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Abstract
The love of the law is flighty. Indeed, it represents itself as ‘without desire’. It is a love imagined emanating from a sovereign that does, and has, and may again, exercise its whimsical decision and render the subject, as Giorgio Agamben (1998) has described abandoned and as Jacques Lacan has offered: castrated. Consequently this love is experienced, on some level, as precarious. It is a love that can be withdrawn, or directed to an-other, at any time. What evokes the law’s desire is neither obvious nor apparent. It is hidden from the ordinary subject.

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‘Who’s your Daddy?’ A question of sovereignty and the use of psychoanalysis

Juliet Rogers[1]

> It is not the surface but the depth, not the apparent but the hidden, not the obvious but the arcane that prescribes the meanings and indeed the loves of a law that is paradoxically without desire (Goodrich 1995: 32).

The love of the law is flighty. Indeed, it represents itself as ‘without desire’. It is a love imagined emanating from a sovereign that does, and has, and may again, exercise its whimsical decision and render the subject, as Giorgio Agamben (1998) has described abandoned and as Jacques Lacan has offered: castrated.[2] Consequently this love is experienced, on some level, as precarious. It is a love that can be withdrawn, or directed to an-other, at any time. What evokes the law’s desire is neither obvious nor apparent. It is hidden from the ordinary subject.

In the condition of imagining its desirability to the law the subject exists in a state of anxiety. Like the child Freud’s patients recalled, who is imagining a beating experienced by someone, the subject knows the father’s displeasure will arrive — someone will be beaten — thus the subject splits the uncertainty about inhabiting the position of loved child and imagines the disposal of the displeasure into an-other (Freud 2001a). The child of the father and the subject before the sovereign occupy the same position. The decision, the beating, the abandonment arrives, somewhere. The question for the psychoanalytic subject and

the question for the subject of the liberal body politic is how to be desirable enough to secure the sovereign's pleasure.

The emergence of the anxiety of desirability in the psychoanalytic subject and in the liberal (democratic) subject is no coincidence. It is not a universal condition. It is a particular, politically contingent and culturally invested terrain that both liberal and psychoanalytic discourses speak to. And not accidentally. The anxious condition betrayed in the attempt to inhabit the place where love, rather than beating, or abandonment, may be received from the sovereign is both a political and psychoanalytic concern because both are wrestling with their desirability before a potentially abandoning or castrating Other; the father, the sovereign, the Lacanian (big O) Other, from whom decisions will be, or will be imagined to be, administered (Lacan 2006).[3] Indeed I suggest in this article that the anxious condition of the liberal subject is a parallel condition for the psychoanalytic subject.

Lacan has stated: 'enlightenment man, is psychoanalytic man'.[4] This is not a happy accident, but has emerged because the subjects of the liberal polity exist in a state of anxiety. This anxiety is a product of the political condition heralded by the Enlightenment and embodied in the fantasies of political certainties and curiosities that mark the 'western' *polis* since Rene Descartes announced the doubt of the *cogito*. And, it is precisely this condition of doubt — a doubt fuelled by the presence of a deciding sovereign — that psychoanalysis, sometimes unconsciously, has theorised and indeed profited from.

The concern of this article is predominantly with the use of psychoanalysis as a method to address the modes of performance, and indeed production of a liberal subjectivity. In one sense I am justifying this use, but also attempting to explain why psychoanalysis cannot — or least should not, until further thinking is done[5] — be used as a tool to analyse a universal psyche or the psyche of all. The ways in which I discuss this problematic are through explaining how the orientation of the liberal subject, imagining itself free, betrays a *particular* relation to the whimsical sovereign, who can — or is imagined to be able to — decide exceptionally at any time. This orientation is mirrored in

psychoanalysis as a relation to what Lacan has come to call the Other. This figure is not law, it is the fantasised sovereign that comes to being in his/her decisions, and sometimes office. This figure plagues the liberal subject's desire and thus its capacity to perform as desirable, or, in the terms of the democratic body politic, as free.

In the first section of this article I will discuss the dual emergence of psychoanalysis and a liberal politics in dialogue with the democratic state. This is specifically evident in the convergence of a discourse of free contract in the work of Jean-Jacques Rousseau (1968) and the problematics of free choice that the killing of Sigmund Freud's primal father inaugurates (2001b). These are not liberal discourses, of course, but they are, I argue, the staging of the event of a liberal subjectivity that presupposes freedom as an outcome to political participation in Rousseau's contractual configuration, and action in Freud's scenario. In the second section I consider the parallel concerns of liberal and psychoanalytic discourse in respect to the possibility of enacting desire as freedom. This is particularly pertinent when the political and social conditions produce that very desire.

In the terms of Jacques Lacan the relation between desire and freedom is a question of 'imaginary servitude' that only psychoanalysis can illuminate, and only love can untie (Lacan 2006: 80). I argue that the psychoanalytic speech on this servitude is the consolidation of a liberal discourse of rights and free speech. In the third section I explore the problematic of a search for the sovereign who can offer the fantasy of a free choice *qua* freedom to contract, and the anxiety that this search betrays. I will conclude with a departure from theories of Christian onto-political performance by the liberal subject through considering the importance of regarding the contemporary subjectivity of such a subject as *particalised*, that is, as offering an economic piece in the contract, rather than performing as a whole subject who can or cannot perform autonomy, or who is, or is not *homo sacer*.[6] As an act of particalisation I discuss a socio-political event of popular dissent in Australia and how the language of this dissent attempts, what I call an authorised capture of what is lost to the sovereign; a method of disavowal of what is always already lost in subjection, a method of

authorising the piece imagined given to the sovereign. In this scenario the particle is speech, and its performance as 'free speech' is the fantasy of securing freedom before the castrating, abandoning and sometimes very unloving sovereign.

Psychoanalytic history

The western subject is a subject that has long been produced through the discourses of psychoanalysis, and a political discourse that mirrors psychoanalytic concerns. This is a psychoanalysis that has precisely responded to — been afforded by — the psychotic, neurotic and perverse[7] of Europe, and later the Americas and beyond (Derrida 1998: 65-90). That is, the founding and developing premises of psychoanalysis speak of, and to, a European and English speaking world; a world that has, for the past four centuries, been grappling with the Enlightenment.

The Enlightenment can be argued, in part, to articulate the possibility and promise of acquiring sovereignty in relation to both the political sovereign and the other for whom the Enlightenment *also* promised equality and later, rights. Enlightenment can then be understood as a promise of freedom as a lack of inhibiting, or prohibiting, performance of the desires by another. For Lacan this would be to be free of the very structure of desire, and for Immanuel Kant it is free to make use of one's reason. As Kant offered as the ingredients of enlightenment:

> For enlightenment of this kind, all that is needed is *freedom*. And the freedom in question is the most innocuous form of all — freedom to make *public use* of one's reason in all matters (1991: 55).

The questions for psychoanalysis are: *how* does one have reason to make public use of? Can freedom exist as a choice 'to make use' prior to 'the public'? And from where does this freedom come, if not from the public? The answers to these questions articulate the *limit* inherent in the freedom exercised as Kantian Reason. Psychoanalysis is particularly concerned with this limit as a tool of subjection manifested as law, language and the reason of the other *qua* public. The production of reason *qua* Reason through 'the public', or, of law in relation to the subject, is precisely what Lacan describes as 'imaginary servitude'.

Historically, the relation of reason to the subject's servitude or freedom *before*, in both a temporal and interpellatory sense, the subjectifying parameters of law — or before the public — are the questions of the Enlightenment in Europe. Since Descartes postulated the existence of the *cogito* in the location of 'thinking' — that is, that man derives his existence from a process derived externally, outside, in the public — man has doubted his internal freedom, what Rousseau describes as his 'natural liberty' (Rousseau 1968: 65), or what has commonly been understood as an essence existing prior to subjection to the law, language or any other form of, what has come to be called, conditioning.[8] However, this thing called 'thinking', particularly for Lacan, was a process of utilising language; a language borrowed from a prior Other; a language that exists temporally *before* the subject. Language, as the tool for thinking, is something one is born in to, and therefore does not choose, *freely* or otherwise.

Since the instance of the Cartesian *cogito* in, what we might call 'western history', the questions of the influence upon man of what he was born into, as opposed to born with — genetically, naturally, biologically, or spiritually — has been articulated in debates of the internal/external or what has been called 'nature/culture'. The influence of these debates reflects what has emerged in psychoanalysis, and are certainly the preoccupation of its theories. As Lacan forthrightly offers:

> At this intersection of nature and culture, so obstinately scrutinized by the anthropology of our times, psychoanalysis alone recognizes the knot of imaginary servitude (2006: 80).

Psychoanalysis recognises, and attempts to think through, the question of the symptoms of the subject as subjected to a prior 'outside', if you like, or as subjected to the language of the Other; a language which is not, and can never be *one's own*. One of these symptoms is a narcissistic identification with the rhetoric of the law as Goodrich (1994: 110) poses as the affect of every subject. This identification enables what might be considered an almost romantic relation with the language of the Other, as if the language is (narcissistically) reflecting one's own image, or one's own desire. The conditions for performing *one's*

own desire are precisely what are at stake in recognising the knot of imaginary servitude that I'll take up later in relation to freedom and Kantian Reason.

The question of imaginary servitude exemplifies the problematics of a liberal premise, and a liberal sovereign promise, of autonomy for a subject of contemporary western democracy, as a promise of *being free* to enact one's own desires beyond the realms of an *imaginary* prohibition. This is a subject who, in Judith Butler's terms need acquire an ambivalence about the oppression and suppression that subject it to the law of the sovereign demand (Butler 1997: 4-8). In Costas Douzinas' discussion, this is the necessary straddling between the condition of subjectus and subjectum (Douzinas 2000: 203-4) before a domestic sovereign who promises freedom for all or an international sovereign who wants to deliver free speech and maintain the inheritance of being 'born free and equal' (United Nations 1948). In the liberal polis or neo-liberal world these promises are articulated as the protection of human rights and/as a freedom from harm.

The harms of freedom

John Stuart Mill offered the simple formula of being free from harm and thereby free to exercise one's will before the limit of harming another. This limit, for Mill (1974), would be secured by the state. The conundrum of liberalism in the West, in its politics of freedom for the *individual* and its necessary subjection of that individual to the prohibition of its freedom through the laws of the body politic, is a paradox which is essentially (and all too quickly) resolved through the notion of free contract and the premise that one's 'natural liberty' is to enable free choice to participate in that contract. This resolution can be summarised in the question for Rousseau in his treatise on *The Social Contract* in 1762.

In Rousseau's discussion he offers the condition of 'the person' in his relation to freedom, others and the state, and the name 'contract' for his conditional existence. He asks:

> How to find a form of association which will defend the person and goods of each member with the collective force of all, and under which each individual, while uniting himself with the others, obeys no one but himself, and remains as free as before?

And he resolves:

> This is the fundamental problem to which the social contract holds the solution (1986: 60).

Rousseau's meditations on the 'social contract' as a kind of fraternal relation, articulated as a vertical, specifically sovereign, relation by Thomas Hobbes (1968) before him in the *Leviathan*, as the 'relation between protection and obedience' (Schmitt 1996: 96), would find a sympathetic legal voice in the *United States of America Declaration of Independence* (1776) and the French *Declaration of the Rights of Man and Of the Citizen* (1789). In these documents liberal man would come to know that he could be protected *from* the state, by the state, through the apparatus of the Rule of Law, and the exercise, or at least recognition of his rights. This moment can be seen to inaugurate the conundrums of 'psychoanalytic man' struggling under the rules of the oppressive primal father, in Freud's myth of the origin of law, a century later (Freud 2001). This is not only because the situations speak to oppression but, because — heralding the fantasy of Enlightenment — *rights and the death of the father promise a condition that is otherwise to subjection*.

In Freud's discussion of the 'primal horde' he suggests that society existed *mythically* — but in our imagination as originally — in a form where the 'primal father' could do as he pleased. His freedom included sexual access to his daughters, to his son's wives, to his sisters. Indeed, the condition of the father in this originary scene is that of limitless freedom to satiate his desire, and of a violent oppression exercised over his sons. The sons, unhappy with this situation, kill the father in order that they may have a kind of sovereignty, one could say, over their own possessions, including wives, property, and so on. What remains in the terrain of the dead father is not an absolute sovereign, however, but many sovereigns whose limits are dictated by the sovereignty of the brother next door if you like. The limit must then be

imposed on all the (other) brothers — in the fashion of the Millian 'harm principle' — so that no individual had limitless access, but no individual (man) could be usurped of his possessions by an-other. A kind of fraternal contract.

This is a myth of origin, and of course it is a myth (otherwise there might be some confusion about the position of the primal father's father), but it is a myth of sovereignty. A myth about the position of the king, head of state, feudal lord and so on and 'his' access to the other (man's) property, and the limits on 'man' in his access to the sovereign's property, that is, his capacity to inaugurate, endure and surpass his own, or another's laws.

While Freud's myth suggests origin and resolution, western, or European 'man' has always had to struggle with the prohibitive demands of the sovereign. The French *Declaration* however, offered, in legal discourse, the possibility that he could thwart the limitless freedom of the sovereign and thereby the absolute prohibition on his own sovereignty.[9] The French *Declaration* suggested that it was not a sovereign right to utilise subjects arbitrarily; that the rights of the sovereign and that of man were in dialogue, or at least in relation. In the French *Declaration* there exists the possibility of killing the oppressive father of the primal horde, perhaps not always, or absolutely, but sometimes, in the interests of political, and what has come to be human, rights. The aftermath of this possibility, the confusion of what to do with this new egalitarian freedom, would require some psychoanalytic assistance however.

The French *Declaration* would form the foundations for the *Universal Declaration of Human Rights* adopted by the United Nations (UN 1948), and continues the articulation of the conditions of the liberal subject in its struggle for freedom in relation to something we might call, in line with Hobbes read by Schmitt, a 'sovereign-representative person' (Schmitt 1996: 97-8). The confusion of this struggle would later be articulated by Freud's patients and documented in his many discussions of the conditions of the human in its relation to the parent, and/as law; one of which being, of course 'A Child is Being Beaten'

(Freud 2001).[10] Lacan would also later consider the imprint of the sovereign-representative person in his discussion of the 'name-of-the-father' (Lacan 2006: 30), 'Mirror Stage', (Lacan 2006: 75-81) and his broader discussions of the importance of the Oedipal influence, and the production of the subject's reality through language (Lacan 1977).

Freud's engagements with the struggle of the subject in relation to its freedom before the father as sovereign were seemingly formulated in the foreground of the liberal political discourse of arguments such as those of Rousseau who suggests:

> The oldest of all societies and the only natural one, is that of the family; yet children remain tied to their father by nature and so long as they need him for their preservation ... as soon as [the son] reaches the age of reason, he becomes the only judge of the best means to preserve him; he becomes his own master [he kills off the father]. The family may therefore be seen as the first model of political societies: the head of the state bears the image of the father, the people the image of his children and all being free and equal surrender their freedom only when they *see advantage* in doing so (1968: 50-1).

Rousseau's belief in the freedom of the subject relies on the presumption that the advantage is 'seen' and surrendered, from the vantage of being already free of the influence of subjection to the family, or the head of state. This may have been more true in 1762, when there was a possibility of existing before the 'social contract' came into practice. That is, where the subject might have had a say in the immanent advantage of installing the social contract.

In 1948 however, when the *Universal Declaration of Human Rights* would put these concerns into legal circulation, a contract with the democratic sovereign had been inescapable in democratic nations, for many generations, and a contract with the free market was becoming globally inescapable.[11] Despite this in Article 1 the *Declaration* states:

> All human beings are born free and equal in dignity and rights [and, in the manner of the Kantian sovereign moral subject] [t]hey are *endowed* with reason and conscience (1951).[12]

In psychoanalysis it is precisely this *endowment*, however, which tampers with the first premise of freedom and equality. As it is precisely the problem with the subject's perception, as 'seeing advantage', in surrendering freedom to an imagined sovereign-representative person as a state of 'reason and conscience' that Freud, and later Lacan, engaged in their analytic practice and theory.

In psychoanalysis freedom is arguably internal, it is seen from a position of existing as and within the social contract, and (spatially) before the father. The struggle for the subject of analysis goes beyond the sovereign's limits, in its application of law. The struggle is with a sovereign-representative person as an object of the transference of feelings of prosecution, persecution or prohibition. This articulates with Wendy Brown's explanation of sovereignty:

> Sovereignty is a peculiar border concept — not only demarking the boundaries of an entity (as in jurisdictional sovereignty) but, through this demarcation, setting terms and organizing the space *both inside and outside* the entity (2007: 4).

Thus, what we call feelings are internalised as what Lacan would call codes (Lacan 2006: 495-6), which produce other thoughts, fantasies, anxieties, and behaviour that limit the subject, of his own accord.

The (Lacanian) Other is not outside the subject but 'at the most assented to heart of my identity to myself he pulls the strings' (Lacan 2006: 436). That is, the Other instantiates limits *inside*, to use Brown's terminology. The limit is the relation between the internal and external jurisdiction of the sovereign-Other. For Brown this is what it means to set the terms and organise the space inside as the 'internal' of the subject as 'the entity'; it is the sovereign who is setting the terms *a priori* the subject. The United Nations notion of being 'born free' is then obviously relational and perhaps contingent on the capacity of the subject to affect the sovereign, or to affect its own sovereignty.

The psychoanalytic subject struggles to tamper with its own freedom and with that of others, because it is *always already* subjectified through the parameters of the subject's relation to others, including, and perhaps especially the sovereign-Other. It is no coincidence then that the

psychoanalytic discourses adopted a foundational interest in the subject's relation to freedom through a consideration of its relation to the sovereign-representative person as a kind of father, and extended this interest to the use of language as the 'name of the father'.[13] This then evokes the very questionable capacity for 'free speech', or the freedom in the use of the name (of the father).

Freedom ex nihilo

The conditions of sovereignty in contemporary legal discourse reinforce the presentation of the subject's free speech and indeed free decision to contract *ex nihilo* through the demand for the participation of all parties equally and freely, all parties as sovereign we could say. And this is certainly the status of Rousseau's subjects in the social contract who, 'being free and equal surrender their freedom only when they see advantage in doing so' (Rousseau 1968: 50-1). This is reiterated in the UN's *Universal Declaration of Human Rights* which suggests that people should be able to return to a state of freedom and equality by being 'free from want and fear' (UN 1948: 1). We might think of this freedom as a lack of alienation; or in Lacanese, a 'lack of lack'.

The lack of lack is what, despite their differences in sovereign representation, Rousseau, Hobbes and Schmitt might call 'natural freedom' (Schmitt 1996: 96) or 'natural liberty' (Rousseau 1968: 65). From this position the individual can contract to be in a state of '*civil* freedom', to be protected by the state by virtue of their obedience to the 'general will'. As Rousseau says:

> [L]aws are acts of the general will ... no longer ask how we can both be free and subject to laws, for the laws are but registers of what we ourselves desire (1968: 82).

This is precisely the gesture that Peter Goodrich explains as the mirrored identification of the subject with the rhetoric of law when he states:

> [T]he legal speech or text had to identify its audience or constituency, and provide that audience or those hearers with such symbols, images, icons or

> figures as would allow communication in its classical or at least etymological sense of communion (1994: 110).

In this identification, or communion, it is impossible to distinguish between the legal speech *provided* by the legal institution and what 'we ourselves desire'. In the fashion of communion the bread becomes the flesh of Christ because it is believed to be so. But Rousseau claims otherwise.

Desire, for Rousseau, is freely *possessed*. While the will of the citizen is alienated to the general will, desire (to do so, to alienate) is never alienated. And, for Hobbes explained through Schmitt:

> The covenant was conceived in an entirely individualistic manner; all ties and groupings are dissolved; fear brought atomized individuals together a spark of [Kantian] reason flashed, and a consensus about security emerged ... [T]he state is more than and something different from a covenant concluded by individuals; for although it results in forging consensus of all with all, in essence, it is not a state, but only a social covenant (1996: 97).

It is not individuals who contract for Hobbes, but it is nevertheless individuals who 'conclude' to be in a covenant with the 'sovereign-representative person' (1996: 93-8). The Kantian reason emerges and produces the conclusion because of a spark that comes from an unknown location but is nevertheless inspired by a fear of (what becomes in 1922) a Schmittian enemy (Schmitt 1985: 26-7). This is not an *a priori* fear however, it is what emerges at the point that the political is articulated, and precisely for Schmitt this is the sovereign's jurisdiction. Thus, the individual's spark is inspired, or even demanded, by the limit of the state defined by normative political parameters that articulate an external enemy. In this sense the spark and the state are simultaneous and certainly, in a psychoanalytic paradigm, the sovereign and the enemy are but two entities which betray, and further inaugurate, the fragmentation of the subject.

Desire for Rousseau and the spark of fear for Hobbes and Schmitt imply an autonomy of reason; something more than conscious that is somehow outside the parameters of the subject always already before

law; desire *ex nihilo*. The subject contracts autonomously, as if it can be a sovereign-representative person of itself, literally before law's existence; *dues mortalis* in Hobbes' terms, prior to even the conception of God. This prior conception of desire is indistinct in both Hobbes and Rousseau, despite their differences. The positive freedom of Rousseau and the negative freedom of Hobbes both exist within the context of a presupposition of a capacity to experience freedom prior to the sovereign's existence. This is not a question of political autonomy, for both explanations of the status of political subjects articulate a limit. It is a question of *a priori* desire, or of the subject's own sovereign capacity to conclude. And, it is this sovereign capacity to conclude, beyond the sovereign's desire, and the desire to do so, or do otherwise, that psychoanalysis speaks to, for desire is the jurisdiction of the unconscious, and the sovereign's love is not quantifiable as positive or negative love.

Kant and Lacan

The capacity to enact an desire *ex nihilo* is importantly also questionable in a Kantian discussion of Reason. The distinction between Kant's notion of Reason emanating (hopefully, for Kant) from a subject who has embraced the moral requirements of the social and Lacan's notion of servitude to language are subtle, but are best understood temporally. For Kant there is an infantile condition prior to Reason in which freedom is not a political or rational freedom, but a condition that is what Lacan might call an articulation of wants. For Lacan this condition is already an entertainment of *reason* — Kantian or otherwise — that the subject assumes. Reason, prior to its performance socially, is driven. Literally. Freedom, for Lacan is a product of a relation between the drives and language (Lacan 1977, 2006).[14] The one does not conquer the other in Kantian fashion, but language, as the articulation of sociality, is in a condition of 'servitude', or, in service of the drives of the subject. The drives, as pleasure or death (Lacan 1977: 161-87), thus produce the very texture of the Reason that Kant extols. The drives and Reason are not only *a priori* but the former produces the conditions of Reason. This, however, is not the whole story.

For Kant Reason pre-exists the subject and is something one adopts, if you like. Reason is particular, however, just as the Symbolic Order, for Lacan, or the context in which the social is articulated, provides the conditions for a particular sociality. Its particularity, again, is driven by the baseness of infantile desire, by the drives entwined with the prohibitions of law. The distinction between Kant and Lacan here is temporal because Kant would privilege Reason before infantile wants, while for Lacan the wants produce the articulation of that very Reason, or what then comes to be law. Hence, when the social is articulated as the political and archived, in Shoshana Felman's terms, as the 'juridical unconscious' (2002), it assumes the violence of the drives. This context for law does not differ from the field of Reason from which a Kantian subject is supposed to draw, or to make a rational choice.[15] Indeed, this choice is defined, or driven by the trauma of the imaginary; the very scene of the drives. This is precisely why Lacan does not distinguish between the Marquis de Sade and Emmanuel Kant for both their positions — of absolute violence and absolute duty — are a product of the violence of the drives.

The discussion of, and distinction between, a Kantian and Lacanian contemplation of subjectivity is crucial to the question of a prior *servitude* to either the drives or indeed the morality of Kantian Reason. These questions are played out in the terrain of sovereign prohibition. Prohibition is, for Lacan, to what the imaginary refers (if not articulates).[16] If not in positivistic law, then at least in the fantasy of what prohibition signifies. The sovereign's terms can be understood as the terms *qua* names of the father. The Lacanian notion of imaginary servitude refers to a service to both the image of the father saying no, and it refers to an image that one need be prohibited from. This might arguably be understood as what Goodrich explains as the 'other scene' of law (Goodrich 1994: 109). This is the Oedipal scene that evokes the pending prohibition, or at least the fear of the violence of the paternal, and arguably sovereign's, law.

This is why Lacan would say in his *Seminar XI* commentary on the killing of the primal father, that God is not dead '*God is unconscious*'

(Lacan 1977: 59), for the killing of the primal father, performed by the brothers in the 'primal horde', offers them freedom to supposedly do as they please, but not freedom to *feel* as they please — or as Lacan would have it — *imagine* as they please. God is unconscious because the brothers now must produce and perform their own limits, and this they do because of unconscious guilt. Thus, their feelings (of guilt) inhabit their desires, and hence their freedom; whether I am doing the 'right thing', or perhaps that I might be doing the 'wrong thing' in the gaze of the sovereign-representative-person evokes this guilt. This is independent of a sovereign imposition on their freedom.

The sovereign/father is not dead but implanted, if you like. In the mode of the Lacanian Other, and from this position, defines the subject's 'free choice'; this is precisely why Lacan speaks of the subject in its 'imaginary servitude'. We might therefore say that guilt is there *a priori* in the liberal subject who has freedom to choose within the limits of the law, but whose choice is now limited by not only positive law's limits, but the limits of their own desire.

Notions such as not wanting or desiring to commit a crime, kill, exploit, rape or steal from one's neighbour and therefore experiencing the 'general will' as a product of the subject's own desires, is from this vantage a nonsense. Not only because of 'man's fundamental aggressions'. As Freud says:

> Man tries to satisfy his need for aggression at the expense of his neighbour, to exploit his work without compensation, to use him sexually without his consent, to appropriate his goods, to humiliate him, to inflict suffering on him, to torture and kill him (1961: 111).

But, because the *desire is produced in* the subject's relation with the sovereign-Other. Indeed, because psychoanalysis cannot be said to offer a universal articulation of the subject prior to Enlightenment, this *desire might arguably be a product of precisely the Enlightenment* as an antagonistic arrangement with the sovereign. Regardless, the subject's contract with the sovereign cannot be understood to reflect the distinction between civil liberty and natural liberty, as Rousseau would have us believe. For natural liberty is *a priori* civil liberty, the

subject's desire is a product of its relation with the (dead) father *qua* sovereign-representative person.

As Schmitt says of the subjugation enacted in Hobbes' *Leviathan*, it is 'fear' that brings subjects together in order to 'conclude', or 'the accumulated anguish of individuals who fear for their lives brings about a new power, [aka the sovereign-representative person]'(Schmitt 1996: 98). What remains untheorised and unanalysed, prior to psychoanalytic intervention, is the texture of this person, and the texture of this fear. The internalised fear is subject to continuing question, and therefore so is the political status of freedom itself in a liberal democracy. Psychoanalysis, in its parallel engagement with the discourse of freedom of the liberal subject, *mutatis mutandis*, offers some thoughts. Indeed, if Lacan is right psychoanalysis alone recognises this knot.

The sovereign Other of tomorrow

The capacity of the subject to exercise what we've come to call freedom, as speech or otherwise, is dependent on its *imagined* relation, or service to the father (dead or alive) *qua* sovereign (representative person). This is precisely the relation which engages the imaginary servitude of the subject. This is importantly an imaginary relation, which explains some of the contemporary fascination with the location of the sovereign and its performance.[17] The fascination with locating the sovereign mirrors the desperation to locate the codes of desirability fantasised as emanating from the Other. The success of this endeavour is experienced, at least momentarily, as relief — or enjoyment — for the subject in its service to the Other. In Goodrich's terms this is achieved by identification with the law's rhetoric; in Schmitt's terms it is not incurring the wrathful (abandoning) exceptionality of the sovereign decision; and for Rousseau it is aligning with what the sovereign will want tomorrow. Success relies, however, on knowing the coordinates which point to s/he who decides.

The sovereign, head of state, the father and the Lacanian Other, function for the subject in distinct but overlapping ways. The sovereign

and 'head of state' are not collapsible. And it is in the difficulty of locating the sovereign to the subject, and its relation therewith, that psychoanalysis speaks to. Rousseau's definitions offer a starting point for this endeavour. As he explains:

> [I]n the place of the individual person of each contracting party, this act of association creates an artificial and corporate body composed of as many members as there are voters in the assembly, and by this same act that body acquires its unity, its common *ego*, its life and its will ... the public person ... in its passive role is called the *state*, when it/ plays an active role it is called the *sovereign* ... those who are associated in it take collectively the name of *a people* (1968: 61-2, his italic, my underline).

The 'common *ego*' that Rousseau describes here is the location from which the sovereign speaks. This commonality is imagined, however, for it is common ... where? There is no location for this presence consistently because the commonality of it dictates that it is located where the 'life' and 'will' of the 'people' are fantasised as emanating. Post the 1789 French *Declaration* and the instantiation of what has come to be called, in the fashion of Michel Foucault, a 'disciplinary conception of power'.[18] The impossible locus of power:

> has meant not so much that sovereignty is an outdated or meaningless concept, but simply that the sovereign becomes more difficult to identify (2006: 137).

Rousseau in 1762 saw the problematic of identification as located in the impossibility of delegation of will. He states:

> [S]overeignty, being nothing other than the exercise of the general will, can never be alienated; and that the sovereign, which is simply a collective being, cannot be represented by anything but itself — power may be delegated, but the will cannot be (1968:69).

Thus, the sovereign could certainly be the head of the state, the Prime Minister, President, King, or father, but Rousseau's configuration disallows, not this possibility, but this possibility as an *enduring certainty*. This is because certainty is a gesture to a future arrival, and as Rousseau contends:

> [W]hile it is not impossible for a private will to coincide with the general will on some point or other, it is impossible for such a coincidence to be *regular and enduring*; ... The sovereign might say: 'What I want is precisely what this man wants' ... but no sovereign could say: 'What this man is going to want *tomorrow* I too shall want' (1968: 69-70, my emphasis).

In disallowing the certainty of a futurity to the sovereign decision Rousseau, in a gesture prescient with the concerns of psychoanalysis, articulates the uncertainty of the psychoanalytic subject who does not consistently know the immanent codes of the Other. Codes which offer the coordination of its own subjectivity. Rousseau's sovereign is a product of general will, but a will which points to an (un)certain futurity of an arriving judgment. It is an anxiety in the unconscious of the subject because, if the subject does not know the coordinates of the limiting ego *qua* sovereign, then it cannot know the parameters of its freedom.

The (un)certain decision

The articulation of the sovereign's decision in legal speech assists, in part, with knowing what the legal sovereign might want tomorrow. However, this certainty is not enduring. The sovereign decision is beyond the parameters of the law articulated through the standard head of state, or indeed the prescriptions of God. These can be known, albeit arbitrarily interpreted. It is however, the terrain of the sovereign 'decision' articulated by Schmitt as the decision on the 'exception' or the 'exceptional case' (Schmitt 1996b: 5). A decision that, while related to the Rule of Law, can *overcome* it arbitrarily. That is, the Rule of Law is not set over the sovereign. This renders the subject in a condition of subjective and indeed castrative anxiety. For a concern with the sovereign who can cut, maim, imprison or kill the subject arbitrarily is the very status of the child before the castrating parent; a parent who is always potentially displeased.

We can see the status of this exceptionality in Rousseau's explanation of the sovereign's condition in that 'it would be against the very nature of a political body for the sovereign to set over itself a law which it cannot infringe' (Rousseau 1968: 62). The sovereign's

will *cannot* be known through recourse to any law. But, because of the sovereign's will not being subject to law, or not subject to a known futurity, the arrival of the will, as (dis)pleasure, is *always already* uncertain. This is of course why Schmitt offers the exceptional decisionism of sovereignty as 'the sovereign is he who decides on the exception' (Schmitt 1996b: 4), a configuration which re-enforces the sovereign's *certainty* and the subject's lack (of it).

The condition of the sovereign decision, in the same manner as the castrative function of paternal law, inaugurates two points of conditionality for the liberal subject. First, that the decision may be exercised by a sovereign-Other and second, that at some point — in the future — it will arrive beyond the known parameters of law. This is an important temporal feature of the sovereign's will (that I'll belabour to make the psychoanalytic connection). The decision is first of all the promise of a certainty that will — at least at some point — arrive, insofar as the sovereign does make effective decisions; decisions through which the subject may live or die. The originary authority of law, articulated by Jacques Derrida (1990)[19] alludes to the concern of the immanence of this decision in the subject. Law's certainty is always potentially (*newly*) *arriving*.

The subject, however, is always uncertain about where this 'will' will arrive, next; but it knows the decision of the sovereign is immanent. *The sovereign isn't to-come, s/he is coming*. An exceptional decision could/can/will certainly arrive. But, it is an exceptional decision which authorises the sovereign and thus provides potentially *new* parameters of freedom for the subject in its relation to law; new limits if you like.

The anxiety for the subject is because the sovereign, as a product of the subject's necessary alienation, *is* the location of a future known, and a known imagined held by the sovereign. The importance of this configuration for psychoanalysis is that the Other is perceived precisely to *know*. Lacan's examinations of the relation with the 'subject-supposed-to-know' suggest, *mutatis mutandis* that the sovereign is assumed to offer the master's discourse (Lacan 1998: 17-19); the capacity to *judge* the correct mode of being for the subject. The

sovereign's capacity and the subject's relation are articulated thus for Rousseau when he states:

> [E]ach man alienates by the social pact only that part of his power, his goods and his liberty which is the concern of the community; but it must also be admitted that *the sovereign alone is judge of what is of such concern* (1968: 74, my emphasis).

Therefore, while the subject alienates his power, his liberty — as a fundamental element of a politically and socially *desirable*, liberal subjectivity — the sovereign does not, indeed, he cannot, alienate his power. He, like the Other, is the receptacle of this alienation, as for Lacan, 'he pulls the strings'.

If the sovereign is not subject to the Rule and can thus impose new limits on the subject's freedom then there is nothing, for the liberal subject, who is not under the fascist dictatorship of the primal father — having killed him — which secures a prior certainty of freedom's limits. Remonstrations gesturing to the importance of the Rule of Law can then be seen as the articulation of, in part, insecurities about the sovereign's future decision. The Rule of Law becomes the tool by which to subject the sovereign to the will of precedent or law's pedigree (non-exceptionism) through the pretension to an originary Rule.

It could also be argued that law's contemporary 'frenetic legislative activity', discussed by Costas Douzinas (2000: 329) and extrapolated to the repetition of international law, by Anne Orford (2004), are attempts to encapsulate any possible new *qua* exceptional decision by the sovereign. In Orford's psychoanalytic rendition of international law's crisis of authority, repetition functions to overcome the anxiety about this lack of knowing. Repetition, in a Lacanian frame is the exercise of never being careful enough (Lacan 1977: 61) in an effort to capture what Lacan calls the Real. It is the Real, however, that is ever present in a sovereign decision that one cannot know tomorrow; the Real is precisely what exceeds the Rule of Law or, indeed, legislation. In this sense 'frenetic' speech of law, or the attempt to capture an authorative foundation for international law represents the possibility

of thwarting the immanent decision and the unknowable Real. Locating the sovereign, suring up the authority of an entity such as international law, or making new laws is an effort to locate the coordinates from where the decision *qua* cut will come. The sovereign decision can never be set over by any law, no matter how repetitive or how frenetic, is thus the political form of castration; the gesture which inaugurates the Real.

God's terms

The sovereign is imagined to have the capacity to castrate, but also the capacity, if his/her love is secured, to offer a way out of castration. For Schmitt, '[t]he sovereign ... is in the position of a private person making a contract with himself' (Rousseau 1968: 62). Receiving, but never alienating. This is the position of God whose onto-political rendering can inaugurate the subject as killed, but also as able to be sacrificed (or not) (Agamben 1998: 8). This tension is articulated in Schmitt's summation of Hobbes, as the position of a mortal god (Schmitt 1996: 92). This mortal god [*deus mortalis*], as the third cog in the tri-partitioning of the state articulated by Hobbes is the figure who struggles to identify (perhaps narcissistically) with the terms of God and thus thwart castration, or indeed abandonment.

Mortal god is a kind of internalising of the sovereign-representative person in man; the freedom for man to decide within the parameters, the legal limits, of the sovereign. In the condition of *deus mortalis* in the Leviathan, man can decide for himself, but his decision is not only limited within the laws of the state but informed by the name of the father, or he is god in and on God's terms. The decision of man is archived, articulated and conceived in the language of the Other as God, or the sovereign. What psychoanalysis offers to this condition, however, is that these terms always leave a remainder. This remainder is both the hovering and immanent Real *qua* decision as that which is yet to be articulated by either the sovereign or the subject. In this duo there is always a surplus, a particle even a right, which is yet to be

articulated. A piece that offers the fantasy of alignment or indeed love of the father; a particle potentially in economic exchange with the sovereign-Other which returns the subject to the body politic as whole.

The possibility of *deus mortalis* as a theological configuration gestures to this object in exchange. The subject is subject in the *terms* of God. However, the importance of departing from theorists who recognise the condition of the western subject as a Christian condition is precisely because of the economic particle — as the yet articulated remainder of these terms — which offers the fantasy of sanction by the Other, or indeed by the sovereign. The contemporary liberal subject is certainly required to perform a Christian ontology — to forgive, to care, 'to love thy neighbour as thyself' (Lacan 1992: 187) — but the relation with God is performative of a relation of Being in or out, if you like. It denies what has now become the trope of a liberal, and certainly a capitalist subjectivity; the objects in exchange.

The Christian configuration of the relation of subject to the state is economic in itself, as Jennifer Beard (2006) has eloquently pointed out, but, the Christian economic relation is not a contract in which one can engage *parts* of oneself. In its status as a Christian subject wrestling with good and evil — being allocated heaven or hell — it is an 'all or nothing' ontology. This is precisely because the choices are one *or* the other after death. Enlightenment man, and psychoanalytic man, assumes a *partiality* to the contract. Indeed, this is what rights are, and this is what the speech of the narcissistically identified subject performs in economic circulation with the legal institution. This is the partial and particalised aspect of the human in contract with sovereign.

In this last section I will offer both a theory of what might actually be exchanged — and thereby potentially suture the subject to the social, or the child to the father, or *deus mortalis* to *Deus* — in the contract with a whimsical sovereign, and I want to explain what remains in the (abandoned) body of the subject that cannot be exchanged. The relation of sovereign to subject is one of, what I am calling, *particalisation*, a texture in which a piece is exchanged, and one that — at least for psychoanalysis — depicts a *textured*, if imagined, relation with the

sovereign as Other. This is both the condition of rights in a liberal democratic land and it is the condition of speech for a (particularly Lacanian) psychoanalytic subject. Rights, speech and product circulate in a consumptive economy that promises the acquisition of the sovereign's desire, if not love.

For Rousseau the alienation he speaks of, as the condition of 'man', is 'to sell' a part of himself, but it is clearly a reciprocal exchange in which the subject — at least in a liberal state — is represented as being able to achieve his freedom to choose, before the law, in return. Unlike being before God (or contemporary capitalism), Rousseau imagined a choice *beyond* the contract. Not just an affinity with God or Satan but a radically other location that may be beyond the economies of contract. This other location is not limbo, but a more contemporary jurisdiction in which the subject imagines the alienating of a particle of itself as an *authorised loss*. The subject does not contract freely but the piece, once alienated, is imagined to circulate without injury, without loss. That is, it circulates to *align* not to *alienate*.

The fantasy of non-alienation, or non-castration, is both a psychoanalytic terrain for analysis and it is a liberal capitalist exercise (and advertisement) in which a consumptive economics both promises and betrays the fantasy of acquisition. Or, purchase promises both the enactment of free desire and the attainment of contentment as the attainment of the piece that will fill the lack. In psychoanalysis this is the fantasy of the collation of the elusive fragments that are desperately (and interminably) being imagined as a unified whole, as the performance of ontological mastery. This is the very gesture of the Lacanian infant who stands before the mirror and imagines the possibility of unity in the gaze of the Other (Lacan 2006: 75-81). It is also the gesture of the liberal subject who stands before the legal institution and imagines the possibility of unity — as a mastery of its fragmenting ontology — in the gaze of the sovereign. But this mastery requires language, and in a neo-liberal world of (human) rights which proclaims the virtue of the 'free and equal' human as a universal imperative, and 'free speech' as the promise of democracy, the fantasy

of a mastery of the particle that can be exchanged without loss, without injury or without subjection, requires an alignment with the language of liberal law. The dominant mode of this language, since 1789, is rights.

Rights in exchange

To say 'I have rights', as either an objection or assent to the sovereign's behaviour is one, quite obvious, performance of ontology in the mirror image of the right legal subject. In this articulation — even in its demonstration against the sovereign — what might be lost functions to return the subject as someone it could always potentially be in futurity, if you like. The subject may not have rights *now* but a claim for their necessity suggests the promise of their arrival in the future. The subject of rights is thus reflected in the sovereign's terms. The rights function as something — as particle(s) — that could be returned to the subject to complete its ontology. The belief in this possibility, however, is the articulation of a fantasy that one can know what the sovereign will want tomorrow; that rights are always in circulation and that the sovereign will set this law over itself *always*. This belief is a disavowal that the sovereign could decide otherwise.

The proclamation of being a subject in the mirror image of the sovereign's jurisdic-form is further, and perhaps more precisely, performed in the realm of neo-liberalism's cleave to capitalist discourse. This can be seen even in forms of political dissent that claim to deny the very structure they mirror. In a recent demonstration against the meeting of the G20 in Melbourne I witnessed subjects in a kind of narcissistic dissent to the G20 meeting. At the event of the protest the Victorian 'riot police' blocked the roads leading to the meeting. Large groups of protesters took up the chant 'Whose streets? Our Streets. Whose streets? Our Streets.' in apparent opposition to the blockade. The mode of this opposition to the aggressive presence of riot police blocking the roads betrayed claims to a desire which exceeded the objection.

The claims to ownership of land *qua* streets, inherent in the chant 'Our streets', articulates a contemporary judicial and economic imaginary that underpins (post) colonial Australia. This chant, both oddly out of sinc with the Australian High Court's (1992) ruling against British claims to Australia being *terra nullius* (empty land) in *Mabo v Queensland* (hereafter *Mabo*), was also disturbingly in parallel with Justice Brennan's claims in the judgment that the 'skeletal principle of the law need be upheld'. The chant, like the assertion in the judgment upholds a notion of prior ownership of land by a (largely white) protesting crowd. The streets remain empty land, to be claimed by legal speech, or to be claimed by white protestors who uphold the skeletal principle of private white ownership. The *Mabo* judgment and its insistency on a skeletal privilege for British primacy also frames the context for Indigenous Native Title applications in daily contest in the courts and Land Rights for (traditional) owners of Australia. 'Our streets', as a claim to prior and private ownership, articulate at one and the same time, the very claim of the sovereign that indigenous land belongs to the (dominantly white) protesters, and that claims to dissent need be framed in the discourse of the (capitalist) state.

In this frame the speech of the dissenting subject mirrors that of the sovereign. Indeed, the speech of the protesters promises, as least in one sense, the futurity of a sovereign decision that will authorise ownership. The dissent attempts an articulation of the 'other scene' of law in the very contentious and problematic terms of sovereign speech, but a speech which aligns — alarmingly accurately — with the 'names of the father'. In these terms the 'hidden depth', that points to the love's of the law is the economically valuable — the mirroring — fragments that inhere in the protesters' speech.

In this performance, even in the subject's dissatisfaction *qua* dissent, there is the promise of no lack. The names of the father are, in this sense, the language of the state and just as the 'law of the father equiparates with that of the sovereign' (Goodrich 1994: 108) the articulation of the language of the sovereign-Other promises a thwarting of the prohibitive, persecutory, or abandoning potentiality of the

sovereign decision. This is of course a fantasy, for the sovereign has no 'set over itself a law which it cannot infringe', but the fantasy of alignment with the language of the capitalist, liberal state is a fantasy of alignment with the sovereign's desire and thus, a fantasy of securing law's love.

Conclusion

The psychoanalytic subject, far from being universal, can be seen as culture specific to the West insofar as the concerns of Freud, his peers and inheritors, articulate the political discourse emerging in the 18th century in Europe. Psychoanalysis' fundamental texts mirror western concerns with the relation of the subject to the sovereign, or the individual to its freedom to exist as free before an imagined aggressive, decision making, and potentially persecuting Other. Psychoanalytic concerns thus parallel, and arguably contribute to, the production of the liberal subject wrangling with its autonomy *qua* freedom in the West. This wrangle can be seen in discursive forms which have emanated from Europe in the 18th century and permeate the cultural present as the concerns of the West. They are then dispersed in the 'white diaspora' (Osurie and Banerjee 2004: 167) that is capitalism and colonialism, and in the mechanics of what has come to be called globalisation or 'development', including the globalisation of psychoanalysis.

Gayatri Chakravorty Spivak's concerns about using psychoanalysis 'that is so culture specific in its provenance' (Spivak 1993: 177) as a method of understanding the psyche, or, to consider the formation of the subject, alert us importantly to the potential danger of collapsing, what she describes as a 'collective fantasy [as] symptomatic of a collective itinerary' (Spivak 1999: 284) as so much psychoanalytic work on the social does. Spivak's concern resonates with the critique of Slavoj Žižek's offered by Judith Butler in respect to his Lacanian methods of articulating and analysing *the* social (Butler et al 2000: 26). The 'collective itinerary' analysed in much wild psychoanalytic

discourse is all too readily assumed as a universal itinerary and thus discount the alterity of those who were not 'developed' by psychoanalysis or indeed through neo-liberal interventions.

Spivak's concerns, however, also point to the possibility of using psychoanalysis that is precisely 'culture specific'. Indeed, we can apply the turn that Spivak makes about Marxism, claiming that it is different to discuss economic modes of production — consolidated as global capitalism — than to discuss 'the machinery production and performance of the mental theatre' (Spivak 1996: 177), or a collective psyche (Spivak 1994: 284). Indeed we can suggest, adopting precisely Spivak's Marxist modality, that psychoanalysis and the performance of a neo-liberal politics internationally, engages a mode of subject production in which the surplus of this arrangement is speech and in fact, the legal speech of rights. This speech both affirms the authority of the sovereign and promises to return the *aligning* subject to the status of desirable subject.

The economic speech of the aligning subject, articulated in the image of the sovereign as the terms of God, are thus a production that both the liberal sovereign and the psychoanalyst profit from. The liberal subject assumes a share in this profit if it organises its labour in the mode of the free individual with, or anticipating, rights or engaging so called 'free speech'. The future security of this position is, however, a fantasy that denies the futurity of the sovereign decision and it denies the castrative function of paternal law. The sovereign decides, the father will be displeased, language is the language of the Other. Product purchase, claims to rights and the performance of dissent will not alter the reality that we do not know what the sovereign will want tomorrow and that the love of the law is flighty, fickle and is without *regular and enduring* desire.

Notes

1 This paper was presented at the conference of 'Law and Literature: Passages' at Melbourne University July 2006. The comments I received there organised some of the themes of this article, particularly those from Bill

MacNeil. Thanks also to Andy Schaap for comments on an earlier draft. I have borrowed some of the phrasing from this conversation from Andy, but any of the mistakes I have made in extrapolation are of course my own.

2 Lacan's discussions of castration are numerous. The best examples for the purposes of the context in which I'm speaking are in *Seminar XI* (1977).

3 Lacan's discussion of the Other appears throughout his body of work. It is best explained in the relation to the subject as 'man's desire is the Other's desire [*le desir de l'omme est le desir de l'Autre*]' (Lacan 2006: 690). This configuration is explained through Lacan's graphs in which the subject always asks the Other *Che vuoi?* What do you want? As a method of formulating the subject's own desire via the *imagined* desire of the Other.

4 Lacan noted that 'Psychoanalysis has played a role in the direction of modern subjectivity' (2006: 285), and we could argue, continues to play a role in the subjection of the subject, both in the West and through a neo-liberal diaspora.

5 To the best of my knowledge there has been little empirical or theoretical interrogation done on the use of psychoanalysis as a universal tool. Most of us who enter this field merely hope that it resonates universally. This largely avoids the problem of it colonising where it falls, or creating its own resonances against which behaviours — political or otherwise — are measured. See Derrida particularly on this concern (1998: 65-90).

6 Of course Agamben's concern — as a question of the conditions of homo sacer — is precisely not a theological concern insofar as the question of 'sacrifice' as opposed to being killed is a political, not a religious condition. However, to be or not to be homo sacer is a contemporary concern of a liberal subject and, like the concern with a Christian ontology, homo sacer evokes the image of a unified ontological condition. As I'll explain, one is either in or out of hell, purgatory, heaven or the polis (Agamben 1998).

7 Psychosis, neurosis and perversion are the three structures Lacan suggests all subjects can be understood to adopt in order to arrange their desire around the primal scene, or the 'paternal no' articulated in the primal scene (2006).

8 The argument in relation to 'conditioning' has been well made in discussion of communitarianism in relation to Kant. For a discussion of these debates see Sanjay Seth (2001).

9 I'm retaining the gendered pronoun here, briefly, for its accuracy. Generally I will assume the Lacanian form of 'it' to designate the subject.

10 In this text, and others such as 'Group Psychology' (2001a), 'Civilization and its Discontents' (2001c) and, in a parallel concern with the inauguration of language in the subject in 'Beyond the Pleasure Principle' (2001b) Freud discusses the concerns of his patients, and indeed of 'civilisation' more broadly, with the possibilities of operating with a desire that is sometimes free of beating, guilt, or aggression.

11 The connection between human rights and the free market has been well made by Gayatri Chakrovorty Spivak in her revision of 'Can the subaltern speak?' (1999). She has also addressed the dominating Christian metaphysics of human rights (2003).

12 This insert is referenced from Wendy Brown's discussion of sovereignty (2007).

13 Lacan states: 'It is in the *name of the father* that we must recognize the basis of the symbolic function which, since the dawn of historical time, has identified this person with the figure of law' (Lacan: 2006: 230).

14 This configuration appears throughout Lacan's work but can best be understood as the relation between need/demand/desire, where 'need' stands in for an amalgam of the drives. 'Desire' is what emerges in the remainder where 'demand' (as the symbolic of language) does not align with the 'needs' of the subject (as the imaginary) (Lacan 2006: 579-80).

15 Lacan's discussion of this relation is best articulated in his seminar on ethics (Lacan 1992).

16 A qualifier is required here because the 'imaginary', for Lacan is that to which language refers, or more accurately, to what the repressed from this scene refers. Language, in this sense straddles the symbolic order and the imaginary. See Lacan's elaboration of 'Schema L' and subsequent discussion (Lacan 2006: 40). See also Dylan Evans' discussion of 'Language' (Evans 1996).

17 This is particularly taken up by Agamben, *Homo Sacer* and the accompanying Agambenites. See Mathew Sharpe's discussion of the problematics of a fascination with Agamben (2006).

18 Mussawir's phrase, a description of Foucault's concept of power is readily found in power/knowledge (Foucault 1977) and specifically (Foucault 1978: 92-102).

19 As Derrida offers, law is always an authorised force, and it is authorised through an originary violence that secures the authority of its sovereignty.

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