

***Keyu and Others* (2015): Derridean Hauntology and Lacanian-Žižekian Psychoanalysis in Between the Lines**

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Published online: 25 July 2016
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Abstract This article will explore Derridean hauntology in relation to the UK Supreme Court case of *Keyu & Others*, as well as through the lens of Lacanian-Žižekian psychoanalysis. In particular, this article will argue that there are two main groups of spectres, or ghosts, which loom over the case. The first are the spectres of Marxism and class struggle, which form the overarching framework of the case. The second are the spectres of the victims of the Batang Kali killings in 1948 at the hands of a Scots Guard patrol. Here, Lacanian-Žižekian psychoanalysis can shed light on the tension between democracies and undemocratic measures, which co-exist side by side and indeed are mutually constitutive. In addition, Lacanian-Žižekian psychoanalysis can provide a way to further understand the need for the victims' and their relatives' voices to finally be heard and acknowledged by the Symbolic Order (the big Other). Lacanian-Žižekian psychoanalysis can further offer a useful interpretive framework through which to understand the traumatic impact of the killings of the Batang Kali rubber plantation workers on their relatives (the appellants of the case), and how it can potentially be mitigated through articulation and integration into the Symbolic. In so doing, this article will expose and bring to light the spectres and ghosts, as well as the obscene underside, that are latent in cases of historical human rights violations, whether those are related to insurgencies in the days of the decline of the British Empire or otherwise. This is important in terms of giving a voice, as well as acknowledging that voice, of the victims and survivors of such human rights violations, which is often silenced or ignored, as well as exposing and acknowledging the obscene supplement that characterizes, for example, democracies and their workings.

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Keywords Derrida · European Convention on Human Rights · Hauntology · Jacques Lacan · *Keyu and Others* (2015) · Slavoj Žižek

Introduction

On 11 and 12 December 1948, 24 unarmed rubber plantation workers were killed by a Scots Guard patrol in British Malaya. The incident has recently rematerialized in the UK courts, all the way to the Supreme Court, through the victims' relatives making a claim for a public inquiry and reparations for the killings. Here, the ghosts, or the spectres of the victims, return through their relatives to seek the justice that is due. In *Spectres of Marx* (2006), Derrida introduces the concept of hauntology as a substitute term for ontology. Hauntology is the science of ghosts and spectres and the science of what returns (Macherey 2008), and aims to unsettle the ontological certainty of, amongst other things, concepts, the self, subjectivity, and identity. For Derrida, spectres and ghosts of both the past and the future (what is yet to come) constantly haunt over who one is and what is said, thought and done. Indeed, ghosts and spectres are imperative, given that who one is and what is said, thought and done are always conditioned by what has happened before and the expectation of what will occur in the future. This article will explore Derridean hauntology in relation to the UK Supreme Court case of *Keyu & Others*,¹ as well as through the lens of Lacanian-Žižekian psychoanalysis. In particular, this article will argue that there are two main groups of spectres, or ghosts, which loom over the case. The first are the spectres of Marxism² and class struggle, which form the overarching framework of the case. The second are the spectres of the victims of the Batang Kali killings in 1948 at the hands of a Scots Guard patrol. Here, Lacanian-Žižekian psychoanalysis can shed light on the tension between democracies and undemocratic measures, which co-exist side by side and indeed are mutually interdependent. In addition, Lacanian-Žižekian psychoanalysis can provide a way to further understand the need for the victims' and their relatives' voices to finally be heard and acknowledged by the Symbolic Order (the big Other). Lacanian-Žižekian psychoanalysis can further offer a useful interpretive framework through which to understand the traumatic impact of the killings of the Batang Kali rubber plantation workers on their relatives (the appellants of the case), and how it can potentially be mitigated through articulation and integration into the Symbolic. In so doing, this article will expose and bring to light the spectres and ghosts, as well as the obscene underside, which may be latent in cases of historical human rights violations, whether they are related to insurgencies in the days of the decline of the British Empire or otherwise. This is important in terms of giving a voice, as well as acknowledging that voice, of the victims and survivors of such human rights violations, which is often silenced or ignored, as well as exposing and

¹ *Keyu and Others (Appellants) v Secretary of State for Foreign and Commonwealth Affairs and another (Respondents)* [2015] UKSC 69.

² Derrida is insistent on the multiple spectres, and therefore legacies and interpretations, of Marxism (Derrida 2006).

acknowledging the obscene supplement that characterizes, for example, democracies and their workings.

Background and Facts of the Case

In the first half of the twentieth century, the country which is now Malaysia was part of the British Empire. In 1941, during World War II, it was invaded and occupied by the Japanese, but was re-taken by the British in 1945, with the help of, amongst others, the Communist Malayan People's Anti-Japanese Army (MPAJA). Shortly after, there was an insurgency conducted by the Malayan National Liberation Army (MNLA), the military arm of the Malayan Communist Party (MCP), in which former members of the Anti-Japanese Army took part—the insurgency was aimed at expelling the British and Commonwealth forces and establishing a Communist-controlled democratic republic (Jackson 2011). The insurgency was known as the Malayan Emergency and spanned between 1948 and 1960, during which, amongst other things, a number of British planters and businessmen were killed (Keyu and Others 2015, para. 6). However, the MNLA characterized the Emergency as the Anti-British National Liberation War, and saw the struggle as an anti-colonial endeavour. The insurrection was characterized by the principles of Marxist-Leninist theory, and therefore sought to create a revolutionary situation, dissolve the machinery of government and its military power, and assume party control of all state functions both during and consequent to the revolution (Vadivella Belle 2015). Further, the MCP and the MNLA predominantly attracted support and membership from the ethnic-Chinese population. In addition, their existence is to be contextualized within significant ethnic tensions in Malaya. As Ucko (2010) argues, post-World War II British attempts to structure a Malayan nation did not sufficiently consider the ethnic-Malay animosity towards the ethnic-Chinese community—whilst the Chinese were politically disenfranchised, they were financially dominant and threatened 'Malay jobs' (Ucko 2010, p. 16). The Malay community therefore boycotted the UK-brokered Malay Union of 1946, which had enfranchised the Chinese. The subsequent construct of nationhood—the 1 February 1948 Federation of Malaya—again disenfranchised the ethnic Chinese, who were effectively excluded from acquiring Malayan nationality. Although this appeased the Malays, it stoked the radicalism of the Chinese Communists further, and former MPAJA member Chin Peng re-activated and expanded the MPAJA, which became the MNLA, and launched the armed struggle against the British administration (Ladd 1977; Ucko 2010).

Early in the evening of 11 December 1948, a Scots Guard patrol took control of the village of Batang Kali in Selangor, which was inhabited by fifty adult villagers and some children. The villagers in question were not wearing uniforms and had no weapons. The men were separated from the women and children and detained in custody overnight in the kongsi huts³ of the village. The detainees were then interrogated, and simulated executions also took place, which caused trauma to

³ Wooden longhouses raised from the ground with a veranda entrance.

some. One the men provided information about armed insurgents who sporadically visited the village to obtain food supplies. A young man was shot dead by the patrol in the village that evening. On the morning of 12 December, some of the patrol members drove away the women, children and one traumatized man. The kongsi hut with the 23 men was then unlocked, and within minutes all 23 were shot dead by members of the patrol. The kongsi huts were then burned down, and the patrol returned to its base. Consequent to this, the UK government characterized the events as the killings of bandits who had been attempting to escape. Following subsequent calls for an investigation, and following statements from participants in the operation as well as surviving witnesses⁴ that the men had been massacred and had not been trying to flee, the Metropolitan Police began an investigation in 1970. This investigation was terminated in 1970, with the Attorney General at the time, Sir Peter Rawlinson, stating that it was unlikely that sufficient evidence would be obtained to support a prosecution—even though by this point eight people had explicitly stated that the killings were murder. The Ministry of Defence also decided not to hold an inquiry into the killings. On 9 September 1992, the BBC broadcasted the documentary *In Cold Blood*, which included interviews with the survivors of the killings and their relatives. This was the first time many of them had been interviewed (*Keyu and Others* 2015, para. 42). The Crown Prosecution Service (CPS) reviewed whether any further steps should be taken. Jim England of the Service's War Crimes Unit argued that a criminal prosecution should not be pursued due to the amount of time that had elapsed and the abuse of process argument that would arise given that inquiries were terminated in 1970. Nonetheless, England did argue that the people interviewed *In Cold Blood* '[...] were never given an official opportunity to tell their side of the story' (*Keyu and Others* 2015, para. 44). Lord Neuberger also highlighted that consideration to holding an inquiry rather than pursuing a criminal prosecution was not given (*Keyu and Others* 2015, para. 45). An investigation was also started by the Royal Malaysian Police on 14 July 1993. An interim Royal Malaysian Police report of 31 May 1995 concluded that further

⁴ In late 1969, one of the Scots guardsmen, William Cootes, provided a sworn statement to the newspaper *The People*, which stated that the victims at Batang Kali had been massacred in cold blood. Sworn affidavits were consequently taken from three other guardsmen who were part of the patrol that went to Batang Kali: Alan Tuppen, Robert Brownrigg and Victor Remedios. A further guardsmen, George Kydd, who did not provide a written statement, told a reporter from *The People* that the killings constituted murder, that the victims had been shot down in cold blood, that they had not been trying to run away, and that there had been no reason to shoot them (*Keyu and Others* 2015, para. 26). A few days later, two of the soldiers, Alan Tuppen and Victor Remedios, also gave interviews on British national television and radio confirming the account of unlawful killing, with Tuppen arguing that in his view the killings amounted to murder (*Keyu and Others* 2015, para. 27). One of the survivors also told a reporter from *The People* that the troops had separated the women and children from the men—who had not been trying to escape—divided the men into groups and then shot them. *The Straits Times* interviewed one of the guides, Inche Jaffar bin Taib, who said that shortly before the killings, a sergeant told him not to look at the male detainees. After he turned his back, he heard a burst of gunfire, and when he turned around he saw 'dead bodies everywhere'. (*Keyu and Others* 2015, para. 29) The sergeant told him that he would be jailed if he breathed a word about what had occurred. Cootes, Tuppen, Brownrigg and Kydd, whilst being interviewed under caution, again admitted that they had been ordered to shoot the men, who had not been attempting to escape. A further guardsmen, Keith Wood, also admitted when interviewed that the men were murdered. Further, Brownrigg and Kydd said that they had been instructed by the army to provide the false explanation that the men had been attempting to run away (*Keyu and Others* 2015, para. 33).

inquiries were necessary, inclusive of taking statements from the Scots Guards. A request was made through Interpol for British help, which was passed to the Metropolitan Police War Crimes Unit—this included a request for the names of the Scots Guards on the patrol. This information was not relayed back until 31 July 1996. Their addresses were then requested by the Royal Malaysia Police, but they were not supplied. Officers involved in the investigation planned to visit the UK to pursue their inquiries, but for some unspecified reason this did not happen. The Royal Malaysia Police file was closed on 30 December 1997, seemingly due to a lack of evidence to support criminal charges.

The appellants, who are closely related to one or more of the victims, argued that the killings amounted to unjustified murder, and that the Secretary of State for Foreign and Commonwealth Affairs and the Secretary of State for Defence were required to hold a public inquiry, or other similar investigation. The appellants argued that a public inquiry was required on three different grounds: under Article 2 (the right to life) of the European Convention on Human Rights (ECHR); under the common law via its incorporation of principles of customary international law; and under the common law through the medium of the judicial review of the respondents' exercise of their discretion under Section 1 of the Inquiries Act 2005. The respondents cross-appealed, arguing that the issues were not within the jurisdiction of the UK courts, given that the Scots Guards were operating with the constitutional framework of Selangor and the Federation of Malaya, and therefore their acts were not attributable to the UK government. In addition, if there were any obligations or liabilities prior to 1957 on the part of the UK government, those had passed onto the newly independent Federation in 1957.

The Supreme Court unanimously rejected the respondents' jurisdiction argument, but unanimously dismissed the appeal on the first and second grounds, and dismissed the third ground by a majority of 4–1 (Lady Hale dissenting). The Supreme Court held that the right to individual petition to the European Court of Human Rights recognized by the UK (14 January 1966) was the 'critical date' triggering the obligations of the ECHR, and therefore the investigative duty under Article 2, rather than the date of the coming into force of the ECHR for the UK (3 September 1953, and extended to the Federation of Malaya 23 October 1953). The lapse of time between the death triggering the investigative duty and the critical date should not exceed 10 years, which in this case it had, and therefore there was no genuine connection between the deaths and the critical date—thus the Article 2 claim failed. A duty to formally investigate was also not recognized in customary international law, given that it is only within the last 25 years that international law has recognized such a duty on states. Even if such a duty did exist, it could not be implied into common law, given that Parliament had already explicitly provided for investigations into deaths through the coroners' courts, the Inquiries Act 2005, and the incorporation of Article 2 of the ECHR through the Human Rights Act 1998. Thus, it was unsuitable for the courts to impose a further duty, particularly one with such potentially wide and uncertain ramifications. Regarding the grounds of judicial review, the majority held that the respondents' exercise of their discretion not to hold an inquiry was not unreasonable and therefore not open to challenge. In contradistinction, Lady Hale argued that the respondents did not seriously consider

the most cost-effective form such an inquiry might take; they did not seriously consider the ‘bigger picture’ (*Keyu and Others* 2015, para. 312); the public interest in properly inquiring into an event of this magnitude; the private interests of the relatives and survivors in potentially coming to a firm conclusion as to what happened and seeing the reputations of their deceased relatives vindicated; and the importance of setting the record straight.

Ghosts and Spectres

The suppression of ghosts, of the past, and of the spectral is stark in Lord Neuberger’s judgment. Neuberger suppresses and silences ghosts not just from centuries ago, but dating back only decades. For Neuberger, it was only within the past 25 years that international law recognized a duty on states to conduct formal investigations into at least some deaths for which they were responsible, and which may have been unlawful. The earliest document that the appellants made reference to in that regard was the UN General Assembly Resolution 60/147, of 16 December 2005, on The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. Neuberger was unconvinced that a fresh duty was imposed onto the UK government via customary international law to investigate any war crime, or any suspicious death, which amounted to a violation of human rights law or humanitarian law, which may have occurred within its jurisdiction in the past. Even if it had, it would have been subject to a cut-off date—which for Neuberger at most could only go back 10 years. As he argued in relation to there being no duty to investigate the killings on the part of the UK government in relation to customary international law: ‘Otherwise the duty would extend to deaths which occurred literally centuries ago’ (*Keyu and Others* 2015, para. 116). Lord Kerr also acknowledged 10 years as being a suitable cut-off date, although he conceded the view that temporal limitations to the application of the ECHR could be viewed as

[...] no more than arbitrarily selected standards which *might* rather than *must* inform consideration of whether a member state should be required to conduct an Article 2 compliant inquiry into a death [...] There is no inescapable point of principle [...] which requires the adoption of a 10-year period. (*Keyu and Others* 2015, para. 208; emphasis in the original)

Therefore, and again on par with Lord Neuberger, Lord Kerr explicitly stated that the decision to dismiss the appeal on the basis of the Article 2 argument was based upon pragmatic, rather than principled reasons. As he argued:

The assertion that an article 2 inquiry is not required does not rest [...] on the claim that no contemporary duty exists but on the essentially pragmatic basis that, for procedural reasons, it is not appropriate that an inquiry be held [...] In principle an inquiry into the deaths that is compliant with article 2 should be held. But it is claimed that that *prima facie* position should give way because a bright line rule is required to restrict the backward reach of article 2. (*Keyu and Others* 2015, para. 207)

Before moving on to consider spectres, it is first necessary to briefly explore Derrida's arguments in *Spectres of Marx*. In the book, Derrida offers a reading of Marx and Marxism consequent to the fall of the Berlin Wall and the dissolution of the Soviet Union, as well as an account of spirits, spectres and ghosts. He does so through readings of a number of texts by Marx, such as *The Communist Manifesto*, *The Eighteenth Brumaire of Louis Bonaparte*, and *The German Ideology*. Consequent to the heralding of a new world order in which liberal democracy and capitalism have triumphed (Fukuyama 2012), Derrida aims to unsettle the notion that the spectres of Marx and Marxism have been fully exorcised. In so doing, Derrida also destabilizes the foundations of the metaphysics of presence and ontology more generally through his notion of hauntology, in which the past and the future continuously haunt the present. There is also a pedagogical, ethical dimension to the book, which is about learning how to live (Royle 2003). As will be discussed in more depth shortly, for Derrida learning to live more fully can only be gleaned from the other, from an encounter with death, and through ghosts and spectres.

Returning to the case of *Keyu*, there are two main spectres that loom over the case. The first is a spectral figure in its fullest Derridean sense—the spectre of Marxism. Class struggle and Marxism are implicitly etched into the case and form its overarching framework; this will be explored in more depth shortly. Further, there are also the ghosts, or spectres, of those who were killed at Batang Kali in 1948. They are spectres because they hover ‘between life and death, presence and absence, and [make] established certainties vacillate’ (Davis 2005, p. 376).

Indeed, ghosts and spectres are anxiety-inducing because of their untimeliness. As Graham Huggan argues, the anxiety ghosts cause ‘is a function not just of their general capacity to unsettle us, but also of the temporal uncertainty surrounding their appearance. For if they probably belong to the past, who is to say that they do not belong to the future?’ (2014, p. 231). This echoes with Lord Neuberger's argument in his judgment that there was no duty to investigate via customary international law, as further incorporated into common law. Part of the argument was that allowing the appeal could open the floodgates to a number of other cases and impose a ‘duty [that] would extend to deaths which occurred literally centuries ago’ (para. 116). As he continued, on refusing to develop the common law through the imposition of such a duty,

it appears to be quite inappropriate for the courts to take it onto themselves, through the guise of developing the common law, to impose a further duty to hold an inquiry, particularly when it would be a duty which has such wide and uncertain ramifications, given that it would appear to apply to deaths which had occurred many decades – even possibly centuries – ago. (*Keyu and Others* 2015, para. 117)

Whether or not a public inquiry would be feasible due to its costs, as Lady Hale argued, is different from asking whether it would be the right course of action to take in decision-making free of policy concerns. As Lady Hale argued, the enormity of what was alleged to have taken place negated the time that had elapsed. To conduct a public inquiry would be to fulfil an ethical injunction on the part of those who are no longer present and those who are yet to come, precisely as encapsulated

in the Derridean notion of the spectre. As Colin Davis argues, ‘Attending to the ghost is an ethical injunction insofar as it occupies the place of the Levinasian Other;⁵ a wholly irrecoverable intrusion in our world [...] whose otherness we are responsible for preserving’ (2005, p. 373). As Derrida argues, one should listen and pay respect to spectres, but not in the expectation that they will reveal some secret. Instead, the spectre paves the way for a productive opening of meaning, rather than allowing for the exposure of definitive content (Davis 2005). As Catherine Smale puts it, ‘The spectre presents us with an injunction to engage with alterity, without seeking to control or dominate it’ (2013, p. 12). Therefore, it is not necessarily about trying to find conclusive answers or the ‘truth’, but rather,

to learn to live *with* ghosts, in the upkeep, the conversation, the company, or the companionship [...] to live otherwise, and better. No, not better, but more justly. But with *them* [...] and this being with spectres would also be, not only but also, a politics of memory, of inheritance, and of generations. (Derrida 2006, pp. xvii–xviii; emphasis in the original)

An inheritance, whatever it may be, is always composed of multiple and heterogeneous aspects and voices, and this further lends weight to the argument that an investigation, or an inquiry, into the past is necessary. As Derrida argues, ‘An inheritance is never gathered together, it is never one with itself [...] *one must* filter, sift, criticize, one must sort out several different possibles that inhabit the same injunction’ (2006, p. 18; emphasis in the original). In addition, bringing those voices to the fore would also mean acknowledging them, and paying respect to them and their importance.

Derrida further highlights the work that is involved in respecting the Other. As Derrida argues in the Dedication section of *Spectres*: ‘Infinite Responsibility, therefore, no rest allowed for any form of good conscience’ (2006, unpaginated). This is not an argument that we should be in a chronic state of anxiety. As Avital Ronell argues in relation to behaving ethically, it is rather about becoming more aware, insofar as it is possible, of the consequences of our actions and choices upon others. As Ronell puts it:

If we’re not anxious, if we’re OK with things, [then] we’re not trying to explore and figure things out. So anxiety is the mood *par excellence* of ethnicity

⁵ For Emmanuel Levinas, ethics arise in our relationship with the Other, in his/her absolute alterity (Levinas 1991). Specifically, Levinas wishes to provide an alternative to Husserl’s phenomenology in which the Other is regarded as another ego, as well as Heidegger’s ontology, which is argued to prioritize the relation to Being over beings. For Levinas, both phenomenology and ontology represent philosophies of violence (de Ville 2011). However, Derrida, at the very least the Derrida of *Violence and Metaphysics* (2001), diverges from Levinas’ alterity of the Other insofar as in Derrida’s interpretation, alterity is always relative alterity, and therefore always partially grounded in a phenomenological conception of the Other. Therefore, alterity is always to a certain extent dependent upon and relative to the self. In addition, Derrida also provides an account that differs from Levinas’ position in relation to Heidegger, insofar as Being is always to some extent required to ground the ethical relation and distinguish the self from the Other. Moreover, Derrida argues that Being cannot be prioritized over beings, since there can only be an order of priority between existent things, and Being is not an existent (de Ville 2011). The impossibility of the encounter with the absolute alterity of the Other is additionally compounded by the mediating role of language (de Ville 2007).

I think. Now I'm not trying to prescribe anxiety disorder for anyone. However, could you imagine Mr. [George W] Bush who doesn't give a shit when he sends everyone to the gas chamber or the electric chair – he expresses no anxiety [...] This is something that Derrida has taught: if you feel that you've acquitted yourself honourably, then you're not so ethical [...] The responsible being is one who thinks they've never been responsible enough. (Ronell, cited in *The Examined Life* 2008, no page number)

For Avery Gordon (2008), attending to ghosts is a pressing matter, because they occur when voices have been silenced, suppressed or concealed (see also Frosh 2013). Gordon interprets Derrida's argument of the ghost as 'the invisible or the unknown or the constitutively unknowable' (2011, p. 2). I disagree with this interpretation, since as I understand it, there is nothing in *Spectres of Marx* to suggest that for Derrida, the spectre and the ghost are essentially unknowable—it may be difficult to get to know the ghost or the spectre, given that, amongst other things, the ghost/spectre is multiple and contingent, and one must further always exercise respect for the alterity of the Other—but it is not out of the question to engage in an understanding and articulation of them. In my reading, it is instead the spirit that is essentially unknowable, but which takes a concrete form in the figure of the spectre and the ghost. The spectre and the ghost give the spirit 'flesh and phenomenality' (Derrida 2006, p. 5) and therefore a history. As Derrida argues,

As soon as one no longer distinguishes spirit from spectre, the former assumes a body, it incarnates itself, as spirit, in the spectre [...] the spectre is a paradoxical incorporation, the becoming-body, a certain phenomenal and carnal form of the spirit [...] For it is flesh and phenomenality that give to the spirit its spectral apparition. (Derrida 2006, pp. 4–5)

As Derrida adds, 'what distinguishes the spectre [...] from the *spirit*, including the spirit in the sense of the ghost in general, is doubtless a supernatural and paradoxical phenomenality, the furtive and ungraspable visibility of the invisible' (2006, p. 6; emphasis in the original).

However, Gordon's analysis of ghosts is crucial when considering the reason why the appellants of *Keyu* argued for a public inquiry. Gordon is sceptical about Freudian psychoanalysis in particular to fully exorcise ghosts, given that solely speaking about ghosts, such as for example in an analytic setting, would not bring them the justice that they are due. As Sean Shapiro argues, 'We are not the exclusive source of the haunting, though we experience it. The dead who suffered were real and their yearnings must be addressed' (2013, p. 65). Derrida urges that justice is impossible and even unthinkable without the principle of responsibility beyond all living present, inclusive of the creation of a better future through learning from mistakes made in the past. In a crucial passage, Derrida argues that:

If I am getting ready to speak at length about ghosts, inheritance, and generations, generations of ghosts, which is to say about certain *others* who are not present, nor presently living, either to us, in us, or outside us, it is in the name of *justice*. Of justice where it is not yet, not yet *there*, where it is no longer [...] It is necessary to speak *of the* ghost, indeed *to the* ghost and *with it*,

from the moment that no ethics, no politics [...] seems possible and thinkable and *just* that does not recognize in its principle the respect for those others who are no longer or for those others who are not yet *there*, presently living, whether they are already dead or not yet born. (2006, p. xviii; emphasis in the original)

Here, the ghosts of the victims of the Batang Kali killings were waiting to be resurrected, and reinserted into a time in which the ECHR, and specifically Article 2 and the right to life, would apply to them, and therefore in which a duty would exist to properly investigate their deaths. By all means therefore, these ghosts dislocate time and the ontological certainty of the present. Their physical remains, literally, were waiting to be brought back, given, as Lady Hale argued, ‘what exhuming and examining the bodies of the deceased could show and how it would help in determining the facts’ (*Keyu and Others* 2015, para. 309). As Derrida argues in relation to mourning, which he ties to the spectre, ‘One has to know [...] *One has to have knowledge* [...] Nothing could be worse, for the work of mourning, than confusion or doubt’ (Derrida 2006, p. 9; emphasis in the original). For Derrida, to have knowledge about the spectre, such as where one is buried, and to which it is added, how one died, is to be able to mourn fully—which would therefore permit catharsis (which, as will be explored shortly, was an important aspect in Lady Hale’s judgment). In addition, as has already been mentioned, for Derrida taking into account ghosts and spectres is also about learning how to live. Learning to live properly cannot be done without, amongst other things, considering ghosts and spectres, and therefore what has come before and how best to prepare and live in the future—what Derrida terms the ‘future-to-come’ (2006, p. xix). As Derrida argues, learning how to live can only be taught ‘from the other and by death’ (2006, p. xvii).

Additionally, Derrida’s *Spectres of Marx* finds common ground with the appellants when Derrida makes reference to, amongst others, ‘victims of the oppression of capitalist imperialism’ (2006, p. xviii). As has already been argued, for Derrida the spectres of Marxism persist, in spite of consistent, persistent and even frantic attempts to conjure them away and completely exorcise them. As Derrida urges, we need to remain vigilant, since as he argues ‘the cadaver is perhaps not as dead, as simply dead as the conjuration tries to delude us into believing’. We must remain vigilant because spectres ‘must be able to work’ (Derrida 2006, p. 120) due to what they could potentially reveal and unsettle, and in the name of justice. British colonial legacy and history is given scant attention in *Keyu & Others*. In particular, consequent to World War II and the Japanese occupation of Malaya, Malayan dollar earnings were considered crucial to British post-war recovery, especially for bridging the considerable gap in the British balance of payments with the US (Morgan 1977; Stenson 1980). British intent at the time was the swift revival of Malayan production in order to restore the dollar arsenal of the Empire. This task was placed almost entirely on the shoulders of the Chinese and Indian labour force—so-called ‘coolies’ that in Malaya had been brought in to work, amongst other things, in tin mining and on rubber plantations. This labour force was, moreover, ‘undernourished, in poor health, ill-clothed and

housed' (Stenson 1980, p. 113). The rubber industry succeeded in producing a record output—however, the benefit of this extra surplus went not to the labourers, but rather, to the European companies and towards the British balance of payments (Morgan 1977; Stenson 1980; Harper 2001).⁶ Further, in between 1945 and 1947, and in an additional effort to find a labour force that would not cause trouble, the British also attempted to break down trade unions by putting Japanese prisoners of war to work (Morgan 1977). The Chinese that moved to rural areas to live subsistence lives during times of unemployment, as a better alternative to working on estates or mines (Ramakrishna 2002), or to flee Japanese persecution during the Japanese occupation, experienced forced resettlement to 'New Villages' during the Malayan Emergency, which, in their least charitable depiction, have been described as being identical in design and purpose to concentration camps built in South Africa half a century prior (Hale 2013). This counter-insurgency tactic was aimed at separating the Communist guerrillas from the peasants, from whom they received support, whether given voluntarily or extracted by force. The exploitation of the Chinese (and Indian) labour force is not mentioned in *Keyu*. The class struggle inherent to the Malayan Emergency, and the power relations of colonial domination, are therefore ignored, and as a consequence, silenced and disavowed.

The Obscene Underside of Democracy: Undemocratic Measures

Friedman (2013) has highlighted the uneasy and paradoxical tension between torture and democracy. Beginning with the mid-twentieth century, Britain, alongside others, became committed to a number of treaties and conventions committed to human rights,⁷ indeed with 'all of them premised upon the reaffirmation of faith in fundamental human rights and the dignity of the human person' (Friedman 2013, p. 1). Friedman argues that in the following two decades consequent to human rights treaties and conventions, across the global landscape of British-controlled territories, inclusive of Malaya, 'there was often a blatant tension between the declared post-war commitment to universal human rights and the subjection of local populations to torture and other crimes' (2013, p. 3).

This tension is exemplary of what Žižek has termed the 'obscene underside' (see, amongst others, Žižek 2005a, p. 57; 2006a, p. 370) of democracy and of communities in general. As Žižek argues, the laws or rules that constitute the social require that subjects forego their own personal *jouissance* (or enjoyment) in the interest of the higher good of the community (Sheehan 2012). However, *jouissance* does not simply disappear. Instead, it is disavowed, or members of the community turn a blind eye to it. It can take the form of an 'open secret', as that which everyone

⁶ On the importance of Malaya to the British economy, see also Morgan (1977), and Hack (1999a, b).

⁷ The United Nations Charter, 1945; Declaration of Human Rights, 1948; the Four Geneva Conventions, 1949; the Refugee Convention, 1950; the European Convention on Human Rights, 1950; the International Covenant on Civil and Political Rights and Economic, Social and Cultural Rights, 1966.

knows very well is going on, but which everyone refuses to openly acknowledge. One of Žižek's most controversial examples of an obscene underside of a particular system is the Catholic Church and cases of paedophilic abuse. For Žižek, the abuse of children is 'not just a series of particular criminal cases concerning individuals who happen to be priests' (2002, pp. 29–30). Instead, it is an inherent product of the Church's institutional symbolic organization—it is therefore both that which is created by the system and supports it (Žižek 2009), as well as that which threatens to undermine it. In *The Parallax View* (2006a), Žižek makes another example that is particularly apt to the examination of *Keyu* and can be transposed to the facts of the case. Žižek discusses the torture and abuse perpetrated at Abu Ghraib in 2003 and 2004, and argues that far from the incidents being perpetrated by a few 'bad apples', as the Bush administration insisted they were (Hajjar 2013, p. 7)—they were actually indicative of the obscene underside of US liberal democracy. Žižek (2005b) also discusses the underside of American power consequent to the terrorist attacks of 9/11 as manifested in the Bush doctrine of pre-emptive self-defence, extra-legal detention as well as torture and abuse, and the Afghanistan and Iraq wars more broadly (see also Butler 2014). Maria Aristodemou makes the following argument in relation to the obscene underside of law specifically, an argument that can be extrapolated to encompass the laws that govern societies and liberal democracies generally: 'Modern theories of law [...] did not count on the fact that the very renunciation of God and adherence to pure law can generate its own libidinal enjoyment' (2015, p. 21). The obscene underside is thus retroactively created by the creation of the laws and rules that constitute the social, as well as being their necessary supplement.

In the case of *Keyu*, whilst Britain was publicly committed to treaties and conventions that espoused and upheld the principles of human rights, it was simultaneously and latently engaged in the obscenity of murder in Batang Kali. As Danny Friedman argues, the use of force at Batang Kali was grossly disproportionate, and therefore constituted the crime of murder under the common law by reference to authority dating back to 1879.⁸ By all means, this was not an anomaly restricted to Malaya, either temporally or geographically. Abu Ghraib and some of the abuses perpetrated in the name of the Global War on Terror have already been mentioned. At around the same time as Malaya (during the 1950s), the British colonial administration was also committing human rights violations in, for example, Kenya.⁹ During the Mau Mau uprising in between 1952 and 1960, torture by colonial authorities against the Mau Mau was systematic (Loytomaki 2014). In particular, more than 100,000 Kikuyu (Kenya's largest ethnic group) were interrogated for supposed sympathies with the Mau Mau (a militant African nationalist movement) and placed in brutal labour camps.¹⁰ At the Hola prison camp, victims were allegedly castrated and even burned alive (Monbiot 2005;

⁸ *R. v Clegg* [1995] 1 A.C. 482.

⁹ Hale (2013, p. 12) appositely suggests that the events in Kenya could open the door for more 'closeted spectres' of the British military establishment.

¹⁰ Elkins (2005) estimates that the number of people detained was actually closer to 1.5 million people, almost the entire Kikuyu population, if one also considers fortified villages (see also Monbiot 2012).

Stanley 2013). Further, similarly to the case of *Keyu*, 11 prisoners were killed, by being beaten to death by prison wardens, at the Hola camp on 3 March 1959 for refusing to work (Anderson 2014).¹¹ Far from being isolated to Batang Kali therefore, the obscene underside of Britain's liberal democratic commitment to treaties and conventions upholding human rights manifested itself in other parts of the British Empire.¹²

On a psychoanalytic level, confronting the Real¹³ of this obscene underside head-on, without prevarication, excuses, filters or justifications, is a radically ethical act—the only true ethical act in the eyes of Lacan (2007). This encounter can be disappointing, frightening, and even deeply unsettling, given that it has the potential to shatter all of our deeply held belief systems, about ourselves and the society in which we live. As Maria Aristodemou argues, facing the Real 'means facing up to our own ugliness without the help of consoling fantasies, including the fantasies of [...] ideologies including human rights and democracy' (2014, p. 56). However, confronting the Real also means that through confronting the abstract, radical negativity that characterizes the social and subjectivity—the so-called 'evil' insofar as it derails us from that which is symbolically scripted and mandated (Žižek 1993)—one can also, from a Lacanian psychoanalytic view at the very least, begin to act and think more ethically, and make different choices in the present as well in the future.

¹¹ In the case of Kenya in particular, but with implications for other parts of the British Empire, Caroline Elkins explicitly highlights this tension. Elkins argues the following in relation to the ECHR, which had been drafted in the wake of World War II, and the attitude of colonial officials: 'Most thought Africans and Asians not yet civilized, and therefore not entitled to the rights and obligations that went along with the postwar notions of international citizenship. Additionally, Mau Mau suspects were thrown into a category all of their own. Their bestiality, filth, and evil rendered them subhuman, and thus without rights. The British argued that Mau Mau threatened not just the life of the colony but that of British civilization as well. Detaining these subhuman creatures amounted not only to saving Africans from themselves but also to preserving Kenya for civilized white people. The world had heard variations of this logic before, most recently when nearly 50 million people had lost their lives in the fight against fascism for the preservation of liberal democracy. Yet only seven years after the end of World War II, Britain found itself in a curious position of constructing its own labyrinth of detention camps in its fight to preserve colonial rule in Kenya.' (Elkins 2005, p. 97).

¹² For examples of abuses, inclusive of human rights abuses, committed in the British Empire, see for example Monbiot (2005) and Brendon (2007).

¹³ Lacan argued that the subject emerges through the interplay of the Imaginary, the Symbolic and the Real. The subject becomes a subject proper through the accession into the Symbolic Order, or the realm of law and language. This accession is supplemented by imaginary identifications that construct the ego and which arise when the infant is in between 6 and 18 months of age—a stage that Lacan termed the Imaginary (Lacan 2001). The excess that cannot be codified within the Symbolic, and which paradoxically is also retroactively created by it, is called the Real. The Real is dangerous insofar as it lies outside the realm of the law and the social; it threatens to return, erupt and disrupt through the subject and the coordinates of the social. For Žižek, the social and the political are also constituted by those three levels—the Symbolic constructs the narratives of our political and social life, which are further supplemented by imaginary identifications, or fantasies around which our desire finds its coordinates—these are attempts to plaster over the Real of abstract, radical negativity that characterizes the social (Žižek 1989; Stavrakakis 1999).

Lacanian-Žižekian Psychoanalysis as an Interpretive Framework

In *Seminar II: The Ego in Freud's Theory and in the Technique of Psychoanalysis* (Lacan 1988), Lacan argues that trauma occurs when a subject has an encounter with the Real, or that which cannot be signified. The Real is where 'all words cease and all categories fail' (Lacan 1988, p. 164). More precisely, what is actually truly traumatic is not the encounter itself, but its repetition, which acts as a prompt for the subject to come to terms with what has happened (Žižek 2006b; Schroeder 2008). The repetition, or the re-living of a trauma, constitute its symptoms (Schroeder 2008). In the work of the early Lacan (of the 1950s: Žižek 2012, 2014) one way to defuse the Real's traumatic impact is for the analysand (or the patient) to articulate it, to be able to express it, and therefore bring it into the realm of the Symbolic (Fink 1995, 1997; Schroeder 2008). As Jeanne Lorraine Schroeder puts it, 'The traumatized subject is doomed to repeat her trauma precisely because she cannot exorcize it by speaking its name' (2008, p. 44) The position of the analysand therefore finds much in common with the appellants in *Keyu*, who argued for a need to know, insofar as it was possible, as many details of what had happened to their deceased relatives at Batang Kali. The claim was tied into the appellants' need for 'closure' (*Keyu and Others* 2015, para. 135), and what Lady Hale referred to as 'catharsis', in particular the 'very real benefits' that an inquiry could bring in relation to it (*Keyu and Others* 2015, para. 310). This closure and catharsis would relieve the 'persistence and strength of the injustice' that had been felt by the survivors and the families of the men who had been killed (*Keyu and Others* 2015, para. 309).

In addition, part and parcel of the claim made by the relatives of the Batang Kali killings was for the full, unequivocal acknowledgement and registration of the events by the big Other, or the Symbolic, to the fullest extent that the truth could be fully determined by a public inquiry. This component to the case, from a Lacanian psychoanalytic viewpoint, is crucial. Indeed, the acknowledgement and recognition of one's voice and one's story has more profound implications in terms of the constitution of the subject and its ontological security. As Linda Belau argues, 'there is no ontological existence prior to recognition in the Other' (2001, para. 5). The disavowal, suppression or silencing of one's story and one's voice can be devastating, and at its most extreme, even fatal. Slavoj Žižek makes the example of Primo Levi's nightmare in which he survives Auschwitz, is reunited with his family, and begins to recount his experiences in the camp. In the nightmare, Levi's family eventually become bored, begin to yawn, and leave the table until Levi remains alone. Here, there is no-one to bear witness to the experiences of Auschwitz and Levi's testimony: Levi's story, alongside the atrocities of Auschwitz, are therefore erased from history and Levi's experiences are disavowed as insignificant, and therefore rendered immaterial to the Symbolic. However, it is in the camp itself that symbolic death, so to speak, begins. As Žižek puts it, 'In the concentration camp, there is no big Other, no one on whom we can count to receive and verify our testimony' (2012, p. 29). Žižek also makes the examples of survivors of rape during

the Bosnian war in the early 1990s—for a number of them, the failure of the registration of their words in the big Other did indeed prove fatal. As Žižek argues:

many of the girls who survived brutal rapes later killed themselves, having rejoined their community only to find that no one was really ready to listen to them, or accept their testimony. In Lacan's terms, what is missing here is not only another being, the attentive listener, but the 'big Other' itself, the space of the symbolic inscription of my words. (2012, p. 29)

That symbolic acknowledgement and inscription was also lacking for the claimants themselves—one of the reasons provided by Lord Neuberger in his judgment was that the survivors 'were in their 80s, and witnesses would have difficulty in recalling events over 60 years ago' (*Keyu and Others* 2015, para. 124). This assumption is, in blunt terms, patronizing as much as it is speculative, given that the survivors were not even given the chance to prove it wrong. In addition, the survivors were equally denied a voice twice before: in the original investigation by UK authorities into the killings in 1948–1949, where none of the surviving villagers were interviewed, and in the criminal investigation begun in 1970 by the Metropolitan Police, which was closed before the surviving witnesses could be interviewed. Further, and on a larger scale, it is the event of the massacre itself that needs symbolic registration. As Lady Hale argued, the enormity of what was alleged to have occurred deserved 'to be acknowledged and condemned' (*Keyu and Others* 2015, para. 309).

Excavating the past is therefore crucial in terms of allowing the appellants and the victims of the Batang Kali killings to have a voice, even if in the case of the victims it is posthumously, and to therefore receive a space for the symbolic inscription of their words. That inscription would also provide for the potential for the rectification of the official record and for the victims' reputations to be restored and vindicated. The reception and inscription into the Symbolic is also necessary for the ontological security and full constitution of the victims' and survivors' material existence. In so doing, it would not only validate the victims and their relatives and their experiences, but also those of other Chinese (and Indian) labourers whose rights were subordinated, repressed and even disavowed in the power dynamics of capitalism and British colonialism. The spectres of Marxism within the context of Malaya would also consequently be heeded, attended to, and respected for what they can teach us about how to live more justly in the present and in the future.

Conclusion

This article has argued that the case of *Keyu* presents us with ghosts and spectres that inevitably affect our present, as well as offer a possibility to make better choices in the present and in the future. The ghosts and spectres of *Keyu* additionally offer the opportunity to ethically engage with the Other, and to pay attention to the multiple and heterogeneous voices of an inheritance. The engagement with ghosts and spectres and therefore the past, from which one learns, thus paves the way to living more justly and responsibly in the present as well as in the future. To do this,

in Derridean terms, means finally learning how to live. Within the context of Britain and its colonial and capitalist legacy, learning how to live means engaging with, amongst other things, the profound inequalities that characterize capitalist class relations in order to build towards a more equitable social, political and economic future. In addition, a Lacanian-Žižekian interpretive framework provided a prism through which to understand the appellants' need for a public inquiry: the public inquiry would provide a space for the acknowledgement and inscription of the victims' and relatives' voices and experiences by the big Other, or the Symbolic. That acknowledgement and registration would further secure the ontological basis of their voices and experiences, which had not been sufficiently heard, as well as potentially provide the appellants some reprieve from the traumatic impact of the killings. Moreover, the event of the killings themselves would further be acknowledged and registered by the big Other through an exhaustive public inquiry. From a Lacanian-Žižekian point of view, learning how to live also means facing the obscene underside that characterizes, amongst other things, liberal democracies. For all their commitment to, for example, human rights, there remains a kernel of that which is unspeakable, that is to say, the Real—that needs to be openly confronted so that it may be unequivocally come to terms with and tackled.

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