

Law And The Unconscious: A Legendre Reader

edited by Peter Goodrich, translated by Peter Goodrich with Alain Pottage and Anton Schütz, Macmillan, London, 1997; xvi, 254 pp; US\$65.

... I attach extraordinary importance to the history of the religious and legal ... texts of the European tradition. From our contemporary perspective, the Middle Ages designate the principal point of entry ... from which the machinery of modernism developed. The ... medieval revolution of the interpreters ... can be understood more easily by lawyers within the common law tradition than by ... those in France.

Pierre Legendre (xvi)

Jurisprudence as exposé, or how the ready-to-wear fantasms of modern law came from late medieval sweatshops

As a graduate student in philosophy, prior to attending law school, I knew that 'jurisprudence' meant 'philosophy of law' and thus referred to a foundational inquiry into legal processes and institutions. I later discovered that the term 'jurisprudence' is often used as a synonym for law generally (as in the multi-volume doctrinal treatise *American Jurisprudence*). For example, I learned that the attorneys in the Jurisprudence office of the Texas legislature were busy not with legal theory but with drafting legislation. Sad, I thought, to see a lofty notion reduced to the mundane but I suppose the word 'jurisprudence' was available. Jurisprudence (as a theoretical inquiry) does not play a large role in American legal education or practice nowadays. For the French theorist Pierre Legendre, however, it should:

We must agree to turn western thought in upon itself. Only then will it be possible to observe it not as progressive and well developed, but simply as one amongst the many attempts to confront the enigma *why are there laws?* (xiv)

When studied, those 'many attempts,' which occurred across history and around the world, can offer some critical distance and leverage to the student or reformer of law.

If we agreed that jurisprudence is essential, could we agree on how to proceed, that is, on what knowledge is essential to understanding fundamentally how contemporary law works?

Which disciplines help us look behind the scenes of law, to escape the discursive boundaries of contemporary law (even if only into another bounded discourse)? Legendre's project is here instructive, if somewhat controversial. We all might agree that legal history is important, though Legendre finds the origins of modernity in the Middle Ages and not in the Enlightenment. Likewise, we might agree with Legendre that the study of rhetoric, literary theory, and interpretation strategies are crucial to jurisprudence but his notion of symbolic causation — the second birth into an institution of speech and the manufacture of persons by language — is as troubling for traditional theorists as it is promising for fellow travellers of French critical theory. The remaining fields of inquiry in Legendre's disciplinary constellation for jurisprudence are perhaps surprising: religion, psychoanalysis, and aesthetics beyond the literary — images, theatre, and even dance. Legendre's unique version of interdisciplinary legal theory is not only compelling but also now available (in part) in English.

Peter Goodrich, editor and primary translator of *Law and the Unconscious: A Legendre Reader*, has been appropriating (in his own work) and popularising (interviewing Legendre for *Law and Critique*, translating a few essays) Legendre throughout the 1990s. *Law and the Unconscious* includes excerpts from five of Legendre's 15 books, two articles previously published in France, a short preface by Legendre, an abbreviated glossary, a selected bibliography of Legendre's work, and a lengthy introduction to Legendre by Goodrich.

Goodrich identifies five themes in 'a project that is at times delirious, at times poetic and on occasion closer to the mediaeval arts than to the conventions of contemporary jurisprudence' (p.5). First, the project is psychoanalytic, oriented to 'the recognition of the unconscious in the practice and interpretation of law' (pp.4-5); Legendre reads the institution of law as if it were a subject — with a body, with pathologies, with a repressed history — that reproduces

itself in the subjects of law (p.6). Second, Legendre highlights the familial form of subjectivity — law 'dictates in advance the familial places, the roles and relationships, the 'familial fates' into which the subject is born' (p.6). Third, given 'that language is the inescapable symbolic structure into which each subject is born,' Legendre adds that in the West we are the inhabitants of a very special material form or body of language, the text or written reasons of law' (p.8). Fourth, Legendre explicates 'the principle of authority that attaches to the power of the father' (p.9) and its various images in the Divine Father, the emperor, the head of the family, and the law as Father. Finally, Legendre explores the analogy between law and psychoanalysis in their respective attention to cases, to conflicts that require resolution ... both are forms of casuistry, a tradition of Roman and Canon law. Each of these themes is detailed by Goodrich in his introduction, with helpful examples from Legendre's work and from a Canadian criminal case about which Legendre wrote a book, *Le Crime du Caporal Lortie: Traité sur le Père* (1989).

Returning to the question of what understandings you need to understand Western law, I think Goodrich's selections from Legendre's works are striking. For example, Legendre insists that religion is significant in legal history and in the construction of the contemporary legal subject. Some would say that we are in a secular age, that we do not think like those in the late Middle Ages, and that, in Legendre's words, the history of religion is either 'a sort of cultural distraction or ... a repository for beliefs which have fallen victim to progress ...' (p.98). Nevertheless, though 'we may try to mask or deny the fact, our organizations are the bearers of the emblems of Christianity' (p.44); if this fact was acknowledged, 'what would become of our grandiloquent pretensions to rationality or our claims to a benevolent simplicity in new methods of organization ...?' (p.89).

Critics of law's purported rationality have often hinted at a religious aspect of law, if only by highlighting beliefs or belief-systems as the primary support for legal regimes. More sustained analyses of law as myth, such as Peter Fitzpatrick's *The Mythology of Modern Law*, are reminiscent of Mircea Eliade's con-

firmation that mythology is inevitable and ever-present in contemporary culture. Legendre likewise identifies the roots of 'our own mythological structures' (p.113) in Roman law and in Christian doctrine, and modern secularisation as 'more a process of substitution than one of radical change' (p.56).

The secularization of aesthetics during the Renaissance and the process of re-classification which took place during the eighteenth century gave rise to something new, but the sacred distinction was left untouched, confirming something that lawyers in Europe have been repeating since the era of scholasticism: the law is written in the domain of pontiffs and rulers; the people, as mere subjects, are separated from it. The Text declares the mystical order of a great spectacle ... [p.56]

Just as the Dutch jurist Herman Dooyeweerd, writing in the early 20th century, saw all social institutions as markers of communal faith, of beliefs parading as common sense, so Legendre sees political power

in a direct relation with the Reason of representation. In order to institute the similar, a society constructs an image of all that we are. Politics, therefore, is eminently religious. [p.234]

Such an analysis, Legendre fears, is subversive and may explain why his 'writings are deemed to be unacceptable' and aberrant, particularly in France (p.89).

Legendre's psychoanalytic orientation is yet another barrier to his influence as a legal historian.

[T]he history of law, which is currently on the decline in France ... is horrified at the very mention of Freud, or, worse still, Lacan. The fact that Freud was, so

to speak, blessed in legal literature, not least in Kelsen's writing ... is commonly overlooked. [p.101]

Yet Legendre is critical of the psychoanalytic establishment for a certain ignorance concerning 'institutional questions' (p.44), including its own (p.199), and is cautious in his appropriation of Freud and Lacan. Psychoanalysis 'is neither an explanation of the world nor of society, it is not an official message, it leaves the questions posed by life unanswered' (p.84). Nevertheless it can 'contribute to the analysis of the capture of the individual by the institution ... through uncovering certain unrelenting cultural patterns of repetition, and through the identifications of the rites ... transmitted by classical texts' (pp.40-1).

The texts of law, including the textual tradition of interpretation, are for Legendre creators of faith and fabricators of believers (p.69). The message of legal institutions is not so much a matter of communication as it is a staging that preys upon our fantasies, our desires, and our sense of guilt, to seduce us as subjects of law. Law institutes our lives, and its discourse is like theology for medievals, or like natural science or medicine for moderns (p.137). Law guarantees and orders our social lives as reasonable, just as Roman and medieval canon law did — we repeat and re-enact those structures, those representations, those myths.

Legal processes and institutions are not, for Legendre, properly characterised as merely one important social structure alongside the institutions of religion or scientific reason — they are our religion and they provide, histori-

cally, our images of causation, proof, and truth. Law works on numerous levels and fronts to create identity and to govern our bodies — their functions, emotions, and desires. We are captured not only in Law's textual boundaries, aesthetic images, and theatrical staging, but in its dance — we conform, we imitate, we march as our bodies, resonating with law, are moulded and ruled. If that sounds exaggerated or provincial (ennobling jurisprudence as the queen of all disciplines), Goodrich's opening translation, entitled 'The Dance of Law', is a wonderful display of interdisciplinary acumen.

In the end, Legendre's rich and multi-faceted project is not easily summarised in a book review. Goodrich's introduction does as good a job as possible in identifying themes, but the themes in *Law and the Unconscious* multiply with each selection and serve to make Legendre's entire canon enticing. If post-colonial studies has been criticised for having 'four centuries and the entire universe'¹ as its disciplinary field, Legendre at times seems to view ten centuries and all of western culture as his own. Jurisprudence, after all, is concerned with the big picture, and while details — textual references, case examples, historical episodes — are not lacking in Legendre, he succeeds in revealing the genealogy and spirit of contemporary legal institutions.

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Reference

1. Jacoby, Russell, *Marginal Returns: The Trouble with Post-Colonial Theory*, Lingua Franca, Sept/Oct 1995, p.30.

Subversive Sites: Feminist Engagements with Law in India

by Ratna Kapur, Brenda Cossman; Sage Publications, in association with The Book Review Literary Trust, New Delhi, 1996; 352 pp; Rs 200, hardcover.

Ratna Kapur and Brenda Cossman provide a critical intervention into the field of women and the law in India in their latest publication *Subversive Sites*. *Subversive Sites* is a feminist analysis of the legal regulation of women in India, examining both the limitations and possibilities of the role that law can play in women's struggles for social change.

India has a long history of the women's movement making extensive use of the law, particularly legal reform, as a tool for social change such as anti-sati legislation, anti-dowry legislation, and reservations for women at State and local government levels. But there have been many disappointments, even within the more successful campaigns, particularly in relation to the implemen-

tation of the law. Thus there is a growing disenchantment among sectors of the women's movement in India who now argue for women to disengage from the legal system. It is interesting that in the light of the Wik Bill currently before the Australian Parliament, which undermines the decision of the highest court in Australia, legal activists in Australia may also be beginning to question the value of law as a tool for change.

In this environment, *Subversive Sites* is a well-timed book. As it explores alternative strategies for the law, the book builds up a well-argued concept of the law as more than just a tool for social change. The authors argue that:

[L]aw needs to be reconceptualised as a site of discursive struggle where compet-