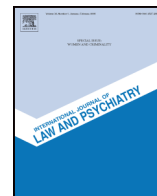




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Freedom in the free world: The extimate becomes the law

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ABSTRACT

My article takes Robert Burt's piece as a starting point to highlight how a lacanian analysis of law differs from the one Robert Burt (rightly) rejected and from the alternative psychotherapeutic scenario Burt develops. I focus on what I consider to be the novel characteristics of a lacanian analysis, particularly its insistence on the castration of the human subject by language, a castration that problematizes our understanding of "freedom" and "free speech", and, in turn, on Law's own castration. The gradual peeling away of the claims made on behalf of the subject by ego psychologists, enables us to arrive at what a lacanian analysis would ideally uncover, that is the subject's extimate core. I illustrate this with the film *The Act of Killing*, a documentary which displays not only the extimate core at the heart of the subject but the extimate as the Law itself. The encounter between law and psychoanalysis, I conclude, far from leading to mutual understanding, leads to the dissolution of the analysand's pretenses, and, in turn, to the withdrawal of psychoanalysis from the scene altogether.

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1. Epigones in America

In a well-known and oft-repeated anecdote relating Freud's arrival to the United States in 1909 with his then friend and colleague Carl Jung, Freud supposedly remarked that the warm reception they were being greeted with by their hosts on the other side of the Atlantic was premised on a fundamental misunderstanding: 'They don't understand', Freud supposedly said, 'that we are bringing them the plague.' Whether this conversation took place or not is immaterial. Its repeated circulation, the circulation of the signifier, as Lacan would emphasize later, is what matters: the signifier takes a life of its own and determines meaning, the same meaning that Freud so presciently suggested was destined to misunderstanding. It is this misunderstanding that Lacan insisted is at the heart of all human communication: we delude ourselves into thinking we understand each other, but the most we can hope for is a successful, and hopefully bloodless, misunderstanding.

In the case of psychoanalysis, welcomed in each and every discipline over the last century, it is clear that this misunderstanding is not due to a lack of understanding but to a reluctance to understand; a passion for ignorance as Lacan would call it. And the reason for this reluctance is the same as Freud predicted: why, after all, would we embrace a discourse whose likely outcome is to show us our own ugliness, confront us with the self who, even if we suspected we harbored, hoped no one else would realize we had?

Does this misunderstanding extend to the reception of psychoanalysis in the legal academy? My fear is that it does. Like many attempts, particularly in vogue at the start of this century to 'wed' law with

other disciplines, the enthusiastic conjoining of law with psychoanalysis, far from critiquing and challenging law, ended up consolidating law's existing presuppositions. Consciously or unconsciously, the enthusiasm for such unions (and I include myself in this merry-go-round) addressed, but unfortunately did not redress, the limitations of our own discipline. We fell prey, that is, to the classic lover's delusion: all-too-well aware of own weaknesses and limitations, we abdicated the work, and the responsibility, for our salvation to the other discipline, duping ourselves into believing that our beloved would make up for our lack. Conveniently ignoring that, as Lacan (1979) put it a propos all relationships (whether they are between humans or between disciplines), 'in persuading the other that he has that which may compliment us, we assure ourselves of being able to continue to misunderstand precisely what we lack.' (p. 133).

What is it that we continue to willfully misunderstand, about ourselves or our discipline, and will do anything to avoid encountering? Lacan coined a neologism for the ultimate goal of a successful analysis: the hope is not to adjust the patient to reality, nor to mold her in the person of the analyst, nor to 'reconcile her with her demons' (as popular parlance has it), but to confront her with her own extimate core. And what is the extimate? The extimate is that part of ourselves that is so painfully intimate that we have hidden not somewhere far away, nor only from other people, but inside us, from ourselves: we have excluded it, from others and from ourselves, in the *interior*. Lacan's (2006) metaphor for the message of psychoanalysis, and how it is categorically *not* psychotherapy, is not dissimilar to Freud's, and for the same reasons: we have to treat it, he suggests, like the tumor that it is and that is spreading, and exteriorize it (p. 274). This means we must bring it to the surface, that is, the surface of the signifier.

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Although the extimate is usually painstakingly and safely hidden out of view, occasionally, not often, but once in a while, we are confronted with it in all its raw and obscene excess: no attempt is made to hide it and the shock is not only at its nakedness but its shameless refusal to hide. This is the challenge, I suggest, posed by Joshua Oppenheimer's *The Act of Killing*. At the end of our excavation into Law's unconscious I will illustrate the culmination of our analysis with this film, a documentary that I will argue displays the extimate not only as an intrinsic part of the legal order but as the Law itself. My grim conclusion will be that when the extimate is not only the hidden core of the Law, but has become the Law itself, the subject has no choice but to acknowledge her own complicity in it. That is, she has no choice but to confront the abyss not only at the heart of her fellow beings, nor only at the heart of the symbolic order, but at the heart of herself.

2. Successful misunderstanding

We are fortunate that Robert Burt was not only present at the start of the psychoanalytic turn in law in the United States but has generously given us an account of his participation, in the form of a description of Anna Freud's seminars at Yale. Despite the grace of his account, we do not need to read between the lines to gauge what he found worrying about Anna Freud's style: confident, overbearing, bordering on 'dogmatism' he intimates. Lacan I believe would not only have nodded in agreement with Burt's observations but, unlike Professor Burt, would have been a lot less circumspect in his choice of epithets and less sparing in his critique. The direction taken by Lacan thereafter, however, 'the direction of the treatment' as he called it in a famous intervention, is much less optimistic than Burt's, and much less benign. Rather than aiming, let alone hoping for 'a democratic resolution' of the patient's conflicts in fruitful cooperation with a judge or therapist in the 'holding place' of the therapist's room or courtroom, as Burt proposes, it is no exaggeration to say the Lacanian analyst aims not at a 'resolution' but a 'dissolution' of the subject, not at a 'synthesis' but a separation of the fake identifications that give the patient's ego the illusion of identity.

Lacanian analysis is a bloody and gruesome process that, far from rectifying the patient's conflicts and leading each adversary to come to a democratic empathy with the other's viewpoint, aims at shifting the ground from under all participants' feet, including, aptly, that of the analyst/judge. For the Lacanian analyst is not there to judge, punish, forgive, cooperate with or reconcile the patient with her adversaries, real or imaginary. The analyst's goal is much more ambitious and much more painful: it aims at shuttering the subject as she finds her and making room for the birth of a new subject. Once the deed is done, the analyst, and the moribund ex-subject that used to be her patient, can slip gently out of view, making way for a new subject: a true and ethical subject.

For Lacan the reception of psychoanalysis not only in the United States but worldwide was premised on a fundamental, and, for better or worse, phenomenally successful, misunderstanding: psychoanalysis, he felt compelled to keep repeating, is not psychotherapy. In particular psychotherapy all-too-often proceeds as if there are only two people in the room, ignoring the inevitable presence of the Big Other of the symbolic order, 'the mediation that speech constitutes between subjects.' (Lacan, 2006, p. 288). It is the presence of the third – an uninvited presence forced on us all – that renders psychoanalysis a preeminently social and political activity. Our psyche and its pains are never just ours, but are on loan from the Big Other of the symbolic order. Until and unless this forced debt is acknowledged, and shaken off, no patient can claim to confront her neuroses. In particular, without taking into account the dimension of the symbolic, any dyadic relationship, (between patient and analyst, or litigant and judge) remains at the level of the imaginary and worse, Lacan warns, the imaginary becomes the norm. So, despite the fact that Freud was at pains to distinguish between the imaginary and reality, psychoanalysts, Lacan (2006) accuses, first

'made the imaginary into another reality, and then, in our times, [found] in the imaginary the norm of reality.' (p. 388).

For Lacan none was guiltier of this pathological misreading of Freud than ego psychologists including Anna Freud and her followers, the same posse Robert Burt discusses and so presciently found wanting. Lacan waged a long vendetta against ego psychologists' teachings and practices as propagated by its troika in the US, a triumvirate made up of Ernst Kris, who had left Vienna for the US during the war, Rudolf Lowenstein, who had been Lacan's own analyst, and Heinz Hartmann who had been in analysis with Freud (Fink, 2004, pp. 38–62). In scathing and repeated attacks on the treatment meted to patients by these prophets, Lacan lambasts them for presuming to try to 'cure' their patients' egos: a euphemism, as far as Lacan (2006) was concerned, for trying to reshape their patients in line with the analyst's ego, serving as 'an excuse', that is, 'for the analyst's narcissism'. (p. 288).

Lacan saw this as a wider plot by ego psychologists along the lines of Roosevelt's New Deal: he mocks Ernst Kris as the intellectual leader of the 'New Deal of ego psychology' who makes it his business to exhort the analysts to adopt to her social environment and to so-called reality: 'Kris' ideas about intellectual productivity', Lacan (2006) concludes, 'thus seem to me to receive the Good Housekeeping Seal of Approval for America.' (p. 332). In the process ego psychologists forget that the ego, the product of and steeped in the imaginary, is not only 'the seat of illusions' (Lacan, 1991, p. 62) but 'frustration in its very essence.' (Lacan, 2006, p. 208). The theory of the ego, to put it bluntly (as Lacan often did), is nothing short of 'an enormous error.' (Lacan, 2006, p. 395). Far from 'curing' this imaginary prosthetic of ours, the Lacanian analyst must lead it to recognize its own fundamental sickness and direct it to accept its own demise. Not least because what for ego-psychologists constitutes a supposedly 'healthy' ego, is, for Lacanian analysts, all the sicker: for the subject as well as for those unfortunate enough to be around her.

While ego psychologists bear the brunt of Lacan's wrath it is no exaggeration to suggest that the reception of psychoanalysis generally, on both sides of the Atlantic, has been one of successful misunderstanding. We are never far from using and abusing psychoanalytic terms in every day speech, yet the ubiquity of Freud's vocabulary in our language, far from proving an acceptance or even an understanding of his teaching, is made at the same time as the implication of psychoanalytic insights is radically denied. The paradoxical result of the appeal to psychoanalysis therefore is to domesticate rather than confront the challenge posed by the unconscious.

Does this misunderstanding extend to the Yale School of Law and Psychoanalysis? As I started suggesting, Robert Burt's polite reservations concerning his seminars with Anna Freud would have found (loud and ostentatious) agreement from Lacan. Lacan would have been less sanguine, however, and much less optimistic about Burt's reading of psychoanalysis' 'lessons' for law thereafter. If there is one theme pervading Burt's work it is the hope that judges can become 'reliable guides for disputing parties – even deeply opposed parties – in working toward amelioration and mutually satisfying resolution of their conflicts.' This aspiration, he suggests, is also that of psychotherapists, whether the conflict they are addressing is that between two persons or within the conflict-driven mind of one person, their patient: in the same way that 'a psychotherapist assists the patient in coming to recognize the previously warring portions of his mind', so a judge can try to lead 'the warring litigants to recognize one another without fear or hostility.' As the psychotherapist aims to help the patient resolve the conflict in their psyche, so the judge aims to resolve the conflict between litigants, ideally with a decision, or interpretation of the law that is offered for agreement even to the losing side. The latter will be instructed, in effect, that whether they like it or not, there is 'an agreed communal meaning to the law and that they have wrongly interpreted that law.' The upshot of a psychotherapeutically-inspired legal proceedings can form the starting point, Burt suggests, for 'friendly interaction', 'new mutually respectful' and 'egalitarian social relationships' indeed for an

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