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Strange Bedfellows: Lacan and the Law

Jacques Lacan and law might seem to be odd bedfellows. Although his seminars wandered far from a narrow focus on psychoanalysis to invoke such fields as philosophy, religion, literature and the arts, Lacan showed no interest in jurisprudence or legal doctrine. Nevertheless, Lacanian theory is all about law.

Lacan posits that the subject is created through submission to the “symbolic” order of intersubjective relations including language, sexual identity and law. Indeed, Lacan’s theory was anticipated more than 100 years earlier by G.W.F. Hegel’s theory of law’s role in the creation of subjectivity.

One might be tempted to object that, on the one hand, psychoanalysis infamously concerned, or even obsessed, with sexuality, whereas legal analysis is rational. This is a false dichotomy. To both Lacan and Hegel, reason and passion are two sides of the same coin.

Lacan rejected a simplistic Freudian identification of sexuality with anatomy, and desire with the animal mating urge. *Human* desire, in contrast, is the desire to be recognized by others. Hegel argues that law is created as means of fulfilling the desire for recognition. Sexuality is, therefore, legal; law, erotic.

1. The Subject

Jurisprudence requires an express or implied vision as to how the subject relates to law. The vast majority of American legal scholars either expressly or implicitly work within the classical liberal political philosophic tradition that presumes that both the subject and rights precede law. Despite its many variants, liberalism’s subject is conceived of as the free, autonomous individual in the state of nature «endowed [...] with certain inalienable rights» (to quote the American Declaration of Independence). This makes law problematic. Although it might be necessary to freedom in that it protects and enforces the subject’s rights from and against others, law impedes the subject’s natural freedom and, therefore, impinges on his rights.

In contrast Lacan and Hegel see the subject, rights and law as unnatural. They are artificial in the sense of creations; works or art. We create law in order to make ourselves into rights-bearing subjects. Or, more accurately, the law, rights and the subject are mutually constituting; created together.

Hegel is not, however, *anti*-liberal. He begins his *Philosophy of Right* with Kant’s proposition that the simplest, most basic conception of personhood as

the autonomous, free, natural individual. However, the reason why the Kantian individual is so radically free is that he – or more accurately, it – is completely abstract, having no concrete, individuating characteristics that could constrain it. Hegel believes that this means that its freedom is purely negative. Specifically, the individual is not a subject, which I am now defining as that aspect of personhood that is capable of intersubjective relations with others. This means, the liberal individual cannot bear the duties that are the essence of Kantian ethics. This is because duties and rights can only be thought of in terms of the symbolic, that is relations with others – I have a duty to you only insofar as you have a right that I must respect.

The abstract individual can not have symbolic relations because it is not recognizable to itself or others. In order to make its freedom actual, the individual must become concrete. This is the function of what Hegel calls abstract right. Through a regime of possessing, enjoying and exchanging external objects the individual individuates herself, becoming unique and, therefore, recognizable in the eyes of another.

This explains the eroticism of law. In the state of nature, the individual's negative freedom is merely potential. One of Hegel's fundamental propositions is that what is potential must be actualized. Or to put this more accurately, Hegel's logic is retroactive. Something can be potential only after it has been actualized. This means that the individual who claims the capacity of freedom as her essence, is logically driven to actualize it in order to confirm its potentiality. Freedom is actualized in legal rights.

Lacan emphasizes how the infant becomes a subject through submission to the primal paternal law of prohibition that enables her to achieve the sexual identify and the ability to engage in language that makes her recognizable. Hegel emphasizes how the most basic form of legal relations, namely property and contract, can perform this function.

To both Lacan and Hegel, the individual becomes a subject only through recognition by other subjects. In Lacan's famous formulation, the desire of man is the desire of the other¹, with all the ambiguity that implies. If individuality is the capacity for freedom, subjectivity is the faculty of desire. As reason tells the individual to actualize its freedom, it demands that she desire, i.e. reason and passion are inexorably linked.

2. Freedom

To say that law is necessary for positive freedom, however, does not mean that law is always liberating. For Hegel, the relationship between the subject's freedom and law is contradictory, and therefore unstable and dynamic. It is true that positive

1 J. Lacan, *The Four Fundamental Concepts of Psycho-Analysis*, ed. by J.-A. Miller, W.W. Norton & Company, New York 1981, p. 31.

freedom is gained through law, but it is equally true that the subject paid for it by giving up some of her negative freedom and autonomy.

Although we create law in order to achieve the rights that are the actualization of concrete freedom, this necessarily means that we must submit ourselves to duties. This is why the subject is created only when recognized as a subject by *other subjects* capable of bearing rights. For this to be achieved, the individual must find other persons who it recognizes as subjects.

The problem is that there are no subjects in the state of nature. The individual must, therefore, first help other individuals become subjects. The individual can not commence this process by claiming rights for itself. Indeed, as I will discuss, this would be a violation of the categorical imperative and, therefore a wrong, not a right. The individual must instead bestow rights on the other – by treating the other as a rights-bearing subject. She does this in the hope that this newly created subject will requite her love, turn around and bestow desired rights upon her, making her a subject.

The subject is a sublation of the Kantian individual – both a cancellation and a preservation. The individual was in a state of contradiction. It was nothing but pure autonomous freedom but could not exercise its freedom. It claimed rights in the state of nature; but if the individual remains autonomous it cannot have rights; rights, requiring recognition, are dependent on others. The individual desires to subjectivize itself to overcome this contradiction. But this does not mean that it has done away with the contradiction. Sublation preserves as well as negates the prior stage of development. The subject and the law cannot completely suppress the individual and the state of nature because they are the building blocks that are the pre-requisites of their very existence.

What degree of constraint should each one of us, subjectively, or society as a whole, objectively (or, more accurately, inter-subjectively) accept? Hegel does not tell us because he cannot. In his prologue to the *Philosophy of Right* he famously declared that such practical distinctions are beyond logic and must be left to pragmatic reasoning². Or, more strongly, the *Philosophy of Right* is an account of how the individual actualizes the freedom that was only potential in the state of nature by engaging in every more complex relations with others. If logic told us precisely what we must do, we would not be free. The logic of freedom is, therefore, its own limitation. We can only decide what empirical legal regime to adopt through practical reasoning.

Nevertheless, Lacan's theory gives us tools to help us analyze, but not solve, the paradoxical relationship of law and freedom. Here I turn to Lacan's theory of the four discourses which he introduced in his Seventeenth Seminar, *The Other Side of Psychoanalysis*.

2 G. W. F. Hegel, *Elements of the Philosophy of Right*, ed. by A.W. Wood, Cambridge-New York, Cambridge University Press 1991, pp. 20-23.

3. The Four Discourses

Although developed as a linguistic theory, Lacan's discourses apply to the entire symbolic order. Specifically, it encompasses a number of issues of the essence to jurisprudence – such as the nature of authority and interpretation. Coincidentally, he delivered this seminar in a law school because he had lost his medical school teaching privileges.

Lacan illustrates his theory with quasi-mathematical diagrams. In this case all four discourses are represented by a single four-footed matrix known as the quadripode.

$$\begin{array}{ccc} \underline{\text{agent}} & \rightarrow & \underline{\text{other}} \\ \text{truth} & & \text{product/loss} \end{array}$$

In the upper-left position is the “agent” of the discourse. The agent addresses its “other” at top right. This relationship is designated by the arrow pointing from left to right. Beneath the agent is its “truth”; beneath the other is the “product” or result of the discourse, which may be something lost or gained. The two elements in the upper register of the discourse are separated from the two in the lower by a “bar”, a common figure in Lacanian theory representing radical disjunction – the upper register is in some way cut off from the lower. No arrow connects the two lower concepts. There is no direct relationship between them, only the indirect one of the discourse itself.

Rotating through the four positions in the quadripode are four concepts represented by four “mathemes”. Lacan uses these concepts and mathemes throughout his work. Their precise meanings within his discourse theory depends on their position within the quadripode.

The first matheme is S_1 , the Master Signifier. Lacan follows most modern linguistic theories by positing that language does not refer directly to the object world, but only to itself. Lacan's formula for signification is S/s : «a signifier stands for a signified»³. The problem is that each signified is itself a signifier standing for a signified in a potentially unending chain of signification. Moreover, as the “bar” between the signifier and the signified indicates, there is a fundamental disruption between the two. Their relationship is not necessary, natural or objective, but is contingent, artificial and established by the subjective will of the speaker.

Signification is in a constant state of slippage as signifiers and signifieds slide above and below the bar in metonymy and cross the bar in metaphor. It is a mistake to assume this means that there is no truth and one interpretation is as good as another. The practice of psychoanalysis is the talking cure by which the analysand articulates the symptom of her trauma. Its theory is an account of how stable meaning can be established – at least temporarily – *despite* the slippage of signification.

3 J. Lacan, *Écrits*, W.W. Norton & Company, New York 2006, pp. 414-445.

Lacan posed a number of explanations as to how this can be done. One way is through the adoption of a master signifier that stands for nothing but itself. It acts as the period ending the run-on-sentence of signification. Specifically, it is a concept that is posited or accepted unquestionably by a subject or community like a *Grundnorm*. Although the function of the Master Signifier is objectively necessary, its specific content is not. It is subjectively or intersubjectively chosen by a subject or community of subjects so that communication can occur⁴.

Second, is S_2 or knowledge. This can be the entire signifying chain governed by the Master Signifier, but its also includes practical knowledge, expertise or the unconscious.

The third *matheme*, the *objet petit a* – the object cause of desire – is both one of the most fundamental, and elusive of Lacan’s theoretical innovations. I will not explicate it in full, but will introduce certain potential implications in context within a discourse.

Lastly is \$, the split or barred subject. This is the subject created in the symbolic order. What is of the essence is that Lacan’s bar, which we first saw in the quadripode and which reappeared in the formula of signification, is now internal to the subject herself: The subject is self-alienated. Alienation is not seen as an aberration that can be overcome through therapy, but the very nature of the human condition⁵. One simplest way of thinking about this is that because the individual only becomes a subject through recognition by others, that which is most internal to the subject – her subjectivity – is always located externally. What is intimate is, in fact, extimate⁶. Subjectivity is a negativity, the faculty of desire. This reflects Hegel’s understanding of the contradictory relationship between freedom and law discussed above.

The first of four discourses is that of the Master where the master signifier is agent.

$$\frac{S_1}{\$} \quad \rightarrow \quad \frac{S_2}{a}$$

When the *matheme* is rotated clock-wise, we create the University’s Discourse, with knowledge as agent.

4 Any specific master signifier is *formally* arbitrary in that its choice is not dictated by logic. That is not to say that it does not have empirical ethical import. A society based on the master signifier of equality is ethically not the same as one based on racial superiority. Indeed, the choice is purely moral in the Kantian sense in that it is a free, uncaused, spontaneous act (J. L. Schroeder, *The Four Lacanian Discourses: Or Turning Law Inside Out*, Birkbeck Law Press, Abingdon 2008, pp. 12-13, 138).

5 P. Meisel, *The Unanalyzable*, in «The New York Times Book Review», April 13, 1997, p. 12 (Book Review of E. Roudinesco, *Jacques Lacan*, Columbia University Press, New York 1997).

6 J.-A. Miller, *Extimité*, in M. Bracher, M. W. Alcorn, R. J. Corthell, F. Massardier-Kennedy (eds.), *Lacanian Theory of Discourse: Subject, Structure, and Society*, New York University Press, New York-London 1994, pp. 74-87.

$$\begin{array}{ccc} \underline{S}_2 & \rightarrow & \underline{a} \\ S_1 & & \$ \end{array}$$

This is followed by the Analyst's Discourse where the agent speaks from the position of desire.

$$\begin{array}{ccc} \underline{a} & \rightarrow & \$ \\ S_2 & & S_1 \end{array}$$

The cycle briefly ends with the Hysteric's Discourse – the discourse in which the split subject speaks⁷.

$$\begin{array}{ccc} \$ & \rightarrow & \underline{S}_1 \\ a & & S_2 \end{array}$$

The cessation is only temporarily, as another spin of the wheel will lead to a new Master's Discourse.

The first two are discourses of power. They are the discourses of those who give commands and offer justifications. It is an error to assume that these the only discourses of law. Being symbolic, law includes all four discourses. The two "critical" discourses are every bit as essential for the functioning of a legal system. The power discourses are those of the governor; the critical discourses are those of the governed. Most importantly, the critical discourses are those of the *practice* of law. To be more specific, a lawyer speaks in the power discourses in her capacity as a lawyer, understood as a person trained in the law. However, when she acts in her capacity as an attorney, i.e. a lawyer representing others, she should switch to the critical discourses.

Although Lacan identified the Master's Discourse as the logically first one, he thought that, as an institution, it had largely been supplanted in modern Western society by the University's. In fact, the Master's Discourse is H.L.A. Hart's, positivist "concept of law": probably the dominant jurisprudential theory in the Anglophone world.

Lacan posits that in the Master's Discourse, the person or institution taking the role of the master signifier is the agent of the discourse. The master signifier addresses its other taking the role of Knowledge by giving orders that are to be obeyed. Remember, the master signifier has no signified. S_2 obeys not because of any substantive content but just because he recognizes S_1 as that which is to be obeyed.

Lacan's theory is inspired by Hegel's master-slave dialectic from his *Phenomenology of Spirit*. As is well known, Hegel posits a primal scene where two

7 I deviate from Lacan who ends with the Analyst's Discourse that supposedly completes the others (J. Lacan, *The Seminar of Jacques Lacan Book XVII: The Other Side of Psychoanalysis*, ed. by J.-A. Miller, W.W. Norton & Company, New York 2007, p. 54). I argue that this violate his own internal structural logic (J. L. Schroeder, *The Four Lacanian Discourses: Or Turning Law Inside Out*, cit., p. 106).

equal warriors engage in a battle to the death in an attempt to achieve recognition. Eventually, one warrior puts down his sword and becomes the slave of the other. It is a common misconception that the slave does so out of fear. It is true that Hegel refers to the slave's fear, but only *after* he becomes an unarmed slave. In fact, the warrior makes an ethical decision to become a slave. He realizes the futility of battle for recognition. If he is killed, he cannot be recognized. If he kills the other, there is no one to recognize him. He surrenders so that both parties might live. Although the form of recognition achieved in a master-slave relationship lacks the mutuality necessary to achieve what I am calling subjectivity, it explains the "logic" of the form of personhood that Hegel thought characterized the classical world.

The point for Lacan's purposes, however, is that S_2 (the slave) obeys S_1 (the master) not for any substantive reason – the master is not braver, stronger or wiser – but merely because the slave recognizes him as master.

Hart similarly argues that law consists of primary rules that are followed, applied and enforced by "officials" who identify them through a secondary "rule of recognition". The status of a law is independent from morality. To put this more strongly, one obeys law because law is Law, not because it is moral, just or for any other substantive reason.

Hegel and Lacan argue that the master is functionally an idiot. To invoke Charles Dickens somewhat out of context, Hartian positivism agrees with Mr. Bumble that «the law is a ass»⁸. This is why the truth of the agent is $\$$ – the master is, in fact, an ordinary split subject like the rest of us.

Hartian positivism is powerful within legal academia because it captures a moment of law that is intuitively familiar to all lawyers: A society could not function unless its officials, and perhaps its members, accept the truism "law is Law". However, it is a partial and inadequate account of law, in the same way that the Kantian individual is a true, but inadequate, account of personhood.

The product of the Master's Discourse is *a*, the *objet petit a*. In this case, the product is created by expulsion. By banning something from the discourse, it can serve as an object of desire. After all, we can only desire that which we do not have. In the case of legal positivism that which is expelled is the morality, justice or substance of the law that Hart insists we cannot discuss in deciding to recognize and obey the law. Consequently, one of the critical lessons of Lacan's analysis is that although positivism claims to separate law from morality, in fact, it can only be thought of in terms of the morality that is now desired.

Hart thought that, by separating morality from law, he preserved morality as a potential external critic of law. That is, an immoral law is law, but it might be «too evil to be obeyed»⁹. Unfortunately, by exiling it from his very concept of law, he offers has no way of conceptualizing the critique or change of law as a legal practice.

8 C. Dickens, *The Adventures of Oliver Twist*, Oxford University Press Oxford, New York-Toronto-Melbourne 1991, p. 399.

9 H.L.A Hart, *The Concept of Law*, 2d. ed, Clarendon Press, Oxford 1994, p. 620.

Why is the addressee in the position of knowledge? Hegel argued that unlike the master who is proudly ignorant, the slave must by necessity learn how to do things. Knowledge in this discourse is *savoir faire*. Similarly, if Hart's officials learn not only the law that they recognize, but how to apply it, administer it, enforce it and generally make the legal system necessary for society to function.

This brings us to the University's Discourse in which S_2 is the agent. This is not what *should* be spoken in universities, but rather what is too often spoken there. The Master's Discourse is unsatisfying precisely because it bans discussion of the justification that is its desire. In contrast, the University's Discourse is a conversation about justification. Here, knowledge is not *savoir faire* but expertise. The agent is the professor, or other expert, who claims to explain why the positive law is what it is (or why it should be different). S_2 addresses *a*, which in this context can be thought of as that which society desires, or what the expert believes it should desire – the goals that law supposedly serves which will be explained by S_2 's justification. We can see this dynamic in the vast majority of normative legal scholarship which purports to do just this.

But note, the truth of such a discourse is S_1 – the master. Although the expert purports to speak the language of wisdom, he always wields power over others. In some ways the University's Discourse is more insidious than the Master's. In the latter, you are merely asked to obey the law. In the University's Discourse, you are required to agree with it as well.

Consequently, the product of this discourse is $\$$, the split subject. In the context of actual universities, this can be the student lectured by professors who do not actually seek truth. But, in the context of law, it is the subject subjected to law who is manipulated to serve the collective goals of society as identified by the expert, as opposed to the subject's own subjective desires. Hegel accepted Kant's categorical imperative that one treat each other person as her own ends, and not as the mean to our own ends¹⁰. But, this is precisely what the University Discourse does. One of the lessons that we learn from Lacan is that the rule by experts is based on a foundational immorality.

Of course, just as the Master's Discourse captures a true moment of any legal system despite its inadequacy, the University's Discourse captures a necessary one, despite its immorality. We need experts to draft, explain and justify laws. Laws must be addressed to the goals of society generally, rather than the idiosyncratic desires of each individual citizen.

We now give the quadripode another turn and enter the Analyst's Discourse. The analyst, who acts as agent takes on the role of *a* and addresses $\$$ not from the position of society's goals, but from the alienated subject's own desire which has been barred by the law. If the master commanded the other, and the university lectured the other, the analyst interrogates the other. As is the case in classic

10 Or, as reformulated by Hegel, «be a person and respect others as persons» (G. W. F. Hegel, *Elements of the Philosophy of Right*, ed. by A. W. Wood, Cambridge University Press, Cambridge-New York 1991, pp. 67-69).

psychoanalysis, therefore, the analyst's discourse consists largely of silence and listening as she encourages the other to speak.

The truth of the Analyst's Discourse is knowledge. Indeed, one of Lacan's terms for an analyst is the «subject supposed to know»¹¹. But, the operative word here is "supposed". The knowledge is not the analyst's expertise, even though the individual analyst is often a doctor or other highly trained professional. Rather it is the as yet unconscious knowledge of the split subject herself about the nature of her desire. If successful, analysis will produce a new S_1 .

This time the master signifier is the articulation of the symptom of the subject's trauma. A psychoanalytic symptom must be distinguished from a medical symptom thought of as the manifestation of a disease *apparent* to a patient, such as aches are symptoms of the flu. That it, the medical symptom is not the disease itself. A psychoanalytical symptom, in contrast, is not merely unconscious, is the *actualization* of trauma. "Trauma" should not be simplistically thought of as a bad thing that has happened to the subject in the past. Rather, a bad thing only retroactively becomes a trauma when it appears in a symptom.

The symptom is that which the subject has not yet been able yet to integrate into the symbolic order through articulation which is why it manifests itself through «the subject's repetitive, consistent characteristic behaviors and speech patterns»¹². This is why it serves as a master signifier: it has not yet been defined or justified, it just is. Nevertheless, yet it structures the neurotic subject's life in the same way as the "meaningless" master signifier structures meaning. The hope of psychoanalysis is that if the analysand can articulate his symptom, he can integrate it into the symbolic order and move on¹³.

The attorney should engage in the Analyst's discourse when she counsels her client or interprets a legal text. In counseling, the attorney should not command or lecture her client. The initially hidden knowledge that the counselor is supposed to know be confused with the attorney's own expertise. Rather the counselor must place herself in the position of the client's lack and interrogate him in order to help him identify and articulate his goals. Once the goals are articulated, the counselor can then guide the client as to how to achieve them within the symbolic order of the law.

Similarly, in interpretation, the reader desires not to impose meaning on the text, but to determine the unknown meaning within the text itself. This is why she is initially in the place of the opacity of the text itself and why her truth is the meaning from which she is initially barred. The text is encountered as a split subject in that the reader experiences it as incomplete. She interrogates the text to produce alternate explanations until she eventually articulates an interpretation. Thus, interpretation is always a collaboration between the interpreter and the

11 B. Fink, *The Lacanian Subject: Between Language and Jouissance*. Princeton University Press, Princeton 1995, p. 87.

12 J. L. Schroeder, *The Four Lacanian Discourses: Or Turning Law Inside Out*, cit., p. 109.

13 In fact, as an empirical matter, some analysand's lovingly cling to their symptoms even after "successful" analysis. This observation led to Lacan's late theory of the *sinthome*.

text; the subject and the object. Once again, the Lacanian proposition that there is an inevitable subjective aspect to interpretation does not imply that there is no objective meaning in the text or that any interpretation is as good as any other. To Lacan, the problem of interpretation is not lack of meaning in signification, but of a *plethora* of potential meanings. This is precisely why interpretation is necessary.

Legal representation should take place in the last discourse, that of the Hysteric. Here \$, the split subject – the subject subjected to the law – is the agent. The attorney does not speak for herself. She puts herself in the client’s shoes in order to give him voice. The split subject addresses S_1 , the master signifier. The master signifier can be the law that she sees either as the cause of, or the solution to, her split. This can be the positive law that gave orders in the first discourse. But, it can also be the legal argument or legal relationship, such as a contract, that can help her achieve her purpose. Consequently, the Hysteric’s Discourse is that of critique and accusation, but also of negotiation.

The truth of the Split Subject is *a*, the desire from which she has been separated by the law. The Hysteric’s Discourse redeems Hart’s assertion that by separating positive law from the morality that becomes its desire, morality can serve as a critique of law. From a Lacanian perspective, however, the ethical critique is not external to law, but is imminent in it; a legal practice.

4. Hysteria

Hysteria reflects the dialectic of the creation of subjectivity through recognition – the insistence that the subject only comes into being through intersubjective recognition. I have already referred to Lacan’s formulation that the “desire of the subject is the desire of the other” but omitted to say that Lacan was specifically referring to the *hysteric* subject. But this is because Lacan thought that subjectivity is characteristically hysteric.

As introduced, this dialectic of recognition is erotic. Consequently, subjectivity is always sexuated. A subject is, therefore, always either a Man or a Woman: symbolic positions that should not be confused with anatomy or orientation. The feminine subject is hysteric, in contrast to the masculine subject who is obsessive. Consequently, despite dominant stereotypes to the contrary, the archetypical subject is a Woman. “Man” is, in some ways, a failed attempt at being a Woman¹⁴. Importantly for this project, this means that an attorney should take on the feminine position when representing a client.

The obsessive refuses to confront the pain of his split, and tries to deny it and his dependence on others. He delusionally claims that he is the ego, the psychoanalytic term for the whole, autonomous, individual of liberalism. Moreover, he also claims that law, or could be, complete and unambiguous so that meaning is objective and

14 S. Žižek, *The Sublime Object of Ideology*, Verso, London 1989, p. 7.

there is no need for interpretation. The hysteric, in contrast, accepts not only her own split and dependence on others, but the universality of desire.

Indeed, the hysteric's question is precisely «Am I a man or a woman?»¹⁵ – what am I with respect to your desire? Žižek restates this as *Che vuoi?*, «What do you want (i.e. from me)?»¹⁶. This can be both a “friendly” inquiry, as in the case of contract negotiation or an outraged rebuke when one is challenging the law.

But, in the end, the law never provides the answer because it cannot. Another name of the symbolic order of law and language is the Big Other. The Big Other is nothing but the community of split subjects and is, therefore, as split as its constituent parts. This means that, ultimately, the subject must answer her questions herself.

Lacan notoriously asserts that the Big Other does not exist¹⁷. This is the corollary of another even more notorious slogan associated with Lacan: Woman does not exist¹⁸. Since Woman (i.e. the subject) and the Big Other are mutually constituting, what is true of one is equally true of the other. That does not mean they don't function; indeed, they insist.

Here, intentionally or not, Lacan invokes Hegel's distinction between existence and essence. Existence claims to have a pre-existing, necessary, permanent reality. It is static and dead. Lacan intuits that when he asserts that the obsessive question posed by the Man-who-claims-to-exist is «Am I alive or dead?»¹⁹.

In contrast, essence is dynamic. It always in a constant state of flux, coming to be and ceasing to be. According to Hegel, God is essential which is perhaps why Lacan asserts that one of the names of God is Woman²⁰. Similarly, to say that the Big Other of the law does not exist is to assert that it is essential. It is open and changing which is why interpretation is needed. The law requires collaboration with the subject.

That which is produced in the Hysteric's Discourse is S_2 , knowledge. This time, however, the knowledge is not *savoir faire*, expertise, or even her symptom. It is a new knowledge about her relationship with respect to the law.

This knowledge is also the creation of right. Rights do not exist, because they are essential. We now return to the beginning of this essay.

15 B. Fink, *A Clinical Introduction to Lacanian Psychoanalysis*, Cambridge, Harvard University Press, Cambridge (MA)-London 1997, p. 122.

16 S. Žižek, *The Abyss of Freedom/Ages of the World*, The University of Michigan Press, Ann Arbor 1997, pp. 81-82.

17 J. Lacan, *The Seminar of Jacques Lacan Book XVII: The Other Side of Psychoanalysis*, cit., p. 66.

18 J. Lacan, *The Seminar of Jacques Lacan Book XX: Encore, On Feminine Sexuality, the Limits of Love and Knowledge 1972-1973*, ed. by J.-A. Miller, W.W. Norton & Company, New York 1998, pp. 72-73.

19 B. Fink, *A Clinical Introduction to Lacanian Psychoanalysis*, cit., p. 122.

20 J. Lacan, *Le Sinthome et le Père: Séminaire Du 18 Novembre 1975*, ORNICAR? vol. 6, 1976, p. 5.

5. Right

Hegel's understanding of right is diverse from most conventional ones because his logic is retroactive. "Wrong" is typically taken to be the violation of a right. But, to Hegel there is no pre-existing right – rights must be created. Most importantly, all unilateral claims to right are initially wrong.

To claim a right against another is to treat him a means to your ends in violation of the categorical imperative. Consequently, wrong precedes right. Right only comes into being in the righting of this wrong – when another person or society freely recognizes your claim to a right. It is not something we find, but something we create. Right, therefore, is an act, not a fact. It is produced in legal action.

Both Hegel and Lacan's theory are dynamic. In sublation an initial understanding – an affirmative statement of a proposition – generates its own negation, the dialectic – a second or double reasoning that points out that which the understanding omits. The contradiction between the understanding and is "resolved" in speculative reason.

This speculative resolution is necessarily unstable and temporary because it preserves as well as negates the contradiction. Indeed, as soon as the speculative resolution is adopted, it becomes an understanding, which generates a new dialectic that needs to be resolved through speculative reasoning and so on.

Similarly, although right initially comes into being as the act of righting a wrong, the moment it is adopted as rule to apply in the next case – that is, the moment it becomes positive law, it becomes a wrong asserted against another that can only be righted through its application. And so, Lacan insists that once the hysterical split subject produces her knowledge in her discourse, the quadrupode necessary continues its vertiginous spin. Once again, positive law sits in the position of the agent and the cycle continues.

And so, Lacan's psychoanalysis reflects the Hegelian understanding of how the subject does not pre-exist, but is created along with law. Moreover, his theory gives insight to every aspect of law: as command, justification, interpretation and critique, surprisingly showing how each aspect leads to the next, forming a never-ending circle. Finally, it helps us to see that right cannot be thought of as a fact that we discover because right does not exist. Like the feminine subject, it is a essential and only fleetingly appears in the act of righting the wrongs that do exist.