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“THE UNCONSCIOUS IS A JURIST”: PSYCHOANALYSIS AND LAW IN THE WORK OF PIERRE LEGENDRE

PETER GOODRICH*

Prologue

On Friday the fourth of May, 1984, while watching the Prime Minister of Quebec speaking on television, a disaffected young corporal in the Canadian army formed the idea of massacring the government of Quebec. Denis Lortie subsequently described this initial impulse in terms of a desire to attack the national Assembly and eliminate the ruling *Parti québécois*, a party which had “done harm to the French language.” He would thus “destroy something which wanted to destroy the French language.” In various other formulations, Lortie expressed a wish to save the language by killing the government: “I will do some harm so as to do some good.”¹

Sometime earlier, at the end of April, Lortie had applied for leave from his base in Ottawa. Claiming that he wanted to see his wife, he had tried to negotiate a leave of three days from his immediate superior, Sergeant Chénier. His request was refused and Lortie subsequently admitted that during the course of his application being refused, something strange had happened: he had seen the face of his father standing opposite him in the guise of Sergeant Chénier.

Lortie, however, was granted one day of leave, for Monday the seventh of May. On Saturday the fifth of May he conducted an inventory of the arsenal at the base and checked out his exercise gear, including his rifle, his gas mask and a first-aid kit. On Sunday the sixth of May he drove to Quebec, checked into a motel and reconnoitered the Citadel looking for a place to kill and to be killed. On Monday the seventh he visited the national Assembly building with a tour group and then purchased a dictaphone and three cassettes. Sometime later that day, Lortie recorded three separate messages on these tapes announcing his murderous plans and his own imminent

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¹ Pierre Legendre, *LE CRIME DU CAPORAL LORTIE: TRAITÉ SUR LE PÈRE* 95 (Paris: Fayard, 1989)(hereinafter, LORTIE). For critical commentary on this work and on the case of Lortie, see Alain Pottage, *Crime and Culture: The Relevance of the Psychoanalytical*, 55 *Mod. L. Rev.* 421 (1992); Marie-Jeanne Segers, *Actualité de la pensée de Pierre Legendre*, 27 *Revue Interdisciplinaire D'études Juridiques* 99 (1991). The best introduction to Legendre's work is Anton Schütz, *Sons of Writ, Sons of Wrath: Pierre Legendre's Critique of Rational Law-Giving*, 16 *Cardozo L. Rev.* 979 (1995).

death to his wife, the military Chaplain and a radio show host, M. Arthur.

On the morning of Tuesday the eighth of May 1984, on the day which "I knew internally was my lowest point, the day of my death,"² Lortie put on his full military uniform and equipment, including his revolver and his automatic rifle. Immaculately dressed, shoes polished, uniform pressed and identity card in place he left the motel to do battle. He posted the cassette to his wife. He then drove to the radio station and delivered the tape intended for M. Arthur. He went next to the Citadel and waited in the car, listening to the radio and expecting his tape to be played. The interruption of the regular broadcast by the playing of his tape was to be the signal for his attack to begin. The tape was not played. Lortie panicked and left his car. He first fired some shots at the entrance to the Citadel and then ran towards the national Assembly building situated next to the Citadel. Lortie entered the Assembly by a side door. First, he destroyed a red emergency telephone which was used for internal security purposes, and then fired at the receptionist while shouting at her to leave. Lortie then ran down the corridors of the Assembly building firing at anyone who crossed his path. He killed three people and injured eight before arriving at the Chamber of Deputies—the Blue Room. As it happened, on the day he had chosen for his attempt to "kill the government of Quebec," the Assembly was not in session and the Chamber was empty. Lortie went and sat down in the President's chair from where he fired a volley of shots directly in front of him at a clock, and then let off some further rounds to his left and his right directed at the empty benches where the representatives would have sat.

Lortie was persuaded by a Sergeant at Arms to give up his weapons and was subsequently arrested without being killed. When asked by the Sergeant at Arms why he had acted as he had, Lortie responded "I cannot tell you. It was not my heart but my head." While waiting in the police station Lortie had another vision in which he saw the face of an old man who mysteriously managed to make him understand that he would be pardoned for all his transgressions.

Subsequently Lortie was tried, and during the course of interrogation and direct examination a variety of incidental responses throw a certain further light upon his crime. Lortie came from a family of six. His father had been alcoholic, violently abusive of his mother and of the children. The father also had an incestuous relationship with Lortie's eldest sister. He had been in prison on several occasions

² Legendre, LORTIE, at 89.

and left the family while Lortie was still quite young. At one point the children had even banded together and hidden a number of weapons in the house, vowing to kill the father the next time he became violent with them. In replying to questions as to why he had committed the crime, Lortie at one point talked of losing a battle "against an inner negativity," a battle against a terrifying fear that he would become his father. Even more remarkably, he stated sometime after being arrested that "the government of Quebec had the face of my father." Elsewhere, Lortie spoke of his crime in the following terms: "I felt capable of destroying this authority, my strength was boundless."³

A few final details need mentioning. In the tape which he sent to his wife, Lortie declared his love for her ("my heart is yours, my head is elsewhere"⁴) and announced his intention to kill and to be killed. In relation both to the murders and his own annihilation, Lortie stated that he did not know why he would carry out these acts, he simply knew that he must do them, that they were imperatives. It should be noted also that this internal imperative to immolate himself and to sacrifice others was mirrored in an external form. In addition to the tape recordings of his intentions, the bulk of the events of May the eighth were recorded on security cameras in the Assembly building and were played back to Lortie both before and during the trial. He found watching these images so terrifying and so intolerable that at one point he fled the dock in tears and hammered his head on the walls of his cell. He acknowledged at one juncture that "I had to see them. It was the decision which I had to take. I had to pass through...." At another point he responded by saying: "You know that I cannot say that it is not me. It is me."⁵ The double negative represents what, with only a minor injustice, might be termed an unconscious self-identification, the attribution of an external or corporeal cause for which the subject has yet to take responsibility.

The above sketch of corporal Lortie's crime does scant justice to the detail of the case, nor does it attempt to reconstruct the political and biographical contexts in which the events took place. The crime is treated by the French psychoanalyst and jurist Pierre Legendre as an exemplary one and becomes the focus of a study of the function or structural place of the father, and of authority or more technically 'legitimacy,' in psychoanalysis and in law. The Lortie case in this sense provides both a striking introduction to Legendre's work and an

³ Legendre, LORTIE, at 61.

⁴ Legendre, LORTIE, at 95.

⁵ Legendre, LORTIE, at 105.

avenue for the exploration of the relation of the legal construction of an institutional order to the familial constitution of the individual subject. Certainly in the case of Lortie it seems fairly clear that the boundaries between law and family, public and private, sociality and intimacy are hardly distinct. They were rather intertwined, transgressed and blurred throughout the narrative of the murder and during the course of its various reconstructions.

The extensive and expanding work of Pierre Legendre has been concerned precisely with that interrelation of the unconscious and the legal and has resolutely applied a Freudian model of analysis to the history and the theory of law. His project can be depicted most directly in legal historical terms as that of recovering a repressed poetics of law. Using a startlingly varied corpus of Latin texts, Legendre elaborates a theory of the subject's erotic attachment to power and a corresponding aesthetics of submission to law. Questions of law are always also questions of subjective attachment. They imply or address a series of institutional subjects and can never be fully accounted without attending to personal questions of motive and desire, fantasm and truth. It is this fundamentally subjective and so in some measure unconscious basis to the most objective of social practices which the case of Lortie so graphically illustrates and to which Legendre's philosophical project is so acutely attentive. The case of Lortie will therefore be used throughout the ensuing elaboration of the connections and disparities that form the shared space of the disciplines of psychoanalysis and law. At a more immediate level of persons rather than disciplines, the contribution of psychoanalysis to law can be phrased more simply as being that of the recognition of the unconscious in the practice and interpretation of law.⁶ In the hope of avoiding too didactic an account of a project which is at times delirious, at times poetic and on occasion closer to the medieval arts than to the

⁶ On recent examples of the use of psychoanalysis in Anglo-American jurisprudence, see Alain Pottage, *Recreating Difference*, 5 *Law and Critique* 131 (1994); David Caudill, *Freud and Critical Legal Studies: Contours of a Radical Socio-Legal Psychoanalysis*, 66 *Ind. L. Rev.* 651 (1991); David Caudill, *Lacan and Law: Networking with the Big Other*, 1 *Studies in Psychoanalytic Theory* 25 (1992); David Caudill, *LACAN AND THE SUBJECT OF LAW: TOWARD A PSYCHOANALYTIC CRITICAL LEGAL THEORY* (Atlantic Highlands, N.J.: Humanities Press, 1997); Drucilla Cornell, "What Takes Place in the Dark," in *TRANSFORMATIONS* (New York: Routledge, 1994).

conventions of contemporary jurisprudence,⁷ the ensuing reconstructions will be grouped around specific themes.

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.'⁸ 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

⁷ On the 'heavy semantics' and 'signifier-centered-textual strategy,' see Schütz, *Sons of Writ, Sons of Wrath*, *supra* note 1, at 990-991 (arguing that "Legendre...views what is generally called explanation as merely some kind of side-effect of a suspect, questionable, and ambiguous enterprise.... For Legendre, arguments are measured by their weight rather than by their epistemological credentials or propositional consistency.")

⁸ The expression is taken from Julia Kristeva, *IN THE BEGINNING WAS LOVE: PSYCHOANALYSIS AND FAITH* 35 (New York: Columbia University Press, 1987) ("Is psychoanalysis perhaps *also* our China within?").

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. In 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

⁹ DIGEST 1. 3. 2. The passage continues "*Lex est omnium divinarum humanarumque rerum regina*" [law is the queen of all things divine and human]. See the discussion in Legendre, *L'INESTIMABLE OBJET DE LA TRANSMISSION* 137 (Paris: Fayard, 1985).

¹⁰ See Legendre, "The Other Dimension of Law," in David Carlson and Peter Goodrich (eds.), *PSYCHOANALYSIS AND JURISPRUDENCE: ESSAYS IN LAW AND THE POSTMODERN MIND* (Ann Arbor: Michigan University Press, 1997).

recently been termed the affectivity of law.¹¹ 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?¹²

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

¹¹ Linda Mills, *On the Other Side of Silence: Affective Lawyering and Intimate Abuse*, 86 Cornell L. Rev. 814 (1996).

¹² This question is beautifully elaborated at length in Yifat Hachamovitch, "In Emulation of the Clouds: An Essay on the Obscure Object of Judgement," in Costas Douzinas, et. al. (eds.), *POLITICS, POSTMODERNITY AND CRITICAL LEGAL STUDIES* (London: Routledge, 1994).

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 structural Text, or in one etymology, the terror and the territory of the Western institution, has been that of Roman law and specifically of the *Corpus Iuris Civilis* which was received into the Western tradition in the late twelfth century. It was through the reception of this vast corpus of texts, according to Legendre and to others, that the Western institution took on the historical and essentially juristic form that we inherit to this day.¹⁴ The reception of Roman law was a complicated inheritance from the two Romes, that of the Papacy and of canon law, and that of Justinian and the transmission of a predominantly imperial law.¹⁵ The systematisation of these two textual systems through the categories of classical Roman legal science constituted what Legendre refers to as the twelfth-century interpretative revolution. The reception of Roman law provided a textual method of social organisation and of institutional action. It also set out the basic substantive categories of social

¹³ Digest 50.1.33, discussed in Legendre, *LE DÉSIR POLITIQUE DE DIEU. ÉTUDE SUR LES MONTAGES DE L'ÉTAT ET DU DROIT* 371-376 (Paris: Fayard, 1988). See also, Tim Murphy, *Memorising Politics of Ancient History*, 50 *Mod. L. Rev.* 677 (1987).

¹⁴ Legendre's views on what he terms the twelfth-century revolution of the interpreters, can be found in *LES ENFANTS DU TEXTE: ÉTUDE SUR LA FONCTION PARENTALE DES ÉTATS* (Paris: Fayard, 1992). For other attempts to address this theme, see Alan Watson, *THE CIVIL LAW TRADITION* (Cambridge: Harvard University Press, 1981); Harold Berman, *LAW AND REVOLUTION: THE FORMATION OF THE WESTERN LEGAL TRADITION* (Cambridge: Harvard University Press, 1983); Donald Kelley, *Gaius Noster: Substructures of Western Legal Thought*, 84 *Am. Hist. Rev.* 619 (1979); and more recently Donald Kelley, *THE HUMAN MEASURE: SOCIAL THOUGHT IN THE WESTERN LEGAL TRADITION* (Cambridge: Harvard University Press, 1990).

¹⁵ A maxim from Gratian transmits the essential point: *Duo sunt genera christianorum*—there are two genres of Christianity, that of the West and that of the East, that of the Papacy and canon law, and that of Justinian and Roman law. See generally Legendre, *DÉSIR POLITIQUE*, *supra* note 13, at 289-318.

structure and of subjective life. Most notable amongst these was the principle of authority that attaches to the power of the father as the author of law.

A *fourth* thematic homology between law and psychoanalysis lies precisely in the complex notion of the 'paternity of law.' Corporal Lortie's numerous references to father figures who variously command, refuse, absolve, and haunt, invokes not only a modern Freudian image of authority but also a classical legal reference. Roman law had attributed an absolute power—a power over life and death—to the head of the family, the *paterfamilias*. The private law right of the father of the household mirrored the comparable public law power of the emperor, the living voice of the law, whose very whim was legislation, and whose 'pleasure'¹⁶ had the force of law. The power of the emperor in its turn mirrored that of the divine father, of whose will the sovereign was no more than the mouthpiece or tongue. To legislate or speak the law was to take up a position in relation to a complex, textually-defined order of precedence and of the names of the law. In substantive terms, it was to find a place and role, an identity and image, within the inscribed or textual order of power. To state the law was literally to speak 'in the name of the father,' whether that father was God, the emperor, the sovereign, the People, or the head of the family. To take up the textually, and so also legally, defined position of the father is to adopt an image or role, to speak "as the law." It is this prior definition of the law of the Father, this abstract textual demarcation of the sites of legitimate social speech, that Lortie inadvertently recognised in explaining his parricidal intentions in terms of a desire (and corresponding power) to destroy "this authority," namely a place, origin or source rather than a mere person or vicarious legal office holder.

It was, in short, an image which Lortie desired to destroy, it was the fantasm of paternity that constituted his "inner negativity" and which his crime was gauged to expunge. The image has a crucial role in Legendre's theory of law as in psychoanalytic interpretation more generally. The image, or in Roman legal terms the *imago*, was the social form of representation of the principle of authority, of Father, sovereign or Law. At the level of the institution, the image of authority, the effigy of social power or representation of collective belonging is an object not only of fear but also of fascination and of love. The image presents the absolute to the subject of law and so

¹⁶ The classical maxim was *quod principi placuit legis habet potestatem* (what pleases the prince has the force of law).

constitutes law as that discourse which can interpret, which is to say mediate or speak between the divine and so unknowable space of authority and the mundane instance of secular law. The image, whether of the social father or of the familial authority, fixes the Law within the individual subject as an ideal object of veneration or of love. The image is in this sense the mechanism of subjective submission to social authority. At the level of the individual, the image also plays a crucial role in the construction of the identity of the subject as a subject of law. The image is here the means by which the subject is differentiated from itself and so acquires an identity. It is through the image, through seeing herself in the mirror, that the subject first comes to recognise a unity and separation that allows her entry into the social.¹⁷

In the case of Lortie, the image had a crucial role to play at the level both of the social and of the individual. At the level of the social, it was precisely the image or the social face of authority which Lortie attempted to erase from the text of the living. The image or face of the father appears throughout Lortie's narrative and its interpretations. More specifically, Lortie desired to take up the place of the father but misrecognised that place as being that of his own father rather than as the abstract instance of the principle of authority. Lortie desired to take on the role of the father but feared becoming his own father. In short he confused two distinct places or functions of the image. In social terms, the image represents or more technically figures the desirability of the textual order and its hierarchy of authoritative places, its authors and authorities (*auctor et auctoritas*). The image passes on the unsayable dimension of that power, and as an image it can move between realms, as also between public and private, institutionality and intimacy. It is thus not altogether surprising that when Lortie viewed his own image, his own representation and acts, on a video, he was able, at least to some degree, to identify with himself and proclaim that "I cannot say that it is not me. It is me." His virtual presence in the images relayed by the video was more real for him as a mechanism of identification than the hyperreal experience of killing that he had just undergone. In more technical terms, Lortie could no longer deny or 'split off from' the inner negativity that was for

¹⁷ This thesis is elaborated most famously in Jacques Lacan, "The Mirror Stage as Formative of the I," in *ÉCRITS: A SELECTION* (London: Tavistock, 1977). The elaboration of the mirror stage with respect to the formation of institutional identity, is discussed in Legendre, *DIEU AU MIRROIR. ÉTUDE SUR L'INSTITUTION DES IMAGES* (Paris: Fayard, 1994).

him represented by the figure of the bad father whom he did not wish to become.

A *fifth* and final observation can again return us to the case of Lortie and its peculiarly exemplary place in Legendre's account of the relationship of psychoanalysis to law. Whatever the structural relation or homology between psychoanalysis and law, and whatever significance is to be given to what Legendre coins as "the insistence of the law in the unconscious," the case of Lortie allows us to advert to another point of confluence. Both psychoanalysis and law address cases and so, in terms of method, both are forms of casuistry. In a sense, the most profound though not necessarily the most acceptable connection between the two disciplines is precisely the most obvious, namely their common history of casuistry and their analogous attempts to provide a normative resolution to individual cases of conflict or dispute. The casuistic tradition, in other words, dates back to the medieval reception of Roman and canon law and it entailed the reception and elaboration of a complex apparatus of questions of conscience or problems of ethics alongside the comparably normative questions of law. What is significant is that these various disputed questions (*quaestiones disputatae*) spanned the disciplines of moral theology and law and addressed cases of conscience and of law, questions of ethics and of legal judgement, in precisely similar terms. They alike belonged to the "institution of life," to the social expression of difference, to the realm of things known and judged. In cruder terms, what is obvious is that the individual case or 'cause of action' faces the law, whether it is that of conscience or of the state, whether spiritual or secular, with the individual, with a subject of decision that is necessarily intimate and implicative.¹⁸ The case requires a judgment that will address the subject, that will come face to face with the other, and so also with the unconscious, while equally bringing the unconscious face to face with its own law. It is in the historically complex theatre of the case and of the art of casuistry that Legendre finds a space within which to address the insistence of the law in the unconscious.

¹⁸ Thus Caudill, LACAN AND THE SUBJECT OF LAW, *supra* note 6 ("If this study is anything--scholarly, scientific--at all, it is personal, implicative. In trying to maintain a cautious distance from a theory -- Lacan's -- postulating that such distance is an illusion, one fears to be only striking a pose."). See also Peter Gabel, *The Phenomenology of Rights-Consciousness and the Pact of the Withdrawn Selves*, 62 Tex. L. Rev. 1563 (1984).

Questions of Method: The Double Reading

The case of Lortie, the case of a son who desires to kill his father and who acts out that desire by endeavouring to kill the social face or effigy of his father, the government of Quebec, raises a peculiarly Freudian problem for legal analysis.¹⁹ In Freudian terms, the Oedipal desire of the son to kill the father lies at the basis of all law, and it is this unconscious principle of authority which is lengthily elaborated in *Totem and Taboo*.²⁰ Freud's myth of the law's origin takes as its starting point the murder of the primordial father, who has monopolised the females of the tribe, by his sons. Overcome with guilt and remorse the sons then legislate against murder and thus inaugurate ethics and law. Both domains are governed by the memory of the absent father, by an image or totem that represents and reminds the sons of their parricidal past. Law, in the form of a totemic figure, a sovereign or social image of power, takes the place of the murdered mythical father and becomes the object of social desire.

One way of interpreting Freud's mythical presentation of the totemic character of law is simply to say that the authority of law is inextricably bound to its mythical origins and to the symbolic forms which represent that myth in the contemporary public sphere. At the level of the social, law is necessarily predicated upon an absent source of authority which, in its most direct form, is variously represented as God, nature, reason, sovereign, or King. The symbolic order, in other words, rests upon an unsayable or immutable yet invisible source of law which can only be represented or symbolised in the various figures of the power of law.²¹ The symbolism of law, in classical terms the social figure of a leader or communal father, masks or screens a truth which cannot be directly stated or shown: "since an emperor cannot be present to all persons, it is necessary to set up the statue of the

¹⁹ For an analysis of another case in which a son kills his father ("It is impossible to blow open the top of a man's head, says the judge in *Moloney*, a case about a man who blows open the top of a man's head, to unshell it, as it were, so as to examine his thinking like an oyster, or a watch-spring, or a nut"), see Yifat Hachamovitch, "The Dummy: An Essay on Malice Prepensend" in Peter Rush, Shaun McVeigh, Alison Young (eds.), *CRIMINAL LEGAL DOCTRINE* (Aldershot: Dartmouth, 1997). The case reference is to *R v Moloney* [1985] AC 905.

²⁰ Sigmund Freud, *TOTEM AND TABOO: RESSEMBLANCES BETWEEN THE PSYCHIC LIFE OF SAVAGES AND NEUROTICS* (Harmondsworth: Penguin, 1939).

²¹ Legendre, *DÉSIR POLITIQUE*, at 266, citing Justinian, *NOVELS* 98, 2, 2 (*post Deum communis omnibus pater*).

Emperor in law courts, marketplaces, public assemblies and theaters—in every place, in fact, in which an official acts, the imperial effigy must be present, so that the Emperor may thus confirm what takes place, for the Emperor is only a human being and he cannot be everywhere."²² The space of the social is marked in advance by law. The unconscious of the institution here takes the form of a plastic and textual imaginary, while the power of law becomes that of an endless array of dignities, roles, and textual figures which bear the delegated authority of an absent source. Curiously institutional desire is prompted by a lack, the legal subject is not and cannot be the one who the dignity or role represents. The institution is only ever an image of its absent reason or cause. Similarly, at the level of the legal subject or individual, Freudian analysis, and, one might add, the history of law, suggest a comparably hidden basis or unconscious source of action in the drives or desires of the libidinal subject.²³

In the first instance, the problem raised by psychoanalysis, in relation both to the institution and to the individual, is that although it is evident that law addresses a vast array of issues that diversely imply myth and the unconscious structure of social life, law has lost the tools for addressing such issues. The effacement of legal history and of the plural historical forms of legal knowledge, however, is only one aspect of the problem. At the level of the disciplines, the repression of the history of law as a social and philosophical form of life is symptomatic of a more pervasive legal 'will to ignorance,' which is expressed most directly in the lawyer's denial of the relevance of affectivity to judgment or desire to law. In disciplinary terms, that denial is replicated in an even stronger form in the jurisprudential repression of psychoanalysis and the willingness of the legal academy to act as if the discoveries of Freud and the writings of Lacan had either never happened or, if sufficiently rigorously ignored, would go away. Despite the essentially symbolic and heavily interpretative nature of legal regulation it is somehow easier or less threatening to the "graveyards"²⁴ that pass themselves off as legal academies to ignore the other scene or unconscious of law.²⁵ The supposed science

²² Kenneth Setton, *CHRISTIAN ATTITUDES TOWARDS THE EMPEROR IN THE FOURTH CENTURY* 196 (New York: Columbia University Press, 1941).

²³ See particularly Sigmund Freud, *BEYOND THE PLEASURE PRINCIPLE* (London: Hogarth, 1961).

²⁴ Legendre, *L'AMOUR DU CENSEU: ESSAI SUR L'ORDRE DOGMATIQUE* 14 (Paris: Seuil, 1974).

²⁵ See Legendre, *PAROLES POÉTIQUES ÉCHAPPÉES DU TEXTE: LECONS SUR LA COMMUNICATION INDUSTRIELLE* 12 (Paris: Seuil, 1982) referring to "the indolent

of law is deemed capable of dealing with the logic of legal rule as a pure surface amenable to an exclusively rational interpretation. It is this refusal to think about the irrational or simply subjective dimensions of law, this refusal to consider the symbolic significance of law, that leads Legendre to castigate roundly an "imbecility at the basis of law," and a comparable practical stupidity, in terms of which "lawyers do not even aspire to think," but simply circulate texts and other emblems of social power.²⁶

In the context of such a lack of thought, and more broadly in view of the repressive functions of law, psychoanalysis is both obviously relevant and obviously threatening to the discipline or 'science' of legal studies. The first project of Legendre's work has thus been simply to insist upon the relevance of psychoanalysis to legal studies, and indeed to any intelligent consideration of the general significance of the legal institution and practice of law. In this respect it is apposite to invoke the earlier and parallel history of the denial of psycho-analysis by Freud's contemporaries and institutional critics. Psycho-analysis threatened to rupture the dogmatic order of knowledges and it continues to threaten the complacency—the 'ignorance,' 'indolence' and 'lack of culture'—of the disciplines. At the level of the disciplines, Legendre argues, the heretic or simply disruptive theoretical task of psychoanalysis is to listen to the repressed histories and abandoned or forgotten knowledges of the scholastic tradition as it has been inherited in the west through medieval law: "Where, in our day, can we find the heirs of the medieval jurists?"²⁷ Who today, in other words, reworks the dogmatic discourse on the governance of the soul, on the fantasm, on faith, fascination, authority or censure? Where does contemporary jurisprudence account for the most prominent function of law, that of engendering subjective belief in authority? Psychoanalysis in other words disturbs the masks, the distances, and the political compromises of the modern academic disciplines. It does so through its pervasive reference to the spectre of sexuality, to the figure of the desiring subject and so also of the role of Eros, Christian *caritas*, or love in any living form of truth and equally in any plausible account of law within what is still an essentially Christian culture.²⁸

pedagogues...who doubtless hope that the discoveries of Freud and Lacan will disappear from circulation." For further discussion of the 'dark' continent of psychoanalysis, see Legendre, *AMOUR DU CENSEUR*, at 8-9, 17-23.

²⁶ Legendre, *L'EMPIRE DE LA VÉRITÉ* 26 (Paris: Fayard, 1983).

²⁷ Legendre, *AMOUR DU CENSEUR*, at 17.

²⁸ See Sigmund Freud, "Resistances to Psychoanalysis," arguing that "Psychoanalysis reveals the weaknesses of the [social] system and recommends that they be abandoned....

At the level of institutions and so of the social history of law, Legendre's insistent recourse to psychoanalysis offers what he terms a "counter-dogmatics" or radical re-reading of the legal tradition.²⁹ At the level of the institution, as also at that of the individual, law masks conflict and represses dispute. The theatre of legal reason exists to cover over the violence and the madness of power. Its function is to make believe that law is reason and to hide the fact that law is also power, and in more technical terms, that the authorship of law is cognate with its authority. In short, the classical "theatre of Justice and of Truth" (*Theatrum veritatis et iustitiae*)³⁰ conceals another history, a latent history or positive unconscious of the legal tradition which contains law's failures, its lapses, its shattered dreams, as also it harbours its desires, its enjoyments, its reverie of a comprehensive system and perfect order of rational rule. In other words, there is no single or merely internal history of law; there are rather plural histories of various laws, of different jurisdictions and changing institutional forms. It is, therefore, the function of a psychoanalytic account of law to provide symptomatic readings of the history of the legal institution and to attend to the desires that underpin law, to listen to the narrative of the lawyer's love of power and to the latent poetry of the legal text. Legendre's work starts out, in other words, from the fact that the history of the Western legal tradition is a history of dogmatic reason and of the institutional forms of life which dogma inscribed as law. What is at issue in law's institution of life is not only a question of legal logic, it is also a matter of faith, of love, and of the poetry of the soul. In the latter, less rationalistic terms, it is Legendre's argument that the legal institution deserves to be taken seriously, to be interpreted in the same way as other dreams. In short, it deserves what Freud termed a 'double reading,' one attentive to both its manifest and its latent meanings.³¹

The other dimension of the Western legal tradition to which psychoanalysis directs our attention is that of what Legendre terms

For having formulated these critiques, psychoanalysis, the enemy of civilisation, has been banned as a public danger," cited and discussed in Legendre, *AMOUR DU CENSEUR*, at 22.

²⁹ Legendre, *AMOUR DU CENSEUR*, at 16-17.

³⁰ See Legendre, *L'INESTIMABLE OBJET DE LA TRANSMISSION. ÉTUDE UR LE PRINCIPE GÉNÉALOGIQUE EN OCCIDENT* 42 (Paris: Fayard, 1985), citing the treatise of the same title by Jean-Baptiste de Luca (1614-1683). See also *DIGEST* 50.17.207: 'res iudicata pro veritate accipitur' (the judgment of a case is received into the place of truth).

³¹ For an instructive account of Freud's concept of double reading, see Sarah Kofman, *THE CHILDHOOD OF ART: AN INTERPRETATION OF FREUD'S AESTHETICS* ch. 1 (New York: Columbia University Press, 1988).

the "non-legal scene of law."³² It is the history of the symbolic materials that were used to fabricate a discourse of life and of death, and to institute an art of law which could address the subjective needs and desires of the institutional subject. The specific problem to be addressed initially is that of the way in which law creates not simply a system of rules but an aesthetic, a culture or form of life. It is in this regard that psychoanalysis attempts to listen not to the apparent logic of legal rule, but rather to the figures of its texts and the erotics of its practices, of its theatre and its rites. The classical notion of an art of law is thus to be recuperated and interpreted quite literally, so that the legal scholar can begin to address directly the significance of the symbols, emblems, rituals, icons and diverse other signs through which a legal tradition establishes a culture and embeds itself in its subjects.

The aesthetics of law and the love of power

From a psychoanalytic perspective, the most striking feature of law is its desire to establish and promulgate order. In classical legal terms, this desire for order was expressed in a variety of ways but can be addressed most directly through recognising the fundamentally aesthetic character of institutional attachment: "The power of institutions is a product of their use of images...to train the subject aesthetically. It was for this reason that the classical tradition marked out a pre-theoretical space and time of rhetoric, a time which is well reflected in a maxim such as: 'Nothing is more beautiful than order' (*Nihil pulchrius ordine*)."³³ The first lesson of the aesthetics of law is that to capture the subject for the institution involves a delicate and complicated play of attraction and of threat and needs to be understood in the psychoanalytical terms of desire. Aesthetics teaches us that the institution of the subject requires the inscription of an image of the social as an object of love. More paradoxically perhaps, the subject must come to desire its submission to power, the subject must love the signs of power, the emblems of an authority which cannot be physically present everywhere and so must appear most usually in fantasmatic or imagistic forms.

The aesthetics of law addresses the cultural desire of legal institutions as well as the mechanisms by means of which they attach

³² Legendre, LORTIE, at 69.

³³ Legendre, LES ENFANTS DU TEXTE. ÉTUDE SUR LA FONCTION PARENTALE DES ÉTATS 55 (Paris: Fayard, 1992). To teach respect for order and through that respect, belief in and love for authority, was a very common glossatorial theme.

themselves to their subjects. In this respect, the aesthetics of law returns legal analysis to some of the most radical and least studied dimensions of the legal tradition. The history of the mediaeval legal tradition was a history of a dual law, of *utrumque ius*,³⁴ meaning that human law was only ever a pale reflection of a divine law and of a spiritual governance of secular powers. The beauty of order was a divine beauty and its rule addressed both earth and heaven, polity and spirituality. The legal construction of life was thus in the first instance a spiritual endeavour because culture was a matter of ghostly or unseen powers and in its canonical definition "consisted in the observation of omens and the interrogation of the course of the stars."³⁵ What is significant in such a broad (and in this instance negative) definition of culture is a recognition of the plurality of cultural spaces and so of the forms of knowledge and of the diversity of objects of law's regulation. Even within the common law tradition, the role of the sovereign was early on defined explicitly as that of a 'nursing father' and in consequence tutelage of the soul and governance of life-style or 'care of the self' was recognised as being as much an issue of law as the more obvious and less interesting regulations of municipal intercourse.³⁶ The institution is established so as to create subjects. It is also to be understood literally as a nursery that becomes a parent to children: "a mother that nourishes not those who want but those who follow her rule; such an allegiance already supposes an apprenticeship, the entry into the imaginary space of the institution whose subjects are infants.... The centralized organisation works towards the production of infants."³⁷

The institution has as its goal the mad project of creating human subjects. It is through law, and specifically through the law, through the Roman categories of persons, things and actions, that the social subject acquires an identity and the power to act. Each subject is born twice, once to nature and once to law. And yet that creation of persons

³⁴ See Legendre, "Le droit romain, modèle et langage: De la signification de l'*Utrumque Ius*," reprinted in Legendre, *ÉCRITS JURIDIQUES DU MOYEN AGE OCCIDENTAL* (London: Variorum, 1985).

³⁵ Gratian, *DECRETALS*, Cause 26, Question 2, Canon 9; discussed in Legendre, *AMOUR DU CENSEUR*, at 263.

³⁶ On the role of the sovereign as 'nursing father,' see Roger Coke, *ELEMENTS OF POWER AND SUBJECTION OR THE CAUSES OF ALL HUMANE, CHRISTIAN AND LEGAL SOCIETY* 98 (London: T. Newcomb, 1660). See generally, Peter Goodrich, *OEDIPUS LEX: PSYCHOANALYSIS, HISTORY, LAW 223-245* (Berkeley: University of California Press, 1995).

³⁷ Legendre, *JOUIR DU POUVOIR. TRAITÉ SUR LA BUREAUCRATIE PATRIOTE 190* (Paris: Editions de Minuit, 1976).

which is subsumed under the *ius personarum* or, as Legendre adapts it, the law of masks,³⁸ is not simply a matter of legal rules, it is also a more profound and complicated governance of drives and desires. The institution has to reproduce itself at the most fundamental of levels, it has to attach itself to the unconscious, it has enter into the space of desire and reproduce “an excess or beyond of that which is said....”³⁹ The role of law in the institutional production or ‘fabrication’ of subjects has to be understood historically not simply in terms of a secular law of succession but also in terms of the transmission of a much more ineffable principle of authority or belief in power: “The great ravings of power, those which make the body walk with the soul, that is to say those which mobilise the unconscious towards death, can only be stated poetically, because power is organised fictively, and most particularly according to the fiction of the all-powerful. Power is absolutely mad because, following the Christian discourse of the all-powerful, *power makes everything out of nothing.*”⁴⁰

The madness of power, the delirium of institutions, the paternity of law over its infantilised subjects, is a function not of reason but of an art of law (*ars iuris*) which captures subjectivity. The institution and more specifically the law enters the subject not through rules but through language and through images. The image of power—of the law-giver or sovereign, of God, emperor, legislature or even something as unconscious as the ‘rule of recognition’ or ‘basic norm’—is a point of transition between the public sphere and the private space of subjectivity. The structure of that entry of law into the subject is a structure of love, or in Augustine’s terms it is *structura caritatis*. The social image of power has to become an object of desire whereby, in one of Legendre’s most famous phrases, the subject can come to ‘love the censor’ or to enjoy power. The law must have an author and that author must be an object of love, a father, a name, an image that represents both the sanctity and the madness—the violence—of power.

³⁸ Legendre, *DÉSIR POLITIQUE DE DIEU*, at 225-26: “Note that one of the central constructions of civil law, that which, following Justinian’s terminology, we call the law of persons, literally derives from *persona*-- referring initially to an actor’s mask--and allows me to translate the formula *de iure personarum* by ‘of the law of persons.’ In all institutional systems the political subject is reproduced through masks. This translation also contributes to the rehabilitation of the problematic of the image at the heart of the legal order.” For commentary on this point, see “Law’s Emotional Body: Image and Aesthetic in the Work of Pierre Legendre,” in Peter Goodrich, *LANGUAGES OF LAW: FROM LOGICS OF MEMORY TO NOMADIC MASKS* (London: Weidenfeld and Nicolson, 1990).

³⁹ Legendre, *L’INESTIMABLE OBJET DE LA TRANSMISSION: ÉTUDE SUR LE PRINCIPE GÉNÉALOGIQUE EN OCCIDENT* 140 (Paris: Fayard, 1985).

⁴⁰ Legendre, *PAROLES POÉTIQUES*, at 212.

The social father or law-giver is one who speaks 'in the name of the principle of authority, who judges in the name of the law, who effaces himself so as to allow the text to speak, or in more classical terms "judgement is received in the space of truth."⁴¹ What is crucial is that it is by virtue of position, by virtue of speaking from the emblematic place of truth, that law transmits its message or passes on its form.

The structure of political desire replicates that of faith in God and demands a comparable and unthinking love. Political love is directed towards the images of a power that is never present in a body but only ever represented emblematically and vicariously by the delegates of its absolute yet invisible source. The sovereign may embody the law, and classically both the sovereign and the judiciary were thought to somehow incorporate the law either by carrying its spirit in their breast or by giving it birth in their speech, but they nevertheless were only ever representatives of a source of law in whose name they spoke. The authority of law was an abstract one which could only ever be mediated by its secular representatives, so much so that the medievals adopted the maxim that only where the body was absent could authority be present (*absens corpore, praesens auctoritate*). The consequence of the absence of any physical or indeed temporal source of law, and it is legitimate to observe that even in contemporary terms, the State, the Government or the sovereign legislature have no extant or natural form, the object of desire was always an impossible one. The subject, in other words, can love the emblems of power, the icons of law, the images or effigies of social authority but that love is necessarily directed through the image to an invisible source: "If jurists deny that they create the Law by means of which the administration maintains its legitimacy, and declare themselves to be no more than its transmitters, if they are simply the bearers of the most authentic of all possible meanings, the author of this dictation...is someone invisible."⁴²

The Poetic Rights of the Text

The double reading which psychoanalysis suggests as the appropriate method for understanding the subjective force of institutional attachments is nonetheless a reading. Although, following the maxim *ut pictura scriptura* (painting as prose), the Western tradition is well aware of the various non-scriptural expressions of

⁴¹ DIGEST 50. 17. 207 (Res judicata pro veritate accipitur)

⁴² Legendre, *JOUIR DU POUVOIR*, at 62.

inscription or writing, it is still the case that the principal historical form of power has been the body or books of written law. The abstract principle of power which the institution represents is not a subject and it cannot be referred to any specific unconscious or any individual body. The unconscious of the institution necessarily refers to a structure, and more precisely to language. The specific institutional form of that language is writing: "In other words, if institutions are both speechless and delirious, silent and raving, reasoning and persecuting, this cannot be in the same sense as the discourses of schizophrenia or paranoia, such as they are treated by the psychiatry of mental states. The madness of institutions is real, but it is not an ordinary madness: it is a sacred madness.... The system of Law necessarily passes through this point of delirium: the Reason of the Text declares itself in the same instance as the delirious questions and mythic fabrications of national institutions are formulated."⁴³

The structural form of the Western institution is that of written reason or written law. The two great textual systems of the west are those of divine and human law and they are expressed in complex codified written forms. The institution may not have a physical presence, but it has a body, a *corpus* of writing and of law. In a formulation which Legendre borrows from Isidore of Seville, the word law is cognate with reading because law is written: *lex a legendo vocata est, quia scripta est* (law comes from the word to read, because it is written).⁴⁴ At the foundation of the Western legal tradition lie various monumental writings, codes of divine and human law, which found the Western institution and establish the structural and fundamentally symbolic forms of social life. The insistence of the law in the unconscious of the Western institution is the insistence of a hierarchical tradition of great texts or, to borrow Legendre's phrase, the insistence of a Text without a subject. The textual system in question dates back to the earliest sacral codifications of Roman law, but has its major expression in Justinian's *Corpus Iuris Civilis* and the dogmatic tradition that developed around the reception of that vast compilation of law in the twelfth and thirteenth centuries.⁴⁵

⁴³ Legendre, *PAROLES POÉTIQUES*, at 53.

⁴⁴ Legendre, *DÉSIR POLITIQUE DE DIEU*, at 297, citing Isidore of Seville, *ETYMOLOGIAE*.

⁴⁵ For a technical account of the reception, see Legendre, *LA PÉNÉTRATION DU DROIT ROMAIN DANS LE DROIT CANONIQUE CLASSIQUE* (Paris: Imprimerie Jouve, 1994). For an introductory analysis of the significance of the textual and interpretative techniques developed by the Romano-canonic glossatorial tradition, see Peter Goodrich, *READING THE LAW* (Oxford: Blackwell, 1986).

To understand the textual tradition of law, the classical heritage of *ratio scripta* or written reason, and the aesthetic and casuistic rules that developed around its interpretation, as the unconscious of the Western institution, again requires a double reading. The principal methodological contribution of psychoanalysis to law, lies in the demand that the textual tradition, the books and other writings of law, be treated as symptoms of a fundamentally political desire. The Textual system of law inscribes the specific form of the Western polity or institution of life and has in consequence to be understood, to be read and interpreted, according to the hierarchy of meanings which the system establishes. The Text establishes in a ritual form the order of texts which will constitute both the power and the meanings of social life. For this monumental task to be possible, it is necessary to understand the textual system symptomatically and to interpret the 'work of the text' in a psychoanalytically informed manner.

The Text of law is first a sign of sociality, a vast emblem of the possibility of collective being, a mirror which reflects the transcendental properties of a culture, namely that culture—*dignitas* or *ius*—does not die. The initial or founding moment of the textual tradition is necessarily obscure, let us say unconscious, because the Text must detach itself from the discourse of municipal institutions and transcribe itself within the delirium or space of truth. Such is to say that the first task of the textual tradition is to screen the absence of any tangible source of authority or law. The Text must have access to the space of truth, the space occupied by God or nation or some other icon of social belief. However much a secularised tradition may wish to read the textual tradition *more geometrico*, in terms of the beauty of order and the logic of rules, it must first presuppose the phenomenon of the Text and a faith which binds us to law.⁴⁶ In the first instance the Text does not explain so much as it implies a series of foundational symbols of social life: the Text establishes the subject's relation to death just as much as it places her in relation to the institution of life.

The twelfth-century reception of Roman law inherited a notion of the Text of law as being the most divine of knowledges: to be learned in the law is the most sacred of things (*res sacratissima civilis sapientia*).⁴⁷ Two connotations of that sanctity of the Text and of the

⁴⁶ On the faith which attaches to instruments (that is to say to texts), see Legendre, *DÉSIR POLITIQUE DE DIEU*, at 289-297; and also Legendre, "Expertise d'un texte," in *LA PYSCHANALYSE EST-ELLE UNE HISTOIRE JUIVE?* 93-113 (Paris: Seuil, 1981).

⁴⁷ *DIGEST* 50.13.155. For discussion, see Legendre, *L'EMPIRE DE LA VÉRITÉ*, at 51-55.

hierarchical order of textuality deserve specific elaboration. The written character of law and the relation of that writing to a hidden divine source served to detach legal textuality from the mundane legibility of secular speech. That the law was written, implied a fatality or destiny to the social which could neither be changed nor disobeyed. That the law was written implied that human life was already inscribed and accounted within the Text and such a fatality could only be understood and lived—it could not be rewritten but only trusted and believed. The discourse of law was thus referable to the space of truth. What was fundamental to society, namely the truth, was written. It was a discourse of foundations, an inaugural speech, an expression of the order of things, of the various signs and other enigmas of the divine and of its control over life and death. The aesthetic of law and the dependence of law upon a fictitious space of origin or truth is a necessary feature of establishing the externality of the authority in whose name the legislator or judge can speak the law. The guarantee of law is a fiction of truth, an image which establishes the unspeakable power of judgement and inscribes it in the fantasmatic space of its subjects.

The legal concept of Text and of textual system was initially mystical and required comparably initiate forms of reading and interpretation. In a surprisingly literal sense, the Text was the body of the social, it was in one etymology the terror and territory of the social, the space and conceptual geography that a culture inhabited. What was necessary to law was first a belief in the Text, a faith in instruments, and not a mere understanding or secular use. The textual system represented the signs or augurs of things divine, the *arcana iuris* which addressed matters of life and death, and in consequence was to be approached mystagogically, through signs, through images and an emblematic speech. In its deepest substrate, the Text was a figure of truth, it was an opaque sign, a dark letter, an incomprehensible writing. Such a view of the textual unconscious may seem bizarre but it needs to be remembered that such a notion of the symbolic power of law, as well as of its opacity or indeterminacy, is not lacking modern representations. What psychoanalysis suggests is that modern law needs to recollect the incomprehensibility or irrationality of the Text and of the law: "It is impossible to approach Roman law without reinstating what I call the rights of incomprehension and the sense of enigma" by means of which it is transmitted.⁴⁸

⁴⁸ Legendre, *L'ÉMPIRE DE VÉRITÉ*, at 132.

The enigma or symbolic character of the Text relates to the foundational quality of law as the means by which a culture institutes life. For law to take hold of the subject, for the subject to become attached to law, it is necessary that the textual culture of the institution be capable of becoming an object of fear and of love, just as its Text would literally be guarded and venerated, both as manuscript and as meaning, by the mystagogues of the legal tradition.⁴⁹ A system of law, in other words, is not simply a logic of rules or empire of reason, it is also a figure of attachment, a fiction or theatre of subjective meanings and affectivities. The desire of the lawyer to order the texts of law *more geometrico*, or in the manner of a geometry, already displays an aesthetic or artistic inclination.⁵⁰ It takes only a small further step to understand that beneath that mask of order or screen of precision lie many other dimensions of attachment to Image, Text and Law. It is necessary to bind the unconscious of the subject to the order of texts or to the culture that the Text represents. Such is the exercise or jurisdiction of power over the imagination and to understand that power, to understand law, it is necessary, therefore, to acknowledge its symbolic function and its poetic qualities, its latent meanings, its texts.

To establish the necessary bond between subject and law, the legal order depends not simply upon fear of law's violence but much more generally upon a structure of political love. The primary form of that bond or *vinculum* is constructed through the textuality of law. In several early works, Legendre is at pains to indicate that this exercise of power over the social subject is never simply a matter of a surface structure of communication. It is a matter of the aesthetics and poetics by means of which law establishes an unthinking adherence, a fantasmatic authority, an unconscious bonding, the governance of the soul. It is this delirious or mythical dimension to the circulation and dissemination of legal texts that positivistic theories of law have lost and so too have denied themselves the possibility of comprehending the social reality of law. That reality is a symbolic one and includes not simply submission to known rules and apparent and comprehended authorities but also a much more mystical apprehension of social

⁴⁹ See Francois Hotman, *ANTI-TRIBONIAN OU DISCOURS D'UN GRAND ET RENOMMÉ JURISCONSULTE SUR L'ESTUDE DES LOIX*, 120 (Paris: Perrier, 1603)(discussing the text of the *Corpus iuris civilis*)("[G]uarded like a precious and sacred relic, only rarely being shown, at night, surrounded by candles and torches...thus did the ancient mystagogues show their sacral law to the faithful.")

⁵⁰ Legendre, *JOUIR DU POUVOIR*, at 162. See also, Jacques Lenoble and Francois Ost, *DROIT, MYTHE ET RAISON* (Bruxelles: Presse Universitaire de Saint Louis, 1981).

structure and of Law as the Western form of fate spelled out in nature or in the living bodies or speaking signs of political and legal authority.⁵¹ The right to incomprehension or to poetry which Legendre elaborates, is in essence a right to interpretation in the strongest of senses, a right to love and to a life of the soul which understands that the meaning of written reason or of Text is both secular and spiritual, of the surface and of the soul: "The reproduction of institutions takes place through a discourse of fiction concerned with the internal structure or space of the imaginary.... The discourse of fiction is in this sense a logic of commentary and it extends so as to deploy the various signs around which the fantasmatic body of the subject is elaborated."⁵²

The structure of subjective identification with the institution depends upon the manipulation of the subject around the imaginary sites of the text. It requires a rethinking of the text in terms of a latent poetics which takes hold of the subject and institutes its soul through an unconscious desire or unspeakable symbolism of law. It requires that we understand a certain madness or poetry of the text, a meaning that lies beyond the prosaic or dead letter of the law, one which inhabits a domain of living law, of the theatre of justice and the judgment of truth. It is here that we can refer to what the mediaeval jurists termed *officium poetae*, the poetic function, which was to say what could not be said other than through poetry, through metaphor and the figures of speech which has elsewhere been termed the lover at work in discourse.⁵³ The text, in other words, is an initiate or sacral form of knowledge. It is the discourse of the imaginary other, it is a letter which falls from the sky, a poetic mask and so also an object of love. It is with that love or *structura caritatis*, that Legendre begins: "What is exquisite in the discovery of a manuscript is precisely that one does not understand. The letter arrives, addressed and received, yet unreadable. The discovery of a manuscript is a poetic event, an event of writing. An unknown writing plays on the imagination like a

⁵¹ With regard to the various classical formulae for the legislator: *lex animata, lex loquens, viva vox iuris*, and indeed the notion that law, reading and delirium are closely connected (*loi, lire, délire*); see Legendre, *DÉSIR POLITIQUE DE DIEU*, at 267 and 293.

⁵² Legendre, *PAROLES POÉTIQUES*, at 137; see also 53-55, 57-66.

⁵³ On the *officium poetae*, see also Placentinus, "Sermo de legibus," the text of which is reproduced in Herman Kantorowicz, *The Poetical Sermon of a Mediaeval Jurist. Placentinus and his "Sermo de Legibus*, 2 J. Warburg and Courtauld Institute 22 (1938); and Peter Goodrich, *Translating Legendre: The Poetical Sermon of a Contemporary Jurist*, 16 Cardozo L. Rev. 963 (1995). The reference to Barthes is to *A LOVER'S DISCOURSE: FRAGMENTS 158* (London: Jonathan Cape, 1979).

painting...it is an illegible letter addressed to the subject who would desire it."⁵⁴

The psychoanalytic jurist's reference to the poetry of the text and more strongly to the function of poetry in the institution of law finds ample expression within the history of the Western legal tradition. The text was always to be understood as containing a hidden meaning or poetic core and it was this fantasm or beyond of the word that the Christian legal tradition taught lawyers to address. It was to this latent meaning of the text, this 'other world of interpretation,' that the power of writing was addressed. There was both "that which was written and something else that was there, something more. It was this something more that Justinian evoked in Novel 146 under the formula *non solis litteris adhaerere*, meaning literally to adhere not only to the letters."⁵⁵ The letter of the law was never self-sufficient and the mediaeval tradition was at great pains to emphasise that methods of legal commentary and interpretation depended upon a complex of rhetorical and extrinsic techniques of construction and evaluation of the text. For the glossatorial tradition the text was only ever a more or less complex sign of what Budé termed "the spirit of Latinity," an interlinear meaning, a spiritual or anagogic sense which the words both harboured and veiled. It was thus possible for the lawyers of the reception both to believe in the absolute reason of written law and to adhere to the maxim that writing is not the substance of law (*scriptura non est substantia legis*).⁵⁶ In a language that in many respects comes close to that of psychoanalysis, the interpreter of the law was subject to a series of protocols which emphasised in detail the plurality and the power of textual meaning.

I will simply avert to the most standard of traditional protocols of legal reading, namely that it is not the letter but the spirit that determines the meaning of law. The text is composed of dead letters (*littera mortua*),⁵⁷ the rule is no more than a "mute judge," a sleeping

⁵⁴ Legendre, *PAROLES POÉTIQUES*, at 221.

⁵⁵ Legendre, *DÉSIR POLITIQUE DE DIEU*, at 295.

⁵⁶ Legendre, *DÉSIR POLITIQUE DE DIEU*, at 316. With respect to the philological views of Guillaume Budé, see *DE PHILOGIA* 47, 143 (Paris: Vascosan, 1536), discussing *litterarum studium* and the spirit of Latinity.

⁵⁷ This Pauline distinction can be found in Francis Bacon, *THE ELEMENTS OF THE COMMON LAWS OF ENGLAND* (London: I. More, 1630) at A 2 a: "for if it be true that *silent leges inter arma*, it is also as true, that your majesty is in a double respect the life of our lawes: once, because without your authority they are but *littera mortua*, and againe, because you are the life of our peace, without which lawes are put to silence...."

form⁵⁸ requiring the interposition or *anima legis* of jurist or judge. What is significant is not that the law is an unconscious text, a symptom, intensity or spirit, but rather that the meaning of law is internal to its living body, *viva vox iuris, lex loquens*, its image, interpreter or legislator. In classical terms, it is spelled out by reference to something beyond words: "To know the law is not to know the words of the law, but its force and power."⁵⁹ In a Renaissance formulation we are similarly told that "no words, forms, niceties, or propriety of language is of any regard in the Civil Law, in comparison to truth, faithfulness and integrity. For *verba menti, non verbis servire debet*; words are made as instruments to serve and express the mind, and not to command it."⁶⁰ Truth, in other words, might be captured by writing but it could only be discovered by an interpretation that went beyond the words and participated in the delirium of the text. In Sir Edward Coke's formulation, "in reading it is not the words but the truth which ought to be loved (*in lectione non verba sed veritas est amanda*)."⁶¹ In short, the jurist requires the reader or subject of law to love, and in doing so refers to a latent meaning or power, namely the capacity of the text to elicit subjective adherence, a faith or *caritas* that belongs not only to the secular letter of the law, but also refers to the space of the divine. Beyond the letter or between the lines, the text embodies a passion, truth or spirit that belongs to the time of structure and to the inaugural space of reference and of Law. It was for this reason that Renaissance lawyers understood that legal meaning could only properly be found in the soul or heard beside or beneath or beyond the text, *subauditio* or *subintellectio* as an intuition, image or unconscious form.⁶²

⁵⁸ See particularly Sir John Davies, "A Discourse of Law and Lawyers," in A.B. Grosart (ed.), *SIR JOHN DAVIES: COMPLETE WORKS* 275-277 (London: private circulation, 1876)(1615)(Volume 2). In a different context, see John Selden, *THE DUELLO OR SINGLE COMBAT: FROM ANTIQUITIE DERIVED INTO THIS KINGDOME OF ENGLAND* 21-22 (London: I. Helme, 1610). For commentary, see Donald Kelley, *THE HUMAN MEASURE: SOCIAL THOUGHT IN THE WESTERN LEGAL TRADITION* ch. 10 (Cambridge: Harvard University Press, 1990).

⁵⁹ DIGEST 1.3.17 (Celsus) *Scire leges non hoc est verba earum tenere, sed vim ac potestatem*.

⁶⁰ Sir Robert Wiseman, *THE LAW OF LAWS OR THE EXCELLENCY OF THE CIVIL LAW ABOVE ALL HUMANE LAWS WHATSOEVER* 70 (London: Royston, 1664).

⁶¹ Sir Edward Coke, *REPORTS* (London: Rivington, 1777)(at Part III fol C 7 b).

⁶² On the significance of *subauditio* and *subintellectio* see Ian Maclean, *INTERPRETATION AND MEANING IN THE RENAISSANCE: THE CASE OF LAW* 166-175 (Cambridge: Cambridge University Press, 1992). The great advocate of *traditio*—the unwritten institutional wisdom of tradition—in the common law tradition was Sir

Dogmatics and Domesticity

In its most radical reading, Legendre's analysis of the legal structure of social life suggests that the function of the lawyer is most frequently an unconscious one. In the long term, it has not been the role of the lawyer to think or to write but rather to represent, to speak 'in the name' of the law, to be an instrument of the text or the voice of an authority or paternity exterior to him. Thus the lawyer counts for nothing in the epiphany of law: "The enclosure of law is a space of silence, it harbours nothing more than a set of highly valuable techniques and the protocols of their application. The State depends upon its jurists, precisely because they silence themselves."⁶³ The lawyer is by tradition a messenger through whom someone else will speak, he is the tool by means of which a greater authority, be it God, nature, reason or sovereign, will write the law. In this sense, the oracular role of the jurist is not to speak but to be spoken through, and so to provide access to the unconscious space or immobile time within which authority and law, reason and power are one.⁶⁴ In Legendre's terms it is the principal symbolic function of law precisely to maintain or keep open the blank space of the social unconscious against which a culture can maintain its myths and preserve its relation to poetry, art and justice, fate or Law. The lawyer deals unwittingly with Law and yet the role of the lawyer is intrinsic to the maintenance of the symbolic structures of social life. In Lacan's terms there has to be an ignorance that puts truth to work.⁶⁵

The place of truth or discourse of fate to which Law refers is understood by Legendre in a classical Freudian sense. Law functions to 'capture' the subject, to generate a submission to authority, and to instigate a love of political power, in the specific form of the Western institution. In one sense this means that the lawyer unconsciously elaborates a dogmatics, a discourse of axiomatic social categories within which the subject finds her place in relation to the extant order of power. This, in Legendre's terms, is the discourse of genealogy, of

Thomas More. For discussion of his apologetic and polemical works, see Goodrich, *LANGUAGES OF LAW*, *supra* note 38, at 72-82.

⁶³ Legendre, *PAROLES POÉTIQUES*, at 149.

⁶⁴ For an eloquent elaboration of this point, see Alain Pottage, "The Paternity of Law," in Costas Douzinas, et. al. (eds.), *POLITICS, POSTMODERNITY AND CRITICAL LEGAL STUDIES* 148-150 (London: Routledge, 1994).

⁶⁵ Jacques Lacan, *ÉCRITS: A SELECTION* 296 (London: Tavistock, 1977) ("Truth is nothing other than that which knowledge can apprehend as knowledge only by setting its ignorance to work.")

the transmission of power across the generations. It establishes the subject's familial fate⁶⁶ and provides him or her with a pre-ordained place and role, and in the last instance an identity, within the order of social life: "The fundamental axis of Roman law is the idea of the Father as the institutional formulation of the principle of Reason. It is the idea of God itself, as that in which we believe."⁶⁷ The system of Roman law is a familial one and it is precisely the common link provided by the juridical principle of the family that binds the subject to the institution. In this sense, the social construction of the subject is to be understood as an intrinsically legal enterprise, because the categories of lineage or of family place are the fundamental categories of law.

At the level of the social, the classical order of interpretation and of law descended in a hierarchical fashion from the divine father and author of all laws. The concealed origin of law was screened by the juridical image or figure of an ancestral or first source, which was repeated throughout the social order of reason, text and law. Each subsequent authority imitated the inaugural sovereignty of the author of law, so that, for instance, Justinian described his own sovereignty as being that of one who was, "after God, the common father of everyone" within the Empire.⁶⁸ The principle of authority took the form of a legal designation of paternal power and its repetitive imitation in the order of institutional offices, dignities or roles. The genealogical principles of succession which governed this "inestimable object of transmission" legitimated authority by reference to the hierarchical order by means of which the power to found and interpret laws descended from its original and Pontifical source.⁶⁹

The Freudian construction of the social in terms of a family governed by a series of paternal sources of law is, for Legendre, the founding metaphor of Western institutions: "My theory is that the State is the story of a family, in the Freudian sense...of brothers who are in love with their parents and at war with each other."⁷⁰ The crucial link between the institution and the subject thus takes the

⁶⁶ Legendre, LORTIE, at 27-33; see also, Pierre Legendre, "Analecta," in Alexandra Papageorgiou-Legendre, *FILATION. FONDEMENT GÉNÉALOGIQUE DE LA PSYCHANALYSE* (Paris: Fayard, 1990).

⁶⁷ Legendre, *DÉSIR POLITIQUE DE DIEU*, at 265.

⁶⁸ NOVELS 98, 2, 2 "post Deus communis omnibus pater." See also Legendre, *DÉSIR POLITIQUE DE DIEU*, at 267.

⁶⁹ *Code* 1, 14, 12: "potestas condendi leges et interpretandi." Discussed in Legendre, *DÉSIR POLITIQUE DE DIEU*, at 111.

⁷⁰ Legendre, *PAROLES POÉTIQUES*, at 148.

form of the social construction of the family and is expressed most specifically in the legal definition of the place and power of the father within the domestic family: "Power within the family derives from a very precise order of political legitimacy. The function of the father in Roman law could not have developed if it were not bound to power within the city.... Paternity, in the full Roman sense of the status of the *pater familiae* [head of the household], is not separable from the political characteristics expressed by the concept of citizen (*civis*)."⁷¹ The power of the father is not self-founding, it is legally instituted and belongs within an order of names that descend from an absolute Father, be that God, the People, or the Republic or America. It is within the family that blood and love, law and pleasure are most directly mixed and contained. It is for this reason that psychoanalysis has such a crucial role to play in the development of a concept of the legal construction or 'fabrication' of the subject, and it is for this reason that an analysis of law cannot escape addressing either the role of the father in the institution or the role of the institution in the father. Both systems of power, public and private, are bound to a common lineage, kinship or *filiation*, whereby the subject, the legally instituted *persona*, is constructed and bound to the absolute, to the principles of a power that transcends mortality and that survives across the generations. At its most basic, the subject is born into an order of precedence, which the glossators termed a law of the living (*vivendi leges*): "defined as the general order of life, organised for humanity in terms of a familial communication with God...one which, according to Rufinus, takes place by reference to the vertiginous rules of a genealogical ceremony, one which celebrates the order of a God who is Father of the family, and who institutes the places of his celestial family (*celestis familie officinas*)."⁷² The celestial Father is explicitly the model or prototype (*pater prototypus*) of all lesser forms of paternity and by the same token the mundane family replicates the spiritual order or hierarchy of family places. The domestic family structure, in other words, is the point of entry into the symbolic, and the places and roles which the family designates imply a law which

⁷¹ Legendre, *L'INESTIMABLE OBJET DE LA TRANSMISSION*, at 172. See further, Alain Pottage, *A Unique and Different Subject of Law*, 16 *Cardozo L. Rev.* 1161, 1198 (1995)(developing the concepts of admiration and personality): "The most basic role of law as moral or cultural tutor is in notifying each subject of this condition of individuation and limitation ... This imposes a juridical art; that of being maieutic tutor, cultivating the uniqueness of the subject within its juridical genre.... What seems most unthinkable is the very notion of a liberating or fulfilling juridical personality."

⁷² Legendre, *L'INESTIMABLE OBJET DE LA TRANSMISSION*, at 248.

attaches itself to the most intimate or private spaces of subjective life, a law that embeds itself within the affective structure of the individual, a law that belongs to what Freudian jargon terms the unconscious.

What is crucial to Legendre's analysis of the subject is the recognition that the individual is born into law and is an individual only by virtue of law. Within the Christian tradition the image of God comes from inside, and the maxim that "I am in the father and the father is in me" refers directly to the unbroken chain of paternal authorities whereby tradition captures the subject in the very moment of its institution as a subject. In Roman law a corresponding principle defined father and son as being the same person (*pater et filius eadem esse persona*)⁷³ and ordained the submission of the child to the person into whom they were born. The father was to be obeyed in the same sense as the law was to be venerated for being what the tradition poetically termed the image of the substance of the father.⁷⁴ The structures of familial life, the early demarcation of domestic roles and subjective places belong to the internal history of law, a history of the soul and of its marking by law. What law institutes, in other words, is not simply an exterior limit or subjection but equally an interior emotional structure which will bind the subject through fear and through love, through fascination and through fealty, to the theatre of justice and truth. However much jurists may seek to deny it, there is an affective dimension to the institution without which the ritual of judgment and of interpretation of laws would be of minimal consequence if not simply impossible.

Postface

It is Legendre's argument that in the same sense that precedent inscribes a prior law or judgment that allows subsequent cases to be treated normatively by reference to the repetition of authoritative rules, so the psyche is also marked by and finds its place or *persona* within a previously ordered domain of familial authority. The internal principle or inscription of authority also helps explain the coincidence of power and love, of normativity and desire. The institutional structure of submission is infantile, the subject loves the law like a child loves its parents. The filial nature of political desire or love of law

⁷³ Code 6, 26, 11; discussed in Legendre, *L'INESTIMABLE OBJET DE LA TRANSMISSION*, at 171-73.

⁷⁴ (*paternae imago substantiae*); see Legendre, *DÉSIR POLITIQUE DE DIEU*, at 242.

is a constant theme within the legal tradition, and like any falling in love it implies an unconscious or a beyond of desire that exceeds the individual and so places the subject in a relation with legality. In one early common law formulation: "To fear God is the effect of the law.... This fear is as a son's fear for his father...this fear is promoted by the law."⁷⁵ As the case of Lortie earlier suggested, the filial fear of law is most immediately a response to the power of the father and is only later a respect or love for the exterior images, rituals or ceremonies, by means of which the social principle of paternity is inscribed.⁷⁶ The exterior forms of law are explicitly fictions in which the institution acts as if it were a subject, a father, and equally as if its subjects were its children.

The first task of a psychoanalytic theory of law was spelled out by Legendre in one of his first works in terms of "the need to reinscribe the link between the structures that surface during the course of psychoanalysis and the institutions which are materialised in legal discourse...in both cases there is but one text, which solemnises conflict, excludes alternative interpretations and methodically follows the path of its subject." The two discourses develop in parallel and it is the task of legal theory to move from one to the other and so to elaborate the mechanisms that tie the subject to its social place: "We do not yet know how to pass from one domain to the other, from the drama of analysis in which the patient develops his or her own spoken text to the juridical simulation in which, under the mask of writing, the Law speaks...."⁷⁷

Legendre's proposal for relating or reconciling the two foundational levels of legal socialisation is to suggest a systematic correspondence between the two orders. In Legendre's analysis the legal structure mimics the psychic structure for the simple historical reason that the scholastic categories which were elaborated to govern the soul (*regimen animarum*) were to a very considerable extent coincident with the dogmatic categories of social regulation. The lesson of genealogy is precisely that both subject and law descend from the same system of names, the same dogmatic order of categories and classifications, from the same familial structure of meaning: "The most private, the most intimate, that which is at the heart of the concept of a subject, to know the fantasm, is already marked by the seal of the

⁷⁵ Sir John Fortescue, *DE LAUDIBUS LEGUM ANGLIAE* 3 (London: Gosling, 1737)(1468).

⁷⁶ Thus Gratian, *DECRETALS*, c. 16, q.3, c. 17: "venerandae romanae leges" (the laws of Rome must be venerated).

⁷⁷ Legendre, *L'AMOUR DU CENSEUR*, at 249.

genealogical order. All subjects carry within them, if I can express myself in this way, the institutional order under the primary form of familial institution.⁷⁸ In dogmatic terms, the child is a portion of the mother's entrails⁷⁹ and bears the image of the father, his similitudes or likenesses—*vestigii et similitudinibus*—on the soul.⁸⁰

In some of his later work, Legendre has revived the classical conception of the Fates to depict the largely ignored prescriptive and providential dimensions of law. The Fates spoke the subject in advance. They indicated that the individual entered an institution of life and that the individual was destined to die. The subject thus experiences the institution of the family as a prior order or fate, as a first law which can neither be resisted nor evaded. The crime of Corporal Lortie can in this respect be treated by Legendre as fated to happen by virtue of a genealogical failure, namely that Lortie was born into a family which had transgressed the order of familial places: not only was his father a tyrant who recognised no limits to his violence but he also engaged in incestuous relations with his children—Lortie's youngest 'sister' was the child of his eldest sister. Wishing to kill the government of Quebec—"the government which had the face of my father"—the accused sought the restoration of the Father: "He killed the person who, in the concrete life of his family, represented the transgression of the taboos and the principle of differentiation. This was the tragedy in which Lortie, at the cost of his own life and that of his unfortunate victims, sought to found himself and to live. This was in short a genealogical crime."⁸¹ There was, in other words, no order of meaning, of names or places, into which Lortie could be inscribed. There was no law to recognise and no law to observe. If such was true at the fantasmatic level of the subject, it was equally true at the level of the social enactment of Lortie's parricidal desire.

The failure of meaning which characterised Lortie's biography and his crime can serve to draw attention to a second order of homology between psyche and law. The two instances of the subject share the fact and the sociality of language and gain their expression and their representation through speech and through writing. The psychic text and the legal text are comparable objects of interpretation

⁷⁸ Papageorgiou-Legendre, *FILIATION*, at 33.

⁷⁹ Fortescue, *DE NATURA LEGIS NATURAE* 240 (1466), reprinted in *THE WORKS OF SIR JOHN FORTESCUE* (London: private distribution, 1869)(*portio est viscerum maternum*).

⁸⁰ Fortescue, *DE NATURA LEGIS NATURAE*, at 233.

⁸¹ Legendre, *LORTIE*, at 141. Alain Pottage remarks that "Lortie's inheritance was a hand of genealogical cards that his father had not played." Pottage, "Crime and Culture," *supra* note 1, at 431.

and, by virtue of the commonality of language, belong to the same institutional order of meaning. One could hazard that the law speaks as if it were a subject, while the subject speaks as if it were a law. Language, in other words, is irremediably social, a fact which necessarily engages the psychoanalyst in the juristic enterprise of interpretation and more broadly in the tragedy of the dogmatic institution of life: "What does it mean to communicate? The reference to law suggests a wide-ranging response: law communicates orders. And yet normativity cannot be reduced to a mere play of appearances, it mobilises a much more subtle set of human relations. *Communicatio* is a substantive derived from *communis*. In other words, normative communication implies making things common, making something common which must not remain private."⁸² Because the subject speaks and because the subject's speech must be interpreted, language implicates the psyche in the institutional order of reproduction, in the genealogical relay that is law for us.

The case of Lortie also allows the specification of a further site of commonality between psychoanalysis and law. It is that of the fantasm and of the image as the vehicles of subjective attachment. The order of law is a theatre of truth. The institution is built upon fictions, represented through images, repeated through rituals and elaborated through the simulated categories of a collective subject or will. The age-old war of texts is complemented and at times exceeded by the war of images. Law relies upon images because it is through images that the legal subject is most directly affected by law. The power and hence also the danger of the image was the primary force that motivated the various movements of reform and counter reform within ecclesiastical history. The image was politically effective but also potentially corrupting; too great a love of images (*latria*) would distract the subject from the dictates of law, while an absence of images would deprive the law of subjects. Thus the concern of lawyers to govern images and to regulate the social forms of representation, the theatre and the ritual of government and of law.⁸³ The image is cognate with the imaginary and it is through the image that law is most directly linked to the mechanisms of subjective attachment or to the direction of individual desire. The case of Lortie is a case of the failure of the *ius imaginum*, of the representation of the order of succession. Lortie had no legitimate identity because he had no image with which to identify, no imaginary space within which to found his own project, and hence he

⁸² Legendre, L'INESTIMABLE OBJET DE LA TRANSMISSION, at 166.

⁸³ For a history see Goodrich, OEDIPUS LEX, *supra* note 36, at ch. 4 & 5.

felt the need to kill an external father—a bad father—so as to make room for a good father within.

The theatre of law, the images, symbols and rites around which law is identified and reproduced, are also domains of attachment or subjects of love. The role of the image in the imaginary is to incite attachment and to focus desire or love upon circumscribed social objects of affection or legitimate political sites. The structure of social love is one of the great enigmas of political power and one of the most opaque of the features of the history of law. The proximity of the image to enigma deserves a parting word. The project of a psychoanalytic jurisprudence is linked to a desire to understand more and not less about law. In Legendre's depiction, it could be said to belong to a venerable scholastic project concerned with the pursuit of an impossible knowledge: "the celebrated interrogation *fides querens intellectum*, word for word, faith in search of understanding, faith in search of intelligibility."⁸⁴ The conjunction of desire and law, of love and power, is not only a fertile ground for understanding the mechanics of law's governance of the subject and so its inscription upon the soul. It is also potentially the site of the recovery of law's difference. The case of Lortie can remind us that in the most tragic of senses a subject without images, a subject who cannot see himself, is a subject without identity and so without any consciousness of law. More than that, a psychoanalytic reading of the history of law can also remind modernity of the unconscious significance or latent meanings of law. The poetics of legal texts, the art of justice and more broadly the aesthetics of legal order are all parts of a history of resistance to a unitary or positivised and closed order of legality. Legendre reminds us that poetry and the poetics of the text signaled amongst other things "the insurrection of desire against the institution."⁸⁵ Poetry and in varying degrees the other legal arts, painting and music in particular, suggest a history and an erotics which wrote against power and implied the possibility of using or interpreting law to other ends.

⁸⁴ Legendre, *L'INESTIMABLE OBJET DE LA TRANSMISSION*, at 131.

⁸⁵ Legendre, *PAROLES POÉTIQUES*, at 53.