Psychoanalysis and the Law beyond the Oedipus

A Study in Legal Fictions

Thesis submitted for the degree of Ph.D. in Law

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We need not answer for any ultimate truth, and certainly not for or against any particular religion.

It is already significant that I had to situate here the dead Father in the Freudian myth. But a myth does not confine itself to not propping up rites, and psychoanalysis is not the Oedipal rite ... 

Jacques Lacan

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The present thesis considers the function of law in the political from the perspective of psychoanalysis, a discipline which foregrounds the subject. Drawing from the Lacanian contributions to psychoanalytic theory, I begin by assessing the validity of the Oedipal hypothesis for the purposes of understanding the dynamics of collective life. My analysis of civilisation in psychoanalytic terms will expose the subject as the seat of certain key phenomena which, despite their deeply intimate character, play themselves out in the field of law, in the confines of the institution, or again in the political realm: essentially, culpability, belief and love. I will argue that, although these phenomena irretrievably obstruct the rational unfolding of discourse, they also impel the precipitation of the subject’s attachment to the political, and permit the consolidation thereof through the medium of transference. Yet, and in contradistinction to other strands of psychoanalytic jurisprudence, in this work psychoanalysis will be used neither as an hermeneutic tool nor as an analogical model. Indeed, my purpose is to evidence the existence of a certain continuity between the unconscious as discourse and the political order. This continuity between the unconscious and the political will be presented in terms of the logic of exception, which structures the subject’s relation to language, and which Lacan identified as the structural core of the Oedipus complex. I will then apply Lacan’s hypothesis of the exceptional structure of discourse to the theories of three political thinkers, chosen for the distinctness of their approach: Legendre, Bentham and Foucault. Finally, I will argue for the dispensability of the function of the Ideal, parasitic occupier of what should remain the structurally ‘empty’ place of exception.
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PREFACE

In the Wasteland of Ethics

When in the waste is the wisdom?

James Joyce ¹

A Tale of Lost Legitimacy

In the West, and in the present context, our laws bear the deep imprint of a pervasive lack of definitive legitimacy; and this lack forces the legal discourse ever further down the self-referential circuits of rhetorical truth.

As to the loss of law's legitimacy, it is no doubt to be ascribed to the enduring erosion of the mythical dimension of political power. This statement is to be understood in two moments:

- Firstly, and as this thesis will strive to demonstrate, legitimacy obtains as a result of a certain correspondence between people's beliefs and the actual forms of power. French constitutionalist Claude Leclercq, for instance, concisely formulates the key condition which political power must fulfil if it is to command legitimacy:

  Legitimacy designates the capacity of a power to conform to the beliefs of the governed concerning its origin and its forms. Legitimacy is then accepted naturally by the governed. It entails natural obedience. [...] Legitimacy attests to a fundamental agreement of the people (subjects or citizens) regarding the identity of the sovereign. (1999, 28, my translation)

- Secondly, this correspondence is traditionally secured by way of the signifying mediation performed through an utilisation of the mythical subtext which subtends a given discourse of power. Thus, Leclercq also notes that the legitimacy of the sovereign, or more generally of those who govern, is secured through the operation of myth:

  Myths make the population accept the lack of identity between those who govern and those who are governed [...]. (ibid., 29)

Yet, in an era in which the representative, liberal democracy is the prevalent mode of government, the mythical cipher which supplies the material required for the institution of a correspondence

¹ Finnegans Wake. 1992, 114.
between the subject's beliefs and the contemporary forms of power is ever less legible. As such, one could even encapsulate what is known as the post-modern condition with the expression "the decline of the mythical function".

How, then, is the declining efficacy of the myth in its function of securing legitimacy remedied in the present day legal system?

To address this question, I suggest we qualify traditional, sovereign legitimacy with the term justness, in contradistinction to current forms of legitimacy, which echo with that of justice. More explicitly, I would pose that a form of power which derives its legitimacy from the strength of a given myth only has to maintain a certain correspondence between the beliefs of its subjects and the manifestations of its power by exploiting the mythical elements at its disposal. Today though, considering the waning mythical contents of the political, legitimacy will rather obtain as a result of the apparent justice dealt out by apparatuses of power.

Having asserted that justice is now more relevant to law's legitimacy than the function of the myth, let us see where this leaves us.

The Ethical Supplement

It is the transience of our law-givers' sway, compounded by the marked absence of law's other-worldly truth, which foregrounds the function of ethics as the substitutive referent of the legal discourse. For indeed, how else will the justice of a decision be established?

But ethics is itself bereft of a positive yardstick with which to measure the justice of law, and its sole fixed referent can be said to be a negative one — to take a shortcut, one could say that in the post-modern legal discourse, the Holocaust serves as negative referent for the definition of good and evil.

Moreover, the absence of a positive referent which would ground the ethical dimension of the political leads to the reduction of ethics to a discourse of rights, which is substituted for all manners of political ideology. Consequently, although ethics may be a necessary supplement for the unravelling of the legal discourse under the auspices of the semblant of justice, it is itself an insubstantial concept, the protean significations of which are produced in the very movement of the discourses which it is said to orient.

As such, the intervention of the ethical in the irresolvable equation of law's justice cannot arrest the slipping away of its legitimacy, quite the contrary. The unabashed call to the ethical merely introduces a distinct signifying material for the unfolding of a new referential field, and the result is the proliferation of legal instruments and the institution of ad hoc juridical instances. In turn, these instances, armed with ever more legal weaponry, may perform a crucial function with regard to law's legitimacy: for they are in charge of the incessant re-assertion of the sole final guarantee of law's permanence — namely, its infinite capacity to respond to all demands made upon it.
Beyond the artificial nature of such repeated calls to ‘the ethical’, there is yet another evident criticism to be levelled at the current reliance on the supposedly ethical trend of the juridical interventionism which is rife in all areas of both internal and international conflicts.

Indeed, the multiplying instruments and instances in question clearly develop the discursive field of ethics in accordance with the interests of the predominant members of the society which is concerned by the juridical event. In turn, the bias which is inherent to the development of the ethical parameters of the legal discourse transforms a purportedly neutral referent into an operative agent for the imposition of whichever morality is favoured by the ruling classes of the dominant nations.

These two shortcomings of the artificial division by means of which the self-referentiality of the legal discourse is articulated have incited numerous reactions. These reactions range, on the one hand, from a recognition of the impossibility at the heart of the law to, on the other hand, a call for an increase in legislation and an improvement in adjudication strategies.

Undecidability and Nomocentrism

In the first of these two extremes, we recognise the deconstructive venture initiated by Jacques Derrida and, generally speaking, pursued by the post-structuralist movement.

Following the apologues of deconstruction then, one should affirm the undecidability (Derrida: 1992a, 24) that lodges itself at the heart of the law. For law and justice are intrinsically incommensurable with one another, for they are of a different order altogether: thus, law is by definition deconstructible, whereas “deconstruction is justice” (ibid., 15). In other words, the legal discourse unfolds in a succession of eminently deconstructible decisions, whilst justice, in its Levinatian definition an infinite responsiveness to the other (ibid., 22), will in and of itself always be the medium for the deconstruction of the legal decision. For

How are we to reconcile the act of justice that must always concern singularity, individuals, irreplaceable groups and lives, the other or myself as other, in a unique situation, with rule, norm, value or the imperative of justice which necessarily have a general form, even if this generality prescribes a singular application in each case? (ibid., 17)

Having thus articulated the constitutional incommensurability of law and justice — since justice is concerned with singularity whilst law is concerned with calculating the incalculable — Derrida is left with the sole option of re-situating ethics in terms of a question for the subject. Indeed, the moment of decision is a moment of responsibility: for it is the moment of a choice which will limit the decider's responsiveness to the other. And in view of the ‘injustice’ which is inherent to the operation of law, a decision will never be ethical per se. Thus a decision will only be ‘ethical’ if reached through a crossing of the impossible: “A decision that didn’t go through the ordeal of the undecidable would not be a free decision.” (ibid., 24)
It is thus that the deconstructionist approach foregrounds the responsibility of the decision-maker and 'decidedly' opposes the closure of discourse. From this perspective then, ethics concerns each subject's singular responsibility, and what is at stake is the subject's own, unaccountable, inexplicable decision:

Such is the aporia of responsibility: one always risks not managing to accede to the concept of responsibility in the process of forming it. For responsibility (we would no longer dare speak of "the universal concept of responsibility") demands on the one hand an accounting, a general answering-for oneself with respect to the general, hence the idea of substitution, and on the other hand, uniqueness, absolute singularity, hence non-substitution, non-repetition, silence, and secrecy. What I am saying here about responsibility can also be said about decision. (Derrida: 1995a, 61)

In this quote, which is extracted from The Gift of Death, Derrida stresses that the subject's responsibility, his ethical position, is by definition inconsistent with the rhetoric of self-justification. It is in the light of the aporetic nature of responsibility that we may understand Derridean politics as a refusal to offer the results of one's own tarrying with the impossible for the discursive ventures of others. For an ethical decision is the result of each subject's wrestling in the throes of the undecidable, and responsibility consists precisely in the act of wrestling. And as such, it is to be repeated time and time again.

At the other end of the scale, we find those who claim that the failure of the law is to be ascribed either to the incomplete state of the law, or to the biased way in which laws are being interpreted. In such readings, the function of the law is not problematised in itself, and the injustices which they recognise are to be ironed out through an incremental development of the law until all possibilities of inequalities are eradicated.

In the latter hypothesis, the undecidable, which for Derrida fuels the very movement of the law, would be diverted in the neutral channels of an increasingly universal legal system, in which law would occupy the unquestioned centre-stage, or again be in the position of exception. Law would rule all states and citizens according to a set of internationally recognised criteria, applied similarly to all, and absolute equality would ensue.

A partisan of the second current, Jürgen Habermas proposed the application of such a solution to international law in a recent article published in Le Monde des Dibats (June 1999). Citing Kant and Kelsen as his precursors, Habermas makes the case for what he terms nomocentrism. Following his argument, it would be possible, and even desirable, to replace progressively the rights of nationals and of peoples with a cosmo-political order which would be governed entirely by law. Accordingly, each citizen of the world could sue its own state in truly international courts of justice.

2 "[...] Deconstruction calls for an increase in responsibility." (Derrida: 1992a, 20)
Habermas supplements this solution by advocating for the individual responsibility of state-officials. Thus for Habermas, the solution to law's partiality would reside in the institution of a world in which law would be the absolute sovereign: this absolute sovereignty of the law would transcend national sovereignties and lead to an individualisation of responsibility beyond the screen of public functions.

In other words, Habermas is proposing the erection of a gigantic supra-national juridical system which would have the potential of circumventing the biased or moralistic approaches of national or regional jurisdictions. It is clear that in the nomocentric hypothesis, the 'ideal' situation is that each should be equal before the law, irrespective of nationality or position. In this way, law would end up being the sole remaining sovereign, and one could therefore hope for the near-perfect neutrality of the juridical apparatus. Lastly, this solution would have the additional advantage of superseding the universalist /relativist debate, which undermines the supposed neutrality that sustains the discourse of rights, by substantiating law's claim to absolute universalism.

The Intervention of Psychoanalysis

The two opposite models outlined above are no doubt both extremely relevant to the ongoing debate on law, justice and ethics in the modern world. Thus, the 'non-positionality' characteristic of the deconstructive venture crucially opposes a closure of discourse which would be performed at the expense of the subject's singularity, whilst the rationalistic faith in the ultimate neutrality of law can prove very useful in securing the protection of certain citizens or even states against the arbitrary behaviour of others.

In this thesis though, I will explore yet another mode of envisaging the function of law in its relation to justice and ethics, which will be developed on the basis of psychoanalytic theory. For in my view, the ethics of deconstruction are marked by a certain impotence when it comes to positive interventions, whilst the rationalistic fantasy of nomocentrism does not account for the complexity of the subject's relation to the law.

On the other hand, the constant focus of psychoanalysis on the subject entails two crucial consequences as regards the legal discourse. First of all then, the ethics of psychoanalysis is 'interventionist'. In fact, one of the functions of analytic theory is to keep track of the mutations of the social bond with a view to treating the subject, who is the prime effect of the symbolic inefficacy which characterises the modern discourse. And secondly, the irrationality of the subject's relation to law, authority and discourse has been noted since the incipience of the discipline of psychoanalysis.

I will now briefly consider these two consequences as regards the potential import of psychoanalysis for legal theory.

3 Thus for example: "I will thus once more attempt to resist the drive [pulsion] towards or the expectation of position-taking. And to those expecting some positioning here in order to fix [arrêter] their judgement, I wish the very best of luck." (Derrida: 1995b, 701)
Of Ethics and Psychoanalysis

The question of ethics is to be articulated from the point of view of the location of man in relation to the real.

Jacques Lacan

What, then, is Lacanian ethics? What does it mean for an ethics to be interventionist? And for it to be indexed on the real? It simply means that the ethical value of psychoanalysis is attested to solely on the basis of its capacity in treating the real which the subject suffers from, rather than through its conformity with an abstract norm or ideal. For psychoanalysis indeed, what matters in discourse in not so much signification but the jouissance that lodges itself in the lapses of meaning.

Yet, it is not because psychoanalysis ‘resorts to invoking jouissance’ to ‘fill up’ such ‘holes within knowledge’ that it must ‘deny’ the existence of such holes and take its leave from the task of elaborating knowledge. (Lacan: 1971a, 5) In the absence of a belief in the possibility of an ultimate discourse, the question becomes one of being able to ‘speak well or to find one’s way in the unconscious, in the structure.’ (Lacan: 1974a, 39; 22 trans. mod) Such is the challenge facing today’s thinkers — although it was already that bequeathed to us by Nietzsche: to discard ideal maps of knowledge, and to treat knowledge as a mode of being itself implicated in the treatment of the real. The goal of such a knowledge is to bridge the abyss of the impossible with the active construction of responsibility.

Thus, suffice to say, at this point, that the ethical nature of a given discourse will be assessed in accordance with its potential for the reduction of jouissance. This statement clearly situates my work under the auspices of a discursive ethics the sole justification of which lies in its efficiency in dealing with the impossible — in Lacanian terms, the real.

Psychoanalytic Jurisprudence

Further, and as already mentioned, psychoanalysis is familiar with the irrationality of the subject, and as such its insights are crucial to a comprehensive understanding of the function of law.

The importance of psychoanalysis has been noted by many a legal thinker: thus, in the course of a commentary on the work of Legendre, Goodrich states that:

What is at issue in law’s institution of life is not only a question of legal logic, it is also a matter of faith, of love, and of the poetry of the soul. (1996: 209)

Such affirmations of the manifold dimensions of the subject’s relation to law may now be commonplace; yet they remain extremely relevant. However in this thesis I will strive to steer clear from the two main pathways usually travelled by the advocates of psychoanalytic jurisprudence.

The first of these pathways is the following: Goodrich, just as Legendre and many others (Caudill: 1997; Douzinas: 1996) who rely on psychoanalysis for the purposes of legal theory, poses that, in view of the emptiness of the subject’s life in the modern world,


5 See Peter Preuss’ concise introduction to Nietzsche’s On the Advantage and Disadvantage of History for Life (1980, 1).
of the many dimensions at play in the legal discourse, one should engage in a double-reading of the law — in other words, one that would be “attentive to both its manifest and its latent meaning.” (ibid.) The purpose of this critical technique would be to uncover the repressed contents of the law or, more subtly, to perceive the part played by aesthetics, rituals, feelings of love, symbols and so on and so forth. And there is no doubt that it is crucial to highlight the irrational dimensions of the legal discourse — in fact, this strategy has gathered ground since the seminal work of Legendre.

The second critical strategy resides in “rebellious lawyering” (Milovanovic: 1996), this being a strategy which aims at pluralizing the dominant discourse through the introduction of new master-signifiers. This strategy is to be performed by practicing lawyers and implemented through judicious pleading strategies. Again, such an enterprise is no doubt very welcome, as it allows for the emergence of a certain polyphony in the field of legal discourse.

However, my own work represents yet a third modality of engaging with law from the perspective of psychoanalysis. Indeed, my aim is not to perform a double reading of the law, nor is it to decipher the rituals of symbolic power, or expose its aesthetic or patriarchal appeal. Instead, I will argue that psychoanalysis offers the possibility of locating the nodal points which structure the subject’s relation to power, and this with a view to defining the parameters which could orient a potential intervention in the subject’s symptom. As such, whether the law is structured on the model of the subject, or the subject on that of the law, is largely irrelevant: what is essential indeed is to isolate the continuity which binds the subject to the law, and to do so in other terms than those pertaining to the theory of a ‘double inscription’.

I will thus endeavour to map something of the mechanisms which orchestrate the topological unfolding of discourse. For it is my argument that there is no such thing as the ‘other scene’ of the political, or as the repressed contents of the law. In fact, the subject’s relation to the law is a complex, multi-dimensional knotting which is not to be read in the simple terms of a dichotomy organised by the clear line of repression, a dichotomy which is perpetuated by the artificial distinction often drawn between the ‘collective’ and the ‘individual.’

Beyond the Oedipus

It is in view of the growing complexity of the subject’s relation to language and to the real, first evidenced by Freud but essentially developed by Lacan, that this thesis will strive to demonstrate the partial obsolescence of the Oedipus complex.

In turn, to challenge the validity of the Oedipus complex will allow me to query the facile equation often made between the law of the unconscious — namely, ‘repression’ — and the law of men. Indeed, although it is an equation easily supported by a number of evident parallels, it will be much more rewarding for our purpose to identify the invariant traits structuring a subject’s inscription in the legal
order than to postulate the existence of a selfsame mechanism operating identically in the psyche and in the social. For to discern that a given State borrows familial imagery in order to ensure the 'voluntary servitude' of its subjects, or that the legal order operates on the trace of the instinctual conflict of childhood, is merely to perceive that a subject may only inscribe itself in social life through the fictional sexology of familial and political life, a perception which could easily lead one to mistake the fiction for the real that it ciphers, and thereby to ignore that it is this very ciphering that renders it amenable to any kind of discursive treatment.

Yet, if psychoanalysis recognises that human sexuality cannot but borrow prevalent discourses in order to realise itself, it is nonetheless also acutely aware of the deleterious effects of the being-for-sex of the subject. It cannot, therefore, ground the desirability of its intervention in the social on the wishful objective of restoring the subject to a wholesome sexuality but must rather target the institution — which declares the personal conflict of the subject to be non receivable before the law.

This is why the analytic discourse concerns itself with mapping various social modes of channelling jouissance, whether their objectives be recuperation, treatment or negation. Indeed, Lacan identifies the 'real' purpose of the institution as follows: "The curbing of jouissance is the essence of all human formations [institutions] rather than its accidental consequence." 6

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PART I

THE FATHERS OF PSYCHOANALYSIS

In the Name of the Law

On Rigor in Science

... In that Empire, the Art of Cartography reached such perfection that the map of one Province alone took up the whole of a City, and the map of the empire, the whole of a Province. In time, those Unconsignable Maps did not satisfy and the Colleges of Cartographers set up a Map of the Empire which had the size of the Empire itself and coincided with it point by point. Less Addicted to the Study of Cartography, Succeeding Generations understood that this Widespread Map was Useless and not without Impiety they abandoned it to the Inclemencies of the Sun and of the Winters. In the deserts of the West some mangled Ruins of the Maps lasted on, inhabited by Animals and Beggars; in the whole Country there are no other relics of the Disciplines of Geography.

I - Of Fictions and Men

Amongst the distinctive literary skills with which Borges crafts his enigmatic tales, there is one which is of particular relevance to the present work, in which I tentatively approach the intricate network of relations that bind the multiplying fictions of discourse to the opaque corporeality of being. It consists in openly installing fiction within fiction.

Whether the object of his invention be an imaginary land, a meticulously fabricated author or an invented book, this fascinating narrative technique relentlessly challenges the tenuous border which separates 'fictional fiction' from 'real fiction'. This ambiguity endows Borges' artful constructs with a laconic yet arcane wisdom, one that obliquely evokes the Gordian knot of human life reduced to its most barren combination: the impossibility of finite meaning and the solitary desolation of being. Indeed, the substitutability of his fictions hinges upon the fleeting nature of meaning, and this resonates with the timeless errancy of men in the realm of language.

In Borges' writings then, the inherently duplicitous nature of language, no longer concealed beneath the unified front of fiction, profoundly resonates with the impossibility which roots being in language: for is it not the impossibility of encapsulating the real of life in the signifier which drives on the incessant interweaving of signifying chains, their kaleidoscopic production giving both form and movement to all discursive species of 'verifiable' and 'fictional' realities to the point of their eventual inversion?

Unsurprisingly, the most marked examples of this stylistic device are to be found in Borges' Fictions, a volume of collected short stories which opens with one entitled Tlön Uqbar Orbis Tertius. Its title is the seamless, unpunctuated cipher for a fictitious land first known as Uqbar. Uqbar, we learn, has come to the narrator's attention through the scripted traces of its existence, traces which mark the pages of obscure books in unique supply. The civilisation of Uqbar itself, it turns out, situates its own legends in an openly imaginary land known as Tlön, which is eventually revealed to be

1 J. L. Borges: 1964, 90.
another planet — the motto of which is Orbis Tertius. A fourfold name thus, for an enigma which Borges constructs by means of precise encyclopaedic details gradually tracing an evidential map of the parameters of life in the fictive location, providing a wealth of miscellaneous data which even include a description of two languages and a very complete and seemingly superior philosophical system.

The tale comes to a close on the narrator's return to his inquiry into the life of Tlön a few years later, at a time where both the existence of Tlön and the 'truth' of its fictional nature are widely recognised. Yet, despite this double recognition, men experience a compelling appeal for this other civilisation; they are fascinated by the enthralling rigour of its designers' intricate composition, which seems to suggest a land of rational wholeness.

Thus it is the history and culture of Tlön which are now being taught in schools, and it is to its harmonious sciences and philosophies that contemporary men swear the allegiance of their minds. In Borges' story then, a fictional past, the imaginative product of a number of collaborating scholars, progressively replaces the lived experience of a community, and the gleaming narrative fiction substituted for it gradually takes on the traits of 'reality'.
we cannot speak of their departing from it, nor can they be made to refer to it. Laws are only a system of language, controlling pleasure and pain on behalf of utility. To conceive a natural law, to establish concrete law on the basis of supposedly pre-existent rights and duties, is to posit unuttered utterances - other than those providentially emanating from some Divine source. If a legislating nature does not exist, if use is the only source of legitimacy, then rights and duties must derive from the law, from its effective, humane utterance, in other words, from an act of language. Legislation is wholly a phenomenon of discourse, an effect of discourse. (1987b, 24)

Miller concisely reminds us here that for Bentham, the function of law is to organise the greatest good for the greatest number on the basis of the principle of utility, and that it does so through language. In the Benthamite world, there is no such thing as a natural order which law would then replicate. Bentham is thus logically led to pose the ex nihilo creation of law, which leaves him facing a problem thus phrased by Miller: “How can language not reproduce a model but create entities that derive their being from it alone?” (ibid.)

It is the perennial difficulty of accounting for law self-referentially which, according to Miller, impels Bentham to devise his theory of language. Indeed, if one cannot refer the validity of law either to the order of things, or to an unquestionable law-giver, then it follows that law is a fiction, and that the validity of law is therefore conditional upon its ability to remain as close as possible to reality. In turn, such a conception of legal fictions calls for the reduction of the fictitious elements of the law to their bare minimum. And this is arguably the reduction which Bentham seeks to achieve in his Theory of Fictions.

What is a fiction for Bentham, then? And how can such fictions be reduced to a near-real status? This is the precise question which Bentham addresses at length in the texts assembled by Ogden. There, Bentham proceeds to divide language into different categories of entities. An entity, for Bentham, “is a denomination in the import of which every subject matter of discourse, for the designation of which the grammatical part of speech called a noun-substantive is employed may be comprised.” (1932, 7)

Having thus equated nouns with entities, Bentham then divides these entities into different categories according to their degree of reality. Thus, he poses the existence of perceptible (real objects) and inferential entities (entities apprehended by the mind such as God and the soul: ibid., 7-10), both of which are real, before recognising the necessity for there to also be unreal entities (ibid., 10-14). Some unreal entities are fables, namely they only exist in the mind of the speaker, whilst other unreal entities, or fictions, are the necessary product of discourse itself: "In the mind of all, Fiction, in the logical sense, has been the coin of necessity..." (1932, 18). The fictive — rather than fabulous — nature of these entities is attested to through their reversibility, which demonstrates the necessity of their existence in so far as the logical consistency of discourse is conditional upon such fictive entities. To put it more clearly maybe, the reversibility of fictive entities entails that they be

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3 Note that for Bentham the 'reality' of an entity is ascribed to perception: for “simple perception is not capable of erring, no, nor sensation either. But judgment is, on the part of every person, and on almost every occasion, exposed to error.” (1932: 66)
re-translated as much as possible in terms of real entities, and that their fictive share be only allowed to persist in so far as their presence in language is required for discourse to be consistent. Hence, having posed the logical need for there to be fictions, Bentham strives to reduce such fictions precisely to this bare logical necessity. This minimalist conception of the function of fictions leads Bentham to very much disagree with the classical use of fictions in the Common Law system:

The fictions with which the substantive branch of the law has been fouled belong not to the design of the present work. The fictions by which, in so much greater abundance the adjective branch is polluted, may be distinguished into two great classes: the falsehoods which the judges are in the habit of uttering, by themselves, or by the officers under their direction; and the falsehoods which they cause to be uttered by the suitors. (1932: 141)

In passing, we note that this is no doubt why Bentham engaged upon the drafting of Codes (Bentham: 1962) as a proposed substitute for Common Law.

To rephrase the argument then, since for Bentham, law is an ex nihilo but necessary creation, there is no doubt that it is a fictive entity, and so are rights, duties, powers, crimes and punishment. Such fictive entities however differ from the traditional falsehoods of the lawyer by virtue of their reversibility. The real entities they are translated back into are pleasure and pain. Consequently, the utility principle must take its bearings solely on the bodily sensations of its subjects: for if “at the very first step that can be taken in the field of language, fiction, in the simplest, or almost simplest, case in which language can be employed, becomes a necessary resource” (1932: 73), “simple perception is not capable of erring, no, nor sensation either.” (ibid., 66) The remainder of Bentham's elaboration is known to us, for it is on this basis that he elaborated the Panoptic device as a way of physically organising the bodies of disorderly subjects, whether they be criminals, the poor, beggars or orphans (see later, chapter III).

To conclude on Bentham then, in his work law is presented as a necessary fiction, an unreal entity the parameters of which are adjusted through the referent of suffering, to be distinguished from the usual fables of lawyers. Thus, J.-A. Miller articulates Bentham's utilitarianism with his Theory of Fictions as follows:

And it is here that we discover the purpose of the 'theory of fictions', which is not disinterested linguistic investigation: the purpose is to arrive at a theory of legislation, of language as legislative power. Fictive entities mobilise real entities, distribute them, organise them. To speak is to legislate, in other words, to bring into play things that do not exist. All legal entities are fictive entities - rights, duties, powers. Natural law is a fable; all law is a creation of language that brings into play two real entities: pleasure and pain, which are the sole, unique referent of all legal discourse. A law is only a linguistic system that artificially associates actions and perceptible effects, on the formula: such an action will lead to this or that suffering, or this or that happiness. (26)

What Miller is telling us here is that Bentham's utilitarianism rests upon the possibility of erecting a linguistic prison tailored to the subject's bodily sensations, and that the reduction of fictions to their value as logical consistency is the medium through which such an aim will be achieved.
More relevant to my purpose — which is to present and reformulate psychoanalysis' fictional account of the law in its knotting with the real of bodies — is the way in which Lacan relies upon Bentham's theory of fictions in order to add a new dimension to psychoanalytic theory from the perspective of the instrumental value of language. For in effect, if for Bentham the fictive components of language are the sole means of conferring logical consistency upon the social organisation of a community, then it also follows that the currency of a given fiction will be conditional upon its use-value, namely its ability to instrumentalise the real of the object, or of the body, for the purposes of the utilitarian calculus of pleasure and pain.

However, Lacan's conception of linguistic fictions differs from that of Bentham in two crucial respects: firstly, for Lacan, perception is not an unmediated access to reality — for perception is itself structured by the signifier —, and secondly, while for Bentham, "discourse and reality are reversible, without a remainder" (Miller: 1987b, 16), for Lacan the subject is the remainder of discourse. Bearing in mind these two key provisos, let us now see how Lacan makes use of Bentham; for indeed, Bentham's work supports Lacan's major change in orientation, which is formalised essentially in the course of his Seminar XX.

This seminar begins to supplement Lacan's erstwhile theorisation of the unconscious as language with a re-thinking of the way in which the body is taken up in discourse, a change of orientation which one finds encapsulated in the contemporary assertion that the unconscious is real. In other words, Lacan's new conceptualisation of psychoanalytic theory leads him to interrogate his earlier postulate as to the primacy of the signifier in so far as he now stresses that the signifier itself is in the service of drive-satisfaction, in a shift of emphasis which relegates meaning to the secondary function of establishing and supporting the circuits of the drive.

It is this slightly different perception of the primacy of the enjoyment of the body as it is circulated by language which renders Bentham's theory of fictions so relevant to Lacan's later elaboration, for it is from the perspective of the body as knotted to language that the instrumental value of linguistic components takes on critical significance. Indeed, it is in so far as language instrumentalises the body of the subject that the possibility of analytic intervention persists beyond the decline of the paternal imago in its key function as agent of repression, this being the conception which informed the Freudian direction of the treatment in its initial focus on the lifting of repression.

Thus, Lacan initiates his twentieth seminar by reformulating the importance of Bentham's contribution to philosophical thought. In the introductory chapter to his Encore, Lacan implicitly refers to one of his earlier seminars, that on ethics (Seminar VII), and recognises the necessity to supplement the conception of ethics associated with Aristotelian ontology, that of the sovereign Good, with an instrumental understanding of language:

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4 See "On a question preliminary to any possible treatment of psychosis", Ecrits.
analysis does not allow us remain at the level of what I began with, respectfully of course —

namely, Aristotle's ethics. A kind of slippage occurred in the course of time that did not constitute
progress but rather a skirting of the problem, slipping from Aristotle's view of being to Bentham's
utilitarianism, in other words to the theory of fictions, demonstrating the use-value - that is, the
instrumental status - of language. (Seminar XX: 10; 3)

It becomes progressively apparent in the course of this seminar that for Lacan, the revolutionary
character of Bentham's theory of fictions lies in that it departs from the idea of language as a
passive representation of the real. For in effect, to conceive of language as a fictional network of
interrelated entities reintroduces the utilitarian dimension of language in so far as such a conception
cannot be dissociated from the recognition of the effect of language on the real that it purports to
represent.9

It is this intuition as to the utilitarian nature of language which enables the English philosopher
to distance himself from the ontological mode of inquiry — classically deemed to have been
initiated by Aristotle8 — which strives to represent being in language through the operation of the
predicate "to be".9 As to the re-introduction of the body in the field of discourse, it logically follows
from Bentham's postulate as to the use-value of language, for the body is that which confers a
degree of reality onto the fictions of language. This location of the body in discourse leads Lacan to
theorise language in a very Benthamite mode, as a means of organising the distribution of pleasure
and pain in human communities or, more cryptically, as supporting "an economy of jouissance"
(ibid., 105; 116).10

And from then on indeed, the Lacanian clinic will move away from the Freudian direction of
the analytic treatment as a gradual deciphering of the repressed and towards a re-organisation of the
subjective economy. This new orientation of analytical practice involves a different use of language,
one that takes its bearings on the fantasy as the matrix of the subject's "secondary gain"11 from the
symptom rather than on the classical Freudian definition of the symptom as a compromise
formation metaphorically linked to a repressed meaning.

It is this later conception of psychoanalysis which informs my thesis, in which I will endeavour
to map the points at which the body is knotted in language. As such, my reliance on psychoanalytic
theory is distinct from the more 'traditional' use psychoanalysis has been put to by many critical
legal theorists, who have used the Freudian invention in the manner of a deciphering instrument

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6 On Lacan's theory of the primacy of the signifier over the signified, which inverts Saussurian linguistics, see chap. V-1.
7 It may also be useful here to recall one of J.-A. Miller's recent formulation, for it casts some light on Lacan's use of
language: "I have decided to begin to use this word, real, before defining it, following the principle according to which the
signification of a word is equal to its usage. This, though, happens to be a definition. It is a definition by Wittgenstein,
which circulated in the formula Meaning is use...It is my opinion that Lacan adopted this definition, that it remained present
throughout his teaching, and even that it supported his enunciation." (13 January 99, Courr 1998-99, unpublished).
8 See for example David Farrell Krell's introduction to Heidegger's Basic Writings (1993), pp. 3-5.
9 Note that Derrida's critique of the metaphysics of presence aims to deconstruct such a conception of ontology (cf. the
first interview in Positions for a succinct account of the Aristotelian legacy in the Western philosophical tradition).
10 This explicit introduction of the body in discourse leads Foucault to coin the term Panopticism to designate the
emergence of mechanisms of power which articulate the dimension of the visible with the erstwhile essentially discursive
dimension of penal law (see Foucault, Discipline and Punish, part III, chapter 3; Delpue: 1986, 40; 1988, 32).
11 Freud's expression to refer to the subject's eventual enjoyment of his symptoms. (e.g. PFL 10, 292)
which would allow the reader to restore the supposedly repressed contents of the law to the 'open' field of discourse.\textsuperscript{12}

Furthermore, this novel conception of the use-value of meaning also impelled Lacan to modulate the understanding of civilisation psychoanalysis had inherited from Freud. Thus, drawing from Bentham's recognition of the instrumental value of language in approaching the real over and beyond its ontological worth in representing being, the French analyst evidences the use-value of language in the process of inscription of the body of the subject in civilisation; and this is what allows him to postulate what I would encapsulate with the expression the fictional structure of law.

That is clearly the essence of law - to divide up, distribute, or reattribute everything that counts as jouissance. (ibid., 10; 3)

Thus law, in the later Lacanian understanding, is a symbolic network whose function is to support the subject's relation to the real of his body. From this perspective, the suffering of the subject does not derive so much from his alienation in civilisation as from his own interpretation thereof, one that inevitably is in the service of the drive, and the task of the analyst is to locate the points of coalescence between subjective positions and particular configurations of meaning.

The link between law, whose "essence is to ...distribute...everything that counts as jouissance", and Bentham's theory of language as a network of entities designed to instrumentalise the real is readily apparent. Indeed in Seminar XX, which has deeply influenced my own work, Lacan declares that "Reality is approached with apparatuses of jouissance... we focus, of course, on the fact that there's no other apparatus than language." (ibid., 52; 55).\textsuperscript{13} Similarly, it is in so far as law is supported by a linguistic apparatus elaborated for the apprehension and treatment of reality that we may consider it as belonging to the order of fictions. Law, thus, is a network of interrelated linguistic constructs which articulate the subject's relation both to the symbolic reality of his context and to the real of his enjoyment, and this conception informs Lacan's approach of language:

Utilitarianism means nothing but the following - we must think about the purpose served by the old words, those that already serve us. Nothing more. We must not be surprised by what results when we use them. We know what they are used for - they are used so that there may be the jouissance that should be (qu'\textit{il faut}). (ibid., 55; 58, my emphasis)

That's utilitarianism. And that allowed a giant step to be taken away from the old tales about universals that had preoccupied people since Plato and Aristotle, had dragged along throughout the Middle-Ages, and were still suffocating Leibniz, to so great an extent that one wonders how he still managed to be so intelligent. (ibid., 56; 60)

From these quotes I derive the indication that one has to analyse the purpose served by our protean legal fictions, for though they may be fictions, they undoubtedly serve a purpose which one must

\textsuperscript{12} Thus for example, Caudill (1997) speaks of the "collective repression and denial of our social dimension in the face of legal culture" and of the "repressed or hidden rules that govern discourse, even legal discourse", his idea being that one can use psychoanalysis to lift the repression which he supposes to be operative in legal discourse. (32-33)

\textsuperscript{13} See chap. I-IV, in which I present the Lacanian concept of jouissance and its relation to law as an apparatus for its treatment. At this point, jouissance can be summarily defined as the effect of language on the body: "The signifier is the cause of jouissance." (Seminar XX: 27; 24)
identify before moving on. In this thesis then, I will draw from Lacan's understanding of fiction as the instrument through which man apprehends, modifies, constructs and interprets his real.

Law, as a particular species of such fictions, will thus consistently be understood as a discursive apparatus for the construction of the fictional framework of civilisation and for the treatment of the malaise inseparable from it — and as such, the mere certainty of the presence of its structures will be shown to fulfil a more profound, fundamental role than the substance of its provisions. Part I of this thesis will then proceed to expose and analyse some of the dimensions of the fictional structure of law in the Western tradition.

Having thus somewhat elucidated my understanding of law as a fictional apparatus for the regulation of life in common, let me briefly return to Borges: indeed, it is this understanding of law as fiction which leads me to draw a number of directions from Borges' insightful tale, directions which will orient my analysis of the relation that binds law to the corporeality of being:

- firstly, and most mundanely, law is not to be mistaken for the real that it codifies and organises;
- secondly, critical legal theory itself needs to closely consider the interplay that inevitably takes place between its interpretative practices and the corporeality of the legal subject, as any interpretation will soon enough become a 'real' fiction in its own right (and Oedipal fictions certainly have). For the unravelling of a discourse's own logic, driven on by the equivocal play of its components, may easily result in a marked disjunction between its own logic and that which actually subtends the truth of the subject of law; 14
- thirdly, my impending analysis of the functioning of law's fictional apparatus, inspired by Legendre's account of the canonical roots of Western legal discourses, will resonate with Borges' literary presentation of fictions as if they were real. Indeed in his Fictions, the mundane constantly comes to the support of the fantastic, gradually weaving a logical web of correspondences which seduces the reader with its systemic rationality as he is charmed through the story by intermittent glimpses of the resolution of an enigma yet constructed under his very eyes. More to our purpose then, Borges' technique uncovers the method for the construction of fiction as truth, and that this method draws the credibility it achieves from logic and the semblance of 'serious' knowledge employed in the process of truth-creation: thus lists, statistics, dates of birth, names, places, references to books — which may or may not exist —, fabricated authorship and all manners of ordered data will contribute to the formation of a convincing picture of 'reality', one that derives its strongest appeal from the reader's willingness to have his thoughts ordered along the lines of reason.

14 On the 'truth' of the subject, see chap. V-III.
On historical Cartography

It is thus not out of simple aesthetic inclination that I decided to situate my thesis — subtitled *A Study in Legal Fictions* — under the auspices of Borges' cartographic allegory, for it is an allegory twice marked by the ambiguity he favours for his fictions: on the one hand indeed, the authorship of this short text remains in question; and on the other, whether this short tale be the cryptic writer's own invention, presented as a discovery of some ancient wisdom, or a true find extracted from a long-forgotten manuscript, the uncertain authorship of the story merely reinforces the indication which I choose to derive from it.

Indeed, it is this intentional ambiguity between 'fictional fiction' and 'real fiction', this undecidability as to which dimension supports the other, as to which is primary and which is secondary, which interestingly blurs the border between fiction and the real: for if the dimension of the real is by definition ineffable, not all fictions are of equal value. There is thus a definite use-value to a narrative that offers itself as such, and yet the level of belief commanded by the discursive construct in question is crucial for politics, theory and law: therefore, if narratives cannot but be used, they must also be constantly interrogated, assessed and rephrased alongside the evolution of the subject as effect15 of discourse. And indeed, Borges' cartographic allegory signposts the necessity for a map to have a function, for no sooner does a map lose its hold on the real that it purports to represent than it loses its relevance.

Moreover, if the idea of cartography is coming forth in this introduction, it is because, on the one hand, in this concise presentation of the work ahead, I also aim to identify the co-ordinates which situate my own inquiry; and on the other, quite simply, because the forthcoming chapters will endeavour to sketch a specific map of the subject's position in Western law by means of an analysis of the prevalent discourses which marked the emergence of the modern subject.

At this point, and having tied the fate of maps to their functions, another preliminary question presents itself: what may be the function of such quasi-historical mappings in the realm of legal theory? It is here that yet another brief reference to a momentous body of work must be made, if only, once more, as an indication. 16

Indeed, the method of theoretical mapping is that favoured by Foucault in his very particular take on history. Thus when one considers Foucault’s work as a whole, as did Deleuze in his excellent collection of essays entitled *Foucault*, then the Foucauldian project emerges no longer as a series of analyses centred around specific institutional practices for the confinement of men but rather, and much more significantly, as the far-reaching drafting of an historical map of discursive and non-discursive practices which, taken together, constitute the informal "diagram"17 of power-relations.

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15 *Effect* rather than *product*, since the insistence of the subject's particularity always defeats to some extent the discursive strategies of the political by diverting all discourses to serve its own purposes.

16 I will return to Foucault in chapter IV.

17 Deleuze: 1986, 42; 1988, 34. The expression is drawn from *Discipline and Punish* (1991) where Foucault refers to the Panopticon as "the diagram of a mechanism of power reduced to its ideal form", at 205.
Foucault's re-writing of history can then be taken to amount to the drafting of a cartography situating the subject's position in discourse: thus, picking up on Foucault's own statement, Deleuze elects to encapsulate Foucault's relation to writing as follows: "to write is to struggle and resist; to write is to become; to write is to draw a map: 'I am a cartographer'."18

Further, and closer to my purpose — for I do not claim to achieve an all-encompassing diagrammatic theory of power in this thesis —, I will take my bearings on Deleuze's insight regarding the creative function of mapping:

every diagram is intersocial and constantly evolving. It never functions in order to represent a persisting world but produces a new kind of reality, a new model of truth. (Deleuze: 1988, 35)

In view of the marked difference of purpose that exists between my own analysis of the law and Foucault's theory of power, I will centre my reliance on Foucault and Deleuze's reading of his work to two specific points:

- Firstly, Deleuze's statement implies that Foucault's historical analysis does not so much aim to represent the lost reality of historical events and their complex influence on the subject, but rather that such attempts are indeed reformulations rather than representations: the function of the map is "to produce a new kind of reality, a new model of truth." More explicitly, since it is impossible to represent the past other than as a version of the present, the importance of such mappings lies in their partaking in the realisation of new discursive and non-discursive modalities of power which, consequently, may serve as strategic maps for calculated interventions in the field of discourse.

- Secondly, Foucault's historical cartography will echo with my own attempt at mapping a number of discursive practices in their relation to the corporeality of the subject in so far as I will endeavour to situate a number of the structural elements organising the subject's relation to law.

Despite a degree of reliance on Foucault, I will only engage with his diagrammatic theory of power-relations from the very specific perspective of my analysis of the exceptional structure of the universal, and this for two reasons: firstly, his acute analysis of the historical transition of sovereign power to disciplinary modes of power reaches far beyond the confines of the present piece of work, and secondly, my central disagreement with Foucault's work lies in that it disregards the political dimension of transference, the manifold dimensions of which are central to this thesis. Indeed, while Foucault strives to reduce the subject to the 'it' of discursive and non-discursive practices, in my opinion this amounts to a misrecognition of the subject's irreducible attachment to the structurally empty place of power and the function of the subject's interpretation of it in the precipitation of the social bond. Thus, although I will consider Foucault's hypothesis of the end of sovereign power

Part I - The Fathers of Psychoanalysis: In the Name of the Law

in my chapter IV, I will state from the outset that this thesis will not be stage to the wholesale engagement which Foucault's work no doubt warrants.

To sum up my preliminary points then, or more accurately, to pose the fictional framework of my own elaboration, let me re-articulate the various co-ordinates which situate my analysis of the Western legal tradition: law will be envisaged as a species of discursive fiction, and I will endeavour to outline the structure of this specific fiction by mapping its parameters from the perspective of psychoanalysis. This psychoanalytic perspective on law will be shown to re-introduce the subject of psychoanalysis as a residue of discourse in the discursive field. Finally, throughout this thesis I will take my bearings on the necessity for such a mapping of the irrationality — or resistance to meaning — of the subject in the field of legal discourse to produce a novel mapping of the legal discourse, and this with a view to identifying with a degree of precision the possible points of knotting that attach the subject as remainder to the discourses that take him up in their practices.

II - Situating Psychoanalysis in the Fictional Land of the Law

Borges' metaphorical evocation of the failure of science to attain the real by means of the fictions that substitute themselves for it in the field of representation situates this thesis from the outset under the auspices of a circumspect study of fictions. More specifically, in this work I will study the fictions which have endeavoured to formalise the real fact of political power from a psychoanalytic perspective. For if, without doubt, discursive fictions can but present an always partial, highly contextualised account of the way in which the body of the subject comes to be caught in the temporal network of relations structuring life in common, they are also evidently the only possible way to approach both the residual particularity of the subject and the framework within which it inscribes itself. On the basis of this summary assertion, one already perceives the paradoxically real nature of fictions: for the real of the body is always already bound up with its fictional representations, and can therefore only be approached through the very circuits which instituted it in the realm of meaning.

Thus, following on from my introductory points, if the overarching purpose of this thesis — as is indicated by its title — is to demonstrate the inadequation of Freudian readings of the law to the contemporary scene, an inadequation which has been brought to light by the partial obsolescence of Oedipal fictions, my work will nonetheless borrow the routes traced by these fictions. And I will do so because, as I have just argued, Oedipal fictions achieved credibility owing to their precise theorisation of the real which returns to disrupt the order of discourse. Furthermore, there can be no other real in language than the structure of the subject, and this structure is by definition correlative with the fictions which instate it.

Having thus outlined my aims, I will now initiate my argument by situating traditional psychoanalytic accounts of law. Although it may be a task that has often been accomplished,¹⁹ it is

¹⁹ Most convincingly in the work of S. Freud (PFL 12; 13; 14), J. Lacan (1932; 1933; 1966) and P. Legendre (1974; 1989).
one that nonetheless needs to be constantly recommenced and, by the same token, rephrased, and this for two reasons:

- firstly, psychoanalysis is a discourse the subject-matter of which is the subject, who is by definition an effect of discourse. Consequently, its engagement with the social must be revised alongside other discursive mutations.

- secondly, because the constant reformulation of psychoanalytic theory is necessary to combat the institutionalisation of the analytic discourse by human sciences\(^{20}\) and the consequent defusing of its provocative potential. This process of neutralisation is effected by means of the trivialisation of analytic insights which, once divorced from their clinical context and in view of their sexualised character, may easily be reduced to the dimensions of the fantasy by narrative renderings. And these renderings, under the pretence of accepting the significant blow the discovery of the unconscious dealt to the powers of reason, in fact recuperate the advances of psychoanalysis in order to erect ever higher walls of meaning behind which to contain the ineffable dimension of being.

**The broken Promise of Civilisation**

In Part I of this thesis, I thus propose to return to Freud's plural theorisation of the discontents characteristic of civilisation — indeed, Freud perceptively senses that such discontents are not to be blamed upon a specific mode of social organisation, and that they are in fact inextricably bound up with life in common \textit{per se}. Freud's compelling intuition incites us to accept the blunt vanity of the conviction that there could exist a satisfactory civilisation, and to realise that it is the very refusal to give up on such fantasmatic hopes for completion that lures civilisation ever further down the road to self-consumption: for, in our quest for a mythical resolution of the impossible, we are no wiser than Tantalos, and like him are ever more intent on reaping the 'forbidden' fruits of rationally planned happiness.

Freud's recognition of the impossibility to dissociate civilisation from its discontents logically impels him to search for the primordial cause of such an ubiquitous sense of malaise, and consequently to interrogate the function of law for the subject: indeed, for Freud there can be no life in common, however minimal, without law — irrespective of either form or content. It is thus that psychoanalytic theory progressively came to map the perplexing phenomenology of subjective relations to the law, and it is the complexity of such relations which, in turn, oriented the analytic discourse — "the discourse of a method to hear"\(^{21}\) the particularity of the subject — in its detection of the presence of subterranean pathways borrowed by the subject in his investment of discourse.

In order to articulate cogently the clinical concepts of psychoanalysis with the discursive order of the universal, I will initiate my argument with a study of how the "founding fathers" established

\(^{20}\) On the gradual substitution of human sciences for law in the institutionalisation of desire, see Legendre: 1974, 232-244.

\(^{21}\) Legendre: 1974, 240.
psychoanalysis' relevance to the legal order, a relevance that should be more evident than ever in our epoch where the dysfunctionality of the methods of the universal has never been more apparent — for, in spite of their patent shortcomings they continue to impose themselves as the sole option. Law indeed is the paramount illustration of such dysfunctional discourses: notwithstanding the drastic mutations it underwent in the course of the last century, law, which no doubt finds a powerful ally in the discourse of capitalism with its prodigal metonymy of objectsgadgets, nonetheless remains the key instrument of political power. The core attribute of law continues to reside in the faltering legitimacy it confers upon the ruthless violence of senseless power. Further, law performs its austere task through the medium of proliferating institutions which dictate the rejection of subjective particularity by reducing all personal conflicts to the measures of the law.

On the contrary psychoanalysis, being a discipline that takes its bearings on the unicity of each subject, is by definition antithetical to the claim subtending all fictions of the universal alike, that of being capable of infinite responsiveness to the other on the terms of whichever exhaustive taxonomy supports the semblance of the modality of reason in question — for although psychoanalytic theory can but borrow the fictional pathways of discourse, its orientation on the subject's particular investment thereof acts as a constant modulating factor. If it is relatively evident, then, that psychoanalysis should be able to act as a counterweight to the order of reason, it is however no less apparent that the central obstacle to such an intervention lies in the difficulty, or even the impossibility, of articulating analytic theory with other forms of discourses.

How indeed is one to combine the conflicting experience acquired through the daily practice of a discipline the essence of which lies in the refusal of universal solutions with this universal treatment of the social symptom that law, in the last analysis, is? And yet, the escalating negation of the subject's particularity, consequent upon the intensifying institutionalisation of modern life enforced in our courts of justice, renders the intervention of psychoanalysis more urgent than ever: for "in the vision of the modern master, the normative constructs [of the institution] have no other objective than the silencing of demand". Psychoanalysis, on the other hand, strives to re-activate subjective speech and facilitate personal inventions by progressively exposing the fictional nature of the Other, and thus its partial dispensability for those who learn how to make use of it — as we will see in the last chapter of this thesis.

22 See C. Douzinas' recent claim in a review article entitled "Psychoanalysis becomes the Law: Notes on an Encounter Foretold": '...the encounter between psychoanalysis and law has been prepared and foretold by the founding fathers, and analysis is destined to become a privileged domain for legal theory.' (Legal Studies Forum vol. XX no3 (1996), 324).
23 Recall J. Habermas' advocacy of nomocentrism as the only way to defeat the western bias of law (1999). See Preface.
25 Largely documented by M. Foucault in his seminal essays Madness and Civilisation, Discipline and Punish, or more succinctly, in his paper "Governmentality" (1979).
27 "One can do without the Name-of-the-Father on condition that one makes use of it", J. Lacan, Seminar XXIII, 13 April 1976.
The Subject is the Place of the Law

Despite the evident act of negation involved in barring subjective particularity from the field of speech, the institutional medium is now being used extensively to remedy the discontents of our western civilisations. It is thus the urgency to preserve and expand the residual spaces within the institution, spaces in which inventive speech on the part of the subject may be encouraged, which impels me to set out on the complex venture of mapping the intricate bonds that knot the unconscious to the political.

In a psychoanalytic perspective indeed, a critical approach to the social bond cannot be content to unmask and decipher the discursive strategies for the repression of desire ascribed to the dominant order, on the contrary: for the innovative potential of psychoanalysis resides in that it provides us with a conceptual framework that takes its bearings from the real of subjective 'enjoyment'. And it is thanks to this orientation that it becomes possible to recognise and locate the "secondary gain" derived by the subject from the Other's discourse with a view to devising means of intervening in his solipsistic relation to the law. Indeed, it is the subject's utilisation of the Other's discourse for his 'own' purposes that perpetuate his alienation therein, an alienation that can prove infinitely more pernicious than any discursive imposition.

This sketchy outline of a later argument indicates from the outset that to formalise the "problem of our laws" in terms of the external resolution of a personal conflict on behalf of a passive recipient is nowhere near radical enough if we are to understand law no longer as an abstract, universal discourse but rather from the very real perspective of its effects on the subject. Indeed, from the perspective of psychoanalysis, not only is there no law without a subject — for law only exists in the moment of its inscription onto the subject —, but also the subject is the primary instance of all discourses, that of law included.

To elucidate this puzzling statement in its dual implication, let us recall that Lacan challenges the traditional dichotomy individual/collectivity that subtends human and political sciences alike:

But if there still remains something prophetic in Hegel's insistence on the fundamental identity of the particular and the universal, an insistence that reveals the measure of his genius, it is certainly psychoanalysis that provides it with its paradigm by revealing the structure in which that identity is realised as disjunctive of the subject, and without appeal to any tomorrow. Let me simply say that this is what leads me to object to any reference to totality in the individual, since it is the subject who introduces division into the individual, as well as into the collectivity that is his equivalent. Psychoanalysis is properly that which reveals both the one and the other to be no more than mirages.

(Ecritr. 292; 80)

Here Lacan is stressing the futility of any attempt to understand either the individual or the collective as distinct dimensions of subjective life, for they do not exist independently of one another.

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28 I am referring to the increasing resort of western political powers to the institutional treatment of madness, crime, addiction etc.
29 I borrow this phrase from the title of one of Kafka's legal parables (1988, 437-8).
30 This being the way in which psychoanalysis is often presented by critical legal theory (see Caudill: 1997).
another.\textsuperscript{31} Indeed, the 'discovery' of the divided subject is what reveals the individual and the collective to be nothing other than the working fictions of social sciences. To be more specific, the division of the subject of the unconscious implies that all speech is a function of its addressee, and that there is consequently no subjectivity that is not inter-subjectivity.\textsuperscript{32}

If Lacan's re-centring of discourse around the divided subject paves the way for a different theoretical approach in apprehending the function of law, it also casts an interesting light upon the failure of constructivist accounts of discourse to go beyond the aporia of origins in so far as it presents the subject as \textit{interpretation in action}. In the analytic approach then, the subject is in topological continuity with the 'external' world, and is neither a social construct, nor the inferior term of an interactive equation. This conception implicates the subject's unquestionable 'enjoyment' [\textit{jouissance}] from his appropriation of the discursive material at his disposal, and this recognition must lead us to question the idea of the subject as a legal object passively treated by discourse.

In view of the complicated entanglement of law and subject, it would therefore be artificial either to address the legal order independently from the law of the unconscious or to postulate one to be the mere replication of the other; and it will be considerably more productive, although infinitely more complex, to identify the nodal points which affect a subject's reception and interpretation of the legal order.

\textbf{III - Itinerary of a Journey in the Underworld of Political Power}

To circumscribe the opaque moments where ineffable \textit{jouissance} coalesces with discourse, moments which will be seen to delineate the blueprint of a subject's relation to the commands of the law, we will need to make a number of theoretical stops in order to acquire a working knowledge of what elements consistently structure a subject's particular relation to the universal in our historically specified western context. Thus, I will successively study the three key modalities of subjective investment in the legal order: \textit{culpability}, \textit{love} and \textit{belief}. These modalities will themselves be seen to be intimately connected to the phenomenon identified under the term of \textit{transference} in psychoanalysis.

The specific nature of Western legal discourses, marked by a strong attachment to universalism, will also be addressed — for since there is little choice indeed but to work with those fictions which structured our civilisation, one must endeavour to map the parameters of their emergence. I will thus dedicate a chapter to studying a number of discourses engaging with the occidental approach to the universal, relying on the work of Legendre, Bentham and Foucault for this purpose. Lastly, I will conclude the first part of my thesis with an analysis of the function of exception in the constitution of subjective structures, and this with a view to isolating the three main dimensions of the complex bond that ties the subject to the political; or \textit{real}, \textit{symbolic}, and \textit{imaginary}.

\textsuperscript{31} The impossibility of dissociating the individual from the group was also noted by Freud in his \textit{Group Psychology} (PFL 12): "from the very first individual psychology ...is at the same time social psychology as well." (95) Indeed, the individual is "a component part of a crowd of people who have been organised into a group at some particular time for some definite purpose." (96)

\textsuperscript{32} Lacan even challenges Freud's notion of primary narcissism (cf. \textit{On Narcissism}, PFL 11). For Freud, primary narcissism is a pre-relational stage in the constitution of the subject, while for Lacan, narcissism itself results from the mirror stage which, being an identification with the image of the other. (cf. "The Mirror Stage" in \textit{Écrits}), is thus already relational.
Chapter I: The Primordial Fact of Politics

My chapter I, entitled The Primordial Fact of Politics, will draw on the writings of Freud and Lacan in order to trace the mechanism by which the legal order finds itself heir to the instinctual conflict of childhood, a conflict which never comes to be resolved and whose residual effect is subsequently taken up at the level of the institution. In the process, it will be necessary to track the origin — or absence thereof — of the sense of guilt, for the hold of the law on its subjects is unquestionably secured on the basis of the haunting mark of a culpability that takes us beyond the ordered world of reason. In turn, our journey in the mythical world of Freud will enable us to identify a number of the structural elements consistently framing man's relation to the law.

In order to affirm the centrality of psychoanalysis for the understanding of the political art we will also have to familiarise ourselves with Lacan's reformulation of the Freudian libido under the name of jouissance, a concept the importance of which must be stressed ab initio. Indeed, it comes as a response to a great many of the Freudian contradictions while preserving the radicality of Freud's discovery of the unconscious. Further, it is in the intimate relation law entertains with jouissance that a psychoanalytic approach to legal and political disciplines finds its legitimacy. More explicitly, Lacan's concept of jouissance may be seen as striving to formalise something of man's inevitable libidinal investment of his relation to the law, an eroticisation which has also been recognised beyond the confines of psychoanalysis by a number of philosophers, amongst whom Bataille, Benjamin or Nietzsche can be counted. 33

The definition of jouissance will therefore occupy the latter part of the first chapter, where it will be introduced by way of a detour through Freud's writings on civilisation. This detour will enable us to progressively discern the persistence of jouissance beneath its 'rational' appearances in the field of law, where its presence essentially materialises itself under two easily identifiable forms: a sentiment of culpability which manifests itself as a need for punishment, and an unquestionable eroticisation of the relation to power. These two phenomena are themselves intimately bound up in so far as the love obtained from authority is what exculpates the subject from his nameless and yet very palpable sense of guilt. Briefly, the mechanism of this articulation can be encapsulated in the following formulation: the subject foregoes his particularity and accepts the imposition of the law so as to secure a twofold certainty from its incarnations: the meaning of his guilt and the forgiveness thereof. It is in view of this real hold of law on its subjects that we will begin to apprehend that politics of love constitutes the central axis of the discursive recuperation of subjective desire for the purposes of power.

Yet, arguably, there is a residual share of jouissance which cannot be taken up within the field of representation, and which is thus mediated neither by means of social guilt nor through transference to authority but remains as the level of what Freud isolated with his concept of

33 See for examples G. Bataille's novels, in which transgression is unfailingly eroticised, W. Benjamin's essay, Fate and Character (1979/1998), or F. Nietzsche, The Genealogy of Morals (1956), amongst countless others.
repetition-compulsion, prefiguring his discovery of the death-drive: the dull, unelaborated return of the same meaningless suffering to the same place, irrespective of the factual situation that frames its emergence.

Chapter II: Culpability and the Politics of Love

My chapter II, Culpability and the Politics of Love, will articulate the advances of chapter I with the work of academic lawyer Pierre Legendre, whose work is possibly the most constructed engagement thus far with the political from a psychoanalytic perspective. A close but nonetheless critical analysis of his seminal essay L'amour du censeur (1974) should allow us to further our understanding of the intricate connection that unites love, guilt, and politics. In the process, I will endeavour to circumscribe the secret appeal of institutional mechanisms designed to recuperate the particularity of the subject's investment in a universal discourse for the purposes of consolidating the hold of a given political system.

This chapter will open with an inquiry into the validity of Legendre's proposed method for a psychoanalytic reading of the law. For this purpose, I will develop Legendre's parallel between the text of the unconscious and that of the law, texts in both of which, according to him, the traces of repressed desire are sedimented. Indeed he claims be able to uncover the sexual repression performed by the dogmatic order through a close reading of the text of the law, a repression which he poses to have initially taken place in the course of the Romano-Christian period of political hegemony.

In a second moment, I will demonstrate how Legendre's account borrows the key Freudian notions of vertical identification and the cultural superego in order to explicate the subject's love of power and his willing subjection to authority. In so doing, I will draw from Freud's Group Psychology, an essay in which he exposes the "libidinal structure of the group" in terms of identifications. (PFL 12, 126) The result of our study will then allow us to assess the validity of Legendre's claim to the effect that the modern institutional discourse functions by way of repressive mechanisms supposedly inherited from the Christian tradition, itself cast as an institutional replication of Oedipal mechanisms.

In a third moment, this chapter will gradually enable us to perceive that law's key concern is to disguise its utilitarian aspiration beneath a number of fictions, whether they be religious, ideological or mythical. We will see how the discursive apparatus that supports it aims first and foremost at precluding any query as to the ultimately unfounded legitimacy of a given legal system. We will thus examine the discursive network of complementary mechanisms designed to institute the favoured fiction of a given dogmatic discourse, firstly, as necessary; secondly, as directed towards the pursuit of social happiness; and thirdly as grounded in truth.

34 Derrida ("Pulsion de mort, cruauté et psychanalyse", Le Monde 9-10/07/2000, 11) has recently argued that there could be a beyond to the death-drive - the impossible (or the undecidable) - in his preparatory article for the international conference "Les Etats Généraux de la psychanalyse" (held in Paris on 8-11 July 2000). I will return to Derrida in my conclusion.
Lastly, we will see how the illusory innocence of the law is established thanks to the love its axiomatic leniency inspires and to the belief in legal truth that its rhetoric commands.

♦ Chapter III: Exceptional Fictions of the Universal

In view of the prevalence of universalism in the modern occidental tradition, which echoes with the structure of the Oedipal unconscious, this chapter will interrogate two distinct versions of such universalist discourses of power. On the one hand then, I will continue my engagement with Legendre, for his work is an extensive and very erudite depiction of the patriarchal model. On the other hand though, I will initiate my departure from patriarchal analyses of the law by way of an engagement with Bentham's utilitarian substitute for the symbolic function traditionally ascribed to the father.

My exploration of these universalist models will take its bearings from an introductory reduction of the Oedipus complex to the function of exception. Following Lacan, I will thus endeavour to demonstrate that this function is structurally operative in both the discourse of the unconscious and that of the political. As such, a parallel will be drawn between the place of exception in the unconscious and the function of sovereignty. I will however note from the outset the diversity of the manifestations of exception in discourses of power, while also elucidating the close connection which exists between the order of the universal and the perils of totalitarianism.

The chapter will then proceed to expose Legendre's account of the matrix of the institutional discourse. Legendre's analysis begins with a study of medieval scholastics and continues with an analysis of the mutation of its unitary approach to science into the canonical discourse, the political instrument of the Church for the management of men. Legendre then argues that the medieval method employed to secure legitimacy involves equating its productions with the order of the universe, and claims that the medieval process of interpretation was subsequently recuperated by the dogmatic order.

Legendre's hypothesis will then be presented in terms of a very specific model of power, for indeed Legendre describes a symbolic mode of organising the universal structure of discourse. Thus, in his reading, the place of exception, or that of sovereignty, is occupied by truth and its temporal incarnations. In this schema of power, the Pope acts as an imaginary supplement to the symbols of textual truth.

In a second moment, I will explore an entirely different mode of organising the structure of the universal, which is the one put forward by Jeremy Bentham with his doctrine of utilitarianism. Indeed, both Bentham’s Panopticon and his theory of language implicitly rely upon the possibility of organising the social by situating the gaze in the place of exception. And in Bentham's work, the traditional function of sovereignty is unequivocally relegated to temporal incarnations of authority.

I will then conclude this chapter by presenting both these models in terms of the logic of the signifier. In this way, a different light will be cast on the distinct reliance of both models on different modalities of the exception. Lastly, my concluding emphasis on the function of exception will foreground the relevance of transference in understanding the political.
Chapter IV: The Vicious Circle of Belief

This chapter will continue to engage with the function of exception, but will also feature another important incursion in the field of psychoanalysis. I will indeed dedicate considerable attention to the analytic theorisation of the phenomenon of transference, which I hold to be intimately bound up with the 'exceptional' structure of the unconscious mapped in the previous chapter.

In effect, this chapter will pick up the argument previously developed concerning the faltering efficacy of the Oedipus complex. Thus, though the Oedipus complex can no longer be held to be fully operative for the contemporary subject, it remains that the logic of exception, which Lacan deduced from the differential structure of the signifier, is still to be accounted for. In fact, the logic of exception, which orchestrates the unfolding of discourse, is a key concept for the understanding of both the central organisation of discourse and the subject's predisposition to transference. As such, transference will be presented in terms of the corollary to the function of exception in the unconscious.

In a second moment, I will take issue with Foucault's critique of psychoanalysis. For Foucault indeed, psychoanalysis inscribes itself amongst other traditional theories of power by virtue of its insistence on the function of the law for the subject. And according to the French historian of discourse, all theories which pose the centrality of the law to be pivotal for power-analyses misconstrue the complex nature of power-relations.

Having outlined the essence of my disagreement with Foucault's conception of psychoanalysis, I will then move on to engage with his power-relations theory, which culminates in an articulation of the distinct modalities of power which he had previously isolated under the aegis of bio-power. Thus, the pastoral and disciplinary forms of power will be briefly considered in the light of their subsequent inscription in Foucault's all-encompassing bio-power theory, which rests upon the unmitigated assertion that power anchors itself to the body of the subject by exploiting sex as the vital link which fuels the dynamics of power.

In the last section of this chapter, I will take stock of the crucial import of Foucault's work for the purposes of understanding the political from the perspective of the subject. Yet I will also argue that Foucault's analysis of power verges on the one-dimensional; as such, it disregards some of the dimensions of the subject's attachment to the political which were previously outlined. On the one hand then, despite his own reliance on the centrality of discourse, which in his work always revolves around the body, Foucault declines to interrogate this centrality. On the other, Foucault's reduction of the subject to the body reveals his disregard for the symbolic dimension of subjectivity.

I will then bring this chapter to a close with a demonstration of the importance of a multi-layered approach to the subject's relation to discourse, endlessly disrupted by the return of what in sexuality is real, namely the insistence of the drive. For if Foucault's alluring cartography of power relations re-introduce the all-too-absent body on the scene of discourse, his work takes little account of man's mediated relation to the drive, anchored through transference to the key figures of the law.
Having thus summarised the proposed contents of the forthcoming chapters, and before engaging upon the thesis proper, I would like to encapsulate the dual agenda which, for the purposes of critical legal theory, is Lacan's most significant legacy in two precise formulations:

- to draw out the full implications of the fictional essence of the law;
- to calculate one's intervention in existing fictions with a view to allow their efficient functioning in so far as the *regulation of the real* which they *structure* is concerned.
 CHAPTER I

The Primordial Fact of Politics

Dogmatic structures [...] cannot be correctly interpreted, nor even understood in their dynamics, without resorting to the clinical fact, a primordial fact if any since it is to this singular level of the political art that psychoanalysis first of all offers its advances.

Pierre Legendre

I. INTRODUCTION

Man's Love of Submission

Man, the most courageous animal, and the most inured to trouble, does not deny suffering per se: he wants it, he seeks it out, provided that it can be given a meaning.

Friedrich Nietzsche

In this first chapter I will bring together a number of elements the combination of which should cast some oblique light on the nether regions of political power. Indeed, in my introduction to the first part of this thesis, I hypothesised the presence of a libidinal attachment binding subjects of law to the discourse of the master and its corporeal incarnations, this hypothesis in turn grounding the legitimacy of my endeavour to present a psychoanalytic critique of the contemporary legal discourse.

What I now hope to demonstrate is that the attachment in question is far from being hypothetical, for it reveals itself through man's obstinate belief in a truth supposedly in the Other, this belief being the source of the willingness to accept a political submission regulated in the name of the law and supported by the combined illusions of love and science. This being the oft-noted phenomenology of the subject's relation to power, what psychoanalysis has to offer is an insight into the more obscure aspects of the relation of the subject—which, as we know since Freud, is the seat of an internal conflict—to external instances of authority.

Guilt and Submission

Yet, I chose to initiate my argument as to the pertinence of psychoanalysis somewhat paradoxically, since I am introducing it with an insightful observation drawn from Nietzsche's Genealogy of Morals. My decision to do so is motivated, firstly, by a wish to assert that the irrational nature of man's relation to the law has been noted in other fields than that of psychoanalysis—and this in view of the criticism of pansexualism sometimes levelled at this discipline—and secondly because Nietzsche's Genealogy bears

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1 P. Legendre: 1974, 251 (the translation of quotes from Legendre will be mine throughout this thesis).
2 The Genealogy of Morals: 1956, 298.
3 Lacan's expression to designate all discourses purporting to bring about the universal Good, a pretence which is itself sustained by means of the semblance of truth achieved through logic (elaborated in Seminar XVII). On the propositional logic supporting the enunciation of truth - or the master's discourse - see my chapter VI, section entitled The Logic of Exception.
Chapter I - The Primordial Fact of Politics

striking resemblance to Freud's later texts on civilisation, most notably to his *Civilisation and its Discontents*. Indeed, in both these texts the authors strive to account for the malaise in civilisation which they reduce to its most puzzling manifestation: namely, a pernicious sense of culpability 'enjoyed' by the subject. The similarities extend further, for both Freud and Nietzsche trace the origin of the subject's unhappiness, and his willing acceptance thereof, to the *external* imposition of instinctual renunciation.

They however differ when it comes to locating the origin of guilt. Thus, in Nietzsche's exposé, men used to be noble and guilt-free (*ibid.*, 174), and culpability is a later interpretation of the suffering he associates with the meaninglessness of existence, a suffering which Nietzsche claims to be exacerbated by law's progressive monopolisation of violence. In the Nietzschean account indeed, the curtailing of aggression henceforth imposed in the name of an abstract ideal of justice bars men from releasing their 'natural' need for active and sensual release, and this renders the void of life unbearable: men are then only too willing to solicit the *meaning* of guilt. In Freud's rendering on the other hand, it is neither law nor religion which institutes culpability *ex post facto* in the subject, for he conceives these two *sine qua non* of civilisation as necessary to contain and regulate a sense of guilt which is already in some sense *present*, albeit at an unconscious level: Freud therefore situates the emergence of guilt as *at least concomitant* with the embryo of the first communities.

Thus, while for Nietzsche, it is law which demands renunciation to aggression and religion which creates guilt, for Freud law and religion both arise out of the inevitable instinctual renunciation upon which any stable social organisation is conditional. Consequently, one of Freud's main concerns will be to locate the *cause* of institutional renunciation and to clarify the nature of its relation to the relentless sense of guilt which his clinical work made him privy to. In turn, it is Freud's continuing ambivalence as to whether this guilt is to be conceived as the *cause* of instinctual renunciation or as its *consequence* which will provide the background against which Lacan's concept of jouissance will outline itself in the last part of this chapter.

Since the central purpose of the first part of this thesis is to examine the instinctual phenomenology of the subject's relation to the law, the remainder of the Nietzschean elaboration will have to be returned to elsewhere, in a paper where I will show that Lacan's work comes, in certain respects, quite close to Nietzsche's, although Lacan is less exalted in his conclusions. Indeed, the analyst's daily confrontations with subjective suffering made it impossible for him to ignore that it is not meaninglessness per se which renders life unbearable, but rather what comes in its place: namely, the destructiveness that lurks behind the void of meaning, or the *acephalic demand for satisfaction of the drive*.4

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4 I have delivered a paper entitled "Law and Memory: Eternal Return and the Pathways of Jouissance" on the close parallels that exist between the work of Nietzsche and that of Lacan at the Critical Legal Conference (19-20 September 1999, Birkbeck College, University of London) and intend to rework this piece for publication at a later date.

5 Thus, Lacan states that "Anxiety is not without having an object", *Seminar X*, 9 January 1963.

6 To avoid confusion, the term 'instinct' is Strachey's translation for the Freudian *Trieb* and has been rejected by Lacan in view of the absolute dissimilarity that obtains between animal instincts and the human drive, a dissimilarity which is due to the fact of language and its coming from the primordial Other. (cf. *On Freud's Trieb*, Lacan: *Reading Seminars I & II*, or *Ecrits*: 1966)
At this point then, we will simply retain from Nietzsche's remark that it aptly identifies a subjective predisposition to seek out meaningful suffering, for it indexes the subject's desire to obey a law enunciated elsewhere. In turn, such a perspective provides a powerful insight into political domination, instituted through the hold of the law on its subjects, by exposing that law draws its real strength neither from reason, nor from fear, nor even from an innate desire for justice, but rather from a predisposition of man to seek submission, the permanency of which is perpetuated by politics of love in their utilisation of culpability.

Culpability and Civilisation

If we are leaving Nietzsche behind for now, we will not do the same with Freud, for while Nietzsche sees the emergence of guilt as secondary to man's fear of the void (ibid., 298-9), Freud strives to take the problem beyond its phenomenology and to circumscribe culpability at its root. Freud's conviction that culpability is present ab initio in civilisation logically impels him to account for its cause as concurrent with the very origin of civilisation, and it is thus that he puts forward his two best known hypotheses, inextricably interwoven in the theory of the Oedipus complex: namely, that the sense of guilt stems from the repression of sexual desire and is the residual mark of some primal sin, guilt being then cast as the combined effect of the return of a forgotten truth and of a repressed desire.

Freud's dual explanation, although disreputable in parts, will nonetheless provide us with a number of precious insights on the mechanisms through which meaningful guilt attaches to the subject's otherwise senseless malaise. In the process, my analysis of the Freudian Oedipus will also isolate the central elements which he poses to be structurally required for there to be a stable legal system — or one that institutes an efficient superstructure for the regulation of instinctual 'renunciation'. Finally, Freud's theorisation of guilt, coupled with his exposition of the historical transformations occurring in the course of its narrativisation, will provide us with a number of directions in our approach to the evolution of the social bond, which in my opinion needs to be conceptualised anew in view of the current dissociation between a generalised sentiment of malaise and the sense of moral fault, a dissociation that deprives the subject of a fixed foothold in meaning through the defiles of which a nameless, all-pervasive unease could — however painfully — be transformed into an active sense of responsibility.

Bearing these introductory comments in mind, we will now engage in the process of reducing the Freudian elaboration to its real core, that which he identified with his concept of culpability, by progressively discarding the multi-layered narratives that clothe it. In the course of this exposition, which will respect the structure of the Freudian argument, it will be possible to locate a 'cause' to the malaise in civilisation that reaches much deeper in man than either a particular mode of social organisation or the meaninglessness of life, and it is in this respect that the Lacanian concept of culpability provides us with a number of directions in our approach to the evolution of the social bond, which in my opinion needs to be conceptualised anew in view of the current dissociation between a generalised sentiment of malaise and the sense of moral fault, a dissociation that deprives the subject of a fixed foothold in meaning through the defiles of which a nameless, all-pervasive unease could — however painfully — be transformed into an active sense of responsibility.

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7 *Civilisation and its Discontents*: PFL 12, 324; *Moses and Monotheism*: PFL 13, 329, and of course *Totem and Taboo*, PFL 13.
Chapter I - The Primordial Fact of Politics

jouissance will take on its full sense. Indeed, as we will see, Lacan situates the emergence of the sense of guilt as consequent upon the structural impossibility of instinctual satisfaction.

II - THE FREUDIAN DISCONTENT

Historical Guilt or sexual Sense?

The subject's suspiciously docile acceptance of suffering, coupled with a submission to the knowledge that rationalises its occurrences, is the riddle which lends its structure to Freud's essay, *Civilisation and its Discontents*, although there he does not take up the question in terms of a political conflict but rather identifies the similarities of the latter with the instinctual conflict that occupies childhood.

After an exposition of this instinctual conflict we will, by way of an incursion into his *Moses and Monotheism* — a more subtle variation on the themes first developed in *Totem and Taboo* — go on to Freud's second hypothesis, that of the primal crime. Indeed, according to Freud there is an unquestionable link between the 'murder of the father' and the instinctual conflict he identified as the inevitable corollary of civilisation — namely, renunciation and the malaise it initiates —, for it is on the basis of this crime that the instinctual conflict of childhood is raised by Freud to the dignity of religion, in a process that brings individual neuroses to the power of a "neurosis of humanity" (PFL 13, 296).

This institutionalisation of the instinctual conflict will be taken up again in my chapter II, where we will no longer concern ourselves with whether sexual culpability preceded hostility towards the father or the reverse, for through a close study of Freud, we will first be able to bring out the contradictions that partially undermine both his hypotheses before divesting his discoveries of their mythical content, and then to supplement his findings with the work of Lacan, who argues that the malaise in civilisation is not to be ascribed to any external cause, and that guilt is to be seen as its subsequent narrative rationalisation.

This will allow us, in the next chapter, to focus on the uses guilt has been put to in the institution of a political domination that draws its strength from the recuperation of subjective desire, and for this I will rely on Legendre's psychoanalytically-informed account of the "dogmatic order" (1974). Legendre's close study of the politics of submission, which he poses to still be operational to this day — although more covertly —, will in turn evidence the urgency of moving beyond subjective belief in the Other, and this will then take us to Lacan's re-thinking of the Freudian father in terms of the place of exception (chapters III & IV) and, in part II, to his manifold attempts at releasing the subject from the stagnation that rules the Oedipal empire.

* My primary reliance on *Moses and Monotheism* in this chapter does not imply a rejection of the earlier *Totem and Taboo*, indeed the logical structure of the argument is the same in both works. The latter piece however presents a somewhat more mature analysis of the social function of religion.
The Oedipus Complex

The instinctual Conflict

True to his belief in the universality of incestuous impulses as well as in that of the incest-prohibition, Freud sees the subject's renunciation of his desire for the mother, a renunciation enforced by the prohibition of the father, as the conflictual matrix of both the sense of guilt and the love of authority, sentiments the presence of which Nietzsche had ascribed to the Christian religion. Freud's argument unravels as follows: in view of the prohibition enforced upon his desire for the mother, the first object of his libidinal attachment, the subject will have no other option but to transform the instinctual energy thus inhibited from its aim into an aggressiveness for the father. But, due to the threat of castration, which Freud sees throughout his work as a very present one, and which he attributes to the real father, the subject's corporal integrity is conditional upon his being loved by the father:

First comes renunciation of instinct owing to fear of external aggression by the external authority (This is of course what fear of the loss of love amounts to, for love is a protection against this punitive authority).  
(Civilisation and its Discontents, 320)

The subject thus finds himself in an instinctual impasse, for he feels an intense aggressiveness for the father which he cannot express due to the fear of castration.

Freud then argues that the subject will only be able to extricate himself from this conundrum through what he terms the introjection of the prohibitive instance:

After that comes the erection of an internal authority, and renunciation of instinct owing to fear of it - owing to fear of conscience. (ibid)

In other words, here Freud identifies the mechanism by which the law of the father is internalised, an internalisation which precipitates both the instances of the Ideal and the super-ego in the psyche. Indeed, in Freud's account the introjection of the law is the means by which the subject will direct the aggressiveness produced by the instinctual renunciation towards himself, for he has now become the seat of this prohibition through its postulated introjection:

What happens to [the individual] to render his desire for aggression innocuous? Something very remarkable, which we should never have guessed and which is nevertheless quite obvious. His aggression is introjected, internalised: it is, in point of fact, sent back to where it came from - that is, it is directed towards his own ego. (ibid., 315)

Note that in Freud's work the female child is dealt with along the same lines as the male child.

Freud explains the transformation of instinctual impulses when inhibited as to their aim in his Instincts and their Vicissitudes, PFL 11.

Freud does not always distinguish these instances, for in fact they are intimately bound up: superegoic effects index the return on the ego of the instinctual impulse which is prohibited by the Ideal, and which has thus no other alternative than to attack the subject.
The subject is now in an even worse predicament, for this returning upon the ego of the aggression arising out of the frustration of libidinal satisfaction — super-egoic effects — manifests itself as an unconscious sense of guilt, only assuaged by a demand for a punishment that would provide the mediation of meaning to this senseless aggression.

Originally, renunciation of instinct was the result of fear of an external authority: one renounced one's satisfaction in order not to lose its love. But with fear of the super-ego the case is different. Here, instinctual renunciation is not enough, for the wish persists and cannot be concealed from the super-ego. Thus in spite of the renunciation that has been made, a sense of guilt comes about. [...] A threatened external unhappiness - loss of love and punishment - on the part of the external authority - has been exchanged for a permanent internal unhappiness, for the tension of the sense of guilt. (ibid., 320)

The subject thus becomes both judge and party to his internal conflict, and the power of later figures of authority on the subject will from then on simply have to borrow the subject's investment in being guilty, and in wanting to receive an exculpating meaning from the Other.

In this Freudian text we thus find a very precise theorisation of the Oedipus complex the elements of which we can now list: an instinctual renunciation instituted by way of an external prohibition, a transformation of the instinctual impulse from sexual libido to aggression and a change of object-choice from mother to father. In turn, this change entails the precipitation of the instances of the super-ego and the Ideal whose function is to channel the libido twice inhibited in its successive aims of sexual satisfaction and aggression, a double inhibition the consequence of which is the return of aggression onto the subject himself. The perceptible manifestations of such a return of the libido onto the subject are a relentless feeling of anxiety — guilt only being the subsequent phenomenological manifestation of the super-ego — and, on the side of the Ideal, a conflictual relation to authority which involves both a dependency on the love of the father, sole guarantee of corporal integrity, and a desire for transgression due to the resentment awoken by the ascription of renunciation to the father. We see that at this point in Freud's theory, guilt is cast as the consequence of an external prohibition.

In passing, there is no doubt that it is from this conflictual tension the subject is host that Freud derives his idea of the dualism of the drive, which he divides into the incompatible figures of Eros and Thanatos, less mythically known as sexual libido and death-drive, and this remark already allows us to recognise that Lacan had good cause to re-unite these conflictual impulses under the heading of jouissance, or "unconscious drive-satisfaction" — since in both cases it is the same instinctual impulse which has simply undergone a mutation. This observation elucidates why Lacan, as early as his Seminar II, could assert the unity of the drive (see section IV):

12 The first formulation of the death-drive occurs in Beyond the Pleasure Principle to account for repetition-compulsion (PFl 11).
Chapter I - The Primordial Fact of Politics

Note that the tendency to union - Eros tends to unite - is only ever apprehended in its relation to the contrary tendency, which leads to division, to rupture, to a redispersion, most especially of inanimate matter. These two tendencies are strictly inseparable. No notion is less unitary. (Seminar II, 101; 79)

The structural Irresolution

This rendering of the Oedipus complex no doubt echoes with the pathologies of the Freudian epoch, but we nonetheless note that this account is supported by a single element, the real presence of an external threat of castration. Indeed, it may be the doubtful presence of such a threat which impelled Freud to put forward what he calls a "phylogenetic" explanation — phylogenetesis designates the transmission of mnesic traces from one generation to the next —, thereby going against the grain of his own constant reassertion of the actuality of this threat:

The behaviour of neurotic children towards their parents in the Oedipus and castration complex abounds in [...] reactions which seem unjustified in the individual case and only become intelligible phylogenetically - by their connection with the experience of earlier generations. (Moses and Monotheism, PFL 13, 344)

In view of the scientific dubiousness of Freud's phylogenetic hypothesis, which could halt our progression by making null and void all deductions made on such a questionable basis, let us mention Lacan's alternative explanation for the undeniable symptomatic continuity that exists between generations, for it will enable us to move beyond yet another flaw in the Freudian theory: indeed, Lacan replaces Freud's 'trans-generational' unconscious with his theory of the "founding speech", an expression he coins to encapsulate the narrative web the child is caught in (although Lacan no doubt recognises that the subject's elective interpretation is central in his reconstruction of the family romance):

...Continued...

14 In other words, the subject's mode of instinctual satisfaction replicates that of his parents, which he inherits through language. See Schreber's perceptive recognition of language's intimate relation to the body, and thus to the drive: "The human soul is contained in the nerves of the body (...) from the most tender beginnings (as the fruit of the womb - as a child's soul) they develop to a complex system which embraces the most widespread regions of human knowledge - the soul of mature man (...) Circumstances seem to be such that every single nerve of intellect represents the total mental individuality of a human being, that the sum total of recollections is as it were inscribed on each single nerve of intellect." D. P. Schreber: 1988, 45. The similarity of Schreber's delusions with the theory of the libido has been acknowledged by Freud himself. (PFL vol. 9, 218)
insoluble conflict that mars humanity, and secondly it indexes the decline of religion, no longer influential enough to account for the violence of the postulated sexual prohibition. Indeed, if the demand that one gives up on one's desire for aggression is evermore present in civilisation, the sexual terror instituted by religion had already begun to wane in Freud's time due to the replacement of the Church and Canon Law as sources of knowledge and universal truth by the modern state.\(^{15}\)

In Freud's rendering then, subjective unhappiness is an effect of collective life, which demands the respect of familial structures and rejects acts of aggression, the two elements he identified as intimately bound up with the Oedipus complex and social contract alike.\(^{16}\) The suffering of the subject is thus associated with an external prohibitive instance, and it is to clarify the intensely painful by-products of the prohibition it upholds that Freud intervenes with his instinctual theorisation of the Oedipus complex.

Yet, Freud's work noticeably demonstrates an unrelenting indecision between the ascription of guilt to sexual renunciation and his attribution of the same to the mnesic traces of the murder of the father, sometimes compounded as the dual cause of the same feeling, sometimes seen as the product of the mutation of civilisation. The manifold and sometimes contradictory elements of the Freudian theory will thus now be re-articulated in several guises the course of my exposition, which I will initiate by presenting more comprehensively Freud's notorious hypothesis of the 'primal trauma of the collective': the generalised murder of the father.

**The Murder of the Father**

The phylogenetic Hypothesis

As already argued then, it may be that it is Freud's own doubts regarding the reality of the threat of castration which impelled him to devise another explanation for the sense of guilt of the subject, or it may be his own unwillingness to give up on his seemingly perfect logical account of the origin of guilt; his motives may even lie in his own conflictual attachment to the figure of the father, or again in his recognition of the perennial appeal of paternal incarnations of religious and political figures. One certainty remains: in his days, guilt was already beginning to manifest itself less as the consequence of a disobedience to the omnipotent father of monotheistic religions and more as the anxiety associated with losing the love of a law of which one has become the primal jurisdiction — indeed, as much is demonstrated by Freud's other writings.\(^{17}\)

In support of my last assertion, we note that in his *Civilisation and its Discontents*, Freud himself acknowledges the similarity that exists between the sense of guilt and the affect of anxiety:

\[\text{\ldots} \]

\(^{15}\) The sexual terror instituted by religion and its subsequent decline are both vastly documented by Legendre (1974).

\(^{16}\) *Moses and Monotheism*: PFL 13, 325.

\(^{17}\) Notably *Inhibitions, Symptoms and Anxiety*, PFL 10, in which Freud associates feelings of guilt with the anxiety caused by a loss of love from the Ideal: "Putting it more generally, what the ego regards as the danger and responds with an anxiety-signal is that the super-ego should be angry with it or punish it or cease to love it." (297), or again in his own case-histories, collected in PFL 8 and 9.
Here perhaps we may be glad to have it pointed out that the sense of guilt is at bottom nothing else but a topographical variety of anxiety. (PFL 12, 328)

Why, then, did Freud not give up on his lucubrations on the father, which would later expose the whole of his work to an extended discredit? Why did he not rather concentrate on the enigmatic nature of anxiety? In view of Freud's intellectual rigour, evidenced by the constant questioning he subjected his work to — note that so far it is Freud's own writings which supplied the elements that undermine his logic —, the only convincing explanation lies in the lack of strength of the sexual prohibition, which therefore reveals itself to be incommensurable with the destructiveness of the sense of guilt. Indeed, the whole of the Freudian edifice is constructed on the basis of his conviction that there exists an external origin to the prohibitive instance, which he then casts as the cause of all the discontents in civilisation.

To clarify the logical impasse that subtends the Freudian theorisation of the Oedipus, let us articulate the elements at our disposal: if it is the external prohibition of incest, enforced by means of the threat of castration, that gives birth to the Ideal and its super-egoic effects, and if the affect of anxiety is provoked by the Ideal, then, in view of the undeniable affinities of guilt with anxiety, without sexual prohibition, there is no reason for guilt and therefore there can be no anxiety. In passing, this explanation also inscribes Freud in the Enlightenment tradition since it attests to his refusal of the limits that the irrationality of the drive inflicts on the powers of reason.

What remains is that Freud nonetheless kept returning to his theory of the residual influence of a guilt associated with the primal murder — he however admits it to be deeply buried in the preconscious realms of the psyche — which, as it is taken up in the ever-tightening circuits of the super-ego, comes to explicate the violent effects of instinctual renunciation.

The hypothesis of primal guilt is one that I will now indulge, for it will be shown to yield a number of crucial elements for our later theorisation of the hold of the law on its subjects by evidencing the structural elements the presence of which can be observed in all modern democracies: the empty place of power, the requirement of formal justice and the utilitarian logic of ethics, operated by means of the cultural super-ego.

I will begin by exposing this theory before bringing sexual renunciation and primal guilt together through an account of the social transformation heralded by Christianity, an exposition which will then lead us to Lacan, for indeed it is the partial failure of Freud's two explanations of the external origin of guilt that supports the Lacanian theory of psychoanalysis, in which the real cause of the sense of culpability must be ascribed to the imposition of language on the subject, in his rendering the only xenopathy the subject truly suffers from.

18 A task fascinatingly undertaken by Heidegger (1993, 89-110), to whom I will also return outside the confines of this thesis.
19 In so far as its ideological content is secondary to its utility, which is to channel instinctual renunciation.
The Story

It is thus that in order to track the historical cause of a guilt which he found himself having to postulate in order to strengthen the credibility of sexual prohibition, Freud engaged upon the wildest theorisation to date of the origin of civilisation by hypothesising the generalised murder of a countless number of primal fathers, the phylogenetic traces of which would then become an unquenchable well of culpability. Thus, faithful to this logic, in his *Moses and Monotheism*, Freud proceeds to argue on the basis of a number of historical and biblical texts that Moses was murdered by his "chosen people", who were tired of the exigencies of what was after all a foreign God, and a severe one at that, for it demanded exclusiveness of adoration and rejected magic and superstition; indeed it went so far as to banish the soothing comfort of pictorial representations.

And Freud goes on to conjecture the psychical *disavowal* of the murder of Moses — had it been repression, no memories of it should have subsisted. Disavowal being a milder version of repression, as argued by Freud in his *Splitting of the Ego* (PFL 11), he then demonstrates, through an analogy with the latency period of the Oedipus complex, that the traces of this crime could nevertheless return to haunt the descendants of the murderers, a return which confers the value of truth upon the crime, for "we must grant an ingredient such as this [return of the forgotten truth] of what may be called *historical* truth to the dogmas of religion as well." (PFL 13, 329), or again:

> I have never doubted that religious phenomena are only to be understood on the pattern of the individual neurotic symptom familiar to us - as the return of long since forgotten, important events in the primeval history of the human family - and that they have to thank precisely this origin for their compulsive character and that, accordingly, they are effective on human beings by force of the historical truth of their content. (PFL 13, 299)

Incidentally, note that the presence of a sense of guilt is the only psychical evidence Freud has of the historical occurrence of this serialised crime. Yet, the sense of guilt riddling humanity at large is then universally accounted for by way of this theory of the primal murder and extended to all communities.

Freud does not let himself be deterred by the audacity of his speculation, and moves on to present the murder of Moses as an "acting-out" of a previously disavowed truth, replicating previous,

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20 Indeed Freud posulates that the Mosaic God was a transplantation of the Egyptian cult of Aten, later on amalgamated with the volcano-God Yahweh and the second coming of Moses. See the historical summary at the beginning of the third essay.

21 From which Freud derives the "intellectualisation" of the Jewish people and the introduction of the name of the father between mother and offspring, for while there is physical evidence of maternal links, the paternal link is an intellectual deduction (PFL 13, 358-363).


23 Although Freud purports to have found historical evidence of such murders in the anthropological accounts of Darwin, Atkinson and Robertson Smith (see *Totem and Taboo*, PFL 13, 203, footnote 2).

24 See however Freud's cursory treatment of religions which in his opinion are not grounded on guilt; thus, regarding Islam: "but the internal development of the new religion soon came to a stop, perhaps because it lacked the depth which had been caused in the Jewish case by the murder of the founder of their religion"; and concerning Asiatic religions - "The apparently rationalistic religions of the East are in their core ancestor-worship and so come to a halt, too, at an early stage of the reconstruction of the past". (PFL 13, 337)
innumerable parricides (PFL 13, 333). In order to support his theory, he calls forth his previous deductions and gives a summary account of his *Totem and Taboo*, in which he had already postulated the generality of this murder as the basis of all life in common:

[My construction] asserts that in primeval times primitive man lived in small hordes, each under the domination of a powerful male. [...] An essential part of the construction is the hypothesis that the events I am about to describe occurred to all primitive men - that is, to all our ancestors. [...] The strong male was lord and father of the entire horde and unrestricted in his power, which he exercised with violence. All the females were his property. [...] The first decisive step towards a change in this sort of 'social' organisation seems to have been that the expelled brothers, living in a community, united to overpower their father and, as was the custom in those days, devoured him raw. (PFL 13, 324-5)

Before seeing how Freud extrapolates universal guilt from this theory (section III), let us note that Freud identifies this murderous act of the community of the brothers as the source of all social organisation, grounded as it is on a renunciation of sexual desire and a worship of the dead father:

It must be supposed that after the parricide a considerable time elapsed during which the brothers disputed with one another for their father's heritage, which each of them wanted for himself alone. A realisation of the dangers and uselessness of these struggles, a recollection of the act of liberation which they had accomplished together, and the emotional ties with one another which had arisen during the period of their expulsion, led at last to an agreement among them, a sort of social contract. The first form of social organisation came about with a renunciation of instinct, a recognition of mutual obligations, the introduction of definite institutions, pronounce inviolable (holy) - that is to say, the beginnings of morality and justice. (PFL 13, 325-6, original emphasis)

On the basis of this last quote, we may already deduce that Freud's own supplementation of the weakness of the real threat of castration as cause of instinctual renunciation by means of his detour via the returned of the repressed murder does not, in fact allow him to solve the ambivalence which impelled him down this dubious anthropological path. Indeed, there he presents instinctual renunciation as a result of the social contract, which thus seems to imply that the internalisation of the law which he is keen to ascribe to an external agency seems in fact to stem from the brothers' own consensual institution of the incest taboo.

Let us see whether we can clarify the particular point of whether guilt is an effect of instinctual renunciation or a cause thereof, for we will see that Freud himself was not without being aware of the logical paradox posed by the circular temporality of his Oedipal theories. Indeed, this may even be why he introduces one of his least convincing distinctions, that between remorse and guilt.

25 An acting-out, in psychoanalytic terms, is the re-enactment of a past event for lack of any other mode to access the preconscious or unconscious knowledge of the event in question, which nevertheless determines the subject's behaviour.
Chapter I - The Primordial Fact of Politics

Of Remorse and Guilt

Indeed, the most striking element in Freud's account of the primal murder, at least for our purposes, is that despite all appearances to the contrary, it in fact demonstrates that there is no guilt present at the origin of the social contract, for indeed why should the brothers feel guilty of having rid themselves of the father, if not because they got rid of him for nothing?

Let me articulate more clearly the persistent ambivalence which inhabits Freud's work as to whether the sense of guilt is to be ascribed to instinctual renunciation or to the murder of the father — or, in other words, as to whether guilt precedes the social contract or is an effect thereof. Thus for example, in Totem and Taboo (PFL 13), having presented his theory of the collective murder of the father by the expelled brothers, Freud moves on to derive the institution of the two Oedipal taboos which in his theory constitute the foundation of law and community:

In order that these later consequences may seem plausible, leaving their premises on one side, we need only suppose that the tumultuous mob of brothers were filled with the same contradictory feelings which we can see at work in the ambivalent father-complexes of our children and of our neurotic patients. They hated their father, who presented such a formidable obstacle to their craving for power and their sexual desires, but they loved and admired him too. After they had got rid of him, had satisfied their hatred and had put into effect their wish to identify themselves with him, the affection which had all this time been pushed under was bound to make itself felt. It did so in the form of remorse. A sense of guilt made its appearance, which in this instance coincided with the remorse felt by the whole group. The dead father became stronger than the living one had been [...] They thus created out of their filial sense of guilt the two fundamental taboos of totemism, which for that very reason corresponded to the two repressed wishes of the Oedipus complex. (PFL 13, 204-5)

In this passage Freud unequivocally locates both the sense of guilt and the Oedipus complex as effects of the collective remorse consequent upon the murder of the father. Thus something of the order of guilt, remorse, unquestionably pre-exists the formation of the social contract in its most primitive form, while guilt itself seems to result from the subsequent behaviour of the brothers. In effect, in Freud's account, remorse is differentiated from guilt in so far as it seems to stem from a return of the brothers' suppressed affection for the father, itself derived from an early identification with him.

Let us see whether we can make sense of the Freudian distinction. In Civilization and its Discontents, Freud attempts to disentangle the phenomenology of remorse from that of guilt, by his own admission to resolve the logical paradox which subtends his account of the constitution of guilt:

As to the sense of guilt, we must admit that it is in existence before the super-ego, and therefore before conscience too. At that time it is the direct expression of fear of the external authority ...it is the direct derivative of the conflict between the need for the authority's love and the urge towards instinctual satisfaction, whose inhibition produces the inclination to aggression. The superimposition of these two strata of the sense of guilt - one coming from fear of the external authority, the other from fear of the
Here then Freud is recognising the difficulty of accounting for the existence of a sense of guilt prior to the internalisation of the super-ego, which he had previously cast as the agency responsible for the sense of guilt in the subject. Yet, he is aware that there is such a thing as guilt before the emergence of this instance of morality known as conscience, and which psychoanalysis showed to be associated with the ethical commands of the super-ego. Freud then moves on to propose his resolution of this temporal conundrum, one that goes by way of the introduction of a dualism in the sense of guilt:

Remorse is a general term for the ego’s reaction in a case of sense of guilt. It contains, in little altered form, the sensory material of the anxiety which is operating behind the scene of guilt; it is itself a punishment and can include the need for punishment. Thus remorse, too, can be older than conscience. Nor will it do any harm if we once more review the contradictions which have for a while perplexed us during our inquiry. Thus, at one point, the sense of guilt was the consequence of acts of aggression that had been abstained from, but at another point - and precisely at its historical beginning - it was the consequence of an act of aggression that had been carried out. But a way out of this difficulty was found. For the institution of the internal authority, the super-ego, altered the situation radically. Before this, the sense of guilt coincided with remorse (We may remark, incidentally, that the term 'remorse' should be reserved for the reaction after an act of aggression has actually been carried out). After this, owing to the omniscience of the super-ego, the difference between an aggression intended and an aggression carried out lost its force. (PFL 12, 330).

Freud moves on to state that guilt proper is an effect of the super-ego, and that it substitutes itself for remorse in the more developed subject. Remorse is associated with a real act of aggression and the real fear of loss of love which ensues: indeed, earlier in the same text, Freud had unequivocally associated remorse and anxiety with loss of love:

This state of mind is called a 'bad conscience'; but actually it does not deserve this name, for at this stage the sense of guilt is clearly only a fear of loss of love, 'social' anxiety (ibid., 317).

As to guilt, it stems from the fear of losing the love of the internal agency of the super-ego. Remorse then, an effect of the fear of losing the love of the external authority, would seem to pre-exist guilt, as guilt stems from the infringement of social taboos: "Whoever contravened those taboos became guilty of the only two crimes with which primitive society concerned itself." (Totem and Taboo, 205).

To put it slightly crudely, remorse would be the effect of a real act of aggression and of the anxiety associated with the fear of losing the love of the external figure of authority consequent upon it, while guilt would be the effect of a psychical wish of aggression and would index the return of the repressed impulse upon the ego of the subject — the external agency of prohibition having of course been internalised.
Although this distinction may be an accurate enough account of the vicissitudes undergone by the drive during the development of the Oedipal phases, where does it leave us in relation to the primal hypothesis? What Freud seems to be implying is that the murdered father, due to the persistence of the love he commanded from his sons through the medium of identification, would constitute a sufficient imprint in the psyche of the primal men to allow for the transformation of an external but absent agent of prohibition into an internal but much more present — albeit only psychically — one.

However appealing this logical resolution of the temporal aporia which presides over the erection of the super-ego may be, one cannot help but feeling slightly dubious. Indeed, why would the love for the father return with such a strength as to warrant the institution of a much more powerful prohibitive agency, if not because the murder had failed to resolve the brothers' instinctual impasse? Do they not remain in a similar situation as before the murder, since indeed a law is required in order to prevent the endless repetition of selfsame murders?

And indeed, Freud himself expresses a degree of doubt as to the tenability of his theorisation of the origin of guilt: for on the page of Totem and Taboo previously quoted (205) Freud, in a footnote, reveals his own persistent dissatisfaction with his own account of the origin of the sense of culpability when he indicates that instinctual renunciation *per se* remains a plausible cause of guilt:

>This fresh emotional attitude must also have been assisted by the fact that the deed cannot have given complete satisfaction to those who did it. From one point of view it had been done in vain. Not one of the sons had in fact been able to put his original wish - of taking his father's place - into effect. And, as we know, failure is far more propitious for a moral reaction than satisfaction. (ibid., 204)

I will thus put forward a provisional explanation for the Freudian ambivalence, which we will later see to be supported by Lacan's re-conceptualisation of the subject: it seems that for Freud, remorse derives from the failure of instinctual satisfaction, which persists despite the violent removal of the perceived obstacle. The persistence of the failure of satisfaction itself indexes the structural impossibility of such a satisfaction. As to guilt, it would thus appear to be the product of the *symbolisation* of remorse, since indeed it occurs in relation to a transgression — whether real or psychical — of social prohibitions. In other words, *it amounts to a making-sense of the impossibility of instinctual satisfaction through its ascription to a real cause.* Despite the Freudian contradictions then, what remains clear is that guilt is inextricably linked to an instinctual impasse, although it is no doubt a socialised version thereof.

Thus Freud's own theory of the murdered father in fact reveals, no doubt against his intention, that the source of the sense of guilt *is none other than instinctual renunciation,* a conclusion which sends us back to his erstwhile theorisation of the Oedipus complex and divests it of its ill-fitting murderous trappings. By the same token, this returns us to the questionable presence of an external instance of sexual prohibition that would be strong enough to be designated as the origin of the malaise in all civilisations and re-asserts the enigmatic nature of culpability, thereby reduced to the *return of the drive onto the subject*
— although it is still linked to an imposed renunciation (even if only by way of a contract the subject willingly enters into), and it is on this precise point that Lacan will take us beyond Freud.

III - LAW, RELIGION AND ETHICS

The structural Importance of the Freudian Discontent

Having anchored his dual explanation of the Oedipal structure of the psyche both to the reality of the threat of castration and to the return of the repressed murder of the father, Freud evidences his preference for the latter theory and moves on to present the primal murder and its Oedipal consequences as the matrix of western civilisation through the medium of religion:

Totemic religion arose from the filial sense of guilt in an attempt to allay that feeling and to appease the father by deferred obedience to him. All later religions are seen to be attempts at solving the same problem. They vary according to the stage of civilisation at which they arise and according to the methods which they adopt; but all have the same end in view and are reactions to the same great event with which civilisation began and which, since it occurred, has not allowed mankind a moment’s rest. (Totem and Taboo, PFL 13, 206)

Indeed, in his works on civilisation, society and religion, Freud proceeds to demonstrate the veracity of his hypothesis by analysing Judaeo-Christian civilisations in terms of his Oedipal theories, starting from the religious concepts of Judaic guilt and Christian culpability before posing that all symbolic constructs of mankind — law, religion and ethics — are derived from the instinctual impasse which he ascribes to an irresolvable primal transgression. We will thus now examine how Freud interweaves the structural elements of the Oedipus complex with the history of mankind.

The mytho-logical Father of Law

The Totem

Let us follow the thread of the story of the primal father a little longer, for we will now encounter something more relevant to our argument in Freud’s historically improbable — to say the least — account. Indeed, or so the story goes, the primal brothers’ social organisation was only made possible through the erection of a ‘totem’ in lieu of the father:

A powerful animal — at first, perhaps, always one that was feared as well — was chosen as a substitute for the father. [...] On the one hand the totem was regarded as the clan’s blood ancestor and protective spirit, who

26 To be fair to Freud, one must note that he acknowledges that "the mere hostile impulse against the father, the mere existence of a wishful fantasy of killing and devouring him, would have been enough to produce the moral reaction that created totemism and taboo. In this way we should avoid the necessity for deriving the origin of our cultural legacy ... from a hideous crime... No damage would thus be done to the causal chain stretching from the beginning to the present day, for psychical reality would be strong enough to bear the weight of these consequences." (PPFL 13, 222-3, original emphasis), although he nonetheless concludes that "in the beginning was the Deed." (ibid., 224) — and probably wisely so for his own theory as, in view of the weakness of his hypothesis of the origin of guilt (see section Of remorse and Guilt), one could rightly question whether the psychical reality of a murder would be sufficient to impel the erection of the super-ego.

must be worshipped and protected, and on the other hand a festival was appointed at which the same fate
was prepared for him that the primal father had met with. (PFL 13, 326)

Beyond the *prima facie* function of the totem, which is evidently to reiterate the brothers' superior
power over the father in an implicit statement that they only accept his authority of their own free will
and only in so far as it suits their convenience, the perceptive quality of Freud's hypothesis lies in his
recognition that for collective life to reach stability, the institution of an *external* instance of law is
required. His perceptiveness extends to an identification of the elements *structurally* required for this
external instance to be able to function: firstly then, law must be *embodied*, for *transference* is the condition
of obedience, and secondly, its incarnations may only be mythical, not-too-present figures. The dead
father is thus ideal, if I may, for he possesses the uncanny capacity of being at the same time *present* and
*absent* — a characteristic picked up by Legendre in his fascinating analysis of the papal institution in
terms of the *present representative of an absent God* and, crucially, one that does not *enjoy* due to the vows of
chastity.

As such, the logic behind Freud's postulated totemic origin of the father-legislator is still valid today,
for the legitimacy of all earthly incarnations of the law still rests upon the dual guarantee offered by
primitive men's totem-animal. This guarantee can be declined as follows: firstly, the *presence* of the father
ensures that no one else will seek to occupy his — at any rate not-so-enviable — position, an assurance
which is further strengthened by the *rituals* conferring a *mythical* aura upon his function, and secondly
the *absence* of the father enables the subject to ascertain that even though he has to contend with a
degree of instinctual renunciation, *there is no one that enjoys more than he does*. Such is the logic which
informs the principle of equality before the law, and the manifold resources of human *logic* will tirelessly
come to disguise the fact that such an equality can but be formal.

The Logic of the dead Father

It is in view of this analysis that Legendre's neo-graphism "mytho-logical" takes on its full sense, for it
indexes the twofold character of the figure of the law-giver: it is indeed only the combination of his
*mythical* and *logical* dimensions which will make his authority palatable to the subject: the *mythical* aspect
is in charge of the libidinal requirement — for *transference* channels the impulses dammed by the
prerequisite of instinctual renunciation, whether it be through fear or through love —, and the *logical*
aspect is in charge of reason, which supports transferential faith by supplementing its hold by means of
rational belief, and this by convincing the subject of the universal *truth* of the law: or alternatively, that it
is implemented for the *equal* good of all.

The structural necessity that the place of the law be occupied by an absent-present figure explicates
why Freud derives both the social contract and the birth of *formal justice* from the erection of a totem

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28 See T. Reik's emphasis on the internalisation of the super-ego as a victory over the father, for it makes its real presence from
then on incidental to the subject's psychical organisation (1973, 391-395).
29 Legendre: 1974, 64-79.
in lieu of the father, for totemic logic fulfils the requirement that the place of the law be only incarnated
by a representative of a power situated elsewhere, this remaining the key exigency of modern democracies:
the place of power must be empty, and it is this empty place that Lacan will call the place of exception.50 This is
no doubt why Lacan's response to his own question in Subversion of the subject and dialectic of desire, 'What is
a father?', is the following:

'It is the dead father', Freud replies, but no one listens, and, concerning the aspect Lacan takes up again
with the 'Name-of-the-Father' it is regrettable that so unscientific a situation should deprive him of his
normal audience. (Ecrits, 812; 310)

As to formal justice, it is an extension of the same logic: in his Moses and Monotheism, Freud asserts
that "the granting of equal rights to all the members of the fraternal alliance" (367), which "restricts the
inclinations to violent rivalry amongst them" (ibid.), is the inevitable corollary of the acceptance of
renunciation, for if the empty place of power guarantees that the father does not enjoy, equality of
rights further ensures that none of the brothers will benefit from the prohibition of sexual and
aggressive impulses more than the others.

In a more modern vein, in his Civilisation and its Discontents Freud had already outlined the
requirement of formal justice as the single most important condition of civilisation:

This replacement of the power of the individual by the power of a community constitutes the decisive step
of civilisation. The essence of it lies in the fact that the members of the community restrict themselves in
their possibilities of satisfaction, whereas the individual knew no such restrictions. The first requisite of
civilisation, therefore, is that of justice - that is, the assurance that a law once made will not be broken in
favour of an individual. This implies nothing as to the ethical value of such a law. (PFL 12, 284)

Despite the questionable value of Freud's theory of origins, it nonetheless leads him to clearly
delineate the only twofold permanent requirement of justice — and hence the structural condition of all
civilisations: that all men be equal in their relation to an external place of law. In his rendering then,
 justice has no substantial content, and only borrows its reality from the formal frame of equality.
Consequently, justice is defined negatively, by way of an opposition to injustice: the feeling experienced in
the face of unequal treatment. And in view of our previous elaboration, we can even say that the feeling
of injustice arises in the face of an inequality in enjoyment: instinctual justice, then, is the spirit which awakens
the dead letter of the law from its otherwise lifeless slumber. The Freudian myth of the dead father must thus be
credited for appreciating to its true worth the importance of the guarantee of equal enjoyment (or equal
non-enjoyment) for the consolidation of any community, the members of which will be able to identify
with one another on the basis of sameness thanks to a vertical identification to the empty place of the

50 On the place of exception, see the last two chapters of this thesis.
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leader, for it is the latter function which curtails the worst effects of imaginary rivalry by instituting symbolic differences, while the meaning of the law comes to occupy the place of the real cause of guilt.

If we may turn our noses at Freud's theory of the generalised ingestion of the father, followed by the subsequent deification of the main course, we cannot but acknowledge that his account touches upon the invariant components of law in modern civilisation: firstly, at the instinctual level, one always encounters, on the one hand, sexual regulations devised to implement a minimal degree of distance between the members of the communal cell and on the other, a generalised prohibition of private violence aiming to institute stability; secondly, the institutional apparatus in charge of the enforcement of such rules is invariably supported by the dual fiction of an empty place of power and the guarantee of formal equality.

Before moving on to Lacan's reconciliation of the Freudian irresolution as to the origin of the first instinctual renunciation, let us linger a bit longer on Freud's elaboration, for we are not finished with guilt yet.

Guilt as the Source of Ethics

Bad conscience, the desire for self-mortification, is the wellspring of all altruistic values.

Friedrich Nietzsche

Another key factor is yet to be drawn from Moses and Monotheism: hostility for the father initiates the institutionalisation of guilt in the Jewish tradition, and is conceived by Freud as the cause of its high ethical standards, devised in order to assuage that guilt. To understand the logic behind this proposition, we need to recall the two tenets of the Freudian Oedipus: firstly, guilt betrays the repressed murder of the father — the historical truth of which we established to be at best incidental — and secondly, the sense of culpability is the manifestation of an hostility for the father which finds no other outlet than self-aggression, and which he incurs by demanding instinctual renunciation. It is the second limb of the Oedipal theory which will now interests us, for it clarifies the mysterious mechanism of the super-ego.

Leaving the hypothetical crime behind for a while, Freud applies his theory of instinctual renunciation mutatis mutandis to the strict Jewish God the commands of whom arouse immense hostility. This inhibited hostility in turn reinforces the sense of guilt by bringing more libidinal energy to its mill, and is further exacerbated by the unhappiness and difficult times encountered by the 'liberated' men:

31 We recognise the dual axes of identification mapped by Freud in his Group Psychology, PFL 12.

32 The dangerous nature of which has been exposed by R. Girard (1982) and of course by Lacan, most extensively in his Seminar I where he relies on Freud's paper On Narcissism (PFL 11). See also M. Jaanus's paper in Reading Seminars I and II: 1996.

33 There we note one of the many uses of Lacan's notorious trilogy of the imaginary, symbolic and real aspects of human life, where the imaginary defines relations constituted on the basis of sameness, the symbolic indexes relations based on differences, and the real refers to the irrational alterity of the drive.

34 The Genealogy of Morals, 221.
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Things were going badly for the people; the hopes resting on the favour of God failed in fulfilment; it was not easy to maintain the illusion, loved above all else, of being God's chosen people. If they wished to avoid renouncing that happiness, a sense of guilt on account of their own sinfulness offered a welcome means of exculpating God: they deserved no better than to be punished by him since they had not obeyed his commandments. And, driven by the need to satisfy this sense of guilt, which was insatiable and came from sources so much deeper, they must make those commandments grow ever stricter, more meticulous and ever more trivial. (PFL 13, 383)

The senseless Circuit of the Drive

Beneath the mythical narrative, what Freud pertinently discerns here is that the real instance of the super-ego finds itself very much at home with guilt. Notoriously, in Freud's conceptualisation, the phenomenology of the super-ego is the following: it manifests itself in the guise of a senseless self-aggression which is diverted by way of renewed renunciations to satisfaction — for the subject misinterprets the bare instinctual command of the super-ego due to the narrativisation of guilt in which he is caught —, this 'success' then entails an ever growing demand for virtuous behaviour, and its outcome is the increasing misery of the subject. Despite its apparent irrationality, this process is in fact a perfect illustration of the processes of instinctual energy in the unconscious: psychoanalysis indeed recognises that the tension of the drive is always the same, in other words that it always demands the same amount of satisfaction, and the ways in which it obtains it are irrelevant: "We must consider the drive under the heading of the konstante Kraft that sustains it as a stationary tension."35

Thus, the libidinal satisfaction given up by the subject is recuperated by the super-ego, which employs these new instinctual resources to further aggress the subject. Indeed, and in view of the intensifying presence of the rule of law evermore entrenched by the sense of culpability, the subject has no other option but to channel this instinctual attack by recognising that he must be guilty of something. In recognising his culpability, the subject engages upon the path of yet more renunciation in a desperate attempt to alleviate the malaise which is however — according to Freud — only experienced as the very consequence of instinctual inhibition: the process can thus go on ad infinitum, or at least until the reduction of the subject to his malaise.36

Following in the same vicious circle of instinctual renunciation, the difficult times met with by the Jewish people led its religious leaders to assume a real guilt on the part of its people and consequently to impose ever higher ethical demands to satisfy God. For Freud though, such ethical rationalisation is a poor disguise for a deeper feeling:

These ethical ideas cannot, however, disavow their origin from the sense of guilt felt on account of a suppressed hostility to God. (PFL 13, 384)

36 Which is what happens in melancholia for example (cf. Mourning and Melancholia, PFL 11), or in serious cases of neuroses.
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The cultural Super-ego

Freud had already postulated that the individual super-ego was the source of ethics in his *Civilisation and its Discontents*, where he further assumes that there exists a similar instance at the level of civilisation: a cultural super-ego thus, the instance in charge of the collective sublimation of instinctual impulses inhibited from their aim:

The cultural super-ego has developed its ideals and set up its demands. Among the latter, those which deal with the relation of human beings to one another are comprised under the heading of ethics. People have at all times set the greatest value on ethics, as though they expected that it in particular would produce especially important results. And it does in fact deal with a subject which can easily be recognised as the sorest spot in every civilisation. Ethics is thus to be regarded as a therapeutic attempt - as an endeavour to achieve, by means of the command of the super-ego, something which has so far not been achieved by means of any other cultural activities. (PFL 12, 336)

It is thus that in Freud's opinion, ethics — despite its unquestionable positive effects for civilisation at large — is, at the instinctual level, an endeavour to satisfy the demands of the super-ego in a desperate attempt to appease the tension thereby created, and that it is by definition doomed to failure — at least where the happiness of the subject is concerned: for as we have seen, the more renunciation, the more guilt and the more guilt, the more renunciation.

Although Lacan later challenges the theory of an imposed renunciation, what needs to be retained of Freud's formalisation for our later purposes is the instinctual logic that subtends civilisation: there can be no life in common without there also being a cultural super-ego, and this cultural super-ego draws its strength from the recuperation of the desire of the subject. This is no doubt what causes Legendre to claim that

The most important theoretical notion advanced by Freud to introduce to the understanding of the institutional mechanism, through an analogy with the internal procedures of the psyche, is without a single doubt that of the Super-ego. 37

Obedience in the Name of Law; Submission in the Name of Love

Freud concludes his *Moses and Monotheism* through a summary analysis of the Christian religion. Having ratified the instinctual impasse of the Jewish religion on account of the irresolvable tension driving guilt ever further upon its concentric circuits, Freud goes on to note that a "dull malaise" had anyway taken hold of all the Mediterranean people at the time of the advent of Christ (PFL 13, 384), and extends his theory to the Christian religion, which differentiates itself most notably from Judaism in its insistence on love. Then, he argues that this generalised sense of guilt had reached its apex and needed an outlet,

37 P. Legendre: 1974, 34 (his emphasis).
which was providentially supplied by Paul's interpretation of the crucifixion of Jesus: the Apostle indeed presented the trial of Christ as a willing sacrifice aiming to free the Jewish people from its guilt. 38

The effect of such an interpretation of the crucifixion was dual: firstly, it disguised the real cause of the sense of guilt — hostility towards God — by displacing culpability onto some obscure original sin, associated with the first sexual act. Then, and most importantly, its second effect was to introduce love into the equation of power, the love of the father being offered as a softening of the arid demands for pure obedience. Indeed, as the religion of the son takes over that of the father, 39 there arises a belief in God's indiscriminate love of all human beings alike through the intermediary of Christ, as Freud observes in his analysis of the Church and the Army (Group Psychology, section V, PFL 11):

> In a Church (and we may with advantage take the Catholic Church as a type), ...the same illusion holds good of there being a head - in the Catholic Church Christ -... who loves all the individuals in the group with an equal love [...]. This equal love was expressly enunciated by Christ: 'Inasmuch as ye have done it unto one of the least of my brethren, ye have done it unto me.' He stands to the individual members of the group of believers in the relation of kind elder brother; he is their substitute father. All the demands that are made upon the individual are derived from this love of Christ's. A democratic strain runs through the Church, for the very reason that before Christ everyone is equal, and that everyone has an equal share in his love. (Group Psychology, PFL 12, 123)

This equal love of Christ for his brethren also extended to the corresponding commandment that men also love one another beyond class, race, religion or even objective reasons, and Freud explicates that this is made possible through an identification with the human figure of Christ, an identification which was evidently impossible with God himself (ibid.; 167-8).

This commandment to "love thy neighbour as thyself" is however, in a certain sense, the most exigent ethical demand of all times, for it demands an unconditional renunciation to all acts of aggression, the "ethics of the other cheek" henceforth coming to replace the Lex Talionis:

> As we already know, the problem before us is how to get rid of the greatest hindrance to civilisation - namely the constitutional inclination of human beings to be aggressive towards one another; and for that very reason we are especially interested in what is probably the most recent of the cultural commands of the super-ego, the commandment to love one's neighbour as oneself. (PFL 12, 336)

On the one hand then, following Freud's argument, such a switch in the ethos of religion from unqualified obedience to unrestricted love was not to lessen the sense of guilt, yet on the other, by locating the origin of culpability in the sexual act, it afforded men the possibility to gain a degree of control over their destiny, for guilt from then on became a highly individualised matter. Thus, if 38 Note that in Totem and Taboo, Freud had already presented the sacrifice of Christ as an attempt to alleviate guilt: "however, Christ redeemed mankind from the burden of original sin by the sacrifice of his own life". (PFL 12, 216) As Freud interprets Christianity as further evidence of the primal murder - "self-sacrifice points to blood-guilt" - I will rely no further on this text.
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Christianity brought culpability to the power of humanity, for all men became equally guilty by the mere fact of birth, it nevertheless also allowed men to take active steps to atone for their inherited guilt by leading a moral life. Even more crucially, it lent credence to the love of the father, who from then on no longer demanded unrestricted submission but required obedience for redemptive purposes, since indeed he wanted the good of men above all.

If we may sneer at Freud's reductive rendering of the story of mankind, we can also choose to extract yet another important element from his schematic narrative: that the death of the son came to humanize the father, thereby 'decompleted' through his loss of a cherished being, and hence made it possible for men to believe that God loved them: had he not offered them his most treasured possession to redeem them, to save them from crushing guilt?

Thus, while the Jewish God, unlike men, did neither suffer nor forgive, the Christian God hurt with the same intensity on behalf of each man: hence the "democratic strain" that "runs through the Church." What better guarantee of equality between the sons could there be than the all-encompassing, divine love of the father? And if there is no doubt that beneath the generous, forgiving appearance of the Christian religion, the introduction of love in men's relation to power also had numerous perverse effects — we will later see with Legendre what they were — it remains that belief in the love of God considerably soothed the lonely fate of mankind, constantly challenged by the meaningless hardships of life, by concealing the blindness of misfortune's hand beneath the mythical percipience of "God's impenetrable ways".

Summary

At the risk of being repetitive, let us recapitulate the advances accomplished through our reading of Freud: firstly, the discontents of civilisation stem from instinctual renunciation in two directions: sexual satisfaction and aggression. Secondly, instinctual renunciation is then institutionalised through the creation of an external instance of law, itself having to fulfil two requirements: it may only be occupied by a representative of an other-worldly power, and it must ensure equality before the law. Thirdly, if the guarantee offered by such a legal structure warrants stability, the effects of instinctual renunciation must still be contended with, and this is why impulses returning onto the subject come to be dealt with by way of their transformation into a sense of guilt, which gives rise both to the individual super-ego and its cultural equivalent. Fourthly, the weight of culpability becomes unbearable in time due to the very logic of instinctual renunciation, and requires further mediation, this time no longer through ethics but through love: this necessity brings about a transformation of the dead father into the 'lacking father' —

39 This substitution is remarked upon by Freud: "The very deed in which the son offered the greatest possible atonement to the father brought him at the same time to the attainment of his wishes against the father. He himself became God, beside, or, more correctly, in place of, the father. A son-religion displaced the father-religion." (Totem and Taboo: PFL 12, 217).

40 See Yves Birnin's phrasing the "pacifying contract" of Christianity in terms of "the sacrifice of the son" the aim of which is "the decompletion of the father" in his editorial to L'envers de Paris: Lacan, la Bible et la psychanalyse, n° 20 (July 1999).
with the death of his son, God loses what is most precious to him —, for it is the decompletion of God which allows him to love men, or rather men to believe in His love for them.

All the elements structuring Christian civilisation, equally those called forth by Legendre to support his study of the dogmatic order, are now in place, and we must now return to the key enigma we uncovered by discarding the most fanciful elements in Freud's theory and reducing it to its structure: for if there is no historical origin to the sense of guilt, since there is neither external prohibition nor primal murders, except as therapeutic attempts ex post facto, what is the source of instinctual renunciation?

The only consistent element in Freud's work regarding the sense of guilt is that is has to do with anxiety, which in his writings is first presented as being caused by instinctual renunciation (PFL 7, 147). In other places however, Freud conceptualised anxiety as being a signal of danger. Indeed, Freud acknowledges the error of his ways in his Inhibitions, Symptoms and Anxiety (PFL 10), where he declares that: "It was anxiety which produced repression and not, as I formerly believed, repression which produced anxiety." (263) By Freud's own admission then, we are to understand guilt as the social manifestation of anxiety, and repression as a means of curbing that anxiety.

We are thus very clearly left with the following riddle: where does anxiety come from? Why do men need repression? And what benefit do men derive from law? It is on this key point that Lacan's concept of jouissance will bring us a number of enlightening insights, for indeed it will allow us to invert the Freudian theory in so far as for Lacan, anxiety stems neither from instinctual renunciation nor from an external threat — not to mention the primal murder —, but on the contrary from the insufficiency of repression.

IV - INTRODUCING JOUISSANCE

The constitutional Impossibility of instinctual Satisfaction

I assume that sinfulness is not a basic human condition but merely the ethico-religious interpretation of physiological distemper.

Friedrich Nietzsche

The therapeutic Function of the Oedipus Complex

If the Freudian argument may well have been compelling in the heyday of Christian civilisation, where sexual activities were exactingly regulated — masturbation, homosexuality and adulterous behaviour being heavily prohibited — and where sexual renunciation was recompensed by the forgiveness of the father in redemptive mode, voiced through the temporal incarnations of His power on earth, it no longer is the case now, and this mutation had already begun in Freud's time.

41 The Genealogy of Morals. 1956, 265.
42 This pattern comes up in Freud's five case-histories, collected in volumes 8 and 9 of The Penguin Freud Library.
43 The strict sexual commands of the Church are extensively documented by P. Legendre in his analysis of Canon law and the practice of confession (1974), most notably in his chapters entitled L'ordre sexuel et sa terreur and Politique des confesseurs, 124-164.

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In Freud's days indeed, the weakening of such rigid religious structures for the containment of desire had long initiated the irreversible alteration in the structure of communal life our contemporary societies testify to with their diverse panorama of sexual preferences and proteiform familial cells, and as much is indicated by Lacan when he observes that the birth of psychoanalysis is concurrent with the transformation of social structures — his notorious "decline of the paternal imago" — which he indexes in his habitual enigmatic fashion by referring to "the convergence of psychoanalysis with the dereliction of the antique bond through which pollution is contained in our culture". "The antique bond" in question implicitly designates the Oedipus complex, although taken in its least conspicuous function, for it is not so much its role in the institution of the familial structure which is in decline, but rather, and more central to our purpose, the part it played in the creation of sense — indeed in the last analysis the Oedipus complex is a mechanism in charge of the ascription of the meaning of guilt to instinctual discontent.

What Lacan is remarking upon here is thus not so much a softening of real fathers — it would be ludicrous to assume that the fathers of yore were any less weak than today's — but rather the decreasing efficacy of all the "therapeutic attempts" of civilisation to regulate the sense of malaise of its subjects, the source of which Lacan no longer locates in either culpability or instinctual renunciation, for he contends that it simply originates from the 'idiotic' command of the drive to "enjoy", a command which cannot be obeyed. Therefore, and as paradoxically as it may seem, Lacan's insight in fact allows us to inscribe the Freudian Oedipus in the succession of therapeutic attempts aiming to instil a degree of real culpability in the senseless command of the drive, and we can even go so far as to claim that guilt is to be understood as one of the modes of elaboration of this destructive command — although in some respects it proves to be the worst of all remedies, sometimes even more harmful than the ailment it purports to address.

The Parasite of Jouissance

This articulation [of the drive in terms of a constant tension] leads us to make of the manifestation of the drive the mode of a headless subject, for everything is articulated in terms of tension, and has no relation to the subject other than one of topological community.

Jacques Lacan48

For Lacan then, it is neither law nor the father which prescribe instinctual renunciation: rather, both come to the support of the subject in his dealings with the drive — and here we only have to recall the

45 'Pollution' indicates that what the Oedipus strives to remedy is the absence of symbolic difference in a social structure, for this absence gives rise to imaginary rivalry and its violent consequences: pollution thus - or contamination owing to a lack of partition.
case of Little Hans, whose infantile neurosis was triggered by the absence of his father's prohibition (PFL 8). In Lacan's rendering, not only is unmediated drive-satisfaction — 'pure' jouissance — incompatible with civilisation, but it is also incompatible with the survival of the subject:

But we must insist that jouissance is forbidden to him who speaks as such, or again that it can only be said between the lines for whoever is subject of the Law, since the Law is grounded in this very prohibition. Indeed, if the Law were to order, 'Jouïs!', the subject could only reply 'J'ouis' (I hear), where jouissance would be no more than merely implied [sous-entendu]. But it is not the Law itself that bars the subject's access to jouissance — rather it creates out of an almost natural barrier a barred subject. For it is pleasure that sets the limits on jouissance, pleasure as that which binds incoherent life together, until another, unchallengeable prohibition arises from this regulation discovered by Freud as the primary process and appropriate law of pleasure. (Écrits, 821; 319, trans. mod)

Thus, if Lacan inscribes himself in the Freudian tradition, he also supplements Freud's elaboration in one crucial respect, which radically modifies the orientation of psychoanalysis: indeed, by introducing the concept of jouissance, Lacan moves beyond the Freudian contradictions while also retaining the essential discoveries he is to be credited for.

Let us expose Lacan's theoretical shift step by step in order to map the points at which the concept of jouissance intervenes to order psychoanalytic theory along different lines:

a) Lacan states explicitly that if "jouissance is prohibited to him who speaks as such", this prohibition is not to be attributed to the law: "But it is not the Law itself that bars the subject's access to jouissance." In view of the Freudian impasse formalised earlier by way of a reduction of his theorisation of instinctual renunciation to its failure — essentially located in that it never convincingly identifies any external instance of prohibition but only its secondary emanations —, we can appreciate to its true value Lacan's claim that the cause of prohibition is to be sought nowhere else than in the necessity of instinctual life. "For it is pleasure that sets the limits on jouissance." Lacan's first move then lies in the recognition of the constitutional impossibility of drive-satisfaction and his attribution of instinctual renunciation to the subject's own psychical organisation.

b) Evidently, this assertion presents Oedipal law in a different light entirely, for if its function is not to impose instinctual prohibitions on the subject, what is it? Lacan's next step is thus to view the Oedipus as the prevalent agent for the transformation of this 'psychical' prohibition by way of the "apparatus of language": in effect, Lacan declares that "another, unchallengeable prohibition arises

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49 Or indeed of a number of cases of psychoses, caused either by the presence of a non-castrated father - as in Schreber's case, which I take up in my penultimate chapter - or by the absence of sufficient external authority.
50 The reference is to Seminar XX: "Reality is approached with apparatuses of jouissance... we focus, on course, on the fact that there's no other apparatus than language.

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from this regulation discovered by Freud as the primary process and appropriate law of pleasure." Here Lacan refers to the taking-up of this impossibility (or real castration) in language, thereby effecting what is known as symbolic castration in the Lacanian vocabulary, and which gives birth to the split subject: "rather it creates out of an almost natural barrier a barred subject". Indeed the subject does not have sufficiently elaborated defences at his disposal to be able to transform the impossible demand of the drive for satisfaction by means of the pleasure principle alone, and he must therefore rely on the intervention of external agencies of prohibition — or what Freud named the reality principle.

Oedipal law must therefore be conceived simply as a means by which men have partially succeeded in curtailing the destructiveness of the drive, and this by drawing it ever further from its circuitous route into the pathways of instinctual renunciation: sublimation, religion, civilisation, law and ethics. Moreover, it is absolutely logical that such a law should draw its substantial elements from the familial context, where the instinctual impossibility first marks the subject, who will then demand that there be an external law that will supply him with the signifying materials necessary to the construction of his own mode of regulation.

c) It is in this light that we can then understand Lacan's affirmation that "the Law is there ab origine":

If Freud insisted on the Oedipus complex to the extent of constructing a sociology of totems and taboos, it is obviously because for him the Law is there ab origine. It is therefore out of the question to ask oneself the question of origins - the Law is there precisely from the beginning, it has always been there, and human sexuality must realise itself through it and by means of it. This fundamental law is simply a law of symbolisation. This is what the Oedipus complex means. (Lacan: 1993, 83)

To state that Oedipal law is there from the beginning implies however no claim to historical truth on the part of Lacan for, true to his claim that "the slightest alteration in the relation between man and the signifier...changes the whole course of history by modifying the moorings that anchor his being" (Écrits, 527; 174), Lacan never speculates on historical origins. What this statement acknowledges is simply that there must always be a degree of instinctual renunciation present in order for there to be subjective life, and this is evidently the primordial fact referred to by Legendre (1974, 251), for man's dependency on external agencies to strengthen his defence against the drive — the pleasure principle — explicates man's willing submission to instances of authority.

d) We however recall that J.-A. Miller defines jouissance as unconscious drive-satisfaction: how is it that jouissance, which we postulated to be impossible, nevertheless manifests itself? In view of this
apparent contradiction, we need to introduce Lacan's subsequent refining of his concept of jouissance: on the one hand then, 'pure jouissance' is impossible as such, but thanks to its being channelled by way of the combined operation of the pleasure and reality principles, jouissance dons a more positive outfit, as indeed it is drawn in the circuits of desire — and this is what Lacan calls the Other satisfaction, or the satisfaction associated with the enjoyment of the unconscious as symbolic. (Seminar XX, chap. V) On the other hand though, there always remains a residual jouissance "that shouldn't be but never fails" (ibid., 55; 59), for "not-all" of jouissance will allow itself to be diverted into the circuits of language, and there will always be some jouissance that will insist and disrupt the subject's "instinctual life". It is this jouissance which reveals the enjoyment of the unconscious as real.52

e) Thus, while both Freud and Nietzsche conceived law in terms of a problematic by-product of civilisation, Lacan views the advent of the law as concurrent with the emergence of the subject, and contends that the primal function of the law is to effect the transformation of purposeless jouissance into its uses: in his Seminar XX, Lacan explains his choice of the term "jouissance" by way of an analogy with the use of the same term in French property law, the rules of which divide and regulate the jouissance one has of one's property and turns the property right into something useful [l'utilé]: "That is clearly the essence of law — to divide up, distribute, or re-attribute everything that counts as jouissance." On the other hand, residual jouissance 'is what serves no purpose.' (10; 3).

No doubt, this 'split' in jouissance may lead us to think that Lacan's erstwhile re-unification of Eros and Thanatos, mentioned earlier (at 43), was after all not that radical, for in his elaboration we still note a certain operational dualism of jouissance. The key importance of this reunification is however indisputable in so far as it will allow Lacan to guide the evolution of psychoanalysis by identifying its primary aim as being the reduction of jouissance to the dimensions of desire rather than the lifting of the ban of repression: it is thus that the Lacanian clinic moves away from the Freudian emphasis on interpretation and stresses the importance of construction, this term designating the construction of the subject's relation to the drive. Moreover, in his later work on the letter, Lacan will also devise means to work on this residual real in order to defuse to the most the perilous insistence of the real, but I will leave this behind until the last chapter of this thesis.

Psychoanalysis as the Ethics of Jouissance

To assert the acephalic nature of the drive, to conceive it as a parasite that lives off the subject, and to affirm as a consequence the constitutional — and desirable — impossibility of jouissance is however not to give up on its treatment, quite the contrary, for it entails a recognition of the nefarious nature of the drive and the necessity for its demands to be diverted through other channels. By the same token, this

52 A distinction made by Lacan in his Preface to the English edition of Seminar XI.
recognition implies a drastic mutation in the orientation of psychoanalysis, for it can no longer hope to
devise universally valid solutions, but rather needs to engage in a constant effort to assess the efficiency
of the mediation of the drive by countless human formations, and to intervene by way of individual
rectification when possible. Furthermore, it does not entail the withdrawal of psychoanalysis from
either the field of theory or that of the social, for indeed, if the Lacanian approach perceives that all
human inventions are indispensable modes — or necessary fictions — of elaborating the drive and
regulating jouissance, it does not accept for all that that they are all equally effective or indiscriminately
desirable. It is thus that we can return, somewhat more informed, to Lacan's assertion to the effect that
"The curbing of jouissance is of the essence of all human formations [institutions] rather than its
accidental consequence."53

In a Lacanian orientation then, which in the last period of Lacan's teaching may be defined as
informed by an 'ethics of jouissance,' one will endeavour to articulate a theoretical apparatus devised for
the treatment of jouissance with the recognition that the primordial fact of politics, when reduced to its real
core, reveals itself to be, in the last analysis, the mark upon which the subject's ethical choice will be
able to ground itself — for, although this mark is what renders the subject amenable to discursive
manipulation, it will also be shown to be that which inscribes his absolute particularity.54

V - CONCLUSION

Fault is the Wound which bleeds Life into the Body of the Law

The laws of fate - misfortune and guilt - are elevated by law to measures
of the person; it would be false to assume that only guilt is present in a
legal context; it is demonstrable that all legal guilt is nothing other than
misfortune.

Walter Benjamin55

In mapping the complex vicissitudes of instinctual life, we reduced guilt, or more accurately the sense
of being-at-fault,56 to the anxiety caused by the impossible demand of the drive for satisfaction. It is this
impossibility, "the primordial fact" of politics, which I termed the 'wound' that secures the law's hold
on its subjects, and which draws the subject's instinctual conflict in the "mytho-logical" circuits of the
law, the appeal of which is sustained by way of its all-encompassing, ever accommodating discursive
apparatus. The political art of submission then derives its strength, on the one hand, from the structural
necessity that there be a narrative reduction of jouissance to the measures of the law, and on the other, from a
pervasive belief in a knowledge in the Other, dispensed in the name of love. This leaves us with the
following elements as formalising the structure of our further reflection: the instinctual utility of law and

54 See my conclusion to this thesis: The mark of Law, a Letter and an ethical Choice.
55 W. Benjamin, "Fate and Character": 1979, 127.
56 To borrow a Heideggerian phrase: Schuldigkeit, which has been taken up by J.-A. Miller: 1988b.
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its corollary, a belief in law supported by faith in a superior knowledge, which however must present itself in the name of the good of the subject, best guaranteed by the semblant of love.

Where can we find this complex articulation best encapsulated, if not in the legal concept of fault? It is an oft-noted fact that the perennial attraction of the law is intimately bound up with fault: indeed, the combination of the mythical and logical dimensions of the law is nowhere better incarnated than in the legal instrumentalisation of fault, for it is the weight of legal guilt which will tip the scale of justice one way or the other, and which will thereby confer the attribute of reason — or legal truth — to the judge's decision, while the redemptive aura of legal fault will in turn render the decision palatable even to the accused party. Those are thus the terms of our equation: on the one hand, it cannot be denied that law fulfils an essential function when it comes to the regulation of jouissance, and that fault is the most efficient means as yet devised by law in order to do so, yet on the other, Freud noted very accurately that the instinctual utility of the law "implies nothing as to the ethical value of such a law" (PFL 12, 284, op. cit. at 17), a remark that resonates deeply with Benjamin's observation, also drawn from his essay on Fate and Character.

The guilt context is temporal in a totally inauthentic way, very different in its kind and measure from the time of redemption, or of music, or of truth. (op. cit., 128)

Here, Benjamin provides us with yet another element for our critical approach to the law, for he supplements our advances thus far by hinting at the fictional quality of the concept of fault in stressing that what will be deemed to constitute guilty behaviour is in no way related to the truth of the subject, to his particularity, and by deducing therefrom the artificial character of the redemptive claims of the law. Thus, although it must be recognised that fault serves an indisputably central function in the regulation of social conflicts, Benjamin's insight brings to light the very reason why we cannot merely accept legal guilt as a satisfactory mode of dealing with the subject's personal conflict, for it at best silences it by means of its "inauthentic" redemptive promise.

It nevertheless remains that the difficulty in doing away with fault lies in the strong attraction it exercises on both parties to the legal conflict, an attraction which entrenches the notion of fault even more deeply than its being a key element in legal narratives — indeed, if it serves to resolve insoluble conflicts by means of an all-accommodating rationale, it also brings an unquestionable satisfaction to defendant and plaintiff alike. It would be disingenuous indeed to deny that there exists a strong libidinal investment on the part of the subject of his relation to the law, which we can decline as follows: firstly, formal justice — equality of enjoyment —, as already argued, plays a strong part in the subject's submission to the rule of law; secondly, there exists an undeniable need for punishment, primarily evidenced by the compulsion to confess, and thirdly, we observe an increasing demand that the law recognise one's status as victim and find a way of compensating the subject for his losses. These three

57 Noted by T. Reik in his interesting - if somewhat dated - work on psychoanalysis and criminology (1973).
factors account summarily for the diverse modes of subjective investment that divert the law from its regulatory purposes: transference to authority, need for punishment, a desire for truth and certainty, and the will to be made whole again by way of affective or real compensation.

Furthermore, we can now circumscribe the two key motives behind man's willingness to accept the legal reduction of his personal conflict to a highly contextualised, hence arbitrary, notion of guilt: on the one hand, the subject derives a form of thwarted satisfaction from his interaction with the law, and on the other, the omnipresence of the law, reinforced by its willingness to appear as having an answer to every human conflict — which, in passing, reveals the legal personnel to be the prime dupes of the power of the signifier" —, strengthens the subject's belief that there are no alternative solutions to the instinctual impasse that marks us all.

Yet, if we are to follow Benjamin in acknowledging the "inauthentic" character of the redemption offered by law, we cannot but search for other means of addressing the primordial fact of politics in the social for, and again I call upon Benjamin:

Fate shows itself, therefore, in the view of life, as condemned as having, at bottom, first been condemned and then become guilty. Goethe summarises both phrases in the words "The poor man you let become guilty." Law condemns not to punishment but to guilt. Fate is the guilt context of the living. (op. cit., 127)

By way of a conclusion to this introductory chapter, let us give a more precise form to the two crucial factors we have been able to deduce from our argument:

- The primordial fact of politics, mediated by way of the legal concept of fault, proves to be the most powerful instrument at the service of political domination, and proceeds by means of its definition of man's misfortune in terms of positive guilt;

- Despite the temporary appeasement it sometimes undoubtedly produces, judicial enunciation can but exacerbate man's personal conflict by actualising a "latent nomination", an actualisation which names the subject's being-at-fault by equating it with a signifying articulation — and the latter can but reduce the subject to the measures of what he is for the Other: hence, inauthentic redemption.

58 An expression derived from the title of Lacan's Seminar XXI: Let non duper errant, which, amongst many other things, we can read as follows: those who refuse to be the dupes of the signifier - namely, to believe in discursive truth, in the eventual adequation of man to the signifier - are condemned to erring, this however implying nothing as to the ethical value of such wanderings....

59 J. Lacan, Seminar IX, 10 January 62: "every enunciation" implies "a latent nomination".
CHAPTER II
Culpability and the Politics of Love

The exchange of fault against submission is what institutes the semblant of the Political, but only in so far as it is expressed in the particular language and version of an explicated myth and commented by a doctoral science.

Pierre Legendre

I - INTRODUCTION
Culpability: religious Fiction or real Function?

In the previous chapter, following a study of the Freudian contradictions and their re-articulation by means of Lacan's complex concept of jouissance, I argued that culpability was most constructively understood as both the favoured instrument and the worst by-product of the discursive fictions in charge of curtailing the sense of malaise unfailingly associated with the discontents of instinctual life. For the greater part of the documented history of mankind, prevalent among such narratives have been those of religion, law and morality, or a protean combination thereof. These narratives discharge their task by converting the most nefarious effects of instinctual life into the more manageable currency of legal and moral guilt, a conversion principally effected through the medium of the concept of fault. Indeed, fault is the means by which senseless malaise is taken up in a process of rationalisation, one that consistently begins with the 'discovery' of a mythical origin as its cause — mysteriously thus far overlooked —, classically an unforgivable sin, a repressed violence, an unspeakable horror or a shameful crime. The no less classical result of such a discovery is that this mythical origin, swiftly endowed with the value of truth, will then serve as a legitimising point of reference for all laws thereafter, though of course its meaning will be constantly rephrased to suit contemporary requirements.

Logically then, this chapter will proceed to explore how the narratives in question succeed in anchoring themselves in the subject, and will isolate the key function performed by fault in the constitution of such a knotting.

Fault and the symbolic Efficacy of Discourse

To resituate our advances thus far in terms of 'real fictions', we may also pose that it is the concept of fault which introduces an element of the real in the fictions, or signifying constructs, which frame civilisation. Indeed, following Lacan, one can define civilisation as the collective fictions which organise the jouissance of a given group. From a Lacanian perspective then, it is plain that the prevalent discourses of a given civilisation may only preserve their dominant status by retaining their symbolic efficacy.

This statement leaves a number of questions in its wake: thus, first of all, what is meant by the symbolic efficacy of discourse? Quite simply, this Lacanian expression indexes the capacity of a given
Chapter II - Culpability and the Politics of Love

discourse to regulate efficiently the jouissance of the subject, this being the primary function of the discourse of the unconscious. As to the institutional discourse, it secures efficacy by relaying the unconscious in its function of instating homeostasis.

Secondly, why is the symbolic efficacy of discourse conditional upon its being linked with the real? Again, simply, because for a discourse to successfully deal with the effects of the real on the subject — namely, the instinctual impasse isolated in the first chapter and profusely indexed by Freud's array of related concepts —, it has to be able to instrumentalise something of the real in question by raising it to the dignity of the signifier. It is indeed clear that the real, although it is that which resists symbolisation, can only be circulated in language by being taken up in a signifying articulation. Consequently, the meaning which discourse ascribes to the real has to command the subject's belief for this meaning to be capable of mobilising the subject's conflict. From the outset then, let us note that belief is the key operational factor in the symbolic efficacy of discourse.

And finally, if the terminology of fault seems to have been the most efficient means of instrumentalising the real for countless centuries, it is no doubt owing to the capacity of moral fault to occupy the same topological space as the fault in the subject. Indeed, if the discourses of civilisation succeed in achieving symbolic efficacy, and if they do so by taking over from the parental discourse which, as we have seen, support the subject in his encounter with the real, then it is clear that such discourses must knot themselves at the point at which the unconscious fails to contain the subject's jouissance. Thus, the symbolisation of fault in discourse echoes with the deep sense of being-at-fault of the subject, or the relentless sense of guilt which Freud attempted to account for and deal with through his Oedipal theories.

Christian Religion, Oedipus Complex and the Institution

In the present chapter, I will begin to examine the conditions which a given discourse must fulfil in order to achieve such a symbolic efficacy, starting from Legendre's thorough analysis of Christian fictions and their heavy reliance on a hierarchised taxonomy of sins in order to progressively isolate the operational feature beneath each 'Christian-specific' device. Indeed, the centrality of the concept of sin in Christianity offers us a prime example of the discursive instrumentalisation of fault by the institution for the regulation of its subjects' behaviour, and as such a close study of its mechanisms will yield many a profitable insight regarding the subject's attachment to power. For the purposes of such a study of the Christian discourse, I will draw from the essay in which Legendre lays down the

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2 See the similar understanding of ethics in the Lacanian clinic: "An ethics is not a moral ideal, it is that which permits the effective treatment of a mode of jouissance.", E. Laurent, "La passe et la garantie dans l'école", La Cause Freudienne 20 (1992), or Psychanalytical Notebooks 2 (1999), at 127.

3 Note that Lacan often assimilates the discourse of the unconscious with that of the master.

4 Those listed in the first chapter: anxiety, remorse, superego, guilt, culpability, repetition-compulsion and the death-drive

5 For the reduction of moral fault to logical 'fault' in its function of anchoring discourse in the real, see P. Skriabine, "Clinic and Topology: The Fault in the Universe", in Topologically Speaking (forthcoming), and my chapter VI. Note also that Lacan's 'sinthome' (the old French spelling for 'symptom') indexes the centality of sin - or the 'fault' in the subject - in the formation of the symptom (Seminar XXIII, 18/11/75, session published in Aubert: 1987, at 39). In Lacan's theory, the expression 'sin' does evidently not imply a moral judgement on the subject, but situates the point at which the subject is unable to subjectify his jouissance. In other words, it situates the particular modality of the structural failure of the unconscious in each subject, which is at the origin of the formation that comes to supplement this failure: the sinthome.
Chapter II - Culpability and the Politics of Love

Theoretical foundations for his psychoanalytic reading of the political, the seminal L'amour du censeur: essai sur l'ordre dogmatique.6

My reliance on Legendre is impelled by two considerations: above all, his work is no doubt the most comprehensive endeavour to date on the part of a lawyer to conceptualise the complex knot which binds the subject to the institution from a psychoanalytic perspective. And in effect, Legendre's analysis will take us through the Freudian concepts of the Oedipus complex, the unconscious (section III), vertical identification and the cultural super-ego (section IV) from the point of view of the political. Indeed, Legendre attests to the pertinence of his psychoanalytically-informed analysis of the genesis of power by postulating the existence of a strict parallel between the strategies of the Christian religion and the mechanism of the Oedipus complex, which are both said to originate in an external prohibition. Further, while Oedipal tension resolves itself through the precipitation of the Ideal in an attempt on the part of the subject to make sense of the ambivalence that repression leaves in its wake, Legendre argues that transference to authority is the medium for a similar 'resolution' in the institutional discourse. For both Freud and Legendre, the sense of guilt is from then cast as the consequence of the return of a repressed sexual sense, and its elaboration in terms of culpability belongs to the Ideal, or to what of the institution comes in its place. Indeed, I will show how Legendre's essay implicitly relies on the Freudian notion of the Ideal in order to theorise the subject's investment in the institutional discourse.

Secondly, Legendre's analysis of the genesis of the contemporary institutional discourse in terms of the transformation of medieval scholastics into the Christian discourse, which in turn gave way to the modern institution, will evidence some of the discursive techniques which continue to ensure the symbolic efficacy of western discourses of power. And I will therefore return to Legendre's historical discourse-analysis in the following chapter with a view to defining more precisely the conditions for the perennial efficacy of the institutional discourse.

The therapeutic Function of Culpability

Whether the Oedipal structure of the unconscious is truly to be attributed to the Christian myth, or whether the Christian religion merely provided a narrative framework for the predisposition of man to guilt and submission is a question I have already begun to address in the previous chapter and which will be elaborated further in the course of both this chapter and the following ones.

Indeed, Legendre is not immune to the temptation of casting both moral and legal culpability as mere institutional devices in the service of the domination of temporal and spiritual powers alike. Yet, recall that I concluded my chapter I on the perhaps unexpected assertion that the only productive way for psychoanalysis to apprehend culpability was to acknowledge that it fulfils an undeniable function, and that it must therefore take its place amongst the "therapeutic" efforts of civilisation to contend with the blind demands of the drive. By the same token, this conclusion logically undermines the credit of the frequent ascription of a malevolent 'theft of enjoyment' to universal discourses and their instances which, as the argument usually goes, would then derive a

6 This work not being available in English, I take full responsibility for the possible inelegance of my translations. All
tremendous benefit from such a deprivation by recuperating the libidinal energy thus aim-inhibited for self-serving purposes. It will be with regard to this point that Legendre's work will prove somewhat too unequivocal.

This summary indication of the essence of my disagreement with Legendre in the guise of his misrecognition of the therapeutic function of both the Oedipus complex and the institutional discourse does not detract from his account of the mechanisms of the institutional discourse, and I will now develop his exposition of the means by which the subject's personal conflict has traditionally been transposed into terms designed by the occidental institution in its universalising aspiration. The argument will develop as follows: I will interweave a presentation of Legendre's historical discourse-analysis of the alienating effects of the subject’s dependency on love, a dependency which he sees to be fostered by the political art of submission in its recuperation of the clinical fact, the "primordial fact" of politics, with the psychoanalytic supplements required for a full appreciation of the value of his elaboration. However, each line of argument will also include a number of elements which modulate Legendre's analysis, to be assembled at a later point.

Although I will decline to fully engage upon the path marked out by Legendre, his theory nonetheless warrants serious consideration, for it rests on a compelling and thorough transposition of the Freudian Oedipus complex to the political field. As such, it will cast some light on the subject's puzzling love of authority. However, when much later in this thesis (chapter VI) I will reduce the structure of the Oedipus complex to the propositional logic that supports it, the grammatical structure of truth I will then identify will be seen to subtend what Legendre had been content to observe as the instinctual phenomenology of political life.

II - A GENEALOGY OF THE RECUPERATION OF DESIRE

Institution and dogmatic Order

This section will be dedicated to posing the frame of Legendre's argument by delineating the sense which he ascribes to such broad terms as "the institution" and the "dogmatic order", and by noting his awareness of the ongoing weakening of dogmatism. I will bring these introductory comments to a close with Legendre's contention as to the persistence of the censoring telos of dogmatism, and his indictment of the increasingly destructive effects of such a persistence for the subject.

From theologico-juridical Dogmatism to generalised Benevolence

Although Legendre's essay is essentially dedicated to an exposition of the politics of submission in the Christian tradition, I will specify from the outset — and this in order to circumvent potential allegations of obsolescence in view of the now marginal function of religion —, that he does not

7 To be precise, for Lacan the drive's sole aim is the satisfaction it derives from the circulation that sustains it as a "stationary tension" (Seminar XI, 181): "If the drive may be satisfied without attaining what, from the point of view of a biological totalisation of function, would be the satisfaction of its end of reproduction, it is because it is a partial drive, and its aim is simply this return into circuit." (ibid., 179) The 'real' objects of the drive are concessions to the pleasure principle, for "the course of the drive is the only form of transgression that is permitted to the subject in relation to the pleasure principle" (ibid., 183), and thus the sexualisation of its aims is retroactive (ibid., 176).
pose the Christian dogma to be still prevalent as such. Rather, Legendre postulates that the modern subject is the object of self-same manipulations by "the institution". In his account indeed, "the institution" borrows the controlling mechanisms perfected by the religious discourse, and the "the institution" includes the university (human sciences at 232ff), advertisement propaganda (241ff) and more generally, the political apparatus at large and its numerous institutions. Further, all these discourses belong to "the dogmatic order".

The Institution

What, then, is this all-encompassing institution? The Oxford Dictionary broadly defines the term "institution" as follows: "a society or organisation founded for a religious, educational social, or similar purpose". And in the first few pages of his essay, Legendre indicates that he intends to use the term "institution" as introduced by Roman Law (7). A quick search through a Latin dictionary yields the additional semantic components: the word "institution" derives from the Latin institutum, past participle of the verb instituere which signifies to fix, organise, dispose, train, form, educate or again instruct. As to institutum itself, it means establishment, habits, rules of conduct, lessons or precepts. It then gave birth to the noun institutio, which is defined as formation, establishment, instruction, education, method or, lastly, system.

We can thus readily assume that when Legendre refers to the generic category "the institution", he is referring to all manners of human formations which function by way of precise rules and a specific method, thereby amounting to a system for the education and training of its subjects. This deduction is backed up by Legendre's constant association of the term "institution" with the "dogmatic order". In other words, in his work "the institution" designates all formations established and operated by the "dogmatic order" with a view to ensuring its supremacy, while "the institutional discourse" is no doubt to be understood as designating the discursive strategies employed by "the institution" in order to perpetuate its hold on the subject.

The dogmatic Order

This evidently leaves us with the next question: if "the institution" encapsulates the whole of the human formations which belong to the dogmatic species, then what is the dogmatic order, since it is supposedly the common denominator of these institutions?

Legendre defines the dogmatic order solely through its characteristics: the dogmatic order is thus impelled by a censoring ethos, operates according to a recuperative principle, and aims to reduce particularity to the measures of discourse. Lastly, and crucially, the dogmatic order legitimises its existence by way of a constant reference to its overarching teleology, the subject's happiness. More precisely maybe, the dogmatic order can be defined through its function, which is to perform the art of censorship. And censorship, whether Oedipal or political, is defined by Legendre as "the successful ways to bury a conflict" (17). Thus, quite clearly, in Legendre's account the purpose of the dogmatic order is the same as that of the Oedipus complex: namely, to substitute its own representations for the personal conflict of the subject with a view to furthering the common good of all involved.

* Note that Legendre's essay was published in the collection "Le champ freudien", which was edited by Lacan at the time.
To gather the threads of the argument so far, let us thus say that "the institution" is the formation through which the "dogmatic order" achieves its purpose, which is the "censorship" of the subject's personal conflict, and that "the institution" will "recuperate" the desire thereby inhibited from its aim through the circuits established by the institution. Lastly, the subject will be seduced in relinquishing his desire once and for all for the love of authority, and in order to access to happiness:

The traditional institution is indeed supported by an explicative discourse, by the science of the legist (in our time also enveloped by the already mentioned social-human sciences), which do not cast the Law as the topographic locus of the incarceration of desire, but rather as the idea of happiness. (28, my italics)

Belief in Love and the modern Institution

According to Legendre, the modern institution inscribes itself in the continuity of the art of censorship carefully established by the canonical tradition, which itself developed on the trace of the parental schema. The critical importance of Legendre's precise mapping of the features which define a discourse as belonging to the dogmatic species lies in it emphasis on the pivotal function of this "idea of happiness" in the subject's acceptance of submission. And in effect, what other guarantee is there that the purpose of such discourses is anything but self-serving? In turn, to believe that the objective of the institution is to instate happiness for all has for corollary the belief that the institution loves its subjects.

Thus, when addressing more specifically the issue of the contemporary legal discourse, Legendre identifies the generalised benevolence of modern bureaucratic democracies as the successor of the redemptive promise supporting the hold of the theologico-juridical apparatus:

What is the deal for us who are the direct heirs of the dogmatic discourse? In view of the ways in which the mythology of omnipotence defends itself, in which the logic for the diversion of the subject reconstitutes itself and in which the tyranny of laws and the misconstruction of the rebel are being learnt, there remains little space for doubt. The answer lies in the expansion of bureaucratised systems, bearers of the great gift of Benevolence, capable of measuring the whole of the conflict as well as of recuperating the threat of a knowing-too-much about the subject and his religion of Power. (23)

The last limb of this statement picks up on the retrieval of the religious artifices by secular organs of power, effected alongside the gradual separation of law from all subservience to its canonical sources. There indeed Legendre notes that the institutional discourse takes over the two key functions of religion: to provide a solution to all possible forms of conflict, thereby reclaiming the rebel, the insane and the criminal alike for the all-encompassing capacity of universal laws, with for underlying motivation to put a halt to the quest for any alternative understanding of such conflicts.

The discernible persistence of such discursive mechanisms for instating what he calls the "hold on the subject by way of his desire" (31) is what motivates Legendre's attempt to unmask what is no doubt the most powerful tool at the service of such a consensual recuperation: belief in love [la croyance d'amour]. For "belief in love", which we will see to be supported by transferential faith in a
knowledge in the Other in the next chapters, is the most obdurate of all obstacles to the foregoing of
the 'comfortable' state of Oedipal infancy, where there is always an Other who knows best. Consequently, Legendre states from the first that his intention is to expose the artificial nature of such a belief and to explore the profound causes of its perennial appeal:

Where the great task of Power consists in being loved, our concern will be to observe how submission, having become a desire for submission, is propagated. [...] From the legists-theologians of Antiquity to the manipulators of advertisement propaganda, a single and self-same dogmatic apparatus has perfected itself in order to capture the subjects by way of the unfailing means which is here in question: belief in love. (5)

I will return to the persistence of such a belief in love at various points in this thesis, for there is no doubt that such a belief constitutes a fundamental impediment to the subject's possible freedom. For now, let us briefly examine whether the dogmatic order is still operational today.

The discursive Remains of the dogmatic Order

From one version to the other, dogmatism is first of all defined by a self-same discursive technique, and not by a determined semantic content.

Pierre Legendre (238)

Despite his central emphasis on the canonical discourse, which he casts as the matrix of the dogmatic order, Legendre does not assimilate this order with a specific discourse. Indeed, this would limit the scope of his analysis to the Christian genesis of the political art. Rather, and more interestingly, Legendre argues that there exists a perennial, all-pervasive mode of instating and utilising submission which can be detected owing to the invariant elements that frame its operation. These elements, as already mentioned, are essentially censorship, or the successful burial of the subject's conflict, and belief in the benevolence of the institution.

Yet, Legendre also notes that it is the partial collapse of the dogmatic order which afforded the possibility of approaching dogmatism critically, dogmatism being now understood as a "historically specified" mode of life in common. He also remarks that the birth of psychoanalysis is contemporary with "an acute phase in the crisis of [traditional] dogmatism and its penitential system" (22-3). This "crisis of traditional dogmatism" does not however allow us to discount the dogmatic order as obsolete, quite the contrary: for the negative effects of the dogmatic order are indeed evermore prevalent, while its positive aspects — or its symbolic efficacy — have considerably lessened. As to psychoanalysis, according to Legendre, it is the discipline which takes upon itself the task of dealing with the nefarious consequences of the faltering but obstinate persistence of the dogmatic order for the subject:

When dealing with historically specified European groups, psychoanalysis is precisely confronted with what remains of the medieval inventions, which have until now proved irreducible: the remnants of a

9 One only has to cast a quick glance at some of today's magazines, where specialist advice is given on every single topic, in order to observe the desperate wanting-to-believe in an Other who knows writ large on every page.
knowledge reasoned by way of this universal taxonomy that the super-ego of culture testifies to in the 20th century. (53)

Legendre also asserts the urgency of engaging critically with the institutional discourse. Indeed, having noted that psychiatry itself recognises the undeniable correspondence that can be observed between specific discursive modes and the clinical phenomenology of mental disorders (8), he voices his fears that the dogmatic order, truncated of its spiritual respondent — and thus of its most potent mythical agent —, will increasingly come to mediate its failure to efficiently suppress the subjective conflict, and that it will do so through an ever growing utilisation of psychiatric hospitals and other such institutions for the containment of its deficiencies:

How will the conflict of desire, evidenced by the ancient dogmatic discourse, be managed, and by who, in this specified institution (nationalist confinement) where not all languages may be spoken, and which does not assimilate all exegeses of the text that is truly its own? I fear that it will be the psychiatric asylum, modernised and made more presentable, which will again supply the tragic answer [to this question], and not only the psychiatric asylum, but any place (assigned and defined by the holy doctrine) where rebels will be seated each according to his own title. (234)

On the one hand then, Legendre takes account of the fragmentation of the dogmatic order, and on the other he affirms the destructive nature of its perennial influence, which is guaranteed by the combined effect of the two following features:

- firstly, the institutional discourse will do everything in its power to sustain the prerequisite to its permanence — the sufficient credit of its pretence to bring about the subject’s happiness —, an obstinacy which denotes the ancestral attachment of the ‘doctors of the Law’ to being universally accommodating, omniscient and omnipotent. In order to sustain the credibility of such a claim, the institutional discourse will tirelessly consolidate the weakening truth afforded to the "semblant of the Political" by rephrasing, re-articulating and re-interpreting the textual material that supports it — although these days it is scientific knowledge which is called forth to compensate for the loss of its spiritual aura, as noted here by Legendre concerning history:

  Specialised historians, channelled in the modern path of Faith, are amongst the most eloquent propagators of a cinematic in conformity with the needs of the institution for beautiful germane images, which have the power to provide a new colouring to history and to prepare it to the taste of the conspiracies of the present. Law consumes the past, remodels it aesthetically, invents it on the basis of the bits and pieces at its disposal, always with a view to ground orthodoxy and in the hope of [instituting] an irrefragable apologetic, which today expresses itself thus: but look at the forthcoming happiness! (238)

- secondly, the mitigated success of the institutional apparatus nonetheless remains sufficient to deter both the subject faced with his particular conflict and other possible discursive interventions from devising alternative modes for the elaboration of life in common, which
may be more respectful of the subject's particularity than the vestigial order of dogmatism —
admant as it is on universal solutions.

Having taken good note of these factors, I will now define the mirroring structures which,
according to Legendre, effect the recuperation of desire in both the Oedipal unconscious and the
institutional discourse, and examine how he proposes to apply psychoanalysis, discipline of the
personal conflict par excellence, to the institution, the task of which is to pre-empt, regulate and
resolve social conflicts.

III - A PSYCHOANALYTIC THEORY OF POWER

Reading Law with Psychoanalysis

The previous section concluded with Legendre's assertion that, although the dogmatic order may
not be as effective as it used to be in its censoring of conflicts of desire, it nonetheless continues
both to preclude the search for alternative solutions and to foreclose the subject's particularity from
the field of discourse. Legendre also indicates that in his view, the major obstacle to the invention
of other modes of discourses lies in the subject's belief in love: for the subject loves the institution
because the institution loves its subject.

This contention being the core of Legendre's argument, this chapter will now unravel as follows:
in this section, I will attempt to establish whether one may use psychoanalytic theory profitably in
order to understand the mechanisms of power; in the following one, I will draw on Freud's theory
of identification in order to circumscribe as accurately as possible the mechanism whereby the
subject comes to love the institution; and in the last section I will sketch a number of elements
which instate the illusion that there exists a reciprocity of love between subject and institution.

A SEXOLOGY OF POWER

The repressed Truth of the Political

Legendre introduces his essay by announcing his intention to use the Freudian discoveries in order
to disclose the repressed truth of power, or in other words lift the ban of political repression.
Although we will examine the 'repressive' mechanism of power in question more in depth in the
following pages, let me state from the outset what the repressed truth of power is for Legendre: the
truth of power is that it sustains itself through a recuperation of the subject's desire, accepted by the
subject in view of the substitutive satisfaction the institution offers in its place. Thus, logically,
Legendre's project is to reveal that the institution ensures its hold on the subject through the "knot
of desire" (5), and to map the means by which it succeeds in doing so.

Legendre then proceeds to adduce evidence as to the viability of his reliance on psychoanalysis
for his purpose by way of an analogy between the unconscious and the institution. Thus he will
draw a number of parallels between, on the one hand, the discourse of the Other that formalises
the subject's instinctual conflict in the unconscious and on the other, the discourse of the
institution which performs a similar act of repression regarding the suppression of the origins of power — for it has none other than itself — with a view to “silence/seal truth” (7).10

Legendre’s starting hypothesis can thus be phrased as follows: just as Oedipal law represses the instinctual impulses of the subject and diverts the latter towards its socially acceptable outlets, the institutional discourse substitutes a transference to authority for the subject’s sexual desire. This analogy leads him to “note [that] the inevitable point of passage for any doctrine enunciating submission [is] a sexology”, for power relies on “a radical manipulation of sexual symbols” (6, his italics), which is instated and operated by law [le Droit].

Legendre’s assertion to the effect that power is grounded on a concealed sexology evidences that in his account the sole mystery of the origin of law lies in its covert recuperation of a prohibited desire. He will then set out to prove the validity of his claim by mapping the genealogy of such a recuperation through a deciphering of the sexual symbols that support the hold of power: the phallus (129ff), the castrated father (70ff), the theme of virginity (134ff) and mother-law (219ff) will subsequently be called forth to support his analysis.

Legendre’s unambiguous affirmation that power sustains itself through its recuperation of sexual desire implicitly endorses one of the two possible readings of the Freudian theory presented in chapter I, namely that there exists an external origin to the malaise in civilisation. It also suggests that Legendre considers both Oedipal law and the institutional discourse as having for their sole function the perpetuation of their hold on the subject.

Inverting Freudian Culpability

Legendre’s conviction that the principal objective of all power is the recuperation of desire for the arbitrary purposes of a given civilisation, and that it operates by way of a concealed sexology, already intimates on what point his analysis will diverge from that of Freud. And indeed, although he does not explicitly states so, it is likely that in Legendre’s analysis, ”the social version of an original political drama” articulated in the ”text of the Law” (28), which he situates at the collective equivalent to the personal conflict ordered by way of unconscious processes, does not refer to the discursive dissimulation of a mythical aggression performed by the subject on figures of authority and thereafter repressed.

On the contrary, for Legendre the original drama is the suppression by way of textuality of a violence enforced by the very figures of authority on the subject, while the textual renderings thereof aim to translate the ruthless imposition of sexual prohibition in terms of a redemptive necessity. It is on this point that Legendre inverts the Freudian theory of the origin of guilt. And in effect, in his account culpability is not to be ascribed to a primal sin on the part of the subject, which would then be — phylogenetically or by means of “founding speech” — transmitted to all succeeding generations, but rather to the fictional, a posteriori construction of such a sin by the instances of power, to

10 The French sceller la vérité indicates both the silencing of truth - that of the subject - and the institution of another truth - that of the Other - in its place by way of the seal of the law, that of the imposed representation of the personal conflict.
be used as a political tool of submission. And in his theory, the purposes of such a construct is none other than to dissimulate the self-serving violence of power.

Legendre then proceeds to argue that this canonical construction of the subject as guilty is implemented by way of the Christian doctrine of the original sin, and that it is perpetuated through the institutions of confession and penitence which lure the subject further away from his desire through the two-fold instrument in its power: the promise of redemption and the covert threat of castration. In his analysis then, the "social version of an original drama" would refer to the continual symbolic re-enactment of the original deprivation of desire.

Before returning to his textual study of the original sin in the canonical tradition, note that such a textual re-enactment is crucial for his theory of submission. Indeed, "the symbolic takes place to simulate the true conflict which is not there" (21). The symbolic interpretation of the instinctual conflict performed by law therefore fulfils three indispensable functions for the purposes of the institution:

- Firstly, it suppresses all evidence that there exists a true conflict by substituting a carefully selected network of representations for it.

- Secondly, such representations may then be drawn into the discursive circuits though which the "idea of happiness" gradually gathers sufficient credit to convince the subject of the 'innocence' of power. Indeed, from that point on, it is the subject who is guilty.

- Thirdly, a number of institutions are then established in order to recuperate the subject's guilt with a view to re-situating the responsibility for the management of its effects onto the institution itself. This last moment in the mechanism of power ensures the monopoly of the institution over the ascription of guilt and the distribution of punishment, and it is on that point that the political dimension truly grafts itself onto the Oedipus complex.

**Symbolic Castration at the hand of the Church**

My hypothesis that such is the origin of guilt — and thus the source of belief in love — for Legendre is supported by his later elaboration on the original sin, the phallus and castration.11 Thus, later on in his work, he states that "Theoretically, moral theology... signifies (by which I mean that it is the pure sum thereof) the absolute threat of castration." (129)

It is his textual analysis of the religious dogma that allows Legendre to observe that the original sin is located in the male organ, "physical locus of the symbol" (128). The Christian Church thus identifies the phallus as the guilty organ, and by way of consequence holds that the phallus must be "sufficiently detached from the body" by way of expiation, in a process that substitutes "an apology of lack" (130) for the jouissance derived from unbound enjoyment of the organ. Legendre's account

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11 In passing, note that the status of the female subject is once again perceived to be utterly subsidiary in relation to the threat of male castration. Oedipal logic is, after all, phallic logic! Note also that quite naively Legendre seems to believe in the possibility of unbound phallic enjoyment.
Chapter II - Culpability and the Politics of Love

is supported by a series of references to the hierarchy of sexual sins\textsuperscript{12} established by the Church, for example:

- It is shameful for a man to frolic with a woman in a way that is not in conformity with nature
- It is more shameful to obtain sexual satisfaction from one's own organs
- It is very shameful that men amongst themselves and women amongst themselves give each other sexual pleasure
- It is diabolical for a man or a woman to obtain sexual excitation with an animal

Legendre moves on to support his theory that the Church aims first and foremost at the "negation of jouissance" (130) by stating that it is not the absence of a marital bond which constitutes the shameful character of a sexual act, but rather the qualification of undesirable modes of enjoyment as sins:

In other words, sexual regulation, in so far as it touches upon the pleasure principle, is not ordered around the distinction: not-marriage/marriage. Rather, it is ordered by way of the fundamental repartition... not-sin/sin. Fault and pleasure are inseparable, united in a total and perpetual altercation; they are recognised as principles bound up with each other, and we are reminded of the institutional system as a whole through the reference to this bond, whose nodal locus Penitence reminds us to be the phallus. (151)

The aim of the Church is thus well and truly to mortify the enjoyment of the organ by way of a prohibition which comes to perform symbolic castration on the subject by detaching the organ from its bearer, who may only enjoy it, as it is, on loan, following the commands of the law. The underlying message is explicit: the phallus belongs to the Church by virtue of the original sin, the Church having taken upon itself the mission of bringing about the redemption of mankind.

Let us summarise our advances so far concerning Legendre's interpretation of psychoanalysis. We note that on the one hand, Legendre goes along with the Freudian hypothesis that there exists an external prohibition at the origin of both the Oedipus complex and its equivalent at the level of the institution, or the canonical discourse. Yet, on the other hand, he does not accept that guilt is a mode of treatment of an instinctual impossibility, for he ascribes this sexual prohibition wholly to the intention of power to institute the recuperation of desire by way of a constructed guilt. Yet, recall that Freud had the intellectual rigour to divide his concept of culpability into remorse and guilt in order to resolve the paradoxical temporality of the emergence of the super-ego, thereby undermining the validity of his own theory as to the existence of an external instance of prohibition. But Legendre is for his part quite unwilling to relinquish his ascription of guilt to the canonical discourse, and one cannot help but feeling that for Legendre the Other very much exists.

Despite this crucial difference in the psychoanalytic approach and that of Legendre, one must nevertheless acknowledge the existence of an external subtraction of a share of jouissance from the subject's "sensitive appetite" (129) in psychoanalytic theory, for indeed this is what goes under the name of castration. Thus, although in Lacanian psychoanalysis — which is built, as we remember,

\textsuperscript{12} A classification Legendre (151) extracts from the canonical writings of Thomas de Chobham.
on the basis of the Freudian contradictions on the basis of the Freudian contradictions — this extraction of jouissance is merely the condition of desire, let us nonetheless go along with Legendre's hypothesis for another while, for the presence of such a subtraction attests to the phenomenological validity of his approach.

In Legendre's exposé then, this subtraction of jouissance is ensured by the canonical threat of a detachment of the organ, and this grounds the legitimacy of his parallel between the Oedipus complex and the institutional discourse. Indeed, for both Freud and Legendre it is the real threat of castration which is the operative element in the subject's acceptance of the law and his subsequent introjection thereof. And we recall that it is this internalisation of the law which initiates the subject's dependency on love and his subsequent entrapment in the evermore demanding hold of the super-ego.

**Reading the Text of the Law in the manner of that of the Unconscious**

**Law as the id quod legitur of culture**

While Freud set out to decipher the symbols of repression in the texts of civilisation with a view to exhuming the cause of the subject's long-mortified desire, Legendre proposes to use a similar method as a deciphering grid for his reading of the texts of Canon and Roman Law. Indeed, according to Legendre, although he has no access to the individual unconscious which supplied Freud with a great deal of corroborative material, the initial texts of law also harbour the sedimented deposits of the subject's repressed desire and should thus supply plentiful evidence of the recuperative mechanisms at play in civilisation:

In other words, we must understand the nature of the analogy between the Law of culture and the text which is fixed in any analytic treatment, and plunge more deeply into this relation through a means which is usually neglected, namely the juridical text. The juridical text indeed offers itself as an absolutely elementary material, and one which is also irreplaceable: for, precisely, it recites and reproduces in completely enigmatic terms the entirety of the sublime and the normative to which any subject refers himself in a given society speaking its national law. At the same time, in view of the assurance and the fertility of its rules, this text lets it be perceived that it also proceeds from the subtractions of desire. (35-6)

In this passage, Legendre is announcing that he proposes to decipher the genealogy of the politics of submission in the textual residues of past dogmatic traditions, unwitting traces of the "subtractions of desire" effected by the canonical discourse and its secular successors, by employing a reading method inspired by that of psychoanalysts. We will now examine whether such a methodological transposition is at all possible.

I will now adduce a number of elements to the support of Legendre's hypothesis that there exists a parallel between the "text of the Law" and that of the unconscious, for it is this postulated parallel which orients his reading. And indeed, if he returns to the text of the Law, it is with a view to locate the desire which it repressed and to expose the means by which this "negation of jouissance" is effected.
Chapter II - Culpability and the Politics of Love

The Unconscious as Text

In order to support Legendre's hypothesis that one may read the text of the law in the same manner as one reads the unconscious, we must define the analytic reading method with more precision. I will therefore sketch a brief theory of the unconscious, borrowing both from Freud and Lacan.

In the course of his teaching, Lacan notoriously reformulated the Freudian unconscious as the discourse of the Other. Indeed, Lacan declines to see the unconscious either as that part of the psyche to which the subject has no access — Freud himself came to question his erstwhile theory and hence proceeded to elaborate what is known as the second topography — or as the Id, great reservoir of libido.

Lacan, then, conceptualises the unconscious as the linguistic apparatus which structures the subject's relation to the drive. In Lacan's rendering indeed, the unconscious is a network of signifiers, an apparatus of jouissance (Seminar XX, 52; 55) which manifests itself as a "lucubration of knowledge" (ibid., 127; 139) on the trace of the instinctual impossibility which marks the emergence of the subject:

The unconscious is a concept founded on the trail left by that which operates to constitute the subject. The unconscious is not a species defining the circle of that part of psychical reality which does not have the attribute (or the virtue) of consciousness. (EmIs, 830; Reading Seminar XI, 260)

Although there Lacan is inflicting a different slant upon Freud's insights, his reformulation does not invalidate Freud's assertion to the effect that the structure of the unconscious is articulated by means of two instinctual processes: condensation — symptom-formation, or the coalescence of libido with a signifying articulation — and displacement, the latter being the process which takes libido away from a particular symbol to invest it in another, less conspicuous one, with a view to instate homeostasis in the psyche.

In effect then, Lacan simply formalises further Freud's own intuition that the unconscious is an apparatus which serves a twofold purpose: to reduce jouissance to the dimensions of the pleasure principle, and to circulate instinctual impulses in a socially acceptable manner by way of the reality principle. Consequently, Lacan notes that "what is essential in repression... is not that affect is suppressed, but that it is displaced and misrecognisable", a statement which clearly indicates that the function of the law of the unconscious is not to repress desire, but to order instinctual impulses with a view to minimise the tension of the drive for the subject. This is why, in a certain sense, the unconscious is desire, although no doubt that of the Other. From a Lacanian perspective, it is thus already apparent that

13 "That which can be read" of a culture (37).
14 See Freud, The Unconscious, PFL 11.
15 See Freud's introduction to The Ego and the Id, PFL 11.
16 See Freud, The Ego and the Id, PFL 11, sections IV & V.
17 See for example Freud's paper on Repression (1915), PFL 11.
18 See Freud's Formulations on the two Principles of mental Functioning, PFL 11.
the analytic treatment cannot aim to lift repression but must strive to re-organise its necessary effects on the subject. If it reformulates the aims of psychoanalysis, Lacan's theory does not invalidate the Freudian reading method, for although there may be no secrets to uncover, the mechanisms of the unconscious can nonetheless be deciphered in order to expose the libidinal structure of the subject.

The Freudian reading Method

The unconscious is thus an apparatus in charge of ordering, channelling, and transforming the drive, and Freud's key intuition is that it utilises the structure of language to do so. This recognition of the intimate connection between language and the unconscious is what grounds Freud's invention of the analytic treatment. The Freudian "talking cure" indeed consists in a method to read the subject's speech, and is devised to decipher the symbols which represent the personal conflict of the subject. As such, the analyst will not interpret the subject's speech but will read the symbols which it borrows to express desire in spite of repression. As to the aim of the treatment it is, unequivocally, to return the subject to a more authentic desire.

How does the Freudian deciphering function? We saw that the unconscious substitutes symptomatic compromise-formations and sexual symbols for repressed impulses, the latter being then taken up by the representations that come in their place. Logically then, the Freudian idea was to attempt to uncover repressed ideas by working with the mnesic links it retains with the representations substituted for it; indeed, Freud ascribed neurotic disorders to the return of the repressed, and this accounts for his idea that the analyst must attempt to undo the work of repression.

It is the possibility of such a reading of the text of the unconscious, designed to re-activate decathected ideas and thereby do away with the pathological effects of repression, which no doubt inspired Legendre's reading of the sexological structure of the legal discourse by analogy with the analytic treatment. Indeed, Legendre poses that the mechanisms at play in the institutional discourse replicates unconscious processes:

This is the way in which the institution operates to represent the conflict: by way of intermediaries and symbols. [...] The individual, any individual, does not figure there as being instituted under the tyrants, he is neither a corpse nor a sleeper, but he well and truly figures there as the bearer of a mask that returns to him as his own [qui lui revient], a subject which is however conspicuous in his role, rehearsed until the emergence of the desire to be taken as such. (7)

Here Legendre picks up, firstly, on the fact that both the unconscious and the institution proceed by way of displacement and representation, and that the combined effect of these mechanisms is to take

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20 Which explains why Freud stumbled upon the "rock of castration" (Analysis Terminable and Interminable, SEXXIII), for there is no such thing as repression of desire, desire itself being instituted by repression: primal repression can thus evidently not be lifted.
21 Cf. Appendix C of The Unconscious, PFL 11.
22 See Lacan's "The Agency of the Letter", Ecrits (510; 159): "Freud shows us in every possible way that the value of the image as signifier has nothing whatever to do with its signification."
23 Note that from a Lacanian perspective, the stake of analysis is not so much to free desire from repression but to separate desire from its alienation in the Other.
a conflict that plays itself out where it is not represented by way of transference to the intermediary and textual symbolisation to a place where this conflict will be amenable to discursive resolution.

In a sense then, just as the Ideal is "the heir of the Oedipus complex" (PFL 11, 376), the instance that 'resolves' the instinctual conflict of childhood by way of a symptomatic formation which retroactively confers the meaning of prohibition upon it, the institution is the place where subjective conflicts are being reduced to the terms of an all-accommodating discourse. This discourse will then fix the sense of the conflict by way of a principled adjudication phrased in terms of right and wrong and initiate the institutional resolution thereof.

In view of the similarity of the operational mechanisms which organise both the discourse of the unconscious and that of the institution, Legendre's proposal is no doubt to apply the Freudian method in order to read the symbols which structure the text of the law beyond their prima facie signification, and this in order to uncover the repressed desire which they represent.

Secondly, Legendre remarks upon the efficiency of the substitution, for he adds that, if the subject of the unconscious comes to enjoy his symptom and mistake it for his identity,24 the subject of the institution does not feel that he has been "instituted under the tyrants". Indeed, in time the subject will fully identify with the mask returned to him by the Other, and thanks to the mechanism of displacement, he will invest the representations offered in the place of his 'instinctual truth'. Hence, the subject becomes the mask that represents him for the Other, whose desire he then mistakes for his own. In this way, Legendre transposes the precipitation of the subject of psychoanalysis as the product of the Other's desire to the institutional field, and he then postulates the rejection of the instinctual truth of the subject from both the unconscious and the institution in favour of a socially ratified version thereof.

IV - THE POLITICAL FUNCTION OF IDENTIFICATION

The libidinal Structure of Civilisation

In the previous pages we have established the existence of a parallel between the text of the unconscious and that of the law. In effect, we have seen that both operate by means of a network of representations substituted for the subject's personal conflict, and that both retain a link with the repressed which they represent. It is the persistence of this link which allows for a symbolic reading of both the unconscious and the law, although what one reads may well be conditioned by what the reader expects to find ciphered therein. Indeed, Freud invariably elects to read the symbols of the unconscious as the symbolic residues of the conflictual incest prohibition, while Legendre chooses to detect the traces of an institutional recuperation of desire.

We already know that Lacan's reading, on the other hand, is indexed on the impossibility of a jouissance which the unconscious regulates as best it can, and that one cannot exhume the subject's mortified desire: at best, one may hope to re-organise the unconscious. As such, if one were to consider Legendre's hypothesis in a Lacanian light, one would no doubt come to the conclusion

24 As noted by Freud in his Inhibitions, Symptoms and Anxiety (PFL 10, 252) in his analysis of the "(secondary) gain from illness."
that although there is no doubt that the institution borrows the instinctual pathways traced by the conflict of childhood in order to establish its hold on the subject, and that it does so by instrumentalising the effects of castration — or the initial negation of jouissance —, one could not for all that read anything else in the text of the law than the strategies utilised by the political in its management of men.

From now on then, it will be more profitable to continue our reading of Legendre with a view to examining how the institution utilises pathways which are already existing in the unconscious rather than in the hope of uncovering a mythical desire.

The Techniques to achieve Submission and Transference to Authority

The libidinal Structure of the Group

If, by now we have a pretty clear idea of what goes on in the unconscious, we have yet to elucidate the means by which the Oedipal conflict of the subject, whether it be imposed (Freud) or structural (Lacan), may be recuperated by the institution for its political purposes. It is on this point that Freud's observations as to the "libidinal structure of the group" (Group Psychol., PFL 11, 126) takes on its full value: for "the essence of the group lies in the libidinal ties existing in it." (ibid., 125). We thus need to identify the unconscious mechanisms which allow for such an investment of the group, the group being the primary cell of all civilisations.

Let me formulate our starting point more precisely: recall, then, that Legendre does not attempt to account for the origin of guilt beyond the institutional discourse and is content to postulate that guilt, the "primordial fact of politics", is the mark upon which the "techniques to achieve submission" (26) employed by the institution operates. Thus, in reading Legendre, we need not concern ourselves with the dark realms of pre-institutional life, but must rather focus on the recuperation of the sense of guilt into the circuits of transference to power.

This is no doubt why Legendre hints at the importance of Freud's Group Psychology. Indeed, he will extract yet another key element for his own theory — which rests on the premise of a transference to authority — from Freud's analysis of the Church and the Army (PFL 12, section V): the Freudian concept of vertical identification, in other words identification to the leader or Ideal identification.

To develop the idea [of the historical import of the religious (and military) experience for the formation of the institutional envelope in the West] would allow us to grasp the logic of the relations which exist between these two universes apparently so distant from one another: the subject, who is prey to his particular conflict, and the text of the Law, in which the social version of an original political drama is laid out. (27-8)

Although it receives but a cursory mention, it is clear that the concept of vertical identification is crucial for Legendre's elaboration. Indeed, how else are we to account for transference to authority, a concept which is summarily posed by Legendre as explicating the subject's willing acceptance of submission? Let us see, then, whether the Freudian text may supply a solution to this riddle.
Horizontal and vertical identifications

In his *Group Psychology*, Freud undertakes to account for the fact that groups have a "libidinal structure" despite the apparent absence of sexual interests which, according to Freud, are the sole cause of bonding between human beings. This paradox — for groups are indubitably strongly bonded together — is what impels Freud to devise his three-fold theory of horizontal identification (136-7).

Firstly then, the child identifies with a parent of the same sex, which it takes for its model, with for consequence that the child's ego will mould itself on the parental model. Secondly, the child wants to attract the same love which the model obtains, and thus develops an attachment with the parent of the opposite sex. In view of the incest prohibition, the child's object-choice regresses to identification: in other words, because the child cannot love and be loved by the parent in the same way as the model, he or she remedies this loss by introjecting the parent into his or her ego, with for result that the ego will further develop by adopting the characteristics of the love-object. Thirdly, Freud poses a third mode of identification, "which may arise with any new perception of a common quality shared with some other person who is not an object of the sexual instinct" (136). He then poses that it is this third mode of identification which accounts for the libidinal ties that exist in a group: "the mutual tie between members of a group is in the nature of an identification of this kind, based upon an important emotional common quality." (ibid.). Even more importantly, Freud proceeds to state that "this common quality lies in the nature of the tie with the leader" (ibid.).

This leads Freud to pose yet a fourth mode of identification in order to account for this tie with the leader, or vertical identification. Indeed, the first three modes of identification refer to what has become known as "horizontal identification" in so far as they are identifications at the level of the ego. Vertical identification, on the other hand, is a species of what is known as Ideal identification in the analytic language. Freud then poses that it is this vertical identification which allows for the circulation of libido as between members of a group, and this despite the apparent absence of sexual interests.

This hypothesis however leaves us to contend with yet another difficult question, which declines itself in two moments: firstly, what benefit does the subject derive from vertical identification; and secondly, how does vertical identification produce horizontal identification between members of the group? The two limbs of this question are dealt with later on by Freud in the same text, for he poses that vertical identification with the leader amounts to the substitution of the subject's love-object for the ego ideal: the love object is "put in the place of the ego ideal" (ibid. at 144). As a consequence, the members of the group will identify with one another on the basis of a shared feature, this being Freud's third mode of horizontal identification.
Ego ideal and vertical Identification

In order to make sense of Freud's *Group Psychology* and, above all, of the mechanism of vertical identification, we must draw yet another distinction: that between the formation of the ego ideal and the mechanism of vertical identification.

In order to elucidate the first of these two concepts, we must return to our previous elaboration on the Ideal (Chapter I). In this chapter indeed, I presented the Ideal as a symbolic elaboration of the real, destructive effects of instinctual renunciation, for the impulses which are inhibited from their aim return onto the subject, and they must therefore be diverted away from the subject. This is the function of symbolic identification, which allows for the channelling of instinctual impulses into the circuits of love.

Now, where does the subject obtain love from? In the first place, love is obtained from the external prohibitive agency, and subsequently from the Ideal that comes in its place. Love amounts to a transformation of instinctual impulses into a symbolic version thereof, which provides the subject with a substitutive satisfaction. This substitutive satisfaction consists in the affect of love returned to the subject from the place of the Ideal as a recompense for his renunciation, and it introduces the subject to the satisfaction that he may henceforth derive from a transference to authority. The crucial deduction we can make from this exposition is that symbolic identification provides the subject with an alternative satisfaction.

Why does the subject derive such a substitutive satisfaction from the Ideal? The explanation here comports two degrees: firstly, this point is partially elucidated by Freud in his analysis of the mechanism which institutes the mutation of sexual interest. Thus, he argues that this mutation is attributable to the desexualisation of the libido which occurs by way of its transformation into narcissistic libido:

> The transformation of object-libido into narcissistic libido which thus takes place obviously implies an abandonment of sexual aims, a desexualisation - a kind of sublimation, therefore. Indeed, the question arises, and deserves careful consideration, whether this is not the universal road to sublimation, whether all sublimation does not take place through the mediation of the ego, which begins by changing sexual object-libido into narcissistic libido and then, perhaps, goes on to give it another aim. (The Ego and the Id, PFL 11, 369)

This key insight is to be situated in the context of our argument on vertical identification if the idea of transference to authority is to make any sense at all in terms of the instinctual satisfaction of the subject. Indeed, ideal identifications, although they provide no opportunity for either sexual or aggressive release, offer the satisfaction of ego-libido to the subject, for, as we recall, symbolic identification is a form of introjection. Thus, by achieving identification with the "model", the subject is able to attract love from the internalised instance of authority now enveloped in the subsequent image of the Ideal. In effect, "[t]here is always a feeling of triumph when something in the ego coincides with the ego ideal." (*Group Psychology*, 164).

Secondly, beyond the internalisation of the Ideal, there is another modality of Ideal identification, and this is what is known more strictly as vertical identification. Through vertical
identification indeed, the subject succeeds in substituting an external object, the leader, *in the place of the ego ideal*. Freud offers an indication as to the motivation for the subject's wish to do so: "the sense of guilt (as well as the sense of inferiority) can also be understood as an expression of the tension between the ego and the ego ideal".

Why, then, is the subject more often than not guilty in the eyes of the Ideal? Freud explicates this phenomenon by telling us that the ego is split between the ego, constituted by the successive layers of horizontal identifications, and the ego ideal:

On previous occasions we have been driven to the hypothesis that some such agency develops in our ego which may cut itself off from the rest of the ego and come into conflict with it. We have called it the 'ego ideal', and by way of function we have ascribed to it self-observation, the moral conscience, the censorship of dreams, and the chief influence in repression. We have said that it is the heir to the original narcissism in which the childish ego enjoyed self-sufficiency; it gradually gathers up from the influences of the environment the demands which that environment makes upon the ego and which the ego cannot always rise to; so that a man, when he cannot be satisfied with his ego itself, may nevertheless be able to find satisfaction in the ego ideal which has been differentiated out of the ego (*Group Psychology*, 139-140).

Here, Freud tells us that the ego ideal is a way of making do with the ego's wounded narcissism — for if the ego will not come up to standards, at least the subject will recuperate some narcissistic satisfaction (self-love) by virtue of his having identified with, and thus introjected, the instance of authority. As to why the ego fails to come up to the ideal, it is plain to see: here Freud tells us that the Ideal integrates all the external demands made upon the subject in order to satisfy the narcissistic wish of self-sufficiency. For such is the Freudian axiom which subtends his theory of identification: that which one can neither defeat nor satisfy, one introjects. Thus, since the Ideal is a composite of conflicting demands, and since it is impossible to satisfy several masters, the subject is nearly always prey to the depressing remonstrations of the Ideal. Consequently, it will be much easier for the subject to satisfy the demands of an external instance of authority than it is to satisfy those of the internal one, and again, the subject's substitutive satisfaction will constitute in self-love.

Finally, the substitution of an external object for the ego ideal, by supplying an outlet for the subject's inhibited impulses, which is itself redoubled by the consequent possibility of horizontal ties with the other members of the group, also diverts some of the subject's libido away from the super-ego, the cruelty of which we know to be fuelled by an excess of instinctual impulses.

**Vertical identification and the Group**

To restate the argument somewhat more explicitly, we observe that there is a missing link between the subject and the group: indeed, according to Freud, what binds subjects together is first and foremost sexual interest, and only subsequently 'sublimated' versions thereof — which include the love of the Ideal. In view of this missing link, why would the subject love an institution from which

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25 The reference here is to Freud's text *On Narcissism: an Introduction* (PFL 11).
26 On this point, recall that Lacan poses that the Ideal identification is what releases the subject from his entrapment in the dualism of the mirror-stage (see *Seminar I*).
he would derive no instinctual satisfaction whatsoever? Thus the institution remedies the absence of a subjective motive for personal investment in the group by offering a model for its members to identify with: through his identification with the model, the subject comes to love the institution.

Why vertical identification transforms itself into a transference to authority can only be explained in so far as what is at stake in such identifications is the subject's relation to the Ideal. Thus the leader, or the model, comes to occupy a place that is already marked out in the unconscious: that of the Ideal. As a consequence of this correspondence, the subject will then be able to make the model function in the same way as he does the Ideal, and to thereby derive an equivalent substitutive satisfaction from his obedience to the external incarnation of an internalised agency. The concepts of transference to authority and that of vertical identification can consequently not be dissociated from each other, for they index the two modes of a relation to the law of the unconscious through which the subject will successfully secure the affect of love he requires to mediate the insistence of the drive.27

We thus see that by articulating the logical temporality that subtends the identification to the leader, Freud supplies us with the theoretical elements necessary to understand the mechanism of transference to power. We will now study further the complex relation between the Ideal identification, matrix of the subject's attachment to the law, and the cultural super-ego, which borrows the pathways already marked out by such a transferential identification.

The cultural Super-ego and vertical Identification

Legendre proceeds to argue that the Freudian opus as a whole inscribes itself against all dogmatic traditions (16) for it exposes "a new causal theory of submission" (19). This theory is then said to reveal the link that unites social censorship to the discourse of love, and what Legendre derives from it is contained in his observation of "the soldering of human groups to their traditional training [dressage]28" (20). I will not reiterate my earlier exposition of the cultural super-ego, which indeed tallies with Legendre's assertion that the Freudian discovery is crucial to the understanding of the political art, but will merely add a precision to my previous argument, one that resonates with Legendre's own analysis.

Thus, the super-ego is not a collective instance — recall that we rejected the phylogenetic hypothesis in favour of Lacan's theory of the "founding speech" —, and the function Freud ascribed to the cultural super-ego is in fact performed by discourse, or rather the proteiform discourses which Legendre regroups under the generic term "dogmatic order". If, following Legendre, "the Super-Ego of culture (Kultur Überich) is nothing but a canonical discourse" (34), then our next step is to investigate how such a discourse contrives means to attract the subject's investment thereof.

27 I already noted in chapter I that in Inhibitions, Symptoms and Anxiety, Freud associates anxiety with a loss of love from the Ideal.
28 I could not find an adequate translation for the word "dressage", which refers near exclusively to the training of animals.
This returns us to the link I just postulated to be missing between the institution and the subject, and it is on this point that the Freudian concept of vertical identification takes on its most acute relevance to our purpose. Indeed, the discourses which support the dogmatic order may only function on the basis of a transference attaching to figures of authority.

Thus, if in the previous subsection I claimed that the subject would only come to love the institution of which he is a member by way of an identification to the model, itself coming in the place of the Ideal, a similar pattern needs to be in place concerning the cultural super-ego. Indeed, its 'collective' purchase is ensured through the intermediary of transferential figures.

Freud's analysis of the instinctual mechanism subtending vertical identification thus elucidates the enigma of political submission, for it recognises political submission to be instated by the serialisation of figures of authority modelled on the subject's initial Ideal identification. Thus, the first Ideal identification is produced by the internalisation of the law, vertical identification to the leader then ensures the subject's membership of a group, and lastly, transference to power affords the subject a means to identify with the discourses structuring a nation. Such a serialisation is hinted at by Legendre, who states that

In order for censorship to be legitimate, and the only possible one, it must be attributed to others having borrowed the power of the parents, the right of keeping watch on us. (36)

We must also note that Freud recognises the possibility for the place of the leader to be occupied by "an idea, an abstraction [...] This abstraction, again, might be more or less completely embodied in the figure of what we might call a secondary leader" (Group Psychology, 129). Here, Freud indicates that a leader may act as a representative of an idea, and that an idea itself may elicit transference. 29

Summary

The arguments developed in this section will now allow us to formulate a number of temporary conclusions on the work of Legendre. Thus, recall that the premise which grounds the validity of Legendre's theory of submission is that the institutional discourse borrows the instinctual pathways already marked out in the subject by the Oedipus complex. And my previous elaborations have supplied us with the following components of this Freudian mechanism: 10

- the successful institution of the Oedipus complex is conditional upon the external prohibition of sexual desire;
- the aggression which results from such a prohibition is inhibited in view of the fear of castration instilled in the subject by means of real threats uttered by the external instance in question;
- in order to 'resolve' this instinctual impasse, the subject internalises the instance of prohibition and identifies with it in order to be able to release his aggressive impulses, albeit against his own ego, and this internalisation precipitates the instances of the Ideal and the super-ego in the psyche;

29 I will study the mechanism of transference and its relation to the Ideal in my fourth chapter.
Chapter II - Culpability and the Politics of Love

- the subject is subsequently the locus of a constant vacillation between self-love and guilt;
- this internalisation is thus not very successful, for the subject is more often than not the object of his own aim-inhibited drive;
- yet, the destructive return of instinctual impulses on the subject can be further mediated through the pathways of sublimation\(^{31}\) gradually set up by civilisation;
- the instinctual satisfaction derived from sublimation consists in the substitution of an external object (the leader, an idea) for the ego ideal through the mechanisms of vertical identification and transference to authority, which also allow for the possibility of self-love thanks to 'external' recognition;
- Finally, those mechanisms organise the libidinal structure which supports civilisation.

Those are the precise elements which structure the pattern Freud claims to have uncovered in the individual unconscious of neurotics and the founding texts of civilisation through a reading of the symbols which come in the place of the repressed impulses. Moreover, Freud's insightful theorisation of the mechanism of identification, coupled with his perceptive understanding of the serialised nature of love, which culminates in the love of authority, implies the circulation of a sublimated sexual desire in discourses of power. As such, the Freudian analysis of the libidinal structure of the group as mediated through successive identificatory processes gradually effecting the sublimation or desexualisation of libido proves to be the indispensable subtext to Legendre's theory of submission.

By way of a conclusion on Freud's Oedipal theory of civilisation, we note that Legendre faithfully applies the Freudian discoveries to the institutional discourse, which in his account borrows precisely the same mechanisms as the Oedipal unconscious. Thus the Church, an external instance of law, prohibits sexual desire through the doctrine of the original sin and the institutions which implement its dictates: confession and penitence. Furthermore, the institution also supplies the subject with a number of means to sublimate his repressed desire: thus, identification with the model, compliance with the law and transference to power. Finally, the seductiveness of Legendre's analysis of religion is supported by Freud's hypothesis that religion is the "neurosis of humanity" (PFL 13, 296).

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30 We are not concerned with Freud's anthropological hypothesis here as it is not relied upon by Legendre.
31 Freud demonstrates that once a signifying pathway is traced in the unconscious, instinctual impulses will always tend to borrow the same one, evermore deeply engraving symptomatic possibilities as the sole ones. *The Unconscious*, PFL 11, 199.
V - THE SYMBOLIC EFFICACY OF THE DOGMATIC ORDER

The operational Features of the institutional Discourse

Having precisely summarised one dimension of Legendre's essay, which is little else but an often implicit transposition of the Oedipus complex to the Christian discourse — but falls short of accounting for the complexity of the Freudian theory —, we must now focus on those aspects of Legendre's work which are more specific to the discourse of law itself. Our starting point will be the residual product of the previous argument, which is Freud's observation of the failure of the Oedipal unconscious to recuperate exhaustively the subject's negated desire.

The Semblant of the Political

Indeed, if the Oedipal unconscious fails to fully repress desire — or, in Lacanian terms, to fully regulate the subject's impossible jouissance —, and this desire, or surplus-jouissance, returns by investing the signifying link it retains with the representations substituted for it, the Christian discourse also fails to soak up fully the subject's "negated jouissance" through the ascription of the original sin to the community at large, for if it symbolises guilt, it does not eradicate its consequences.

Expropriation of Culpability

Consequently, if the semblant of the Political must knot itself at the point of failure of the Oedipus complex, and if it does so through the medium of the notion of fault, it will equally be lacking in symbolic efficacy should the subject be left to labour under the weight of culpability.

Thus the institutional discourse must also take it upon itself to operate an exculpating discourse. For it is by asserting the subject's innocence that the external ideal becomes far more attractive than the unpredictable commands of the ego ideal. The 'successful institution' will thereby provide the same satisfaction as the Ideal in the guise of self-love but will be more attractive for the subject, as compliance with the institution is easier to discharge than with the dictates of the Ideal. And this is no doubt why Legendre hypothesises that the institution will recuperate the sense of culpability associated with the Ideal in the unconscious, thereby freeing the subject from its unbearable weight:

But it must be noted that the recuperation of human subjects by means of institutional formalisation implies that they be expropriated as much as possible from their culpable feeling [...]." (47)

The function of such a recuperation of guilt is two-fold: firstly, it alleviates the weight of the Ideal for the subject, and secondly, it defuses the eventual anger of its subject should the law be seen to be a depriving agency. Thus the law will locate the deprivation of desire in a mythical pre-legal time, while presenting itself as the 'good' institution in charge of dealing with the consequences of 'sins', misdeeds or other negative events 'anterior' to its emergence. The legal discourse thereby diverts the aggressiveness arising from the "negation of jouissance" away from itself, for it claims to be the instance in charge of regulating guilty life for the best.
Inauthentic Redemption

However, in the same movement, the institutional discourse also divests the subject of the possibility of responsibility correlative to the innate guilt the hold of the law is conditional upon, for in effect it demands the right to monopolistic adjudication on issues of culpability and responsibility. This is why law's undertaking to steer humanity in its entirety towards redemption leaves the subject disarmed in the face of his nameless personal guilt, evermore detached from a sufficiently real meaning in the manner of that offered by the Judeo-Christian tradition's dual rationalisation of subjective culpability in terms of sexual sense and historical guilt.

It is on this precise point that the Freudian Oedipus proves partially obsolete, for the meaning of the guilt it utilises as channelling device, sexual sense, is no longer convincing enough to deal with the discontents of civilisation. And this is no doubt what Lacan indexes with his "decline of the paternal imago" as early as 1938. In other words, there Lacan takes stock of the weakening symbolic efficacy of both the Oedipus and of the apparatus in charge of the distribution of jouissance in civilisation through self-same transferential mechanisms: namely religion, which ensures the secondary gain of humanity's shared neurosis. For the secularisation of law separates its dictates from religious guilt, and what remains in its wake is the institution's more utilitarian claim to work towards universal happiness.

This is where Legendre's work can prove more relevant to the modern critical legal discourse, for if his hypothesis of the institution's recuperation of desire by means of sexual prohibition is largely unconvincing in view of today's 'sexual liberation', it nonetheless remains that the institution continues to function, and that it continues to function by means of the imposition of managerial solutions on its subjects for the good of all. As such, we can even postulate that what remains of the sexual repression performed by the institution of yore is solely this expropriation of culpability, the origins of which are now lost while its diffuse effects remain all the more present. This may even be why Legendre poses the persistence of the dogmatic mode of discourse in modern societies, for what truly concerns us is the subject's dis-empowerment in the face of the institution: is it not the 'benevolent' recuperation of responsibility which instates the fiction of universal good from which all discourses of power, in the last analysis, derive their sole legitimacy?

Having thus argued that what truly entrenches the subject's attachment to the institution is his vacillation in the face of a necessary Ideal, heir to the instinctual impossibility of infancy, we must now briefly examine the operational features of the "dogmatic order", which further confer the quality of unique truth on its legal apparatus.

Regulation, Incantation & Rhetoric

Order is a kind of compulsion to repeat which, when a regulation has been laid down once and for all, decides when, where and how a thing shall be done, so that in every similar circumstance one is spared hesitation and indecision.

Sigmund Freud

Legendre proceeds to enumerate the formal conditions that ensure the discursive expansion of the initial knotting whereby the real is taken up in the institutional discourse: "a regulated discourse" is required, one that is "punctually recited" and "rigorous in its grammar" in order to fix the terms in which all forthcoming conflicts will be accommodated by way of an exhaustive classification, laid down with a view to reduce facts to a "universal" — thus exclusive — "taxonomy" which, in turn, provides the signifying basis for any conflict to then be taken up and processed through the hermeneutic apparatus of the qualifying discourse.

Legendre perceptively identifies three invariant conditions for the successful implementation of such a classification, the observance of which structure all universal discourses alike, and which I have renamed regulation, incantation and rhetoric. More explicitly, such discourses will take on the value of necessity — namely, impose themselves as formulating "the only licit questions" through their use of:

- **Regulation**: the existence of precise rules, which entails a degree of predictability, and thus affords the subject a degree of certainty as to his situation in the order of discourse;

- **Incantation**: the existence and contents of these regulations, and the chosen interpretation thereof, are established by means of the frequent repetition of a number of set formulas which utilise symbolic imagery and precise rituals;

- **Rhetoric**: the discourse of law is supported by the rhetorical logic of its agents.

This summary presentation leads us to observe that, if such conditions constitute the formal prerequisite to the persistence of the dogmatic order, the legal discourse is without the shadow of a doubt its most rigorous incarnation, for it always speaks in the name of the Rule of Law, which is itself established in seminal texts transferred from generation to generation; it progressively achieves the status of sole alternative through countless legislative and juridical productions which continuously rephrase personal conflicts in the chosen terms ordered by way of a rigorous taxonomy; and finally, its rhetoric is precisely devised to defeat all impending allegations of partiality: the law indeed is always innocent.

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33 *Civilisation and its Discontents*, 1930, PFL 12, 282.
34 As already noted in chapter I in relation to the requirement of equality before the law isolated by Freud, the formal prerequisites to the persistence of the legal order presented above are obviously necessary but not sufficient to preserve law's legitimacy. See conclusion, p. 95.
Chapter II - Culpability and the Politics of Love

A Fictional Apparatus for the Production of Legal Truth

Having presented the three formal conditions which progressively establish develop on the basis of the necessity of law, we have yet to grasp how this necessity dons the more compelling attire of truth. It is with a similar purpose in mind that Legendre moves on to demonstrate how both the value of universal truth and the rudiment of a belief in love are being integrated in the legal discourse; indeed he lists three elements required for such a transformation of the blind necessity of law into a truth enunciated for the common good:

- A corpus of science, its respondent, and lastly the particular axiom formalising punishment. These three parts of a same whole determine a number of logical relations, the very relations which institute censorship in a given culture. On this basis, let us try to grasp the importance of juridical knowledge, which is fundamental in such matters. (39)

A Corpus of Science: The Necessity of Law brought to the power of the Order of Things

The first element in Legendre's enumeration — a body of science — could lead us to believe that he is predictably indicting the outsized order of textuality regrouping the minute and mundane codification of innumerable legal rules whose function is to classify, order and encompass the whole of the human drama. But what Legendre is in fact discerning is that beyond the notoriously procedural practice of the law, the textual referent that supports its enunciating activity — however well strengthened by the formal logic of its public appearances — is not sufficient per se to induce submission, and that the blunt necessity of a given discourse must be further consolidated by indexing this textual referent itself onto another species of truth, no longer merely self-referentially textual.

It is thus that Legendre singles out for primary phenomenon "the vital exigency of a symbolic relation allowing to link up the pragmatism of Law with the discourse that all human groups tell themselves about nature" (39), thereby providing us with a crucial insight into one of the sources of legal legitimacy: indeed, what supports law beyond its rules, its incantation and its rhetoric is it claim to replicate anthropological truth, divine justice, or natural morality, which allows law to present itself as a "logical fatality" (40): in other words, to claim that it is carrying out the mere implementation of the order of things.

Furthermore, Legendre pinpoints the importance of the narrative origin of the juridical science, for it is on the basis of the signifying fixation that ciphers the emergence of the legal order that the utilitarian necessity that there be a regulated intervention in the life of men is transformed into a substantial one, and this transformation in turn introduces the possibility for the subject to identify with the group whose management falls within the scope of the law in question:

Any juridical science thereby indicates that it plays on the myth of the necessity through which the science commenced and recommences for each of its subjects. There is thus no juridical science which isn't initially a particular version of anthropology. In other words, the juridical system occupies a certain level, a certain place, a топос в порядке in the universal order of sciences, and functions as such. (39, his italics)
Chapter II - Culpability and the Politics of Love

Its Respondent: the University Agent establishes and transmits legal Truth

Legendre then moves on to remark that, although their function may be indispensable, neither jusnaturalist fictions, nor mythical revelations of justice, nor intricate accounts of abstract morality will suffice to sustain the legal discourse, for its statements also need to be harmonised with present situations.

In effect, the legal discourse must be incessantly subjected to a process of reformulation which, by the same token, fortifies its decisions; and this process is performed by the hermeneutic tradition of the university, whose task is to supply the ethical, scientific or historical background against which the dictates of the legal order will take on their full truth value. It is thus that Legendre identifies the central part played by the discourse of the university in the erection of the façade shielding the utilitarian spirit of the law from too close a scrutiny: for the university is where 'the doctors of the Law' reign unchallenged, having unlimited and discretionary access to other sources of knowledge to be then modulated to suit the pressing needs of the law. Legendre hence declares that the function of the university is to supply the answers that are required by the discourse of censorship (40).

On the one hand then, the function of the academic respondent to the institutional discourse is to take up legal statements and to re-inscribe the decisions they enforce in the broader dialectics of knowledge, surrounding the decrees of the law with an aura of scientific accuracy, refining their logic and assuming their share of the function of incantation.

Secondly though, the function of the university extends further, for it is where new generations of legists are being formed to the task of creating legal truth, choice outfit for the bare necessity of law:

I intend to thereby designate the function of transmission, undertaken in the western tradition by the university agent, participating in the strict definition of a sacerdotal science, namely itself establishing and hierarchising its media. (40)

Thus the exclusive institutionalisation of the transmission of legal knowledge transforms the 'doctors of the Law' themselves into the operators of a science that remains "unknown" to them (41), the science of submission, and this evidences why "the masters of the Law [fall] prey to their logic"(7).

The "logical fatality" law claims to lend its voice to is thereby elevated to the next degree on the scale of truth, that of logical science, thanks to the action of the no doubt also innocent — since merely subservient to a knowledge that is already there — university agent.

Axiomatic Leniency: The Innocence of the Law and sovereign Good

Lastly, Legendre detects that there is yet another means to inspire subjective belief in legal truth, one which further secures the credit of the logical fatality of law and its scientific subtext through the addition of a third dimension, that of "reassuring speech" (40), which characterises the "particular axiom formalising punishment" mentioned earlier: that of a leniency raised to the dignity of universal principle.
Legendre initiates this limb of his argument by declaring that the legal order, despite all appearances to the contrary, is in fact not addressing the delinquent, but first and foremost all its other subjects: what is at stake in the legal process is indeed not so much to solve the personal conflict opposing the parties to the case at hand, but rather to reassert the all-accommodating impartiality of legal truth, using for this purpose whatever factual circumstances happen to unwittingly offer the support of their materiality to the inscription of legality. The object of the legality thus animated is consequently of a different order entirely than the anecdotal pretext giving rise to its renewed formulation; and the very parties to the case are relegated to being the incidental recipients of the "enunciating machinery" of the judiciary (114).

It is therefore not so much the person of the transgressor which is judged but his discursively reified transgression, which may then be impartially processed: the benevolent neutrality of the law may then be demonstrated by its leniency, for it requests neither personal revenge nor libidinal satisfaction as it purports to act in the name of the community with a view to protecting it against the danger of fragmentation introduced by the outlaw — the accused is condemned for the common good. The principle of axiomatic leniency can be phrased as follows: for law to position itself as a disinterested third party to a private conflict, fault must appear as "an abstract notion, a pure ideality defining some dramatised object" (41), and above all as free from any enjoyment on the part of the law-giver. For such a neutral impression to be created, law presents itself as the blind regulatory hand of justice whose function is to preserve the "locus of the fraternal society" (41) by defusing any threat posed to its unity by the transgressing act. The consolidation of the communal link thus initiated is further strengthened by the circulation of the "dramatised object" of transgression, which reconstitutes the social bond dented by the infringement of the communal rule by way of a joint condemnation of the breach.  

It is thus that our necessary law, after having become naturally true and then scientifically grounded, further guards itself from inopportune questioning by posing as the innocent hand of collective interest which undertakes to resolve personal conflicts with for primary aim to exculpate both those who abide by the law and those who implement its rules: their common concern indeed lies in the preservation of the law itself, of the integrity of its status. Then, the neutrality of the law is also ensured in so far as it derives no personal benefit from its role.

Although one may observe that it is this two-fold leniency which no doubt introduces the subject to his belief in the love of the law, this is not the most radical conclusion to be drawn from Legendre's insight — for does it not also demonstrate that the prime function of legal fault is to exculpate the legal order itself from the infliction of punishment and guarantee its innocence? Indeed, the hermetic front constituted by the combined discursive productions of the three-fold legitimising apparatus devised to produce legal truth exposed in this section evidences that the foremost concern of all legal actors is to dissociate themselves from decisions taken in the exercise of their functions, for they pose as

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the neutral **vehicles** of the law for the fulfilment of its legitimate mission, which is to preserve the community.

The most significant result obtained by means of the measured articulation of the various fictional dimensions of truth relied upon by the legal order, combined with the wilful dissociation of the legal personnel from any personal input, is that *in the name of the law, all are innocent*. Indeed, the regulated discourse of juridical instances "pleads for the innocence of all through the institution which bestows forgiveness upon them" (40), while the innocence of the law itself is ensured through its "permanent simulation of telling the truth about Evil and Crime" (44). It is this generalised repudiation of personal responsibility when it comes to the orientation of the law which explicates why any manifestation of legal violence should appear to occur as if it had been orchestrated and demanded through the operation of the Holy Spirit of the letter of a law that commands obedience over and against the personal inclination of its operators—or so the story used to go.

**VI - CONCLUSION**

*The Stigma of Illegitimacy*

The naked semblant of justice is that justice is the property of a discourse.

J.-A. Miller

In my introductory chapter I presented a comprehensive account of the analytic theorisation of the genesis of the sense of guilt with a view to ascertaining whether any invariant element could be isolated as structuring the inextricable association of culpability and law. A close study of Freud's own contradictions led me to successively discard the two main hypotheses he devised regarding the real origin of the sense of guilt—a primal sin, a real threat of castration—as either unconvincing or insufficient to account for the onset of neurosis in the contemporary world, or in less analytic terms, for the disproportionate sense of guilt afflicting most subjects—whether it be at a conscious or at an unconscious level. In turn, to recognise the insufficiency of the postulated external prohibition allowed me to present the Freudian Oedipus complex as a truly contingent and historically specified mode of making sense of the real of instinctual life rather than as an invariant, quasi-natural occurrence; and this paved the way for my introduction of the Lacanian concept of jouissance as the sole identifiable invariant beneath the sense of guilt: indeed culpable feelings unfailingly stem from an *instinctual impossibility marking the emergence of the subject*.

We may thus usefully reformulate the Freudian Oedipus complex in Lacanian terms. Recall indeed that in Lacan's theory, there is no such thing as an external agency of prohibition, and rather, that the discourses which the subject is exposed to provide him with the necessary signifying material with which to regulate his own jouissance. Thus, in Lacan's work, the *impossibility* of jouissance is mediated thanks to the law of the unconscious, which is a *necessity*. The *necessity* of law for the subject entrenches itself as such by weaving its commands with the *contingent* elements of the
subject's sexual history. This knot of the necessity of law with the contingency of the subject's history allows for the transformation of the impossibility of jouissance into the possibility of desire. Yet, it leaves a residual impossibility in its wake, and this is what Freud isolated with his concepts of the Ideal and the super-ego. In other words, the Oedipus complex fails to fully regulate the subject's jouissance, or again, the discourse of the unconscious fails to achieve full symbolic efficacy. However, it introduces the subject to the necessity of law, and the institution offers a necessary relay for the faltering efficacy of the unconscious.

This minimalist understanding of the origin of culpability then enabled me to discern that it was the irreducible trace of this instinctual impossibility which thereafter both called for and lent its strength to the indispensable discursive process that weaves the group's core narrative, a narrative the principal function of which is to progressively develop a common sense for the impossible; and to then initiate a critical examination of the legal mode of discourse. In the course of this examination, organised in the previous chapter and partially realised in this second chapter, a number of features repeatedly came to light: indeed the legal discourse relies essentially on concepts such as sin, fault, transgression, punishment and so forth, and this clearly indicates that what is at stake for the discursive superstructure organising life in common is to organise an economy of jouissance—a task it discharges by creating its own channels for the 'natural' circulation of libidinal fluxes, their permanence being guaranteed by an 'indifferent' overarching sense, for it merely has to satisfy to the negative requirement of formal justice identified earlier: namely, that all be equal before the law.

Having thus circumscribed the real core of the subject's relation to the law, and in view of the absence of a yardstick with which to assess substantial justice, it became apparent that a discourse could only sustain itself as just, firstly, by achieving symbolic efficacy, and secondly, through its reliance on a number of formal and fictional traits, and this second chapter thus concluded with a definition of the discursive mechanisms in charge of the institutionalisation of what I identified as the primordial fact of politics. Thus in the first chapter, we began to discern that the Oedipus complex was not an invariant feature of life in common, but rather a contingent mode of knotting affect, sense and enjoyment, we are now begin to perceive that legal fictions partake of the same necessity: namely, to supply a certain sense to the absence of substantial justice in the real by means of the legal institutionalisation of the concept of fault.

And indeed, the three fictional dimensions of truth just exposed in section V — natural truth, logical science and axiomatic leniency — fulfil analogous functions, for their ultimate purpose is to displace the responsibility of the juridical decision onto another place, whether it be ascribed to an immutable order of things for the text of law, scientific truth for the exegesis thereof, and full circle back to the legal text for the courts of justice. It is this very confluence of precautions which paradoxically exposes the haunting torment of the law: its lack of legitimacy. Indeed, law's darkest secret is that it has none other than its illegitimate birth, that the parental figures that come to lend their bodies to

38 Both Freud and Lacan agree to define anxiety as the only true affect. See respectively Inhibitions, Symptoms, Anxiety and Seminar X. See also T. Reik's pertinent definition of guilt as "social anxiety" (1973, 181).
the incorporeal fictions of legality are only subsequently introduced to remedy the impossibility for law to account for its origins, that the violence of the law is simply that of a blunt, violent necessity, informed by a utilitarian ethos and guided by the will of the dominant class, and that the brutal fact of the law has to be softened by a number of fictitious narratives that will allow the subjects to believe in the truth of the law, to enjoy its authority, and to love it and be loved by it.

Chapter III will now proceed to reduce the import of Freud's invention of the Oedipus complex to his discovery of the impasse which marks the emergence of the unconscious, and which Lacan took up in logical terms with his concept of the Name-of-the-Father, later formalised in terms of the place of exception. I will then argue that the neurotic logic of the unconscious, grounded as it is on a logical exception to itself, is intimately bound up with the possibility of totalitarianism in so far as it predisposes the subject to seek out a master, a sovereign, or a leader. The modalities of exception will also be traced through two very different discursive models of the political order, drawing form the work of Legendre and Bentham in order to elicit some of the connections which exist between the psychoanalytic concept of exception and the political concept of sovereignty. In turn, this will lead us, in chapter IV, to consider Foucault's hypothesis as to the end of sovereign power, and to interrogate the concept of transference from the perspective of its function in the political.

Chapter III - Exceptional Fictions of the Universal

CHAPTER III

Exceptional Fictions of the Universal

There is nothing doctrinal about our office. We need not answer for any ultimate truth, and certainly not for or against any particular religion. It is already significant that I had to situate here the dead Father in the Freudian myth. But a myth does not confine itself to not propping up rites, and psychoanalysis is not the Oedipal rite ... No doubt the corpse is a signifier, but Moses' tomb is as empty for Freud as that of Christ was for Hegel. Abraham revealed his mystery to neither of them.

Jacques Lacan

I - INTRODUCTION

Of the Exception in Civilisation and the Unconscious

I will begin this introduction with a brief reminder of our progression in order to then set the stage for an unfolding of the many facets of the function of exception, structural marker of the place identified by Freud with his concept of the Father.

The Place of Exception in Civilisation

In chapter I, I presented Freud's dual explanation of the origin of culpability as the combined effect of historical guilt and the return of incestuous impulses, to be understood in relation with the function of the Father as agent of prohibition. After a careful examination of the logical impasses encountered by Freud in locating the origin of the sense of guilt, we were however able to conclude that this hypothetical agent of prohibition functions best when 'dead'. As such, I isolated the key importance of Freud's theory of the Primal Father, which is that it evidences the characteristics of the function of the father 'post-totemisation' (regrouped under the heading of 'the logic of the dead father', section III). Indeed, Freud aptly notes the structural requirement that the central place of power be kept empty in the Oedipal democracy. In turn, it is Freud's recognition of the requirement that the father be dead which no doubt impelled Lacan to theorise the paternal function anew with his concept of the Name-of-the-Father, which can be understood to be the signifier of the 'dead' — or absent, and thus only present in so far as it is represented — Father of law: "No doubt the corpse is a signifier".

Lacan's concept of Name-of-the-Father, in effect, reduces the function of the father to that of a signifier, the signifier of exception whose function is above all to organise the unconscious. For Lacan, such is the real signification of Freud's Oedipal inventions: they amount to a theorisation of a specific modality of the unconscious whereby the subject's relation to language, or the symbolic, is ordered through a place which is structurally devoid of sense. The imaginary link with civilisation or, in Lacanian terms, with the Other, is then established through the mediation of the Ideal, or the introjected figures

1 Ecrits: 818, 316 (this is however a new translation by B. Fink, soon to be published).
2 See "On a question preliminary to any possible treatment of psychosis", Ecrits. This text will be engaged with in chapter V.
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of law which come to lend their consistencies to the empty place of exception. It is in view of this link between the empty place of the 'father' in the unconscious and the possibility of a libidinal investment in group-formations that I presented the Ideal as the libidinal vector of civilisation in so far as it is the identificatory medium of transference in chapter II.

The uncanny parallel which exists between the Oedipus complex and the patriarchal mode of social organisation could well impel us to make the bold statement that Freud's Oedipus amounts to his own elective ciphering of the effects of a specific mode of organising civilisation in terms of the structure of the subject; and this would imply that religion is not so much neurosis brought to the power of humanity as the Oedipus complex is a neurotic manifestation of the impact of patriarchal religions on the subject. This is intimated by Freud himself when, in his Group Psychology, he poses that religious groups could be seen to "form a transitional stage" between group-formations with real leaders and group-formations organised by means of transference to an idea:

We should consider whether groups with leaders may not be the more primitive and complete, whether in the others an idea, an abstraction may not take the place of the leader (a state of things to which religious groups, with their invisible head, form a transitional stage) and whether a common tendency, a wish in which a number of people can have a share, may not in the same way serve as a substitute. (PFL 11, 129; emphasis added)

Religion, then, could be understood as an emptying-out process of the place of the real leader, culminating in the substitution of a symbol for its absence, while this symbol nonetheless remains liable to be incarnated through the mechanism which instates and serialises the ego-ideal in the unconscious. Drawing from Freud's own observation, we may then pose that the Oedipus complex formalises the neurotic unconscious as an effect of a mode of civilisation organised around a transference to the empty place of the leader, henceforth occupied by symbols of truth, knowledge and love and supported in the imaginary by their representatives in the discourses of civilisation.

In a like vein, Legendre argued that it was the very fragmentation of dogmatism which led to the birth of psychoanalysis, the discipline which undertakes to deal with the effects of the weakening efficacy of the religious discourse. For is it not the failure of a dominant discourse which invariably brings about the emergence of a new one?

In turn, this may be why, if Freud was able to reduce the religious mechanisms in their instrumentalisation of sin to the Oedipus complex, Lacan, in the wake of a further decline of patriarchal societies, could reduce the Oedipal myth to its structural import: namely, that it indexes the place of exception in the unconscious in so far as the unconscious is of the order of the signifier. For in fact, in Lacan's understanding there is no such thing as Oedipal truth, and the Oedipus complex is the mythical narrative which fleshes out the function of exception which in the Lacanian theory is posed as the operational nucleus of the neurotic unconscious.
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An Articulation of Psychoanalysis with 'the Social'

Before moving on any further, a major objection to the use of psychoanalysis in legal theory needs to be addressed, and for this purpose I will briefly consider the recent work of Douzinas, *The End of Human Rights* (2000), in which he catalogues the major theoretical contributions of the past two millennia at the expense, maybe unsurprisingly, of a thorough engagement with any. If I address this objection at this point in the thesis, it is because in the present chapter I will suggest that the concept of exception, once divested of its fatherly myths, offers the means to respond to the well-rehearsed objection that one cannot 'transpose' the advances of psychoanalysis regarding the structure of the subject onto the social order.

In this encyclopaedic attempt, Douzinas proposes to construct a critique of human rights in the Kantian sense of the term — namely, "to explore the philosophical presuppositions, the necessary and sufficient 'conditions of existence' of a particular discourse or practice" (Douzinas: 2000, 3) —, and more centrally to rethink the "(legal) subject" (ibid.). Following from his presentation of a great number of such "philosophical presuppositions", Douzinas' essay draws to a close with a summary introduction of key psychoanalytic concepts which, in his account, find their rightful place in the philosophical preconditions to the understanding of the contemporary subject, and of the subject's obstinate attachment to the discourse of human rights.

In his condensed — and thus inevitably reductive and sometimes incorrect — chapters on psychoanalysis, Douzinas argues that "the transfer of its contested concepts from subject to society has not been successfully carried out yet, and one could argue that it is perhaps inappropriate." (317). Indeed, in his understanding, "psychoanalysis is a theory of the subject. Any extension to social structures must only be by analogy and, as the difficulties of psychoanalytical social theory show, it can only have the theoretical persuasiveness of analogy." (315). Consequently, psychoanalysis is no more than "a powerful hermeneutic tool for understanding the persistence of critique and the emotional life of law" (333). Rather disappointingly though, his recognition of the hurdles that exist in using psychoanalysis as a critical discourse does not lead Douzinas to explore his own ambivalence regarding psychoanalysis, for he simultaneously relies on the existence of "the 'fundamental prohibition' imposed by the social symbolic" (313) and criticises Salecl's postulate of a "social symbolic castration" (315). One is left feeling that Douzinas wants to have it both ways: use psychoanalysis where it suits him, and conveniently reject the claims of some of its proponents should it detract from his own argument.

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3 "Psychoanalysis and in particular its Lacanian revision are fast becoming the latest great frontier for jurisprudence too." (297)

4 Most notably when, without qualms, Douzinas assimilates Lacan's position with that of Legendre: "the task of psychoanalysis is to underpin the law again, to bear witness to the 'truth' of the speaking subject and strengthen the position of the father", which leads him to accuse Lacan of occupying an "authoritarian position" (327). This is a gross misunderstanding of Lacan's work, for although Lacan did note that the weakening of the symbolic resulted in an increase in segregative practices, he did not for all that advocate an - impossible and undesirable - return to the Freudian pathologies characteristic of the paternal order. Indeed, Lacan's work as a whole inscribes itself very much against the subject's alienation to the Ideal. (see chapter VI)
I will not engage any further with Douzinas' selective intermixing of psychoanalysis proper with its peripheral emanations. Let me simply state that I very much beg to differ with his reductive understanding of the potential of psychoanalysis. For if, and this is rightly noted by Douzinas, there is no doubt that it is extremely dubious to transpose the idea of human right onto the concept of object a (op. cit., 312-318), or to sustain the existence of a "symbolic social castration" (315) instituting the "fundamental prohibition" (313), this is also not what a serious engagement with psychoanalysis from the perspective of the political should aim at. Indeed, and this is the difficult position I am struggling with in this thesis, the psychoanalytic discourse lies at the crossroad at which civilisation encounters the subject. For all that though, it does not follow that psychoanalysis proceeds by means of a simplistic transposition of its concepts from one place to the other. Rather, the very foundational claim of psychoanalysis lies in the premise that there exists an inextricable correlation between the discourses of civilisation and the structure of the subject; consequently, it would be vain to hope understanding the ones in isolation from the other.

Indeed, this is why it would not even be relevant to try and elicit some form of temporal order of priority according to which the Oedipus complex would be prior to the institutional discourse or a result of it; for the 'subject' and the 'social' are in topological (dis)continuity with one another, each supplying a number of elements for the elaboration of the other. Thus the discourse of the unconscious is not distinct from the discourses of civilisation, and the point of reading law psychoanalytically is not to transfer psychoanalytic concepts onto the social. The potential of a psychoanalytic jurisprudence is neither analogical nor hermeneutic: I am not seeking to pose that one can understand the political by analogy with the functioning of the unconscious, nor that the Oedipus complex invites us to interpret the institutional discourse on the basis of repression. Indeed, as already posed, from the perspective of psychoanalysis, the discourse of the unconscious is in continuity with the discourses of civilisation. And this continuity, in Lacan's work, is organised around the place of exception.

Civilisation as a 'common Mode of Jouissance'

Thus, taking our bearings on Miller's comment that "civilisation is a mode of jouissance, and even a common mode of jouissance, a systematised distribution of the ways and means to jouir" (Miller: 1997a, 13), we are left with the task of exposing with as much accuracy as possible the ways in which the discourses of civilisation knot themselves to the unconscious as discourse. This is what we did to some extent in chapter II, by showing how the Christian discourse succeeded in anchoring itself on the subject's sense of being-at-fault through the concept of sin and by operating collective pathways for the sublimation of a "negated jouissance." But this chapter will take us beyond Legendre's extrapolation of the similarities that undoubtedly exist between Freud's Oedipus complex and the institutional discourse, which does indeed provide us with an interpretative framework for the deciphering of the symbolic logic of the law. It will be with a view to demonstrating in what sense the potential of psychoanalysis extends beyond hermeneutics that the Lacanian concept of exception will be developed.
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The purpose of psychoanalysis indeed, to paraphrase a famous formula, is neither to interpret the world nor to change it, but rather to intervene in the complex and sometimes destructive knottings of the subject with the discourses he is subjected to from the moment of his birth. The possibility of such an intervention requires a close analysis of the effect of various discourses on the symptomatology of the subject, including the institutional discourse. Thus for example, in its most restrictive understanding, the institutional discourse is in charge of dealing with the rebel, the insane and the criminal through containment strategies which can but further alienate the subject in the order of a discourse which, though it may not be repressive in the classical sense of the term, is evermore insidiously engaged in a process of classification which deprives the subject of the responsibility to speak.

Thus it maybe that the discourse of rights is one of the symptoms of the modern world, and it may also be true that Lacan was not in favour of "a so-called universal law called the rights of man" (quoted in Douzinas, 314; Fink: 1995: 101). But is this not rather an index of Lacan's profound understanding of the alienating effect of a right-discourse dissociated from a genuine concern with the human subject's particularity than of his authoritarian, non-liberal tendencies? Indeed, what Lacan is remarking upon here is simply that there cannot be a solution to the subject's discontents in the order of the signifier, for it is his subjection to this very order which causes his alienation in the first place.

Let us now expose the root of this subjection to the order of the signifier and see if we can, rather than 'transferring' psychoanalytic concepts onto the social, map something of the deep and inextricable entanglement of the subject in the discourses which produce him as remainder.

II - DISCURSIVE MODALITIES OF THE UNIVERSAL

Of Rules and Exception

In the previous chapter, by drawing on psychoanalytic theory, we were able to attest to the validity of Legendre's observation that the Christian discourse derived its strength from the instinctual phenomenology which was assembled and accounted for by Freud's Oedipus complex. At this point in my elaboration however, I can no longer defer the difficult issue of the credibility of the Oedipus complex in today's setting. Indeed, much of what was said in the previous chapters resulted in a partial discarding of the mythical aspects of the Freudian elaboration, while I nonetheless chose to retain his perspicacious insights on the mechanisms which, according to him, structure the libidinal fluxes which secure the subject in the social bond.

So far then, I have retained some elements of the Freudian theory while declining to recognise the wholesale credibility of the Oedipus complex. In view of this slightly 'schizophrenic' reading of Freud, it will now prove useful to return to the Lacanian re-reading of the Oedipus complex so as to establish more precisely the elements of the Oedipus theory which remain convincing in spite of the obsolescence of some of its key tenets — such as the real threat of castration, the primal murder, or the phylogenetic hypothesis of the origin of guilt.
For this purpose, I will now present Lacan's reading of the Oedipus complex as a 'supplementation' device whose function is to institute the unconscious, before engaging more strictly with the structure of the universal in its political dimension.

**The Oedipus Complex as Supplementation**

Yet the Oedipus complex cannot run indefinitely in forms of society that are evermore losing the sense of tragedy.

Jacques Lacan

The term 'supplementation', first introduced by Lacan in relation to psychosis, indicates that in his reading, the subject's confrontation with the impossibility of jouissance can only be resolved through the constitution of a symptom, which knots sense and jouissance for the subject. Thus, the Oedipal symptom, according to Lacan, is nothing else than a 'traditional' supplementation device, whereby sexual sense is substituted for the impossibility of jouissance. In effect then, Lacan's insightful reduction of the Freudian myth to its status as symbolic supplementation of the instinctual conflict of the subject will now allow us to apprehend the law of the Oedipal unconscious in a different light, for to perceive the Oedipus complex as a supplementation device indeed implies that the Oedipus is not an invariant element in the structure of the subject but rather, that it is simply one of the modalities of the unconscious. In turn, this entails that the Oedipus complex is not to be seen as causing the sense of guilt but as an organisation thereof through the medium of sexual sense.

**Oedipus Complex and dogmatic Order**

This version of the Oedipus complex as an organisational device was developed in chapter II with regard to Legendre's study of the dogmatic order, which was presented as the institutional utilisation of the concepts of moral and legal fault with a view to operating a historically specified mode for the collective channelling of jouissance. As such, we went along with Legendre's hypothesis that the canonical discourse derived its symbolic efficacy from its capacity of recuperating the subject's guilt for its own purposes, and that it did so through the medium of the Ideal. This led us to conclude that Legendre was describing an Oedipal mode for the organisation of the institutional discourse.

However, in view of Lacan's presentation of the Oedipus complex as a supplementation device, we are left with the following question: is the Oedipal structure of the unconscious a by-product of the dogmatic order or on the contrary, does the latter borrow and reinforce the Oedipal structure of the unconscious? This is a question I will not overly indulge in, for it would prove both impossible to resolve and unprofitable for my purpose, which is that of studying the instinctual mechanisms which support subjective investment in the institution. Yet I will remind the reader that for Lacan,

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5 *Ecrits* 813, 311 (trans. mod).
6 See *Seminar III* and the contemporary text "On a question preliminary to any possible treatment of psychosis" (*Ecrits*).
7 See *Seminar XXIII* and Skriabine's *Clinic and Topology* (The Other Press: forthcoming)
8 See P. Skriabine: "Clinic and Topology: the Fault in the Universe", Part II, in *Topologically Speaking*, forthcoming. This is attested to by the non-Oedipal organisation of psychotic and perverse structures (see chapter V on psychosis).
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It is therefore out of the question to ask oneself the question of origins - the Law is there precisely from the beginning, it has always been there, and human sexuality must realise itself through it and by means of it. This fundamental law is simply a law of symbolisation. This is what the Oedipus complex means. (Seminar III, 83)

In this statement, Lacan is intimating that the structural value that insists beneath Oedipal narratives is that it is a law of symbolisation, an insight which he further develops by posing that symbolisation is organised by means of an exception to itself. Thus, Lacan is implying that though the Oedipus complex may well be nothing other than Freud's elective theorisation of the discontents characteristic of the Judeo-Christian civilisation, it nonetheless remains that the truth which it ciphers continues to be pertinent to our understanding both of the human psyche and the institution, for indeed it indexes the exceptional structure of the law of symbolisation.9

In effect then, if one is to conceive the Oedipus complex as only one of the modalities of the unconscious, it follows that the institutional discourse does not necessarily have to borrow the pathways which we became privy to thanks to Freud's Oedipus complex. Thus, if the next sections in this chapter will be dedicated to Legendre's exegesis of the Catholic religion, we will then move on to study other possible analyses of the political organisation of subjectivity.

The Place of Exception in the Unconscious

In order to elucidate what is meant by the place of exception, it will be necessary to return to some of Lacan's earlier elaborations on the signifier. As I cannot engage with the whole of Lacan's work in this thesis, the following account will require a certain willingness on the part of the reader to accept a number of the Lacanian premises.

The first step is to recall what may be Lacan's best known statement to the effect that the unconscious is structured like a language. If the unconscious is structured like a language, then it implies that it is constituted of signifiers. Thus, drawing from the linguistic advances of Saussure and Jakobson, Lacan adapts the theory of the signifier as a differential unit for the purposes of psychoanalytic theory. In effect, the signifier can only be defined in contradistinction with other signifiers (Seminar IX, 6/12/61), and thus through the logical operator of difference, namely a ≠ b, a ≠ c etc. Indeed, "it is because language aims at sense that the logic of the signifier which supports it is a logic of difference" (Skriabine: Clinic and Topology, 120), for sense is produced through differentiality: somewhat simplistically, a tree is a tree because it is not a flower, I am a woman because I am not a man, law is defined in relation to justice, right in relation to wrong and so on and so forth.

It logically follows that in the order of signifiers, the logical operator of identity, or a = a, which results in a "zero of sense" (ibid.), is not operative. Yet, Lacan poses that in order to ground the differential unravelling of sense, there needs be a point of self-identity in the order of the signifier, and

9 I will develop this parallel between the Oedipus complex and the law of symbolisation in chapter V.
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this is how Lacan comes to deduce that in the set of signifiers, there exists a signifier, which can be any signifier, with which the subject identifies. However, the consequence of this identification of the subject with a signifier, which from then on has for function to represent the subject as signifier to other signifiers, is the non-sensicality of the signifier of primal identification in its dimension of identity to itself: or the signifier as letter, also noted S₁ by Lacan. It is on the basis of the conjunction of these two logical operators, identity and difference, that Lacan formalises his theory of exception, for indeed it is his contention that the order of the signifier may only operate on the basis of an exception to itself, which introduces the possibility for the subject to gain a sense of — no doubt alienated — identity in language.

Russell's Paradox

Let me illustrate this further by presenting Lacan's engagement with Russell's well-known paradox of the set of the sets that do not include themselves (Seminar IX, 24/01/62). Let us take, for example, the set 'Humanities': it will contain generic sub-categories such as Social Sciences, Language Studies etc., which do not include themselves. However, should the set 'Humanities' be included in itself, then the set 'Humanities' will be inconsistent with its definition. On the other hand, should the set 'Humanities' not include itself, then it will be lacking an element. For Lacan, this logical paradox is ascribed to the failure of symbolic logic to recognise that a same signifier can fulfil two different functions: hence, Lacan's proposal is to introduce a distinction between the word 'Humanities' as inscription, a series of letters thus, indexing "the essentially localised structure of the signifier" (Écrits, 501; 153) and the signifier 'Humanities' as differential unit included in the set.

Lacan is obviously not proposing to revolutionise the world of symbolic logic here, but rather to deduce the structure of the subject from that of language by isolating the function of the name in its identification of the subject beyond differentiality. Thus in Lacan's theory, the subject can only exist in language by means of an identification with a signifier which will, on the one hand, remain a signifier caught in the differential productions of language, and on the other will designate the subject in its identity to itself.

This dualism of the signifier is also what one finds elaborated elsewhere in Lacan's concept of the Name-of-the-Father, a signifier without signification whose function is to organise the set of signifiers. Thus the Name-of-the-Father is the signifier which names language, and is included in it as signifier but excluded from it as inscription of a place which remains identical to itself: the Name-of-the-Father is an extimate signifier (inside and outside the order of the signifier).

It is on the very basis of the differential logic of the signifier that Lacan poses that the order of the signifier can only function by means of an exception to itself, and that this exception is nothing other than the subject. As such, what Freud's discovery of the Oedipal logic of the unconscious reflects, in

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10 This well-known Lacanian formulation appears for the first time in Seminar IX (9 december 1961): "Unlike the sign, the
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fact, is the exceptional structure of language for the subject. Lacan thereby indexes the 'a-sphericality'\textsuperscript{11} of the structure of the unconscious, which will revolve around the \textit{ab-sens}\textsuperscript{12} of signification. In view of the subject's quest for the sense to be ascribed to his non-sensical self-identity, the place of \textit{ab-sens} will henceforth be liable to be invested by the Ideal and its serialised heirs, which supply sense.

As a final comment, note also that what Lacan is describing here is 'neurotic logic', for indeed the structures of psychosis and perversion are organised differently. Indeed for Lacan,

In fact, the image of the ideal Father is a neurotic fantasy. Beyond the Mother, real Other of demand, whom one wishes to assuage desire (that is, her desire), there stands out the image of a father who would close his eyes to desires. The true function of the Father, which is fundamentally to unite (and not to set in opposition) a desire and the Law, is more marked, even, than it is revealed by this. The neurotic's wished-for Father is clearly the dead Father. (\textit{Ecrits}: 825; 321, trans. mod.)

Further, we must note that the 'classical' structure of neurosis as theorised by Freud is also giving way to more proteiform modes of organising the unconscious, and that this mutation in the patriarchal organisation of civilisation is thus also heralding the transformation of the Oedipal clinic invented by Freud into the contemporary Lacanian 'clinic of fictions' (see Chapter VI).

\textbf{Universalism and Exception}

Both the present chapter and the following one will develop these conclusions on the function of exception which, if it acts as an operator of sense in the discourse of the unconscious, will also be shown to fulfil a similar function in the discourses of civilisation. Indeed, as I just argued, it is the differential nature of the order of the signifier which requires the existence of an exception to itself in order to supplement its endlessly deferred production of sense on the basis of difference with the logical operator of identity.

In order to develop my analysis of the political on the basis of Lacan's theory that the function of exception in fact pertains to the very order of the signifier, and that the structure of discourse is consequently a-spherical \textit{per se}, I will present three different versions of the political discourse, all of which have in common to be founded on analyses of universalist discourses.

\textbf{Logics of the Universal}

This chapter will develop Legendre's critique of the canonical discourse (section III), which for him rests upon a specific substitution: that of its universal truth for the subject's particular desire through the medium of the theologico-juridical \textit{distinguo} of sin. It will therefore open with an exploration of Legendre's analysis of the discursive logic of western science, matrix of the universalist institution. I will then argue that what Legendre is in fact indexing with his exposé of the institutional discourse is the centrality of the \textit{function of exception} in the organisation of the universalist management of men. Indeed,

\textsuperscript{11} J. Lacan, \textit{L'Êtourdit} (1973), at 40. In other words, language is articulated by means of a central exception to itself.
Legendre is performing the careful mapping of a highly specific modality of the exception, which is particular to an order of discourse the central axis of which is the symbol. As such, Legendre is describing an Oedipal mode of organising political subjectivity, one that operates by means of symbolic transference to the place of sovereignty: for in his work, the place of exception is confused with that of political sovereignty. In a second moment, I will also expose his argument to the effect that the figure of the Pope will be called to reinforce the symbol of textual truth by means of a temporal incarnation (section IV).

However, this is not the only way of organising political subjectivity in a universalist tradition. This statement will be sustained by way of a brief presentation of utilitarianism (section V), for this is a political doctrine which does not rest upon the truth-value of its symbolism but rather on the instrumentalisation of meaning by way of the principle of utility. Yet, the efficacy of such a discourse is nonetheless conditional upon the operation of a central function, which in the seminal work of Bentham is occupied by the gaze. For Bentham then, the place of exception is distinct from that of sovereignty. The critical importance of Bentham's otherwise questionable doctrine lies in that to an extent, Bentham recognises the impossibility for the order of the signifier to account for itself self-referentially. Bentham thereby steps out of the symbolic logic of truth by introducing the possibility for the place of exception to be occupied by something else than a symbol which would both complete and decomplete the order of the signifier: a drive-object, or the gaze. 13

My exploration will then lead us to consider Foucault's hypothesis to the effect that sovereign power is no longer operative, for in his later work he argues that sovereign power has been progressively replaced by bio-power, the institution of which was initiated through the utilisation of the very censorship mechanisms also isolated by Legendre: confession and penitence (chapter IV). However, in Foucault's argument, these mechanisms do not so much strive to censor desire but are rather designed to draw the subject's sexuality into the circuits of power and knowledge. From the outset then, we can credit Foucault's later work with being a courageous attempt at defeating the centrality which is innate to the order of the signifier, for he engages critically both with the symbol as supplement to the logic of the signifier and with the gaze as alternative operator for the completion of the universal. We will thus examine how successful he is in his compelling project. In the next chapter then, Foucault's work will be engaged with in the context of the concept of transference: for I will also argue that transference is the unavoidable corollary of the exceptional structure which operates the order of the signifier, and that Foucault fails to take full account of its incidence in the functioning of discourse.

12 Ibid. at 16.
13 I am grateful to Philip Dravers for drawing my attention to the relevance of Bentham in the context of my argument.
Totalitarianism and Universalism

I will now rephrase the trajectory of the forthcoming argument in terms of the intimate correlation which exists between universalism and totalitarianism. For this purpose, let us re-assemble the theoretical elements exposed so far, this time from the perspective of the political. Thus, if we are to accept Lacan’s contention that the logic of the signifier is supported by means of the place of exception, it should be plain that a discourse purporting to be universal can only sustain itself as complete by adducing an extimate supplement to its discourse. Indeed, we saw that for Lacan, the production of sense is differential, and that a universal discourse cannot close upon itself without the operation of an element which is extimate to itself. Logically then, when the order of the signifier is in the service of the universal, the danger of totalitarianism comes in the wake of the political: for the order of discourse will be forever seeking to remedy its structural incompleteness, and it will do so by introducing an operator of identity. Classically, this operator of identity can take the form of sovereignty, for the position of the sovereign as supplement to discourse is what remains identical to itself. Yet, we will see that it can take other, even less desirable forms, as in the work of Bentham (section V), but also in dictatorial regimes which are supported by a cult of the leader (chapter IV).

Bearing in mind the intimate correlation between a possible totalitarianism and the order of the signifier then, I will now re-articulate my proposed itinerary in terms of sovereignty and totalitarianism. I will start from Legendre’s study of the canonical discourse proper, which can be seen to function by way of an equation between the place of exception and that of sovereignty through the medium of the symbol of universal truth. As such, the model of political organisation with which it takes issue can be named totalitarianism of redemptive truth, in other words symbolic totalitarianism.

Then, and by way of transition with the work of Foucault, we will consider Jeremy Bentham’s utilitarianism in order to present an example of discourse in which the place of exception does not correspond to that of sovereignty, for indeed Bentham’s theory relies upon the instrumentalisation of the gaze while the place of sovereignty is simply posed to be occupied by whoever is recognised as such by the subjects of a given community (Bentham: 1970, 18-19). Such a proposition can be seen to favour real totalitarianism, or in other words instrumental totalitarianism.

The combined insights derived from my two-fold analysis of the function of exception in the work of Legendre and Bentham will then provide us with a transition with the next chapter, in which Foucault’s hypothesis of the end of sovereign power will be examined. Indeed, for Foucault sovereign power has given way to the transversal and proteiform modalities of disciplinary power which intertwine with the body of the subject by means of an extraction of knowledge on life. As such, Foucault’s critique is an indictment of the totalitarianism of the sciences of life, in other words, bio-power; while for him, more traditional analyses of power in terms of the centrality of law misconceive the diagrammatic nature of power-relations. As such, I will argue that Foucault is trying to circumvent the inevitability of the function of exception as operator of discourse.
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This three-fold development will nonetheless lead me to re-assert the centrality of the function of exception in the western legal discourse. Indeed, in my opinion, Foucault's contention as to the end of sovereign power fails to account for the transferential dimension of power still at play in the modern institution. Finally, I will bring the first part of this thesis to a close by arguing that the modalities of such a function can be manifold, and indeed concurrent, and that these modalities — or their combination — are by no means indifferent to the resulting structures of civilisation.

Of the Benefits to be gained from Discourse-analysis

A methodological Precision: History, Structure and Discourse-Analysis

The question of the validity of discourse-analysis as a method of reading history is one that runs rife in the academic community, for in effect, in view of the over-determination of the signifier, it is easy to establish that there is no analysis that is not also an interpretation, and that as such it is oriented by the project of the writer. Rather than joining forces with such refutations of the importance of the historical reading method, seen by some as detracting from the empirical 'neutrality' of 'factual' history, it will be more productive to engage with such discourse-analyses on their own terms.

Thus, if the theoretical productions engaged with in this chapter no doubt consist in distinct historical analyses of the political discourse, it must be understood that neither such analyses nor my reliance on them will seek to yield a veridical account of history; nor will I claim that by means of such analyses the truth of the subject could be successfully extracted from the manifold narratives that cloak its emergence. In fact, it is now commonplace to state that one can only ever account for the past from the perspective of the present, and that such accounts will unfailingly be phrased in the terms of the current discourses of civilisation; for indeed it is clear that the concern of such analyses must lie with the operational framework of modern discourses. As such, what I hope to be able to derive from the works that will now be studied is an insight on the structural dynamics of the political, obtained by way of a reduction of the residual traces of such discourses on today's political organisation to the features they left in their wake. The key such feature will be the function of exception, which will be presented in conjunction with the contingent knottings associating it with the political function of sovereignty.

The Exception makes the Rule

It must by now be clear that the overarching postulate which is to be read as subtext throughout this chapter is the following: there can be no universal discourse that does not function by means of an exception to itself.14 This is indeed the logical paradox which accounts for the place of exception both in the unconscious and that of sovereignty in the political order: indeed, there has to be a place of enunciation from which both the law of the unconscious and the laws of the real world emanate, and this

14 A full elucidation of this postulate in logical terms will take place in Chapter VI.
place of exception opens the subject to the temptations of transference, which make him susceptible to believing in the Ideal, the leader or the law-giver.

In other words, the exception does not so much confirm the rule as it makes it. And we can indeed understand the attempts of political philosophers to theorise the residual place of sovereignty in the organisation of power — Hegel's prince, Carl Schmitt's definition of sovereignty to name but a couple — in the light of such a logical paradox; for although there are laws, laws are never exhaustive enough to be self-sufficient.

More importantly still, it will be argued in chapter IV, and again in chapter VI, that it is this exceptional structure of the universal which produces the possibility of there being a transference to the representative of exception, whether it be an idea, an object or a temporal incarnation; and that this transference is a sine qua non of civilisation.

III - A SYMBOLIC ORGANISATION OF THE UNIVERSAL

Truth in the Place of Sovereignty

In the first limb of my exposition of the exceptional structure of the universal characteristic of the occidental tradition, I will present Legendre's study of the way in which the canonical discourse gave itself the discursive means to invest the place of exception. In effect, Legendre argues that the place of exception in the canonical discourse is occupied by the idea of universal truth, which then comes to be relayed by the Pope and his intermediaries, transient representatives of the residual place of sovereignty.

In the present section, I will concentrate on Legendre's exposition of the means by which truth is presented as universally and eternally valid in the canonical discourse, and this in spite of the ongoing interpretative adaptation required in order to assimilate the production of other fields of knowledge. And in section IV, I will briefly outline the function of the Pope as ultimate respondent of the truth of the canonical discourse, and argue that his exceptional position in the order of the Christian discourse is what provides an imaginary vector for symbolic transference in the Christian religion.

For now, I will present Legendre's argument to the effect that the unitary approach to science specific to the canonical discourse, and by virtue of which all forms and modalities of knowledge come to be subsumed under the aegis of reason, is to be traced back to medieval scholastics. More precisely, Legendre's key intuition resides in his hypothesis that the perennial influence of medieval scholastics is to be more accurately located in the persistence of the "universality of a discourse on method" (52), which allows the apparent neutrality of its discursive productions to take precedence over the substantial discoveries of science by virtue of the impeccable logic that supports it.

15 "The political state is divided into the following entities: above all, the power to determine what is universal, and this is the legislative power; in second place, the subsumption of the sphere of particular interests under the universal, that is to say the power of government; and thirdly, subjectivity as ultimate power of decision, that is to say the power of the prince." (I Hegel, Principles of the Philosophy of Law, quoted by E. Laurent: 1999, at 128)

16 "Sovereign is he who decides on the state of exception" (Agamben: 1998, 9)
Chapter III - Exceptional Fictions of the Universal

Historical Prolegomenon: The Textual Sources of the Canonical Discourse

Legendre, guided in his project of tracing the discursive genealogy of the institution by the centrality of the written word as source of truth in the occidental tradition (80-98), proceeds to demonstrate the feasibility of his own decoding venture by recalling that there are only two textual sources of Romano-Canon Law, sole legitimate discourse until at least the end of the period which historians conventionally refer to as the Middle-Ages. Thus, his proposed objective being to read both the development of the institution and that which it censored in the texts that supported the elaboration of the canonical discourse, Legendre takes his bearings on the two textual axes structuring its unfolding interpretative strategies, while also noting that both are theologico-juridical productions and as such are promulgated in the name of God (259-262):

- Justinian's 6th compilation of a Corpus juris civilis, which includes doctrinal texts (The Digest), Imperial decisions (Code) and a manual for students (Institutiones) and was discovered in the Occident in 11th — Justinian being the Emperor-theologian of the Orient.

- The first Canon codification to intervene on such a scale, which comprises two compilations: Gratian's Decree Concordia discordantium canonum (circa 1140), which, as its title indicates, was drafted with a view to uniform contradictory interpretations of the Rule — the term canon being derived from a Greek word signifying rule. His codification is itself supplemented by Pope Gregory IX's Liber extra (1234) — or 'book outside' [of Gratian's decree] —, which draws its inspiration largely from the Justinian Code.

In the course of his summary of the textual sources of Romano-Canon Law, Legendre asserts that such were the two only consequent bodies of written law — they were of course taken up in an ongoing process of interpretation the elected productions of which would then be literally transcribed in the margins of the Law — until the Lutheran Reformation and the popular movements henceforth agitating European nations (262), which marked the beginning of a new historical era due to, on the one hand, the overt pluralisation of truth-claims thereby introduced, and on the other, the emergence of the concept of the State as central unit of government.

Let us now examine how Legendre proceeds to sustain his postulate that a study of the mechanisms at play in the canonical discourse, which he carried out through a textual analysis of the sources mentioned above, is a sine qua non to any understanding of the modern institutional discourse.

17 Namely, either 1453, date of the fall of Constantinople, or 1492, Columbus' discovery of America.
A unitary Taxonomy of the Universe

The institutional Dogma in Europe and the universal Great Art of the Middle-Ages

In Legendre's account, the working framework of the embryonic medieval institution borrows both its structure and its substantial content from two interwoven sources, the combination of which forms the canonical discourse: theology and law (43); and it is this combination which Legendre indexes when he identifies the canonical discourse as the matrix of the modern institution. In order to justify his collapsing of law and theology as the joint sources of the contemporary institutional discourse, Legendre proceeds to locate the common origin of both discourses by arguing that "the institutional dogma in Europe" came to be phrased and continues to be formulated in the terms set by medieval scholastics, for it is the latter that set the symbolic language henceforth utilised in the canonical discourse and, subsequently, that of the modern institution:

In reality, medieval scholastics belongs well and truly and in its entirety to the institutional dogma in Europe, and even, it is the very foundation thereof, since it laid down the symbols to approach it, the logical keys to renew its formulae and the initial example of a reading. (51)

What Legendre indicates in this statement is that the contemporary institution reasons to this day in terms of a symbolism, a logic and a rhetoric first devised under the Romano-Christian Empire and then adopted by the Catholic Church, for their perennial influence may still be discerned in the present method of phrasing conflicts.

In order to understand the significant implications of such an audacious claim, we must examine on what basis his surprising hypothesis may be justified. Thus in the same section, Legendre specifies that the drive for exhaustive classification characteristic of the dogmatic order is to be tracked beyond the canonical discourse, which he sees as "inserting itself in a taxonomy covering the universality of science" (52). Following Legendre, the discourse of religion merely came to occupy a position that was already marked out by the medieval approach to science at large, the advances of which it consistently attempted to contain under a unitary principle of universal knowledge, or a cosmogony ordered by way of an all-encompassing taxonomy:

... the medieval proposition is to erect science in a universal Great Art, which the artist may operate when he knows how, namely by knowing through which divisions and according to which degrees various doctrines communicate between one another. Rhetoric, which encompasses logic, enunciates the principles for classification with a view to convince, as well as all relevant categories and inter-relations, the entirety of which appears to constitute an immense metathetical system: the science of humans - as such, and as product of the universe. (52)

The "immense metathetical system" enigmatically referred to by Legendre indexes the operation of a method for the transposition of all knowledge in the terms of the overarching discourse of universal science; and indeed what will be crucial for our later elaboration is that it is not the substantial content of
Chapter III - Exceptional Fictions of the Universal

the universal Great Art which Legendre is isolating as the origin of the subjection of man to the unitary principle of medieval science, but rather its method for the recuperation of all elements extraneous to itself: namely "rhetoric, which encompasses logic", with a view to presenting all science as "the product of the universe". In effect, it is the transmission of this method to subsequent discourses of power which Legendre perceives to be the keystone of our institutions.

A single Notion of Law

Before returning to the method in question — or the method of the question — let us note that the growing influence of religion allowed the canonical discourse to present itself as the embodiment of the spiritual dimension of universal science, and to incorporate existing bodies of knowledge under its aegis, thereby progressively coming to embrace all other discourses and subordinating all forms of knowledge to a superior form of truth. Legendre however declines to engage upon either a study or a critique of the universalising discourse of the Middle-Ages, for such is not his concern: indeed, he proceeds to argue, on the basis of his observation of the cosmogonic ethos of medieval knowledge, that the unitary fiction it engendered had for result the subsuming of all discursive realities under "a single notion of Law":

What is important for the purpose of the present study is to note the generality of the dogmatic access to knowledge for medieval people. What we are faced with here is a primitive knotting. We have forgotten that it used to control everything, and not simply theology and Law [le Droit] but also medicine, history, the science of animals, and mathematics itself. The extreme technicality deployed in the handling of the distinction [...] resulted in that nothing was left outside of the institution, and in the erection of the edifice of laws under a single notion of Law [la Lai]. (52)

We can draw two provisional conclusions from Legendre's detour via ancient dogmatism: firstly, the canonical discourse is heir to the universalising passion of medieval scholastics; and secondly, Law [le Droit] and the institution are marked by the same obsession to unify all discourses under a "single notion of Law [la Lai]"; the French distinction between Droit and Lai allowing us to perceive that laws are inscribed under the broader ordering principle of the Law of reason. Thus, Legendre argues that the institution is inaugurated with science itself[...] the first institution consists in no more no less than this unitary system for a total, absolutist science, unlimited in its application by the mechanic virtue of its own logic. (53-54)

His isolation of the unitary finality of the institutional discourse is what allows him to postulate that our present law, in so far as it holds on to its determination of incorporating all other discourses by way of

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18 Incidentally, we may already remark that it is with respect to the uncompromising control of religion on knowledge that Descartes' separation of the realm of science from that of truth, which he relegates to the divine domain, must be appreciated at its true radical value.

19 "There is no such thing as pre-discursive reality. Every reality is founded and defined by a discourse." Lacan: Écrits, 852, Reading Seminars I & II, 418.
a metathetical principle — organising the transposition of all modalities of logic and science in terms of the rhetoric of the law —, inherited both this trait of omniscience and the means by which to sustain it from the "universality of a discourse on method" (52) characteristic of the medieval relation to knowledge.

**Fault as the Distinguo of legal Science**

In addition to this genealogy of discourses marked by the unitary spirit informing the Western tradition, Legendre also mentions that "[t]he Middle-Ages, beneath the enigmatic transparency of the canonical discourse, stipulates a constitution of censorship." (55) What Legendre is introducing here with his reference to censorship is the indication that if, on the one hand, the occidental institution is heir to a discourse whose foremost task is to classify, name and organise all manners of particularities with a view to ensuring the consistency of knowledge, operating by means of the logical utilisation of subtle rhetorical distinctions, on the other hand, such a universalising orientation takes on a different slant when it comes to law.

Indeed, it is the nature of the censoring mission entrusted to the law which determines the form of the distinguishing it requires to carry out its classificatory objective when dealing with the wealth of human particularities. Thus, the canonical discourse relies on sin as its sole guiding principle, for such is the only unitary principle which may include all human particularities under its aegis. The doctrine of sin is itself activated in relation to transgression, for transgression supplies the necessary material for the distinguishing of fault to be brought to bear upon the multiplicity of human events; indeed it paves the way for the casuistic formalisation of a number of principles by means of which legal subjects may first be ordered in terms of guilty and innocent parties and then distributed, following the nature of their transgression, under the various headings recognised by the juridical apparatus. The dual function of fault is therefore to exclude the transgressor from law's benevolence while including him in its scope and to include all others therein by virtue of the exclusion of the 'outlaw', which has for desired consequence the retracing of the place of the law and the consolidation of its certainty. Thus transgression is the very principle animating the canonical discourse (54), and there is no doubt that it remains at the heart of our laws — although the ancient appellation of sin has given way to its secular counterpart: morality.

**A ritualised Process of Interpretation: Truth as Rhetorical Production**

I will not dedicate any more time to establishing the classificatory ethos of the medieval discourse on knowledge, for it has already been sufficiently demonstrated by distinguished others. More to the point, we must now supplement our advances thus far with an exposé of the method which allows the rhetoric of fault to play itself out convincingly in the course of the juridical debate.

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20 See for example M. Foucault, The Order of Things.
Chapter III - Exceptional Fictions of the Universal

A Trial of the Text

In the last analysis, the prime guarantee of orthodoxy is well and truly the respect of forms in a trial instituted against the text itself.

Pierre Legendre (97)

In effect, Legendre discerns that the production of truth takes place in the course of a ritualised process of interpretation, where the issues at stake will first be framed in the terms selected by the institutional discourse and then dialectically mobilised with a view to producing a decision in conformity with the discourse in charge of the formalisation of the conflict. The central objective of the dialectical apparatus of power is indeed to activate a pre-established 'distinction' with a view to phrasing anew the discursive limit apparently challenged by the conflict being addressed. It is this limit which, once redefined, will in turn come to consolidate the existing taxonomy of the canonical discourse by recuperating all transgressing subjects under a number of precise headings, which then call for a determined institutional response — and here we recognise the pertinence of Foucault's analysis of the emergence of the concept of madness in terms of the inclusion of a liminal position in the order of discourse in Madness and Civilisation (1967: 11), for it is the recuperation of that which fails reason itself within the terms of rational discourse which further secures the credit of the postulated capacity of reason to accommodate all particularities.

Legendre identifies this ritualised process of interpretation as unfolding by way of a 'trial of the text', a method which he claims to be originally attributable to medieval scholastics, and which was imported into the canonical discourse as the indispensable companion to the universalising ethos it had adopted as its own. It is this method indeed which supports the claim of the canonical discourse to be holding the 'universal key' (recognised as such by the Latin expression clavis universalis, 95) to all temporal conflicts, a claim which is repeatedly averred through the ritualised show of logic that openly gives birth to a new interpretation of truth, all the while seemingly submitting its textual distinctions to re-examination, for it is the text which is on trial: it is its distinctions which are being studied, questioned and rephrased to accommodate the facts it is presented with, it is the text that is interrogated, and it is the text that will emerge triumphant, if somewhat adapted. To borrow a famous Derrideanism, there is indeed nothing, or no one, outside the text in the canonical tradition.

Grammatical Analysis

Furthermore, if the method of the trial of the text allows "the correct interpretation [to] discover sense as dependant from Ratio" (95), it is by virtue of this yet apparently subsidiary branch of logic that grammatical analysis is. Indeed, Legendre notes that "grammatical explication secures the linguistic tool for the institution" (94), and that by combining a universal discourse on method with the art of textual exegesis, the institution ensures itself of a rhetorical truth that purports not to proceed by way of decision but rather to undrape a substantial truth supposedly dormant, until then cloaked in the opaque wording of the text. This is why Legendre may claim that the essence of the juridical art lies in reading
the text of law — "[t]he science of the jurist consists in knowing how to capture his text" (93) — and that he may index the constitutional over-determination of the signifier as the condition for law's flexible artistry, that which allows its agents to unfold their hermeneutic skills *ad infinitum*:

Hence the extreme importance of words in so far as they are verbal forms devoid of any precise meaning, hence this sliding of lexicography which produced a number of speculations which, although to us they may appear unexpected, are perfectly rigorous in the traditional conception. (95)

This statement allows us to circumscribe more precisely the nature of the universal key referred to in the previous paragraph, that which opens the door to discursive truth: indeed what could the key in question be but a reading method that presents itself as determined by grammatical logic, the apparently ir reproachable neutrality of which supports the impartial enunciation of reason?

**Taxonomy and its Interpretation**

Let us now visualise the two pillars supporting the edifice of medieval scholastics. Indeed, the medieval relation to knowledge is characterised by an approach to science which develops through a measured articulation of the universal taxonomy united under the fiction that its ordering replicates that of the universe, and which takes place in the respect of the exact rules it devised in order to ensure the repeatedly successful outcome of the ritualised process of interpretation: for the permanence of a unitary system of knowledge is by definition dependent upon its capacity of being all-accommodating. This exposition will support my earlier claim that it is first and foremost the method of medieval knowledge which the present institutional discourse is actively heir to.
Table I: The Unitary Method of Medieval Scholastics
Chapter II

Exceptional Fictions of the Universal

Although the contents of this table have been gradually introduced in the course of the preceding elaboration, it may not be superfluous to supplement this visual summary of the argument thus far with a brief articulation of the elements collected therein. Thus, we know medieval scholastics to be characterised by two features:

1) That it proceeds upon its quest for universal knowledge by subordinating all forms of science, all discursive productions, to the rhetoric — or grammatical truth — that supports its claim to lend its textual body to the universe: thus rhetoric encompasses logic, for it presides over the very structure of reasoning — and as such the claims of logicians as to the neutral impartiality of their science is vitiated ab initio\(^1\) —, and it is logic which determines the advances of science. In turn, laws, which we remember to be dependant upon a consistent postulate to echo with the order of things and to be no more than the expression of a "logical fatality" (40), must be subordinated to a scientific truth that presents itself as the textual replica of the universe.

2) That it mobilises, animates and adapts the resulting taxonomy to take account of the ongoing evolution of other disciplines, thereby incorporating new scientific discoveries, discursive challenges or other forms of 'rebellion' through the 'method of the question', which involves the formalisation of all challenges or events in the terms of the existing text. The question is thus phrased on the basis of the relevant distingo and the text is subsequently interrogated by means of a grammatical analysis that however refers itself to the very text in question. This carefully guarded process of interpretation, organised on the very basis of the sole distinctions which it recognises, will unfailingly lead to the production of a new version of truth, with for result that the text emerges from the trial further strengthened by its overcoming of the challenge and its recuperation of the formerly inconsistent knowledge.

If we now take a step back from medieval scholastics and return to our present legal systems, we cannot but recognise that they proceed in a self-same fashion: indeed, the key moment in any juridical instantiation consists in the legal construction of the facts before the law, and it is on the basis of this qualification that all relevant facts may then be included within the existing legal taxonomy and be logically processed through applicable texts. Moreover, we note that a textual exegesis conducted in the formal respect of both the existing taxonomy and the logical rules of grammar ratifies the innocence of the jurist, the crucial importance of which we studied in the previous chapter:

In the epiphany of the Law, the jurist plays no part, he has not invented anything, he is innocent, having simply performed the logical operation inscribed in the text by pronouncing the words of the sense attributed to the latter. (96)

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\(^1\) See later chapter VI, section entitled The Logic of Truth.
Chapter III - Exceptional Fictions of the Universal

IV - An Imaginary Supplement to the Symbols of Textual Truth

The "Explicated Myth" of Omniscience

In the preceding section, I have outlined Legendre’s argument to the effect that the canonical discourse is the most perfect incarnation of the unitary principle of knowledge characteristic of the Middle-Ages, and whose telos he delineates as consisting essentially in the subsuming of all scientific disciplines and temporal enigmas by means of the rhetoric that systematically structures its discourse. Yet, Legendre acknowledges that such mechanisms for the erection of a hermetic barrage to all potential challenges are not sufficient in themselves to achieve the permanency required of universal truth, and that the value of interpretation — although it is presented as a mere performance of the "logical operation inscribed in the text" in question — must be further reinforced by yet another level of fiction: or a postulated access to a superior order of knowledge.

The Pope as Mytho-Logical Supplement

"A sacred circle where all is being said"

It is thus that Legendre isolates the key fiction of the dogmatic order: "that there exists a sacred knowledge, privileged and removed from others, in relation with the Most High where Power reigns; for it is only in this place that Nature will at last come to be mastered and justified." (61)

It is however not this indication of the existence of a superior order of knowledge which will supplement our analysis, for the proteiform manifestations of similar fictions have been shown to permeate the whole of the dogmatic edifice, but rather its "sacred" quality, which entails two significant consequences concerning the authorised form to be adopted by the 'revelation' of law to the common mortal: indeed, the term 'sacred' points to the mythical aura of law while it also implies the necessary 'sacredness' of he who has access to this "circle where all is being said".

Regarding the first of these two implications, Legendre remarks that the crucial moment of the interpretative process is the act which initiates the ritual of casuistry, and whose symbolic re-enactment has for function to situate the unfolding of the ritual of hermeneutics under the auspices of legitimacy: this act consists in the "naming of the referential field" (61). Legendre’s enigmatic expression, the "referential field", indicates that the legitimacy of canonical knowledge, in the last analysis and beyond its rigorous methodology for interpretation, lies in its jealous claim to have sole access to divine and natural laws, while human laws, being by definition subordinated to a superior order of truth, can but lend themselves to constant readjustment, the latter being performed through an always more detailed interpretation of eternal justice.

It is the second implication of the sacred quality of knowledge which will take us into territory as yet unexplored in the canonical course of this chapter, for it leads us to the threshold of the next prerequisite to transference: namely, that there be a "supreme point of power" (62). The function of the 'beneficiary' of this additional requirement — for one could say that he holds the law on trust, namely on
condition that he only makes regulated use of it — is to animate the dead letter of the law; and it has classically been performed by figures modelled on that of the father.

The figure of the law-giver must also prove equal to the two essential criteria that make supreme power tolerable, desirable even: thus, the 'sacred' enunciator of Law must pose as both omnipotent and castrated, a combination which will prove less unlikely than it may seem at first sight. I will later elucidate the logic of this combination by showing that its paradoxical requirements are both necessary for the father to elicit belief in love, but first, I will demonstrate why the function of the father is a *sine qua non* for the smooth unfolding of dogmatic logic. Indeed, it is the *very structure* of the canonical discourse which renders its legitimacy dependent upon the existence of an 'external' instance of guarantee.

"The supreme Point of Power"

The canonical claim that it entertains a privileged relation with the place where eternal knowledge is engraved, awaiting authorised deciphering, proves to be crucial in two respects: firstly, and most evidently, it is the subject's belief in the existence of a reserve of science by virtue of which all human conflicts would be resolved for the best that ensures obedience to the law; and secondly, the belief commanded by the "sacred circle" of knowledge confers the exclusive power of transmitting the decisive science of the law upon the canonist and the legist alike.

And yet, neither the canonist nor today's more mundane jurist will be imprudent enough to allow his function to be glimpsed in its unavoidable partiality, and the production of truth will have to ground itself as *just* by reference to an *external* point of enunciation. Further, I would argue that the necessity for such an extraordinary function to come to the support of the revelatory process of the law is a direct consequence of the universal structure of the occidental discourse.

Let me formulate the logic subtending this last point: first of all, recall that in the universalising approach of the Western tradition adopted by the legal discourse, the discursive production of juridical instances is organised on the basis of a fundamental split traversing the field of legal knowledge: law is indeed sustained in its legitimacy by its pretence to declare the "logical fatality" inscribed in the order of the universe. Then, in view of the necessity for law to testify to its adaptability, which secures continuing belief in the absolute justice thereby promulgated, the interpretative procedure formalises its division as one occurring between the theological — in its modern guises the natural, the scientific or the moral — and the juridical, which are themselves hierarchised in terms of a superior/inferior knowledge (61). In turn, the convincing nature of the decisions taken on the basis of this division is conditional upon the existence of an authorised means of transmission whose function is to link these two orders of knowledge. Consequently, the active revelation of superior knowledge may not be indiscriminately performed, and a no less 'sacred' intermediary between eternal and temporal truths is therefore required to effect the connection, with for implication that the legal apparatus is dependent upon there being a suitable channel for the transmission of divine and natural laws to the mortal realm.
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In the Romano-Christian tradition, the aporia of legitimacy was appositely resolved through the intervention of a mediating figure. In view of the personalised character of power, the choice of such a figure was no cause for lengthy tergiversation: thus, under the Roman Empire it was the Emperor who fulfilled this function, while in the Catholic religion this sacred task was devolved to the Pontiff, "who proffers the legitimate Word" (62). In Legendre's terms then, the choice of the Pope as locus of legitimacy instituted "the enigma of an ultimate respondent", which "locked the institution in accordance with the occidental tradition" (62). In the Catholic dogma, the institution of an "ultimate respondent" was further supported by the irrefutable location of knowledge in the very person of the Pontiff, deemed to hold all relevant archives in his chest; expressed in the imaged language of Latin theology in the following axiom: *Omnia Scriinia habet in Pectore suo* (75).

Thus, the Pope, cast as the absolute recipient of the divine Word, animates the mythical omniscience located in the "sacred circle", and the legitimacy of his enunciation is twice guaranteed: firstly, by virtue of its direct link with a superior order of knowledge, the Pope becomes the "genitor of the Word" (64), he who has access to the right answers and is the sole guarantor of the justness of the inferior term in the legal equation — human laws — for he has exclusive access to the sacred science; and secondly, the unique position of the Pope, or of the Emperor, at the centre of the unitary system of knowledge, designates him as the ideal love-object, eroticised substitute fleshing out the symbol of textual truth. It is this dual function of the "ultimate respondent" of law as omnipotent and universal object of love which leads us to consider the structural omn-impotence of the father-figure in the canonical tradition, and to pose imaginary castration as the corollary of symbolic omnipotence. For Legendre tells us that "The Pope simultaneously represents omnipotence and radical sexual privation." (70)

The Omn-impotence of the Father

In the Catholic tradition then, the Pope represents God, or the absent father. It is by virtue of his coming to occupy the place of the absent yet all-loving, all-knowing father of mankind, creator of all things, that the Pope acquires the attribute of omnipotence, which he merely borrows from the father — of which he is a symbol. More subtly, it is the representative character of the Pope which renders his omnipotence desirable to men, for the "mythology of the Absent" (29) that supports his function introduces yet another crucial element in the dialectics of power: indeed, just as the love of God for men is averred by virtue of his having sacrificed his son for the happiness of men, thereby mimicking something of castration (or decompletion), the position of the Pope is similarly strengthened by a semblant of castration which resonates with that of the father: for the vows of chastity, symbolic as they may be, imply that the representative of God on Earth has accepted to sacrifice his sexual enjoyment for the good of all. Lastly, note that the position of representative explicates yet another key feature of the

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22 *Pectore* being also translated as heart (ibid.) in order to further support the illusion that the Pontiff loves his subjects.
temporal function of the father, that of innocence: indeed, he is merely the mouthpiece of an Other, in
the name of whom he speaks (71).

In the Lacanian terminology, in which the symbolic indexes the structure of language, the Papal
equation can be translated as follows: the Pope is, on the one hand, the *symbolic father par excellence*, the
law-giver who articulates the law under the auspices of symbolic completion, and yet it is by virtue of
his *imaginary castration* — or the fact that he desires and therefore lacks — that the subject finds his
place in the order of language by being what the Other lacks. The Pope is thus the perfect incarnation
of the father-legislator, with whom previous centuries were no doubt more familiar with than we are,
for he holds the universal key of language, securing the subject's rational belief in the law, and yet is
marked by the sexual renunciation which guarantees the possibility of loving and being loved by virtue
of his decompletion.

It is thus the *omn-impotence* of the father-figure which instates transference in its *symbolic* dimension,
for it is the dual guarantee outlined above in terms of symbolic completion and imaginary decompletion
that establishes the presence of formal equality, which was presented in the first chapter as the only
absolute requirement of justice. Indeed the *extimate* position of the Pope ensures the possibility of
horizontal identification between the remaining subjects, who will no longer compete to achieve the
supreme position of power, while the sole authorised occupier of this exceptional position is tolerated
as such because he does not enjoy his position.

**Summary: the canonical Discourse, a symbolic Version of the Universal**

In the two preceding sections, which inaugurated my attempt at identifying various modalities of the
political utilisation of the function of exception, I have presented Legendre's analysis of the way in
which the function of exception was equated with the symbols of textual truth in the canonical
discourse, which were then relayed through the place of the "mytho-logical" incarnation of exception.
Indeed, we have seen that in his account, the coupling of the unitary principle of knowledge and of a
ritualised method of interpretation allowed for the discursive recuperation of all manners of
particularity under the aegis of canonical truth, while the structural incompleteness of the symbolic
order was supplemented by the intervention of the "ultimate respondent" of truth.

Although Legendre's theory is no doubt compelling, it is now time to leave the canonical discourse
behind, for it will now be shown to theorise a single dimension of the complex equation of power. I
will therefore now transpose Legendre's analysis onto a different plane, framed in terms of what was
elaborated of the function of exception in the order of the signifier in section 11 of this chapter.

To begin with, we note that Legendre's analysis is confined exclusively to the order of the signifier.
Indeed, Legendre clearly focuses on a symbolic version of the universal, which he poses to be
supported as such by means of its ability to exhaustively recuperate and transpose all other human
productions in the order of the signifier. As such, the textual symbols of truth function in order to both
complete and decomplete the order of the signifier, thereby lending credence to the concurrent and
only apparently paradoxical claims of the legal discourse to be both all-encompassing and all-accommodating. Thus when it is complete, it is all-encompassing, and when it must be decompleted, it is all-accommodating. As to the residual function of the sovereign, it is necessary to the functioning of the symbolic universal, for it is his position which supports the decompletion of truth by offering itself as a logical supplement, which will be accepted as such by virtue of its own vacillation between completion and decompletion.

Yet, one must also take note of the fact that Legendre's focus on the symbolic logic of the signifier precludes him from perceiving that there could exist other modes of organising the political, and that such a one-dimensional understanding of the order of discourse leaves him little choice but to eventually advocate the restoration of a strong paternal order, thereby leading him to recant on his erstwhile recognition of the alienating nature of the subject's belief in love in the Oedipally-organised empire of patriarchy. And in effect, this is how Douzinas summarises Legendre's later position, which we can maybe now apprehend as being the inevitable result of his own attachment to patriarchy and the symbolic rule:

For Legendre, contemporary law with its proliferating rights for various minorities has forgotten that the central task of institutions is to guarantee the genealogical binding or filiation of the subject, and has thus abandoned the main anthropological function of law. Courts [...] suffer from a peculiar case of catastrophic institutional amnesia. They have abandoned 'thinking about the structure of the Interdiction...and given up on introducing the subject to the institution of the limit.' The law, lured by the 'propaganda of science' and 'our democratic ideals' abandons its role and, by attacking the 'montages of Interdiction', becomes an accomplice to the destruction of the symbolic order which hitherto 'supported the life of the species.' (Douzinas: 2000, 324-5, quoting Legendre: 1995, 956-7)

V - A REAL ORGANISATION OF THE UNIVERSAL

The Empire of the Gaze and its indifferent Sovereign

Utilitarianism: side-stepping the symbolic Logic of the Signifier

It is no doubt not perchance that the doctrine of utilitarianism first gathered ground in Great Britain, a country which had rejected the Papal rule and was consequently less amenable to accepting the fictions of redemptive truth circulating in its Catholic counterparts. For although the empire of religious morality was certainly very strong in Britain, its system of thought indubitably bears the deep imprint of its refusal of the authority of Rome and of its early overthrowing of monarchy. Moreover, with respect to the development of science, Britain was no doubt deeply influenced both by its precedent-based system and its relentless advocacy of empiricism, counterpoised to the Cartesian method by Francis
Chapter III - Exceptional Fictions of the Universal

One may pose that this specific conjunction of the historical and the discursive prevented the complete recuperation of truth by principled textuality and its Papal respondent. It is arguably this context, less indexed on textual truth, which provided the favourable epistemological conditions necessary to Bentham's theory of utilitarianism. Bentham's theory being well known to lawyers, I will not engage in a comprehensive presentation of its tenets. In effect, what interests me is rather to demonstrate that even in the Benthamite system of political organisation, the central function of the place of exception cannot be circumvented, although this time it is not occupied by the painstakingly crafted semblance of truth in the manner of the canonical discourse but is rather articulated by means of the utility principle, whose translation into laws is entrusted to an indifferent sovereign.

The Principle of Utility

If the canonical discourse grounds its legitimacy on the claim to bring about the redemption of mankind in the realm of God, a claim which is sustained by virtue of its appropriation of truth, the utilitarian is concerned with achieving the greatest good for the greatest number on earth. Further, the utilitarian declines to recognise the existence of a natural truth, source of all laws, and proceeds to organise the universal along the lines drawn in the course of an exhaustive calculus of pleasure and pain — which we recall to be the sole real referents of law as fiction (Part I).

Having thus expelled symbolic truth from the legal order, the utilitarian must find his bearings through the operation of the principle of utility, which Bentham defines in the following terms:

The public good ought to be the object of the legislator; general utility ought to be the foundation of his reasonings. To know the true good of the community is what constitutes the science of legislation; the art consists in finding the means to realise the good. (Bentham: 1891, 1)

Such a motivation faces the prospective legislator with the task of calculating means of achieving the good of the community. However, as we have seen in Part I, for Bentham the concepts of laws are fictions, which, despite being unreal entities, derive their validity from the logical consistency which they afford to an otherwise incomplete discourse. We also saw that for Bentham, the validity of these fictions is assessed by means of their re-translation in terms of real entities, while the sole relevant such entities, when it comes to law, are pleasure and pain:

Nature has placed mankind under the governance of two sovereign masters, pain and pleasure. It is for them alone to point out what we ought to do, as well as to determine what we shall do. On the one hand the standards of right and wrong, on the other the chain of causes and effects, are fastened to their throne. They govern us in all we do, in all we say, in all we think. [...] The principle of utility recognises this subjection, and assumes it for the foundation of that system, the object of which is to rear the fabric of

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23 See Etienne Dumont's introduction to Bentham's Theory of Legislation (1891: ii)

Having thus stated that pleasure and pain are the only two referents of this fiction which law is, Bentham proceeds to define utility more precisely:

Utility is an abstract term. It expresses the property or tendency of a thing to prevent some evil or to procure some good. Evil is pain, or the cause of pain. Good is pleasure, or the cause of pleasure. That which is conformable to the utility, or the interest of an individual, is what tends to augment the total sum of his happiness. That which is conformable to the utility, or the interest of a community, is what tends to augment the total sum of the happiness of the individuals that compose it. (Bentham: 1891, 2)

Logically then, having postulated that law as fiction may only derive its validity from such referents, Bentham undertakes the interminable and tedious process of producing unit-values of pleasure and pain, according to which the measures of government and the infliction of punishments may then be devised. It is thus that Bentham elaborates a logic of utility: "The logic of utility consists in setting out, in all the operations of the judgement, from the calculation or comparison of pains and pleasures, and in not allowing the interference of any other idea." (Bentham: 1891, 3)

Further, for Bentham, such terms as just, unjust, moral, immoral, good or bad do not have innate contents but are always to be understood in terms of the logic of utility. (Ibid.) In this way, Bentham does away with the canonical fiction of an omniscient law-giver and is able to reduce the function of sovereignty to, firstly, being the source of laws, and secondly, managing the utility principle for the maximisation of the good of the greatest number. As such, in Bentham's work, the sovereign is simply an instrument subjected to the rule of utility.

Utilitarianism and Sovereignty

In the work of Bentham thus, the thorny question of the sovereign's legitimacy receives somewhat of a short treatment, for in his utilitarian theory indeed, the sovereign is he who is recognised as such by his community:

Considered in the point of view [of its source], the will of which [law] is the expression must, as the definition intimates, be the will of a sovereign in a state. Now by a sovereign I mean any person or assemblage of persons to whose will a whole political community are (no matter on what account) supposed to be in a disposition to pay obedience: and that in preference to the will of any other person. Suppose the will in question not to be the will of a sovereign, that is of some sovereign or other; in such case, if it comes backed with motives of a coercive nature, it is not a law, but an illegal mandate: and the act of issuing it is an offence. (Bentham: 1970: 18-19)

Bentham's summary conception of the sovereign is a logical consequence of the fact that, although he recognises the indispensable function of the sovereign, in his opinion this sovereign's legislation should be an effect of the utility principle. Indeed, legislation "ought to have precisely the same object" as morality. And morality, unsurprisingly, is defined by Bentham as "the art of directing the actions of
men in such a way as to produce the greatest possible sum of good" (Bentham: 1891, 60) — since indeed the utility principle must be operated in the interest of the community, which is "the sum of the interests of the several members who compose it." (An Introduction to the Principles of Morals and Legislation, 1962: vol. I, 2)

Thus Bentham, unlike Legendre, is not trying to establish the existence of either a sovereign truth or an ultimate respondent thereof, the coupled operation of which allows for the differential unravelling of the order of the signifier along the axis of the symbol of completion, a symbol which operates as a logical supplement to the absence of legitimacy which undermines the credibility of the legal discourse. Bentham indeed is not concerned with instituting or even theorising legitimising devices in the order of the signifier, for the principle of utility is the sole legitimacy required in his doctrine.

**Utilitarianism: a Logical Totalitarianism**

Although Bentham allows us to do away with symbolic totalitarianism, he does not for all that propose a doctrine which would be any more respectful of the subject than the Christian dogma. Indeed, it is readily apparent that the Benthamite theory of utilitarianism is extremely reductive, for it mercilessly — although 'for the good cause' — strips man of his particularity, thereby denying man the capacity of free will. For it is well-known that Bentham's entire system is unambiguously aimed at organising the 'comprehensive management of men, their bodies being reduced to the seat of calculable units of pain and pleasure. This is what Miller tells us of the Benthamite doctrine:

> What is innate to Benthamite man is subjection. The calculation of pleasures is a commentary upon a single utterance: man is subjectable, he is governable, he can, by nature, be denatured by his feelings; to lead him, one need only manipulate the levers that motivate and activate his actions; seeking pleasure, fleeing pain, he is an elementary machine delivered by nature in the hands of the dispensers of happiness. (J.-A. Miller: 1987b, 24-5)

In his account of the work of Bentham, J.-A. Miller proceeds to explicate the totalitarian logic which informs the unfolding of utilitarianism: "This utilitarian conception of the world is based on a simple belief: nothing is without its effect. [...] The utilitarian says: since nothing is without effect, everything can be calculated." (1987b: 6) If nothing is without effect, and nothing is without a cause, and if man is absolutely calculable without any remainder, it logically follows that the utilitarian must engage in a constant calculus of the effects resulting from certain causes, and that there can be no place for the contingent, the natural, the creative or even the neutral.

And since this momentous task of organising the world along the lines of utilitarianism cannot be deferred to an otherworldly truth, or to an omniscient law-giver, it must rest solely upon the efficient construction of the logic of utility. This logic does not admit to any exception — save, maybe, for the calculator himself...

Having thus reduced the function of sovereignty to utility-management, which should take place along the lines set out by a comprehensive, calculus-based causal logic, and having postulated an
exception-less logic of utility (except for the opacity of the place of the calculator, which is however implicit in the theory of utilitarianism), Bentham nonetheless re-introduces something of the function of exception, for it will be that which unifies the various units of pleasure and pain under the watchful gaze of the utilitarian, replaced by the Panoptic design of the Benthamite institutions.

**Panopticism and the Centrality of the Gaze**

"Morals reformed - health preserved - industry invigorated - instruction diffused - public burdens lightened - Economy seated, as it were, upon a rock - the Gordian knot of the Poor Laws not cut, but untied - all by a simple idea in Architecture! [...] A new mode of obtaining power of mind over mind, in a quantity hitherto without example. (Panopticon or, the Inspection House, & C: 1962, vol. IV, 39, original emphasis).

Those are the very enthusiastic terms in which Bentham chooses to introduce his Panoptic invention to the world: plainly, in his opinion, the Panopticon is the universal solution to all of humanity's evils — or should I say causal disorder? Having thus stated his objectives, Bentham goes on to explain that he has invented a structure for any establishment the purposes of which is to keep a number of persons under inspection:

No matter how different, or even opposite, the purpose: whether it be that of punishing the incorrigible, guarding the insane, reforming the vicious, confining the suspected, employing the idle, maintaining the helpless, curing the sick, instructing the willing in any branch of industry, or training the rising race in the path of education: in a word, whether it be applied to the purposes of perpetual prisons in the room of death, or prisons for confinement before trial, or penitentiary-houses, or houses of correction, or work-houses, or manufactories, or mad-houses, or hospitals, or schools (op. cit. at 40, very much his emphasis).

What is Bentham's universal panacea then, that which will cure the sick, incapacitate the criminals and the insane, and train the good to be better?

**The Panoptic Mechanism**

Bentham proceeds to support his claim as to the indisputable worth of his invention by asserting the centrality of the function of inspection for the training of men for the purposes of utility. Thus, when someone needs to be inspected, then "the more constantly the persons to be inspected are under the eyes of the persons who should inspect them, the more perfectly will the purpose of the establishment have been attained." (ibid). Nothing is left up to the subject's active decision. The gaze of those "who should inspect them" is posed as the agent in the process according to which a subject will be either formed or reformed. What of law is to be internalised in the utilitarian empire is limited to the gaze of the overseer, who eventually becomes superfluous. Indeed, if "Ideal perfection [...] would require that each person should actually be in that predicament, during every instant of time" (ibid), Bentham however recognises the impossibility of such a constant observation, and substitutes the next best thing he can think of for it: "at every instant, seeing reason to believe as much, and not being able to satisfy himself to the contrary, he should conceive himself to be so." (ibid, original emphasis).
Chapter III - Exceptional Fictions of the Universal

Having thus stated how in his opinion, maximum utility will be successfully extracted from the establishment for the (re)formation of mankind, Bentham then proceeds to introduce his brother's architectural plan for the actual construction on buildings which would render such a constant observation, or the credible semblance thereof, possible. The rest is well-known: the building is circular, the inmates would be divided into cells of equal dimensions which would occupy the circumference of the building, while the "apartment of the inspector occupies the centre" (ibid.). Bentham then engages in a meticulous description of the best dimensions and dispositions to be respected, and, being Bentham, loses himself in endless descriptions.

What is remarkable for our purposes is Bentham's complete recuperation of the function of the gaze for his purposes, most notably so concerning the penitentiary institution. Indeed, the inspector himself will be inspected by the public who will be allowed in both to relay the inspector's gaze upon the inmates and to inspect the inmates themselves. As to the public, through the operation of its own gaze it will be deterred from crime and edified on insanity. Thus utility can only be ensured through the exhaustive recuperation of everything human, for lest it should be harnessed to a useful purpose, a cause may lose itself in unpredicted effects.

The Apparatus as Semblance of God

Though I have stated that Bentham's utilitarianism and his institutional devices serialised on the Panoptical model can be seen as an attempt to do away with the function of truth and its respondent in the utilitarian implementation of the law, we cannot but help to note that just as God is posed to be omnipresent and all-seeing in the Christian tradition, the Panopticon re-create such a central observer:

But the powers [of the Panopticon] actually create an all-seeing, omnipresent, omniscient body that condemns the inhabitants to a dependency that no ordinary prison can emulate, a body that is very like some fabricated God. The Panopticon is a machine that creates a semblance of God. (J.-A. Miller: 1987b, 4-5)

We can also recall Freud's comment as to the organisation of religion around transference to an invisible God (Group Psychology, PFL 11, 129) and pose that Bentham's invisible overseer similarly organises the Panoptical empire: "The essence of [my plan] consists, then, in the centrality of the inspector's situation, combined with the well-known and most effectual contrivances for seeing without being seen" (op. cit., 1962: 44, original emphasis).

One can rightfully wonder whether what Bentham's utilitarianism in fact achieves is not simply a split between the function of sovereignty as source of all laws and its other function, that of exception, which is that of unifying all men through the operation of a transcendental factor, in the event the Eye of the Law.

The Panoptic field of vision derives its unity solely from its central point. Without the gaze that unifies them, we would have nothing but an unaccounted-for collection of atoms, of inmates immured in solitude, crushed under the yoke of surveillance. (J.-A. Miller: 1987b, 8)
Chapter III - Exceptional Fictions of the Universal

Summary: Panopticism, Utility and the Centrality of the Gaze

In Bentham's work then, truth is superfluous, and meaning is instrumental. The sole referent of discourse is the body. And indeed, no sooner does one step out of the order of the signifier and its correlate, the symbol of (de)completion, than the function of truth proves to be obsolescent. But in Bentham's work, obsolescent truth gives way to endless calculations, openly aiming at the reduction of the whole of mankind's sensations to unit-values, indispensable fodder for the gaping jaws of the utility principle in its devouring thirst for the human. The development of utilitarianism is driven on by Bentham's delusional conviction that one should be able to calculate the whole of humanity in order to achieve the instrumentalisation of life for the 'greatest good of all.'

Further, we can even note that although it is apparently the centrality of the gaze which unites the Panoptical empire, it is not such an extrapolation to assume that Bentham poses himself as the universal overseer of the utilitarian organisation of language, and that, to put it bluntly, Bentham places himself in the function of exception. This hypothesis is supported by Bentham himself, who in his notebooks thus celebrates the event of his 83rd birthday:

1831 - February 16 - the day after arrival at the age of 83.
J.B.'s frame of mind.
J.B. the most ambitious of the ambitious. His empire - the empire he aspires to - extending to, and comprehending, the whole human race, in all places, - in all inhabitable places of the earth, at all future time.
J.B. the most philanthropic of the philanthropic: philanthropy the end and instrument his ambition.
Limits it has no other than those of the earth. (quoted by J.-A. Miller: 1987b, 20; Bentham: 1962, vol. XI, 72)

Without the gaze then, whether it be that of the law or Bentham's own, there is nothing to unite the fragments of the Panoptical order. Consequently, although Bentham does successfully side-step the function of the symbol, necessary operator for the order of the signifier to sustain its claim to embody universal truth, his realm nonetheless operates through the centrality of the gaze of he who watches, or Bentham himself. For maximal utility may only be achieved once everything has been calculated: and this no doubt requires that, beyond the walls of the Panopticon itself, there be an universal, invisible overseer endlessly computing the pleasures and pains of humanity, dividing causes from effects, re-introducing certain causes where certain effects are needed, with a view to no doubt defusing any creative, non-productive, unpredictable irruption in the beautiful world of ordered reason, at last divorced from the oppression of truth.

Considering the horrific implications of Bentham's 'ethical' totalitarianism, a doctrine in which the forever self-dividing logic of language becomes a fantastic tool for the fanatical recuperation of every trembling of the soul, every single sign of bodily enjoyment mercilessly picked up and converted into referential units by the utilitarian machine, acting in the manner of a gigantic encephalograph keeping
track on the pulsating life of man, and which aims to resolve itself through the exhaustive devouring of the human, one may look back wistfully at Legendre's comparatively benign symbolic totalitarianism.

Indeed, should Bentham's project ever prove successful, it would no doubt result in the elaboration of an implacable framework for the incarceration of the fabulous, the creative, the particular — or maybe, simply, the human. And language, in such an understanding, would no longer be the order of the signifier, unravelling sense along its differential pathways and thereby allowing for the re-surfacing of desire in the equivocal sense which it can but produce. Indeed, it would itself become a Panoptical apparatus for the incarceration of reality in discourse, kept in place under the immutable gaze of the overseer, sole exception to his empire.

VI - CONCLUSION

The Exception: imaginary, symbolic and real Function

The first two chapters of this thesis were dedicated to a close, critical reading of the Oedipus complex, whether it be in the guise of an analysis of the Freudian theory itself or of a study of Legendre's utilisation of its tenets as a deciphering grid for his critique of the Christian discourse. The present chapter, on the other hand, formalised the Lacanian reduction of the Oedipus complex to the exceptional structure which Lacan poses to be innate to the order of the signifier. In turn, his formalisation of the Oedipus complex in terms of the law of symbolisation allowed me to pose that the place of exception which organises the discourse of the unconscious is also operative in the political discourse of the universal. On this basis, I ventured the following hypothesis: when the order of the signifier is in the service of the universal, the risk of totalitarianism looms at the political horizon, and this as a consequence of the very 'exceptional' logic of the signifier. I further stated that such is the case whether the universal discourse in question is principally supported by means of a symbol, an incarnate sovereign or an object in the place of exception, although the resulting forms of totalitarianism are no doubt determined by the operator of exception.

On the one hand then, Lacan’s insightful theorisation of the function of exception allowed me to formalise the classical conception of sovereignty as a symbolic investment of the place of exception, supported by real leaders. On the other hand, I relied on the work of Bentham in order to demonstrate that one could nonetheless conceive a universal political system which would function without such an appeal to the symbolic function of sovereignty. However, I argued that the alternative also relied on the centrality of an exception to itself, and even one that was not to be favoured, as indeed, without the operation of a structurally empty place of power, one is left to the empirical calculation of the human by means of its reduction to the lowest common denominator: suffering. Further, the exceptional position of the calculator is itself implicit in the utilitarian logic, and it thus merely substitutes its elective overseer for another, less desirable even that the fathers of yore.
Chapter III - Exceptional Fictions of the Universal

The two models presented in the course of this chapter are no doubt near caricatures of two distinct ways of organising the universal. Indeed, just as a discourse will never be able to subsume all particularities under the aegis of its symbols, Bentham's calculus is also doomed to stumble upon the obstinate resistance of the subject to being logicised. But what I will elect to retain from these two versions of the universal is of a different order.

In effect, Legendre's compelling exposition of the logic of the canonical discourse uncovers the mechanisms of a specific mode of transference which attaches the subject to the institution, for it is a mode of transference which borrows the vector of an ideal identification with the insignia of truth and omniscience, displayed by its secondary representatives when necessary. To put it in Lacanian terms, vertical identifications participate both in the imaginary and symbolic dimensions of transference: the former offers the narcissistic satisfaction of self-love to the subject, while the latter allows the subject to believe in the completeness of the order of the signifier.

However, what was presented of Bentham's work reveals yet another dimension of the social bond, for the doctrine of utilitarianism evidences that the body itself is caught in the institutional discourse. As such, utilitarianism crucially highlights the function of the gaze in securing obedience to the law. The insight gained from utilitarianism thus indicates why Legendre's hypothesis to the effect that submission is organised along the interwoven lines of belief and love is not sufficient to account for the subject's unquestioning acceptance of the institution. Indeed, one does not obey the commands of the law solely with a view to recuperating self-love, or to supporting the completion of the symbolic, however traumatic the absence of truth may be (see chapter VI). In fact, the function of the gaze isolated by Bentham returns us once more to the uncanny percipience of the Freudian theory. Freud's concept of the super-ego indeed indexes the operation of something far more oppressive than the canonical discourse which Legendre claimed to be able to reduce it to. With a little help from Lacan, we can indeed pose that the super-ego is not so much an instance in the unconscious as a drive-object which keeps an eye on the subject.

To now conclude this chapter, I will rephrase the three essential dimensions of the subject's relation to the law we have been able to elicit through a pointed reading of the works of Legendre and Bentham: thus, one obeys the law in the name of truth and for the sake of love, no doubt, but also because one is under the gaze of the law. And the gaze of the law proves far more difficult to elude and infinitely more destructive than the other dimensions of transference. Yet, this dimension is lacking in Legendre's analysis. The utilitarian 'supplement' thus confirms us in our suspicion that the structurally empty place of exception in the order of the signifier does not remain empty for long, for it is simultaneously host to the gaze of the law, the symbols of truth and the incarnations of love. As such, the function of exception, and this holds true of the political as well as of the unconscious, must not be conceived in any other way than as a complex compound of its three-dimensional occupiers.
The concept which has repeatedly come to the fore in this chapter is that of transference; consequently, the next chapter will strive to elucidate this puzzling phenomenon, which was first noted by Freud in the course of the analytic treatment. Before exploring the concept of transference itself though, the next chapter will consider Foucault's plea that one should not give way to the temptations of centrality when analysing power-relations. Indeed, Foucault opposes the function of the gaze and that of the symbol in the organisation of political subjectivity with equal vigour, and although there is no doubt that he remains very much caught in both the logic of the signifier and the function of the gaze when seeking out the 'agent' of discursive efficacy, his attempt to think the political otherwise deserves careful consideration.

The next chapter will also bring the first part of this thesis to a close. For this purpose, it will reassemble the many lines of argument developed therein with a view to formulating my own concluding propositions. Indeed, by the end of chapter IV, I hope to have successfully demonstrated the necessity of articulating the three equally important dimensions of the subject's relation to the law isolated in the course of my work — or those which Lacan identified with his ternary of the imaginary, symbolic, and real. For to pose the prevalence of any of these dimensions amounts to a misrecognition of the manifold dynamics of subjective investment in the political, and this can but result in a partial, reductive version of the intricate mechanisms of transference to power — and by the same token, undermine the potential of a psychoanalytic jurisprudence.
CHAPTER IV
The Vicious Circle of Belief

What is 'repressed' then, is not some obscure origin of the Law but the very fact that the Law is not to be accepted as true, only as necessary - the fact that its authority is without truth. The necessary structural illusion which drives people to believe that truth can be found in laws describes precisely the mechanism of transference: transference is this supposition of a Truth, of a Meaning behind the stupid, traumatic, inconsistent fact of the Law. In other words, 'transference' names the vicious circle of belief: the reasons why we should believe are persuasive only to those who already believe. 

Slavoj Zizek

1. INTRODUCTION
The enigmatic Core of the Subject

Whilst the first two chapters of this thesis focused on a rather classical Freudian reading of the law — for it was organised along Oedipal lines, complete with a multi-layered analysis of the mechanism of identification —, in chapter III, on the other hand, I explicitly departed from the Freudian theory in a number of key respects. Indeed, the Oedipus complex being the object of many well-rehearsed criticisms, the most fundamental of which were addressed in the course of my elaboration, it was necessary to show how Lacan's structural approach could nonetheless allow us to rely on the Freudian theory while also discarding the mythological dimensions of Oedipal narratives. And in effect, it is with the overt intention of preserving the insightful value of Freud's seminal discoveries that I presented Lacan's pivotal reduction of the Oedipus complex to the function of exception in the unconscious.

I then posed that such a reduction was in fact a prerequisite to any convincing articulation of psychoanalytic theory with the current discourses of the political; and this in view, on the one hand, of the dereliction of the paternal function of yore, and on the other, of the theoretical criticisms levelled at the utilisation of psychoanalysis in the field of law. For in effect, and as already argued, what is at stake for a psychoanalytic jurisprudence is not to transpose its conception of the subject onto the social, but rather to map the parameters of the topological (dis)continuity which inextricably binds subject and discourse. And my contention is that such a mapping will best be achieved by articulating the analysis of exception carried out in chapter III with an exposition of the phenomenon of transference. Indeed, I will argue in the present chapter that transference further attests to the structural import of exception, which thus far has been essentially presented in terms of a logical deduction.

Exception and the Political

Let me summarise the argument developed in chapter III: to begin with, recall that the overarching postulate of the preceding chapter resided in the hypothesis that, from a Lacanian perspective, one

1 S. Zizek: 1989, 38 (original emphasis).
2 See chapter VI for a more developed analysis of the decline of the paternal imago.
could account for the 'centralised' organisation of the political characteristic of universal discourses on the basis of the very logic of the signifier.

To support this hypothesis, I outlined Lacan's conceptualisation of the order of the signifier. I began by noting that Lacan, following in the footsteps of Saussure and Jakobson, adopted the idea that language was grounded on the operation of difference. Yet Lacan was not content to translate the advances of structural linguistics as regards the differential value of the signifier into the psychoanalytic concepts of displacement and condensation. Taking his bearings on the Freudian concept of the Father, Lacan eventually came to supplement linguistics by logicising the function of exception, thereby reducing the Primal Father to its structural role, which is twofold: to organise the unconscious on the basis of a symbolic lack, and to fix the place of this lack in the unconscious.

Why does the function of exception correspond to a symbolic lack? For Lacan, lack is introduced in discourse by virtue of the subject identifying with the signifier that represents him in language, more often than not his name, or a compound signifier. This signifier is the 'ideal' signifier. The consequence of this identification is that the signifier which represents the subject will henceforth be subtracted from the differential interplay of meaning, and this will manifest itself as a gap in the symbolic order. For, in view of its value as inscription, this signifier cannot be fully dialecticised. In turn, this symbolic lack incites the subject to address the Other in order to obtain an answer to the question of the traumatic impossibility of knowledge. In fact, we will see in section II that this address to the Other, which is motivated by a demand for knowledge, is the driving force of transference.

Having exposed the logic which supports Lacan's introduction of the function of exception, I then moved on to argue that the exceptional structure of the order of the signifier implied the 'a-sphericality' of the discourse of the unconscious. The term 'a-sphericality' indexes the fact that the circuits of discourse are organised around the central hole in knowledge, which is both the mark of the impossibility of self-referential discourse and that of 'self-identity'. In other words, since the very structure of the order of the signifier implies a symbolic lack, there can be no metalanguage, no Other of the Other, no ultimate guarantor of knowledge (Ecrits, 813; 311); and it is the impossibility of finite knowledge which impels and organises the production of discourse.

Thus, to say that the unconscious is organised 'a-spherically' amounts to posing the discourse of the unconscious as being topologically articulated, in the manner of a Moebian strip — the interweaving

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4 Note that my analysis of transference and exception in the present chapter focuses on the neurotic structure of the unconscious. The psychotic structure will be addressed in the next chapter.

5 As in Laplanche and Leclaire's famous case of Philippe (1972), who had identified with the signifier Pauvredit, an irreducible compound of the expression pauvre Philippe used by his mother, the name of a friend of the family Lit, and of the French words lit [bed] and licorne [unicorn].

6 Note that for the psychotic subject, there is no gap in the symbolic: the psychotic knows (in support of this seemingly extravagant affirmation, see chapter V).

7 I will return to Lacan's surface topology at more length in chapter VI.
dimensions of which represent discourse and the subject — which revolves around the place of exception. This place, the place of the hole in knowledge, is marked by a signifier which is specific in that it is both inside and outside the unconscious, and this by virtue of the self-identical value which it needs to take on: this specific signifier is what Lacan will also call a letter (Lacan: 2001, 14). In turn, the absence of sense [ab-sense] of this extimate signifier, of the letter, is the ‘cause’ both of the subject’s predisposition to transference and of the ‘a-sphericality’ of discourse, which is drawn to the enigma at its core while never being able to attain it.

Logically then, in the present chapter my focus will be on the concept of transference and its complex articulation with the place of exception.

The Double-Bind of Exceptionality

In a second moment, building on Lacan’s theory of the unconscious as discourse, I proceeded to argue that when a political discourse tends to the universal, it inevitably finds itself caught in the double-bind of exceptionality by the simple virtue of the ‘a-spherical’ structure of discourse.

On the one hand, the expression ‘double-bind of exceptionality’ indexes the structural necessity for there to be such a function in discourse. On the other hand though, it also pinpoints the alienation of the subject to the successive incarnations of exception, an alienation which is to be ascribed to the subject’s desire for this place to be occupied. It is in view of the subject’s desire for there to be a master, whose ‘represented presence’ conceals the hole in knowledge, that I linked the function of exception with the possibility of totalitarianism. Indeed, the hole in knowledge is logically associated by the subject with his own non-sensical trauma, and as such the subject will want to avoid confronting the real that lodges itself there and returns in the guise of anxiety and its derivatives.

As to the logical correlation I pose to exit between the double-bind of exceptionality and the ‘a-sphericality’ of discourse, it has already been touched upon in the previous chapter. Briefly, following the Lacanian logic, for a discourse to be universal, it needs to be complete. And since the order of the signifier is differential, it is structurally incomplete: thus, a discourse will only succeed in closing back upon itself through the intervention of an element of a different order: the gaze, a person, or the symbols of truth which introduce a fictitious completion.

The additional element in question derives its appeal from the subject’s desire for the symbolic field to be unified under the aegis of sense. Moreover, psychoanalysis discovered that man’s tendency to seek unification, named Eros by Freud, is best achieved by means of a shared transference to a central element: indeed this element fulfils the dual function of ‘completing’ the order of the signifier and of allowing the discharge of affect necessary for the elaboration of the traumatic real in discourse.

Consequently, the place of exception is both the condition for discourse to make sense and that which opens the subject to the temptations of transference to a knowledge located in the Other.

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* This is what Lacan’s reliance on the figure of the torus strives to represent (Seminar IX).
The presence of this double-bind in both the discourse of the unconscious and in that of the political thus led me to pose the existence of a certain topological continuity between the place of exception in the unconscious and that of sovereignty in the political: in other words, it is by virtue of the potential for serialisation to occur in the place of exception that the subject is taken up, firstly, in the inter-subjectivity of discourse, and secondly, in the political.

Testing the Exception

I then put the Lacanian theory of exception to the test of other discourses, beginning with Legendre’s analysis of the Christian religion. And in the previous chapter, we saw that his study tallies with the hypothesis that the universal is structured by way of the function of exception: for Legendre uncovers precisely such a structure at play in the discourse of the Church.

Recall that in Legendre’s work indeed, the function of truth is crucial for the Church to reign unchallenged, sheltered by the fiction of completion. Further, according to him the place of exception is conjointly occupied by the symbols of truth and the person of the Pope, while the latter’s ‘absent presence’ is relayed by the representatives of the Church in each community. Legendre’s analysis thus resonates with the Freudian theorisation of the libidinal structure of religious groups, following which the group is formed by way of an identification with an idea, itself represented by an ‘absent’ leader (Group Psychology: PFL 12, 129).

There are evidently a couple of provisos to accepting Legendre’s sole account as verifying the Lacanian theory: firstly, his essay focuses essentially on the highly specific tradition of the Catholic Church, and secondly, his reading is overtly guided by his interpretation of psychoanalytic concepts. It was thus apposite, at this point in my argument, to consider whether the pertinence of the Lacanian theory of exception could also be attested to in relation to other, less ‘Oedipal’ political traditions — or indeed readings thereof.

This is why I chose to study another modality of the legal discourse, and even one which appears to be diametrically opposed to Legendre’s erudite exegesis of the Western text. I therefore proceeded to consider Bentham’s theory of utilitarianism, which attests to the possible obsolescence of truth as the overarching organising principle of the political, but where the gaze of the overseer nonetheless fulfils the function of exception.

Through my engagement with these two distinct modalities of the universal discourse, I hope to have demonstrated that Lacan’s theorisation of the function of exception had the potential to guide us in our apprehension of political discourses from the perspective of their central organisation and, maybe even more importantly, to map the mechanisms which capture the subject in such systems. Indeed, my twofold analysis yielded a number of key elements which can be seen to support the Lacanian contention to the effect that discourse, or at least those discourses which tend to the universal, can only function by means of an exception, whether it be represented by a symbol, a sovereign, or the gaze of the law — or even, and more accurately, any combination of the three.
Chapter IV - The Vicious Circle of Belief

The advances accomplished so far will now be developed towards the introduction of the mechanism of transference. In my analysis indeed, transference is the corollary of the exceptional structure of both the political discourse and that of the unconscious. And as such, it will prove to be a pivotal concept for my elaboration.

Chapter Outline

First of all, the mechanism of transference, which in my argument accounts for the subject's capture in the political discourse on the basis of its articulation with the place of exception, will be presented in analytical terms (section II). The purpose of this conceptual introduction is to construct a solid theoretical framework by defining the complex parameters of transference gradually isolated in the course of a century of analytic practice; and this with a view to applying the advances of psychoanalytic theory to the political in the later sections.

After having identified the key features of transference and outlined the intimate connection of this phenomenon with the place of exception, I will move on to engage with certain elements of the Foucauldian analysis of power, which culminates in his theory of bio-power. In view of my previous engagement with both the religious discourse and Bentham's Panopticon, I have chosen to focus on the Foucauldian interpretation, firstly, of the mechanisms of confession and penitence, which for him pertain to the pastoral modality of power; and secondly, of the disciplinary modality of power which he indexes with the term of Panopticism.

If I choose to consider the work of Foucault in a thesis otherwise dedicated to articulating psychoanalysis with the political, it is because I believe that his diagrammatiκ theory of power could be seen to detract from my analysis; for in effect Foucault strives to defeat the centrality which I posed to be correlative with the function of exception in the structure of discourse. Thus for example, in the first volume of his History of Sexuality Foucault argues that traditional analyses of power, namely analyses of power which take their bearings on the centrality of the law, and consequently on that of lack, participate in the concealment of other, more pernicious modalities of power which entrap the subject by means of multiple technologies. And for Foucault, psychoanalysis is one such traditional representation of power. Section III will thus challenge the pertinence of his critique of psychoanalysis.

Despite the sometimes compelling nature of the Foucauldian argument, I will however decline to abide by his proposition that one should reject the centralising function of law. My disagreement with the historian of 'discourse' will develop in two directions: in section IV, I will highlight Foucault's own ambivalence as regards the obsolescence of centralised analyses of power which he postulates. In effect, Foucault relies consistently on the centrality of the body in discourse when drafting his "cartography" (Deleuze: 1986; 1988, chap. II) of power-relations. As such, his postulate as to the dispensability of

*A diagram of power is "a mechanism of power reduced to its ideal form." (Discipline and Punish, Foucault: 1991, 205) See later, p. 162 ff.
centrality when analysing power-relations rests upon the substitution of a central operational factor for another. Further, and maybe more originally, I will argue that his theory does not account for the dimensions of love and belief, which are crucial to the constitution of subjectivity in discourse.

In section V, I will isolate the benefits which may nonetheless be gained from the Foucauldian venture with regard to understanding the nature of power, for Foucault perceptively identifies the intimate correlation which exists between *discourse* and *jouissance*. This precious insight will therefore have to be situated in relation to the traditional advances of psychoanalysis regarding the transferential dimension of power-relations. Indeed, while the Foucauldian insight concerning the function of the body in discourse is essential to a comprehensive analysis of power, there is however no doubt that symbolic transference remains operative in the social bond. It thus follows that the function of exception with which it is intimately bound up, and the centralising effects which it impels, remain to be accounted for in others terms than those which point to the centrality of the body.

Finally, in this last section I will also consider the case of group-formations in which the place of exception is occupied by a real leader, and this in order to see whether psychoanalytic theory can assist our understanding of the uncanny fascination which consolidates the hold of fascistic regimes on their subjects. I will then bring both this chapter and Part I to a close by re-assembling the manifold dimensions of transference and exception in their ‘social’ manifestations.

II - THE MECHANISM OF TRANSFERENCE

*The Conjunction of Desire and Love*

In the present section I will delineate the contours of transference in the broader acception of the term, and transference will be thus defined so as to include its manifestations beyond the confines of the analytical treatment.

*Transference or Desire as Displacement*

Transference is a phenomenon which has inspired many a contradictory account and which, to this day, remains controversial even in the analytic community. Our preliminary task will thus be to articulate its multiple dimensions as cogently as possible, and this in order to produce a working concept to be later brought to bear on the field of the political.

*Transference and Desire*

Let us begin with French analyst Guéguen’s comment to the effect that transference is “a daily life phenomenon” (*Guéguen: 1995, 77*) which “affects” all manners of human communications. This simple statement indicates from the outset that the mechanism of transference extends beyond its exacerbated manifestations in analysis. We now have to isolate the specificity of this mechanism in order to circumscribe what phenomena can be assembled under the heading of transference.

For this purpose, let us consider Freud’s general theory of transference [*Übertragung*]: following Freud then, transference is, broadly speaking, the unconscious *mechanism* which enables instinctual
impulses to circumvent repression. It is therefore owing to transference that repressed desires may emerge in the subject's discourse. We will examine Freud's hypothesis more in detail in the next subsection, but let us already identify the two consequences which logically ensue from the proposition that the term 'transference' designates the possibility for the repressed to return:

- first of all, transference is evidently a prerequisite to the possibility of analysis, for without transference, repressed desires would remain repressed and therefore be inaccessible;
- secondly, transference is the medium of desire, since it allows for the resurfacing of the repressed in discourse.

Furthermore, if we are to follow Freud, all the formations of the unconscious — dreams, parapraxes, symptom-formations and jokes — are expressions of a repressed desire. It is thus but a short step to pose that transference is the psychical mechanism at play in the constitution of all unconscious-formations, and that such formations allow for the emergence of desire. And this is the step taken by Lacan when he states that 'transference is the enactment of the reality of the unconscious.' (Seminar XI, 149; original emphasis)

Transference and the Reality of the Unconscious

Lacan further develops his concise reformulation of transference by stating that "the reality of the unconscious is sexual reality." (ibid., 150) Yet, Lacan immediately proceeds to modulate this statement by posing a crucial distinction between biological sexuality and what he calls social sexuality.

In this opposition, biological sexuality is oriented towards reproduction, whereas social sexuality is oriented towards seeking affiliation or alliance, that is to say a combinatorial of signifiers. (M.-H. Brousse: 1995, 104-5).

This binary opposition can be developed as follows: for Lacan, transference is the enactment of the sexual reality of the unconscious, but only insofar as the sexuality of the unconscious is social. In other words, transference is the mechanism for the enactment of the subject's position in the order of the signifier, and the coordinates which preside over this enactment are inscribed by the laws of alliance and affiliation. Moreover, those are the laws which orient the signifying elaboration of the subject's relation to the real of sexuality. Following Lacan indeed, "the drive is precisely that montage by which sexuality participates in the psychical life." (Seminar XI, 176)

It follows that for Lacan, sexuality is not a natural given, and that there is no such thing as 'instinct' in human sexuality:

The drive, as is constructed by Freud on the basis of the experience of the unconscious, prohibits psychologising thought from resorting to 'instinct' by which it masks its ignorance through the supposition of morals in nature [...] Libido is not sexual instinct. [...] Libido, in Freud's work, is an energy that can be

10 This theory is developed in The Interpretation of Dreams (PFL 4), essentially in chapter VII at 715-718.
jected to a kind of quantification which is as easy to introduce in theory as it is useless, since only certain quanta of constancy are recognised therein. Its sexual colouring, so categorically maintained by Freud as its most central feature, is the colour of emptiness: suspended in the light of a gap. ("On Freud's Trieb", *Ecrits*, 851; *Reading Seminars I & II*, 417)

In this short passage, Lacan unequivocally rejects the equivalence between drive and instinct. This rejection is coupled with the key refutation of the Freudian theory of libido, following which libido would primarily be a sexual force only subsequently channelled through the repression enforced by the moral standards of a given civilisation. Indeed, in the Lacanian conception, "the legibility of sex in the interpretation of the unconscious mechanisms is always retro-active." (*Seminar XI*, 176) It follows that for Lacan, human sexuality is a signifying construct.

What is the relevance of this assertion to our exploration of the concept of transference? Let us answer this question one step at a time: if sexuality is a signifying construct, then there can be no human sexuality without there also being an unconscious, which is a combinatory of signifiers ordered by the laws of alliance and affiliation. The unconscious is thus a linguistic apparatus for the socialisation of what of sex is real. Yet, Lacan also tells us that the unconscious may only realise itself through transference. Consequently, transference is a mechanism for the enactment of the sexual reality of the unconscious, and we will study this mechanism in the next subsection. Let us already note however that from this perspective, transference is "almost the same" thing as the unconscious, for "there is no such thing as the unconscious without transference." (Brousse: 1995, 102-3)

In a Lacanian understanding then, transference is the mechanism whereby the reality of the unconscious is enacted, and "the drive is [...] an apparatus by which to bring some sexuality as real into the field of the imaginary and the symbolic" (Brousse, *op. cit.*, 113):

The integration of sexuality into the dialectics of desire passes through the bringing into play of what, in the body, deserves to be designated by the term *apparatus* - if you understand by this that with which the body, with regard to sexuality, may fit itself up [*s'appareiller*] as opposed to that with which bodies may be paired off [*s'apparier*]. (*Seminar XI*, 177)

Let us rephrase the advances accomplished in this subsection: for Lacan, transference is the mechanism whereby the reality of the unconscious, or its social sexuality, is enacted. It follows that in a Lacanian reading, transference reaches way beyond the confines of analysis, for it refers to the very medium of the constitution of subjective desire in the order of the signifier. Indeed if, following Lacan, the drive is produced by the subject's encounter with language, its association with sexuality is only secondary and takes place through the mediation of the signifier: or that of the laws of alliance and affliation. This conception of the drive as an elaboration of the real of sexuality in language casts light on Lacan's assertion that the drive is *not an instinct but a montage*, and even a montage that borrows the signifying structure of the unconscious.
Bearing in mind that for Lacan, transference names the unfolding of the unconscious along the lines inscribed by the laws of social sexuality, let us return to Freud, this time with a view to elucidating the mechanism of transference.

The Dream as Formation of the Unconscious

Before exploring transference as a mechanism, let us situate more precisely the crucial opposition which exists between the Freudian and Lacanian theories of sexuality, for this divergence of perspective has crucial repercussions on the notion of transference. Thus for Freud, libido is the life-force of sexuality, and is repressed by the discourses of civilisation — centrally, the incest prohibition. As a consequence of this prohibition, the subject’s desire is repressed and returns in the unconscious-formations of the subject.

On the other hand, Lacan asserts the unity of libido and death-drive (Seminar II, 101; 79) and names this unity with the term ‘jouissance’, which “is forbidden to him who speaks as such.” (Ecrits, 821; 319) This postulate allows Lacan to circumvent the improbable universalism of incestuous desires, for in effect, in his work, jouissance is a-sexual, and is impossible as such. Indeed, for Lacan it is the interpretation of censorship which the subject extracts from the discourses in which he is taken which provides him with the signifying material with which he will construct his sexuality. As such, the Oedipus complex inscribes itself in the succession of signifying devices designed to account for the social structure of human sexuality, for it lays down specific laws of alliance and affiliation.

In spite of this fundamental divergence, which will be returned to in more detail in the next subsection in terms of its impact on the notion of transference, it remains that in the psychoanalytic theories of both Freud and Lacan, transference is to be understood as the mechanism whereby the unconscious expresses itself. To study the mechanism in question, we will once more return to Freud, and this time I will be relying on his celebrated work on The Interpretation of Dreams (PFL 4).

The central postulate of this essay is expressed by Freud in the following terms: "a dream is a (disguised) fulfilment of a (suppressed or repressed) wish." (PFL 4, 244; original emphasis) Sketchily, the book develops along the following lines: Freud outlines a number of theories concerning the science of dream-interpretation before moving on to recount a fair amount of dreams and their proposed interpretation.

His work becomes more immediately relevant to our purposes when Freud addresses the key objection that could be opposed to his theory of the dream as wish-fulfilment: for one could easily retort that the notable distortions which occur in the process of dream-formation, such as counter-fulfilment for example, undermine this hypothesis. In fact, more often than not, the dream does not seem to fulfil any wish whatsoever. To address this objection, Freud introduces the idea that although dreams are wish-fulfilments, they also are compromise-formations: namely, the dream is designed to satisfy the demands of both the unconscious impulses and the agency of censorship.
Freud develops this hypothesis in chapter VII of The Interpretation of Dreams, where he outlines the process of the dream-work. His starting point results from the potential criticism outlined earlier: on the one hand then, the dream will appear to abide by the laws of censorship, yet on the other, the dream harbours repressed impulses. And because of the contradictory tensions at play in the dream, the wish-fulfilment will not appear as such.

How can such a dual mission be performed by the dream? Freud sets out to explicate how the dream succeeds in resolving this tension.

This is the process of dream-formation which accounts for the apparently paradoxical nature of the dream: the dream-work capitalises on the residues of the subject's day, which it re-invests in the formation of a signifying construct the function of which is to conceal the subject's desire. Indeed, the dream must disguise the unconscious desire which it expresses so that the latter may circumvent the censorship of the prohibitive agency. The wish-fulfilment which thus often appears to unify the dream under the aegis of a relatively innocuous satisfaction is in fact nothing other than the artful disguise donned by the real desire, which one finds ciphered in the dream. This is why one cannot interpret a dream at face-value; rather, one must read its component-elements in order to locate the desire which they indirectly designate.

Transference as Displacement

Freud's exposition of the dream-work could seem to be at best incident to my work. However, the question which it raises will soon enough put us back on the track of transference: for how can the day's residues, which are more often than not entirely distinct from the desire in question, nonetheless be the vehicle of a repressed desire?

According to Freud, it is by virtue of the mechanism of transference. In this context, the term ‘transference’ is used to index the displacement of a repressed affect onto the signifying elements which are available in the subject's day. Indeed, in Freud's theory, the latter elements will prove more inconspicuous to the beady eye of the super-ego than the repressed impulses which smuggle themselves therein. Thus, Freud states that:

[…] an unconscious idea is as such quite incapable of entering the preconscious and that it can only exercise any effect there by establishing a connection with an idea which already belongs to the preconscious, by transferring its intensity on to it and by getting itself ‘covered’ by it. Here we have the fact of ‘transference’, which provides an explanation of so many striking phenomena in the mental life of neurotics. (PFL 4, 716).

In Freud's hypothesis then, the repressed impulses will be transferred onto innocuous signifying material, and by virtue of the primary processes of condensation and displacement, the links which the day's residues retain with the repressed impulses will prove sufficient for the re-surfacing of desire.

By way of consequence, Freudian transference is to be understood as naming the circulation of desire in the unconscious. And since in the Freudian theory, the unconscious consists of repressed
incestuous impulses, and is gradually formed in the three times of the Oedipus complex; it is also static, a-temporal, and equal to itself. We can therefore conclude that for Freud, transference is simply the unconscious mechanism which allows unconscious, repressed affects to gain access to the preconscious/conscious realm of the psyche by attaching themselves to existing signifying elements, which have the advantage of being apparently disconnected from the prohibited material.

This last point is crucial to understanding the difference between Lacan’s and Freud’s theories of the unconscious and by way of consequence, of transference. For Lacan indeed, the unconscious is temporal, dialectical: for if in Lacan’s work transference remains the mechanism whereby desire circulates in the unconscious, transference is also “the enactment of the reality of the unconscious.” As such, transference connotes the intersubjective constitution of desire rather than the self-same expression of permanent incestuous wishes in disguise.

The Question of Censorship

We will not consider the Freudian theory of dreams any further here, for what truly interests us is his insightful conception of transference as the movement of desire along the signifying chain. It is however concerning transference that we will depart once more from the Freudian corpus.

The crux of Lacan’s divergence from Freudian psychoanalysis concerns the interpretation of the function of censorship in the unconscious. In fact, Freud and Lacan’s distinct understanding of the fundamental concepts of psychoanalysis — the drive, repetition, the unconscious and transference — can all be traced back to a different apprehension of the founding moment of the unconscious.

To be somewhat more explicit, let us go over a now familiar territory: for Freud then, the transferential mechanism allows the return of repressed desires despite the internalised agency of censorship which governs the unconscious. For Lacan on the other hand, we know that the idea of censorship needs to be modulated. And logically, if in Freud transference is cast as a means to circumvent censorship, any reformulation of the function of censorship will impact upon the Freudian notion of transference.

The argument can be presented in the following terms: in the first chapter, we saw that from a Lacanian perspective, censorship was to be primarily ascribed to the homeostatic function of the pleasure principle, and only secondarily so to internalised agencies of prohibition. In turn, such a conception of ‘external’ censorship as secondary, as strengthening the subject’s defences against an impossible demand for satisfaction, can but undermine the Freudian theory of transference as a displacement the function of which would be to elude prohibition.

The consequences of this essential divergence as regards transference begin to emerge: thus, for Freud, transference indexes the displacement of affect onto the signifying chain with a view to allowing the return of the repressed. For Lacan on the other hand, the term ‘transference’ names the signifying elaboration of the “unconscious as real” (Lacan: 2001, 571; Seminar XI: vii) and its ongoing transformation into the unconscious as symbolic along the lines inscribed by the laws of social sexuality. In other words, Lacan’s distinct
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perspective on censorship leads us to pose that transference names the signifying unfolding of the reality of the unconscious rather than the unconscious mechanism for the return of the repressed.

This distinction also elucidates Lacan's mystifying assertion that "repression and the return of the repressed are the same thing" (Seminar I, 215; 191), for what is the return of repressed incestuous impulses for Freud is the signifying unfolding of desire for Lacan. What is at stake in transference is thus the formation of desire, and not the expression of an immutable wish. Indeed for Lacan, we know that the drive is a constant tension (Seminar XI, 181) that needs to find outlets. Consequently, transference does not so much reveal a concealed desire as it designates the process for the enactment of desire, and we can now return somewhat more enlightened to the proposition that "There is no such thing as the unconscious without transference." (Brousse, op. cit.)

What is crucial for our purposes is that by inflicting a different slant on the Freudian theory, Lacan highlights the key function of intersubjectivity in the constitution of desire. Indeed, subjective desire is not set, it is variable and will be modulated in relation to its addressee. This is why the response of the Other plays such a fundamental part in the development of desire, and this underlines the importance of the position of the analyst — or indeed, of the subject's addressee in the institution. In fact, if for Freud transference consists largely in the "constant [repetition of a stereotype plate]11 — constantly repeated afresh — in the course of a person's life" (The Dynamics of Transference, SE XII, 100), for Lacan transference is to be understood in terms of an address to the Other.

As this reading of transference foregrounds the dimension of the addressee in speech, this will logically lead us to interrogate transference as the phenomenon which supports and orients intersubjectivity. Consequently, the question that now faces us is the following: bearing in mind that transference is "the enactment of the reality of the unconscious", how then does transference manifest itself in the field of human relations? To address this question, the various dimensions of transference progressively outlined by Lacan in the course of his teaching will be explored.

The Three Dimensions of Transference

Having thus presented the Freudian notion of transference as displacement and recast this indication in terms of the mechanism at play in the signifying unfolding of desire, an unfolding which very much involves the response of the Other, we now have to consider the various dimensions of the subject's transferential investment of the addressee of his discourse.

Indeed, are all human relations transferential? To phrase the question in the terms which are classically used in analytic theory to describe the field of human relations, what, if anything, distinguishes transference from object-choice and identification?

11 "It must be understood that each individual, through the combined operation of his innate disposition and the influences brought to bear on him during his early years, has acquired a specific method of his own in his conduct of his erotic life — that is, in the preconditions to falling in love which he lays down, in the instincts he satisfies and the aims he sets himself in the course of it. This produces what might be described as a stereotype plate (or several such)." (Freud: SE XII, 99-100)
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Transference is a Form of Love

The definition of transference in the field of psychoanalysis is very well known: transference is a form of love.

Jean-Pierre Klotz

In this subsection, I will take my initial bearings from Klotz's traditional definition of "transference as a form of love" in order to specify what form of love transference exactly is. Indeed, if the connection between love and transference is well known — the prevalence of love-affects in the analytic situation had been noted from the inception of psychoanalysis by Freud (Observations on Transference-Love, SE XII) —, it is less often explicated in other terms than those of the reproduction of an erstwhile schema.

It is the reductive conception of transference which prevailed in the analytic community at the time which, amongst other things, impelled Lacan to set about his return to Freud. Indeed, the post-Freudian interpretation confines the subject to the endless repetition of the same patterns. First things coming first then, Lacan initiated his return to Freud with a close reading of the "Papers on Technique" (Seminar I), which include the two papers on transference mentioned in this chapter.

In the course of this seminar, Lacan endeavours to demonstrate that although transference doubtlessly involves a degree of repetition, it is a complex phenomenon the manifold aspects of which require careful mapping. Hence, Lacan proceeds to theorise transference with a view to uncovering the distinct dimensions of the subject's relations with others.

The Lacanian presentation of transference as an intricate articulation of several dimensions leads him, in a first moment, to resituate transference at the junction of the symbolic and imaginary axes of discourse. In a second moment however, Lacan will also pose the existence of a real dimension in transference, and these three aspects will therefore be successively envisaged.

1) Transference on the Imaginary Axis: the Other as Double

In his paper entitled 'The passionate Dimension of Transference' (1995, 91-97), Klotz emphasises the connection which exists between the phenomenon of transference and the three imaginary passions identified by Lacan in his Seminar I. For Klotz then, transference is bound up at the same time with love, hatred and ignorance.

Love and Hate

The ambivalent dimension of transference, the subject's oscillation between feelings of love and hate, is familiar to those conversant with the theory of the mirror-stage (Ecrits), and I will consequently not unduly linger on this well-known paper. Note simply that it is there that Lacan offers the hypothesis of the mirror-stage as a response to the question posed by Freud in On Narcissism, a paper in which Freud had postulated that a "new psychical action" (PFL 11, 69) was required to take the child from auto-

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erotism to narcissism. The mirror-stage is indeed presented by Lacan as the "new psychical action" posed by Freud to be necessary for the constitution of narcissism.

Here, I will only sketch a rudimentary picture of the imaginary. Following Lacan then, the infant acquires mastery over his 'fragmented' body-image through an identification with his unified image in the mirror, and this first identification is henceforth replicated in a series of imaginary identifications with fellow beings [semblables] endowed with similar characteristics. These imaginary identifications, which take place at the level of the ego, are known as horizontal identifications, a term which indicates that the subject identifies with another on the same level, namely that of the image. Lastly, the absence of dissymmetry implies that on this axis, all relationships between the two subjects are confined to imaginary dualism. For the imaginary is the order of sameness as it rests upon the subject's early entrapment [captation] in the 'whole' image, which is however always in the mirror, or in the other.

Imaginary love, jealousy and hatred are the unavoidable consequences of the subject's alienation to the narcissistic double, which inaugurates the inextricable dualism pertaining to all subsequent relations with the semblable. Thus, Lacan states in Seminar II, which is dedicated to an analysis of the concept of the "Ego in Freud's Theory", that:

Every imaginary relation comes about via a kind of you or me between the subject and the object. That is to say - if it's you, I'm not. If it's me, it's you who isn't. (Seminar II, 169).

In this seminar, Lacan, who was at that time very much influenced both by Kojève's series of lectures on The Phenomenology of Spirit and the assiduous attendance of Hegelian scholar Jean Hyppolite, also claims that this imaginary dualism — and the attendant impasse — was most notoriously expressed by Hegel in the master/slave dialectic. Recall indeed that for Hegel, the only way to achieve self-consciousness is to force one subject to recognise the other's desire as prevalent over his own in the course of a struggle for prestige — namely, the forceful introduction of dissymmetry is the only way out of dualism. This leads Lacan to reject the Hegelian conception of self-consciousness as irretrievably locking the subject in a dialectical opposition the sole issue of which is oppression.

Lacan further explicates the mechanism of love in the imaginary later on in his teaching when he poses the ego to be the seat of a reversible libido (cf. Seminar X) which fluctuates between the subject's ego and the other with which it identifies. The affect of love is accounted for as follows: when the ego is confirmed in his identity by the other, love for the other as image of the self ensues, and as such imaginary love is intimately bound up with identification. On the other hand, when the other appears to take the place of the subject, it is hatred which arises. 16

Let us conclude this brief account of the narcissistic double-bind by situating its effects in the context of transference. Following Lacan then, the imaginary is always at play between subjects. Indeed,
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it is on the basis of the imaginary that subjects identify with one another, and thus may libidinally invest other subjects. By way of consequence, transference becomes such as love and hate must also be understood in terms of the subject's identification with another at the level of the image. As such, a relation which is situated on the imaginary axis can, at best, lead to identification, and at worst, to hatred and jealousy. It is in view of the sterility of imaginary relations that Lacan conceptualises the symbolic dimension of transference as that which institutes a dissymmetry between subject and other.

The Passion for Ignorance

What is it that, even on the imaginary axis, distinguishes transference from other love-relations? Whilst the ambivalence of love is well-known, the connection between transference and the passion for ignorance is less often addressed. Indeed, and as we will see shortly, transference is addressed to an Other who knows. Why then, is it also bound up with ignorance?

Quite simply, because by supposing another of the knowledge which he lacks, the subject avoids confronting the reality of his castration, or in other words, the fact that there is no other knowledge than the incomplete knowledge of the unconscious. Thus, although transference is directed to the subject-supposed-to-know, it is deeply rooted in the subject's passion for the ignorance that shelters him from the real of trauma.

For the neurotic subject, the gap in knowledge and resulting discontinuity induce symbolic castration, since this passion [ignorance] covers over a fundamental separation between the subject and the Other. [...] it is fundamentally ignorance as passion which best defines the neurotic's passion: ignorance as the name of one's relationship with knowledge. (Klotz: 1995, 97)

Having thus succinctly defined the imaginary dimension of transference, which distinguishes itself from other modes of imaginary identifications insofar as the passion for ignorance intervenes to strengthen the subject's resistance to constructing his own knowledge, we also see the emergence of a link between the imaginary dimension of transference and its symbolic aspect. For indeed, ignorance may only express itself safely when there is another who knows, as it takes the guise of a demand for knowledge. Consequently, we will now consider the symbolic dimension of transference, namely transference insofar as it is addressed to the Other, bearing in mind that the Other is defined by Lacan in Seminar XI as the locus of knowledge.

2) Transference on the Symbolic Axis: the Other as Subject-supposed-to-know

In his essay on transference, collected in Reading Seminar XI, Guéguen (1995) also underlines the strong connection which exists between transference and love. Yet, he appositely supplements this oft-noted connection with the additional indication that the love in question is differentiated from other forms of love insofar as it is supported by belief, and even a specific form of belief, since it is addressed to the "knowledge of its legitimate representative":

16 In this respect, Lacan quotes Augustine's hatred when seeing the sibling at the mother's breast (Seminar I, 193; 171).
Politics, education, medical practice, and psychoanalysis all require some kind of adherence or belief, some kind of risk-taking at the beginning and throughout, since the choice has to be renewed every day. Every time you go to your session, you have to ask yourself these questions [as to the choice of the analyst] again because such risks can be taken, not in the name of reason or science, but only in the name of love. Some of us may try to deny the fact that love interferes in our choices. Some may place choice under the cover of a philosophical tradition of utility, but there is no choice without belief, no choice without transference in the broadest sense of the term, as long as transference is always a question of believing in the knowledge of its legitimate representative, whether politician, professor, doctor, or psychoanalyst. (1995, 78-79; emphasis added)

Following Guéguen then, transference is, broadly speaking, a phenomenon which materialises when love and belief are present at the same time in an intersubjective relation. Thus what distinguishes transference from a classical imaginary identification is the dimension of belief in knowledge.

What kind of knowledge will command transference?

In the light of our previous elaborations, we may advance that the knowledge to which symbolic transference is addressed concerns its deceptive potential to appease the subject's trauma. Hence, what interests the subject on the symbolic side of transference is the possibility to suppose the Other of a knowledge which could ‘complete’ the order of the signifier, and thereby supply a signification to the subject's existence:

[transference is a particular kind of love addressed to knowledge. If the analysand loves the analyst, it is merely because the analysand supposes that the analyst has the key to his or her unconscious knowledge [...] This knowledge promises to turn suffering into signification. (Guéguen: 1995, 90)

In effect, it is by virtue of the supposition of knowledge which is conferred upon him by the subject in his quest for signification that the analyst may step out of the dualism which occurs on the imaginary axis of love.

Yet the symbolic axis of transference, although it is more productive for the subject than its imaginary aspect, is nonetheless conditional upon the subject's alienation to his belief in the Other's knowledge. As such, and in due course, it will be incumbent upon the analyst to separate the subject from this belief. Indeed, whilst the supposition of knowledge in question allows the subject to elaborate his relation to the signifier in speech, symbolic transference also maintains the subject in a relation of subordination to the Other who knows.

3) Transference in the Real: the Other as Object

The third dimension of transference is maybe the most novel in Lacan's elaboration whilst also being one of his most important additions to psychoanalytic technique. Indeed, the two dimensions of transference previously outlined both operate by virtue of a certain deception: transference on the imaginary axis drives the subject down the path of an identification with the ego of the addressee, whilst symbolic transference lulls the subject into believing that it is the Other who knows; and this belief relieves the subject of the responsibility to construct his own knowledge regarding the enigma of
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his being. And in effect, it is the real in transference which must intervene to separate the subject from both these deceptive dimensions. The other consideration which further guided Lacan in his hypothesis of the real dimension of transference is that it would be naïve to believe that the subject would remain in analysis — or locked up in any transferential relation for that matter — without a gain of jouissance.

This last statement leads us to consider how a subject may enjoy his transferential relation to the other even beyond the satisfaction derived from love and belief.

Lacan will pose that the subject’s enjoyment of transference has to do with the object. The object being a complex psychoanalytic concept, I will once more be succinct. To begin with, I must indicate that for Lacan, at a certain stage in his teaching, the object which he calls a figures the real. The object a — a for autre [other] insofar as object a is bound up with the other — comes in the place of the symbolic lack as a surplus-jouissance the function of which is to alleviate the weight of symbolic castration. As such, the presence of object a — as gaze or voice — allows the subject to gain some enjoyment from his alienation in the Other, and this is what Lacan calls separation. Since the object a is always at play in the subject’s relation to the Other, it logically follows that it will also intervene in the transferential relation: indeed, the object a conditions the way in which the subject enjoys at the level of the drive.

Thus, when Lacan states (Seminar XI) that the analyst must occupy the position of object a for the subject, it implies, no doubt, that the analyst must lend his person to the enjoyment of the subject, but also that the analyst must know how to separate the subject from the enjoyment which he derives from the analysis — in the guise of a being seen or being heard — in order to put the subject back on the track of his own process of invention.

In passing, we note that the analytical process must involve a skilful wielding of the ‘treble-edged’ tool of transference, and that there is indeed no other guarantee of a ‘proper’ analytic treatment than the analyst’s own ethical position: for the analyst must both resist the temptation of being the all-knowing, and of offering himself for identification. In fact, it is the awareness of the difficulties inherent to the handling of transference which accounts for Lacan’s notorious emphasis on the ethics of the analyst, to which he dedicated a whole seminar (Seminar VII), and later on his focus on the desire of the analyst, this being the concept which brings Seminar XI to a close.

Transference and Exception

Let us now endeavour to re-assemble the elements we encountered in our analysis of the concept of transference with regard to the function of exception.

Firstly, the possibility of transference emerges concurrently with the institution of the symbolic lack which organises the order of the signifier for the subject. Indeed, it is always with a view to substantiating an always fleeting identity that the subject enters the transferential game. Secondly, and following the Lacanian reading of Freud, transference designates the signifying unfolding of the sexual reality of the unconscious. Thirdly, this process is intersubjective and requires the Other as addressee. In view of these indications, we can now pose that transference is the mechanism whereby the symbolic lack in the
unconscious comes to be articulated with the Other with a view to furthering the ongoing dialectisation of the symbolic unconscious in discourse.

Lastly, our threefold account of transference allows us to add that what initiates the transferential process, or the "enactment of the reality of the unconscious", participates in the three orders of the analytic experience isolated by Lacan:

- the imaginary other, who offers the possibility of an identificatory solution;
- the symbolic Other, who is supposed to know what completes the lack in the unconscious;
- the other insofar as he embodies the real object of jouissance for the subject.

Consequently, we can say that the manifold phenomenon of transference indexes the threefold vector which articulates the subject to the incarnations of exception, and thus that transference is consequent upon the exceptional structure of the unconscious. Furthermore, it logically follows that if the unconscious unravels its signifying chains in relation to an addressee, then what comes to flesh out the exception for the subject will deeply influence the development of his unconscious as discourse.

These indications should help us to circumscribe what is at stake in transference. Indeed, we can now state that what differentiates transference — in its classical conception in analytic theory — from other modes of subjective relations is the clear prevalence of the symbolic axis, which preserves the subject from both the always looming entrapment in narcissistic dualism and the dull, repetitive satisfaction derived from the circuitous pathways of the drive. However, neither the imaginary nor the real dimensions of transference should be disregarded, for both play a crucial part in the (dis)continuous unfolding of the subject's discourse.

Transference and the Ego-Ideal

These various dimensions of transference can be re-articulated in a single conceptual formulation which will yield a definition of transference that foregrounds the importance of the symbolic over and above the imaginary and real dimensions at play.

Transference may indeed be defined by way of a return to the theory of identification developed by Freud in his Group Psychology (PFL 12). Indeed, transference also resonates with what Freud describes there under the name of ideal-identification (cf. chapter II, section IV). To return to our earlier elaboration then, we recall that the term of ideal identification indexes the substitution of an external object for the subject's own ego-ideal (ibid. at 144). And I would argue that this is precisely what happens in the traditional — or indeed 'neurotic' — modality of transference.

This proposition does not go against the grain of the Lacanian elaboration. Indeed, Lacan also situates the ego-ideal at the centre of transference:

The subject has a relation with his analyst the centre of which is at the level of the privileged signifier known as the ego ideal, in so far as from there he will feel himself both satisfactory and loved. (Seminar XI, 257)
Yet, we note that Lacan departs once more from the Freudian theory, since for him the ego ideal is a privileged signifier. It is a signifier insofar as it lays down the signifying coordinates which allow the subject to love his own ego other than by way of the narcissistic double-bind. And it is privileged by virtue of its coming in the place of the symbolic lack in the unconscious, indeed it is the signifier of primal identification. Lastly, the Other as subject-supposed-to-know, as supposed to be the one who knows the signification of this signifier, will be able to function in a manner which is similar to that of the ideal signifier for the subject, and thus to allow the subject to love his own image.

Having placed the ego ideal at the centre of the transferential nexus, Lacan immediately moves on to supplement its function by stating that it is redoubled by the privileged object which object $a$ is:

But there is another function, which institutes an identification of a strangely different kind, and which is introduced by the process of separation. It is a question of this privileged object, discovered by analysis, of that object whose reality is purely topological, of that object around which the drive moves, of that object which raises in a bump, like the wooden darning egg in the material which, in analysis, you are darning — the object $a$. (Seminar XI, 257)

It follows that for Lacan, what differentiates transference from other modes of subjective relations is that transference makes use of the place of the ideal signifier, but also plays on the subject's vacillation between the ideal and the object in order to free the subject from the burden of the ideal. This ideal signifier is supported by the imaginary other, and yet the necessary symbolic dissymmetry is also present by virtue of the subject's supposition of a knowledge to this particular Other, who is its “legitimate representative”. Lastly, the transferential Other also embodies the object $a$ for the subject, and this allows the subject to enjoy the transferential relation.

Through this presentation of one of psychoanalysis' most complicated concept, I hope to have demonstrated that transference simultaneously brings into play imaginary love, symbolic belief and real satisfaction. Further, these three dimensions of transference find their anchoring point in the place of the symbolic lack that marks the subject: for the activation of the different modalities of transference is conditional upon the presence of an Other who enables the subject to derive a three-fold satisfaction from the all-too-real place of exception which institutes lack in the unconscious.

After having considered this essentially analytical theorisation of transference, I will return to the task at hand, which is principally to examine a number of discourses which account for the enigmatic phenomenon of power and the subject's investment thereof from the perspective of the teachings of psychoanalysis. Thus, I will now consider the work of Foucault with a view to demonstrating its insufficient concern with the transferential nexus that unfailingly warps all rational attempts at conceptualising the political.
III – A FOUCAULDIAN CRITIQUE OF PSYCHOANALYSIS

Repression and The Centrality of the Law

Psychoanalysis and the repressive Hypothesis

Before engaging with the Foucauldian analysis of power per se, a preliminary hurdle must be overcome: for Foucault's later work is quite critical of certain aspects of psychoanalysis, and it will consequently be apposite to consider his arguments.

The present section will therefore outline the key points of the Foucauldian critique in order to establish whether it could undermine the importance of psychoanalytic theory in apprehending the mechanisms of political power. This preliminary engagement will nevertheless prove useful in and of itself for the exposition of the Foucauldian project, the main lines of which will begin to emerge in the course of the forthcoming discussion.

The 'Truth' about Repression

We must cease once and for all to describe the effects of power in negative terms: it 'excludes', it 'represses', it 'censors', it 'abstracts', it 'masks', it 'conceals'. In fact, power produces; it produces reality; it produces domains of objects and rituals of truth. The individual and the knowledge that may be gained of him belong to this production.

Michel Foucault

The Foucauldian critique of all theories which pose the existence of repression at the core of the political, principally developed in the first volume of the History of Sexuality (1998; hereafter WFK), resides in the simple postulate that there is no such thing as repression.

This assertion however requires a degree of modulation: for Foucault himself recognises that certain discourses aim at and result in the 'repression' of sexual desires. Yet, following his argument, the true function of repression is neither censorship nor prohibition. In fact, repression, which is most blatantly at play in the canonical apparatus, is designed to initiate the production of knowledge on bodily pleasures, which were until then unspoken of in the realm of power. As such, the purpose of the repressive apparatus is not the prohibition of pleasures, but rather the development of power, for

Pleasure and power do not cancel or turn back against one another; they seek out, overlap, and reinforce one another. They are linked together by complex mechanisms and devices of excitation and incitement.

(WFK: 48)

This statement is drawn from the chapter entitled The Incitement to Discourse, where Foucault postulates that the purpose of the repression which is often associated with the mechanisms of confession and penitence operated by the Church does not so much aim at censoring desire: for in effect, the repressive apparatus of the Church seeks to strengthen and expand the hold of power on the subject by interlinking pleasure with discourse.
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It is this simple inversion of repression as negative force into repression as positive force that leads Foucault to depart from what he poses to be a widespread theory of power grounded on the repression of sexuality, and which he encapsulates under the aegis of the "repressive hypothesis." (WK Part One)

Thus, according to Foucault, and although he makes no reference to any specific body of work, the repressive hypothesis rests upon the idea that power is grounded upon the negation of sex, whilst for him, on the other hand, power develops by producing the subject: in fact, the production of the subject is orchestrated by way of a seemingly repressive apparatus which, under the guise of censorship, incites speech and excites the subject's desire.

The best known of all Foucauldian hypotheses is no doubt that the proliferation of power strategies proceed through an utilisation of the knowledge extracted from the subject. Applying this logic to bodily pleasures, the aim of the apparently repressive devices of power is the transformation of pleasure into discourses on sexuality — whether they be religious, medical, scientific, or indeed psychoanalytic. And this transformation enables the discourses of power to use the subject's very body as a support for their extension. Indeed, by virtue of the extraction of knowledge on pleasure, perversions are created and reinforced, and the emergence of these perversions legitimise, in turn, the extended interferences of power in the private realm. This extension of power feeds off the subject's unconscious knowledge by offering to transform it into conscious knowledge:

Causality in the subject, the unconscious of the subject, the truth of the subject in the other who knows, the knowledge he holds unbeknown to him, all this found an opportunity to deploy itself in the discourse of sex. Not, however, by reason of some natural property inherent in sex itself, but by virtue of the tactics of power immanent in this discourse. (WK 70)

It follows that for Foucault, all theorisations of power which are confined to analyses of repression result in a misrecognition of the real dynamics of power, which develops by capturing the body in both its discourses and its practices.

Whether such one-dimensional theories of power do in fact exist remains to be seen, but here I will limit myself to arguing that psychoanalysis, for its part, does not propose to account for the social on the basis of law as negation of desire, quite the contrary. Hence, I will proceed to refute the Foucauldian relegation of psychoanalysis to the shadowy lands of the 'repressive hypothesis'.

Psychoanalysis and the Extraction of a Knowledge on Sex

Traditional psychoanalysis being oriented on the idea of repression, where it takes the form of the incest prohibition, Foucault's next step should not come as too much of a surprise.

For Foucault then, psychoanalysis is one discourse amongst others for the continuation of the extraction of knowledge on the body, although it is no doubt performed by different means than those erstwhile relied upon. It is thus that for him, psychoanalysis takes its share in the transformation of

pleasure into discourses of sexuality, thereby reinforcing the function of the law "by saturating [the rules of alliance] with desire." (WK 113). As such, Foucault argues that psychoanalysis participates in the "tactics of power immanent in discourse", and that these tactics are impelled by a "will to knowledge". (WK 73)

I however disagree with Foucault's indictment of psychoanalysis as amounting to an extraction of knowledge on sex on two counts: firstly, Lacanian psychoanalysis is not so much concerned with sex as it is with the subject's relation to language, and as such the analytic treatment will strive to support the subject in his elaboration of a singular relation to his symptom much more than it will endeavour to extract some knowledge on sex. Even more, we will see in chapter VI that the being-for-sex of the subject is precisely perceived to be the utmost nexus of alienation in discourse. And secondly, it would be rather naïve to assume that psychoanalysis is unaware, on the one hand, of the connection which exists between law and perversion, or indeed, between discourse and jouissance, and on the other, of the positive force which repression is. For in psychoanalytic theory repression is not conceived in terms of a negation of desire, since indeed it is perceived to be the very condition thereof.

This last point needs to be somewhat developed: indeed, Foucault acknowledges that in analytic theory, law is perceived to be constitutive of desire rather than being the negation thereof. However, for him, this amounts to a simple 'retro-version' of the classical repressive hypothesis, for to pose law as constitutive of desire amounts to reinforcing the law in question, which thus remains central.

It is concerning this last point that we may now move on to consider Foucault's hypothesis of psychoanalysis as 'retro-version'.

The Decline of the Paternal Function: Psychoanalysis as "Retro-Version"

Foucault remarks upon the concurrence of the emergence of psychoanalysis with the decline of the paternal function: "We must not forget that the discovery of the Oedipus complex was contemporaneous with the juridical organisation of loss of [paternal] authority." (WK: 130; trans. mod.) On the basis of this historical convergence, Foucault proceeds to argue that psychoanalytic attempts to bring sexuality back to law: as such, it belongs to the nineteenth century's "theoretical effort to re-inscribe the thematics of sexuality in the system of law, the symbolic order, and sovereignty." In other words, Foucault argues that the Freudian endeavour was to "ground sexuality in the law — the law of alliance, tabooed consanguinity and the Sovereign-Father, in short, to surround desire with all the trappings of the old order of power." (WK: 150). However, for Foucault, "this position of psychoanalysis was tied to a specific historical conjecture", and amounts to little else but a "historical 'retro-version'." (WK: 150) The expression 'retro-version' clearly indexes Foucault's belief that psychoanalysis is a mere attempt at turning the clock back to the time of the Father, and that we should

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18 Note that in the English version the word parental is used instead of paternal, which figures in the French.
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instead “conceptualise the deployment of sexuality on the basis of the techniques of power that are contemporary with it.” (FK: 150)

No doubt, the era of the sovereign as symbolic Father is over, and this is a point oft made in the course of this thesis. Even, I would not overly disagree with the Foucauldian contention that psychoanalysis may once have hoped to re-instate the father, although he be “a fallen one before the eyes of the law”, by transforming a ‘symbolic’ sovereign into an “object of compulsory love”. (FK: 130) Indeed, I have myself argued that the Oedipus complex was to be perceived as a symbolic device designed both to remedy the waning power of symbolic authority and to alleviate the worst consequences of ‘repression’. In fact, in Lacanian terms, the Oedipus complex could be seen to formulate the mechanism whereby the symbolic function of the law-giver is given imaginary consistency, and this introduces the dimension of love in the subject’s relation to authority.

Psychoanalysis has however much evolved since its inception, and we may even recall from the previous chapter that Lacan’s conclusions led him precisely to define the Oedipus complex in terms of a supplementation, and a partially obsolete one at that — a supplementation being a device which artificially remedies a structural fault in the unconscious.

Furthermore, it is precisely in view of this alienation to the father as “object of compulsory love”, or more accurately, to love itself, that the last Lacanian ventures endeavoured to map the mechanisms which orchestrate and govern the alienation in question. Yet, for psychoanalysis, alienation to love is perceived to be indissociable from the structure of the unconscious itself rather than to be ascribed to a given discourse. Indeed, alienation to love ensues from the subject’s belief in the existence of the Other, the Other who knows (see chapter VI). This is why Lacan is led to pose that the subject’s ‘liberation’ from the entanglements of the true which the unconscious is will have to go by way of a subjective recognition of the inexistence of the Other of love. Hence, to present psychoanalysis as condoning and reinforcing alienation to love is a complete misconstruction of its ethics, which favours individual invention over and above any imposition of a ready-made solution, or indeed the dubious offering of a substitute love-object.

Consequently, I would argue that if psychoanalysis no doubt still insist upon the centrality of the laws of alliance and affiliation in the constitution of desire, thereby taking stock of the creative function of repression, it does not for all that follow that this is the only dimension of subjectivity which it envisages. Let us thus see whether we can further clarify the function ascribed to law in analytic theory.

Psychoanalysis: a Juridico-Discursive Representation of Power

Foucault’s critique develops towards an assimilation of psychoanalysis with the general tendency which he claims to be at play in the west: that of building theories of power along the lines of what he calls “juridico-discursive representations of power”. Foucault, for his part, purports to supersede such theories, which foreground the centrality of the law, and to move toward an “analytics of power: that is,
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towards a definition of the specific domain formed by relations of power, and toward a determination
of the instruments that will make possible its analysis.” (WK: 82)

Consequently, Foucault wishes to do away with all juridico-discursive representations of power. And
for him, psychoanalysis inscribes itself in the lineage of these representations.

A “Thematics of Repression”

If the classical juridico-discursive representations of power foreground the function of the law and that
of the sovereign, when it comes to psychoanalysis those representations are characterised by a specific
understanding of the relation between sex and power. This understanding is defined by the five features
which, following Foucault, are unfailingly present (WK: 83-85): a negative relation (one can only say no
to sex), the insistence of the rule (sex is defined in relation to the law), the cycle of prohibition (a law of
prohibition which demands renunciation), the logic of censorship (only prohibition, silencing and
denial are appropriate modes of dealing with sex), and lastly, the uniformity of the apparatus (the same
mechanisms apply throughout society). And for Foucault,

It is this conception that governs both the thematics of repression and the theory of the law as constitutive
of desire. In other words, what distinguishes the analysis made in terms of the repression of instincts from
that made in terms of the law of desire is clearly the way in which they each conceive of the nature and
dynamics of the drives, not the way in which they conceive of power. They both rely on a common
representation of power which, depending on the use made of it and the position it is accorded with
respect to desire, leads to two contrary results: either to the promise of a 'liberation' if power is seen as
having only an external hold on desire, or, if it is constitutive of desire itself, to the affirmation: you are
always-already trapped. (WK: 82-83)

It is thus clear that for Foucault, juridico-discursive representations of power fail to account for the
complexity of power-relations by virtue of their incapacity to conceive power in other terms than those
of a negative relation: in other words, law negates desire, and the psychoanalytic 'retro-version' lies in
asserting that desire is constituted in the very act of negation which is brought to bear upon the subject.
Thus, following such interpretative models, the law may only exist in opposition to desire, whilst desire
will only exist in relation to the law.

If Foucault disagrees with such analyses of the law, it is because for him, such representations
misconstrue the nature of power, which he defines in contradistinction to the classical juridico-
discursive hypothesis:

[p]ower must be understood in the first instance as the multiplicity of force-relations immanent in the
sphere in which they operate and which constitute their own organisation; as the process which, through
ceaseless struggles and confrontations, transforms, strengthens, or reverses them; as the support which
these force relations find in one another, thus forming a chain or a system, or on the contrary, the
disjunctions and contradictions which isolate them from one another; and lastly, as the strategies in which
they take effect, whose general design or institutional crystallisation is embodied in the state apparatus, in
the formulation of the law, in the various social hegemonies. (WK: 92-93)
Foucault's insistence on the distinct nature of the multiple strategies of power at play in discourses and other practices, which he wishes to separate from all possible unifications under the aegis of the law, is indubitably compelling; and I do not seek to deny their partial relevance to understanding the mechanisms of power-relations.

However in my view, and as I have already stated, his theory of power-relations fails to account for the complex function of what I would venture to call the "decentred centrality" of exception in the political. This disregard for the perennial role played by exception in the modern discourse may even be what leads Foucault to ignore the dimensions of love and belief which support intersubjectivity through the transferential medium.

And in effect, if, in support of this inclusion of psychoanalysis amongst other juridico-discursive representations of power, it must be acknowledged that for psychoanalysis the law is no doubt central, for — and as Foucault rightly notes — law is perceived to be constitutive of desire through the rules of alliance and affiliation, it is however the law of the signifier which is key to psychoanalytic theory. And as we have seen in chapter III, the law of the signifier connotes the central function of the exception in discourse: it follows that any symbolic incarnation thereof will only ever be secondary to the institution of the unconscious.

Let us see if we can differentiate with more precision what I termed the "decentred centrality" of law for psychoanalysis and Foucault's indictment of its supposed juridico-discursive ethos.

The "Decentred Centrality" of Law for Psychoanalysis

In my view, Foucault's conception of psychoanalysis is rather reductive, and a number of arguments can be put forward against his critique.

- There is a marked difference between, on the one hand, stating that the laws of alliance and affiliation fulfil a key function in the constitution of desire and on the other, posing the centrality of the law as an emanation of sovereign power. According to Lacan then, it may be that the law as 'law of symbolisation' (see chapter V) is central for the subject, but it does not follow that the law is the same for all. Indeed the expression 'law of symbolisation' connotes the exceptional structure of the unconscious rather than an overarching patriarchy secured by way on the incest prohibition.

- Further, we recall that for Lacan, sexuality is not an instinctual given but a signifying construct which allows the subject to elaborate a relation to his body in speech. It follows that there can be no sexuality which is not mediated by the law of the signifier, whose function is to allow the subject to situate himself in the network of symbolic relations that surround him. And on the point of sexuality, Foucault himself is rather unclear: thus he sometimes posits sex to be the product of discourse, and at other times he states that discourse draws sex into its circuits. This ambivalence is somewhat clarified when Foucault intimates that sex connotes knowledge in
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contradistinction with bodily pleasure. However Foucault does not overly expand on the nature of pleasure 'pre-sexuality'. Could there be pleasure independently of a signifying structure, independently of love and the transference that it implies? Or is Foucault's own analysis caught up in the very discourse which it seeks to depart from?

- Lacanian psychoanalysis is concerned neither with lifting the bar of repression, nor with reinstating the father, nor with re-asserting the prevalence of centralised accounts of power. In effect, although Foucault's reductive rendering of the psychoanalytic venture may have resonated with the early Freudian enterprise, today's psychoanalysis is as much in tune with the erosion of the centrality of the law in its classical acceptation as it is with the complex nature of what used to be called 'repression'. The task that psychoanalysis sets itself is not however to restore and repair the father, but to intervene where necessary in the new modalities of the social bond.

- The recognition of the waning symbolic efficacy of the sovereign consequent upon the decline of religion and the attendant decline of patriarchy is not to be associated with a disregard for the incidence of the function of exception in discourse, nor of the transferential phenomena which are inseparable from it. For it does not follow from the fragmentation of the unitary function of the law that we are free from the dimensions of love and belief, which remain very much operational in the constitution of subjective desire in discourse — as they do indeed in the operation of power. This is why it remains important to insist on the function of exception and transference, without for all that posing the overarching transcendence of a single unitary mechanism in the organisation of the social bond.

- On the contrary, such an insistence provides us with a number of indicators thanks to which we may become conversant with the proteiform modalities of the subject's relation with what in the social happens to incarnate the exception. Indeed, to understand that the subject's relation to discourse is centrally organised by means of an exception to itself, and that this central lack opens the subject to transference, can pave the way to a better understanding of the social bond in terms of a collection of particular modes of making the exception function, and could even supply precious indications as to where one may intervene in the subject's transferential relation to places of power: hence, the *decentred centrality* of the law for psychoanalysis.

- Indeed, this expression indicates that although the structure of the unconscious is organised by way of the centrality of the law of the signifier, it does not follow that the law as sovereign emanation is central to the subject. It rather implies that the social bond is a collection of decentred centralities which articulate with one another through transferential relations to
multiple points of exception rather than on the basis of an interplay of points of resistance which lead to the expansion of power. It follows that the subject’s dependency on the signifier, his relation to authority, his transference to love, are always fundamentally personal modalities of making the law of symbolisation function.

Having thus formulated my disagreement with the Foucauldian critique of psychoanalysis, I will now move on to engage with the French theorist’s own “analytics of power” in his own terms.

**IV - INDIVIDUALISATION, TOTALISATION AND BIO-POWER**

*Pastoral Power, Panopticism and the Norm*

Never, I think, in the history of human societies [...] has there been such a tricky combination in the same political structures of individualisation techniques, and of totalisation procedures. This is due to the fact that the modern Western state has integrated in a new political shape, an old power technique which originated in Christian institutions. We can call this power technique the pastoral power.

Michel Foucault  

If I nonetheless choose to continue my engagement with Foucault in spite of his evident distaste for psychoanalysis, it is because his work focuses precisely upon the same mechanisms of power as those studied by Legendre — namely confession and penitence. Further, Foucault also deems the Benthamite Panopticon to be crucially relevant to the current mechanisms of power: thus, in *Discipline and Punish* (hereafter *DP*), he situates the function of the Benthamite gaze at the centre of what he calls disciplinary power.

Confession, penitence and the Panoptic invention being the very devices of power which were considered from a psychoanalytic perspective in the previous chapter, a careful engagement with the Foucauldian interpretation of the same mechanisms is clearly essential at this point. Indeed, Foucault’s work could be seen to irremediably challenge the pertinence of psychoanalytic readings of the law, for the Foucauldian position is diametrically opposed to what has come to be accepted as the psychoanalytic reading.

Yet, in this thesis I have consistently refused to abide by the orthodox approach to psychoanalytic readings of the law, which can be summarised by the following sequence: civilisation is organised by means of a symbolic discourse which has a manifest and a latent content. Civilisation, whose structure is similar to that of the unconscious, is supported by the legal discourse, which perpetuates the ‘parental’ repression of subjective desires. In turn, this persistence of parental repression in the ‘social’ implies the parallel existence of a ‘social other scene’ to match this other scene that the Freudian unconscious is. And this ‘social other scene’ is the place where the voices silenced by the legal discourse could be encouraged towards the polyphonic orchestration of resistance to the main discourse.

19 *Afterword: The Subject and Power*, in Dreyfus and Rabinow: 1982, at 213, thereafter referenced as *SP*.
Indeed, this now well-rehearsed psychoanalytic perspective may well fall foul of some of the Foucauldian criticisms mentioned earlier. Moreover, the impact of such a psychoanalytic jurisprudence is by definition limited to the possibility of re-introducing the 'latent' contents of discourse to the 'conscious' portion of civilisation/the psyche, whereas in my view, the potential of psychoanalysis is far more radical.

There is no doubt, then, that Foucault rightfully challenges such reductive accounts of the function of law in terms of repression. However, I have argued that his critique of 'traditional' psychoanalysis does not apply to the more recent developments introduced by Lacan in psychoanalytic theory. Further, in the next sections, besides exposing the logic of Foucault's successive theories, I will also argue that his insightful perception of the corporal dimension of discourse profoundly resonates with the foregrounding of the body which characterises Lacan's later work.

As the work of Foucault spans over three decades, attesting throughout to the creative potential of his thought, I must specify that my engagement will be confined to a selective survey of his opus. In this section indeed, I will merely seek to demonstrate the necessity not to forego the insights of psychoanalysis regarding the 'decentred centrality' of exception in discourse, and this in spite of the profound mutation undergone by political structures in the course of the past centuries.

A preliminary Overview

It is clear from the quote placed as epigraph to this fourth section that for Foucault, the predicament of the modern man, said to be caught in the individualised techniques of totalisation procedures, is to be ascribed to a very specific evolution in power-relations. Sketchily, one could condense the fruitful development of the Foucauldian genealogy of power in three main stages: firstly, the subject is taken up in the strategies of pastoral power, indexed on the sovereign; secondly, the pastoral modality of power is subsumed into disciplinary modalities of power, which operate by means of observation; and thirdly, both these modalities are subsumed into bio-power, or "a technology of power centred on life" (WK 144).

Thus pastoral power individualises, disciplinary power totalises, and bio-power normalises. The forthcoming subsections will therefore successively consider these three moments in the work of Foucault with a view to establishing whether he successfully supersedes the contention that the political is centrally organised.

Bearing in mind these preliminary indications, we will examine the ways in which, according to Foucault, human beings are objectified for the purposes of power, beginning with individualisation.
Chapter IV - The Vicious Circle of Belief

The Individualisation Techniques of pastoral Power

The Canonical Heirloom: the Production of a Discourse on Sex

Not unlike Legendre, Foucault traces the individualisation of power back to the strategies first developed by the Church. However, unlike Legendre, Foucault does not view the mechanisms of confession and penitence as instituting the repression of desire, for in his opinion they are concerned with learning about bodies, pleasures and sexuality with a view to managing men.

Thus in the Foucauldian account, these mechanisms of the Church are institutional incitements to talk about sex: (cf. WK: 17-35)

This is the essential thing: that Western man has been drawn for three centuries to the task of telling everything concerning his sex; that since the classical age there has been a constant optimisation and an increasing valorisation of the discourse on sex; and that this carefully analytical discourse was meant to yield multiple effects of displacement, intensification, reorientation, and modification of desire itself. (WK 23)

Having posed that the 'repressive' devices of the Church in fact incite the proliferation of discourses on sex, Foucault exclaims:

A censorship of sex? There was installed rather an apparatus for producing an ever greater quantity of discourse about sex, capable of functioning and taking effect in its very economy. (WK 23)

Thus Foucault subverts the classical conception of the canonical discourse as a repressive agency which would have silenced the subject's desire. Indeed for Foucault, quite the opposite ensued: for indeed sex was turned into discourse, transformed into the big secret that held power together, and consequently desire became intimately bound up in the discourses of power:

What is peculiar to modern societies, in fact, is not that they consigned sex to a shadow existence, but that they dedicated themselves to speaking of it ad infinitum, while exploiting it as the secret. (WK 35)

However, although Foucault presents a slightly different perspective on the canonical devices utilised for the subjection of men, he nonetheless does not venture too far from the repressive hypothesis which he criticises. Indeed, he poses both the centrality of such devices in the process of extraction of knowledge and that of sex as key to the constitution of power. Further, the power of the Church itself operated by virtue of the centrality of God, relayed by that of the pastor.

I would thus argue that the Foucauldian subversion of repression only brings forth two nuances to what was previously elaborated of the relation between sex and power: on the one hand, he recognises the connection that exists between law and perversion, which he perceptively isolates as the driving force beneath the expansion of power, but on the other he downplays the function of transference, which to my mind is crucial in the modality of power known as pastoral.
What is Pastoral Power?

If the state is the political form of a centralised and centralising power, let us call pastorship the individualising power. Michel Foucault 20

In his essay entitled The Subject and Power (Dreyfus and Rabinow: 1982), Foucault proceeds to argue that the individualisation of power, which he notes to remain a feature of current power-relations, began with the form of power known as pastoral.

In his account, this modality of power is to be ascribed to the influence of religion, for indeed it is religion only which postulates that certain individuals can serve others as pastors. But for Foucault, the term pastoral also “designates a very special form of power”, and I will quote his description thereof in full:

1) It is a form of power whose ultimate aim is to assure individual salvation in the next world.

2) Pastoral power is not merely a form of power which commands; it must also be prepared to sacrifice itself for the life and salvation of the flock. Therefore it is different from royal power, which demands a sacrifice from its subjects to save the throne.

3) It is a form of power which does not look after just the whole of the community, but each individual in particular, during his entire life.

4) Finally, this form of power cannot be exercised without knowing the inside of people’s minds, without exploring their souls, without making them reveal their innermost secrets. It implies a knowledge of the conscience and an ability to direct it.

This form of power is salvation oriented (as opposed to political power). It is oblate (as opposed to the principle of sovereignty; it is individualising (as opposed to legal power); it is co-extensive and continuous with life; it is linked with a production of truth - the truth of the individual himself. (SP: 214)

On the basis of the elements just listed, the connection which Foucault poses to exist between the pastoral modality of power and individualisation is apparent: indeed, pastoral power is a form of power which purports to take the good of each subject upon itself, and therefore demands an intimate knowledge of the subject’s life in all its dimensions for the purposes of salvation.

Foucault then states that in spite of the disappearance of the ecclesiastical institutionalisation, the function which it performed has “spread and multiplied outside the ecclesiastical institution”. (ibid) Thus for Foucault, the state is a “modern matrix of individualisation, or a new form of pastoral power.” (SP: 215). It is the direct heir of the religious techniques of individualisation, thanks to which it may relay the pastor in its function of saving its citizens by means of similarly intrusive and individualising techniques. What, however, differentiates the pastoral modality of power from the modern state?

20 In Omnis et Singulatim: Towards a Criticism of Political Reason (Foucault: 1988, 60). See this paper for a more historical analysis of the pastoral function.
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Following Foucault, the modern state is to be distinguished from the classical pastoral power of the Church by three aspects: firstly, the objective of the state is to ensure salvation in this world rather than in the next; secondly "the officials of pastoral power increased" (SP: 215); and lastly, the knowledge of man developed around two roles: "one, globalising and quantitative, concerning the population; the other, analytical, concerning the individual." (ibid.)

The combination of these three factors, which connotes the multiplication of state-functions and the increasingly intrusive role of its institutions, allowed the new modality of pastoral power to spread throughout the "whole social body; it found support in a multitude of institutions." (SP: 215) This extension of the 'pastoral', benevolent power of the state into realms ere free from its influence leads Foucault to hypothesise the totalisation of power as a logical consequence.

Totalisation and the Depersonalisation of Power

Nonetheless, the simultaneous expansion of both the totalising and the individualising functions of the state had to go by way of other modalities of power than those which relied upon the function of the pastor. For in fact, and although Foucault does not overly develop this dimension, pastoral power rests upon an individualised relation between the subject and sovereign incarnations — I would indeed go so far as saying that it is secured by means of transferential ties, which bind the subject through love and belief. And in view of the demographic explosion, the development of capitalism with its imperatives of productivity and the expansion of the functions of the state, how could the classical mode of pastoral power continue to operate unchanged?

Panopticism: the Self-Sufficiency of the Gaze

In Discipline and Punish, the essay in which he develops his theory of disciplinary power, Foucault claims that the Benthamite invention of the Panopticon is coextensive with a new modality of power, the crucial import of which is that it formalises the possibility for power to be depersonalised whilst also remaining operative.

Yet, despite the dispensability of the sovereign which Panopticism offers, it does not for all that do away with centrality: indeed, the body of the subject replaces the body of the king (DP: 208) as central in the equation of power, whilst the central position of the subject is secured in its place through the operation of the gaze: "visibility is a trap". (DP: 200)

In his chapter entitled Panopticism, Foucault then moves on to describe the ingenious mechanism devised by Bentham in order to allow power to exist without resorting to the sovereign. As argued in the previous chapter, it is the gaze which fulfils the centralising function until then fulfilled by the sovereign — or even, the subject's simple conviction that he is being continuously watched:

Hence the major effect of the Panopticon: to induce in the inmate a state of conscious and permanent visibility that assures the automatic functioning of power. So to arrange things that the surveillance is permanent in its effects, even if it is discontinuous in its action; that the perfection of power should tend to render its actual exercise unnecessary; that its architectural apparatus should be a machine for creating
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and sustaining a power relation independent of the person who exercises it; in short, that the inmates should be caught up in a power situation of which they are themselves the bearers. (DP. 201)

Furthermore, one must note that the Panoptic structure, in its utilisation of surveillance, allows for the depersonalisation of power:

Power has its principle not so much in a person as in a certain concerted distribution of bodies, surfaces, lights, gazes; in an arrangement whose internal mechanisms produce the relation in which individuals are caught up. The ceremonies, the rituals, the marks by which the sovereign's surplus power was manifested are useless. (DP: 202)

Indeed, the main effect of the Panoptic arrangement resides in that anyone "can operate the machine" (ibid.). And Foucault encapsulates the Panoptic effect beautifully in the following formulation: "a real subjection is born mechanically from a fictitious relation." (ibid)

Foucault is however not content to examine the Panoptic device, for he also argues that its relevance extends over and beyond its being a clever architectural invention wherein observation would fulfil a prominent part in the subjection of men. He postulates that the Panopticon is in fact the blueprint for a diagram of power:

But the Panopticon must not be understood as a dream building: it is the diagram of a mechanism of power reduced to its ideal form; its functioning, abstracted from any obstacle, resistance or friction, must be represented as a pure architectural and optical system: it is in fact a figure of political technology that may and must be detached from any specific use. (DP: 205)

By asserting that the architectural device of the Panopticon in fact amounts to a diagram of power-relations, Foucault claims that the Panoptic invention is an ideal representation of a specific modality of power. And the specificity of this modality of power which interests Foucault resides in the fact that the source of power is itself contained within the very apparatus which secures the subject.

For Foucault poses that the invention of the Panopticon is coextensive with a modality of power in which the function of the gaze is integrated in the power-apparatus which ensures subjection. As such, there is no longer need for the 'external' intervention of the sovereign, the king, or the pastor. Indeed, the modality of power defined by Foucault as Panopticism is self-sufficient insofar as at its centre lies the subject, never better disciplined and observed than by his own belief in the gaze that watches over his every movement: ultimately, the subject "becomes the principle of his own subjection." (DP: 203)

In the same spirit Deleuze, in one of his incisive essays on Foucault, defines the diagram of disciplinary power in terms of a map of power-relations whose cause is immanent. In the diagram of disciplinary power, there is no need to rely on the 'exteriority' of the sovereign, the source of power is not localisable, it is coextensive with the apparatus that supports it.

[...] the diagram acts as a non-unifying immanent cause that is coextensive with the whole social field: the abstract machine is like the cause of the concrete assemblages [assemblages] that execute its relations; and
these relations between forces take place 'not above' but within the very tissue of the assemblages they produce. (Deleuze: 1986: 44; 1988: 36)

One can easily perceive why, in such a conception of power-relations, the classical notion of transference to power should appear to be misguided, having no actual relevance. For the diagram appears to be self-sufficient; it is both open-ended and closed upon itself. The subject as body lies at its centre, and the internalised gaze discharges the function until them bestowed upon temporal incarnations of sovereign power.

**Panopticism and Disciplinary Power**

In view of the depersonalisation of power which it entails, the main effect of Panopticism as diagram of power is to allow for the substitution of relations of discipline for relations of sovereignty. (DP: 208) Indeed, Panopticism seems to be capable of doing away with the transferential dimension of the political, for the gaze appears to be sufficient to maintain and operate efficacious power-relations.

Consequently, the relations of discipline in question are marked by the prevalence of the utility principle rather than by belief or love, which we associated with transference. For Panopticism, like the Panopticon, is designed to maximise the utility of individuals whilst minimising the costs of the operation of power. Indeed, in Foucault’s argument, sovereign power is sustained through the repeated manifestations of "surplus power": violence, the rituals of sovereignty, the threat of death. Disciplines, on the other hand, solely require the cogent organisation of surveillance at all levels of power-relations.

Having posed the dispensability of the sovereign in Panopticism, Foucault proceeds to argue that the relations of discipline which it instituted came to encompass the whole of society following a de-institutionalisation of the disciplines: for discipline as modality of power extends beyond the physical boundaries of the institution. Thus for example, the control of teachers over pupils reaches out to familial life, the management of public health leads to investigations outside the hospital, and so on and so forth (DP: 211): or the development of lateral forms of control.

Consequently, although disciplinary power is principally controlled by the state, it should not be exclusively associated with it. And such is the signification of a diagram: it connotes specific power-relations rather than a centralised modality of power:

'Discipline' may be identified neither with an institution nor with an apparatus; it is a type of power, a modality for its exercise, comprising a whole set instruments, techniques, procedures, levels of application, targets; it is a 'physics' or an 'anatomy of power, a technology. (DP: 215)

It is thus that according to Foucault, the "faceless gaze" of Panopticism "transformed the whole social body into a field of perception." (DP: 214). And progressively, sovereign power, a costly way of securing obedience, gave way to observation, indexed on utility and operated by means of a constant surveillance the main agent of which is the subject. Panopticism is thus to be situated in the process of depersonalisation which is a feature of current power-relations. Further, it resulted in the institution of totalisation procedures by virtue of its extending over the whole social field.
Foucault then brings this process to its logical conclusion in the last limb of his genealogy of power, by posing the advent of bio-politics, bio-power, or the technologies of life in the last chapter of his *Will to Knowledge*.

**Bio-Power: the Norm and the Body**

**The Focus of Power on Life**

It is Foucault's contention that the demise of the sovereign is avowed, attested to by the disappearance of the right to wield the threat of death. (WK Part Five) The irretrievable demise of the sovereign is no doubt further reinforced by the depersonalisation of power coextensive with the substitution of the practices of observation for the relations of sovereignty of yore. But Foucault also argues that power has undergone yet a third mutation. Indeed for Foucault, power is now:

working to incite, reinforce, control, monitor, optimise, and organise the forces under it: a power bent on generating forces, making them grow, and ordering them, rather than one dedicated to impeding them, making them submit, or destroying them. There has been a parallel shift in the right of death, or at least a tendency to align itself with the exigencies of a life-administering power and to define itself accordingly. This death that was based on the right of the sovereign is now manifested as simply the reverse of the right of the social body to ensure, maintain, or develop its life. (WK 136)

According to Foucault, the development of disciplines did not stand on its own, and another modality of power concurrently took shape. The pivotal axis of both these forms of power is that they are both exercised over life.

In concrete terms, starting in the seventeenth century, this power over life evolved in two basic forms; these forms were not antithetical, however; they constituted rather two poles of development linked together by a whole intermediary cluster of relations. One of these poles - the first to be formed, it seemed - centred on the body as a machine: its disciplining, the optimisation of its capabilities, the extortion of its forces, the parallel increase of its usefulness and its docility, its integration into systems of efficient and economic controls, all this was ensured by the procedures of power that characterised the disciplines: *an anatomo-politics of the human body*. The second, formed somewhat later, focused on the species body, the body imbued with the mechanics of life and serving as the basis of the biological processes: propagation, births and mortality, the level of health, life expectancy and longevity, with all the conditions than can cause these to vary. Their supervision was effected through an entire series of interventions and *regulatory* controls: *a bio-politics of the population*. The disciplines of the body and the regulations of the population constituted the two poles around which the organisation of power over life was deployed. (WK: 139)

It is thus that for him, what is now at the centre of today's diagram of power-relations is not simply the utility of the subject: it is *life* itself. Thus the purpose of power is no longer simply to maximise the utility of the subject; it is now plain *subjection*. As to the function of repression and that of observation, they are subsumed in a new diagram of power that takes its bearings on life, and aims at its exhaustive administration and management.
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Sex and the Norm

A further "consequence of this development of bio-power was the development of the norm. [...] A normalising society is the historical outcome of a technology of power centred on life." (ibid.) Indeed, according to Foucault, law traditionally rests upon a dialectic of lack, violence and death. Bio-power on the other hand sustains itself by regulating and governing life. We will consider the full signification of power's dependency on life in the next section, but for now let us isolate by what means life is supposedly linked to power.

It is the focus of power on life which foregrounds the importance of sex as a political issue: sex "was the pivot of the axes along which developed the entire political technology of life. On the one hand it was tied to the disciplines of the body [...], on the other hand, it was applied to the regulations of populations." (WK: 145) Indeed, sex as product of discourse allows for the recuperation of the subject's own force by power in order to fuel its apparatus with a view to subjection. Thus sex links the body to power.

It is in view of the ongoing focus on sex in the discourses of power that the body came to occupy centre-stage as anchoring point of the political. By way of consequence, Foucault states that his concern lies with drafting 'a history of bodies' and the manner in which what is most material and vital in them has been invested." (WK: 152)

Having examined the key elements of the Foucauldian analysis of power, we see that it culminates in placing the body, life, at the centre of the current diagram of power-relations. Further, in the diagram in question, the source of power is coextensive with the apparatus that controls, observes, normalises life. There is no illusory exteriority, and thus no need for a sovereign. Power is self-sufficient, it expands 'diagrammatically', driven on by its on logic, which is neither horizontal nor vertical but 'transversal', and its movement results from the constant interplay of points of resistances: for each and everyone is at the same time source of power, object of power, subject of power.

By way of conclusion to the Foucauldian project however, and considering the pivotal importance of sex in his theory, one could certainly question how far he has in fact departed from the repressive hypothesis.

V - THE BODY IN THE PLACE OF EXCEPTION

Of Jouissance in the Structure of Discourse

In this last section I will present a number of arguments as to why Foucault's successive — and not mutually exclusive — theories of power should be put in perspective. Firstly then, I will argue that although he in turn situates pleasure, the gaze and the body at the centre of power-relations, Foucault does not interrogate the centralised structure of discourse itself when dealing with power. Secondly, Foucault discounts both the symbolic dimension of the subject and the residual function of the
sovereign in the political. As a consequence, Foucault takes no notice of the function of transference in the constitution of intersubjectivity in discourse.

On a more positive note, I will also argue that one must nonetheless take Foucault's work into account, for it crucially recognises that there is jouissance at play in the structure of discourse.

**The Centrality of the Body**

Throughout his work, Foucault foregrounds the body, and this crucial reminder of the corporeality of power should be taken into account by all analyses of the political. Indeed, Foucault's insistence on the body as object of jouissance in discourse aptly fleshes out the classical, rather begrudging recognition of the body in the loftier, somewhat disembodied terms of desire.

However firstly, his invariable placing of the body at the centre of the apparatus of power does not lead him to interrogate the 'a-spherical' structure of discourse; and secondly, although the part played by the body is key to an understanding of discourse, it does not for all that invalidate the other dimensions of discourse which were studied in the course of this thesis.

**The Body as Exception to Discourse**

In the Foucauldian critique power, whether it aims at the production of a discourse on sex, operates through the subjective internalisation of the gaze, or is effected through the anchoring of the norm on the body, is always centrally organised. This succinct evocation of the three axes of power which were described in the previous section illustrates that for Foucault, it is the body which is at the centre of the apparatus of power: bodily pleasures in pastoral power, bodily utility in disciplinary power, or simply, life in bio-power. Furthermore, when we considered Foucault's last hypothesis, we saw that he came to subsume the other modalities of power which he investigated under the aegis of bio-power. In so doing, he also posed sex to be the constructed link between the body as seat of pleasure and power. This last element shows that it is by way of sex that the body was evermore drawn into the discourses and practices of power.

Thus Foucault, although he strives to debunk the centrality of law in power analyses, nonetheless does not depart from the idea that discourse is centrally organised, albeit by virtue of its being anchored in the body of the subject by way of the vital link of sex. Yet, Foucault does not seek to account for the centrality which, even in his work, is seen to be coextensive with the structure of power itself.

And throughout the last two chapters, I have argued that in view of the very structure of the signifier, discourse could only be organised and anchored in the real of life by virtue of an exception to itself. Thus, in Legendre's classically Freudian analysis of power, we saw that the exception was conceptualised in terms which echo with the Freudian conception of the father. Indeed for Legendre, power functions by virtue of a transference to a figure which incarnates both love and authority. Secondly, through a study of Bentham, we saw that the function of the father as symbol of love and authority could equally efficiently be fulfilled by the operation of the gaze on the body of the subject — although for Bentham the field of discourse is nonetheless unified by virtue of the implicit existence of
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the absolute overseer. Now, we see that for Foucault, it is the body itself as object of discourse which secures the expansion of power, which thus remains centrally orchestrated by way of the exception to itself which it strives to encompass.

In my view then, Foucault's analysis of power does not undermine what was earlier elaborated of the exceptional structure of discourse both in the unconscious and in the political. Rather, Foucault offers us yet another dimension to add to the unfolding of our political map. Indeed, it is important to take account of the fact that beyond symbolic transference to power, beyond even the function of the gaze, the body of the subject as object of jouissance, but also as exception to discourse, continues to anchor the ongoing unfolding of power.

Yet Foucault's advances do not imply the obsolescence of the other modalities of exception we posed to be operative. Indeed, I would pose that the law may simultaneously operate transferentially, linking the subject to the Other of knowledge and Love; as gaze, keeping the subject in place by means of surveillance strategies; and lastly because the subject's body is caught up in the discourses and practices which allow for the circulation of jouissance in the structure of discourse.

Jouissance in the Structure of Discourse

Foucault stresses the fact that the deeper meaning of what one says has to do with one's pratique de jouissance, one's practice, how one obtains jouissance.

Eric Laurent21

Foucault limits his theorisation of power to a single dimension of the political, the essence of which I would formulate as follows: the 'truth' of the political discourse is the jouissance of the subject as body.

There is no doubt that this is a very important dimension, and it demonstrates Foucault's awareness of the fact that "structure implies a quota of jouissance" (Laurent: 1995, 36). Indeed, and as Lacan himself recognised,22 it would be vain to speak about structure without attempting to localise the jouissance that lodges itself therein. As such, Foucault offers us another piece for the construction of a political analysis which would take its bearings from the centrality of exception in discourse.

On the basis of Legendre's work indeed, we were able to elaborate something of the function of love and truth in power relations, through that of Bentham's we were made aware of the key role played by the gaze, and now with Foucault, we may add a third dimension to the jigsaw of power: power takes up the subject as body, it produces modes of jouissance, modifies the subject's relation to his pleasures, in brief, power is a collection of ongoing practices which do not leave the subject unchanged.

As such, we can pose that the three distinct analyses of power which were exposed in the first part of this thesis each foregrounds a key dimension of the 'subject': thus, Legendre highlights the

21 E. Laurent: 1995, 33-34.
22 Lacan's four discourses (presented in Seminar XVII) precisely amount to an attempt at theorising four different ways in which jouissance is taken up in the structure of discourse.
dimension of the subject as lack, Bentham evidences that the subject may be an object for an omnipotent Other, whilst Foucault, for his part, isolates the subject as object of jouissance.

Yet, despite the crucial insights offered by the Foucauldian theory of power-relations, I would nonetheless assert their insufficiency when it comes to drawing a comprehensive picture of the mechanisms of power. Indeed, one cannot be content with theorising the subject in terms of an object of jouissance, which may at best be a resistant element at play in the prevalent diagram of the time. What of the other dimensions of the subject?

The Subject in the Political

In this subsection, I will begin by identifying the part which is reserved to the subject by Foucault before supplementing his account by returning to the symbolic dimension of transference explored in the second section of the present chapter.

The Function of the Subject in Power Relations

In his *Aftenvord* — entitled *The Subject and Power* — to the book Dreyfus and Rabinow dedicated to his work (1982), Foucault claims that his analysis underlines the dimension of the subject rather than that of power:

> [The objective of my work over the past twenty years ] has been to create a history of the different modes by which, in our cultures, human beings are made subjects. My work has dealt with three modes of objectification which transform human beings into subjects. [...] Thus it is not power, but the subject, which is the general theme of my research. (SP: 208)

In this opening statement, Foucault unequivocally indicates that the subject is produced through various modalities of *objectification*.

Yet, this does not imply that the Foucauldian subject be a pure 'object' of discourse. In fact, the subject is perceived to be an active term in the interactive equation of power, and the very resistance of the subject is integrated in the dynamics of the power-relations, which it may nonetheless influence:

> Every strategy of confrontation dreams of becoming a relationship of power and every relationship of power leans towards the idea that, if it follows one line of development and comes up against direct confrontation, it may become the winning strategy. (SP: 226)

For Foucault then, resistance to power will unfailingly be taken up in the dynamics of power-relations, which do not suffer exteriority. Thus political resistance will need to be brought to bear on specific points of the diagram of power in order to bring about a certain evolution from within.

This all-inclusive theorisation of power implies that agency in not in question; the subject is neither fully object of discourse nor agent of discourse: power is not localisable, there are only power-relations. (SP: 219) Indeed, since the expansion of power is sustained by the force of the subject which it produces, should the subject be passive, then there would be no power: it would be dead.
For Foucault then, it seems that power is somewhat parasitic: for it needs to incite and excite in order to develop — hence its dependency on sex. The Foucauldian theory depicts a power which is very much alive. And indeed, as was stated above, the key import of Foucault's work resides in his focus on the jouissance which lodges itself in the structure of discourse.

Although this 'vitalist' conception of power does echo with the analytic observation of the fact that there is a "quota of jouissance" in structure, there is however not only jouissance is structure. Indeed there is also desire, which is indexed on lack, and the real function of the super-ego is also very much present in the subject. For if jouissance circulates in the structure, lack and the super-ego both insist in the same place. This is why an analysis of power from the perspective of psychoanalysis needs to retain its bearings on what in the structure of the subject is fixed.

A final Return to Transference

Transference introduces intersubjectivity between the subject and object of transference.

Pierre-Gilles Guéguen

As I have asserted throughout this chapter, the crux of my disagreement with Foucault lies in his reduction of the subject to his bodily dimension. Yet, and as we have seen in section II of this chapter, the psychoanalytic perspective allows us to perceive that there exists other dimensions to discourse than the simple supply of energy to the parasitic expansion of power.

For as Gueguen states, "transference introduces intersubjectivity" between two subjects on the basis of a dissymmetry which is not to be exhaustively accounted for by the hierarchical organisation of power-relations. Indeed, the dissymmetry in question also pertains to the symbolic axis of subjective relations, which pinspoints the subject's dependency on the signifier or, more precisely, on the ideal signifier which governs transference. This ideal signifier is the signifier with which the subject identifies, and as such it is the signifier of what makes the subject lovable in the eyes of the Other. It is thus the symbolic vector for the necessary introduction of dissymmetry in the imaginary, which also mediates the subject's relation to the real of his body.

As such, there is more than bodily jouissance, or even punctual resistance, to intersubjectivity. Indeed, the subject's relation to discourse is also to be conceptualised in terms of a collection of fundamentally singular modes of inscribing one's solitude in the social bond. And these modes may just as well foreground the symbolic, transferential relation of the subject to authority and love as they may revolve around the subject's pratiques de jouissance or indeed, implicate the paranoiac model which is indexed on the function of the gaze.

As such, it is crucial to keep track of the function of the ideal and that of the gaze when trying to decipher the complexity of power-relations from the perspective of the subject, not only as body, but

24 Recall that Lacan argued that the structure of personality was paranoiac in "The Mirror Stage" (Emile).
also as marked by lack and haunted by repetition. This is why psychoanalysis offers the possibility to theorise the mechanisms of power more comprehensively than either one of the three accounts envisaged in the course of the first part of this thesis.

**Group-Formation and Real Leaders**

To conclude this chapter on transference, let us envisage the danger of a return of the leader as a real object in group-formations.

Indeed, the subject's latent faith in the existence of the Other is always ready to materialise, and the shadow of tyranny looms large over our political edifices. We must thus be aware of the perils attendant to the potential re-personalisation of power, which deeply marked recent world history with a bleak litany of dictatorships, fanaticism and racial hatred never better enforced than by a cult rendered to the personality of a leader. One may even argue that it is the weakening of the symbolic efficacy of the paternal function which provided the context for new forms of totalitarian fanaticism, the monstrous hydra begotten by the last century.

And in effect, the weakening of a symbolic truth that would come in the name of love, thereby successfully quilting the universalist discourse with the fiction of the sovereign good, may give way to a fascination with the body of the leader in group-formations where the leader becomes the hypnotic object instating a shared identification between members of the group.

In his 1921 paper on Group Psychology, Freud supplements his insightful study of the libidinal structure of group-formations by noting that the mechanism of ideal identification is quite similar to that of hypnosis (PFL 12, 144), which is performed through the medium of the voice of the hypnotist. This statement offers us a precious indication: for it implies that the unifying function of the leader may also be fulfilled by way of a transference to an object, for example the voice of the leader which is key in phenomena of mass hysteria, as it provides both a collective drive-satisfaction to the group, and a stable point of reference under the gaze of which the group is 'vertically' unified.

And history has sadly confirmed the Freudian intuition; it has even taught us a great deal on the topic of transference to a real object as a mode of group-formation: namely, that it is supported by the facade of absolute power, or the seeming absence of castration; that it functions by way of the imposition of strict rules and rituals which provide both certainty and regular enjoyment to its subjects; that it secures it perennial hold in spite of its failure to deliver on its promises by ascribing the conspicuous postponement ad infinitum of the pledged social happiness to the ill-wishing activities of yet another enemy, thus to be eradicated for the glory of the leader to reveal itself in its full magnificence — and therefore, by instigating the mass destruction of whichever group happens to be cast as the cause of the deficiencies of a power that announced itself as omnipotent.
VI - CONCLUSION

Speaking Other-wise

It may occur to some reader to ask me, 'Are you constructing an ideal or destroying one?' I would ask him, in turn, whether he ever reflected upon the price that has to be paid for the introduction of every new ideal on earth? Of how much reality, in each instance, had to be slandered and misconceived, how much of falsehood ennobled, how many consciences disturbed, how many gods sacrificed? For the raising of an altar requires the breaking of an altar: this is a law: let anyone who can prove me wrong.

Friedrich Nietzsche

In this moment to conclude, Nietzsche's quote may serve as a useful reminder. For throughout this thesis, I have continuously emphasised the relevance of psychoanalysis for the purposes of conceptualising the political, or more accurately, when striving to isolate the mechanisms whereby the subject is inscribed within the 'social'.

Yet, I do not wish to erect psychoanalysis itself as a-temporal, eternally valid and universally true ideal. In that, I do no more than take heed of Lacan's own recognition of the uncertain future of psychoanalysis, which he once declared to be intimately bound up with what would become of the real (Lacan: 1974b; unpublished).

In my mind, in Lacan's indication there are two propositions: firstly, the survival of psychoanalytic as a 'science of the subject' is conditional upon its efficiency in dealing with the real of the symptom; and secondly there may come a time when psychoanalysis loses its capacity to intervene in the symptom. For there can be no analysis without transference, and the continued transference of the subject to psychoanalysis is not in the least guaranteed. For, despite the nefarious effects of the ideal for the subject, can there be transference in the absence of the ideal? And should the answer to this question be positive, what forms of transference would there be?

Leaving the hypothetical future of psychoanalysis behind, I for my part believe in the desirability of relying on psychoanalytic theory, for it offers other disciplines the numerous insights it gains from its daily interaction with the subject. Yet, for interventions made from the perspective of psychoanalysis to retain a degree of credibility, one must steer clear from the mortified application of a theory which by definition needs to constantly evolve in order to be able to respond adequately to the emergence of new symptoms. Hence the proposed venture of this thesis, which is to supersede the Oedipus complex whilst preserving the Freudian invention, but only insofar as it can be proven to be constructive in understanding the subjective plight.

Further, and to borrow the title of one of Gueguen's articles, one must avoid to fall into the trap of a discourse that legitimises itself on the model of a "Lacan says that" (Guéguen: 1994). For if Lacan provided us with extremely precise tools with which to apprehend the complex structure of the subject,
there is no doubt that these tools must constantly be modulated, refined and adapted alongside the mutations of the social bond. It thus follows that the very relevance of Lacanian theory is itself conditional upon the ever renewed demonstration of both its clinical efficiency and its theoretical pertinence in apprehending the modern symptom.

Beyond this necessary caution even, one must also bear in mind that psychoanalysis has never purported to offer any ideal solutions. For psychoanalysis is a theory of the subject which takes its bearings on the three dimensions which were brought to light in the analytic experience — those that Lacan named imaginary, symbolic and real. The analytic experience thus allowed for the invention of a set of tools which may profitably brought to bear upon other disciplines. And yet, those tools are nowhere better utilised than in the context of the analytic treatment. For it is in the context of the treatment, which proceeds ‘under transference’, that the analyst accepts the personal responsibility of respecting the subject’s singular constructions. Indeed, the sole guarantee that the subject’s particularity will be respected resides in the analyst’s own desire, in the ethical position which analysts may reach after a lengthy treatment. This is why psychoanalysis must not be conceived as an immutable hermeneutic apparatus des-indexed from the subjective experiences of both the patient and the analyst.

What, then, is the point of drawing on psychoanalytic theory when inquiring into the function of law in the modern world? In my opinion, the crucial importance of psychoanalysis resides in that it serves as a constant reminder of the complexity of the subject, and that it consequently has the potential to resist the sclerotic, universal discourses of those institutions which purport to deliver the good of the subject. Thus the political function of psychoanalysis, should there be one, lies in that it may pluralise and disrupt prevalent discourses, and that it thereby always insists on the subject’s singularity. In turn, such an insistence on singularity essentially aims to underline that the subject’s own salvation lies with no one else than himself. And this was the very essence of the Freudian ethics:

Happiness, in the reduced sense in which we recognise it as possible, is a problem of the economics of the individual’s libido. There is no golden rule which applies to everyone: every man must find out for himself in what particular fashion he can be saved. (PFL 12, 271)

It is thus that I would now like to bring this first part to a close by asserting that the insights which were gained through my interpretation of psychoanalytic theory, and which I successively brought to bear on a number of analyses of power, will in fact prove most helpful when considering symptomatic relations to discourse from the perspective of each subject.

For, and to conclude, speaking Other-wise implies that when speaking, one must strive to be aware of what makes the Other exist for the subject. Indeed, the Other is the partner of the subject’s symptom, and as such the form of the subject’s symptomatic relation to language will also point to the Other which functions for him. For this is truly the sole function of exception: the exception is what allows the subject to make the Other which he requires as partner to his symptom exist.
PART II

LAW AND PSYCHOANALYSIS

Taking Exception to the Letter

In the first part of this thesis, I exposed, evaluated and reformulated the Oedipal theories which Freud had devised in order to account for what he encapsulated with the expression 'the discontents of civilisation'. The purpose of this engagement was to assess the current relevance of the Freudian discoveries for the study of the dynamics of the political.

Indeed, the mythical contents of the Oedipus complex, coupled with Freud's insistence on the universality of the incest prohibition, have long been seen to detract from the scientific status of the discipline of psychoanalysis. It is in view of the widespread incredulity which Freud's work often provokes that I undertook, following Lacan, to reduce the Oedipus complex to the logic of the unconscious. In the process, I hope to have attested to the importance of psychoanalysis for the re-thinking of the political from the perspective of the subject.

In this second part, I will develop the Lacanian theory of exception in two moments. Thus in chapter V, I will analyse the function of the place of exception in the unconscious, opposing the neurotic unconscious to the psychotic unconscious with a view to fleshing out what was previously exposed in structural terms. And in the second chapter, I will present Lacan's work on topology, which reformulates psychoanalytic theory and adjusts its concepts to the symptoms of the modern world.

♦ Chapter V: Psychosis and the Law: Legal Responsibility and the Law of Symbolisation

Chapter V, taking exception literally by demonstrating the importance of the place of exception for the subject of law, argues for the practical importance of psychoanalysis for criminology, an importance which finds its raison d'être in the necessity that a subject be response-able for there to be full legal responsibility. In recognising the requirement for a certain linguistic constellation to be in evidence — namely that there be a subject of enunciation who is able to answer for what he articulates at the level of his statement —, the correspondence between legal responsibility and the law of symbolisation, Lacan's term for the Oedipus complex, is addressed.

Starting from the fictitious structure of truth and its corollary, the fact that 'truth is grounded on the fact that it speaks', the unconscious emerges as a grammatical apparatus for the production of meaning. The logic of exception, indexed on the signifier of the Name-of-the-Father, is exposed as the mechanism for the operation of this grammatical apparatus as it is brought to bear on the trace of subjective division.

I then demonstrate the importance of division for the subject of law by presenting the deleterious effects of the dysfunctional grammar of psychosis through a study of President
Schreber's Memoirs and his use of grammatical devices in order to institute a constitutional democracy in the realm of God — and thus submit the Father to his Name.

* Chapter VI: The Topology of the Subject of Law: The Nullibiquity of the Fictional Fifth

Chapter VI demonstrates the importance of taking exception back to the letter — or in other words, of doing away with the Ideal.

This chapter will begin by accounting for the mutations undergone by the function of the Ideal: thus, although the symbolic father of yore may be 'dead', it left the subject's alienation to the Other of love in its wake. And this alienation is just as nefarious as the subject's more classical subjection to symbolic incarnations of authority.

For the purposes of arguing for the dispensability of the Other of love, this final chapter will draw from Lacan's borromean topology, which will be presented in the light of Lacan's earlier focus on propositional logic. Indeed, knot topology can prove invaluable in locating the nodal points to be targeted by an external intervention, and this in order to interrupt the incessant serialisation of meaning for a subject. We will see, then, how borromean knots endeavour to circumscribe what in the structure of discourse remains invariant beneath its particularisation by each subject, or in other words to identify what in the subject is of the order of the calculable — and thus open to a possible intervention on the structure.

Borromean topology, then, is a material tool to be used in order to locate the points at which a body is knotted in language, and this exposes the dispensable character of the paternal function and reveals the fictional nature of the Other of Love.
CHAPTER V

Psychosis and the Law: Legal Responsibility and Law of Symbolisation

Responsibility is the possibility of answering for oneself [...]. The subject of law, in so far as he is to answer for his actions, is the subject of renunciation—we use a linguistic term. It is the subject who answers for what he articulates at the level of the statement, and this is why it is necessary that he should not confuse himself with his statements.

Criminology is of interest for psychoanalysis in so far as it poses the problem of knowing whether mental illnesses should lead to the suspension of the subject of law.

Jacques-Alain Miller

In the case of a psychotic subject, it is grammar that should be summoned to the courtroom.

Pierre Naveau

I - INTRODUCTION

The Subject of Lacanian Linguistics

In this chapter, I will draw from the Lacanian reading1 of a psychotic patient's own memoirs, Daniel Schreber (1988), to support my contention that both the advances of psychoanalytic theory and the intervention of the analyst can prove vital in the dealings of justice with subjects suffering from pronounced mental disorders.

The few sentences chosen for epigraphs are drawn from the work of contemporary Lacanian analysts, who concern themselves, perhaps less cryptically than Lacan himself did, with the articulation of the analytic discourse in the social bond that supports it. The concise indications which they offer will structure the unfolding of this chapter.

In the course of the forthcoming argument, the practical import of psychoanalysis for the law should emerge. For although psychoanalysis will evidently not provide a magical tool for the deciphering of 'madness', or even the treatment thereof; it nonetheless has the potential to evidence the logic at play in certain criminal acts. As such, and by resisting the temptation to demonise the criminal, psychoanalysis has the possibility of confronting the juridical apparatus with its own responsibility for the humane treatment of the subject.

The opening quotations explicitly address my concern with the subject's own logic, for they supply a number of crucial indications which elucidate, from the perspective of the subject, what it means to come to the law. Indeed they present us with the following elements: a definition of responsibility; a subsequent identification of the subject of law as response-able; a formulation of the condition precedent to legal responsibility understood as response-ability and, as a logical conclusion to such a sequence, an interrogation of the function of law with regard to mental illness, which in this chapter I have chosen to restrict to the subjective structure of psychosis.

2 Comment made in the course of a clinical discussion on the passage to the act in psychosis, Journées de l’ANPASE (a conference in the Lacanian orientation held in Paris on 24-25 January 2000: “La responsabilité : un impératif contemporain”).
3 In Seminar III and “On a question preliminary to any possible treatment of psychosis” (Écrits, 1966; 1977).
But before moving on to the core of my argument, it may not be superfluous to briefly recall the anchoring points of the double subversion Lacan inflicted upon the traditional linguistics he first drew his inspiration from, for it is, without a doubt, this double subversion that will allow us to conceptualise the Lacanian subject as the place of the law—a long-term construction to be continued beyond this thesis.

**Lacan's double Subversion of Linguistics**

Lacan's notoriety borrows the vehicle of his own enigmatic phrases, driven by an infinitely equivocal wealth of sense encapsulated in formulations such as 'there is no Other of the Other', 'desire is the desire of the Other', 'there is no sexual relation', 'The woman does not exist', and so on. Yet, the beauty of these ciphered messages does not lie in the covert revelations they seem to harbour, but in the fact that they lend themselves to the game of desire. Their very opacity insists, illuminated from time to time by the ephemeral flash of a privileged moment of understanding, which marks the rhythm of the logical temporality of interpretation. It is thus that Lacan's formula offer their structure to the movement of our desire.

These few introductory words put us from the outset on the trail of the distinction between *enunciation* and *statement*, which Lacan re-interpreted as indicating that it is desire which instils meaning in statements. In so doing, Lacan gave new depth to the classical linguistic terminology according to which 'enunciation' refers to the act of utterance, whereas 'statement' designates the actual words being uttered. Indeed, the Lacanian perspective moves away from the formalism of the distinction and underlines the profound influence of desire on the production of meaning. In fact, Lacan intimates that the distinction between enunciation and statement evidences the subjective division in the structure of language.

Let us consider the example relied upon by Lacan in order to illustrate this proposition. In Seminar XI (138-140), Lacan considers the classical paradox exemplified by the statement *I am lying*. By stating that *I am lying*, I am indeed telling the truth: it is thus that in deceiving you, I am telling the truth. From this simple paradox, Lacan deduces the distinct natures of the I of enunciation and the I of the statement—the latter, following Jakobson (Ecrits, 800; 298), is nothing but a shifter which designates the subject in the statement without signifying him. On the basis of this observation, Lacan poses that the subject of enunciation always says the 'truth' concerning the subject's desire. This leads him to deduce that desire borrows the signifying material which is available in the Other as locus of the signifier. Thus, each act of utterance is a compromise between the subject's desire and the 'desire' of the Other to whom the statement is addressed. In effect, the introduction of the function of desire in language by Lacan amounts to recognising that sense is always profoundly subjective, for it is produced under the aegis of desire, in the *interweaving of two constituent-elements, articulated by a temporal scansion and punctuated by retroaction.*

In turn, this recognition of the subjective division in language clarifies Lacan’s somewhat unorthodox use of the Saussuran terms of *signifier* and *signified*, where the signifier is primary and the

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4 See also "Subversion of the subject" (Ecrits, 793-827; 292-325).
subject, its signified, is secondary. The latter proposition also elucidates one of Lacan's agalmatic incantations — the unconscious is structured like a language — for in his conception, the unconscious is the combination of the two dimensions of language, signifier (structure), and signified (enjoyed sense), animated by the movement of desire.

Lacan's first 'subversion', then, lies in his understanding of the subject's reality as structured by the signifier, and thus as secondary to the signifier. The second moment of Lacan's teaching is indexed upon an even more radical subversion, that of the signifier itself, for Lacan ends up conceptualising the unconscious as a linguistic apparatus in the service of jouissance.

Throughout Lacan's work then, language is never a pliable tool in the hands of man for the apprehension of the world, entertaining a mysterious correspondence of sorts with a signifier supposedly in the real, but on the contrary it is an 'apparatus' for the construction and maintenance of 'reality' in an otherwise senseless universe. This last point allows us to begin to perceive that a subject for which the apparatus of language is dysfunctional can but see himself engulfed in an unworkable conception of reality, and it is this statement which brings me to the second point of my introduction.

Psychosis and the Law

Why address the question of the relation between psychoanalytic theory and the law from the perspective of psychosis? Because from a psychoanalytic point of view, the structure of psychosis does not fulfil the condition precedent to responsibility before the law — namely subjective division. As such, an informed focus on the position of the psychotic from the angle of legal responsibility will allow us to circumscribe the sense of legal responsibility from the perspective of the subject in terms of its condition precedent.

This elaboration will take us through those of the Lacanian concepts that were specifically designed to account for the articulation of the subject's being in language, which will enable us:

- to map the logical function of the Name-of-the-Father in terms of the subject's division between the level of the statement and that of enunciation, and to appreciate its function with regard to legal response-ability.

- to elucidate the psychotic's position before the law, a position determined by the absence of the structural and structuring element identified by Lacan as the agency of the Name-of-the-Father.6

- to decipher the politics of justice inscribed as watermark to the apparently flawless concept of responsibility — law's 'neutral' criterion to command punishment — and to question what it is that really activates legal responsibility: the subject's actions, his character, his mental disorder? Or the risk posed to others, the cost of alternative modes of response and, above all, a nation's refusal to modify its political orientation?

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5 A claim developed in "The function and field of speech and language in psychoanalysis" (Ecrits, 237-322, 30-113).
In order to address the questions raised in my opening paragraphs, I will present a step-by-step exposition of the logical concatenation that takes us from legal responsibility to the law of symbolisation (III). This will bring me to the threshold of my developments on the law of the unconscious, psychosis and their relation to the legal order (IV), an exposition I will now initiate by inscribing our elements in the context of the preliminary question of psychoanalysis' relevance to the law (II).

II - POLITICS OF PSYCHOANALYSIS

Law, Psychoanalysis and fleeting-improvised Men

The Place of Psychoanalysis in the Contemporary Legal Discourse

In view of the current tendency to an evermore 'globalised' pragmatism, it is not in the least superfluous to keep adducing evidence in support of alternatives to mainstream discourses and to champion those disciplines for which the creative potential of the subject continues to exist, over and beyond the 'resistible rise' of market forces supported by the relentless mapping of 'subjectivity' performed by the discourse of science.7

To borrow an expression from a man of law — admittedly a most peculiar one, for it is on the basis of his delusional writings that I will elaborate my reflection on the psychotic's relation to the law — are we to see those who come to the law reduced to the status of "fleeting-improvised men"; in other words fitted within pre-existing constructs animated by the spirit of the judge, with for main object the silencing of the victim and the securing of the criminal?

If we are to avoid the looming reduction of the law to a mere apparatus for the distribution of rights, obligations and penalties, dealt out primarily to maintain Law and Order, then there is a real urgency to conceptualise anew the inscription of man in the legal order, with the subject understood as primary locus of the law.

And yet, I am in no way advocating a paternalistic legal system, for it is equally imperative to challenge the unavoidable flip-side of a repressive society, namely the pervasive cult of the victim and its psychologising ideologies. Indeed, the weakening of all ideals belonging to the class of 'universal truths' can but reinforce the need for hysterical identifications, a mechanism which rests upon an

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7 We may think of the Human Genome Project and its ominous potential in view of the numerous claims witnessed over the past decades regarding the discovery of biological or genetic 'causes' for various modes of social dysfunction ranking from alcoholism, addictive personalities and violence to underachievement, homosexuality, schizophrenia, autism etc. I am expecting the imminent discovery of a poverty gene. Science often turns itself into the accomplice of 'wild' - deregulated - capitalism, turning a blind eye to its corollary, the increasing penalisation of society (for statistical evidence on the links between wild capitalism and increasing repression, see L. Wacquant, "L'emprisonnement des 'classes dangereuses' aux Etats-Unis", Le Monde Diplomatique, July 1998) and even supporting it by supplying scientific evidence as to the pre-determination of criminal characters, which exonerates the political class of its responsibility to the subject.

8 Schreber: 1988, at 74. "Fleeting-improvised men" is the "basic language" term used by Schreber to refer to all human beings encountered during his second stay in "God's Nerve-Institutes" (at 56); it indexes the insubstantiality of men, who only exist for his benefit and that of God.


10 On hysterical identification, see Freud's Group Psychology (PFL 12) at 136-7: "There is a third particularly frequent and important case of symptom-formation, in which the identification leaves entirely out of account any object-relation to the person who is being copied [...]. The mechanism is that of identification based upon the possibility or desire of putting oneself in the same situation [...]. It would be wrong to suppose that [one] takes on the symptom out of sympathy. On the contrary, the sympathy only arises out of the identification." In that respect, the translators of Télévision were particularly inspired in translating Lacan's neologism, 'humanitaerie', as 'humanhysterianism' (Lacan: 1990, at 33), thereby making
identification with the image of the victim and deters the subject from modifying his own position by providing him with the substitutive satisfactions of affect — whether mediated by the image of the other or not.

I will return to the difficult question of which avenues may be open to a psychoanalytic intervention in the social bond at more length in my conclusion, for it may be premature to address it now. But we can already take note of the fact that, while there is a growing consensus as to the urgency of political action in the face of the increasing 'utilitarianisation' of politics, economy and justice — as is attested by the proliferation of popular movements, non-governmental organisations and other associative groupings disengaged from the framework of institutionalised politics — there is as yet little recognition of the potential of psychoanalysis to inform a practical engagement with the law.

I will however specify from the outset that I am thinking of the possibility of an analytically-oriented practice operating in the institutional or carceral context, supported by pluri-disciplinary workgroups involving members of the legal and para-legal professions and of mental health specialists. Indeed, the very nature of the analytic discourse prevents all reliance on psychoanalysis outside the transferential relation: for the analyst is an integral component of the analytic discourse.

**The Function of Truth for the Subject**

Despite the difficulties associated with the use of psychoanalytic theory outside of the analytic context, such a challenging venture will nonetheless prove useful to understanding a number of key features of the subject's relation to law, and thus to orienting ourselves differently in the legal discourse.

Thus, there is no doubt that Lacan's formalisation of the social bond in terms of 'modes of jouissance' paves the way for a decisive orientation on the real, a real which has not so much disappeared from the scene as seen its veridical dimension engulfed in the multiplication of erratic sub-textualities — only to better resurface in the guise of the fantasmatic enjoyment that pervades the media culture as it unashamedly feeds off unelaborated affects of horror, violence and fetishised sexuality.

Lacanian psychoanalysis, on the other hand, because of its long-standing recognition that "truth has the structure of fiction", recognises the vital function of truth for the subject, while however
Chapter V - Psychosis and the Law: Legal Responsibility and Law of Symbolisation

thoroughly subverting the concept. Truth is not to be confused with the formulation of either a universal, eternal statement or a method for the serialised production thereof; it is to be conceived as of the real. As such, it is intimately bound up with the subject's ineffable particularity as it attempts to cipher itself by means of the fantasy, the place of enunciation which smuggles the subject's desire back into statements destined to obtain the Other's love.16

This orientation of psychoanalysis on the truth of the subject — rather than subjective truth — is what makes its advances so crucial with regard to the law. Indeed how is one to judge, legislate, interpret, in the face of stomach-churning sexual perversions, bewildering criminal delusions, the damning clamouring for punishment of guilt-ridden subjects or its opposite, the displacement of one's responsibility on to one's social environment, parents or education, if not by taking one's bearings on the criminal's veridical relation to his act? The significance of such an orientation proceeds from its dual implication: on the one hand, with respect to the concept of truth itself, and on the other, as regards the locus of responsibility.

Truth and the Real

To lend my voice to support those intolerable words, "I, the truth, am speaking... ", goes beyond allegory. Which simply means everything that can be said of the truth, of the only truth: namely, that there is no such thing as a meta-language (an assertion made so as to situate all of logical positivism), no language being able to say the truth about the truth, since the truth is grounded in the fact that it speaks, and that it has no other means with which to do so. (Lacan: Science et vérité, 867-68; 16)

Lacan's steady rejection of the existence of a meta-language and its corollary, the dismissal of the transcendental aura of truth, are well-known. Whether their consequences are fully understood is another question. Indeed, to say that "the truth is grounded on the fact that it speaks" does not indicate that there is no truth but that "to each their own".

What, then, is the truth of the subject? It is produced in the elective ciphering of the subject's experience of the structural disparity that obtains between the signifier and jouissance (Miller: 1995, 99-110): the truth of the subject is his symptom. It is the word 'elective' that points to the tremendous innovation Lacan introduces psychoanalytic theory to: to be a little more explicit, Lacan sees that, despite its coming from the Other, sense ferries water to the mill of the subject's jouissance. He thereby brings Freud's 'secondary gain of the symptom' to the power of language, and his subsequent version of the unconscious as reale accounts for the jouissance obtained by means of the knowledge that the Freudian unconscious is: joui-sense.18

This innovative conception enables Lacan to temporalise Freud's static unconscious and animate desire by redoubling it with jouissance, thereby suggesting that there may be a beyond to the Freudian reading of the text of the unconscious. Desire, the ciphered repressed sedimented in the 'unconscious subtext' hypothesised by Freud, is itself subverted by a will of jouissance [volonté de jouissance] which

16 Thereby giving rise to the "formations of the unconscious" such as Freudian slips, jokes and other parapraxes.
makes use of this very desire. It is this will of jouissance which differentiates the truth of the subject from subjective truth, for indeed, what else is revolutionary about Lacan's concept of truth? Certainly not the pedestrian claim that each subject is governed by his particular version of truth, or even that this truth is produced by the subject's interpretation of the Other's desire, something already sensed by Hegel and developed by Freud. Lacan's key addition is that the subject's own persistent choice of jouissance subverts and utilises his alienation in the Other, with two crucial implications:

- The Other is a construct of the subject, who would rather submit to his aggrandised Ideal, often at the cost of unspeakable suffering, than to face the logical impossibility language introduces in the real: castration.

- The split between statement and enunciation, which appears to be an effect of the Other's prohibition, is in fact the structural condition of being-in-language. Prohibition only supplies meaning to its signification.

But it is not the Law itself that bars the subject's access to jouissance — rather it creates out of an almost natural barrier a barred subject. (Écrits, 821; 319)

These two consequences — that the Other is a fiction, that subjective division is an effect of language — pave the way for a further distinction, that between the truth of the subject and what I would call a veridical real: while the former refers to the subject's interpretation of the Other's desire as both sustained and subverted by jouissance, the latter designates the possibility of doing away with the fiction of the Other — indeed, the symptom is painful mostly because of its ascription to the Other; in other words, the phrase "veridical real" indexes the subject's relation to language after the place of exception is voided of its fictional occupant.

It is in the writings of Joyce — of whom he declares that "had he taken part in our game, Joyce] would not have gained anything from it since [...] he went straight to the best of what one can expect of an analysis at its end." — that Lacan finds evidence of the possibility of another mode of separation, this time no longer as a means to enjoy one's alienation in the Other but from joui-sense, a separation he encapsulates in the phrase 'to cancel one's subscription to the unconscious' [désabonner à l'inconscient]. Such a separation refers to the subject's construction of a substitutive poetics of truth, the resonance of which will progressively replace the fictional agent of enunciation in its function of quilting the body in speech; it has come to be called a sinthome. It is with the latter

19 Developed by Kojève: 1996.
21 Signification designates the effect of the signifier while meaning refers to the sense that retroactively attaches to it. Cf. in this respect the primary cell of the graph of desire, "Subversion of the subject and the dialectic of desire" (Lacan: 1977, 303).

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outcome in mind that I choose to christen the truth psychoanalysis strives to enable the subject to produce with the phrase "veridical real": or truth without the Other.

**Truth and Responsibility**

To recognise that the subject always acts according to his truth — whether it be that of his relation to his Other or to language as bare "apparatus of jouissance" — implies that he is the only locus of responsibility for his actions, for it is in the opacity of the subject's jouissance that the motives of a crime lie.

As early as 1933, Lacan begins to address the problem this opacity poses to the law of men as he attempts to clarify the underlying motivations of the Papin sisters' infamous crime, while however stressing that he is not advocating the 'humanitarian' solution of granting irresponsibility to the criminal:

But we note, for those who are frightened by the psychological path which we shall follow in order to study the issue of responsibility, that the saying "to understand is to forgive" is subject to the limits of each human community, and that, beyond these limits, to understand (or to believe one understands) is to condemn.

At this early point in his work then, Lacan already acknowledges that, whatever the clinical structure, there can be no outlaw, that subject and social order alike depend upon the existence of an external legal and moral order whose function is to either strengthen, rectify or alleviate the internal law of the subject — depending on the circumstances of the case. His 1950 paper on criminology does not depart from this ascription of responsibility to the subject, far from it:

[The case of the Papin sisters] proved that the analyst alone is able to demonstrate, against prevalent opinion, the alienation of the criminal's reality in a case in which the crime gives the illusion of a response to its social context.

Lacan's insistence that the motives of a crime are inscribed in the register of the subject's truth goes against the grain of all sorts of psychologising currents, for it presents the subject as always 'responsible' in so far as the decision to act upon his 'alienated reality' is his and his only.

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25 The reference is to Seminar XX: "Reality is approached with apparatuses of jouissance... we focus, of course, on the fact that there's no other apparatus than language." (Lacan: 1998, 55).

26 Motives of paranoid crime: the crime of the Papin sisters (Lacan: 1933, 389-398 at 393; or 564-575 at 569). In 1933 provincial France, two maids suddenly decide to murder their mistress and her daughter, gouging their eyes out and searching for the response to 'the mystery of life' in the blood of their victims. It is in this crime that Lacan finds confirmation of his theory of 'alienated reality', or of the paranoid structure of personality: 'man is in the other'. See "The Mirror Stage"; "Aggressivity in psychoanalysis" (Lacan: 1966; 1977). The influence of Kojeve (1996) here is clear.

27 This is maybe nowhere better illustrated than in the story of Althusser, long-diagnosed with manic depressive psychosis, who strangled his wife in a state of automatism: the philosopher was 'spared' legal responsibility under art. 64 Code Penal — defence of madness — and sectioned for a few years. His autobiography, The Future Lasts a Long Time (Althusser: 1992) is an attempt to take responsibility and to find a place for himself within the law. His oft-quoted story shows that a verdict of irresponsibility can in no way satisfactorily deal with the question of psychosis before the law: to be made to ex-sist — from eu-stasis or standing outside — to the law of men, to be literally out-lawed, may indeed be the worse punishment for the psychotic, who already suffers from being outside the order of meaning and the security it implies with regard to jouissance.

This may seem to be a somewhat harsh position, and today more so than ever, for indeed our culture, grounded as it is on the prudential ethics of loss-spreading and blame-circulation, has come to favour a clear-cut victim/culprit Manicheism, the inevitable corollary of the increasingly litigious inclination of a society which relies near-exclusively upon juridical enunciation for the allocation of right and wrong. But Lacan anticipates such criticisms:

One is always responsible for one's position as subject. Those who would like to may call that terrorism. I have the right to be amused, for it is not in a setting where doctrine is fair game for bargaining that I should fear offending anyone by formulating that guileless errors are the most unforgivable of all. The psychoanalyst's position leaves no escape, excluding as it does the tenderness of the beautiful soul. (Science and Truth: 858-9; 7-8; trans. mod)

Yet, to situate responsibility at the level of the subject rather than to dilute it in a form of supposedly irresistible determinism does not in the slightest entail anything of the order of a moral judgement, whether it be incriminatory or exculpatory, quite the contrary: firstly, it restores some dignity to criminal and victim alike, for it recognises they have a share in their own destiny. Secondly, it favours a "veridical" approach to the motives of a crime, giving in neither to "humanhysterianism" (Lacan: 1974a, 33) nor to man's fantasmatic desire to uncover and strike at the beast supposed to be somnolent in every man's breast. 30

This approach, where it exists, endeavours to delineate the parameters of a subject's truth and adjust the response of the law to it. And in effect, to return to psychosis, when one begins to discern that it is a disturbance at the level of language which underpins most psychotics' crimes, it is no longer possible to consent to the comfort of the easy equation madness/monster, as Lacan's biographer points out:

[...] the originality of a position tending to forge a new conception of the relations between psychiatry, criminology, and penal justice may be seen to emerge. Faced with the partisans of dynamic psychiatry attempting to save the insane from the guillotine as well as with the official experts who had become the executioner's accomplices, Lacan emitted, for the first time, the hypothesis of a third path [...]. For him to explain a crime was neither to forgive nor condemn it, neither to punish or accept it. It was, on the contrary, to 'derealise' it, that is, to restore to it its imaginary, then symbolic dimension. In that perspective, if the criminal is mad, he is not for all that a monster reduced to his murderous instincts [...]. Lacan thus de-realised the crime without dehumanising the criminal. [He] emphasised that psychoanalysis resolved the principal enigma of criminology, which remained stymied by the dilemma of a symmetry endlessly pitting reason and madness, man and beast, God and Satan against each other. (Roudinesco: 1990, 127)

Somewhat paradoxically then, in rejecting the irresponsibility of criminals and insisting on a veridical approach to crime, it is the responsibility of their judges that Lacan calls to the bar.

29 On prudential ethics, see L'Etat-Providence (Ewald: 1986).
30 "Torture, sexual perversions, horror museums, and concentration camps belong solely to the realm of the human, and if the obscene beast springs from the womb of mothers, it is by way of human metaphor." Roudinesco (1990, 127). On the need for monsters, see M. Foucault's incisive article, L'évolution de la notion d'individu dangereux dans la psychiatrie légale du XIXe siècle (Foucault: 1994).
Let us now return to the four elements I first extracted in my introduction, for they map the pattern of a relation which remains largely to be constructed, that between the law of men and the law of the unconscious.

III - LEGAL RESPONSIBILITY; LAW OF SYMBOLISATION

The Subject of Lacanian Linguistics before the Law

Responsibility and Response-ability

- "Responsibility is the possibility of answering for oneself."

Although Lacan argues that the subject is "always responsible", it is nevertheless necessary to differentiate this responsibility as to "one's position as subject" from legal responsibility. If responsibility regarding one's position as subject returns the subject to his elective 'choice' of jouissance, my first epigraph on the other hand, drawing from the common etymology of 'response' and 'responsibility' [respondere], subordinates legal responsibility to the possibility of answering for oneself, namely for one's deeds and words at the level of the statement.

- "The subject of law, in so far as he is to answer for his actions, is the subject of enunciation."

The following link in the sequence implies that the subject of law must be able to grasp the motives of his actions. Legal responsibility thus requires a divided subject, a subject who knows he is not where he speaks. Indeed, one does not judge the grammatical subject of the statement "I have killed" but the person of the murderer, his intention: as all lawyers know, there can be no criminal offence without mens rea. It is the mind of the criminal which is on trial then, but only in so far as he is response-able.

- "It is necessary that he should not confuse himself with his statements."

Response-ability be it then. But what does it take to be response-able? On this point Miller contends that, in order for there to be legal responsibility, the subject should not identify with what is articulated at the level of his statement — it is thus subjective division which is required.

Since however subjective division is an effect of language, we need to define which form of division is in question. From the above quotation, it is implicit that the 'split' upon which responsibility is conditional is that between enunciation and statement. Through the work of Freud and Lacan, we know that this mode of division is instated and operated by means of a specific signifier, whose status is unique in the order of language, for it is the signifier of all other signifiers, and as such without a signification. This is the extraordinary position Freud's Primal Fathers came to occupy, and which Lacan renamed, somewhat less dramatically, the Name-of-the-Father. The place of exception is thus a fictional point outside the law thanks to which there is law, and whose function is to organise the subject's relation to jouissance by articulating enunciation to statement, which allows for

31 On the division between statement and enunciation, see Lacan's elaboration in Seminar XI (1977), chap. XI.
32 S. Freud, Totem and Taboo (1913, PFL 13).
33 Later, Lacan states that any signifier may occupy the place of exception for the subject: "In the last analysis, the symptom depends upon a structure in which the Name-of-the-Father is an unconditioned element.", (Aubert: 1987, 27).
the attribution of meaning to a signification. In other words, it is on the basis of this fictional point that the structuring and circulating of the subject's jouissance by means of the signifier is operated.

Structurally speaking, the function of exception is nothing else than a logical necessity and as such is empty, but because of the need for consistency attached to imaginary castration, the function of exception comes to be incarnated by a number of idealised figures serialised on the model of the Ideal. The imaginatisation of the place of exception occurs as follows: subjective division operates on the basis of the trait of jouissance imprinted upon the subject in his first encounter with alterity, which trait is then coupled with an Ideal signifier, elective choice of the subject. This elective choice of a meaning to be ascribed to the nonsensical mark of language is necessary in order to set in motion the subject's alternation between an engraved mode of jouissance and a scripted signification. But this choice of a signifier, if it is the condition of movement, is also the means by which the liberating potential of division comes to be reclaimed away from the subject, who from then on sees his desire drawn to the magnet of the Ideal, imaginised occupier of the place of exception. Thus, if every "act of enunciation" implies "a latent nomination", it is because "the neurotic is really Nameless" (Ecrits: 323) before the law, for the place of the name, where he could come into being in an act of self-nomination, is exclusively invested by imaginised versions of the Name-of-the-Father.

These few elements then clearly point to the neurotic subject, whose legendary indecisiveness is a sure index of the subjective division playing itself out in the perpetual inadequation between what he says he wants and what he wants to say, complete with its associated collection of tragi-comic trivia and supposedly insoluble dilemma, spin-offs of the cyclical wheel of repetition. The aim of all this neurotic non-activity is none other than to achieve a fragile semblance of equilibrium between the contradictory demands of the symptom (which 'plugs' the want-to-be of the subject) and fantasy (which equivocates from beneath the signifying apparatus that a symptom is), all the while under the crushing gaze of the Ideal. Meanwhile, while the neurotic entangles himself evermore in the chains of his signification, the subject's acephalic jouissance has a field day scoring costly points of satisfaction at the expense of the subject, Other-wise engaged. Indeed, recall that drive-satisfaction is a parasite that lives off the subject:

We must consider the drive under the heading of the konstante Kraft that sustains it as a stationary tension... by circumventing an object]. This articulation leads us to make of the manifestation of the drive the mode of a headless subject, for everything is articulated in terms of tension, and has no relation to the subject other than one of topological community. (Seminar XI: 181)

On a more positive angle, if the neurotic's division in the symbolic does have some infelicitous drawbacks, at least his grammar functions: namely, the signification of each of his statements is attributed a meaning from the place of enunciation thanks to its being indexed on a point of exception.

34 Or the fantasy qua grammatical conjugation of the subject with an object, which irreversibly inscribes the subject's mode of jouissance, and the symptom qua signified of the Other, respectively (S 0 a) and $O$ (O) on the graph of desire (Ecrits: 1977, 315).
This implies that the subject lives by the truth of his being and is thus able to answer for the actions he committed in the pursuance of this truth.

Such is not the case for a psychotic subject, whose relation to division and exception is very different. The psychotic's grammar is indeed dysfunctional, in so far as the place of exception is not for him an empty position — necessary allowance made for the Ideal — but is marked by the real Father, with for potentially horrendous consequence the reduction of truth to certainty.

- "In the case of a psychotic subject, it is grammar that should be summoned to the courtroom."

This statement, possibly the most puzzling of all at first, must now begin to make sense in view of the emphasis placed upon the marked relation that exists between language and legal responsibility. If we are to abide by psychoanalysis' contention that there can be no legal responsibility stricto sensu without a subjective division in the symbolic, then the importance of the subject's relation to language and to grammar — the set of established rules governing a language — logically ensues. And indeed, a differential diagnosis37 will take its bearings from the grammatical mode which structures a subject's relation to language: conjugation or definition.

Neurotic grammar conjugates the subject as subject of desire ($) with the objects of his desire (a) by means of a two-way relation Lacan terms "conjunction-dijunction" (0): in other words, conjugation aims to satisfy the subject while preserving his desire, and designates the neurotic mode of being-in-language. Conjugation as mode of enjoying one's unconscious reveals the driving force operating in the space of the division between enunciation and statement: namely the wish to conjugate oneself with one's direct (drive objects) or indirect (object-choices) complements of object. This grammatical mode is organised on the basis of a particular logic, the Oedipal organisation of the unconscious, or logic of exception.

**Logics of the Unconscious**

**The neurotic Unconscious**

Lacan indeed divests the Oedipus complex from its imaginary clothing by reducing it precisely to the law of language: "This fundamental law [incest prohibition] is simply a law of symbolisation." (Seminar III, 83) This elliptical statement postulates that the function of the Oedipus, beyond its indisputable role in the imaginary constitution of the subject's sexuality, is to institute a precise form of logic in the subject's relation to language. To expose in more details what has already been hinted at, let us map the functioning of the logic of exception in terms of language: neurotic logic revolves around the crucial function of the Name-of-the-Father, the hollow axle of the ciphering wheel of desire.

Furthermore, it implies that the following elements be in place and operative: firstly, a code — what Lacan terms the Other, locus of the established rules of language, treasury of signifiers; secondly, messages emanating from the subject; thirdly meaning, in the sense that the subject's messages receive their meaning from the place of the code; fourthly, a mechanism for the attribution of meaning.

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36 See Freud's paradigmatic neurotic, the "Rat Man", *Case Histories II*, (PFL 9).
filtering both sense and jouissance through the place of exception — the residual place of nonsense in language which offers the subject the space to construct his own elective signification as subject, or truth —; and lastly subjective division, namely a cut in action between code and message, which offers the necessary temporal scansion for the subject to be able to choose which of the meanings available in the code he will elect to attribute to his messages. This grammatical apparatus, the unconscious, supports the production of truth which, recall, "is grounded in the fact that it speaks." This elucidates one of Lacan's most notorious claims, for "[t]his is precisely why the unconscious which speaks the truth about the truth is structured like a language." (Science and Truth, loc. cit.)

The Psychotic Unconscious

The unconscious, this apparatus conjugating the subject in the field of desire with a view to produce truth, does not function in psychosis. Psychotic grammar is indeed characterised by definition. Foreclosure — rejection of the real — of the signifier of exception implies that there is no fictional legislator enunciating the law of symbolisation, thereby regulating the subject's relation to language. This entails, in turn, that subjective division in psychosis, instead of traversing the symbolic field itself, is located between the symbolic and the signifier in the real which represents the subject.

The immediate consequence is that there is neither ciphering of sense nor equivocation but a simple imposition of a signification on the subject: definition thus. Indeed, the absence of a fictional point of enunciation annihilates the principal import of the predicate, temporal scansion, and its effect: to open sense to desire, in so far as the temporal scansion introduced by the predicate opens even tautology to interpretation and thus to the creative elaborations of the subject. The temporality of the psychotic, on the other hand, does not involve scansion, it is eternal and eternally the same. The psychotic is immortal; he cannot fully symbolise birth, sex, parenthood or death, events which thus often trigger a latent psychosis.

Moreover, the absence of subjective division in the symbolic also entails that the psychotic has no objects in the neurotic sense. The divided subject is indeed able to re-find, clothed in the form of another subject, that part of himself he has given up by identifying with a signifier; on the contrary the psychotic's love-object is always an imaginary other, support of his ego — hence the frequency of shared delusions (Ecrits 182) in psychosis, Lacan's delire à deux.

Let us illustrate this assertion with an example: we note that one of psychoanalysis' most famous psychotics, Schreber, gets married shortly after his elder brother's suicide, at the — in those days, relatively advanced — age of 36, which leads us to hypothesise that he is in fact transferring the function of imaginary support from brother to wife.

37 Namely a diagnosis in terms of clinical structure: neurosis, psychosis or perversion. I have intentionally left the difficult question of perversion aside in this paper, for it does require a full elaboration in its own right.
38 This elaboration is drawn principally from "On a question preliminary" and "Subversion of the subject", Erits 1977.
39 Hegel's Phenomenology of Spirit (1977) is the best example thereof, for he derives Absolute Truth from a single tautology thanks to the structure of the predicate: being is, but we know nothing of being. All we can say of being, then, is that being is and that since we know nothing of it amounts to saying that being is nothing. The rest is history.
This absence of objects implies two things: firstly, that the psychotic does not *conjugate* himself in the field of desire, and as such does not have a fantasy; secondly, when some event — Lacan's *One-Father* — happens to disrupts the imaginary duality, the ego of the psychotic slips away due to the sudden lack of external support:

It is enough that this One-Father should be situated in a third position in some relation based on the imaginary dyad o-o', that is to say, ego-object or reality-ideal, that interests the subject in the field of eroticised aggression that it induces. (*Ecrits* 217, trans. mod.)

At the level of the organisation of language, the lack of a fantasy indexes the incapacity of the psychotic to *conjugate* himself and thus the lack of a lack.

Indeed, when the psychotic is no longer sheltered by his imaginary identification, his artificial subjective division between symbolic and signifier in the real collapses: the signifier that represents him returns from the real in the guise of auditory hallucinations — described by Schreber as *nervous language*, for they speak without the medium of any *sensorium*: they 'speak' his body (1988: 117) — which expose the fact that there is no empty space for the subject in language: the psychotic then becomes the body of the signifier that represents him; with for result his annihilation as subject. A single signification remains in the face of perplexity: the certainty of being the object of the Other's jouissance.

**IV – PSYCHOTIC LINGUISTICS**

*Human Knowledge – The Soul of Mature Man*

Not only can man's being not be understood without madness, it would not be man's being if it did not bear madness within itself as the limit of his freedom.

Jacques Lacan 41

The subtitle of this last section is, again, drawn from Schreber's astonishing *Memoirs* (1988: 45). If I am placing my final elaboration under its auspices, it is because I believe that it perfectly encapsulates the subordination of all knowledge to the subject's truth, and the equation of the latter with reality. Coupled with the idea that "the sum total of recollection is as it were inscribed on each single nerve of intellect", 42 this is not such a bad anticipation of Freud's theorising of psychical reality as a fiction invested with affect, in other words as a libidinally-cathected signifying structure.

*A veridical Relation to Language in Psychosis*

It is such piercing insights which evidence the psychotic's veridical relation to language, for he conceives what we no longer do: namely that we speak with our bodies, that they are, following Kafka's imagery in *The Penal Colony*, the flesh upon which language is engraved. This more

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40 It is notable that psychotics often have delusions of immortality, often coupled with an imaginary identification with religious figures, the figure of Christ for example, like Freud's Wolf Man, *Case Histories II* (PFL 9). Cf. Agnès Afflalo's powerful reading of the case, "Réévaluation du cas de l'homme aux loups", *La Cense Freudienne* 43 (1999), 85-116.


42 D.P. Schreber: 1988, 45. In his analysis of Schreber's *Memoirs* (*Psychoanalytic Notes on an Autobiographical Account of a Case of Paranoia (Dementia Paranoides)*: PFL 9, 218), Freud recognizes how much Schreber's delusions echo his own theory of the libido. For my part, I note the affinity between Lacan's concept of *talangue* and the idea of a material inscription of language on the body of the subject in the short section entitled *On a question preliminary* at the beginning of this thesis.
immediate intuition of the intimate relation that binds the body in language explains why one should accord so much more credit to the psychotic's veridical speech than to neurotic truth. For indeed the neurotic always tells the truth, even when he lies, as Lacan's humorous tale illustrates:

Take the Jewish joke in which one Jew tells another that he is catching the train for Lemberg. Why are you telling me that you are going to Lemberg, the other replies, since you really are going there, and that, if you are telling me this, it is so that I shall think that you are going to Cracow? (Seminar XI: 139)

It is however his truth that the neurotic cannot but tell, and as such all we learn from his speech bears the mark of his particular symptomatic relation to language. Indeed his truth, that which he calls reality, turns out to be nothing other than an incongruous, illogical construct, riddled with contradictions, utilised by fantasy, paralysed by anguish, supported by fictions, preserved by denials, in short his relation to the signifier after it has been deformed by the whole arsenal of unconscious formations, namely all the grammatical structures (various modes of negation, conjugation, elision) at the disposal of the subject for the purpose of sustaining his desire in the face of his fictional Other.

On the contrary, the psychotic does not have access to the dimension of truth, and his statements are articulated at the level of enunciation. It is this specificity of the psychotic's relation to language that make his constructions such precious sources of information as to the organisation of subjectivity in language:

I know the false modesty that is current in science on this subject; it is a fit companion for the false thought of pedantry, when it argues the ineffable nature of lived experience, even of the 'morbid consciousness', in order to disarm the effort that it expends, namely that required at precisely the point at which it is not ineffable since it (a) speaks, at which lived experience, far from separating, communicates itself, at which subjectivity yields up its true structure, the structure in which what is analysed is identical with what is articulated. (Ecrits 216)

I have therefore decided to rely upon two precise moments of Schreber's Memoirs in support of my previous elaboration of the logic of exception.

The Case of President Schreber

Allow me, then, to introduce at last the main character of this chapter, Senatorpräsident Daniel Paul Schreber, who is no doubt the most famous lawyer in the field of psychoanalysis.

A man of high moral standards and a judge of good standing and reputation for most of his life, he came to be appointed division president of the Court of Appeal of Dresden as of 1 October 1893, following which the second and most serious episode of his nervous illness began. He was diagnosed with paranoid psychosis in November of the same year, at the age of 51, and subsequently spent nine years in various psychiatric institutions, during which he constructed an extremely elaborate delusional system, involving becoming God's wife, being emasculated, being a
woman subjected to men's physical attentions, being the only real man left on earth, being the bearer of a new race, becoming pregnant by God, and other related elements. By means of his delusional constructions, he however eventually achieved the by no means negligible feat of accounting for the whole history of mankind, although it admittedly entailed its re-organisation around his own person. 44

A delusional Logic

Beyond the extraordinary nature of his delusions though, it is the logic behind Schreber's writings that is striking, and this is probably why his Memoirs, published in 1903 at his pressing demand, provided Freud with his paradigmatic case of paranoid psychosis and Lacan with the necessary material for his theorisation of the Name-of-the-Father and the mechanism of foreclosure in psychosis. For my part, the aspect of these Memoirs I have elected to focus on here is his gradual construction of his very own grammar, a successful enough endeavour if any, for President Schreber succeeded, at least for a few years, in recovering most of his mental health, his job, his wife and his social standing. It is thus his substitutive grammatical apparatus which interests me, for:

What I am saying here is that it is the business of reason to recognise the drama of madness, sua res agitur, because it is in man's relation to the signifier that the drama is situated. (Lacan: Ecrits, 214)

Thanks to the inventiveness of his writings, Schreber gradually remedies some of the consequences of the foreclosure of the Name-of-the-Father: the lack of subjective division in the symbolic is replaced by his own articulation of code to message in language, giving rise to the same consequence — the retroactive attribution of meaning to a signification —; while the lack of a lack is dealt with through the preservation of a number of empty spaces in language through the use of shifters and metonymy.

The support afforded by these two inventive modes of defeating the imposition of a signification allow him to say 'No' to the Father, incarnated in the figure of God, and to finally subject Him to the law of men: in other words, he succeeds in instituting a constitutional democracy in the realm of God:

"The Order of the World" is the lawful relation which, resting on God's nature and attributes, exists between God and the creation called to life by him. God cannot achieve what contradicts His own attributes and His powers in relation to mankind or, as in my case, to an individual human being who had entered into a special relation with Him. God, whose power by rays is essentially constructive in its nature, and creative, came into conflict with Himself when he attempted the irregular policy against me, aiming solely at destroying my bodily integrity and my reason. This policy could therefore only cause temporary damage, but could not lead to permanent results. Or perhaps, using an oxymoron, God Himself was on my side in His fight against me, that is to say I was able to bring His attributes and powers into battle as an effective weapon in my self-defence. (1988: 79)


44 In this centrality Schreber ascribes to his own person, we recognise an occurrence of the common psychotic phenomenon of megalomania, namely hyper-catheisis of the ego. It is thanks to this prosthetic over-evaluation that the subject will be able to contain the deliquescence of the structure of language initiated by the return from the real of the signifier of exception.
Subjective Division: Basic Language, Messages, Meaning

I must specify here that Schreber’s elaboration is constructed within the framework of a continuous dialogue between himself and, in his own terms, the “voices that speak to him”. In the course of this dialogue, he progressively instates a mechanism for the attribution of meaning to his statements, similar in structure to the neurotic unconscious. Thus, the voices begin by notifying Schreber of what they call the Grundsprache, or basic language: a code, or signifiers about signifiers. Hallucinations of this order supply the rules of God’s language, the vocabulary appropriate to His realms, and detailed information as to the hierarchical organisation of Heaven.

We may in passing remark upon the name Schreber chooses for his code, the Grundsprache, which echoes the German term for constitution: Grundgesetz. This supports my hypothesis that Schreber is trying to impose a sort of constitutional democracy upon God, who abused his powers concerning Schreber and had to be called to order:

In my case, moral obliquity lay in God placing Himself outside the Order of the World by which he himself must be guided; although not exactly forced. (...) The Order of the World reveals its very grandeur and magnificence by denying even God Himself in so irregular a case as mine the means of achieving a purpose contrary to the Order of the World. (1988: 78)

The other half of what the voices say consists of messages, although they are always interrupted. In that respect, Lacan defines the association Grundsprache/interrupted messages as follows: “A code constituted by messages on the code, and of a message reduced to that in the code which indicates the message.’ (Ecrits: 187) Schreber must then guess what the missing part is and complete the messages: meaning then comes from Schreber himself. So far, we have four equivalent elements out of the five listed earlier regarding the neurotic unconscious: signification — or effect of the signifier —, code, message and meaning. But we are still lacking the point of exception on the basis of which the choice of meaning is operated by the subject.

In order to understand what guides Schreber in his attribution of meaning without the support of the hollow axle of desire, let us look at the content of what comes to complete the voices’ messages. The voices accuse him of being an idiot, a negator of God, a perpetrator of voluptuousness. (Ecrits: 186) How are we to understand the insulting nature of the meaning that comes to quilt code and message? It is likely that these self-directed accusations do in fact express the reverse, namely a covert aggressiveness towards God, who “did not really understand the living human beings”... because "He dealt only with corpses.”45 In my view then, it is this will to say No! to God which orients the operation of Schreber’s delusional grammatical apparatus.

This hypothesis is supported by Freud’s observations on paranoid grammar which, although he may have been misguided as to its purpose, nevertheless remain instructive: in the last section of his analysis of Schreber’s Memoirs, Freud remarks that there is a certain recurrent mode of negation in paranoia. (PFL 9, 200-202) It is thus that ‘I love him’ becomes, variously: 1) I do not love him, I

45 D. P. Schreber: 1988, 75. We know that Schreber’s father, Dr Daniel Gottlob Moritz Schreber, designed all sorts of machines whose sole function was to re-educate the body. See Ecrits: 1977, 220.
hate him; 2) I do not love him, I love her, or 3) she (he) loves somebody else. Thus, a grammatical
form negation which occurs either at the level of the object, subject or verb. Freud understands
these three modes of negation as defences against homosexuality. More interestingly, Lacan
perceives that these modes of negation articulate different modalities of the psychotic's handling of
the dual relation that supports him through the use of grammar. (Ecrits: 188) By analogy, we may
hypothesise that a similar use of grammatical inversion is what underlies Schreber's self-accusations:
by insulting himself he is in fact insulting God and, by means of this artifice, progressively saying
no to the all-encompassing, persecutory Other.

- **Shifters and Scilicet**

There is yet another way in which Schreber makes use of the resources of grammar to keep God at
bay, and it is by interrupting the messages of the voices just after the words which indicate his
position and which thus do not signify but merely designate.

One might note that the sentence is interrupted at the point at which the group of words that one
might call index-terms ends, the terms being either those designated by their function in the signifier
... as shifters, or precisely the terms which, in the code, indicate the position of the subject on the basis
of the message itself. (Ecrits: 186)

The words supplied by the messages are terms of position then, while the elided terms are those which
the code defines with respect to their use. The function of the shifters in Schreber's grammar is clearly to
delineate a space for the subject while preserving it as meaning-free, which enables him to come up with
his own choice of meaning: a position without imposition.

In addition, the voices also take to eliding more and more words from their messages, words
which Schreber must then supply himself, as for instance in the sentence "He should" scilicet think
"about the Order of the World", which Schreber footnotes as follows:

The word "think" was omitted in the above answer. This was because the souls were in the habit... of
giving their thoughts... grammatically incomplete expression; that is to say they omitted certain words
which were not essential for the sense. (1988: 70)

The Latin term scilicet signifies word to be supplied (OED). In my view, this particular mode of
introducing holes in the Other's messages indicates that the function of metonymy, contrary to that
of metaphor, is operative in psychosis. If metaphor is, for Lacan, the linguistic mechanism which
allows the neurotic to serialise equivocal sense in the empty place of the signifier subtracted from
the Other, thereby decompleting it, the psychotic, on the other hand, cannot serialise his being in
such a way: he must make do with metonymy if he wishes to achieve a similar end. Scilicet then:
indeed, to contend that you are the one who has the word to be supplied to the Other is a means of
decompleting the other and of consolidating the subject in the belief that he may have something
that the Other therefore lacks — and that He therefore lacks.

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46 J. Lacan, *Ecrits* 1977, 304-5 "...the subject is constituted only by subtracting himself from it [the Other] and by
decompleting it essentially in order, at one and the same time, to have to depend on it and to make it function as a lack."
Schreber's delusions, then, unquestionably allow us a glimpse of the real function of language: namely, that over and beyond meaning, it is the structure of language and its grammatical apparatus which support the subject's being.

There would be a lot more to say on Schreber's fantastic world, no doubt, but now is the 'time to conclude'.

**V - CONCLUSION**

*The disenchanted Utilitarianism of Justice*

In this chapter, I have presented a number of elements in support of the pertinence of psychoanalytic theory with regard to understanding the subject who comes to the law. But, beyond a theoretical elucidation of the subject, are there any other modes of political intervention open to psychoanalysis? Or is the disenchanted utilitarianism of the legal apparatus, already noted by Lacan in 1956, to be the final mot d'ordre of justice?

Responsibility, in other words punishment, is an essential characteristic of the idea of man which prevails in a given society. A civilisation the ideals of which are becoming always more utilitarian – for it is engaged in the accelerated movement of production – can no longer know anything of the expiatory signification of punishment. And if it does retain its exemplary impact, it nevertheless leans towards its absorption by its correctional end. Besides which the latter is slowly changing object. The ideals of humanism resolve themselves in the utilitarianism of the group. And since the group that lays down the law is not, for social reasons, completely assured as to the fairness (justice) of the foundations of its power, it defers to a humanitarianism where the revolt of the exploited and the bad conscience of the exploiters find equal expression, and for both the notion of punishment has become equally insupportable. The ideological antinomy, here as elsewhere, reflects the social malaise.47

Psychoanalytic theory, no doubt, allows us to cast a critical glance on other discourses, but it is not, for all that, that it may hope to substitute its own credo to those currently operative, and this precisely because it finds its raison d'être by taking its bearings on the truth of the subject, which is itself the product of other discourses. And indeed, in his third Rome conference, Lacan tells us that [Even though the analytic discourse] ..."does cast some light on other discourses,.. it does not for all that render them obsolete. The aim of the discourse of the master, for example, is that things should go in step for everybody."48 This is a clear indication that psychoanalysis cannot pretend to substitute itself to other discourses, for the path of universal solutions is, by definition, barred to it. Is this to toll the bell of a psychoanalytic jurisprudence?

In his Seminar XX, largely dedicated to utilitarianism, Lacan elaborates his own version of Bentham's philosophy as a possible avenue for the contribution of psychoanalysis to the social bond, not in terms of 'utilitarianisation' but in those of distribution of jouissance:

The economy of jouissance is something we can't yet put our fingertips on. It would be of some interest if we managed to do so. What we can see on the basis of analytic discourse is that we may

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have a slight chance of finding out something about it, from time to time, by pathways that are essentially contingent. (Seminar XX: 116)

Such an orientation on an economy of jouissance rather than on any Ideal, ideal discourse or other form of imposed universalisation, leaves us with only two possible approaches: on the one hand, to take up the position of the analyst when encountering individuals within institutional frameworks, and on the other, to aim at the very foundation of the social bond: discourse. The first approach is a matter of personal choice. As to the second one, it proposes to target the discourse of the master, whose function is to construct and operate the fictional framework within which institutions are inscribed.

In the latter perspective, the political function of psychoanalysis is to oppose totalitarian conceptions of the institution and any institutional theory grounded on conformity to a rule for, indeed, the argument is well-known, universal discourses do not go without exclusion and segregation. Psychoanalysis' refusal to lay claim to ready-made solutions should also help us to bear in mind that if it is only "by pathways that are essentially contingent" that we may learn how to better organise the economy of our jouissance, this is no doubt the logical consequence of the recognition of each subject's particularity, a recognition which entails as its sole rule the respect of each subject's choice of being, and the belief in what he enunciates — although of course not at the level of his statement.
CHAPTER VI

The Topology of the Subject of Law: The Nullibiquity of the Fictional Fifth

Lacan is, without a doubt, making use of the creationist effect [of topology] to encircle the real [of the structure], to circumscribe this structure. But he also warns us against what could become a mysticism of topology, against any fascinating effect or initiatory drift associated with it - through capture by the image, the putting into play of the imaginary of the body. Is this not the precise point at which we may recognise the motive behind the tour de force accomplished by Lacan in "L'Étourdit", a text in which he articulates his topology for our benefit with no other support than words, in which he shows us how discourse itself is topologically articulated? What Lacan formidably demonstrates in this text (...) is that one can do without topology on condition that one makes use of it.

A writing is thus an act [un faire] which provides a support for thinking (...) What remains is that the signifier, in other words what is modulated in the voice, has nothing to do with writing.

Jacques Lacan

I - INTRODUCTION

An Emphasis on the Real in Language

In order to bring the second part of this thesis to its conclusion, I will focus on the last period of Lacan's teaching in its two-fold emphasis on the letter and the knot.

Following Lacan, both the letter and the knot have to do with the real in language, and thus this change in orientation indexes a certain shift in Lacan's work: indeed, the era of the Name-of-the-Father is principally oriented on the symbolic axis of language. This theoretical shift — from the symbolic to the real —, and the change of terminology that accompanies it, will however not undermine the advances accomplished in chapter V. For borromean topology will be shown to cast Lacan's previous elaboration on the signifier in a different light — in effect, borromean topology situates the Name-of-the-Father in the perspective of the contemporary 'pluralisation' of discourse.

As such, the clinic of the Name-of-the-Father, introduced by Lacan following his logical reduction of the Oedipus complex, proves itself to be merely a modality of treatment suited to a certain form of neurosis. The borromean clinic, on the other hand, is designed to apprehend all manners of symptomatic formations, and this on the basis of each subjective organisation of jouissance rather than from the perspective of the Other.

Beyond a Clinic of the Other

Bearing these preliminary indications in mind, I will now outline the purpose of this chapter, which is two-fold: firstly, I intend to demonstrate how Lacan's borromean topology inscribes itself in the continuity of his teaching, and secondly, I will argue that this topology may be put to many practical

1 P. Skriabine: 1993, 123.
2 J. Lacan, Le Séminaire XXIII: Le Sinthome, 11 May 1976. It is in this seminar that Lacan elaborates the four-ring borromean knot and its corollary, the clinic of generalised foreclosure (on which see Skriabine, op. cit.). I thank Luke Thurston for generously sharing his translation of this difficult text, which will be used in this chapter, although with slight modifications.
uses with regard to defining the parameters of an intervention in a given discursive structure — my own focus here being that of law.

My epigraphs indicate from the outset the directions to follow in order to cover each limb of the proposed itinerary. Indeed, on the one hand, Skriabine’s emphasis on the intimate connection that unites discourse to topology clearly signposts the way into the study of the later Lacan; and on the other, Lacan’s explicit assertion of the sheer heterogeneity of speech and writing identifies the Archimedean point to lean upon in constructing the possibility for an intervention in the symptomatic hermeneutics playing itself out in discourse — and this, by taking exception to the letter or, in other words, beyond the fictional fifth.

Before elucidating the complex enigma ciphered in the latter statement — for it is this statement which lends its form to this chapter’s central claim, namely that one can do without the Other of Love —, each of its components must be carefully situated within the framework of the argument.

It is with this purpose in mind that we may now set out on the pathways already concisely mapped out: for in effect, to combine Skriabine’s statement regarding the topological structure of discourse with Lacan’s assertion of the idiosyncratic status of writing will help us to delineate the importance of borromean topology. In turn, this combination will be used to progressively trace an inroad in Lacan’s complex re-articulation of subjective structure by means of the topology of knots. And the distinct understanding of subjectivity we will have acquired will expose the artificiality of the psychical construct which supports the subject’s alienation to love, and thus to its addressee, one’s particular Other

It is this precise construct, the fantasy, which accounts for the eroticisation of one’s relation to the law and the deleterious effects which ensue — indeed, the law is never dead enough. And if we are to take the irrational core of the social bond into account, then we must also learn how to locate the knots of signifying jouissance which, in the subject’s discourse, both organise the structure of his repetition and resist interpretation, for it is on this basis only that it will be possible to effectively intervene in a particular subject’s mode of encountering the institution and the legal order which it incarnates.

II - A CLINIC OF FICTIONS

Situating Borromean Topology

First of all, let me underline that Lacan’s re-articulation of the subjective structure is far from being gratuitous. It is on the contrary crucial in so far as it supports the introduction of a clinical differential that is much more appropriate to our epoch, which is that of the well-documented pluralisation of truth. Indeed, Lacan’s borromean approach announces significantly more than a change in representational tactics, it also formalises a novel operational distinction for the

\[\text{For an elucidation of this statement, see S. Zizek, "Beyond Discourse-analysis", in New Reflections on the Revolution of our Time, E. Laclau (London: Verso, 1990).}\]
understanding of man's being in the world, and one that no longer relies on the Other for orientation: rather, it focuses on the subject by taking its bearings from each subject's particular invention — or fiction — for the treatment of his real.

The Fictional Obsolescence of the Father

Lacan's last conceptual shift ratifies his acceptance of the irretrievably solipsistic nature of the subject's truth, exposed by the contemporary reduction of Oedipal meaning to *père-version* ['turning-towards-a-version-of-the-father'] and the unmediated subjection to love it entails. Indeed Oedipal love, having been progressively dissociated from the *semblant* [make-belief] of universal truth formerly associated with the father, now shows itself under its most stagnant facet: "The law here is simply the law of love, in other words perversion."4

Borromean Topology

Thus, it is with regard to the effects for the subject of the historical transformation in the patriarchal organisation of social structures5 that borromean topology plays a central part in Lacan's attempt to think anew the very relevance of psychoanalysis on the basis of such changes. Indeed, the challenging task now facing psychoanalysis no longer resides in its potential to alleviate the weight of repression for the subject, but in that of ridding him of the parasite of love.

And it is precisely the possibility of doing away with the Other of love that Lacan addresses with his invention of the borromean knot:

The *naud bo* does just that: it sanctions the fact that Freud makes everything depend on the function of the father. The *naud bo* is nothing but the translation of the fact [...] that love, and even more, love one could describe as eternal - is what relates back to the function of the father, addressing him in the name of this: the father is the bearer of castration. [...]But I am trying to give [Freud's] intuition another body, with my *naud bo*.6

Some elucidation of this mysterious statement is no doubt required as a preliminary to its utilisation for our purposes. Thus, Lacan's expression, "*naud bo*", condenses several senses, for it evokes at the same time the phallus — *naud* is a slang term for male genitals, and *naud bo* puns *naud beau*, thereby hinting at the imaginary phallic identification that supports the subject —, Mount Nebo — which is the mountain from which Moses contemplated the Promised Land and where he died, and lastly it stands for *naud borromien*. Lacan's *naud bo*, then, both deploys the mechanism of castration, which rests on the dead father of law and the *semblant* that comes in the place of the impossibility of the sexual relation — the phallus —, and purports to replace it with a *writing*.

In terms of the three registers, the dead or Freudian father introduces a symbolic hole in the real which is then covered over by an imaginary semblant. We thus see that what makes the subject consist in language stems from the introduction of a certain complex connector between the


different orders. Further, we can already begin to perceive that for Lacan, such a mode of knotting RSI is undesirable — since he proposes to substitute a writing for it —, and this in so far as its corollary is a deeply-rooted belief in the Other of Love. The Freudian mechanism of castration — that which organises human sexuality along the lines of Oedipal logic — has been mapped by Lacan on his tables of sexuation in terms of logical propositions and will be further developed in section IV, where the relation between belief in the Other of love and the Oedipal organisation of sexuality should become apparent.

For now, let us circumscribe what Lacan purports to gain from his topology with respect to the subject’s perennial alienation to the Other of love, or in other words to the place first indexed as such by Freud with his concept of the father. Indeed, in this quote, Lacan clearly expresses his hope that the borromean knot will come to provide a support for the subject to be able to replace the imaginary consistency he derives from the father as "bearer of castration" with something else, of another order: another body, says Lacan, since it is the imaginary which is in question.

Why the imaginary, when in this Seminar Lacan talks of the real of the symptom? Because it is the imaginary which 'solidifies' the fragmented body of the subject, divided into part-objects by the cut of the drive, and this solidification obtains through the gaze of the loving Other. The stake for psychoanalysis thus resides in the possibility of building a new imaginary for the subject, and this on the basis of a writing, in other words through a use of the drive that would no longer be enslaved to the fulfillment of the fantasy.

It is concerning this precise point that knot topology becomes fundamental in Lacan’s elaboration, since the knot is to be this other body which may free the subject from his debilitating alienation to love, an alienation which keeps him incarcerated in a fictional Panopticon the oppressive nature of which is mistaken for 'reality' and 'enjoyed' by means of the fantasy: in this mental construct indeed the subject is utterly dependent on the gaze of the Other for his identity.

**The Letter lends its Materiality to the Body of the Knot**

What is it about the knot that allows Lacan to claim it has the status of a body, though?

At the level of analytic practice, borromean topology responds to the necessity of anchoring an emergent clinic of fictions to something which, in language, is structurally of the real — indeed, in view of the partial failure of this agent of universalisation that the Oedipus is, the only alternative would be to recognise the at least clinical obsolescence of psychoanalysis.

Thus, in order to ground this new orientation of analytic theory on each subject’s fiction, two elements need to be combined: the real and language. Indeed, the fragmenting of the Oedipal

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7 Note that the Other of Love is the Other of Law for the neurotic subject, for the speech of the father is that which humanises symbolic law.
Other leaves us with the real for sole anchoring point, and yet this real needs to be located in language in order for it to be mobilisable by the intervention of the analyst.9

However elusive the concept of the real may be, we know it to be characterised by inertia, for "the real is that which always comes back to the same place".10 The next step logically ensues: what, in language, always returns to the same physical place, irrespective of the meaning attributed to it, if not the letter? This analogy explicates how borromean knots may provide analytic theory with the support of a real point of fixation in language: by offering the solid body of a writing to the incorporeal breath of the signifier.

It seems to me that I have already accounted for the fact that the borromean knot may be written, since it is a writing, a writing which supports a real. This in itself already points to the following: it is not only that the real can be supported by a writing, but that there is no other tangible idea of the real.11

This is why writing, the letter, now come to the fore of the Lacanian problematic of the symptom, while meaning, the Other, are demoted to the secondary status of recruits enrolled for the fictional treatment of jouissance.

Furthermore, Lacan's reliance on writing entails a re-invention of the real itself, henceforth intimately associated with the act of writing in its materiality, and thus bound up with language: "I have invented what can be written as the real.[...] I have written this real in the form of the borromean knot."12

The borromean knot is a writing, then, a writing of the real even. And most importantly for our purposes, it is a writing the four-ring structure of which inscribes the dispensable nature of the Other of love, as the latter performs a function which is in fact already fulfilled by the subject's symptom: hence my fictional fifth, which consists in the belief that it is the Other that knots, whereas Lacan defines the symptom as the fourth ring knotting RSI.

Bearing these major developments in mind, let us backtrack a little and retrace the steps which will have brought us to the threshold of Lacan's most radical and possibly least exploited theoretical innovation.

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9 I am evidently not denying the importance of the Other for the subject, quite the contrary: the analytic clinic introduced alongside borromean topology by Lacan proposes to use the letter in order to do away with an Other whose fictional nature, if not new, is now more apparent than ever in view of its multiple failings. The main consequence of this 'dereliction' of the Other is that the Other is no longer 'real' enough to support an efficient treatment of the subject's jouissance. From the perspective of the analytic treatment, this orientation implies that the analyst will take his bearings on the subject's relation to the drive, starting from the fantasy $(s \leftrightarrow a)$, rather than on the meaning of his symptom. The letter a in the formula on the fantasy inscribes the subject's imaginarised relation to the drive, namely the subject's relation to the drive as mediated through the locus of his fictional Other. Analysis will thus aim at the progressive reduction of this Other in a process known as the construction of the fundamental fantasy. J.-A. Miller, after Lacan, talks of this process as a dis-imaginarisation, which he explicates as follows: "the construction of the fundamental fantasy is the same thing as its reduction to the drive." (J.-A. Miller, "The Sinthome, a Mixture of Symptom and Fantasy", La Cause Freudienne 39 (1998), 7-17, translated in Psychoanalytical Notebooks 5 (2001), 9-31, at 27. Information on this publication is available @ www.londoncircle-esp.com).


III - FROM THE OTHER TO THE LETTER
...or from the Symbolic to the Real

Writing - the letter - is in the real, and the signifier in the symbolic.

Jacques Lacan

The title of this section names the distinctive shift in emphasis Lacan introduces psychoanalytic theory to in the last part of his teaching, in which he reduces the symptom to its bare structure: that of a letter coupled with a signifier. In effect, what Lacan demonstrates in his Seminar XXIII, dedicated to the writings of James Joyce, is that the traumatic kernel of the symptom is nothing other than the S_1 taken in its two-fold dimension of mark of language on the body — the unary trait — and its subjectification, which takes it from alterity to Otherness. It is the meaning ascribed to this primary subjectification that the subject will endlessly reproduce, and it is for this purpose that he will tirelessly construct the Other he requires as partner to his symptom. This conception, which exposes the Freudian unconscious as nothing other than a ciphering of the S_1 in the service of the jouissance of repetition, indubitably calls for a radical re-thinking of psychoanalysis, for it can no longer aspire to lift the bar of repression but must instead devise ways of isolating the S_1 and working with it.

Let us now examine the elements of response borromean topology brings to the theoretical turmoil such a fundamental change of orientation left in its wake.

The Topological Structure of Discourse

To begin with, it may not be superfluous to underline that topology will not take us to any mythical beyond of language, and if we are to follow Lacan to the letter, nothing ever will. On the contrary, topology's fundamental attraction lies in that it provides us with a representational support with which to grasp the mechanism of language: for topological figures are visual illustrations of the fact that discourse itself is "topologically articulated", that it is produced in the discordan t assemblage of heterogeneous registers.

Surface Topology

There exists however an unquestionable parallelism between the evolution in Lacan's use of topology and the major conceptual shifts traversing and reorganising his theory of discourse. Indeed, in the first two decades of his teaching, Lacan had not yet radicalised his conception of the signifier in terms of a 'parasite of jouissance', and he was still attempting to conceive the subject as the thwarted product of a conflict with the Other, resolving itself in a manner of speaking: or in the precipitation of proteiform symptomatic constructs. Such was the belief informing Lacan's

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15 In passing, this explains why the discourse of the unconscious is that of the master, with the S_1 in the position of agent.
Chapter VI - The Topology of the Subject of Law: The Nullibiquity of the Fictional Fifth

eirstwhile use of topology: that the xenopathic effect of language on the subject was to be ascribed to its originating in the Other.

Consequently, at this point in his teaching Lacan relies on topology in order to visualise the entanglement of the subject in the Other in terms of positions and relations. This intricate intertwining is itself conceived as finding its centre of gravity in a point of alterity, corresponding to the residual irreducibility, or trauma, of the subject's particularity to dimensions of sameness and difference — the measures of the law characteristic of the symbolic order.

The tri-partite structure of the subject's relation to Other and object can be extrapolated from Skriabine's introduction of the topology of the 'a-sphere':

In order to account for the foundational entrapment of the subject in the signifier and the primal repression correlative to this emergence of the subject, we need a topology that is no longer that of the sphere, but constructed on the basis of the structuring function of the hole, in other words a topology of the a-sphere.17

Surface topology is thus brought in by Lacan in order to lend imaginary consistency to an otherwise abstract vision of the complicated, three-dimensional structure of the subject's organisation in the symbolic: hole, Other, subject. In giving an image to the dissonant coupling of two dissymmetrical registers, self and Other, in their relation to a third term — the hole in the symbolic in its "structuring function"— Lacan acquires a compelling visual instrument to support his challenge of the traditional inside/outside dichotomy. It also allows him to define the modus operandi pertaining to the 'a-sphericality' of subjective structure in terms of demand, desire and repetition, and to identify their respective modalities: reading (the signifier of demand), interpreting (the text of the Other), circling (the drive-object).

Yet, for all its clarification of the contradictory tensions the subject is host to, surface topology fails to account for the solid core of the symptom18 — already connoted by Freud with his character19 — which insists beneath what appears to be a discontinuous heterogeneity only kept together by the forceful and repeated imposition of a name, originating in the father but by definition indecipherable. for the subject, although it may be a signification, cannot be reduced to a signifier.

It is this illegibility of the name which explicates why the subject should always be trying to elicit a nomination from the Other of love, desperately wanting to believe that it would only take the Other to read his name for a precipitation of his identity to ensue. And it is this relentless demand of a Tell me who I am? that we can hear pulsating in each statement, in a covert plea the artful masks of which are so familiar to the analyst.20

17 P. Skriabine, op. cit. at 121, his italics.
18 On the subject's mode of jouissance as core of his symptom, see J.-A. Miller, L'expérience du réel dans la cure analytique, 1999-2000.
19 S. Freud, "Some character-types met with in psychoanalytic work" (1916), Art and Literature (London: Penguin Books, 1995). Character, in Freud's conception, is that which insists beyond the meaning of the symptom and instinctual impulses alike (293).
20 We can think here of what J.-A. Miller has recently called the commodification of the analyst-object in so far as he has become the respondent of a right-to-sense, "Les contre-indications au traitement psychanalytique", Mental 5 (July 1998), 9-17, at 16; translated in Psychoanalytical Notebooks 4 (2000), 65-73.
From not-wanting-to-know anything about it to Self-nomination

Borromean topology on the other hand, which intervenes in Lacan’s teaching after the decade he spent elaborating the structure of discourse and the propositional logic that supports speech — we will later see why —, reverses a number of the previous conclusions of psychoanalysis: it is thus that it represents the subject as the instance of an heterogeneous continuity operating on the trace of the unary trait, with the latter orienting the punctuation of enunciation in its progressive making sense of the real. Essentially, this conception evidences that nomination is present ab initio in the subject, though it is latent, and that its actualisation no longer rests with an hypothetical father but is of the order of the subject’s own invention, involving a form of writing in so far as what names the subject is not of the order of the signifier but of the act.

Such a radical inversion in psychoanalytic theory, which takes the emphasis away from interpretation and its corollary, the analyst as subject-supposed-to-know, to place it on the invention of the subject favoured by the intervention of the analyst, resonates with the concurrent mutation in institutional discourse. Indeed, in the course of the 20th century, the very real repression of deviant desire carried out by the organs of power, patristic and secular alike, progressively gave way to other modes of social organisation. It is thus that thirty years ago, the belief in the Other, sustained by mytho-logical — to use Legendre’s excellent encapsulation of the function of the father in both its mythical and logical dimensions — incarnations of figures of authority was still strong enough for him to uncover convincingly the repressive strategy at play in the discourse of the institution and indict its ‘malevolent’ purpose, the recuperation of the subject’s desire through an eroticisation of the relation to the Law:

The sinner, suffering from his desire, is thus invited to seek substitutes; the object of replacement par excellence, ideal and sublime, is Law itself, transformed into an object of love.

Today however, Legendre’s account is no longer sufficient to describe accurately the institutional picture, infinitely complicated by the ongoing dispersal of both the means and the ends of the politics organising the socialisation of the subject.

Repression and Disavowal

To begin to map the parallel transformations occurring in the institution and in the subject, a correspondence justified by the primacy of the function of exception in both social and subjective organisations, let us note that if on the one hand, the former view — that of an external imposition of identity dispensed against the ‘pound of flesh’ of sexual renunciation — retains something of its

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22 P. Legendre, op. cit. at 114.
23 P. Legendre, op. cit. at 142.
24 For a detailed historical account of the regulations of sexual pleasure, see Legendre: 1974, at 143-164.
compelling character, on the other, the increasing dissociation of the Other of love from the place of unique truth announces the prevalence of the function of disavowal in modern subjective structures, a change named by Lacan when his names-of-the-father became père-version.

The Mechanism of Disavowal

In order to support my claim as to the current prevalence of the function of disavowal, I will make a brief theoretical detour. Indeed, recall that Freud identified three distinct psychical mechanisms at the foundation of the three classical modalities of the unconscious: primal repression (Unverdrängung), which institutes the neurotic unconscious, disavowal (Verleugnung) which characterises perversion and lastly, that which Lacan renamed foreclosure (Verwerfung), which defines the psychotic structure. 25

I will not study these three mechanisms here but will simply note the importance of disavowal in the psychical structure of neurosis, which is oriented by the perverse trait of the fantasy. Indeed, if disavowal is a mechanism first identified by Freud in his studies on perversion and fetishism, he later identified its subsidiary function in neurotic structures. 26

It is the psychical operation of disavowal indeed which situates subjective division in its principle: for at the same time, the subject denies castration in the Other 27 — for to accept that the Other lacks introduces the unbearable anguish associated with being reduced to the status of object for the Other 28 — and affirms this castration in order to retain the possibility of being the object of the Other's love. It is this simultaneous denial and affirmation of castration by the neurotic subject which frames the sexual relation: indeed, to be loved by the Other, the Other must be lacking so that the subject may incarnate the phallus for him, and yet the subject must avoid being the object of the Other's jouissance. In other words, the subject has to disavow castration for the sexual relation not to exist in the real in order to then affirm it so that the sexual relation may exist in the symbolic. Furthermore, the sexual relation may only exist in the symbolic by way of the mediation of this imaginary function that the phallus is. Indeed, it is on the basis of an imaginary identification with the phallus that he/she is for the Other that the subject will find his/her place in the sexual relation (see section IV).

If this conundrum no doubt evidences the indispensable function served by denial in the constitution of the subject, the increasing importance of disavowal is also, albeit more mundanely, attested to by the fact that since these days the Other of meaning is more lacking than a sieve, only love and its amazing delusional capacity has a power sufficient to blind the all-too-willing subject to its deficiencies.

I will return to the disturbing prevalence of the mechanism of disavowal in its supplementation of repression for the subject in my section III, after having situated more precisely the potential of

25 See Seminar I, where Lacan reformulates Freud's three 'founding' moments in terms of the structure of the unconscious.
26 S. Freud, “Splitting of the ego in the process of defence” (PFL 11); An Outline of Psycho-analysis. (SIE 23), chap. VIII.
27 See S. Freud, “Fetishism” (PFL 7), where denial is presented as the "scotomisation" of the absent maternal penis.
28 Generally on anguish, the object and the Other, see J. Lacan, Seminar X: L'angoisse, unpublished.
the borromean knot to replace the father and thus separate the subject from his alienation in the Other.

The Borromean Knot is a writing that names the Subject in place of the Father

The lie of the ideal has hitherto been the curse on reality.
Friedrich Nietzsche

It is with regard to the function of the Ideal that the borromean knot may intervene in order to free the subject from his entrapment in the double-bind of disavowal, which bars all enjoyment but that obtained through the fantasy. Indeed the unary trait, the mark inflicted on the subject by the Other's castration, is disguised by the subject's Ideal identification. This Ideal identification provides the substance of a corpus juris to the subject's nonsensical sense of malaise, thereby allowing for motivated decisions on the alternate adjudication of love and guilt in a process that fixes the sense of what of the real manifests itself as the superego, reduced by Lacan to its core: namely, the deathly injunction to "enjoy!". As to the fantasy, it clothes such an injunction with a scenario that allows the subject to 'enjoy' his submission, implemented through his "forced choice" of the meaning of the Other's lack, and which results in an inscription of its text on the subject's body, turning the latter into the very tables of the law — they would otherwise remain dead letter.

There lies the relevance of the borromean knot, for it purports to return the perverse trait to its unary core with a view to affirming the possibility of a degree of self-identity for the subject, one that would no longer depend upon the gaze of the Other or the tyranny of the Ideal for its permanence. Let us see how Lacan proposes to do so:

The borromean knot is not a knot but a chain with a number of properties, and in the minimal form in which I have inscribed it, at least three are required.32

How can we understand this statement? Maybe as follows: the borromean knot is a chain in so far as its elements are tied two by two, and it is only the intervention of a fourth term which knots the three. The fourth ring is thus a name that ties the knot, or again a "metaphor" of how being a body; in language, are knotted by a nomination.

No doubt, the fourth ring that knots the chain is usually that identified by Lacan with his concept of the Name-of-the-Father, the signifier of exception — which can be any signifier.33 Indeed, the signifier Name-of-the-Father, once pluralised by Lacan, simply refers to the Oedipal structure of those symptoms organised by reference to a certain modality of the function of exception. To believe in the Name-of-the-Father however, since it is a signifier the meaning of which is located in

30 And the perverse trait, core of the fantasy, implies that the subject enjoys as if he were the Other enjoying the subject as object.
31 In his Seminar XVIII, op. cit, 16 June 1971, adding that this command is "impossible to satisfy, this being at the origin of all that is being elaborated [...] under the term of moral conscience." J-A. Miller adds that this "Lacanian superego [...is the truth of the Freudian superego", in "L'Autre qui n'existe pas et ses comités d'ethique", op. cit at 14.
the Other by virtue of the mechanism of disavowal briefly exposed earlier, implies eternal subjection to a truth supposedly elsewhere.

This is doubtless why Lacan devises another solution:

I consider that having articulated the real in question in the form of a writing has the value of what is generally called a traumatism. Not that it has been my aim to traumatise anybody [...] Let's say that it is the forcing of a new writing which, through metaphor, has a bearing which must certainly be termed symbolic. It is a forcing of a new kind of idea which is not of the kind that blooms spontaneously simply out of what makes sense, namely the imaginary.34

Lacan's use of the term 'metaphor' in this context affords us two precious insights: firstly, that the metaphor of his own invention also symbolises something of the real, not unlike the paternal metaphor.35 Secondly, it indicates that it does so by means of a writing: Lacan's writing of the real in the form of a knot amounts to a symbolisation of the discrete, three-ring chain, which as such institutes a degree of identity: the function of symbolisation, indeed, is traditionally to unify a certain heterogeneity under the aegis of the signifier.

However, there stops the comparison, for as Lacan says a little later in the same session, this real is his symptom. He then elucidates this mysterious statement as follows: by taking Freud's "degree of symbolism to the second degree" in his writing of the real, he demonstrates that "one can do without the Name-of-the-Father on condition that one makes use of it".36 The latter statement, combined with the expression "second degree of symbolism", can be understood to mean that one must use one's alienation in the symbolic and the dependency on love it entails37 in order to reach the point at which one is finally able to recognise that there is no father that names, that one's symptom is one's only name — which, in passing, also explicates Lacan's appellation for Joyce: Joyce-the-symptom. But, and this is the crucial advance accomplished in this Seminar, one can only make use of one's symptom as a nomination through the acceptance of the inexistence of the Other and the affirmation of the real as impossible. It involves a writing of sorts then, since it comes with the obligation of an invention on the basis of the only mark of the real there is: the trait of castration, which anchors language in being.

In the light of such a radical claim, the function of the father reveals itself to reside essentially in its concealment of the real of castration: variously, the solipsistic nature of human reality, the absence of knowledge in the real, the structural failure of sense, or again the impossibility of the sexual relation. And borromean topology paves the way for the formalisation of the analytic clinic in the era of père-version, characterised by a symptomatology of disavowal in lieu of that of repression.

34 Ibid.
37 We think here of the mechanism of transference and its reliance on love. See the conclusion of my paper on Joyce, "Acephalic Litter as a Phallic Letter", op.cit.
Chapter VI - The Topology of the Subject of Law: The Nullibiquity of the Fictional FFflh

Since the concept of the father, tightly bound up with the function of exception of which it is the favoured embodiment, is central to the analogy that grounds the claim of a psychoanalytic jurisprudence to be capable of alleviating the necessity of law — "the laws of the real world", of which Lacan says "that it's a question that remains entirely open"38 — let us try to fathom the correspondence between such a radical revision of psychoanalysis' key tenets and the evolution in the function of law.

IV - LOVE, LAW AND PSYCHOANALYSIS

The Function of the Ideal

The task of the lawyer (and of his present successors in the dogmatic enterprise) lies precisely in the art of inventing reassuring words of designating the object of love where politics situates prestige, and of manipulating the fundamental threats.

Pierre Legendre19

The Freudian Father and the Lacanian Symptom

The Institutional Discourse

Lacan's drastic reduction of the symptom to its structure demonstrates that the validity of psychoanalysis is not conditional upon the perennial immutability of its concepts, quite the contrary: for the analytic discourse is a discourse the subject-matter of which is the product of other discourses. To be more explicit, psychoanalysis' recognition that there is no meaning in the real — save for that introduced there by man — requires flexibility, since the analytical discourse must both be able to identify the invariant elements of man's being in language and accommodate historical modifications: the latter indeed revolve around changes of discourse.

The reduction in question therefore resonates with the contemporaneous transformation of the institutional discourse: I am referring here to the slow discredit of traditional figures of authority which, coupled with the now irrevocable ubiquity of liberalism, inaugurated a new era for what Legendre calls the "dogmatic order". In his account, the dogmatic order is the discourse of reason in the service of universal truth, prevalent in European nation-states which, as we know, were deeply marked by monotheism and its pyramidal hierarchy, topped by the mytho-logical father in his law-giver outfit — a castrated figure bearing the mask of omnipotence.

In effect, prior to the many crises which deeply scarred the 20th century, institutional discourse had been operating by means of an exclusive appropriation of truth, which it then redistributed in the guise of the universal Good. More recently however, it had to exchange the ostentatious trappings of an overt if benevolent repression for the considerably less alluring attire of utilitarian pragmatism which, although still dealt out in the name of love, no longer lays convincing pretence to universal truth.

39 P. Legendre, op. cit. at 25, his emphasis.
We see that such changes echo with the evolution of psychoanalytic theory: for if Freud's symptom manifested itself as a message ciphering the return of the repressed desire of the subject, the unsurprising consequence of a centralised, authoritarian social order, Lacan's latest theorisation denudes the symptom of its narrative garb and presents it as a necessary fiction, the function of which is to operate as a supplementary device [supplication] to knot RSI, exposed as such in view of the lesser purchase of reason and the consequent over-compensation on the side of a demand for love.

The Imaginary Degradation of the Ideal 40

It may be the case that today's 'father' no longer operates in the name of an a-temporal truth, adapted for good or worse to the temporal exigencies of regulating life through a complicated procedure organising the interpretation of the fictitious commandments of an eternal justice — that instituted by natural and divine laws. But let us not, for all that, be oblivious to the fact that the need for love of the subject, although it may no longer be exhaustively absorbed through sublimation by a nation, a religion or an ideology, is nonetheless still being recuperated. But the recuperation now in question aims to fuel the consumerist dynamics of the market and animate its circuits, those of an evermore demanding surplus-enjoyment [plus-de jouir], in which judges and lawyers themselves are unwittingly drawn to play a well-orchestrated part — for if they are no longer the privileged mouthpiece of Reason, they still are the preferred make-beliefs of fatherly love: their innocence 41 is the guarantee that they always speak in its name.

Indeed, I would even go so far as asserting that to an extent, they are by way of becoming the respondents of a right to juridical truth — although in our civilisations, the demand is not so much that a timeless justice be rendered but rather consists in a request for a tailored truth, providentially in endless supply in the ever-expanding prêt-à-porter collection of legal provisions.

It is in that respect that the evolution of what I choose to call the politics of love, which permeates our 'post-industrial' institutions just as much as it did those of our ancestors, may prove even more pernicious than the more authoritarian structures of power of yore. For one could encapsulate the shift in the status of the institutional 'father' as follows: from administrator of a monopoly on truth to addressee of a universal demand for love.

This is the shift which I understand to be designated by the expression "the imaginary degradation" of the Ideal. It indexes a profound modification in the structure of the contemporary social bond, one which foregrounds the importance of understanding the role of the fantasy in the subject's relation to the Other, over and above the meaning ascribed to one's place in the symbolic.

The imaginary degradation of the Ideal in question is to be coupled with the consequent supplementation of the failure of any signifier to order social structures by means of a vertical identification to the empty place of the law giver — that of the castrated father — , and thus with

40 I borrow this phrase, "imaginary degradation of the Ideal", from Philip Dravers.
41 For they speak the text and not their desire. Note that this is why it is so important that the father be castrated, for there lies the only guarantee that He does not enjoy the subject but speaks for his or her good: because He loves him or her.
the growing reliance on the horizontal dimension of identification in the constitution of the social bond.⁴²

The shift in analytic theory introduced by Lacan with his borromean topology thus resonates with a much deeper mutation which traverses the field of social organisation. No doubt, it is against the background of the imaginarisation of the Ideal, consequent upon the weakening symbolic efficacy of repression,⁴³ that we must heed Lacan's warning:

Our future as common markets will be balanced by an increasingly hard-line extension of the process of segregation.⁴⁴

There is no need for me to go over Lacan's well-known developments on the nefarious effects of the imaginary, a mode of identification which locks the subject in the dialectic of recognition the sole outcome of which is rivalry and the consequent struggle to death that it entails.⁴⁵ I will simply note the increasingly detailed taxonomy ordering the treatment of social symptoms — such as the DSM IV — and recognise the relevance of Lacan's announcement of a forthcoming culture of segregation. For when repression fails to order the social by means of transference to an ideology, utilitarianism steps in to deal with the subject on the basis of an infinitesimal normativisation of his particularity, with the destructive consequences that such a labelling process entails: or the silencing of the subject's inventions.

It is with regard to the identification of such crucial modifications in the structure of the social bond that the political pertinence of psychoanalytic theory lies, in so far as such perceptions support a subject-oriented vision of the social treatment of the discontents pertaining to all civilisations.

But before concluding on the law, let us briefly examine the already mentioned logic of exception in so far as it may elucidate somewhat man's obstinate love of subjection.

V - THE PROPOSITIONAL LOGIC OF EXCEPTION

How to make the Other exist?

The Other, in my terminology, can thus only be the Other sex.

Jacques Lacan⁴⁶

There is no Other but the Other sex: this phrase encapsulates the central postulate which orients Lacan's seminar on love, Encore, and which inscribes itself as the logical corollary of his concurrent reduction of the real to the sexual non-rapport. These two propositions, taken together, elucidate why Lacan should elect to introduce the logic of sexuation as that which structures man's relation to the Other — and thus to language. Indeed, to identify the real as the impossibility of the sexual

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⁴³ Indexed by Lacan when he notes "the convergence of psychoanalysis with the dereliction of the antique bond through which pollution is contained in our culture", "Lituraterre": 2001, 11 my translation.
⁴⁵ See Lacan's reading of the Hegelian master/slave dialectics, Seminar II, chapter VI.
⁴⁶ Seminar XX, 39.
relation situates the whole of man's symbolic organisation as a construction, the sole purpose of which is to establish a substitute for the absence of the sexual rapport.

<table>
<thead>
<tr>
<th>( \exists x. \Phi x )</th>
<th>( \forall x. \Phi x )</th>
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These tables show man's relation to the Other sex to be organised by means of an imaginary identification with the semblant of the phallus, which modulates itself in the two auxiliary forms of having and being under which the subject will conjugate him- or herself in language: for the phallus occupies in the symbolic the place of the absent signifier of the real of the sexual non-rapport. 47

To flesh out such a condensed account of sexuation, the terms of its tables will now be defined in a clockwise movement, and in the course of this interpretative rotation the different facets of the function of exception will progressively emerge.

1) The Logic of Truth (top left)

For those unfamiliar with Lacan's tables of sexuation, let me recall the classical reading of the symbols involved: thus the first formula

\[ \exists x. \Phi x \]

is to be read as follows: there exists one \( x \) for whom the phallic function (\( \Phi x \)) is not operative, or there exists a non-castrated Other. This is the place occupied by the Freudian father of the primal horde, the father of unbound jouissance. 48

As to the second formula,

\[ \forall x. \Phi x \]

it is to be read as follows: for all \( x \) the phallic function exists, namely all men are castrated. In Freudian terms, the set of 'brothers' is subjected to the law of the father.

In L'Étourdit, Lacan proposes to read the first two formulae in a much less imaginary fashion than in the Freudian account, for indeed he sees them as formalising respectively the particular negative of existence and the universal affirmative of truth — or to phrase it in the more familiar terms of sexuation, it is because there exists one man who is not subjected to the phallic function that all

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47 This is no doubt why in L'Étourdit (1973) Lacan calls the phallus the ab-sense, at 16.
48 See S. Freud, "Totem and Taboo" or "Moses and Monotheism" (PFL 13).
other men are subjected to it. Lacan opens his *L'Étourdit* by articulating the logic which supports 'male' sexuation in discourse:

That one speaks remains forgotten behind what is said in what is being heard. This statement, which appears to be an assertion since it is presented in a universal form, is in fact modal, existential as such: the subjunctive through which its subject is modulated testifies to it.49

What Lacan accomplishes here is the reduction of the structure of truth to the grammatical artifice that supports it, and he does so by showing that universally affirmative propositions are conditional upon the existence of enunciation to the statement: "there is no universal proposition that does not have to contain itself by means of an existence which negates it."50 It ensues that the place of enunciation is what will without fail give the lie to the universality of all statements, which explicates in passing why our philosophical tradition should be so attached to the pretence of "the nullibiquity" of enunciation, a nullibiquity which provides an "alibi to the discourse of the master"51 and which is established through a process of dissimulation in the course of which the contingency of enunciation is effaced beneath the constructs of reason.

Lacan's logical reduction leads him to draw a number of illuminating consequences with regard to the functioning of discourse, which I will summarise here: firstly, since for there to be truth, it must be enunciated, truth only exists by virtue of an exception to itself, and it is this grammatical sine qua non which account for the structural indispensability of a place of exception. Secondly, the supposedly empty place of exception shows itself to be inseparable from contingent enunciation, and this exposes the semblant-value of truth. Two seemingly paradoxical observations can then be made: on the one hand, the affirmation of truth requires the wilful denial of that which exists to it — for the contingency of enunciation undermines truth —, but on the other, without the existence of enunciation there would be no truth, since it is the particularisation of the function of exception which lends imaginary consistency to a given statement.

To clarify matters further, let us list our advances: 1) there can be no truth without existence; 2) existence cannot be effaced; 3) there can thus be no truth that does not involve a disavowal of existence; 4) finally, and most radically, it is however this disavowed existence which affords its credibility to truth, for indeed truth needs to be libidinally cathected in order to have any substance. This though may only occur through phallicisation, which is itself a function of the Other of love.

Belief in discursive truth, then, is a function of the phallus.

To conclude on the logic of truth, it is worth noting that this modality of the logic of exception is an accurate description of the mechanism that attests to the innocence of juridical enunciation and, more generally, of all discourses deriving their legitimacy from a claim to embody the universal. Indeed the law always comes in the name of an Other, thereby disavowing the political value-choices

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49 *L'Étourdit*, *op. cit.*, at 5, my translation.
enforced in the courts of justice, and it is this disavowal which affords law its legitimacy - that which stems from its claim to abstract neutrality.

2) **The Logic of Speech** *(top right)*

Again, let us begin by recalling the classical reading of the two formulae placed by Lacan on the top right of the tables: thus the first formula postulates that there exists no \( x \) for whom the phallic function is not operative, while the second formula indicates that not-all of \( x \) is subjected to the phallic function.

In his *L'Étourdit*, Lacan also recasts these formulae in terms of the logic of discourse. Indeed, the second set of formulae indicates that there exists another mode of subjective articulation in discourse, one that could be characterised as follows: "I speak, therefore it enjoys". Indeed, this is how one may read the formulae of 'female' sexuation: a universal proposition in the form of a double negative — there is nothing that cannot be said of the phallic function —, and its consequence, that not-all of woman is exhausted by the signifier: for if all can be said, then not-all that is said can be true. This formulation, which is not indexed on truth, does not for all that disprove the necessity of exception but designates a different modality thereof: speech indeed is a function of the exception that she is for the Other.

Whilst spatial constraints prevent me from engaging further in a discussion of the logic of speech on the not-all side of sexuation, it is nonetheless worth noting that the logic of the not-all, taking its bearings as it does on the absence of truth in the Other — noted \( S(A) \) on the tables —, is a demonstration in action that all claims to universality can but structurally rely on a very specific exclusion: that of the particularity of the subject of enunciation. By way of consequence, it is a powerful critical tool to be used in order to reinstate the polyphony of subjective particularities.

3) **The Logic of Sexuation** *(bottom tables)*

Before all, let me recall the signification of the notations used by Lacan on the bottom half of the tables: thus \( $ \) is the barred subject, \( \Phi \) refers to the phallic signifier, \( S(A) \) is the signifier of the lack in the Other, the letter \( a \) indexes the object \( a \) and \( La \) represents woman as not-all subjected to the signifier.

In the previous two subsections, we studied two modalities of the function of exception, although we have seen that both are organised by means of the same element, which defines the position of the subject for the Other: the signifier of sexuation. Two different interpretations of this signifier and of the Other's castration correspond to these two modalities: the Other of truth is incomplete, for it lacks something which the subject has, and the Other of speech is inconsistent, for it lacks something which the subject is.

The second half of the tables responds to the enigma posed by Lacan's very precise formalisation of the propositional logic of exception, namely: how can there be an Other sex for

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each sexuated position on the basis of a single signifier of sexuation? Quite simply, it implies that both sexuated positions must make a complementary use of the lack in the Other, which in turn entails a different relation to language, truth, speech and exception for both, and thus successfully substitutes the regulated Otherness of the Other sex for the unpredictable alterity of the other.

On the 'female' side, the signifier of the barred Other indexes the position "being the phallus" for the Other, or in other words that woman speaks from the position of being the signifier of what lacks in the Other. Then, she is "not-all" because she is not subjected to her belief in the truth of the Other: indeed, she is the truth of the Other. Her Other lacks on the side of the signifier so that she may be the phallus, and does not lack on the side of jouissance, so that it may not enjoy her as object. She however finds herself dependent upon an imaginary identification with an other in the position having the phallus in order to also be able to have truth.

As to the 'male' side, the Other's castration on the side of the signifier is disavowed but that on the side of jouissance is affirmed, which results in the subject identifying with the position "having the phallus": or having the jouissance that the Other lacks.

Consequently, if man corroborates the fictional nullibiquity of enunciation, it is only in so far as to be the dupe of the signifier allows him to preserve his having what the Other lacks. The outcome of man's identification with the semblant of jouissance is the refusal of desire, for one cannot lack what one has identified with as having, and this leaves the 'male' subject no alternative but to alleviate the solitude consequent upon such a denial through a fantasmatic relation to the Other sex on the basis of the fantasy.

We see that both sides of sexuation are equally grounded on the simultaneous disavowal and affirmation of castration which install both sexes in a similarly solitary relationship to the phallus, and that this solitude is further compounded by the correlative dependency on there being a lack in the Other.

The inevitable conclusion to be drawn from Lacan's exposition of the fictional organisation of being a body in language by means of the phallic semblant is that it maintains both sexuated positions in an utter and absolute dependency on there being an Other that is at the same time castrated and not-castrated.

And this oscillation constantly reinforces subjective division and the fragility of identity it implies, which in turn entices the subject to appeal to the 'external' support offered by an identification with whichever image or signifier is prevalent of what it is to be a man or a woman. Whether the Ideal identification is with an image or with a signifier will resolve itself in the prevalence of an Ideal on the side of the imaginary or of the symbolic, and this in passing may also cast some light on Freud's puzzled realisation of the weakness of the Ideal in most women.

53 The frequency of such recourses to a ready-made identification can be schematically exemplified by the current proliferation of eating disorders, partially explained by the fact that the response to the question of what it is to be a woman lies in an identification with 'to be thin' (as argued by analyst Geneviève Morel at the Xth Encounter of the Freudian Field in Barcelona, 24-26 July 1998).

54 Recalled by J.-A. Miller and E. Laurent in "L'Autre qui n'existe pas et ses comités d'éthique", op.cit.
The Importance of Sexuation for Law

It is in view of these supplementary elements that Lacan's last theoretical advances take on their full importance. Indeed, his invention of a writing of the real amounts to a contingent nomination that symbolises the sexual non-rapport for the subject, and this thereby introduces the possibility of doing without the phallus. Sexuation indeed is a defence against the real of sexuality, while on the contrary the letter is a-sexuated and therefore enables the subject to elaborate his jouissance without the mediation of the phallicised fantasy.

As to "the laws of the real world", locus par excellence of the encounter with the Other of exception, Lacan's theorisation offers us the necessary support to understand that juridical enunciation can but fail for the subject, for it is taken up in the circuits of the subject's interpretation of what he or she is for the Other, and that alternative means of being with the subject of law must be devised to supplement the legal apparatus where possible: indeed the function of the law is none other than to keep its subjects at its door.\textsuperscript{55}

It is on the basis of the recognition of the subject's alienation to a phallicised fantasy, which defines him or her as the lacking term in the Other, that a number of psychoanalysts have recently engaged with the social under the aegis of an organisation named CIEN.\textsuperscript{56} Indeed this relatively recent organisation, founded in 1996, elects to take its bearings precisely on the fantasy of the subject, for it perceives the problematic nature of the institutional treatment of the social malaise:

The only way to curb jouissance in the particular is to operate on the fantasy on a one-by-one basis, a fantasy which resides in a relation of being-for-sex.\textsuperscript{57}

Further, this precise direction echoes with psychoanalysis' latest and most daring inversion, which will no doubt seem paradoxical to those who perceive the analytic treatment to still be aiming at restoring the subject to a less problematic sexuality: for indeed, this statement also implies a recognition that being-for-sex is the seat of the subject's foremost alienation.

It is with this precious indication in mind that we can now turn to the conclusion, where I will attempt to knot the many threads of my argument into something of a useful metaphor.

\textbf{VI - CONCLUSION}

The hold of the institution on the subject is assured by means of the semblant.

Pierre Legendre\textsuperscript{58}

Legendre's statement, placed as epigraph to this conclusion, is to be read against the background of the enlightening insights provided by Lacan's lucid analysis of the function of the semblant. Indeed,

\textsuperscript{55} In the manner of the man from the country in F. Kafka's famous parable of the Door-keeper (Kafka: 1984, 161ff), who spends his life waiting to be allowed into the law and dies in the process, whereupon the door-keeper closes the door, declaring that it was meant for the sole benefit of the expectant man.

\textsuperscript{56} CIEN is a Freudian Field organisation with links in France, Argentina and Brazil, and aims to introduce something of the analytic practice in the institution.

\textsuperscript{57} P. Lacadée, "Là où sont les enfants, CIEN, le social au singulier", in CIEN, Document de travail n°1 pour la Journée du 10 janvier 1999, 11-15, at 13.

\textsuperscript{58} Recall Foucault's take on psychoanalysis (1998), discussed in chapter IV.
if Legendre's semblants are those of institutional truth, there is no doubt that they borrow their structure and draw their strength from the subject's own skewed relation to the real and the structure of his belief in the Other. One could even suggest that there exists a certain topological continuity between the structure of the institutional discourse and that of the unconscious: are both not indexed on the function of exception?

To orient one's approach to the law on the basis of Lacan's work on the letter allows us to see through the semblants of juridical enunciation which, even when seemingly cut-to-size and however guaranteed by the procedural make-beliefs of judicial innocence, have for effect the entrapment of the subject in his belief that the truth of his being lies unread in the Other. The nefarious effect of such a blind profession of faith is remarked upon by Legendre, who states that "Law discolours the universe, from which it subtracts history; it dispossesses any human being of the pretension of having to say something." In other words, to insist on the desirability of 'universal' solutions forecloses the subject's invention from the institutional environment.

Thus, although the weakening of repression and the prevalence of disavowal in the contemporary social bond indexes a certain decline in the symbolic efficacy of the function of exception — or sovereignty — it is not for all that that law and the institution will be able to remedy its deficiencies:

The text of law will not be able to regulate what of jouissance results in the indiscipline of the body, nor will it be able to deal with all that the family no longer regulates, namely the irruption of private jouissance in the public domain.

Further, beyond recognising the inadequacy of law as universal supplementation, one must also challenge the proposed devices for the institutional containment of such irruptions, for imprisonment — or institutionalisation — represents the reduction of the problem posed by the subject's 'irruptive jouissance' to one of management, and as such it amounts to an utter disrespect for human particularity.

Although psychoanalysis does not hold the key to the discontents of modern civilisation, Lacan's last attempts at devising means to mobilise the weight of the symptom signpost a way forward which is not that of the universal. Indeed, it involves the slow exposure of the inexistence
of the Other, supposed repository of truth. This path returns the difficult task of inscribing one's solitude in the social bond to the subject's own invention in a process that involves taking exception to the letter, a process which culminates in a contingent act of nomination that renders belief in the Other superfluous.

To say it otherwise, it is by reducing the fictional universality of the function of exception to its contingent core that the subject may de-eroticise his relation to the law, which could henceforth be returned to the simple truth it strives to conceal, namely that it is an apparatus which serves a purely regulating function in the service of those in power, and that it does so with a view to perpetuating an entrenched status quo and to defusing the particular dangers potentially posed by "social deviants".
CONCLUSION

With neither Illusion nor Alibi

[...T]here is no use in trying to get rid of men's aggressive inclinations [...] The Russian Communists, too, hope to be able to cause human aggressiveness to disappear by guaranteeing the satisfaction of all material needs and by establishing equality in other respects among all the members of the community. That, in my opinion, is an illusion.

Sigmund Freud

Psychoanalysis, for me, if you allow me this other confidence, would be the other name of the "without alibi". The recognition of a "without alibi". If it were possible.

Jacques Derrida

My final words, as befits, shall broach both what went before and what remains to come.

I - The Role of Psychoanalysis in Question

Let us recall the question which lent its impetus to this thesis: can the discipline of psychoanalysis, its theory — which we know to be inseparable from its praxis — further our understanding of the contemporary social bond, of the particular ways in which a subject inscribes his singularity in a given community? In other words, could the 'blind angles' of our civilisation be brought into eloquent relief by the analytic perspective? In the course of my reflection, I replied in the affirmative, and asserted the importance of psychoanalysis for our contemporary civilisation in two decisive respects.

Firstly, on a theoretical level, psychoanalysis offers a number of conceptual tools with which to map the complex transferential mechanisms that articulate the subject with 'the political'. Thus, I dedicated considerable attention to the Freudian concepts of the cultural super-ego — situated by Freud as the compelling force which lends consistency to the otherwise textual bodies of law, ethics and religion —; identification — which accounts for the libidinal cohesion of the group despite the absence of sexual interests —; and transference to authority. Those indeed are the main concepts introduced by Freud with a view to explicating the presence of feelings of love, belief and culpability in the political sphere; and we saw how Freud mapped his 'social' concepts onto the structure of the Oedipus complex, which names the mechanism whereby the child find its place in the familial structure. In spite of the 'fictional' obsolescence of Oedipal theories, Freud's conceptual inventions nonetheless remain invaluable so far as they uncovered the transferential mechanisms which orchestrate the unfolding of the symbolic and libidinal continuity which articulates the subject's psychical material with the political sphere.

1 Why War?, Freud: PFL 12, 358.
Secondly, on a practical level, the analytic clinic, owing to its steadfast orientation on the real and its recognition of the absolute singularity of each subject's fictions — or indeed his unconscious —, has the unique potential to instrumentalise in-depth therapeutic effects for its patients whilst also respecting the utmost particularity of their inventions.\(^3\)

I would now like to consider the possibility for psychoanalysis to play a greater part in the "direction of modern subjectivity" \((Ecrits, 283; 72)\) than it currently does.

Here again, there are two distinct dimensions to envisage: first of all then, we need to ask ourselves whether psychoanalysis is adequately equipped for the deciphering of the human consequences of 'globalisation'. Indeed, 'globalisation', whatever contradictions the word may otherwise conceal, must at the very least be recognised as a process which is characterised by the contemporaneous internationalisation and juridification of human relations. As such, it seems to challenge the traditional idea of the nation as a territorially defined unit of political power. I am not, however, arguing that the apparent obsolescence of the nation does away with the classical function of sovereignty. Yet, 'globalisation' does render the apprehension of national sovereignty more difficult, and this is what may undermine the potential for the kind of resistance to the death drive advocated by Freud, whose reasoning was determined by his belief in an overarching paternal model replicated in all human formations, including the nation. The question, then, is whether psychoanalysis could theorise new modes of resistance to the death drive in a context in which the vertical dimension of identification plays a lesser part in the social bond.

To put it in simpler terms, one has cause to wonder whether the symbolic efficacy of psychoanalysis is doomed to wane as a consequence of the profound mutations currently affecting the function of sovereignty. It is indeed oft-noted that Freud constructed his interpretation of the (de)stabilising forces at play in civilisation on the basis of the paternal hypothesis, the credibility of which was attested to, on the one hand, by the prevalence of the Judeo-Christian tradition in Europe and on the other, by the currency of patriarchal structures of power as the favoured mode of political organisation.

Secondly, and on a more deeply challenging note, we also must consider whether psychoanalysis — be it Freudian or Lacanian —, has anything to offer in the manner of a 'treatment' to the discontents of mankind, since it perceives these very discontents to be coextensive with civilisation itself. Indeed, despite its insightful perception of the continuity which weaves the 'individual' in the 'social' fabric, and its acute awareness of the destructiveness that lurks at the core of every subject, can the discipline of psychoanalysis be put to a practical use outside the confines of the clinic?

Were the answers to both these questions be affirmative — which is what I have effectively argued for in the preceding chapters by showing, on the one hand, how Lacanian psychoanalysis was able to fruitfully actualise the Freudian doxa so as to account for the ongoing modification of the

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\(^3\) See especially Lacan's latest seminars (XXI to XXVI).
structure of the social bond, and by illustrating, on the other, how psychoanalysis could profitably orient a number of positive interventions in the institution —, there would yet remain another hurdle to the potential impact of psychoanalysis on our civilisation. For in effect, we cannot ignore the fact that there remains little desire for psychoanalysis in the contemporary world.

At the moment of conclusion, I will thus interrogate the possibility of a 'political' future for psychoanalysis. For this purpose, I will be drawing on the spirit of Derrida's courageous address to an international gathering of analysts recently held in Paris, and in which the philosopher pleaded for a more sustained, better considered intervention of psychoanalysis in the modern world (2000b). A synoptic account of Derrida's argument will prove useful to the forthcoming discussion.

The piece opens with an interrogation of the manifold manifestations of human cruelty in its intimate association with a certain form of psychical pleasure. Derrida then states his belief that psychoanalysis is the only discipline capable of engaging with what is specific to cruelty: namely, its inextricable entanglement with the indomitable insistence on sovereignty of either the subject or the state.

Thus, Derrida begins his argument by recalling, on the one hand, the intimate connection between pleasure and cruelty isolated by psychoanalysis, and on the other, the no less intimate correspondence it identified between cruelty and sovereignty. In a second moment, Derrida underlines both the potential function of psychoanalysis in theorising the current manifestations of cruelty and the necessity for it to do so, since it follows from his previous point that the forms of sovereignty will influence contemporary manifestations of cruelty. In a third moment however, Derrida alludes to his disappointment with psychoanalysis. Indeed, in his opinion, psychoanalysis is declining to analyse the concepts of cruelty, sovereignty, and mastery in the era of 'globalisation'. For Derrida indeed, we live in a new scene, "structured, since world war II, by unprecedented juridical performatives [...] such as the new Declaration on the Rights of Man - and of Woman, the condemnation of genocide, the concept of crime against humanity [...] , the ongoing creation of new international criminal instances [...]" (2000b: 21); and psychoanalysis is failing to take account of these new 'sovereign performatives' in its apprehension of the social bond.

In effect, Derrida is intimating that psychoanalysis has not thought through what the consequences of such new 'sovereign performatives' were for its conceptual grasp of cruelty and sovereignty. I would even say that this apparently gentle remonstration is in fact a barely veiled indictment of psychoanalysis's antiquated attachment to the sovereign structures of yore; indeed in several places, Derrida hints at psychoanalysis' resistance to thinking beyond the paternal sovereignty of its own structure, grounded as it is upon the name of its founding father. Although he is forcefully asserting the importance of psychoanalysis then, Derrida is also showing some impatience for what he takes to be a refusal to expose itself to the event.


5 Concerning the relation between cruelty and sovereignty, Derrida notes the coincidence between the United States' refusal to give up its national sovereignty and its increasing use of the death penalty. (2000b, 63)
Having thus ciphered the critical value of his appeal to psychoanalysis in his text, Derrida moves on somewhat abruptly to the exchange of letters which took place between Einstein and Freud on the question of war (PFL 12). His close reading of the engagement between the two men enables Derrida to affirm that both accept the incontrovertible existence of the death drive, of the drive to aggression. Building upon the very logic of their engagement, Derrida demonstrates that such an acceptance of the irreducibility of the death drive also implies an acceptance of the impossibility to eradicate it.

Derrida then moves on to show how the Freudian 'solution' to the death drive is conditioned by the very premise of the irreducibility of the death drive, which leads Freud to suggest that the sole alternative to aggression lies in an indirect treatment of the death drive by means of a reinforcement of Eros as counter-force. For Derrida, this conviction prevents Freud from seeking other solutions to the discontents of civilisation — such as, possibly, the weakening of sovereignty.

Having reached this crucial conclusion, Derrida suddenly changes tack, and chooses to address himself more directly to the psychoanalytic community, an address which he introduces by taking the psychoanalytic 'revolution' as an example: if the psychoanalytic revolution were to continue happening — since a revolution never stops happening —, it could think the death drive differently. Quite subtly then, Derrida is using the example of the psychoanalytic revolution as a demonstration that should be in action of the importance of the event over and beyond the irreducibility of the death drive. In other words, if the death drive is the impossibility which marks the fate of man, there could also be other modes of the impossible beyond this obstinate, cruel impossibility.

It is on this point of the possible 'beyond of the death drive' that Derrida takes his most polemical step. Indeed, he announces that the affirmation of the irreducibility of the death drive could amount to an 'alibi' on the part of Freudian psychoanalysis, and one which can be deconstructed as well as 'ethically' challenged. These two lines of argument are both crucial to the question of the role of psychoanalysis, and I will return to them in part III of this conclusion.

For now, this being a synoptic account of a piece that will be returned to, I will specify what I understand the Derridean take on the death drive to be. Thus, to argue that there is a 'beyond to the death drive' does not amount to rejecting the hypothesis of the death drive. Indeed, I would interpret the Derridean position as follows: Freud, by arguing that the death drive is only susceptible to be dealt with indirectly, by relying on Eros, is in fact legitimising the reduction of alterity, against which the death drive could well be a defence, to a mere economy of the drives. And the persistence of this belief in the irreducibility of the death drive could be an index of psychoanalysis' resistance to relinquishing its own 'sovereignty'. In other words, Derrida is hinting that Freudian psychoanalysis may be caught up in the logic of sovereignty the symptoms of which it had set out to alleviate.

Before returning to this latest instalment in Derrida's engagement with Freudian psychoanalysis, let us briefly outline the changes which Lacan introduced in psychoanalytic theory, and which amount to an actualisation of its 'sovereign' corpus. Indeed, the Lacanian inventions will clearly prove crucial if we are to attest to the actual political relevance of psychoanalysis.
II – An Actualisation of the Freudian Corpus

As announced by its grand title, this thesis set out to demonstrate that, in spite of the disrepute incurred by some of the psychoanalytic concepts crafted by Freud, the discipline of psychoanalysis was to be discounted neither as a clinical practice, nor as a critical perspective on the successive inventions of mankind concerning its political organisation.

Having already dedicated a considerable amount of time to articulating the Freudian concepts with the Lacanian discourse, at this point in my elaboration I will be content to rephrase concisely Lacan's acute interventions in psychoanalytic theory, which gradually effected the necessary actualisation of the Freudian corpus. This reminder will prove necessary in two respects: firstly, it will identify the three main axes of the 'revolution' Lacan brought to psychoanalytic thought; and secondly, it will prepare the ground for our concluding assessment of the future of psychoanalysis.

- The Reduction of the Oedipus Complex to the Logic of the Unconscious

As argued prolifically in the course of this thesis, Lacan's foremost advance towards the actualisation of the Freudian theory resides in his logical reduction of the Oedipus complex to a contingent modality of the law of symbolisation. By reducing the Oedipus complex to a logical articulation indeed, Lacan uncovered the linguistic structure which supported the Freudian fictions: that of 'truth'. This move away from the 'paternal truth' of 'sovereign linguistics' — or the discourse of the master — is what, eventually, enabled Lacan to sideline the function of the paternal figure in psychoanalytic theory.

Moreover, as I have shown in the course of this thesis, it is Lacan's 'emptying-out' of the function of exception which permitted us to expose the mechanisms of the political discourse hitherto concealed beneath the classical fictions of sovereignty. Taking my initial cue from the work of Legendre, I thus proceeded to study a number of transferential mechanisms for the discursive re-distribution of subjective feelings of love, belief and culpability by means of various political re-appropriations of the place of exception, the 'place' which, for Lacan, institutes and structures the unconscious.

Further, my study of various modalities of the political discourse highlighted another important consequence of the Lacanian reduction of the function of the father/sovereign to the logical function of exception: indeed, the 'fictional obsolescence' of the paternal function enables us to perceive that it is the subject's alienation from his own alterity that makes him such an easy prey for the discourses of power.

- Jouissance and the Bipolarity of the Drives

Lacan's introduction of the concept of jouissance amounts to another crucial foray into the Freudian mythologies, and it is one which also deeply challenges the conceptual dualism which structures the Freudian theorisation of libidinal economy.

Freud's mythological theory of the drives notoriously rests on the bipolarity which opposes the death drive — Thanatos — to the life drive, Eros, with its two components of narcissism and
sexuality. It is in Beyond the Pleasure Principle (PFL 11) that Freud extrapolates the existence of the death drive on the basis of the clinical phenomenon of repetition-compulsion (329). The theory is relatively straightforward: for Freud, man is stage to the same age-old conflict as any individual member from any other species. This conflict supposedly opposes the individual's drive to self-preservation and sexual gratification to the species' ancient 'instinct' to return to the inanimate: for whilst the individual wants to further his own good, his 'purely biological' instinct impels him to "restore an earlier state of things". (331, original emphasis)

Having employed his theory of the death drive to explicate the destructive nature of the superego on the basis of an internal tension, Freud proceeds to develop his hypothesis in order to account for the occurrence of external conflicts. Thus, Freud recognises the possibility for the death drive to be projected onto external objects: "The death instinct turns into the destructive instinct when ... it is directed outwards, on to objects. The organism preserves its own life, so to say, by destroying an extraneous one." (Why War?, 357)

Freud further speculates that this projection enables the subject to obviate a portion of the aggressiveness which would otherwise return upon himself. This 'positive' diversion of the death drive, however, leads to an externalisation of the death drive which thus becomes an endless source of conflicts, resulting in the whole litany of the discontents of civilisation apprehended on the larger scale of things.

In view of this hypothetical bipolarity, Freud concludes, with irreplaceable logic, that the 'destructive instinct' may only be countered by Eros, the life instinct. Thus, in order for the effect of the death drive on the group to be defused, the forces of Eros must be diverted away from sexual gratification and towards man's attachment to his neighbours through the two-fold vector of identification (Why War?, 359).

Let us now consider the Freudian hypothesis with a critical eye: for Derrida then, the bipolarity of the drives evidences the Freudian conviction that there is nothing beyond the beyond of the pleasure principle (2000b, 81), since indeed the life drive is itself in a secondary position in relation to the death drive, and since all other psychical phenomena are accounted for by Freud on the basis of this primary, unequal dualism. It would thus seem that in the Freudian perspective, the central purpose of all human inventions is to re-absorb the negative forces of the death drive in the balanced economy of the pleasure principle.

If we now recall our previous question as to whether psychoanalysis has anything to offer in the manner of a treatment to the discontents of civilisation, then it is clear that in the Freudian hypothesis, the sole option resides in inflating the function of Eros by encouraging the formation of stronger vertical identifications to those of 'us' who are civilised enough to be able to give up on our innate tendency to aggression and destruction. Hence, the Freudian proposition amounts to a pitching of the 'civilised' values of sublimation against the 'uncivilised' insistence of the death drive, in the clear hope that these civilised values will spread to the less civilised strata of the population through the vector of vertical identification. (Why War?, 359)
If one cannot help but sympathise with Derrida's healthy dislike of such a reductive solution to the discontents of civilisation, it does not however imply that his critique be applicable to all branches of psychoanalytic theory. Indeed, Lacanian psychoanalysis is far from condoning such dualistic interpretations of the complexity inherent to human relations.

Thus, the ideal reader may recall that in the first chapter of this thesis, in which the Lacanian concept of jouissance was presented as a response to the impasse encountered by Freud concerning the origin of guilt, I indicated that, as early as his second seminar, Lacan refuted the bipolarity of the drives:

Note that the tendency to union - Eros tends to unite - is only ever apprehended in its relation to the contrary tendency, which leads to division, to rupture, to a redispersion, most especially of inanimate matter. These two tendencies are strictly inseparable. No notion is less unitary. (Seminar II, 101; 79)

And in fact, we can but note that Lacan's refutation of the dualism of the drives, as is so often the case, logically stems from the very terms of the Freudian equation: indeed, if the Freudian mode of treating the death drive consists in inflating the libidinal share employed by the forces of Eros, it implies the capacity of the 'life' drive to absorb the 'death' drive, and this very commensurability makes their unity irrefutable. Lacan's concept of jouissance, then, comes to efface the artificial gap introduced by Freud between life and death, which must henceforth be thought in continuity with each other.

The most important consequence of this theoretical clarification, for our present purpose at least, resides in the fact that, in refuting the hypothesis of a death drive that would stand on its own — and would thus be at the origin of 'biological life' insofar as it would be what is most real, most distinct from meaning and the economy of life, for indeed it would incarnate the life of the species over and above that of the individual —, Lacan also makes it possible to think beyond the death drive: in other words, Lacan asserts that there must be a cause to jouissance.

And indeed, later on in his teaching, Lacan offers the following pithy statement to our puzzled consideration: "The signifier is the cause of jouissance" (Seminar XX, 27; 24). In my reading, this crucial indication intimates that for Lacan, jouissance is not a pure, biological fact of life, for it is itself the subject's response to his encounter with the real of the Other, or its utmost alterity. For Lacan then, and this responds to the Derridean critique, beyond the death drive, beyond the beyond of the pleasure principle, there is the alterity of the signifier.

- An Economy of Jouissance

It is sometimes the case that a short summary should prove more enlightening than many a lengthy discussion. This could well be true of the preceding paragraphs, for they amount to a condensed rendering of the two momentous challenges inflicted by Lacan upon the Freudian theory: his refutation of the pre-eminence of the paternal function on the one hand, and his refusal of the dualism of the drives on the other, those being the two keystones of Freudian psychoanalysis.

Having taken stock of these two massive dents to the integrity of the Freudian corpus, we must yet consider their crucial consequence with respect to the declared aim of psychoanalysis. For Freud
then, the principal aim of psychoanalysis — at least insofar as civilisation is concerned —, is to devise ways of countering the death drive. Thus for example, as briefly mentioned, the Freudian alternative to the onslaught of 'cruelty' onto the modern world would go by way of an inflation of the power of *Eros*, itself to be structured along the vertical axes of ideal identification. In other words, and as aptly noted by Derrida, the Freudian solution aims to institute a stable economy of the drives on the basis of their bipolarity.

Leaving aside for a moment the fact that the Lacanian rejection of this bipolarity of the drives *de facto* entails the necessity to rethink the aim of psychoanalysis, let us examine why the Freudian option is in no way desirable. For in effect, the Freudian option is to be mistrusted for a number of reasons:

- First of all, and in spite of Freud's refusal to introduce "ethical judgements of good and evil" regarding the drive (*Why War?*, 356; noted by Derrida: 2000b, at 37) — for Freud is refusing to fall into the Manichean trap of a conceptualisation of life in terms the opposition of good and evil forces —, it nonetheless remains that the hypothetical bipolarity of the drives rests upon the assumption of a corresponding dualism between the 'good' forces of civilisation and the 'bad' drive-impulses of the uncivilised.

- Secondly, the hypothesis of the bipolarity of the drives inscribes itself in the context of a broader assumption that there exists a division between discourse and the body: the 'good' impulses are mediated and supported by language, whilst the 'bad' impulses insist at the level of the body.

- Thirdly, the negative effects of ideal identifications for the subject are well-known to the analyst: the stronger the ideal, the harsher the superego. Further, for Lacan the forces of *Eros* are equally destructive for the subject, for they operate by way of narcissism, which Lacan aptly perceives to be a form of death.

- Lastly, to pose that the only way of defeating the death drive is to strengthen the identificatory structure of society is extremely questionable insofar as it evidences little respect for, or even confidence in, the possibility of human freedom; further, to exalt the potential of vertical identification in treating the death drive implicitly condones the 'hierarchisation' of society along the arbitrary divide of the subject's degree of civilisation.

And indeed, Lacan will take as much distance from the third arch-premise of Freudian psychoanalysis as he did from the other two. In fact, one could even see the whole of Lacan's teaching as striving to overcome the deep rifts inscribed by Freud's conceptual dualism in the field of psychoanalysis. We recall, for example, that Lacan dedicated a lot of time to mapping the intimate articulation of jouissance with discourse: indeed, for Lacan it is not a question of having jouissance/the body on the one hand, and civilisation/discourse on the other, but of thinking jouissance in continuity with discourse, and the body as intimately bound up with language.
Having already introduced the Lacanian rejection of the dualism of the drives, and having just listed a number of reasons to support this rejection, let us briefly consider whether there is a declared 'aim' to Lacanian psychoanalysis. Thus, if for Freud, the solution to the discontents of civilisation goes by way of sublimation and its dissemination by way of identification, for Lacan the 'solution' lies in the institution of an 'economy of jouissance' (Seminar XX, 105; 116), which is reached by each subject on a one-by-one basis, possibly helped along the way by an analyst whose ethics are indexed on his own "desire to obtain absolute difference". (Seminar XI, 276)

We must not, however, be misled by the similarity in terms: for Lacan's economy of jouissance rests on an entirely different theoretical premise than the Freudian economy of the drives. Indeed, the Freudian solution, which is to reinforce the function of Eros, amounts to increasing the part played by the Other for the subject, and thus to increasing the subject's alienation in the Other. Lacan's economy of jouissance, on the other hand, rests upon the subjective assumption of the inexistence of the Other, only possible once the subject will have faced up to that which in him is absolutely other to himself: or the very recognition of the alterity lodged at the core of his being.

III - The Future of Psychoanalysis

In his address to the aforementioned conference, Les États Généraux de la Psychanalyse, pointedly entitled Les états d'âme de la psychanalyse, Derrida unequivocally asserts that psychoanalysis is the best situated of all disciplines — or even the sole qualified one — to take issue with the various components regrouped by Freud under the heading of the death drive, namely cruelty, sovereignty, mastery and power:

Let us ask ourselves [...] whether, yes or no, what is called psychoanalysis would not open the only pathway which would allow us, if not to know, at the very least to think, to interrogate what this strange and familiar word 'cruelty' could signify [...] . (2000b, 11)

In fact, Derrida, having commenced his address by commenting on the distinct modalities of cruelty, then moves on to note its association with a certain form of pleasure before reminding us that this 'pleasurable' cruelty was first theorised by psychoanalysis.

It is no doubt the conceptual and clinical familiarity of psychoanalysis with man's strangely cruel nature which impels Derrida to call psychoanalysis to the 'task' of thinking cruelty anew, or rather, of thinking the syntax, the grammar of cruelty (2000b, 13), mastery, power and sovereignty in the context of globalisation. For if cruelty is linked to the will to sovereignty, which is itself a form of resistance to alterity, then how can psychoanalysis resist the new forms of cruelty, of sovereignty without thinking such changes through?

Derrida's address further unfolds in an attempt at mapping the position of psychoanalysis with respect to this cruelty — or in other words, to the death drive. Derrida's interrogation unravels according to the rhythm of a fruitful oscillation between the two terms of illusion and alibi, both of

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6 The French expression états d'âme signifies 'moods'.

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which, according to Derrida, psychoanalysis should be able to do without: thus, could the death drive, the 'without illusion' of psychoanalysis, nonetheless be psychoanalysis' alibi?

- **Without Illusion**

> In reality, there is no such thing as 'eradicating' evil.
> Sigmund Freud *

In this essay, which deals essentially with the position of psychoanalysis as regards 'cruelty', Derrida is quick to disengage Freud's theory of the death drive from the mythological guise in which it was first introduced on the theoretical scene. Thus, Derrida refers to several of the texts in which Freud asserts the irreducibility of the death drive in mankind before drawing out the consequences of this affirmation.

Taking stock of the Freudian credo to the effect that it is impossible to eradicate evil, Derrida notes the 'without illusion' of this position. Derrida supplements his observation by intimating that if, on the one hand, this 'without illusion' of psychoanalysis has its merits — does it not allow psychoanalysis to confront with lucidity the very real occurrence of the worst forms of cruelty, aggression, hatred, racism and exploitation of man by man? — on the other, Derrida refuses to accept this 'without illusion' of psychoanalysis as sufficient: for indeed, it may not "found an ethics".

Could this [psychoanalytic] logic [of destructive drives indissociable from the death drive] induce, or even found an ethics, a law and a politics capable of measuring up, on the one hand, to the psychoanalytic revolution of this century, and on the other to the events which constitute a cruel mutation of cruelty, a technical, scientific, juridical, economical, ethical and political mutation, one that is also ethnic and military and terrorist and repressive [politiere], of the present times, and if yes how? (2000b, 70)

Derrida then develops his critique of the Freudian position, for which the only pathway which is open to man lies in the absorption of what Derrida terms the 'aneconomical appearance' (2000b, 81) of the death drive into the economy of the drives. This means that for Freud, Eros is to be used against the death drive, or again that the 'apparently aneconomical' death drive is to be re-incorporated in the 'good' drive-economy of civilisation.

Derrida's very qualification of the death drive in terms of its 'aneconomical appearance' already indicates what he believes the status of the death drive to be for psychoanalysis. To put it less elliptically, one could say that for Derrida the death drive, which appears to exceed the drive-economy, is in fact part of the very economy which it pretends to exceed, since indeed it can be re-absorbed by it. This qualification as to the nature of the death drive does not however lead Derrida to argue that the death drive does not exist, but rather to suggest that the death drive, posed as the aneconomical excess which grounds the economy of life, could well constitute psychoanalysis' alibi, an alibi the function of which would then be to conceal the radical alterity which exceeds the drive itself.

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8 *Thoughts for the Times on War and Death*: PFL 12, 68.
It follows that for Derrida, any reduction of the history of mankind to one of a bipolar struggle between the drives, or effectively between civilisation and the tendency of life to return to the inanimate, amounts to foreclosing that which truly exceeds any economy, that of the drives or other, for it is also that which exceeds all calculation. This is what leads Derrida to hint at the alibi-like function of the death drive, relied upon by psychoanalysis in order not to confront "the alterity of the event, the very 'arrivingness' [arrivance] of he who arrives [l'arrivant]." (2000b, 82)

**Without Alibi**

It is clear that for Derrida, the 'without illusion' of psychoanalysis, although it is an indispensable element which, as such, should lucidly be taken into account by all other disciplines, and to be thought fully in all its consequences by psychoanalysis itself, is not good enough. And in effect, Derrida himself prefers to argue for a position that would be 'without alibi'.

In my reading, Derrida is calling for psychoanalysis to gather the courage of thinking beyond the theoretical safeguards of its concepts, beyond the routes long opened by its founding fathers, and of remaining open to the arrivingness of the event, of the other, of the alterity which, for Derrida, is the sole valid justification of the right to life. (2000b, 83)

Derrida is thus advocating an "hospitable exposition to the event" *(ibid)*, this amounting to a position which cannot be transformed into a task: for it is not of the order of the possible, it is not of the order of an economic conditionality. One could even say that for Derrida, this 'hospitable exposition to the event' is the sole condonable 'ethical imperative' there can be, for it is one which exceeds all possible ideological, economical, or political agenda — all possible alibis — and therefore all possible reductions of the alterity of the event, of the arrivingness of the other, to the measures of an existing discourse.

It may even be in terms of the 'arrivingness of the event' that one could return to the long-lasting dispute opposing Lacan to Derrida concerning the letter and its arrival — or not — at its destination; although it will not be with a view to add to a now somewhat dogmatic debate by virtue of its academic currency, but with the intention of offering a political perspective on what seems to have become a rhetorical polemic designed merely to ascertain the respective merits of two of the leading intellectual figures of the second half of the 20th century.

Famously thus, Lacan asserts that the letter always arrives at its destination *(cf. "Seminar on the 'Purloined Letter'", in The Purloined Poe)*, since its destination is where it arrives: indeed, to put it somewhat cursorily, the subject will always interpret the letter in accordance with his symptom. Derrida, on the other hand, contends that in view of the differential nature of language, it can never arrive at its destination *(cf. "The Purveyor of Truth", ibid.)*.

I am not interested, here, in comparing the multiple implications of each position. Instead, I would like to propose a novel reading of the Derridean position in the light of his recent address: thus, could the letter in question not be conceived in terms of the event, to be received in all its arrivingness? In other words, if the letter, as event, does not arrive at its destination, is it not because its destination is the alibi which allows the subject to foreclose the unconditionality of the event?
Further, I would even argue that in this address, Derrida is putting himself in the position of the letter. In effect, it seems that Derrida is asking those to whom the event is addressed — and Derrida is certainly putting himself in the position of the event when he refers to the hospitable exposition of those who invited him to speak to “the visit of a stranger” (2000b: 87) — to refuse the comfort of believing that the letter has arrived at its destination. Derrida then, at this point, is asking his audience of psychoanalysts to accept to be disturbed, displaced, exposed by his address — namely, he is asking to be received as event, and not to be taken as read.

Moreover, by addressing himself to the analytic community, Derrida is effectively saying that if there remains anyone who should be able to adopt such a position, then it is the analytic community: for it is founded upon the daily acceptance of an ‘hospitable exposition to the alterity of the other’, which it claims for sole ethical principle. The familiarity of psychoanalysis with the alterity of the other, which it unquestionably accepts in the consulting room, should enable psychoanalysts to make good use of the ‘without illusion’ it inherited from Freud by combining it with the ‘without alibi’ of ‘the beyond the beyond of the pleasure principle’, which was certainly not foreign to Lacan.

Finally, to accept one’s existence as ‘without alibi’, may it not also imply that it is time for the analytic community to consider the possibility of existing as community beyond its “transferential filiation” (Derrida: 2000b, 53) to the name of its founding fathers? Or, at the very least, to question whether it is at all possible to think a community ‘without an alibi’?

- Is it too late?

Does the alibi remain avoidable? Is it not already too late?

Jacques Derrida (ibid., 90)

An unpleasant picture comes to one’s mind of mills that grind so slowly that people may starve before they get their flour.

Sigmund Freud

Ominously, by the time of publication, Derrida had twice supplemented his oral address to the Etats Généraux: firstly with a postscript, which concludes on the suggestion that it may be too late for the world to learn to live without an alibi, without the alibi of the always possible re-appropriation of the event in the current discourse; and secondly with a couple of loose pages inserted in the book itself, in the manner of an afterthought.

This afterthought, which comes after the postscript, quotes key passages of the preceding essay, before suggesting once more that the possibility of the ‘without alibi’ may already be foreclosed from the field of human relations:

What I have attempted to think, if not to know, along this route, is the possibility of an im-possible beyond the death drive, beyond the drive to power, beyond cruelty and sovereignty, and an unconditional beyond. Not sovereign but unconditional.

Could this beyond (beyond the beyond of the pleasure principle, thus) still be an alibi?
Conclusion – With neither Illusion nor Alibi

Does the *without alibi*, the 'nowhere else', remain possible? Once and for all or more than once? (2000b, last lines of an inserted postscript entitled *Sans Alibi*; original emphasis).

*At the time of writing*, one can but hope that the 'without illusion' which characterises a certain dimension of psychoanalysis will not be appropriated as justification by those other discourses whose economical goals are, alas, far removed from any aspiration to reach a balanced drive-economy.

As to the possibility of the 'without alibi', what psychoanalysis will certainly have taught us, and what we may yet be able to hear, is that it is a matter of personal choice.

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**NB:** Many of the works referred to in this thesis not being available in English, I have translated the relevant quotations myself. Also, when the work is available in both French and English, I often supply the two references – having modified the English translation on a small number of occasions.