Italian political philosopher, Giorgio Agamben takes a wide-ranging approach to the state of exception that conflates a number of different philosophical, political, historical, juridical and anthropological approaches to offer an overview about the state of exception. To Agamben as he maintains,

The state of exception is not a dictatorship (whether constitutional or unconstitutional, commissarial or sovereign) but a space devoid of law, a zone of anomie in which all legal determination – and above all the very distinction between public and private – are deactivated. Thus, all those theories that seek to annex the state of exception immediately to the law are false, and so too are both the theory of necessity as the originary source of law and the theory that sees the state of exception as the exercise of a state's right to its own defense or as restoration of an originary pleromatic state of the state of law ("full powers"). But fallacious too are those theories, like Schmitt's that seek to inscribe the state of exception indirectly within a juridical context by grounding it in the division between norms of law and norms of realization of law, between constitutional power and constituted power, between norm and decision. The state of necessity is not a state of "the state of law", but a space without law (even though it is not a state of nature, but presents itself as the anomie that results from the suspension of law (Agamben, 2005, pp. 50-51).

Agamben's view on the state of exception differs from Carl Schmitt, who annexes the state of exception indirectly to the juridical sphere and from Walter Benjamin, who considers it as a revolutionary prospect outside the juridical realm, beyond the law. In other words, Benjamin has no faith in the bourgeois and liberal juridical sphere, so any exception or redemption cannot be accomplished within such a system; rather he invests his hope on revolutionary forces to bring substitutional changes, or what he calls, *the real state of exception*. Thus, Benjamin's statement that indicates that the state of emergency has become the rule, in fact, refers to what Agamben

identify as a “willed” state of exception or fictitious state of exception that has become the modern paradigm of government in Western liberal democracies.

Although Agamben provides his readers with a genealogical overview and embarks on a journey to the Roman antiquity, traversing between the past and the present to not only speak about the state of exception in general, but also how it has been historically applied under exceptional circumstances such as wars, civil unrests, danger to the governing body etc., Agamben does not differentiate between the state of emergency and the state of exception in his text. It is this lack of clarity in this regard that one can suggest that Agamben’s approach to the state of exception, and not the state of emergency/necessity which is technically different from the state of exception, leads him to consider such a state as devoid of law, *betwixt and between*, the liminal period in rites of passage. I will attend to this concept shortly. Perhaps, once again, a look into George Schwab’s *The Challenge of the Exception* is helpful to see how such a differentiation changes the meaning as well as the pronounced political nature of the state of exception as Agamben himself is well-aware of; yet does not relate it to the law. However, in the Preface to his text, Schwab points out that,

For the purpose of this study a state of exception may be a temporarily called, in a broad sense, any type of severe economic or political disturbance that requires the application of extraordinary measures, and for which constitution makes provisions. Legally it usually means the temporary, partial or total suspension of ordinary and constitutional laws by the president to restore order. The state of exception in a specific sense presupposes a constitutional order, while the state of emergency is a general category without specific reference to an existing order, because *necessitas non habet legeme* [necessity knows no law} (1970, p. 7).

Such a significant differentiation in fact not only points to the state of exception’s transient nature which is time-bound and not meant to become a permanent state or a paradigm of government, but

also presupposes a constitutional order that by naming it “the state of exception” speaks of the existence of a juridical framework that has authority over such a state; while the state of emergency, as Schwab maintains, does not fall under a specific order; rather it is applicable in general circumstances. The question that arises is this, how can the state of exception can be reduced to a state of suspension and detached from the law where the law recedes, but its force stays in full force?

Unlike Agamben, Schmitt’s pursuit is to take the mask off from the liberal and pure approach to law and exposes the indirect relationship between the law and the state of exception, which is politically charged, which Agamben himself identifies as the modern paradigm of government in liberal democracies, but absolves the law by considering the state of exception as a space of liminality, devoid of law. In doing so, through the anthropological application of the rite of passage, as was first identified by van Gennep and later was developed and applied by Victor Turner in his ethnographies, Agamben locates the state of exception neither in the juridical sphere, as Schmitt considers, nor locates it outside of the law as Benjamin maintains. Rather he sees it through an anthropological lens’ of the rites of passage as neither this nor that ... betwixt and between, a stage of liminality between the legal norm and political decision. It is in such a stage of exception, as Agamben argues, that a zone of indistinction points neither to the law nor to the exception, but to an anomic zone, a non-state of differentiation. In other words, in such a state, the law recedes, but the force of law stays in full force. In doing so, one can argue that what makes the state of exception is so significant and powerful is its relation with the juridical sphere, where it derives its authority and its monopoly on coercion, although *illegitimate* and unethical, but legal. Needless to emphasis that it is the law, hegemony, that authorizes and consolidates the power of

the sovereign to transmute the law into sheer force, the interplay of *auctoritas* and *potestas* in the first place. In short, Agamben by separating the law from its force, ignores the reality of the law and its hegemonic disposition that makes it what it is ... a force of authority derived from the social body and the body politic without which there can be neither law, nor the state of exception that, like bolts of Titans, can set the world on fire metaphorically speaking.

Perhaps it is better now to look into the *exceptional* measures that were taken after 9/11 in the US because of the war on terror and the subsequent and continuous renewal of a state of exception that is still in place at the time of this study. In *The Terror Presidency: Law and Judgement Inside the Bush Administration* (2007), Jack Goldsmith, the Head of the Office of Legal Counsel to President (OLC), from October 2003 until his resignation in June 2004, points to the President Bush's inattention to soft factors of legitimation, one of which was to follow the rule of law both at the national and international levels, and the other, which was the public deliberation. Instead of relying on the two aforementioned soft factors of legitimation, President Bush's emphasis, as Goldsmith maintains, fell on the presidential prerogative with a limited regard for the public deliberation about constitutional issues within the nation and international principles/laws and values vis-a-vis his war on terror. Being pursued by his aggressive supporters, including Vice-President Richard Bruce (Dick) Cheney, David Speers Addington, the legal counsel and chief of staff to Dick Cheney, Donald Rumsfeld, the Secretary of Defense and Alberto Gonzales, the Attorney General, President Bush pushed for aggressive policies including measures taken in GTMO through the expansion of the presidential power.

Yet, Goldsmith was not an opponent to the President Bush in general. Rather he was critical of the expansion of the presidential power and the subsequent violence that ensued in particular. Accordingly, he points to the normalcy of the state of emergency (the state of exception) within the juridical and the political landscape of the US at the time of national crisis. Referring to Abraham Lincoln as well as well Franklin D. Roosevelt, Goldsmith explicates that at the time of crises, the efforts of these presidents were not on the expansion of the presidential power; rather they were on public deliberation and political consultations with the Congress. As a legal expert, Goldsmith informed Alberto Gonzales, the United States Attorney General, and David Addington, the Chief of Staff to the Vice President, Dick Cheney, both of whom were the strong proponents of the expansion of the presidential power on the war on terror. While Goldsmith brought to the attention of these administrative figures that even if the President had such a power to break the law at the time of crisis in order to save the nation, it was wise that the President, “who disregards the law should do so publicly, throwing himself on the mercy of Congress and the people so that they could decide whether the emergency was severe enough to warrant extralegal action” (2007, p. 81). Subsequently, he states that,

I was not urging the President to break the law ... I was simply letting his legal advisors know that there were honorable precedents, going back to the founding of the nation, of defying legal restrictions in time of crisis. “A strict observance of the written laws is doubtless *one* of the high virtues of a good citizen, but it is not *the highest*”, Thomas Jefferson wrote to a friend in 1810. “The laws of necessity of self-preservation, of saving our country when in danger, are of the higher obligation. To lose our country by scrupulous adherence to written law, would be to lose the law itself, with life, liberty, property and all those who are enjoying them with us; thus absurdly sacrificing the end to the means”, Goldsmith quotes Thomas Jefferson (2007, p. 80).

Goldsmith criticisms are several including how President Bush considered the response to the 9/11 terrorist attacks as the war on terror. Not only the President was criticized at home, but also

abroad. “The conflict with al Qaeda and other Islamist terrorist groups ... does not qualify as a “real war”, rather ...in a metaphorical sense, [is]akin to war on drugs, on crime ...Goldsmith maintains. Drawing on Yale Law Professor, Bruce Akerman, he quotes him who states, ““The wars with Afghanistan and Iraq were wars; the struggle against Osama bin Laden and al Qaeda is not”” (Goldsmith, 2007, p. 103). As Akerman points out, terrorism is a technique and, ““Once we allow ourselves to declare war on a technique, we open up a dangerous path, authorizing the president to lash out at amorphous threats without the need to define them””(ibid). Accordingly, the war on terror appears as an endless conflict and can be lashed out anywhere and against anyone, any group and ...it is at the disposal of the president/sovereign’s whim.

Although the war on terror, as was already mentioned, has not been a real war, it has had real and violent implications, one of which was Memorandum Regarding Military Interrogation of Alien Unlawful Combatants Held Outside the United States known as “torture memos” of August 1, 2002 drafted by John Yoo, then Deputy Assistant Attorney General and signed by Goldsmith’s predecessor, Jay Bybee, the head of OLC at the United States Department of Justice. Part I, Article 1 of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, an international law, bans torture and makes it a crime punishable by death, signed in 1988 and ratified in 1994 by the United States, has defined torture as an “act by which severe pain and suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession...”. Moreover, Article 2 of the Convention against Torture states that:

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.
3. An order from a superior office or a public authority may not be invoked as a justification of torture.

Unlike, the Convention, “the torture memos” was a “one-sided” legal document deeply flawed as Goldsmith brings into the attention of his superiors in the Department of Justice.

Although Goldsmith withdrew the torture memos while he was the head of OLC, it was being reinstated after his resignation from his position later on. Given that in retrospective, the Congress had defined the prohibition on torture narrowly by only banning the most extreme acts which entailed many loopholes, and given that Yoo had identified torture with acts that cause the amount of pain “associated with a sufficiently serious physical condition or injury such as death, organ failure, or serious impairment of body function”; as Goldsmith concludes, “[a]ny action that fell of these extreme conditions could not, in OLC’s view, be torture” (2007, p. 144). Such a conclusion was derived from faulty reasons, although as Goldsmith reminds us, the lawyers’ role at the OLC, in particular during the terror presidency, was to expand the presidential power at the expense of national and international laws. Accordingly, the OLC had argued that even if torture had been committed, they could still avoid criminalization by “invoking a necessity defense”, preventing catastrophic harms against the US. Thus, one of the pronounced emphases of Yoo and his superiors was that the “torture law violated the President’s constitutional commander-in-chief powers ... “from gaining the intelligence he believes necessary to prevent attacks upon the United States”” (ibid).

In criticizing the torture memos for its flawed reasons and its one-sidedness, Goldsmith not only brings into our attention that it prevented Congress from being able to control the President, overriding congressional power, but also hindered the separation of powers and judicial prerogatives. Yet, Goldsmith unabashedly criticizes the Bush administration, though with an exemplary caution of an insider and patriot who has a great respect for American legal principles and international law. In other words, his core argument, although has a critical bite, enjoys a strategic deliberation on what had happened during President George W. Bush and the war on terror, can be heard here, while remaining loyal to the overall governing system. Goldsmith, thus, maintains:

How could this have happened? How could OLC have written opinions that, when revealed to the world weeks after the Abu Gharib scandal broke, made it seem as though the administration was giving official sanction to torture, and brought such dishonor on the United States, the Bush administration, the Department of Justice, and the CIA? How could its opinions reflect such bad judgement, be so poorly reasoned, and have such terrible one? ... The main explanation is fear [of a new attack]. Fear explains why OLC pushed the envelope. And in pushing the envelope, OLC took shortcuts in its opinion-writing procedure. (2007, pp.165-66).

As Goldsmith explicates further, “Public judgments about the legality of presidential actions are colored by public perceptions of the stakes. When a nation is unambiguously at war and believes its future is at risk, practices that would have seemed wrong in peacetime are viewed as necessary and thus legitimate” (2007, p. 115). Although Goldsmith tries to justify President Bush and his supporters in his final analysis and points to how fear was a significant factor behind OLC legal opinions, he simultaneously points to the President Bush and his supporters for the expansion of the presidential power and unilateralism on the war on terror instead of relying on public deliberation and consulting with the Congress in the first place being in line with many laws

including the US law of war and the international law of armed conflict, international humanitarian law as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Perhaps the most chilling and notorious space, GTMO, can attest to Goldsmith's concern about the assault on the rule of law by the expansion of the presidential power on the war on terror by President Bush and his hawkish supporters. Thus, although President Bush, Vice President Cheney, and many other aggressive men in the President Bush administration were insistent on the expansion of presidential powers and wanted to leave presidency "stronger than they found it. ... they seemed to have achieved the opposite" (Goldsmith, 2007, p. 140). The Bush's Presidency, therefore, instead of relying on the rule of law both at the national and international levels, not only spread fear, suspicion and mistrust of *the other* in the American social body and the body politic, but also relied on the haphazard and arbitrary *de facto* rules in that state of exception that led to a continuous renewal of the state of exception ever since.

Goldsmith does not delve deep into the historical/social/political/economic context of the law and the state of exception. Perhaps, *The agon of war* (2012) is a case in point, where Claudio Colaguori sheds light onto the interconnection of the agon culture with hyper-masculinity and violence, solidified and justified by the force of the state and its law. The agon as Colaguori defines "is literally the arena of competition", or in other words the mentality of power-making through a zero-sum game mentality. Through this perspective the sovereign justifies his/her monopoly on violence, and reifies such forces through opening of spaces of confinement, exclusion and extermination, to name just a few. As Colaguori brings into our attention the anthropological origin of the state through Marvin Harris's ethnographic data, we can see how such spaces of

confinement, of exclusion, and extermination are parts of the fundamental features of “the state society”. Colaguori, thus, quotes Harris who explicates that:

For the first time there appeared on earth kings, dictators, high priests, emperors, prime ministers, presidents, governors, mayors, generals, admirals, police chiefs, judges, lawyers, and jailers, along with dungeons, jails, penitentiaries, and concentration camps. Under the tutelage of the state, human being learned for the first time how to bow, grovel, kneel and kowtow. In many ways the rise of the state was the descent of the world from freedom to slavery (Colaguori, 2012, p. 111).

Colaguori’s approach to agon culture, therefore, sheds light onto the spatial interdependence of domination with the masculine violence, the state, its laws/ policies as well as the demise of freedom and the appearance of servitude in the world. Needless to add that exclusionary spaces have been the salient part of the state society with its force of law, but also part of the confinement of the racial/ethnic “other” to such spaces as concentration camps, part of the legacy of the colonial/imperial<sup>32</sup> enterprises from the past into present.

---

<sup>32</sup> Please see Iain R. Smith’s and Andrew Stucki’s article, *The Colonial Development of Concentration Camps (1868-1902)*, in *The Journal of Imperial and Commonwealth History* (2011, September). Through a comparative study of three concentration camps in particular in Cuba (1868-98), the Philippines (1899-1902) and South Africa (1900-2), one can see the appearance of concentration camps in the colonial/imperial enterprise at the turn of the 19<sup>th</sup> and 20<sup>th</sup> centuries. Through a comparative approach and looking into these civilians’ concentration camps, which were created as antiguerrilla warfare, preventing the civilians’ help against colonial/imperial power, Smith and Stucki argue that despite racist discourses and practices of other-making, which usually were concealed by the rhetoric of the “civilizing mission,” the creation of such camps was predominately for the military purpose. Yet, they note that “It was in the context of the British camps in South Africa (1900-2) that the term “concentration” camp was first put into general currency in English” (2011, September, p. 417). However, despite racism as well as the high mortality in the civilians’ camps due to hunger, disease and many other ill factors, Smith and Stucki conclude that, “We argue that none of these have much in common – either in purpose or in organization – with the Nazi camps in Germany (from 1933) or in occupied Europe (1939-45)” (Smith and Stucki, 2011, p. 417).

In *Servitude of the certitude in the 9/11 hauntology: A case study of (in)securities in cyber “security,”* Livy Visano (2013) by conflating a critical Marxist ideological argument with a Foucauldian governmentality in mind, at the outset maintains that, “Critical awareness is not bound by a servitude to certitude nor by a carceral culture of fear and entreating escape” (Colaguori, 2013, p. 309). Commencing his argument with such a statement, Visano invites us to walk with him and to embark on a strategic move towards a consciousness that is not engulfed with the myth of certainty beyond which there is no path to freedom, but to submit to an impasse, to the bondage of servitude. Visano’s foci on this text is several, but I only attend to his overall argument in regard to the effects of the capitalist base and its effects on bourgeois culture where ideologies set the foundation for the laws and through proliferation of fear in the social body, Foucauldian biopower channels towards Mbembe’s necropolitics. As Visano explicates, post-9/11 is marked by the prevalence of fear as a mechanism of persuasive submission that implicates the ruled into the US and its allies war on terror. It is no wonder that, in such condition that breathes paranoia, many laws are enacted such as the US Patriot Act, the US Home Security Act as well as the *Anti-Terrorism Act* in Canada in 2001. As Visano maintains, the latter Act, which was amended in 2007, “has little to do with ‘fighting terrorism’ ...but is really about extending the power of the state to assist its effort in criminalizing dissent and furthering the agenda of capitalist globalization” (Colaguori, 2013, p. 320). Visano, then points out that, the freedom of the individual, which is the core value of liberal democracies, “is one of the first casualties of war on terror” (325).

If Foucault saw in biopower the force of modernity in creating docile bodies to respond to the needs of the state in general, and the economic system in particular, at the surface of which

care for a population appeared as the forefront of the modern biopolitics, it is Achille Mbembe (2019) who goes further than Foucault by showing the direct relationship between biopolitics and necropolitics. In other words, where Foucault left off, Mbembe resumes and shows us that late modernity is fraught with the fear of death, which not only promotes helplessness, but robs individuals of the feelings of being alive. In other words, the biopolitics of modernity has shifted/reverted towards the necropolitics of late modernity reinforcing the colonial/imperial past into present. Mbembe therefore maintains that:

Almost everywhere the law of blood, the law of talion, and the duty to one's race – the two supplements of atavistic nationalism – are resurfacing. The hitherto more or less hidden violence of democracies is rising to the surface, producing a lethal circle that grips the imagination and is increasingly difficult to escape. Nearly everywhere the political order is reconstituting itself as a form of organization for death. Little by little, a terror that is molecular on essence and allegedly defensive is seeking legitimation by blurring the relations between violence, murder, and the law, faith, commandment, and obedience, the norm and the exception, even freedom, tracking and security (2019, p.7).

In short, the post 9/11 political climate in the juridical realm has reverberated the old story of racism, of “bending the mind and breaking the body.” Needless to add that the sovereign of biopower has demasked himself and is showing his true face. Since 9/11, the sovereign has “secured” the consent of the ruled by spreading fear and terror in the social body, the body politic permeating body of individuals. The universal promise of the law to “objectivity” and “impartiality,” thus, have been shattered by the necropolitics of post 9/11 that turns living and enabled bodies of “the other” into living dead and regenerates the old story of colonialism/imperialism of other-making, of racism, of spatialization of emotions and engulfed apathy anew under the rule of law and the sovereign's decision to make an exception. In short, as

Visano draws on Foucault, it ““would be hypocritical or naïve to believe that the law was made for all in the name of all ...”” (Colaguori, 2013, p. 320).

In this Chapter, entitled, Understanding the law and the state of exception, after Dorian unabashedly appeared with his ‘calm’ demeanor speaking of universality, objectivity and impartiality, I challenged his ‘truth’ claim by referring to Antonio Gramsci’s concept of hegemony. If law is hegemony, as I have argued, the state of exception has been the transmutation of law into sheer force in ‘exceptional’ states which have become the rule, and part of the modern paradigm of government as Walter Benjamin and Agamben maintain. The declaration of a state of exception by the US in September 14, 2001 because of the terrorist attacks on the World Trade Center in New York, and the Pentagon in Washington, opened Pandora’s box. The US has renewed the state of exception on its war on terror ever since, despite the change of presidency, and has acted arbitrarily by opening spaces of exception like GTMO. GTMO is the epitome of engulfed apathy, and also a violent space in the business of barbarity where in the name of security, the US has stood against American democratic principles of liberty and equality under the rule of law. This Chapter presented opposing theoretical perspectives to analyze law and the state of exception in regard to 9/11, the US war on terror and the violence that ensued subsequently against “the other” in the name of ‘truth,’ ‘reason,’ ‘security’ and ‘democracy.’ This Chapter concludes with pointing to the agonal culture of conflicts and antagonism. Instead of attending to systemic crises at the national and international levels, the US war on terror has sent freedom to the sacrificial altar to ‘secure’ the US global domination and its greedy market, and has enacted laws and policies that speak of state terrorism/criminality.

## Conclusion

### A conclusion to a postscript

Every story, as we are told has a beginning and an end, though there is no certainty about how it started and whether one can claim that there is an end, so is *The Picture of Dorian Gray*. For years, Dorian had escaped the consequences of his vices as he appeared/disappeared in the world, drowned in engulfed apathy and world alienation. It was the path that he had taken, seduced by Lord Henry Wotton, a cultural hegemonic force, and an artist, Basil Hallward, who evoked his sense of exceptionalism by drawing his beauty on the canvas. As the picture was complete and began its *independent* life, it was Dorian who wished that he could give his soul in return of staying beautiful and ageless. ““If it were I who was to be always young, and the picture that was to grow old! For that – for that – I would give everything! Yes, there is nothing in the whole world that I would not give! I would give my soul for that””, Dorian said without any hesitation (Wilde, 1985, p. 31)!

The fulfillment of Dorian’s wish, not only brought miseries and destruction to the existence of others who were enchanted by his lovely appearance, but also led to Dorian’s self-destruction at last. The enigmatic portrait could not be separated from his *master*. Beyond his physical appearance, the omnipresent charm, his civility and his courteous language, there stood the picture, which had registered Dorian’s daily deeds. Frightened by what had been engraved on the canvas, Dorian decided to conceal and confine the portrait in the lonely and unloved room of his childhood. Yet, concealment was also subject to doom. Throughout the years, his monstrous deeds had decayed and ruined his beautiful portrait which now had become his source of agitation and inner

crisis. The picture had gradually been transformed into a dreadful mirror image of Dorian testifying to his apathetic and alienating dispositions. There was a violent urge to destroy the picture, not because it reminded him of what he had done to others for which he was not remorseful, but because the portrait had changed into a heinous being. Dorian could not stand its terrifying presence. There was an urge to share his agitation and his sense of despair with someone. Basil, the artist who had painted his beauty on the canvas, was perhaps the only one with whom the hideous picture could be viewed.

It was as if there were days before, when he was with Lord Henry and playing the piano, that he recalled Hamlet, one of the tragic figures of the Shakespearean masterpiece, while repeating the following verses:

““Like the painting of a sorrow,  
A face without a heart””<sup>33</sup>

There was a new consciousness developing in Dorian. This was not accidental. Years of living and leading a life that signified *power* was in fact a life wrapped in indifference to the well-being of “others”, and now the heinous truth on the canvas was like termites consuming his inner self. Beyond that appearance of civility, that signified security and concern for all, now stood a painting of despair and a face without a heart. Dorian lived with a rationality that left very limited space for others whom he had driven out of his life and relegated to misery. Now, the whole stature of his *being* was about to crumble under the burden of despair. The time had finally arrived for Dorian to confront his monstrous dispositions, to see a man, a face without a heart.

---

<sup>33</sup> Wilde, 1985, p. 235.

It was the need to escape his terrifying picture, and the fear of others, who may find his monstrous picture that forced Dorian to tell Basil to come over and to see what had happened to the beautiful portrait of his youth. Agitated and overcome with a sudden burst of anger and aggravated by Basil's sense of horror and disgust seeing his hideous picture, Dorian stabbed Basil to death. The artist, who had created his beauty on the canvas, was a lifeless creature doomed by his own creation. The next day, Dorian sent a messenger to have a by-gone friend, a chemist come over and help him get rid of the body. Despite Alan Campbell's unwillingness to help, Dorian blackmailed him into destroying the body with his expertise, so that no trace of Basil would be left as if he were vanished from the face of the Earth. Yet, in his inner *self* there was still an ever-present tension that needed to be overcome! That night after appearing in High Society with his ever-charming stature and manner, Dorian arrived home. After his servants resigned to their beds, with a flickering lamp at hand, Dorian ascended to the cold and alienating room where the heinous portrait had added a new disfiguration to itself because of murdering Basil. As he looked the picture over, he could see the traces of blood on his hands and feet. The disfigured face of the portrait disgusted him, and he could not stand it anymore. Suddenly Dorian's eyes were captured by the knife that he had used to take the life of Basil Hallward, the creator of his picture. He reached for the knife and with all his might brought it against his own picture. As his stab reached the portrait, there came a shrill voice followed by a heavy fall. The stab to his picture was in fact a deadly strike to Dorian's own existence. Dorian's servants reached upstairs and found a dead man beneath the beautiful picture of Dorian Gray, their master.

Enigmatically, the picture, that had disappeared years ago, was there once again, standing solidly against the wall and had transformed to its original state of beauty, the beauty that evoked

awe and admiration. Yet, nobody except Dorian and Basil knew the story behind the portrait. Beneath the picture was an old man, wrinkled and lifeless, whom his servants could not recognize. There were rings on his fingers that confirmed who the man was. Dorian Gray was gone and had become a part of the book of history that Lord Henry Wotton had given him to read in his youth. It was that self-fascination engulfed in apathy that had led Dorian to embark on world alienation.

Here I am almost at *the end* of this journey that began with my emotional reflections on the violent events of 9/11 and the subsequent and exceptional measures taken by the US and its allies on the war on terror against “the other”. In search of an understanding as how law and the state of exception have a significant role in creating an existence that thrives on the spatialization of emotion, I embarked on a journey to examine the significant role that the law and the state of exception have in the creation of an existence that thrives on engulfed apathy and world alienation where 15-year Omar Khadr, a Canadian citizen by birth, was captured in the war on terror and sent to Guantanamo Bay Camp (GTMO). The bumpy road to GTMO was entangled with a long history whose *origin* indicated a duality of the superiority of the mind over the body, of reason over emotion, and the superiority of the after world over the Earth. Given that the hegemony of “truth” was at work, though in the dawn of modernity, the truth of the philosopher kings and the sacred God of the ancient regimes, transformed to the genial ‘I,’ the God of “I think, therefore, I am,” started to devour the plurality inherent in the world with a scorching breathe in the name of reason and progress. Extended and perpetuated with full force with a colonial and imperial mentality in mind, the bureaucratic organizations whose ruthlessness was tried and examined on the colonized other lands, overseas, returned to the colonizers’ lands with a totalitarian force. Wrapped in apathy, like many other total institutions of this nature, concentration camps appeared in the world

as the site of human sufferings, and the space of confinement and extermination of bare life, governed by an apathetic disciplinary power under the force of law and the decrees of the sovereign.

Although Dorian Gray is gone, and despite Oscar Wilde's pessimistic views that spoke of doom, he leaves us with the possibility that we can start anew, a hope that in Hannah Arendt's understanding points to natality, speaking of each birth that can open a new path, a path of action to act in concert --- a new way towards an enabling world where reason and emotion are not separated and when acting in concert can create a bulwark against violence and oppression. Arendt's profound views and in particular her belief in the concept of plurality call for political participation by appearing in the world through speech and action, signifying the love of the world, *amor mundi*. Unlike her opponent, Carl Schmitt, Arendt refuses any political category and while she is aware that violence is part of the human condition, she does not reduce politics to the distinction between friend and enemy.

Arendt is a strong advocate of participatory democracy and is aware of the entrenchment of world alienation in the house of modernity that has celebrated the social at the expense of the political leading to such a human condition that a culture of hyper-individualism entangled with insatiable consumerism has saturated the social body, the body politic and the body of the individuals engulfing them in apathy. When emotion and reason appear together in the world, when emotions are no longer reduced to fear and hatred, and love and care for the other are not spatialized within individuals and left in vicinities of homes, or between a few individuals, whose familiarity bring them together, there is a possibility for emotions to create new paths of

interconnectivity in the house of modernity. Given that the *I-thou* relationship whose mainstay is not on law-making and law-preserving violence, rather, it is based on such a wisdom that what “is injurious is injurious itself,” the only hope towards new horizons of possibility is to bring awareness that the first step towards change starts from the self and the care for the other and vice versa.

Let’s look back to the beginning of this text, into Gadamer’s *Truth and Method*, where his apt proposition to *conclude* his text speaks of a simultaneous *ending* and *beginning* which applies to my concluding words as well. “I will stop here. The ongoing dialogue permits no final conclusion. It would be a poor hermeneutist who thought ...[one] could have, or had to have, the last word”.<sup>34</sup>

---

<sup>34</sup> Gadamer’s *Truth and Method*, 2003, p. 579.

## Bibliography

- Agamben, G. (2005). *State of Exception*. (K. Attell, Trans.). Chicago: The University of Chicago Press.
- Agamben, G. (1998). *Homo Sacer: Sovereign Power and Bare Life*. (D. Heller-Roazen, Trans.). Stanford, California: Stanford University Press.
- Ahmed, S. (2016, November 9). Fascism as love. Retrieved from <https://feminiskilljoys.com/2016/11/09/fascism-as-love/>
- Ahmed, S. (2004). *The Cultural Politics of Emotion*. New York: Routledge.
- Aho, J. A. (1994). *The Thing of Darkness: Sociology of the Enemy*. Seattle: University of Washington Press.
- Allison, D. B. (1992). *The New Nietzsche: Contemporary Styles of Interpretation*. (Ed.) Cambridge, England: The MIT Press.
- Amnesty International Canada. (2008, April). United States of America in whose best interests? Retrieved from <http://site.ebrary.com/lib/oculyork/Doc?>
- Amnesty International Unites States of America. (2006, September 29). US Military Commission Act 2006 – Turning bad policy into bad law. Retrieved from <https://www.amnesty.org/en/documents/AMR51/154/2006/en/>
- Appadurai, A. (1996). *Modernity at Large*. Minneapolis: University of Minnesota Press.
- Arendt, H. (2005). *The Promise of Politics*. (J. Kohn Ed.) New York: Schocken Books.
- Arendt, H. (1998). *The Human Condition*. (2<sup>nd</sup> ed.) Chicago, London: The University of Chicago Press.
- Arendt, H. (1994). *Eichmann in Jerusalem: A Report on the Banality of Evil*. New York: Penguin Books.
- Arendt, H. (1991). *On Revolution*. New York: Penguin Classics.

- Arendt, H. (1977). *The Life of the Mind*. San Diego: A Harvest Book (Harcourt).
- Arendt, H. (1976). *The Origins of Totalitarianism*. San Diego: A Harvest Book (Harcourt).
- Arendt, H. (1970). *On Violence*. San Diego: A Harcourt Brace & Company.
- Arsenault, A. (Director). (2015, September). *Omar Khadr: Villain or Victim?* (Video). Toronto: Canadian Broadcasting Corporation.
- Ashoori, D. (1998). (1377 Iranian Calendar). *Mā va Moderniyat: A collection of articles on the cultural crisis of Iranian society facing with modernity*. Tehran, Iran: Sarat.
- Aristotle. (1998). *Politics*. (E. Barker, Trans.). New York: Oxford University Press.
- Atwan, A. B. (2011, May 17). Why bin Laden was radicalized. *CNN*. Retrieved From <https://www.cnn.com/2011/OPINION/05/17/osama.bin.laden.al.qaeda/index.html>
- Frontline*. (1998). Interview Osama Bin Laden. *PBS*. Retrieved from <https://www.pbs.org/wgbh/pages/frontline/shows/binladen/who/interview.html>
- Barrett, S. (1998). *Anthropology: A Student's Guide to Theory and Method*. Toronto, Buffalo, London: University of Toronto Press.
- Barrett, M. (1991). *The Politic of Truth: From Marx to Foucault*. Stanford: Stanford University Press.
- Barsoum Raymond, D. (1991). *Existentialism and the Philosophical Tradition*. Englewood Cliff, New Jersey: Prentice Hall.
- Bataille, G. (1997). The notion of expenditure and the meaning of general economy. (F. Botting & S. Wilson Eds.). *The Bataille Reader*. Oxford: Blackwell.
- Bauman, Z. (2003). *Liquid Love: On the Frailty of Human Bonds*. Cambridge, UK: Polity Press.
- Bauman, Z. (1991). *Modernity and Ambivalence*. Cambridge, UK: Polity Press.
- Bauman, Z. (1989). *Modernity and the Holocaust*. Ithaca, New York:

Cornell University Press.

- Beals, C. (2007). *Levinas and the Wisdom of Love: The Question of Invisibility*. Baylor Waco, Texas: University Press.
- Becker, E. (1975). *Escape from Evil*. New York: The Free Press.
- Bellina, E. & Bonifazio, P. (2006). *State of Exception: Cultural Responses to The Rhetoric of Fear*. New Castle, UK: Cambridge Scholar Press.
- Benjamin, W. (1978). Critique of violence. *Reflections: Essays, Aphorisms, Autobiographical Writings*. (P. Demetz, Ed. & E. Jephcott, Trans.). New York: Schocken Books.
- Benjamin, W. (1968). Theses on the philosophy of history. *Illumination: Essays & Reflection*. (H. Arendt, Ed. & H. Zohn, Trans.). New York: Schocken Books.
- Biswas, Sh. & Nair, S. (2010). *International Relations and States of Exception: Margins, Peripheries, and Excluded Bodies*. (Eds). London: Routledge.
- Blomley, N. K. (1994). *Law, Space, and the Geographies of Power*. New York: The Guilford Press.
- Bolton, M. K. (2008). *U.S. National Security and Foreign Policymaking After 9/11: Present at the Re-creation*. Lanham, USA: Rowman and Littlefield Publishers Inc.
- Boulding, E. (2000). *Cultures of Peace: The Hidden Side of History*. New York: Syracuse University Press.
- Bourke, J. (2011). *What It Means to Be Human: Reflections from 1791 to the Present*. London, UK: Virago Press.
- Bourke, J. (2006). *Fear: A Cultural History*. USA: Shoemaker Hoard.
- Brean, J. (2015, May 8). Omar Khadr, victim and villain: Former Guantanamo Detainee a divisive Canadian symbol. *National Post*. Retrieved from: <https://nationalpost.com/news/canada/omar-khadr-villain-and-victim-former-guantanamo-detainee-a-divisive-canadian-symbol>
- Brecher, B., Halliday, J. & Kolinska, K. (1998). *Nationalism and Racism in*

*the Liberal Order*. (Eds). Aldershot, England: Ashgate.

Butler, J. (2004). Indefinite detention. *Precarious Life: The Power of Mourning and Violence*. London: Verso.

Cancio Melia, Manuel. (2011). Terrorism and criminal law: The dream of prevention, The Nightmare of the rule of law. *New Criminal Law Review*, Vol. I, pp. 108-122.

*CBC News*. (2010, October 25). Khadr to return to Canada: Lawyer. Retrieved from [www.cbc.ca/news/world/khadr-to-return-to-canada-lawyer](http://www.cbc.ca/news/world/khadr-to-return-to-canada-lawyer)

*Center for Constitutional Rights*. (2007, February 20). Boumediene v. Bush /Al Odah v. United States historic case. Retrieved from <https://ccrjustice.org/home/what-we-do/our-cases/boumediene-v-bush-al-odah-v-united-states>

*Center for Constitutional Rights*. (2007, October 17). FAQs: The Military Commission Act. Retrieved from <https://ccrjustice.org/home/get-involved/tools-resources/fact-sheets-and-faqs/faqs-military-commissions-act>

*Center for Constitutional Rights*. Rasul v. Bush historic case. (2002, February). Retrieved from <https://ccrjustice.org/home/what-we-do/our-cases/rasul-v-bush>

Chomsky, N. Rounds Mitchell, P. and Schoeffel, J. (2002). *Understanding Power: The Indispensable Chomsky* (P. R. Mitchel& J. Schoeffel. Eds.). New York: The New Press

Chomsky, N. (2001). *9/11*. New York: Seven Stories Press.

Chowdhury, S. R. (1989). *Rule of Law in a State of Emergency: The Paris Minimum Standards of Human Rights Norms in a State of Emergency*. London: Printer Publishers.

Chung, E. (2010, January 29). Khadr Repatriation Overturned by Top Court. *CBC News*. Retrieved From [www.cbc.ca/news/canada/khadr-repatriation-overturned-by-top-court-1.893059](http://www.cbc.ca/news/canada/khadr-repatriation-overturned-by-top-court-1.893059)

- Clarke, S., Hoggett, P. & Thompson, S. (Eds.). (2006). *Emotion, Politics And Society*. New York: Palgrave Macmillan.
- Cohen, S. (2001). *States of Denial: Knowing about Atrocities and Suffering*. Cambridge: Polity Press.
- Colaguori, C. (2013). *Security, Life, & Death: Governmentality in the Post 9/11 Era*. (Ed.). Whitby, Ontario: de Sitter Publication.
- Colaguori, C. (2012). *Agon Culture: Competition, Conflict and the Problem of Domination*. North York, Ontario: de Sitter Publication.
- Council of Europe Publishing. (2007). *Guantanamo: Violation of Human Rights And International Law?* Strasbourg Cedex: Council of Europe Publishing.
- Damasio, A. (1995). *Descartes' Error: Emotion, Reason, and the Human Brain*. New York: Avon Books.
- Daniel, N. (2009). *Islam and the West: The Making of an Image*. Oxford: Oneworld Publications.
- Davey-Attlee, F. (2015, January 22). Inmate's book exposes horrors of Gitmo. CNN. Retrieved from <https://www.cnn.com/2015/01/21/americas/guantanamo-bay-prisoner-book/index.htm/>
- Davidson, J. (2005). *Emotional Geographies*. England: Ashgate, Aldershot.
- DeLuca, T. (1995). *The Two Faces of Political Apathy*. Philadelphia: Temple University Press.
- Derrida, J. (2002). Force of law: The mystical foundation of authority. *Acts of Religion*. (G Anidjar Ed. & Trans.). London: Routledge.
- Derrida, J. (1997). *The Politics of Friendship*. London: Verso.
- Derrida, J. (1986). Declaration of Independence. *New Political Science*. No.15, pp. 7-15.
- De Sousa, R. (1987). *The Rationality of Emotion*. Cambridge: The MIT Press.
- Diken, B. & Laustsen, C. B. (2005). *The Culture of Exception: Sociology Facing the Camp*. London and New York: Routledge.

- Doucette, K. (2020, February 11). You can't live lightheartedly', Omar Khadr tells child soldiers panel in rare public appearance. *The Canadian Press*. Retrieved from <https://nationalpost.com/news/world/former-guantanamo-bay-detainee-omar-khadr-speaks-in-at-child-soldiers-panel>
- Edelman, M. (1988). Some premises about politics & the construction and uses of political leaders. *Constructing the Political Spectacle*. Chicago: University of Chicago Press.
- Edwards, S. (2010 May, 24). Obama officials pushed, failed to get rules based on International Law in Khadr tribunal. Free Omar: The Official Campaign Website. Retrieved from <https://freeomar.ca/law/obama-officials-pushed-failed-to-get-rules-based-on-international-law-in-khadr-tribunal-2010/>
- Elsa, J. (2007, September 27). *The Military Commission Act of 2006: Analysis of procedural rules and comparison with previous DOD rules and the Uniform Code of Military Justice*. Congressional Research Service. Retrieved from <https://fas.org/sgp/crs/natsec/RL33688.pdf>
- Elster, J. (2009). *Reason and Rationality*. New Jersey: Princeton University Press.
- Esposito, J. L. (2010). *Unholy War: Terror in the Name of Islam*. Riyadh: International Islamic Publishing House.
- Evans, B. (2013). *Liberal Terror*. Cambridge, UK: Polity Press.
- Fairs, J. R. (1968, December). The influence of Plato and Platonism on the development of physical education in Western culture. *Quest*. December 1968, 11 (1), pp. 14-23. Retrieved from [https://journals-scholarsportal-info.ezproxy.library.yorku.ca/pdf/00336297/v11i0001/14\\_tiopapopeiwc.xml](https://journals-scholarsportal-info.ezproxy.library.yorku.ca/pdf/00336297/v11i0001/14_tiopapopeiwc.xml)
- Feyerabend, P. (2010). *Against Method*. New York: Verso.
- Fine, R. (2014). The evolution of the modern revolutionary tradition: a phenomenological reading of Hannah Arendt's on revolution. *Europeans Journal of Cultural and Political Sociology*. 1:3, 216-233, DOI: 10.1080/23254823.214.990244
- Finn, G. (1994). The space-between ethics and politics: Or, more of the same?'. *Who Is This "WE"?: Absence of Community*. Montreal:

Black Rose Books.

- Forgacs, D. (2000). *The Antonio Gramsci Reader: Selected Writings 1916-1935*. New York: New York University Press.
- Forst, R. (2002). *Contexts of Justice: Political Philosophy beyond Liberalism and Communitarianism*. (M. John & M. Farrell. Trans.) Berkeley: University of California Press.
- Forti, S. (2006). The biopolitics of souls: Racism, Nazism, and Plato. *Political Theory*, Vol. 34, No. 1 (2006, February), pp. 9-32. Sage Publications, Inc. Retrieved from <http://www.Jstor.org/stable/20452432>.
- Foucault, M. (2003). *Society Must be Defended: Lectures at the College De France 1975-1976*. (M. Berani & A. Fontana Eds. & D. Macey Trans.). New York: Picador.
- Foucault, M. (1995). Panopticism. *Discipline and Punish: The Birth of the Prison*. New York: Vintage Books.
- Foucault, M. (1990). *The History of Sexuality Volume 1: An Introduction*. New York: Vintage Books.
- Foucault, M. (1978). Governmentality. *The Foucault Effect: Studies in Governmentality*. (1991). (G. Burchell, C. Gordon & P. Miller. Eds.) Chicago: The University of Chicago Press.
- Frazer, M. (2006). The compassion of Zarathustra: Nietzsche on sympathy and strength. *Review of Politics* 68, No. 1 pp. 49-78.
- Friedlander, H. & Milton, S. (1980). *The Holocaust: Ideology, Bureaucracy, and Genocide: The San Jose Papers*. Millwood, New York: Kraus International Publication.
- Gadamer, H. G. (2003). *Truth and Method*. (2nd Revised Ed.). New York: Continuum.
- Gandhi, M. (2001). Notes and Comments: Common article 3 of Geneva conventions, 1949 in the era of international criminal tribunals. ISIL Year Book of International Humanitarian and Refugee Law. Retrieved from <http://www.worldlii.org/int/journals/ISILYBIHRL/2001/11.html>
- Gandhi, L. (1998). *Postcolonial Theory: A critical Introduction*. New York: Columbia University Press.

- Gandhi, M., 1869-1948. (2001). *Non-Violent Resistance (Satyagraha)*. Mineola, NY: Dover Publication.
- Garner, B. A. (1996). *Blacks Law Dictionary*. (3rd Ed.). U.S.A: Thomson/West.
- Georges, F. A. (2009). *The Far Enemy: Why Jihad Went Global*. Cambridge: Cambridge University Press.
- Gibney, A. (Director). Gibney, A., Orner, E., Shipman, S. (Producers). (2007). *Taxi to the Dark Side* [Motion Picture]. United States: THINKFILM.
- Girard, R. (1972). *Violence and the Sacred*. (P. Gregory Ed.). Baltimore: The Johns Hopkins University Press.
- Goffman, E. *Asylums*. (2017). New York: Routledge.
- Goldsmith, J. (2007). *The Terror Presidency: Law and Judgment inside the Bush Administration*. New York: W. W. Norton & Company.
- Gregory, D. (2006). The black flag: Guantanamo Bay and the space of exception. *Geografiska Annaler. Series B, Human Geography* Vol. 88, No. 4 (2006), pp. 405-427.
- Gross, D. M. (2006). *The Secret History of Emotion: From Aristotle's Rhetoric to Modern Brain Science*. Chicago: The University of Chicago Press.
- Grosz, E. (1994). *Volatile Bodies: Toward a Corporeal Feminism*. Bloomington: Indiana University Press.
- Hall, S. (1986). Gramsci relevance for the study of race and ethnicity. *Journal of Communication Inquiry* 10 (2). Retrieved from: [https://journalsscholarsportalinfo.ezproxy.library.yorku.ca/pdf/01968599/v10i0002/5\\_grft\\_sorae.xml](https://journalsscholarsportalinfo.ezproxy.library.yorku.ca/pdf/01968599/v10i0002/5_grft_sorae.xml)
- Harvey, D. (2006). *Spaces of Global Capitalism: Towards a Theory of Uneven Geographical Development*. London: Verso.
- Harvey, D. (2005). *A Brief History of Neoliberalism*. New York: Oxford University Press.

- Haven, C. (2010, October 14). Dalai Lama advocates a secular approach to compassion. *Stanford Report*. Retrieved from <http://news.stanford.edu/news/2010/october/dalai-lama-speaks-101410.html>
- Hayden, P. (2014). *Hannah Arendt Key Concepts*. (Ed.) London: Routledge.
- Hecht, Jamey. (1999). *Plato's Symposium: Eros and the Human Predicament*. New York: Twayne Publishers.
- Henn, M. (2010). *Under the Color of Law: The Bush Administration's Subversion of U.S. Constitutional and International Law in the War on Terror*. Lanham: Lexington Books.
- Hobsbawm, E. (1994). The century: A bird's eye view and the age of total war. *The Age of Extremes: A History of The World, 1914- 1991*. New York: Pantheon Books.
- Holland, J. (2007). *Misogyny: The World's Oldest Prejudice*. With a forward by Jenny Holland. Philadelphia: Running Press.
- Hudson, B. (2006). Beyond white man's justice: Race, gender and justice in late modernity. *Theoretical Criminology*. London: SAGE Publications.
- Human Rights Watch. (2011, July 12). Getting away with torture: The Bush administration and mistreatment of Detainees. Retrieved from <https://www.hrw.org/report/2011/07/12/getting-away-torture/bush-administration-and-mistreatment-detainees>
- Human Rights Watch. (2009, November 18). Retrieved from <https://www.hrw.org/news/2009/11/18/us-ratify-childrens-treaty>
- Human Rights Watch. (2006, September 28). Q & A: Military Commission Act of 2006. Retrieved from <https://www.hrw.org/report/2006/09/28/q-military-commissions-act-2006>
- Huxley, A. (2006). *Brave New World*. New York: Harper Perennial Modern Classics.

Ignatieff, M. (2004). *The Lesser Evil: Political Ethics in an Age of Terror*. Princeton and Oxford: Princeton University Press.

*International Bar Association*. (2008, November). Defining the status and rights of 'war on terror' detainees under domestic and international law. Retrieved from ['war on terror' detainees under domestic and international law](#)

*International Committee of the Red Cross*. (2010, October 29). Prisoners of war and detainees protected under international humanitarian law. Retrieved from <https://www.icrc.org/en/doc/war-and-law/protected-persons/prisoners-war/overview-detainees-protected-persons.htm>

Johns, F. (2005). Guantanamo Bay and the Annihilation of the Exception. *The European Journal of International Law* Vol. 16 no. 4. Pp. 613-635.

Kafka, F. (1979). *The Basic Kafka*. (E. Heller Trans.). New York: Pocket Books.

Khadr to serve no more than 8 years. (2010, October 25). *CBC News*. Retrieved from [www.news.ca.msn/top-stories/cbc-article.aspx?cp-documentid=26078100](http://www.news.ca.msn/top-stories/cbc-article.aspx?cp-documentid=26078100)

Khadr interrogator convicted in prisoner's torture death. (2008, March 14). *The Toronto Star*. Retrieved from <https://www.thestar.com>

Kierkegaard, S. (1962). *Works of Love: Some Christian Reflections in the Form of Discourses*. Howard & Edna Hong (Trans). New York: Harper and Row Publishers Inc.

Kohn, J. (2018, summer). Hannah Arendt: The appearance of estrangement. *Social Research* Vol. 85, Iss. 2: pp. 301-321.

Korte, G. (2017, September 14). A permanent emergency: Trump becomes third President to renew extraordinary post 9/11 power. *USA TODAY*. Retrieved from <https://www.usatoday.com/story/news/politics/2017/09/14/permanent-emergency-trump-becomes-third-president-renew-extraordinary-post-9-11-powers/661966001/>

Lahoud, N. & Johns, A. (Eds.). (2005). *Islam in World Politics*.

London: Routledge.

Lakoff, G. (2006). *Whose Freedom?: The Battle over America's most Important Idea*. New York: Farrar, Straus and Giroux.

Lasch, Ch. (1978). *The Culture of Narcissism: American Life in an Age of Diminishing Expectations*. New York: W.W. Norton & Company Inc.

La Torre, M. (2010). *Law as Institution*. London: Springe.

Lavine, T.Z. (1984). *From Socrates to Sartre: The Philosophic Quest*. New York: Bantam Books.

Lefebvre, H. (1991). *The Production of Space*. Oxford, UK: Blackwell.

Levinas, E. (1996). *Basic Philosophical Writings*. (Peperzak, A. T. Ed.). Bloomington: Indiana University Press.

Linke, U. and Smith, D. T. (Eds). (2009). *Cultures of Fear: A Critical Reader*. London: Pluto Press.

Lipset, S. M. (1997). *American Exceptionalism: A Double-Edged Sword*. New York: W.W. Norton and Company.

Litowitz, D. (2000). Gramsci, hegemony, and the law. Retrieved from <https://legalform.files.wordpress.com/2017/08/litowitz-gramsci-hegemony-and-the-law-2000.pdf>

Litowitz, D. (1997). *Postmodern Philosophy and Law*. Lawrence, Kansas: University Press of Kansas.

Lloyd, G. (1993). *The Man of Reason: "Male and Female" in Western Philosophy*. Minneapolis: University of Minnesota Press.

Locke, M. and Scheper-Hughes, N. (1990). A critical interpretive approach in medical anthropology: Rituals and routines of discipline and dissent. *Medical Anthropology: A Handbook of Theory and Method*. (1990). (Thomas M. Johnson and Carolyn F. Sargent. Eds.). Westport, Connecticut: Greenwood Publishing.

Loewenstem, M. E. (2003). The impartiality paradox. *Yale Law & Policy Review* Vol. 21, No. 2 (Spring, 2003), pp. 501-525.

- Lorde, A. (1984). *Sister Outsiders*. Berkeley: Crossing Press.
- Lutz, C. A. (1988). *Unnatural Emotion: Everyday Sentiments on a Micronesian Atoll and Their Challenge to Western Theory*. Chicago: The University of Chicago Press.
- Lutz, C. A. (1996). Engendered emotion: Gender, power, and the rhetoric of emotional control in American discourse. *The Emotions: Social, Cultural and Biological Dimensions*. (R. Harre & G. Parrott. Eds.). London: SAGE Publications.
- Lutz, C. A. and Abu-Lugod, L. (1990). *Language and the Politics of Emotion*
- Macfarlane, E. (2012, July). The Supreme Court is culpable in the Omar Khadr case: The Harper government is guilty of stonewalling – But that’s largely because the court allowed it. *Macleans*. Retrieved From [www.macleans.ca/general/the-supreme-court-is-culpable-in-the-omar-khadr-case](http://www.macleans.ca/general/the-supreme-court-is-culpable-in-the-omar-khadr-case)
- Machiavelli, Niccolo, (2003). *The Prince*. New York: Penguin Books.
- Macklin, A. (2008, October 31). The Omar Khadr case: Redefining war crimes. Retrieved from <https://www.hrw.org/news/2008/10/31/omar-khadr-case-redefining-war-crimes>.
- Mahler, J. (2008, June 15) Why this court keeps rebuking this President. *The New York Times*. Retrieved from [www.nytimes.com/2008/06/15/weekinreview/15mahler.html](http://www.nytimes.com/2008/06/15/weekinreview/15mahler.html)
- Mann, M. (2005). *The Dark Side of Democracy: Explaining Ethnic Cleansing*. Cambridge, U.K: Cambridge University Press.
- Manstead, A. S.R. (1991). *Emotion in Social Life*. (Ed.). Lawrence Erlbaum Associates Ltd.UK: Hove.
- Marcuse, H. (1966). *Eros and Civilization: A Philosophical Inquiry into Freud*. Boston: Beacon Press.
- Marion Young, I. (1990). With a new forward by Danielle Allen. *Justice and the Politics of Difference*. New Jersey: Princeton University Press

- Marks, S. P. (2006). International Law and the 'war on terrorism': Post 9/11 responses by the United States and the Asia Pacific countries. *Asia Pacific Law Review*. Vol 14, No 1: LexisNexis.
- Massumi, B. Editor (1993). *The Politics of Everyday Fear*. Minneapolis: University of Minnesota Press.
- Mayer, J. (2008). *The Dark Side: The Inside Story of How the War on Terror Turned into a War on American Ideals*. New York: Doubleday.
- Mayer, J. (2006, June 26). The hidden power: The legal mind behind the White House's war on terror. *The New Yorker*. Retrieved from <https://www.newyorker.com/magazine/2006/07/03the-hidden-power>
- Mbembe, A. (2019). *Necropolitics*. Durham and London: Duke University Press.
- McGarrity, N., Lynch, A. & Williams, G. (2010). *Counter-Terrorism and Beyond: The Culture of Law and Justice after 9/11*. (Eds.). London: Routledge.
- Miller, P.L. (2011). *Becoming God*. London and New York: Continuum International Publishing Group.
- Minow, M. (1998). *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence*: Boston: Beacon Press.
- Mosafa, M. J. (2002: 1381 Iranian Calendar). *Ba Peer Balkh*. Tehran, Iran: Parishan.
- Nacos, B. L., Bloch-Elkon, Y , Shapiro, R. Y. (2007). Post-9/11 Terrorism Threats, New Coverage, and Public Perceptions in the United States. *International Journal of Conflict and Violence*. Vol:1(2), pp.105-126.
- Naffine, N. (1990). *Law and the Sexes: Explorations in Feminist Jurisprudence*. Sydney: Allen and Unwin.
- National Education Association (nea). *Convention on the Rights of the Child*. Retrieved from <http://www.nea.org/home/36924.htm>
- Neal, A. W. (2010). *Exceptionalism and the Politics of Counter-terrorism: Liberty,*

- Security, and the War on Terror*. New York: Routledge.
- Nietzsche, F. (2000). *On the Genealogy of Morality*. K. Ansell-Pearson. (Ed., C. Diethe. Trans.). Cambridge, UK: Cambridge University Press.
- Nietzsche, F. (1990). *Beyond Good and Evil*. London: Penguin Books.
- Nietzsche, F. (1978). *Thus Spoke Zarathustra: A Book for None and All*. New York: Penguin Books.
- Nietzsche, F. (1968). *The Will to Power*. (W. Kaufmann & R.J. Hollingdale. Trans.) New York: Vintage Books.
- Omar Khadr should have served youth sentence, Supreme Court rules. (2015, May 14). *The Canadian Press*. Retrieved from [www.cbc.ca/news/.../omar-khadr-should-have-served-youth-sentence-supreme-court-r...](http://www.cbc.ca/news/.../omar-khadr-should-have-served-youth-sentence-supreme-court-r...)
- Omar Khadr granted bail by Alberta judge. (2015, May 7). *The Canadian Press*. Retrieved from [www.msn.com/en-ca/news/canada/omar-khadr-granted-bail-by-Alberta-judge/ar-A...](http://www.msn.com/en-ca/news/canada/omar-khadr-granted-bail-by-Alberta-judge/ar-A...)
- Omar Khadr returns to Canada: Youngest and last western detainee at U.S. naval base taken to Millhaven prison. (2012, September 29). *CBC News*. Retrieved from [www.cbc.ca/news/canada/omar-khadr-returns-to-canada-1.937754](http://www.cbc.ca/news/canada/omar-khadr-returns-to-canada-1.937754)
- Omar Khadr as child soldier. Retrieved from [https://www.law.utoronto.ca/documents/Mackin/Khadr\\_ChildSoldier.pdf](https://www.law.utoronto.ca/documents/Mackin/Khadr_ChildSoldier.pdf)
- Paust, J. J. (2007). *Beyond the Law: The Bush Administration's Unlawful Responses in the "War" on Terror*. Cambridge: Cambridge University Press.
- PBS. Politics. (2011, May 4). A historical timeline of Afghanistan. Retrieved from <https://www.pbs.org/newshour/politics/asia-jan-june11-timeline-afghanistan>
- Petersen, A. (2004). *Engendering Emotions*. New York: Palgrave Macmillan.
- Pfiffner, J. P. (2010). *Torture as Public Policy: Restoring U.S. Credibility on The World Stage*. Boulder: Paradigm Publishers.

- Pipes, D. (2004, March 16). [The Khadr:] Canada's first family of terrorism. *New York Sun*.  
<https://www.danielpipes.org/1639/the-khadrs-canadas-first-family-of-terrorism>
- Plato. (c.380 B.C.). (1992). *Republic*. G.M.A. Grube: Trans. Revised: C.D.C. Reeve. Indianapolis: Hackett Publishing Company, INC.
- Plato. (1999). *The Symposium*. London, England: Penguin Books.
- Pressler, Ch. A. & D., Fabio B. (1996). *Sociology and Interpretation: From Webber to Habermas*. Albany, New York: State University of New York Press.
- Prokhovnik, R. (2002). *Rational Woman: A Feminist Critique of Dichotomy*. (2nd Ed.). Manchester: Manchester University Press.
- Public Law 109- 366 – (2006, OCT. 17). Military Commission Act of 2006. Retrieved from <https://www.hsdl.org/?abstract&did=476359>
- Rabinow, P. (1984). *The Foucault Reader*. (Ed.) New York: Pantheon Books.
- Razack, Sh. (2008). *Casting Out: The Eviction of Muslims from Western Law and Politics*. Toronto: University of Toronto Press.
- Razack, Sh. (2002). *Race, Space, and the Law: Unmapping a White Settler Society*. Toronto: Between the Lines.
- Reck, G. G. (1993). Narrative and social science: reclaiming the existential. *Issues in Integrative Studies*. No. 11, pp. 63-74. Retrieved from [wwwwp.oakland.edu > docs > AIS > 1993-Volume-1](http://wwwwp.oakland.edu/docs/AIS/1993-Volume-1)
- Reed, P. and Shephard, M. (co-directors). (2015). *Omar Khadr: Out of the Shadows*. Toronto: Canadian Broadcasting.
- Ritter, A. (1980). The anarchists as critics of established institutions. *Anarchism: A Theoretical Analysis*. Cambridge: Cambridge University Press.
- Robin, C. (2004). *Fear: The History of a Political Ideal*. New York: Oxford University Press.
- Rogers, P. (2004). *A War on Terror: Afghanistan and After*. London: Pluto Press.

- Rosen, L. (2006). *Law as Culture: An Invitation*. Princeton: Princeton University Press.
- Roy, A. (2001, October 23). Brutality smeared in peanut butter: Why America must stop the war now. *The Guardian*. Retrieved from <https://www.theguardian.com/world/2001/oct/23/afghanistan.terrorism8>
- Rubin, B. (2007). *Political Islam: Critical Concepts in Islamic Studies*. (Ed.). London: Routledge.
- Sabini, J. & Silver, M. (1998). *Emotion, Character, and Responsibility*. New York: Oxford University Press.
- Said, E. W. (2002). The clash of ignorance. Retrieved from <https://www.thenation.com/article/clash-ignorance/>
- Said, E. W. (1994). *Representations of the Intellectual: The 1993 Reith Lectures*. New York: Pantheon Books.
- Said, E. W. (1994). Overlapping theories, intertwined histories. *Culture and Imperialism*. New York: Vintage Books.
- Said, E. W. (1979). *Orientalism*. New York: Vintage Books.
- Sassoli, M. & Bouvier, A. (2006). *How Does Law Protect in War? Cases, Documents and Teaching Materials on Contemporary Practice in International Humanitarian Law*. Volume I and II. Second Edition. Geneva: International Committee of Red Cross.
- Schachman, N. (2010, May 5). 'The king of torture' and the child jihadist. *WIRED*. Retrieved from <https://www.wired.com/2010/05/the-king-of-torture-and-the-child-jihadist/>
- Schauer, F. & Sinnott-Armstrong, W. (1996). *The Philosophy of Law: Classic and Contemporary Readings with comments*. Fort Worth: Harcourt Brace College Publishers.
- Scheff, T.J. (2006). *Goffman Unbound*. New York: Routledge.
- Scheff, T. J. (2005). Roots of war and peace: Emotions and bonds in

moral shock. Retrieved from [www.humiliationstudies.org/documents/ScheffMoralSchock.pdf](http://www.humiliationstudies.org/documents/ScheffMoralSchock.pdf).

- Scheff, T. J. (1997). *Emotions, the social bond, and human reality: Part/whole analysis*. Cambridge, UK. Cambridge University Press.
- Scheppele, K. L. (2006, April 1). North American Emergencies: The Use of Emergency Powers in Canada and the United States. *International Journal of Constitutional Law*, Volume 4, Issue 2. pp. 213-243. [academic.oup.com > icon > article](http://academic.oup.com/icon/article)
- Schmitt, C. (1996). *The Concept of the Political*. Chicago: The University of Chicago Press.
- Schmitt, C. (1985). *Political Theology: Four Chapters on the Concept of Sovereignty*. (G. Schwab, Trans.). Cambridge, England: MIT Press.
- Schwab, G. (1970). *The Challenge of the Exception*. Berlin: Duncker and Humblot.
- Scott, J. C. (1990). *Domination and the Arts of Resistance: Hidden Transcripts*. New Haven: Yale University press.
- Sen, A. (2006). *Identity and Violence: The Illusion of Destiny*. New York: Norton and Co.
- Shapiro, K. (2008). *Carl Schmitt and the Intensification of Politics*. Lanham: Rowman and Littlefield Publishers.
- Shephard, M. (2008). *Guantanamo Child: The Untold Story of Omar Khadr*. Mississauga, Ontario: John Wiley & Sons Canada, Ltd.
- Slomp, G. (2009). *Carl Schmitt and the Politics of Hostility, Violence and Terror*. New York: Macmillan.
- Smith, I.R., Stucki, A. (2011, August 15). The Colonial Development of Concentration Camps (1868-1902). *The Journal of Imperial and Commonwealth History*. 39:3, 417-437, DOI: 10.1080/03086534.2011.598746

- Smith, A. 1723 -1790. (2002). *The Theory of Moral Sentiments*. Cambridge: Cambridge University Press.
- Smith, M. (2009). *Emotion, Place and Culture*. Farnham: Ashgate.
- Solomon, R. C. (2007). *True to Our Feelings: What Our Emotions Are Really Telling Us*. Oxford: Oxford University Press.
- Spanos, W. V. (2008). *American Exceptionalism in the Age of Globalization: The Specter of Vietnam*. Albany: State University of New York Press.
- Stafford-Smith, Clive. (2004, February 22). The abuse goes on. *The Guardian*. Retrieved from <https://www.theguardian.com/world/2004/feb/22/terrorism.guantanamo>
- Steffen, L. (2007). *Holy War, Just War: Exploring the Moral Meaning of Religious Violence*. Lanham: Rowman and Littlefield Publishers, Inc.
- Stehr, N. & Weiler, B. (2008). *Who Owns Knowledge?: Knowledge and the Law*. (Eds.). New Brunswick (U.S.A): Transaction Publishers.
- Steinmetz, G. (2005). *The Politics of Method in the Human Sciences: Positivism and its Epistemological Others*. Durham: Duke University Press.
- Soja, W. (1989). *Postmodern Geographies: The Reassertion of Space in Critical Social Theory*. London: Verso.
- Stoffel, D. The Canadian Press. (2010, October 25). Khadr to return to Canada: Lawyer. CBC News. Retrieved from [www.cbc.ca/news/world/khadr-to-return-to-canada-lawyer-1.905780](http://www.cbc.ca/news/world/khadr-to-return-to-canada-lawyer-1.905780)
- The Auschwitz-Birkenau State Museum. (2002). *KL Auschwitz seen by the SS*. Oswiecim.
- The Legal Inadequacy of U.S. Military Commissions for Trying Omar Khadr. Free Omar: The Official Campaign Website: AafPost. Retrieved from <http://freomar.ca/>

- The White House: Office of the Press Secretary. (2010, September 10). Letter from the President on the Continuation of the National Emergency with Respect to Certain Terrorist Attacks. Retrieved from <https://obamawhitehouse.archives.gov/the-press-office/2010/09/10/letter-president-continuation-national-emergency-with-respect-certain-te>
- Tietz, J. (2006, August 24). The unending torture of Omar Khadr. *Rolling Stone*. Retrieved from <http://www.rollingstone.com/politics/.../the-unending-torture-of-omar-khadr-200608>.
- Traverso, E. (2003). *The Origins of Nazi Violence*. New York: The New Press.
- Turner, J. H. and Stets, J. E. (2005). *The Sociology of Emotion*. Cambridge: Cambridge University Press.
- Uchida, Y., Townsend, S. M., Markus, H. R., Bergsieker, H. B. (2009, Nov 11). Emotions as Within or Between People? Cultural variations in lay theories of emotion expression and inference. *PSPB*, Vol. 35. The Society for Personality and Social Psychology, Inc. Retrieved from <https://journals.sagepub.com/doi/abs/10.1177/0146167209347322>
- United Nations Treaty Collection. (2000, May 25). 11. b Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. Retrieved from [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11-b&chapter=4](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11-b&chapter=4)
- University of Toronto Faculty of Law. *Khadr Case Resource Page*. Retrieved from [https://www.law.utoronto.ca/documents/Mackin/Khadr\\_ChildSoldier.pdf](https://www.law.utoronto.ca/documents/Mackin/Khadr_ChildSoldier.pdf)
- Visano, L. (2013). Servitude of the certitude in the 9/11 hauntology: A case study in cyber security, in Colaguori, C. (2013). *Security, Life, & Death: Governmentality in the Post 9/11 Era*. (Ed.). Whitby, Ontario: de Sitter Publication.
- Waters, T. and Waters, D. (2015). *Weber's Rationalism and Modern Society: New Translations on Politics, Bureaucracy, Social Stratification*. (Eds. and Trans.). New York: Palgrave Macmillan.
- Weaver, M. (2015, January 21). State of the union: Barack Obama renews vow to close Guantanamo Bay. *The Guardian*. Retrieved from <https://www.theguardian.com/us-news/2015/jan/21/state-union-barack-obama-renews-pledge-close-guantanamo-bay>

- Weber, M. (1918). Politics as a vocation. *Max Weber: Essay in Sociology*. 1946. H. H. Gerth & C. Wright Mills. (Trans.). New York: Oxford University Press.
- Welch, M. (2006). *Scapegoats of September 11<sup>th</sup>: Hate Crimes and State Crimes in the War on Terror*. New Brunswick: Rutgers University Press.
- Weintraub, J. (1990). The theory and politics of the public/private distinction. *Public and Private in Thought and Practice: Perspectives on a Grand Dichotomy*. J. Weintraub & K. Kumar . (Eds.) (1997). Chicago: The University of Chicago Press.
- Weisman, J. (2006, July 13). Battle Looms in Congress Over Military Tribunals. *Washington Post*. Retrieved from [www.washingtonpost.com](http://www.washingtonpost.com)
- Wilde, O. (1985). *The Picture of Dorian Gray*. London: Penguin Books.
- Williams, R. (1977). *Marxism and Literature*. Oxford: Oxford University Press.
- Worthington, A. (2010, May 13). The torture of Omar Khadr, a child in Bagram and Guantanamo. *CommonDreams. Org*. Retrieved from <https://www.commondreams.org/.../torture-omar-khadr-child-bagram-and-guantanamo>
- Worthington, A. (2007). *The Guantanamo Files: The Stories of the 774 Detainees in America's Illegal Prison*. London: Pluto Press.
- Xenakis, S. N. (2017, July 20). *Omar Khadr, Dr. Stephen Nicholas Xenakis University of Alberta*. YouTube. Retrieved July 17, 2020, from <https://www.youtube.com/watch?v=7Wh2cawmweY>
- Xenakis, S. N. (2012, October 10). An Undangerous Mind. Retrieved from <https://www.nytimes.com/2012/10/11/opinion/some-guantanamo-detainees-are-security-threats-omar-khadr-isnt-one-of-them.html>
- Young, J. (2007). *The Vertigo of Late Modernity*. Los Angeles: Sage Publications.
- Young, J. (1999). *The Exclusive Society: Social Exclusion, Crime and Difference in Late Modernity*. London: Sage Publications.

Young-Bruhel, E. (2004). *Hannah Arendt: For the Love of the World*. New Haven: Yale University Press.

Young-Bruhel, E. (1982). Reflection on Hannah Arendt's the life of mind. *JSTOR*, Political Theory, Vol. 10 No. 2, May 1882 277-305.

Zizek, S. (2005). The obscenity of human rights: Violence as symptoms  
Retrieved from <http://lacan.com/zizviol.htm>

## **Appendix A**

### **Convention on the Rights of the Child**

Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49.

#### **Preamble:**

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and

relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

## **PART I**

### ***Article 1***

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

### ***Article 2***

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

### ***Article 3***

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals

legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

#### ***Article 6***

1. States Parties recognize that every child has the inherent right to life.

#### ***Article 19***

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programs to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

#### ***Article 20***

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

#### ***Article 36***

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

#### ***Article 37***

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

### ***Article 38***

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

### ***Article 39***

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

### ***Article 40***

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defense;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. 4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

## **Appendix B**

### **United Nations Rules for the Protection of Juveniles Deprived of their Liberty**

Adopted by General Assembly resolution 45/113 of 14 December 1990

#### **I. Fundamental perspectives**

1. The juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles. Imprisonment should be used as a last resort.
2. Juveniles should only be deprived of their liberty in accordance with the principles and procedures set forth in these Rules and in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). Deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases. The length of the sanction should be determined by the judicial authority, without precluding the possibility of his or her early release.
3. The Rules are intended to establish minimum standards accepted by the United Nations for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, and with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society.
4. The Rules should be applied impartially, without discrimination of any kind as to race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability. The religious and cultural beliefs, practices and moral concepts of the juvenile should be respected.
5. The Rules are designed to serve as convenient standards of reference and to provide encouragement and guidance to professionals involved in the management of the juvenile justice system.
6. The Rules should be made readily available to juvenile justice personnel in their national languages. Juveniles who are not fluent in the language spoken by the personnel of the detention facility should have the right to the services of an interpreter free of charge whenever necessary, in particular during medical examinations and disciplinary proceedings.
7. Where appropriate, States should incorporate the Rules into their legislation or amend it accordingly and provide effective remedies for their breach, including compensation when injuries are inflicted on juveniles. States should also monitor the application of the Rules.
8. The competent authorities should constantly seek to increase the awareness of the public that the care of detained juveniles and preparation for their return to society is a social service of great importance, and to this end active steps should be taken to foster open contacts between the juveniles and the local community.

9. Nothing in the Rules should be interpreted as precluding the application of the relevant United Nations and human rights instruments and standards, recognized by the international community, that are more conducive to ensuring the rights, care and protection of juveniles, children and all young persons.

10. In the event that the practical application of particular Rules contained in sections II to V, inclusive, presents any conflict with the Rules contained in the present section, compliance with the latter shall be regarded as the predominant requirement.

## **II. Scope and application of the rules**

11. For the purposes of the Rules, the following definitions should apply:

(a) A juvenile is every person under the age of 18. The age limit below which it should not be permitted to deprive a child of his or her liberty should be determined by law;

(b) The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.

12. The deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles. Juveniles detained in facilities should be guaranteed the benefit of meaningful activities and programmes which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society.

13. Juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty.

14. The protection of the individual rights of juveniles with special regard to the legality of the execution of the detention measures shall be ensured by the competent authority, while the objectives of social integration should be secured by regular inspections and other means of control carried out, according to international standards, national laws and regulations, by a duly constituted body authorized to visit the juveniles and not belonging to the detention facility.

15. The Rules apply to all types and forms of detention facilities in which juveniles are deprived of their liberty. Sections I, II, IV and V of the Rules apply to all detention facilities and institutional settings in which juveniles are detained, and section III applies specifically to juveniles under arrest or awaiting trial.

16. The Rules shall be implemented in the context of the economic, social and cultural conditions prevailing in each Member State.

## **III. Juveniles under arrest or awaiting trial**

17. Juveniles who are detained under arrest or awaiting trial ("untried") are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention. Untried detainees should be separated from convicted juveniles.

18. The conditions under which an untried juvenile is detained should be consistent with the rules set out below, with additional specific provisions as are necessary and appropriate, given the requirements of the presumption of innocence, the duration of the detention and the legal status and circumstances of the juvenile. These provisions would include, but not necessarily be restricted to, the following:

- (a) Juveniles should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly with their legal advisers. Privacy and confidentiality shall be ensured for such communications;
- (b) Juveniles should be provided, where possible, with opportunities to pursue work, with remuneration, and continue education or training, but should not be required to do so. Work, education or training should not cause the continuation of the detention;
- (c) Juveniles should receive and retain materials for their leisure and recreation as are compatible with the interests of the administration of justice.

## **Appendix C**

### **United Nation Standard Minimum Rules for Administration of Juvenile Justice**

#### **(Beijing Rules)**

Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") Adopted by General Assembly resolution 40/33 of 29 November 1985

#### **Part One GENERAL PRINCIPLES**

1. Fundamental perspectives 1.1 Member States shall seek, in conformity with their respective general interests, to further the well-being of the juvenile and her or his family.

1.2 Member States shall endeavour to develop conditions that will ensure for the juvenile a meaningful life in the community, which, during that period in life when she or he is most susceptible to deviant behaviour, will foster a process of personal development and education that is as free from crime and delinquency as possible.

1.3 Sufficient attention shall be given to positive measures that involve the full mobilization of all possible resources, including the family, volunteers and other community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the juvenile in conflict with the law.

1.4 Juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society.

1.5 These Rules shall be implemented in the context of economic, social and cultural conditions prevailing in each Member State.

1.6 Juvenile justice services shall be systematically developed and coordinated with a view to improving and sustaining the competence of personnel involved in the services, including their methods, approaches and attitudes.

#### **Commentary**

These broad fundamental perspectives refer to comprehensive social policy in general and aim at promoting juvenile welfare to the greatest possible extent, which will minimize the necessity of intervention by the juvenile justice system, and in turn, will reduce the harm that may be caused by any intervention. Such care measures for the young, before the onset of delinquency, are basic policy requisites designed to obviate the need for the application of the Rules.

Rules 1.1 to 1.3 point to the important role that a constructive social policy for juveniles will play, inter alia, in the prevention of juvenile crime and delinquency.

Rule 1.4 defines juvenile justice as an integral part of social justice for juveniles, while rule 1.6 refers to the necessity of constantly improving juvenile justice, without falling behind the development of progressive social policy for juveniles in general and bearing in mind the need for consistent improvement of staff services.

Rule 1.5 seeks to take account of existing conditions in Member States which would cause the manner of implementation of particular rules necessarily to be different from the manner adopted in other States.

## **2. Scope of the Rules and definitions used**

2.1 The following Standard Minimum Rules shall be applied to juvenile offenders impartially, without distinction of any kind, for example as to race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status.

2.2 For purposes of these Rules, the following definitions shall be applied by Member States in a manner which is compatible with their respective legal systems and concepts:

( a ) A juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult;

( b ) An offence is any behaviour (act or omission) that is punishable by law under the respective legal systems;

( c ) A juvenile offender is a child or young person who is alleged to have committed or who has been found to have committed an offence.

2.3 Efforts shall be made to establish, in each national jurisdiction, a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed:

( a ) To meet the varying needs of juvenile offenders, while protecting their basic rights;

( b ) To meet the need of society; To implement the following rules thoroughly and fairly.

### **Commentary**

The Standard Minimum Rules are deliberately formulated so as to be applicable within different legal systems and, at the same time, to set some minimum standards for the handling of juvenile offenders under any definition of a juvenile and under any system of dealing with juvenile offenders. The Rules are always to be applied impartially and without distinction of any kind.

Rule 2.1 therefore stresses the importance of the Rules always being applied impartially and without distinction of any kind. The rule follows the formulation of principle 2 of the Declaration of the Rights of the Child.

Rule 2.2 defines "juvenile" and "offence" as the components of the notion of the "juvenile offender", who is the main subject of these Standard Minimum Rules (see, however, also rules 3 and 4). It should be noted that age limits will depend on, and are explicitly made dependent on, each respective legal system, thus fully respecting the economic, social, political, cultural and legal systems of Member States. This makes for a wide variety of ages coming under the definition of "juvenile", ranging from 7 years to 18 years or above. Such a variety seems inevitable in view of the different national legal systems and does not diminish the impact of these Standard Minimum Rules.

Rule 2.3 is addressed to the necessity of specific national legislation for the optimal implementation of these Standard Minimum Rules, both legally and practically.

### **3. Extension of the Rules**

3.1 The relevant provisions of the Rules shall be applied not only to juvenile offenders but also to juveniles who may be proceeded against for any specific behaviour that would not be punishable if committed by an adult.

3.2 Efforts shall be made to extend the principles embodied in the Rules to all juveniles who are dealt with in welfare and care proceedings.

3.3 Efforts shall also be made to extend the principles embodied in the Rules to young adult offenders.

#### **Commentary**

Rule 3 extends the protection afforded by the Standard Minimum Rules for the Administration of Juvenile Justice to cover:

( a ) The so-called "status offences" prescribed in various national legal systems where the range of behaviour considered to be an offence is wider for juveniles than it is for adults (for example, truancy, school and family disobedience, public drunkenness, etc.) (rule 3.1);

( b ) Juvenile welfare and care proceedings (rule 3.2);

( c ) Proceedings dealing with young adult offenders, depending of course on each given age limit (rule 3.3).

The extension of the Rules to cover these three areas seems to be justified. Rule 3.1 provides minimum guarantees in those fields, and rule 3.2 is considered a desirable step in the direction of more fair, equitable and humane justice for all juveniles in conflict with the law.

### **4 . Age of criminal responsibility**

4.1 In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.

### **Commentary**

The minimum age of criminal responsibility differs widely owing to history and culture. The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially antisocial behaviour. If the age of criminal responsibility is fixed too low or if there is no lower age limit at all, the notion of responsibility would become meaningless. In general, there is a close relationship between the notion of responsibility for delinquent or criminal behaviour and other social rights and responsibilities (such as marital status, civil majority, etc.).

Efforts should therefore be made to agree on a reasonable lowest age limit that is applicable internationally.

## **5. Aims of juvenile justice**

5. 1 The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.

### **Commentary**

Rule 5 refers to two of the most important objectives of juvenile justice. The first objective is the promotion of the well-being of the juvenile. This is the main focus of those legal systems in which juvenile offenders are dealt with by family courts or administrative authorities, but the well-being of the juvenile should also be emphasized in legal systems that follow the criminal court model, thus contributing to the avoidance of merely punitive sanctions. (See also rule 14.)

The second objective is "the principle of proportionality". This principle is well-known as an instrument for curbing punitive sanctions, mostly expressed in terms of just deserts in relation to the gravity of the offence. The response to young offenders should be based on the consideration not only of the gravity of the offence but also of personal circumstances. The individual circumstances of the offender (for example social status, family situation, the harm caused by the offence or other factors affecting personal circumstances) should influence the proportionality of the reactions (for example by having regard to the offender's endeavour to indemnify the victim or to her or his willingness to turn to wholesome and useful life).

By the same token, reactions aiming to ensure the welfare of the young offender may go beyond necessity and therefore infringe upon the fundamental rights of the young individual, as has been observed in some juvenile justice systems. Here, too, the proportionality of the reaction to the circumstances of both the offender and the offence, including the victim, should be safeguarded.

In essence, rule 5 calls for no less and no more than a fair reaction in any given cases of juvenile delinquency and crime. The issues combined in the rule may help to stimulate development in both regards: new and innovative types of reactions are as desirable as precautions against any undue widening of the net of formal social control over juveniles.

## **6. Scope of discretion**

6.1 In view of the varying special needs of juveniles as well as the variety of measures available, appropriate scope for discretion shall be allowed at all stages of proceedings and at the different levels of juvenile justice administration, including investigation, prosecution, adjudication and the follow-up of dispositions.

6.2 Efforts shall be made, however, to ensure sufficient accountability at all stages and levels in the exercise of any such discretion.

6.3 Those who exercise discretion shall be specially qualified or trained to exercise it judiciously and in accordance with their functions and mandates.

### **Commentary**

Rules 6.1, 6.2 and 6.3 combine several important features of effective, fair and humane juvenile justice administration: the need to permit the exercise of discretionary power at all significant levels of processing so that those who make determinations can take the actions deemed to be most appropriate in each individual case; and the need to provide checks and balances in order to curb any abuses of discretionary power and to safeguard the rights of the young offender. Accountability and professionalism are instruments best apt to curb broad discretion. Thus, professional qualifications and expert training are emphasized here as a valuable means of ensuring the judicious exercise of discretion in matters of juvenile offenders. (See also rules 1.6 and 2.2.) The formulation of specific guidelines on the exercise of discretion and the provision of systems of review, appeal and the like in order to permit scrutiny of decisions and accountability are emphasized in this context. Such mechanisms are not specified here, as they do not easily lend themselves to incorporation into international standard minimum rules, which cannot possibly cover all differences in justice systems.

## **7. Rights of juveniles**

7.1 Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings.

### **Commentary**

Rule 7.1 emphasizes some important points that represent essential elements for a fair and just trial and that are internationally recognized in existing human rights instruments (See also rule 14.). The presumption of innocence, for instance, is also to be found in article 11 of the Universal Declaration of Human rights and in article 14, paragraph 2, of the International Covenant on Civil and Political Rights.

Rules 14 seq. of these Standard Minimum Rules specify issues that are important for proceedings in juvenile cases, in particular, while rule 7.1 affirms the most basic procedural safeguards in a general way.

## **8. Protection of privacy**

8.1 The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling.

8.2 In principle, no information that may lead to the identification of a juvenile offender shall be published.

### **Commentary**

Rule 8 stresses the importance of the protection of the juvenile's right to privacy. Young persons are particularly susceptible to stigmatization. Criminological research into labelling processes has provided evidence of the detrimental effects (of different kinds) resulting from the permanent identification of young persons as "delinquent" or "criminal".

Rule 8 stresses the importance of protecting the juvenile from the adverse effects that may result from the publication in the mass media of information about the case (for example the names of young offenders, alleged or convicted). The interest of the individual should be protected and upheld, at least in principle. (The general contents of rule 8 are further specified in rule 2 1.)

## **9. Saving clause**

9.1 Nothing in these Rules shall be interpreted as precluding the application of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations and other human rights instruments and standards recognized by the international community that relate to the care and protection of the young.

### **Commentary**

Rule 9 is meant to avoid any misunderstanding in interpreting and implementing the present Rules in conformity with principles contained in relevant existing or emerging international human rights instruments and standards-such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, and the Declaration of the Rights of the Child and the draft convention on the rights of the child. It should be understood that the application of the present Rules is without prejudice to any such international instruments which may contain provisions of wider application. (See also rule 27.)

## **Part two**

### **INVESTIGATION AND PROSECUTION**

#### **10. Initial contact**

10.1 Upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter.

10.2 A judge or other competent official or body shall, without delay, consider the issue of release.

10.3 Contacts between the law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to her or him, with due regard to the circumstances of the case.

### **Commentary**

Rule 10.1 is in principle contained in rule 92 of the Standard Minimum Rules for the Treatment of Prisoners. The question of release (rule 10.2) shall be considered without delay by a judge or other competent official. The latter refers to any person or institution in the broadest sense of the term, including community boards or police authorities having power to release an arrested person. (See also the International Covenant on Civil and Political Rights, article 9, paragraph 3.)

Rule 10.3 deals with some fundamental aspects of the procedures and behaviour on the part of the police and other law enforcement officials in cases of juvenile crime. To "avoid harm" admittedly is flexible wording and covers many features of possible interaction (for example the use of harsh language, physical violence or exposure to the environment). Involvement in juvenile justice processes in itself can be "harmful" to juveniles; the term "avoid harm" should be broadly interpreted, therefore, as doing the least harm possible to the juvenile in the first instance, as well as any additional or undue harm. This is especially important in the initial contact with law enforcement agencies, which might profoundly influence the juvenile's attitude towards the State and society. Moreover, the success of any further intervention is largely dependent on such initial contacts. Compassion and kind firmness are important in these situations.

### **11. Diversion**

11.1 Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority, referred to in rule 14.1 below.

11.2 The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these Rules.

11.3 Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian, provided that such decision to refer a case shall be subject to review by a competent authority, upon application.

11.4 In order to facilitate the discretionary disposition of juvenile cases, efforts shall be made to provide for community programmes, such as temporary supervision and guidance, restitution, and compensation of victims.

## **Commentary**

Diversion, involving removal from criminal justice processing and, frequently, redirection to community support services, is commonly practiced on a formal and informal basis in many legal systems. This practice serves to hinder the negative effects of subsequent proceedings in juvenile justice administration (for example the stigma of conviction and sentence). In many cases, non-intervention would be the best response. Thus, diversion at the outset and without referral to alternative (social) services may be the optimal response. This is especially the case where the offence is of a non-serious nature and where the family, the school or other 7 informal social control institutions have already reacted, or are likely to react, in an appropriate and constructive manner.

As stated in rule 11.2, diversion may be used at any point of decision-making-by the police, the prosecution or other agencies such as the courts, tribunals, boards or councils. It may be exercised by one authority or several or all authorities, according to the rules and policies of the respective systems and in line with the present Rules. It need not necessarily be limited to petty cases, thus rendering diversion an important instrument.

Rule 11.3 stresses the important requirement of securing the consent of the young offender (or the parent or guardian) to the recommended diversionary measure(s). (Diversion to community service without such consent would contradict the Abolition of Forced Labour Convention.) However, this consent should not be left unchallengeable, since it might sometimes be given out of sheer desperation on the part of the juvenile. The rule underlines that care should be taken to minimize the potential for coercion and intimidation at all levels in the diversion process. Juveniles should not feel pressured (for example in order to avoid court appearance) or be pressured into consenting to diversion programmes. Thus, it is advocated that provision should be made for an objective appraisal of the appropriateness of dispositions involving young offenders by a "competent authority upon application". (The "competent authority," may be different from that referred to in rule 14.)

Rule 11.4 recommends the provision of viable alternatives to juvenile justice processing in the form of community-based diversion. Programmes that involve settlement by victim restitution and those that seek to avoid future conflict with the law through temporary supervision and guidance are especially commended. The merits of individual cases would make diversion appropriate, even when more serious offences have been committed (for example first offence, the act having been committed under peer pressure, etc.).

## **12 . Specialization within the police**

12.1 In order to best fulfil their functions, police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained. In large cities, special police units should be established for that purpose.

## **Commentary**

Rule 12 draws attention to the need for specialized training for all law enforcement officials who are involved in the administration of juvenile justice. As police are the first point of contact with the juvenile justice system, it is most important that they act in an informed and appropriate manner.

While the relationship between urbanization and crime is clearly complex, an increase in juvenile crime has been associated with the growth of large cities, particularly with rapid and unplanned growth. Specialized police units would therefore be indispensable, not only in the interest of implementing specific principles contained in the present instrument (such as rule 1.6) but more generally for improving the prevention and control of juvenile crime and the handling of juvenile offenders.

### **13 . Detention pending trial**

13.1 Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.

13.2 Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.

13.3 Juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations.

13.4 Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

13.5 While in custody, juveniles shall receive care, protection and all necessary individual assistance-social, educational, vocational, psychological, medical and physical-that they may require in view of their age, sex and personality.

### **Commentary**

The danger to juveniles of "criminal contamination" while in detention pending trial must not be underestimated. It is therefore important to stress the need for alternative measures. By doing so, rule 13.1 encourages the devising of new and innovative measures to avoid such detention in the interest of the well-being of the juvenile.

Juveniles under detention pending trial are entitled to all the rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners as well as the International Covenant on Civil and Political Rights, especially article 9 and article 10, paragraphs 2 ( b ) and 3.

Rule 13.4 does not prevent States from taking other measures against the negative influences of adult offenders which are at least as effective as the measures mentioned in the rule.

Different forms of assistance that may become necessary have been enumerated to draw attention to the broad range of particular needs of young detainees to be addressed (for example females or males, drug

addicts, alcoholics, mentally ill juveniles, young persons suffering from the trauma, for example, of arrest, etc.).

Varying physical and psychological characteristics of young detainees may warrant classification measures by which some are kept separate while in detention pending trial, thus contributing to the avoidance of victimization and rendering more appropriate assistance.

The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 4 on juvenile justice standards, specified that the Rules, inter alia, should reflect the basic principle that pre-trial detention should be used only as a last resort, that no minors should be held in a facility where they are vulnerable to the negative influences of adult detainees and that account should always be taken of the needs particular to their stage of development.

### **Part three**

## **ADJUDICATION AND DISPOSITION**

### **14. Competent authority to adjudicate**

14.1 Where the case of a juvenile offender has not been diverted (under rule 11), she or he shall be dealt with by the competent authority (court, tribunal, board, council, etc.) according to the principles of a fair and just trial.

14.2 The proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely.

### **Commentary**

It is difficult to formulate a definition of the competent body or person that would universally describe an adjudicating authority. "Competent authority" is meant to include those who preside over courts or tribunals (composed of a single judge or of several members), including professional and lay magistrates as well as administrative boards (for example the Scottish and Scandinavian systems) or other more informal community and conflict resolution agencies of an adjudicatory nature.

The procedure for dealing with juvenile offenders shall in any case follow the minimum standards that are applied almost universally for any criminal defendant under the procedure known as "due process of law". In accordance with due process, a "fair and just trial" includes such basic safeguards as the presumption of innocence, the presentation and examination of witnesses, the common legal defenses, the right to remain silent, the right to have the last word in a hearing, the right to appeal, etc. (See also rule 7.1.) 15.

### **Legal counsel, parents and guardians**

15.1 Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country.

15.2 The parents or the guardian shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile. They may, however, be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile.

### **Commentary**

Rule 15.1 uses terminology similar to that found in rule 93 of the Standard Minimum Rules for the Treatment of Prisoners. Whereas legal counsel and free legal aid are needed to assure the juvenile legal assistance, the right of the parents or guardian to participate as stated in rule 15.2 should be viewed as general psychological and emotional assistance to the juvenile—a function extending throughout the procedure.

The competent authority's search for an adequate disposition of the case may profit, in particular, from the co-operation of the legal representatives of the juvenile (or, for that matter, some other personal assistant who the juvenile can and does really trust). Such concern can be thwarted if the presence of parents or guardians at the hearings plays a negative role, for instance, if they display a hostile attitude towards the juvenile, hence, the possibility of their exclusion must be provided for.

## **16. Social inquiry reports**

16.1 In all cases except those involving minor offences, before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority.

### **Commentary**

Social inquiry reports (social reports or pre-sentence reports) are an indispensable aid in most legal proceedings involving juveniles. The competent authority should be informed of relevant facts about the juvenile, such as social and family background, school career, educational experiences, etc. For this purpose, some jurisdictions use special social services or personnel attached to the court or board. Other personnel, including probation officers, may serve the same function. The rule therefore requires that adequate social services should be available to deliver social inquiry reports of a qualified nature.

## **17. Guiding principles in adjudication and disposition**

17.1 The disposition of the competent authority shall be guided by the following principles:

( a ) The reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society;

( b ) Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum;

( c ) Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response;

( d ) The well-being of the juvenile shall be the guiding factor in the consideration of her or his case.

17.2 Capital punishment shall not be imposed for any crime committed by juveniles.

17.3 Juveniles shall not be subject to corporal punishment.

17.4 The competent authority shall have the power to discontinue the proceedings at any time.

### **Commentary**

The main difficulty in formulating guidelines for the adjudication of young persons stems from the fact that there are unresolved conflicts of a philosophical nature, such as the following:

( a ) Rehabilitation versus just desert;

( b ) Assistance versus repression and punishment;

( c ) Reaction according to the singular merits of an individual case versus reaction according to the protection of society in general;

( d ) General deterrence versus individual incapacitation. The conflict between these approaches is more pronounced in juvenile cases than in adult cases. With the variety of causes and reactions characterizing juvenile cases, these alternatives become intricately interwoven. It is not the function of the Standard Minimum Rules for the Administration of Juvenile Justice to prescribe which approach is to be followed but rather to identify one that is most closely in consonance with internationally accepted principles. Therefore the essential elements as laid down in rule 17.1, in particular in subparagraphs (a) and (c), are mainly to be understood as practical guidelines that should ensure a common starting point; if heeded by the concerned authorities (see also rule 5), they could contribute considerably to ensuring that the fundamental rights of juvenile offenders are protected, especially the fundamental rights of personal development and education.

Rule 17.1 ( b ) implies that strictly punitive approaches are not appropriate. Whereas in adult cases, and possibly also in cases of severe offences by juveniles, just desert and retributive sanctions might be considered to have some merit, in juvenile cases such considerations should always be outweighed by the interest of safeguarding the well-being and the future of the young person.

In line with resolution 8 of the Sixth United Nations Congress, rule 17.1 ( b ) encourages the use of alternatives to institutionalization to the maximum extent possible, bearing in mind the need to respond to the specific requirements of the young. Thus, full use should be made of the range of existing alternative sanctions and new alternative sanctions should be developed, 11 bearing the public safety in mind.

Probation should be granted to the greatest possible extent via suspended sentences, conditional sentences, board orders and other dispositions.

Rule 17.1 ( c ) corresponds to one of the guiding principles in resolution 4 of the Sixth Congress which aims at avoiding incarceration in the case of juveniles unless there is no other appropriate response that will protect the public safety.

The provision prohibiting capital punishment in rule 17.2 is in accordance with article 6, paragraph 5, of the International Covenant on Civil and Political Rights.

The provision against corporal punishment is in line with article 7 of the International Covenant on Civil and Political Rights and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the draft convention on the rights of the child.

The power to discontinue the proceedings at any time (rule 17.4) is a characteristic inherent in the handling of juvenile offenders as opposed to adults. At any time, circumstances may become known to the competent authority which would make a complete cessation of the intervention appear to be the best disposition of the case.

## **18. Various disposition measures**

18.1 A large variety of disposition measures shall be made available to the competent authority, allowing for flexibility so as to avoid institutionalization to the greatest extent possible. Such measures, some of which may be combined, include:

( a ) Care, guidance and supervision orders;

( b ) Probation;

( c ) Community service orders;

( d ) Financial penalties, compensation and restitution;

( e ) Intermediate treatment and other treatment orders; ( f ) Orders to participate in group counselling and similar activities;

( g ) Orders concerning foster care, living communities or other educational settings;

( h ) Other relevant orders. 18.2 No juvenile shall be removed from parental supervision, whether partly or entirely, unless the circumstances of her or his case make this necessary.

## **Commentary**

Rule 18.1 attempts to enumerate some of the important reactions and sanctions that have been practised and proved successful thus far, in different legal systems. On the whole they represent promising opinions that deserve replication and further development. The rule does not enumerate staffing requirements because of possible shortages of adequate staff in some regions; in those regions measures requiring less staff may be tried or developed.

The examples given in rule 18.1 have in common, above all, a reliance on and an appeal to the community for the effective implementation of alternative dispositions. Community-based correction is a traditional measure that has taken on many aspects. On that basis, relevant authorities should be encouraged to offer community-based services.

Rule 18.2 points to the importance of the family which, according to article 10, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights, is "the natural and fundamental group unit of society". Within the family, the parents have not only the right but also the responsibility to care for and supervise their children.

Rule 18.2, therefore, requires that the separation of children from their parents is a measure of last resort. It may be resorted to only when the facts of the case clearly warrant this grave step (for example child abuse).

## **19. Least possible use of institutionalization**

19.1 The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period.

### **Commentary**

Progressive criminology advocates the use of non-institutional over institutional treatment. Little or no difference has been found in terms of the success of institutionalization as compared to non-institutionalization. The many adverse influences on an individual that seem unavoidable within any institutional setting evidently cannot be outbalanced by treatment efforts. This is especially the case for juveniles, who are vulnerable to negative influences. Moreover, the negative effects, not only of loss of liberty but also of separation from the usual social environment, are certainly more acute for juveniles than for adults because of their early stage of development.

Rule 19 aims at restricting institutionalization in two regards: in quantity ("last resort") and in time ("minimum necessary period"). Rule 19 reflects one of the basic guiding principles of resolution 4 of the Sixth United Nations Congress: a juvenile offender should not be incarcerated unless there is no other appropriate response. The rule, therefore, makes the appeal that if a juvenile must be institutionalized, the loss of liberty should be restricted to the least possible degree, with special institutional arrangements for confinement and bearing in mind the differences in kinds of offenders, offences and institutions. In fact, priority should be given to "open" over "closed" institutions. Furthermore, any facility should be of a correctional or educational rather than of a prison type.

## **20. Avoidance of unnecessary delay**

20.1 Each case shall from the outset be handled expeditiously, without any unnecessary delay.

### **Commentary**

The speedy conduct of formal procedures in juvenile cases is a paramount concern. Otherwise whatever good may be achieved by the procedure and the disposition is at risk. As time passes, the juvenile will find it increasingly difficult, if not impossible, to relate the procedure and disposition to the offence, both intellectually and psychologically.

## **21. Records**

21.1 Records of juvenile offenders shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons.

21.2 Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender.

### **Commentary**

The rule attempts to achieve a balance between conflicting interests connected with records or files: those of the police, prosecution and other authorities in improving control versus the 13 interests of the juvenile offender. (See also rule 8.) "Other duly authorized persons" would generally include, among others, researchers.

## **22. Need for professionalism and training**

22.1 Professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases.

22.2 Juvenile justice personnel shall reflect the diversity of juveniles who come into contact with the juvenile justice system. Efforts shall be made to ensure the fair representation of women and minorities in juvenile justice agencies.

### **Commentary**

The authorities competent for disposition may be persons with very different backgrounds (magistrates in the United Kingdom of Great Britain and Northern Ireland and in regions influenced by the common law system; legally trained judges in countries using Roman law and in regions influenced by them; and elsewhere elected or appointed laymen or jurists, members of community-based boards, etc.). For all these authorities, a minimum training in law, sociology, psychology, criminology and behavioural sciences would be required. This is considered as important as the organizational specialization and independence of the competent authority.

For social workers and probation officers, it might not be feasible to require professional specialization as a prerequisite for taking over any function dealing with juvenile offenders. Thus, professional on-the job instruction would be minimum qualifications.

Professional qualifications are an essential element in ensuring the impartial and effective administration of juvenile justice. Accordingly, it is necessary to improve the recruitment, advancement and professional training of personnel and to provide them with the necessary means to enable them to properly fulfil their functions.

All political, social, sexual, racial, religious, cultural or any other kind of discrimination in the selection, appointment and advancement of juvenile justice personnel should be avoided in order to achieve impartiality in the administration of juvenile justice. This was recommended by the Sixth Congress. Furthermore, the Sixth Congress called on Member States to ensure the fair and equal treatment of women as criminal justice personnel and recommended that special measures should be taken to recruit, train and facilitate the advancement of female personnel in juvenile justice administration.

#### **Part four**

### **NON-INSTITUTIONAL TREATMENT**

#### **23. Effective implementation of disposition**

23.1 Appropriate provisions shall be made for the implementation of orders of the competent authority, as referred to in rule 14.1 above, by that authority itself or by some other authority as circumstances may require.

23.2 Such provisions shall include the power to modify the orders as the competent authority may deem necessary from time to time, provided that such modification shall be determined in accordance with the principles contained in these Rules.

#### **Commentary**

Disposition in juvenile cases, more so than in adult cases, tends to influence the offender's life for a long period of time. Thus, it is important that the competent authority or an independent body (parole board, probation office, youth welfare institutions or others) with qualifications equal to those of the competent authority that originally disposed of the case should monitor the implementation of the disposition. In some countries, a *juge de l'exécution des peines* has been installed for this purpose.

The composition, powers and functions of the authority must be flexible; they are described in general terms in rule 23 in order to ensure wide acceptability.

#### **24 . Provision of needed assistance**

24.1 Efforts shall be made to provide juveniles, at all stages of the proceedings, with necessary assistance such as lodging, education or vocational training, employment or any other assistance, helpful and practical, in order to facilitate the rehabilitative process.

#### **Commentary**

The promotion of the well-being of the juvenile is of paramount consideration. Thus, rule 24 emphasizes the importance of providing requisite facilities, services and other necessary assistance as may further the best interests of the juvenile throughout the rehabilitative process.

### **25. Mobilization of volunteers and other community services**

25.1 Volunteers, voluntary organizations, local institutions and other community resources shall be called upon to contribute effectively to the rehabilitation of the juvenile in a community setting and, as far as possible, within the family unit.

#### **Commentary**

This rule reflects the need for a rehabilitative orientation of all work with juvenile offenders. Co-operation with the community is indispensable if the directives of the competent authority are to be carried out effectively. Volunteers and voluntary services, in particular, have proved to be valuable resources but are at present underutilized. In some instances, the co-operation of ex-offenders (including ex-addicts) can be of considerable assistance.

Rule 25 emanates from the principles laid down in rules 1.1 to 1.6 and follows the relevant provisions of the International Covenant on Civil and Political Rights.

### **Part five**

## **INSTITUTIONAL TREATMENT**

### **26. Objectives of institutional treatment**

26.1 The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.

26.2 Juveniles in institutions shall receive care, protection and all necessary assistance-social, educational, vocational, psychological, medical and physical-that they may require because of their age, sex, and personality and in the interest of their wholesome development.

26.3 Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

26.4 Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.

26.5 In the interest and well-being of the institutionalized juvenile, the parents or guardians shall have a right of access.

26.6 Inter-ministerial and inter-departmental co-operation shall be fostered for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalized juveniles, with a view to ensuring that they do not leave the institution at an educational disadvantage.

### **Commentary**

The objectives of institutional treatment as stipulated in rules 26.1 and 26.2 would be acceptable to any system and culture. However, they have not yet been attained everywhere, and much more has to be done in this respect.

Medical and psychological assistance, in particular, are extremely important for institutionalized drug addicts, violent and mentally ill young persons.

The avoidance of negative influences through adult offenders and the safeguarding of the wellbeing of juveniles in an institutional setting, as stipulated in rule 26.3, are in line with one of the basic guiding principles of the Rules, as set out by the Sixth Congress in its resolution 4. The rule does not prevent States from taking other measures against the negative influences of adult offenders, which are at least as effective as the measures mentioned in the rule. (See also rule 13.4.)

Rule 26.4 addresses the fact that female offenders normally receive less attention than their male counterparts, as pointed out by the Sixth Congress. In particular, resolution 9 of the Sixth Congress calls for the fair treatment of female offenders at every stage of criminal justice processes and for special attention to their particular problems and needs while in custody. Moreover, this rule should also be considered in the light of the Caracas Declaration of the Sixth Congress, which, inter alia, calls for equal treatment in criminal justice administration, and against the background of the Declaration on the Elimination of Discrimination against Women and the Convention on the Elimination of All Forms of Discrimination against Women.

The right of access (rule 26.5) follows from the provisions of rules 7.1, 10.1, 15.2 and 18.2. Inter-ministerial and inter-departmental co-operation (rule 26.6) are of particular importance in the interest of generally enhancing the quality of institutional treatment and training.

## **27. Application of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations**

27.1 The Standard Minimum Rules for the Treatment of Prisoners and related recommendations shall be applicable as far as relevant to the treatment of juvenile offenders in institutions, including those in detention pending adjudication.

27.2 Efforts shall be made to implement the relevant principles laid down in the Standard Minimum Rules for the Treatment of Prisoners to the largest possible extent so as to meet the varying needs of juveniles specific to their age, sex and personality.

### **Commentary**

The Standard Minimum Rules for the Treatment of Prisoners were among the first instruments of this kind to be promulgated by the United Nations. It is generally agreed that they have had a world-wide impact. Although there are still countries where implementation is more an aspiration than a fact, those Standard Minimum Rules continue to be an important influence in the humane and equitable administration of correctional institutions.

Some essential protections covering juvenile offenders in institutions are contained in the Standard Minimum Rules for the Treatment of Prisoners (accommodation, architecture, bedding, clothing, complaints and requests, contact with the outside world, food, medical care, religious service, separation of ages, staffing, work, etc.) as are provisions concerning punishment and discipline, and restraint for dangerous offenders. It would not be appropriate to modify those Standard Minimum Rules according to the particular characteristics of institutions for juvenile offenders within the scope of the Standard Minimum Rules for the Administration of Juvenile Justice.

Rule 27 focuses on the necessary requirements for juveniles in institutions (rule 27.1) as well as on the varying needs specific to their age, sex and personality (rule 27.2). Thus, the objectives and content of the rule interrelate to the relevant provisions of the Standard Minimum Rules for the Treatment of Prisoners.

## **28. Frequent and early recourse to conditional release**

28.1 Conditional release from an institution shall be used by the appropriate authority to the greatest possible extent, and shall be granted at the earliest possible time.

28.2 Juveniles released conditionally from an institution shall be assisted and supervised by an appropriate authority and shall receive full support by the community.

### **Commentary**

The power to order conditional release may rest with the competent authority, as mentioned in rule 14.1, or with some other authority. In view of this, it is adequate to refer here to the "appropriate" rather than to the "competent" authority.

Circumstances permitting, conditional release shall be preferred to serving a full sentence. Upon evidence of satisfactory progress towards rehabilitation, even offenders who had been deemed dangerous at the time of their institutionalization can be conditionally released whenever feasible. Like probation, such release may be conditional on the satisfactory fulfilment of the requirements specified by the relevant authorities for a period of time established in the decision, for example relating to "good behaviour" of the offender, attendance in community programmes, residence in half-way houses, etc.

In the case of offenders conditionally released from an institution, assistance and supervision by a probation or other officer (particularly where probation has not yet been adopted) should be provided and community support should be encouraged.

## **29. Semi-institutional arrangements**

29.1 Efforts shall be made to provide semi-institutional arrangements, such as half-way houses, educational homes, day-time training centres and other such appropriate arrangements that may assist juveniles in their proper reintegration into society.

### **Commentary**

The importance of care following a period of institutionalization should not be underestimated. This rule emphasizes the necessity of forming a net of semi-institutional arrangements.

This rule also emphasizes the need for a diverse range of facilities and services designed to meet the different needs of young offenders re-entering the community and to provide 17 guidance and structural support as an important step towards successful reintegration into society.

## **Part six**

# **RESEARCH, PLANNING, POLICY FORMULATION AND EVALUATION**

## **30. Research as a basis for planning, policy formulation and evaluation**

30.1 Efforts shall be made to organize and promote necessary research as a basis for effective planning and policy formulation.

30.2 Efforts shall be made to review and appraise periodically the trends, problems and causes of juvenile delinquency and crime as well as the varying particular needs of juveniles in custody.

30.3 Efforts shall be made to establish a regular evaluative research mechanism built into the system of juvenile justice administration and to collect and analyse relevant data and information for appropriate assessment and future improvement and reform of the administration.

30.4 The delivery of services in juvenile justice administration shall be systematically planned and implemented as an integral part of national development efforts.

### **Commentary**

The utilization of research as a basis for an informed juvenile justice policy is widely acknowledged as an important mechanism for keeping practices abreast of advances in knowledge and the continuing development and improvement of the juvenile justice system. The mutual feedback between research and policy is especially important in juvenile justice. With rapid and often drastic changes in the life-styles of the young and in the forms and dimensions of juvenile crime, the societal and justice responses to juvenile crime and delinquency quickly become outmoded and inadequate.

Rule 30 thus establishes standards for integrating research into the process of policy formulation and application in juvenile justice administration. The rule draws particular attention to the need for regular review and evaluation of existing programmes and measures and for planning within the broader context of overall development objectives.

A constant appraisal of the needs of juveniles, as well as the trends and problems of delinquency, is a prerequisite for improving the methods of formulating appropriate policies and establishing adequate interventions, at both formal and informal levels. In this context, research by independent persons and bodies should be facilitated by responsible agencies, and it may be valuable to obtain and to take into account the views of juveniles themselves, not only those who come into contact with the system.

The process of planning must particularly emphasize a more effective and equitable system for the delivery of necessary services. Towards that end, there should be a comprehensive and regular assessment of the wide-ranging, particular needs and problems of juveniles and an identification of clear-cut priorities. In that connection, there should also be a co-ordination in the use of existing resources, including alternatives and community support that would be suitable in setting up specific procedures designed to implement and monitor established programmes.