# Psychoanalytical Jurisprudence

## 1AC

#### From the “plain view doctrine”, “Miranda warning”, and “exclusionary rule” to “qualified immunity” – police and the courts act co-constitutively to justify unconstitutional action both preemptively and retroactively. The discursive schema known as “the law” is used to uphold the legitimacy of this empty system by expanding carefully constructed police narratives and legal ideology. This system enables the police to manifest reason for the courts existence and the court the opportunity to sustain police existence, respectively. Such a symbolic regime locks in the linguistic possibilities of the law while expanding doctrines such as qualified immunity into a disciplinary signifier that exceeds purely legal manifestation and impacts all fields of society.

Dragan Milovanovic, 2003

Milovanovic is a professor at the College of Arts and Sciences at Northeastern Illinois University, his studies focus on postmodernism, post-structuralism, the Frankfurt school, chaos theory, complexity theory, catastrophe theory, topology theory, constitutive theory, edgework analysis, and Lacanian psychoanalytic semiotics. “An Introduction to the Sociology of Law”, pg 252-254

Hunt's specific proposal is that law helps constitute discursive formations (our own terminology is "linguistic coordinate systems"), which then function to "both place limits of possibility on social action and impose specific forms of discursive possibility" (1993: 293).9 In other words, subjects both use and reconstitute the law "field" in their everyday activity. Consider activist lawyers who must make use of legal discourse, legal categories, and principles of formal rationality to defend rebels before the court. In the process, a case may be "won," but legal ideology, the rule of law, is given further unintentional legitimation. It is inadvertently reconstituted. The example offered is the interaction between the courts and the police. If we envision the courts and the police as two relatively independent spheres, but nevertheless in a situation of mutual dependence, we can then see how constitutive theory is pertinent. For example, Hunt tells us that courts often legitimize police practices, but courts in turn need police to legitimize their own task; that is, police practices provide an opportunity for the courts to legitimize their own existence and effectiveness (ibid., 296). Consider, for example, how such juridically established case opinion as the "plain view doctrine," the "Miranda warning," and the "exclusionary rule," came into being. Once the plain view doctrine was established it became a basis of constructing narratives by police, both in restricting law enforcement practices and in an ex post facto fashion. However, crises could upset this balance, as for example, when the media exposes the police engaging in unconstitutional behavior (i.e., illegal searches, arrests, surveillance, etc.), or when some "sting operation" uncovers some unscrupulous judge. The mutual dependence between relatively autonomous spheres, therefore, is always unstable (ibid., 297) . This produces change. But attributing change to one sphere or the other is misleading; rather, both spheres are implicated in change as they adjust to each other. Let us provide our own example of the application of a constitutive approach to the interaction between the sphere of policing and the sphere of law-making/law-finding. Consider the plain view doctrine (police who are investigating a crime who come across other illicit activity in plain view need not return to a judge to obtain an arrest or search warrant). Police training educates the neophyte police officer as to its constitutional origins and importance in a democratic society based on the "rule of law." Much of the everyday activity of the police may be guided by this doctrine; much, however, uses it as a way of constructing narratives after the fact that fit constitutionally permissible police operations. In other words, it is a way of avoiding the dismissal of otherwise illegally obtained "evidence" during "suppression hearings" prior to trial. After- the-fact narratives are constructed by incorporating given legal principles and linguistic forms (words, concepts, principles, etc.) to obtain, on the face, a logically, coherently appearing story of the "what happened?" Thus both spheres - the police and the judiciary - are implicated in the construction of narratives and in the continuance of their form. Police constructions give continuous form, scope and energy to legally established principles, providing them with further support and legitimacy which in turn appear to be guiding police everyday behavior. Police stories are therefore carefully constructed with the discursive elements dictated by the higher courts, and provide readily available examples of their constitutional behavior. Courts, by accepting these narratives provide legitimation for these renditions of "what happened?" Hunt also provides a thesis that perhaps law could be better under­ stood in terms of how it combines and recombines with different relatively autonomous spheres (ibid., 299-300). Law, in modern society, he tells us, increasingly penetrates different disciplines (e.g., mental health, corrections, education, the sciences, etc.) and is penetrated by them. The significance of law, in Hunt's words, is that it acts as "a mediating mechanism - law as the bearer of the normative framework of the normalization worked on by a diversity of disciplinary practices" (ibid., 299) .

#### Normalizing symbolic forces result in the manifestation of Oedipal subjecthood – a subjectivity that is confined within institutional pathways and is forced into a singular oneness in order to enable coherence. The social constructions of scientific reasoning and universal human subjecthood form the basis of exclusion, repression of subjectivity, and structures of disciplinary power – only radical questioning can stop the continual reconstruction of the legal subject.

Andreja Zevnik, 2016

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In Oedipal logic the subject is seen as a relational/mirror construction where one always requires the other for its formation. A legal subject is not just any form of existence; rather only a very particular embodiment of ‘the self’ experiences the second, the institutional birth, and begins to count as a subject of law. In such a way, a legal subject is limited to only particular experiences of the worl**d**, 66 while a range of subjects remain outside the institutional forms of legal subjectivity. They might have gone through the first birth, but not the second. **The problem with such Oedipal legal subjectivity is twofold.** First it is exclusionary as only a very limited number of subjects are recognised as full subjects of law. The legally recognised notion of existence derives from a Cartesian idea of a human being capable of reasoning and making rational decisions. Such exclusionary character of legal subjectivity implants a contradiction in the very heart of the discourse of universalism of human rights and equality in the face of law. 67 Second, the Oedipal logic still ordering current legal discourse is no longer predominant. Postmodern notions of the decentred subjects whose relation to authority is no longer hierarchical and whose ways of subjectivation are no longer paternal challenged rational Cartesian subjectivity. 68 Moreover mythical foundations of law on which Oedipal logic rests are precarious, as Legendre noted already in 1970 and 1980. 69 They have been challenged and destroyed by a range of events–such as for example the US politics after 9/11 – where nomos or a myth grounding authority has been exposed. **When** such **exposure of the myth is recognised there is no way back. No new laws or rules can resurrect the mythical foundations once they have been exposed. The only option left is either a creation of a different myth or a complete ‘ontological’ reconsideration of ways in which one thinks and relates to law and legal subjectivity.** That we consider societies to comprise of human beings endowed with reason and subjected to inalienable and sacred human rights should not be taken for granted. The statement might seem to be common sense; yet, it is such because of a particular scientific reasoning, initially invisible, yet seminal for modern notions of the self**. The images of the subject pictured here** are rational and scientific, and subjective and mythical. Both images **play along various dualisms prominent in modern thinking of the self: body–mind, person–thing, mind–matter;** all these dualisms construct a way of reasoning that legitimises the existence of ‘one’ in relation to the existence of the ‘other’. In other words, ‘one’ is conceived only in relation to the ‘other’. 70 **The implications of such reasoning**, and the conception of what is‘human life’ and how it exists and consequently how the subject gets constituted, **are immense**. However, the dualism does not only operate on the level of the self (the way it is ‘internally’ perceived), but also **on the way the subject is constructed**. Being faithful to dualism and modern western metaphysics based on the **Cartesian thought implies that the subject, aside from‘internal forces’, equally requires an external impetus for its formation. 71 That does not mean that the subject needs an external impetus for it to be able‘to form itself’,but rather that the external impetus is essential for it‘to appear in the world’. A subject as a particular embodiment of being, in the process of subjectivation, loses its agency. Instead of being free and capable of taking control of social and political fields, the subject is subjected to rules and freedoms associated with a particular order and dominant social conventions.** 72 For reasons of order and one’s own security, a subject abandons its freedoms and is subjugated to the rule of a rational power and law. **The law, being a combination of biological and symbolic aspects, connects the subjects’ infinite mental universe–or all possible ways of existence or embodiments of being-ness–with its physical existence** and institutes them as rational beings. 73 Yet, such act does not only institute the subject as a rational being, but also institutes an institution of ‘subject-hood’, which is specific to a particular society and its dominant mode of existence. It institutes a particular law that brings these subjects together; and, as a final outcome, such institution of‘subject-hood’ (as a particular form of life with its distinctive laws of relating to another subject and belonging to a community), transgresses the finitude of the subject’s life and operates as a force of continuity. It facilitates the reproduction of the same legal subjects. The‘subject-hood’ thus operates in a similar way to Kantorowicz’s idea of the king’s two bodies. 74 The continuity of the king’s powers is insured by the eternal and infinite institution of sovereignty. It is here that the role or the institution of sovereignty is eternal: after the death of one sovereign, the body of sovereignty is merely transferred to another sovereign. In the same way the institution of a (political) community exists to provide continuity of relationships between the sovereign and its subjects. This ‘unifies’ subjects into one ‘collective subject’, which as such bonds and is governed by the institution of the sovereign.The logic, which is associated with the rational representation of a legal subject, derives from the Oedipal law. As such, the legal personality does not address the needs and the changes that appear in the modern social, legal and political realm. With changes in the way a subject relates to authority and the disappearance or a denial of a mythological foundation of law, Oedipal law and the paternal function law symbolises no longer accurately represent the subjects within the law, and cannot account for their legal subjectivity. Instead, they veil the reality of their incompetence and inability to remain the main guarantors of legal authority. As I explain later, **if we are to understand law no longer as an abstract and universal discourse but rather from the perspective of the effects it has on the subject, we ultimately have to rethink the bond that law creates with the political being and subject-hood that results from this bond.** As Véronique Voruz in her psychoanalytically influenced comment writes:‘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’. 76 The subject does not come into being but is instituted by way of an affective – or libidinal –binding between life and the social. 77 **Thus the change of legal subjectivity reflects a change in the libidinal bond, or in the way a being relates to its desire. To be a legal subject then means nothing else but to exist for and in the law, or as Neil Duxbury writes, ‘to be displayed as this thing in existence, referred to primarily in relation to idols’.** 78 In other words, to be a legal subject means to exist not only for the law, but also for those who interpret and make law. With the structure of Oedipal law being shaken by the emergence of the truth ornomos, or by the decentralisation of the ‘subject’ in western culture a need for a ‘different law’ emerged. According to Lacan, Legendre and many other critical scholars who engage with the origins of law and its problem in postmodern western society, an alternative formation of law should arise from the conditions that exist before the initial intervention of the Father–before or at the moment of subject’s first birth. Such conditions correspond to the pre-social ‘laws of maternity’ (the desire of the mother) present before the intervention of the father, and suppressed in the unconscious after the intervention. In Lacan’s colourful expression, the mother’s desire is fundamental, because: it is not something that is bearable just like that, that you are indifferent to. It will always be a weak havoc. A huge crocodile in whose jaws you are–that’s the mother. One never knows what might suddenly come over her and make her shut her trap. That’s what mother’s desire is. 79 **What Lacan says in this metaphorical expression is that departing from the legislative function of the father and reverting the very roots of subjectivation and the emergence of society, leaves us with uncertainty and with no guarantee of a ‘positive’ outcome. Though what one can be certain of is that the** 38 Law and life **outcome would be different and that the order arising from this would be subjugated to different rules and laws.** Voruz, for example, fully acknowledges the importance of such difference. She writes: [I]n the absence of a ready-made mode of instituting the necessary separation between language and jouissance – separation also being Legendre’s version of the paternal function in his later work…**we have to refuse the comfort provided by the horizontal mode of identification… and learn to recognise the absolute singularity of each subject’s mode of inscription in the social.** 80 What Voruz is advocating in the above quotation is precisely the need to‘try out’ different organising principles–principles in relation to which‘beings’ form different ways of existence. One is no longer the subject–as the‘external’ reference point in relation to which the subject is formed no longer exists – but rather a different form of being that relates to a particular understanding of law differently. From the external creation of the subject, Voruz implies, that the being has to be left to its own capacities to create and re-create itself in different forms of existence, and law has to be there to facilitate this openness. The subject of law and society is then a subject whose desires correspond to the predominant logic of‘legal’ Oedipal desire (suppression of mother’s desire and a recognition of paternal authority). In terms of legal subjectivity, this stands for the double birth of the legal subject. Both births shape forms of being in ways, which correspond to the recognised Oedipal legal subjectivity and in turn creates a particular legal and political subject-hood. Hence, only a very narrow expression of being-ness, or one form of being is recognised as a subject of law. As a consequence, all other forms remain outside the limits of law, often without rights, duties or in fact even without any acknowledgement of their existence. While these two sections dealt with the role law plays in the current Oedipal/paternal legal ordering, the following section takes a step forward and considers how such Oedipal ordering can be challenged.

#### Any attempts at transgressions, be it individual rebellion, acts of violence, or otherwise, only serve to maintain a system of law which has included them since the very beginning – every criminal needs an innocent and every ruler needs a people. Only a critique of the underpinning signifiers which sustain this existence can prompt change.

* Solvency def
* Case o/w
* UQ

Maria Aristodemou, 2014

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So as we mentioned before, while prisoners' interrogation is supposed to respect the universal prohibition of torture, the practice of torture is the system's dirty little secret which also keeps the officials bound to each other. Racism in the police, sexism in companies, paedophilia in the Catholic church are all examples of such an obscene underside to the official rhetoric, an institutional dirty secret running underneath the official line of the rule of law, equality between the sexes and protection of children in one's care. Sexual abuses of detained immigrants is a recent addition to the list; even with few such cases being, brought to the media, let alone the courts, it is not hard to imagine that guards engaging in such abuse protect themselves. and each other, by keeping this shared 'secret'.('-7 Like the abuses at Abu Ghraib, far from being isolated 'bad apples' in an otherwise functioning system, they are part and parcel of the machinery of prohibition; take the obscene supplement away and the structures that sustain the prohibition will also disappear. Zizek goes further to suggest that one only becomes a 'full' member of a community not when she identifies with that community’s explicit rules, but when she participates in its hidden rules. So it is not only the abuses themselves that we can imagine the perpetrators 'enjoying' but the fact that they are sharing an illicit secret. This is the case not just in communities sharing a common guilt, but for the constitution of a legal community and of the legal system as such. The **founding gesture of' any system, including the legal system, is a crime so radical it redefines the existing standards of legality and illegality**. The subjects' shared guilt for this illegality and collective disavowal of this guilt is responsible for creating and maintaining a community of legal subjects. This is why **the chief distinction when addressing legality and illegality is not that between law and individual acts of disobedience to law, but the distinction between particular transgressions and the absolute transgression at the origin of the legal system itself.** Like Brecht's, 'what is the robbery of a bank compared to the founding of a new bank' the founding of a new legal system was preceded by a crime so great it overthrew the existing system and set up a new one. As Zizek puts it: 'The antagonism between law and crime is internal to law itself." **Once the crime is universalized it no longer appears as a crime but it turns from transgression into a new order." The rationale for contemporary calls to pay restitution to the descendants of victims of past injustices, from slavery, to colonialism, and apartheid, is the acknowledgement of the original crime that set up the system and a false hope that somehow the system can 'cleanse' and purify itself of the crime that installed it in power in the first place.** This is the type of arch-crime and arch-disobedience that Chesterton's police in The Man Who Was Thursday are in search of: they know the real criminals are not those who disobey the law but the men who 'believe that all the evil results of human crime are the evil results of the system that has called it crime'. "" Chesterton confirms the identity between crime and law at the end of The Man who Was Thursday: Sunday, the President of the anarchist Council is the same person as the Chief who hired them all to the elite Scotland Yard force to fight the anarchists. So the man who reminded us that 'civilization itself" is the most sensational departure and the most romantic of rebellions' and that 'morality is the darkest and most daring ofconspiracies"'3' concludes that Law is the arch-crime and the original act of transgression. As we see soon, if there is an anarchist among the crew in The Man Who Was Thursday it is God himself. Since the law is supported not only by the visible symbolic structures but their obscene underside, for a subject to defy the system, their disobedience must go beyond critique and disobedience of particular laws. As Chesterton shows and as Zizek insists, the chief distinction is not that between law and individual transgressions of the law, but between transgressions and the absolute transgression that appears as universal law. The genius of the arch-crime is that it dissolves its own criminality by negating and overcoming the existing definitions of what is legal and what is criminal: 'it turns its own transgression into a new order. '7' So law, although a crime at its inception, becomes universalized crime'."" Compared to the transgression that is Law itself, ordinary criminals appear as petty bourgeois adventurers. HBO’s The Wire implies the same dynamic between the arch-transgression that is the law and individual criminal transgressions: as Wendell Pierce, the actor playing policeman Bunk Moreland, spells it out: 'Hopefully people can see how they benefit from having an underclass, which is the real criminal element of the show'. As we have seen, the drug trade is not the crime, indeed Stringer Bell and the other drug dealers are more tied to the law and the symbolic order than the detectives and police Commissioners who are convinced of the futility of the prohibitions. Further up the chain of command, however, the notion of having no crime, no criminals and thus no criminal underclass, is the real danger; for without the criminal underclass maintained by the drug war, where would the corrupt activities of the institutions themselves be? The drug, dealers' defense lawyer Levy accuses Omar Little who makes it his business to rob drug dealers, of being a parasite: 'You're feeding off the violence and despair of the drug trade', he tells him. To which Omar responds, 'Just like you man. I got the shotgun. You got the briefcase. It's all in the game'. Jesse in Breaking Bad recommends Saul Goodman to Walt White for the same reason 'when the going gets tough', he says, 'you don't want a criminal lawyer. You want a criminal lawyer'. In this respect the legal system relies on and breeds on illegality. The last thing it wants is the disappearance of illegal activity. Since the system relies on illegality, it takes more than mere disobedience to change let alone transform the system. Instead, individual transgressions only succeed in feeding and maintaining the system.

#### We advocate psychoanalytical jurisprudence as a methodology to limit qualified immunity for police officers. *We’ll defend that qualified immunity is bad and is significantly limited in the world of the affirmative.*

#### Qualified immunity is not only a legal doctrine, but a regime of signifiers that buttresses the judicial system’s inability to be questioned or critiqued from the outside. Psychoanalysis disrupts modern jurisprudence through questioning the unconscious of institutions, adding subjectivity to an otherwise objective mix. Through this reading, we can begin to understand the legal order as socially reproduced by subjects, a grid which forms identity and relationship according to its institutional confines. Our methodology is one of a process of analysis and critique, which enables a critical interrogation of the affectivity, power, and textual linguistic codes that make up what we call “the law”.

Peter Goodrich, 1997

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First, and most strikingly, psychoanalysis has long been perceived as too threatening or too personal a form of knowledge to be addressed directly in the study of law. Study of the unconscious, or acknowledgment of the emotions, of the body and of its repressions or hidden domains of desire have not figured greatly in the modern theories of positive law. For the discipline of law, psychoanalysis has remained a dark continent or 'China within. It threatens to disrupt the complacent truths of modernist jurisprudence and so also to question the rationality of legal practice by finally addressing the unconscious of institutions, and correlatively the repetitions and repressions, the drives and desires both of the authors and interpreters of law as well as of its subjects. It is thus perhaps unsurprising that although law is primarily concerned to judge the discourses and the actions of natural and corporate subjects it has studiously avoided the most radical of contemporary theories of the subject. In the first instance, the work of a psychoanalytic jurisprudence is thus to introduce the question of emotion and the domain of subjectivity into the analysis of the institution and specifically of its law. The introduction of a psychoanalytic perspective into the analysis of law and of what Legendre terms its "capture of the subject" involves the elaboration of a critical methodology for reading law. In Freudian terms **it involves** a 'double reading,' **an acknowledgment of a relation between conscious and unconscious dimensions of the human subject and so also of the texts of law**. At the level of jurisprudence or the theoretical analysis of law, this means a reading of the institution of law 'as if' it were a subject and so driven to reproduce itself. Thus at the level of method, Legendre has consistently used psychoanalysis to develop a radical theory of law as a social subject ceaselessly labouring to create subjects. In these terms psychoanalytical jurisprudence is in the first instance a theory of law which seeks to understand the legal order as the structural mechanism or social form of reproduction of subjects. Law, for Legendre, is intrinsic to the formation of the individual subject, **and law is both historically and theoretically at the centre of the symbolic order in relation to which individual identity is formed.** Where Lacan referred to the unconscious as being structured like a language, Legendre adds that the unconscious acts like a jurist. The second theme, which Legendre reiterates in varying contexts, concerns the specific familial form of subjectivity, whether the subject is an institution acting 'as if it were a natural subject or an individual. If the unconscious, for Legendre, is a jurist then its legalism should be understood in a dual sense. First, **law determines the space of intimacy or of subjectivity, it dictates in advance the familial places, the roles and relationships, the 'familial fates' into which the subject is born. I**n a second and more theoretical guise, **Law in the sense of the foundational social principle of authority is intrinsic to the symbolic dimension of social relations, and forms the context or 'mirror' within which identity is constructed in the institution.** What is most striking about Legendre's project of re-thinking law from a psychoanalytic perspective is thus much less a question of the utility of psychoanalysis in explaining features of the subjectivity of law than it is an instance of reinscribing law in our understanding of the subject. In this sense the case of Lortie is far more than an instance of the utility of psychoanalysis in the explanation of the unconscious causes of a subject's actions. The case of Lortie is rather a vivid and, precisely because it is perverse, exemplary site for playing out or, more simply, understanding the legal categories which constitute the subject. To borrow a Roman law maxim, of which Legendre is fond, law's function is "to institute life" [vitam instituere] 9 and in so doing its domain of application is co-extensive with the substantive domain addressed by psychoanalysis. **What psychoanalysis provides is a method of listening to and interpreting, both individual biography and institutional history. It allows us access** to what Legendre, mimicking Freud, **terms the "other dimension of law,"** namely its other scene or unconscious. 10 In practical terms, **psychoanalysis thus allows us to address the most complex and critical of institutional questions, those which relate to the subjectivity of legal practice and to what has recently been termed the affectivity of law."** A psychoanalytic jurisprudence could be said to address the subjective enigma-the delirium-of institutions, and **to ask the most simple and unanswerable of questions.** What is it that leads a subject to love the social representation, the living image, or emblem of law? Equally, what causes a subject to submit to the institution and to follow the law? Why is it Lortie that is mad and not the government of Quebec? 2 The answer to such questions can only be equivocal or contingent. The institution which acts 'as if it were a person is not necessarily free of those delirious, violent or poetic states which we term passion, madness or love. What is principally at issue is the ability of the subject to recognise its identity or place, its role within the familial order of institutions or of household government. Whether institutional or individual, madness is most immediately manifest in a failure to recognise where, when and to whom a subject is entitled to speak. **The law in this context is simply the manifestation of power as a structure, and madness is the failure to observe the space and the images or faces of that manifest structure**. Returning to the case of Corporal Lortie and his psychotic endeavour to erase the social fantasm of paternity, a government with the face of his father, the legal categories that institute subjectivity, the function, and here the failure, of law are peculiarly clear. Lortie's transgression emerged initially out of a desire to destroy an evil father, the social image or fantasm of paternity, the President of Quebec. This desire was expressed initially in terms of a drive to prevent the destruction of the national language. While this allusion to language might seem incidental, it can also be taken as the most fundamental of references to structure and to law. The third theme to be addressed relates to the particular form in which the institution not only acts 'as if it were a subject but also acts as if it had a body and so also, in Freudian terms, an unconscious. Since Lacan, **psychoanalysis has constantly emphasised the importance of the fact that we are inhabitants of language. To the observation that language is the inescapable symbolic structure into which each subject is born**, Legendre adds that **in the west we are the inhabitants of a very specific material form or body of language, the text or written reason of law. The reference to language, and so indirectly to texts and to their Western manifestation as written law, thus refers us to the foundational structure, the symbolic form and scriptural identity of Western institutions**. The question of law is a question of structure, and for Legendre this means that it is a question of a Text-a Book or books-which set out the specific social places of legitimate authority**. It is the text that establishes our social identity and institutional place, it is the text which provides us with our jurisdiction or right of speech, it is the text in which** we are born and in which we die, or in classical legal terms, Rome-a Text, a system of law-is our common homeland (Roma communis nostra patria est). 13

#### The role of the ballot is to vote for the best methodology to analyze the unconscious.

#### Societal consciousness known as the superego, can both maintain and deconstruct the mythology of the law, which upholds particular notions of living and forecloses alternative methods of being. Institutions are structured according to this underlying ideological regime which gives them their perceived authority in the form of rules and obligations. Pathways for change are therefore constructed at a symbolic level – with and between social subjects – and political, normative, and legal influence must be leveraged on the level of this discursive form to result in change.

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The psychoanalytic engagement with law explores these three aspects; and in particular the mythical foundations of law and law’s relation to the body. There are at least **two ways** in which legal myth institutionalises the life of individuals (by limiting and determining forms of existence). First, a particular idea of law relates to a particular notion of ‘life’ (or form of existence e.g. the subject), which is instituted in a legal system as a result of a particular idea of law. However, the characteristics of a system that derives from this particular interpretation of life and law are not set in stone. Any change in the understanding of life, or in psychoanalytical terms, in the subject’s unconscious and its relation to the self, the other and the authority (or the law) is transformed at the level of the symbolic order which consequently influences the political, the social, the content and the logic of the law. In other words, forms of existence (or life) and social and political structures are inherently linked. The collapse of this bond disintegrates a (paternal) social bond, which could lead into a collapse of the symbolic order, and from that, 24 Law and life to the collapse of the normative, political and legal order we know today. Legendre conducted a study of legal texts by Glossators from the medieval times onwards to trace the origins of the modern paternal structure of law and the limitations and prohibitions it imposes on forms of existence that eventually become fully recognised by law. In his work, he explicitly writes that‘**the principle of paternity is essential to the symbolic survival of Western culture’**. 9 For psychoanalysis then, one can speculate that the character of modern western culture is a product of paternal/Oedipal logic. **Second, ‘psychoanalytic law’ is most importantly the law of a superego**. 10 As such, psychoanalytic law rather than constituting or directly influencing the substance of positive law represents the basis, or the underlying logic of law. In other words, superego gives positive law–a system and an institution of rules and obligations according to which societies live–its legitimacy, it sets its framework and enables both the compliance and the transgression of law. Thus, the superego has a double role: it provides unconscious orientation for the law, or the spirit of the logic in which laws should be made; and acts as its reverse–the other –side, for which law cannot account, and which is outside the principles of positive law. Thus, the superego embodies the source of authority that the subject internalises once it becomes part of a society. In Legendre’s thought, that source of authority is associated with the figure of the ‘imaginary father’ (origins of the idea of the Name-of-the-Father) that entered the discursive and legal practice of the western juridical order through medieval legal writings and the official institution of legal interpretations or a legal interpreter –a judge or a sovereign. On a psychoanalytical level, in contrast, ‘the father’ became part of the subject’s unconscious in the moment of child’s separation from the‘mother’; in the moment when the prohibition of incest –and from that the Oedipus complex–intervenes as one of primordial social prohibition. I return to how Oedipal law functions as an ordering logic of law and legal subjectivity later on. From the above discussion two most important aspects are the relationship between law and form of existence (the body), and the paternal or Oedipal idea of law in the context of authority and the institution

## 1AC – V2 (Dense Language Parsed Down)

#### From the “plain view doctrine”, “Miranda warning”, and “exclusionary rule” to “qualified immunity” – police and the courts act co-constitutively to justify unconstitutional action. “The law” is used to uphold the legitimacy of this empty system. It expands police narratives via legal ideology. This system enables the police to justify the courts existence and the court to justify police existence. This relationship frames legal doctrines as rigid and static. It also expands doctrines such as qualified immunity to discipline all of society.

Dragan Milovanovic, 2003

Milovanovic is a professor at the College of Arts and Sciences at Northeastern Illinois University, his studies focus on postmodernism, post-structuralism, the Frankfurt school, chaos theory, complexity theory, catastrophe theory, topology theory, constitutive theory, edgework analysis, and Lacanian psychoanalytic semiotics. “An Introduction to the Sociology of Law”, pg 252-254

Hunt's specific proposal is that law helps constitute discursive formations (our own terminology is "linguistic coordinate systems"), which then function to "both place limits of possibility on social action and impose specific forms of discursive possibility" (1993: 293).9 In other words, subjects both use and reconstitute the law "field" in their everyday activity. Consider activist lawyers who must make use of legal discourse, legal categories, and principles of formal rationality to defend rebels before the court. In the process, a case may be "won," but legal ideology, the rule of law, is given further unintentional legitimation. It is inadvertently reconstituted. The example offered is the interaction between the courts and the police. If we envision the courts and the police as two relatively independent spheres, but nevertheless in a situation of mutual dependence, we can then see how constitutive theory is pertinent. For example, Hunt tells us that courts often legitimize police practices, but courts in turn need police to legitimize their own task; that is, police practices provide an opportunity for the courts to legitimize their own existence and effectiveness (ibid., 296). Consider, for example, how such juridically established case opinion as the "plain view doctrine," the "Miranda warning," and the "exclusionary rule," came into being. Once the plain view doctrine was established it became a basis of constructing narratives by police, both in restricting law enforcement practices and in an ex post facto fashion. However, crises could upset this balance, as for example, when the media exposes the police engaging in unconstitutional behavior (i.e., illegal searches, arrests, surveillance, etc.), or when some "sting operation" uncovers some unscrupulous judge. The mutual dependence between relatively autonomous spheres, therefore, is always unstable (ibid., 297) . This produces change. But attributing change to one sphere or the other is misleading; rather, both spheres are implicated in change as they adjust to each other. Let us provide our own example of the application of a constitutive approach to the interaction between the sphere of policing and the sphere of law-making/law-finding. Consider the plain view doctrine (police who are investigating a crime who come across other illicit activity in plain view need not return to a judge to obtain an arrest or search warrant). Police training educates the neophyte police officer as to its constitutional origins and importance in a democratic society based on the "rule of law." Much of the everyday activity of the police may be guided by this doctrine; much, however, uses it as a way of constructing narratives after the fact that fit constitutionally permissible police operations. In other words, it is a way of avoiding the dismissal of otherwise illegally obtained "evidence" during "suppression hearings" prior to trial. After- the-fact narratives are constructed by incorporating given legal principles and linguistic forms (words, concepts, principles, etc.) to obtain, on the face, a logically, coherently appearing story of the "what happened?" Thus both spheres - the police and the judiciary - are implicated in the construction of narratives and in the continuance of their form. Police constructions give continuous form, scope and energy to legally established principles, providing them with further support and legitimacy which in turn appear to be guiding police everyday behavior. Police stories are therefore carefully constructed with the discursive elements dictated by the higher courts, and provide readily available examples of their constitutional behavior. Courts, by accepting these narratives provide legitimation for these renditions of "what happened?" Hunt also provides a thesis that perhaps law could be better under­ stood in terms of how it combines and recombines with different relatively autonomous spheres (ibid., 299-300). Law, in modern society, he tells us, increasingly penetrates different disciplines (e.g., mental health, corrections, education, the sciences, etc.) and is penetrated by them. The significance of law, in Hunt's words, is that it acts as "a mediating mechanism - law as the bearer of the normative framework of the normalization worked on by a diversity of disciplinary practices" (ibid., 299) .

#### These static signifiers force subjectivity to correspond to predetermined categories set forth by the law. This is the process of Oedipal subjecthood –anything that differs from an ideal is forced to homogenize to allow the system to function. Reason and ideal subjecthood are socially constructed as inevitable. This is the basis of exclusion which enables disciplinary power.

Andreja Zevnik, 2016

Zevnikis a Lecturer in International Politics at the University of Manchester, UK. Her research interests include theories of subjectivity, political violence and resistance, aesthetic politics, law and psychoanalysis. She is co-editor of Jacques Lacan Between Psychoanalysis and Politics (Routledge, 2015) and a convener of the Critical Global Politics research cluster at Manchester. “Lacan, Deleuze and World Politics – Rethinking the Ontology of the Political Subject”, pg 35-39

In Oedipal logic the subject is seen as a relational/mirror construction where one always requires the other for its formation. A legal subject is not just any form of existence; rather only a very particular embodiment of ‘the self’ experiences the second, the institutional birth, and begins to count as a subject of law. In such a way, a legal subject is limited to only particular experiences of the worl**d**, 66 while a range of subjects remain outside the institutional forms of legal subjectivity. They might have gone through the first birth, but not the second. **The problem with such Oedipal legal subjectivity is twofold.** First it is exclusionary as only a very limited number of subjects are recognised as full subjects of law. The legally recognised notion of existence derives from a Cartesian idea of a human being capable of reasoning and making rational decisions. Such exclusionary character of legal subjectivity implants a contradiction in the very heart of the discourse of universalism of human rights and equality in the face of law. 67 Second, the Oedipal logic still ordering current legal discourse is no longer predominant. Postmodern notions of the decentred subjects whose relation to authority is no longer hierarchical and whose ways of subjectivation are no longer paternal challenged rational Cartesian subjectivity. 68 Moreover mythical foundations of law on which Oedipal logic rests are precarious, as Legendre noted already in 1970 and 1980. 69 They have been challenged and destroyed by a range of events–such as for example the US politics after 9/11 – where nomos or a myth grounding authority has been exposed. **When** such **exposure of the myth is recognised there is no way back. No new laws or rules can resurrect the mythical foundations once they have been exposed. The only option left is either a creation of a different myth or a complete ‘ontological’ reconsideration of ways in which one thinks and relates to law and legal subjectivity.** That we consider societies to comprise of human beings endowed with reason and subjected to inalienable and sacred human rights should not be taken for granted. The statement might seem to be common sense; yet, it is such because of a particular scientific reasoning, initially invisible, yet seminal for modern notions of the self**. The images of the subject pictured here** are rational and scientific, and subjective and mythical. Both images **play along various dualisms prominent in modern thinking of the self: body–mind, person–thing, mind–matter;** all these dualisms construct a way of reasoning that legitimises the existence of ‘one’ in relation to the existence of the ‘other’. In other words, ‘one’ is conceived only in relation to the ‘other’. 70 **The implications of such reasoning**, and the conception of what is‘human life’ and how it exists and consequently how the subject gets constituted, **are immense**. However, the dualism does not only operate on the level of the self (the way it is ‘internally’ perceived), but also **on the way the subject is constructed**. Being faithful to dualism and modern western metaphysics based on the **Cartesian thought implies that the subject, aside from‘internal forces’, equally requires an external impetus for its formation. 71 That does not mean that the subject needs an external impetus for it to be able‘to form itself’,but rather that the external impetus is essential for it‘to appear in the world’. A subject as a particular embodiment of being, in the process of subjectivation, loses its agency. Instead of being free and capable of taking control of social and political fields, the subject is subjected to rules and freedoms associated with a particular order and dominant social conventions.** 72 For reasons of order and one’s own security, a subject abandons its freedoms and is subjugated to the rule of a rational power and law. **The law, being a combination of biological and symbolic aspects, connects the subjects’ infinite mental universe–or all possible ways of existence or embodiments of being-ness–with its physical existence** and institutes them as rational beings. 73 Yet, such act does not only institute the subject as a rational being, but also institutes an institution of ‘subject-hood’, which is specific to a particular society and its dominant mode of existence. It institutes a particular law that brings these subjects together; and, as a final outcome, such institution of‘subject-hood’ (as a particular form of life with its distinctive laws of relating to another subject and belonging to a community), transgresses the finitude of the subject’s life and operates as a force of continuity. It facilitates the reproduction of the same legal subjects. The‘subject-hood’ thus operates in a similar way to Kantorowicz’s idea of the king’s two bodies. 74 The continuity of the king’s powers is insured by the eternal and infinite institution of sovereignty. It is here that the role or the institution of sovereignty is eternal: after the death of one sovereign, the body of sovereignty is merely transferred to another sovereign. In the same way the institution of a (political) community exists to provide continuity of relationships between the sovereign and its subjects. This ‘unifies’ subjects into one ‘collective subject’, which as such bonds and is governed by the institution of the sovereign.The logic, which is associated with the rational representation of a legal subject, derives from the Oedipal law. As such, the legal personality does not address the needs and the changes that appear in the modern social, legal and political realm. With changes in the way a subject relates to authority and the disappearance or a denial of a mythological foundation of law, Oedipal law and the paternal function law symbolises no longer accurately represent the subjects within the law, and cannot account for their legal subjectivity. Instead, they veil the reality of their incompetence and inability to remain the main guarantors of legal authority. As I explain later, **if we are to understand law no longer as an abstract and universal discourse but rather from the perspective of the effects it has on the subject, we ultimately have to rethink the bond that law creates with the political being and subject-hood that results from this bond.** As Véronique Voruz in her psychoanalytically influenced comment writes:‘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’. 76 The subject does not come into being but is instituted by way of an affective – or libidinal –binding between life and the social. 77 **Thus the change of legal subjectivity reflects a change in the libidinal bond, or in the way a being relates to its desire. To be a legal subject then means nothing else but to exist for and in the law, or as Neil Duxbury writes, ‘to be displayed as this thing in existence, referred to primarily in relation to idols’.** 78 In other words, to be a legal subject means to exist not only for the law, but also for those who interpret and make law. With the structure of Oedipal law being shaken by the emergence of the truth ornomos, or by the decentralisation of the ‘subject’ in western culture a need for a ‘different law’ emerged. According to Lacan, Legendre and many other critical scholars who engage with the origins of law and its problem in postmodern western society, an alternative formation of law should arise from the conditions that exist before the initial intervention of the Father–before or at the moment of subject’s first birth. Such conditions correspond to the pre-social ‘laws of maternity’ (the desire of the mother) present before the intervention of the father, and suppressed in the unconscious after the intervention. In Lacan’s colourful expression, the mother’s desire is fundamental, because: it is not something that is bearable just like that, that you are indifferent to. It will always be a weak havoc. A huge crocodile in whose jaws you are–that’s the mother. One never knows what might suddenly come over her and make her shut her trap. That’s what mother’s desire is. 79 **What Lacan says in this metaphorical expression is that departing from the legislative function of the father and reverting the very roots of subjectivation and the emergence of society, leaves us with uncertainty and with no guarantee of a ‘positive’ outcome. Though what one can be certain of is that the** 38 Law and life **outcome would be different and that the order arising from this would be subjugated to different rules and laws.** Voruz, for example, fully acknowledges the importance of such difference. She writes: [I]n the absence of a ready-made mode of instituting the necessary separation between language and jouissance – separation also being Legendre’s version of the paternal function in his later work…**we have to refuse the comfort provided by the horizontal mode of identification… and learn to recognise the absolute singularity of each subject’s mode of inscription in the social.** 80 What Voruz is advocating in the above quotation is precisely the need to‘try out’ different organising principles–principles in relation to which‘beings’ form different ways of existence. One is no longer the subject–as the‘external’ reference point in relation to which the subject is formed no longer exists – but rather a different form of being that relates to a particular understanding of law differently. From the external creation of the subject, Voruz implies, that the being has to be left to its own capacities to create and re-create itself in different forms of existence, and law has to be there to facilitate this openness. The subject of law and society is then a subject whose desires correspond to the predominant logic of‘legal’ Oedipal desire (suppression of mother’s desire and a recognition of paternal authority). In terms of legal subjectivity, this stands for the double birth of the legal subject. Both births shape forms of being in ways, which correspond to the recognised Oedipal legal subjectivity and in turn creates a particular legal and political subject-hood. Hence, only a very narrow expression of being-ness, or one form of being is recognised as a subject of law. As a consequence, all other forms remain outside the limits of law, often without rights, duties or in fact even without any acknowledgement of their existence. While these two sections dealt with the role law plays in the current Oedipal/paternal legal ordering, the following section takes a step forward and considers how such Oedipal ordering can be challenged.

#### Any explicit attempts at resistance, be it individual rebellion, acts of violence, or otherwise, maintain the legal system. The law requires criminality in order to how what it means to be “innocent”. The only way to produce change is to criticize this ideological underpinning.

Maria Aristodemou, 2014

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So as we mentioned before, while prisoners' interrogation is supposed to respect the universal prohibition of torture, the practice of torture is the system's dirty little secret which also keeps the officials bound to each other. Racism in the police, sexism in companies, paedophilia in the Catholic church are all examples of such an obscene underside to the official rhetoric, an institutional dirty secret running underneath the official line of the rule of law, equality between the sexes and protection of children in one's care. Sexual abuses of detained immigrants is a recent addition to the list; even with few such cases being, brought to the media, let alone the courts, it is not hard to imagine that guards engaging in such abuse protect themselves. and each other, by keeping this shared 'secret'.('-7 Like the abuses at Abu Ghraib, far from being isolated 'bad apples' in an otherwise functioning system, they are part and parcel of the machinery of prohibition; take the obscene supplement away and the structures that sustain the prohibition will also disappear. Zizek goes further to suggest that one only becomes a 'full' member of a community not when she identifies with that community’s explicit rules, but when she participates in its hidden rules. So it is not only the abuses themselves that we can imagine the perpetrators 'enjoying' but the fact that they are sharing an illicit secret. This is the case not just in communities sharing a common guilt, but for the constitution of a legal community and of the legal system as such. The **founding gesture of' any system, including the legal system, is a crime so radical it redefines the existing standards of legality and illegality**. The subjects' shared guilt for this illegality and collective disavowal of this guilt is responsible for creating and maintaining a community of legal subjects. This is why **the chief distinction when addressing legality and illegality is not that between law and individual acts of disobedience to law, but the distinction between particular transgressions and the absolute transgression at the origin of the legal system itself.** Like Brecht's, 'what is the robbery of a bank compared to the founding of a new bank' the founding of a new legal system was preceded by a crime so great it overthrew the existing system and set up a new one. As Zizek puts it: 'The antagonism between law and crime is internal to law itself." **Once the crime is universalized it no longer appears as a crime but it turns from transgression into a new order." The rationale for contemporary calls to pay restitution to the descendants of victims of past injustices, from slavery, to colonialism, and apartheid, is the acknowledgement of the original crime that set up the system and a false hope that somehow the system can 'cleanse' and purify itself of the crime that installed it in power in the first place.** This is the type of arch-crime and arch-disobedience that Chesterton's police in The Man Who Was Thursday are in search of: they know the real criminals are not those who disobey the law but the men who 'believe that all the evil results of human crime are the evil results of the system that has called it crime'. "" Chesterton confirms the identity between crime and law at the end of The Man who Was Thursday: Sunday, the President of the anarchist Council is the same person as the Chief who hired them all to the elite Scotland Yard force to fight the anarchists. So the man who reminded us that 'civilization itself" is the most sensational departure and the most romantic of rebellions' and that 'morality is the darkest and most daring ofconspiracies"'3' concludes that Law is the arch-crime and the original act of transgression. As we see soon, if there is an anarchist among the crew in The Man Who Was Thursday it is God himself. Since the law is supported not only by the visible symbolic structures but their obscene underside, for a subject to defy the system, their disobedience must go beyond critique and disobedience of particular laws. As Chesterton shows and as Zizek insists, the chief distinction is not that between law and individual transgressions of the law, but between transgressions and the absolute transgression that appears as universal law. The genius of the arch-crime is that it dissolves its own criminality by negating and overcoming the existing definitions of what is legal and what is criminal: 'it turns its own transgression into a new order. '7' So law, although a crime at its inception, becomes universalized crime'."" Compared to the transgression that is Law itself, ordinary criminals appear as petty bourgeois adventurers. HBO’s The Wire implies the same dynamic between the arch-transgression that is the law and individual criminal transgressions: as Wendell Pierce, the actor playing policeman Bunk Moreland, spells it out: 'Hopefully people can see how they benefit from having an underclass, which is the real criminal element of the show'. As we have seen, the drug trade is not the crime, indeed Stringer Bell and the other drug dealers are more tied to the law and the symbolic order than the detectives and police Commissioners who are convinced of the futility of the prohibitions. Further up the chain of command, however, the notion of having no crime, no criminals and thus no criminal underclass, is the real danger; for without the criminal underclass maintained by the drug war, where would the corrupt activities of the institutions themselves be? The drug, dealers' defense lawyer Levy accuses Omar Little who makes it his business to rob drug dealers, of being a parasite: 'You're feeding off the violence and despair of the drug trade', he tells him. To which Omar responds, 'Just like you man. I got the shotgun. You got the briefcase. It's all in the game'. Jesse in Breaking Bad recommends Saul Goodman to Walt White for the same reason 'when the going gets tough', he says, 'you don't want a criminal lawyer. You want a criminal lawyer'. In this respect the legal system relies on and breeds on illegality. The last thing it wants is the disappearance of illegal activity. Since the system relies on illegality, it takes more than mere disobedience to change let alone transform the system. Instead, individual transgressions only succeed in feeding and maintaining the system.

#### We advocate psychoanalytical jurisprudence as a methodology to limit qualified immunity for police officers.

#### Qualified immunity is not only a legal doctrine – it is also a signifier that upholds the judicial system’s inability to be questioned. Psychoanalysis is a critical analysis of our unconscious assumptions. It disrupts modern systems of law by adding subjectivity which is otherwise foreclosed. Through this, we can understand the legal order as contingent rather than innate – a process which reproduces particular subjects. This enables a change within the affectivity, power, and textual codes that make up what we call the “law”.

Peter Goodrich, 1997

Goodrich is a Professor of Law and Director of Law and Humanities at the Benjamin N. Cardozo School of Law at Yeshiva University, he was the founding dean of the department of law at Birkbeck College, University of London, he is managing editor of Law and Literature and was the founding editor of Law and Critique. “‘THE UNCONSCIOUS IS A JURIST’: PSYCHOANALYSIS AND LAW IN THE WORK OF PIERE LEGENDRE” *Legal Studies Forum*, Vol. 20, pg 199-202

First, and most strikingly, psychoanalysis has long been perceived as too threatening or too personal a form of knowledge to be addressed directly in the study of law. Study of the unconscious, or acknowledgment of the emotions, of the body and of its repressions or hidden domains of desire have not figured greatly in the modern theories of positive law. For the discipline of law, psychoanalysis has remained a dark continent or 'China within. It threatens to disrupt the complacent truths of modernist jurisprudence and so also to question the rationality of legal practice by finally addressing the unconscious of institutions, and correlatively the repetitions and repressions, the drives and desires both of the authors and interpreters of law as well as of its subjects. It is thus perhaps unsurprising that although law is primarily concerned to judge the discourses and the actions of natural and corporate subjects it has studiously avoided the most radical of contemporary theories of the subject. In the first instance, the work of a psychoanalytic jurisprudence is thus to introduce the question of emotion and the domain of subjectivity into the analysis of the institution and specifically of its law. The introduction of a psychoanalytic perspective into the analysis of law and of what Legendre terms its "capture of the subject" involves the elaboration of a critical methodology for reading law. In Freudian terms **it involves** a 'double reading,' **an acknowledgment of a relation between conscious and unconscious dimensions of the human subject and so also of the texts of law**. At the level of jurisprudence or the theoretical analysis of law, this means a reading of the institution of law 'as if' it were a subject and so driven to reproduce itself. Thus at the level of method, Legendre has consistently used psychoanalysis to develop a radical theory of law as a social subject ceaselessly labouring to create subjects. In these terms psychoanalytical jurisprudence is in the first instance a theory of law which seeks to understand the legal order as the structural mechanism or social form of reproduction of subjects. Law, for Legendre, is intrinsic to the formation of the individual subject, **and law is both historically and theoretically at the centre of the symbolic order in relation to which individual identity is formed.** Where Lacan referred to the unconscious as being structured like a language, Legendre adds that the unconscious acts like a jurist. The second theme, which Legendre reiterates in varying contexts, concerns the specific familial form of subjectivity, whether the subject is an institution acting 'as if it were a natural subject or an individual. If the unconscious, for Legendre, is a jurist then its legalism should be understood in a dual sense. First, **law determines the space of intimacy or of subjectivity, it dictates in advance the familial places, the roles and relationships, the 'familial fates' into which the subject is born. I**n a second and more theoretical guise, **Law in the sense of the foundational social principle of authority is intrinsic to the symbolic dimension of social relations, and forms the context or 'mirror' within which identity is constructed in the institution.** What is most striking about Legendre's project of re-thinking law from a psychoanalytic perspective is thus much less a question of the utility of psychoanalysis in explaining features of the subjectivity of law than it is an instance of reinscribing law in our understanding of the subject. In this sense the case of Lortie is far more than an instance of the utility of psychoanalysis in the explanation of the unconscious causes of a subject's actions. The case of Lortie is rather a vivid and, precisely because it is perverse, exemplary site for playing out or, more simply, understanding the legal categories which constitute the subject. To borrow a Roman law maxim, of which Legendre is fond, law's function is "to institute life" [vitam instituere] 9 and in so doing its domain of application is co-extensive with the substantive domain addressed by psychoanalysis. **What psychoanalysis provides is a method of listening to and interpreting, both individual biography and institutional history. It allows us access** to what Legendre, mimicking Freud, **terms the "other dimension of law,"** namely its other scene or unconscious. 10 In practical terms, **psychoanalysis thus allows us to address the most complex and critical of institutional questions, those which relate to the subjectivity of legal practice and to what has recently been termed the affectivity of law."** A psychoanalytic jurisprudence could be said to address the subjective enigma-the delirium-of institutions, and **to ask the most simple and unanswerable of questions.** What is it that leads a subject to love the social representation, the living image, or emblem of law? Equally, what causes a subject to submit to the institution and to follow the law? Why is it Lortie that is mad and not the government of Quebec? 2 The answer to such questions can only be equivocal or contingent. The institution which acts 'as if it were a person is not necessarily free of those delirious, violent or poetic states which we term passion, madness or love. What is principally at issue is the ability of the subject to recognise its identity or place, its role within the familial order of institutions or of household government. Whether institutional or individual, madness is most immediately manifest in a failure to recognise where, when and to whom a subject is entitled to speak. **The law in this context is simply the manifestation of power as a structure, and madness is the failure to observe the space and the images or faces of that manifest structure**. Returning to the case of Corporal Lortie and his psychotic endeavour to erase the social fantasm of paternity, a government with the face of his father, the legal categories that institute subjectivity, the function, and here the failure, of law are peculiarly clear. Lortie's transgression emerged initially out of a desire to destroy an evil father, the social image or fantasm of paternity, the President of Quebec. This desire was expressed initially in terms of a drive to prevent the destruction of the national language. While this allusion to language might seem incidental, it can also be taken as the most fundamental of references to structure and to law. The third theme to be addressed relates to the particular form in which the institution not only acts 'as if it were a subject but also acts as if it had a body and so also, in Freudian terms, an unconscious. Since Lacan, **psychoanalysis has constantly emphasised the importance of the fact that we are inhabitants of language. To the observation that language is the inescapable symbolic structure into which each subject is born**, Legendre adds that **in the west we are the inhabitants of a very specific material form or body of language, the text or written reason of law. The reference to language, and so indirectly to texts and to their Western manifestation as written law, thus refers us to the foundational structure, the symbolic form and scriptural identity of Western institutions**. The question of law is a question of structure, and for Legendre this means that it is a question of a Text-a Book or books-which set out the specific social places of legitimate authority**. It is the text that establishes our social identity and institutional place, it is the text which provides us with our jurisdiction or right of speech, it is the text in which** we are born and in which we die, or in classical legal terms, Rome-a Text, a system of law-is our common homeland (Roma communis nostra patria est). 13

#### The role of the ballot is to vote for the best methodology to analyze the unconscious.

#### Our societies are ordered according to social norms which we internalize as true – known as the superego. These can both maintain and deconstruct the law which upholds particular ways of living. Institutions are structured according to these social norms, which gives them their authority in rules and obligations. Change is therefore constructed on a symbolic level – between social subjects – enabling change within political, normative, and legal influence.

Andreja Zevnik, 2016

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The psychoanalytic engagement with law explores these three aspects; and in particular the mythical foundations of law and law’s relation to the body. There are at least **two ways** in which legal myth institutionalises the life of individuals (by limiting and determining forms of existence). First, a particular idea of law relates to a particular notion of ‘life’ (or form of existence e.g. the subject), which is instituted in a legal system as a result of a particular idea of law. However, the characteristics of a system that derives from this particular interpretation of life and law are not set in stone. Any change in the understanding of life, or in psychoanalytical terms, in the subject’s unconscious and its relation to the self, the other and the authority (or the law) is transformed at the level of the symbolic order which consequently influences the political, the social, the content and the logic of the law. In other words, forms of existence (or life) and social and political structures are inherently linked. The collapse of this bond disintegrates a (paternal) social bond, which could lead into a collapse of the symbolic order, and from that, 24 Law and life to the collapse of the normative, political and legal order we know today. Legendre conducted a study of legal texts by Glossators from the medieval times onwards to trace the origins of the modern paternal structure of law and the limitations and prohibitions it imposes on forms of existence that eventually become fully recognised by law. In his work, he explicitly writes that‘**the principle of paternity is essential to the symbolic survival of Western culture’**. 9 For psychoanalysis then, one can speculate that the character of modern western culture is a product of paternal/Oedipal logic. **Second, ‘psychoanalytic law’ is most importantly the law of a superego**. 10 As such, psychoanalytic law rather than constituting or directly influencing the substance of positive law represents the basis, or the underlying logic of law. In other words, superego gives positive law–a system and an institution of rules and obligations according to which societies live–its legitimacy, it sets its framework and enables both the compliance and the transgression of law. Thus, the superego has a double role: it provides unconscious orientation for the law, or the spirit of the logic in which laws should be made; and acts as its reverse–the other –side, for which law cannot account, and which is outside the principles of positive law. Thus, the superego embodies the source of authority that the subject internalises once it becomes part of a society. In Legendre’s thought, that source of authority is associated with the figure of the ‘imaginary father’ (origins of the idea of the Name-of-the-Father) that entered the discursive and legal practice of the western juridical order through medieval legal writings and the official institution of legal interpretations or a legal interpreter –a judge or a sovereign. On a psychoanalytical level, in contrast, ‘the father’ became part of the subject’s unconscious in the moment of child’s separation from the‘mother’; in the moment when the prohibition of incest –and from that the Oedipus complex–intervenes as one of primordial social prohibition. I return to how Oedipal law functions as an ordering logic of law and legal subjectivity later on. From the above discussion two most important aspects are the relationship between law and form of existence (the body), and the paternal or Oedipal idea of law in the context of authority and the institution

# Frontlines

## 1AR

### [Advocacy] Ext --- Goodrich [15s]

#### [Omitted]

### Ext --- Milovanovic [15s]

#### [Omitted]

### Ext --- Zevnik [25s]

#### [Omitted]

### Ext --- Aristodemou [15s]

#### [Omitted]

### Ext --- Role of the Ballot [15s]

#### [Omitted]

## Contraditions Bad

#### [Omitted]

## Dougherty Valley Psychoanalysis

### General

#### [Omitted]

## Psychoanalysis Bad

### A2 – It’s Nonsense/Fake

#### [Omitted]

### Empirics Prove

#### Neuroscience and anatomy prove psychoanalytical theories

Mark Pizzato, 2010

Pizzato researches Affective Neuroscience and Lacanian psychoanalysis as a professor at University of North Carolina-Charlette. “Inner Theatres of Good and Evil: The Mind’s Staging of Gods, Angels and Devils”

I argue that these three Lacanian orders relate to the basic areas of neural anatomy: the left and right neocortex, plus the subcortical areas (from limbic system to brainstem).21 Humans share with all pre-existing animals, at least as far back as reptiles, a core brainstem that regulates internal functions and processes instinctual responses to outside stimuli, such as the body's instant, unconscious reaction to danger. We share with mammals a limbic system (including the temporal lobes at the sides of the head) that evolved around the brainstem to process more complex emotions and learned behaviors.22 Like other primates, we also have an expanded neocortex as the outermost layer of our brain (with occipital lobes in the back of the head, parietal lobes at the top rear, and frontal lobes).23 However, humans evolved distinct functional areas on each side of the neocortex. The left neocortex has audioverbal, linear, causal, executive, prosocial, routine functions, in contrast to the right hemisphere's visuospatial, holistic, intuitive, devil's advocate, anxiety- biased, novelty-detecting processes.25 Distinctive language systems (syntax and semantics) are in the left hemisphere, in Broca's and Wernicke's areas,2' in nearly all right-handed people and most left-handed.2. The right brain has further ties to the emotional limbic system and instinctual brainstem, but the left tends to operate separately (especially in men28), expressing or inhibiting limbic emotions and right-cortical intuitions, through its rational language and executive controls. Specifically regarding theatrical mimesis, the left inferior parietal lobe (IPL) is used for recognizing "pantomimes executed by others" because it stores the "complex digrams" or schemas used in the "higher level intentional planning" of actions, while the right IPL is used for interpreting spatial orientation (Jacob and Jeannerod 253). Thus, certain left-cortical functions correlate with Lacan's Symbolic order of language, rules, and social codes, the right with the Imaginary, and the limbic system and brain- stem areas with the Real. Yet these three orders arc "inmixed" dimensions (Ragland-Sullivan 190), as are the corresponding areas of our brains. The Symbolic order resides primarily, but not solely within and between left brains, like the Imaginary in and between right hemispheres, and the Real in limbic systems and brainstems.2- I say "primarily" because there are also aspects of Symbolic language, involving imagery and emotions, in certain right-brain functions: making and interpreting metaphors, contextual meanings, puns, prosody, and non- verbal gestures (Ornstcin 103-08; Cozolino, Neuroscience of Psychotherapy 109). Thus, the right brain is used more for language, along with the left, by "expert" readers (Wolf 162). While the right brains Imaginary order is crucial for "sell-image" (Ornstein 132, 175-76), the spatial sense of ego also depends upon the left brain's "orientation area," as I will consider in the first chapter The general correspondence of Real, Imaginary, and Symbolic orders to the brainstem/limbic system, right hemisphere, and left hemisphere is confirmed by research on developmental growth spurts in the neocortex during childhood. As in Lacan's theory of the mirror stage, with the infant's Imaginary ego initially developing through preverbal communication with the (m)Other, neuroscience shows that right-brain to right-brain "attunement" between the mother and child, during its first two years of life, profoundly shapes its emotional and perceptual pathways, especially its sense of self in relation to others (Cozolino, Neuroscience of Human 38, 66-75, 84-85; Neuroscience of Psychotherapy 191-92). The "prosocial self then shifts, through language development, into the left brain, with its growth in subsequent years (118; Wolf 185-88). This relates to the Lacanian Symbolic order of words and laws shaping the child more directly after the initial mirror stage, at 6-18 months. According to neuroscience, the self as a "distributed neural network that encompasses shared self-other representations" continues to be "right- hemisphere based" (Deccty and Sommerville 527). Recognition of one's own face can be lost when the right hemisphere is anesthetized (529)—demon- strating that the Imaginary perception of ego (or the Freudian "imago"), and its possible fading or Lacanian "aphanisis," is based in the right cortex.31 Regarding our potential for therapeutic and theatrical catharsis, there appears to be a crucial filter between Symbolic/Imaginary and Real orders (or superego /ego and id) in the prefrontal area of the neocortex, at the edge of the limbic system.3 Neurologists locate a "stimulus barrier" between the Freudian superego and id in the "ventromesial or ventromedial regions of the prefrontal lobe [where it] merges into the limbic system" and protects the ego "from the incessant demands of instinctual life" (Kaplan-Solms and Solms 275-76).34 Here, cathartic changes may occur in how remnant natural instincts are expressed (or transformed through greater awareness), from mostly unconscious, limbic, Real emotions, through right-brain, Imaginary perceptions and fundamental fantasies, to the Symbolic order of language, rules, and self identity in relation to the social Other. Neurologists have also found four layers of the prefrontal cortex (PFC) with distinctive, nested, hierarchical functions (Koechlin et al.; Murphy and Brown 133-35). The premotor cortex, at the rear of the PFC, exerts sensory control, selecting specific motor (bodily action) responses to stimuli. The caudal lateral PFC, the next layer moving forward, adds contextual control regarding the current situation when stimuli are received. The rostral lateral PFC, a further anterior layer, then exerts episodic control over the other two, by tracking present and past information regarding general behavior, thus allowing for changing contingencies. (Murphy and Brown give the examples of answering the phone when it rings, not answering it at a friend s house, or answering it there because the friend IS in the shower and asks you to, as illustrating these three levels of stimulus response.) A fourth area is posited in the frontopolar cortex, used for cognitive branching and controlling the shifts between different episodes of behavior, while exerting control over the other three layers. Likewise, the orbitofrontal cortex (OFC) determines "reward value" choices, including the selection of "stimuli on the basis of familiarity and [selection of] responses on the basis of a feeling of Vightness" (Elliott et al. 308). The lateral regions of the OFC arc involved with "the suppression of previously rewarded responses." Brain imaging studies find that these areas are "fundamental" in behavioral choices, especially in "unpredictable situations." One might argue that the Lacanian Symbolic and Imaginary orders of cultural rules and personal perceptions connect with the Real of stimuli and actions through these areas of the PFC (just behind and above the ventrome- dial). The brain responds to familiar or unpredictable stimuli with inner theatrical representations and outer performances, through shifting, time-bound, contextual, sensory controls. Such controls are shaped in each human brain through learned cultural experiences of the social Other, which create further top-down constraints utilized by the PFC's layered functions, in relation to bottom-up stimuli. And yet, theatrical performances are ways that the Other, as well as the individual, may change. A culture can explore extended possibilities of Symbolic and Imaginary shifts in situation, context, and sensation, using a collective dreamlike space. This may also involve divine and demonic characterizations of top-down or bottom-up forces, experienced in nature, in the body and brain, or in social networks. Lacan's three orders relate not only to the brain's anatomy, but also to cognitive psychologist Merlin Donald's theory about the evolutionary stages of cultural development in our hominid ancestors. About two million years ago, early hominids evolved beyond the "episodic" experience of other animals (and prior australopithecines)— with the "mimetic" stage of human evolution.3 Donald cites the evidence of increasing brain size in our hominid ancestors,-' the first stone tools, big game hunting, a more group-oriented way of life, and thus "a cultural strategy for remembering and problem solving" (Mind 261).' Instead of being "immersed in a stream of raw episodic experience, from which they ... [could not] gain any distance," early hominids developed a new cognitive capacity, "mimetic skill, which was an extension of conscious control into the domain of action. It enabled playacting, body language, precise imitation, and gesture" (120, 261). This also included prosody, which is processed today in the brain's right hemisphere: "deliberately raising and lowering the voice, and producing imitations of emotional sounds. About a half million years ago, archaic Homo sapiens gradually evolved a "mythic" stage of culture and brain development, culminating with the emergence of our own subspecies, Homo sapiens sapiens, about 125,000 years ago (Donald, Mind 261). The mythic stage is evidenced by a much higher rate of innovation than in prior hominids: sophisticated tools, "beautifully crafted objects, improved shelters and hearths, and elaborate graves" (261-62). This stage included oral traditions of language and narrative thought — beyond the gesture, mime, and imitation of prior mimetic hominids, or the basic awareness and event sensitivity of episodic primates (260)." It thus involved a fundamental change in the human brain (and vocal tract): an "invasion" of the left parietal lobe by language, replacing spatial perception and movement, which then became a more distinctive function of the right parietal lobe (LcDoux, Synaptic 303, 318).40 Donald's mythic stage shows the evolution of the Symbolic order of mind and society, as well as our current left hemisphere functions. The mimetic stage correlates to right brain processing and the Lacanian Imaginary. Today's human brains also bear the remnant animal emotions and drives of primal episodic awareness in the limbic system and brainstem, as a lost yet disruptive Real or chora\*1 Indeed, each child moves through similar developmental stages, recapitulating hominid phylogeny: from primal episodic awareness to the mimetic "interlinking of the infant's attentional system with those of other people" and then to narrative speech (Donald, Mind 255). Or, in Lacanian terms, a child moves from the Real of natural being to the Imaginary order of mirrored illusions of ego in the (m)Others desires and then, through verbal language, to the Symbolic order of superego incorporation, with the Others discourse and social rules, via the Name and No of the Father. This basic outline of Lacanian orders, brain anatomy, and hominid evolution shows that "theatre" (and dance) in the most primal sense — as Imaginary, mimetic performance —began about two million years ago. At that time, our ancestors developed a new skill that eventually became specialized in the visuospatial, prosodic, Imaginary functions of the right hemisphere, with ties to the emotional/instinctual Real of the limbic system and brain- stem. Later hominids developed oral language and myth-making, as further Symbolic orders, through distinct areas of the left brain about a half million years ago. As with the modern child's development from primary to higher- order consciousness, through the Real and Imaginary dimensions of the mirror stage and the later Symbolic acquisition of language and rules, these layers of the brain and of hominid culture continue to interact today — with each human being transformed by a particular family and society. As Donald points out, primal mimesis in early hominids relates not only to the current playacting of children (Mind 266), but also to the "many institutionalized versions of pretend play in theater and him, and [to the] imaginative role playing [that] is integral to adult social life" (263). A crucial aspect of this evolutionary skill is emotional regulation, which involves the germ of self-consciousness, through a "mimetic controller" in the brain, "a whole-body mapping capacity ... under unified command" (269). Thus, early hominids developed larger frontal lobes, setting the stage for the later evolution of a distinctive left hemisphere (271).'15 Like children today (starting with the Imaginary dimension of the Lacanian mirror stage), our hominid ancestors developed a "kinematic imagination" with the physical "image of self" becoming an anchor to experience and awareness (273). This involved rhythmic body movements, expressing temporal relations, through the intersubjective medium of performance, as a "public theatre of convention" (272-74). However, the full emergence of theatre as narrative performance began with oral storytelling during the hominid "mythic" stage, starting about a half million years ago. Then, about forty thousand years ago, humans evolved a further, "theoretic" stage, through the "externalization of memory ... [using] symbolic devices to store and retrieve cultural knowledge" (Donald, Mind2G2). During this current stage of hominid evolution, the tradition of recorded theatre and drama developed, along with other artistic technologies,44 a "Symptom" of being human that has vastly expanded in recent centuries.45 Thus, theatre in the theoretic sense may have started with Paleolithic cave art (as considered in the first chapter). Eventually, the theoretic technologies of theatre, externalizing and interconnecting the performance elements of the human brain, developed in various ways through different cultures — culminating in the current globalism 01 virtual media screens, often dominated by Western paradigms. Our theoretic stage with its evolving technologies continues to reshape the skills of prior stages and "liberate consciousness from the limitations of the brains biological memory systems" (305). However, such an external memory field can also be a "Trojan Horse," Donald warns, "a device that invades the innermost personal spaces of the mind. It can play our cognitive instrument, directing our minds toward predetermined end states along a set course" (316). Such a Trojan Horse potential, with good and evil effects, becomes even more significant through divine characters and godlike ideals, at various points in Western history, from stage to screen performances, as explored throughout this book. Donald's stages of cognitive psychology match with Stephen Mithens archeological theories and research.4fl According to Mithen, the early hominid social intelligence of Homo erectus> 1.6 million years ago, involved the communication of "contentment, anger or desire" through a "wide range of sounds (Prehistory 144) —as with the mimetic prosody theorized by Donald. Human verbal language with "a vast lexicon and a set of grammatical rules" began 500,000 to 200,000 years ago, with Neanderthals and archaic Homo sapiens, as evidenced by brain and throat structure, indicated in fossils of their bones (140-42, 208). This corresponds to Donald's mythic stage of hominid evolution. Mithen also cites archeological evidence that a dramatic shift occurred 40,000 years ago. Early humans in the Upper Paleolithic period changed from having separate types of intelligence—natural history intelligence (such as interpreting animal hoofprints), social intelligence (with intentional communication), and technical intelligence (producing artifacts from mental templates) — to a new cognitive fluidity between them, creating artifacts with "symbolic meanings ... i.e. art" (163-65).47 This shows the begin- ning of Donald's theoretic stage and relates to the possible shamanic visions and performances evidenced by Paleolithic cave art.48 The evolutionary stages, neurological layers, and psychoanalytic orders of self and Other awareness, developing through shared cultural performances, reflect what might be called an "inner theatre" of the brain.49 By this, I do not mean a "Cartesian theatre" with the mind inside the brain as a single ghostly spectator watching the machinery of inner scenes, or as a play-wright-homunculus inhabiting a central control area (the pineal gland, according to Descartes. 400 years ago). This theory has been fully critiqued by cognitive philosophers, from Gilbert Rylc to Daniel Dennett, as well as by current neurological evidence. However, cognitive scientist Bernard Baars uses theatrical terms in other ways to explain the global workspace of human consciousness. Less than 10 percent of brain activity is conscious, like a "spot- light" on the visible actors and scenery (Theater 46-47).5 The rest involves unconscious agents, like a legislative "audience," competing and collaborating to focus attention on particular perceptions and ideas onstage. There are Deep Goal and Conceptual Contexts, like "backstage" workers, as well as immediate expectations and intentions, forming an unconscious sense of self as "director" of the brains inner theatre (144-45).52

## Topicality

### Trump DA

#### [Omitted]

### We Meet/Linguistics [25s]

#### [Omitted]

### Paternalism DA [10s]

#### [Omitted]

### Judicialism DA [15s]

#### [Omitted]

### CI [30s]

#### CI: Debaters may defend a limiting of qualified immunity through a method of psychoanalytical jurisprudence – so long as they defend that qualified immunity will decrease and is bad.

#### [Omitted]

### Policy-making

#### [Omitted]

### Fairness

#### [Omitted]

### SSD [10s]

#### [Omitted]

### TVA [25s]

#### [Omitted]

### Weigh Case

#### [Omitted]

## Extra-Topicality

### General

#### [Omitted]

### CI

#### [Omitted]

## Kritiks

### General

#### [Omitted]

### Perm – Do Both

#### [Omitted]

### Perm – Sequencing

#### [Omitted]

## Root Cause Bad

### Theoretical Modeling Good

#### [Omitted]

## Pessimism

### Metaphysical

#### [Omitted]

## Colonialism

### Institution Key

#### Indigenous groups engage legal structures to tune institutions for their own goals and ideologies and hold people accountable – that’s the thesis of the affirmative.

Kyle Powys Whyte, 2016

Whyte is an Associate Professor of Philosophy and Timinick Chair in the Humanities at Michigan State University. "Indigenous Peoples, Climate Change Loss and Damage, and the Responsibility of Settler States", "Indigenous Environmental Movements and the Function of Governance Institutions." (2016): 563-580

I understand indigenous peoples to encompass the roughly 370 million persons whose communities governed themselves before a period of invasion, colonization or settlement and who live within territories where nations, such as New Zealand or Canada, are more widely recognized internationally as sovereigns. Groups identifying as indigenous typically exercise political and cultural self-determination through their own laws, rights, and governing capacities—often having to navigate ongoing forms of colonialism, such as settler colonialism, colonial legacies, and numerous legal, political, bureaucratic, and social barriers imposed by nations, international organizations, subnational and municipal governments, corporations, and groups of private citizens (Anaya 2004; Cadena and Starn 2007; Larson et al. 2008; Niezen 2003; Sanders 1977). The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) articulates political and cultural self-determination as indigenous peoples’ being able to “freely determine their political status . . . and economic, social and cultural development” (article 3), exercise “autonomy or self-government” (article 4), and “strengthen their distinct political, legal, economic, social and cultural institutions . . .” (article 5) (United Nations General Assembly 2007). These articles express indigenous renditions of self-determination and cultural integrity in international human rights law. A significant part of indigenous political and cultural self-determination involves the operation of indigenous environmental governance institutions, which refer to systems ranging from customs to social orderings to decision-making processes that coordinate the achievement of environmental outcomes such as clean air and water, sustainable crop yields, and upkeep of culturally meaningful places. UNDRIP also enshrines such institutions by protecting “traditional subsistence economies” (article 20), “traditional plants, animals and minerals” (article 24), and “spiritual relationships with . . . traditionally owned or otherwise occupied and used lands, territories, waters, and coastal seas and other resources” (article 25) (United Nations General Assembly 2007). These institutions are often seen as the practical embodiments of indigenous cosmologies expressing webs of mutual responsibilities shared across human and non-human beings, entities, and collectives. As major architects of environmental movements, indigenous environmentalists advance important arguments about what the function, or purpose, of environmental governance institutions should be. Different from functions discussed by people of other nations and heritages—like creating trading markets that incentivize pollution abatement or synthesizing diverse scientific sources for climate change planning—many indigenous environmentalists argue that institutions should be structured to function as conveners, or orchestrators, of relationships that connect diverse parties (from humans to forests) as relatives with reciprocal responsibilities to one another. To make this case, I will provide an overview in the following section of indigenous environmentalism and the theory of institutions. Then, in the third section, I will identify a set of themes about the function of institutions in the communications of indigenous environmentalists. In the fourth section, I will analyze these themes as a framework of indigenous conceptions of the function of institutions. In the fifth section, I will describe in more detail two cases of how indigenous environmentalists have structured institutions that function in this way. I will conclude with some remarks on why indigenous institutional frameworks are important dimensions of political and cultural self-determination and should be at the table in academic and policy spheres. Indigenous Environmentalists and Institutions As a citizen of an indigenous nation, activist, and scholar, I have participated in and am aware of diverse indigenous environmental movements. The collective actions of these movements include declarations, public performances, direct actions, reformation of law and policy, court victories, and grassroots institution building.

## Ideal Theory

### General

#### [Omitted]

## Truth Testing

### General

#### [Omitted]

## Deleuze + Guattari

### Perm – Methodological Synthesis

#### Permutation: Do the affirmative and all non-competitive parts of the alternative.

#### DnG and Lacan are theoretically entwined and are extensions of the same core theories based around desire – ignoring that stifles complexity and ensures bad theorizing that races to the margin. Synthesis of methodologies is the most comprehensive and solves the offense.

Luke Caldwell, 2009

“Schizophrenizing Lacan: Deleuze, [Guattari], and *Anti-Oedipus*,” *intersections* 10, no. 3 (2009): 18-27. [brackets in original]

In 1972, Gilles Deleuze and Felix Guattari's Anti-Oedipus' exploded like a bombshell on the French intellectual scene. Unleashing an extended polemical attack upon the foundational elements of orthodox psychoanalysis and Marxism, it quickly became a bestseller. While the primary target of the book was Freud, the innovative theories of Jacques Lacan did not emerge unscathed. Because of the brevity of their critique, many have interpreted Deleuze and Guattari's relationship to Lacan as one of antagonism and rejection**.** This, however, obscures many important connections that they maintained with Lacan and their insistence that they were actually extending Lacan's theories to their necessary conclusions. Through an analysis of Anti-0edipus in relation to core Lacanian theories, this paper will investigate how Deleuze and Guattari transform Lacan, both faithfully and unfaithfully, to give support to their utopian project. In a style that Deleuze and Guattari would affirm, we will not start in the 70's- in history-but rather with more contemporary events to elucidate the stakes motivating this inquiry. In the Fall 2004 edition of the journal Criticism, a debate unfolded about the relationship between Deleuze and Lacan. 2 Centering around two reviews of neoLacanian Slavoj Ziiek's subversive study of Deleuze, Organs without bodies, 3 and a response by the author, the short debate ironically revolved around a largely absent signifier-one might even say a phallus-like "organ without a body"-that established or dissolved the comedians between the Deleuzian and Lacanian projects. That bracketed term was [Guattari], the man who tore Deleuze from a "good" Lacanian trajectory, or the man who helped him realize it. In Organs without bodies, Ziiek polemically took up the former position, saying that Deleuze was infected by his collaborations with Guattari- "guattarized" in Ziiek's terms-and that Deleuze only turned to him for help because he had reached a philosophical impasse and was looking for an "easy escape”. 4 Žižek reads in Deleuze’s corpus two different ontologies, one engaged with in his solo work and the other in his collaborations with Guattari. The first—the proper Lacanian position—presents the event as an effect of primordial causes, or rather, as the “irruption of the [Lacanian] Real within the domain of causality”. 5 The second—the philosophically contaminated position—affirms the event as a continuous, virtual process of production that creates the discontinuous structures of the actual. 6 Žižek sees Deleuze struggling between these two positions in his last book prior to meeting Guattari, The logic of sense, 7 but the publication of Anti-Oedipus marks a decisive turn away from the former position in favor of the latter—a turn that Žižek sees as largely precipitated by Guattari’s radical politics. Anti-Oedipus, in Žižek’s eyes, therefore marks a critical turn away from Lacan and is worthy of being dismissed as “arguably Deleuze’s worse book”. 8 Smith, in his review of Žižek, challenges this perspective, calling into question whether Deleuze’s move toward Guattari and Anti-Oedipus was really a rejection of Lacan. Citing an interview Deleuze gave shortly before his death, Smith argues that Lacan actually saw the transgressions of Anti-Oedipus as a continuation of his work. In the interview, Deleuze recounts being summoned by Lacan a few months after the publication of Anti-Oedipus. In their meeting, Lacan denounced all of his disciples (with the exception of one), calling them “all worthless” and then told Deleuze, “What I need is someone like you”. 9 Lacan biographer Elisabeth Roudinesco recounts the same story, but complexifies the issue, claiming that at the same time Lacan was praising Deleuze, he was also “grumbling about him to Maria Antonietta Macciocchi: [Lacan] was convinced Anti-Oedipus was based on his seminars, which already, according to him, contained the idea of a ‘desiring machine’”. From these stories, we can see that Lacan himself saw a clear connection between his project and that of Deleuze and Guattari.

## Baudrillard

### Perm – Theoretical Terrorism

#### Permutation: Do the affirmative and all non-completive parts of the alternative.

#### Baudrillard’s thesis is indebted to the psychoanalytical process of the imaginary – the symbolic economy is demarcated by fluid signifiers which can be changed by “thought” itself which destroy the real.

Samuel Strehle, 2014

Strehle, M.A., is a teaching assistant at the Institute of Sociology at the University of Basel, Switzerland. In 2012 he published a book on Jean Baudrillard (“Zur Aktualität von Jean Baudrillard. Einleitung in sein Werk”). Currently he is working on his doctoral dissertation on sociology of images and the social imaginary. His research interests range from general social and cultural theory, cultural anthropology, visual culture and art theory to consumer culture, Critical and French Theory and psychoanalysis. “A Poetic Anthropology of War: Jean Baudrillard and the 1991 Gulf War”, International Journal of Baudrillard Studies, Vol. 11, Number 2, ISSN: 1705-6411.

The idea of ‘theoretical terrorism’ is strongly linked to his concept of “reversibility”[13](http://www2.ubishops.ca/baudrillardstudies/vol-11_2/v11-2-strehle.html" \l "ft-endnote13) —a key term in Baudrillard’s thinking. The term may be characterized by two main aspects: At first, it refers to the reciprocity of gift exchange in which there is no closure of exchange but an endless changing and challenging of sides. In this regard, it is a name for the symbolic fluidity of power.[14](http://www2.ubishops.ca/baudrillardstudies/vol-11_2/v11-2-strehle.html" \l "ft-endnote14) At second, it refers to a principle of changing a situation by radically reversing its viewing angle—“poetic transference of the situation”, as Baudrillard calls it in Impossible Exchange (1999: 85). Being a rather “phantastic principle” (Zapf 2010: 145, my translation), the concept of reversibility is linked with the most powerful and yet most clandestine subtext in Baudrillard’s oeuvre: **’Pataphysics. The idea behind this absurd science of “imaginary solutions” is as simple as it is mysterious: It is an attempt to create a different reality through imagination.**[15](http://www2.ubishops.ca/baudrillardstudies/vol-11_2/v11-2-strehle.html" \l "ft-endnote15) Pataphysicians fight reality through the use of imaginary forces, **through creating illusion and deceit**. It is easily overlooked how central this pataphysical approach has been for Baudrillard; **even his most serious book, Symbolic Exchange and Death, is surprisingly full of pataphysical statements, especially in the dense, programmatic introductory pages: “The only strategy against the hyperrealist system is some form of pataphysics, ‘a science of imaginary solutions’; that is, a science-fiction of the system’s reversal against itself at the extreme limit of simulation, a reversible simulation in a hyperlogic of death and destruction”** (Baudrillard 1976: 4 f.). How can “science-fiction” shatter the system of reality? Baudrillard explains his strategy later in The Perfect Crime (1995), especially in the section on “Radical Thought”, and in Impossible Exchange (1999). Ideas, he claims, can create their own reality, since thinking is a performative act that builds its own ‘parallel world’: “Thought […] does not seek to penetrate some mystery of the world, nor to discover its hidden aspect—it is that hidden aspect. It does not discover that the world has a double life—it is that double life, that parallel life” (Baudrillard 1999: 149). In the performative “act of thinking” (ibid.: 115), reality is not so much depicted but challenged. The purpose of theory for Baudrillard is the exact opposite of what we normally would expect: It should not recognize and analyze reality, instead it must deny and contradict its hegemony. It has to create illusion and establish a power of seduction that makes one lose the path of reality. The “value of thought”, claims Baudrillard (1995: 94), “lies not so much in its inevitable convergences with truth as in the immeasurable divergences which separate it from truth.” Only in awareness of those abstract ’Pataphysics can we distill any sense out of some of the oddest remarks in Baudrillard’s oeuvre, for example his “delirious self-criticism” from Cool Memories where he accuses himself of “having surreptitiously mixed my phantasies in with reality” and of “having systematically opposed the most obvious and well-founded notions” (Baudrillard 1987: 38). He even complains about readers taking his theories for actual facts and reading them in a “realist version”: “Simulacra are today accepted everywhere in their realist version: simulacra exist, simulation exists. It is the intellectual and fashionable version of this vulgarization which is the worst: all is sign, signs have abolished reality, etc.” (Ibid.: 227). Instead of this “realist version”, Baudrillard suggests that even his most prominent terms can be regarded as pataphysical attempts to seduce his readers through fictitious ideas, for example when he admits to having “put forward the idea of simulacrum, without really believing in it, even hoping that the real will refute it” (Baudrillard 1995: 101). Apparently he understands his thinking to be something like a playful simulacrum itself, for also theory can precede—and thereby seduce—reality: “The theoretical ideal would be to set in place propositions in such a way that they could be disconfirmed by reality, in such a way that reality could only oppose them violently, and thereby unmask itself. For reality is an illusion, and all thought must seek first of all to unmask it. To do that, it must itself advance behind a mask and constitute itself as a decoy, without regard for its own truth. [...] Reality must be caught in the trap, we must move quicker than reality” (ibid.: 99). In this sense, Baudrillard’s writing is “theory-fiction” (Baudrillard 1991c: 202) rather than theory, as he borrows a term from Jean-François Lyotard (1979: 92 f., cp. Blask, 2002: 133). Like all ’Pataphysics, this notion of “theory-fiction” may be traced back to the surrealists and their “poetic anthropology”, as Dietmar Kamper (1981, my translation) has called it. Such an anthropology is “poetic” because it refers to the art of writing, but also because it touches the original notion of “poiesis”, meaning to create something. ‘Poetic anthropology’ does not seek to describe a reality that lies out there, instead it aims to autopoietically produce the subject it writes about through its own act of description. Theory for Baudrillard is a “paradoxical political intervention” (Zapf 2010: 241, my translation). Thinking itself has to become the ambiguous kind of “singularity” (Baudrillard 1995: 96) and “event” (ibid.: 104) that is eliminated from almost any other sphere of the system: “Cipher, do not decipher. Work over the illusion. Create illusion to create an event. Make enigmatic what is clear, render unintelligible what is only too intelligible, make the event itself unreadable. Accentuate the false transparency of the world to spread a terroristic confusion about it, or the germs or viruses of a radical illusion—in other words, a radical disillusioning of the real.” (Ibid.: 104). Maybe this is the most unique aspect of Baudrillard’s thinking altogether. He is a thinker who tries to think the world different from what it actually is. He sees himself as something like a smuggler or drug dealer, pushing forbidden items on a “black market in thought” (Baudrillard 1999: 104), promoting “a clandestine trade in ideas, of all inadmissible ideas, of unassailable ideas, as the liquor trade had to be promoted in the 1930s” (Baudrillard 1995: 104 f.).