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Laws of Inclusion and Exclusion: *Nomos*, Nationalism and the Other

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Abstract

This article explores how and why contemporary nationalist 'defence leagues' in Australia and the UK invoke fantasies of law. I argue these fantasies articulate with Carl Schmitt's theory of '*nomos*', which holds that law functions as a spatial order of reason that both produces and is produced by land *qua* the territory of the nation. To elucidate the ideological function of law for defence leagues, I outline a theory of law as it relates to (political) subjectivity. Drawing on the work of Foucault, Agamben and Brown, I demonstrate how subjects form and are formed by historically contingent relationships to law in the contemporary neo-liberal moment. Turning to Lacan, I show how nationalistic invocations of law provide nationalists with a fantasy that the nation's law represents *them* and holds them together (*as* the nation itself). Similarly, I argue that nationalists imagine that the other has *their own law* as well, which not only corresponds to the other, but functions as a legible index of the other's otherness—a metonym for the threatening uncertainty and radical difference that the other represents. Drawing on Lacan's concept of the big Other, I ultimately argue that nationalists aggressively (re)assert law not only to defend the nation, but to ensure *their own* symbolic and ontological security therein.

Keywords Defence nationalism · Foucault · Lacan · Law · Neo-liberalism · *Nomos*

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One Land, One Law, One People. (The English Defence League 2016).

They're just trying to put their law down on us. (EDL Member)[1]

Introduction: our law, their law

Nationalists often exhibit a range of fantasies and anxieties about land and their imagined connection to it. They typically fantasise about *owning* and possessing (the) land, but are also often anxious (the) land will be taken from them, or their claim to it invalidated. To combat this anxiety, nationalists attempt to (re-) assert their imagined ownership of land and their spatial and symbolic priority therein (Hage 1998, 2004). Contemporary nationalist 'defence leagues' in Australia and the United Kingdom[2] illustrate this dynamic, as evinced by the English Defence League's motto, 'taking back our streets!', as well as by the very name of the group 'Reclaim Australia' (because in order to be able to *reclaim* the nation for oneself, one must imagine that an-other possesses it). For members of these defence leagues—whom I will refer to as defence nationalists[3]—such fantasies and anxieties about land are also simultaneously fantasies and anxieties about *law*. As shown in the epigraph above, members of the EDL fantasise about the existence of a singular, totalising (system of) law that is commensurate to a singular land and a singular 'people' (hence 'One Land, One Law, One People'). Indeed, for defence nationalists, *together*, land, law and people are 'One' *qua* the very nation itself. That is to say, together, they are (imagined) 'whole'.

But just as defence nationalists imagine that *they* have *their own* law (correlative to the land, the people and the nation), so too, they imagine that the other has '*their*' law, which is incompatible with 'ours', and which threatens to take over 'our' land and perhaps even 'our' people as well. As one EDL member elucidated in a video uploaded to YouTube (bs09b2s 2011): 'You've got interracial law…they're trying to get their law over our country… You've got the Iraqi law that they've put down on London…they're just trying to put their law down on us.'

When asked which specific laws had been imposed in London, he elaborated: 'They've got their law. Obviously it's their law, isn't it?' Similarly, another EDL member reflected: 'these Paki lads…they like our benefits, but not our laws' (Treadwell and Garland 2011, p. 630). The notion that the other does not 'like' our law, and self-evidently has their own that they would like to impose on 'us', is also conveyed in the EDL's Mission Statement:

[1] Quoted in a video uploaded to YouTube (bs09b2s 2011).

[2] Among such groups are included: the English Defence League, the South East Alliance (SEA) and the British National Front (BNP) in the UK; and the Australian Defence League (ADL), Reclaim Australia, the United Patriots Front (UPF), the True Blue Crew, and the Party For Freedom in Australia.

[3] I refer to members of these groups as such not only because defence leagues are constructed as *quasi*-paramilitary organisations with their own uniforms, rankings, hierarchies and insignia, but more importantly, because members of these groups typically portray *themselves* as defenders of the nation.

> The European Court of Human Rights has determined that 'sharia is incompatible with the fundamental principles of democracy'. Despite these problems, there are still non-Muslims who condone the intrusion of sharia norms, and who believe that sharia can operate compatibly with our existing traditions and customs. In reality, sharia cannot operate fully as anything other than an alternative to our existing legal, political, and social systems. The primacy of British courts must be maintained and defended. (EDL 2016)

In these examples, the other's law is depicted as an 'incompatible' system that threatens to be imposed 'over our country'. 'Their law' and their norms ('sharia norms') could replace *ours*, overhauling all of '*our* existing legal, political, and social systems' in the process (my emphasis). For this reason, Stephanie Banister, a former candidate for the far-right One Nation party in Australia declared: 'their laws should not be welcome here in Australia' (Olding 2013).

The above invocations of law—whether of 'ours' or of 'theirs'—beg the question: what *is* law for defence nationalists? How does law relate to their nationalism? And how might an understanding of the *function* of these invocations allow us to better understand the subjects and subjectivities of defence nationalists? To respond to these questions, I start with the premise that the *ideas* of law that nationalists explicitly invoke may not entirely capture the function of law in nationalist narratives, fantasies and subjectivities. Put differently, I start with the premise that the function of law for nationalists may exceed the ideas of law which are consciously held and explicitly drawn upon by them. As I will elaborate, this is because the effects and affects of law can be unconscious or otherwise subterranean.

To distinguish the *ideas* nationalists have of law from the totality of law's effects and affects, I first provide a general outline of the manner in which nationalists invoke law. By doing so, I do not seek to cover such invocations exhaustively, but instead, to provide a general sense via some representative examples (some of which have been provided already above). I then draw upon Carl Schmitt's theory of law as '*nomos*', which holds that law and land work *together* to both inaugurate and function as a spatial order of reason (2003). As Schmitt elucidates, land and law are inseparable insofar as they co-constitute and co-substantiate one another. This is because law is predicated on land both *for* and *as* its jurisdiction, while land is predicated on law insofar as law *defines* land as it comes to be *known* and possessed (as, for example, a nation, territory or property). I argue that Schmitt's conceptualisation of *nomos* strongly articulates with defence nationalist conceptualisations of law (and indeed land), in that for both Schmitt and defence nationalists, nations are *juridical* entities that both produce and are produced by law, and that both uphold and are upheld by law.[4]

While Schmitt's theory of *nomos* provides a framework towards understanding law as *explicitly* invoked by nationalists, to understand its subterranean (ideological) dimensions, *a theory of law as it relates to (political) subjectivity is required*. To provide this, I draw on the work of Jacques Lacan, for whom law plays a role in

[4] To reiterate, I am not necessarily arguing that land and law *really are* what Schmitt says they are, but rather, that Schmitt's theory of *nomos* articulates with what land and law are *for defence nationalists*.

producing subjects in the first instance (2006, p. 229). As I elaborate, Lacan's theory of the subject sits poetically alongside Schmitt's theory of law and the nation, in that just as for Schmitt, nations are *juridical* entities that both produce and are produced by law, so too for Lacan, *subjects* are juridical entities that produce and are produced by law. To historicise these subjects of law, I put the sometimes (perhaps often) competing frameworks of Michel Foucault (2010), Giorgio Agamben (1998) and Wendy Brown (2015) into conversation with Lacan. I argue that by reading these theorists together, we can better understand how subjects are discursively formed *as juridical subjects* in the present neo-liberal moment *through* historically contingent modes of subjectivation that uniquely implicate law. An understanding of these modes of subjectivation can enrich existing analyses of *both* neo-liberalism and contemporary ethnic nationalism—of which defence nationalism is but one instantiation—because rather than understanding subjects merely as pre-existing individuals who are alienated *within* societies by social, economic and political forces (sometimes resulting in aggression and nationalism), this reading holds that subjects are also alienated *from their own presumed identities as well*. That is, subjects are not pre-existing individuals who belong to a particular class, group or section within society that feels or is disenfranchised and alienated under the auspices of neo-liberalism; rather, subjects are discursively formed as (hyper)individuated subjects *by the very processes of neo-liberalism itself*. As I elucidate, these processes *themselves* carry psychosocial implications which are expressed both *through* and *in* defence nationalism (including through explicit invocations of law).

Drawing on Lacan, I develop a nuanced theory not only of how and why nationalists invoke law, but of the fantasies of law and the nation that underpin these invocations as well. My contention is that subjects who identify with defence leagues elevate the nation to the status of the Lacanian 'big Other' (hereafter, the Other), which is the symbolic figure that provides and guarantees the existence of a stable field of meaning by providing and guaranteeing the imagined existence of 'knowledge' (Lacan 2007, pp. 12–15).[5] By constructing the nation *as* the Other (the guarantor of meaning and knowledge), defence nationalists attempt to alleviate neo-liberal anxiety by ensuring that the nation exists and functions as a stable social field *for them*: as a singular, albeit collective body comprised of *their* flesh, *their* land and *their* law. In short, defence nationalists attempt to ensure that the nation provides 'One Land, One Law, One People' *for them* to the exclusion of all others (that is, to the exclusion of small-o others).

Juxtaposing Schmitt's theory of *nomos* alongside Lacan, I show how defence nationalist fantasies of land and law assist in the *personification* and *reification* of the nation as the Other, whereby land provides the physical 'body' of the nation while law provides its 'language'.[6] By providing nationalists with imagined 'access'

[5] For Lacan's extended discussion, see 'Production of the four discourses' (Lacan 2007, pp. 11–26).

[6] The elevation of the nation to the Other is facilitated by constructions of the nation in Western Liberal democracies. In these settings, nations are personified insofar as they are said to possess a 'will' of their own; in theories of popular sovereignty, this 'will' is said to reflect the collective will of the People, and is supposedly enshrined and protected in law. On this point, a number of foundational theorists of the Western nation and sovereignty can be read, including Locke (1689), Hobbes (1968), and Rousseau (1968).

to the nation (through its land and law), I show that defence nationalism works to alleviate anxiety by enabling nationalists to (re)conceptualise and *tether* their bodies and identities to the nation. I show that for nationalists, the nation *as* the Other provides a body, a language, a law and a land that, by extension, allows nationalists to imagine and enjoy (self-)certainty within the symbolic field of the nation.

As foreshadowed above, the notion that *our* law represents *us* and holds us together has a pernicious underside: the correlative notion that so too, the other 'obviously' has their own law that represents *them* and holds them together (*at our expense*). For nationalists, the other and the other's law therefore represents *un*certainty: that is, a threat to the (*self*-)certainty that the nation is imagined to afford nationalists with/in its boundaries. I hold that while the other's law functions as a symptom or metonym for the threatening and 'incompatible' difference of the other, it is also *imagined* by nationalists to function as a legible index *of* that otherness: that is, as an *account* of an otherness that would otherwise be considered radically foreign. While nationalistic invocations of the other's law therefore ostensibly *threaten* nationalists through representations of 'incompatibility' and uncertainty, they nevertheless also provide avenues for 'solving' the very problem they purport to identify and to make legible: namely, the problem of the other's otherness. As I elaborate, defence nationalist fantasies of law 'solve' the problem of the other by allowing nationalists to imagine that they can *instrumentalise* their bodies against the other *in the name of the very nation itself*, and that by thereby fulfilling their (self-)ordained role as defenders of the nation, so too, they can secure and guarantee their own (self-)certainty therein.[7]

Invocations of the One

When defence nationalists invoke law, they typically do *not* appeal to *specific* laws, but instead, to an overarching *notion* of law. This overarching law, the 'One Law' for the EDL, refers to a singular system of law *in its totality*. This totality is captured by the EDL's use of the generic phrase 'the rule of law' (EDL 2016). As the EDL Mission Statement elaborates:

> The onus should always be on foreign cultures to adapt and integrate. If said cultures promote anti-democratic ideas and refuse to accept the authority of our nation's laws, then the host nation should not be bowing to these ideas in the name of 'cultural sensitivity'. Law enforcement personnel must be able to

[7] To reiterate, throughout this article I am only suggesting that the nation and law function together in this way for defence nationalists. I am suggesting that a particular set of fantasies about self, nation and law—and the relationship(s) between these—lies at the core of defence nationalism. I am *not* suggesting that these orientations are universally or even broadly assumed. Indeed, many subjects, even many nationalists, assume entirely different orientations towards law and nation than those outlined in this article. There are a multitude of possible orientations towards law and nation that subjects can assume. Like the 'defence nationalist' orientation I theorise and historicise throughout this article, understanding any one of these possible formations would require (and merit) a detailed and sustained interrogation.

> enforce the rule of law thoroughly without prejudice or fear. Everyone, after all, is supposed to be equal in the eyes of the law. (EDL 2016)

Members of the EDL not only hope for this singular law, they demand it: 'We demand one legal system—one law—for all' (EDL 2016). For nationalists, this 'one law' not only *defines* the nation (its land, borders and jurisdictions), but *defends* it as well. For them, law is both a basis and a tool for excluding others deemed non-national others from the nation. As one EDL member put it, the British government should 'stop…mass immigration and deport Muslim extremists along with those who can't abide by British law' (Thornton 2017, n.p.); similarly, another called for the government to implement laws that will 'STOP REWARDING' and 'START DEPORTING' Muslims (Stonham 2016). These invocations of law show that for defence nationalists, law functions as an edifice that holds the collective body together as a cohesive unit (within its land). They also show that law keeps the collective body *together* by keeping *other* bodies apart or out entirely (through expulsions, deportations and the prevention of 'mass immigration'). Here, the role of law for defence nationalists is two-sided: on the one hand, it functions as a map through which the nation is conceptualised and represented (by providing a 'technical' articulation of the nation's borders and citizenship criteria); while on the other, it works as a *tool* for (*re*)mapping the nation from within (by providing a positive articulation of who should and should not be allowed into the nation, as well as an account of those 'within' who should be expelled).

By regulating the inside and outside of the nation through borders, barriers, expulsions and deportations, law functions, for defence nationalists, as theorised by Costas Douzinas, which is as a tool for maintaining a symbolic and imaginary sense of 'wholeness' through a guarantee that the other, such as the figure of the Muslim, the migrant or the refugee, is kept 'outside' of the nation (2000, pp. 357–358). As I later elaborate, law's project of keeping the other outside of the nation is *both* a political project and a psychic project for nationalists that relates to nationalistic efforts to distance the self from the inexorable abject that threatens to dissolve or jeopardise the imagined continuity of the self. What the above examples show is that the ideological apparatus of law *organises* bodies and makes them (whole) by determining and reinforcing boundaries and jurisdictions (Douzinas 2000; Rush 2005); in turn, law then provides a stage upon which those bodies can 'appear' and be recognised: that is, a stage upon which they can be(come) recognised and recognisable as subjects with stable, enduring identities (Rogers 2014, p. 19). Corporations, nations, communities, bodies and 'individuals' can all be included among those that are made and recognised by law. Although each of these bodies is defined as a supposedly separate entity, they are also imbricated with one another through law: for example, law defines both the nation and what it means to be a citizen in reference to one another; law then tautologically allows subjects who meet the criteria of citizen to appear as citizens (that is, whole subjects) within the nation. It is precisely because of this function that law becomes a crucial site of recognition—both *of* and *by* the nation—for nationalists.

While there are multiple '*bodies of law*', Western law itself can also be referred to as a body of law in the singular—as the '*One* Law' that the EDL and other defence

nationalists invoke. Such invocations are consistent with the way law is constructed in Western ideology, which is as a singular body that *is always whole* (Rogers 2014; Rogers and Ghumkhor 2015; Douzinas 2000). In the West, law is always whole because despite the inevitable amendments that occur to specific laws over time, the underlying *idea* of law itself remains constant (as something comparable to the '*Grundnorm*' in Hans Kelsen's theory of law (1967)).[8] In the West, when specific laws change, *the law* remains intact and constant, even in its apparent inconstancy. To undermine or amend a specific law is not to undermine law itself, but the opposite: to reinforce, reaffirm and venerate the totality of law and its rule. Even if, over time, every individual law were to change, the Western 'rule of law', as *demanded* by the EDL, could remain,[9] because although ephemeral and in perpetual flux, the body of Western law remains a constant, total body: a singular body that is never incomplete, but is *ideal* and never fragmented; a body that is 'One' in the EDL's parlance. As I outline below, for defence nationalists, this singular body of law is itself certain but also provides certainty (of the self and nation, and of the subject's recognisability as a national subject therein).

(De)limitations of Law

Schmitt writes that 'in mythical language, the *earth* became known as the mother of law' (2003, p. 42, emphasis in original):

> She contains law within herself, as a reward of labor; she manifests law upon herself, as fixed boundaries; and she sustains law above herself, as a public sign of order. Law is bound to earth and related to earth. (2003, p. 42)

For Schmitt, together, law and land are '*nomos*', a force that organises and reifies the social and the political by providing the 'objectification of the *polis*' (2003, p. 9). As Schmitt elaborates, *nomos* entails 'a constitutive act of spatial ordering', a founding moment of land appropriation through which the jurisdiction of law—in which a social and political order can emerge—is declared (2003, p. 71). Schmitt writes that:

> The constitutive process of a land-appropriation is found at the beginning of the history of every settled people, every commonwealth, every empire. This is true as well for the beginning of every historical epoch. Not only logically, but also historically, land-appropriation precedes the order that follows from it. It constitutes the original spatial order, the source of all further concrete order and further law. It is the reproductive root in the normative order of history. All further property relations – communal or individual, public or private

[8] Kelsen's theory of the *Grundnorm*—the 'ground norm' or 'basic norm'—refers to the *foundation* of the legal system itself, which functions as the constant backdrop upon which legal debate and amendments occur (1967).

[9] For an example, see Rush (2005) for a discussion of *Mabo and Others v. The State of Queensland*. As Rush elaborates, although the High Court of Australia ruled against the colonial declaration '*terra nullius*', upon which the land called Australia and Australian law is founded, common law—and its 'rule'—nevertheless continued.

> property, and all forms of possession and use in society and in international law – are derived from this radical title. All subsequent law and everything promulgated and enacted thereafter as decrees and commands are *nourished*, to use Heraclitus' word, by this source. (2003, p. 48)

For Schmitt, law is only possible through the appropriation of the very land upon which it is founded (2003, p. 48):

> [S]oil that is cleared and worked by human hands manifests firm lines, whereby definite divisions become apparent. Through the demarcation of fields, pastures, and forests, these lines are engraved and embedded […] In these lines, the standards and rules of human cultivation of the earth become discernible […] the solid ground of the earth is delineated by fences, enclosures, boundaries, walls, houses, and other constructs. Then, the orders and orientations of human social life become apparent. (2003, p. 42)

Here, Schmitt shows how manifestations of law and land are intertwined. When land is 'cleared and worked', 'firm lines' and demarcations manifest and 'the orders and orientations of human social life become apparent'. Put in Agamben's terms, it is only when land is worked and law is established that the 'factual setting' of reality can emerge (1998, p. 170); that is, 'the orders and orientations of human social life'.

While for Schmitt, law is predicated on land, the reverse also holds: land, defined and *designated* as a distinct 'thing' that can be *possessed* (for example, as a territory), is dependent on law for its delineation (the 'radical title' to which Schmitt refers above). Put differently, *nomos* as a spatial body not only *inhabits* and rules over the land (as in the phrase, 'the law *of* the land'), it also *founds* land as it will come to be *known* (as a nation is founded through declarative violence).[10] Law—understood as *nomos*—is therefore not only a discursive apparatus that is drawn upon to *manage* the spatial, it is also an apparatus that *founds* the spatial as well. As Dorsett and McVeigh elaborate, the very *claiming of a jurisdiction* entails 'an inaugural gesture of enunciation' that '[gives] voice…to sovereignty and to the order of *nomos*' (2002, p. 298). Once this order is established, its continuation is predicated on the ongoing possession of the land that founds law, and yet on which law is also founded in the first instance.

Schmitt's theory of *nomos* is useful for understanding both how and why defence nationalists seek to manage land, law and the nation precisely because Schmitt theorises that land and law work *together* as 'the immediate form in which the political and social order of a people becomes spatially visible' (2003, p. 70). Indeed, for both Schmitt and defence nationalists, land, law and people (e)merge together as 'One' and thus cannot be (easily) dissociated. When nationalists invoke law to reaffirm their spatial and symbolic priority with/in the nation—to effect deportations and re-affirm their own citizenship as 'authentic' belonging—they seek to instrumentalise law to manage and clear the land *of others* so that 'orders and orientations of human social life' that are favourable *to them* are established not only *with/in* the nation, but *as* the nation itself. However, like all defined and delineated objects, the

[10] See Derrida (1992) for discussion. For an exemplary discussion, see: Rush (2005).

spatiality of *nomos* (of land, law and people) is both most evident and most *fragile* at its edges, because where one territory ends, an-other begins. When one crosses the national border, for example, one leaves behind one's nation and simultaneously enters another. This theoretical point, which is developed in the coming sections, contextualises the preoccupation defence nationalists have with the border and 'border protection'. It also contextualises nationalistic attempts to re-assert and reinforce law by calling for and indeed *demanding* that stronger laws be implemented, and for the rule of law itself to be (re)enforced more strongly.

Subjects Before the Law

As outlined above, for Schmitt, law produces the very land upon which it is predicated. So too, for Lacan, law produces the very *subjects* upon which law is predicated (that is, law produces the very subjects for whom law itself is supposedly produced to govern). For Lacan, there is no pre-juridical subject: one does not *pre-exist* the law, but comes '*before*' the law to be recognised as a subject *as such* (2006, p. 229). Law produces subjects, for Lacan, because law provides a framework and coordinates *by which* subjects will come to be known as particular subjects.[11] One therefore does not come '*before*' the law temporally, but instead as one comes before a mirror: spatially, and facing it so as to receive a reflection of one's self as a particular kind of subject. As Judith Butler writes: 'we start to give an account [of ourselves as subjects] only because we are interpellated as beings who are rendered accountable by a system of justice and punishment' (2005, p. 10). Insofar as law *produces* subjects as particular kinds of subjects, law does not police existing differences so much as it *creates* the differences it comes to police (Butler 2005; McManus 2016). As McManus observes, 'law does not have the function of managing difference', instead, law 'produces difference through the very processes that are designed and implemented to manage it' (2016, n.p.). Law is therefore criminogenic in that it produces 'criminal' subjects by producing *types* of criminality. As McManus elaborates:

> in the process of creating…restrictions and legal categories [law] encourages subjects to identify with these legal labels and appropriate them as part of their identity. The thief, the drug user, and the illegal immigrant are all seen as deviations from the norms law is designed to uphold. But this gets the chicken and the egg scenario wrong since these persons are directly the products of the law. (2016, n.p.)

Through its identity-producing capacity, law not only produces a taxonomy of 'criminal' subjects and identities through categories of criminality, it also produces articulations of the *individual* subject before the law: the 'law-abiding' citizen, and, I will argue, the *national* subject as well. Indeed, by dispensing recognition as a particular subject—for example, recognition as an 'individual' before the law; as a

[11] For Lacan's extended discussion, see 'The function and field of speech and language in psychoanalysis' (Lacan 2006, pp. 197–268).

'lawful' or 'unlawful' 'citizen'; as an 'Australian', 'British', 'immigrant' or a 'refugee' subject—law 'reveals itself clearly enough as identical to a language order' (Lacan 2006, p. 229).

The bodies and subjects that law produces are contingent, and can be historicised and (potentially) understood in relation to the context(s) with/in which they have emerged. Foucault famously taught us that medieval and contemporary forms of power produce and regulate bodies, and therefore subjects, differently and differentially (1977). More recently, a body of work has emerged that pays homage to Foucault's genealogical method by examining how contemporary bodies and subjects are produced through historically contingent modes of subjection and subjectivation—some of which uniquely implicate law. Law itself, however, does not produce bodies and subjects in isolation; rather, bodies and subjects are produced from within complex, discursive assemblages of which law is but one component. Much of the emerging research reflects this by seeking to understand contemporary forms of subject production and subjectivation in relation to the pervasive, seemingly all-encompassing assemblage referred to as 'neo-liberalism', whose prevailing ideologies draw upon both capitalism and law *together* to reinforce one another in historically novel ways (Agamben 1998; Bowsher 2018; Brown 2015; Chandler and Reid 2016; Dilts 2011; Dardot and Laval 2013; Read 2009). This work shows that by constructing the sanctity of the individual body as its *telos*, contemporary (Western) law and capitalism work in tandem to cast the subject not only as an 'individual' subject, but as a *radically* 'private', entirely enclosed individual who is *wholly* responsible for their own decisions and actions. In the coming section, I elucidate how neo-liberalism heralds and inaugurates novel forms of subjectivity, subjecthood and subjection through this production of bodies and subjects *as such*. I then argue that these modes of subjectivity, subjecthood and subjection are accompanied by equally novel modes of alienation: in short, that if one gives an account of oneself only because one is *called* to give an account, *à la* Butler (2005), that the individualising, interpellatory architecture of neo-liberalism ensures that the account given is a *juridical* account enunciated from the perspective of a radically private, alienated hyper-individual. In turn, I examine how neo-liberal subjectivity, subjecthood and subjection, and the alienation that accompanies them, are implicated in defence nationalism.

Corpus *capitalis*

In his later work, Foucault sought to historicise the emergence of neo-liberal individualism and governmentality. In doing so, Foucault articulated the emergence and production of the figure of '*homo æconomicus*': the mythical, individual subject, the 'atom of freedom' in whose name the neo-liberal Sovereign purports to govern (2010, p. 271). *Homo æconomicus*, Foucault writes:

> represents one of the most important mutations, one of the most important theoretical transformations in Western thought since the Middle Ages. What English empiricism introduces – let's say, roughly, with Locke – and doubtless for

> the first time in Western philosophy, is a subject who is not so much defined by his freedom, or by the opposition of soul and body, or by the presence of a source or core concupiscence marked to a greater or lesser degree by the Fall or sin, but who appears in the form of a subject of individual choices which are both irreducible and non-transferable. (2010, pp. 271–272)

For Foucault, *homo œconomicus*—the original subject of liberalism—came to function as an historical predicate and enabling condition of the neo-liberal Sovereign, sanctioning an 'art' of governance 'determined according to the principle of the economy' (2010, pp. 270–272). The ultimate goal of this Sovereign was to provide and maintain a 'free' market, which is enshrined in law, and through which supposedly free subjects can pursue their rationally—that is, '*freely*'—chosen interests (Foucault 2010, pp. 270–272). On Foucault's reading, neo-liberalism and neo-liberal governance actively *produce* the very subjects upon whose *prior existence* the Sovereign itself is predicated. Put differently, for Foucault, the Sovereign *retroactively* produces the very subjects whom and for whom it supposedly exists to govern. To borrow a phrase from Slavoj Žižek, neo-liberal ideology 'posits its own presuppositions': the existence of a 'free', borderless market within which 'free', *albeit heavily bordered*—that is, private and privatised—human subjects exist.

For Foucault, neo-liberalism and the free-market work in tandem to establish 'veridiction', a term Foucault uses to refer to the 'truth' that subjects come to see through their subjection to discourse (2010, p. 224). This 'truth' can be understood as the necessity of the free-market through which *homo œconomicus* pursues and realises their 'rational' interests (which are, nevertheless, a product of the Sovereign's inscription in the first instance). In neo-liberal conditions, the figure of *homo œconomicus* becomes concomitant with *homo juridicus*, insofar as the subject's *need* for the free-market is articulated as a *right* to the free-market. Through this elision between *homo œconomicus* and *homo juridicus*, the provision of the free-market comes to function normatively and as a litmus test of (universally) 'good' state action (alongside the notion that more economic 'activity' is always good for all, hence the aphorism, 'a rising tide raises all boats').

While the confluence of *homo œconomicus* and *homo juridicus* transmogrifies the economic into the Sovereign's final cause, within this *telos*, the Sovereign's role is posed in an obfuscatory way. This is because although neo-liberal ideology seemingly imposes a *limit* upon the Sovereign (articulated *vis-à-vis* law and the economy), the category of the limit is always necessarily dual-sided, in that one cannot draw a boundary to determine a limit (or point of transgression) without *also* simultaneously but implicitly legitimising that which falls short of the limit's stipulation (Brown 2008, p. 36). Brown illustrates this point with respect to the concept of the border, which not only demarcates 'the boundaries of an entity (as in the jurisdictional sovereignty)', but also '[organises] the space both inside and outside the entity' (2008, p. 36). By way of analogy, fans of competitive sport will know that rules and boundaries foreshadow their own testing; in sporting parlance, this process is called playing 'line ball', where participants play as aggressively as possible while remaining *just* below the threshold that would constitute a 'foul' (an illegal play). That is, participants deliberately take *lawful play* to its absolute limit. While

this often results in the adjudication of a foul (which could come with a penalty), the subsequent (re)enforcement of the rule(s) and boundaries that the foul occasions merely provides further clarity as to the threshold of acceptable behaviour; in turn, this '*new*' (re)articulation of the rule(s) can then itself be pushed and tested to *its* limit as well. This dual-sided nature of rules and borders is comparable to that of law, because by necessity, law both prohibits and legitimises simultaneously, because one cannot prohibit something without implicitly legitimising that which falls short of the threshold of that which one prohibits.

With the dual-sided nature of the limit in view, Brown (reading Foucault) argues that although neo-liberal ideology claims to *limit* the role of the Sovereign to that of a 'caretaker' who respects the sanctity of the subject and the economy—and the subject of the economy—that nevertheless, the neo-liberal Sovereign does not *recede* from the body of its subjects, but instead, *intrudes* and encroaches upon them in novel and paradoxical ways (2015, p. 17). For Brown, this intrusion occurs because neo-liberal ideology constructs the market not only as something that is *sacrosanct* that the Sovereign must preserve, but as something that is *ubiquitous* as well (2015, p. 17). The market is ubiquitous, for Brown, because neo-liberal ideology seeks to commodify and economise *all things* as potential sources of capital (including one's education, health, fitness, fashion and friends, and as well, we might add, the nation). For this reason, Brown maintains that neo-liberalism is not a singular ideology, discourse or mode of governance, but is instead a complex and diffuse set of 'rationalities' (2015, pp. 52–56). These rationalities (or ways of thinking) are the hallmark of late-capitalism, permeating and influencing the conduct of governments, legal institutions, schools, prisons, homes and selves (Brown 2015, p. 10). Corporations are left absent from this list only because the corporation itself has come to function as the template and *telos* upon which the others are increasingly modelled and formed into their own respective bodies (Brown 2015, p. 10). Thus, although neo-liberal ideology explicitly claims to limit the Sovereign's jurisdiction to economic realms, thereby setting its subject 'free', it nevertheless also implicitly legitimises the state's intrusion into all realms insofar as it economises them and converts them into sources of capital (Brown 2015, p. 17).[12]

There is, however, an aspect of the Sovereign intrusion that Brown elides, which is that the neo-liberal Sovereign's attempt to render everything 'inside' the economic fold is also a *double* intrusion, because the very positing of the free-market and the existence of individual subjects *in and of itself* amounts to a claim regarding that which is *assumed to already be there* to be intruded upon or retracted from in the first instance. Through its naturalisation of the market, neo-liberal ideology *disavows* its first order intrusion (its founding claim to capture things as they always–already are); in turn, this disavowal legitimises the second order of intrusions that stem from the first (whichever specific acts must be undertaken to ensure that the market and subjects operate 'freely'). This disavowed intrusion inaugurates a form of

[12] This argument regarding the intrusion and extension of neo-liberalism articulates with Peter Sloterdijk's analysis of widespread conceptualisations of globalisation. For Sloterdijk, these conceptualisations depict the 'globe' as an *economic* whole: 'an enclosure so spacious one would never have to leave it' (2013, p. 175), nor, it might be added, could one even leave if one desired.

mystification that is distinct from that which Marx elucidated (that between the means of production and the classes), because the Sovereign's intrusion into *everything* not only comes with tacit legitimacy, but also a complex disavowal: a masquerade of retraction from the 'private' life and the privatised *body* of the subject (supposedly so as to enable their self-governance).

Contemporary subjects *internalise* neo-liberalism's disavowed intrusion, so that just like the ideologies of neo-liberalism, they too seek to 'entrepreneurialize' and economise all domains, whether they are 'studying, interning, working, planning retirement, or reinventing [themselves] in a new life' (Brown 2015, p. 36). Thus, although the Sovereign intrudes upon the privatised body, subjects of neo-liberalism are nevertheless constructed as the *sole* caretakers of their bodies and selves, the so-called 'masters' of their own destinies (Brown 2015, p. 36). This onus of caring for the self as a radically private, hyper-responsibilised individual falls heavily upon subjects who identify strongly as (defence) nationalists, because the very forces that interpellate subjects *as* hyper-individuals *also* diminish the means by which nationalists attempt to articulate their own supposedly 'individual' identities—the nation. This is because the same forces that produce subjects as heavily bordered, hyper-individuals *also* erode the borders of the nation—the collective symbolic resource from which 'individual' national identities are built and maintained—through the transnational forces and *rationalities* of the globalised economy. Put differently, neo-liberalism opens up and fractures Pauline Hanson's ideal 'One Nation', and the 'One Land, One Law, One People' that the EDL seeks to 'defend'.

The above analysis of neo-liberalism and its production of 'individuals', articulates with Agamben's theory of contemporary Sovereignty. For Agamben, one of the hallmarks of contemporary Sovereignty is that it is founded upon that which it claims to exclude but includes accidentally: namely, the body of its subjects (1998, p. 9). This is because despite its claim to *emancipate* subjects by retracting from their bodies and 'private' lives, the Sovereign nevertheless offers historically particular forms of subjection through 'the production of a biopolitical body' (Agamben 1998, p. 6). Indeed for Agamben, this production is 'the original activity of sovereign power' (1998, p. 6). The aporia of contemporary democracy then, is that the Sovereign prints 'freedom' and 'rights' on the very bodies it claims to set free (Agamben 1998, p. 9). For Agamben, this subjection in the guise of emancipation—which is another phrase for 'disavowed intrusion'—paradoxically constructs the body as both 'the place for the organisation of State power and the subject's emancipation from that power' (1998, p. 9).

On Agamben's reading, the contemporary neo-liberal Sovereign is more than a mere regulator of the rights and freedoms that govern political life; instead, the Sovereign *makes the very decision as to what constitutes life itself*. As I will elaborate, it is this aspect of contemporary Sovereignty—the capacity to decide what a body *is*—that is especially relevant in understanding defence nationalism and the importance defence nationalists ascribe to law. Crucial to Agamben's argument is the category of 'bare life', which constitutes 'the new biopolitical body of humanity' as produced by the Sovereign (1998, p. 9). As Agamben elaborates, the category of bare life can be explained in relation to the figure of '*homo sacer*': the figure *in* Roman law who is nevertheless excluded entirely *from* Roman law (who is 'banned'

from law). Through this 'ban' as exclusion, Agamben argues that *homo sacer* is the one that can be killed with impunity (that is, killed *without* the commission of homicide), but who, by virtue of this, is also *unfit* for ritual sacrifice (due to their lack of worth). For Agamben, the decision as to who is included or excluded from law—and *how* they are included or excluded—determines who can be killed, but also who can *permissibly* be left to die (as occurs, for example, when the nation's laws and onus of care are deemed not to apply to the refugee who is 'offshore', that is, outside of the realm of *nomos*).[13]

For Agamben, the Sovereign's decision as to how to apply (or not apply) law to the body literally *passes over* the physical body, determining, as it does, what that body '*is*' as bare life: that is, as a body reduced to a *biological* body (1998, p. 162). Agamben illustrates this power in relation to a number of examples of technical, medico-legal decision-making regarding the status of life and death, including decisions such as when a life-support machine can be turned off, or euthanasia administered. What Agamben observes, is that through various advances in medicine and technology, in conjunction with a number of hallmark legal rulings, *death itself* has come to be redefined, so that 'somatic death', rather than 'brain death', is its defining characteristic (1998, p. 162). For Agamben, this ability to *redefine life* (and death) demonstrates the power of the Sovereign decision, which is so potent that the comatose body enters a state of 'radical indistinction' (1998, p. 164), whose ontological status 'wavers between life and death according to the progress of medicine and the changes in legal decisions' (1998, p. 186). What such examples illustrate, is that the Sovereign no longer merely decides how to enforce law in a given factual setting, but rather, that *through its decision*, the Sovereign *creates* the factual setting itself (Agamben 1998, p. 170). In the example above, for instance, the Sovereign *first* decides the definitions of life and death, and by so doing, comes to alter the 'factual' setting regarding which bodies are considered alive or dead. For Agamben, it is thus not only the life of the subject that wavers at the whim of the Sovereign's decision, but the very 'factual' status of reality itself (1998, p. 170). With this supposedly 'factual' status established, the particular life-support machines that can be turned off, and those that cannot, then *appears* to follow *automatically* without the need for a further decision, but instead, through a mere technical application of the law. Similarly, in defence nationalist fantasies, it is the *law* that decides who belongs to the nation and who does not, who is a citizen and who is not, and who can be deported and who cannot. Such fantasies position nationalists so that they need not *decide* who belongs to the nation and who does not; for them, this information is 'automatically' *known* (by them) by default, so that all they need do, is to (re)enforce the Sovereign decision by 'acting' against others who, as per the 'factual status of reality', inherently do not belong.

[13] For discussion, see Douzinas (2000).

Law and the Other

To reprise briefly, neo-liberalism has transmogrified subjects' relationships to law, society, culture, politics and the political (Foucault 2010; Brown 2015; Dardot and Laval 2013; Chandler and Reid 2016). So too, it has transformed subjects' relationships to one another and the nation. For defence nationalists, the effects of neo-liberalism have arguably transformed the nation from a vessel of land and law that *contains* 'One People', to a loose assemblage of radically private, disconnected (hyper)individuals besieged by non-national others (including refugees and migrants). Within neo-liberal settings, law plays a role in the way that both collective and individual bodies are formed—be they corporations, nations, subjects or otherwise. For Foucault (2010), Brown (2015) and Agamben (1998), the neo-liberal Sovereign founds the 'individual' bodies upon which neo-liberalism itself is predicated. The neo-liberal Sovereign then appropriates those bodies *as wholly individuated bodies*, the sanctity of which is both the foundation and *telos* of Western law (that is, both its starting point and end game). Although the neo-liberal Sovereign *inscribes* law upon bodies to establish them as private bodies that exist independently in the world, it nevertheless claims to 'retract' from them as it does so (even enshrining this supposed retraction, without irony, in law). The Sovereign therefore inhabits the bodies from which it claims to retract through the very biopolitical processes that posit the existence of those bodies in the first instance. The formation of bodies as individuals influences the way subjects conceptualise their own identities (Foucault 2010; Brown 2015, p. 36); that is, when subjects internalise neo-liberal rationalities they see themselves as neo-liberalism would see them: as hyper-individual subjects who conceptualise themselves *as such* (Brown 2015, p. 36). This is not to say, however, that subjects are merely passive *tabula rasa* within which power is inscribed and internalised, unmodified, unadulterated, and without resistance and interpretation. As foreshadowed, it is on this latter point that psychoanalytic theory can prove illuminating.

On a Lacanian reading, the (bio)political Sovereign that inhabits the subject is the Other—the symbolic fiction subjects elevate over the entirety of the symbolic field as the guarantor of its apparent truth and coherence (Lacan 2006, p. 358; Lacan 2006, pp. 364–383; Lacan 2007, pp. 11–26). Although the specific apparatus of the Other differs among subjects—for some, it may be God, Science, Nature, a cult, a president or indeed, law and/or the nation—the function of the Other is to make sense of the world (in Agambenian terms, to establish the 'factual status' of reality). The original schema for the Other is 'God': some higher power that can supposedly guarantee the inexplicable, even if this knowledge remains beyond the subject's comprehension (hence the need for '*faith*' in God/the Other). For Lacan, the Other provides and guarantees the subject's coordinates of Being by providing and guaranteeing the stability of the means by which the subject can conceptualise their own presumed identity. Beyond this, the Other also structures the subject's *desire* (Lacan 2007, pp. 11–26), insofar as the Other provides the language *in which* desire is formed and *into which* desire is translated and articulated (Lacan 2006, p. 222; Lacan 2006, pp. 575–584). For

Lacan, desire therefore ultimately *belongs to the Other*, because it is the Other, and not the subject, that possesses language (Lacan 2006, p. 10; Lacan 2006, pp. 676–677; Lacan 2007, p. 13). For Lacan, the subject's *primordial desire*—that which structures all of the subject's other desires—is the desire to be *recognised* by the Other (Lacan 2006, p. 582; Rogers 2014, p. 19). Recognition from other subjects and the Other quells anxiety because it provides certainty: a guarantee that a subject is who s/he thinks s/he is, and belongs where s/he thinks s/he belongs. The subject's primordial desire is to be recognised by the Other because it is the Other that guarantees the stability of the symbolic world. Put simply, however the Other recognises me, *I (can believe that I) really am*.

The core contention of this article is that when defence nationalists invoke fantasies of law to establish the factual status of reality within the nation—as outlined in detail above—they effectively elevate the nation to the status of the Other, so that the stability of the nation as a field and meaning, and their place and primacy therein, can appear guaranteed. One of the reasons the nation can be readily elevated to the Other is because the nation has a clear, 'official' and authoritative language—law—which is capable of recognising subjects *as they desire to be recognised*: as individual subjects who belong to the nation (such as through birth and citizenship). Law is a powerful tool for the delivery of the subject's primordial desire because law conceptualises subjects *as they see themselves* in neo-liberalism: as individual subjects with individual identities and desires (Rogers 2014, p. 19). On a Lacanian reading, subjects invest themselves in law not *only* because law functions as an authoritative discourse of the Sovereign, but because law functions as the language of the Other; that is, law *dispenses* the Other's recognition with authority (Rogers and Ghumkhor 2015).

Conclusion: The Mandate of Law

As outlined above, law and land are co-constitutive insofar as each founds the other through a constitutive act of enunciation (Schmitt 2003, p. 71). Law is founded through an inaugural moment of land appropriation, and land is founded through law insofar as law defines land *as it comes to be known* (as a jurisdictional nation or territory). Law and land therefore both found and are founded by one another (Schmitt 2003, p. 71). With Schmitt's theory of *nomos* in view, the land-related anxieties of nationalists—that the other has taken over 'our streets' *à la* EDL, or has 'claimed' Australia for itself *à la* Reclaim Australia—can also be understood as *juridical* anxieties, because it is law that defines, enshrines and protects land and its various spatial domains. Here, I am not making the point that the nation merely presupposes land and law in a related way; nor am I observing only that land cannot be conceptualised as territory without the juridical. Rather, I am claiming that for defence nationalists, land *is* (the) juridical, and that this fusion of land and law is central to both the anxieties and the fantasies that underlie defence nationalism.

By understanding the nation as *nomos*—as spatio-juridical entity that both produces and is produced by law—we can understand why for nationalists, the nation is approximate to the status of the Lacanian big Other: an authoritative entity that

is personified, made legible and reified as a spatio-normative regime whose primary function is to structure desire and provide symbolic stability and (self-)certainty. By juxtaposing Schmitt's theory of *nomos* with Lacan's theory of the Other, we can understand why for defence nationalists, it is not only 'our land', but '*our law*' that 'must be maintained and defended' (EDL 2016, my emphasis). Law must be defended because the fantasised connection between land, law and people leads to an imagined connection so total that defence nationalists become 'One' not only with the nation, but with one another and the self. Law must be defended because, as the authoritative language of the Other, it protects and indeed defends against symbolic instability and anxiety. The Other's authority (law) ensures that the laws of small-o others cannot take over, and that ambivalence cannot be introduced into the nation. By securing the nation, law ensures that so too, *nationalists* are secured both physically and ontologically—that is, insofar as nationalists can imagine themselves safe from the other's law *qua* radical uncertainty, so too, they can imagine that they have certainty of the self as well.

My contention is that defence nationalists imagine that their 'defence' of the nation comes with the tacit authorisation of the Other *qua* the nation itself, and that this authorisation is substantiated through fantasies of land and law that work together to personify the nation as the Other: spatialised and reified as land, with a language made legible in law, and with its *own desires* that can be *animated* through the flesh of its subjects (specifically, through the flesh of defence nationalists). By securing the nation with law, defence nationalists hope also to secure the recognition from the nation that *they desire for themselves*: this recognition is as a subject of the nation *par excellence*; a self-ordained *defender* of the nation who is 'One' with its land, its law, and its people.

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