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LEGAL THEORY

THE LAW AND THE UNCONSCIOUS

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Abstract

We have tried in this article to identify the unconscious mechanisms behind the legal discourse, whether it is the decision-making process by the judge, the substantiation of a court decision or a doctrinal opinion in the legal sciences. We have also tried to identify the unconscious processes that trigger the criminogenic behaviour and those that condition the positioning of the individual in relation to the law. Moreover, we have tried to show that the legal text is no stranger to the unconscious mechanisms of the person who creates it, his / her own traumas, suppressed desires or drives. Thus, we can firmly sustain that a court ruling or a legal opinion can never be clearly separated from the very unconscious of the person who „sets the law", and that the judge, who theoretically „sets the law", becomes the one who „makes the law".

Key words: *court judgment, legal text, unconscious, legal psychoanalysis, law, symptom*

The late Freudian theory proposes three mental instances responsible for the human personality, the id, the ego, and the super-ego. The id is the primary, subjective element that existed prior to individual experiences. It is the home of instinctual trends. The id is driven only by instinct, in the service of the principle of pleasure, seeking satisfaction of desires and avoiding pain. The id is limited in its goals by the ego, the mental state governed by the principle of reality. The ego is the only psychic instance that confronts the reality of the outside world and which, therefore, uses thought, problem solving, and creates the mediation between blind psychic forces and reality. The super-ego is the home of moral judgments and ideals – including traditional values and other social ideals internalised during childhood – the severe instance commanding the suppression of urges and punishment. The ego is the instance caught in the middle of the war between the id

seeking only the satisfaction of pleasure, the super-ego that requires the suppression of the drives and the pursuit of the moral ideal, and the reality imposing constraints.

The ego, faced with these three opposing forces, the id, the super-ego and the reality, is left with the possibility either to seek realistic solutions or pathological solutions of denial and distortion of reality for the satisfaction of the id and / or the super-ego. Such pathological mechanisms of avoiding reality are refutation, projection, sublimation, denial, fixation, phantasmality and regression. Refutation is the psychic process that removes and conceals from the conscience a memory, an idea, a perception, and hence creates a blindness to a certain realm of reality. Projection is the psychic process through which moral anxieties, unresolved conflicts, ideas, affections, desires are objectified and located in the outside world. The psychic energy is projected on an external reality, the subject thus escaping, symbolically, of individual responsibility and inner conflict. Sublimation is the process by which the psychic conflict is resolved by the transfer of psychic energy to socially valued realities, the drive moving from its own sexual object to a non-sexual object. Denying means hiding and eliminating a drive by formulating its opposite, therefore the extreme chastity is the denial of too strong sexual desires. Denial is often the only way to express a repressed idea by presenting it in a negative form. Fixation and regression are defence mechanisms that stop or engage the normal process of psychological evolution to avoid psychic conflicts, attaching the desire towards objects of pre-libidinal satisfaction of the libido.

If we consider, as David Caudill does, society as an individual subject of psychoanalysis, then the singular individual, the normal person, represents for society the superfluous drives that it needs to control. Just as the individual refutes dangerous ideas, society represses the individual. Just as the individual tries to control his / her strong instincts, Freud believes that the primary and dangerous passions of the individual should be controlled by oppressive social structures[1]. Caudill also shows that in the same way that society presents manifest contents and structures that could be identified with the consciousness, it also presents structures obscured, identifiable with the unconscious. And if the law is a conscious instance of society, a set of manifest prohibitions, its grounds and mechanisms ought to belong to an instance similar to the individual unconscious. In the radical Freudian scheme, it is not about the conditioning or modelling by the social interaction of an individual consciousness already established, but rather that society has an unconscious and formative effect on the individual experience, self-perception, and the perception of others[2]. Thus, without the objective of a social unconscious, we must nevertheless take into account the effects of the social

[1] Caudill, David S, „*Freud and Critical Legal Studies: Contours of a Radical Socio-Legal Psychoanalysis*" in Leonard, Jerry. Legal Studies as Cultural Studies: A Reader in Post(Modern) Critical Theory, SUNY Press, 1995, p. 26.

[2] *Idem*, p. 27.

structure, with its manifest but especially obscured parts, as playing an essential role in structuring the individual subject.

In a first phase, Freud proposes an explanatory topic for understanding the psychic life comprising the unconscious, the preconscious and the conscious. This subtle human psyche lacks the represses instance that suppresses the urges from within. That is why Freud proposes in 1930 a second topical that includes the id, the ego and the super-ego. The super-ego is the psychic instance responsible for law and taboo, the suppression of drives from within and the perpetuation of the law of the Fater. When he wrote *Totem and taboo*, Freud did not have a term for the psychic instance that allows the moral and legal principles to be internalised, as well as their mental perpetuation after the disappearance of the primordial father. Later on, he would use the term „super-ego", opening a whole discursive field on what he describes as the critical instance of the psyche which performs the self-control and self-punishment functions, and at the same time creates ideals and moral judgments[3]. The super-ego is the origin and the individual equivalent of the Law. The super-ego is the one conferring power and effectiveness to the Law. The super-ego is the creator and guarantor of the Symbolic Law that goes beyond, supplements and gives substance to real law. The super-ego applies not only consciously accepted legal and moral principles, but also additional, hidden, obscured laws, the violation of which gives rise to feelings of guilt, nothingness and depression[4].

The super-ego is the instance that embodies the mental embodiment of the Father. The physical absence of the Father is compensated by the creation of this psychic instance that ensures the continuity of the paternal law, the order of the world and the obedience of the son. The Father's role of being omnipotent and omniscient is instantiated in the super-ego. The real father for the little child is the guarantor of the world order and the need for order of the subject gives the psychic connotation of this tyrannical pseudo-father that is the super-ego. At the onset of Oedipus' complex, the son must accept the role of the father as the only possessor of the mother and, at the same time, accept the prohibition of incestuous desire. Henceforth, any desire that seems to undermine paternal authority and transgress its prohibitions is rigorously suppressed by the super-ego, and any aggression directed against the father is redirected to one's own person ... The Freudian conception of the origin of the super-ego implies a second genealogy of the rule of law in which the living, real father is transposed into a disordered psychic instance that oversees the ego[5].

Once the Oedipus complex is overcome, the child becomes subject, moral subject, individual subject to the Law. The child overcoming the complex of

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[3] Brunner, Jose, „*Freud and the rule of law: from Totem and Taboo to psychoanalytic jurisprudence*", 2000, p. 284.

[4] *Ibidem*.

[5] *Ibidem*.

Oedipus is subject to the symbolic order. The oedipal phase does not mean obedience to the rules imposed by the real father in the flesh and bones, but obedience towards the Law. This Law prescribes the role and place of the child in the social structure, and the place of the subject in symbolic order. At that time, the child internalises the language and taboo of incest. The overall social forces impregnated in the child through the acquisition of language constitutes the „Law" or what Lacan designates as the „Father's Name"[6].

This super-ego, the projection of which in the real world is the law, gives the transcendent, immutable, necessary, and absolutely sure nature of the law. This instance of the psyche is unavoidable, severe, tyrannical, absolutely certain, clear and immutable in its judgments. Law having super-ego as a role model must possess the same qualities, especially certainty. Jerome Frank, analysing this psychoanalytic law-making mechanism, tries to deconstruct it to create the premises of rationalising the real uncertainty of the law. Here we need to distinguish between the symbolic Law, which is indeed certain, immutable, referring to the transcendental area, and the real law, the collection of texts that consciously regulates social life. The symbolic Law represents the symbolic register of the judicial and, therefore, it regulates any real legal relationship, is the inner unwritten law, a law that does not depend and does not need to be imposed by an outside force.

The law has always been, is and will continue to be largely vague and variable[7] ... Much of the uncertainty of the law is not an unfortunate accident: it has tremendous social value[8]. There is necessarily a plastic and unstable feature of the law. The desire for an absolutely stable and comprehensive law is a myth to be deconstructed. Frank begins in deconstructing this myth by showing that it originates in childhood. Initially, the child has the illusion of absolute control over the surrounding world in that his / her desires seem to be fulfilled by itself. The subsequent awareness of the lack of stability and controllability of the world is accompanied by the transfer of omnipotence over the parents. It is at this point, Frank says, that the origin of the myth of absolute certainty of the law must be sought. The child embodies the idea of an omnipotent and omniscient instance for which there is no form of uncertainty or instability. For the child, there is an irresistible necessity for an omniscient and omnipotent father who lies between him / her and the uncertainties of life[9]. But the illusion of this omnipotent and omniscient father, imaginary as would Lacan say, breaks down at the end of the

[6] Ashe, Marie, „*Mind's Opportunity: Birthing a Poststructuralist Feminist Jurisprudence*" in Leonard, Jerry, *Legal Studies as Cultural Studies: A Reader in Post(Modern) Critical Theory*, SUNY Press, 1995, p. 112.

[7] See also Lazăr, Ioan *Dreptul Uniunii Europene în domeniul concurenei*, Universul Juridic Publishing, Bucharest, 2016, passim.

[8] Frank, Jerome, *Law and the modern mind*, Transaction Publishers, 2009, p. 6-7.

[9] *Idem*, p. 17.

phallic stage at about 6-7 years old. The child realises that certain things are unknown to the father, and certain things are beyond his power. The desire for stability and predictability leads him / her to design the all-knowledge and all-power on other people, socially constituted as centres of power. The apparent instability of the world must be subject to regularisation by a person – a person the child can influence as he / she does with his / her father. Many are the persons who become substitutes for the dispossessed father: the priest or the pastor, the leaders of the group. They, in turn, will end up in disappointing[10]. The child realizes that a real person cannot transcend and absolutely regulate the world's uncertainties. But the desire for an absolute instance intensifies with these disillusionments, and although conscious, this need is less and less verbalised, it becomes increasingly strong unconsciously. The instance that needs to hold the control becomes less and less personal, but the need to reinstate the pattern of the child-omnipotent father primordial relationship into the real world intensifies. The need for such an instance regulates social relations either in a sacred form, the omnipotent God-father, or in a profane form of law, an impersonal instance that must resemble an omnipotent Father who can adjust ante hoc any uncertainty of life. The fact that religion shows the effects of the infantile desire to establish a father-controlled world has often been noticed. But the effect on the law of this infantile desire has gone unnoticed. ... This infantile desire is an important element in explaining the absurdly unrealistic view that the law is or can become totally certain and absolutely predictable[11].

Schoenfeld[12] on the other hand, criticizes Jerome Frank's position, pointing out that if judges only assume the position of law interpreters thematically, they have the consciousness of their power and even over-emphasize it. Staging the law in fact only creates a pedestal for judges. The analysis of the enforcements made by the judiciary will be relevant to deconstructing the opposite myth, that of judges as masters of the law. The judges, in a psychoanalytic reading, imagine that they are really usurping the place of the father giving the law. On the imaginary context, they have already assumed the role of the father. But also in the imaginary context they are just loyal interpreters, in other words, obedient sons. As a result, the position of the judge is ambivalent, as is the law. Schoenfeld asserts that the projection of a certain degree of omnipotence over judges, a projection allowed by an analysis like Frank's, is in fact just as infantile and can bring consequences as bad as the idea of transcendence of the law. Schoenfeld accuses Frank of not submitting to the alternative psychoanalytic investigation suggested, leading to the idea that the transcendence of the law can be reasonably analysed and eradicated

[10] *Ibidem*.

[11] *Idem*, p. 19.

[12] Schoenfeld, C.G. *Omnipotence and the law: a psychoanalytically oriented analysis*, in *Journal of Psychiatry and Law*, 1988, 16: 421-58.

without leaving any traces in the unconscious. For Frank, the illusion of the rule of law is one that can be diagnosed and eliminated without loss[13].

The judge has, as we have seen, an ambivalent position in relation to the law. He / she changes the law, believing he / she keeps it unchanged. This is because, on the one hand, the symbolic, immutable Law, which regulates the legal field, that which was unconsciously established by the killing of the original patriarch, cannot be uttered. This law is the legal super-ego. On the other hand, the law formulated, the real text of the law is an eternal shortcoming. It exists and works only to the extent it is interpreted, staged in real processes. This staging is achieved by individual, judges, jurors, witnesses etc., whose individual unconscious operates in the process by influencing, says Jerome Frank, the establishment of the facts. Starting from classical Freudian theory and assuming factual scepticism, Jerome Frank brings a critique of the legal system from the point of view of the actual fact-finding process. According to Frank, the word „Law" should be understood as the sum of 1) the specific decisions delivered, 2) which are otherwise less predictable and uneven, and 3) the processes in which these decisions are delivered by focusing on 4) the possibilities of improve them. Speaking about the law, Frank is concerned not with what the immutable law would be, but rather with all the decisions delivered in the past as well as the expectations regarding the future decisions that will be delivered.

Analysis of decision-making in the case of a trial should focus primarily on the importance of often unconscious and therefore psychoanalytically prejudices of the judges and witnesses in their capacity as fallible humans with personal histories and idiosyncrasies, endowed with an unconscious manifested in testimonies and pronouncements. What predominates in making decisions in fact are preconceptions about witnesses and testimonies made, as well as preconceptions that interfere with witness testimonies. A lawsuit is usually based on oral and not often conflicting testimonies. Making a decision involves (re)establishing the truth from a series of disparate and inconsistent points of view. In the first instance, these testimonies are a personal filtering of the facts observed affected by oblivion, biased reconstitution, personal prejudices. Moreover, these views are supported before the judge by certain witnesses and the (re)creation of the truth will be based on an assessment of the credibility of the witnesses. Thus, the depositions of some people will have a greater weight in making the decision. This assignment / distribution of credibility towards the witnesses cannot be formalised, depending on the personal history of the judge and jurors, their preconceptions and cultural preconceptions. Thus, there are biased reports against women, unmarried women, people of different nationality or race, the tone of the voice or of unconscious tics. The major obstacle in prophesying court decisions is therefore

[13] Brunner, Jose, *Freud and the rule of law: from Totem and Taboo to psychoanalytic jurisprudence*, p.h.q., p. 287.

the inability due to these insubstantial factors to predict what a judge or a jury will consider as the facts[14].

The problem is not the lack of codification of the rules, of the „true rules" that would exist and would be applied by the higher courts in the case of appeals, but the real problem is a factual problem, namely, what will be considered as a fact within the court. The unpredictability of the cases does not lie in the uncertainty of laws and rules, although this is the universal prevalence, but in the uncertainty of establishing, accepting and defining facts. The question to be asked before any trial is not how the judge will judge what has happened but what will be established during the trial that it has happened. The facts do not exist before they are settled in court. This set of facts is related to some hermeneutics of personal memory about events as well as a psychoanalysis of what is accepted as a fact. The facts considered in the process are born within the process through unconscious choices of what is accepted and what must be overlooked, repressed or forgotten. The uncertainty about the facts under consideration does not end with the delivery of the sentence and possibly the justification of that sentence because while we may know the facts after the trial, we cannot know how these facts have actually been established, what are the mechanisms through which the corroboration of divergent opinions establishes a unique factual truth. The superior court that analyses the transcript of oral depositions can only consider the facts established in the trial as being given the historical truth. But these „facts" are based on personal preferential choices of the judge. Establishing the facts cannot be but a sum of such preferential choices because it takes place on the basis of inference processes based on the interpretation of some depositions. These depositions are themselves the fruit of personal interpretations as events have been recorded through personal idiosyncrasies. Once the facts are established, any well-informed magistrate or lawyer can fairly predict what will be the decision that will be taken by the inferior or superior court. The true uncertainty of the judiciary system lies in the factual uncertainty, in knowing what will be the facts that had taken place. The enforcement of law and jurisprudence cannot be foreseen before the actual process, not because the law, precedents and rules are uncertain, but because these laws, precedents and rules are not enforceable. The object of the law, the facts, is „created" during the hearing and interpretation of witness testimonies. And no rule of law that takes into account the interpretation and enforcement of the law will make the judicial process more predictable as long as no one can know in advance which testimonies are accepted, albeit false or imprecise, and which are rejected, though true but not persuasive. The judge may be more attentive to certain witnesses than to others, he /she may show sympathy for some and antipathy for others. And these affective intentionalities are the foundation on which the facts are built and stabilised. „The facts", we should never

[14] Frank, Jerome. 2009 [1930]. *Law and the modern mind*, Transaction Publishers. p. xxv.

underestimate this, are not objective. They are what the judge thinks they are. And what he/she thinks they are is based on what he / she hears and sees while witnesses testify – which can be, as it is, different from what another judge hears and sees[15].

Consequences of Freudian analysis

The myth of the primitive horde and the analysis of the establishment of law and society analogous to the emergence of individuality as a result of the overcoming of the Oedipus myth phase destabilises the long tradition that founded the law on rational and conscious decisions. This Copernican overthrow is prefaced only by the Nietzsche theory of resentment. In his *Genealogy of morality* in 1887, Nietzsche shows that the rule of law, equality before the law, social order and morals stem from the resentment of the weak. They are constituted in egalitarian communities in response to the excesses of the strong. Nietzsche thus originates the law in a negative passion, hostile to life and its excess. Like Nietzsche, Freud denies the rational origin of the law to reveal the role of unconscious passions and urges. The law is the effect of mourning, of regret. The law is a jointly imposed self-punishment for excess or urges. The Freudian genealogy of the rule of law ... is dialectical and critical at the same time, establishing the law on desire and guilt and integrating it into the logic of excess. ... His purpose is to show that neither the constitutive origins nor the current practices and effects of the law can be subsumed to the stated purpose. He states that the original conflicts and the forces involved in them can never be completely cancelled[16]. This means that studying the origin of the law is of equal importance as the psychoanalysis of the chain of draftings and historical movements that have taken place in the legal system and which have, besides a manifest and conscious form, an unconscious, repulsive, drive side. All of these have effects at present, unobservable effects because unconscious bans work and do not allow their rational analysis. As long as the law is considered to be an autonomous and rational system, it will only reproduce its own obsessions that it rationalises and raises to the status of objective principles. Jose Brunner argues that lawyers could benefit from considering apsychoanalytic reporting to law as long as such reporting shows the social and cultural barriers of the law. The Freudian analysis makes us aware of the role the law plays in the cultural system, a role that is not limited to the declared aims of the law.

The Freudian analysis is not only used in a critical way, deconstructing the weaknesses and unveiling the obscured elements of the law. In a constructive

[15] *Idem*, p. xxx.
[16] *Idem*, p. 289-290.

manner, Robin West[17] uses the Freudian analysis of the origin of the law to substantiate the liberal doctrine[18] of the principle of equality before the law. She argues that the Freudian analysis offers more plausible arguments for equality before the law than the legal theorists of American liberalism. West criticises the arguments of liberal lawyers on the ground that they are based on non-contentious moral truths obtained through rational intuitions. For West, this can only provide the arguments a void universality. West sees in the Freudian analysis a naturalist way of substantiating the principle of equality before the law. Freud bases his argument on the existence of the rule of law on universal mechanisms of functioning of the human psyche and on historical considerations.

Equality before the law and egalitarianism are unnatural, opposed to individual drives. „The cultural element is given by the first attempt to regulate these social relations. If such a test had been missing, these relationships would have been at the whim of the individual, that is, the one who is the most physically strong would have decided in the sense of his driving interests and movements. Nothing would have changed if this strong person had met yet another stronger individual"[19]. Freud shows that individual driving energies are aggressive and antisocial and cannot be neutralised by selfless instincts or erotic drives. Erotic drives cannot be used to substantiate social cohesion. The erotic instinct is not directed at large social groups. Within the psychic life, the erotic drive requires the choice of the object and a temporary couple relationship. As a result, instincts, individual drives cannot ensure social cohesion and the establishment of law, much less equality among peers. Such a social order must be grounded elsewhere, in the establishment of the symbolic order. The rule of law was the answer of history to the problem of the excesses of individualistic, selfish-erotic drives, which were directed only towards their own satisfaction, in opposition to any form of community cohesion. But once the tyrant and the almighty father of the tribe is killed, the sons feel the guilt and regret. Affective dependence on the father is overestimated once the hatred drives against him have been violently satisfied. As a result, a collective obedience to the tyrannical rules once imposed by the whims of the killed father will be created. Love for the father and respect for his laws are projected onto the totem animal. The rule of law originates, therefore, according to West, in the relative and artificial state of equality established between the sons by the slaughter taboo. The superiority of Freudian substantiation of the principle of equality before the law is that it does not presuppose the existence of a moral subject endowed with reason which would deduce and rely on this deduction the

[17] West, Robin, *Law, rights and other totemic illusions: legal liberalism and Freud's theory of the rule of law*, *University of Pennsylvania Law Review*, 1986, 134: 817–82.

[18] For a study on liberal doctrine in the context of public law see Lazar, Ioan, *Public Finance Law*, ed. 2, Universul Juridic Publishing, Bucharest, 2016, pp. 31-33.

[19] Freud, Sigmund, *The Uneasiness in Culture*, in Freud, Sigmund. *Works 4. Society and Religion*. Trei Publishing, 2000, pp. 170.

principle of equality before the law. For Freud, it is sufficient for the process of psychological development to evolve relatively normally, that is to say, the symbolic order is internalised for the rule of law to function.

Instead, the desire to break the law in a psychoanalytic key, the desire to destroy authority, is the central subject of Peter Goodrich's famous legal study of psychoanalysis „The Unconscious is a Jurist"[20] that actually resumes the study of his predecessor, Pierre Legendre[21]. Both studies start from the same political event, namely the attempt of corporal Lortie to kill the Prime Minister of Quebec. Lortie, corporal in the Canadian army until the date of the attack, a seemingly psychically normal individual, with vague skews considered within the limits of lax normality, without a legal or clinical history, begins abruptly in an episode of decompensation through a violent and seemingly inexplicable venting. Upon the medical history, those who investigated the attack find out that the venting reaction started from a leave requested by the corporal and refused by the superior. Apparently weird, Lortie says the sergeant who refused to grant him the leave had the face of his father. The violent venting in fact concerns the Prime Minister as an image of authority and implicitly the image of the father.

Lortie's obsessive invocation of the image of his father who orders, refuses, or hurts does not evoke only a Freudian interpretation of authority, but is also a legal reference. The Roman law has given absolute power, power over life and death, to the father of family, *pater familias*. The father's rights to rule, the almost discretionary right from the private law, finds its pair in the discretionary right of the Imperator in the public law[22]. Therefore, the Freudian comparison or approximation in interpreting the history of corporal Lortie is not forced, and finds even a historical justification; while in the public law institutions, the Lèse-majesté is the murder of the Emperor, in private law the equivalence is the killing of the father. Once again, in a psychoanalytic interpretation, the suppressed desire to destroy authority is hidden and unleashes, as the hidden repressed desires emerge in the killing of the *pater familias* as an embodiment of the Authority. Legendre interprets Lortie's attempt to kill the Prime Minister as being in fact the attempt to kill the Authority, just as Oedipus, killing his father actually killed the authority that prevented him from fully accomplish his desire. The Authority refuses to the subject the plenary access to enjoyment. The Lacanian term of enjoyment is more appropriate, having a more intimate connection with the forbidden desire, although Legendre and Goodrich are Freud's disciplined followers. The confluence of the two stories lies at the level of patricide as a denial of authority or the forcing of its limits.

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[20] Goodrich, Peter, *The Unconscious Is a Jurist: Psychoanalysis and Law in the Work of Pierre Legendre*, in *Legal Studies Forum* 20/3, 1996, pp. 195-228.

[21] Legendre, Pierre, *Le crime du caporal Lortie: Traite sur le pere*, Fayard, 1989.

[22] For a broader study on dichotomy of public law - private law see also Lazar, Public Finance Law, Universul Juridic Publishing, Bucharest, 2016, pp. 81-83.

On the same line of thought, however, Legendre makes an extra step: the relationship between the subject and power, or the relationship between the subject and authority is not exclusively conflictual, but biunivocal, which does not deny erotic interpretation; in other words, Legendre elaborates a theory of the erotic attachment of the subject to power, consecutive to subservience, obedience. Obedience to the subject towards authority generates, as a secondary effect, a vassal attachment to the Law. Thus, the matters of Law involve subjective attachment issues derived from the fascination of power, the original fascination towards the father. In this respect, Goodrich points out that, even more paradoxically it is that the subject has to grow to wish to be subjected to power, to love the signs of power, the emblems of authority[23].

Although „paradoxical", the affective ambivalence is not an unusual concept for Freud. Indeed, the term introduced by Bleuer was picked up by Freud who considered the affective ambivalence a normal feature of the psychic apparatus in which love and hatred coexist towards the same object. The explanation is not complicated: love involves hatred, due to the homeostasis of the ego, its characteristic of maintaining its inner balance which is disrupted by the very „object" of the affective attachment. Thus, as long as the object which the subject in love with disturbs the balance of the ego, the defensive mechanism of the latter perceives this disturbance and therefore, the sense of hatred towards the object appears correlated and necessary.

The implication is that what the hero of Legendre and Goodrich is trying to destroy in the madness episode is the paternity fantasy that ordains and establishes social places and roles. In this context, madness is the failure of the subject to observe and abide by the social place, the failure of the subject to symbolise, as he remains fascinated by the image. Lortie thinks that killing the Prime Minister, the personification of power and law, the image, the consequence, and the representation of a symbolic principle, will succeed in overturning the prohibition principle, the Law and the Authority as such. The law does not oppose only desire, normalising and regulating it, but also psychosis. Institutional or individual, madness is particularly manifest in the failure to recognise where, when and to whom a subject has a right to address. In this context, the law is simply the manifestation of power as a structure, and madness is the failure to abide by the spaces, images or figures of this structure[24]. Lortie's madness, and the madness in general for Lacan, is an amalgamation of Symbolism, Imaginary, and Real, a short circuit in the level of mutual regulation and relative independence of the three fields.

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[23] Goodrich, Peter, *The Unconscious Is a Jurist: Psychoanalysis and Law in the Work of Pierre Legendre*, in *Legal Studies Forum* 20/3, 1996, p. 210.

[24] Goodrich, Peter, *The Unconscious Is a Jurist: Psychoanalysis and Law in the Work of Pierre Legendre*, in *Legal Studies Forum* 20/3, 1996, p. 201.