

**A genealogy of (bio)political contestation during the reform of the Mental Health  
Act 1983 in England and Wales**

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## **A genealogy of (bio)political contestation during the reform of the Mental Health Act 1983 in England and Wales**

In 1997 the Department of Health announced their intention to reform the Mental Health Act 1983. Since publishing the first Green Paper in 1999, the proposed reforms have received major criticisms from virtually all 'stakeholders' in mental health care. This PhD offers a genealogy of (bio)political action during the process of reforming the Act. The focus is on the period from August 2002 to September 2003, with particular reference to the activities of self proclaimed 'service users' and 'survivors' in two independent protest groups: 'NO Force' and 'Protest Against the Bill'.

The methodological premise (chapters two and three) is born from something of a lacuna in post-Foucauldian governmentality studies which, although well posited, offer little in the way of advancing a genealogy of governmental contestation. My focus is twofold. Firstly, by advancing a (post)Foucauldian understanding of resistance - which, with respect to power, 'always comes first' (Deleuze 1988) - I aim to develop the relationship between 'biosociality' or 'life politics' (Rabinow 1996, Rose 2001) and mental health law. Secondly, I seek to draw on the correlate of governmentality: agonism, taking it into governmental contestations in broadly 'liberal democratic' societies by focusing on what Tully (1999) calls "the free agonistic activities of participation" (171). Together these advance my focus on agonistic 'games of truth' enacted during the reform process.

This general methodological premise underpins my three major fieldwork chapters. Chapter four focuses on agonism *in actu* through the process of demonstrating (in the form of a protest march undertaken by No Force). Beginning with, as Barry (2001) notes, the techniques and technologies "of telling and witnessing the truth" (176), I move through, and beyond Foucault, with respect to the importance of mediatisation and circulation in agonistic truth telling today. Chapter five expands on my understanding of life politics to offer a genealogy of the imbrications between human rights (law) and mental health (law) during the reforms. Here recourse to (human) rights is posited neither simply as a (dangerous) 'empty category' nor exemplary of an expanding 'vital life' but having a distinct genealogy emerging from problematisations in mental health law. Finally, in chapter six, I turn to the use of testimony from 'psychiatric survivors'. This form of biopolitical truth speech is not only illuminating of agonistic games of truth but also of that which is *other* to it (those who *do not* speak) and that what falls at the *limits* of biopolitical truth speech (for those who *cannot* speak).

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I dedicate this thesis to my Dad (1934-1998).



## Chapter One

### Introduction

#### 1.1 Introduction

“I would like to suggest another way to go further towards a new economy of power relations, a way which is more empirical, more directly related to our present situation, and which implies more relations between theory and practice. It consists of taking the forms of resistance against different forms of power as a starting point. To use another metaphor, it consists of using this resistance as a chemical catalyst so as to bring to light power relations, locate their position, find out their point of application and the methods used. Rather than analysing power from the point of view of its internal rationality, it consists of analysing power relations from the antagonism of strategies” (SP: 211).

“[T]he interplay of governmentalization and critique has brought about phenomena which are, I believe, of capital importance in the history of Western culture ... [I]f governmentalization is indeed [the] movement through which individuals are subjugated in the reality of a social practice through mechanisms of power that adhere to a truth, well, then! I will say that critique is the movement by the subject gives himself [sic] the right to question truth on its effects of power and question power on its discourses of truth” (Foucault 1997a: 31-32).

In his famous essay ‘The Subject and Power’ (SP) Foucault argues that we might focus on forms of resistance in order to bring to light power strategies. I take Foucault’s attention to resistance here as twofold. Firstly, the forms of struggle to which he refers - “oppositions to the power of men over women, of parents over children, of psychiatry over the mentally ill, of medicine over the population, of administration over the ways people live” (SP: 211) - provide a way to bring to light *techniques* of power and forms of subjectification (in the examples Foucault gives us, struggles against the ‘submission of subjectivity’ have developed with respect to historical forms of pastoral power). Secondly, the form of questioning itself, which concerns the self and the political present, “affirms the primacy of the present, of the event, of the contingent, and of the freedom thereby possible” (Dean 1994: 50). It is this second form of ‘critical attitude’, tied to

particular problematisations of the self in a political present, which provides a way for Foucault himself to intervene. Indeed, towards the end of his discussion he suggests:

“Maybe the target nowadays is not to discover what we are, but to refuse what we are ... The conclusion would be that the political, ethical, social, philosophical problem of our days is not to try to liberate the individual from the state and from the state’s institutions but to liberate us from both the state and from the individualization which is tied to the state” (SP: 216).

It is this dual focus on analysing forms of struggle to locate techniques of power, along with a concern with problematisations of the self in a political present, which instigated my interest in the political activities of self proclaimed ‘service users’ and ‘survivors’ during the reform of the Mental Health Act 1983. It is an interest which ties together two related fields. Firstly, the rise of what is often termed ‘service user expertise’; that is an academic and activist related focus on forms of knowledge concerning the voice and experience of psychiatric ‘service users’ and ‘survivors’. Secondly, the coexistence of a political field which, on the one hand appears to embrace this form of ‘expertise’, and on the other is caught within a legislative arena which, and with respect to the reform of the Mental Health Act 1983, circulates around discussions of dangerousness, homicide and suicide. It suggests, at the very least, that Foucault’s intentions in *The Archaeology of Knowledge* against writing a history of the referent seems at its most pertinent today. Here polarised debates surrounding the inclusion and exclusion of the ‘mentally ill’, which may have been relevant for ‘institutional geographies’, surely no longer hold<sup>1</sup>. My focus, then, is precisely where these two histories meet - forms of governing madness and/or dangerousness through mental health law and forms of contestation which emerge through the rise of ‘service user experts’ and ‘psychiatric survivors’.

By focusing specifically on the actions of two protest groups during the reform process - NO Force and Protest Against the Bill (PAB) - my primary aim is to consider the

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<sup>1</sup> For a discussion on the complexities of ‘social inclusion’ see Philo et al (2005), who, in focusing on Training and Guidance (TAG) units in the Scottish Highlands for people diagnosed with mental health problems, suggest these are in-between spaces with different economic and social imperatives which “spin together in a manner hinting at deeper tensions in the so-called new deal for disabled People” (787).

conditions of existence for the 'service user' or 'psychiatric survivor' as a political subject (both the possibility for, and the limits of). In the first instance, my interest in the constitution of madness as a form of enunciable experience resonates with Foucault's thoughts on sexuality in his genealogies of the 'desiring subject'. In the introduction to the *Use of Pleasure*, for example, Foucault emphasises that the aim of his work on sexuality was:

“a matter of seeing how an 'experience' came to be constituted in modern Western societies, an experience that caused individuals to recognize themselves as subjects of a 'sexuality,' which was accessible to very diverse fields of knowledge and linked to a system of rules and constraints. What I planned, therefore, was a history of the experience of sexuality, where experience is understood as the *correlation* between fields of knowledge, types of normativity, and forms of subjectivity in a particular culture” (UP: 4 *my emphasis*).

This trajectory connects Foucault's 'archaeologies' on the formation of the human sciences, his 'genealogies' on the power relationships which regulate these sciences, and the forms - or rather folds - of subjectification “within which individuals are able, are obliged, to recognize themselves as subjects of this sexuality” (UP: 4). The analysis Foucault uses to combine these is 'games of truth', which he describes as follows:

“[T]he games of truth and error through which being is historically constituted as experience; that is as something that can and must be thought. What are the games of truth by which man proposes to think his own nature when he perceives himself to be mad; when he considers himself to be ill; when he conceives of himself as a living speaking, labouring being” (UP: 6-7).

In my analysis of the actions of service users and survivors during the reforms, I take 'games of truth and error' into what I consider, following Tully (2002), the 'games of truth' through which beings can emerge as 'political subjects' in a '(bio)political contestation'. Governmentality scholars have written much on the rationalities and techniques which constitute 'governing through freedom' (see Rose 1999), but they have said little on the constitution (in all senses of the term) of 'political freedom'. Rare exceptions to this trend include Hindess (1997) and Tully (1999, 2002). Hindess uses the

term 'political rationality' as distinct to a 'rationality of government' to describe how governmentalities manage division and opposition. Tully (1999, 2002), who I draw on extensively in chapter three, is interested in agonistic forms of citizen participation in diverse governmentalities. He describes his focus as follows:

“[R]ather than approaching from the side of the motives of the citizens or groups involved, the authentic or autonomous identities they aim to have recognized ... I would like to examine the ways in which the citizens engaged in these struggles call into question and modify the rules of the game in which they are engaged, the game of citizen participation in constitutional and federal democracies” (Tully 1999: 169).

Throughout this thesis I connect Tully's attention to the practices of political freedom with my focus on biopolitical struggles (struggles which can, as Tully suggests, constrict subjects to forms of identity or self-knowledge), hence my use of the term 'biopolitical games of truth'. Firstly, in chapter four (demonstration), I begin to outline what we might call the *dispositif* (apparatus) of (bio)political action, that is the spaces, rationalities and techniques of acting politically. Secondly, in chapters five (human rights) and six (testimony), in addition to outlining a *dispositif* (apparatus), I am interested in the form and the limits - we might even say exclusions - of biopolitical games of truth.

It is here that the work of Giorgio Agamben (1998, 1999, 2000) has been instructive. Shifts in biopolitics today have, for some, enabled somatic, 'biosocial' citizens to emerge amidst the terrain of 'life itself' (Rabinow 1996). These shifts, as I will suggest in chapter three, might include the rise of 'service user experts'. For Agamben, however, forms of politics on the terrain of 'life itself' are merely indicative of an expanding 'bare life', and are subsequently doomed to failure. Although critical of Agamben's teleological account of the formation of political life in relation to bare life, I introduce his work, along with Foucault's lesser discussed *Society Must Be Defended*, to think through caesuras within current formations of biopolitics: caesuras between inclusions and exclusions on the terrain of biopolitical life today.

To return to Foucault's understanding of a 'critical attitude', my aim in this thesis is to question precisely those analyses which have sought to relax in the hope of something like a 'inclusive governance' giving equal credence to 'service users', 'workers', 'relatives and advocates', and 'local communities' when formulating mental health policy<sup>2</sup>. In some senses I work at a level preceding this as I am interested in the conditions of existence of the rise of 'service users' as a distinct 'interest group'. However, with respect to 'conditions of existence', I am not referring to a (universal) mode of experience which enables 'service users' and 'survivors' to enter onto a political stage, and with respect to 'limits', I am not invoking a theory to critique what is happening and how things could be otherwise. These limits are not psychological or *a priori* limits of the human condition but limits in our present biopolitical games of truth. Through invoking them I merely seek to re-problematise what may have been accepted in advance. Before going on to outline current imbrications of biopolitics and their relevance for this thesis (see section 1.4), in the following I review some of the work falling within the guise of 'the geographies of mental health'. I pay particular attention to those who have utilised Foucault's *Madness and Civilization* and those who have focused on the experiential geographies of 'service users'.

## 1.2 Asylum geographies

In his review of 'asylum geographies' Philo (1997: 73) draws a helpful, albeit fluid, distinction between the '*geographies of mental health care facilities*' and the '*geographies of mental ill health*'<sup>3</sup>, a division which invokes a conceptual distinction

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<sup>2</sup> Here I am referring to Gleeson and Kearns (2001) article. Although they successfully break down any normative polarity between 'dehumanising' psychiatric institutions and a more 'humane' community care, they advance a form of critique which presupposes that actors come fully formed with individual (embodied) moral viewpoints, which can then be debated in a political arena. They further imply a normative ethic over the status of boundaries over who might be excluded from their politics of consensus. Here their invocations of 'care' for the "'moral object' at the centre of debate" (74) as a test for inclusion make little sense when it is precisely 'care' which enables biopolitical drives to foster, regulate, reform and/or exclude service users.

<sup>3</sup> In reviewing the burgeoning field of the geographies of mental health, Wolch and Philo (2000) also outline two waves which broadly correspond with Philo's earlier distinction here.

between the structural and/or discursive dynamics of mental health care provision and the subjective and place-based experiences of mental distress<sup>4</sup>.

The *geographies of mental health care facilities* have researched the locational dynamics of mental health care during institutionalisation and deinstitutionalisation. These include community opposition to mental health care facilities (see for example Dear and Taylor 1982), and the determinants (such as economic or behavioural) of public facility location, accessibility and utilisation (Dear and Wolch 1987). Philo (1997), in his critique of the early ‘McMaster school’<sup>5</sup>, suggests that much of this work has been premised on a universal and ahistorical division between the ‘mad’ and ‘non-mad’, and hence focused on the spatial patterning of and reaction to the ‘isolation’ or ‘exclusion’ of ‘madness’. This overlooked the obvious Foucauldian point that such a division, which is indeed fractured historically, is a discursive accomplishment and not a universal *a priori* to research. Philo locates in the later work of Dear and Wolch (1987), along with more recent studies by Park and Radford, a willingness to consider:

“‘[O]ntological transformations’ whereby the ‘abstract content’ of thoughts about madness, asylums and their geographies translates into the ‘concrete form’ of people labelled as ‘mad’, institutions designated as spaces for mad people, and even the particular locations and environments in which these institutions end up being positioned” (Philo 1997: 82)<sup>6</sup>.

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<sup>4</sup> It is important to point out here that geographers have been researching mental health since the 1960’s (generally termed as ‘mental illness’ or ‘social defectiveness’). Early studies were generally concerned with the spatial distribution of ‘mental illness’, but include both aetiology (distribution) and epidemiology (causes) (see, for example, Giggs 1988). For the purpose of this review, I am terming these ‘psychiatric geographies’ (Park et al 1998: 6) and grouping them within the *geographies of mental health care facilities*. This is because I suggest that similar criticisms levelled towards the latter (and which I will discuss here) can be directed to these studies (see also the commentary by Paul 1994 and reply by Kearns 1994). Notably, these studies rarely consider the discursive complexities of their ‘objects’ of research, and neither are they concerned with ‘subjective’ experiences of mental distress.

<sup>5</sup> The McMaster ‘school’ is associated with the work of Michael Dear and his co-workers (for example, Dear and Taylor [1982] and Dear and Wolch [1987]). Here, Philo (1997) is critiquing Dear and Taylor’s (1982) publication *Not On Our Street: Community Attitudes to Mental Health Care*.

<sup>6</sup> In Dear and Wolch’s (1987) *Landscapes of Despair* (de)institutionalisation is configured as a (recursive or conflictual) relationship between structural forces, ideologies of the welfare state and changes in (mental health care) professionalism and ideas. In the final instance mental health professionals are conceived as ‘gatekeepers’ of mental health care who “have a state-sanctioned code of practice usually linked to a service ethic” (Dear and Wolch 1987: 18), but it is confusing where this leaves the realm of ‘ideas’ regarding what and where this care might be. They offer a brief summary of Foucault, who is relegated to labelling theory and the realm of ideas, whereas mental health care ethics are subsumed under materiality and social structures. With respect to a renewed attention to agency, it is the ‘coping mechanisms’ of

It is, however, Philo's own work which goes furthest towards an archaeology of the interaction between individuals, treatment settings and social process in asylum geographies. In his historical geography of the 'mad-business' in England and Wales Philo (1987) approaches the fractured 'medico-moral discourses' which shaped institutional geographies during the nineteenth century. In other work (Philo 1992) he offers perhaps the most promising methodological account of the relationship between Foucault's archaeological method and the spaces of the asylum. Here Philo successfully elaborates a spatial ontology for what he calls the 'spaces of dispersion' and Foucault's 'substantive geographies' (tools we can utilise together when collating a historical archive). He achieves this through drawing on Foucault's work on Raymond Rousset to do to space what Foucault's archaeologies and general histories do to the teleological time of total histories; that is he spatialises those series found in Foucault's archaeologies onto a plane or a single strata in the archive without searching for the essence of things. What Philo then gives us - with respect to his interest in the history of the asylum - is a critique of a spatial geometry of power simply read into social otherness: the spaces of unreason versus the space of reason. "The operations of discourse, knowledge and power are crucially bound up with the soils of nameable places" (155). An attention to place is not the dispersal or variation of a metanarrative but the *necessity* of geography to make discourse, knowledge and power work. In a sense we might say that one can find some semblance or order in historical archives, but this cannot be achieved without attention to place, not through a desire to unearth secrets or essences, but through the importance of local discursivities:

"It is evident that in Western Europe since about 1600 there *has* been something of an impulse to segregate mentally disordered people, but positing an *a priori* geometric model of unreason always and everywhere excluded to the outside of social life should only be a very preliminary step before engaging directly with the substance of past situations where certain people may have been taken to certain institutions for certain economic, social, political, and/or cultural reasons" (156).

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mental health care service users (termed here as 'clients'), outside 'prejudices' and 'community opposition' which are conceived as the main variables in the place-based manifestations of deinstitutionalisation (see pp 14-27).

Whether re-working the spatial imagination of Foucault's archaeologies overcomes the structural dislocation between the spaces of reason and the rest is an observation which is primarily historical rather than methodological. Philo, more so than Foucault, pays attention to geography, the local and critiques histories of madness which are premised on a universal exclusion. In fact, it is striking that 'Foucault's geographies' (Philo 1992) comes close to ridding *Madness and Civilization* of a referent ('lepers', 'the mad' etc) and yet is simultaneously able to retain a focus on social othernesses. Although not discussed in the paper, it is perhaps Foucault's turn to a 'will to truth', coexisting with an attention to discourse as it takes place, which incites both the substantive geographies and the historical forms of spatial exclusion which Philo describes.

My detour away from *Madness and Civilization* in this thesis is part methodological and part historical. In *Discipline and Punish* and *Abnormal* Foucault discusses a power not based on the *exclusion* of unreason but the *inclusion* of the abnormal, here, the example used is that of the administration of the plague town rather than the banishment of the leper (although the mechanisms of the former somewhat superimpose on the latter, an aspect important for asylum geographies). My argument progresses in section 1.14 to suggest that we might develop this notion of the abnormal - which to Foucault, in his 1975 lectures, was the 'dangerous individual' - to a form of *becoming* dangerous, that is a dispersed strategy of techniques which, in the first instance, do not work directly on individuals but abstract factors<sup>7</sup>. This allows a focus on not seeing exclusions through systems of representations but as immersed in post-disciplinary societies or societies of control (Deleuze 1991)<sup>8</sup>.

There is perhaps a certain grammar of *Madness and Civilization* which is relevant to this thesis, with respect to the spatialised language of limits, exclusions, divisions and thresholds. Both Agamben and Foucault are concerned with 'thresholds' of the political,

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<sup>7</sup> The necessity to govern the contingency of risk and dangerousness is caught within the will to govern through the 'community', and through 'choice' (see Rose 1999). Beyond the scope of the focus of this thesis but certainly complementary with it, attention to the development of 'home treatment teams' and 'crisis resolution services' all point to a shift in the logic of the norm in post-disciplinary societies.

<sup>8</sup> I use the term post-disciplinary to distinguish the term from the duality of anatomo (disciplinary) politics and modern state biopolitics of populations which form the focus of Foucault's work.



a temporal threshold of modernity for Foucault when “the life of the species is wagered on its own political strategies” (WK: 143) and, for Agamben, a philosophical threshold of the political, which instigates itself on an exception. The question remains as to whether, or how, we should think these thresholds today (Dean 2004a). There are undoubtedly linkages between the understandings of the limit in *Madness and Civilization* and an understanding of limits in ‘games of truth’, the difference might be borne from Deleuze (1988). Whereas we might say that the limit in *Madness and Civilisation* emerged as a phenomenological inability to grasp madness in itself through the formation of Western reason (the unthought), in Foucault’s later work we can argue that the limit is tied to Nietzsche, and Foucault’s historicising of Kant; it is the limit of ourselves in the present. Deleuze (1988) writes:

“[T]he problematical unthought gives way to a thinking being who problematizes himself [sic], as an ethical subject. To think is to fold, to double the outside with a coextensive inside” (118).

Further, worthy of attention would be a comparative study of Agamben’s ‘spaces of exception’ (notably the camp) and Foucault’s ‘spaces of confinement’. Agamben draws on Blanchot’s description of *Madness and Civilization* as “society’s attempt to ‘confine the outside’” (Agamben 1998: 18) and describes the supposed lacuna in Foucault’s later account of biopower: “The inquiry that began with a reconstruction of the *grand enfermement* in hospitals and prisons did not end with an analysis of the concentration camp” (Agamben 1998: 119). However, he also argues that the exception, as he understands it, is more complex:

“Here what is outside is included not simply by means of an interdiction or an internment, but rather by means of suspension of the juridical order’s validity - by letting the juridical order, that is, withdraw from the exception and abandon it” (Agamben 1998: 18).

Agamben allows us to think through thresholds of the political in which the sovereign decision on the exception is enacted. My rejoinder to Agamben through Foucault’s

accounts of biopolitics and governmentality is to thwart a simple teleology (rather than genealogy) of a universal 'space of exception', expressed today for many in 'the camp'.

In the next section I want to outline some changes in mental health geographies which suggest that although Philo (1987, 1992, 1997) has questioned *a priori* notions of 'madness', 'isolation' or 'exclusion' outside of their discursive complexities, it is a closer engagement with those who actually use mental health services which has dominated the more recent 'cultural' and 'experiential' turn in mental health geographies (Wolch and Philo 2000).

### 1.3 The geographies of mental ill health

The work of Parr (1997, 1999a, 1999b) has been particularly influential in going towards a geography of the 'user movement'. In her work on the 'new geographies of deinstitutionalisation' in Nottingham (1997) she outlines individual and collective resistances to medical practices, the former through sites of refuge in the city outside formalised mental health care<sup>9</sup>, and the latter through organised 'user groups' staking claims in their care provision (see also Parr 1999a). In subsequent work (1999b) she aims to incorporate the 'experiential geographies' of those suffering from mental distress, and moves to integrate the unconscious into her research as a way of configuring the "spatialities of the self" (Parr 1999b: 673)<sup>10</sup>. She successfully rebukes the medicalisation of psychosis, as one prescribed by 'causes' and 'determinants', by focusing on 'meaningful' (as opposed to 'irrational') states of distress along with a social modality these might be given. Coming from a phenomenological perspective, the work of Davidson (2000a, 2000b) equally takes seriously the contention that the intellectualised

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<sup>9</sup> In this vein, Parr's (1997) work draws on that of Laws and Dear (1988) on the formal and informal facilities which shape the personal geographies of deinstitutionalisation. Parr (1997) aims to go further and write "a new geography of mental health where individual conceptualisations of space and place from the viewpoint of the deinstitutionalised (or never-institutionalised) person with mental health problems are privileged" (436). For similar approaches, see also Knowles (2000) and Pinfold (2000).

<sup>10</sup> Parr's (1999b) focus is on 'delusional geographies' but importantly (following Pile 1996): "'delusion' [does] not mean a medical problem or symptom, but rather a hazy experiential mesh between the conscious and unconscious, irreducible to either ... and as embodied (often temporarily) by people named as having mental health problems" (Parr 1999b: 674). The 'embodied' geographies of delusion are aligned with 'external' (material) spaces to conceptualise the experiential nuances between body and city. She successfully shows how respondents in her study used material 'therapeutic landscapes' (see Gesler 1992) to 'resecure' or 'rebound' the (disrupted) self.

'thinking' subject is insufficient in conceptualising 'experiences' of mental distress. In an equally encouraging move, she aims to rethink (deviant) bodies through her research on those suffering from agoraphobia. In drawing on the work of Merleau-Ponty she writes:

"It is not thinking but perception that is paradigmatic of our lived but never fully conscious experience. Rather than taking self (perceiver) or world (perceived) as given, we must begin with perceptions themselves, *i.e.* with phenomena. Perceptions are fundamental intentional states-of-being, 'the background from which all acts stand out' (2000b: 643).

Here, emotional mind/body states cannot sufficiently be recollected (as they are consciously recalled), and then tied by researchers to notions of identity or difference, but considered only as they are lived out in the world. To Davidson spatiality is fundamental to this task, and here she draws on Merleau-Ponty's distinction between 'objective' and 'lived' space. The former is geometric or Euclidean space, the latter is our relationship to our environment (and our connection to objective space) through the (embodied) activities in which we engage. Here subject and environment are neither unified nor ontologically distinct: "space is the correlate to, but also the negation of subjectivity" (2000: 645). The harmonious, 'taken-for-grantedness' and 'wellbeing' of lived space shows itself during illness, through a disruption between lived space and its connection with objective space. In 'schizophrenic' breakdown for example, "the subject's own lived space limits, rather than 'makes space for' his [sic] existence" (2000: 647).

Wolch and Philo (2000) write on the 'cultural' and 'experiential' turn in mental health geographies that:

"Despite the critical edge that much of this work celebrates and the rich documentation of various 'sites of resistance' created by marginalised groups, there remains a danger that much of the new work is disengaged from real life politics or the policy-making process" (149).

Arguably, the 'cultural (and experiential) turn' in mental health geographies has invoked a strategic dislocation between user accounts and professional 'expertise', one which has subsequently neglected the contingency of diagnosis (or, in Foucauldian terms, what is

'known' or is 'said' about mental illness and its relations to psychiatric practices and subjects). Both Davidson and Parr successfully break down dualisms which pervade medical and mental health geographies (that between the body and society, ideology and matter: see especially Parr 2002). My contention here, however, is that little has been said with respect to the genealogy of this 'experiential' subject<sup>11</sup>. Madness speaks, but what gives madness permission to speak is somewhat occluded. In this respect I am not interested in locating a prior experience of madness as an alternative to (biomedical) knowledge, nor do I place significance in the importance of representations or ideas as constituting or influencing the management (or 'internalisation') of madness; rather I am interested in precisely the ways in which madness can be constituted as experience, that is as something that *can* and *must* be thought<sup>12</sup>.

#### 1.4 Biopolitics today

A certain dictum has influenced much of the legacy of Foucault's thoughts on 'biopower'. It follows that during the eighteenth century the sovereign's power to take life was replaced by a productive biopolitics - whose power was not simply to let live but to *make* live<sup>13</sup>. Unlike sovereignty where death was a spectacle, death became the *limit*, it was *outside* the power relationship: "Power has no control over death but it can control mortality" writes Foucault (SD: 248)<sup>14</sup>. The repercussion this 'threshold of modernity' has for thinking forms of political practice is immense, as Foucault (WK) famously surmises:

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<sup>11</sup> It is interesting here that Parr's work on delusional geographies echoes the emergence of groups such as the Hearing Voices Network (HVN) who equally seek to define 'delusional' experiences, in this case voice hearing, as a meaningful practice.

<sup>12</sup> Although not the focus of this particular research, there is certainly the possibility of connecting Foucault's problematisation of madness with a *non-intentional* form of phenomenology connected to his 'four folds' (with respect to Merleau Ponty and the fold, see Wylie [forthcoming], and with respect to Foucault's ethical four fold, see Deleuze 1988: 94-123).

<sup>13</sup> This, as we will see, is most exemplary in contemporary governmentality studies which emphasise governing through freedom, and biopolitics as governing through knowledges of life and not death (Rabinow and Rose 2003). Other examples include recent writings on discipline which reiterate how it incites *active* bodies (Patton 1998), and furthermore, bodies which are always subjected and provoked but never entirely grasped through these strategies (Hinchcliffe 2000).

<sup>14</sup> It is after all the issue of suicide - as that which usurps the power of death by a sovereign - which became a primary focus of sociological analysis in the eighteenth century (see WK: 138-139). See also Tierney (1998).

“For millennia, man remained what it was for Aristotle: a living animal with the additional capacity for a political existence; modern man is an animal whose politics places his existence as a living being in question” (143).

Today with the advent of the genome and technologies of ‘molecular life’, many argue that we have witnessed a mutation in (national) biopolitics. This shift manifests in two areas of literature in (post) Foucauldian studies. Firstly, a governmental one, which seeks to describe ‘actions upon the actions’ of others. Here we can follow a trajectory of studies which outline the advent of techniques to govern ‘natural liberty’ (Burchell 1991), through to present neo-liberal governmentalities where success is shown by the ability of ‘active citizens’ to govern themselves (Rose 1999)<sup>15</sup>. Secondly, we are witnessing a contemporary mutation in biopower, which has shifted from Foucault’s original formation outlined above, as “the endeavour, begun in the eighteenth century, to rationalize the problems presented to governmental practice by the phenomena characteristic of a group of living beings constituted as a *population*” (EW1:72), to a form of vital politics found at the molecular level of *life* (rather than populations) itself. From biopolitics as for each and for all, to ethopolitics, as an ethic of somatic self to self (Rose and Novas 2000, Rose 2001)<sup>16</sup>. Various terms as micro-biopolitics (Thrift 2000, 2004) and the ‘politics of life itself’ (Rose 2001), no longer perhaps is governmentality governing ‘the conduct of conduct’ but governing the conduct of *zoé*<sup>17</sup>. Contemporary

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<sup>15</sup> Counter to this reading here are Stuart Elden’s fascinating re readings of Foucault’s published works in light of his lectures and seminars presented at the Collège de France and elsewhere. In relation to the disciplinary society, Elden (2003) suggests that Foucault’s interest began, not with the Panopticon (understood as the total institution of the prison), but from his lectures and seminars on public health. He writes: “[T]he model for the disciplinary society is not the prison - as is often assumed - but a combination of the military dream and the mechanisms for treatment of the plague” (244). Here Elden critiques the strict distinction between police (Polizeiwissenschaft [Security]) and liberalism in governmentality studies (in which liberalism is seen as the *birth* of governmentality).

<sup>16</sup> Rose (2001) defines ethopolitics as follows: “By ethopolitics I mean to characterize ways in which the ethos of human existence - the sentiments, moral nature or guiding beliefs of persons, groups, or institutions - have come to provide the ‘medium’ within which the self government of the autonomous individual can be connected up with the imperatives of good government ... while ethopolitical concerns range from those of lifestyle to those of community, they coalesce around a kind of vitalism: disputes over the value to be accorded to life itself: ‘quality of life’, ‘the right to life’ or ‘the right to choose’, euthanasia, gene therapy, human cloning and the like. In this highly contested domain somatic individuals themselves are key actors” (18).

<sup>17</sup> This, in Greek terms is a paradox, for there can not be a politics simply of life itself - life exists in order to be transformed into the good, political life. Contrariwise, however, the distinction between *bios* and *zoé* on which this term rests is itself under question. Cohn (2004) for example discusses how ‘brain scans’ are

biopolitics can, no doubt, be 'frightening' (see Thrift 2004), in that the space created by the knowledges of life itself can, at least in theory, be used in all forms of thanato politics<sup>18</sup>. However, within these formulations, contemporary biopolitics is no longer monopolised by (sovereign) states nor even disciplinary powers, but rather a multitude of actors dealing in biosociality (Rabinow 1996). Foucault alludes to the modulation of disciplinary mechanisms in *Discipline and Punish*, in the form of disciplinary powers spanning outside the walls of the institution (DP: 211-212), yet he says little of the effective modulation of the *matter* of biopower itself.

### 1.5 The politics of life itself<sup>19</sup>

Is the politics of life itself *the* form of contemporary biopolitics? One which, however hard we resist through recourse to either subjectivity or the state, is largely emerging in the space of the half-second delay of micro-biopolitics (Thrift 2004) or amongst the biotechnologies which create forms of life (Rose 2003). Indeed, in order at least to attempt to grasp these contemporary formations of biopower, and to offer something of an engagement with them, emphasis is placed on an analytics which, instead of resorting to subjectivity (outside of technology), or forms of political rationality (outside of techniques), aims to push the lines of flight within biopolitics itself (Latour 2004). Or considers new form of *mattering* - composing the human - which is not premised on nature-culture distinctions (Latour 2004, Law 2004, Rabinow 1996).

We might pause here and ask: what is the connection, or indeed indistinction, between analysis of contemporary biopolitics and contemporary understandings of neo-liberal governmentalities, as governing through freedom? If, for example, it is true to say that the proliferation of the psy industries, for example, is synchronous with neo-liberalism (and studies of mental health care in post-communist states suggests this is so), then what is

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evocative of *bios* (political life does not animate them, rather they reconfigure political life). In chapter four I focus on Rabinow's (1999) critical engagement with Agamben in this area.

<sup>18</sup> This is the very paradox of biopower. As Foucault suggests when he writes: "If genocide is indeed the dream of modern powers, this is not because of a recent return of the ancient right to kill; it is because power is situated at the level of life, the species, the race" (SD: 137).

<sup>19</sup> Taken from Rose (2001).

the contingency of the relation?<sup>20</sup> But perhaps more contentiously, we might move away from this synchrony between psy, life politics and neo-liberalism and point to a rupture, a counter discourse emerging in contemporary political theory: the return of sovereignty (Agamben 1998, 2000, 2005 Butler 2004). Why, when the vital characteristics of neo-liberalism seem a ubiquitous feature of modern life in the West, might we figure the return of the sovereign? To answer this we can point to a difficulty in contemporary analytics of governmentality and biopolitics. How, for example, can we account for or explain the *state* of the refugee, the asylum seeker, or emergency terrorist legislation, along with the formation of state detention centres and/or quasi hospitals for those that are deemed dangerous?<sup>21</sup> Might we turn to the suggestion that the principal governmental activity of states today is security<sup>22</sup>? Rose (2000) has suggested that we are witnessing infractions in the governing of freedom<sup>23</sup>. Yet, if this is so, how, more modestly, might we understand the continued recourse to the 'state' to implement rights and investigate human rights abuses? Are we to relegate these yearnings to a pathology which covers up the real workings of post sovereign power - that of dispersed disciplinary practices (see Butler 1997) or rather post-disciplinary practices of control (Rose 2000)?

With relation to Foucault, the premise that sovereignty has been, historically and analytically, succeeded by biopower, and the explicit, or implicit, synchrony between neoliberal governmentality (as governing through freedom) and contemporary biopower (as governing - or rather disclosing - vital life), has been subject to recent critique, or

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<sup>20</sup> Indeed, authors have looked at this through mutations in capitalism, specifically capitalist business (Thrift 2000) and capital in 'control societies' (Hardt and Negri 2000). To Foucault there is no doubt that biopower enabled capitalist relations: "[b]io-power was without question an indispensable element in the development of capitalism; the latter would not have been possible without the controlled insertion of bodies into the machinery of production and the adjustment of the phenomena of population to economic processes" (WK: 140-141). Foucault goes on to ask in 'What is Enlightenment?' "how can the growth of capabilities [*capacities*] be disconnected from the intensification of power relations?" (EW1: 317), a question which may still be pertinent today with respect to capital.

<sup>21</sup> I am not suggesting that these examples are equivocal but each constitute anomalies which challenge contemporary forms of political citizenship (understood as 'governing through freedom'), or at least their figures (the asylum seeker, the dangerous individual, the suspected terrorist) suggest similar techniques of thought (preventative or indefinite detention).

<sup>22</sup> Security here is understood as security of *consequence*. This is a form of polizeiwissenschaft (police) which authors argue - contrary to much of the governmentality oeuvre - has existed in some form since the birth of the modern state (see Agamben 2002 and footnote 14).

<sup>23</sup> Which subsequently bring to light the ethical forms of life which 'governing through freedom' supposes (see also Rose 2000b).

perhaps rather revision through the work of philosopher Giorgio Agamben (1998, 2000, 2005). Agamben suggests that an indistinction exists between biopower and sovereignty, in that the once excluded *zoé* is now *writ large* through our contemporary biopolitics:

“[It is] not merely that the law has been overextended in its domain of operation, such that it encroaches on more and more domains of our lifeworld, but that it has come to be wholly identified with life itself ... in losing all transcendence, the law becomes wholly identified with life and operates solely through the structure of the ban, such that the law simultaneously applies and suspends itself in its application” (Mills 2004: para. 8).

Here Mills is pointing to Agamben’s (1998) thesis, which, drawing on Walter Benjamin’s suggestion that the political exception has become the rule, extends, or rather revisits Foucault’s formulation of biopower. Agamben proposes that it is not simply the birth of biopower - as Foucault sees it - in which the biological lives of subjects become embroiled in politics. Rather, it is the *originary* activity of politics (*bios*) to constitute itself on the structure of the exception (*zoé*), which is simultaneously included and excluded from the political order. What is specific about the biopolitical ‘threshold of modernity’ and its *nomos* - the Nazi death camps - is that the exception coincides perfectly with the political sphere. Extending his account to the contemporary period Agamben draws on the refugee (2000); detainees at Guantanamo Bay; and forms of indefinite detention (2005) to exemplify how each is ‘citizen’ by nature of ‘his’ [sic] inclusive exclusion from the legal order. Reversing a Foucauldian thesis that sovereign power was displaced, or rather infiltrated, by biopolitics, he suggests that sovereignty - as the decision on the exception - is biopolitical before it is juridical. Sovereignty and ‘humanity’ thus coexist:

“The sacredness of life, which is invoked today as an absolutely fundamental right in opposition to sovereign power, in fact originally expresses precisely both life’s subjection to a power over death and life’s irreparable exposure in the relation of abandonment” (Agamben 1998: 83).

It is the relationship (or indeed indistinction) between governmentality, sovereignty and biopower which began my interest in forms of biopolitical contestation during the process



of reforming the Mental Health Act 1983. A disjuncture, even an “impossible dialogue” (Ojakangas 2005: 5), between two sets of (post) Foucauldian literatures was about to be played out ‘in the real’. It is a disjuncture which extends to a number of questions. Firstly, what is the relationship between biopower (as the power to ‘foster life or disallow it’) and political action? Is there a secret complicity between biopower and political death, as Agamben supposes, or does biopower simply extend what we mean by ‘the political’ and offer itself through positive knowledge - as vitality, as organism, or as code (Rabinow and Rose 2004)? For Agamben biopolitical life, or what he comes to call ‘bare life’, is a life with no potential, but what happens when ‘bare life’ or rather ‘life politics’ itself claims a “right to life” (WK: 145)? Might, then, we frame the problem differently: rather than simply assume either an unfolding bare life or an unprecedented life politics, might we think through biopolitical games of truth in our contemporary spaces of political contestation. To return to the opening quote to this chapter, it would mean addressing a politics of truth which takes forms of resistance or contestation with respect to biopolitics as a starting point, not through addressing an internal rationality but through an agonism, which instigates and limits political action.

## **1.6 The reform of the Mental Health Act 1983 and the draft Mental Health Bill 2002<sup>24</sup>**

“Care in the community has failed. Discharging people from institutions has brought benefits to some. But it has left many vulnerable patients to try to cope on their own. Others have been left to become a danger to themselves and a nuisance to others. Too many confused and sick people are left wandering the streets and sleeping rough. A small but significant minority have become a danger to the public as well as themselves” (Department of

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<sup>24</sup> The Mental Health Act 1983 is the legislative framework for the detention (often called sectioning) and compulsory treatment of people defined as having a ‘mental disorder’. The Explanatory Notes to the draft Mental Health Bill 2002 state: “The purpose of this Mental Health Bill is to introduce a new legal framework covering the compulsory care and treatment of people who are suffering from mental health disorders, including mentally disordered offenders. The Bill sets out the framework for determining when and how treatment for mental disorder may be provided on a compulsory basis in the best interests of the patient or to prevent serious harm to other people. The government considers that this framework complies with the requirement in Article 5 of the European Convention on Human Rights (ECHR) that patients be detained in accordance with the law” (2002b: 1-2 para. 5). See Appendix: fig. 1 for a legislative trajectory of the process of reform.

Health Press release: "Frank Dobson Outlines Third Way For Mental Health"  
Wednesday 29th July 1998).

In November 1998 the Department of Health published their plan to 'modernise mental health services'. In part three of this proposal, under 'failures of the past', numerous reasons were offered as to why 'care in the community has failed' (Department of Health 1998: 15). Those which concern reforms to the Mental Health Act focus primarily on two areas:

"A group of service users have begun to emerge with severe mental illness - typically schizophrenia - who are socially isolated, difficult to engage and obviously in need of care in the long term: care in the community has often failed to deliver the treatment and support they need" (Department of Health 1998: Part 3.2).

"The Mental Health Act has also failed to provide an adequate framework for dealing with a quite different group of people: those with severe anti-social personality disorder who present a risk to the public" (Department of Health 1998: Part 3.4).

The former quote, above, is linked with provision in the subsequent draft Mental Health Bill 2002 to enable compulsory treatment in the community as well as in hospital. The latter links with perceived 'gaps' in the Mental Health Act 1983 which have allowed people to 'slip through the net'. As the documents accompanying the draft Mental Health Bill explain:

"[C]ompulsory treatment may in future be provided where in the opinion of clinicians it can deliver the best care for patients. This could be in a hospital or, in a change from the 1983 Act, in the community" (Department of Health 2002b: 2 para. 5).

"The single definition of mental disorder in the new Bill means that all patients will be considered against the same set of conditions. This removes the problem in the current act that people with mental impairment or psychopathic disorder need to fulfill a requirement that 'treatment is likely to alleviate or prevent a deterioration of this condition' (the so-called 'treatability' test). This test has meant that some dangerous mentally disordered people have not been made subject to the Act as it has been

possible for them to argue that they are not personally benefiting from it” (Department of Health 2002c: 7 part 2.11)<sup>25</sup>.

In 1997 the Department of Health had already announced their systematic reform of mental health legislation in England and Wales. The reforms were to form part of a three-tier ‘modernization of mental health services’. This was outlined as follows: 1) increased (financial) investment in mental health services; 2) implementation of a National Service Framework to “deliver more effective and accessible support for patients limiting the need for compulsion” (2002c:5); and 3) “an up to date legal framework which promotes patients rights, protects their safety and protects the safety of the public” (2002c: 5). It is the forms of contestation surrounding the legal framework - the reform of the Mental Health Act 1983 - which is the focus of this thesis.

An unprecedented amount of criticism centered on the proposed changes. In 1998 the charity Mind initiated the formation of the Mental Health Alliance (MHA), an alliance of over 50 members, including all the major mental health charities, the Law Society, Liberty, and the Royal College of Psychiatrists. Together they shared ‘grave concerns about the bill’. In September 2002, NO Force, a ‘service user’ and ‘survivor’ campaign group against the draft Mental Health Bill was born, and later (in January 2003) another group, Protest Against the Bill (PAB), was formed.

Early on, MHA gathered a list of ‘common concerns’ (see appendix fig. 4) with respect to the reforms. These included fears over widening the condition by which one could be compulsory detained, along with concerns over the availability of sufficiently accurate risk assessment procedures to ensure that only people who pose an unacceptable danger could be incarcerated under the proposals. For NO Force and PAB similar concerns centered around definitions and risk assessments, along with fears over the extension of compulsory treatment into the community.

The draft Mental Health Bill was published by the Department of Health in June 2002, accompanied by Explanatory Notes and a Consultation Paper. ‘The bill’, as it became

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<sup>25</sup> See appendix: fig. 3 for the relevant sections of the draft Mental Health Bill 2002.

known, was the main focus of contestation during my period of study (August 2002 to September 2003). It is in thinking through these forms of contestation, genealogically and biopolitically, which dictates the rest of this thesis.

I begin with returning to Foucault's own thoughts on biopower. I do this as a form of rejoinder to the two departures from Foucault's work - that of 'bare life' (Agamben 1998) or 'life politics' (Rose 2001) - which I outlined in section 1.5.

### 1.7 Biopower and 'society must be defended'

"It is quite possible that war is the continuation of politics by other means, but isn't politics itself a continuation of war by other means" (SD: 48).

In 1975-1976 Foucault delivered his annual course at the Collège de France. This particular course - which he entitled 'society must be defended' - can be posited as "something of a pause, a momentary halt and no doubt a turning point" (Fontana and Bertani 2003: 273) between *Discipline and Punish* (published February 1975) and *The Will to Knowledge: The History of Sexuality Volume 1* (published October 1976), in as much that it situates a form of closure on discipline and paves the way for his research into governmentalities (see Pasquino 1993)<sup>26</sup>. Although unable to outline a full exegesis of this text here. I seek to outline a genealogy of the relations which led up to Foucault's understanding of 'modern biopower' and 'modern biological racism'<sup>27</sup>.

In this lecture series Foucault tested the hypothesis that 'politics is the continuation of war by other means': one which suggests that the force relations of war provide a diagnostic for modern biopower (see Dillon and Reid 2001)<sup>28</sup>. Foucault begins with

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<sup>26</sup> Pasquino (1993) writes: "It seems to me that this question of disorder and threat must replace the issue of domination and power and that it alone is capable of accounting for the problematic of the government of others" (82).

<sup>27</sup> It is in light of these lectures that the final chapter of *The Will to Knowledge* 'Right of Death and Power Over Life' can be better situated in Foucault's oeuvre.

<sup>28</sup> Later Foucault reverses his thesis slightly and states: "Should we turn the expression around then and say that politics is war pursued by other means? If we still wish to maintain a separation between war and politics, perhaps we should postulate rather that this multiplicity of force relations can be coded - in part but never totally - either in the form of 'war' or the form of 'politics'" (WK: 93).

something of a paradox. At the same time that seventeenth century states acquired a monopoly on war, eradicated private wars and turned them to the frontiers of the state (and hence the creation of a discursive dualism between order/politics in the state and anarchy/war outside [e.g. leviathan]), a counter discourse of war emerged, one which presented a war always going on beneath order and peace<sup>29</sup>. Foucault describes this discourse as follows:

“[It was] a new discourse, a strange discourse. It was new, first, because it was, I think, the first historico-political discourse on society, and it was very different from the philosophico-judicial discourse [aka Hobbes] that had been habitually spoken until then. And the historico-political discourse that appeared at this moment was also a discourse on war, which was understood to be a permanent social relationship, the ineradicable basis of all relations and institutions of power” (SD: 49).

Contrary to reading Foucault’s premise that ‘politics is war by other means’ as simply implying that force relations precede politics (or the state/sovereign), to Foucault, it is the very stuff of politics as war which is used in the historico-political discourses of the seventeenth and eighteenth century<sup>30</sup>. These counter histories, function in the form of myth:

“This counter history is effective not because of its historical accuracy, but in part because these stories are ‘supported by very traditional mythical forms ... the lost age of great ancestors, the imminence of new times and a military revenge, the coming of a new kingdom that will wipe out the defeats of old’” (Foucault cited in Murray 2004: 250).

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<sup>29</sup> In many senses ‘*Society Must Be Defended*’ is a reading of Foucault’s essay ‘Nietzsche, Genealogy, History’ writ large. The sovereign contract which seemingly replaces total war is itself subjected to genealogy: “It would be wrong to follow traditional beliefs in thinking that total war exhausts itself in its own contradictions and ends by renouncing violence and submitting to civil laws. On the contrary, the law is the calculated pleasure of relentlessness. It is the promised blood, which permits the perpetual instigation of new dominations and the staging of meticulously repeated scenes of violence” (NGH: 378).

<sup>30</sup> Here he invokes an eclectic mix of political thinkers and activists, including Sir Edward Coke (1552-1634), a jurist and John Lilburne, (1614-1657) leader of the Levellers - both British republicans – along with Boulainvilliers (1658-1722) - a French aristocrat. Each, albeit with disparate political goals, ran against the assertion of the arbitrariness of the philosophico-judicial discourse of the monarchy. What is most interesting to Foucault is less the historical ‘facts’ but rather the forms of truth these activists drew upon; forms of truth which function as a “discourse which lays claim to truth and right, but which explicitly excludes itself from juridico-philosophical universality” (SD: 268).

'Politics is the continuation of war by other means' is not the truth of politics or the truth of power but a genealogical fragment connected to these counter discourses. The 'I' who speaks this discourse is not a jurist, nor are they neutral; "The subject who is speaking is - I wouldn't even say a polemical subject - a subject who is fighting a war" (SD 53-54). Equally, the 'right' on which they drew is not a juridical right but a singular right (of family or races) "marked by a relationship of property, conquest, victory or nature" (SD: 52)<sup>31</sup>. Relations of force were linked to truth, being on a side meant you could narrate the truth and a historical right, not the history of reason, not an absolute right, but one interested in:

"defining and discovering, beneath the forms of justice that have been instituted, the order that has been imposed, the forgotten past of real struggles ... It is interested in rediscovering the blood that has dried on the codes, and not therefore, the absolute right that lies beneath the transience of history; it is interested not in referring the relativity of history to the absolute of the law, but in discovering, beneath the stability of the law or the truth, the indefiniteness of history" (SD: 56).

This counter discourse of races mutated in two ways. Firstly, the emergence of the dialectic, which to Foucault was not a theorising or understanding of this discourse of races, rather "it had the effect of taking it over and displacing it into the old form of philosophico-judicial essentially codifying war, struggle and confrontation into a logic of contradiction" (see SD: 58)<sup>32</sup>. Secondly, and through the birth of the nation-state, it was recodified into the biological caesuras of modernity. No longer was it a mythical war between races but a war against the enemy within the 'true' race; political struggle was no longer against the state but rather for the nation-state. In short, biopower, now concerned with regularising through the logic of the norm, was intercepted by racism - that which allows a cut in the biopolitical. Here, biopower becomes a 'warlike'

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<sup>31</sup> It is this view of 'rights' which has led numerous authors to consider various rights claims in contemporary life not through (metaphysical) juridical discourse but as tactical ways of 'rediscovering the blood which has dried on the codes' (see chapter five).

<sup>32</sup> This leads to Foucault's proposition that state socialism draws upon the racist discourses of biopolitics. With respect to the codification of force, Foucault critiques 'Marxists' for an ignorance of the term 'struggle' in 'class struggle'. In an interview he says: "This touches on a momentous political question: how is it that since the nineteenth century the specific problems of struggle and the strategy of struggle have tended so constantly to be dissolved into the meagre logic of contradiction?" (PK: 143 see also SD: 58-59).

relationship not 'invented' by racism or the modern state; rather, Foucault's hypothesis of war is made biological by racism: biological racism. "[T]he enemies are not adversaries in the political sense of the term: they are threats, either external or internal, to the population (SD: 256). This war does not protect the sovereign but it is a vital war made in the name of life:

"At this point, the discourse ... abandons the initial basic formulation, which was 'We have to defend ourselves against our enemies because the state apparatuses, the law, and the power structures not only do not defend us against our enemies; they are the instruments our enemies are using to pursue and subjugate us.' That discourse disappears. It is no longer: 'We have to defend ourselves against society.' but 'We have to defend society against all the biological threats posed by the other race, the subrace, the counterrace that we are, despite ourselves bringing into existence'" (SD: 61-62).

Concluding the lecture series with thoughts on biopower and fascism shares much with the final chapter of *The Will to Knowledge*:

"Wars are no longer waged in the name of a sovereign who must be defended; they are waged on behalf of the existence; entire populations are mobilized for the purpose of wholesale slaughter in the name of life necessity: massacres have become vital" (WK: 137).

However, the use of race is an addition which outlines the rupture in historico-political discourse and its re-emergence in state biopower:

"In the biopower system, on other words, killing or the imperative to kill is acceptable only if it results not in a victory over political adversaries, but in the elimination of the biological threat to and the impoverishment of a species or race. There is a direct connection between the two. In a normalizing society, race or racism is the precondition that makes killing acceptable ... If the power of normalization wished to exercise the old sovereign right to kill, it must become racist (a killing which is not simply murder, but expulsion, political death and so forth)" (SD: 256).

Racism is the precondition of the right to kill in normalised systems of biopower in the nineteenth century. Here killing is not simply murder but every form of indirect murder

which increases risk of death or political death through expulsion or rejection. Indeed, Foucault continues:

“[T]he same could be said of criminality. Once the mechanism of biopower was called upon to make it possible to execute or isolate criminals, criminality was conceptualised in racist terms. The same applies to madness, and the same applies to various abnormalities”

Racism here is the cut, or the caesura of biopower, it produces a break in biopolitics, “the break between what must live and what must die” (SD: 254).

### **1.8 Society must be defended today?**

For Foucault, it is not so much that the sovereign right to kill disappears, or is replaced by discipline, but it is reinscribed in a society of normalisation. It emerges alongside the development of a technical knowledge in the eighteenth century (see Elden 2001, 2002). Foucault then, as many other authors point out (see, for example, Dean 2004a, 2004b and section 3.3), does have a relationship to sovereignty, and indeed, in his ‘governmentality’ lecture Foucault (1991: 102) points to a triad of “sovereignty-discipline-government”. There is not simply a demise of sovereignty, rather sovereignty is a *part* of a governmental process of ‘state centralization’ and a dispersion of ‘pastoral power’ (Foucault cited in Fitzpatrick 2001: 260). However, Foucault says little of the forms of struggle in the particular biologically monist societies he outlines. Further, his account is one tied to the formation of nation-states. The question today then rests on two counts. Firstly, how do we ‘diagnose’ contemporary strategies of biopower beyond the ‘nation-state’ and/or national biopolitics (Dillon 2002, Dillon and Reid 2000)? Secondly, what forms of biopolitical struggle and contestation are we witnessing today? I will return to the first question of national biopolitics later in this chapter (see section 1.14). My primary interest for the rest of the thesis turns to the latter: forms of biopolitical contestation today are. I want to suggest, ones which are often undertaken in the form of ‘human rights’ and giving an account of one’s ‘biopolitical life’. It is the games of truth, their limits and caesuras, in this form of biopolitical struggle which I seek to outline in



chapters five and six. Before introducing the chapters, however, I want to offer a reading, or rather a 'diagram', of the current proposals to reform mental health law<sup>33</sup>. I do so in and through (post)Foucauldian writing on law, sovereignty and biopower.

### 1.9 Foucault on law, sovereignty, and biopower

Few 'Foucauldian' studies have paid due attention to the role of law within analysis of biopower and governmentality and there are, no doubt, good reasons for not singling law as a focus of study<sup>34</sup>. Still, in doing so, we might be careful not to relegate the formation of social law to a juridical model of governing, nor, perhaps simply absorb it into the study of governmentalities.

I want to begin by outlining two primary legacies borne from Foucault's scattered writings on law and sovereignty. The first follows a reading of Foucault which suggests that biopower (as governing life) has superseded law (as sovereign command). The force of this approach comes from a reading of Foucault's oft mentioned criticisms of the juridical-sovereign conception of power. The second disputes the singularity or sovereignty of law. Law is part of a heterogeneous set of *normalising* practices. While we may be witnessing a legislative 'turn to confinement' in mental health care (Moon 2000), such analysis must also consider the wider governmental field in which mental health law is placed. Albeit different, what both these views share is an eschewal, either historically or analytically, of an Austinian model of law as sovereign command. I aim to show that,

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<sup>33</sup> Deleuze suggests there are three Foucauldian 'diagrams' (sovereignty, discipline and control). Consistent with 'abstract machines' they exist only as the immanent abstract cause of the techniques or *dispositifs* that effectuate them. As Patton explains: "[an abstract machine] is both a condition of the effects realized in a given assemblage and an abstraction that exists only in those effects" (2000: 57). This supports a reading of *Discipline and Punish* which argues against the notion that Foucault heralded the 'disciplined' society, rather, there are only ever strategies and disciplinary mechanisms (which come together in the army), not disciplined bodies per se. Hopefully an example here will suffice: Deleuze (1988) suggests the relation between a political economy of punishment and the birth of the space of the prison is enabled by a generalised diagram of power 'panopticism' functioning as an abstract machine. Panopticism is not then an ideal type dispersed through the social body (see, also, Gordon 1980 and Elden 2001), rather "[i]n this case, the abstract machine of panopticism accounts for the convergence of the discourse of delinquency and the disciplinary techniques which together make up the social assemblage which Foucault called the carceral *dispositif*" (Patton 2000: 58). The abstract machine of discipline is extended to that of control in Deleuze's (1991) 'Postscript on the Societies of Control' and is broadly synonymous with the use of post-discipline here.

<sup>34</sup> Although see Kendal and Wickham (1994) for a review.

whilst the former critique may be misplaced, the latter may be open to revision. I revise the latter through a focus on contemporary mental health law.

### 1.10 Foucault on law: first legacy

In the first legacy the coding of power through a juridical right is, at best, conceived as failing of contemporary political theory and, at worse, conceived as an actual mask for disciplinary power<sup>35</sup>. Both views imply an historic transformation in which, during the eighteenth century, the juridical monarchic and legal code of understanding power was penetrated by a new form of power irreducible to law: biopower and the power of normalisation (see WK: 89) - yet political theory has largely retained the juridical code. Such views emerge from particular readings of Foucault's work such as *The Will to Knowledge* and *Discipline and Punish*, in which Foucault critiques the 'juridical-discursive' model of power as an analytical model of power "that governs both the thematics of repression and the theory of the law as constitutive of desire" (WK: 82)<sup>36</sup>. This follows Foucault's general critique of Kantian inspired political philosophy which aims to limit political power through philosophical truth (see SD:24, WK: 88-89, EW3: 298-299)<sup>37</sup>. As Simons (1995) surmises:

"The questions posed traditionally are whether the sovereign power has the right to do what it does (such as taking life), or whether subjects have rights which the sovereign power may not violate (such as the right to life). Political theory remains tied to the notion of sovereignty which becomes democratic and collective by being transferred from the monarch to the people" (52).

Simons (1995) and Ivison (1998b) both suggest that at times Foucault overstates his 'regicide of political philosophy'. Ivison (1998b), for example, discusses political thought

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<sup>35</sup> This is one which Valverde and Rose (1997), drawing from Baker (1994), suggest can ironically be read as Marxian analytic; borne perhaps from comments by Foucault such as "power is tolerable only on condition that it masks a substantial part of itself ... [for] ... would they accept it if they did not see it as a mere limit placed on their desire" (WK: 86).

<sup>36</sup> As Foucault suggests, the way they conceive the drives may be different but not is their analysis of power. Hence, "[w]e must conceive of sex without the law and power without the king" (WK: 91).

<sup>37</sup> This leads to his oft quoted conclusion that "At bottom, despite the differences in epochs and objectives, the representation of power has remained under the spell of monarchy. In political thought and analysis, we still have not cut off the head of the king" (WK: 88-89).

on the 'balance of powers': here Foucault's suggestion that political thought merely transfers from a monarch to 'the people' is simplistic; liberal political philosophy has to confront fragmented accounts of sovereignty and not simply 'the sovereign' (as the monarch or the people) per se. Albeit important, this does not detract from what Simons (1995) sees as a stronger case of Foucault's, which is against the doctrine that legal power (bound up with the institution of monarchy in the Middle Ages) presented itself as a neutral arbiter in social disputes, and it is this role as *arbiter* which political philosophy has largely retained (EW3: 122-3)<sup>38</sup>.

### 1.11 Foucault on law: second legacy

"Today, criminal justice functions and justifies itself only by this perpetual reference to something other than itself, by this unceasing reinscription in non-juridical systems. Its fate is to be defined by knowledge" (DP: 22).

Although we can see that Foucault has concerns with the juridical encoding of power, much of Foucauldian scholarship engaged with law seeks to immerse law into Foucault's works on governmentality and biopower (see for example Hunt and Wickham 1994). In this legacy, biopower is not accompanied by a decline in legal mechanisms; on the contrary, there has been a proliferation of legislation since the emergence of biopolitical strategies. However, laws are infused by practices of normalisation: "the law operates more and more as a norm" (WK: 144) writes Foucault. Indeed, authors have suggested that practices of normalisation are paramount to the formation of contemporary law, particularly social law (see Ewald 1990, Tadros 1998). In this vein, law should not be

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<sup>38</sup> In *The Will to Knowledge* Foucault describes the retention of the juridical code and discourse of right as the code which power took, and continues to take, to *present* itself. He begins with the institutions of the Western monarchies in the Middle Ages. These "rose up on the basis of a multiplicity of prior powers, and to a certain extent in opposition to them ... Law was not simply a weapon skilfully wielded by monarchs; it was the monarchic system's mode of manifestation and the form of its acceptability" (WK: 86-87). To Foucault, Western monarchies established the juridico-political dimension of power as a code, and their mode of power worked through law (although could not be reduced to it). Their succession, however, was made on *behalf* of the judiciary against the monarchy, hence retaining the legal code, a code which has continued into the present. Foucault writes: "A tradition dating back to the eighteenth or nineteenth century has accustomed us to place absolute monarchic power on the side of the *unlawful* ... But this is to overlook a fundamental historical trait of western monarchies: they were constructed as systems of law, they expressed themselves through theories of law, and they made their mechanisms of power work in the form of law" (WK: 87).

confused with sovereign power, when Foucault is talking about “the regression of the juridical” (Ewald 1990: 139) this is understood as the expression of a sovereign, not of law *per se*. Rose and Valverde (1998) describe this approach to law through the ‘legal complex’ - which is a dual endeavour. Firstly, law becomes infused with all forms of expertise (see DP: 23)<sup>39</sup>. Secondly, and more importantly regards the notion of norm, the law forms a part of governmental strategies, which in themselves often require framing in the language of law - a law which “has not merely legitimated them but actually composed the authorities, techniques and lines of force that have made them possible” (Rose and Valverde 1998: 543).

Ewald (1990) offers us a genealogy of social law and its contingency on the notion of norm. Following Canguilhem the etymology of the word ‘norm’ is somewhat surprising, considering our contemporary use of the term, and this offers some insights into how the norm is understood in Foucault’s work (see Ewald 1990: 139-140; AB: 49-50; DP: 177-184). As Ewald (1990) explains:

“[T]he norm is related to power but it is characterised less by the use of force or violence than by an implicit logic that allows power to reflect upon its own strategies and clearly define its object. This logic is at once the force that enables us to imagine life and the living as objects of power and the power that can take ‘life’ in hand, creating the sphere of the bio-political” (139).

In relation to the law, this is not through constructing *objects* of thought, or simply *producing* a norm (a normal child, a normal patient, a normal family)<sup>40</sup>. Neither is it an ideological norm; the norm is post-metaphysical. Indeed, it is this attribute which allows a certain kind of (social) law, “a law constituted with reference to the particular society it claims to regulate and not with respect to a set of universal principles” (Ewald 1990: 155). Its concern is with techniques which can *standardise*: “Normalisation produces not objects but procedures” (Ewald 1990: 148).

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<sup>39</sup> Foucault’s focus on the emergence of the concept of ‘homicidal mania’ in eighteenth century legal circles is a primary example (see AB: 109-136; EW: 176-200).

<sup>40</sup> Further, the norm makes disciplines truly interdisciplinary. As Foucault suggests, discipline is saturated by biopolitics and biopolitics is “taking control of life and the biological processes of man [sic] as species and of ensuring that they are *not disciplined but regularised*” (SD: 246-247, my emphasis).

Further, following Canguilhem (1993 cited in Pottage 1998a), the norm can only exist via a prior state of abnormality: “although the abnormal is logically secondary it is existentially prior” (Pottage 1998a: 12)<sup>41</sup>. Simply put, the norm is a way of managing the abnormal, an abnormal which emerges through governmental strategies; it is a technical and political concept (AB: 50)<sup>42</sup>.

## 1.12 Normalisation and liberalism

With the notion of the norm we can revisit Foucault’s challenging assertion that “the democracies of the state of right were not necessary liberal, nor was liberalism necessarily democratic or devoted to forms of law” (EW1: 77). To Foucault, the rule of law is not the *founding* act of liberalism. Rather it forms part of a liberal technology of governing and its principle that “one always governs too much” (EW1: 74). Laws based on the norm act to *complement* the governmental rationality of a limited government. This, however, is not through the case of the sovereignty of the people (seen through their ‘norm’), rather, law coincides with liberal techniques of governing - i.e. the quasi ‘natural’ realities of ‘the social’, and ‘the economy’<sup>43</sup>. This coexists with the rationality of

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<sup>41</sup> Ewald (1990) gives the example of social insurance, in which risk plays the same role in insurance as the norm does in disciplinary mechanisms. Unlike analysis of ‘risk society’ (influenced by Beck and Giddens) ‘risk’ is not an event but rather a way of treating certain events which may happen, that are themselves certain understanding of risk. Social risk therefore has come to be thought of in insurance terms, or through techniques of insurance. We can point to a new rule of justice in social insurance, for example, one in which defined risks are not sought through attributing causes but sharing a proportional part of ‘natural’ risk (for a critique of Giddens and Beck, from a governmentality perspective, see Dean 1996a).

<sup>42</sup> Ewald (1990) has some interesting comments with respect to thinking this through spatially. The suggestion that *The Will to Knowledge* completes or continues what began in *Discipline and Punish* - that is, the level of normalisation at the level of the body is extended to the now social body or population - is to Ewald misjudged (see, also, SD: 252-253). Rather the norm can *never* exist in isolation, it refers only to other norms and “[N]orms communicate among themselves, shifting from one level or field of their existence to another according to a kind of modular logic” (Ewald 1990: 153). Here the norm of populations is part of the continual displacement of the logic of the norm. “If a norm exists, the entire space in which it appears becomes a normative space ... Norms are linked neither by scale (macro or micro) nor by the characteristics of their objects, whether they are bodies, populations or things. Hence the ubiquity of the normative, which can no longer be confused with the exercise of power that it informs” (Ewald 1990: 153-154). Still, we might suggest here that the understanding which allows the norm to travel and/or to hold together spaces of populations - which is performed here through techniques of thought (language in Ewald’s account) - would benefit from certain renderings of ‘Actor Network Theory’ in governmentality literatures (see Rose and Miller 1992).

<sup>43</sup> Ewald (1990) gives the example of United Nations Resolutions (and agreed norms for evaluating conduct). A more mundane example of traffic law (and the norm of maximum speeds) is given by Dean (2004: 120).

'rights', 'liberties', and the participation in a parliamentary democracy outside of state control. As Dean (2004b) explains:

“[N]ineteenth century liberalism is concerned not only with the development of representative institutions compatible with the individual citizen’s rights but with ensuring that individuals as members of a population know how to exercise those rights properly. Liberalism is as much concerned with the appropriate normalizing practices to shape the exercise of citizens’ political freedom as it is with guaranteeing their rights and liberties” (122).

I will focus on the exercise of ‘citizens political freedom’ in chapter three, but for now perhaps the best analysis in this area comes from Baker (1994), who focuses on the emergence of the rule of law in nineteenth century France. He outlines how the ‘governmentalisation of the state’ (i.e. the emergence of questioning concerning its legitimacy and how one should govern) was indeed defined in terms of an expression of the popular will. Yet, by destroying resistance to a (sovereign) centre this facilitated the development of disciplinary society.

Arguably, a genealogical analysis of contemporary forms of political action counters the so-called ‘paradox’ of liberal democracy - the seeming tension between a liberal logic of difference and a democratic logic of equivalence (see, for example, Mouffe 2000). As Foucault’s account of liberalism shows, liberal democracy does not necessarily include a tension, as these terms only come into play through appropriate normalising practices which constitute political ‘freedom’.

### **1.13 The norm, normativity and contemporary mental health law**

Rose (1996, 1998a), in thinking through contemporary changes in mental health law, identifies a mutation in the notion of norm. Here a new logic of security has become embroiled into the normalising strategies of risk thinking. To Rose, risk understood through the norm (i.e. the abnormal and populations at risk) has given over to risk understood through public safety. This is a modulation of the relationship between risk thinking and psychiatry:

“risk thinking *transforms* the very activity of psychiatry, the conception of its civic role and professional responsibilities and the public representation of madness itself, not just as difference, but as wholly negative focal point of risk” (Rose 1998a: 192 my emphasis)<sup>44</sup>.

Following Castel’s (1991) seminal work on risk, for Rose (1998a) post-disciplinary risk thinking is truly interdisciplinary with novel relations between experts to identify and control risky individuals<sup>45</sup>. However, “rather than being structured by norms and deviations, our contemporary imagination is organised by we the public and all that threatens us” (Rose 1998a: 191). What is striking here, in Rose’s otherwise astute analysis, is his eschewal of the notion of biopower in thinking through the rationalities of protecting ‘the public’<sup>46</sup>. We might ask, in what ways does the notion that ‘society must be defended’ become embroiled with the ‘dangerous’ or ‘risky’ individual? Is it simply that psychiatry has reverted back from its concern with ‘risk factors’ to identify and control the ‘monstrous individual’ (as Rose seems to imply), even if this monstrous individual is governed through risk<sup>47</sup>.

#### **1.14 From governing risk to governing the contingency of risk decisions**

“[The] generalized space of risk factors stands in the same relation to the concrete space of dangerousness as the generalized space of non-Euclidean geometries has to the three-dimensional space of Euclidean geometry; and this abstracting geometry which shifts from dangerousness to risk entails a potentially infinite multiplication of the possibilities for intervention” (Castel (1991: 289).

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<sup>44</sup> The *National Confidential Inquiry into Suicide and Homicide by People with mental Illness* (Department of Health 1997) is exemplary of this modulation of risk thinking.

<sup>45</sup> Castel (1991), writing in the early 1990s, outlines a shift from dangerousness to post-disciplinary risk management in community mental health care. It focuses, not on the ‘dangerous individual’ or forms of confinement, but on the preventative administration of ‘populations at risk’.

<sup>46</sup> For Rose (1998a), this is put down as a response to media reporting and a generalised *ressentiment* imbued in victim culture. Arguably notions of ‘victim culture’ and/or ‘moral panics’ need to be themselves submitted to genealogy (see chapter six for a genealogy of the notion of victim culture in social movements).

<sup>47</sup> Rose (1996) points to a paradox here as risk thinking blurs the distinction between the monstrous and the rest. Indeed, if we follow Castel (1991: 287), post-disciplinary risk is not focused on individuals but ‘abstract factors’. Rose, however, suggests that risk thinking is amenable to identifying risky individuals and hence the terms ‘monstrous individual’ and ‘risk management’ can coexist.

“If we’re going to accept from the position of the public, that it’s not sustainable and not right to turn people on the streets when we know that they’ve got a degree of dangerousness and simply say we can’t do anything with them, that’s got to be the starting position ... [O]f course, there is a balance to be struck about protecting the public and also protecting the rights of individuals ... but what I would say is that one of the whole purposes here is actually to try and help individuals understand and manage their behaviours so that the risks to themselves and other people is actually lowered, and so in a sense both of those directives are going in the same direction” (Beverley Hughes MP, Home Office Minister speaking on the DSPD Programme in 2002).

Leaving aside thought over the content of these claims, we might ask, following the quote from Hughes above, how something can so easily fleet between control and care. Is there a demonic paradox between the city citizen and shepherd flock game where care can so effortlessly turn into security? For Moon (2000), similar to Rose (1996), we are witnessing something of a reversion from risk thinking premised on the norm to a focus on the dangerous or monstrous individual in mental health law. Indeed, numerous authors have pointed out the relations between the so-called failures of ‘care in the community’ and a turn to ‘confinement’, which is often put down to misjudged perceptions of dangerousness, the role of the media and/or the unfair attention placed on random killings by those who have been diagnosed with a ‘mental disorder’ (see, for example Laurance 2002, Moon 2000). In thinking through shifts in mental health law I want to return, however, to the formation of biopower in *Society Must Be defended*. To be sure, I am not suggesting that state biopower has returned and that we are witnessing a racist divide between the logic of the norm and the biological threat, but rather something more difficult. Rather than follow a path that locates causal factors (in the media or the state), I want to focus on the issue more genealogically, by thinking through different understandings of contingency and strategy in sovereign and post-disciplinary biopower. I do so to enable a ‘diagram’ of risk thinking in mental health law today<sup>48</sup>. Pottage (1998a) highlights the stakes of this approach with respect to the different attitudes to contingency in Foucault’s work:

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<sup>48</sup> This is not to say that the media does not have an important role in creating ‘circulating entities’ of dangerousness (Latour 1999), an arena of research which is beyond the scope of this thesis.



“[O]ne [sovereignty] avoids or absorbs contingency (substance), and another [biopower] which pre-supposes, and thrives on, contingency (emergence). The essential point is that this apparently simple and austere distinction between a right to dispense death and a right to foster life expresses a vital transformation in the fabric of society and in the operation of social processes” (9).

Hence when Foucault discusses a life folded into history (see WK: 143), he describes an operation in which social life incorporates its own foundation, a form of recursive process by which turns what “ought logically to be its substrate into the domain in which biopolitics is applied” (Pottage 1998a: 9). “[M]an” [sic], writes Foucault was “placed at the same time outside history, in its biological environment, and inside human historicity, penetrated by the latter’s techniques of knowledge and power” (WK: 143). This, however, is more than a Heideggerian enframing in which technology adapts itself to its own results, and hence makes itself prior to nature (and, as such, nature becomes standing reserve). Rather:

“[t]he innovation of Foucault’s model lies in its representation of ‘life’ ... to fold life into history is not merely to invert a logical hierarchy; rather, it is to presuppose a horizon that affords no substances or structures to which the elements of social life can be attached. Social or historical operations have to take responsibility for themselves. They do so by a structure of reflexivity that is best explained as a peculiarly radical explanation of operations which ‘adapt themselves to their own results’” (Pottage 1998a: 9).

As Rabinow (1996) shows, Castel’s analysis of post-disciplinary psychiatry exemplifies perfectly this form of recursivity. It can be characterised as follows:

“First, a mutation of social technologies that minimize direct therapeutic intervention, supplanted by an increasing emphasis on a preventative administrative management of populations at risk; and second, the promotion of working on oneself in a continuous fashion so as to produce an efficient and adaptable subject. These trends lead away from holistic approaches to the subject or social contextualism and move instead toward and instrumentalized approach to both environment and individual as a sum of diverse factors amenable to analysis by specialists. The most salient aspect of this trend ... is an increasing institutional gap between diagnostics and therapeutics” (99-100).

What emerges, for Castel, is something like the governing of risk factors: not who you are but what you do; and we are all, in one sense or another, *predisposed*.

This furthers a reading of mental health law as contingent on shifting mutations in the governmentality of risk. Uncertainties in risk thinking are not given over to god or nature, the politics of life is not located there<sup>49</sup>. Rather, when undesired consequences are attributed to the fact that decisions were made, and not fated, a will to govern better or differently arises. We might argue that, rather than a reversion to a media driven 'monstrous' individual, 'failings' in the anticipatory structure of mental health law has invoked the liminal figure of the 'dangerously (severe personality) disordered' and the 'revolving door patient' who are neither simply 'monstrous' nor abnormalities who can be disciplined in *current* criminal or mental health law. Rather, they figure as a 'loophole', the resolution to which adheres to something of a paradox of promised danger sometime in the future ("locked up indefinitely even when we haven't committed a crime", "we will have to take medication, even when we are well" vocalises one demonstrator)<sup>50</sup>.

Governing the contingency of risk decisions, the fact that decisions are made and not cosmological results in an anticipatory structure in which the 'dangerously mentally disordered' are not the monstrous limits of the abnormal; rather, emphasis turns to the fact that a decision was made which either failed the service user through suicide or the public through homicide. "In this way decision making structures 'incorporate' contingency, or appropriate the future, by using their own expectations or operations as a basis for their reproduction" (Pottage 1998a: 11).

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<sup>49</sup> Cosmology describes when uncertainties and errors are given to gods or nature (life is outside history), whilst technology describes when undesired consequences of decisions are given to the decisions themselves, the fact that they were made. The future then is not something outside, what occurs depends on the decisions at present. "In cases of disappointments, the 'technological' response is not to blame 'nature' but to address its own operations, and to ask whether its expectations should be modified. Unlike 'cosmological' events, the expectations invested in decisions are elements that are (re-)produced exclusively by the social process which generates them" (Pottage 1998a: 10).

<sup>50</sup> Critical Mental Health Forum demonstration August 2002 (see appendix: fig. 2).

Further, the random motiveless killing from those who have made contact with mental health services does not instigate anxiety for a new form of confession, but rather acknowledgment of a 'failed system', one which has enabled a revolving door patient and/or those who can slip through the net. Risk is not merely a logical outcome of the lack of medical treatment, but like the norm, is a precursor to better treatment. Outcomes (as correlates of decisions) mean that an expectation of future risk is to be used for the replication of autonomous processes. The 'mental health system' will never stabilise into a 'system'. There will always be new contingencies, new risks.

To summarise something of a 'diagram' of post-disciplinary mental health law, governing 'the abnormal' through disciplinary practices and normalisation has become embroiled in governing contingency. Risky and/or dangerous individuals are less diagnosed on the basis of individualisation and medicalisation (and its equivalent, confession), but through *feedback mechanisms* in risk prevention strategies. In cases such as the *random* killing, rather than the juridical necessity for the 'mad man' to confess is the incitement to govern better, to govern those who fall through the net, to govern those 'revolving door patients' or those 'personality disordered' who have succeeded in using the law against itself.

The question of anticipating and diagnosing danger is not a new one (risk has not simply been replaced by a new logic of dangerousness). Foucault in his 'abnormal' lectures (AB) and elsewhere (EW3: 176-200) discusses a form of questioning which arose in the early nineteenth century concerning whether the criminal was mentally ill or delinquent; this 'psychiatrisation of crime' emphasised the character of the criminal and implied that the judicial system focus on the criminals' potential danger and not the crime itself (EW3: 176-200). Today, however, unlike Foucault's discussion there is not simply the 'dangerous (severe personality) disordered' individual, but danger or 'becoming dangerous' as Dillon and Reid (2001) explain<sup>51</sup>:

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<sup>51</sup> The term 'dangerously and severe personality disordered' was dropped after its emergence in the White Paper on reform of the Mental Health Act. It is now defined as a 'treatment programme' suggesting further that governing risk is less defined by individuals than actions.

“What Foucault had already noted in respect of the advent of disciplinary power ... becomes radically intensified and extended here. Thus bodies-in-information tend to become subject to the logics of becoming-dangerous such as symptomatology of pathology or epidemiologies of danger” (57).

Sovereignty, as the decision on the exception and as the right to dispense (political) death (“[sovereignty] avoids or absorbs contingency” Pottage 1998a: 9), does not simply disappear in this system of biopower, rather it is crucial to adjudicate on this very exception to the promotion of ‘life itself’ associated with a dispersed post-disciplinary biopolitics:

“Biopolitics must and does recuperate the death function. It does teach us how to punish and who to kill ... Power over life must adjudicate punishment and death as it distributes life across terrains of value that the life sciences constantly revise in the cause of life’s very promotion. It has to. That is also why we now have a biopolitics gone geopolitically global in humanitarian wars of intervention and martial doctrines of virtuous war” (Dillon 2005: 44).

### **1.15 Questions of method**

Hannah (2000) aptly describes the ways scholars, positively disposed to Foucault, tend to use his work. The first, the *invokers*, utilise certain Foucauldian themes, such as power-knowledge, as an addition to their analyses; the second, the *exegetes*, interpret Foucault and seek to discover both his oeuvre and its limits; finally, a third group of scholars, the *elaborators*, extend detailed readings of Foucault, and interpret the silences, to suggest its relevance for their own research. This thesis might be situated in the third group, ‘the *elaborators*’. On the one hand I refer to, extend, and/or critique some of the themes and ideas drawn from Foucault’s books and articles to consider their usefulness for the present. Examples here include my discussion of post-disciplinary biopolitics (above); my formation of agonism as both a conceptual and political term in chapter three; a lengthy discussion in chapter five concerning Foucault’s shifting thoughts on (human) rights; and a discussion in chapter six regards mutations in the technologies of the confessional (a genealogy which goes back at least to a Christian monastic setting). On the other hand, I do not seek to outline and then follow a Foucauldian ‘method’, not least because to do so would submit his work to becoming a form of theoretical interpretation

of which he was opposed. However, I do utilise some of the methodological concerns with which Foucault himself grappled. In the following I seek to discuss these issues with relation to archaeology, genealogy and my archive.

### **1.16 An archive of serious speech acts**

Archaeology, in general terms, is an approach to historical documents which seeks, not to excavate them in an attempt to find another layer of meaning (in the historical age or in the present through an unfolding teleology), but rather disperses them into an archive (for a lengthy discussion of this organisation, see Hannah 1993 and Philo 1992). This dispersal forms the field, or we could say system, which describes the condition of existence of discourses in the human sciences (that is the formation of objects that can fall within the true). This field cannot be reduced to an ideology, spirit or theory, it may subsequently have rules (Foucault's 'historical formations') but it does not have laws as such. As Dean (1994) and others correctly point out, Foucault's archaeologies do not fail, as some suggest, with respect to non-discursive 'practice'. Both Elden (2001) and Philo (1992), for example, point to the necessity of spatial practices for this system of dispersal. Philo (1992: 139) correctly, I believe, retrieves a Foucauldian understanding of space as simply a geometry of power relations by relating the archaeological method outlined in *The Archaeology of Knowledge* to the "empirical spaces and places" of his other works. Elden (2001), through a more Heideggerian lens, draws attention to place based practices which free objects to be given to the true. In this vein, Foucault is not working at the level of epistemology, semiotics or social constructionism, he is concerned with the historical *a priori*, that is with those conditions which enable the formation of objects and subjects in the human sciences<sup>52</sup>. Foucault is not concerned with a shared set of background practices (although we can suggest that these are implied) but is precisely interested in *discursive* practice. Dean (1994) explains this succinctly when he states:

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<sup>52</sup> Hannah (2000) appears to invoke Foucault as a 'social constructionist'. However, if we take this to mean a semiological system which constructs objects of thought, then Hannah's own use of Foucault's archaeological method suggests this is not the case. For further discussion of the historical *a priori* see, for example, Elden (2001).

“[A]rchaeology does not address the everyday language and patterns of implicit and explicit communication and knowledge arising in what German philosophy has called the *Lebenswelt* (life-world). Nor is it primarily concerned with the abstract, highly formalized languages of, say, mathematics or physics. Rather it is defined in relation to the constitutive rules of any systemised body of knowledge and discourse” (32).

As Dreyfus and Rabinow (1982) suggest, Foucault does not need to perform a phenomenological excursion into ‘conditions of possibility’ (through a focus on perceptions or sense for example) as he is concerned with bracketing his analysis at the level of the statement (one whose seriousness he does not need to choose but is decided upon by those in a particular period). My reference to genealogy throughout this thesis is not simply to reject this level of analysis, it is however to attend to some of the limits, rather than simply failures, of Foucault’s archaeological approach. In the first instance, Foucault is concerned with the conditions of existence of *veridical* discourses, that is, those discourses in the human sciences which seek to systemise and self rectify themselves with the “aim of reaching the truth” (Dean 1994: 32). My concern is indeed with those ‘psy’ discourses which enunciate the truths of madness, but my parallel focus on service users, *dispositifs* (apparatus’s) and imbrications of power-knowledge suggests a slight shift from the level of the statement in the human sciences.

With this in mind, my archive, which spans the whole of this thesis, and became the inspiration to some of the more substantive foci in individual chapters (of which I will talk more later) includes publicly available consultation responses, speeches and policy position papers from NO Force and the Mental Health Alliance, along with internally referenced material (such as the Human Rights Act 1998). Taken together, it contains statements, or following Dreyfus and Rabinow (1982: 48) “serious speech acts”, which can be read and connected in relative isolation from a set of ‘background practices’. In this vein, I am judging neither their truth nor their meaning, but considering what can be said and by whom with respect to the formation of mental health law (hence my focus on ‘conditions of existence’). To this end we might argue the documents I have drawn upon are neither an empiricist endeavour to extract an evident truth of what ‘exactly’ happened during the process of reform, nor a representative (positivist) rule bound system which

exhausts everything that happened (for a discussion of these with respect to Foucault's archaeologies see Philo 1992 and the response from Hannah 1993); they are concerned, primarily, with serious speech acts. However, in attending to the *discursive practices* of 'service users' and 'survivors' it has also been necessary to incorporate aspects from Foucault's later genealogies (see below).

### 1.17 A genealogy of (bio)political contestation

"If archaeology displaces the delirium of interpretation with an analysis of the positivity of discourse, then genealogy displaces both the search for ultimate foundation and its opposite nihilism, with a form of patient criticism and problematization located in the present" (Dean 1994: 20).

"In Foucault's later works, practice, on all levels, is considered more fundamental than theory. Again the intelligibility of the human sciences is not to be found in their own theories. It is not to be found in some system of formation rules either; this level of rules is just simply dropped. Nor is it to be found in the horizon of meaning shared by the participants. Rather, Foucault now finds the human sciences intelligible as part of a larger set of organized and organizing practices in whose spread the human sciences play a crucial role" (Dreyfus and Rabinow 1982: 103).

Foucault's later 'genealogies' incorporate a shift from the formation of the human sciences towards their interception with political and governmental practice. We might, however, be careful with respect to the meaning giving to the term 'practice' here. What is pertinent in the quote above from Dreyfus and Rabinow (1982: 103) is the phrase: 'Foucault now finds the human sciences intelligible as part of a larger set of *organized* and *organizing* practices in whose spread the human sciences play a crucial role'. What the authors are alluding to here is that, whilst archaeology could accept extra discursive political and economic concerns, and certainly acknowledged the importance of the non-discursive, genealogy makes these aspects central as part of the *strategies* of power/knowledge<sup>53</sup>. Once I had defined my archival field of 'serious speech acts', my focus on forms of political enunciation required further attention to agonistic strategies as they were practiced. This is because, although relatively stable, the rationalities and

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<sup>53</sup> As numerous authors have pointed out, genealogy and archaeology are mutually enforcing (see, for example, Dean 1994 and Philo 1992).

techniques of contestation during the reforms are unlike those systemised forms of knowledge found in Foucault's archaeologies. The spaces in which service users and survivors enunciate truths do indeed concern the human sciences, but less through their veridical formation than with their imbrications into strategic and agonistic struggles.

For chapter four (the demonstration) and chapter six (testimony) I attended a number of events (these are outlined in appendix fig.2), and I also accessed an internet message board with respect to the organisation of a demonstration (chapter four). This form of data collection is unusual when adopting the work of Foucault, yet was integral to my discussion of an apparatus/assemblage of political agonism. The problem I encountered here concerned how I might describe a relatively stable set of practices - here the focus on demonstrating (as) a service user/survivor, a space in which the enunciator is both subject and object - without a level of interpretation which seeks to describe these actions through individual interpretations (which would draw on a second layer of meaning), or through post-hoc theoretical interpretation of what happened (and of course the former gives rise to the latter). I have already established that in Foucault's 'archaeologies' weight is given to statements ('serious speech acts'), and here by attending to practices I am not simply bringing to light the areas in which serious speech acts take place (which would entail moving towards ethnomethodology). Rather, I use the internet message board to establish the techniques (*techné* as arts or techniques) which enable a political apparatus for truth telling (one which I also expand, in chapter four, to a form of assemblage)<sup>54</sup>. In this sense I am delineating what we might term the non-discursive aspect of the apparatus (*dispositif*) for political enunciation. In simple terms, an apparatus (*dispositif*), which I will discuss further in chapter three, includes both discursive (Foucault's archaeological episteme) and non-discursive aspects (Rabinow 2003):

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<sup>54</sup> The *strategic games* of *dispositifs* outlined in *Will to Knowledge* and *Discipline and Punish*, once we move into 'The Subject and Power' (SP), seemingly become more *agonistic*. In effect, then, I am invoking but going further than Foucault in linking an apparatus of truth telling to forms of political agonism. As Rabinow (2003) states: "As he [Foucault] turned to issues of 'subjectivation' the issue of the apparatus faded from view. Had Foucault lived long enough to return to his work on bio-power and on historical forms of governmentality, he would no doubt have rethought and redeployed the concept of apparatus" (55).



“[The] apparatus brings together power and knowledge into a specific grid of analysis. Foucault defines *dispositif* by saying that when one has succeeded in isolating ‘strategies of relations of forces supporting types of knowledge and inversely,’ then one has a *dispositif*” (Dreyfus and Rabinow 1982: 121).

The apparatus involves a certain organisational capacity and intelligibility on my part (hence in this vein it is a form of ‘interpretation’). However, with respect to my focus on the organisation of ‘games of truth’ for subjects and objects:

“[I]t is also the practices themselves, acting as an apparatus, a tool, constituting subjects and organising them. Foucault is seeking to isolate and establish the kind of intelligibility that practices have” (Dreyfus and Rabinow 1982: 121).

My use of both archaeology and genealogy manifests in connecting the objectivising practices of the human sciences with “the way a human being turns him- or herself into a subject” (SP: 208), along with the games of truth in which these are implicated. With this in mind it might seem pertinent that I would tie my approach to a methodological reading of Foucault’s later work. However, rather than thinking through forms of *askesis* (although reference is made to the fold of subjectification in chapter three), my aim is to link objectivising and subjectivising games of truth on a register akin to *political* contestation in the present. As Dean suggests:

“The object of our studies of government is not the subject that is produced by specific governmental and ethical practices. It is the relation between the *forms of truth by which we have come to know ourselves* and the *forms of practice by which we seek to shape the conduct of ourselves and others*” (1996: 220 my emphasis).

To conclude, my methodological objective is to assemble the terrain of political enunciations from service users and survivors which fall within games of truth. In light of this, chapters four, five and six correspond to three related fields: the demonstration, human rights and testimony respectively. My focus on these arenas is not arbitrary, taken together they form a political apparatus for truth telling.

## **1.18 Introduction to Chapters**

### **Governmentality, biopolitics and agonism (chapter three)**

After a methodological chapter (chapter two) specifically into the (political) purposes of genealogy, in chapter three I offer a more extensive methodology. It is one embroiled in my focus on forms of biopolitical contestation surrounding the reform of the Mental Health Act 1983.

How might we consider my earlier diagram, outlining shifts in mental health law, with relation to biopolitical contestation? Foucault argues that modern power is organised around two poles: an anato-mo-politics of the human body and a biopolitics of the population. It was sex(uality) as a political issue which exemplified a pivot which tied the forces of bodies and their distribution through disciplines with the biopolitical regulation of populations (see WK: 139-140; 145). With the demise of a biopolitics which presupposes the nation-state (and vice versa), how can we conceive biopolitical action today? In answer to this question, for many the biopolitics of mental health understood through populations has shifted to the ethical terrain of practices of the self. Both Rose (1999, see also Rose and Novas 2000) and Rabinow (1996) have offered dialogics of contemporary technologies of the self. These aim to connect biopolitics with a “post-disciplinary rationality” (Rabinow 1996: 91) through forms of ethopolitics (Rose 2001) and biosociality (Rabinow 1996). Here I offer a rejoinder to these literatures by thinking through the formation of ‘psychiatric survivors’ and ‘service users’ with relation to biopolitical action. In this chapter I put a number of Foucault’s genealogical ‘tools’ into action: notably, power-resistance, problematisation and agonism.

### **Demonstration (chapter four)**

In this chapter, I heed Connolly’s (1999) suggestion that diagnostics of ‘political movements’ may well forget how they actually proceed whilst in motion<sup>55</sup>. Here I focus

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<sup>55</sup> Connolly writes: “We are morally primed to expect a new identity to *precede* our recognition of it” (1999: 62 my emphasis). Much of Connolly’s recent work is concerned with the relation of political

on the 'techniques' of demonstrating a zone of 'opposition' to the draft Mental Health Bill. An attention to the 'sights' and 'sites' of political action has been initiated by Barry (1999, 2001), but my focus extends to an account of agonism. Here, I suggest that the demonstration is not merely a site or a background to the more important task of political enunciation, it is something which needs to be assembled. Furthermore, it is one in which onus is put on circulation - an image, an interview - as part of the process of political enunciation.

### **Human rights: 'bare life' or 'life politics'? (chapter five)**

This chapter begins with the suggestion that the mutation in mental health law which I outlined previously results in something of a 'crisis' in the 'true' subject of mental health law. In this sense, shifts in mental law share something with the problematisations created by those 'forms of life' instigated by the new genetics (Pottage 1998b). As Pottage (1998b) suggests, contemporary controversies in the realms of bio-sciences are exemplary of the failing of sovereignty to account for/as the law and the conceptual framework that has grounded philosophical reflection on the law and nature, persons and things. Despite, or rather because of this, we can ask: in a period in which we have lamented the 'death of man', in which the *bios* of biopolitics is neither grounded in populations or human beings, who or what functions as the bearer of human rights? Both the *Mental Health Act 1983* and the *Draft Mental Health Bill 2002* are conceived as 'incompatible' with the Human Rights Act 1998 (the former through case law focusing on the *voluntary* request for tribunals as contravening article 5, and the latter through concerns with respect to the 'widening criteria for compulsion'). Human rights are also a resurgent motif drawn upon in 'survivors'' testimonies and campaigns (see chapter six). Caldwell (2004) acknowledges the increasing reference made to human rights in contemporary life. The referent, however, has become more than just a discursive object,

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movements or macropolitical actions to micropolitical techniques of thought and action: "each time a new advance is made in the domains of ecology, race relations, income distribution, worker rights, gay rights, religious freedom, and gender diversity it is supported and enabled by micropolitical actions that create resonances across several constituencies at multiple levels of being" (2002b: 109). To imagine this flowing in the opposite direction is in many respects apposite to Foucault's comments on how mobile and transitory points of resistance, which group and regroup, can, but only occasionally and due to strategic codification, "make a revolution possible" (WK: 96).

As she goes on to say, “humanity has emerged as a material political group, yet what political power represents humanity is more complex” (para 2). We might go further to ask what materiality, or what ‘humanitas’ of the human, is represented by this group? Influence regards human rights may come from the UN but the enforcement comes from sovereign states: “As those powers become increasingly involved with humanity, they can no longer be fully captured by the concept of a nation state sovereignty committed to particular peoples” (para 3); it is this relation between ‘humanity’ and the political which is of interest here.

### **Testimony and biopolitical truth speech (chapter six)**

Focusing on testimony from ‘service users’ and ‘survivors’ contesting the draft Mental Health Bill, I want to suggest that these are not simply the closed spaces of confession (one which as Foucault suggests were exacerbated through juridical regimes in the eighteenth century) nor the play of subjection and subjectification (see Butler 1997a) - as both can result in judgements over the actions of those giving testimony. Rather, I want to think through the very *possibility* of giving testimony during these proposals, not through providing explanation for its cause but through focusing what I have come to call ‘biopolitical truth speech’. There is a long history of research into testimony, and much critical work emerges from feminist analysis of what has been termed as ‘wound culture’ (Berlant 2000, Brown 1995). These analyses suggest that it is the fetishising of injury which has formed the basis of identity politics. I draw much from this work but want to suggest that it is constrained by a reading which gives no place to the agonistic truth games of this form of political speech. Although there is an important avoidance of the *presence* of testimony (i.e. we should not wield interpretative powers), the presence of something like a wound proves symptomatic for their wider theoretical critique. Rather, I focus on what it means to ‘give account of oneself’ publicly and politically. I conclude by focusing on the ‘outside’ and the ‘limit’ of this form of biopolitical truth speech. Simply put, although in many senses successful, it contains a necessary failing.

## Chapter Two

### Methodology I: Genealogy of (bio)political contestation

#### 2.1 Genealogy

In this chapter I will make some introductory comments towards a ‘genealogy of (bio)political contestation’. Foucault never defined a genealogical ‘method’, and there are important reasons for this<sup>1</sup>. Genealogy, like governmentality, is enmeshed in the historical practices which it seeks to ‘diagnose’<sup>2</sup>. Indeed, many have suggested, following Deleuze (see Dean 1996a), that we approach Foucault’s genealogical work like a ‘toolbox’:

“We should be concerned not so much about the recuperation and integration of Foucault’s work for philosophy, history or the social sciences, than for undertaking a form of analysis concerned with the limits and possibilities of *how we have come to think about who we are, what we do and the present in which we find ourselves* ... we can also use Foucault to inaugurate a critical engagement with our present and to diagnose its practical potential and constraints” (Dean 1996a: 210 my emphasis).

My own use of genealogy becomes embroiled into its specific use in chapter three. Here I want to outline broadly my reasons for choosing Foucault’s ‘toolbox’, along with some incitements from the post-Foucauldian literature on ‘governmentality’ to do so.

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<sup>1</sup> Although some seek to ‘discover’ a Foucauldian method through his essay on Nietzsche (NGH), I take this essay as a ‘polemical’ use of genealogy embroiled in the present in order to think otherwise. As Brown (2001) explains: “In ‘*Nietzsche, Genealogy, History*’ his most sustained discussion of genealogy, Foucault does not say what genealogy is but what it defines itself against, what conventions of history and metaphysics it aims to disrupt. This markedly *indirect* articulation of genealogy itself exemplifies the practice of genealogy. ‘Nietzsche Genealogy History’ is an account of contemporary values - in particular, progressive history and metaphysical critique - as problematic fictions; it is an alternative story of our commonplaces that aims to reveal their fictive and hence fragile character” (100).

<sup>2</sup> Perhaps the best example of this comes from Foucault’s use of the term ‘strategy’. The term begins as an explicit drive to distinguish power from the juridical form (see DP; SD). Similar perhaps to the term ‘network’ in ANT, strategy did not constitute a methodology, rather it was an ordering of (immanent) force relations. In *Society Must Be Defended* Foucault goes further to suggest that the strategies (and tactics) of war provide an analyser for the political field, inasmuch that force relationships inherent in war gradually became invested in political power and military strategic thought (see SD and chapter one). Finally, in *The Will to Knowledge* strategies become an operationalization of the social field through biopolitics and calculation: “there is no power that is exercised without a series of aims and objectives” (WK: 95).

Unlike most 'genealogies', I am focused on a relatively recent and short period of time: August 2002 to September 2003 (although we occasionally shift outside this time frame). The doing of a genealogy of the "near future and recent past" (Rabinow 2003: 55) is slightly different from a 'history of the present', but nevertheless it has a similar intention: to think the (recent) past so that we might think otherwise for a future to come:

"In each apparatus [*dispositif*] it is necessary to distinguish what we are (what we are already no longer), and what we are in the process of becoming: the historical part and the current part ... In each apparatus we have to untangle the lines of the recent past and those of the near future: that which belongs to the analytic and that which belongs to the diagnostic. If Foucault is a great philosopher, this is because he used history for the sake of something beyond it: as Nietzsche said: acting against time, and thus on time, for the sake of a time one hopes will come" (Deleuze 1992: 164).

We can now begin to gauge why Foucault describes his books as 'fictions', 'experience books' and 'coming true in the future'. On the 'purpose' of his work, Foucault responds to those who judged his book *Discipline and Punish* as paralysing by saying:

"When the book came out, different readers - in particular, correctional officers, social workers, and so on - delivered this peculiar judgement: 'The book is paralyzing. It may contain some correct observations, but even so it has clear limits, because it impedes us; it prevents us from going on with our activity.' My reply is that this very reaction proves that the work was successful, that it functioned just as I intended. It shows that people read it as an experience that changed them, that prevented them from always being the same or from having the same relation with things, with others, that they had before reading it" (EW3:246).

In a sense genealogy makes a 'cut' in the present, its aim is not to supplant what is deemed unacceptable with the acceptable - as in forms of 'ethical' or 'action' research - rather it acts *on* our time and *counter* to our time. It *re-problematizes* problems, so that answers are not easily given in advance (Colwell 1997: para 24)<sup>3</sup>. On talking of the question of 'rights' in prison, for example, Foucault says:

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<sup>3</sup> A problematisation is different from a problem. A 'problem' anticipates future problems whereas a problematisation is an 'event'. As Rabinow (1999: 181) writes: "Events problematize classifications, practices, things. The problematization of classifications, practices, things, is an event". It is a focus on problematisation - of which I offer a more substantive definition in chapter three - which instigated my

“There are immediate measures to take [aimed at] eliminating all abuses of rights in the way the law is applied ... but then – or rather at once – it’s a question of taking it up again at the roots... We must try now to rethink the entire thing: not at all to avoid its reality, but rather never to accept anything ‘self-evident’ as given” (Foucault cited in Keenan 1987: 30).

Genealogy provides a diagnostic for less ‘experimental’ areas of social life. Those repetitive, even occasionally staid, acts of ‘ontic’ politics, which, to put in Deleuzian language, are sense events which continue to be reactualised: the ‘peaceful’ political demonstration (chapter four) and the enunciation of human rights claims (chapter five), for example<sup>4</sup>. I follow forms of ‘protest’ which seem far removed from Foucault’s ‘insurrections of subjugated knowledge’ (see chapter three) and/or the lines of the event<sup>5</sup>.

## 2.2 Governmentality and political action

My interest in forms of biopolitical contestation emerged from something of a lacuna in post-Foucauldian analysis of governmentality. Many studies falling within the semblance of ‘governmentality studies’, although well posited, seemed to offer little in the way of a genealogy of political *action*. That is, simply put, on forms of problematisation and contestation over governing itself. Although seeking an analytic beyond programmes of rule, with the emphasis on the “particular regimes of truth concerning the conduct of conduct” (Rose 1999: 19) and - with particular reference to Foucault’s infamous 1978 ‘Governmentality’ lecture - the importance of problematising *governing* itself, many governmentality studies retain a methodological focus on the documents of various programmes of (successful) rule<sup>6</sup>. Further, less attention has been paid to an

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interest in the problematisation of the ‘subject’ in mental health law and its implication in human rights claims (see chapter five).

<sup>4</sup> Colwell (1997) gives the example of Christianity in Nietzsche and the categories of normal and abnormal in Foucault: “they ... become fixed insofar as they are developed as multifaceted and specific answers that reduce the *problematic* situations from which they arise to *problems*, answers given categorical status and extended to encompass all future problems” (para 19, my emphasis).

<sup>5</sup> This is not to say that they are not related. Colwell (1997), for example, suggests that the focus on genealogy as it is understood here provides a form of ‘counter actualising’ events, returning to the virtual structure, not to make them actual and/or present, but as inciting ways of going on differently.

<sup>6</sup> Foucault (1991) surmises the importance of problematising governing itself perfectly when he writes: “The governmentalization of the state is a singularly paradoxical phenomena, since if in fact the problems of governmentality and the techniques of government have become the only political issue, the only real

understanding of governmentality as the ‘contact point’ between techniques of rule and techniques of the self. On this point, Foucault (1993) writes:

“I think that if one wants to analyze the genealogy of the subject in Western Civilization, he [sic] has to take into account not only techniques of domination but also techniques of the self ... He has to take into account the points where the technologies of domination of individuals over one another have recourse to processes by which the individual acts upon himself. And conversely he has to take into account the points where the techniques of the self are integrated into structures of coercion or domination. The contact point where the individuals are driven by others is tied to the way they conduct themselves, is what we can call I think government” (203).

No doubt, Foucault’s own studies of the nascent governmentalities of *raison d’état* and *Polizeiwissenschaft* (the science of police [policy]) through to liberalism and neo-liberalism were conducted at the level of governing “populations of subjects” (Gordon 1991: 4), but this does not imply that we might not consider the published material on governmentality in light of both his later work on ethics and his reassessments of power-knowledge. Indeed, in a late interview, Foucault appears to redefine his understanding of power found in *Discipline and Punish* and *The Will to Knowledge* in light of his work on governmentality and ethics:

“I’m not even sure if I made myself clear, or used the right words when I first became interested in the problem of power. Now I have a clearer sense of the problem. It seems to me that we must distinguish between power relations understood as strategic games between liberties - in which some try to control the conduct of others, who in turn try to avoid allowing their conduct to be controlled or try to control the conduct of the others - and the states of domination that people ordinarily call ‘power’. And between the two, between games of power and states of domination, you have technologies of government ... There are three levels to my analysis of power: strategic relations, techniques of government, and states of domination ... I intend this concept of ‘governmentality’ to cover the whole range of practices that constitute, define, organize, and instrumentalize the strategies that individuals in their freedom can use in dealing with each other” (EW 1: 299-300).

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space for political struggle and contestation, this is because the governmentalization of the state is at the same time what has permitted the state to survive” (103).



As Dean (2004: 47) suggests, Foucault's analysis of government tends to focus on the second and perhaps third of these 'levels', rather than the first<sup>7</sup>. Still, what Foucault's comments do imply is that, if we attend to 'strategic games between liberties' (agonism), some of the critiques of governmentality - such that of an ignorance of the politics of relations (see O'Malley et al 1997) - may be ill founded<sup>8</sup>.

### 2.3 A genealogy of (bio)political contestation

Foucault never offered substantive analysis of the practices of political movements - other than in his writings as a journalist during the 1979 Iranian Revolution and his scattered comments on the gay liberation movement<sup>9</sup>. The reason perhaps is that such analysis would risk capture, and instil programmatic thought<sup>10</sup>. Hence my biggest danger is that by attending to the spaces of political action I will inadvertently capture that which cannot be captured. We can, however, maintain with Foucault that we can never exhaust in and through our genealogies historical events themselves (see Foucault 1990: 211-224)<sup>11</sup>, and there is nothing inherent to suggest that one cannot trace a genealogy of political action. In fact (at times), Foucault insists that this is integral:

“It seems to me that this whole intimidation with the bogey of reform is linked to the lack of strategic analysis appropriate to political struggle, to struggles in the field of political power. The role for theory today seems to me to be just this: not to formulate the global systematic theory which holds everything in place, but to analyse the specificity of mechanisms of power, to locate the

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<sup>7</sup> In chapter four I connect 'strategic games between liberties' (agonism) and the 'techniques of government' through attention to the 'demonstration'.

<sup>8</sup> O' Malley et al (1997), in their engagement with the governmentality literature, critique the focus on near univocal programmes of rule which, although situated in a space between the history of political philosophy and empirical studies of social relations, generally focus on texts of rule rather than the messy actualities of governing, or the importance of 'social relations'. The latter they define as referring "not only to recognition of the multiplicity of voices and discourses subject to government but not aligned with it, but equally to the multiplicity of voices within rule itself" (505). Their critique stops short at thinking through democracy and agonism in the spaces of the political.

<sup>9</sup> See the collection *Politics, Philosophy, Culture* (Foucault 1990). With respect to the Iranian Revolution see the recent collection of Foucault's writings in Afary and Anderson (2005).

<sup>10</sup> Indeed, this hesitation is one shared by Butler (see Bell 1999).

<sup>11</sup> This is what both Foucault and Deleuze refer as the 'time of the event' (*Aion*), outside of the time of history (*Chronos*) and hence 'finally inexplicable' (see Routledge and Simons 1995).

connections and extensions, to build little by little a strategic knowledge” (PK: 145)<sup>12</sup>.

My focus in chapter four (demonstration) and chapter six (testimony) is on the ‘apparatus’ and ‘assembly’ of political action which makes up the forms of contestation over the draft Mental Health Bill. To a non-geographer these may simply be posited as those public arenas where the Bill is enacted, but perhaps these might better be described as sites in which the ‘truth can be told’ (Barry 1999, 2001). To push towards a Latourian vein, we might call these assemblies of assemblages, the *re*-presentation of facts and truths for the purposes of political argumentation (see Latour 2003, 2005). Of course, both Latour and work in governmentality studies has taught us that political arenas extend well beyond the political institutions of parliamentary democracies. Indeed, the demonstration, the lobby, the political conference, are arenas where a genealogist is least inclined to visit. However, if we are to attend to critiques of governmentality, its displacement from the ‘messy’ actualities of governing, then arguably we must also refer to these agonistic truth telling games.

A ‘genealogy of (bio)political contestation’ shares something with Judith Butler’s definition of ‘genealogy’ as that which “investigates the political stakes in designating as origin and cause those identity categories that are in fact the effects of institutions, practices, discourses with multiple and diffuse points of origin” (cited in Colwell 1997: para 1). It throws up lines of descent which have led to what we take as ‘origins’ (‘service users’, ‘demonstrations’, ‘rights claims’, for example). However, in my research, greater attention is paid to the agon, the ‘game in action’: that which is played there and there alone (Dreyfus and Rabinow 1982). For Rabinow (1999, 2003: 55-56), to attend to a genealogy of the ‘near future and recent past’ he incorporates assemblages into his Foucauldian tools of ‘problematization’ and ‘apparatuses’ - short-lived matrices from which apparatus emerge or become transformed. Experimental and heterogeneous, “either a more structured apparatus emerges from it or it disaggregates” (Rabinow 1999: 56). As I will show in chapter three, I retain a focus on agonism in action, in which

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<sup>12</sup> Here Foucault is critiquing Marxist thought which is against any form of reformatory local action less it attacks the ‘weakest link’, which will act on the whole.

turbulence of Rabinow's experimental assemblages might be best figured as the 'freedom' of an agonistic encounter.

## Chapter Three

### Methodology II: Governmentality, biopolitics and agonism

#### 3.1 Foucault, discipline and geography

Geographers have found the work of Foucault apposite when approaching the spatialities of law and social policy. Driver (1993), for example, focuses on the formation of the workhouse system in nineteenth century England and Wales: “situated at the intersection of two histories, those of modern government and institutional discipline” (Driver 1993: 2). In a Foucauldian manner he begins from “the way [social] problems are framed as problems” (Driver 1993: 15), or, as I will describe in section 3.7 below, the ‘problematization’. Driver is interested in the territorialisation of government (what he terms, the government of space) through technical infrastructure, and, in going further than Foucault in *Discipline and Punish*, considers the diagram of disciplinary power as it is actually diffused and/or deflected. Although he does not explicitly draw on the governmentality literature (perhaps because he is concerned with writing a historical geography of the science of police [*polizeiwissenschaft*])<sup>1</sup>, he warns against regarding the development of state infrastructure as a self-propelling force of rationalisation (see also Ogborn 1992). In a rich description of the anti-Poor law campaign, he focuses on the fractured and contested nature of space, not simply between the centre and the local but through their contestable territories. Other authors have sought to attend to the workings of disciplinary power and its imbrications with resistance, in what appear as smooth disciplinary (disciplined?) spaces. Hannah (1997), for example, talks of “bribery, smuggling, differential treatment, abuse, sexual trafficking and deal making” (173)<sup>2</sup>. I will discuss an alternative reading of resistance, through the notion of force relations, in section 3.10 below. What is worth discussing here, though, is how some of Foucault's methodological tools introduced in *Discipline and Punish* might be relevant for thinking

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<sup>1</sup> By which he discusses a problematic which emerged through the coexistence of ideas of *laissez-faire* along with the intensification of state regulations (a similar problematic is made by Foucault in his overview of ‘The Birth of Biopolitics’ lecture series, EW1:73-79).

<sup>2</sup> Hannah (2000) refers to a “governmental technique of social control” the cycle of which may be “subverted through resistance” (7). In fairness, although I am wary of invocations of ‘social control’ and question his use of resistance here, Hannah’s use of the term bears resemblance to Canguilhem’s and Ewald’s understanding of recursive processes in the functioning of the norm (see chapter one).

through the forms of resistance that Driver (1993) describes and Hannah (1997) seeks. In both *Discipline and Punish and Will to Knowledge* Foucault suggests that all power relations are strategic orderings and, yet, the possibility of incorporating strategy (and tactics) in forms of (local) resistance is not explored by Driver (1993). This is intriguing as, in an earlier paper, Driver (1985) focuses precisely on the importance of strategy<sup>3</sup>. Here, he importantly points out that *Discipline and Punish* does not exemplify a ‘disciplined society’ and that the Panopticon is an ideal type. He goes on to outline the inescapability of strategy with respect to the actual workings of disciplinary mechanisms, providing an alternative to those who conceive discipline through a form of instrumentalist social control which works on preformed bodies. Further, through strategy he provides a way for us to rethink resistance:

“Foucault’s work entails an examination of our own concepts of ‘resistance’ and ‘nonresistance’. This involves an extended examination of how particular struggles are actually formed, the shape they take, and the ways in which particular discourses surrounding and defining them are constructed and reconstructed ... Despite the silences of *Discipline and Punish* on the subject, such an analysis of resistance, or rather *struggle*, is possible, though it will have to be constructed independently of what Foucault calls the ‘good old ‘logic’ of contradiction” (Driver 1985: 441)<sup>4</sup>.

Rather than strategy becoming a methodological point, however, there is also the notion that disciplinary power itself works through military *strategic* thought and the military dream of a totally ordered society (Elden 2001 [133-135], Elden 2003). As I discussed in section 1.7, the Nietzschean themes of strategies, force relations, combat and war, become submitted by Foucault to genealogy: “[U]ltimately what presides over all these mechanisms is not the unitary functioning of an apparatus or an institution, but the necessity of combat and the rules of strategy” (DP: 308). Strategy, as a form of political action, as I will go on to argue in section 3.13 below becomes reconfigured in Foucault’s later work through a notion of agonism (although the two are related: see SP). Similar to

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<sup>3</sup> Driver, writing in 1985, was no doubt addressing his discussion towards other critiques and concerns aimed at Foucault (such as his lack of class analysis, a theory of the state, and ways to understand power beyond interests or ownership).

<sup>4</sup> For precisely this analysis in political movements see Blain (1994).

the historicising of Nietzsche, agonism too is historicised as a form of contestation in contemporary governmentalities.

### **3.2 Governmentality and geography**

Attention to Foucault's writings on governmentality is an emerging field in geography (see, for example, Barnett 2001, Hannah 2000, Moon and Brown 2000, MacKinnon 2000, Murdoch 1997, Murdoch and Ward 1997). This work attends to governmental rationalities and/or technologies of administering large scale territories or populations (Murdoch and Ward 1997); provides ways of researching the shifting scales of governing in neoliberalism (Mackinnon 2000, Moon and Brown 2000, Murdoch 1997) and is concerned with, what has been termed, 'global governmentalities' (Larner and Walters 2004). As Larner and Walters point out, 'governmentality' has generally been employed in two different ways:

“Used in a specific sense, it denotes a particular way of thinking about and exercising power, whose historical emergence Foucault dates to the eighteenth century in Europe. Here 'governmentality' names a form of power whose logic is not the defence of territory or the aggrandizement of the sovereign but the optimization of the health and welfare of the population. But governmentality is also used in a second, more general, sense. This is an approach that explores how governing always involves particular representations, knowledges, and expertise regarding that which is to be governed. This second understanding draws attention to the complex relationship between thought and government ... the practice of government involves the production of particular truths” (496).

The majority of post-Foucauldian geographical studies on governmentality can be absorbed into the second vein. Hannah's (2000) reading, however, of the emergence of a distinct governmentality in late-nineteenth century American public life, goes against those who have sought to use governmentality as an theoretical framework rather than a mode of rule and retrieves it from its current incarnation in neo-liberal governmentalities. He outlines a national governmental logic which “more or less successfully infuses state

institutions and their behaviour” (9)<sup>5</sup>. As he goes on to emphasise, his focus on the ‘state’ is not necessarily a difficulty for his Foucauldian analysis once we consider the “governmentalization of the state” (Foucault cited in Hannah 2000: 31), and/or governmentality as constitutive of the territorial state<sup>6</sup>. Still, Hannah’s analysis remains at the level of governmental programmes *emanating from* a ‘relatively autonomous’ (33) state (albeit an unclearly bounded and internally fragmented one). My intention in the remaining chapters of this thesis is precisely to deal with an, oft-neglected, aspect which Hannah also mentions in his overview of (liberal) governmentality, that is, the guarantee “of political spaces within which critical reflections on the actions of the state are possible” (Barry et al 1996: 8, cited in Hannah 2000).

### 3.3 Sovereignty, biopolitics and geography

Geographers have also sought to introduce the less amenable aspects of modern power relations into their analyses of governmentality. Robinson (1997), for example, sets herself the difficult task of making Foucault work for her research on urban racial segregation in post-apartheid South Africa. She successfully uses an expanded notion of citizenship to discuss, not what is merely excluded from rights and obligations, but what is caught within surveillance networks and yet (biopolitically) excluded (which in many senses echoes my discussion on exclusions to biopolitical citizenship in chapter five). On the one hand Foucault offers tools - such as biopower and disciplinary power - for her to consider the investment of the South African state at a national and microphysical level. Yet, on the other hand, Foucault’s rejection of a normative analysis over forms of power suggests, for Robinson, that his account needs to be supplemented with a notion of ‘state

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<sup>5</sup> Hannah’s (2000) focus is on a ‘discursive formation’ of governmentality, this is an interesting use of archaeology, not least because, unlike the systemised fields of Foucault’s archaeologies, “governmentality has never achieved such ‘tightness’” (42). Nevertheless, two aspects of Foucault’s archaeological method provide a way to organise a distinct governmentality as it surfaced: firstly, the formation of governmental objects (through surfaces of emergence; authorities of delimitation and grids of specification); and secondly, the formation of governmental subjects (through enunciative modalities). Hannah abandons his archaeological method when he turns to substantive concerns of biopolitics, such as the regulation of women and immigration restriction.

<sup>6</sup> Hannah (2000: 36) outlines the governmentalisation of the state in his study as: “(1) the push for collection of more and better statistics; (2) the push to give these statistics a larger role in governmental decision making; (3) the increasing involvement of social scientists in this decision making; and (4) the establishment of institutional arrangements conducive to the pursuit of the first three goals”.

domination'. In disputing a Foucauldian form of (productive) biopolitics as in the interests of (state) economic growth, Robinson writes:

“[I]f the state has had any interest in effective political domination or control aside from this, it is not specified [by Foucault]. By contrast, I would suggest that in South African cities strategies associated with biopower have meshed well with efforts to secure the domination of African people – both as citizens and as an excluded racially defined group” (373).

Robinson's argument is, perhaps, overstated. As I have already argued in chapter one, Foucault's discussion of biopolitics suggests that if it dreams of killing, expelling or excluding (terms implied by Robinson's 'domination') then it must become racist. Further, as I will discuss later in this chapter, Foucault's discussion of strategic power relations, at least in theory, enable us to grasp forms of power which have become relatively stabilised as dominant or as adversarial (see SP). Foucault's point is simply that the sustenance of these relations cannot exist without, at least in principle, possible flight (less power is physical violence).

What the work of Driver, Hannah and Robinson advances - through their interests in biopolitics and the administration of territory or peoples - is an attention to the techniques and rationalities of forms of (nation) state sovereignty, a facet which has been somewhat under theorised in recent turns to globalisation and deterritorialisation (Elden 2005b). Retaining aspects of sovereignty within an analysis of past and present governmentalities is not necessarily a hindrance to research and, as such, might be understood in four ways. Firstly, as Elden (2005b), Hannah (2000) and Murdoch and Ward (1997) suggest, we can consider national sovereignty through its invocations with territory (via map making and statistics, for example, gathered through 'centres of calculation'). Secondly, as Foucault describes it in his 1978 'governmentality' lecture, we can consider sovereignty as (an historical) form of rule premised on the control of land rather than populations. Here, sovereignty (as power over death to those who threaten the sovereign) is a form of rule which implies a form of power (we might say that sovereignty is a mode of power whose performative effect is the sovereign, hence the elaborate displays of the ancient regime in Foucault's work). Thirdly, as Agamben and others (see Dean 2004a) advance, we can



consider sovereignty - as the decision on the exception to forms of national political citizenship - as a permanent political predicament in contemporary societies. Finally, and the reading I advance in this thesis, we can consider how shifts in biopolitics - from the government of national populations to forms of biopolitics on the terrain of 'life itself' - intersect with those exclusions, expulsions and caesuras which Agamben and Foucault have so aptly theorised. To combine facets of each of these understandings we might consider that sovereignty, governmentality and biopolitics can coexist, not least through the term 'the governmentalization of the state' but with respect to, for example, sovereign understandings of fatherland and territory which intersect with the biopolitical caesuras of eugenics<sup>7</sup>, and how, in more recent times, decisions on biopolitical life and death are manifest through (sovereign) decisions, willed by no-one, in the fields of genetics and euthanasia. My understanding of sovereignty, as the decision on the exception to biopolitical games of truth, is one enacted in the spaces of contestation during the reform of the Mental Health Act. It is a specific, but not limited, definition once we imagine biopolitics as emerging on the shifting terrains of 'life itself'. It is to these shifts in post-disciplinary biopolitics that I now turn.

### 3.4 On the Death of Man [sic] and Superman<sup>8</sup>

“[I]f the forces within man [sic] compose a form only by entering into a relation with forms from the outside, with what new forms do they now risk entering into a relation, and what new form will emerge that is neither God nor Man? This is the correct place for the problem which Nietzsche called 'the superman' ... Nietzsche said that man [sic] imprisoned life, but the superman is what frees life *within man himself*” (Deleuze 1998: 130).

“Perhaps some day we will no longer really know what madness was ... Artaud will belong to the foundation of our language, not to its rupture; the neurosis will belong among the constitutive forms (and not the deviations) of our society. Everything we experience today in the mode of the limit, or as foreign, or as intolerable will have returned to the serenity of the positive. And whatever currently designates this exteriority to us may well one day designate us” (Foucault 1997b: 97).

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<sup>7</sup> See Legg (2005) and Philo (2005) for a discussion with respect to biopolitics, governmentality, disciplinary power and space.

<sup>8</sup> Taken from Deleuze (1988: 124).

Deleuze (1988: 124-132) in his book *Foucault* offers a compelling appendix which to some is suggestive of our current scientific *episteme*<sup>9</sup>. He outlines a trajectory broadly synonymous with that of Foucault's three *epistemes* in the *Order of Things*. First, the classical, in which the outside is *infinity*. Second, the modern - where man [sic] emerges through life, labour and language - in which the outside is *finitude*. Finally, to a formation of the future, in which the outside is an unlimited finite (*fini-illimité*). Foucault heralded the 'death of man' at the end of the *Order of Things* (373; 422, see also EW2: 222) which he posited at the level of language, but, as Rabinow (1996) suggests, the death of man manifests at the level of *life itself*: "In this new constellation, beings have neither a perfected form nor an essential opacity" (Rabinow 1996: 92). No longer is the analytic of human finitude the attribute for positive knowledge in the human sciences (and vice versa), nor simply are there numerous folds of 'human being' tied to different spaces (an aspect in fact symptomatic of the 'performance' of the modern analytic of finitude)<sup>10</sup>. Rather, the human itself is infinitely re-imagined; the most oft cited example being the genome (see Rabinow 1996)<sup>11</sup>. To some our current episteme presents a "Nietzschean potential to free us from some of our longest lies" (Haraway cited in Rabinow 1996: 107)<sup>12</sup>. We have, it seems, finally come to terms with death, and our embodiment, and deny any grounding in nature or transcendence for either. From infinity (God) to finitude

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<sup>9</sup> We are of course working within the phraseology of archaeology here. The episteme as defined in the *Archaeology of Knowledge* is not a form of knowledge (connaissance) nor a type of rationality, rather it is the "total set of relations that unite, at a given period, the discursive practices which gives rise to epistemological figures" (AK: 211). In other words, what, in the positivity of discursive practices [savoir] makes epistemological sciences possible [connaissance].

<sup>10</sup> The performance of the analytic of finitude, is contingent and restless, "and because the form of man finds no warrants for its existence, other than those that it grants itself, it is constantly exposed to, and stimulated by this restlessness" (Pottage 1998: 11). Here 'man' is a fold in the fabric of contingency, what Deleuze (1988) refers to as a double emergence.

<sup>11</sup> Deleuze writes: "The forces within man enter into a relation with forces from the outside, those of silicon which supersedes carbon, or genetic components which supersede the organism, or agrammaticalities which supersede the signifier. In each case we must study the operations of the superfold, of which the 'double helix' is the best-known example" (1988: 132). As Deleuze and others have shown, Foucault's historicising of the Kantian question itself heralds the death of man, once (human) death was brought in the realm of positive knowledge.

<sup>12</sup> Rabinow (1996) writes: "If sociobiology is culture constructed on the basis of a metaphor of nature, then in biosociality nature will be modeled on culture understood as practice. Nature will be known and remade through technique and will finally become artificial, just as culture becomes natural. Were such a project to be brought to fruition, it would stand as the basis for overcoming the nature/culture split" (99).

(death), the post-human today - if we can call her that - consists of *fini-illimité* (unlimited finite)<sup>13</sup>.

### 3.5 'Service user expertise' and 'psychiatric survivors'<sup>14</sup>

In chapter one I outlined Agamben's thesis regarding the biopolitical nomos of modernity. In it, those who are included in the structure of the political order, through a biopolitical exception, inevitably suffer. If, however, following the formation of *fini-illimité*, we accept the death of god and/or man; if we understand post-disciplinary biopolitics as neither grounded in the shifting norms of populations nor folded in human being: then how are we to consider the notion of the 'psychiatric survivor'? Following a similar quandary - one which critiques the (human centred) ethics of Levinas and Caputo - William Connolly (1999, see also Bell 2001), pondering the difficulties of defining 'human' suffering, writes:

"A political theorist might focus on power struggles between disparate professionals over the legitimate definition and treatment of suffering. An evangelist might minister instances that flow from a crisis of faith. And a physician might medicate theorists and spiritualists burned out by the projects these faiths commend. Is the bottom line, then, that people go to the doctor when they really need help? Perhaps. But they might pray after getting the treatment. Or file a malpractice suit. Or join a political movement to redesign the health care system. *Sufferers are full of surprises*" (48 my emphasis).

In the field of mental health, who suffers? Who is at risk from suffering? 'Service users'; 'survivors'; 'refusers': at once sufferers of "severe mental stress who [also] want to

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<sup>13</sup> Franklin (2000) has termed this a 'respatialisation of genealogy' by which "genetic information no longer necessarily passes in a one-way, linear path of descent from one generation to the next. Rewritten as information, message, code or sequence, the gene becomes newly flexible as it also becomes differently (re)productive" (190) As Franklin explains, eighteenth century natural history had a static, non-temporal classification for living/non living things. The study of geology and change (central to the emergence of evolution) results in the production of an epistemic system focused on the underlying connectedness of living things, enabling the concept 'life' itself. Nature becomes biology. Biology has become geneticised, and today the notion that nature is a limit or force has become problematic, it is now a receding horizon.

<sup>14</sup> I use the term 'survivor' for the following reasons. Firstly, along with 'service user (expert)', it is the most common term used by those contesting the proposals, indeed, it is often posited as a more radical term to that of 'service user' (for example in references to the 'survivor movement'). As we will see in chapter six, the term also invokes a more substantive meaning, to have survived or borne witness to something.

reduce compulsion in the mental health system”<sup>15</sup>. To suffer is to witness failed or failing services, to suffer from adverse drug interactions, to suffer from the inability to alleviate suffering: “We are vulnerable and the government is making us more vulnerable; psychiatric drugs kill one a week”<sup>16</sup>. Yet, sufferers, or what I will henceforth term ‘survivors’, are not simply passive recipients of mental health services. Today, as ‘experts by experience’, service user expertise is inaugurating forms of ‘user led research’ pushing to become a credible witness in ‘evidence based practice’ (Faulkner and Thomas 2002)<sup>17</sup>. These knowledges are not merely ‘post hoc’ but ones imbued into the ethos of ‘progressive’ mental health services (see Parr 1997).

### 3.6 From sociobiology to biosociality?

To Rose (2001), connected to a post-disciplinary rationality of biopower, a plethora of individuals and groups are “not merely demanding public provision and rights, but are making their own claims in the deployment of biomedical technologies ... they use their individual and collective lives, the evidence of their own existence and their vital humanity” (19). Contrary to the somewhat dystopian vision of Giorgio Agamben (1998), this vital order imbued with artifice offers little to support a new exclusionary biopolitics founded on the basis of a biopolitical exception. Rather, it seems, biopolitics today creates new collectivities organised around the molecularisation of vital life (see Rose and Novas 2003). No longer can we talk of ‘defending society’ from those deemed abnormal through (carceral) disciplinary mechanisms. Indeed, it seems that, in the field of

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<sup>15</sup> Taken from ‘Protest Against the Bill’ (PAB) online group’s message board description.

<sup>16</sup> Of course to others, ‘the public’ are at risk of homicide. At once the call to ‘stop the suicides’ (Mad Pride campaign title August 2002) is to ‘stop the homicides’ (Zito Trust). This is typified in a witty, yet, for the purposes here, wry example from a placard on a recent demonstration (not covered in this thesis) against ‘forced psychiatry’. As a play on the charity SANE (‘Schizophrenia a National Emergency’) it reads PANE (‘Psychiatry a National Emergency’).

<sup>17</sup> ‘User-led research’ has existed since 1996. It incorporates projects set up and led by ‘service users’ and ‘survivors’, and includes ‘User Focused Monitoring’ at the Sainsbury Centre for Mental Health; ‘Strategies for Living’ at the Mental Health Foundation and ‘The Service User Research Enterprise’ (SURE) at the Institute of Psychiatry. In 2002 the National Institute for Mental Health in England (NIMHE) set up a service user/carer ‘Experts by Experience’ national consultative group. A further example is the emergence of the ‘Critical Psychiatry Movement’, a network of psychiatrists who argue that the anti-psychiatry movement is outmoded and initiate collaborate working with service users and survivor experts who, like Rose and Novas’s (2000) ‘somatic individuals’, have eroded natural and social distinctions between madness and reason. Many Community Mental Health Teams also have paid positions for ‘service user’ representatives (see Wallcraft et al 2003).

mental health, a molecularisation of biopolitics makes it increasingly difficult to differentiate pathology from the norm and between those interventions targeting susceptibility to illness or risk (for example, homicide and suicide prevention) and those aimed at enhancing capacities (for example, mental health promotion)<sup>18</sup>. We shift from a national biopolitics to a disaggregated biopolitics, giving rise to new forms of ethical questioning and new pastoral ‘experts of the soma’ (for example, genetic counsellors).

So, to attend to the politics of contestation at the level of biopolitics today, on one level we might argue this is to be focused on the terrain where forces of *fini-illimité* fold. “*What are our four folds?*” asks Deleuze (1988: 105 see also Rose 1998: 190)<sup>19</sup>. Today, must we turn to ‘brain scans’ (Cohn 2004) and ‘neurochemical selves’ (Rose 2003) to understand the folds of life beyond ‘man’ [sic]? ‘Selves’ so constantly under erasure to become synonymous with ‘life’ itself (Palladino and Moreira forthcoming). Perhaps. But arguably we might take issue with a ‘politics of life itself’ if it concludes in saying that culture/artifice has simply entered into the serenity of the positive, a positive which through the formation of ‘biosociality’ and ‘biological citizenship’ (Novas and Rose 2003) is suggestive of a *democratization* of biopolitics. Greco (2004), for example, argues that Rose’s collapse of Canguilhem’s distinction between the (social) norm and (vital) normality - whereby vital normativity is redefined through molecular knowledges - allows no space for indeterminacy. Her example is of the ‘placebo’ effect - a form of normativity which does not easily fit within the molecular biosciences (who demarcate it only as a negative). Following my analysis in chapter one, mental health law has indeed mutated into a post-disciplinary understanding. We might also argue that mental health is indeed witnessing shifts in expertise (which, as we will, see are indicative of shifts in the

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<sup>18</sup> Compare this with the expanse of a disciplinary technology that Foucault describes from the end of the eighteenth century: “At first they were expected to neutralize dangers, to fix useless or disturbed populations, to avoid the inconveniences of large assemblies; now they were being asked to play a positive role, for they were becoming able to do so, to increase the possible utility of individuals” (DP: 210). What is novel here is that it is no longer the genus ‘human being’, nor the human ‘soul’ (as in DP), which becomes the target, we are all encouraged to adapt and enhance our vital capacities.

<sup>19</sup> The ethical fourfold is outlined in the important introduction to *The Use of Pleasure* (UP: 26-28) as the ethical substance, mode of subjectification, ethical work and telos. To Deleuze the fourfolds form a micropolitics, operating beneath (not outside) the codes of knowledge and power “and are apt to unfold and merge with them, but not without new foldings being created in the process” (Deleuze 1988: 105). It is this understanding which has filtered into the work of Connolly (2001) and Bennett (1996).

forces of the outside which ‘make up man’), with the emergence of ‘service user experts’ and ‘psychiatric survivors’; but rather than a democratic ‘plenitude of the possible’ (one which is seemingly driven alongside late capital), and to return to my focus on biopolitical games of truth, a politics of life itself is more likely to (re)create numerous *problematizations* for the ‘subject’ of mental health law (see infra and chapter five).

### 3.7 The problematisation

In Rabinow’s more recent work (see Rabinow 2003) the formation of *fini-illimité* is understood as somewhat epochal. For Foucault there was a retreat regards the ‘death of man’, and for Rabinow too perhaps the formation of *fini-illimité* has not wholly borne fruit. Rather<sup>20</sup>:

“[W]hat if we took up recent changes in the logoi of life, labor, and language not as indicating an epochal shift with a totalizing coherence but rather as fragmented and sectorial changes that pose problems, both in and of themselves and for attempts to make sense of what form(s) anthropos is currently being given” (14).

For Foucault, a problematisation is born from an ensemble of discursive and non-discursive practices in which a rupture, an uncertainty, becomes a form of questioning. The most sustained engagement with problematisation begins in *The Use of Pleasure* (UP: 10-12), and it is one which Foucault argues connected many of his studies: the problematisations of madness arising from social and medical practices in *Madness and Civilization*; the problematisation of life, labour and language according to epistemic rules in *The Order of Things*; and the problematisation of sexual practices in classical antiquity in the *Use of Pleasure* (UP: 12). A helpful definition comes in a late interview and is worth quoting at length:

“[T]hought is not what inhabits a certain conduct and gives it meaning; rather it is what allows one to step back from this way of acting or reacting, to present it to oneself as an object of thought and to question it as to its

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<sup>20</sup> In ‘What is Enlightenment’ (EW1: 303-319) the modern becomes an ethos or attitude towards the present, one which we can extend to formations of *fini-illimité*.

meaning, its conditions and its goals ... for a domain of action, a behaviour to enter the field of thought, it is necessary for a certain number of factors to have made it uncertain, to have made it lose its familiarity, or to have provoked a certain number of difficulties around it. These elements result from social, economic, or political processes. *But here their only role is that of instigation.* They can exist and perform their action for a very long time, before there is effective problematization by thought. And when thought intervenes, it doesn't assume a unique form that is the direct result or the necessary expression of these difficulties; it is an original or specific response - often taking many forms, sometimes even contradictory in its different aspects - to these difficulties, which are defined for it by a situation or context, and which hold true as a possible question" (EW1: 117-118).

The most important points here are that problematisation is not a form of idealism but is grounded in practices. As Foucault once argues, he may not say that what is characterised as schizophrenia *corresponds* to something 'real', but there is a relation between the thing problematised and the process of problematisation. The problematisation is an answer to practices 'in the real' (see FS: 171-173)<sup>21</sup>. My argument begun in chapter one, and to be expanded on in chapter five, is that post-disciplinary mental health care problematises the 'subject' of mental health law, and so my interest turns to the forms of response given in the name of 'human rights'.

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<sup>21</sup> On the question of problematisation there is undoubtedly a connection in Foucault's work with Heidegger. Schwartz (1998) writes: "According to Foucault, subjectivity emerges only in the event of a problematisation when thought comes to reflect upon and offer responses to tensions, difficulties and problems in a gathering of practices. Foucault seems to suggest that we cannot even *think* about our ways of existence until they have become problematised, much as Heidegger posits that *Dasein* becomes conscious of objects only in the advent of an equipment breakdown" (19). However, problematisation in terms of an equipment breakdown may be outmoded for an analysis of biopolitical problematisations today for (at least) two reasons. Firstly, those who are most influenced by a Heideggerian interpretation of Foucault (see for example Dreyfus 1992) acknowledge that Foucault ceases to offer any judgement over a technological understanding of being. Indeed, in his essay *What is Enlightenment?* Foucault echoes Baudelaire: "You have no right to despise the present" (EW1: 310). Further, in a 1980 lecture (the *Howison Lectures*) at Berkeley, Foucault (1993) says "For Heidegger, it was through an increasing obsession with *techné* as the only way to arrive at an understanding of objects, that the West lost touch with Being. Let's turn the question around and ask which techniques and practices form the Western concept of the subject, giving it its characteristic split of truth and error, freedom and constraint. I think it is here where we will find the real possibility of constructing a history of what we have done and, at the same time, a diagnosis of what we are" (223-224). Secondly, for some, modern *dispositifs* can be understood through Heidegger's understanding of *Ge-stell*, posited as an 'enframing'. Dean (1996b) alludes to this reading (see also Elden 2001: 111). Unlike Heidegger, Foucault describes many *dispositifs* (like the term episteme it replaces). Further, if we take seriously the formations and problematisations of 'life' today, then the term *Ge-stell* is not simply methodologically inappropriate but historically so.

### 3.8 Governing contingency and biopolitical contestation

We can begin to see the difficulties of diagnosing biopolitical contestations today. As I argued in chapter one, governing risk through disciplinary practices and normalisation has not, as some authors suggest, reverted ‘back’ toward an understanding of madness as obligatory dangerousness (and/or vice versa); rather, governing risk has mutated toward a ‘post-disciplinary’ understanding: what I have otherwise described as ‘governing the contingency of risk decisions’. In this chapter I henceforth ask: in the sphere of governmental contestation regarding the reform of the Mental Health Act 1983, what are the strategic responses to governing the contingency of risk, particularly when an understanding of ‘reverse discourse’ (HS: 101), as a form of opposing strategy, will not suffice? Arguably, however, as I will go on to show, the notion of ‘strategic response’ is itself too solid, too suggestive of a *post hoc* resistance to undertake this task. It in some senses implies that ‘resistance’ *comes after*; a condition which Foucault suggests is only *one* outcome of power strategies<sup>22</sup>. Nor do I aim to absorb the actions of service users and survivors into techniques of ‘governing the self’, which, at least in secondary literature, has a tendency to posit ‘subjects’ at the end points of the strategic power game<sup>23</sup>. Rather, my aim is to attend a little closer to what Foucault means by “strategic games between liberties” (EW1: 299) and connect governmentality with its equivalent agonism; not within the freedom of Greek city, as the etymology of the term ‘agonism’ is usually posited, for there never is a return, but rather towards contestations surrounding post-disciplinary biopolitics today. To achieve this, I begin by outlining a (re)reading of resistance in Foucault. No doubt Foucault was more concerned with counter actualising the present, making what appears ‘obvious’ and ‘necessary’ show up against a field of contingency, but this does not mean that resistance was simply post-hoc. As we will see, it is wholly immanent in power strategies. Resistance is explored in two related ways. Firstly, through the notion that the subject or ‘modern soul’ is a resistant force. Secondly, through a focus on the shifting force relations (the outside) which ‘make up man [sic]’

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<sup>22</sup> Foucault writes: “[T]he fixing of a power relationship becomes a target-at one and the same time its fulfilment and its suspension. And in return the strategy of struggle also constitutes a frontier for the relationship of power, the line at which instead of manipulating and inducing actions in a calculated manner, one must be content to reacting to them after the event” (SP: 225).

<sup>23</sup> This, as I will go on to show, is not Foucault’s intention.



and their relationship to the transversal and immediate struggles which I outlined in section 1.1. I conclude by suggesting that ‘resistance’ contributes two factors towards an analysis of biopolitical contestation. Firstly, as a way of understanding the emergence of ‘biosocial individuals’ (as the shifting resistant force relations which ‘make up man [sic]’). Secondly, and through adapting the vitalism which Deleuze positions in Foucauldian resistance as a premise for Foucault’s understanding of ‘freedom’ in the space of the agon. I conclude the chapter by focusing specifically on ‘political agonism’, a term which overcomes the implicit demarcation between governmentality and governed, intention and action, found in some post-Foucauldian governmentality literatures.

This general concern underpins my next two chapters: agonism *in actu* as a political game of ‘truth telling’ through the techniques of demonstrating in chapter five, and games of truth with respect to problematisations to the subject of ‘human rights’ emerging from post-disciplinary understandings of risk in chapter six<sup>24</sup>. Chapter seven turns to the politics of truth telling in the form of testimony from ‘psychiatric survivors’, what I have come to call ‘biopolitical truth speech’.

### **3.9 The burdens of resistance**

On the politics of resistance as a programmatic - one imbued with the question “is one right to revolt, or not?” (EW3: 452) - I agree with Nikolas Rose (1999: 279) when he says:

“The notion of resistance, at least as it has conventionally functioned within the analyses of self-proclaimed radicals, is too simple and flattening ... It is merely the obverse of a one-dimensional notion of power as domination. And it seems to imply a subject who resists out of an act of bravery or heroism”.

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<sup>24</sup> I write *in actu* to enhance a critique (see Pottage 1998 and Elden 2001) that the description of power in *The Subject and Power* (SP) is misread into English ‘as power exists when it is put into action’, implying that power is potentiality, rather than actuality.

Indeed, it is the tenacity of resistance understood in this way which has led Mitch Rose (1997) to demarcate much of what appears within geography under its banner<sup>25</sup>. The alternative for Nikolas Rose (1999) is towards examining forms of minor or minority politics and:

“the ways in which creativity arises out of the situation of human beings engaged in particular relations of force and meaning, and what is made out of the possibilities of that location. They are cautious, modest pragmatic, experimental, stuttering, tentative. They are concerned with the here and now, not with some fanaticized future ... They frequently arise in cramped spaces – within a set of relations that are intolerable, where movement is impossible, where change is blocked and voice is strangled” (279-280).

However, as Rose goes on to argue, these minor politics are inherently brief and “as both feminism and the green movement have shown, lines of flight rapidly get recuperated, organized, systematized, programmatized” (280). Here Rose appears to be collating Foucault’s understanding of ‘transversal’ and ‘immediate’ struggles (SP: 211-213) with a Deleuzio-Guattarian ‘line of flight’. There is nothing inherently wrong with this, but it does perhaps lend itself to a number of misinterpretations. Indeed, although Foucault is suggestive of this reading in his ‘Two Lectures’ of 1976 (see SD: 1-41), neither he nor Deleuze connected minor politics with what comes under the guise of minority politics (a point Rose himself seems to acknowledge)<sup>26</sup>. Still, although not made explicit, what Rose

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<sup>25</sup> Rose, M (1997) argues that much work in geography sets in stone the/a nature of domination even as it deliberates over the precise nature of resistance. Some of the authors Rose draws upon - notably Nietzsche - are looked into in more depth in chapter six. Here it is worth noting that, although the questions he poses are timely, he suggests that the ‘state’ or ‘domination’ is performed into being. My focus on agonistic ‘games of truth’ potentially gets us away from demarcating the actions of the governed.

<sup>26</sup> We have perhaps been mistaken in simply connecting insurrectory knowledges to preconceived understandings of disenfranchised identities or groups. Rather, Foucault in this 1976 lecture is describing his approach to genealogy by connecting erudite (local) knowledge (of the past) with the struggles of his time: disqualified non-‘scientific’ knowledges. These knowledges were not offering us some recourse to an immediate knowledge (the ‘truth’ of madness as spoken by the mad for example) but an insurrection of knowledge, a reactivation of local knowledge against the scientific hierarchalisation of truth. However, and this is the most important thing, Foucault says: “compared to the situation we had five ten, or even fifteen years ago, things have, perhaps changed; perhaps the battle no longer looks quite the same ... are we really still in the same relationship of force? ... And after all, once we have excavated our genealogical fragments, once we begin to exploit them and to put in circulation these elements of knowledge that we have been trying to dig out of the sand, isn’t there a danger that they will be recoded, recolonized by these unitary discourses which having first disqualified them and having then ignored them when they reappear, may now be ready to reannex them and include them in their own discourses and their own power-knowledge effects?” (SD: 11). With the demise of universal knowledge and the current emphasis on

is suggestive of here is that 'resistance' shares a proximity to 'lines of flight'. This is a resistance, which I will go on to argue presently, 'always comes first' (Deleuze 1988).

### 3.10 Power-resistance and force relations

Resistance, although described by Foucault as 'adversary, target, support or handle' in power relations (see WK: 95) - in other words, its necessity - has often appeared in secondary literature as something or someone which *resists* power-knowledge<sup>27</sup>. Contrariwise, not only is it the relationship *between* power and knowledge which interests Foucault, but, in one sense, resistance *articulates* power-knowledge as part of the practice of discourse. Indeed, on this point, some have interpreted Foucault's latent understanding of the subject (or rather the 'modern soul') in *Discipline and Punish* and *Will to Knowledge* explicitly or implicitly through a Nietzschean resistant/reactive force (see Colebrook 1999, Lash 1984). A similarly reactive understanding of the subject is found in the early work of Judith Butler, and the Nietzschean influence in *Gender Trouble* on the timing of performativity (in which the utterance *precedes* the subject) is often understated and hence potentially misread as performance<sup>28</sup>. Foucault's understanding of power, resistance and subjectification shifts, however, from a subject understood through (reactive) perspectivism. As he explains:

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practice, we might indeed ask, what is a subjugated knowledge today? A line of flight? The event? If so, might these become majoritarian through methodology or in/as our actuality?

<sup>27</sup> Again, it is perhaps our (mis)understandings of Foucault's points regarding subjugated knowledges which is to blame for this misreading. Foucault's infamous phrase "where there is power, there is resistance" (HS: 95) needs to be elaborated thus: "and yet, or rather consequently, this resistance is never in a position of exteriority to power. Should it be said that one is always 'inside' power, there is no escaping it, there is no absolute outside where it is concerned, because one is subject to the law in any case? This would be to misunderstand the strictly relational characteristic of power relationships. Their existence depends on a multiplicity of points of resistance: these play the role of adversary, target, support or handle in power relations" (HS: 95). Similarly in relation to 'reverse discourse' there is no gap or plane of interpretation between discourse and reverse discourse, an aspect of which I will talk more of later in relation to agonism: "[I]t is in discourse that power and knowledge are joined together. And for this very reason, we must conceive discourse as a series of discontinuous segments whose tactical function is neither uniform nor stable. To be more precise we must *not* imagine a world of discourse divided between accepted discourse and excluded discourse" (HS 100-101).

<sup>28</sup> Butler (1990) writes: "The challenge for rethinking gender categories outside of the metaphysics of substance will have to consider the relevance of Nietzsche's claim in *On the Genealogy of Morals* that 'there is no 'being' behind doing, effecting, becoming; 'the doer' is merely a fiction added to the deed". By which she replies, "There is no gender identity behind the expressions of gender; that identity is performatively constituted by the very 'expressions that are said to be its results' (25).

“Power is exercised through networks, and individuals do not simply circulate in those networks; they are in a position to both submit to and exercise this power. They are never the inert or consenting targets of power; they are always its relays. In other words, power passes through individuals. It is not applied to them ... [O]ne of the first effects of power is that it allows bodies, gestures, discourses, and desires to be identified and constituted as something individual” (SD: 29-30).

It is the difficulty of positing resistance as articulation, or as that which disrupts in what appear as relatively successful strategies of power, which has arguably resulted in its demise in (early) studies coming under the guise of ‘Actor Network Theory’; substituting resistance for translation and/or enrolment (see for example the collection in Law 1986, and Latour’s 1993: 161 discussion of networks of *intéressement*). This means that some analyses falling within ‘Actor Network Theory’ arguably do not counter criticisms aimed at the term ‘power’ in the power-knowledge couplet - that the term ‘network’ is a will or a force which is primarily aimed at extension (only halted by nonchalance or indifference in ANT and knowledge in Foucault)<sup>29</sup>.

### 3.11 Is resistance obsolete?

Should we jettison the term resistance? Perhaps like the term ‘power’ it requires a lot of work to shake off just some of its imaginary. The difficulties of the term suggested above can be borne through a paper on Foucault by Deleuze, one which, closer I believe to Foucault’s own understanding of power-knowledge, offers perhaps the genesis of a way out<sup>30</sup>.

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<sup>29</sup> Sitze (2002), for example, takes up the possibility that Foucault drew on Nietzsche but only through Heidegger’s reading of him (see also Elden 2001). He argues that Foucault’s ‘*will to knowledge*’ is understood through Heidegger’s (mis)understanding of the ‘will to power’ as enhancement/‘movement’ (i.e. power) and preservation/‘certitude’ (i.e. knowledge), and, as such, thoroughly imbued within Western metaphysics. The connotations of this for the network metaphor in ANT has been widely discussed (see for example Brown and Capdevilia [1999] for an excellent account of the use of force and substance in ANT). Perhaps we can arrest this critique of Foucault once we make the conceptual distinction between force (as an immanent/abstract cause) and power (as a strategic ‘concatenation’ effect) (see *infra*).

<sup>30</sup> This is not to suggest a simple convergence between Foucault and Deleuze, since there are of course important differences. Beyond the difference in emphasis - between a focus on the event ‘proper’ (Deleuze) and on the de-actualisation (genealogy) of *historical* events (Foucault) - this is perhaps most pronounced in their take up of Nietzsche. Unlike Deleuze, Foucault says little of the negative and positive movements of the will to power other than alluding to them through ‘moving substrate of force relations’ (see HS) and connecting (and historicizing) them in *Society Must be Defended* to an actualisation of war strategies in

In comparing Foucault's *dispositif* (apparatus) to his notion of *agencement* (assemblage), Deleuze (1997) suggests that to him the former are forms of reterritorialisation<sup>31</sup>. So whilst to Foucault *dispositifs* of power normalise and discipline, to Deleuze they recode and reterritorialise. But Deleuze and Guattari's *agencements* prioritise deterritorialisation, so whilst Deleuze has lines of flight (immanent in any social field) Foucault has the more cumbersome notion of resistance<sup>32</sup>, a resistance which, queries Deleuze, appears at times as the inverse image of *dispositifs*: "For if *dispositifs* of power are in some ways constitutive, there can only be phenomena of resistance against them" (188). Similarly, Foucault's understanding of strategy (which he uses partly as a critique of 'contradiction') is again to Deleuze only secondary in relation to lines of flight. Hence, when Foucault famously discusses a life that resists biopower (see HS: 145), to Deleuze this life is the "variable plane of immanence of desire, which passes through every determined *agencement*" (190).

To take up the concerns that this understanding incites, we can begin by arguing that both 'lines of flight' (Deleuze) and 'resistance' (Foucault) are immanent in any given assemblage or apparatus. This points to an alternative understanding of resistance, which is that a strategic field of force relations contains its own destruction in its creation. This is an aspect which Smith (2003) draws out in comparing Foucault's understanding of the norm with Deleuze and Guattari's understanding of territorialisation:

"For Foucault, normalization is not merely an abstract principle of adjudication but an already actualized (and always actualized) power relation. Foucault's question then became: is it possible to escape, or at least *resist*, this power of normalization? In Deleuze's terminology, the same question

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modern biopower. It is this aspect which has led some to argue that Foucault offers little account of Nietzsche's 'eternal return', exemplary perhaps in our recent turn to Deleuze. Still, Deleuze argues that *fini-illimité itself* is the eternal return, and as such we are historicizing our current obsession with the event as one in fact 'accounted for' in scientific practice.

<sup>31</sup> The terms *dispositif* and *agencement* do not have adequate interpretations into English; the translations taken from this essay come from Brian Massumi and are repeated in other English translations of Foucault's work.

<sup>32</sup> Deleuze writes "I therefore have no need for the status of phenomena of resistance, if a first given of a society is that everything takes flight, then everything in it is deterritorialised" (188) As Patton (2000: 74) suggests, in outlining supposed differences between Deleuzian desire and Foucauldian power; "the difference between power and desire all too easily appear to coincide with a difference between the positive force of desire and the negative force of power".

would be stated in the following terms: within a given social assemblage or 'territoriality', where can one find the 'line of flight', or the movement of relative deterritorialization, by means of which one can escape from or transform the existing norm (or territoriality)? From the viewpoint of immanence ... it is the *process itself* that must account for both the production of the norm as well as its possible destruction or alteration" (307-308).

### 3.12 Life, law and resistance

In his book *Foucault* (1988), Deleuze picks up further on the immanence of resistance when he writes:

"[It is] from the outside that a force affects, or is affected by, others. ... The diagram, as the fixed form of a set of relations between forces, never exhausts force, which can enter into other relations and compositions. ... Moreover, the final word on power is that *resistance comes first*, to the extent that power relations operate completely within the diagram, while resistances necessarily operate in a direct relation with the outside from which the diagrams emerge" (89 original emphasis).

Resistance does not precede power due to some universal apriori, neither by some primordial scene (86-87). Rather Deleuze here is pointing to the 'outside' from which force relations affect and are affected in any given diagram. There is not, then, an excess to discursive practices in which change happens, neither is there resistance *to* them. Rather it is from outside; from the shifting relations between forces (from which the diagrams - the panopticon for example [see DP: 205] - emerge as power relations, but never exhaust), which makes change possible: "This means that a social field offers more resistance than strategies, and the thought of the outside is a thought of resistance" (Deleuze 1988: 90). In an interview in which Foucault is asked about whether we are simply 'trapped' in the power relationship, he replies:

"[R]esistance comes first, and resistance remains superior to the forces of the process; power relations are obliged to change with the resistance. So I think that resistance is the main word, *the key word*, in this dynamic" (EW1:167).

With respect to this question of immanent forces, let us consider further the question, which Foucault outlines towards the end of *The Will to Knowledge*, of the 'life' which becomes the form of resistance in biopolitical struggles; one which is diagnosed by Deleuze (1988):

“Contrary to fully established discourse, there is no need to uphold man in order to resist. What resistance extracts from this revered old man, as Nietzsche put it, is the forces of a life that is larger, more active, more affirmative and richer in possibilities ... Life becomes resistance to power when power takes life as its object. Here again, the two operations belong to the same horizon (we can see this clearly in the question of abortion, when the most reactionary powers invoke a 'right to live'). When power becomes bio-power resistance becomes the power of life, a vital power that cannot be confined within species, environment or the paths of a particular diagram. Is not the force that comes from outside a certain idea of Life, a certain vitalism, in which Foucault's thought culminates? ... And for Foucault as much as Nietzsche, it is in man himself that we must look for the set of forces and functions which resist the death of man. Spinoza said that there was no telling what the human body might achieve, once freed from human discipline. To which Foucault replies that there is no telling what man [sic] might achieve as a living being as the set of forces that resist” (92-93).

There are three aspects indicative in and from the above that enrich a Foucauldian understanding of resistance in/as biopolitical contestation. Firstly, the life of biopower can become a basis for resistance: the power of life. Here the upholding of sovereign law or universals is unnecessary to describe or enable political action, it is the forces or capacities of human bodies constituted in and through biopolitical strategies which can become the basis for resistance - not as an inverse to power but an “irreducible opposite” (WK: 96, “there is no telling what man [sic] might achieve as a living being as the set of forces that resist” above). Deleuze here is pointing to Foucault's historicizing of the Kantian question, given what human beings have become they will 'resist' attempts to limit their capacities (see EW1: 303-320, and Patton 1998: 65)<sup>33</sup>. Secondly, as resistance

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<sup>33</sup> Deleuze (1988) draws directly on those transversal and immediate struggles which I outlined in section 1.1. These are enabled through the (shifting) capacities of bodies (which emerge from force relations, which themselves come from outside) and, through the problematisation of power, point to a *possibility* for a 'new economy of power relations' which Deleuze posits as follows: “[the] struggle for subjectivity presents itself, therefore, as the right to difference, variation and metamorphosis” (106). However, as he continues, “what happens ... if the transversal relations of resistance continue to become re-stratified, and to

is dependent on the outside of force relations not, or not yet, caught within power relations, Deleuze senses a form of vitalism in Foucault<sup>34</sup>; this is a vitalism which in *The Will to Knowledge* Foucault terms as ‘bodies and pleasures’ and Robinson (2003) posits as “a relation of immanent forces that are no longer, or not yet, fully integrated in the *dispositif* of power” (127). Let us follow Deleuze (1988) and call these the ‘non-stratified’ (87). My focus is not, however, to ‘sense’ the relations between these abstract forces (the outside), only to follow Deleuze who suggests that by ignoring them many have misinterpreted ‘the death of man’ (outlined in section 3.4) as either a death of the ‘concept’ man or the overcoming of man through *man* becoming the superman:

“In fact the question is not that of the human compound, whether conceptual or real, perceptible or articulable. The question concerns *the forces which make up man*: with what other forces do they combine, and what is the compound that emerges?” (1988: 88 my emphasis).

Through the formation of *fini-illimité*, the forces which fold ‘man’ in the human sciences have already begun to connect with non-human forces. It is this formulation of resistance which ‘comes from outside’ which arguably enables a more thorough understanding of the *emergence* of ‘biosocial’ (in)dividuals. Or, and the focus of my preceding analysis, how the once minoritarian knowledges of madness have become majoritarian through ‘psychiatric survivors’ and ‘service user experts’. Today with a shift from ‘body politics’ - a term indicative of the transversal struggles which Foucault aptly describes in *The Subject and Power* - to ‘life politics’, the force of the outside need not, or no longer, be described as ‘vitalist’, with all the connotations this term implies<sup>35</sup>. As I have previously argued, *Life itself*, is an invention of recent history (see OT 128)<sup>36</sup>. My preferred term for

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encounter even construct knots of power” (94). This diagnostic connects with the ‘blockages’ which I will identify within biopolitical games of truth (see 3.14).

<sup>34</sup> This vitalism no doubt connects with those critiques of ‘bare life’ which suggests that for Foucault the ‘life’ of biopolitics is not immobilised or contained but enhanced (see Fitzpatrick 2005: 71).

<sup>35</sup> In fairness, Deleuze’s use of the term vitalism here is itself a historically contingent one attributed to Foucault’s discussion of Bichat in *The Order of Things*.

<sup>36</sup> As Connolly (1998) outlines, the problem of the term life is that it almost plays a structural role close to god - ‘life’, ‘bodies’, ‘earth’, ‘différance’, ‘resistances’ (113). Rather to Connolly, life in Nietzsche exceeds any attempts to organise it. Foucault resists the language of life found in Nietzsche, possibly as Connolly suggests to fend off any suggestion of an ‘elemental energy’ accessible to experience by non linguistic means or a vital purposeful force.



‘vitalism’, as indicating a non reductive resistance, at least in biopolitical contestation, is that of the ‘freedom’ of the agon (see 3.13).

Deleuze connects this renewed understanding of resistance in biopolitics with law, and argues that law itself exceeds ‘man’ as the subject of law. Indeed, as we have seen in chapter one, the ‘subject’ of social law is the regulation of ‘life processes’ rather than the person (civil law). Deleuze (1988) writes:

“[M]an replaced life, and the subject of law, when for a moment his image was composed of vital forces during the political era of Constitutions. But today law has again changed subject because, even *within men*, the vital forces are entering into new combinations and composing new figures” (91).

### 3.13 Governmentality and agonism

In an important essay ‘The Subject and Power’ (SP) power is increasingly distinguished from domination and the strategic field of struggle - which determined much of Foucault’s analysis in *Discipline and Punish* - becomes an agonistic and governmental one. We might also argue the ‘non-space’ of struggle becomes the ‘freedom’ necessary for the agonistic encounter<sup>37</sup>. Indeed, in shifting from the *pathos* of struggle towards a more agonistic definition, Foucault expands the view outlined in his essay, ‘Nietzsche, Genealogy, History’ (NGH):

“Won’t everything that is said be inscribed in the very mechanisms that we are trying to denounce? Well I think it is absolutely necessary that it should happen this way: if the discourse can be co-opted, it is not because it is vitiated by nature, but because it is inscribed in a process of struggle. Indeed, the adversary pushing, so to speak, on the hold you have over him in order to turn it around constitutes the best valorization of the stakes and typifies the whole strategy of struggles: as in judo, the best answer to an opponent’s manoeuvre never is to step back, but to reuse it to your own advantage as a base for the next phase” (Foucault 1985 cited in Thiele 1990: 920).

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<sup>37</sup> As Sharp et al (2000) suggest ‘something of a gap’ emerges between governmentality and practices of the self. I would argue that, to avoid incurring intentionality within this gap, this ‘gap’ is the freedom necessary for (governmental) power relations to emerge (a relation which must be distinguished from violence and domination).

Power is now “a total structure of actions brought to bear upon possible actions; It incites, it induces, it seduces” (SP: 220). It is here that we enter the terrain of governmentality proper, and the preferred term for the specificity of power relations is now ‘conduct’, in the dual sense of the term:

“[T]o conduct is at the same time to lead others ... and a way of behaving within a more or less open field of possibilities ... Basically power is less a confrontation between two adversaries or the linking of one to the other than a question of government” (SP: 220-221)<sup>38</sup>.

‘Freedom’ is the (pre)condition for the exercise of power without which the power would be equivalent to a physical determination or violence (SP: 221 see also EW1: 292):

“At the very heart of the power relationship and constantly provoking it are the recalcitrance of the will and the intransigence of freedom. Rather than speaking of an essential freedom, it would be better to speak of an ‘agonism’ - of a relationship which is at the same time reciprocal incitation and struggle; less of a face to face confrontation which paralyzes both sides than a permanent provocation” (SP: 221-222).

In many senses, then, power becomes governmentality and resistance (the outside) becomes the ‘undefined work of freedom’; agonism (*in actu*) falls somewhere in between:

“I would say that the analysis, elaboration, and bringing into question of power relations and the ‘agonism’ between power relations and the intransitivity of freedom is a permanent political task inherent in all social existence” (SP: 223).

There are, at least, three possible readings of Foucault’s account above of agonism and ‘actions upon actions’ for thinking through governmental contestation today. Firstly, agonism can be understood as Foucault describes it in *The Use of Pleasure* (UP: 67), a form of positive struggle akin to a wrestling match, in which actions upon actions folds

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<sup>38</sup> As the translators note, Foucault plays on the double French meaning of the verb *conduire* - to lead, and *se conduire* - to behave or conduct oneself. The term government here is understood in its broadest meaning, as the way in which conduct may be directed.

force (the outside) into subjectification (through actions upon others and actions upon the self). It can be taken forth into either a Heideggerian or Deleuzian reading of Foucault, through ‘enframing’ or the ‘fold’ (see Dean 1996, Deleuze 1988, Rose 1998a) <sup>39</sup>. Secondly, in the work of Pottage (1998), agonism can be ‘radicalised’ so that actions upon actions become virtually synonymous with Deleuzian co-varying machines<sup>40</sup>. Finally, and the reading I want to advance here, is a configuration of agonism with distinct reference to a political register in the present. Here the work of James Tully (1998, 2002) is exemplary (although for a discussion of agonism and politics see also Thiele 1994)<sup>41</sup>. In all these understandings, ‘freedom’ - as the condition for ethics (and politics) - is not conceived as opposition to power or governmentality but as a *capacity* to act in relation<sup>42</sup>. As Foucault (SP) famously puts it, each actor is sustained by a “permanent provocation” (222). My aim is explicitly to connect Foucauldian agonism to a political register which focuses on games of truth. It is an agonism which is not bound to the Greek city (as found in the work of Arendt) as game between equals, but accommodates all forms of governmental practice including biopolitical action.

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<sup>39</sup> This was “one in which the combative relationship with adversaries was also an agonistic relationship with the self” (UP: 67). As Deleuze (1988) explains: “In Foucault’s opinion the Greeks ... folded force, discovered it was something that could be folded, and only by strategy, because they invented a relation between forces based on the rivalry between free men (the government of others through self-government, and so on)” (113-114). In a Heideggerian reading, governmentality as action upon actions can be described as a clearing in which forms of *askesis* occur and folds of subjectification are formed. In *The Subject and Power* the relationship between power and being is described as a clearing, whereby a finite field of possibilities (governmentality) opens up actions: “By this we mean individual or collective subjects who are faced with a field of possibilities in which several ways of behaving, several reactions and diverse compartments may be realised. [T]o ‘conduct’ is at the same time to lead others ... and a way of behaving within a more or less open field of possibilities” (Foucault cited in Dreyfus 1992: 82).

<sup>40</sup> For Pottage (1998a), the gymnastic relation in agonism in which “the art of the game is not to dominate an opposing actor, but to anticipate and exploit its interventions, and this to make one’s own interventions dependent upon an opponents restless intervention of (counter-) strategies” (22) becomes a form of continuously varying articulation: “each machine is affected by another only by virtue of its own autonomous principle of replication, and their co-variation is ‘productive’ in the quite radical sense that the force it generates is referable only to this ... although a power relation presupposes a particular historical configuration of forces and discourse, it does not actualize or stabilize latent possibilities or probables. Rather it is produced in the relation sculpted by its exercise: it emerges from the articulation of discourse and force. The specificity of this relation is expressed by the idea of power as *agon*, or agonism” (22).

<sup>41</sup> Thiele (1990) suggests that this is a politicized form of Nietzschean tragic heroism. Nietzsche’s subject of inner agonism, and self-overcoming as an aesthetic goal, is for Foucault taken to the political sphere: “With Nietzsche, Foucault maintained the agonal nature of philosophic pursuit. Truth is not the discovery of dispassionate injury but the product of fierce struggle, the spoils of a victory. Its nature is always partisan” (84). He compares this to the *disclosive* freedom of Heidegger (see Thiele 1994).

<sup>42</sup> In this vein, it is best described as *ontological* rather than ontological (see Connolly 1999).

### 3.14 Governmentality agonism and political contestation

Foucault uses the term 'practical systems' (EW1: 317) to describe "what [men and women] do and the way that they do it", incorporating "forms of rationality that organize their way of doing things (the technological aspect) and the freedom with which they act within these practical systems, reacting to what others do, modifying the rules of the game, up to a certain point (this might be called the strategic side of these practices)". This connects strategic games between liberties with techniques of governmental contestation (for example the demonstration, chapter four). Games of truth necessarily incorporate an understanding of freedom (in action), one in which the 'rules' of the game are permanently problematised, 'a permanent provocation':

"Foucault's unique contribution to this reorientation [of agonism] in the twentieth century was to link together the following three elements: the practice of freedom, the modification of the rules in the course of a game, and agonistic activity. He sees the modification of the rules of any game as itself an agonistic game of freedom: precisely the freedom of speaking and acting differently. He asks us to regard human activities as games with rules and techniques of governance to be sure, and these are often agonistic games, but also, and more importantly, to look on the ways the players modify the rules by what they say and do as they carry on, and, in so doing modify their identities as players: that is, the games of freedom within and against the rules of the games of governance" (Tully 1999: 168).

Unlike an Arendtian understanding in which agonistic games are set between equals within a public sphere to bring forth something new, for Foucault the rules of the game, and the sphere of action itself, is open to modification. Further, for a governmental relation to occur, there is an implicit consensus in non-consensus, less there be only violence: "perhaps one must not be for consensuality, but one must be against nonconsensuality" (Foucault 1984: 379).

This has a dual influence on my analysis of practices of governmental contestation during the mental health reforms. The focus on the game in action implies that 'the rules' of participation in governmental contestation are problematised as they are 'in action'. The consultation process, the parliamentary lobby, even the demonstration are historical but

no less contingent ways of contesting - securing the 'freedom' to demonstrate is as much an artefact of governmentality as securing the freedom of the market. Agonistic participation is not something given by the possession of rights, but rather forms of participation are acquired in action, through agonistic activities. These are 'struggles' which in their very action call into question and modify the rules of the game in which they are engaged; the game of citizen participation. For Tully (1999), "these struggles modify the ethos of citizen participation: the *form* of citizen participation and the *practices* of governance in which participation takes place" (169). Further, as Tully (1999) points out:

"Identity politics and struggles for recognition are agonistic games in which the contestants seek to modify and often reverse the rules of recognition of the game, not once and for all, but as their identities and diverse ways of being themselves change over time and generations" (175).

As Tully himself identifies, the term recognition (with its Hegelian undertones) is unfortunate, for there is no end state, no final goal, no 'consensus' as such (175). Agonistic games do indeed allow a 'service user' or 'survivor' to enter into the play of true and false, but there is not (preceding) intentionality, for agonism is always *in actu*, and hence there is not struggle against but with. Tully, however, identifies two 'blockages' in practices of governing in which citizens have been 'encouraged' to participate:

"These constraints subject them to a form of citizen identity of self knowledge and a mode of citizen conduct or control, with regard to both the form and loci of participation, without their say. They find themselves unfree in the very activities in which they are supposed to constitute themselves as free citizens and peoples" (170)<sup>43</sup>.

Today the blockages or limits in both the *form* and *loci* of political participation may well come in the form of a 'politics of consensus' premised on 'interest groups' (see chapter

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<sup>43</sup> Tully does not retain a focus on formal institutions of representative constitutional democracy but aims to connect with the sites in which citizens participate in dispersed governmentalities. For example, in response to downsizing of public services citizens have demanded to be treated as 'agents' or 'citizens' rather than passive recipients (welfare liberalism) or non-recipients (neo-liberalism). Secondly, in new sites beyond nation-states, ad hoc assemblies have arisen in areas where there have been failures to govern or govern well. Actions which bring forth something new but cannot be conceived in advance (see chapter five).

four with respect to the *loci* and chapter's five and six with respect to the *form* of interest groups), who are tied to particular forms of self knowledge (see chapter six).

With respect to the demonstration in chapter four I hope to display that is not simply a site of politics in which the 'facts' of mental health can be presented, nor simply where survivors present their truths. It is rather a (re)presentation in itself, an agonistic truth telling activity. This form of enunciation is not simply linguistic, nor material; neither can it be defined through the function of *énoncés* (statements), less the survivor take up the realm of subject position within the dispersion of discourse (encountering similar problems of 'de-subjectification' found in radical democracy)<sup>44</sup>. Indeed, as I will go on to argue, the 'survivor' is both more (in its agonistic relation, sculpted as it is enacted) and less (through the limits of testimonial enunciation as such: see chapter six) than that of a nodal point outlined in *Hegemony and Socialist Strategy* (Laclau and Mouffe 2001).

This is one argument against the notion that pre-constituted identities enter the 'stage' of political struggle, and, in many senses is a 'relational ontology' (Mol 1999) if this means that there are no 'environments', no 'ontologies', which precede actions. Agonism constructs itself on ontologies which are simply not 'there':

“[W]hat defines a relationship of power is that it is a mode of action which does not act directly and immediately on others. Instead it acts upon their actions: an action upon and action, on existing actions or on those which may arise in the present or the future ... [A] power relationship can only be articulated on the basis of two elements which are each indispensable if it is really to be a power relationship: that 'the other' (the one over whom power is exercised) be thoroughly recognized and maintained to the very end as a person who acts; and that, faced with a relationship of power, a whole field of responses, reactions, results, and possible interventions may open up” (SP: 220).

To say that ontologies are performed can result - at least through potential misreadings - in new sets of concerns and questions, such as: is it simply that 'objects' or 'subjects' are performed or enfranchised into being? As I will show in chapter five, there are indeed

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<sup>44</sup> This is not to deny a lineage here, the 'author' for Foucault is both historically *and* functionally contingent.

numerous techniques and technologies of *demonstrating* which, *in actu*, enable service users and survivors to enter games of truth. The agonistic relation, however, is not simply one which unfolds through linear time (as if it were a dialectic). Indeed, although we can say that the original draft Bill was anticipated and finally published in June 2002, and it was this ‘fact’ which encumbered the ‘storm’ of protest during the summer, this does not mean that the time of the service user or survivor simply belongs to that of a responsive identity to the policy documentation, nor even to the draft Mental Health Bill itself. This is close to Connolly’s (1999) understanding of the ‘becomings’ of new social movements, once this is taken to mean that the time of the service user or survivor is tied to the nexus between problematisations, mobile apparatuses (for example the confession) and the politically agonic activity itself.

### 3.15 Agonism and the ‘rights of the governed’

Following Tully (2004), we can ask, is agonism distinctively political, as something of a contemporary form of ‘civic freedom’, or what Foucault terms ‘the rights of the governed’ (a freedom which must be distinguished from Isaiah’s Positive and Negative freedoms)? A *civic* freedom, because it is a freedom *contingent* on both governing and governed<sup>45</sup>. Perhaps. Games of truth are not closed by a frontier but this must not simply posit free play, or forms of ‘progression’. The agonic encounter brings forth limits *in action*.

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<sup>45</sup> In distinguishing civil from civic freedom, Tully writes: “The great traditions of negative and positive freedom both rest on the Roman imperial presupposition that we are free in virtue of the imposition and establishment of a set of law-based institutions ... This dominant orientation towards institutionalized modern freedoms rather than *activities* overlooks and conceals two dimensions of civic freedom in the modern world. First, a people is said to be free just in virtue of having the requisite institutions. The complex activities of civic freedom that take place within them and the conditions for citizens to be able to participate tend to be ignored and considered irrelevant to freedom. Second, the complex activities of civic freedom by which people over the centuries have struggled to overthrow imposed rule and become self-determining, to create these sorts of institutions in culturally diverse ways, to sustain them against those who would dismantle them, to amend them and open them to those who have been excluded, and to create new and better institutions fall entirely outside the realm of civil freedom” (Tully 2004: 5 my emphasis). Tully is making a political point here, which is against the imposition of civil freedoms through military force, regardless of whether those who are being ‘liberated’ have or are able to practice civic freedom. Further, we often mistake civic freedom as that which is civil (e.g. free press, elections) where in actual fact the latter is only one particular historical expression of civic freedom.

## **Chapter Four**

### **The demonstration**

#### **4.1 The 'golden rules' of campaigning**

Between September and December 2002, the charity Mind held a total of nine 'Rights Not Compulsion' conferences in various cities across the UK. The morning of each conference was dedicated to the draft Mental Health Bill, "what is in it and what is wrong with it", and the afternoon to "campaigning skills", such as "working with MP's" and "working with the media"<sup>1</sup>. Information packs, following the trajectory of the day, were provided for reference; the first half given to Mind's official 'response to the bill', and the second to 'how to campaign against the bill'. With respect to the latter, specific reference was given to the 'golden rules' of campaigning:

"As in all campaigning, no matter what you decide to do, it is important that you give yourself the best possible chance of winning. To do that you must make sure you think about and take into account the six 'golden rules' that apply to all campaigns: Aims; Involvement; Information; Audience; Partnership; Timing" (Mind: 'Rights Not Compulsion' information pack).

'Aims' and 'Information' are considered in depth:

"Unless you are clear about what you want to achieve you can't plan an effective campaign ... make sure you are clear about what you are for as well as what you are against. A credible campaign is one that is able to give clear and realistic alternatives to the proposals" (Mind: 'Rights Not Compulsion' information pack).

"At all stages of a campaign you will need information ... You need to be able to show clear evidence that will convince people about your argument. Good

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<sup>1</sup> Each of these quotes is taken from a notification of attendance letter for the Birmingham conference (taking place on 5<sup>th</sup> December 2002). All the conferences were open to anyone on a first come first served basis. Attendance and lunch at the conference was provided free of charge. The objectives of the conference were outlined in the attendance letter as follows: "1) Be informed and briefed on the areas of objection to the proposals in the Bill 2) Be aware of Mind and the Mental Health Alliance campaign objectives to combat the proposals 3) Know what action you can take locally and nationally to support the national campaign to combat the proposals 4) Understand the key campaigning skills you can apply when campaigning against the Bill; with particular reference to partnership working, influencing politicians and working with the press and the media".



evidence makes it harder for people to discount the campaign's arguments. Examples of good evidence are: the personal testament of people who use services; case examples of people whose life situation has been changed or affected; statistics showing the numbers affected; financial information showing the financial implications; research from other sources showing how what you are proposing has worked elsewhere" (Mind: 'Rights Not Compulsion' information pack).

Aims. Information. Action. The precision tactics outlined by Mind appear as something of a lay version of rational choice theory: individual actors, armed with information, are ready to enter into battle on the political stage. This may tell us little of how biopolitical contestation is assembled, but it is perhaps indicative of what *presents* as a successful political campaign. A protagonist (service user or survivor), an adversary (the Mental Health Bill), and a political challenge (the campaign). We could go further to say that the presentation of an 'effective campaign' is an attribute necessitated when working with the media, one exemplified in formulating a press release:

"Writing a press release takes a mixture of a little bit of creativity and a lot of simplicity ... Grab your readers' attention with a snappy headline. Think about your campaign theme, and try to wrap up the most striking message in one short, uncomplicated phrase ... Use a longer sub-head to summarise your story or expand on the statistics announcement you're making ... Give them the facts straight. Start with a paragraph explaining the *What, when, where, why, and who* of the story; keep your sentences short, and cut the jargon! Use buzzwords or current phrases if appropriate, but be careful not to descend into language that only the experts will understand ... [B]ack up your argument with facts, figures and direct quotes ... Give it the personal touch. Always include a quote from a named person. Keep anything emotive within quotation marks" (Mind: 'Rights Not Compulsion' information pack).

In this chapter I want to expand on the account of agonism which I introduced in chapter three. For reasons which will become clear, I will focus on what Mind posits in the second part of its information pack: described as 'campaigning skills', I prefer the less intentioned term 'political techniques'. This is not merely to herald the importance of practice or 'practical knowledge' in politics. Rather, I incorporate political techniques (*techné* as arts or techniques) alongside political technologies, which together break down

any demarcation of a romanticised resistance ‘versus’ instrumental rationality<sup>2</sup>. Indeed, on this point, in discussing the techniques of ‘direct action’, Andrew Barry (2001) writes:

“Extra-parliamentary political protest is undoubtedly less formal and less standardised than conventional forms of scientific and political practice. But it also has its own characteristic tactics, sites, rhetorics and organisational forms that may be replicated in different locations and situations” (206).

My focus here is not on extra-parliamentary activity, but on the event of organising a legal demonstration undertaken in the form of a protest march. As we have seen in chapter three, the game of political action that surrounds the draft Mental Health Bill may be less about the game itself than the rules of biopolitical action and less about the rules than how the rules proceed in motion, or rather through our agonistic understanding, *en passant* (in passing) (Tully 2004)<sup>3</sup>. The problematisation of mental health (law) which I outlined in chapter one persists as an ‘event’ (see Rabinow 2003: 55-56) but not without being transversed, and at times transformed by the turbulence of agonistic activity; here the political demonstration is just one particular instance<sup>4</sup>.

My basic premise in this chapter is that rather than focus on the constitution of political identities (see for example Massey 1995), which implies that ‘identities’ have a beginning, middle and an end, we might focus instead on the formation of political actors, or rather political actions. To lobby, to demonstrate, to *be* political, as infinitives require attention to political assembly as part of an agonistic activity. Simply put, I hope to show that the presentation of the survivor does not precede the assembly of political action.

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<sup>2</sup> See ‘Technologies of the Self’ (Foucault 1988b: 18) in which Foucault outlines four ‘technologies’ of practical reason (production, sign systems, power and of the self).

<sup>3</sup> Foucault writes “The word game can lead you astray: when I say ‘game,’ I mean a set of rules by which truth is produced. It is not a game in the sense of amusement; it is a set of procedures that lead to a certain result, which, on the basis of its principles and rules of procedure, may be considered valid or invalid, winning or losing” (EW1: 297).

<sup>4</sup> My use of problematisation here does not mean that the problematisation of ‘madness’ is an enduring entity in every arena in social life. Madness as a problematisation is transversed by numerous events, along with relatively fixed apparatuses.

## 4.2 What if we did politics a little?<sup>5</sup>

My focus on the techniques of political action begins from the simple premise that we have perhaps become so preoccupied with questioning and (re)defining ‘the political’, that the specific *sites* and occasionally mundane *acts* of ‘politics’, at least in poststructuralist political theory, have often been displaced as technical, institutional and, at times, anti-political (see Barry 2001, Shapiro 2002)<sup>6</sup>. Sites here may be understood through various materialities - from what Callon and Law (2002) term *qualcalation* (the entangled cross on a voting form for example, see Barry 2002) - to the enactment of political demonstrations (see Barry 1999, 2001)<sup>7</sup>. Focusing on ‘sites’ and ‘acts’ suggests that timely political questions, such as the (in)compatibility of universal and singular rights in liberal democracies, are presuppositions of political theory, for political practices - voting, lobbying, demonstrating and so forth - invariably allow the universal and singular to coexist.

## 4.3 Materiality and the political

Along with some of the (real or imagined) inabilities for (post-structuralist) political theory to grasp political action, there is also a related concern with the ability of radical democracy to think through the ‘more than human’ (see Braun and Disch 2002), and conversely for ‘Actor Network Theory’ to think through antagonism<sup>8</sup>. Featherstone (2004), for example, questions the tendency towards liberal pluralism and enfranchisement in (early) ANT. Whereas for Mouffe antagonism is ontological and human, Featherstone turns to political activities which construct practices of *enrolment* in antagonistic ways. Although a focus on the more than human is welcome, to maintain a

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<sup>5</sup> Adapted from Latour (2003) ‘What if we talked politics a little?’

<sup>6</sup> The demarcation between politics (institutions) and the political (antagonism) is evident in much poststructuralist political theory, particularly proponents of radical democracy (see for example Mouffe 2000).

<sup>7</sup> Interestingly to Callon and Law (2002) *qualcalation* and non-*qualcalation* forms a new form of the rational and non-rational.

<sup>8</sup> Interestingly, if radical democracy has been critiqued for ignoring materiality (or the technical necessities of politics such as public inquiries, crafting legislation, the lobby and even organising the demonstration), governmentality has been critiqued for seemingly ignoring the political; in fact to some, Foucault’s accounts of governmentality are inherently *anti-political* (see Mouffe 1999 and footnote 10).

distinction between (idealist) discourse and (material) matter and to supplement materiality with an antagonistic element does not perhaps do justice to the Foucauldian lineage to radical democracy, which in part emerged from Foucault's understanding of discourse as an articulatory practice (see Laclau and Mouffe 2001: 96). Indeed, when Laclau and Mouffe state that "every object is constituted as an object of discourse" (2001: 107) they do not mean to say that nothing exists outside of language; rather, they are suggesting that nothing enters into the play of true and false outside of the apparatus (see Deacon 2000). Like Foucault in the *Archaeology of Knowledge* there is a regularity in *dispersion*, not around a discursive or materialist 'object', but by an ensemble of differential positions "which in certain contexts of exteriority can be signified as a totality" (Laclau and Mouffe 2001: 106)<sup>9</sup>. Arguably what might be pertinent is that there has been a demarcation of the *spaces* (and technologies) of political enunciation in radical democracy<sup>10</sup>, not simply through 'institutions' but through political practice as an apparatus or assemblage without solid foundation<sup>11</sup>. If we extend this to the question of 'materiality', then artefacts are not something factual which are opposed *to* or to be represented *by* the political, rather they assemble (the political) and are assembled (by the political). In this sense we can renew the question of political representation, not in the traditional vein of the ideal speech situation<sup>12</sup>, but rather, through that of the assembly (the demonstration) recombined with that of *re*-presenting the topic, the concern, the issue, the topos, the procedures for which in political speech may be eloquent and rhetorical (Latour 2003), or confessional (see chapter six). A focus on political representation is what Latour terms 'the assembly of assemblages', a simple but, in some respects, radical reconsideration of politics itself - considering that the issue of assembly has remained a concern of political theorists, and the issue of assemblage scientists (see Latour 2005). For Latour, like my focus on governmentality and agonism, this move is

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<sup>9</sup> To Laclau and Mouffe (2001) this extends into their account of 'elements' and 'moments', in which the play of differential positions is always contingent and never complete.

<sup>10</sup> Furthermore, the exegesis for radical democracy is possibly outmoded for narrating a politics of/for our time, a point Mouffe herself suggests (2005). Still, with my focus on governmentality and agonism, Mouffe (1999) appears to demarcate governmentality as merely an apolitical condition of (neo)liberalism, but hopefully my focus on the governmentality of political action does a little more to expand on what is at stake in our present political climate.

<sup>11</sup> This is how I interpret Massey's (1999: 280) proposition that "multiplicity and space are co-constitutive".

<sup>12</sup> The revival in 'citizenship' shares much with this typification (see Burchell 1995).

not simply exemplary of the expanse of interest into practice and performativity, but it is perhaps best described as a reconsideration of the demarcation between the ontic and ontological conditions for politics<sup>13</sup>. Contrary however to some of the mundane and/or uncanny arenas that this leads Latour (2005) and others - such as supermarkets, churches and financial trading rooms - there may be 'games of truth' which are still relatively 'successful' in parliamentary democracies: that of demonstrating in the form of a march<sup>14</sup>. My aim, however, is not simply to tip the balance away from theorising the political with a renewed interest in the 'public' sphere of politics. As my understanding of agonism suggests, along with a number of governmentality scholars, the demarcation of a 'public sphere' for acting, speaking and being 'political' is itself part of a governmental rationality:

“Even where resistance seems to be fuelled simply by reaction and response, a settling of misunderstandings or according to a set political line, there is nothing obvious about the forms and formulations that are practiced as politics. Tracing what counts as, feels or looks like resistance - the logic calculations and aporias of its operations - involves an attempt to open up for examination the conditions of possibility of the political landscape” (Barry et al 1995: 486)<sup>15</sup>.

'Conventional' even occasionally staid acts of ontic politics need to be assembled and become fabrications once submitted to genealogy.

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<sup>13</sup> Examples here include 'ontological politics' (Mol 1999) and a 'politics of conviviality' (Whatmore and Hinchcliffe forthcoming).

<sup>14</sup> Further, Latour (2004) does not focus on 'games of truth' but, following Whitehead, well and poorly articulated propositions.

<sup>15</sup> As we will see later, my focus on the assemblages of demonstrating is not bound to a Euclidean political space. The term 'assemblies of assemblages' taken from Latour implies that the political exists in a number of time/spaces. Agonism too does not imply a 'inter-subjective' horizon between actors, as we will see with respect to mediatisation. For a related field of work which breaks down any presumptions towards a 'public sphere' see Shapiro (1997) who, through focusing on the media, critiques neo-Tocquevillean fears of a declining public sphere and hence a declining politics. The question of political practice is not a new activity. As Tully (1999) shows, authors as diverse as Arendt, Wittgenstein and Foucault through to Habermas, Rorty and Skinner are concerned with politics as a practical activity. What separates Arendt, Wittgenstein and Foucault from Habermas is that politics (and ethics) is conceived through the agonistic encounter itself rather than a through drive for (rational) consensus.

#### 4.4 Governmentality, technology and the political

The work of Andrew Barry (1999, 2001) is essential for my focus in this chapter. He provides something of a nexus between governmentality, science studies and the political:

“[[I]f political science can too often become narrowly empirical in its focus on formal political institutions and its positivist concern with political decisions and public policy, analyses of political discourse and cultural politics can become lost in the study of ideology at the expense of attention to the conduct and tactics of politics and their specificity of institutions” (2001: 199).

There are two facets of ‘governing a technological society’ which concern Barry<sup>16</sup>. Firstly, as we have already seen, Barry disputes any opposition between technology and the human, technology and politics. This, of course, is not a new supposition and is summarised by Barry as follows:

“Seen in these terms, techniques and devices can become political ... in the sense that technical designs and devices are bound up with the constitution of the human and the social. Any attempt to contest or challenge the social order may then involve - and probably will involve - an effort to contest the development and deployment of technology as well. To say that a technology can be political is not to denounce it, or to condemn it as a political instrument, or to say its design reflects particular social or economic interests. Technology is not reducible to politics. Nor is it to say that technical devices and artefacts are ‘social constructions’ or are ‘socially shaped’: for the social is not some thing which exists independently from technology” (9)<sup>17</sup>.

A similar premise can be found in Dean (1996b), who argues that at times governmentality studies separate out techniques and/or technologies from political rationalities:

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<sup>16</sup> Barry’s focus on “the government of technological society” is not intended as an epochal shift. Rather, in a Foucauldian manner (EW1: 303-317), the importance of technology is understood as a particular attitude or orientation towards the present.

<sup>17</sup> In an attempt to break down the notion of technology as (inert) matter, a distinction is made between a technical device (as a material or immaterial artefact) and a technology (knowledge, skill, calculations) which make it useable.

“Technologies of government at times appear to be conceived instrumentally, as means to somewhat elusive ends, e.g. as means of action and intervention, as means of translating thought into reality, as indirect means for acting at a distance” (58-59)<sup>18</sup>.

Dean’s attention turns to a reorientation of Heidegger, arguing that *techné* (practical knowledge) becomes a *technology* of governmentality (as instrumental) once it is part of a strategic rationality. Contrary to Heidegger, however, although we orientate ourselves as part of a standing reserve, this is not one which is ordered or replicable, but rather:

“[A] technology of government constitutes those over whom authority is exercised as subjects of *performance*. It acts on the action of such subjects so that they engage their own conduct as something that is testable, monitorable and calculable” (61, my emphasis).

With Dean’s analysis we are ‘free’ with respect to conditions not of our choosing<sup>19</sup>. My use of *techné* is slightly different from both Barry and Dean. Barry (2001) seems to maintain a division between politics and the political, between the ‘closure’ of politics and the ‘openness’ of political antagonism<sup>20</sup>. In this sense “the political is irreducible to politics” (176-177). However, by retaining the distinction between politics and the political and then supplanting politics, or technology, with its *political* element (that technology can have political effects, for example,) perhaps maintains an unnecessary dualism<sup>21</sup>. That is, if the political is *always already* technical (a *dispositif* and an assemblage) then we are perhaps best to replace politics with governmentality and the

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<sup>18</sup> Although he does not make this explicit, Dean (1996b) appears to be critiquing forms of governmentality inaugurated by Miller and Rose in the early 1990’s. Indeed, in their discussion of rationalities and technologies of governmentality, Rose and Miller write: “If political rationalities render reality into the domain of thought, these ‘*technologies of government*’ seek to translate thought into the domain of reality, and to establish ‘in the world or persons and things’ spaces and devices for acting upon those entities of which they dream and scheme” (1990: 8).

<sup>19</sup> The example given by Dean (1996b) is that of a reorientation of our work practices to suit audit cultures.

<sup>20</sup> For Barry (2001) politics is “a way of codifying particular forms of contestation - particularly associated with the activities of political parties and the state” (194). Whereas the political is the “space of contestation ... thus an action is political in this latter sense to the degree to which it opens up new sites and objects of contestation” (194).

<sup>21</sup> Indeed, we might be wary of supposing that the political aspect of contestation is something akin to the ‘spirit of resistance’: as the revolutionary moment in excess of the political movements in which they occur (Routledge and Simons 1995: 472). Such an analysis is akin to ‘revolution proper’ to Foucault in the Iranian revolution or to Deleuze as that which occasionally instigates a break with the past: “a becoming breaking through into history” (Deleuze cited in Patton 2000: 108). Alternatively, for Deleuze and Guattari the focus is on ‘the revolutionary potential of decoded flows’ (Patton 2000: 105).

political with the space of the agon<sup>22</sup>. Here, similar to proponents of radical democracy, we might argue for acknowledging a radical contingency but without positing a (collective or individual) identity enabled through an ontological alterity (a constitutive outside): for contingencies (and political actors) do not happen outside of the techniques and practices which gives rise to them. Here talk of identity - 'I am a survivor' - is not proof of an *ontological* antagonistic entity; rather, this talk may be more indicative of a polemic or, as we will see in chapter six, a particular enunciative regime of truth telling in politics<sup>23</sup>. Politics may present through rhetorical or polemical means but this talk cannot be founded on ontological grounds<sup>24</sup>. It is not simply the case then that antagonism, a struggle between enemies, needs transforming into agonism, a struggle between adversaries (Mouffe 2000: 102-3); rather, agonism *may become antagonistic*. From the perspective of *Society Must be Defended*, antagonism (understood as a warlike relationship between adversaries) is an *historical* rather than an *ontological* determinate for the political, no less 'real' but no more enduring.

Dean (1996b) maintains a distinction between *techné* and technology, and subsequently an (implicit) Heideggerian distinction between (human) being and a technological understanding of (human) being. As pointed out in chapter three a turn to biosociality and/or the emergence of the psychiatric survivor and service user, along with Foucault's inclination not to 'judge' the present, does not allow for this premise.

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<sup>22</sup> What Barry and others (see for example Butler in Bell [1999: 166]) describe as the irreducibility of the political to politics would here be defined as the 'freedom' that occurs in the interstice between governmentality and agonism. As I outlined in chapter three, the political is always practiced and freedom is always immanent.

<sup>23</sup> The etymology of the term 'polemic' as a descendent of *polemikos*, is related to *polemos*, the Greek term for war (see Blain 1994: 25). Interestingly, it is Carl Schmidt who first insisted on the polemical character of political concepts (see Pasquino 1993: 87). Polemics are not inherently negative; indeed, suggestive in *Society Must be Defended* we can position them as part of a battle.

<sup>24</sup> A similar point regarding the problematic synchrony of antagonism with ontology is made by Elden (2000), albeit with very different conclusions. To surmise a complex set of arguments, for Elden the contemporary Schmittian understanding of the political as antagonistic is, with reference to Heidegger, a misreading of politics understood in the original Greek as *altheia*, as the site of abode of human history. The former Schmittian understanding is borne through a modern (mis)understanding of technology, being and hence politics. Essentially, then, we mistake antagonism as an ontology of politics for that which is in fact ontic.



For my discussion here, another facet of Barry's (2001) argument is perhaps more interesting, in that he acknowledges a technical dimension to constitution of the 'public sphere':

"[I]f we regard the public sphere as a set of spaces within which matters of truth and justice can be raised in public, then there is always a technical dimension to the specific forms that the public sphere can take, and the connection and distinction between the realms of 'public' and 'private' politics ... The contemporary public sphere cannot be understood as something like a set of spaces in which rational discussion simply takes place in an unmediated fashion. They are not like the Greek *polis* of the modern political imagination. Rather they are arrangements of persons and technical devices formed in particular settings, within which it is possible to articulate a range of rhetorical forms" (9-10).

The political demonstration involves setting up a site where the truth can be told. In Foucauldian language, attention to the 'sights' and 'sites' (Barry 1999) of demonstrating might translate as *dispositifs* similar the *enactment* of hysteria in Charcot's performances (see WK: 24)<sup>25</sup>:

"[T]here are significant similarities between political demonstrations and scientific and technical demonstrations, and many of the questions addressed by those concerned with the study of scientific demonstrations can also be raised by those concerned with the study of politics" (Barry 2001: 176).

The 'demonstration' through its scientific understanding implies proof anticipated beforehand ('you will witness this'), but as Barry (2001) points out the *demo* also implies provisionality: "the possibility of a real object, rather than its actualisation. It is a way of showing what can or might be done" (178). For Barry, this is exemplary of the openness of the political, and in my analysis it is an expression of agonism in actu.

However, with respect to the importance of the media for this form of truth telling we might have to shift slightly from Foucault's attention on the play of true and false towards

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<sup>25</sup> "Charcot's Salpêtrière ... was an enormous apparatus for observation, with its examinations, interrogations, and experiments, but it was also a machinery for incitement, with its public presentations" (WK: 55).

an *assemblage* of political action. This is an assemblage rather than a *dispositif* (apparatus) because, although the apparatus deconstructs any notion of physical presence or authorship (witness the apparatus of the confession for example), it is perhaps ill-equipped to deal with the importance of communications in politics (see also Barry 2001: 200). Unlike the techniques of confession, or disciplines, there is no “intersubjective” mediating horizon between actors which makes strategies communicable (Pottage 1998a)<sup>26</sup>.

In summary, I want to argue in the following that the space of governmental contestation from survivors - that of the demonstration - is not simply a political site, or a background, in which the ‘truths’ of mental health can be presented *against* the reforms. It is rather in itself a truth telling activity. Further, it is an assemblage which goes beyond Foucault’s analysis of the play of true and false because it is one dependent on communication strategies. Following my focus on the governmentality of political contestation, the visibility of demonstrating against the reforms is not in the name of the ‘spectacular’ politics of bringing forth that which does not exist, but rather that which is *in potentia* existing - the (re)presentation of the service user/survivor.

#### **4.5 The “Rights Not Compulsion” march and rally**

“Make your voice heard - join us”<sup>27</sup>

The Mental Health Alliance (MHA) ‘Rights Not Compulsion’ march and rally was arranged for Saturday 14<sup>th</sup> September 2002. The timing was significant: the consultation period for the draft Mental Health Bill was officially to end just two days later. The route was not uncharacteristic of any mass demonstration in London. Meeting at Whitehall Place with a 1pm start, the march was to pass down Whitehall, handing statements into both the Department of Health and Downing Street. The route, at just 1½ miles, was to

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<sup>26</sup> In focusing on analyzing the ‘how’ of power relations, in his essay *The Subject and Power*, Foucault discusses the connections between ‘power relations’, ‘relationships of communication’ and ‘objective capacities’ and expands on his earlier use of disciplines (see SP:217-218). His interest is with ‘blocks’ in these three forms which enable relatively congealed disciplinary practices. This does not mean they are ‘static’, but it does create difficulties in thinking through communication technologies.

<sup>27</sup> Heading of leaflet advertising MHA September 14th ‘Rights Not Compulsion’ march and rally.

take about an hour, finishing in Geraldine Mary Harmsworth Park for a rally 2pm-5pm. Information packs for those attending the march and rally were available to download from the Mental Health Alliance's website. Like the campaign information pack accompanying Mind's conference series, the start of the information pack was given over to replicating the Alliance's 'Key Concerns' about the current proposals. It began with fears surrounding the likelihood of increased compulsion followed by proposed alternatives for "rights to assessment and treatment"; "the right to draw up advanced statements"; and "the right to advocacy from the point of assessment". This was followed by maps and information on getting to the march, along with a 'model press release' for local mental health service-user groups to send to their local media. The model press release began in bold "**Local Mental Health Group To March On Downing Street**", followed by a smaller sub-heading "*XXXX (insert the name of your group)* heading for London to protest against proposed mental health legislation". The importance of the media was pronounced and a page of 'soundbites' was included for use in consultation responses or in letters to MPs/the media. Soundbites such as: "The draft Mental Health Bill risks increasing the number of people subject to compulsory treatment" and "Dangerous severe personality disorder should be the subject of a Home Office Bill, and not mental health legislation". The pack finished with a call for stewards to help on the day. The rationale for the march appears only once and is succinctly put:

"The day is a peaceful march and rally to show the strength of feeling about the Government's proposals. We don't want the event to be confrontational or aggressive. It is about showing the strength of opposition to the proposals and celebrating the fact that very different groups can all work together for a better Mental Health Act" (MHA: 'Rights Not Compulsion' information pack).

Requests were made for "placards, banners, and posters", no more than 8 feet wide, addressing the theme of the day, 'Rights Not Compulsion'; along with "home-made handcuffs, ball and chain, anything to show how you feel against increased compulsion". The march was to culminate in a rally - with music and speakers - in Geraldine Mary Harmsworth Park. The site was significant as the location of the original "Bedlam" psychiatric hospital, "highly appropriate, as we believe the Government's proposals

would be a real step backwards in the treatment of people with mental health problems” (Model Press Release ‘Rights Not Compulsion’ information pack).

#### 4.6 The demonstration

“We arrived at the march I suppose about an hour before it started... The police were there. As more and more people arrived it started to feel more and more like a proper march because our fear was that there would be 10 or 15 of us when it was supposed to be a mass protest, but hundreds turned up. The salsa band turned up playing their music, which gave continuous sound to the march and made us feel all part of the group.

Personally, what I remember is walking along the street with this placard, part of a protest. It is not what I would normally do. I would normally feel self-conscious and embarrassed doing something like that in public. But because of the people I was with, it felt quite natural and I felt quite relaxed and happy doing this, it seemed like a good thing to do” (Filmed interview by ‘Listen to the Voices’ with NO Force protestor).

On Saturday 14<sup>th</sup> September at 1pm protestors left Whitehall Place, marching past Downing Street, heading for the park. Absent, however, was the familiar logo of the Mental Health Alliance, and the placards demanding ‘Rights Not Compulsion’ were replaced with potent declarations for ‘NO Force’. Within two weeks of the march the Alliance had cancelled. The reason given that “[t]he Alliance can not guarantee the health and safety of participants in an atmosphere of prejudice, ignorance and fear whipped up by sections of the media in the wake of Soham”<sup>28</sup>. The response was pronounced, and immediately a small group of survivors started exchanging messages on an internet message board<sup>29</sup>. The first sent on the evening of Tuesday 2<sup>nd</sup> September began:

“I hate to be the bearer of bad tidings but the March on the 14th of September has been postponed. Keep an ear to the ground for further news on this. I

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<sup>28</sup> This quote is taken from a MHA Press Release (4th Sept 2002). On Tuesday 20<sup>th</sup> August 2002, just under a month before the ‘Rights Not Compulsion’ march, a school caretaker, Ian Huntley, was detained under Section 2 of the *Mental Health Act 1983*. Huntley was in police custody and at the time of his section was about to be charged with the murder of two children, Holly Wells and Jessica Chapman. This event, which gathered a great deal of media interest, became known simply as ‘Soham’.

<sup>29</sup> The UK Survivors internet message forum on which these messages appeared began in Jan 2000. The group description is as follows: ‘For mental health user/survivors in the UK, disabled people and allies/professionals to debate, receive and give support and to network together’.

know you cannot verify this as the news has just come out. But check it out with other sources and I think you'll find it's true".

As news filtered through the various core and associate members of MHA, it was soon confirmed online on 3<sup>rd</sup> September and was verified by an official press statement released from MHA (on 4<sup>th</sup>) which publicly acknowledged the cancellation and advertised an alternative parliamentary lobby on 23<sup>rd</sup> October. Immediately arrangements to go ahead with the march anyway were proposed:

"We have approximately 120 service users that are still coming on September 14th so far today, and that doesn't count people that won't have heard of the 'postponement' - So for us it's the same time, same place. [We] are arranging alternative speakers at the moment and also hopefully police coverage for the rally. If anyone from UK Survivors would like to speak at the rally please contact us off list. I understand that there are some people who feel that a smaller rally will be more ineffective and maybe that's truly the case, however the principles involved are extremely important to all of us and we are determined that the MHA will not determine our agenda ... Rufus [May] is on 5 Live tomorrow at 1pm and will try and announce that we are going ahead despite MHA" (3<sup>rd</sup> September)<sup>30</sup>.

In these early exchanges on an internet message board, there were no iterations of the Mental Health Alliance's former intentions for the march and no discussion of the specificities of their objections to the bill, particularly whether the 'common concerns' put forward by them were to be endorsed, rebranded or rebuked. Rather, attention focused on a broader "art[s] and ethic of demonstrating" (Barry 1999: 84, see also Blain 1994):

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<sup>30</sup> 5 Live is a BBC radio talk channel centred on current affairs. Rufus May, a psychologist, self proclaimed 'survivor' and winner of a Mental Health Media award was to appear on an hour long discussion of the Mental Health Bill, along with Tony Zigmond (Royal College of Psychiatry) and Sophie Goodchild (Independent on Sunday journalist). The programme was entitled 'Where's the balance?' and was advertised as follows: "Mental health campaigners have called off a national protest march because of fears it will be misinterpreted in the wake of the Soham murders. At issue is a proposal to reform the 1983 Mental Health Act. The new draft bill will contain proposals to lock up hundreds of people with dangerous incurable personality disorders – even if there no evidence they committed a crime. The government says new legislation will take dangerous people off the streets. But isn't it also discriminating against people who are ill? How can we achieve a balance in maintaining public safety and looking after the welfare of the mentally ill? Simon asks these and other questions to a panel of experts" (downloaded from [www.bbc.co.uk/fivelive/mayo/mental\\_health.shtml](http://www.bbc.co.uk/fivelive/mayo/mental_health.shtml) on 7th September 2002).

“It is a sad day when the very organisations, who are supposed to be supporting us in our fight against the proposed breach of our human rights as set out in the draft mental health act bill, see fit to take the coercive stance of cancelling our right to peaceful protest. The Mental Health Alliance appear to think that those of us who would have attended the march and rally are unable to weigh up the risks for ourselves and make the decision as to whether we would still stand up and be counted for what we believe in. I stand with [the] statement that some of us will still attend. Whether we have a rally or a picnic in the park it is important that as many of you as possible come along and make your presence felt in a peaceful way....I am prepared to stand for what I believe in and I am sorry that the MHA thinks it can dictate to us that the demo will no longer take place...So come on all of you who believe that we must get our message across - join with us on the 14<sup>th</sup>” (3rd September).

“It is, I think, important that we not be put off by events and the weak stomachs of some people. No matter when we chose to act there would be an obstacle, large in this case, but nonetheless I think we need to stand and be counted. The more so as people from all over are making the effort and we should take the opportunity to get together - solidarity!” (3rd September).

There was no presentation of statistics, evidence or information, and no reference of supporting ‘ideologies’ but something closer to an ‘ethical substance’ of political action (see UP: 26-27, Dean 1996a, Blain 1994), that which in selves or others needs to be acted upon, and indeed overcome in order to *be political*. Countering nonchalance and acceptance or passivity in light of MHA’s decision all figure here, along with the counter imperative and work needed to “stand and be counted”; “make voices heard”; “become leaders” (see Blain 1994: 823-4)<sup>31</sup>. Still, the technique of ‘making voices heard’ required as much attention to assembly as any ethic or imperative to act, and by 4<sup>th</sup> September, a specific ‘steering group’ message board had been set up online for the sole purpose of organising the march<sup>32</sup>. Attention focused on the necessity to co-ordinate efficiently with the police (Scotland Yard), the media, and potential supporters. It was the latter which was deemed most difficult: “We have no money so cannot help people to travel, produce publicity other than through the media” (4<sup>th</sup> September). Still, a meeting was arranged with Scotland Yard with the hope that the original time and schedule could be maintained, as this would coincide with the information previously sent out by MHA.

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<sup>31</sup> The flip side of this was often referred to as ‘burn out’.

<sup>32</sup> The message board was titled ‘Mental Health Campaigns’, and the number of registered members began at around 20 peaking at around 50.

The new march was successfully announced by Rufus May on 5 Live and two people were given the task of coordinating media relations.

#### **4.7 Slogans, banners, re-presentations**

With the meetings with the police in hand and media relations underway, the messages turned to the act of demonstrating itself. A survivor offered to produce some flyers to hand out to interested bystanders and ideas for slogans were offered:

“STOP CTO’s<sup>33</sup>  
No Compulsion!  
No indefinite detention  
Mad NOT Bad  
Human Rights not Oppression  
Dignity not Stigma” (5<sup>th</sup> September).

In light of the association with Soham, possible quotes which emphasised the disproportionate focus on risk in the bill were put forward for reworking into slogans:

“...the risk of being killed (by a psychotic stranger) is around the same as that of being killed by lightning ... about 1 in 10 million” (Dr George Szukler 2000).

“Most psychiatric disorders are only very occasionally associated with criminality” (Professor Herschel Prins 1990).

“Most people who have schizophrenia are never violent at any stage of their illness” Dr John Cutting (Cutting and Charlish, 1995)

“The people we should really worry about are the people who are drunk or intoxicated” (Hall, 1999)

“Fewer than 10 homicides a year - less than 2% of all killings - involved patients with schizophrenia ... you are 20 times more likely to be killed by a sane than an insane person” (The Guardian 1999).

This focus on the negligibility of killings, as evidence for the ‘unbalanced’ nature of the proposals, was soon rebuked, however, not because it was ‘untrue’, but rather because it incited the possibility of reinforcing the very misconception of madness as dangerousness. Here the negligible but haphazard nature of ‘killings’ unfortunately

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<sup>33</sup> CTO’s stands for ‘compulsory’ or ‘community treatment orders’.

proved a protean assertion equally providing the very imperative to act in light of their indiscriminate randomness (see chapter one)<sup>34</sup>.

Another member forwarded information regards T-shirts which they had designed for the original MHA march:

“If people would like to order a T-Shirt for the Rally we can produce them for the day - perhaps meet up earlier in Trafalgar Square on the day? They would cost between £5 and £7 a t-shirt (cost price - I haven't worked it out yet!) - on the front we have HUMAN RIGHTS at the top, various pictures - person in a cell, woman having ECT, a syringe, multi-coloured pills - all shapes and sizes, psycho-surgery etc. and at the bottom we have a picture of the front page of the Reform of the Mental Health Act document with NO, NO, NO, NO and No alongside. On the back we have the following: THE HIDDEN MINORITY; The Forgotten People; Human Rights Violations; Oppression; Discrimination; Coercion; In-Humane Care & Treatment; In-Prisonment; Unemployment; Forced Drugging; Psycho-Surgery; Electrocution; Mind and Social Control. People turn their heads to look at the T-shirt as it is quite hard hitting!! We have produced 6 so far for us - another 10 have been ordered by users in Hammersmith - feel free to order one too” (6<sup>th</sup> September).

These became a means to identify stewards and later became a uniform NO Force T shirt:

“We [3 people] have produced 20 T-shirts for the stewards white, large, no force logo on the front and the back. They have come out well!! The final cost was approx. £65-00. It makes sense to meet with the stewards in Whitehall place with the t-shirts before the march?” (11<sup>th</sup> September).

Placards, slogans, T-shirts, but there was still the challenge of having ‘something’ to present at Downing Street: “do we have time for anything other than a petition?”<sup>35</sup> (8<sup>th</sup> September). A survivor offered forward a draft response to the previous White Paper on reform of the Mental Health Act, which had been written collaboratively with service users and survivors in east London, as something to be circulated and amended and “put into Downing Street”:

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<sup>34</sup> This assertion was replicated by an oft quoted discourse by MHA which stated that risk assessment was an ‘inexact science’. and the repetition that 50,000 people will have to be sectioned to prevent one homicide.

<sup>35</sup> The link to the petition read: “Oppose the Mental Health Bill. It will take away our human rights. <http://www.thepetitionsite.com/takeaction/629187504> Please sign now, and tell others”.



“[I]t starts with the most important issues that came up when users and survivors were asked by users and survivors about the mental health act changes - such as NO to increased powers of compulsion or forced treatment, particularly Community Treatment Orders, YES to the right to a comprehensive assessment of needs, YES to safeguards with drug treatments and ECT, YES to Advanced Directives, YES to mental health advocates etc... it is quite comprehensive and completely user & survivor generated” (6<sup>th</sup> September).

This consultation response was taken up quickly, and subsequently provided the official NO Force response to the proposals<sup>36</sup>. The key points of the consultation response needed to be translated into a press release, and advice was sought from The Mental Health Media Bureau:

“[The Mental Health Media Bureau] gave us all the leads we need for an effective press release and although the mental health media bureau is a neutral organisation it was easy to feel a rapport, I recommend that we use these guys again to help get our issues exposed and I got the feeling the more creative you are the more they like it! we need to get the media release out by Sunday evening latest. I'm happy to email it out if names have been added to the quotes and Media Bureau fact sheet attached (7<sup>th</sup> September)<sup>37</sup>.”

Like the advice offered by Mind, the Media Bureau emphasised that clarity must coexist with creativity: “be prepared to explain basic background information”; “Journalists do not like jargon”; “learn to speak in soundbites ... simple easily understandable phrases which stick in the mind”. The press release was finally sent on 8<sup>th</sup> September:

For Immediate Release

### **March against Mental Health Bill to go ahead**

People who have experienced the mental health system first hand and their supporters will go ahead with a march and rally against human

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<sup>36</sup> See Appendix: fig. 7.

<sup>37</sup> The Mental Health Media Bureau offer training courses for survivors, offering advice regards liasoning with the media ‘Media Bureau is a national one-stop-PR-shop offering media skills training and a range of support services to help mental health services users and survivors communicate confidently and effectively through the media’ downloaded from <<http://www.mhmedia.com/training/bureau.html>> on 12th March 2005.

rights abuses the government proposes to introduce, even though the Mental Health Alliance has decided the event is “too dangerous”. Mental health service user groups refuse to cancel their plans to gather in London on Saturday, 14<sup>th</sup> September, and are liaising with police to ensure the march through Whitehall and rally in Geraldine Mary Harmsworth Park go ahead.

...

“This legislation does little to improve the gaps in services for people with mental health problems - instead it’s a knee-jerk reaction to the common misconception that mental distress makes us dangerous,” said Cully Downer in Brighton.

“Forcing people to take medication that can have side effects worse than the original symptoms is a draconian measure that violates our human rights, but that is what the government is proposing these plans stigmatise people with mental health problems by assuming that they will commit a crime.” he said.

#### **4.8 Publicity**

The extensive use of the media when making political claims epitomises to some the dangers of politics today; to paraphrase Habermas, politics today consists of ‘interest groups’ accumulating publicity in a sphere of non-public opinion (see Barry 2001: 179). However, assembling ‘survivor expertise’ requires mediatisation, as the art of ‘making survivor voices heard’ is demanded to be without standardisation: “we are individuals and demand our voices are heard”. A zone of ‘opposition’ may well involve the demonstration of survivor truths but it also requires the ‘non-space’ of media reporting. This is not to say the demonstration does not exist without the media, recalling the right to demonstrate is as much a part of the event as formulating the press release (see chapter six), but without the media witness, and perhaps you and I as witness, the work of circulation stops short and the demonstrating procedure may well be considered a failure. As the press release concludes:

“We can arrange interviews and photo opportunities with people who have experienced the mental health system first hand ahead of the march and at the event. Media are also welcome to cover the event. Please call Liz Main on 01234-567890 if you plan to cover the event”.

The relationship of the media to the demonstration is not simply to turn a complex event - the plethora of 'survivor voices' - into a simple one, which in turn speaks to complexity. The placards, the march, the press release, already set in motion the necessary 'betrayal' of political enunciation. Using the example of political speech, Latour (2003) articulates the stakes of this double betrayal perfectly:

“[S]he who talks in the name of all *must* necessarily *betray* those she represents, otherwise she will fail to obtain the transformation of the multitude into a unit; in turn, those who obey *must* necessarily transform the order received, otherwise they will simply keep repeating it without implementing it” (150).

In speech act theory, talk does not belong to the one who says it but the (hidden) one who gives it to him/her (we rarely ask, 'in whose name are you speaking?'). In political speech, however, the hidden interlocutor is given substance, revealing something of an abyss between the enunciator in the discourse and the (hidden) one/s who causes to talk (in which we always are inclined to ask 'in whose name are you speaking?' see chapter six). For Latour (2003) it is this abyss, this inherent difficulty of political enunciation, which is filled by the activity of demonstrating:

“I can see the one who obeys me, and I can reveal myself, for instance through street demonstrations by those who claim to speak on my behalf” (158).

The demonstration, for Latour, enables the 'full circle' of political enunciation; that ancient problem of turning the one into the many and the many into the one. He perhaps allows too much assurance on the ease of assembling and the possibility for curved talk. Political demonstrating is, as I have suggested, as much a technical apparatus as a scientific demonstration. However, if we take his focus on the necessary betrayal seriously we can begin to see how, not only the political demonstration, but also media circulation articulates 'survivor truths'.

With respect to circulation, the role of the press was to be dual. Firstly, as a publicity machine to advertise that the march was still going ahead:

“The press release will have to go out by Tues/Weds at the latest as of course we are all concerned that people will believe the MHA statement and cancel their arrangements. Hopefully before the PR [press release] goes out we at least can contact all our local orgs and tell them that we are going ahead with the demo and the details will follow. We have been interviewed already by the Independent and the Guardian who will publish our intention to carry things forward even before our press release” (6<sup>th</sup> September).

Indeed, this intention was successfully published in The Guardian newspaper just three days before the march was due to take place:

“Hundreds of demonstrators are planning to go ahead with a protest against the government's draft mental health bill, despite an official rally having been cancelled for fear that marchers might be at risk, given the public mood following the Soham killings.

...

Cully Downer, coordinator of Insight, a service users' group in Brighton, and an organiser of Saturday's protest, says he has received some 500 requests for information and hundreds of emails from people who plan to attend. He has met police to discuss security and says they have no concerns” (Raekha Prasad 11<sup>th</sup> September, 2002 *The Guardian*).

Secondly the media was to provide the most important gateway to ‘the public’ and ‘politicians’:

“BBC London Live radio have apparently been running us as a headline and in the news bulletins all afternoon, rotating various different “grabs” about why the bill sucks. Sky News ran a 3 minute interview this morning, which is v. long for a live interview. I haven't seen it back but felt it went pretty well ... Nursing Standard sent a photographer who was also photographing the event for a mental health magazine, Mental Health Today's editor was there and taking photos, and of course the Independent on Sunday was there big time with a reporter for the entire march and a photographer who stayed on for the picnic afterwards as well. Listen to the Voices TV were filming ... If anyone spots any coverage on websites or newspapers or whatever, please let me know. Like I say, I'll try to put together a proper list of coverage” (14<sup>th</sup> September).

This was deemed a ‘success’. The Mental Health Media Bureau ran a story on the march, entitled ‘May No Force be with you!’ presenting interviews with those in control of liaising with the media:

“Too often people who have experienced mental distress only get a voice in the media when a ‘case study’ is needed to illustrate a story. On this occasion it was our voice that was telling the story. To me, that was one of the most important aspects of involving the media” (Survivor interviewed in ‘Mad about the Media’ Issue 4 autumn 2002).

The article continues:

“The newsworthiness of the No Force protest was increased by its eye-catching visual branding. This included making placards and t shirts - a real plus for visual image hungry TV and newspapers”

Placards proclaiming ‘NO Force’, ‘forcing is not supporting’, ‘forced drugging is torture’, provide a means to trace a group into existence (Latour 2003). The necessary betrayal of the demonstration and media reporting ‘tells the story’. It is not merely that the technological media brings together dispersed entities such as ‘survivors’, the ‘public’ and ‘politicians’; rather, it exemplifies there is no ‘background’ which unites these as indivisible instants in time/space<sup>38</sup>. As I have already suggested, there are no mediaries, no opposing ‘side’, and no (quasi) objects of contestation as such in the process of demonstrating - agonism does not relay between two points. Rather, it is brought in action through political techniques. However, whilst Foucault de-ontologises the subject (the ‘survivor’) as something produced in action, there may be presuppositions here regarding the notion of a ‘common space’ in which games of truth are performed, and this is one which the media witness arguably disrupts.

#### **4.9 Stakeholder**

Following the NO Force demonstration, the Mental Health Alliance parliamentary lobby - as their alternative to the cancelled march - took place on 23<sup>rd</sup> October 2002<sup>39</sup>. The

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<sup>38</sup> On the issue of ‘non-space’, this shares much with recent work which seeks to advance Latour’s (1999) understanding of ‘circulating entities’. Callon and Law (2004) suggest that it is the media which makes these visible: “[W]hat happens if presence and absence - or proximity and distance - are not opposed to one another; and second what happens if there is no spatial totality or shared context” (Callon and Law 2004: 3; see also NGH).

<sup>39</sup> Mental Health Alliance produced an information pack for lobbying which stated: “We would encourage you to talk about your own experiences of the Mental Health Act, but also suggest that you refer to some of

Mental Health Alliance released a press release on 23<sup>rd</sup> October entitled “MPs to be told truth about Bill by real mental health experts” followed by “Hundreds of service users, carers and professionals will be in Westminster on Wednesday (23<sup>rd</sup> October) to put pressure on their MPs to oppose the draft Mental Health Bill”. The lobby was arranged into three areas: Church House where speeches were given by members of the Mental Health Alliance, MP’s and shadow ministers; Westminster Hall where requests to meet with MPs could be made; and finally the Jubilee Room to the side of Westminster Hall for a ‘soapbox session’ primarily for ‘service users’ to make contributions up to three minutes long (after filling in a request form). Members of NO Force attended with fifteen or so people unfurling a 120ft long banner outside the House of Parliament with names of people who had ‘died in/from the system’. NO Force’s attendance was highly visible from T shirts with the NO Force logo: “we may get a lot of people deciding to join up with our movement at the lobby on the 23<sup>rd</sup> - all we need to do is to make ourselves heard and show enthusiasm, provide a vibrant alternative to the big charities and organisations” (message board 16<sup>th</sup> October 2002); “I don’t think its too long before they know we cant be ignored” (message board 7<sup>th</sup> October 2002). This was the final public *demonstration* of NO Force. Subsequently a meeting was brokered (by MHA) for members, along with other national ‘service user groups’ (Mindlink, voices forum, and Greater London Action on disability) to meet and agree some ‘common themes’ to put forward to the chiefs executives meeting of the MHA: “to give the MHA a better idea about what issues services feel are important” (message board 18<sup>th</sup> January 2003). NO Force stated that they were not a part of the Mental Health Alliance and were “only seeking to voice the direct service user opinion against the bill” (message board 30<sup>th</sup> January 2003)<sup>40</sup>. A complementary document to the NO Force ‘Pressing Concerns’ (NO Force 2003) response to the draft bill was called for to get “testaments, experiences, opinions,

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the ‘common themes’ set out in this pack” (2). These themes were arranged under the headings of ‘Compulsion’; ‘Rights to assessment and treatment’; ‘advanced statements’; ‘advocacy’. Like the previous information pack for the MHA ‘Rights Not Compulsion’ march, the pack included a list of ‘soundbites’ such as “The Bill should include a legal right to care and treatment, and not wait for a crisis to develop. This would minimize the need for compulsory treatment”; “people with mental health problems are not only statistically more likely to be a danger to themselves than others , but also more like to be the victim of crime than the perpetrators of it”; and “people should have the right to make and advance statement setting out their decisions about what treatment they would like if they become ill again” (11).

<sup>40</sup> The MHA responded to the document favourably as having only minimal divergences from their campaign messages (personal communication).

concerns etc” from service users and survivors, “down to earth and REAL”. Responses to the REAL document came forward:

“If CTO’s become law then I will disengage from mental health services and will campaign to make it known why. I would rather be dead than be forced to take long term depot injections under a CTO and suffer all the severe side effects that goes with me and my sensitivity/allergy to anti-psychotic drugs. So if I disengage I will know that I am protecting myself from a potential nightmare” (4<sup>th</sup> February 2003).

Yet the document never surfaced; rather, the ‘Pressing Concerns’ was to become the main focus for the next part of the campaign: sending it off to MP’s in light of a seminar on ‘Human Rights and Mental Disabilities’ in Copenhagen. Finally, a meeting was brokered with Louis Appleby (mental health czar) and members of the bill team at the Department of Health (on 15<sup>th</sup> May 2003) for up to three representatives from NO Force along with three other survivors attending under the umbrella of the MHA. One of the main points of discussion at the meeting was regarding the “lack of, and inappropriate user consultation there had been about the bill” (18<sup>th</sup> May 2003)<sup>41</sup>. There were no more protests or demonstrations from NO Force. In 2004 representatives gave speeches at the Conservative Party conference, again brokered through the Mental Health Alliance<sup>42</sup>. Finally, they were invited to give ‘oral evidence’ to the pre-legislative parliamentary scrutiny committee in 2004. NO Force had become stakeholders.

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<sup>41</sup> Subsequently a service user consultation group was set up with respect to gaining service user views on the *Code of Practice* which would accompany a new Mental Health Act.

<sup>42</sup> NO Force attended the Conservative Party Conference on 6th October 2004 in Partnership with the Mental Health Alliance. The speech began as follows “I would like to thank the Mental Health Alliance for inviting me to speak this evening. NO Force is a campaign that was set up to provide a direct user voice against certain elements of the Mental Health Bill. We are here in partnership with, but autonomous from, the Mental Health Alliance, so as to be able to provide a clear message without any conflicts of interest. We hope to complement and strengthen the nation’s opposition to key elements of the Mental Health Bill by working in partnership, when appropriate, with the Mental Health Alliance”.

## Chapter Five

### Human rights: bare life or life politics?

#### 5.1 The impasse of rights claims

##### *What we want to see in the bill*

- ✓ The right to treatment when we need it
- ✓ The right to a say in our treatment through advance directives
- ✓ The right to therapies other than medication
- ✓ The right to independent advocacy

##### *What we want dropped from the bill*

- ✗ The power to lock up people who haven't committed any crime – not only is this an abuse of human rights, the Mental Health Act should not be used to allow it to happen
- ✗ The power to force people to take medication in the community
- ✗ The power to force invasive treatments onto people in mental distress

(NO Force press release September 2002).

“In thinking through the consultation process [to the draft Mental Health Bill] there appears to be unbelievable ‘consensus’ - at least in the written form. This is partly because many replies seem to replicate the Mental Health Alliance’s [MHA] common concerns (perhaps because numerous ‘soundbites’ have travelled to respondents through websites/campaign packs). These documents incorporate judicial and ‘human rights’ based discourses which include ‘rights to assessments and services’ (to minimise compulsion); a desire to protect ‘patient rights’ such as through advocacy and treatment safeguards; and the bill’s perceived ‘incompatibility with the Human Rights Act 1998’. In most cases these exist in isolation or are otherwise determined alongside a simple morality based discourse stating that the draft Bill is ‘unethical and unworkable’. Of course, I am making second order judgements here but perhaps there isn’t spatio-temporal multiplicity in the (political) world after all!” (Field diary 17<sup>th</sup> October 2002).

The impasse of rights claims emerged from something of an early ‘crisis’ in fieldwork. The repeated appearance, presence and logos of ‘human rights’ demanded further thought, thought which has sent others, who do not want to wield interpretative powers to



support its truth claims, primarily into the realms of Derridean deconstruction<sup>1</sup>. Indeed, such ‘rights talk’ can encourage a range of theoretical excursions into the non-relational: the Lacanian Real, Levinas’s Other (Perrin 2004), for example<sup>2</sup>, perhaps resulting in a final dismissal of the speech in hand - its genealogy, its mode of enunciation, and the strategic field in which it is placed. How then might we embrace this talk, the repetition of service user and survivor ‘rights’ and the perpetuation that “it is a human rights issue”, even though we have spent many hours arguing otherwise?<sup>3</sup> If mental health law has indeed mutated into a post-disciplinary and, in many senses, a post ‘human(ist)’ form, then why the persistence of *human* right, this seemingly inalienable right of ‘human dignity’ enshrined in article one of the ‘Universal Declaration of Human Rights’ (United Nations 1948)?

In this chapter I want to propose that the intersection between human rights (law) and mental health (law) does indeed have a distinctive genealogy. Human rights are neither a precautionary liberal institution in an otherwise (radical) democratic society (see White 2001), nor simply an aporia which encourages the aforementioned departure in search for the *call* preceding ‘human rights’. Instead, I approach the enunciation and aporia of rights claims primarily as practical rather than philosophical questions. ‘Rights’, as we will come to see, repeat, but do so as part of agonistic struggles.

## 5.2. Biopolitics and human rights

There are, broadly, two understandings of human rights which can be found in the literature on biopolitics. For the sake of simplicity we can say that the first positions human rights positively as indicative of an expanding ‘life politics’, whereas the second demarcates human rights as symptomatic of a mounting ‘bare life’. Human rights as a form of ‘life politics’ follows a (post)Foucauldian biopolitics which seeks to understand recourse to ‘rights’ through a somatic register. It is outlined by Nikolas Rose (2001):

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<sup>1</sup> Which conceived as a post hoc *analysis* is necessarily flawed, for no logos is ever present but continually deferred (see M Rose 2004).

<sup>2</sup> For an excellent overview of alterity in post-structuralism see Dillon (2000).

<sup>3</sup> “It is a human rights issue” is taken from a placard appearing at the NO Force demonstration in September 2002.

“[H]uman beings in contemporary Western culture are increasingly coming to understand themselves in somatic terms - corporeality has become one of the most important sites for ethical judgements and techniques. Two modes of such a ‘biological ethics’ are particularly striking. On the one hand, human rights now have a biological dimension and, partly in consequence, have imagined a new kind of ‘species universality’. Legal, political and social rights were first linked to the capacities and obligations of individuals who were elements of a political association. But now it seems, each human being has such rights, simply by virtue of their existence as beings of this human kind. Individuals seem to have acquired a kind of biological citizenship - a universal human right to the protection, at least of each person’s bare life and the dignity of their living vital body ... it is now possible for human beings to demand the protection of the lives of themselves and others in no other name than that of their biological existence and the rights and claims it confers” (21).

Rose positions contemporary human rights claims as actualisations of forms of biosociality. Today, Foucault’s discussion on ‘the welfare state problem’ - in which the seeming need (and demonic possibilities) of satisfying social security alongside the demands for autonomy (rights) - collapses, as the proliferation of active subjects in post liberal societies themselves *define* vital rights (in line with market capitalism and numerous experts of the soma). Yet for a writer such as Giorgio Agamben (1998, 1999), recourse to ‘species universality’ and ‘biological citizenship’ is merely exemplary of an unfolding historical telos of the political. For Agamben, as we saw in chapter one, political life is proffered on an exclusion, one which he argues is today writ large through our contemporary *biopolitics*. We are all, by nature of being a biopolitical animal, bare life - a factor most profound through our recourse to human rights:

“In the achievement of inclusion in the name of universal human rights, all human life is stripped naked and becomes sacred. Perhaps in a very real sense we have all become *homo sacer*” (Dean 2004a: 28)<sup>4</sup>.

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<sup>4</sup>*Homo sacer* is a term Agamben has adapted from Roman law for the present. It refers to a limit concept of ‘sacred man’, “whom the people have judged on account of a crime. It is not permitted to sacrifice this man, yet he who kills him will not be condemned for homicide” (Agamben 1998: 71). For Agamben, we are all (potentially) *homo sacer*: “the *Muselmann* - like the body of the overcomatose person and the neomort attached to life-support systems today - not only shows the efficacy of biopower, but also reveals its secret cipher, so to speak its *arcantum*” (1999: 156).

For Agamben, biopolitics as the control of biological life is expanded to coincide with Schmidt's state of exception, one which does not come *after* the rule on the normal order of legal things but is the rule's suspension. Sovereignty is the borderline concept between the normal legal order and the exception - or rather, the sovereign is enacted through a decision on the exception to the norm<sup>5</sup>:

“[T]he exception does not subtract itself from the rule; rather, the rule, suspending itself, gives rise to the exception and, maintaining itself in relation to the exception first constitutes itself as a rule. The particular force of law consists in this capacity of law to maintain itself in relation to an exteriority” (Agamben 1998: 18).<sup>6</sup>

For Agamben, both the sovereign and the exception are outside the normal legal order. We shift from an exception to the law, towards our contemporary biopolitics where the exception *is* the law.

### 5.3 Agamben and the norm

Much of the tension between the two theses of 'bare life' and 'life politics' rests on interpretations of the biopolitical 'life' or rather the 'form of life' which becomes the force of politics and biopolitical struggles: “what brought life and its mechanisms into the realm of explicit calculations and made knowledge-power an agent of transformation of human life” (WK: 143). For Agamben, when life becomes bare life it is subjected to a

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<sup>5</sup> Sovereignty as a borderline concept emerges from a paradox in the rule of law, one which points to the fact that a sovereign does not need law to create law. Attention to the sovereign 'decision' which is in but also above the law is a concern for a number of authors ranging from Arendt to Schmidt to Derrida. For Agamben (1998), the rule of law has to instigate itself on an exception and it is the sovereign who decides or is rather decided upon through a state of exception.

<sup>6</sup> Interestingly, Fitzpatrick (2001) suggests this function is very close to Foucault's writing on Blanchot. Here the law is an unfulfilled outside, not negation but infinitely unattainable: “the law is not the principle or inner rule of conduct. It is the outside which envelopes actions, thereby removing them from all interiority ... How could one know the law and truly experience it ... without provoking it, without pursuing it into its recesses, without resolutely going even farther into the outside into which it is always receding?” (EW2: 158). Following Deleuze (1988), I prefer a reading which connects Foucault's writing on Blanchot with the 'limits' of political agonistic games of truth, exceptions to which, like Agamben's (1998: 166-180) discussion of 'the camp', may, indeed, manifest in material 'spaces of exception'.

sovereign decision on (political) death<sup>7</sup>. Unlike Rabinow and Rose's 'biosociality' (Rabinow and Rose 2003), bare life is a life with *potentiality not to be* rather than a *form* of (political) life<sup>8</sup>. Here, law, in biopolitical societies - once the exception has become the rule - applies itself in no longer applying. In decisions over the value of biopolitical life, concepts of legality and illegality make no sense, fact and law are indistinguishable and we are all *homo sacer* at threat of death<sup>9</sup>. Although saying little on particular legislation (particularly social law), following Agamben's analysis, both mental health law and human rights law would appear exemplary of the exception to the normal legal order of things, and the proliferation of social laws since the eighteenth century is merely indicative of the Arcanum of the political: the state of exception which today is becoming the rule. Yet, this does not allow any recognition to the notion that contemporary formations of biopolitics give rise to 'forms of life' which resist (e.g. biosocial individuals, see chapter three). Nor, does it acknowledge that biopolitics is indeed a power proffered on living beings as opposed to legal or political subjects, but it is one which, as I outlined in chapters one and three, coincides with a law which operates increasingly as a *norm*. It is to this understanding of the norm that I now turn.

#### 5.4 Biosociality and the norm

In an era of biopower there is an *immanent* logic between law and life, or rather, the law is less a *violence* external to life than a *logic* which "allows power to reflect upon its own strategies and clearly define its objects. This logic is at once the force that can take 'life'

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<sup>7</sup> Palladino (2003a) importantly outlines two concerns relevant here with respect to biopolitics and the life sciences. For Agamben (1998), the collapse between human and animal today (an unfolding from the obsession of distinguishing the 'anthropomorphic animal' begun by Aristotle) has finalized through an attempt to locate animal life in the inner human being. The distinction between *bios* and *zoe* wholly collapses into 'life' (Palladino 2003b 324). Further, following Aristotle, it is only the law which distinguishes between animal and human life; law's authority emerges only on threat of suspension and reversion to animal life. Hence, it is the sovereign decision on (biopolitical) death which is enacted today amidst our realms of biopolitics.

<sup>8</sup> A life with no potential is, for Agamben, those who are biologically 'alive' but juridico-politically 'dead' (see Agamben 1998: 160-165).

<sup>9</sup> Agamben (1998) writes: "The 'sovereign' structure of the law, its peculiar and original 'force,' has the form of a state of exception in which fact and law are indistinguishable (yet must, nevertheless, be decided on). Life, which is thus obliged, can in the last instance be implicated in the sphere of law only through the presupposition of its inclusive exclusion, only in an *exceptio*. There is a limit-figure of life, a threshold in which life is both inside and outside the juridical order, and this threshold is the place of sovereignty" (27).

in hand, creating the sphere of the bio-political” (Ewald 1990: 139)<sup>10</sup>. For Foucault, the juridical may well function as a code in biopolitical struggles, but the norm’s relation to life, through law, is not external but internal. This does not mean there are not exceptions to the norm, contrariwise the forms of life to which the norm refers are always escaping it (WK: 143). As Ojakangas (2005) explains this is not a law without content but a law without form, an ‘elastic law’ (17):

“In the case of the norm, these exceptions are not, however, taken out (*ex-capere*), but taken in (*in-capere*). Exceptions are nothing but extensions of the norm ... This is so because the norm is *not* transcendent as regards the forms of life - the synthetic notion of life excludes any transcendence - but is derived from them, that is, from the multiplicity of exceptions. Agamben’s statement that the law must first of all create the sphere of its reference in real life and make that reference regular, does not apply to the norm” (Ojakangas 2005: 4, my emphasis).

For advocates of biosociality - through the logic of the norm, and now a form of vital normativity - biopower does not reduce life to bare life but multiplies life and optimises forces (Ojakangas 2005). However, as Dean (2002b) suggests, we might be careful here not to subsume the logic of the norm into productive (and positive) forms of neo-liberal governmentalities, and consider further the relations between ‘governing through freedom’ and the ‘power of life and death’ (see also section 3.3). The norm as Foucault (see AB), following Canguilhem, understands it, emerges from the case of the abnormal - it is a technical and a political concept (see section 1.11). This factor has given forth a different caesura when thinking through political norms and exceptions, not between a norm and a vital ‘exception’ which continually escapes it, nor, simply, between bare life and political life, but, in modern (nationalist) biopolitics, between that which ‘threatens’ the species body (see SD, WK) and, in (neo)liberal governmentalities, that which refuses to or cannot be optimised (Dean 2002a, 2000b, Valverde 1996). Here the decision on the exception to optimising biopolitical life and/or governing through freedom is, in the case

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<sup>10</sup> As I outlined in chapter one with relation to Ewald’s (1990) work, a norm is not a value but a rule of judgment along with the means to produce that rule: “The kind of law which is compatible with normalizing practices is one in which laws are produced with reference to the particular society it claims to regulate and not to a set of universal principles. For Ewald [1990] this kind of law no longer emanates from the sovereigns will but from the collectivity without being willed by anyone in particular” (Dean 2004b: 120).

of the former, through the coexistence of the nation-state and biopolitical racism (see chapter one), and in the latter, through a series of foldings which turn the injunction to 'govern through freedom' into binding (authoritarian) obligations (Dean 2002a). If, then, we accept the current turn to forms of biosociality and micro-biopolitics, then we need to ask how we configure, if at all, the caesura between the human and inhuman which Foucault posits at the end of his 1976 lecture series *Society Must be Defended* (see chapter one). If the human and physical sciences are increasingly being formed on the basis of a vital normativity then it may be worth looking to contestations concerning genetics, psychotropic drugs, and the government of madness in thinking through exclusions to forms of biosociality. Rather than simply dismissing Agamben, then, I want to use the tension between 'bare life' and 'life politics', along with my more subtle account above, to think through imbrications of human rights, sovereignty and biopolitics during the proposals. Contrary to invocations of 'vital rights' and similar to Foucault's proposition that one might focus on points of 'resistance' in order to understand power strategies (see section 1.1), we can, I believe, focus on political games of truth which bring forth limits in current invocations of 'human rights' (see Campbell 1998)<sup>11</sup>. In the following, I do this through two interconnected foci. Firstly, I draw on Agamben's writings specifically on human rights, which arguably contribute to thinking through some of our 'limit figures' in human rights law: the suspected terrorist, the refugee and, my focus here, the 'dangerous and severely mentally disordered'. Secondly, with respect to consultation responses from Mental Health Alliance (MHA) and NO Force (criticisms which were solidified in the Joint Committee on Human Rights [JCHR] twenty-fifth report), I want to suggest that one may 'fight' through a biopolitical 'right' by nature of being a 'service user' or 'survivor', but add that this 'right' is also posited through a universal right of humanity, a right premised by nature of being human<sup>12</sup>. I want to suggest that in spite, or rather because, of the problematisation of dangerousness in

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<sup>11</sup> In speaking of limits, as I have already emphasized in section 1.1, I do not seek a form of neo-Kantian cosmopolitanism - as we see in much human rights literature - whereby the limit conditions of the subject enable the enunciable experience of what constitutes a human right. That is, I do not invoke the use of 'human rights' as exemplary of forms of human experience. Rather, if we retain an analytic of finitude it is in how humans are made as subjects and objects of political contestation, not 'modern man' but a being who puts his or her existence in question.

<sup>12</sup> I make reference to the JCHR report because it became the primary reference point for public debate on the draft Mental Health Bill.

mental health law - one in which the subject cannot be easily positioned - forms of truth from MHA and NO Force seek to secure the thresholds of the current *humanitas* of 'human rights'. Before turning to Agamben, I want to return to, and critique in light of my argument, Foucault's thoughts on (human) rights claims.

### 5.5 Foucault and 'rights'

In attempting to work through the relationship between mental health and human rights genealogically, it is worth looking back on Foucault's shifting thoughts on rights, beginning with his comments on the 'blind alley' of rights claims towards the 'right not to be governed thus'.

The former understanding purports to the heterogeneous relationship between a "public right of sovereignty and a polymorphous mechanics of discipline" (SD: 38), in which recourse to (human) rights *potentially* limits us at certain frontiers (39-40). This leads Foucault to argue that the 'old right of sovereignty' will not be able to limit the effects of discipline forever, and that we should search for a new form of right, "both anti-disciplinary and emancipated from the principle of sovereignty" (40). Foucault is not simply *against* rights; rather, like his understanding of power, he is critical of those who ground rights in a *legitimation* thesis. Rights are to be created through invention and struggle (Gordon 2002: xxiv).

It is such an 'inventive' right which has been elaborated by Keenan (1987, 2000). For Keenan, rights are not themselves present; we can argue they are enunciated by political techniques but they are also without foundation:

"For me, calling something a 'right' means: precisely because I don't have and cannot take for granted something that is mine as a naturally given possession, precisely because it is not here now, I claim it. That is a claim without any ground or basis in the present. It takes place in public, but the public is the space of appearance, of persuasion, of force and argument - not of presence and grounds. That's what a claim is: baseless, in this sense" (2000).

For Keenan, the aporia of rights claims in disciplinary societies is, *at once*, a problematisation of rights yet simultaneously proffered on a right to come. Or, to put it another way, rights are grounded in ‘nothing’, but simultaneously affirm a (not yet) ‘new right’ (Keenan 1987, Osborne 2003).

This is the very political moment, or perhaps movement, of rights; there is no way out of rights, but this does not mean the present ‘right’ is self-identical<sup>13</sup>. A similar argument is put forward by Ivison (1998a, 1998b), who conceives rights as tactics imbued within political strategies. He understands rights as historico-political forms of positive struggle which do not presuppose the jurist, but rather the subject in battle who ‘awakens the blood which has dried on the codes’, to paraphrase Foucault<sup>14</sup>. These are political rather than philosophico-juridical rights in that they use a judicial concept in an *unjuridical* way. For Ivison (1998b), “[a]ll rights talk, whether singular or natural, is to some extent tactical, for it is always a case of using it to pre-empt and/or facilitate a possible action or range of actions” (142). However, he also argues that there must be a wider background acceptance that right is an effective tactic to invoke:

“The comparative picture Foucault draws between these ‘singular’ rights and the natural or human rights of the jurist rest in large part on the account of self presupposed in each case. It also relies heavily on Foucault’s assertion that representations of practical conflict - and ultimately war - pattern social and political relations, and that notions of strategy and tactics are thus the most appropriate instruments of analysing relations of power” (143)<sup>15</sup>.

This, as I have suggested in chapter one, points to a limit of utilising the language of tactics for rights claims - which for Foucault were situated in the sixteenth-eighteenth century - with respect to human rights claims in biopolitical struggles today.

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<sup>13</sup> Keenan, perhaps unsurprisingly, introduces Derrida into his Foucauldian trajectory.

<sup>14</sup> Rights, in the sense of strategy in *Society Must be Defended*, are, in many senses, like the purpose of genealogy itself: a past imagined, manifest as a right for a future to come. The argument is to embrace rights, with an understanding that rights can be seized for any purpose and that there is always ‘the distant roar of battle’: “Rules are empty in themselves, violent and unfinalised; they are made to serve this or that, and can be bent to any purpose. The successes of history belong to those who are capable of seizing these rules” (NGH: 378).

<sup>15</sup> Rights here play a similar role in their singularity to that of Deleuzian “metamorphosis machines in the law” (Patton 2000: 20). In Foucauldian language, this means that political creativity emerges, not from established rights, but that which is legally problematic and brings established rights into question.



The second and related understanding of right is to be found amidst Foucault's later *Parrhesia* lectures (FS) on the 'art of telling the truth', which is emulated today as 'the rights of the governed' - a historico-critical attitude traced back to the Christian pastoral of the fifteenth to seventeenth century (see EW1: 303-319). 'The rights of the governed', unlike the rights of 'man', entail a critical dialogical attitude between governors and governed and provide a *positive* complement to political agonism. We must demand, states Foucault, "the *parrhesia* (free speech) of the governed, who can and must question those who govern them, in the name of knowledge, the experience they have, by virtue of being citizens, of what those who govern do, of the meaning of their action, of the decisions they have taken" (Foucault 1988 cited in Bell 1996: 86-87). As many commentators have noted (see, for example, Campbell 1998, Gordon 2002, Keenan 1987), it is the 'rights of the governed' which instils Foucault's defence of the Vietnamese boat people in a statement delivered at an international conference in Geneva in 1981. Here Foucault outlines an international citizenry "with no other grounds for speaking, or for speaking together, than a shared difficulty in enduring what is taking place ... Who appointed us then? No one. And that is precisely what constitutes our right" (EW3: 474). He continues: "Amnesty International, Terre de Hommes, and Médecins du monde are initiatives that have created this new right - that of private individuals to effectively intervene in the sphere of international policy and strategy" (475). Here human rights are not grounded in metaphysical values but are initiated. They are "the initiation of the right to initiate, the intervention of a right to intervene, where there is no one" (Keenan 1987: 23).

Today, however, we might turn this around; for those who 'have no rights', 'human rights' are often (explicitly) framed in terms of a non-politicised humanitarian intervention. Further, the 'rights of the governed' may become less dialogical once the 'governed' become an 'interest group', tied to forms of self-knowledge, in a politics of consensus (see *infra*). It is the genealogical stakes imbued by initiating 'human rights' in such fixed relations of force which Foucault is suggestive of in a late interview:

“Humanism may not be universal but may be quite relative to a certain situation. What we call humanism has been used by Marxists, liberals, Nazis, Catholics. This does not mean that we have to get rid of what we call human rights or freedom, but that we can’t say that freedom or human rights has to be limited at certain frontiers ... What I am afraid of about humanism is that it presents a certain form of our ethics as a universal model for any kind of freedom” (1988a: 15).

## 5.6 Human rights and the draft Mental Health Bill 2002

“ECHR Article 5, I (e):

1. Everyone has the right to liberty and security of the person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:...

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of *persons of unsound mind*, alcoholics or drug addicts or vagrants; ...

ECHR Article 8:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is *necessary in a democratic society in the interests of national security*, public safety or the economic well-being of the country, for the prevention of disorder or crime, *for the protection of health or morals*, or for the protection of the rights and freedoms of others” (European Convention on Human Rights, my emphasis).

Following the exclusions to Article 5 (‘right to liberty’) and Article 8 (‘right to private life’) outlined above, numerous lawyers, academic readers in law and psychiatrists have sought to underline that grounding opposition to mental health law through a principle of ‘convention compliance’ with the Human Rights Act 1998 is a relatively ineffective exercise:

“The European Convention in Human Rights is highly discriminatory: Article 5.1e. lumping together those of unsound mind with vagrants, alcoholics and drug addicts as people it is perfectly proper to lock up without conviction of a crime, without a trial and without even a suggestion of a threat to anyone. It is worth noting in my view, that it is only because the Convention (and so the Human Rights Act) so completely fails the mentally ill that we now face this further, what I can only describe as legalized assault on a section of

vulnerable members of our society” (Dr Anthony Zigmond, Make Up Your Mind conference 2002)<sup>16</sup>.

“Department of Health officials describe the Mental Health Bill as being ‘Convention Compliant’ ... achieving convention compliance is not difficult. It requires the provision of only relatively basic safeguards for the individual rights of psychiatric patients. Department of Health officials talk of ‘a new Human Rights agenda based on communitarian ideas’ - that is the community should have strong rights to protection against the depredations which might be visited upon them by mentally disordered people ... The new human rights agenda involves reading up the state’s positive duty under Article 2 to uphold the public’s right to life ... At the same time the new human rights agenda involves reading down the rights of psychiatric patients under Article 5 to protection against arbitrary detention and under Article 8 to protection or arbitrary use of compulsory treatment” (Fennel 2004: 3).

Despite such criticisms, the question of whether the draft Bill was ‘convention compliant’ persisted throughout the campaign from MHA and NO Force. Such fervency for the Human Rights Act 1998 is perhaps indicative in the very ‘paradox’ manifest in the terminology of human rights: between balancing the rights of individuals (from *the state*) and the right (of *the state*) to defend individuals from other individuals. This paradox was played out in the debate surrounding the lack of ‘principles’ outlined on the face of the Bill<sup>17</sup>, the Government opting for just three, whereas the Mental Health Alliance opted for ten<sup>18</sup>. In defending the lack of principles on the face of the 2002 draft Bill and the subsequent 2004 Bill (to which the following quote refers) Rosie Winterton (Minister for Health) stated:

“If we were to have the principles on the face of the Bill, I would want them to reflect the balance between the need for patient autonomy and the principles of least restriction and so on, but balancing that with the right of society as well in

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<sup>16</sup> Make Up Your Mind was a collaborative conference between the Royal College of Psychiatry and the Law Society (both members of MHA) on the Reform of the Mental Health Act and the proposed Mental (In)capacity Act.

<sup>17</sup> Clause 1 of the draft Mental Health Bill provides that a code of practice must accompany the new Act and “set out the guiding principle for all decisions concerning the use of compulsion” (Department of Health 2002b: 2 para. 8).

<sup>18</sup> The MHA’s proposals include: respect for autonomy; least restrictive and least invasive alternative; compulsion as a last resort; non-discrimination; reciprocity and non-discrimination. The Department of Health opt for just three: (1) patients to be involved in the making of decisions; (2) decisions are made fairly and openly; and (3) the interference to patients in providing medical treatment to them are kept to the minimum necessary to protect their health or safety of other persons.

terms of public [safety] ... If they were to be on the face of the Bill, I just would want to be clear that it would be about reflecting that balance that runs throughout the Bill between those two very sensitive issues” (House of Lords and the House of Commons 2004: 21-22 amendments original).

This points to a further paradox that, although human rights seemingly enhance a form of ‘negative liberty’ from the ‘state’, even a form of ‘international citizenship’ (if they enact the ‘rights of the governed’), it is only the ‘state’ or ‘public authorities’ in the case of the Human Rights Act 1998 which concedes that it has violated rights, hence implying that only those subjected to public authorities can ‘benefit’ through their subjection:

“It may be noted that although *The Universal Declaration of Human Rights* begins by asserting ‘the inherent dignity’ and ‘the equal and inalienable rights of all members of *the human family*’, it turns immediately to the state. In doing so it underlines the fact that the universal character of the rights-bearing person is made the responsibility of sovereign states, each of which has jurisdiction over a limited group within the human family. This limited population -- as Foucault noted -- is at once the object of the state’s care and the means of securing its own power” (Asad 2000: para 13).

### **5.7 Human rights and ‘limit concepts’**

It is Giorgio Agamben (1998, 2000), following Hannah Arendt (1973), who offers one of the most compelling engagements with the paradoxes of contemporary human rights, a paradox which manifests through an inherent failure to ‘protect’ those most needing of ‘rights’. Following Arendt’s (1973) discussion in Part II (Imperialism) of *The Origins of Totalitarianism*, Agamben (2000) displays this paradox, beginning with the ambiguity between ‘man’ and ‘citizen’ in the 1789 *Declaration of the Rights of Man and Citizen*:

“In the system of the nation-state, so called sacred and inalienable human rights are revealed to be without any protection when it is no longer possible to conceive of them as rights of the citizens of a state. This is implicit, after all, in the ambiguity of the very title of the 1789 *Declaration des droits de l’homme et du citoyen*, in which it is unclear whether the two terms are to name two distinct realities or whether they are to form, instead, a hendiadys in which the first term is actually always already contained in the second” (20).

It is this ambiguity which leads Arendt (and now Agamben) to critique any notion that rights are declarations of eternal or metajudicial values which bind legislators, and rather to consider them through their historical function in the formation of modern nation-states. Elaborating on Arendt, the birth/nation foundation of rights is at once an inscription of bare life in the 'nation':

“Declarations of rights represent the originary figure of the inscription of natural life in the juridico-political order of the nation-state. The same bare life that in the ancient regime was politically neutral and belonged to God as creaturely life and in the classical world was (at least apparently) clearly distinguished as *zoē* from political life (*bios*) now fully enters into the structure of the state and even becomes the earthly foundation of the state's legitimacy and sovereignty ... The fiction implicit here is that *birth* immediately become *nation* such that there can be no interval of separation [*scarto*] between the two terms” (Agamben 1998: 127-128).

In the 1789 declaration, the foundational ('natural') 'rights of man' [sic] vanish into the figure of the citizen whom preserves these rights in the nation state: “The nation ... thus closes the open circle of man's [sic] birth” [128]). What lies at the basis of nation states in the nineteenth and twentieth centuries, then, is not 'man' as a free political subject but bare life (i.e. born into a nation). This relation between birth and nation, however, enters into a crisis in the period following the First World War, whereby the link between the two is no longer able to perform a legitimation function inside the nation-state. This has two implications. Firstly, as we have seen, the relation between birth and nation creates an investment in (bare) life itself, which subsequently discriminates between active and passive rights; citizen and man; and between authentic life and life with no value. Here the appearance of Nazism and fascism, in which 'natural life' becomes the exemplary place of the sovereign decision, needs to be situated - however paradoxical it may seem - in the biopolitics of national sovereignty and declarations of rights. Secondly, and in response to Nazism and fascism, 'the rights of man' which once made sense as presupposition to the rights of the citizen are now used outside of citizenship (for example, in humanitarianism and universal human rights claims):

“The separation between humanitarianism and politics that we are experiencing today is the extreme phase of the separation of the rights of man from the rights of the citizen. In the final analysis however, humanitarian organisations - which today are more and more supported by international commissions - can only grasp human life in the figure of bare or sacred life, and therefore, despite themselves, maintain a secret solidarity with the very powers they ought to fight” (133).

This does not exemplify a mere restriction of the recourse to rights in democracy (see for example Mouffe 2000) but has a biopolitical meaning. For Agamben (1998), as we have seen, one main characteristic of modern biopolitics is the need to distinguish what is inside from what is outside, the line between political and non-political life. It is this threshold which is continuously redrawn today, in decisions (often framed in terms of human rights) between life and (political) death:

“Once *zoē* is politicized by declarations of rights, the distinctions and thresholds that make it possible to isolate a sacred life must be newly defined. And when natural life is wholly included in the polis - and this much has, by now, already happened - these thresholds pass, as we will see, beyond that dark boundary separating life from death in order to identify a new living man, a new sacred man” (131).

The paradox for Arendt and Agamben is that those most needing of rights, those who are truly stripped of everything except the fact they are ‘human’ (or bare life), are unable to exercise them. For Arendt, the refugee appearing outside the fiction of national citizenship is truly ‘the man of rights’ (Agamben 1998: 134). For Agamben, the refugee - one who brings forth the division between birth and nation, breaking the association between bare life as simply a presupposition to political life - is a ‘limit concept’ who puts the originary fiction of modern state sovereignty in crisis<sup>19</sup>.

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<sup>19</sup> Agamben (1998) writes: “The concept of refugee must be resolutely separated from the concept of the ‘human rights,’ and the right of asylum ... must no longer be considered as the conceptual category in which to inscribe the phenomenon refugees. The refugee should be considered for what it is, namely, nothing less than a limit concept that at once brings a radical crisis to the principles of the nation-state and clears the way for a renewal of categories that can no longer be delayed” (134). The refugee for Arendt, and now for Agamben (albeit with different conclusions), is archetypal for this new category of political thought.

Following Agamben's framework, seeking recourse to human rights to contest the draft Mental Health Bill appears as merely the culmination of the very exception which has now become the rule - the politicisation of *zoē* (bare life). Critically, then, the exception 'unsound mind' is something of a limit-concept which brings into question the principles of the formation of national citizenship. Like Foucault's 'madman' in the *Ship of Fools*, those of unsound mind appear an irreducible (and now juridical) outside cast inside and excluded through the asylum or psychiatric knowledge (MC: 7). As a limit figure, 'unsound mind' suggests an other to the *humanitas* of human rights, which even in their constitution found themselves on an exception - those who 'threaten' the species body. This caesura in 'human rights', which cannot simply be overcome, embodies the very paradox of the ethical reasoning which legitimates them: not all are guaranteed rights by nature of being human<sup>20</sup>.

However, although this argument may be compelling, it is somewhat conclusive. Agamben denies any agonistic understanding of those who protest in the name of 'human rights', who *act as political citizens* through, for example, the political demonstration (see chapter four). What Agamben does suggest, however, is that there are caesuras within the concept of 'human rights' itself, a factor evident in the term 'unsound mind'. What he does not investigate is how we might think through these caesuras beyond alluding to something of an *arbitrary* sovereign decision. In the following I will deal with the notion of agonism first, followed by a genealogical focus on the caesuras in the concept of 'unsound mind'.

## 5.8 Human rights and agonism

“[T]he Rights of Man are the rights of those who have not the rights they have and have the rights that they have not” (Rancière 2004: 302).

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<sup>20</sup> For Agamben (1999), for any ethical reasoning to exclude persons on basis of an inhumanity, no matter how unpleasant or difficult, cannot claim to be an ethic (64). Connolly (1999) also focuses on some of the most interesting ethical cases which “arise when people suffer from injuries imposed by institutionalized identities, principles and cultural understandings; when those who suffer are not entirely helpless but are defined as threatening, contagious, or dangerous to the self-assurance of hegemonic constituencies; and when sufferers honour *sources* of ethics inconsonant or disturbing to these constituencies” (50-51).

Through agonistic activity rights may not be *heard* but they can be *enacted*: to act as if one has the rights which, alongside that action, the constitution denies<sup>21</sup>. Rights, like power, only become as they are put into action or rather, in action. With respect to the exclusions to Articles 5 and 8 individuals may *demonstrate* that they are denied the rights which they subsequently enact - a facet close to the understanding of claiming rights that Keenan (1987) gave earlier. In the agonistic game certain political frontiers, particularly in the *humanitas* of human rights, are not organised beforehand but produced in political action:

“The Declaration of Rights states that all men are born free and equal. Now the question arises: What is the sphere of implementation of these predicates? If you answer as Arendt does, that it is the sphere of citizenship, the sphere of political life, separated from the sphere of private life, you sort out the problem in advance. The point is, precisely, where do you draw the line separating one life from the other. *Politics is about that border*” (Rancière 2004: 303, my emphasis).

Contrary to Agamben, political *action* means that biopolitical (or bare) life may itself claim a ‘right to right’ in politics by nature of a doing. We might go further to say that it is only amidst the demonstration that something of a gap opens between the problematisation of rights and the right claimed by acting politically - as in the declaration that ‘it *is* a human rights issue’; ‘live *and* let live’; ‘we *are* the public’<sup>22</sup>. Between the techniques of contestation and agonistic struggle, this is ‘the freedom’ which occurs on the interstice, a freedom which, like the ‘lightening flash’ of transgression, can only be sought in action<sup>23</sup>.

However, we might be wary to push this point too far. Although Arendt and Agamben presuppose a boundary of political community in theory - a facet I have questioned -

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<sup>21</sup> Rancière invokes the famous statement made by Olympe de Gouges, during the French Revolution; if “women were entitled to go to the scaffold, they are entitled to go to the assembly” (303).

<sup>22</sup> “Live and let live” appeared on a hand written A4 banner at the September NO Force March; “We are the public” comes from a speaker at the ‘picnic’ in Geraldine Mary Handsworth Park after the NO Force March.

<sup>23</sup> In discussing Blanchot, Foucault states that there is not the law and then transgression, but rather transgression brings forth the law. Law itself is invisible: “how can one see its invisibility unless it has been turned into its opposite, punishment, which, after all, is only the law overstepped, irritated, beside itself?” (Foucault cited in Deacon 1998: 134).



Rancière (2004) states that it has become an actuality given our contemporary liberal democratic ‘politics of consensus’. It is the identification of the ‘rights of man’ [sic] with a subject or interest group which results in their depoliticisations, and their biopolitical exclusions. Abstract rights are tentatively turned into ‘real’ rights attached to ‘real’ identity groups who have a recognised place in the global population<sup>24</sup>. As Rancière explains:

“[T]he political space, which was shaped in the very gap between the abstract literalness of the rights and the polemic about their verification, turns out to diminish more and more everyday. Ultimately those rights appear actually empty” (2004: 307).

This results in a dual outcome. Firstly, the ‘rights of humanity’ become humanitarian (non-political) rights (rather than an agonistic right of dissensus), as the rights of those who have no rights in a political consensus. Secondly, for those who do have ‘rights’, ‘human rights’ become the rights of those (of unsound mind) who are ‘mentally disordered’ (usually always ‘balanced’ against the rights of the public). The ‘mentally disordered’ have rights under Article 5.4 of the ECHR, which reads: “Everyone who is deprived of his [sic] liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful”<sup>25</sup>. Indeed, the limit figure of ‘unsound mind’ was somewhat ratified following the case of *Winterwerp* (*Winterwerp v Netherlands*) in 1979 in which The European Court of Human Rights ruled:

“In the Court’s opinion, except in emergency cases, the individual concerned should not be deprived of his liberty unless he has been reliably shown to be of ‘unsound mind’. The very nature of what has to be established before the competent national authority - that is, a true mental disorder - calls for objective medical expertise. Further, the mental disorder must be of a kind or degree warranting compulsory confinement. What is more, the validity of

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<sup>24</sup> This deduction of democracy to ‘interest groups’ shares some similarities the majoritising of minoritarian politics outlined in chapter three.

<sup>25</sup> A similar point with respect to Agamben’s discussion on ‘the refugee’ is displayed by Fitzpatrick (2005) who writes: “‘the refugee’ does not seem to be in a situation of simple ‘abandonment’ where something is included solely through its exclusion,’ ... The refugee is inclusively recognized as part of the ‘human’ community through international and national laws of some effectiveness” (69).

continued confinement depends upon the persistence of such a disorder” (571)<sup>26</sup>.

For Foucault in *Madness and Civilisation* (MC) the ‘madman’ (unsound mind) is subsequently given the language of *mental illness* via the clinician<sup>27</sup>. My focus in the following is to consider the limits of the rights of those who have rights by nature of ‘mental disorder’ or ‘mental illness’.

### 5.9 The rights of those who have rights (patients’ rights)

Writing nearly twenty years ago, Nikolas Rose (1986) touches on some of these aforementioned issues, with respect to patients rights, in his focus on forms of contestation leading up to the 1983 Mental Health Act. His argument culminates in the suggestion that contestation surrounding mental health law seems to shift between a ‘new legalism’ (framed in terms of liberty and rights) and welfarism (framed in terms of therapeutic justice provided by the medical profession), both of which contractualise a ‘subject’ of mental health law<sup>28</sup>. In leading up to the 1983 Act it was argued by Lawrence Gostin, the then legal director of Mind, that legal means were required to strengthen

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<sup>26</sup> Cited in Sugarman (2002: 571). The Human Rights Act 1998 (HRA) which ratified the European Convention on Human Rights (ECHR) into domestic law in 2000 is a self proclaimed “living instrument”; inasmuch that, with respect to Article 5, legal judgments are not merely driven by case law but are to be actively interpreted in light of ‘societal attitudes’ and shifts in ‘medical treatment’. The Winterwerp case explains this as follows: “The convention does not state what is to be understood by the words ‘persons of unsound mind’, this term is not one that can be given a definitive interpretation ... it is a term whose meaning is continually evolving as research in psychiatry progresses, an increasing flexibility in treatment is developing and society’s attitude to mental illness changes, in particular so that greater understanding of the problems of mental patients is becoming more wide-spread” (cited in Sugarman, 2002: 570).

<sup>27</sup> Foucault writes: “In the serene world of mental illness, modern man no longer communicates with the madman: on one hand, the man of reason delegates the physician to madness, thereby authorizing a relation only through the abstract universality of disease; on the other, the man of madness communicates with society only by the intermediary of an equally abstract reason which is order, physical and moral constraint, the anonymous pressure of the group, the requirements of conformity. ... The language of psychiatry, which is a monologue of reason about madness, has been established only on the basis of such a silence.” (MC: xii-xiii).

<sup>28</sup> Rose (1986) summarizes the ‘contractualisation of subjectivity’ thus: “the dispute between legalism and psychiatry is possible precisely because they operate with commensurable conceptions of their subjects. They share a conception of the person as consistent in thought and emotion, unified in capacities and beliefs, autonomous in the sense of free from interventions from alien forces or spirits, and having the capacity and responsibility for personal choice ... Whilst civil libertarians claim the self evidence of such a subject as the basis in nature for their doctrines of rights, psychiatry utilizes such a conception as the reference point for its ascriptions of insanity” (201).

'patients rights' against the medical profession. The positing of 'patients rights' and 'rights to services' against 'therapeutic justice' emerged as a response to the previous 1959 Mental Health Act which was premised on a model of 'preventative medicine' inaugurated in the 1930s<sup>29</sup>. In the 1959 Act 'discretionary authority' with respect to compulsion was given over to the medical profession due to "the belief in the objectivity and scientificity of specialist knowledge" (Rose 1986: 180). This form of 'therapeutic justice' was critiqued, not least with respect to the rule of law, but also through the notion of entitlement. Psychiatric discretion, it was argued, was akin to charity or benefice as it removed access to services by right<sup>30</sup>. The aim of the "new legalism" (Rose 1986: 189), as it became known, was to develop non-medical forms of treatment away from hospital. This was to be achieved through increasing the powers of independent social workers in the compulsory admissions procedure - who would seek alternatives to inpatient care and have increased powers to contest medical opinion concerning the necessity for compulsion ('the least restrictive alternative'). Decisions on the legitimacy of compulsory detention and treatment were further to be legalised by expanding the use of mental health tribunals to appeal decisions (MHRTs consisting of a legal representative, a lay person and a psychiatrist):

"Neither unquestionably scientific, nor trustworthily humane, the clinical mandate of psychiatry was to be subordinated to a judgment made in terms, on the one hand, of constitutional rights and, on the other, of lay beliefs and values" (Rose 1986: 188).

Many of these proposals bore fruit. The social workers' role in admissions was made obligatory and MHRTs were fully implemented and given increased powers to discharge. Patients on section were given 'rights to (treatment) safeguards', and 'rights to certain

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<sup>29</sup> The model of preventative medicine leading to the 1959 Mental Health Act argued that preventative measures with respect to infant mortality, tuberculosis and sexual disease could be equally applied to mental disorders, the onus being on informal admission, outpatient treatment and a reduction in compulsion.

<sup>30</sup> Gostin sought to establish a 'right to treatment' in the 'least restrictive' setting. This would incorporate developing community services and legal entitlement to standards of provision (reciprocity). This alternative was framed through an 'ideology of entitlement' (Laing 2000) with 'dignity' and without 'stigma'.

standards of care' (reciprocity). Just glancing over the common concerns of MHA (see appendix fig.4) it seems that little has changed in terms of 'libertarian rights'.

For legal academics, writing during the reforms, it is considered that we are even further away from Gostin's proposals than we were pre the 1983 Act:

"The government's proposals do very little to empower patients and give them positive rights and entitlements to services. ... The proposals ... suggest that the government is moving away from the 'new legalism' of the 1980s and reverting to a system grounded in the traditional legalism of the 1890s. This will not improve the rights and status of mentally ill patients and demonstrates that we are still a very long way from turning Gostin's 'ideology of entitlement' into a reality" (Laing 2000: 249).

However, there are important mutations in mental health law today. For example, the 'least restrictive alternative' is positioned by the Department of Health as incorporating compulsory treatment in the 'community' (as opposed to in hospital), a facet widely criticised by NO Force and MIND<sup>31</sup>. Secondly, the suggestion that compulsory detention breaches the rule of law is today rarely posited as due to the power of 'medical discretion' of psychiatrists but with respect to the 'inexact science' of risk prevention measures, along with the dangers of premising a bill on 'public safety'<sup>32</sup>. In the following, I seek to expand my focus on the limits of human rights through the 'rights of the mentally disordered' by focusing further on these contemporary critiques of the proposals.

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<sup>31</sup> Although to a lesser degree in MHA as a whole, who have argued that CTOs are acceptable if everything 'is in place' (i.e. good community facilities).

<sup>32</sup> Lawrence Gostin, writing in the Guardian newspaper (Thursday September 12<sup>th</sup> 2002) during the current reforms states: "[T]he proposals undermine the human rights approach that many advocates including myself, then legal director of Mind, sought to achieve through the current [1983] legislation. ... This was the era of the 'patients rights' movement, which strongly influenced the tenor of the 1983 act. By contrast, the impetus for the draft legislation is protection of the public and retrenchment of human rights. Responding to highly publicized, unusual cases of violence by people with mental disabilities is not a good way to create law ... The raison d'être for civil commitment is that the person benefits from treatment. If there is no benefit, involuntary admission to hospital is akin to preventive detention. Preventive confinement unfairly restricts the liberty of individuals, not because of a violent act they have committed, but because they may commit violence in the future. It is for this reason advocates of human rights and civil liberties distrust preventive detention. The draft bill will not provide better public protection but will diminish the rights and status of people with mental disabilities".

## **5.10 Liberty: restoring (medical) expertise**

“We are ... concerned that a provision of the [current] 1983 [Mental Health] Act expressly preventing detention ‘by reason only of promiscuity or other immoral conduct, sexual deviancy or dependence on alcohol or drugs’ is omitted from the draft Bill. The history of the twentieth century demonstrated that psychiatry is capable of being abused: Nazi Germany and the USSR were probably not the only countries in which socially or politically unacceptable behavior was regarded as a manifestation of a ‘disorder of mind ... which results in an impairment or disturbance of mental functioning’ (to use the words of clause 2(6) of the draft Bill) and treated accordingly ... We recommend that an exclusion should be included when a Bill is introduced to Parliament, to prevent mental health professionals becoming the guardians of morality in a way that could lead to a violation of Articles 8 (right to respect for private life) and 10 (right to freedom of expression) of the ECHR” (Joint Committee on Human Rights report on the draft Mental Health Bill: 11<sup>th</sup> November 2002).

The quote above reflects concern over the removal of exclusions from the 1983 Act, an opinion reflected in the numerous press releases which emerged shortly after the Joint Committee’s report. The example below is from MHA:

“Human rights in danger, Alliance and MPs tell government

The Mental Health Alliance today (11 November) urges the government to act on the findings of the Joint Committee on Human Rights report of the draft Mental Health Bill.

The report, published today, which has thirteen concerns, states that the draft Bill would allow health professionals to ‘act as guardians of morality as well as health.’

Alliance chair Paul Farmer says: ‘The Alliance has warned all along that the Bill will not comply with the Human Rights Act. We welcome the committee’s findings and share their concerns that the draft Mental Health Bill could be a threat to human rights, especially the widening of treatment criteria for mental illness’ ...” (Mental Health Alliance press release 12<sup>th</sup> November 2002).

The Human Rights Act 1998 incorporates the notion of ‘declarations of incompatibility’, a facet which has been incorporated into numerous aspects of the draft Bill itself

(Woodhouse 2002)<sup>33</sup>. It is this question of ‘convention compliance’ which spurred dispute with respect to the ‘broadening criteria for compulsion’:

“It may well breach human rights law to detain a person or treat them compulsorily in the community only on the basis of a diagnosis of personality disorder and a risk assessment, if they have committed no offence, if compulsion would not be of therapeutic benefit and if they are not before the courts on a criminal charge” (Mental Health Alliance 2002 Briefing on Proposed Mental Health Act Reforms: 6).

“The Bill should specify the need for objective evidence of mental disorder, as is required under human rights law. We think that this is important especially in the context of stereotyped assumptions made about certain groups. It will be vital if current exceptions are removed” (Mental Health Alliance 2002 Briefing on Proposed Mental Health Act Reforms: 7).

The main point of contention with respect to human rights concerned the ‘definition of mental disorder’ and ‘conditions for compulsory power’ (see appendix fig.4). Taken together the grounds for compulsion were conceived as being made much ‘broader’ with respect to, at least, four areas. Firstly, removal of the requirement for hospital admission for compulsory treatment. Secondly, removal of the ‘treatability’ criteria. Thirdly, the ‘least restrictive alternative’ need not come into play if an individual was considered a danger to others<sup>34</sup>. Finally, as we have seen in the opening quote to this section, the

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<sup>33</sup> In 2001 the 1983 Mental Health Act was deemed ‘incompatible’ by the courts with respect to the procedures for disputing compulsion through the mental health review tribunal (MHRT). The 1983 Act put the onus on the patient to demonstrate they were no longer suffering from a ‘mental disorder’ warranting detention. This was deemed incompatible with Article 5, under which it was not for patients to demonstrate they were no longer warranting detention but for the tribunal to provide the necessary evidence that they still were (Woodhouse 2002). To rectify this further with respect to decisions for compulsory treatment, the consultation document accompanying the draft Mental Health Bill (DH 2002) outlines further changes to the role of tribunals: “The Bill ... is designed to bring the law more closely into line with modern human rights law, as defined by developing case law arising from the European Convention of Human Rights. In particular, the Bill will require all decisions to apply compulsion to mentally disordered people to be taken by an independent juridical body” (6). The areas where the draft Mental Health bill is drafted to be ‘convention compliant’ is with respect to an *automatic* tribunal for compulsory treatment decisions beyond 28 days (above) and the ‘safeguards’ for ‘incapacitous’ patients (see infra).

<sup>34</sup> These concerns are echoed in NO Force’s response to the draft Bill (see appendix: fig. 8). Under the heading ‘Strict criteria for compulsion’ NO Force write: “The broad definition of mental disorder, without the tight criteria of conditions to be satisfied for compulsion, is unacceptable as it greatly broadens the grounds for sectioning. This applies more specifically with the abolition of the ‘treatability’ criterion as well as the removal of the protection afforded to certain categories of people who cannot be compelled under the 1983 Act. Legislation should clarify that treatment must be therapeutic for the patient. The ‘least restrictive’ principle in the Richardson Report should also be deemed paramount in any mental health

removal of exclusions for people who suffer from drug and alcohol abuse or are deemed 'sexually deviant'.

In the following I draw on alternative proposals put forward by NO Force and MHA, which are not only premised on restoring strict definitions over defining and treating 'mental disorder', but also, and my focus here, on 'respecting' and 'enhancing' the 'autonomy' and 'dignity' of the 'mentally disordered'.

### **5.11 Liberty, dignity and equality**

“Perhaps it is time to frame the concerns of persons with mental disability not simply as a social problem, but as a human rights imperative. Persons with mental disabilities seek four interrelated human rights: liberty, dignity, equality, and entitlement” (Gostin 2004: 11).

“[F]urthering patients' autonomy, dignity and physical and moral integrity are fundamental to the protection of their human rights in relation to medical treatment, whether for mental or for physical illnesses and disorders” (JCHR 2002: 11).

What is the place of autonomy, dignity and moral integrity? On what conditions is the 'upholding of dignity' or the 'securing of liberty' enacted? With respect to alternative proposals put forward by No Force and MHA it is with respect to three areas: capacity, incapacity and autonomy.

### **5.12 Restoring dignity: incapacity and the 'Bournewood Gap'**

“I would hesitate to say which was worse: the degradation of an incapacitated person shames us all even if that person is unable to appreciate it, but in fact most people are able to appreciate that they are being forced to do something against their will even if they are not able to make the decision that it should or should not be done” (R (Wilkinson) v RMO Broadmoor Hospital 2001 [para 26]).

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legislation for compulsion” (NO Force response to the draft Mental Health Bill. Sept 2002. See appendix: fig. 8).

A case, which has commonly become known as the ‘Bournewood gap’, follows that of *R v. Bournewood Community and Mental Health N.H.S Trust* (1998). The case concern the detention of a 48 year old man (Mr L) with autism who was admitted to psychiatric hospital informally, on the basis that an incapacitated patient need *not* be admitted compulsorily as long as they did not resist. Mr L did not resist being admitted, nor did he seek to leave. As he had not been detained by the 1983 Act, he was not subject to any of the ‘safeguards’ such as a review of his detention through a mental health review tribunal (MHRT)<sup>35</sup>. The case brought then was that L had been detained unlawfully. After a lengthy appeal process between the Court of Appeal and House of Lords, the case finally went to the European Court of Human Rights (ECtHR). Here it was declared that the health authority had indeed breached Article 5. This ‘lacuna’ in the Mental Health Act was to be rectified in part 6 (clauses 121-139) of the draft Mental Health Bill. It is described by MHA under the heading “safeguards for patients with long-term incapacity” as follows:

“At present patients who lack the capacity to consent to admission to hospital or to treatment but do not resist are not protected by any of the safeguards in the Mental Health Act. The Bill introduces safeguards which will apply to ‘any patient with long-term mental incapacity in either hospital or residential care who is assessed as needing long-term care and/or treatment for serious mental disorder from specialist mental health services in his/her best interests’ except those in this group who are either actively resisting or who pose a significant risk of serious harm to other people. These latter two groups will be dealt with under the full formal powers” (MHA briefing on Proposed Mental Health Act Reforms Aug 2002)<sup>36</sup>.

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<sup>35</sup> According to the decision of the House of Lords in *Bournewood*, persons suffering from mental disorder who are treated for their condition as in-patients in hospital fall into two categories

(1) those who are compulsorily and formally admitted into hospital against or regardless of their will, and are detained or liable to be detained in hospital pursuant to the Mental Health Act 1983 (‘compulsory patients’) and

(2) those who entered hospital as in-patients for treatment, and who either

a) having the capacity to consent, did consent (‘voluntary patients’), or

b) lacking the capacity to consent, did not object (‘informal patients’)

Mr L was deemed as falling in category 2(b).

<sup>36</sup> The draft Mental Health Bill consultation document (Department of Health 2002c) describes the ‘new provisions’ for ‘adults with long term mental incapacity as follows: “Over recent years, there has been concern about patients who are not formally detained but who are treated without their consent. Such patients may lack the capacity to consent to treatment for a variety of reasons, for example senile dementia, severe learning disability or accidental brain injury. The new Bill contains measures to protect such patients, including the appointment of a nominated person to act on their behalf, treatment on the basis of an agreed care plan, access to specialist advocacy, and the right to challenge admission and treatment” (21).



This change was considered a ‘welcome improvement’, and was an uncontroversial one which addressed one of the areas of ‘incompatibility’ with the Human Rights Act 1998 found in the Mental Health Act 1983<sup>37</sup>. The law, it was argued, must protect those who are incapable of resisting (and hence being able to be detained formally). The question of capacity did not reside in restoring the dignity of those caught in a Bournewood lacuna, and so it was argued that the law also needed to respect the capacity of those who may be ‘unwell’ but had capacity and could refuse.

### **5.13 Restoring dignity: capacity**

“In recent years, the old assumptions about the links between mental disorder and violence and mental disorder and incompetence have been challenged. And as a result, the issue of personal autonomy has been raised directly in relation to treatment for mental disorder. In particular the realisation that many patients with mental disorder retain the competence necessary to make treatment decisions has triggered debate on whether and in what circumstances those competent decisions should be respected, especially when they involve the refusal of proposed treatment” (Genevra Richardson 2002: Make up your Mind conference).

The notion of (restoring) capacity has received saliency in contestation of the draft Bill on two counts. Firstly, as we have seen, the importance of restoring dignity of those non-refusing and yet incapacitated patients for reason of learning disability, brain injury and so forth. Secondly, and my focus here, attention to a ‘discrimination’ between ‘physical’ and ‘mental health’ with respect to the capacity to refuse treatment. Anthony Zigmond, speaking at the ‘Make up your Mind’ conference, advances this opinion on discriminatory discrepancy:

“The mentally ill may retain capacity and yet are not permitted, under either current or proposed legislation to refuse treatment if a refusal would lead to injury to health or premature death. I am sure you are aware of the example: two people, one with schizophrenia, one with cancer. They both recognise that they are ill, that their illnesses can be treated and that there are consequences to not receiving treatment. They can understand, remember,

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<sup>37</sup> These sets of safeguards were subsequently removed from the most recent draft of the Mental Health Bill 2004, considering that safeguards for this ‘group’ were more appropriate for the ‘Mental Capacity Act’.

weigh the information in the balance and so on. The patient with schizophrenia, even if fully capable, will be treated without consent. If the patient with cancer is treated without consent it is an assault. It goes further, of course. The patient with cancer can make a legally binding advance directive declining particular medical interventions for a future time when he loses capacity, not so the patient with schizophrenia. And of course, if the patient with schizophrenia also has cancer he can refuse treatment for the cancer but not for his schizophrenia. It is unfair, it is absurd and it makes the mentally ill lesser citizens” (Anthony Zigmond 2002 Make up your Mind conference).

The expert committee (appointed by the Department of Health in 1998), of which Genevra Richardson (above, opening section quote) was chair, endorsed two fundamental principles on reforming the Mental Health Act. Firstly, ‘non-discrimination’, so that those with ‘mental disorder’ be treated the same as other illness. Secondly, to grant ‘respect for patients’ autonomy’. Neither of these principles appeared in the draft Mental Health Bill 2002. The importance of ‘capacity’ and ‘non discrimination’ was a facet, however, endorsed by both MHA and NO Force:

“The Alliance believes that an assessment of capacity should be the foundation of the compulsion process. As in cases of physical health, treatment should require consent unless the person lacks capacity. Where the person does lack capacity, then, subject to certain safeguards, treatment should be allowed in a person’s best interests. While there is a case for the White Paper proposal that where a person has capacity, compulsion should also be used if s/he is at significant risk of suicide, compulsion should never be used to impose treatment on a person with capacity simply for that person’s health or safety. A person with capacity who is assessed as posing a high risk to others may be subject to compulsion on grounds of public safety where treatment is available” (Mental Health Alliance 2002 consultation response to Proposed Mental Health Act Reforms: 6).

The importance of rectifying capacity from incapacity, and subsequently what should happen if/when one lost capacity, was to be given to ‘advance statements’. It was Thomas Szasz who was amongst the first to call for a ‘psychiatric will’ (1982), a request made for (or refusal of) involuntary psychiatric interventions in the future. Today, it is argued, advanced statements are to be given for those who, when ‘well’ (capacitated), can express how they would like to be treated when/if they become ‘incapacitated’:

“Under current law an advance refusal to accept treatment is in most circumstances legally binding but once a person is subject to compulsory powers it can be overridden. We consider that this gives too little acknowledgement of the patient’s wishes at the time when that patient had capacity. Accordingly there should be an obligation on professionals wishing to treat under a preliminary care plan to abide by any refusal to accept treatment that has been stated in the advance statement unless it can be shown that there is a change of circumstances that makes the refusal not in the person’s best interest” (Mental Health Alliance 2002 consultation response to Proposed Mental Health Act Reforms: 11).

The notion of ‘advanced decisions’ to refuse treatment has been defined in the draft Mental Incapacity Bill (June 2003)<sup>38</sup>. It covers “a decision made by a person after he has reached 18 and when has capacity to do so”, for “(a) a later time and in such circumstances as he may specify, a specified treatment is proposed to be carried out or continued by a person providing health care for him, and (b) at that time he lacks capacity to consent to the carrying out of or continuation of the treatment” (section 23, 1). As the Bill continues, excluded decisions include that of treating a patient with respect to mental disorder (27, 1). It was this exclusion of the ‘mentally disordered’ from the realm of capable individuals which was deemed discriminatory.

#### 5.14 Problematising bare life?

Among the many themes in *French DNA: Trouble in Purgatory*, Rabinow (1999) witnesses something of a ‘problematisation of bare life as such’, inasmuch that “the biopolitical articulation of *zoē* and *bios* that emerged after World War II - which centred on the dignity of the human person in response to programmes to strengthen the race (or population) - is today becoming disaggregated (Rabinow 1999: 16). The upshot is a bare life which, like Agamben’s, certainly concerns issues of ‘brute existence’, but in a way

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<sup>38</sup> Proposed ‘mental incapacity’ legislation (now termed as ‘mental capacity’ legislation) has remained separate from mental health legislation, although some argue that notions of capacity and incapacity should be universal between legislative frameworks. Anthony Zigmond sets out the stakes of this division when speaking at the Make up your mind conference: “One of the single biggest problems facing our patients is stigma. Genevra Richardson in the report of her Scoping Review said ‘we have received powerful submissions on behalf of those who suffer from learning disabilities and those who care for them to the effect that a Mental Health Act is not an appropriate framework’. Now they gave a number of reasons for this but amongst them was ‘inclusion within a Mental Health Act is thought to be stigmatising’ ... stigmatisation unacceptable for the learning disabled but presumably OK for the mentally ill”.

totally unintelligible to the Greeks and Aristotle's original demarcation between *zoë* and *bios*. Agamben's doubts surrounding the estheticisation of 'life' as an embracing of the human's animality is questionable in that, for Rabinow, *zoë* - bare life - is *necessarily* transformed by genomics, and as such it problematises questions of life, death and human dignity. For Rabinow, shifts in understandings of life itself pose new problems for understanding the human, the sanctity of life and the event of death. This rupture emerges in the 'modern soul' found in *Discipline and Punish*, and has for Rabinow become manifest in a crisis of 'dignity':

“[W]hat is taken to be at issue is the fate of humanity, not only in the material sense (as some environmentalist see it) but precisely in a spiritual one. What is at issue is a crisis of 'dignity,' the symbol enshrined in the Universal Declaration of Human Rights as the bulwark against the justification of any future Auschwitz. What is at issue today is neither docile bodies nor sinful souls (which is not to say that such states have disappeared). What is at issue are assemblages in the process of re-formation, ones that seek to bring together health and identity, wealth and sovereignty, knowledge and values. ... [W]hat has been relatively stabilised in the period following World War II in western countries as the body, society and ethics - and their relations - are again today begin remade, and the assemblages in which they functioned disaggregated. Consequently, we are witnessing, and engaged in, contestations over how technologies of social and bodily recombination are to be aligned with technologies of resignification” (1999: 12).

For Rabinow it is the identification of DNA with the human person, in which a part literally stands for the whole, which creates the problem. “Life is problematic today”, writes Rabinow, “because new understandings and new technologies that are involved in giving it a form are producing results that escape the philosophical self understanding provided by both the classical world and the Christian tradition” (16) Anxiety sets in, and so we might argue do ethics committees, legal decisions over life and death, patients groups, religious groups and indeed *desperate* attempts to clarify the natural from the social (see Fraser 2001). What brings *bios* and *zoé* together (mere life to a form of life) then is presently open to question.

If we shift slightly into the psy sciences generally, and governing the contingency of risk as I outlined it in chapter one, then arguably there is no immediate crisis in the question

of life itself. Rather, the problematisation of ‘dangerousness’ through the draft Mental Health Bill is ratified in particular ways, valorised with respect to definitions of ‘unsound mind’, and on grounds of positing capacity from incapacity. As Rabinow (1999) points out, dignity for Kant was on condition that one was autonomous. It was to apply on condition that one was rational, and this is a definition which largely stuck. After World War II, however, and invocations of human rights, dignity suddenly emerged as an *apriori* principle of human existence. Similar to Rabinow’s analysis, in my foregoing discussion it is the body at its most vulnerable, most heteronomous, which needs to be protected: the foetus, the embryo and now, in the case of Bournemouth, the ‘incapacitated’ who is non-refusing. The importance of designating the ‘capacitated’ from the ‘incapacitated’ receives further salience for MHA and NO Force - the capacitated must be respected for their autonomy, less they are dangerous. In both scenarios, the aim is either to *express* or *restore* the dignity of the mental subject qua human person.

We might then argue that games of truth, in relation to the repetition of human rights claims during the process of contesting the draft Mental Health Bill, seek to reinstall the *humanitas* of human rights. This is not to imply that post-disciplinary mental health care (and the Draft Mental Health Bill) is in some way ‘open’ and its contestation somewhat sanitised or closed. Contrariwise, as we saw in chapter one, post-disciplinary mental health care practices are dispersed, which implies that adjudication (the sovereign decision) on terrains of biopolitical life today is equally dispersed (similar points are made by Dean 2002b and Dillon 2004). My focus, in this chapter, has been specifically on human rights as they are actualised during contestation over the proposals, and my aim has been to discuss the adjudication, or sovereign decision, with respect to the limits of games of truth. I have suggested that discourses of human rights, although agonistic in that, following Tully (1999), they involve games of citizen participation and recognition, seem far removed from the *openness* of agonistic struggles which are concerned with contesting the ‘blood which has dried on the codes of law’. Neither, however, are they simply emblematic of a dangerous expansion of bare life, in which we all, through recourse to human rights, become biopolitical exceptions. There is, as I have argued, a *form* of citizenship enacted in these games of truth, one which is granted by nature of

being 'mentally disordered'. Human rights, as the rights of those who are 'mentally disordered', have been utilised to valorise capacity (choice) from incapacity (protection); authentic mental illness (blamelessness) from inauthentic mental illness (dangerousness alone). The latter of these, concerned with questioning dangerousness on the grounds of 'risk assessment' alone, may prove particularly salient. It is arguably through the regulation of dangerousness - not through diagnostics (Foucault's understanding of dangerousness in *Abnormal*) but on the grounds of 'risk assessment', 'risk factors' and therapeutics (treatment programmes) - that we come close to Agamben's (1998: 166-180) biopolitical exception *par excellence*: the material space of 'the camp' (the piloting of DSPD units in prisons, special hospitals and lower security facilities). Arguably, these are spaces with which our current games of truth, with respect to human rights, are absolutely incapable of dealing. Such a claim is difficult and challenging; it would require a genealogical study into these new 'camps' in mental health care. Still, neither easily prison nor hospital, and arguably where fact and law become indistinguishable, it is perhaps only here that biopolitics enters into a real 'zone of indistinction' with the sovereign exception.

## Chapter Six

### Testimony and the limits of biopolitical truth speech

#### 6.1 Introduction: the politics of moralising

“Liberalism rests on [the] capacity to promise” (Bell 1996: 81).

“[F]or the Nietzsche of *On the Genealogy of Morals*, the modern subject does not simply cease to desire freedom as is the case with Foucault’s disciplinary subject but much more problematically, loathes freedom” (Brown 1995: 64).

Nigel Thrift (2004) has recently called attention to a politics which focuses on his alternative rendition of ‘bare life’. This is a bare life filled with anticipation, an undiscovered country of the ‘half second delay’ which “attempt[s] to engage a productive, forward sense of life which strives to engage positively with the world” (68)<sup>1</sup>. No doubt this connects with emergent forms of biopolitical life (the force of the outside, or the ‘freedom’ of the agon) outlined in chapter three. Yet, when I began this PhD it appeared that most of what I was witnessing resembled nothing of this form of animated geography exemplary for a (new) political ethos. Those once minor knowledges in psychiatry, now majoritarian, solidified into forms of political action in which the imperative to ‘tell the truth about oneself’, how one has suffered and who was to blame, seemed antithetical to Thrift’s project: something of a will to the past, a becoming reactive rather than any form of ‘not-yet’ political consciousness. The repetition of human rights claims, the moralising overtones demanding justice for past injustices, along with proclamations that “we are vulnerable and the government is making us more vulnerable” seem to ooze the very forms of politics which Thrift suggests makes “private bargains with misery” (68). In this chapter I do not seek to critique the call to apprehend life and its concomitant attempt to create concepts for the pre-personal world. Indeed, who could dispute the Nietzschean inspired claim that to counter our dominant images of thought we might affirm life instead of producing knowledges that are opposed to life: “thinking would then mean discovering, inventing new possibilities of life” (Deleuze

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<sup>1</sup> Thrift’s (2000) understanding of ‘bare life’ is the antithesis of Agamben’s, suggesting that the threshold of the political (good life) is, if it ever was, no longer premised on an exception (bare or animal life). Bare life, albeit non-cognitive, is not a life with no potentiality, rather it ‘pulses with action’.

1983 cited in Patton 2000: 23)<sup>2</sup>. Thought, no doubt, reflects the fields of immanence or conditions of possibility which give rise to it, and, although wary that I may preserve a certain image of thought, I believe that we might be cautious not to polarise what we seek to overcome - the politics of moralising versus the politics of virtuality/affect<sup>3</sup>. There is something difficult when narrating forms of politics which themselves seem caught in a dogmatic image of thought and/or reactive (human) forces. In such areas how easy is it to shift analysis beyond an acknowledgment of our prevalent, and to some increasing, politics of moralising (Mouffe 2005: 72-76)? Of course we might search for, or point to, arenas of enchantment, lines of flight, minor knowledges or the freedom of the agon<sup>4</sup>. Life, as Connolly (1999) has pointed out, exceeds all claims to know it, but drives to find a 'solid bottom' exist, a moraline drift by which agonism can become antagonism and life can fuel *ressentiment*. That "the dangers of moralizing plagues everyone" (Bennett 2002: 16) is a facet found in the 'desire to punish' (Connolly 1999) or even 'to be punished' (Brown 2001). In this chapter I want to think through the co-existing claim of a 'politics of moralising', and, with respect to the placing and timing of testimony, focus on what Wendy Brown has called the 'wounded attachment' (Brown 1995, see also Tapper 1993)<sup>5</sup>. My focus is genealogical, one whose minimal 'onto-story' is that the imperative to moralise is not merely confined to political scientists, or indeed geographers, but *may*

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<sup>2</sup> A 'politics of conviviality' (Hinchcliffe and Whatmore [submitted]) has been successful in dethroning the reactive force of positing a 'subject'; rather, it is *for* incorporeal life, "that there is more there, there" (Thrift 2004: 69).

<sup>3</sup> I have witnessed, at conferences mainly, criticisms of 'non-representational' approaches such as 'do you move so far away from Hegel that you end up coming back to him?', and the most common 'what is the politics of all this?' Of course, these criticisms are undoubtedly suggestive of our dominant images of politics - that which is ontic and antagonistic. However, they do point to the possibility that, at times, 'non-representational' approaches slip into positing a *radical* negativity; a 'reaction' against 'reactive forces', as the active will to power in Nietzsche; virtuality and the pure event in Deleuze (Coole 2000). As outlined in chapters two and three, my suggestion regards apprehending 'life knowledge' as such is that it might have some engagement with biopolitics and Foucault's understanding of 'problematization' and/or Deleuze's 'problematic' - simply put it asks: what is it about life which offers itself to be, necessarily, thought?

<sup>4</sup> Here, the affective dimension of the political, including the macropolitical, offers a 'line of flight' and a micropolitics of desire. It focuses "not simply on power's capacity to affect bodies [*à la* Foucault] but on one's affective capacities that resist being quarantined within a collective form of desire" (Bennett and Shapiro 2002: 4). On affect and the macro-political, the most oft cited example is Brian Massumi's discussion of Ronald Regan (see Connolly 2002b).

<sup>5</sup> This is a danger of simply applying the philosophical imperatives of Deleuze into the social world. For elaboration on this point, particularly with respect to 'diagnosing' the creative industries, see Osborne (2003).



be imbued in political practices within liberal democratic societies<sup>6</sup>. Hence, I will begin with a diagnostic of a politics of morality and that of its ethos: *ressentiment* (Nietzsche 1998), a *ressentiment* which for Brown provides a descriptor of political activity which is based on fetishising a wound; a wound created by a past injustice. Rather than begin with affirming the flow of life, I want to think then with those who have sought to describe the relation between testimony and political action conditioned by negative, reactive forces.

My argument, however, will not progress to affirm the prevalence and dangers of testimony amidst a politics of morality; instead, I seek to question the amount of analytical *pressure* put on this form of speech by those who go on to denounce it. Firstly, I question how, in such a seemingly disaggregated society (in which even the term ‘society’ is a failing) political enunciations can still turn that ancient problem of the one into the many and the many into the one: that ‘double betrayal’, as Latour (2003) calls it, of political enunciation, which I introduced in chapter four. By using the example of the activities of a second service user and survivor campaign group called ‘Protest Against the Bill’ (PAB), along with ‘the People’s Parliaments’ - a campaign of mock parliaments organised by Mental Health Alliance alongside local service user organisations to raise objections to the bill - I aim to think through the politics of testimony or what I have come to call ‘biopolitical truth speech’. Here, when one says ‘I speak for myself’, political speech must *supplement* the ‘I’ of the avowal and the ‘I’ of the avowed with something else to become a political articulation (as Latour understands it) and escape its close proximity to confession. Secondly, critiques of testimony are in many senses constrained by a reading which gives no place to the (im)possibility of this form of speech; that is - with respect to my interest in biopolitics - with what falls at the limit of biopolitical truth speech. As such I finish by focusing on the ‘unsayable’ in testimony, a point which necessarily moves beyond Foucault’s play of the true and false. This is not, however, to point to something mystical, or unspeakable about pain, suffering, or ‘madness’; it is an unsayable wholly dependent on contemporary biopolitics. Here I focus

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<sup>6</sup> Although beyond the scope of this thesis, there is nothing to deny that a ‘politics of moralising’ does not have an affective register. Nietzsche talks of the *feeling* of the will to power, one which is constitutive of the human experience of agency (see Patton 1998: 74) To Nietzsche, striving to reach this feeling can give rise to a number of illusions.

on enunciations which talk of friends lost to suicide and suggest that biopolitical truth speech contains its own aporia, one which is not philosophical but biopolitical.

## 6.2 Introducing testimony

“We demand the right to be respected, why haven’t our voices been listened to?”

(NO Force march: rally speaker Sept 2002)

“Why are the government not listening?”

(Outcry conference: survivor speaker Sept 2003)

“Listen to the voices”

(Outcry conference: survivor speaker Sept 2003)

Although geography utilises the voice in most, if not all, of its qualitative methods, its primacy has come under criticism (see for example Whatmore 2003). Arguably, to begin with ‘the voice’ is a fault of thought. Trapped within certain perspectivism, perhaps by ‘listening to the voices’ I/we are not thinking hard enough about the act of *witnessing* testimony itself (see Dewsbury 2003). In waiting for codes - as forms of truth which self proclaimed ‘experts by experience’ drew upon - I was/am, unable to witness that which is closest to me: to Deleuze the logic of sense or the sense-event - ‘on the surface between words and things’ (see Colwell 1997) - to Foucault, that which is closer than any external world (see Deleuze 1988), or for Levinas, the call of the other which precedes our exchange (see Butler 2001)<sup>7</sup>. In some senses then it is a failing to write the testimonial enunciations that I will focus on here. Yet in doing so I do not aim to capture or exemplify a form of eloquence<sup>8</sup>. Contrariwise, rather than analyse the words spoken as a

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<sup>7</sup> Harrison (forthcoming) has written an excellent account of the non-relational and the ethical aspects of testimony. Focusing on Levinas and Derrida, he is concerned with what falls at the limits, or rather precedes, the relational. Here, however, in light of political enunciations, I follow Bell’s (2001) critique of Levinas, which queries the lack of political response in the call to ethics. She questions the hiatus between ethics and politics, suggesting that the latter *reforms* the former: “When the hiatus between ethics and politics is defined as a move from the face-to-face relation to the third, to justice and judgement, one removes the question of the *political constitution and contestation of ethical response*” (166 my emphasis). In short, our understanding of limits and/or the non-relational needs to be supplemented with genealogical analysis, a factor Agamben appears to achieve in the final chapter of *Remnants of Auschwitz* (1999).

<sup>8</sup> Indeed, for some authors argue it is the very *ineeloquence* of speaking in the form of a plea which calls for the negativity of the situation to carry on, for the reader or listener to *do* something (see Berlant 2001).

form of expression or as signifying nodal points in relational understandings of political 'identities', I am interested in the possibility for this form of truth speech as such. This form of 'survivor' testimony is both constituted at the boundaries of scientific evidence in mental health, and yet, if we follow Foucault, the 'truth of ourselves' was absolutely integral for the formation of the psy disciplines. To summarise, I seek to understand the games of truth by which testimony is enacted; what it takes to 'give an account of oneself' publicly and politically.

There is, of course, a long history of research into testimony, but for the purpose of my focus here we might position two broad lineages. The first spans from philosophy to literary theory - focusing on the unsayable in any act of testimony (or speech) particularly with respect to post Holocaust testimony. The second is found in the social sciences, with respect to the use of testimony as either a progressive or regressive subaltern politics<sup>9</sup>. The former pushes testimony towards an ethical domain which, at times, ends up disengaged from genealogy and politics. The latter is political and, at times, genealogical, yet cannot easily overcome the ethical difficulties of testifying as such. I focus on Wendy Brown's (1995, 2001) work here because she offers a genealogical account of 'wound culture', a diagnostic for contemporary political struggles (in which the enunciation of human rights claims is symptomatic: see Brown 2004). Although not directly referenced to testimony, she aims to connect (post)disciplinary practices, rights claims, and the avowal based on giving account of one's (past) suffering. Her genealogy relates to some of Foucault's points with respect to civil liberties movements (see chapter five) but connects them with a broader genealogy of political action today.

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<sup>9</sup> On the former, see, for example, Shoshana and Laub (1992). On the latter, see, for example, the discussion in Bell 1993).

### 6.3 Wounded attachments

“We are vulnerable people and the Government is making us more vulnerable”

(Outcry conference: survivor speaker Sept 2003)

“[W]e can’t pretend that things that have happened and still are happening never took place. We want an apology for decades of pain. We want an apology for decade of hurt”

(Outcry conference: survivor speaker Sept 2003)

“Labour should care”

(Banner at NO Force March)

In *States of Injury* (1995) Brown diagnoses ‘wound culture’ as a contemporary form of Nietzschean *ressentiment* in which reactive forms of ‘identity politics’ fetishise a wound created by a past injustice. Simply put, current forms of ‘identity politics’ become ‘attached’ to destructive modes of their own subjection:

“[G]iven the widely averred interest of politicized identity in achieving emancipatory political recognition in a posthumanist discourse, what are the logics of pain in the subject formation processes of late modern polities that might contain or subvert this aim?” (55).

Her concern is genealogical in that she utilises *ressentiment* without the psychologising overtones it occasionally receives by connecting it with liberalism and disciplinary practices.<sup>10</sup> The reactive force of *ressentiment*, its success borne through morality, and its truth through powerlessness is, to Brown, the preparation for all forms of politics grounded in identity based claims.

Following a broadly Foucauldian trajectory, she suggests that disciplinary productions name and normalise social behaviors as social positions, “[o]perating through what

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<sup>10</sup> Her concern is also political and with the demise of a politics of freedom, symptomatic, she suggests, of a quest for freedom through maximizing predictability and rationality (aka Weber) along with fears surrounding a politics unarmed with truth. Although to many Foucault shares allegiances with the Frankfurt school, he importantly cautions against a mere (oft negative) acceptance of rationalization: “I think the word rationalization is dangerous. What we have to do is analyze specific rationalities rather than always invoking the progress of rationalization in general” (SP: 210).

Foucault calls ‘an anatomy of detail,’ disciplinary power’ produces social identities (available for politicization because they are deployed for purposes of political regulation), which cross-cut juridical identities based on abstract right” (Brown 1995: 58). In this light, the increasing fiction of state universality coexists with an increasing individuation of social subjects which “together breed politicized ‘identities’ rooted in disciplinary productions but orientated by liberal discourse into protest against exclusion from a (fanaticized) discourse of universal justice” (Brown 1995: 58). Simply put, liberal discourse recolonises identity as political interest and becomes a generic claim of particularism in universalist political culture. Through recourse to judicial ‘identity based’ rights, politicised identity desires to inscribe in law its pain over exclusion rather than conjure imagined futures.

It is important to be clear about the temporal logic of *ressentiment* here. The standard reading of *ressentiment*, as a moral interpretation of a play of forces - ‘I suffer therefore someone is guilty’ - invokes, as Colebrook (1999) highlights, a subject who *uses* reactive morality. This is in fact a misreading of the temporal logic of *ressentiment*. Rather, it is reaction itself which recognises only itself. It is a distribution of force which turns back on itself because what it effects - a position - is not seen as an effect. It is a ‘becoming reactive’ which can only recognise effects as causes: ‘I am weak because of who I am’. It is this temporal logic of *ressentiment* which for Brown (2004) is implicated in the forms of political claims which seek recourse to the law and (liberal) human rights in (post)disciplinary political practice<sup>11</sup>.

Further, for Brown (1995), liberal discourse denies the ‘making’ of subjects, and hence there is a tension between the presumption of an assumed liberal subject and their dependence on a number of social relations and forces. There is a ‘failure’ of the subject to ‘make itself’ “in the context of a discourse in which its self making is assumed, indeed, is its assumed nature” (Brown 1995: 67); a failure, now called suffering, which must find reason within itself or find external blame:

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<sup>11</sup> It also connects to the reading of a ‘reactive subject’ and the formation of the ‘modern soul’ in *Discipline and Punish* (see chapter three).

“For every sufferer instinctively seeks a cause for his suffering, more exactly, an agent; still more specifically, a *guilty* agent who is susceptible to suffering - in short, some living thing upon which he can, on some pretext or another, vent his affects, actually or in effigy ... This ... constitutes the actual physiological cause of *ressentiment*, vengefulness, and the like: a desire to *deaden pain by means of affects*, ... to *deaden*, by means of a more violent emotion of any kind, a tormenting, secret pain that is becoming unendurable, and to drive it out of consciousness at least for the moment: for that one requires an affect, as savage an affect as possible, and, in order to excite that, and pretext at all” (Nietzsche cited in Brown 1995: 68).

Ressentiment then does three things: 1) it produces an affect (rage, righteousness) that overwhelms the hurt; 2) it produces a culprit responsible for the hurt; 3) and it produces a site of revenge to displace the hurt (Brown 1995: 68). For those who have escaped the *ressentiment* turned outward a politics of enchantment, for those who have not, enter ‘politicised identity’: a negative form of action by which identities become invested in their own subjection<sup>12</sup>.

“In locating a site of blame for its powerlessness over its past - a past of injury, a past as a hurt will - and locating a “reason” for the “unendurable pain” of social powerlessness in the present, it converts this reasoning into an ethicizing politics, a politics of recrimination that seeks to avenge the hurt even while it reaffirms it, discursively codifies it. Politicized identity thus enunciates itself, makes claims for itself, only by entrenching, restating dramatizing, and inscribing its pain in politics; it can hold out no future - for itself or others - that triumphs over this pain” (Brown 1995: 74).

For Brown, this creates a difficulty in deciding when investments in a history of suffering come into conflict with the need to give up these investments, in the pursuit of an emancipatory democratic project<sup>13</sup>.

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<sup>12</sup> This is a will stricken by history, one cannot will backwards, and control the past: “he [sic] cannot break time and time’s covetousness, that is the will’s loneliest melancholy” (Brown 1995: 72).

<sup>13</sup> Brown (1995) does offer a way out, a political ethos which draw upon but also questions the necessity for a Nietzschean active forgetting: “erased histories and historical invisibility are themselves such integral elements of the pain inscribed in most subjugated identities that the counsel of forgetting, at least in its unreconstructed Nietzschean form, seems inappropriate if not cruel” (74). Departing from Nietzsche, Brown states: “For if I am right about the problematic of pain installed at the heart of many contradictory demands for political recognition, all that pain may long for - more than revenge - is the chance to be heard into a certain release, recognized into self-overcoming, incited into possibilities for triumphing over, and hence losing, itself” (74-75) Her political ethos surrounds generating a politics based on vision (what I want for us) rather than identity (who I am), that is from ontological claims to more expressively political ones.

I take much from Brown's diagnostic of our late modern political condition, and I also take something of her and others' (see Connolly 2002a, Butler 1997a) wariness of a politics of moralising founded upon claims of exclusion from a fanaticised 'site' of power or as a violent response to grief (Butler 2004). Rather than advocate an alternative political ethos, which often posits a dualism between the politics of moralising and an ethic of 'freedom' (where, in reality, these are much more intertwined), I want to suggest that Brown's analysis, in many respects, occludes the difficulty regarding political assembly - how bodies come together under the mantle of so-called 'identity' based claims. My interest in this chapter is less with those practices which Brown posits as overly secured - a facet I have focused on with respect to the demonstration (chapter four) - but with the form of biopolitical truth speech which she diagnoses. That is, whilst Brown posits political claims as premised on a negative will imbued in liberal democratic political practice, there is in effect a (subjugated) 'speaking subject'. I want to focus further on this form of enunciation which says as much about games of truth telling in politics than as a symptom of the reactive promise of liberal freedom. With precaution I want to suggest that for testimony, or what Brown would call 'wounded speech', to be conceived as 'political' at all it needs to do something more than 'tell the truth of the individual' (the disciplined confession). Finally, for Brown the wounded attachment is a form of *ressentiment* which creates and remains *within* the subject. I want to argue that testimony is not bounded to the subject when one testifies at the limits of biopolitical subjectification.

#### **6.4 'Protest Against the Bill' (PAB)**

At the start of 2003, four months after the inauguration of NO Force, a second wave of incentive for "a direct peaceful protest against the draft mental health bill" emerged on an internet message board. The board was set up as an open membership (which increased slowly, and peaked at 70). It was advertised as follows:

"A planning and discussion group for people who want to take part in a direct, peaceful protest against the proposed mental health Bill. The focus is upon promoting the direct and individual voices of those of us with severe

mental stress who want to reduce compulsion in the mental health system. Some members (including the moderator) have a connection with the NO Force movement. However, survivors and users with no link to this movement are also free to join in, contribute ideas and take part. Rather than being led by one group such as NO Force, any protest will be far stronger if it encompasses a whole load of groups and individuals who may hold diverse opinions, but are united in the aim to both reduce compulsion and get our voices heard” (message board description 7<sup>th</sup> January 2003).

Rather than follow the techniques of organising a direct action event, I aim to focus on the demonstration itself. This demonstration, rather than the proposed ‘direct action’, culminated in a ‘survivor conference’ called ‘Outcry’ taking place in September 2003. Arguably, like the preceding NO Force March it was a technical achievement: advertising for participants and delegates (140 registered in total), financing (£1 entry per head was to be charged for the cost of hiring the church hall), and circulation through sending out press releases to all the national media<sup>14</sup>. Here, however, following my comments with respect to Wendy Brown’s genealogy of rights claims, personal testimony and political enunciation, I want to focus specifically on what the above proclaims as “promoting the *direct* and *individual* voices of those of us with severe mental stress who want to reduce compulsion in the mental health system”.

### 6.5 The ‘Outcry’ conference

In June 2003 a flyer was posted amongst numerous message boards advertising for speakers and/or workshops at the conference. It began by stating that:

“We are looking for psychiatric users and survivors who’d like to give a speech / presentation at the conference. The event is being called the Outcry conference, and we’re looking to have all the speakers as people who’ve had direct experience of being diagnosed with a mental health problem or personality disorder” (Protest Against the Bill June 2003).

The aims given were as follows:

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<sup>14</sup> The event received no newspaper coverage. However, a two page article was written for the magazine *Mental Health Today* one month before with respect to one of the purposes of the conference ‘to start a national service user and survivor alliance’.



“To promote the fact that we DESERVE to be heard and taken seriously; To create a direct survivor response/s to the governments mental health proposals; To organise the initial stages of a nationwide ‘user and survivor alliance’ - promoting our voices and needs” (Capitals in original).

If ‘political talk’ requires translating multiplicity into unity via representation and unity into multiplicity via obedience (see Latour 2003), then this onus on both the demand for the service user voice and yet a voice which itself is multiple and hesitant to betray the speaker suggests that this speech will not easily travel. Yet, in spite, or rather because of this, it is seemingly a more truthful talk:

“At the end of the day and at the beginning of the day we know the truth about the mental health system” (NO Force message board: September 9<sup>th</sup> 2002).

Focusing on ‘The real mental health experts’ was not confined to service user and survivor protest, however, for the Mental Health Alliance (MHA) also initiated their ‘People’s Parliament’ campaign with a flyer which called for service user expertise:

Are you a mental health service user/survivor of mental distress?

Have you got views about the proposals for the new Mental Health Act?

Do you want your voice heard?

As we saw in chapter four, for Latour (2003), in the subtleties of everyday talk, the enunciator - the one who causes to talk - is never rendered explicit, (this is a norm of speech act theory), but in political speech the one who causes to talk is always rendered explicit, the hidden interlocutor is given substance. ‘On whose behalf are you speaking?’, we often ask politicians<sup>15</sup>. Hence the weight, the slowness of political speech (‘who do you represent?’ ‘do you represent properly?’). Yet it may be argued that this speech instigated from service user and survivor experts is a more ‘truthful’ speech: those who speak do so on their own behalf. But if this is the case then this talk must either necessarily fail as political speech, and become closer to ‘everyday talk’ - that is without

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<sup>15</sup> To be sure, Latour does not confine his reading to politicians but anywhere political speech is enacted, and a prime example might indeed be academic ‘talk’.

the necessary betrayal - or be posited as confession. Here the gap between the one who speaks and the one who causes to speak, becomes repositied as the two I's in the avowal from the psychiatric survivor who says: "I will now tell the truth about myself as I am now doing" (see EW2: 452 and Keenan 1987). As a confession the spacing between the two I's does not instigate the question of 'on whose behalf are you speaking?' because it implies a different interlocutor: the psychoanalyst, or psychiatrist for example, is the one who adds substance to the truth of the psychiatric survivor (see HS 64). To 'tell the truth of oneself' is a politics which pushes testimony very close to confession.

### 6.6 Confession: torturous truth<sup>16</sup>

"[I]f I tell the truth about myself as I am now doing, it is part that I am constituted as a subject across a number of power relations that are exerted over me and I exert over others" (Foucault EW2: 452).

"I am a mad 24 year old woman" (Speaker: Outcry conference, September 20<sup>th</sup> 2003).

'I confess that my truth is madness', is a complicated utterance, containing both an avowal based on the utterance itself (*I* confess); one which either succeeds or fails, and the avowed (that *my* truth is madness) which is judged in terms of its truth value. A performance which describes itself doing what it says. Or to put it another way, "it makes the description possible by doing it, and what it does is nothing other than describe itself doing" (Keenan 1987: 16).

"I'm a 25 year old service user ... and have been in the mental health services for about 5 or 6 years. In that time I've been given a surprising number of diagnoses, ranging from depression, schizophrenia and anxiety to borderline personality disorder, psychotic illness, hypomania, and the current gem - schizoaffective disorder. They really don't know what's going on in my own

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<sup>16</sup> Foucault spent much time distinguishing between power and violence, but as *Discipline and Punish* tells us torture (which is not simply violence) forms a kind of a Möbius strip, a trace from the Middle Ages found in the formation of the disciplines. In its relation to confession, Foucault writes: "since the middle ages torture has accompanied it like a shadow, and supported it when it could go no further: the dark twins" (WK: 59 see also DP) Indeed torture with respect to a confession is perhaps the only act where the power-knowledge relationship becomes wholly indistinguishable (see Sitze 2002).

head and they probably don't know what's going on in their own [audience laughter]" (Speaker: Outcry conference).

"I take medication, a lot of medication, but the only way the medication helps me is through my choice to take it. I've decided that I need it, I know why I need it and I've decided which drugs I am prepared to take. People often don't even know what medication they are on, or the side effects that they produce. They are just told that they need it, and not always why. I know people who have decided to come off their medication and I believe there are other ways to manage distress. People should be allowed to explore these, and take the chance to make mistakes, that's our basic human right" (Speaker: Outcry conference).

In these utterances there is the coexistence of the enunciator ('I'), the avowal ('am a service user', 'take medication') and the demand ('human rights', 'choice'). Science studies have told us of the ability for certain forms of truth to become 'black boxed', to travel, but is there something different about this form of enunciation and its alignment with an author, telling the truth about themselves, as they are now doing?

"[T]he *I* has to multiply itself, cite itself, and cite itself citing: as I am doing now. The temporal structure of this 'now' which gives the time within the same utterance for at least two *Is* ... exceeds the present (the first person present) on which it seems to depend" (Keenan 1987: 16-17).

This no doubt results in a 'problem', how is this form of truth speech possible In which the subject is both present and not present in the same utterance; an utterance which simultaneously must allow the testimony to take place? For Foucault this performance points to the moment (or rather the movement) of discourse as the dash (-) between power-knowledge; a dash which articulates them on the basis of their difference (see chapter three). It is a factor which suggests that discourse is unstable and fragile (it represents nothing but *articulates* power-knowledge, or rather, discourse unfolds as a power relationship), and it is "at once an instrument and effect of power, but also a stumbling block, a point of resistance" (Foucault cited in Keenan 1987: 17). Yet, as a discourse of confession it becomes a relatively successful mobile apparatus. Indeed, confession is a, perhaps the, form of speech where the 'I' of the utterance and the 'I' of the speech act coexist. As set out in *The Will to Knowledge*, confession is a *technology* which, no doubt as discourse, enacts its own effects (that which escapes -

possession/ecstasy in Catholicism for example) and creates its own intrinsic ‘pleasures’ (the ‘pleasure of analysis’)<sup>17</sup>. It also emerged as a necessary demand within juridical regimes (see EW3: 429-434; DP: 38; WK: 58-63)<sup>18</sup>. The confession, as Foucault tells us, went through a transformation; once entrenched in the practices of penance, it extended into the micro-practices of psychiatry (see WK and AB: 167-199) where ‘telling the truth about oneself’ was absolutely integral to the formation of the psy disciplines. “For a long time” writes Foucault, “this archive dematerialized as it was formed. It regularly disappeared without a trace (thus suiting the purposes of the Christian pastoral) until medicine, psychiatry and pedagogy began to solidify it” (WK: 63)<sup>19</sup>. Today, for Foucault, it is part of a multitude of relationships:

“[N]ext to the testing rituals, next to the testimony of witnesses, and the learned methods of observation and demonstration, the confession became one of the West’s most highly valued techniques for producing truth. We have since become a singularly confessing society. The confession has spread its effects far and wide. It plays a part in justice, medicine, education, family relationships, and love relations, in the most ordinary affairs of everyday life, and in the most solemn rites; one confesses one’s crimes, one’s sins, one’s thoughts and desires, one’s illnesses and troubles; one goes about telling, with the greatest precision whatever is most difficult to tell ” (WK: 59).

In the confession there is always the presence (or virtual presence) of a partner who is not merely an interlocutor but the one who requires the confession and intervenes to judge, console, punish and reconcile (WK: 61), the priest and now the psychiatrist or analyst<sup>20</sup>.

In many respects confession is not simply a form but a *genre* (see Berlant 2001). But is there *anything* different about the confined technologies of confessional talk found in

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<sup>17</sup> Confession “produces intrinsic modifications in the person who articulates it: it exonerates, redeems, and purifies him; it unburdens him of his wrongs, liberates him, and promises him salvation” (WK 62).

<sup>18</sup> Foucault writes: “People often reproach the police for the manner in which they induce confessions. And they are right. But if the justice system, from top to bottom, were not so much a consumer of confessions, the police would be less apt to produce them, and by every means” (EW3: 431).

<sup>19</sup> I am aware that the unpublished fourth volume of the History of Sexuality series has enabled a number of commentaries on the rupture in Foucault’s thought, including his account of confession (see Elden 2005a for an overview).

<sup>20</sup> The techniques of confession in the *scientia sexualis* (WK: 65-67) can be surmised as follows: 1) clinical codification of the inducement to speak - confession combined with examination and, personal history combined with decipherable signs; 2) through the postulate of a general and diffuse causality; 3) the principle of a latency; 4) through the method of interpretation; 5) through the medicalisation of effects, normal to pathological rather than sin.

Foucault's institutional apparatus and the extendable, circular spaces of political enunciation? Unlike the analyst, the interlocutor in these speeches is not singular, is sometimes absent and never the one who provides truth to the latency, a truth which is not simply "what the subject wished to hide but what was hidden from himself" (WK 66). Further, if all the points, knots, focuses, and resistances of confessional practice found in the spacing of analyst and analysed, are now, in a sense multiplied in the space of the 'survivor conference' then it seems striking that such confessional speech could happen at all.

How might these enunciations escape confession; how does the latency in need of interpreter become closer to political speech? Firstly, we might say that 'telling the truth about oneself' is part of an agonic activity, a political practice. Perhaps like the apparatus of confession we need a political apparatus, and it is here, I think, that we return to the necessity of the 'demonstration': the conference, the march, the placards, the press release, the call for speakers, these begin to set in motion the necessary betrayal of political enunciation, in which a grouping can be formed amongst the aggregates. Secondly, alongside the avowal 'I am a service user', 'I am a survivor', there is also a right: a 'right to services'; a 'right to treatment'; a 'right to advocacy'; a 'right to advanced statements', or simply 'respecting people's rights'. This may be so, but arguably we may problematise the notion of confession today by arguing that in post-disciplinary mental health care - in which the space between diagnostics and therapeutics is ever expanding - and in an age of biosociality - in which the one who speaks is an author of a 'becoming' oeuvre - the apparatus of confession is itself questionable. Indeed, unlike the (modern) performance of confession, in which 'man' is always an impossibility to ground, invoking a restlessness and a perpetual discovery of an 'unthought' (see chapter three), in biosociality there is an attempt to re-appropriate or rather to overcome the unthought (see OT: 351-358; Palladino 2003a), not through theoretical excursions but as an actuality in our present. Like my earlier account of *fini-illimité*, we each seemingly become 'authors' of our own *zoé*. As Palladino (2003a: 94) explains, there is no recourse to 'man is the measure of all things' and no discovery of an unthought, but in our "differentiating particularities" we each *become* the measure of all

things. Again, however, we are faced with the impossibility of delegation for political enunciation in an even further disaggregated society. Indeed, as Palladino concludes, we “hence [become] the measure of nothing” (94). Hence, before returning to confession, there is a second thesis I want to engage with respect to biosociality and biopolitical truth speech. I do so by focusing on the MHA’s ‘People’s Parliaments’.

### **6.7 Testimony, biosociality and political speech**

‘Speak your mind, or lose your voice’<sup>21</sup>.

The ‘People’s Parliaments’ were a major part of the MHA’s campaign against the draft Mental Health Bill. The purpose of the day was to ‘gather the views of service users and survivors of mental distress’. Structure was given, they were to be enacted as ‘mock’ parliaments, and each speaker could speak for a maximum of three minutes on the following three resolutions:

- 1) The new Mental Health Act should ensure that there is a reduction in the number of people treated under compulsory powers
- 2) The new Mental Health Act should give a legal right to an independent advocate
- 3) The new Mental Health Act should provide safeguards for people given treatment under compulsory powers (Liverpool People’s Parliament, campaign pack).

Advertised on the MHA website and arranged alongside local mental health service user groups, three People’s Parliaments took place between March and September 2002 (in London, Birmingham and Liverpool)<sup>22</sup>. The Liverpool debate was to be chaired by Louise Ellman MP and comments made on the day were to be forwarded to the ‘bill team’. Approximately two weeks before attending participants were sent a confirmation letter along with an order paper which began by stating:

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<sup>21</sup> “Speak your mind, or lose your voice” is the title of a campaign by Mind giving guidance to responding to the most recent round of proposals - the Mental health Bill 2004 (Department of Health 2004).

<sup>22</sup> Costs of the meetings (including hiring venues, refreshments, materials and [local] travel expenses for attendees of up to £4) were met by MHA.

“The ‘People’s Parliament’ will be discussing three resolutions about the new mental health act. This briefing gives you some information about what the Government plans and what the Mental Health Alliance wants to see. This is to help you plan what you might say in the debate. Please try to make points which are relevant to the resolution under debate at the time, but feel free to speak about whatever aspect of that resolution is most important to you” (Liverpool People’s Parliament, campaign pack).

About 50 people attended each People’s Parliament. Each resolution was introduced by a member of the MHA, after which delegates who had put their name down to speak were called to do so in turn. Speeches were sometimes short, rarely interrupted and occasionally followed by applause or cheers from the audience (usually on the mention of ‘control’ or ‘rights’). Some of the speeches and their corresponding resolutions I have reproduced here:

The new Mental Health Act should ensure that there is a reduction in the number of people treated under compulsory powers:

“The Government are not proposing a Mental Health Act but a Mental Control Act. It is about control. Government attitude appears to be ‘what can we get away with that allows us to be just within the parameters of the Human Rights Act but allows us to protect the public from the mentally disordered’” (Speaker: Liverpool People’s Parliament).

“I want to say that the extension of compulsory treatment in the community, and as a first rather than a last resort in hospital, is a quick fix and ineffectual solution to a more complicated state of affairs. I want to say this by using the simple and straightforward example of trust. My own psychiatric career began voluntary in 1997, and forgive me for my ignorance but I made the mistake of trusting my GP over my mental distress. I was compliant with her wishes and sent on my merry way with some pills. These did little to help. I was worried and debilitated by their side effects and soon realized my only option was to find my own way. This ended up in two hospitalizations, compulsory treatment, which left me with lock jaw and paralysis and ongoing fear about other people’s reaction to my psychiatric history. I’m not angry at my GP of the time but do think that had she had a range of options to aid my recovery, I may not have lost four years of my life. I also think that had hospital been more inviting with more emphasis on care rather than the administration of drugs it may have actually helped rather than hindered my state ...” (Speaker: Liverpool People’s Parliament).

**“Over the last 10 months I have read ‘your rights in a mental health hospital’. I have read four different books. If you commit yourself into a mental hospital you have no rights. The same if a doctor has committed you, no rights ...” (Speaker: Liverpool People’s Parliament).**

**The new Mental Health Act should give a legal right to an independent advocate:**

**“There has never been a right to advocacy before, it is really welcome to see it in the new Bill. Will advocates be there when decisions are being made? Who are they going to be employed by to ensure independence?” (Speaker: Liverpool People’s Parliament)**

**“What about CTO’s advocacy. I’m all for it. Will there be enough to go around?” (Speaker: Liverpool People’s Parliament)**

**The new mental health act should provide safeguards for people given treatment under compulsory powers:**

**“Tribunals are not well enough debated, too many powers concentrate on it. Tribunals are not empowering to service users and very rarely disagree with professionals” (Speaker: Liverpool People’s Parliament).**

**“I should be able to make decisions as to how I would and where I would like to be treated. I think advanced directives should be a right. I know what is right and wrong for me and I know everyone with mental health problems also has that right. We are experienced in our own illness and at the end of the day we should have the right to say what we want and where we want it” (Speaker: London People’s Parliament).**

**“Forcible treatment damages your self-esteem and your trust in other people. It humiliates and alienates us. It’s a quick fix that doesn’t work. Treating someone against their will is used far too frequently to channel depressed people into overcrowded wards and to force them to comply with treatment they do not find useful” (Speaker: London People’s Parliament).**

**“I was treated with diabolical cruelty by the nurses. No one talked to me. I was smashed against the wall with my hands behind my back and injected. No doctors saw me at home or in hospital ... I suffered this treatment for 51 days and was told I could go home if I agreed to take chlorpromazine. I selected for myself a drug called sulpiride. People should be consulted about medication, not subjected to chemical rape” (Speaker: London People’s Parliament).**

**“My concern is people are admitted to hospital under the Mental Health Act and subjected to compulsory treatment but very often the treatment does more**



harm to their mental or physical health than the original presenting problem. For me being force fed as an anorexic was the final culmination of my sense of hopeless failure as a human being” (Speaker: London People’s Parliament).

Experiences to enunciate, choices to present and justifications to explain, ‘who are you?’ ‘what do(n’t) you want?’ and ‘why?’ There is no denial of service users or survivors from the assembly of speakers. Contrariwise, service users and survivors are recognised, duty-bound into the ‘community of humans’ to provide evidence, to make decisions and defend (moral) positions. In many senses they are compelled to the figure of an autonomous individual who is free to make choices (Callon and Rabeharisoa 2004). After each resolution and set of speakers, a vote was taken from the floor, and the vote was always carried by a unanimous ‘aye’. ‘Aye’ to ensuring a reduction in the number of people treated under compulsory powers. ‘Aye’ to a legal right to an independent advocate. ‘Aye’ to providing safeguards for people given treatment under compulsory powers. The Liverpool People’s Parliament was written up as a report and sent on to participants and the ‘bill team’, while the London one appeared as a two page article entitled ‘Powers to the People’ in the magazine *Mental Health Today* (consisting of a short introduction and lengthy quotes from participants)<sup>23</sup>. The Birmingham one appeared as a list of quotes to be used by the MHA in campaigns material and any meetings with the ‘bill team’ at the Department of Health<sup>24</sup>.

Of course the speeches often slipped away from the three resolutions. Occasionally the chair intervened, but often people were left to talk about ‘the negative effects of psychiatric labels’, ‘being misunderstood’, ‘physical illness being misdiagnosed as mental illness’, ‘unemployment’, or ‘the importance of day services’. However, with respect to being a (moral) individual who ‘has a view’ and wants to ‘make their voice heard’, the mode of articulation is not different, one is still a (liberal) agency capable of predication. Indeed, even if one argues that there may be refusals, those who remain silent, keep things hidden from the audience, the logic would be no different - there is a

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<sup>23</sup> See Jackson (2002).

<sup>24</sup> Simon Lawton-Smith (head of the ‘policy committee’ at the MHA) personal communication (29<sup>th</sup> May 2003).

subject capable of making autonomous choices and decisions, who keeps them secret because they are inappropriate to the debate (Callon and Rabherarisoa 2004). That is, there is a subject capable of deciding things which are best left unsaid.

In thinking through this form of biopolitical truth speech, let us return to the notion of political articulation introduced by Latour (1999, 2003) and now expanded by Callon and Rabeharisosa (2004):

“[In political articulation] the mechanism of delegation through which speech is gathered, transmitted and then expressed is obviously central. The arena implies speakers who talk on behalf of those whose words they are conveying, and who aim those words at a certain audience. The delegation of speech and its transmission are based on a specific effort which ends up producing a monopoly on speech, at least temporarily, and consequently of reducing to silence, at least temporarily, the one that delegates his or her speech to another. This delegation which is the counterpart of the construction of a public arena where speeches are articulated, draws a boundary between that which is publicly articulated and that which is not. This is evident when the person(s) on whose behalf the spokesperson talks are distinct from the spokesperson. Simply through the choice of the words and, above all, the constraint of justification weighting on all words, a private space defined in a negative residual way is designed and performed” (20).

Who has delegated you? On whose behalf are you speaking? This is not always said but is always implied. The articulation of political speech produces a privatisation. Of course, in speeches from service users and survivors it seems there is no delegation, speakers are seemingly expressing themselves for themselves ‘speak *your* mind or lose *your* voice’. Yet, as Callon and Rabeharisosa (2004) point out, the mechanism is not different, it *produces* a private space<sup>25</sup>. The public sphere is not a platform for articulating (or

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<sup>25</sup> Callon and Rabeharisosa’s (2004) interest in ‘public’ or ‘political’ speech is with respect to something of an impasse in their own research. The subject of their paper is Gino, a “limb-girdle muscular dystrophy patient in Reunion Island who refuses to comprehend the lessons of genetics and to become part of the medical and associative networks that implement and diffuse that knowledge” (1). Describing the interview situation in which they, Gino and his family are caught, they are perplexed as to why Gino speaks only three times, each utterance suggesting that he has little interest in the sociologists’ area of investigation. Refusing to articulate Gino as somewhat backward, simple minded or simply amoral (considering that the genetic evidence suggests his grandchildren’s future is at stake), they seek instead an alternative rendition. Describing the interview situation as exemplary of a ‘public arena’ or more specifically as a form of political enunciation (Latour 2003), Gino is being performed into something of a refusal. Through the interview, Gino is made into a political actor, “a human being in his own right with experiences to

extending) private thoughts, rather “it ‘privatises’, constructing a sphere of intimacy, the origins and content of which can be understood only by replacing it in the mechanism of delegation of speech” (20). There is not a privacy here, a secret as such, for privacy always occurs after the decision on what is public (something that governmentality scholars have for a long time argued - see Barry et al 1996). Rather, in speaking one’s own views publicly, “a distance is created between themselves (the speakers) and what, for want of a better term, can be called the actors on behalf of whom they speak. The expression ‘I speak for myself’ clarifies this mechanism of delegation” (Callon and Rabeharisoa 2004: 21).

‘To speak in one’s own name’ then is not to introduce one’s ‘private thoughts’ into the assembly - to disrupt, to upset, or even to expand the political. Contrariwise, to speak politically introduces a private space. Who are you speaking of? In which the reply is, ‘we speak for ourselves’, as selves who are capable of predication, of opinion, of morality. Callon and Rabeharisoa (2004) go on to suggest that when an individual ‘speaks in his or her own name’ - which in their example is that of the interview with Gino - the split instigates a silence in the subject. No longer is it simply distinguishing between public and private that is important (which share a common requirement, that of justification) but between that which can be thought and said (even if its controversial) and that which cannot be acknowledged, which in the case of their research is Gino’s disinterest in their questioning. Hence his only ‘refusal’ is not to speak, not to speak on his own behalf, and not to provide justifications. This then implies to the audience (the researchers) that he is immoral, does not care, when he should:

“The closer a public arena is to the idea of a public space open to all, where everybody can and must express themselves on their own behalf, the more individuals are caught in a split logic ... individuals inhabiting it are more divided within themselves than anywhere else” (21)<sup>26</sup>.

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communicate, choices to present and explain, and decisions to justify” (Callon and Rabeharisoa 2004: 7). All the public entities, the tests, the organisations, the decision making and choices (why does not he consult a doctor? why not join the association concerned with the disease? why not get his children to have the genetic test?) invokes only a logic of refusal by Gino.

<sup>26</sup> Gino refuses the logic of duplicity, of ‘double talk’, of ‘speaking on his own behalf’, of justifying and hence admitting some form of hidden truth. “Gino indicates that he is engaged in other forms of

Yet in the case of the service user and psychiatric survivor speaking on the draft Mental Health Bill, the autonomy of speaking on one's behalf publicly is 'split', but not between that which can and cannot be articulated less it become immoral or duplicitous<sup>27</sup>. Here the 'public assembly' is played out, not in the research encounter, but in actu<sup>28</sup>. Furthermore, privacy, a secrecy even, is imperative. That is, along with the requirement to express opinions and justify choices, decision making is supplemented by an acceptance of deep convictions based on personal experiences, experiences which are often not spoken as such but always implied. For example, the utterance (given above): "At the end of the day and at the beginning of the day we know the truth about the mental health system and the error of this Mental Health Act going through" is followed, not with descriptive experiences but with the declaration "from the view of the basic principles of human rights, dignity, trust, respect, freedom, choice, autonomy, support". Similarly a leaflet accompanying the NO Force 'pressing concerns' document begins with "We represent the individual and direct voice of people suffering from severe mental distress" and is followed by "[t]he new law could force people working within the mental health system to violate our human rights and civil liberties. This is against International and UK Laws on Human Rights". The avowal is followed by a right. It matters, then, who is speaking, but what is said can easily revert to a right, not only to 'advocacy', 'advanced statements' or 'tribunals' (see chapter five), but also a right simply to 'make voices heard'.

It is only now that the 'wound' introduced at the start of this chapter takes on a slightly different imperative. It is less an inherent mode of attachment for negative action, one conditioned by liberal democratic societies, but is a demand in political enunciation, a demand which, like the confession, is often not spoken as such but implied. This does not mean that there is an inherent failure of politics truthfully to represent; a concern which

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entanglement, where public justification and articulation are no longer playing a key role" (Callon and Rabeharisoa 2004: 22).

<sup>27</sup> Here we can only envisage an imaginary scenario in which a service user or survivor proclaims 'we have no interest in being here or the draft Mental Health Bill'.

<sup>28</sup> For Gino this points to other forms of entanglement where public articulation is not playing an important role – a facet which could only be applied to all those who have *not* become interested in the forms of circulation surrounding the draft Mental Health Bill. However, this area may prove futile to research, as it would further install the 'violence' of the interview situation, as Callon and Rabeharisoa describe it, one which creates a silence in Gino.

plagued much discussion over a politics of recognition in the 1990's. This construction falls apart once we consider politics not through identities, or preceding entities which need faithful representation, but as actions with respect to games of truth telling<sup>29</sup>. It is, however, illuminating with respect to what falls outside of, or is other to, games of truth as I have outlined them here. Indeed, such an interest, a concern even with this sphere of political articulation links with calls for alternative renditions of democracy, a parliament of things for those who do not speak, or refuse to be fabricated by all these techniques into an autonomous voice<sup>30</sup>; for those, as Callon and Rabeharisoa (2004) following Latour put it, who have learnt to 'affect and be affected' in other ways. We might then create 'circulating entities' for those who do not speak with rational choice and morality (see for example Hinchcliffe and Whatmore forthcoming)<sup>31</sup>. Rather than follow this path here, one which in one sense denies some of the most interesting and perhaps even necessary aporia of the form biopolitical truth speech in which I am interested<sup>32</sup>, I want to think in terms of the limits, or rather perhaps the thresholds, of this form of biopolitical truth speech. There is one last thesis I want to try when discussing those who do not speak, or are not articulated as such. Here I will return to the Outcry conference and focus on what falls at the limits of this form of biopolitical truth speech.

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<sup>29</sup> A facet science and technology studies (STS) have for a long time recognised.

<sup>30</sup> Latour writes: "we do not have to create this parliament out of whole cloth, by calling for yet another revolution. We simply have to ratify what we have always done, provided that we reconsider our past, provided that we understand retrospectively to what extent we have never been modern" (1993: 144). On the one hand this is similar to a ratification of the techniques of demonstration in chapter four. Yet, as Palladino (2003b) highlights, calls for a 'parliament of things' contain an interesting paradox; for a lawgiver is still required to write the 'new constitution', "new words needed to convene a new assembly" (*ibid*: 145), implying a "motivating transcendental principle" and denying human historicity; most importantly history "opened by the naming of animals and non-humans", a history which we cannot easily escape (Palladino 2003b: 331).

<sup>31</sup> Importantly here there is no attempt at a liberal enfranchisement.

<sup>32</sup> Indeed, Palladino and Moreira (forthcoming) in their critique of Callon and Rabeharisoa return to Foucault's diagnostic of the unthought found, by which Gino is a figure of the limit: "Man has not been able to describe himself as a configuration in an episteme without thought at the same time discovering, both in itself and outside itself, at its borders yet also in its very warp and woof, an element of darkness, an apparently inert density in which it is embedded" (Foucault cited in Moreira and Palladino [forthcoming]: 31).

## 6.8 The limit of biopolitical truth speech: for those who can not speak

“My friend xxxxx killed herself last year... For the year leading up to her death we tried to get more help for her - she even wanted admission to the acute ward because she was *that* desperate...Unable to get any support from them, and after many overdoses, she eventually succeeded in killing herself. This makes me so angry because she was a wonderful woman who was doing all she could to get through all the crap she'd had in her life. Her problem wasn't that she refused to engage with the services, it was that the services refused to engage with her” (Survivor testimony: Outcry conference September 2002).

“I have been asked by a fellow member of [online self injury support group] to tell you about xxxxxx, who was also a member and a friend. She died in June when she was just 18 as a result of an overdose. During her short life she had been sectioned 3 times. In the end, her 'crisis' plan consisted of her parents being given charcoal to give her in the event of another overdose. She was a lovely, caring and vivacious person ... It was a privilege to have known her.  
Compulsion didn't save her.  
Things have got to change” (Survivor testimony Outcry conference September 2002)

The answer to Wendy Brown might not really be to *listen* to the wounds (see also Ahmed 2005), and to overcome them - which perhaps allows her diagnostic to revert back into a form of psychologism, but to consider the impossibility of narrating particular forms of the wound in biopolitics: truth games which fall at the limit. Rather than immediately turn to the notion that service user and survivor enunciations typify a wounded subject, we might also ask what this form of survival speak tells us about the limits of biopolitics today. And here with these quotes above, we are left with an obvious conundrum. How can one enunciate, even confess to death, as that which falls at the limit of the biopolitical subject?

“In Latin there are two words for 'witness'. The first word, *testis*, from which our word 'testimony' derives, etymologically signifies the person who, in a trial or lawsuit between two rival parties, is in the position of a third party (*terstis*). The second word, *superstes*, designates a person who has lived through some-thing, who has experienced an event from beginning to end and can therefore bear witness to it” (Agamben 1999: 17).

The psychiatric 'survivor' cannot be neutral and does not bring facts to a trial, but the survivor speaks a form of truth. On another level we might, following Giorgio Agamben (1999), suggest that testimony is actually born from the failure of witnessing; indeed, this is the only imperative - those who actually bore witness *cannot* give testimony<sup>33</sup>. To testify is to bear witness to the unsayable. For Agamben, testimony is the possibility of speech given by an impossibility of speaking, an inseparable intimacy between *Muselmann* and the survivor. We can only *bear witness* to bare life. However, as my focus on agonism has shown, here survivors are speaking forms of truth, there is no sphere of inseparable intimacy between life and (biopolitical) death. To return to my hesitation over digressions into languages of the unsayable, there is not something primordial about madness or death itself, which is only ever lost in speaking about it<sup>34</sup>. Yet we do need to consider the impossibility of talking of a life beyond suicide other than to seek recourse to blaming a system which did not prevent it. There are things which cannot be said, cannot enter games of truth as such, nor can they be articulated, not because they are grammatically impossible, nor because they are the Foucauldian 'unsaid' which enables the play of true and false (discursive practice for example), but rather because they are limit figures in biopolitics; those who have committed suicide, those who in Foucauldian language have 'escaped' biopolitics (Osborne 2005)<sup>35</sup>.

The seeming curvature of political speech, in which the I's must align themselves and where we always ask 'in whose name are you speaking?' - a necessity which is filled with all forms of political practices - is not arguably to be confined merely to extending the parliament of political things, or even to an understanding of immanence, virtuality or the outside, but may have to consider those historical and biopolitical thresholds in which

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<sup>33</sup> Agamben (1999) writes: "The witness attests to the fact that there can be testimony because there is an inseparable division and non-coincidence between the inhuman and the human, the living being and the speaking, the *Muselmann* and the survivor" (157).

<sup>34</sup> Foucault's earlier works on the thought from the outside (thinking speech - *aisthēsis*) was to be found in literature, not through a subject enunciating madness. Madness, for Foucault, was the *alter* of thinking speech as unspeakable/thoughtless speech which is *still no less historically contingent*. Indeed, to Foucault to *speak* of madness is really not to speak of madness at all but to speak about unreason and, later, mental illness, within the metaphysical spaces of western thought madness provides 'the general form of transgression'.

<sup>35</sup> One cannot speak from suicide, although of course, as Connolly (1999) explains, life often exceeds it in the case of the 'unsuccessful' suicide.

we are still arguably caught: to speak of suicide and that it was not prevented, those 'events' which fall outside of any biopolitical positivities<sup>36</sup>. Deleuze (1988) makes this clear when speaking on the supposed limits of Foucault's imbrications of power-knowledge:

“If the relation to death as the outside is historic; if biopolitics gives rise to a life which resists (either as primary force relations immanent [i.e. shifts in forces which make up the (post)human], or/and the life that resists [i.e. social movements which fight in the name of life]) then what if this outside is death, a death which gives rise to the desire to resist it” (1988: 96).

To Deleuze this is what pulls Foucault out of the impasse of power-knowledge, an impasse which is not conceptual but where power itself places us - hence the desire 'to get free of oneself'. But arguably it is perhaps this impasse in which we still find ourselves today.

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<sup>36</sup> Perhaps the best example of the time of the 'event' is death itself. Death is an event in both senses: the relation towards death (history) and the *impersonal* event of death, in which there is a non-relation (EW2: 343-368). Death is not *my* death, hence 'to die' - the incorporeal event par excellence - forms a part of the outside (unlike the inside of thought found in Hegel's negation). Death, however, I believe provides the main ethical and practical difficulty for geography, as Deleuze's, Foucault's 'aesthetics' and, especially Nietzsche's, thought is suggestive of advocating a timely death, or rather *acceptance* of a timely death (hence the acceptance of suffering). Of course, this (successfully) denigrates bio-political drives to foster and/or manage human life (and its twin power of thanato-politics) but it does not necessarily supersede them in the present.



## Chapter Seven

### Conclusion

To return to Foucault's *Society Must be Defended* lecture series (which I outlined in chapter one) we might ask 'is it simply that the state form of thanato politics - the caesura between what must live and what must (politically) die - is anachronistic, never to return?' Is it superseded by technologies of vital life, which are pulsing with action? Or might we focus on the issue of caesuras genealogically. Let us take the example of the human rights 'decision'. Who decides when a human rights abuse has been made? The origin of the word 'decide' means a cut in life, and for Agamben (1999) this cutting defines the political - one which produces an inhuman correlative which we cannot dispense of in the name of human rights (see Spinks 2001). However, like Foucault's understanding of strategy, we might argue that the politics of the decision is only ever given to us as genealogists after the event. Hence, we must not get caught up in the question of 'who decides?' on the cut between inclusion and exclusion, (an incorrectly targeted question similar to that of 'who holds power?') - there is no 'strategist' here. Rather, we might revisit the politics of the caesura through our current problematisations in post-disciplinary biopolitics. With respect to (bare) life, 'bios' has indeed become biology, and biology has become geneticised, but by this time questions concerning the 'sanctity of human life' have usually always intervened. My diagram of mental health law in chapter one suggested that proposals to reform the Mental Health Act 1983 were not simply located in 'dangerous individuals' but in those who endanger 'the public' through an anticipatory, almost tautological, risk prevention strategy. It is a law which entails a problematisation - like much post-disciplinary legislation - one in which, it seems, our only recourse is to 'human rights'.

In chapter four I argued that agonism as a form of 'recalcitrance' in contemporary governmentalities must extend to forms of political action - demonstrating, lobbying and so forth. It is the combination of agonism ('games of truth') and forms of contemporary biopolitical contestation ('life politics') which together ground my account of a genealogy of biopolitical action. Ideally chapter five should be read alongside chapter

four, and/or the final chapter on testimony: rights must be enacted. Rights, however, are also an aporia; rights stop us in our tracks. We cannot easily deny them in search of an alternative form of political enunciation, we can only posit how they play. In the ethical domain, human rights are often positioned as recourse to a kind of ‘biological citizenship’, to the dignity of the living vital body (Rose 2001: 21). The contemporary resurgence of interest in biopolitics in the social sciences, however, must avoid potential critiques which imply it is simply *making present* or *expanding* what we mean by the biopolitical<sup>1</sup>. Perhaps a cautionary example comes from a paper by Braun and Disch (2002) who describe the almost impossibility of mobilising against the war in Afghanistan, when such a war was framed by its proponents in terms of the (human) rights of the Afghan woman against the tyrannies of patriarchy. Here the logic of equivalence, the negation of an Other, so important for political mobilisation in the literature of radical democracy, can no longer fix the contours of antagonism. Their argument is for the insertion of materiality in order to attend to the ‘making of connections’ in politics. Yet, the aporia of *human* rights persists. How, then, do we conceive a politics made on behalf of ‘life itself’ and yet invested in securing life through human rights law? Human rights may be an agonistic game, but it is one which potentially limits us at certain frontiers (Foucault 1988a).

I concluded in chapter six with another biopolitical limit - suicide. We might begin to posit our thoughts on death here somewhere between acknowledging *ressentiment* understood in its original Nietzschean vein, in that we still “struggle with [human] finitude” (Connolly 2002a: 166) - in which the only recourse in enunciations on suicide is to ‘rights’ in a system which did not prevent it - alongside considering *ressentiment* in its contemporary manifestation - toward the ‘drive for solid formations’, and the politics of moralising (Brown 1995, 2004). In chapter six, I aimed to advance a ‘Foucauldian’ understanding in which our relation toward death is built into our current imbrications of biopolitics. Arguably today (human) life and death is being problematised but it is not superseded. Death is still a silence where biopolitics places us.

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<sup>1</sup> Such critiques have at times unfairly been targeted at ‘Actor Network Theory’. Indeed if ANT is a form of materialist semiotics then not only is presence mutable (fluid) but dependent on Otherness (see Law and Mol 2001 who use the metaphor of fire for this point).

## Appendix

**Fig 1. Trajectory of mental health legislation (period of study in bold)**

- October 1998 Expert committee appointed, chaired by Genevera Richardson
- July 1999 *Richardson report* published by the expert committee. Green paper *Managing dangerous people with severe personality disorder* published jointly by the Home Office and Department of Health.
- November 1999 Green Paper on the *Reform of the Mental Health Act 1983* published by Department of Health
- December 2000 White paper on *Reforming the Mental Health Act 1983* published (In two parts: 'the new legal framework' and 'high risk patients', combining to some extent the two previous Green papers)
- **June 2002 Draft Mental Health Bill 2002 and consultation document published**
- **September 2002 consultation period ends. Over 2000 consultation documents received by Department of Health**
- September 2004 revised draft Mental Health Bill published. pre-legislative parliamentary committee set up
- March 2005 pre-legislative parliamentary committee report.

## **Fig 2. Index of main events June 2002 - Sept 2003**

- The Law Society and Royal College of Psychiatry 'Make up your mind' conference, June 2002
- Critical Mental Health Group demonstration outside Department of Health buildings London, August 2002
- NO Force demonstration through central London, 14<sup>th</sup> Sept 2002
- Mind 'Rights Not Compulsion' conferences (9 in total), September - December 2002
- Mental Health Alliance (MHA) "People's Parliament", Liverpool 20<sup>th</sup> Sept 2002 (two others took place in Birmingham and London)
- Mental Health Alliance (MHA) Lobby of Parliament, 23<sup>rd</sup> Oct 2002
- Justice in health conference on the draft Mental Health Bill 2002, 30<sup>th</sup> June 2003
- Protest against the Bill (PAB) 'Outcry' conference, London 20<sup>th</sup> September 2003
- Protest against the Bill (PAB) 'Behind Closed Doors' Protest 16 Nov 2003

**Fig 3. Relevant sections from the Draft Mental health Bill 2002**

### **Definition of mental disorder**

Part 1 of the Bill (clause 2) outlines basic definitions

"Mental disorder" means any disability or disorder of mind or brain which results in an impairment or disturbance of mental functioning

"Medical treatment" means treatment for a mental disorder provided under the supervision of an approved clinician; and for this purpose "treatment" includes—

- (a) nursing,
- (b) care,
- (c) habilitation (including education, and training in work, social and independent living skills), and
- (d) rehabilitation (read in accordance with paragraph (c).'

### **Conditions for compulsory treatment**

Part 2 of the Bill (clauses 6 to 56) contains the detailed provisions regarding compulsory examination, assessment and treatment of patients. Clause 6 sets out the four 'relevant conditions' to be satisfied before a patient can be compulsorily interfered with under the draft Bill. These are —

- (1) The first condition is that the patient is suffering from mental disorder.
- (2) The second condition is that that mental disorder is of such a nature or degree as to warrant the provision of medical treatment to him.
- (3) The third condition is —
  - (a) in the case of a patient who is at substantial risk of causing serious harm to other persons, that it is necessary for the protection of those persons that medical treatment be provided to him, and
  - (b) in any other case, that—
    - (i) it is necessary for the health or safety of the patient or the protection of other persons that medical treatment be provided to him, and
    - (ii) that treatment cannot be provided to him unless he is subject to the provisions of this Act.
- (4) The fourth condition is that appropriate medical treatment is available in the patient's case'.

#### Fig 4. Mental Health Alliance: Common Concerns (footnotes and font original)

The Mental Health Alliance was formed by a range of organisations involved the mental health with the specific aim of helping to ensure that the new Mental Health Act reflects the needs and wishes of people who will be affected by it. Members of the Mental Health Alliance share the following views on reform of the Mental Health Act:

- The aim of the new legislation should be to **reduce the need for using compulsory powers**.
- The new legislation should offer people an individual enforceable **right to a comprehensive assessment** of their needs; and to have their identified **needs met** with appropriate and good quality services.
- **A free independent advocate** should be made available to everyone at all times, from the point of assessment; and the Government should provide adequate resources for this on a national basis.
- The current law takes **insufficient account of people's capacity** to make their own treatment decisions and leaves **those deemed to lack capacity without proper protections**. New legislation must address both these issues in conjunction with wider incapacity legislation. Incapacity must not be equated with disagreeing with your doctor and must be sensitive to cultural differences.
- People with mental health problems should have the right to draw up **advance statements**<sup>1</sup> on their care and they want involved in such care. Such statements should be legally enforceable such that a person who has lost capacity (whether detained or not) has the same rights as someone who has retained capacity.
- There should be a **duty for full information** to be provided on any proposed treatment and for informed consent to be sought in every case. **Special safeguards** should continue to apply to psychosurgery, ECT and long-term drug treatment and should be extended to polypharmacy, prescribing above BNF levels<sup>2</sup> and force feeding. Where treatment is given without consent it should be subject to independent review including a second medical opinion and involving consultation with patients and their representatives.
- We support the formation of new **independent tribunals** as long as they reflect the community they serve, comprise a breadth of experience (including that of service users) and receive appropriate training. There should be an independent appeals procedure against the Tribunal's initial decision.
- Whilst recognising the Government's concern about public protection we continue to have doubts about the need for the powers proposed in relation to high risk patients. In particular we have concerns about: the application of the powers to non-offenders regardless of whether or not they can be treated; the availability of sufficiently accurate risk assessment procedures to ensure that only people who pose an unacceptable danger would be incarcerated under the proposals; the introduction of powers before there is an adequate evidence base and without the existing pilots being fully evaluated; the disproportionate impact of such powers groups who already face discrimination in the mental health system.

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<sup>1</sup> As known as advance directives

<sup>2</sup> The British National Formulary (BNF) is a guide for general practitioners setting out recommended dose levels for medication. We define polypharmacy as the concurrent administration of two or more drugs for mental disorder from the same BNF class.

## Fig 5. The European Convention on Human Rights

### Articles with particular relevance to mental health legislation

#### ARTICLE 2

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
  - (a) in defence of any person from unlawful violence;
  - (b) in order to effect a lawful arrest or to prevent escape of a person lawfully detained;
  - (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

#### ARTICLE 3

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

#### ARTICLE 5

1. Everyone has the right to liberty and security of person.  
No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
  - (a) the lawful detention of a person after conviction by a competent court;
  - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
  - (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority of reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
  - (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
  - **(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts, or vagrants;**
  - (f) the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and the charge against him.
3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
4. **Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.**
5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

## **Fig 6. Mental Health Alliance Briefing on Proposed Mental Health Act Reforms (Aug 2002)**

### **Introduction**

This briefing is intended to provide a guide to the Draft Mental Health Bill published by the Department of Health in June 2002. This Bill represents the next stage in a process of public deliberation and consultation which has included the Richardson Committee Report the Government Green Paper, the Health Committee Report and finally the White Paper in December 2000.

The Alliance is most disappointed that key points expressed in recommendations of the Richardson Committee, expert opinions and our responses to Government have not been accepted in this Bill. We have grave disquiet about its central provisions, which we consider are unworkable and regressive. There are some welcome aspects of the Bill but we fear that these may fail to work effectively in the proposed framework.

We are also concerned that the Bill does not appear to be joined up with the progressive developments initiated by the government in service provision. The implementation of the National Service Framework would ensure better care for service users and lead to less need for compulsion while the Bill appears to tend in the opposite direction. We consider that an improvement in community and inpatient services would better alleviate some of the problems that the Government is seeking to address by the use of compulsory powers. Indeed the increase in the use of compulsion which will we believe result from the enactment of this Bill may exacerbate these problems by leading resources further away from the services that most people with mental health problems need.

We fear that this Bill is not workable because of the resources it will require. The Royal College of Psychiatrists has estimated that it will require 600 more psychiatrists, other areas of the mental health work force are already understaffed and vacancies exist in current staffing.

The Government has invited the public to respond to a consultation on the Draft Bill by 16<sup>th</sup> September 2002. The specific questions in the consultation only cover new issues arising since the White Paper but comments are invited on the Bill as a whole. This briefing is to assist those who wish to respond to the Consultation. It is not a comprehensive analysis of all parts of the Bill but highlights the Alliance's main areas of concern.

...

### ***A right to assessment***

One of the Alliance's key concerns about the Bill is its lack of any response to the recommendation of the Richardson committee that a new Mental Health Act should provide service users with a statutory right to assessment of their mental health needs. In their White Paper 'Modernising Mental Health Services' and in the National Service Framework for Mental Health the Government have accepted the need for a better range of community care services and for more consistent availability of such services across the country. The Mental Health Alliance believes that the opportunity of a new Mental Health Act should be taken to support these developments by giving people a right to have their mental health needs assessed. There are already duties to carry out assessments of a person's community care needs imposed on health and local authorities under the NHS and Community Care Act 1990 but these do not amount to an



effective means of ensuring that people with mental health problems get access to medical services when they need them.

The Mental Health Alliance is aware of many people who have been turned away when they ask for help for their mental health, only to be subjected to compulsory detention and treatment when their mental health deteriorates further. The Richardson Committee concluded that in view of the evidence they had received from users, carers, mental health practitioners and the police about the difficulties in gaining access to the necessary services there should be a right to assessment of mental health needs which would apply to those in contact with services who might, for example, believe that their condition is deteriorating, and to those known to services who believe that they need such an assessment. They envisaged that the right would give rise to a public law duty on the relevant authority.

### **Part 1 The Definition of Mental Disorder & Conditions for Compulsory Powers (Draft Bill clauses 2, 6, 7)**

...

#### ***The Alliance's comments***

#### ***The grounds for compulsion are made much broader***

Despite the Government's stated aim to reduce the amount of compulsion used in England and Wales the Bill **greatly broadens** the grounds for compulsion. The Bill therefore is likely to lead to increased and unwarranted use of compulsion with all the extra distress to service users, strain on the mental health and Tribunal system and cost that is entailed.

This results from:

- (i) A broader definition of mental disorder.
- (ii) A broader set of criteria for compulsion -
  - the requirement of hospital admission is removed.
  - The current requirement of treatability and treatment for some patients has been removed.
  - There is no requirement to exhaust less restrictive options first if the person is considered a danger to others.
  - The exceptions for people who suffer only from drug and alcohol abuse or sexual deviancy are removed.

#### ***What kinds of case might now be subject to compulsory powers?***

While the following examples may seem extreme they are potentially within the scope of the legislation but are all situations in which the use of the powers would seem inappropriate.

- the elderly confused person in a nursing home who refuses to take his medication because of the side effects;
- the seriously depressed woman who persistently fails to keep her appointments with the psychiatrist because she doesn't think he is helping her;

- the lonely man with a personality disorder who is acting strangely speaks in a threatening manner and the neighbours want him out of the way "just in case";
- the young black man who has been diagnosed with schizophrenia and gets lippy with the police when he is arrested for an offence he claims he did not commit.
- the autistic teenager who is disruptive at college but refuses to take the Ritalin prescribed for him.
- The young woman with learning difficulties whose lack of sexual inhibitions is putting her in situations of risk and her mother wants her out of harm's way.

Under this Bill people who pose a serious risk of harm to others should be detained even if they are prepared voluntarily to accept treatment. This is anti-therapeutic and fundamentally objectionable in principle.

***The broad criteria may have unintended and unwanted consequences.***

The broad criteria indirectly give great power to clinical staff and the clinical supervisor at all stages of the process from assessment to discharge. The patient has the right to challenge the exercise of compulsory powers at a Tribunal hearing but the breadth of the conditions will limit the extent to which the Tribunal can overturn the clinical supervisor's decision; a patient applying for a discharge will face difficulties in showing that s/he no longer meets the criteria if the clinical supervisor opposes the discharge. For the same reasons it will be relatively easy for a clinical supervisor to apply successfully for an order to be renewed. As a consequence people who are not ill enough to require hospital treatment could potentially face an indeterminate period on a community treatment order.

***The Bill imposes treatment on people who have capacity to decide for themselves.***

Mental illness does not inevitably result in lack of capacity. However, a person with a mental illness can be detained and treated without consent even though that person has the capacity to understand the nature of the illness and the choices of treatment. People who are physically ill are not detained and forcibly treated because they refuse to take the treatment that should improve their condition. In such cases an adult with capacity cannot be given treatment without consent, even if a refusal risks permanent injury or premature death. Adults are presumed to have capacity.

The Alliance believes that there is no justification for the continuing legal discrepancy in relation to medical treatment decisions between physical and mental health.

***Community Treatment Orders (CTOs) will increase the use of compulsion and drive people away from treatment.***

Community treatment orders are a major concern to many service users some of whom fear that CTOs will increase their chances of being subject to compulsion if they disagree with the treatment recommended by their psychiatrist. The danger is that this quite realistic fear will drive people away from the services and the treatment they need.

Under the existing Act the requirement of hospital admission places a limit on compulsion by requiring the person to be sufficiently ill to require hospital treatment. In practice, limits are also posed by bed numbers. The fact that compulsory treatment orders will be made in the community

greatly expands the numbers of people subject to compulsion and for reasons already stated potentially likely to remain on a CTO.

...

***The provisions for high-risk patients are flawed.***

The Government aim is to use the new Mental Health Act to protect the public's safety from people who are dangerous and have a personality disorder. The 1983 Act requirement (for people with a mental impairment or psychopathic disorder) that "treatment is likely to alleviate or prevent a deterioration in condition" has been removed. Treatment is defined so widely that it will cover almost any programme to manage or alter behaviour, however limited or ineffective. It also covers "care" which need not involve a therapeutic programme at all. There is no requirement for treatment to be under medical supervision.

People who fall into this category are a much neglected group in mainstream service provision and we welcome the government's commitment to improving services for them. Psychiatric opinion has been divided over whether personality disorder is a valid medical diagnosis and over the possibilities for treatment. More recently some methods of treatment are now being shown to achieve positive outcomes.

However, while The Alliance agrees with the government's desire to protect the public from dangerous people we consider the proposals in the Bill fundamentally flawed. The heavy-handed solution in the Bill has fundamental implications for the civil liberties of those involved and creates a disturbing precedent. It will be expensive and unworkable. We also fear that this policy is likely to increase rather than decrease risk to the public.

- High-risk patients are a low incidence group but misdiagnosis is likely to occur. The provisions are unworkable because they rely on a psychiatrist's prediction of risk that someone poses a significant risk of serious harm. There is no accurate way of assessing risk other than the numbers of previous acts of violence or offences. To meet their new responsibilities to protect the public from risk psychologists would need to detain large numbers, many of whom may have never harmed in the past nor would do so in the future. Their ability to challenge their detention will be limited by the vagueness of the diagnosis and the predictors of risk.
- The fear of indeterminate detention is likely to drive people with significant personality disorder and perhaps others with mental health problems from seeking help. This cannot be in the interests of public safety.
- There has in The Alliance's view been serious misreporting in the media of the risks represented by people with mental health problems. These proposals reinforce the common but false perception in the public's The Alliance that all people with a mental illness are dangerous.
- The scheme is unjust. Why should this group alone be subject to a preventive detention regime when other groups that pose as high - if not higher risks - are not covered? A diagnosis of mental illness is not itself a predictor of violence. Factors associated are being young and male, (by age 31 one in 14 men have been convicted of a violent criminal offence, and being under the influence of alcohol (51% of violent crime and 66-80% of homicides).

- They further stigmatise people with personality disorder and will not provide the consensual treatment that would benefit this much neglected group.
- It may well breach human rights law to detain a person or treat them compulsorily in the community only on the basis of a diagnosis of personality disorder and a risk assessment, if they have committed no offence, if compulsion would not be of therapeutic benefit and if they are not before the courts on a criminal charge.
- The proposed powers are likely to impact disproportionately on certain groups such as black and minority ethnic communities and reinforce the discrimination which they already experience in the mental health system.
- It is likely to be very costly - and in draining resources from general services may backfire.

### *The Alliance's alternative proposals*

#### *Capacity*

The Alliance believes that an assessment of capacity should be the foundation of the compulsion process. As in cases of physical health, treatment should require consent unless the person lacks capacity. Where the person does lack capacity then, subject to certain safeguards, treatment should be allowed in a person's best interests. While there is a case for the White Paper proposal that where a person has capacity, compulsion should also be used if s/he is at significant risk of suicide compulsion should **never** be used to impose treatment on a person with capacity simply for that person's health or safety. A person with capacity who is assessed as posing a high risk to others may be subject to compulsion on grounds of public safety where treatment is available.

#### *Community Treatment Orders*

We consider that a person should only be subject to compulsory powers if their condition is sufficient to require admission to a hospital or other inpatient setting for assessment. Hospital is also a safer environment for the initial exercise of compulsory powers when assessment is taking place and the first period of treatment is to be given. Any initial treatment should be under the supervision which is available in in-patient settings.

We also believe that for patients experiencing compulsory powers for the first time the first care and treatment order should take place in hospital or other in patient setting.

#### *More limits on the conditions for compulsion.*

The Bill should specify the need for objective evidence of mental disorder, as is required under human rights law. We think that this is important especially in the context of stereotyped assumptions made about certain groups. It will be vital if current exceptions are removed.

The Bill should specify that that treatment should be "least invasive" as well as "least restrictive" This is an important issue, for example in relation to the overuse of depot medication and sedating injections.

### ***Provisions for high-risk patients***

There should be improvements in the current provision of mental health services for this group and in the practice of the civil and criminal justice systems. This would have a greater positive impact for this group and for public safety.

Government work on developing and evaluating specialist therapeutic services for people with a personality disorder is welcome, but is as yet at an early stage. A recent seminar of experts in the field recommended improvements in services for early intervention as the key solution.

The civil and criminal justice system could be used more innovatively to bring dangerous people before the courts in other ways and on lesser charges than the commission of a violent offence - domestic violence laws would provide a model. Criminal justice legislation should be used to allow courts the option of imposing indeterminate sentences in appropriate cases involving violent offences related to a mental disorder. Judges should receive training on sentencing for violent offenders as part of the Judicial Studies Board programme. Current legislation is too complex to be consistently applied and risk assessment is little understood.

...

### ***The Bill needs to be complemented by legislation on mental incapacity.***

People with fluctuating incapacity or long term incapacity need others to take decisions about a range of health social and personal issues - either through advance statements or other substitute decision making processes and they need to know that their affairs are being attended to. This will have a direct beneficial effect on their mental health and maybe assist their recovery.

However at present people who lack capacity whether on account of mental health problems, learning disabilities or physical illness are left in a legal limbo because of the uncertainty about the definition of capacity, about who has power to make decisions and act on their behalf, (and in what circumstances), and because of the areas where no one has power to take decisions on their behalf- in particular in relation to their healthcare and social needs. This leaves very vulnerable people exposed to exploitation and neglect. Starting with the Law Commission Report in 1994 there has been years of consultation on legislation on mental incapacity. A Bill with a clear framework for substitute decision-making has been drafted. This legislation is needed to underpin and provide a wider context for the provisions of the draft mental health Bill.

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**Fig 7. NO Force response to the Draft Mental Health Bill (Font and footnotes original)**

## USERS & SURVIVORS

### RESPONSE TO GOVERNMENT WHITE PAPER

#### "REFORM OF THE MENTAL HEALTH ACT 1983"

6<sup>th</sup> September 2002

Many users, survivors and patients across the country have been consulted on their response to the Government White Paper - "Reform of the Mental Health Act 1983". The summarised response is in order of the priority of issues that were raised most frequently by users and survivors. The reasoning behind each issue is shown as bullet points, with references to back this up where appropriate, to keep the response simple and clear.

### REFORM OF THE MENTAL HEALTH ACT 1983

#### NO TO INCREASED POWERS OF COMPULSION OR FORCED TREATMENT

As users, survivors and patients we agreed that the "Reform of the Mental Health Act 1983" had increased the powers of compulsion dramatically and that we are fundamentally opposed to these changes.

We know implicitly that such legislation will encourage widespread violation of the human rights of people with mental health support needs<sup>3</sup>.

We instinctively know that these wide ranging powers are being brought about by the government responding to inaccurate public perceptions (fuelled by biased and discriminatory media coverage of isolated violent attacks by people with mental health support needs) that "mentally ill" people are generally violent. We know that this perception is not based on factual evidence or reality<sup>4</sup>.

We also believe that increasing the powers of compulsion is a "quick fix" solution and cheaper option for managing the burden to society of "mental illness"<sup>5</sup> rather than developing a range of services for people with mental health support needs, especially ones sensitive to black and ethnic and minority groups, in the community, and in addition to psychiatric intervention.

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<sup>3</sup> United Nations High Commissioner for Human Rights, Principles for the protection of persons with mental illness and the improvement of mental health care, Adopted by the General Assembly resolution 46/119 of 17<sup>th</sup> December 1991.

<sup>4</sup> Taylor, P.J. & Gunn, J. (1999) Homicides by people with mental illness: myth and reality. *British Journal of Psychiatry*. 174: 9-14

<sup>5</sup> Diamond, R. J. (1996) Coercion and tenacious treatment in the community: Applications to the real world. In Dennis, D. L. and Monahan, J. (Eds) *Coercion and aggressive community treatment. A new frontier in mental health law*. Plenum Press. New York.

We are shocked that the government has not listened to users, survivors, patients and carers, or many voluntary organisations and professionals that provide mental health services, or even their own appointed Expert Committee on key recommendations<sup>6</sup>. We support and endorse the responses to the Green and White Papers produced by the Mental Health Alliance<sup>7</sup>, Greater London Action on Disability<sup>8</sup>, Mental Health Foundation<sup>9</sup> and Mind<sup>10</sup>.

The questions that will be asked, in light of the World Health Organisation reporting on the dramatic demographic increase in mental health support needs<sup>11</sup>, by members of the general public who have since become users of mental health services, will be, where are the alternatives to psychiatric intervention? Why haven't I got a choice? Why are my needs not being met? Why are the services not culturally specific? Why am I being treated like a criminal and a child? And why have I become stigmatised and have had many human and civil rights curtailed?

The message from users, survivors and patients to the government is "to get it right now" with the correct balance between less compulsion and more choice of services.

The following list of points have been put forward as reasons against the proposed increased powers of compulsion and especially with the compulsory treatment orders (CTO's):

- People will avoid mental health services, particularly at a time of crises<sup>12</sup>.
- Avoidance of mental health services will result in increased risk to people with mental health support needs.
- The therapeutic relationship between user and key worker will be destroyed.
- The key worker will have a policing role in the community of people under CTO's and this will break the trust of the client.
- It is known that there is a creative tension between approved social workers and doctors. This tends to work in the users best interest. We do not want CPN's to be given powers to initiate assessments as they are too closely linked with doctors.
- Adverse side effects of powerful psychiatric drugs cannot be monitored continuously in the community.

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<sup>6</sup> Department of Health. *Report of the Expert Committee: Review of the Mental Health Act 1983*. London: Stationery Office, 1999.

<sup>7</sup> *The White Paper - Reforming the Mental Health Act, A Briefing from the Mental Health Alliance*, February 2001

<sup>8</sup> *New Mental Health Act . Direct from Hell*, Common Agenda Newsletter, December 1999, Greater London Action on Disability.

<sup>9</sup> *New compulsory treatment orders could deter people from seeking support*, Mental Health Foundation News Release, 20<sup>th</sup> December 2000

<sup>10</sup> Mind, The Mental Health Charity, *Reforming the Mental Health Act, Summary of Proposals with Comments from Mind*, Policy and Parliamentary Unit, 8<sup>th</sup> January 2001

<sup>11</sup> World Health Organisation, *Report on Non-Communicable Diseases and Mental Health - Key areas of work for the years 2000-2001*, June 2000

<sup>12</sup> Perkins, R. E. (1999) *Falling through the net...or deliberately jumping?* OpenMind, 97.

- There is no indication whether a CTO will be ended once a person is stable in the community.
- CTO's will increase stigmatisation and social exclusion of people with mental health support needs by the general public.
- CTO's will therefore work against Standard 1 of the National Service Framework for Mental Health. Standard 1 states "Health and Social Services should combat discrimination against individuals and groups with mental health problems, and promote their social inclusion".
- Compulsory treatment puts more emphasis on the dominant medical model of mental illness with restriction of resources to develop alternative models.
- Lack of alternative mental health services will exclude culturally specific mental health support needs that do not embrace the Western medical model.
- The criteria for sectioning and compulsory treatment orders are too broad and based on subjective opinion.
- The criteria for mental disorder is too broad and can open up the powers of compulsion to abuse.
- Lack of specific laws around incapacity and capacity opens up the powers of compulsion to abuse and possible violations of individual's rights.
- Lack of statistically valid methods of risk assessment opens up the powers of compulsion to abuse and violations of an individual's human and civil rights.
- The scientific evidence for "mental illness" being a disorder of the brain is lacking and therefore putting most resources into mental health services based on the medical model is not realistic.
- The scientific evidence on the action of the majority of psychiatric drugs on the brain is lacking and resources should also be directed towards alternatives to the medical model.
- The lack of research on the damaging effects of psychiatric drugs and the debilitating reactions and side effects are lacking. In order for there to be more public confidence in psychiatric drugs all encompassing research should be carried out with user and survivor based evidence.

## YES TO THE RIGHT TO A COMPREHENSIVE ASSESSMENT OF NEEDS

The White Paper states that all patients treated under formal powers will be given a full assessment of their health and social care needs. However, such an assessment will only take place if it has been decided that compulsory powers should be used. A failure to provide early access to a comprehensive assessment and appropriate and quality services can lead to the use of compulsion at a later date. We believe that the new mental health legislation must place a duty on health and social care agencies to provide a comprehensive assessment of a person's needs when such an assessment is requested or it appears that the person has mental health needs. Given that the right to an assessment will be of little value if no services are provided to meet identified needs, individuals should also have the right to receive the appropriate treatment, care and/or support to meet their assessed needs. Without a statutory duty it seems unlikely that the resources necessary to provide comprehensive services throughout England and Wales will be made available. We would like to remind the Government of the United Nations Principles for the protection of persons with mental illness and the improvement



of mental health care (17.12.91) which includes "All persons have the right to the best available mental health care, which shall be a part of the health and social care system".

#### YES TO CONSENT AND SAFEGUARDS OF DRUG TREATMENT AND ECT

We agree that people should have access to information about their treatment so as to be able to make an informed choice on the type of drug they are prescribed and to give their consent. People all react to drugs and ECT in different ways and therefore it is vitally important that patients are listened too concerning their treatment. The types of treatment should be seen as dynamic between patient and practitioner with both working in partnership to achieve a therapeutic outcome. There is also a high element or risk associated with commonly used psychiatric drugs and treatment such as neuroleptics, lithium, poly-pharmacy and ECT in terms of acute side effects, adverse reactions (some resulting in death) and toxicity at certain levels<sup>13</sup>. Therefore the patient should always have all the relevant information relating to types of drugs for treatment so that they can make safe and informed choices.

#### YES TO FREE INDEPENDENT USER CONTROLLED ADVOCACY

It was unanimously agreed that all people with mental health support needs should have a statutory right to choose a free independent advocate whether in hospital or in the community<sup>14</sup>. This safeguard is vital when considering the broad definition of mental illness, the disregard to determining incapacity and the increased powers of compulsion in the White Paper. Users and survivors are pleased that the White Paper states that 'the Patient Advocacy Liaison Service announced in the NHS Plan will provide the gateway into, but not be the provider of, independent specialist advocacy services'.

- People should be provided with clear information concerning independent advocacy and should be offered this service free of charge and by individuals that have no conflict of interests.
- People should be offered independent advocacy before, during and after assessment, compulsion and care and treatment.
- People should have access to independent advocacy to enable their best interests to be heard, acknowledged and acted upon in their treatment and care, especially when under formal powers of compulsion.
- People should be able to access an advocate directly through different gateways.
- People should be able to have an advocate from the same black, ethnic and minority group background.
- People should be entitled to have an advocate present especially during an assessment, when decisions are being made concerning treatment and care and at any time.
- The Government should provide resources for independent advocacy and ideally the service should be user and survivor controlled.

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<sup>13</sup> Jones-Edwards, G. (1998) An eye-opener. *OpenMind* 93, 12-13.

<sup>14</sup> Thomas, P. & Bracken, P. (1999) *The Value of Advocacy : Putting Ethics into Practice*. Psychiatric Bulletin. In press, June 1999.

## YES TO ADVANCE DIRECTIVES

People with mental health problems in relation to the principles of autonomy should have the right to draw up advance directives on their care and those they want involved in such care<sup>15</sup>. Such statements should be legally enforceable such that a person who has lost capacity (whether detained or not) has the same rights as someone who has retained capacity. We believe that people with mental health problems should have the right to draw up legally enforceable advance directives on their treatment and care and those they want involved in such treatment and care and to agree such statements with the clinical team where possible. We welcome the expectation that clinical teams will help patients with this task and also insist that people can draw up their advance directives independently. The clinical team must be required to follow such statements unless there are compelling reasons for acting otherwise which must be recorded in writing.

We are astounded that the Government has not carried through its intention of allowing all patients to nominate a person to be involved in decisions about their care and treatment and placing it in the hands of the social worker or professional responsible for co-ordinating action following a decision to apply compulsory powers. This is a serious breach of the patients right to choose a person to represent their best interests. We think that it is entirely inappropriate and possibly a breach of Article 8 of the European Convention to weaken this safeguard by taking the power of nomination out of patients' control.

## YES TO THE NEW MENTAL HEALTH TRIBUNAL

We support the formation of new independent tribunals with a lawyer as chair and two other members with experience of mental health services, one with a clinical background and the other with a background in community or voluntary service sector service provision. We feel that the White Paper should have expressly identified either members of black, ethnic and minority communities or service users as potential tribunal members and should have provided details on how the members will be appointed<sup>16</sup>. It is essential that black, ethnic and minority communities are fully represented on the panels and that users and survivors with first hand experience of mental health needs and mental health services should also be present on the panels. We are totally opposed to doctors not being able to discharge patients, even when they are thought to be well enough, and having to get approval by the tribunal.

## NO TO COMPULSORY POWERS CONCERNING HIGH RISK PATIENTS

Whilst recognising the Government's concern about public protection we continue to have doubts about the need for such sweeping powers as are proposed. We are very concerned for the following reasons.

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<sup>15</sup> Srebnik, D.S. & La Fond, J.Q. (1999) *Advanced directives for mental health treatment*. *Psychiatric Services*, 50, 919-925

<sup>16</sup> The Mental Health Foundation, Briefing No. 8, *Joint Policy Statement on Race and Mental Health*, July 1997

- About the threshold of risk which will enable people not before the courts for offences to be detained. We share the view of the Home Affairs Committee that the relevant test should be virtual certainty that they will commit a very serious criminal offence rather than evidence of a significant risk of serious harm.
- That new powers are being proposed to cover people with a personality disorder before there is an adequate evidence base. No powers should be introduced until the existing pilots have been fully evaluated.
- That these powers will impact disproportionately on oppressed people and will reinforce discrimination that already exists in the mental health system<sup>17</sup>.

...

#### YES TO COMMISSION FOR MENTAL HEALTH WITH USER AND SURVIVOR INPUT

We welcome the Government's recognition of the need for effective monitoring of the working of a future Act. Users and survivors should have a strong input into effective monitoring and training of people working within the Commission for Mental Health. Where responsibilities for inspection are to be taken over by generic bodies such as the Commission for Health Improvement it will be essential to ensure that the relevant expertise is developed within those bodies. Therefore the places given to lay people need to be given to users and survivors who understand mental health issues from an experiential point of view.

#### YES TO CODE OF PRACTICE WITH USER AND SURVIVOR INPUT

The White Paper states that new legislation will place a duty on the Secretary of State to publish a Code of Practice and to keep it under review and that it is important that the Code takes into account the views of those with a significant interest. Users and survivors would like to know when and how they will be consulted on the Code of Practice.

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<sup>17</sup> Szmukler G. & Holloway F. *Reform of the Mental Health Act - Health or Safety?*, The British Journal of Psychiatry (2000), 177: 196-200.

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