The Law and the 'Other'

Unveiling the law's inherent violence in silencing the lived reality of women in Ernaux's *Happening*

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TABLE OF CONTENTS

INTRODUCTION **2**

METHODOLOGY **4**

CHAPTER OUTLINE **6**

1. ERNAUX'S OTHERING IN HAPPENING: CONCEPTUALIZING THE LAW **9**

1.1. CHAPTER INTRODUCTION **9**

1.2. UNIVERSALITY OF LAW **9**

1.3. THE LAW IS GENDERED **12**

1.4. THE VIOLENCE OF THE UNKNOWN 'OTHER' **15**

1.5. CHAPTER CONCLUSION **17**

2. 'OTHERING' IN ERNAUX'S HAPPENING: HOW A PLURALITY OF NORMATIVE LEGAL ORDERS SHAPE EXPERIENCE **19**

2.1. CHAPTER INTRODUCTION **19**

2.2. PROBLEMATIZING TRANSCENDENCE: THE INSTRUMENTALIST PARADIGM OF LAW AND LEGAL MONISM **20**

2.3. LEGAL PLURALISM: AN ATTEMPT AT CONCEPTUAL CLARITY **22**

2.4. LEGAL PLURALISM IN ERNAUX'S HAPPENING **24**

2.5. LEGAL PLURALISM AND 'OTHERING': WHY AN ILLEGAL, CLANDESTINE ABORTION IS MOST 'NORMATIVE' **25**

2.5.1. LEGAL PLURALISM: LAWS IN CONFLICT 26

2.5.2. VIOLENT 'OTHERING' IN SCENARIO 1 26

2.5.3. VIOLENT 'OTHERING' IN SCENARIO 2 27

2.5.4. VIOLENT 'OTHERING' IN SCENARIO 3 27

2.5.5. WHY SCENARIO 2 IS MOST 'NORMATIVE' 27

2.6. CHAPTER CONCLUSION **29**

3. COUNTERING 'OTHERING': THE VALUE OF EXPERIENCE **31**

3.1. CHAPTER INTRODUCTION **31**

3.2. "MATTER PRECEDES LAW" **32**

3.3. FEMINIST EPISTEMOLOGY: PARTIAL OBJECTIVITY **33**

3.4. COUNTERING 'OTHERING' **35**

3.4.1. THE VALUE OF PERSONAL EXPERIENCE AS A SOURCE OF KNOWLEDGE 35

3.4.2. THE IMPORTANCE OF UNDERSTANDING 38

3.5. CHAPTER CONCLUSION **40**

CONCLUSION **42**

REFERENCES **46**

INTRODUCTION

In her autobiographical work *Happening* Annie Ernaux writes about the clandestine abortion she had at the age of 23. The events take place in 1963, at a time when abortion was still prohibited by French legislation. Ernaux sets out to write *Happening*, among other things, to rid herself of the guilt of never having faced and put into words the reality of what she describes as such an 'unforgettable event'. In remaining silent, she would contribute to the perpetuation of the veil of secrecy surrounding an experience that while, at the time and geographical place of her writing, was banished to the past, all the same once victimized those forced to seek an illegal abortion.[1] Given that, while the right to have an abortion has recently been adopted by the French parliament as a constitutional right,[2] we must not be mistaken in thinking the prohibition on abortion – and thus the desperation of women seeking for one illegally – to truly be something of the past.

We see, for example, how the overturning of *Roe v. Wade* by the U.S. Supreme Court, which allows again for individual states to decide on the right to abortion, has led to several States re-introducing a ban on abortion. In the State of Texas legislation was passed that criminalizes abortion after the sixth week. It also criminalizes assisting women in having an abortion by, for example, driving them to the abortion clinics. In rewarding snitches with a $10.000 check, the legislation passed makes for a witch hunt on women that have illegal abortions and those that assist them in doing so.[3] More recent developments include a political struggle in the State of Arizona regarding the possible reintroduction of anti-abortion legislation that was first adopted during the American Civil War – a time when women were not able to vote and therefore unable to participate in the legislative process.[4] Consequently, legislation pertaining to abortion, which, by definition, targets the female body, could be adopted without that legislation truly representing women. Law, as Cover writes, is "the projection of an imagined future upon reality."[5] As a result, in the adoption of such legislation by the State of Arizona – that is, legislation that was formulated without regard for the voices of women – women, including their experiences, would be silenced. To impose such a law, then, is to imagine a future in which women have no say over their bodies.

Importantly, it is not only in the U.S. that we see such conservative developments; similar developments can also be seen in the European Union, where in 2020 the Polish Constitutional Tribunal prohibited abortion almost in its entirety, making exceptions only in case of rape, incest, or when the mother's life is endangered.[6] Still, the prohibition induces such a fear of persecution that multiple women have died as a result of easily detectable diseases endangering the lives of pregnant women.[7] Van den Nieuwenhuizen notes how these recent developments prove that the acquired right to abortion is never truly self-evident and

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[1] Annie Ernaux, *Happening,* trans. Tanya Leslie (Fitzcarraldo Editions, 2022), 19-20.
[2] NOS, "Frankrijk eerste land ter wereld met recht op abortus in grondwet," *NOS*, March 4, 2024. https://nos.nl/artikel/2517698-omstreden-abortuswet-kan-donald-trump-swing-state-arizona-kosten
[3] Madeleijn van den Nieuwenhuizen, *Leven en laten leven,* (Atlast Contact, 2022), 16.
[4] Lily Sophie Maigret, "Omstreden abortuswet kan Donald Trump swing state Arizona kosten," *NOS,* April 22, 2024. https://nos.nl/artikel/2517698-omstreden-abortuswet-kan-donald-trump-swing-state-arizona-kosten
[5] Robert M. Cover, "Violence and the Word," *Yale Law Journal* 95, no. 8 (1985): 1604.
[6] Van den Nieuwenhuizen, *Leven en laten leven,* 17.
[7] Van den Nieuwenhuizen, *Leven en laten leven,* 17.

how we can never be fully sure of our right to abortion.[8] Even in the Netherlands, legislation regarding abortion is still included in the Dutch Criminal Code, as such, although it has been legalized, it has not juridically been equated to other regular medical procedures.[9] Consequently, given that the legalization regarding abortion is not safeguarded in the Dutch constitution, if political winds turn, such legislation can also be changed on a whim. Taken together with these recent developments we have to face the reality: while we might regard the possibility of the abolition of legal abortion as unthinkable, it is not.[10]

The law prohibiting abortion is central to Ernaux's *Happening*. It is that which sets the story into motion, given that it is the prohibition on abortion that forces her to seek an abortion out illegally and clandestinely. The law is central to Ernaux's *Happening*, because in forcing her to seek out an illegal, clandestine abortion – given that Ernaux was quite adamant regarding the fact that she had no intention of keeping the pregnancy[11] – it quite literally shapes her life and her experiences. The law, in a sense, as noted by Cover, truly projects an imagined future upon her reality.[12] It is a future in which Ernaux either carries and gives birth to a child that she has no desire to keep – a future in which she has no say over her body, in which her physical integrity is compromised – or a future in which she seeks out an abortion illegally and clandestinely to avoid judgment of the law.

After shortly having introduced her project, Ernaux, being aware of its importance and centrality, quotes the specific law referring to the illegality of abortion and the acts associated with it from the *Nouveau Larousse Universel*, a dictionary citing this law:

> (Leg. sp.) – The following persons shall be liable to both a fine and a term of imprisonment: 1) those responsible for performing abortive practices; 2) those physicians, midwives, pharmacists and other individuals guilty of suggesting or encouraging such practices; 3) those women who have aborted at their own hands or at the hands of others; 4) those guilty of instigating abortion and spreading propaganda advocating contraception. The guilty parties may also receive an injunction that they leave the country. Moreover, those belonging to the second category will be deprived of the right to exercise their profession either temporarily or definitely. – *Nouveau Larousse Universel*, 1948 edition[13]

In citing the law, she seems to acknowledge that it is, among others, these mere sentences and the fear of persecution that they induce, that are responsible for shaping her experience. She recognizes how it is legal language and the imagined future that law projects upon reality that is responsible for shaping her experience. An experience that she, in her concluding remarks, describes as one "bearing on life and death, time, law, ethics and taboo – an experience that sweeps through the body."[14]

Ernaux only barely survives the procedure. In describing her delivery of the aborted fetus, she writes how she, after having delivered the aborted fetus, lost tremendous amounts of blood and thought that she "was going to die of a haemorrhage."[15] Van den

[8] Van den Nieuwenhuizen, *Leven en laten leven,* 12.
[9] Ibid., 28.
[10] Ibid., 63.
[11] Ernaux, *Happening*, 17.
[12] Cover, "Violence and the Word," 1604.
[13] Ernaux, *Happening*, 21.
[14] Ibid., 74.
[15] Ibid., 62.

Nieuwenhuizen notes how, unlike Ernaux, many women seeking out an illegal abortion do not survive the procedure: "many bleed to death, […] contract blood poisoning [or] accidentally perforate their wombs, after which they lie huddled in a corner for hours until they die like animals – lonely and abandoned to their fate."[16] In their breaking of the law, these women are, thus, confronted with a violent fate: death. It is this fate that women in the U.S. and Poland are now confronted with.

Consequently, it is in her reflection on abortion – its prohibition and the right to it – that van den Nieuwenhuizen notes that there is a true state violence in our legal history.[17] Similarly, when Ernaux writes that when the law prohibiting abortion that victimized her and other women was abolished, most tended to "remain silent on the grounds that 'now it's all over'",[18] and how in doing so their lived realities continue to be "surrounded by the same veil of secrecy as before",[19] we see how it is the violence of the law that victimizes women and, in noticeable absence thereof, simultaneously silences them. It is on this violence, with which the law seemingly silences and thereby 'others' the lived realities of women, that this thesis focuses.

Having taken this into account, this thesis aims to answer the following question: How does Annie Ernaux's quest for a clandestine abortion in her memoir *Happening* both illustrate and counter the ways in which the law silences and thereby violently others the lived realities of women? I aim to answer this question by means of three sub-questions, each of which will be separately considered in their respective chapters:

> SQ1. How does Ernaux's *Happening* expose how the prevailing conceptions of the law lead to her being violently 'othered' in her search for a clandestine abortion?
>
> SQ2. What does Ernaux's attempt at minimizing the violent 'othering' she experiences in her search for a clandestine abortion show us about the ways in which the law operates in reality?
>
> SQ3. How does Ernaux, in describing her experiences in her search for a clandestine abortion and unveiling the lived realities of women, counter such violent 'othering' at the hand of the law?

METHODOLOGY

To answer the research question, and each of the sub-questions respectively, I will analyze Ernaux's *Happening* and reflect on her writing by entering into a critical dialogue with the text. My choice for Ernaux's *Happening* lies in its autobiographical approach, as it offers the opportunity "to look at historical and social process and one's own formation as a window onto social and historical processes, as an example of them."[20] That is to say, it offers me the opportunity of using the text as a window on the violence with which the law

[16] Translated from van den Nieuwenhuizen, *Leven en laten leven,* 38.
[17] Ibid., 23.
[18] Ernaux, *Happening*, 19.
[19] Ibid., 19.
[20] Patricia Saunders, "Fugitive Dreams of Diaspora: Conversations with Saidiya Hartman," *Anthurium: A Caribbean Studies Journal* 6, no. 1 (2008), 5.

silences and 'others' the lived realities of women, as the text offers up one such lived reality – that is, Ernaux's lived reality. Ernaux in introducing her project writes:

> I want to become immersed in that part of my life once again and learn what can be found there. This investigation must be seen in the context of a narrative, the only genre able to transcribe an event that was nothing but time flowing inside and outside of me. The diary I kept back then will provide the necessary dates and evidence to establish what happened. Above all I shall endeavour to revisit every single image until I feel that I have physically bounded with it, until a few words spring forth, of which I can say, 'yes that's it.' I shall try to conjure up each of the sentences engraved in my memory which were either so unbearable or so comforting to me at the time that the mere thought of them today engulfs me in a wave of horror or sweetness.[21]

Ernaux seeks to immerse herself in her past, she seeks to investigate this part of her life to see what can be found in this immersion. She argues that the investigation needs to be in the form of a narrative. In doing so, she seems to recognize how she herself does not explicitly reflect on this immersion *theoretically*. Ernaux immerses herself, she aims to physically bind herself to the images and words she conjures up. While she investigates and reflects upon her experience, she does not necessarily try to make a deeper, underlying and theoretical truth explicit. *Happening* comprises a mere 76 pages; it is a short work. That is to say, Ernaux herself does not focus on theory, she focuses on her experience. She simply aims to unveil her experience to see what can be found there. It is an experience that, she writes, often tends to remain shrouded in secrecy as most former victims of the law prohibiting abortion tend to remain silent after it was abolished "on the grounds that 'now it's all over'".[22]

Ernaux herself in *Happening* seldomly explicitly critiques the prohibition on abortion; only once in the English translation, does she refer to it as discriminatory.[23] In French she speaks, when writing how abortion is now no longer outlawed, of the paradox of a just law, whereby she indirectly refers to the law prohibiting abortion as being unjust.[24] She even writes how it is precisely the fact that "abortion is no longer outlawed […] [that allows her] to stay clear from the social views and inevitably stark formulas of the rebel Seventies – 'abuse against women', etc. – and face the reality of this *unforgettable* event."[25] In doing so, Ernaux recognizes how it is the *reality* of her experience that is central to her work, rather than a concern with how this aligns with social views of the time. Still, Ernaux's *Happening*, her immersion in an experience that she describes as traumatic[26] – an experience that nearly killed her – is, to a certain extent, permeated with such critique.

This is why I aim to enter into a critical dialogue with the text, her experience, and position it within a larger theoretical framework. As Budgeon notes, it is not *unmediated* experience that lends us access to knowledge acquisition, but it is the theoretical mediation of

[21] Ernaux, *Happening*, 19.
[22] Ibid., 19.
[23] Ibid., 19.
[24] Annie Ernaux, *L'Événement,* (Gallimard), 12.
[25] Ernaux, *Happening*, 22.
[26] Ibid., 18.

experience that does so.[27] The role and importance of personal experience as a means to knowledge acquisition, as well as its importance of countering the 'othering' resulting from the law, will be further elaborated upon in Chapter 3. Ernaux's narration of her experience, her unveiling, allows me the opportunity to uncover the legal and philosophical implications suggested by those, sometimes only short and few, sentences that I consider to hint at the possibility of a deeper analysis regarding the nature of law and the violence with which it silences and thereby 'others' the lived realities of women.

Consequently, it is important to acknowledge that while I make use of a literary text, I will approach the text mostly through the lens of philosophical and legal theories. In doing so, I touch upon broad topics in the fields of law and philosophy including, for example, theories pertaining to the gendered nature of legal reasoning as well as feminist epistemology. Ernaux's *Happening*, given the careful narration of experiences in her desperate search for a clandestine abortion, is rich in content; and the themes touched upon will, given my limitations in time, surely only barely scratch the surface of what can be uncovered. I do not aim to speak for Ernaux. Instead, in my analysis I aim to illustrate to the best of my abilities, how these themes and critiques within theories of law and philosophy seem to emerge from Ernaux's *Happening*.

In doing so, I have sometimes stretched the meaning of some concepts, such as the concept of 'legal pluralism', to allow for a broader theoretical scope – in case of 'legal pluralism', for example, for it to also entail nonlegal forms of normative ordering; this, however, will also be further elaborated upon in Chapter 2.3 which entails an attempt at conceptual clarity regarding 'legal pluralism'. Moreover, I have stretched Alcoff's formulation of the 'transcendental delusion', formulated with reference to the effects of colonization and Eurocentrism and the presumed universality of Western *thought*,[28] to also account for the belief of the universality of law and its subsequent operation as a technology of gender.[29] Similarly, I have used theories pertaining to Black being, Black being in the wake of slavery, and the 'othering' resulting from slavery, to say something about the 'othering' of women in the wake of legislation prohibiting abortion. While I do not want to equate the two, I have utilized these theories as the underlying systems of 'othering' seem to operate similarly. As such, while the situations cannot be equated, insights from one can be applied to another, to unveil deeper truths about the process of 'othering'.

CHAPTER OUTLINE

Having taken this into account, Chapter 1 will consider the question: How does Ernaux's *Happening* expose how the prevailing conceptions of the law lead to her being violently 'othered' in her search for a clandestine abortion? This chapter lays the foundation for the subsequent chapters in that it uncovers how the law operates as a language of power, as well as our prevailing conceptualization of the law as transcendental and universal applicable and how, as a result, 'epistemicide' is committed by violently silencing other

[27] Shelley Budgeon, "Making feminist claims in the post-truth era: the authority of personal experience," *Feminist* Theory 22, no. 2 (2021): 260.
[28] Linda Martín Alcoff, "Philosophy and Philosophical Practice. Eurocentrism as an epistemology of ignorance," in *Routledge Handbook of Epistemic Injustice*, eds. Ian J. Kidd, José Medina, and Gaile Pohlhause (Routledge, 2017), 39.
[29] Carol Smart, "The Woman of Legal Discourse," In *Gender and Justice,* ed. Ngaire Naffine (Routledge, 2017), 34.

forms of thinking and making sense of the world. The chapter problematizes this view by arguing how, in reality, the law cannot escape its immediate circumstances, how it is rooted in the socio-historical context from which it emerged and, as such, how the law is gendered. Chapter 1 concludes by arguing how, given that the law is a gendering strategy, whereby the gendered position of women is considered 'other', the lived realities of women and ways in which they make sense of the world, in having to conform to the normative conceptualization of law, is silenced, and, therefore, how the 'other' remains unknown. Given then that knowledge on how to safely abort, which naturally belongs to the lived reality of pregnant women seeking to terminate their pregnancies, is destroyed as a result of the prohibition on abortion, we see how women seeking to terminate their pregnancies, such as Ernaux in her search for a clandestine abortion, are violently 'othered' because of a lack of information.

Chapter 2 considers the question: What does Ernaux's attempt at minimizing the violent 'othering' she experiences in her search for a clandestine abortion show us about the ways in which the law operates in reality? The chapter, in aiming to answer the question, further problematizes the belief in the transcendence of law, by arguing how in subscribing to such a belief, we also subscribe to the instrumentalist paradigm of law, which assumes legal monism. The chapter shows how whereas the instrumentalist paradigm of law does not reflect reality, a 'social working' paradigm of law, which assumes legal pluralism, does. The chapter continues by illustrating how legal pluralism is illustrated in Ernaux's *Happening* and how, in Ernaux's attempt to act most normative – that is, to be least 'othered' – both official state law and 'living' law seem to be informed by the higher valued characteristics of Western thought associated with masculinity. Chapter 2 concludes by acknowledging how both formal and informal systems are informed by values which are deemed to be transcendental, resulting in their operating as gendering technologies, whereby those not adhering to this gendered norm are violently 'othered' in one way or another.

Chapter 3 aims to answer the question: How does Ernaux, in describing her experiences in her search for a clandestine abortion and unveiling the lived realities of women, counter such violent 'othering' at the hand of the law? The chapter elucidates how legal pluralism and legal materialism are inherently tied up and how, as such, how law is material. That is to say, how it is matter that precedes law. It is in the acknowledgement that law – both formal and informal – emerges from a material base that the chapter stresses the importance of feminist epistemology, given that it is knowledge of this material base that informs law. The chapter shows how, similar to chapter 1, the values that inform the paradigmatic knower are wrongfully presumed to be detached and disembodied, but how, in reality, the values that inform the paradigmatic knower are often associated with masculinity and, subsequently, how the knowledge generated by the paradigmatic knower, as well as the law emerging from such a known material base, is gendered. The chapter shows how feminist epistemology shifts our understanding of objectivity from identity to partial connection and acknowledges how the knowing self is always an *integrated* self. Chapter 3 continues by arguing how it is in the theoretical mediation of experience that we gain access to knowledge acquisition and how Ernaux in writing that she wants her experience to dissolve into the lives and heads of others, she expresses a desire for her experience to become integrated into the knowledge of the material base from which law emerges. In describing her existence, her partial experience, in *Happening*, Ernaux makes it explicit and thereby enforces its being. In doing so, she seeks to 'de-other' rather than normalize. While she recognizes that her

experience *is* not 'other', as there is no lesser truth,[30] she seems to be aware of how it is *made* to be 'other' through the commitment of 'epistemicide', as such seeks to make her lived reality *known* and thereby she seeks to counter the epistemicide which had silenced and 'othered' her. The chapter concludes by arguing how *understanding* is crucial to the integration of partial knowledge and how to understand one has to be *unsettled* – that is, one has to *feel* – and how Ernaux's embodied narrative, in which she does not shy away from ugly truths, offers the perfect place to do so.

[30] Ernaux, *Happening*, 37.

1. ERNAUX'S OTHERING IN *HAPPENING*: CONCEPTUALIZING THE LAW

1.1. CHAPTER INTRODUCTION

In her critical analysis of the gendered nature of legal reasoning, Finley writes that "[t]o tame the beast you must know the beast."[31] That is to say that in order to counter the violence inflicted by the law, we must first develop an understanding of the law. In doing so, she states, we must constantly and critically assess "who has been involved in shaping law".[32] This chapter, thus, aims to develop such an understanding of the law by formulating our prevailing conceptualizations of the law, how these may be flawed and how they, in their flawed nature, may inflict violence on those that do not naturally align. The chapter aims to answer the following question: How does Ernaux's *Happening* expose how the prevailing conceptions of the law lead to her being violently 'othered' in her search for a clandestine abortion?

To elucidate this, the chapter will first discuss how Ernaux's *Happening* illustrates the ways in which law functions as a language of power, as a way of providing us with normative understandings of the world and how, in doing so, we perceive the law as being able to transcend its immediate circumstances and be universally applicable. After this the chapter aims to problematize this view by explicating how Ernaux illustrates that the law, and the paradigmatic legal subject that it entails, cannot transcend its immediacy, how it did originate in a socio-historical context, and, consequently, that the nature of these normative and supposedly transcending abstract legal norms are, in reality, gendered. It shows how the law is a gendering strategy whereby the gendered position of woman is 'othered' and thus is considered as falling outside of the normative paradigmatic conceptualization of the liberal legal subject. The chapter illustrates how, given that those 'othered' are defined and interpreted by the limited understanding of the world offered by the normative conceptualizations of law, the lived realities of those 'othered' and their understanding of the world, is silenced. The chapter concludes by showing how Ernaux, in her search for a clandestine abortion, is violently 'othered', as a result of the silencing of knowledge on how to safely terminate a pregnancy, given it being prohibited by law.

1.2. UNIVERSALITY OF LAW

One of the most direct statements that Ernaux makes about the law is in her describing how one "couldn't tell whether abortion was banned because it was wrong or wrong because it was banned. People judged according to the law, they didn't judge the law."[33] In stating that it is not the law that was being judged on whether the things that it prohibited were morally wrong, but that the things described by the law were judged in accordance with these descriptions, Ernaux seems to recognize the ways in which the law functions as a language of power.[34] That is to say that the law operates as an authoritative

[31] Lucinda M. Finley, "Breaking women's silence in law: The dilemma of the gendered nature of legal reasoning," *Notre Dame Law Review* 64, no. 5 (1989): 890.
[32] Finley, "Breaking women's silence in law," 890.
[33] Ernaux, *Happening*, 31.
[34] Finley, "Breaking women's silence in law," 888.

discourse, whereby, as Finley argues, it "can pronounce definitively what something is or is not and how a situation or event is to be understood."[35] Legal language and the interpretation thereof suggests the ways in which we socially construct reality interpersonally, it offers a common understanding of events and, as such, operates as a reinforcement of such understandings.[36] The law is a system of meaning-making, its "language frames the issues, it defines the terms in which speech in the legal world must occur, it tells us how we should understand a problem and which explanations are acceptable and which are not."[37] In doing so, the law thus provides us with a way of gaining knowledge about our shared reality. Consequently, to prohibit abortion, is also to pronounce that abortion should be understood as morally wrong, and that somebody having an abortion should be regarded as morally deviant.

Furthermore, in reflecting on the role of her abortionist, Ernaux notices how the vilification and pursuit of abortionists in the 1960s/70s can be likened to the current vilification and pursuit of smugglers who charge vast sums of money to help refugees illegally enter, for example, Britain. Similar to the aforementioned sentiment, she states how "[n]o one questions the laws and the world order that condone their existence."[38] Rather, it is again the situation that is judged and interpreted according to its conformity with the law. Because illegally entering Britain via Calais is prohibited, it is judged to be *wrong*; even when, as Ernaux writes, it is the "sole means of survival"[39] of those fleeing their native countries. Similarly, as was mentioned, because abortion is prohibited, those committing an illegal abortion are judged to act wrongly, they are vilified.

In both descriptions, then, Ernaux seems to recognize that laws are purported to be universal. In the sense that they, having the power to define and interpret a situation, entail objectivity. Finley notes how legal language demands such objectivity, given that "experience and perspective are translated as bias, as something that makes the achievement of neutrality more difficult."[40] The law, therefore, speaks of itself as being universal, objective and neutral in order to maintain an appearance of fairness. Such a seemingly neutral and value-free language namely also keeps up the front that the knowledge constructed about our shared reality through the employment of such language – that is to say, by the institutions and structures established by means of the law – as well as one's choices and one's "apparent possibilities for conducting the world"[41] is value-free. That is to say that one is not directed by value-laden, and to that extent biased, laws in their conduct of the world.

Davies describes how, according to what she coins the 'vertical account of law', we experience the law as "a unified and orderly arrangement of norms, emanating from a single authoritative centre."[42] This coincides with the legal positivist view that recognizes law as a human construction, singularly emanating from a "coming together of reduced, rational, individual human types in a transcendental law-creating subject."[43] Given that, according to our subscription to the belief that law offers us a de-contextualized and therefore objective system of norms, we believe the law to operate vertically, we act on the basis of this belief to

[35] Ibid., 888.
[36] Cover, "Violence and the Word," 1602. See also Finley, "Breaking women's silence in law," 888.
[37] Finley, "Breaking women's silence in law," 905.
[38] Ernaux, *Happening*, 56
[39] Ibid., 56
[40] Finley, "Breaking women's silence in law,"897.
[41] Ibid., 896.
[42] Margaret Davies, "Feminism and the flat law theory," *Feminist Legal Studies* 16 (2008), 283.
[43] Davies, "Feminism and the flat law theory," 299.

thereby *make* the vertical account of the law true.[44] According to such a vertical account of the law, we, as subjects, are defined and interpreted by these top-down, hierarchical constructions of law.[45] In forcing one to conform to such top-down legal imperatives, the law, according to Menke, de-subjectivates, as "it demands that the perpetrator judge *himself*."[46] That is to say, the law demands that the subject acts in conformity with it. It entails a de-subjectification as it is not the subject itself judging, but it is the law, as a presumed impartial and neutral entity, that judges the subject through the subject itself.[47] The law, as such, thus operates through "systems of inclusions and exclusions",[48] whereby it "constitutes matter by naming it, forming it, [and] including or excluding it".[49] In that sense, because we have to judge ourselves according to a unified and authoritative system of norms and values, we have to conform to the conceptualisation of 'normativity' that the law imposes on us.

Legal language, in its appeal to objectivity, demands taking a decontextualized stance; it demands to "abstract a situation from historical, social, and political context".[50] Ernaux, in describing how she felt that judgment of a situation was imposed depending on its conformity with the law – and, as such that the situation was defined and interpreted according to these top-down legal imperatives – thus, seems to recognize how laws are assumed to transcend the immediacy of our environment, given that they take such a decontextualized stance towards reality. Because of their seemingly unchanging nature, the laws are not questioned, but instead they are taken as a means for interpreting and subsequently gaining knowledge about the world. Ernaux, therefore, seems to recognize how we, in our conceptualization of the law as transcendental and universal, subscribe to the paradigmatic view of law through the lens of liberal legalism, in which law is posited "as an essentially benign, neutral and autonomous institution"[51] and the paradigmatic legal subject – that is, the liberal legal subject – is defined as a rational, socially de-contextualized, disembodied and, accordingly, neutral individual.[52]

Grear notes, quoting Norrie, however, how the aforementioned liberal legal subject was, in fact, "forged in an 'actual historical context' at the time of the 'intellectual birth of liberal Western modernity'"[53] and, as such, how we cannot truly regard the liberal legal subject as a socially de-contextualized and thus neutral individual. The belief, however, that the liberal legal subject is a de-contextualized and thus neutral, corresponds with Alcoff's formulation of the so-called 'transcendental delusion'. While first formulated with reference to the effects of colonization and as the legitimization of European dominance and superiority on the presumption of the universality of Western *thought*, the concept can be stretched to include the aforementioned belief in the universality of law. By reason of the role of law, in

[44] Ibid., 286.
[45] Ibid., 284.
[46] Christoph Menke, "Law and Violence," *Law and Literature* 22, no. 1 (2010): 7.
[47] Menke, "Law and Violence," 7.
[48] Davies, "Feminism and the flat law theory," 283.
[49] Andreas Philippopoulos-Mihalopoulos, "To have to do with the law," In *Routledge Handbook of Law and Theory,* ed. Andreas Philippopoulos-Mihalopoulos (Routledge, 2019), 477.
[50] Finley, "Breaking women's silence in law," 905.
[51] Rosemary Hunter, "Contesting the Dominant Paradigm: Feminist Critiques of Liberal Legalism," In *The Ashgate Research Companion to Feminist Legal Theory*, eds. Margaret Davies, and Vanessa Munro (Routledge, 2016), 19.
[52] Anna Grear, "'Sexing the matrix': embodiment, disembodiment and the law – towards the re-gendering of legal rationality," In *Gender, Sexualities and Law,* eds. Jackie Jones, Anna Grear, Rachel E. Fenton, and Kim Stevenson (Routledge, 2011), 44.
[53] Grear, "'Sexing the matrix'," 44

its reciprocal relationship with knowledge acquisition, – that is, in its reflection and perpetuation of our beliefs about our shared reality – being as such, that it functions in shaping our understanding of the world.

Alcoff describes how Eurocentrist thought, whereby Europe is regarded as being "at the vanguard of human culture, achieving the highest success in every domain of human inquiry and endeavor, but especially in the domain of knowledge",[54] subscribes to the so-called transcendental delusion. This entails the belief that thought, specifically Western thought, "can be separated from its specific, embodied, and geo-historical source"[55] and, as such, that it is universally applicable. Alcoff writes how the belief in the universality of Western thought is required as a legitimization of Eurocentrism and colonialism, as Europe needed to establish itself as epistemically superior in relation to the colonized. To consolidate this belief it was necessary to commit a form of 'epistemicide', whereby the intellectual traditions of the colonized were destroyed to inhibit their resistance and establish them as epistemically inferior.[56]

Similarly, in subscribing to the paradigmatic liberal legal subject as a de-contextualized and neutral individual, we ignore the fact that this subject also originates within a specific historical context.[57] Moreover, in ignoring its context-specific origins and in the belief that the liberal legal subject transcends concrete circumstances and, as such, is universally applicable, we simultaneously legitimize it being the paradigmatic, dominant, and thus normative approach of legal personhood. In comparing the belief in the liberal legal subject as a de-contextualized and thus neutral individual to the 'transcendental delusion', as formulated by Alcoff, we have acquired the theoretical tools – that is, the concept of 'epistemicide' – with which we can critically analyze the paradigmatic liberal legal subject and its problematic effects.

1.3. THE LAW IS GENDERED

Namely, in universalizing the liberal legal subject and regarding it as transcendental and therefore as 'normative', we subsequently 'other' and, in a sense, proclaim the epistemic and legal inferiority of those which do not conform to this paradigmatic view. That is to say, given that the liberal legal subject is considered to be an abstract, disembodied and de-contextualized individual; the concrete, embodied and situated individual is 'othered'. It is when Ernaux writes about the law as an "invisible, elusive reality unknown to memory that had sent [her] scouring the streets in search of an unlikely doctor"[58] that she recognizes how the law does not transcend context. The law, in its abstract form, eludes her. It is invisible and its reality is unknown to her memory, given that the law in itself does not have a concrete existence. What she does remember, however, is the way in which this abstract reality affected her material circumstances.

> The law was everywhere. In the euphemisms and understatements of my journal; the

[54] Alcoff, "Philosophy and Philosophical Practice," 398.
[55] Ibid., 397.
[56] Ibid., 398.
[57] Grear, "'Sexing the matrix'," 44.
[58] Ernaux, *Happening*, 31.

> bulging eyes of Jean T; the so-called forced marriages […] , the shame of women who aborted and the disapproval of those who did not. In the sheer impossibility of ever imagining that one day women might be able to abort freely.[59]

Ernaux illustrates how the law permeates her surroundings. How it could be found in her journals, where she writes of the "REALITY"[60] inside her, rather than describing it as a pregnancy; and in the intrigued expression of Jean T – a married student she hinted her pregnancy at, because she thought he might be able to help her – indicating his awareness of the law and how Ernaux, to him, had changed from being a model student to a desperate girl. How it could be found in the marriages women were forced to enter into, because being an unmarried mother, as will be further elaborated upon in chapter 2, would bring them the shame of embodying the legacy of poverty. It is in the recounting and subsequent narration of her memories that Ernaux carefully unveils the violence inherent to the law. That is to say, she does not unveil a mere 'simple' violence, a violence whereby abstract categories are forced upon material circumstances that never truly fit these molds, but a subsequently greater violence, one whereby the one subjected to this imposition is violently 'othered' by nature of these abstract molds. Because while the concrete, embodied and situated individual is automatically 'othered' by its non-abstract and non-de-contextualized being, this constitutes merely a simple violence. The greater violence, however, arises out of the fact that even in the disembodiment of the rational and de-contextualized legal subject, there is a body,[61] there is matter. As a result, these abstract molds are abstracted from a concrete situation that might, by its gendered nature, as will be elaborated upon, not even correspond with one's own concrete situation. This will not only 'other' the one subjected to the imposition by reason of the abstract being imposed on the concrete, but also 'other' because the concrete reality from which the abstract molds were abstracted does not correspond with the subjects' own concrete reality.

To account for this greater violence, we must note how, according to Finley, Western thought is ordered through a set of dualisms: "culture/nature, mind/body, reason/emotion."[62] Grear notes how the devalued side of each of these dualisms –that is, body/emotion/nature – is associated with femininity, while the valued side – that is, mind/reason/culture – is associated with masculinity.[63] Consequently, when Finely argues that law "adopts the valued of the privileged side of the dualisms",[64] we can see how law becomes associated with masculinity and, as such, how the law is gendered. Thus, Grear notes, given that reason is associated with masculinity, even in the disembodiment of the liberal legal subject, there is a body, a male body.[65] It is, therefore, in the fact that the male body, and the characteristics associated with it, implicitly makes up the supposedly disembodied, rational and de-contextualized legal subject, that this greater violence arises, given that all who do not adhere to the implicit masculinity of the normativity of the legal subject are, as a result, 'othered'.

It must, however, be noted that the law is not 'male', as this "presumes that any system founded on supposedly universal values and impartial decision making (but which is

[59] Ernaux, *Happening*, 31.
[60] Ibid., 14.
[61] Grear, "'Sexing the matrix'," 42.
[62] Finley, "Breaking women's silence in law," 899.
[63] Grear, "'Sexing the matrix'," 41.
[64] Finley, "Breaking women's silence in law," 899.
[65] Grear, "'Sexing the matrix'," 42.

now revealed to be particular and partial) serves in a systematic way the interests of men as a unitary category."[66] In doing so, one would, namely, ignore the importance of intersectionality. In reality, *men* are not a homogenous category served by law. Moreover, Naffine notes how we need to acknowledge that legal personhood is much more complex than the singular or static view of the legal person once adopted by some feminists. That is to say, "that depending on one's guiding scheme of interpretation one's legal conception of a person changes",[67] instead of there only being one conceptualization of the legal person. Still, however, Naffine argues that even in the conceptualization of "four influential ways of thinking about persons in law"[68] – that is, legalism, rationalism, religionism, and naturalism – we find that each of these conceptualizations of legal personhood do still have a so-called masculine 'flavour'. She suggests how "the patriarchal nature of the historical development of these different ways of thinking about persons in law tends to give all of them a masculine flavour which makes it difficult to conceive of legal persons as women."[69] She indicates that while women are definitely recognized as persons, they are from a masculine perspective, but much less so *as women*. Those that do not naturally feature such masculine flavour, are subsequently, *feminized*. In that sense, those feminized have to conform, they thus continue to be 'other'. Furthermore, those *feminized,* and thus historically excluded and, as such, regarded as 'outsider' and 'other' subjectivities by the law, include more persons than merely women, given that the historical exclusion of those persons in law coincides with their exclusion "operative in the burgeoning global capitalist techno-economy",[70] whereby from this account "the poor, women, children, and other non-dominant humans",[71] including, among others, racial minorities and the disabled, are excluded based on their being 'other'. Instead of being 'male', the law is thus 'gendered'. Thinking of the law as being gendered allows us to think of it as operating as a technology of gender, whereby we would acknowledge the importance of intersectionality. That is to say, such an approach allows us to think of the law as a gendering strategy, whereby the law imposes the gendered position of woman, the feminine, and thus of 'other', on a subject.[72]

Additionally, given that historically we have seen how privileged white men have shaped law in their own image and their experience of the world, which because they "have had the power to ignore other perspectives and thus to come to think of their situation as the norm, their reality as reality, and their views as objective",[73] we can also see how their understanding and normative ordering of the world has "come to be seen as universal, neutral, objective, inevitable and complete".[74] In doing so, we can see how their 'conquering gaze' – a term coined by Haraway who places the criticism of 'vision' as a means of understanding the world at the center of feminist discourse, as vision is by definition embodied – has seemingly escaped the confines of the body, as it claims "the power to see

[66] Carol, "The Woman of Legal Discourse," 32.
[67] Ngaire Naffine, "Women and the cast of Legal Persons," In *Gender, Sexualities and Law,* eds. Jackie Jones, Anna Grear, Rachel E. Fenton, and Kim Stevenson (Routledge, 2011), 16.
[68] Naffine, "Women and the cast of Legal Persons," 16.
[69] Ibid., 16.
[70] Grear, "'Sexing the matrix'," 39.
[71] Ibid.," 39.
[72] Carol, "The Woman of Legal Discourse," 34.
[73] Finley, "Breaking women's silence in law," 893.
[74] Hunter, "Contesting the Dominant Paradigm," 13.

and not be seen, to represent while escaping representation."[75] Consequently, given that this seemingly disembodied gaze that "signifies the unmarked positions of Man and White"[76] claims 'objectivity' and 'neutrality' in generating knowledge and gaining understanding of our shared reality, which is codified in law, we can see how, "law disqualifies other knowledges, including feminist knowledge".[77] That is to say, referring back to Alcoff, we can see how law in its normative conceptualization of the liberal legal subject and the subsequent 'othering' of those excluded by this conceptualisation, destroys the means by which these 'othered', feminized people make sense of the world. In other words, knowledge of these realities is destroyed; the 'other' remains unknown. We can thus see the process of 'epistemicide', and the subsequent disempowerment of those 'othered' by the commitment of 'epistemicide', taking place within a legal context.

1.4. THE VIOLENCE OF THE UNKNOWN 'OTHER'

Through the commitment of 'epistemicide', then, we see how knowledge of the lived realities of the feminized 'other' is systematically destroyed in order to establish the epistemic and thereby legal superiority of the masculinized norm. That is to say, the commitment of 'epistemicid*e*' leads to the lived realities of women that do not adhere to the law, associated with masculinity, being silenced. In the silencing of the lived realities of women, these lived realities are made to be *unknown*. That is to say, the silencing of the lived realities of women leads them to being 'othered'. Here, it is established how mechanisms of 'othering' are found in the silencing of those lived realities that are considered 'other'. The mechanisms of 'othering' are, therefore, found in making these lived realities *unknown* so that they cannot challenge the legitimacy of the norm. Mechanisms of 'othering' are thus found in the unknown. As a result, we see the known 'norm' is regarded as being transcendental and universally applicable. Finley notes how the normativity of the law "will continue to reflect and shape prevailing social and individual understandings of problems, and thus will continue to play a role in silencing and discrediting women."[78]

Consequently, it is important to acknowledge the connection between power and knowledge; given that using such presumed neutral and de-contextualized legal language continuously helps to silence the lived reality of women.[79] That is to say that the knowledge of these realities, these truths, are silenced and, therefore, in a sense 'killed'. Without knowledge of such realities, power over the lived realities of women resides where the presumed universal knowledge of experience lies. That is to say, power over the lived realities of women lies with the presumed disembodied perspective, which represents values associated with masculinity and is often embodied by men. As was mentioned it is this knowledge that informs the law, as well as the knowledge that the law, through its demand for conformity, imposes and sustains. We then see how, because of a lack of knowledge of the lived realities of women and the need for women to conform to a masculine understanding of their reality, they continue to be 'other'.

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[75] Donna Haraway, "Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective," *Feminist Studies* 14, no. 3 (1988): 581.
[76] Haraway, "Situated Knowledges," 581.
[77] Hunter, "Contesting the Dominant Paradigm," 24.
[78] Finley, "Breaking women's silence in law," 906.
[79] Ibid., 896-897.

Menke, in his analysis on the relationship between law and violence, defines violence as a "restraint or violation imposed by somebody on somebody against their will."[80] He notes how some critics argue that law and violence are inherently tied up, while some argue that law cannot be violent "if the legal verdict is justified […] and insofar as it is not against"[81] the will of the person sentenced. Here, however, we are confronted with the question of what is 'just'. It is when we associate that which is just with that which is fair that we can see the importance of the law speaking of itself as being universal, objective and neutral in order to maintain such appearance of fairness. Yet, as we have seen, the law is not 'fair', in the previous presumed sense of the word, as it is not universal, objective and neutral; rather, the law is gendered. If we associate fairness with justice, we would have to come to the conclusion that the law is not just and therefore that it is, in its imposition on an unwilling subject, violent.

It is, therefore, exactly in the absence of information and the charged silences that Ernaux is met with in her search for a clandestine abortion – and therefore the fact that she is unwillingly restrained from being able to have an abortion – that she first experiences this violent process of 'othering' taking place. Ernaux describes how at first she thought that having an abortion, whilst not necessarily being easy, would not be an extensively hard undertaking; stating that she "too was prepared to cling to the sink."[82] It is in this void of information – that is, in the unexpected, the unknown – between the discovery of the pregnancy and the termination thereof that the violent nature of the law manifests itself. Because instead of it simply being a 'hard undertaking', Ernaux found herself confronted with the possibility that having an abortion would end up killing her. She writes how she "looked up the word 'abortion' in the library index",[83] hoping to find practical information on how to have an abortion, but instead she was only met with articles that focused on the *consequences* of a 'criminal abortion'. [84] Because abortion was prohibited by law, the lived reality of women having undergone an abortion and practical knowledge of how to have an abortion was silenced.

Moreover, she on multiple occasions notes the silences that she is met with when asking for help. Furthermore, while not explicitly asking for an abortion, she begs her physician "to make the bleeding come back, at any costs."[85] She writes how her physician averts his glance and remains silent, being aware of the fact that she will probably go through with the abortion, but that it is not worth the risk of ruining his career. She writes how girls like her "were a constant reminder of the law that could send them to prison and close down their practice for good."[86] Later on she, again, describes blaming herself after leaving the office of her physician for ruining her last chance in persuading him to circumvent the law, stating that she "had overestimated [her] powers of persuasion."[87] Consequently, because Ernaux is unable to find information on how to safely have an abortion, she is left to try to have an abortion herself:

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[80] Menke, "Law and Violence," 2.
[81] Ibid., 2.
[82] Ernaux, *Happening*, 23.
[83] Ibid., 27.
[84] Ernaux, *L'Événement,* 18.
[85] Ernaux, *Happening, 29*-30.
[86] Ibid., 30.
[87] Ibid., 38.

> The following morning I lay down on my bed and slowly inserted a knitting needle into my vagina. I groped around, vainly trying to locate the opening of the womb; I stopped as soon as I felt pain. I realized I wasn't going to manage on my own. I was enraged by my own helplessness. I just wasn't up to it. 'No luck. Impossible, damn it. I can't stop crying and I've just about had it.'[88]

In this passage we can clearly see how the prohibition of abortion, which has the erasure of knowledge of how to safely have an abortion as its consequence, leads to Ernaux violently trying to have an abortion herself. It becomes clear how this process of 'epistemicide', resulting from the prohibition of abortion, truly leads to the *violent* 'othering' of women, given that, in their being restraint by the law from having a safe and legal abortion – a restraint which is against their will as they desperately seek to have a safe and legal abortion – these women now find themselves in situations outside of our normative shared understanding of the world. They find themselves confronted with the unknown. It is, then, in the unknown and in their desperation to terminate their pregnancies – that is, also in their desperation to cease being 'other', as being a pregnant women seeking to terminate her pregnancy is something that is prohibited by law, by definition entails being 'other' – that they are confronted with the physical violence that a lack of proper medical knowledge in terminating a pregnancy, can have on their bodies.

1.5. CHAPTER CONCLUSION

To conclude, in writing how "[p]eople judged according to the law, they didn't judge the law",[89] Ernaux illustrates how the law functions as a language of power – that is, the law, as an authoritative discourse, provides us with a way of gaining knowledge about the world – as well as how we perceive the law to be universally applicable. This chapter has shown how our deluded belief in the possibility of the transcendence of the liberal legal subject – which, as such, is authoritative in its understanding of the world – coincides with Alcoff's formulation of the transcendental delusion. The transcendental delusion entails our tendency to forget that the liberal legal subject too originates within a socio-historical context and therefore that its way of understanding the world cannot be universally applied. To keep up this facade of transcendence, and thus to keep up the normativity of the law and the liberal legal subject, we see how other forms of thinking and making sense of the world are violently silenced; Alcoff terms this as the committing of 'epistemicide'.

In acknowledging, through her narration of the concrete manifestations of the law, that the law cannot escape its immanence, Ernaux carefully unveils this violence inherent to the law. It is a violence that extends beyond the mere othering that results from abstract categories being forced upon material circumstances that never truly fit these molds. Rather, it is a violence in which the concrete, embodied, and situated individual is violently 'othered' by the *nature* – that is, implicit biases resulting from the circumstantial origins of the liberal legal subject – of the abstract molds that are imposed on it. The nature of these abstract legal molds, namely, is a gendered one, given that even in the disembodiment of the rational and de-contextualized legal subject, there is a body, a male body. The law is a gendering strategy, whereby the gendered position of woman, the feminine, and thus of 'other' is imposed on the

[88] Ernaux, *Happenin*g, 37.
[89] Ibid., 31.

subject that does not correspond with the laws' disembodied embodiment. In rendering women 'other', and thus as falling outside the normative understanding provided by legal language, we can see that in their having to conform to the normative conceptualization of the liberal legal subject, the means by which they make sense of the world is silenced. The 'other' remains unknown.

Given then that knowledge on how to safely abort, which naturally belongs to the lived reality of pregnant women seeking to terminate their pregnancies, is destroyed as a result of the prohibition on abortion, we see how women in seeking out a clandestine abortion fall outside of the normative understanding of the world as imposed by law. In her search for a clandestine abortion, Ernaux, being restrained in her ability to find information on how to safely abort and being met with an unwillingness to help her in safely terminating her pregnancy, finds herself having to try and violently terminate the pregnancy herself. As a result, she finds herself being violently 'othered'.

2. 'OTHERING' IN ERNAUX'S *HAPPENING*: HOW A PLURALITY OF NORMATIVE LEGAL ORDERS SHAPE EXPERIENCE

2.1. CHAPTER INTRODUCTION

In the previous chapter we have seen how Ernaux's *Happening* exposes the prevailing conceptions of law and how these lead to her being violently 'othered' in her search for a clandestine abortion. Ernaux, in writing that "[p]eople judged according to the law, they didn't judge the law",[90] shows, as elaborated upon in chapter 1, how the law operates as a language of power, and how it is perceived as transcending one's immediate context and, as such, as being universally applicable. This coincides with Davies' formulation of a vertical account of law, whereby we experience law as "a unified and orderly arrangement of norms, emanating from a single authoritative centre."[91] Given then, that we, as depicted in Ernaux's *Happening*, subscribe to the belief that the law is transcendental and universally applicable and that, as such, it offers us a de-contextualized and objective system of norms, we believe the law to operate vertically, and in our acting in accordance with this belief, we *make* the vertical account of the law true. We have seen, however, how chapter 1 has problematized this belief in the transcendence of law and subsequently in its supposed de-contextualized nature, by arguing that the law cannot escape its immediate surroundings, that it *is* rooted in its socio-historical context and that, as a result of the context in which it originated, it operates as a gendering technology. Those not adhering to this gendered norm are then violently 'othered', by the commitment of 'epistemicide', which destroys and thereby silences knowledge of other ways of being and, therefore, the lived realities of women seeking to terminate their abortions.

This chapter aims to further problematize the belief in the transcendence of law in seeking an answer to the following question: What does Ernaux's attempt at minimizing the violent 'othering' she experiences in her search for a clandestine abortion show us about the ways in which the law operates in reality? To answer this question the chapter will first focus on how the law seems to operate in reality, after which a demonstration of how Ernaux's attempt at minimizing the violent 'othering' she experiences in her search for a clandestine abortion concurs with this more realistic account. To further elucidate this the chapter will first illustrate how the widespread belief in the transcendence of law and its universal applicability, exposed by Ernaux, which coincides with the vertical account of law, implies legal monism and therefore the dominant instrumentalist paradigm of law. The chapter continues by arguing that such an instrumentalist paradigm of law, which assumes legal monism, legal centralism and a top-down approach of law, is problematic, given that it does not mirror reality. Consequently, we should move towards a truer depiction of reality by approaching law bottom-up, through a social workings paradigm of law, which identifies legal pluralism as one of its basic assumptions. It is argued that other informal forms of normative ordering, such as social norms, are equally important in the analysis of plural legal systems.

After this, the chapter describes how Ernaux in narrating her memories, uncovers how it is, in reality, a plurality of legal systems, both formal and informal, that engender

[90] Ernaux, *Happening*, 31.
[91] Davies, "Feminism and the flat law theory," 283.

normativity and generate the feelings of obligation she experiences in her quest for a clandestine abortion. Lastly, by examining the dialectical relation between the plurality of normative legal orders that Ernaux is confronted with, the chapter elucidates how Ernaux, in her choice of whether to have an illegal abortion, is met with three possible scenarios, each leading her to be violently 'othered'. The chapter concludes by arguing how, as a result of the dialectical relation between the plurality of normative legal orders, it is her choice for an illegal and *clandestine* abortion that is most normative – that is, it leads her to being least 'othered' – and thus mandates the not following of official state laws.

2.2. PROBLEMATIZING TRANSCENDENCE: THE INSTRUMENTALIST PARADIGM OF LAW AND LEGAL MONISM

We have seen, as was illustrated in chapter 1, how Ernaux, in writing that "[p]eople judged according to the law, they didn't judge the law",[92] exposes our widespread conceptualizations of the law, whereby we judge it to be transcendental – that is, we perceive the law as being able to transcend one's immediate context, as decontextualized – and, as such, we judge it to be universally applicable. It is these two assumptions that make us fall victim to the so-called 'transcendental delusion'.[93] We have also seen how these assumptions coincide with Davies' formulation of a vertical account of law, whereby we experience the law as "a unified and orderly arrangement of norms, emanating from a single authoritative centre."[94] To transcend, namely, implies that one rises above the rest. It means that in this exaltation that which is supposedly 'transcendental' also claims an authoritative character. For the source of such unified and transcendental law to claim its singularity as an authoritative center – that is, the state, given that the prohibition on abortion is issued by the French state – it has to have a monopoly over the law. The belief in the transcendence of law and the vertical account of law both necessitate legal monism.

Griffiths, more specifically, defines legal monism as entailing the assumption that the state has "an effective monopoly over the regulation of interaction that […] excludes other sources of regulation as important influences on behavior."[95] Legal monism, Griffiths continues, is also one of the assumptions made in adherence to the dominant, instrumentalist paradigm of law.[96] According to the instrumentalist paradigm of law, law and legislated rules are considered as tools "in the hands of a policy-maker who is bent on realizing (or forestalling) some sort of social change".[97] In that sense, he describes, legislation, as a tool, is assumed to be made to work, it is made with the goal of producing a certain set of desired results. Both the belief in the transcendence of law and the vertical account of law, then, coincide with the instrumentalist paradigm, given that it is these tools in the hands of policy makers that, as a unified whole "emanating from a single authoritative centre",[98] set out to bring about these desired results. Griffiths, then, quotes Benda-Beckmann, in stating that

[92] Ernaux, *Happening*, 31.
[93] Alcoff, "Philosophy and Philosophical Practice," 397.
[94] Davies, "Feminism and the flat law theory," 283.
[95] John Griffiths, "The Social Working of Legal Rules," *Journal of Legal Pluralism and Unofficial Law* 48 (2003): 15-16.
[96] Griffiths, "The Social Working of Legal Rules," 15-16.
[97] Ibid., 13-14.
[98] Davies, "Feminism and the flat law theory," 283.

"*[l]aw [is a] desired situation projected into the future*",[99] by which we can recognize our aforementioned characterization of law as a language of power, whereby the state must have a monopoly over this power, capable of socially constructing our interpersonal reality.

Yet, when Ernaux writes, "[g]irls like me were a waste of time for doctors. […] They must have assumed that most women would go through with the abortion anyway, in spite of the ban",[100] we can see that legislation does not always produce the predetermined set of results – in this case preventing women from having an abortion – it is expected to. Griffiths further emphasizes this when describing how even though legislation is *expected* to produce such a predetermined set of expected results, it has been shown by research on instrumentalist effectiveness that "legal rules, so considered, rarely produce the intended results and are therefore apparently of little social significance."[101]

While there are some that argue that such an instrumentalist description is merely a straw man, given that supposedly "nobody believes such nonsense anymore",[102] we have seen how Ernaux has exposed that it is precisely this conceptualization of law – law as instrumental, necessitating the state's monopoly over the law, legal centralism, the vertical propensities of law, and therefore legal monism – that dominates the consciousness of people. In writing how "[p]eople judged according to the law, they didn't judge the law",[103] we see how Ernaux describes how people use the law as a *tool* in their understanding of the world around them; by *means* of the law, they create an understanding of their shared reality. Moreover, Griffiths notes how most adherents to the instrumentalist paradigm, because of the inexplicit nature of its functioning, as well as the presumed 'universality' of the legal 'tools' it posits, remain unaware of how the assumptions about law and society made by the instrumentalist paradigm permeate their everyday intellectual apparatus and, as such, "would indignantly reject an effort to attribute these to them."[104] Davies too, recognizes that it is only because of the familiarity of the vertical aspect of law to legal scholars and, as was shown by Ernaux, to society and its conceptualization of law in general that "it appears to represent a universal truth about the nature of law or at least a necessary truth about the experience of law in Western societies."[105]

Taking into account that the instrumentalist paradigm is not a straw man, as well as the fact that, as was noted, laws only rarely produce the expected and intended set of results, thereby leading them to be of apparently little social significance. Griffith, then, continues by describing how within an instrumentalist paradigm we miss "attention to the real state of affairs."[106] If the legal rules posited by the state, and emanating from this singular and authoritative center, appear to be of little social significance, as assumed under the instrumentalist paradigm, we have to ask ourselves what rules *are* of social significance. Davies notes how in reality the power of law does not emanate "from a single centre, but is located in multiple sites".[107] Likewise, Nelken quotes Ehrlich in claiming that "the centre of gravity of legal development lies not in legislation, nor in juristic science, nor in judicial

[99] Griffiths, "The Social Working of Legal Rules," 13.
[100] Ernaux, *Happening*, 30.
[101] Griffiths, "The Social Working of Legal Rules," 14.
[102] Ibid., 16.
[103] Ernaux, *Happening*, 31.
[104] Griffiths, "The Social Working of Legal Rules," 13.
[105] Davies, "Feminism and the flat law theory," 286.
[106] Griffiths, "The Social Working of Legal Rules," 16.
[107] Davies, "Feminism and the flat law theory," 286.

decision, but in society itself".[108] He describes how Ehrlich argued that the state does not possess a monopoly over the law.[109] According to a Foucauldian view on power, Davies writes, we should not see power through a traditional lens as being located "in hierarchical and politically sovereign institutions",[110] but as a seemingly meandering and "discursive force which circulates through socio-political spheres."[111] She, therefore, in taking into account that instead of emanating from a single center, the power of law is located in multiple sites, as well as this Foucauldian view on power, recognizes how there is a mismatch between the expected normative singularity of state law and the reality of the endless plurality of social life.[112]

Given this mismatch and the way in which the instrumentalist paradigm of law leaves us guessing as to the rules that are truly of social significance, Griffiths notes how a new approach is needed. A new, more adequate theory of legislation able to answer the question of what rules are of social significance, Griffiths claims, would be the formulation of the 'social working' paradigm. The 'social working' paradigm, contrary to the instrumentalist paradigm, provides us with a 'bottom-up' approach of legislation, focusing on "that concrete social situation where the social action and interaction that are subject of regulation take place."[113] Moreover, the 'social working' paradigm recognizes legal pluralism, whereby, according to Griffiths, "[t]he state is but one of many sources of regulation"[114], as one of its basic assumptions. In doing so, it recognizes the reality of the endless plurality of social life, as well as how, as a result of this plurality, the power of law is located in multiple sites

2.3. LEGAL PLURALISM: AN ATTEMPT AT CONCEPTUAL CLARITY

Simply put, Merry describes how legal pluralism is generally defined to entail a situation of the coexistence of two or more legal systems in the same social field.[115] She broadly defines a 'legal system' as including both the by the state supported system of courts and judges "as well as nonlegal forms of normative ordering."[116] These nonlegal forms of normative ordering are informal systems "in which the processes of establishing rules, securing compliance to these rules, and punishing rulebreakers seem natural and taken for granted",[117] as, for example, occurs within collectives. Some, however, argue that informal systems of normative ordering cannot truly be characterized as 'law' and thus as *coexisting* with other orders of law, such as state law.[118] For example, Nelken notes how there's a divide between those legal scholars and social scientists that argue that "we should describe rival or sub-state legal regimes as law"[119] and those that do not.

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[108] David Nelken, "Eugen Ehrlich, living law, and plural legalities," *Theoretical Inquiries in Law* 9, no. 2 (2008): 447-448.
[109] Nelken "Eugen Ehrlich, living law, and plural legalities," 451.
[110] Davies, "Feminism and the flat law theory," 282.
[111] Ibid., 282.
[112] Margaret Davies, *Law Unlimited,* (Routledge, 2017), 5-6.
[113] Griffiths, "The Social Working of Legal Rules," 19.
[114] Ibid., 18.
[115] Sally Engle Merry, "Legal Pluralism," *Law & Society Review* 22, no. 5 (1988): 870.
[116] Merry, "Legal Pluralism," 870.
[117] Ibid., 870-71.
[118] Davies, *Law Unlimited,* 12.
[119] Nelken, 2008, 454.

Yet, we should not simply disregard nonlegal forms of normative ordering as 'non-law', merely because of the refusal of so-called state-law insiders to accept these manifestations of normative ordering as 'real' law, given that, as Davies argues, "[t]he noise and plurality of law consists not only of the social matter that state law ends up being applied to."[120] Instead, the plurality of law, she claims, is found precisely in the interference between so-called 'official state law' and these nonlegal, informal forms of normative othering. It is found "in the substratum of human relationships that constitutes law and normativity."[121] As was mentioned, Ehrlich, Nelken quotes, claims that "the centre of gravity of legal development lies not in legislation, nor in juristic science, nor in judicial decision, but in society itself".[122] As a result, we also need to consider Ehrlich's concept of 'living law' in the equation of the plurality of law. Ehrlich's living law is defined as "the law which dominates life itself even though it has not been posited in legal propositions."[123] Ehrlich, with his concept of 'living law', thus offers a sociological understanding of law, as 'living law' is "the law that actually circulates social settings"[124] and, in doing so, he recognizes how the social normativity of groups can also be brought into the sphere of the legal. Hertogh describes how Erlich defines court rulings and state legislation merely as "norms for decision".[125] These norms merely inform the judges and government officials on the ways in which they should perform their tasks.[126] In doing so, he distinguishes 'living law' from official state law. It is not necessarily only that which is posited in legal propositions, but what people *experience* as law, that which dominates their lives, that is considered normative.[127]

Ehrlich, too, was confronted with the criticism that he fails to clearly distinguish between 'law' and other social norms. Yet, it needs to be noted that it is futile to "get caught up in an argument about definitions"[128] if one wants to truly utilize the study of legal pluralism to understand the power of law. Especially, because the failure to make such a distinction is only truly problematic within normative jurisprudence. Yet, in descriptive studies of the plurality of law and its influences, the broadly defined concept of 'living law', which also includes informal systems of normative ordering, such as social norms, is particularly useful. It is namely, Merry argues, in the dialectical analysis of relations amongst a plurality of both formal and informal normative orders that we can come to "a framework for understanding the dynamics of the imposition of law and of resistance to law."[129] By means of such a dialectical analysis of a plurality of normative orders, we can ultimately also aim to answer questions that are inspired by Ehrlich's conceptualization of 'living law' as including "a wide range of normative phenomena".[130] Such as, in our analysis of Ernaux's quest for an illegal, clandestine abortion, the question: "[w]hen do norms mandate not

[120] Davies, *Law Unlimited*, 47.
[121] Ibid., 47.
[122] Nelken "Eugen Ehrlich, living law, and plural legalities," 447-448.
[123] Ibid., 446.
[124] Davies, Law Unlimited, 49.
[125] Marc Hertogh, "A "European" Conception of Legal Consciousness: Rediscovering Eugen Ehrlich," *Journal of Law and Society* 31, no. 4 (2004): 473.
[126] Hertogh, "A "European" Conception of Legal Consciousness," 473.
[127] Ibid., 476.
[128] Nelken "Eugen Ehrlich, living law, and plural legalities," 466.
[129] Merry, "Legal Pluralism," 890.
[130] Nelken "Eugen Ehrlich, living law, and plural legalities," 458-459.

following or using the law?"[131] That is to say, when does the 'living law', or informal systems of normative ordering, prevail over more formal systems of normative ordering such as official state law?

2.4. LEGAL PLURALISM IN ERNAUX'S *HAPPENING*

Before being able to answer the question of when, in case of Ernaux's quest for an illegal, clandestine abortion, "norms mandate not following or using the law"[132], we have to first establish how Ernaux recognizes the plurality of law, and in doing so, how she, in her writing, seems to provide us with a bottom-up approach of legislation and thus seemingly adheres to this 'social working' paradigm of law. It is in one the aforementioned quotes that we can see how Ernaux, in her narration of her memories, offers us with the perfect opportunity to conduct such a dialectical analysis of the plurality of normative orders that operate in creating normativity and feelings of obligation in her quest for a clandestine abortion. Ernaux writes how "[t]he law was everywhere. In […] the shame of women who aborted and the disapproval of those who did not."[133] In this quote she acknowledges how she experienced the disapproval of the women who did not abort, and the coinciding implication that they should have had an abortion, as a law regulating her life.

Likewise, Ernaux writes how the men she encounters in her search for an abortion keep at a safe distance while also wanting to see "the show without having to pay the price."[134] Whilst they did not want to be a part of it, they were fascinated by her story. They wanted to know how her 'story' would unfold, how it would end. They were keen to find out whether she would succeed in getting a clandestine abortion, but they were not so keen in offering their help and getting involved, aware that they might burn their hands in doing so.[135] They acknowledge the prohibition of abortion, they wish to not be involved; yet, they are not necessarily appalled by the prospect of her having one. Furthermore, Ernaux writes how after her successful abortion she was congratulated – "Hats off, old girl! Hats off!" –[136] as well as being told that she was "much better off now".[137] Likewise, after being informed by Dr N of her abortion, Dr V, the family physician, excitedly asked her who was responsible for her abortion; after learning that she traveled all the way to Paris, he asks her why she had not bothered going to "old mother X only a few doors away".[138] Ernaux writes, "[n]ow that I no longer needed them, suddenly bevies of abortionists were springing up left, right and centre."[139] In describing the excited and approving remarks after her successful abortion, as well as the fact that she was never reported to the authorities while a lot of people had been aware of her predicament and her search in the termination thereof, given that even in the hospital she was classified as "gravid uterus" – meaning that she was described as being

[131] Ibid., 458-459.
[132] Ibid., 458-459.
[133] Ernaux, *Happening*, 31.
[134] Ibid., 26.
[135] Ibid., 26.
[136] Ibid., 72. For the original French: "chapeau, ma vieille ! chapeau !" See Ernaux, *L'Événement*, 54.
[137] Ernaux, *Happening*, 66.
[138] Ibid. 69.
[139] Ibid., 69.

pregnant, while all were aware that in reality she had aborted –[140] Ernaux illustrates how the norms regulating social relations did not always fully align with the prohibition on abortion.

Ernaux, furthermore, writes, "[g]irls who abort and unwed mothers from working-class Rouen were handed the same treatment. In fact, they probably despised her [the unwed mother] more."[141] Being a pregnant, unmarried girl would bring her the shame of embodying the legacy of poverty that she so desperately sought to escape.[142] In that sense, to be an unmarried mother would lead to a double 'othering'. The 'unmarried' mother, Finley writes, is differentiated by the modifier, 'unmarried', from all other 'mothers', a term which is deemed neutral in the sense that "our cultural understanding of the unadorned word "mother" is a woman who is married".[143] In that sense, to be an 'unmarried' mother is to be 'other', as one does not adhere to the norm of being married. The second level of being othered is found in a much prior differentiation, one on which all other differentiations are founded. Smart claims how it is the initial differentiation of Woman from Man, whereby Woman, associated with motherhood, is inherently 'other' to Man.[144] To be an unmarried mother is then to be doubly othered by nature of being both Women, and thereby being inherently 'other' to Man, and being an *unmarried* mother, which is to be 'other' to a married mother, whereby married motherhood embodies our understanding of 'proper' and thereby normative motherhood.[145]

Ernaux writes how, after having successfully had a clandestine abortion, she experienced a feeling of pride, having "ventured where others fear to tread."[146] We can see that it is not only the law enforced by the state that violently shapes Ernaux's experiences, but also the norms imposed on her by society, an informal system of normative ordering. It is the disapproval of those pregnant, unmarried girls that do not abort that carry in them the implicit imperative that they seek out an abortion. While this imperative is clearly not officially "posited in legal propositions",[147] it is one that dominates Ernaux's life and the lives of numerous other women. In that sense, the disapproval of unmarried women who did not have an abortion generates a 'living law' in society; a law that prescribes unmarried women to have an abortion. In doing so, Ernaux, thus, recognizes how the power of law does not merely emanate from a single center, but instead how it is located in multiple sites. That is to say, the laws dominating Ernaux's life are located not only in the laws posited by the state, in the official prohibition on abortion, but also in society itself, in informal systems of normative ordering. As such, she illustrates how it is a plurality of normative orders that have an influence in shaping her experiences in her desperate search for a clandestine abortion.

2.5. LEGAL PLURALISM AND 'OTHERING': WHY AN ILLEGAL, CLANDESTINE ABORTION IS MOST 'NORMATIVE'

[140] Ibid., 65.
[141] Ibid., 64.
[142] Ibid., 23.
[143] Finley, "Breaking women's silence in law," 887.
[144] Carol, "The Woman of Legal Discourse," 36.
[145] Ibid., 39.
[146] Ernaux, *Happening*, 71.
[147] Nelken "Eugen Ehrlich, living law, and plural legalities," 446.

2.5.1. LEGAL PLURALISM: LAWS IN CONFLICT

In recognizing the disapproval of unmarried women who did not have an abortion as generating a 'living law' in society, we are now confronted with the fact that, on the one hand, official state law prohibits abortions, while the 'living law' which dominates life itself, on the other hand, mandates unmarried, pregnant girls to have an abortion. Here, the official state law comes into conflict with the 'living law', with the informal systems of normative ordering posited by society. Ernaux writes how she wrote to P, the man who impregnated her, that she "was pregnant and had no intention of keeping it."[148] In that sense, she seems not to hesitate in following the 'living law'. As such, it is here that the question of when "norms [mandate] not following or using law"[149] becomes relevant again.

Ernaux, when finding out she was pregnant, even though she immediately was set on seeking out a clandestine abortion, is essentially met with two choices; that is, to either have an abortion or not. Yet, while she is met with two choices, they lead to three possible scenarios, each of which leads to her being violently othered in some way or another:

S1. To not have an abortion: adhere to the state law, but break the living law.

S2. Have an illegal, yet clandestine abortion: break the state law, but adhere to the living law.

S3. Try to have a clandestine abortion, but be found out: break the state law and be persecuted.

2.5.2. VIOLENT 'OTHERING' IN SCENARIO 1

Following the first scenario, Ernaux would set out not to have an abortion. In doing so, she would adhere to the prohibition on abortion as formulated by the state law, but she would break with the 'living law' as she would, in carrying her pregnancy to term, become an unmarried mother. As was mentioned, Ernaux describes how she wrote to P, the man who impregnated her, that she "was pregnant and had no intention of keeping it."[150] She continues by stating that neither of them "had seemed particularly keen to pursue the relationship"[151] and how she was aware that he would be greatly relieved by the news that she was planning to have an abortion.[152] From these passages it becomes clear that Ernaux had no intention of marrying P and thereby becoming a married mother, only 'othered' in the first instance by her being a Woman, inherently 'other' to Man. Instead, in becoming an unmarried mother, she would be doubly 'othered'. She would fully surrender herself to becoming the embodiment of poverty. She writes how then, "neither my *baccalauréat* nor my degree in literature had waived that inescapable fatality of the working-class"[153] and therefore how her being the first in her working-class family to attend higher education and having been spared factory and retail work, had been futile. As an unmarried pregnant girl she would be chained to the social class she so desperately sought to ascend. In that sense, she is violently 'othered', according

[148] Ernaux, *Happening*, 17.
[149] Nelken "Eugen Ehrlich, living law, and plural legalities," 458-459.
[150] Ernaux, *Happening*, 17.
[151] Ibid., 17.
[152] Ibid., 17.
[153] Ibid., 23.

to Menke's definition of violence, as in her being an unmarried mother, the 'living law' imposes upon her, against her will, a restraint in realizing her desired future.[154]

2.5.3. VIOLENT 'OTHERING' IN SCENARIO 2

In following the second scenario and, therefore, in having an illegal, yet clandestine abortion, Ernaux breaks the state law, but adheres to the living law. In this situation she is violently 'othered' by the fact that in choosing to break state law, she has to seek out and undergo a dangerous and violent clandestine abortion. She, as was described in chapter 1, is violently 'othered' in this search for a clandestine abortion, as she is, because of the prohibition on abortion, unable to find information on how to safely abort as well as met with an unwillingness of others to help her in her search of safely terminating her pregnancy. As a result of this, she finds herself having to try and violently terminate the pregnancy herself. Yet, in seeking out a clandestine abortion, she would still be adhering to the living law. Ernaux would not have attended higher education in vain, because while the 'othering' experienced by having a clandestine abortion is particularly violent, society is blind to it. Once she had successfully had an abortion she described feeling proud, a feeling that she claimed was "not unlike that experienced by lone sailors, drug addicts or thieves, who have ventured where others fear to tread."[155] She had braved the unknown and endured the violent 'othering' at its hands, but was not chained by it. As such, her attending higher education would not have been futile, as she would still be able to fulfill her goal of ascending social classes. She would not be restrained in realizing her desired future.

2.5.4. VIOLENT 'OTHERING' IN SCENARIO 3

Following the third scenario, Ernaux would have tried to have a clandestine abortion, but somewhere along the way she would have been discovered and prosecuted for breaking the prohibition on abortion. In doing so, she would be 'othered' in the most basic sense of being 'othered', according to what Ehrlich terms the 'norms for decision'. She would, in breaking official state law, be labeled as a criminal, which is 'other' to the norm of a (state-)law-abiding citizen. This 'othering' would be violent, according to Menke's conceptualization, in the sense that by being liable both a fine and a terms of imprisonment, as a result of her having an illegal abortion,[156] she would, against her will, be restrained in her freedom.[157]

2.5.5. WHY SCENARIO 2 IS MOST 'NORMATIVE'

Having considered how each possible scenario that results from choosing to either have an abortion or not leads to Ernaux being violently 'othered'. We are now left with the question of when "norms [mandate]not following or using law".[158] That is to say, why did Ernaux not hesitate when choosing to terminate her pregnancy, even when doing so was prohibited by official state law? In answer to this question, we need to return to the set of dualisms that, according to Finley, order Western thought: "culture/nature, mind/body,

[154] Menke, "Law and Violence," 2.
[155] Ernaux, *Happening*, 71.
[156] Ibid., 21.
[157] Menke, "Law and Violence," 2.
[158] Nelken "Eugen Ehrlich, living law, and plural legalities," 458-459.

reason/emotion."[159] According to Grear, it is the side of the dualism associated with masculinity – that is, mind/reason/culture – that is valued most. Naturally, then, the side associated with femininity – that is, body/emotion/nature – is valued least.[160] Hunter notes how within the Western thought systematic associations are drawn "between characteristics of the legal person – rationality, autonomy, self-interest, objectivity, assertiveness, self-sufficiency, self-possession – and masculinity".[161] Considering Grear's claim of the higher valuation of masculine characteristics within Western thought, it is illustrated by the systematic associations drawn between the aforementioned characteristics of the legal person and masculinity how characteristics such as, for example, 'autonomy' are assumed to be of a higher value than its opposite 'heteronomy'. To be heteronomous is not to be ruled by oneself, but rather to be ruled by external forces, outside of one's own control.

It is this valuation of 'autonomy' over dependency that causes Ernaux's following of the second scenario to be most normative. When Ernaux writes, "I'm not sure how long it took me to return to normal – a term understood by all despite its vagueness"[162], she recognizes that the only way to return to 'normal' is for her to have a clandestine abortion. That is to say, the only way for her to return to 'normal', the only way for her to remain most 'autonomous', is for her to follow the second scenario, given that in following either the first or the third scenario Ernaux would be subjected to a double 'othering'. In the first scenario, Ernaux would become the unmarried mother, whereby she is double 'othered' by reason of her being an *unmarried* mother. For the doubly othered women adhering to the official state law – that is, in adhering to the prohibition on abortion – would not 'normalize' her. Moreover, in the third scenario, Ernaux would be doubly othered by her being a *persecuted* woman; that is to say, she would be 'othered' both by the fact that she is a woman and that she is persecuted. In both instances, it is in this double 'othering' that she loses her 'autonomy'. In becoming an unmarried mother, she is no longer autonomous, given that she is chained to her social class by her being the embodiment of poverty. In that sense, she is chained by external forces and therefore unable to ascend social class. In being a persecuted woman, Ernaux would no longer be autonomous in the sense that her incarceration would plainly also imply a restraint on the freedom to rule oneself. As a result, most 'normative' for Ernaux is to evade 'official state law', as in doing so, in having a clandestine abortion, she remains most autonomous.

In answer to the question of when "norms [mandate] not following or using law"[163], I argue that it is precisely in choosing what is most 'normative' – that is, the situation in one is least 'othered' – that allows for norms to mandate when official state law need not be followed or used. Law, as was formulated in chapter 1, operates as an authoritative discourse, pronouncing "how a situation or event is to be understood."[164] Legal language and the interpretation thereof offers us with a common understanding of events, it pronounces what is 'normal' – that is, what is 'normative' – and in doing so what is not; that is to say, what is 'other'. The 'norms for decision', as formulated by Ehrlich, guide "judges and government officials how to perform their tasks."[165] Yet, they do so to keep everyone as closely aligned

[159] Finley, "Breaking women's silence in law," 899.
[160] Grear, "'Sexing the matrix'," 41.
[161] Hunter, "Contesting the Dominant Paradigm," 13-14.
[162] Ernaux, *Happening*, 73.
[163] Nelken "Eugen Ehrlich, living law, and plural legalities," 458-459.
[164] Finley, "Breaking women's silence in law," 888.
[165] Hertogh, "A "European" Conception of Legal Consciousness," 473.

and in adherence with this 'normative' understanding of the world as posited by law. We have seen, however, how the law does not emanate from a single center, but instead how its power is located in multiple sites; and, as such, how questions of 'normativity' cannot always be clearly and definitively answered by referring to official state law – and Ehrlich's norms for decision – given that the higher valued characteristics of Western thought – such as, for example, the characteristics of the paradigmatic legal person: "rationality, autonomy, self-interest, objectivity, assertiveness, self-sufficiency, self-possession" –[166] inspiring the formulation of official legislation also inspire informal systems of normative ordering.

That is not to say that official state law ceases to have an influence on one's behavior in breaking the law. Griffiths writes how it is also the way in which one adapts their behavior in breaking the rule, that can be considered a 'direct effect' of a law; that is, the rule-following behavior that a law induces.[167] As such, it is still this fear of the superior power with which the official state law, given that it is the ultimate source of coercive power, stands in relation to other systems of regulation, that makes for the fact that the abortion should be sought out clandestinely and, therefore, that Ernaux is also violently 'othered' – while less than the blatant, violent othering taking place in the first and third scenario – in the second scenario.[168]

2.6. CHAPTER CONCLUSION

To conclude, this chapter has illustrated how the widespread, yet problematic belief in the transcendence of law, the universal applicability of law and the vertical account of law, imply legal monism and therefore the instrumentalist paradigm of law. We have seen how with the instrumentalist paradigm of law, its assumption of legal monism and its top-down approach of law we miss "attention to the real state of affairs."[169] As a result, the chapter has expounded a more realistic bottom-up approach of law, offered by the 'social working' paradigm of law, which identifies legal pluralism as one of its basic assumptions. Some difficulties surrounding the conceptual clarity of legal pluralism and what qualifies as 'law' has been offered by arguing how in descriptive studies of the plurality of law and its influences, Ehrlich's concept of 'living law' , which also includes informal systems of normative ordering, such as social norms, is particularly useful. The chapter continued in showing how Ernaux in narrating her memories and writing that "[t]he law was everywhere. In […] the shame of women who aborted and the disapproval of those who did not"[170] shows how it is in her experience of the disapproval of unmarried women who did not have an abortion – as a result of their being doubly othered – that we can see the generation of a 'living law'; namely, a law that prescribes unmarried women to have an abortion.

In answer to the question of what Ernaux's attempt at minimizing the violent 'othering' she experiences in her search for a clandestine abortion shows us about the ways in which the law operates in reality, we find that the power of law emanates from multiple sites and that it is in the conflict between a plurality of legal orders – that is, in the conflict between the official state law and the 'living law' – that we must choose that which leads to

[166] Hunter, "Contesting the Dominant Paradigm," 13-14.
[167] Griffiths, "The Social Working of Legal Rules," 9.
[168] Merry, "Legal Pluralism," 874.
[169] Griffiths, "The Social Working of Legal Rules," 16.
[170] Ernaux, *Happening*, 31.

our being ‘othered’ the least. That is to say, we must choose that scenario which, as a result of the higher valued characteristics of Western thought informing both formal and informal systems of normative ordering – whereby both seem unable to escape the ‘transcendentalist delusion’, be it on different levels, which is elaborated upon in chapter 1 – is considered most normative. Yet, in our analysis of Ernaux’s *Happening*, we find find that even in choosing to follow what appears to be the scenario that is most ‘normative’, one might be violently ‘othered’, given that what appears most ‘normative’ might not always coincide with official state law. And because the state continues to be the ultimate source of coercive power, as a result of which official state law continues to stand superior in relation to other systems of regulation, we find that one might still be violently ‘othered’ in the adaptation of their behavior in breaking official state law. That is to say, Ernaux, in choosing to have an abortion, has to adapt her behavior to account for the superiority of official state law, by reason of the state being the ultimate source of coercive power, and have one clandestinely. And, as was shown in chapter 1, the quest for such a clandestine abortion, leads to her being violently ‘othered’, precisely because it is in fear of the official state law that knowledge on how to safely abort is erased and people are unwilling to help her in her search for an abortion.

3. COUNTERING 'OTHERING': THE VALUE OF EXPERIENCE

3.1. CHAPTER INTRODUCTION

The previous chapters have shown how in Ernaux's *Happening* we see how prevailing conceptions of law as transcendental and universally applicable lead to Ernaux's violent 'othering' in her search of a clandestine abortion. Chapter 1 expounds how we, according to Ernaux's *Happening*, in our prevailing and paradigmatic conceptualizations of the law, subscribe to the belief that the law, operating as a language of power, provides us with a de-contextualized and objective systems of norms; yet, how this belief is problematic, given that law cannot escape its immediate surroundings, that it *is* rooted in its socio-historical context and that as a result of this context, it operates as gendering technology, whereby those not adhering to this gendered norm are violently 'othered'. Chapter 2 further problematizes this belief in the transcendence of law, as in subscribing to such a belief we also subscribe to the instrumentalist paradigm of law, which assumes legal monism. Such a top-down approach of law, however, it showed, does not mirror reality. Consequently, chapter 2 highlights the need to move towards a more realistic approach of law; that is, a bottom-up approach, whereby we subscribe to a 'social working' paradigm of law, which assumes legal pluralism. The chapter then shows how such legal pluralism is illustrated in Ernaux's *Happening*; given that Ernaux, in describing the ways in which she was violently othered, but also in her attempt to act most normative – that is, to be least 'othered' – shows how law, in reality, emanates not from a single site, but from multiple. Moreover, the chapter illustrates how both official state law and 'living' law seem to be informed by the higher valued characteristics of Western thought associated with masculinity**.** These characteristics themselves are thereby presumed to be transcendental. As a result, both formal and informal systems of ordering, seemingly cannot escape the transcendental delusion, which is described in chapter 1, be it on different levels. Consequently, they operate as gendering technologies, whereby those not adhering to this gendered norm are violently 'othered' in one way or another.

This chapter aims to further disentangle the problems associated with the transcendental delusion, as well as uncover how Ernaux seemingly counters the 'othering' that results from this belief in transcendence of thought by seeking an answer to the following question: How does Ernaux, in describing her experiences in her search for a clandestine abortion and unveiling the lived realities of women, counter such violent 'othering' at the hand of the law? The chapter aims to elucidate this question by first illustrating how legal pluralism and legal materialism are intrinsically tied up with one another. The chapter illustrates how, according to legal materialism, it is matter that precedes law and how law not only shapes matter, but also emerges *from* it – that is to say, how law is shaped by matter and, subsequently, how it is only the matter which is known that is able to inform such law. The chapter then moves into the terrain of epistemology by problematizing the presumed disembodied paradigmatic knower, given that its gendered partiality is wrongfully transcendentalized and declared superior. Instead, to counter the epistemicide necessary for the paradigmatic knower to be transcendentalized, the chapter continues by illustrating how, in line with feminist epistemology, we should hone in on the partiality of knowledge. The chapter argues that feminist epistemology shifts our understanding of objectivity from identity to partial connection and acknowledges how the knowing self is always an *integrated* self. The chapter concludes by acknowledging the importance of theoretical mediation of

personal experience as a way to knowledge and integration thereof and how Ernaux, in narrating her experience, unsettles and thereby fosters understanding. In doing so, she makes her experience explicit, enforces its being and thereby counters the 'othering' resulting from epistemicide, as she allows her experience to inform a more inclusive material base from which both formal and informal systems of normative ordering emerge.

3.2. "MATTER PRECEDES LAW"[171]

Chapter 1 illustrated how, according to our paradigmatic conceptualization of the law through the lens of liberal legalism, law generally seeks to renounce the body, how it insists on overcoming nature and in its disembodiment how it insists on overcoming the material, thereby claiming to be abstract, detached and as a result transcendental and universally applicable.[172] Chapter 2 further describes how the belief in the transcendence and universal applicability of official state law coincides with the assumption of legal monism by the dominant instrumentalist paradigm of law. The chapter, however, sought to provide us with a more realistic bottom-up approach of law, thereby providing a 'social working' paradigm of law, which assumed legal pluralism as one of its tenets. We saw how Ernaux describes that it was a plurality of normative orders that shaped her experience, as her attempt at being least 'othered' led her to choosing what was considered most 'normative' according to the complex interplay of such a plurality of normative orders. Consequently, her choosing to follow the 'living' law, rather than adhering to official state law, showed us how the power of law is located in multiple sites, rather than emanating from a single center.

Such legal pluralism, while arising "out of anthropological place-based analysis of normative orders, […] is nonetheless focused on the human practices, beliefs, and systems that are the expression of law in particular situations."[173] That is to say, law, while often imagined as abstract and detached, is grounded in social practice; legal pluralism is the consequence of law being a continuous dialogue between the social and material. Law is thus "a plurality of material social actions".[174] In that sense, law is intrinsically material, it is rooted in the concrete, in the plural and diverse reality of social life. Davies argues that law "cannot exist without this materiality."[175] In short, Davies writes, "law does not simply represent, describe and categorise social relations because such relations also make law."[176] Legal pluralism and legal materialism are inherently connected, because it is out of the diversity of the social material base, it is out of the diversity of social life, that a plurality of law emerges.[177] Philippopoulos-Mihalopoulos writes how while law transforms bodies – that is to say, while law shapes the material world "by naming it, forming it, [and] including or excluding it" –[178] it is, in the first place, these bodies that determine the kind of law that emerges from a given situation. While law constitutes matter, it is matter, Goodrich writes,

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[171] Peter Goodrich, *Advanced Introduction to Law and* Literature, (Edward Elgar Publishing, 2021), 28.
[172] Marett Leiboff, "Towards a jurisprudence of the embodied mind-Sarah Lund, Forbrydelsen and the mindful body," *Nordic Journal of Law and Social Research* 2, no. 6 (2015): 77.
[173] Nicole Graham, Margaret Davies, and Lee Godden, "Broadening law's context: materiality in socio-legal resrarch," *Griffith Law Review* 26, no. 4 (2017): 485.
[174] Graham, Davies & Godden, "Broadening law's context," 485.
[175] Davies, *Law Unlimited*, 70.
[176] Ibid., 41.
[177] Ibid., ix.
[178] Philippopoulos-Mihalopoulos, "To have to do with the law," 477.

that *precedes* law.[179] To put it in terms relating to the deluded belief in the transcendence of law, as formulated in chapter 1, law is not an abstract, de-contextualized being, it is not universally applicable; rather, law is rooted in material circumstances, in its socio-historical context. Law *is* material.

Yet, as we have seen in the previous chapters, if both formal and informal systems of normative ordering emerge from material circumstances, we have to consider what informs these material circumstances. To what extent are we *aware* of the diversity of this materiality? How *do* we generate knowledge about this material base? In doing so, we move into the terrain of epistemology. Code argues that it is the "aim of knowledge seeking to achieve the capacity to predict, manipulate, and control the behavior of the objects known."[180] As such, it is our knowledge of the material base that informs our capacity to control the behavior of that which is known, in the sense that we can make it conform with our notions of normativity. That is to say, it is our knowledge of the material base that informs both formal and informal systems of normative ordering. In trying to answer the question of how we generate knowledge about the material base from which law emerges, we have to first ask *who* generates such knowledge. What is a knower?

3.3. FEMINIST EPISTEMOLOGY: PARTIAL OBJECTIVITY

Longino notes how in Western epistemology the paradigmatic knower, similar to the paradigmatic liberal legal subject, is a detached, disembodied individual, an individual who has freed themselves "from the distortions in understanding and perception that result from attachment.[181] Moreover, Code describes how the ideals assumed in the dominant epistemologies, which we have inherited from the Enlightenment – that is, the socio-historical context within which our notion of a 'paradigmatic knower' emerged – "presuppose a universal, homogenous and essential 'human nature' that allows knowers to be substitutable for one another."[182] Knowers are detached individuals. The circumstances and interests that inform these individuals "are deemed epistemologically irrelevant"[183] and because of this they can be interchanged for one another. Yet, in assuming the universality, homogeneity and essentiality of "human nature" and thus of knowers, the connection between knowledge and power – that is, the position of power residing in the circumstances which are presumed to be universal – is obscured.[184] It is this disembodied knower, the disembodied mind that, as we have seen in chapter 1, is insisted on by law.[185] Yet, this disembodied mind is, in reality, partial and necessarily incomplete,[186] given that the ideals of this autonomous researcher, this paradigmatic knower "are the artifacts of a small, privileged group of educated, usually prosperous, white men."[187] There *is* a body in the disembodied mind and it is male.

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[179] Goodrich, *Advanced Introduction to Law and* Literature, 28.
[180] Lorraine Code, "Taking Subjectivity into Account," In *Feminist Epistemologies*, eds. Linda M. Alcoff, and Elizabeth Potter (Routledge, 2013), 17.
[181] Hellen E. Longino, "Subjects, Power, and Knowledge: Description and Prescription," In *Feminist Epistemologies,* eds. Linda M. Alcoff, and Elizabeth Potter (Routledge, 2013), 104.
[182] Code, "Taking Subjectivity into Account," 16.
[183] Ibid., 16.
[184] Ibid., 16.
[185] Leiboff, "Towards a jurisprudence of the embodied mind," 84.
[186] Ibid., 84.
[187] Code, "Taking Subjectivity into Account," 21.

As such, similar to what was illustrated in chapter 1, the paradigmatic knower, and thereby also the knowledge generated by this knower, is gendered, given that the paradigmatic knower's ideals are in conformity with those values associated with masculinity.[188] If then it is this presumably detached knower that generates knowledge about the material reality from which law emerges, we see, as was argued in chapter 1, how law, by reason of it emerging from a material base which is known through a gendered lens, is gendered and partial. Given then that, as was illustrated in chapter 2, it is not solely official state law that is responsible for shaping experience, but rather what leads to the most 'normative' result, for transcendence of such norms – based on higher valued masculine ideals – to be legitimized, knowledge about possible other ways of being needs to be destroyed. That is to say, 'normativity' is based on the commitment of 'epistemicide', whereby knowledge of other ways of being is destroyed – that is, made to be 'other' and inferior – in order for the belief in the superiority, exaltation and transcendence of the aforementioned norms to be affirmed.

To counter such commitment of epistemicide, we need to hone in on this partiality. Haraway places 'vision' – which is by definition embodied – at the center of feminist discourse surrounding knowledge and objectivity. She describes the problematic nature of this so-called 'conquering gaze' – which, in reality, represents "the unmarked positions of Man and White" –[189] which in claiming "to power to see and not be seen, to represent while escaping representation",[190] escapes the confines of the body. In doing so it wrongfully claims 'objectivity' and 'neutrality'. To counter this, Haraway describes how feminist objectivity opposes such problematic, assumed disembodied objectivity precisely with its embodiment. Feminist objectivity entails the acknowledgement of knowledge to be *situated* in its material circumstances. That is to say, it recognizes knowledge as being context-bound.[191] As a result, Haraway claims, "objectivity turns out to be about particular and specific embodiment",[192] as it is only partial perspectives that promise true objective vision. In the presumption of transcendental knowledge, subject and object are split, whereby the subject, presumed capable of such a totalizing gaze, is de-contextualized. Yet, Davies writes, we need to recognize how, in line with Heidegger and the existentialists, "being is 'in-the-world' not separate from it"[193] and therefore how "we are completely immersed in a material world and formed in connection with it."[194] We cannot step outside this being 'in-the-world', and thus we cannot split subject and object. Instead, Haraway argues, how contrary to such presumed de-contextualized objectivity, "[f]eminist objectivity is about limited location and situated knowledge",[195] whereby we become answerable to the way in which we *see*. True "rational knowledge does not pretend to disengagement".[196] Rather, it recognizes objectivity

[188] Hunter, "Contesting the Dominant Paradigm," 13-14.
[189] Haraway, "Situated Knowledges," 581.
[190] Ibid., 581.
[191] Ibid., 581.
[192] Ibid., 582-583.
[193] Davies, *Law Unlimited*, 8.
[194] Ibid., 8.
[195] Haraway, "Situated Knowledges," 583.
[196] Ibid., 590.

as positioned rationality. That is to say, that particularity is the only way in which one is able to find a larger vision.[197]

The risk that the alternative to a 'totalizing' vision, which "claims to be from everywhere and so nowhere,"[198] and thus the possibility of transcendental knowledge would consist of relativism, which consists of the equally problematic claim of being nowhere while being everywhere equally,[199] Haraway claims, is unfounded. The alternative to such a totalizing vision of absolutism, is not radical relativism, in which particular and personal experience would only "provide an illusory foundation for knowledge claims",[200] but rather "partial, locatable, critical knowledges sustaining the possibility of webs of connection called solidarity".[201] In providing such an alternative, feminist objectivity hones in on the multidimensionality of subjectivity and therefore of vision. It recognizes how "[t]he knowing self is partial in all its guises, never finished, whole, simply there and original; it is always constructed and stitched together imperfectly, and *therefore* able to join with another, to see together without claiming to be another."[202] Feminist epistemology shifts our understanding of objectivity from identity – that is, stating that something *is* – to partial connection. It acknowledges that the knowing self is always, in a way, an *integrated* self. As a result, bias inherent to one's particularity and partiality is not necessarily problematic when able to sustain "possible webs of connections called solidarity",[203] only when it is wrongly assumed to be capable of transcendence.

3.4. COUNTERING 'OTHERING'

3.4.1. THE VALUE OF PERSONAL EXPERIENCE AS A SOURCE OF KNOWLEDGE

It is thus in the acknowledgement of the knowing self as an integrated self that we can find the importance of particularity and thereby also the importance of the role of personal experience. The status of personal experience in the generation of knowledge has been heavily challenged precisely because those referring to personal experience as a way to knowledge are accused of relativism; that is, they are accused of providing "an illusory foundation for knowledge claims."[204] Bugeon, however, claims how it is not *unmediated* experience that provides us with knowledge about reality, but the theoretical mediation of experience that does so. It is experience that is reflected upon and evaluated, experience mediated by theory, that offers us access to knowledge. Experience, Budgeon quotes from Scott, namely "is not the origin of our explanations, not the authoritative […] evidence that grounds what is known, but rather that which we seek to explain".[205] It is in such explanation, in the mediation of experience, that we can gain knowledge and sustain possible webs of connection. It is in this mediation that experience can be integrated as knowledge in connection to other partial knowers.

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[197] Ibid., 590.
[198] Ibid., 590.
[199] Ibid., 585.
[200] Budgeon, "Making feminist claims in the post-truth era," 249.
[201] Haraway, "Situated Knowledges," 584.
[202] Ibid., 586.
[203] Ibid., 584.
[204] Budgeon, "Making feminist claims in the post-truth era," 249.
[205] Ibid., 260.

As a result, to counter the commitment of 'epistemicide', whereby the knowledge of diverse ways of being is destroyed – that is, to be made 'other' and thereby inferior – and the knowledge of a specific, in reality, partial set of circumstances is taken to be transcendental and thereby superior, it is important to enforce these different ways of being. That is to say, to hone in on their partiality and generate knowledge of these different ways of being by means of theoretically reflecting on and evaluating one's personal experiences. In doing so, knowledge of these diverse ways of being, represented in their partiality, can be integrated into the material base from which law emerges, whereby this base is made more inclusive as well as the law that emerges from it. This would, in a way, counter the 'othering' resulting from laws – both formal and informal – emerging from such an exclusionary material base. Ernaux expresses a similar sentiment when writing the following:

> [T]hese things happened to me so that I might recount them. Maybe the true purpose of my life is for my body, my sensations and my thoughts to become writing, in other words, something intelligible and universal, causing my existence to merge into the lives and heads of other people.[206]

In writing how she wants her existence to merge into the lives and heads of others, she seems to express a desire for her experience to be integrated, for it to form a *part* of the foundation informing the ways in which people understand the world. She states how she wants for her experience to become writing, for it to become something intelligible and universal. She does not seek to 'universalize' her experience in the sense that she wants to 'normalize' it, but rather she seeks for it to be understood by others, through a medium – that is, writing – that can, to a certain extent, be universally understood. Ernaux writes how she seeks to unveil her lived experience, an experience that has victimized her, and other women, and that has continued to occupy her mind for years.[207] She claims that in remaining silent she herself "would be guilty of silencing the lives of women"[208] and, in doing so, she would side herself with the male domination of the world. In writing and unveiling her experience, however, she enforces the existence of her lived reality.

Ernaux, for example, states how, during her search for a clandestine abortion, she "never resorted to descriptive terms of expressions such as 'I'm expecting, 'pregnant' or 'pregnancy' […] [given that they] endorsed a future event that would never materialize."[209] Instead, she would refer to the "REALITY"[210] inside her. In doing so, at the time she aimed to distance herself from her predicament, as it is her predicament that served as a source of her being 'othered'. Ernaux, therefore, seems to recognize that to name is to enforce or, as Davies writes, that "[d]escription is also discipline."[211] To describe is then also to prescribe. In other words, to say that something 'is', is not normatively neutral, it implies an 'ought'.[212] To describe herself, at the time, as being pregnant, whilst also being unmarried, she would simultaneously describe herself as deviating from the norm and, in doing so, she would surrender herself to the shame associated with it. Given then, as was shown in chapter 2, that

[206] Ernaux, *Happening*, 74.
[207] Ibid., 18-19.
[208] Ibid., 37.
[209] Ibid., 23.
[210] Ibid., 14.
[211] Davies, *Law Unlimited*, 36.
[212] Ibid., 35.

it is precisely her aim to reduce the amount of her being 'othered', she restricts herself from describing her predicament as such. In doing so, she does not counter the 'othering' experienced, she merely avoids it. This too is seen in Ernaux's visit to Dr N after an unsuccessful attempt to abort the fetus herself. Here, she expresses her unwillingness to 'keep it'. Dr N is visibly upset and orders her not to tell him where she is going; still, he writes her a prescription for penicillin.[213]. She notes how neither of them had dared to mention the word 'abortion' and how "[t]his thing had no place in language."[214] As long as neither of them explicitly mention the procedure that she was in search of, both can distance themselves from the criminal nature of the act, they can continue to pretend its non-existence. Both, in a sense, distance themselves from her predicament and her search for the termination thereof. In their inability to make her predicament explicit, they acknowledge her material reality as being 'other'.

As a result, it is precisely in writing and unveiling her experience, in making it explicit, that she enforces its existence. She enforces its *being*, whereby through theoretical mediation it is possible to generate knowledge about the experience and therefore for it to become part of the material base from which law emerges. In doing so, Ernaux does not seek to 'normalize' her experience, but rather she seeks to 'de-other'. She claims how "[t]here is no such thing as a lesser truth"[215] and therefore how her truth, her experience, in its partiality, is not lesser than the partial experience which is wrongfully universalized and presumed to entail a superior truth. In unveiling her lived reality, she, in a way, seeks to rupture this dominant episteme – that is, this universalized truth – with her known lived reality.[216] To rupture this episteme is what Sharpe, in *In The Wake: On Blackness and Being*, describes as "wake work."[217] Sharpe uses various metaphors of being in the wake – that is, "the keeping watch with the dead, the path of a ship, a consequence of something, in line of flight and/or sight, awakening, and consciousness" –[218] as a way to relate to knowledge "of slavery and Black being in slavery",[219] to rupture the dominant episteme with known lived realities and in doing so possibly being able to "imagine otherwise from what we know *now* in the wake of slavery."[220] She writes how "[w]akes are processes",[221] and how they entail being aware of the traces a ship leaves in the water's surface, as well as relating to these traces. It is "to occupy and be occupied by the continuous and changing present of slavery's as yet unresolved unfolding."[222]

In that sense, being in the wake is to be aware of the traces left by discriminatory legislation as well as how one now relates to these traces. It is to occupy and continue to be occupied by the unresolved unfolding of such legislation. It is to be aware of how the sentiment of "now it's all over"[223], because of which former victims tend to remain silent, is flawed. Sharpe, quotes Dionne Brand, when writing that to rupture this dominant episteme

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[213] Ernaux, *Happening*, 38.
[214] Ibid., 38.
[215] Ibid., 37.
[216] Christina Sharpe, *In The Wake: On Blackness and Being,* (Duke University Press, 2016), 22.
[217] Sharpe, *In The Wake,* 22.
[218] Ibid., 22.
[219] Ibid., 18.
[220] Ibid, 22.
[221] Ibid., 24-25.
[222] Ibid., 2016, 19.
[223] Ernaux, *Happening*, 19.

one has to sit "in the room with history."[224] That is to say, that knowledge of Black being in slavery is gained not only from the research methods Black academics are expected to adhere to, which, through this process of epistemicide, does violence to their own "capacities to read, think, and imagine otherwise",[225] but also from those ways of knowing that are "from and of the everyday". Similarly, in unveiling her lived reality Ernaux, in a way, sits "in the room with history."[226] In doing so, she seeks to foster an understanding of her lived reality by which she is able to rupture the dominant episteme, the universalization of which would continue to silence and thereby 'other' the lived realities of women having undergone an abortion.

3.4.2. THE IMPORTANCE OF UNDERSTANDING

Here, the notion of true *understanding* is crucial to the successful integration of partial knowledge and of the careful weaving of possible webs of connection. It is this personal and political engagement with others, Babbitt writes, that brings "about the conditions that make being an integrated self possible".[227] One has to engage, one has to understand. Pure scholarly demonstrations and theoretical information regarding, for example, sexism and racism do not guarantee full understanding of what they truly *mean*. Such demonstrations are not sufficient to truly make one understand how the structures and assumptions with which people interpret information and themselves – in this case, for example, the way in which Western values associated with masculinity informs formal and informal systems of normative ordering, thereby leading to the 'othering' of those that do not adhere to such normativity – are *wrong*.

To counter the violence of abstraction, Saunders states, one has to tell a *physical* story. An example of this would be the autobiography, "which is not a personal story that folds onto itself […] [but] it's really about trying to look at historical and social process and one's own formation as a window onto social and historical processes, as an example of them."[228] Saunders recognizes, in writing and thinking "comparatively about the memory of slavery"[229], as well as engaging with the past of slavery "in order to understand the future that we inhabit",[230] that she too was a part of the remains, and therefore, that she, in being a part of the remains of slavery, was there as a bridge between the past and the present. So too does Ernaux, being a part of the remains of the prohibition on abortion, in her autobiographical work *Happening* offer herself as a bridge between the past and the present. In doing so, she offers her own lived reality "as a window onto social and historical processes, as an example of them."[231] That is to say, she offers herself as a bridge to foster understanding.

To foster such understanding, Babbitt notes, "one often *has* to become unsettled".[232] De Grouchy, in her *Letters on Sympathy*, argues that emotion "seems to suit the soul as

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[224] Sharpe, *In The Wake,* 18.
[225] Ibid., 18.
[226] Ibid., 18.
[227] Susan E. Babbitt, "Feminism and Objective Interests: The Role of Transformation Experiences in Rational Deliberation," In *Feminist Epistemologies*, eds. Linda M. Alcoff, and Elizabeth Potter (Routledge, 2013), 260.
[228] Saunders, "Fugitive Dreams of Diaspora," 9.
[229] Saunders, "Fugitive Dreams of Diaspora," 9.
[230] Ibid., 9.
[231] Ibid., 5
[232] Babbitt, "Feminism and Objective Interests," 258.

exercise does the body".[233] That is to say, she recognizes how for the fostering of sympathy, which she defines as "the disposition we have to feel in a way similar to others",[234] our emotions need to be stirred. To cultivate our ability to feel sympathetic towards another, to *understand* one another, our emotions need to be stirred. Finley notes how law, in its presumed objectivity and neutrality, is not receptive to emotions. Instead, Finley argues, we turn to literature to express our emotions.[235] Consequently , we see the importance of literature to invoke and foster understanding, as it is in literature – through fiction and narration – that we are able to become unsettled, allowing us to feel sympathetic towards and understand one another.[236] Ernaux seems to acknowledge the importance of invoking a feeling of discomfort, and being unsettled, as a means to understanding. In introducing her project she writes:

> Above all I shall endeavour to revisit every single image until I feel that I have physically bounded with it, until a few words spring forth, of which I can say, 'yes that's it.' I shall try to conjure up each of the sentences engraved in my memory which were either so unbearable or so comforting to me at the time that the mere thought of them today engulfs me in a wave of horror or sweetness.[237]

In stressing the importance of the embodiment of her words and in trying to conjure those sentences that were so unbearable to her at the time that they engulf her in a wave of horror today, she expresses a desire to let the reader also experience this wave of horror. She expresses a desire for the reader to be unsettled. In doing so, she acknowledges that it is only when the reader too experiences the wave of horror that she experienced, that they truly start to approximate what it was like to *live* her reality. It is only when they are capable of putting themselves in Ernaux's shoes, in approximating her lived reality, that they start to truly understand what it meant for her to be in desperate search of a clandestine abortion. It is only then, in their being unsettled, in their ability to feel as she did, that they truly start to understand her experience.

In writing how she tried to commit an abortion herself, she describes how she laid down on her bed and "slowly inserted a knitting needle into [her] vagina."[238] How she desperately groped around to locate the opening of her womb, but how she stopped as soon as she felt pain; how she was enraged by her own helplessness. After this passage she acknowledges how this description might be regarded as distasteful by some, how they may be repelled by it, but how her truth is not inferior and how in failing to write this embodied truth she "would be guilty of silencing the lives of women"[239] and siding herself with the male domination of the world. Ernaux, in writing, thus expresses a desire to lift the veil of secrecy covering the lived experiences of women victimized by the prohibition on abortion, thereby enforcing its existence. She seeks, by invoking the horror of her readers, to foster

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[233] Sophie de Grouchy, *Sophie de Grouchy's Letters on Sympathy: A Critical Engagement with Adam Smith's the Theory of Moral* Sentiments, trans. Sandrine Bergès (Oxford University Press, 2019), 75.
[234] De Grouchy, *Sophie de Grouchy's Letters on* Sympathy, 59.
[235] Finley, "Breaking women's silence in law," 905-906.
[236] Carolyn Heilburn, and Judith Resnik, "Convergences: Law, Literature, and Feminism," *The Yale Law Journal* 99, no. 8 (1990): 1927.
[237] Ernaux, *Happening*, 19.
[238] Ibid., 35.
[239] Ibid., 37.

understanding of such an experience, the horror that she must have experienced at the time, and, in her evaluation of the experience, for knowledge thereof to dissolve into the heads of others.

That is to say, she seeks to integrate knowledge of an experience once shrouded in shadows, which would, according to male domination of the world, be cast aside as a lesser truth, into the heads of others. She seeks for it to be weaved into webs of connection. She seems to desire for it to inform the ways in which others understand the world and thus their knowledge of the world – that is, of the material reality – from which law emerges. In doing so, she does not seek to 'normalize' her experience and her lived reality, but instead she, in a way, desires to 'de-other' it; that is, to counter the 'othering' that results from laws – both formal and informal – emerging from a material base that, resulting from the commitment of epistemicide, is exclusionary in the sense that knowledge of a specific, in reality, partial set of circumstances is taken to be transcendental and thereby superior

3.5. CHAPTER CONCLUSION

To conclude, Ernaux in describing her experiences in her search for a clandestine abortion and unveiling the lived realities of women, counters the violent 'othering' at the hand of the law, as she seeks to integrate her experience, her partial truth, into the ways in which others make sense of the world – that is, in their knowledge of the world – and thereby for it to inform the material base from which law emerges. The chapter has shown how law, while often imagined as abstract and detached, is, in reality, grounded in social practice and how it is from this continuous dialogue between the social and material that a plurality of law emerges. In doing so, it elucidated how legal pluralism and legal materialism are inherently tied up. It was illustrated how while law, through the imposition of its normativity, constitutes matter, it is matter that, in the first place, *precedes* law and, as such, how law is material. In the acknowledgement that law – both formal and informal – emerges from a material base, the chapter moved into the terrain of epistemology by asking how we generate knowledge about this material base. In answer to this question, it was imperative to look at *who* generates such knowledge.

Consequently, we saw, in a similar line of reasoning as was delineated in chapter 1, how the paradigmatic knower is conceptualized as a detached and interchangeable individual. In reality, however, we have seen how the disembodied mind is partial and necessarily incomplete and how the values that inform the paradigmatic knower are often associated with masculinity. In doing so, the chapter illustrated that, similar to chapter 1, the knowledge generated by the paradigmatic knower, is gendered; and, as a result, how the law emerging from such a known material base, is gendered as well. For the norms and values that inform the material base, from which formal and informal systems of normative ordering emerge, to be universalized, knowledge about other possible ways of being need to be destroyed. 'Epistemicide' needs to be committed. To counter the commitment of epistemicide, the chapter described, we need to move into the terrain of feminist epistemology and hone in on partiality. Knowledge needs to be recognized as context-bound. The chapter stated how true rational knowledge is positioned and able to form possible webs of connection. Feminist epistemology shifts our understanding of objectivity from identity to partial connection and acknowledges how the knowing self is always an *integrated* self.

The chapter continued by arguing that it is in the acknowledgement of the knowing self as an integrated self that the importance of personal experience lies. It was illustrated how it is in the reflection on experience, in its theoretical mediation, that experience offers us with access to knowledge. It is in this mediation that experience can be integrated as knowledge. Ernaux writes how she wants her existence, her experience to merge into the lives and heads of others; she expresses a desire for her experience to become integrated. The chapter argued how Ernaux, in describing her search for a clandestine abortion, makes her experience explicit and enforces its being, whereby through theoretical mediation one can generate knowledge about it. In doing so, Ernaux does not seek to normalize her experience; instead, she seeks to de-other it. By fostering an understanding of her lived reality she ruptures the dominant episteme, the universalization of which would continue to silence and 'other' the lived realities of women that have undergone an abortion. The chapter illustrated how *understanding* is crucial to the integration of partial knowledge and how Ernaux in her autobiographical work *Happening* offers herself as a bridge between the past and the present, in which the enforcement of her own lived reality operates as a way to foster such understanding. The chapter concludes by showing how Ernaux recognizes that to foster understanding one has to be unsettled and how it is through her narration of her experience, in which she expresses a desire for the reader to also be engulfed by the wave of horror she experienced herself in writing certain passages, that she seeks for her readers to understand her experience. In making her lived reality known, she seeks to counter the 'othering', resulting from epistemicide. She seeks to make her lived reality known and understood, to integrate her experience into the minds of others, whereby it can inform a more inclusive material base from which both formal and informal systems of normative ordering emerge.

CONCLUSION

The answer to the question of how Annie Ernaux's quest for a clandestine abortion in her memoir *Happening* both illustrates and counters the ways in which the law silences and thereby violently 'others' the lived realities of women, is twofold. On the one hand, this thesis aimed to elucidate how Ernaux's *Happening* illustrates the ways in which the law silences and thereby violently 'others' the lived realities of women, whole, on the other hand, it aimed to elucidate how it was precisely in Ernaux's *Happening* that such silencing and violent 'othering' by the law is countered. By analyzing how Ernaux's *Happening* exposed the prevailing conceptualizations of the law responsible for the silencing and violent 'othering' experienced by Ernaux in her search for a clandestine abortion, chapter 1 considered the first part of this question. In writing how "[p]eople judged according to the law, they didn't judge the law",[240] Ernaux seems to acknowledge how the law operates as a language of power, a system of meaning-making, whereby we construct socially construct reality interpersonally. Moreover, the statement includes the belief that law is transcendent and universally applicable. The belief, while commonly held, was shown to be problematic, given that it ignores that the law and the liberal legal subject – that is, the paradigmatic view of legal personhood – is, in reality, rooted in its socio-historical circumstances. Both originated within a socio-historical context that valued characteristics associated with masculinity over those associated with femininity and, while thinking of itself as being detached and disembodied, they, in reality, reflect their gendered nature.

To keep up the facade of transcendence – that is, of disembodiment and exaltation – and thus to underscore the normativity of the law and the liberal legal subject, other forms of thinking and making sense of the world are silenced. They are destroyed through the commitment of 'epistemicide'. In their destroyal and silencing they are relegated to the position of being the unknown 'other'. It was shown how the law and the paradigmatic legal subject, given their masculine embodiment, are gendered and thus how those that do not naturally conform to their normative conceptualizations are, by definition, regarded as the feminized 'other'. Ernaux shows how given the prohibition on abortion, knowledge on how to safely abort, which naturally belongs to the lived reality of pregnant women seeking to terminate their pregnancies, is erased and how she is met with an unwillingness of society to provide her with information on how to safely terminate her pregnancy. In being confronted with the 'unknown', Ernaux is left to try and violently terminate the pregnancy herself, as well as later in her memoir *Happening,* to undergo an unsafe illegal abortion, which nearly kills her. Chapter 1, therefore answers the first part of the question by showing how it is in her confrontation with the unsafe 'unknown' – resulting from the 'epistemicide' which is the consequence of the legitimization of the belief in the transcendence of law, which, in reality, is gendered – in her attempt to have an illegal abortion that Ernaux finds herself being violently 'othered'.

Chapter 2, then, operated to bridge the two parts of the main research question by considering how this commonly held belief of the law as transcendental and universally applicable, which is responsible for the violent 'othering' of Ernaux in her quest for a clandestine abortion, also implies legal monism and thereby the instrumentalist paradigm of law. Yet, how such an instrumentalist paradigm of law, with its top-down approach of law,

[240] Ernaux*, Happening*, 31.

does not mirror reality. The chapter, instead, expounded a more realistic bottom-up approach of law, which is offered by the 'social working' paradigm of law. It is the 'social working' paradigm of law that, instead of legal monism, assumes legal pluralism. In clearing up some of the conceptual difficulties surrounding the concept of legal pluralism and what counts as 'law', the chapter referred to Ehrlich's concept of 'living law', which also includes informal systems of normative ordering, such as social norms, as useful for the analysis of 'normativity' to be included in the concept of 'law'.

In our analysis of Ernaux's *Happening* we find that while she recognizes that she is violently 'othered' by means of the law, she also seems to acknowledge that, unlike the commonly held belief illustrated in chapter 1, the 'official state law' is not the only form of normative ordering that shaped her experience. In writing that "[t]he law was everywhere. In […] the shame of women who aborted and the disapproval of those who did not",[241] Ernaux recognizes that it is in her experience of the disapproval of unmarried women who did not have an abortion – as a result of their being doubly othered – that a 'living law' is generated. This law prescribes unmarried women to have an abortion. In choosing to have an illegal abortion, Ernaux, consequently, proves how the law's power emanates from multiple sources, rather than a single centre. With regard to the question of whether or not to have an abortion, we saw that the 'official state law' conflicts with the 'living law' and that Ernaux, in choosing to have an illegal and clandestine abortion, follows the scenario that appears most normative and would therefore lead her to being 'othered' the least. This scenario is most normative as it aligns with the higher valued characteristics of Western thought, associated with masculinity, which inspires both formal and informal systems of normative ordering. Yet, even in her choosing that which is most normative, we find that Ernaux is violently othered, because in doing so, she is forced to break the 'official state law', whereby, as chapter 1 showed, she finds herself confronted with the unsafe 'unknown.'

In illustrating how Ernaux's *Happening* countered the silencing and violent 'othering' by the law, chapter 3 tackled the second part of the research question. It does so by showing how law, while commonly imagined as abstract and detached, is, in reality, grounded in social practice and how a plurality of law emerges from this continuous dialogue between the social and material. While law, through the imposition of normativity, shapes matter – as was illustrated in chapters 1 and 2 – it is matter that *precedes* law. Law, in reality, is therefore material. As such, legal pluralism and legal materialism are inherently tied up with one another. Yet, it is only from a *known* material base that law can emerge. In answer to the question of *who* generates such knowledge, we saw how the paradigmatic knower is conceptualized as a disembodied and interchangeable individual. Yet, again, we saw how this presumed disembodied individual is associated with masculinity, whereby the knowledge generated about the material base, as well as the law – both formal and informal – emerging from it, is gendered. In this, we, again, saw the commitment of 'epistemicide', as knowledge of the lived realities of those considered 'other' is silenced, by reason of its presumed bias-riddled partiality, to legitimize the transcendence of the paradigmatic knower.

To counter such 'epistemicide', the chapter argued how we, according to feminist epistemology, need to shift our understanding of objectivity from identity to partial connection, whereby we hone in on the partiality and context-bound nature of knowledge. True rational nature is positioned and the knowing self is, therefore, always an *integrated* self, as it weaves these partial knowledges into webs of connection. As a result, it was shown

[241] Ernaux, *Happening*, 31.

how in the acknowledgement of the knowing self as an integrated self, we find the importance of personal experience as a way to gain such partial knowledge. It is precisely in the theoretical mediation of experience that we gain access to knowledge and that such theoretically mediated experience can be integrated into such webs of connection. Ernaux too, it was shown, in writing how she wants her experience to merge into the lives and heads of others, expresses a desire for her experience to become integrated. She does not seek to 'normalize' her experience, simply to 'de-other' her lived reality. Because while Ernaux recognizes that her experience *is* not 'other', as there is no lesser truth,[242] she seems to be aware of how it is *made* to be 'other' through the commitment of 'epistemicide'.

Ernaux counters this 'epistemicide' and thus the violent 'othering', because in describing her experience she makes it explicit, she makes it *known*. In narrating her experience, she fosters an understanding of her lived reality, by which she ruptures the dominant episteme, in which knowledge of the material base is masculinely gendered. It is in the unsettling passages that she truly allows others to approximate her experience through the feelings of horror induced by these passages. It is only when the reader too experiences the wave of horror that she experienced, that they truly start to approximate what it was like to *live* her reality. As a result, it is only then, in their being unsettled, in their ability to feel as she did, that they truly start to understand her experience. it is only Having argued this, the chapter answers the second part of the research question, as it shows how Ernaux truly counters the 'othering' resulting from 'epistemicide', given that in understanding her experiences in search of a clandestine abortion, knowledge of her lived reality, and that of women having undergone similar experiences, can become integrated into the minds of others. As a result, it can inform a more inclusive and diverse material base from which more inclusive and less violent systems of normative othering can emerge.

Having answered the main research question, we may still consider a few things. It may be asked why Ernaux has only written about her experience when abortion was no longer outlawed in France,[243] given that *L'Événement* was first published in 2000. Was the integration of her experience only possible then, *because* abortion was no longer outlawed and because the law nowadays, therefore, no longer 'others' those in search of an abortion? Yet, in answer to this question, we have to consider that while the law may now no longer 'other' those in search of an abortion, Ernaux writes that it all the same once victimized those forced to seek an illegal abortion.[244] As it is precisely in remaining silent that one would contribute to the experience remaining shrouded in secrecy and thereby remaining 'other', Ernaux feels that she is obliged to unveil the lived reality of what she describes as such an 'unforgettable' event. She feels like she is obliged to make her experience known and thereby to 'de-other' it.

It is precisely because we now find ourselves at a point in a time where the right to abortion is threatened in various parts of the world, that it is important that knowledge of these lived realities does not remain shrouded in secrecy. It is precisely because van den Nieuwenhuizen writes how, even though she, in her reflection on the right to abortion, hoped to find an objective list of reasons why the abortion should be allowed, she found how, in the end, those reasons could only be subjective.[245] It is precisely because we can never be fully

[242] Ernaux, *Happening*, 37.
[243] Ibid., 19.
[244] Ibid., 19-20.
[245] Van den Nieuwenhuizen, *Leven en laten leven*, 60.

sure of the right to abortion and because we might regard the possibility of its abolition unthinkable, until it is not,[246] that it is crucial that we *know* about and *understand* the reality of what happens when legal and safe abortions are, again, prohibited. Women will always seek out abortions, whether safe or unsafe, whether legal or illegal.[247] As such, Ernaux's *Happening*, in which she illustrates the ways in which the law silences and thereby violently 'others' the lived realities of women, is crucial in countering such violent 'othering' by unveiling and making the lived realities of these women *known*. After which knowledge of the violence with which women seeking out illegal abortions are confronted can be integrated into knowledge of the material base from which laws emerge. As a result, we might hope that the integration of such knowledge ensures that it is the right to a safe abortion that emerges from such a material base and that it, in its emergence, is properly maintained and safeguarded by enshrining it into constitutions worldwide.

[246] Ibid., 63.
[247] Ernaux, *Happening*, 30.

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