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# »Law's Outsiders«: An interview with Alex Sharpe

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In May 2012 Alex Sharpe, Professor of Law at Keele University, UK, visited Lund University where she participated in a series of seminars and workshops organised around a central motif in her work: the legal outsider. As part of her visit she presented a version of a paper recently published in the *Modern Law Review*[1] titled »Transgender Marriage and the Legal Obligation to Disclose Gender History«. The paper focused on and challenged the legal and wider cultural framing of non-disclosure of gender history as harmful and as unethical. The paper is her latest intervention and forms part of a substantial body of writing around transgender/law issues. This corpus includes her book: *Transgender Jurisprudence: Dysphoric Bodies of Law* (2002),[2] the first to offer a critical treatment of the subject. In a separate workshop she approached the legal constitution and regulation of outsiders through the lens of the monster. This event served to introduce her latest book, *Foucault's Monsters and the Challenge of Law*.[3] In contrast to a focus on one specific group of legal outsiders (transgender people), *Foucault's Monsters* offers instead a deeper theoretical analysis and a much broader historical sweep. Drawing on Foucault, the book presents a theoretical framework for understanding the legal production of outsiders and a history of the legal category monster. The history presented works both as a history of the past, but also, and more importantly, as a history of the present whereby sense is made, through the monster template, of contemporary outsider figures: admixed embryos, conjoined twins and transgender people. This interview with Professor Sharpe focuses on these two aspects of her scholarly work: trans-

1 »Transgender Marriage and the Legal Obligation to Disclose Gender History« (2012) 75(1) *Modern Law Review* 33-53.
2 *Transgender Jurisprudence: Dysphoric Bodies of Law* (London: Cavendish, 2002).
3 *Foucault's Monsters and the Challenge of Law (London:* Routledge, 2010).

gender/law relations specifically and the legal constitution and regulation of outsiders more generally understood through Foucault's monster template.

**Linnéa Wegerstad (LW): What is transgender jurisprudence?**

Alex Sharpe (AS): Transgender jurisprudence is a body of law that deals with the relationship between transgender people and law in a variety of contexts. The field can be subdivided in different ways. However, two key concerns that emerge can be described as designation and discrimination. There is overlap but, broady speaking, designation refers to judicial or legislative determination of sex. While not inevitable such legal designations tend, almost without exception, to be made within a binary frame. The question of designation is provoked by challenge to legal classification and involves struggle over what counts as male and female. Questions of sex determination tend to present themselves in the context of laws where gender is considered to matter: criminal law, pension rights, social security entitlements, and so forth. The most important area however, and the one where legal anxiety is most evident, is marriage. Historically, marriage has operated as a kind of litmus test for the authenticity of law's reform claims. Sometimes reform has been possible in relation to some legal subject matters but not marriage. In order to understand this we need to recognise state opposition to gay and lesbian marriage and judicial, legislative and wider cultural conflation between (trans)gender and (homo)sexuality. There is a long history that helps make sense of this conflation, one that implicates but precedes the institutions and discourses of sexology and psychoanalysis. Conversely, discrimination requires consideration of the ways in which transgender people are afforded legal protection. In contrast to a legal focus on sex, or the designation question, anti-discrimination laws that protect transgender people side-step the question of sex in a binary sense through providing protection on the basis of transgender status or, less aptly, sexuality, or through interpretation of sex discrimination to include discrimination on the basis of transgender status.[4] Accordingly, it is the question of discrimination rather than designation that has enabled the greater expression of gender non-conformity. However, I do not mean to romanticise law in the context of discrimination. On the contrary, courts have sought to shore up heteronormativity in various ways in moments of inaugurating anti-discrimination law measures.

4 A. Sharpe, Transgender Performance and the Discriminating Gaze: A Critique of Anti-Discrimination Regulatory Regimes' (1999) 8(1) *Social and Legal Studies: An International Journal* 5-24).

**Niklas Selberg (NS): What are the tensions in research contributing to transgender jurisprudence?**

AS: I suppose there are many tensions: theoretical, ethical, political, ontological. For example, much of transgender scholarship both within law and beyond draws heavily on Queer and poststructural theory. This has provoked criticism from some trans people who object to what they see as Queer's appropriation of trans as its emblematic marker. This raises ethical questions especially when trans is deployed for non-trans purposes on the sexual political terrain. Equally, and relatedly, there is concern that trans is reduced to a kind of play or performance. For some, who see trans identity in more ontological terms this is deeply problematic. These are issues that divide communities and are not specific to trans people. For myself, as a transgender woman working within the academy and within trans communities, I am acutely aware of some of these difficulties and fault lines. This is perhaps especially true given that my work draws heavily on poststructural theory. In this respect, I am open to some of these criticisms. For me, the key thing to emphasise is that if trans is to be understood as a socially constructed identity it is not peculiar in this respect. This is a feature of all identities. I think part of the problem here is the especial vulnerability of trans people to the accusation of artifice, an outlook that has its own difficult history. While I recognise the difficulties that many trans people face in the shadow of the law, and while it might, in some contexts, be lacking in pathos to abandon some form of strategic essentialism,[5] it needs to be emphasised that essentialist arguments delimit transgender, effect hierarchies and ultimately undermine autonomy as they privilege a static moment, typically birth, over the idea of becoming. In this regard, appeals to science need to be treated with caution as Eve Sedgwick has reminded us.[6]

**LW: Do these tensions play out in law and legal theory?**

AS: The tensions between legal understandings of identity as fixed and legal understandings of identity as malleable are present in trans/law contexts as well as across a range of other sexual political issues. Let us take sexuality as an example, and especially gay male sexuality. Here law has, over time, struggled around the act/identity distinction. Sometimes law has constructed gay male sexuality as a fixed category with a solid foundation. In fact this seems to be required, at least rhetorically, in order that gay men and lesbians gain anti-discrimination law protection. This seems to be an effect of liberal law's understanding of rights acquisition whereby rights conferral presupposes the prior establishment of a coherent fixed group

5 G.C. Spivak, In Other Worlds: Essays in Cultural Politics (London: Routledge, 1987).
6 E. Sedgwick, *The Epistemology of the Closet* (New York: Penguin, 1990).

identity. On the other hand, there has been a lot of legal and political anxiety concerning, for example, reducing the age of consent for gay men. Part of this anxiety is informed by the idea that sexuality is mutable, that young men are impressionable and that their sexuality is not fully formed. So, on the one hand law fosters the idea that sexuality is fixed, but on the other that it clings to the notion that it remains sufficiently malleable to require paternalistic intervention. There is tension in legal reasoning and political discourse around these sorts of issues. Sometimes the identity aspect of sexuality is put to the fore, while in other instances acts are foregrounded. Law's struggle, and indeed ambivalence, regarding the act/identity dyad is also apparent in trans contexts. The distinction plays itself out around the idea of the natural. Thus reform judges have sought to naturalise transgender people and their bodies as well as the status of surgical interventions. Conversely, those judges that have resisted reform have sought, through particular interpretations of biological science, to de-naturalise transgender bodies and desires. Indeed, even within reform jurisprudence naturalising tendencies are suspect. Reform is more interesting to me and, I think, revealing about legal desire. My work has always been less interested in those courts that refuse transgender claims, that interdict, prohibit, that utter the royal »no.« Much more interesting are those courts that say yes and in these circumstances we need to interrogate precisely the medico-legal conditions of legal inclusion and, of course, such conditions are always present. When we challenge liberal law in moments of reform we get to glimpse something important about the nature of legal anxiety. We get a clearer sense of what is at stake for law in incorporating transgender people within the social and legal order. My claim that the naturalising tendencies of reform courts are suspect points to an ambivalence that lies at the heart of the transgender/law nexus. We see this in the context of the UK legal provision requiring transgender people to disclose their gender history prior to a marriage ceremony. On the one hand, law confers gender recognition on transgender people. Yet, at the same time, law's commitment to gender recognition appears inauthentic. This is because the act of recognition is tied to the present moment whereas the disclosure provision insists on the past as truth. On the surface, it appears that sex/gender claims are taken seriously. Yet, in the marriage context, a biological understanding of sex as truth reasserts itself thereby undercutting present sex/gender status that, at least ostensibly, enjoys the imprimatur of law. And, of course, this tension draws us back to legal anxiety.

**LW: Where does this anxiety come from?**

AS: This is an important question! It is also important not to reduce the answer to a single factor. However, it appears to me that homophobia and the legal and cultural conflation of transgender and homosexuality are central to grasping legal anxiety around transgender people, their bodies and desires. Indeed, homophobia appears to

operate as a subtext throughout the corpus of the law that is transgender jurisprudence. This seems to be especially apparent in the marriage context. To return to the example of non-disclosure of gender history before a marriage we have, for example, a situation where a person who is legally recognised to be female marries a man. According to law, this is an opposite sex and therefore heterosexual relationship. Yet, the sexual encounter imagined, indeed anticipated, is not really viewed as heterosexual in the fullest sense. Doubt continues to linger in the legal mind. In this sense the spectre of homosexuality haunts transgender reform moments. The possibility of inadvertent communion with homosexuality underwrites the disclosure provision. It is what the provision is designed to protect against. The problematisation of heterosexuality here follows from the fact that law remains ambivalent about the sex/gender status it has conferred. At the heart of the problem lies the legal and cultural conflation of transgender and homosexuality. This, of course, has a longer history. If we go back to before the so-called gender revolution of the 18th century,[7] being a man who desired men did not equate with being feminine. That is, it did not call masculinity into question. We see this clearly in the figure of the Rake. During the 18th century, same-sex desire and masculinity gradually became uncoupled in a wider cultural sense. This equation of »failed« masculinity with homosexuality became further entrenched with the emergence of sexology and psychoanalysis. It is a conflation that continues to circulate today despite resistance to it and it carries over in transgender contexts.

**NS: I'm thinking of your article about the obligation to disclose gender history. Would you say that abolishing this obligation would make marriage an unproblematic institution in society?**

AS: No, I wouldn't say that! There are many reasons for thinking of marriage as a problematic institution. Repealing the provision has more to do with issues of equality and countering notions of transgender people as gender ambiguous, sexually harmful and ethically suspect.

**NS: You touch upon anti-discrimination legislation in this article. This kind of legislation operates by defining legal categories which can change over time. From the perspective of law reform groups, what are the advantages of, and pitfalls associated with, this legal fact?**

AS: There is a tension here. On the one hand, the creation of a protected category creates rights and provides a form of redress for a disadvantaged group. On the oth-

7 R. Trumbach, *Sex and the Gender Revolution (vol 1) Heterosexuality and the Third Gender in Enlightenment London* (Chicago: Chicago University Press, 1998).

er hand, conferral of anti-discrimination law rights within liberal legal regimes always comes at a cost. Here I am speaking of inclusion/exclusion. You state in your question that legal categories can change over time. This is true. But at any particular point in time one is either inside or outside the relevant category. For example, transgender women have been, and in some jurisdictions still are, considered to fall outside the category female either as a general proposition or on the basis of failure to comply with particular medico-legal conditions, most notably, surgical conditions. Thus the category female has been understood to exclude transgender women as a class and then subsequently to include some, but not other, transgender women. Moreover, it is not only law that is implicated here. We need to recognise the agency of law reform groups that are complicitous in producing these kinds of outcomes. This raises a question of ethics in the context of identity-based forms of political activism. By the same token, we need to recognise that an effect of law's categorical imperative is to foster tensions within social movements and undermine possibilities for cooperation. In addition to the policing of category boundaries whereby some individuals who locate themselves within a group are legally positioned outside it, we have the additional problem that in relation to some groups law refuses to provide protection. Here I am not speaking about dispute over group membership, but about law's refusal to protect entire groups of people. Moreover, this difficulty is a direct effect of law's categorical imperative within liberal legal orders. Conferral of anti-discrimination law rights proves contingent on a group seeking protection establishing that it is a fixed or immutable group. We should challenge this linkage between rights and immutability. We should be able to say: »We have a group, group X, they are discriminated against, we can document a history of discrimination against this group over time, at the hands of the dominant group and that should be enough, without having to say that this group is fixed in some more immutable, ontological or essentialist way. For example, in the UK today there is is no protection afforded on the basis of class or weight. Of course, people are discriminated against on the basis of class and weight. But because these categories are seen as fluid protection is withheld. Discourses around consumption and the ideology of meritocracy reproduce the idea that weight and class are to some extent random outcomes. In a related register, this kind of categorical imperative reifies, indeed naturalises, categories that might be better viewed as social constructs. While weight and class are seen as moveable targets, sex, race, sexuality, disability and so forth are seen as concrete or relatively concrete categories. Yet, even the most cursory examination of such claims reveals their limits. For example, lets take sex or, more specifically, the male/female dyad. This is perhaps the most axiomatic, naturalised and culturally unproblematic of social distinctions. Yet, the scientific fact of

intersex gives the game away. Clearly, at the level of science, if not culture, there are more than two sexes. This observation serves to dramatise Judith Butler's claim that gender is the ideology that produces sex.[8]

**LW: Talking about your article on transgender marriage, what strikes me is that the arguments you put forward rely on law and the coherence of law, which are a very traditional way of legal arguing. Why did you choose that method?**

AS: I think external and internal critiques are both important to the study of law. In terms of internal critique, I think it is important to take law and legal rules seriously. This is important because, as in the present context, doing so is an important avenue to legal change. It is also important to challenge law and legal rules from a perspective internal to law because a purely external critique runs the danger of reducing law to politics or fails to grasp the politics that is or has become internal to law. It is also critically important to recognise that law and legal power are not simply about obligation and sanction. Rather, a key aspect of an internal critique of law lies in teasing out and challenging its cultural power. In terms of the disclosure of gender history issue, law not only creates a legal requirement and sanction. The provision also produces discursive fallout. It does so through reproducing the notions that transgender people are sexually harmful, gender ambiguous and ethically suspect. These legal representations, which circulate both within and beyond law, need to be resisted.

**NS: I really liked the arguments put forward in your article. I think on the internal matter, on the »arguing like a lawyer« part, you managed to short circuit the law on its own premises. You successfully deploy consistency, public policy, analogy and also the hierarchical perspective with the European Convention. But where I think you really did a good job here. Where do the problems with law come from? Is it bad lawyers? Perhaps they haven't read their convention correctly? Is it what they have to work with?**

AS: I don't think the problem is one of bad lawyers. If we stay with the transgender issue that we have been discussing I think the problem lies in cultural understandings of transgender bodies and desires. These understandings both inform legal reasoning and are informed by it. A view of transgender people as gender ambiguous or as gender uncertain finds support in dominant and binary understandings of sex that permeate our culture and law. A view of transgender people as sexually harm-

8 J. Butler, *Bodies That Matter: On the Discursive Limits of Sex* (London: Routledge, 1993).

ful is inextricably tied up with homophobia. And a view of transgender people as ethically suspect is informed by the idea that truth is tied to a particular configuration of biological factors at the moment of birth. In other words, judges might be viewed as drawing on and reproducing what is understood to be axiomatic, self-evident and natural both with law and the wider culture. What is at play here then is the ideology or politics of gender. It is again important to recognise how politics is internal to law. Moreover, the penetration of law by this type of politics is so old that the distinction between law and politics in this context is, perhaps, hardly worth making. When liberal law makes claims to universality, impartiality and neutrality it disavows a gender politics that is its own. Thus when the lawyer or judge tries to distinguish between law and politics the attempt is flawed but not disingenuous. Here lies the problem which is one of deeply embedded assumptions. And, of course, it is the most deeply entrenched assumptions that we need to tackle. This is part of Foucault's legacy.

**LW: That leads me nicely into the next question. Perhaps we can talk a little about your most recent book *Foucault's Monsters and the Challenge of Law*. You describe the monster as a legal template, as someone who is located outside the law. What is the role of law in creating the monster? How does Foucault articulate the monster? What are its constituent features?**

AS: The category monster comes from Roman Law. Thus it has its source in the law. In that sense it is a legal category; it has a legal life, a legal history. It is not something that comes from outside the law, like, for example, Baumann's stranger. In terms of Foucault's understanding of the monster, Foucault understands the category as a way of delineating bodies that have been placed outside the law from those that remain within its domain. In Roman law there is, as Foucault notes, a distinction between deformity and monstrosity. The deformed or disabled are people whose rights might be restricted in some way, but they are not entirely restricted. Law accommodates them in various ways. In other words, deformity can be viewed as representing the limit of law's capacity to incorporate or include. So the distinction is really one between problematic bodies that law can accommodate or incorporate into its order and those bodies that not only challenge law but threaten to bring it to a point of crisis. The only way to deal with the monster is to deny it a place within the law lest law itself be corrupted or dissolved. Of course, the monster also functions for law. It is impossible but at the same time recuperative. This is because the monster is essentially a hybrid creature, it blurs boundaries. Through placing it outside the law, binary categories of the law are thereby maintained. In terms of the sufficient and necessary conditions of monster production, Foucault draws our attention to a nature/law nexus. For Foucault, the monster is an effect of a double breach, of nature and law. A breach of nature occurs when a body is viewed as being

sufficiently irregular. However, an irregular body only becomes a monster when it is considered to pose a fundamental challenge to law, and specifically to legal order or taxonomy. By way of example, Foucault identifies the bestial human, the so-called privileged monster of the late Middle Ages. This figure which is part human, part beast, was considered to represent a breach of nature on account of its high degree of bodily irregularity. In terms of law, the creature undermined one of law's central axioms, the distinction between human and animal. Accordingly, it was considered a monster until we could no longer suspend our disbelief in a bestiality thesis. Interestingly, the human/animal hybrid has returned as an object of concern in the context of developments in genetic science.

**NS: How is the emergence of monsters to be understood in historical terms? What is the relationship monsters bear to power relations? And what types of monster does Foucault identify?**

AS: These are interesting questions. In the first place, monsters are specific to time and place. That is to say, they are historically contingent. While they have persisted over time, both as source of anxiety and prop to the human subject, the intensity of concern they have generated as well as the shape they have assumed has proved dependent on prevailing power relations. In this regard, the question of monsters is not only psychological or fantasmatic. It is also socio-political. Let's take an example, the entry of monsters into English legal texts in the mid-thirteenth century. Prior to Bracton's Laws of England there was no mention of monsters in English law.[9] So the question that arises is: how did this happen? This is, of course, a properly historical question and I intend here only to identify some important themes. Of course, one could point to the rediscovery of Justinian's texts and therefore to the legacy of Roman law. Historians have however emphasised the fact that, unlike Continental Europe, the reception of Roman law was a partial affair in England. In order to make sense of the entry of monsters into English law in the mid-thirteenth century we need to understand the social and political upheavals of the period and the anxieties which they generated. This was not a period of social calm. It was a time of religious wars, of crusades and, more significantly, the loss to Islam of the third crusade; a fact that weighed heavily on the Western imagination. It was a time when nation states started to take shape, to grow buds, a time when the Church of Rome sought to reassert its power and a time when Jews were expelled from England. It was a time when sodomy, not previously subject to the death penalty, became a capital offence throughout most of modern day Europe. So monsters make their appearance in English law at a time of multiple crises in the West. Later,

9 H. Bracton, *On the Laws and Customs of England* 1240-1260, vols 1-4 (trans, S.E. Thorne) (Cambridge MA: Harvard University Press, 1968).

in the late-sixteenth century English context, we can look to the writings of the canon lawyer, Henry Swinburne, to illuminate the social and political forces that help account for the emergence of, and particular shape taken by, law's monsters.[10] Swinburne wrote after the English reformation and for it. He talks about dog, duck and raven-headed monsters. The animals that are depicted, the ass, the raven and the dog, are particularly interesting. The dog was understood to be a sign of the devil, the ass a sign of the Jew, and the raven signified deities and the afterlife. There is powerful religious symbolism in these monsters. The context of reformation and counter-reformation give particular shape and colour to the monsters England imagined. In short, monsters appear to emerge at times of crisis and conflict: national, religious, sexual and so forth. For Foucault, the key periods he identified were the late Middles Ages, the Renaissance and the Classical period and the monsters he saw as privileged by European societies within those periods were respectively, the bestial human, conjoined twins and the hermaphrodite. These respectively represent crises of species differentiation, legal personhood and sex.

**LW: Could you say something about monsters today? Is it still meaningful to use this category as a mode of analysis?**

AS: In terms of Foucault's monster, the fundamental thing to grasp is the nature/law-nexus as I have already indicated. The monster exists when nature is breached, and the breach of nature simultaneously undermines law in a fundamental way, in the taxonomical, categorical sense. It is for this reason that Foucault's monster framework is particularly useful. In terms of bodies, it can no longer cover hermaphrodites (or intersex people) because, although the notion that intersex bodies are significantly irregular persists, and this could be interpreted to meet Foucault's breach of nature requirement, it can no longer be said that those bodies cause a crisis for law. While this was possible prior to the emergence of the two-sex medical model in the eighteenth century, subsequently medicine insisted on a binary understanding of sex.[11] According to this model, a third sex is more apparent than real. The task of physicians became one of determining true sex within a binary understanding. On the other hand, Foucault's framework could be said to persist in its application to conjoined twins. Again, and for the reasons already given regarding intersex people, a claim about breach of nature could still be made. In relation to law, breach might also be established because, although we understand the causes of conjoined twins today, conjoinment still represents a challenge to the categorical

10 H. Swinburne, *A Brief Treatise of Testaments and Last Wills*, 1590 (New York, Garland Publishing, 1978).

11 T. Laqueur, *Making Sex: Body and Gender from the Greeks to Freud* (Cambridge, MA: Harvard University Press, 1990) Chp 5.

structure of law. That is, conjoined twins challenge the legal idea of personhood as a single embodied mind. It is also important to recognise that Foucault's idea of the monster is not limited to the physical body. Rather, it also applies to the psyche. Thus for Foucault, a double breach of nature and law is apparent in the context of the abnormal individual, a figure whose emergence he dates to the nineteenth century. This »diluted monster« to quote Foucault, is a monster precisely because s/he can be understood within the context of a double breach of nature and law. For example, the homosexual can be understood in terms of nature gone awry evidenced by »perverse« desire/practice. The challenge to law lies in the threat posed to the heteronormative gender order. I am not suggesting that gay men and lesbians and others previously considered abnormal within discourses of sexology and psychoanalysis fit within Foucault's monster framework today. They certainly have been, and they continue to be vulnerable to the possibility of monsterisation. Indeed, in many law reform contexts, the persistence of discourses around the natural, in conjunction with the state's commitment to heteronormativity, points to this dilemma.

**LW: How does your reading of Foucault's monsters relate to other contemporary modes of understanding power relations or social differentiation and exclusion?**

AS: What I am interested in is outsiders and in particular how they are produced or constituted through law. This is really a central theme in all of my work and certainly in the Transgender Jurisprudence and Foucault's Monsters books. In writing Foucault's Monsters I was especially interested to pinpoint the necessary and sufficient conditions for outsider production. Of course, there are several available templates for thinking about outsiders available within law, such as the idiot, the lunatic and the deformed or disabled, as well as within social theory: Girard's scapegoat[12] and Bauman's stranger[13] being two of the more obvious examples. When I started to read Foucault's abnormal lecture series,[14] which is central to the analysis adopted in the book, I found the monster template to be particularly useful. Choices like this, and choices over research method, are informed by the concerns you have and the questions you pose. In the first place, coming from the point of view of being interested in gender and sexuality and the body, as Foucault himself was, and given the strong relationship between monsters, especially Foucault's monsters, and sexuality, this template presented itself as an option with appeal. But irrespective of

12 R. Girard, *Violence and the Sacred* (Baltimore MD: John Hopkins University Press, 1977; *The Scapegoat* (Baltimore MD: John Hopkins University Press, 1986).

13 Z. Bauman, *Modernity and Ambivalence* (Oxford: Polity Press, 1991); *Postmodernity and its Discontents* (New York: New York University Press, 1997).

14 M. Foucault, *Abnormal: Lectures at the College de France* 1974-1975 (London: Verso, 2003).

these links, I believe Foucault's monster framework offers something other available templates do not. What Foucault offers is a certain kind of precision and delineation. His monsters are discrete and more easily identifiable. By way of contrast, Girard's scapegoat and Baumann's stranger offer a very generalised account that seems capable of including practically anybody and everybody. So I found Foucault more useful and more analytically precise. The monster also has appeal because it perhaps precedes and perhaps breathes life into alternative templates. In this sense, the monster may represent a kind of master category. I hesitate to use this phrase which sounds anything but Foucauldian. Certainly, Foucault himself viewed the abnormal individual as a descendant of the monster, as a figure shaped by the nature/law logic of the monster. Perhaps this is true of other outsider templates? What we need are genealogies of the scapegoat, of the stranger and so forth. What I'm saying is that the monster is perhaps the un-distilled outsider – that's a nice phrase, I should have used it in the book. I think some of these other figures are more distilled. Foucault talks about the abnormal individual as a diluted monster which captures this kind of idea. The monster however is the pure outsider, or as close as we can get to it. Because no one is ever absolutely other, there are degrees of otherness. The monster can never be absolutely other because, given that it is premised on the fact of hybridity, it must be at least part human and recognisably so. Nevertheless, the monster is the figure interpreted to bear the greatest degree of difference from an ontologically pure human subject. This renders the template particularly valuable and illuminating for thinking about constructions of a coherent human subject given that all outsiders operate as foils.

**LW: Does the monster category say more about what it means to be human than it does about monsters *per se*?**

AS: I think that's a very good question. Of course, the answer must be yes. Monsters only really make sense in relation to the human which they presuppose. Monsters can be viewed as a series of claims about human coherence and intelligibility and simultaneously, and correspondingly, as expressions of doubt about those very claims. Perhaps of particular interest is the relationship human status has to the mind/body distinction when viewed from the perspective of legal monsters. In contrast to the privileging of mind over body, something tantamount to an axiom within Western philosophy and law, my analysis of English legal monsters reveals that the body is more important than the mind as a threshold of human status. This is really very interesting given that it appears to be counter-intutitive. Perhaps the point is best illustrated by examples. If we take the legal categories idiot or lunatic, we find that no degree of mental incapacity could lead to the designation monster. In other words, the mind, no matter how compromised, could ever translate a healthy body into a monster. Conversely, a body that was considered to be too ir-

regular could be so translated irrespective of its reasoning abilities. In short, the body emerges as the bedrock of what it means to be human and does so consistently through five centuries of English legal texts on monsters. This finding is relevant to theories of personhood and to politics, including Feminist politics, around the body. It is certainly a provocation.

**NS: What is the relationship between *Foucault's Monsters* and the possibility of law reform?**

AS: I think I would respond as Foucault might to this sort of question. Foucault always explained himself as providing groups with tools, and it was for them to decide how to use them, and it was not for him to tell people what to do. He was engaged in a series of ground clearing exercises. He took the taken for granted and challenging it at its core and showed ways of doing and thinking differently. That we are not conditioned by the past. That we can break the chain, overcome the weight of history. I hope that this book is Foucauldian in that sense. If the book is about law reform or, at least, politics, it is so in the sense that it points to the need to challenge law's binary structures and the legal deployment of the trope of nature. For what Foucault's monsters reveal about legal exclusion is that it is an effect of an interpretation of nature and law as having been doubly breached. For law reformers, it represents a cautionary tale, one that urges care in relation to the development of arguments and strategies that revolve around law's categorical structures and discourses of nature.

**NS: In the last sentence of your book you state that you want to contribute »to this political project of resistance«.[15] What do you mean by this? How might resistance be informed by insights generated by *Foucault's Monsters*?**

AS: The book points to the cultural power of law and the need to contest law at this level. Its novelty lies in teasing out more precisely the specific legal claims that need to be challenged. As I have already made clear, law insists on the inevitability of particular binary categories, such as male and female, and on the »unnaturalness« of particular bodies. In doing so, it produces monsters: the unnatural objects that lie outside its domain. There are at least two types of strategy that might be adopted in the face of this legal challenge. First, and most obviously, one might pursue a strategy of what might be described as de-monsterisation. This would involve insisting on two things: the possibility/desirability of a third term and the renaturalisation of bodies. The latter, though not the former, is a strategy that law reform courts have

15 A. Sharpe, *Foucault's Monsters and the Challenge of Law* (London: Routledge, 2010) 152.

already adopted in the context of transgender jurisprudence. Second, one could instead embrace the monster. Lets call this a strategy of monsterisation. However, I think these to be two sides of the same coin. This is because the de-monsterisation approach necessarily opens up and expands what counts as natural, thereby chipping away at the logic of the distinction. Further, and perhaps more importantly, de-monsterisation lends itself not only to claiming bodies as fully human within binary categories of law, but also, and crucially, to the assertion of third terms. In this latter respect, and in the context of the liberal legal imagination, this is a call to the monster. It represents perhaps an endorsement of pluralism *par excellence.*

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