

Law and Enjoyment

POWER, PLEASURE AND
PSYCHOANALYSIS



 Daniel Hourigan

ROUTLEDGE


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Power, Pleasure and Psychoanalysis

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 **Routledge**
Taylor & Francis Group
LONDON AND NEW YORK

First published 2015
by Routledge
2 Park Square, Milton Park, Abingdon, Oxon, OX14 4RN

and by Routledge
711 Third Avenue, New York, NY 10017

Routledge is an imprint of the Taylor & Francis Group, an informa business

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British Library Cataloguing in Publication Data

A catalogue record for this book is available from the British Library

Library of Congress Cataloging-in-Publication Data

Hourigan, Daniel.

Law and enjoyment : power, pleasure and psychoanalysis / Daniel Hourigan.

pages cm. -- (Discourses of law)

Includes bibliographical references and index.

ISBN 978-1-138-81596-4 (hbk) -- ISBN 978-1-315-74646-3 (ebk) 1. Pleasure. 2. Law--Social aspects. 3. Power (Social sciences) 4. Psychoanalysis. 5. Popular culture. I. Title.

BF515.H68 2015

340'.19--dc23

2014047225

ISBN: 978-1-138-81596-4 (hbk)

ISBN: 978-1-315-74646-3 (ebk)

Typeset in Minion by
Servis Filmsetting Ltd, Stockport, Cheshire



Printed and bound in Great Britain by
TJ International Ltd, Padstow, Cornwall

Law and Enjoyment

This book advocates, and develops, a critical account of the relationship between law and the largely neglected issue of 'enjoyment'. Taking popular culture seriously – as a lived and meaningful basis for a wider understanding of law, beyond the strictures of legal institutions and professional practices – it takes up a range of case studies from film and literature in order to consider how law is iterated through enjoyment, and how enjoyment embodies law.

Drawing on psychoanalytic theory, this book addresses issues such as the forced choice to enjoy the law, the biopolitics of tyranny, the enjoyment of law's contingency, the trauma of the law's symbolic codification of pleasure, and the futuristic vision of law's transgression. In so doing, it forges an important case for acknowledging and analysing the complex relationship between power and pleasure in law – one that will be of considerable interest to legal theorists, as well as those with interests in the intersection of psychoanalytic and cultural theory.

Daniel Hourigan is a lecturer in English Literature at the University of Southern Queensland, Australia.

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The publisher gratefully acknowledges the support of the Jacob Burns Institute
for Advanced Legal Studies of the Benjamin N. Cardozo School of Law to the
series *Discourses of Law*.

Dedication

This book would not have happened without the love and support of my family and friends. Special thanks go to Sally for her love and support, John for the gift of philosophy, and William for his recognition and friendship. I would also like to acknowledge the institutional support of the School of Humanities and the Griffith Law School at Griffith University, the School of Arts and Communication at the University of Southern Queensland, and the Law and Literature Association of Australasia Inc.

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Introduction

It is striking how law reaches beyond the legal profession and institutions to operate as a popular pathos of cultural narratives and social developments. In these contexts law not only expounds its legal and juridical rules, procedures and practices; it also functions as a popular trope of twentieth- and twenty-first-century narratives delivered for mass consumption on presses and screens everywhere. But there is a third place that law inhabits, a place where the commercial interest of entertainment and the political interests of professionalism part ways. This third place is the theoretical: law in theory. Legal theory and jurisprudence are the two dominant modes of this realm that draws upon minor literatures to inspect the legal canon: the words of novelists, the clinic of psychoanalysts, the letters of disciples, and the speculative realism of philosophers to name but a few. This book is interested in how the cultural and legal are inflected by the theoretical; how law is thought, how it is narrativised, and how it is *enjoyed*.

The enjoyment of law has many different stripes. It can be a judicial construction that avows the arbitrary separation of jurisdiction and power. It can also be the sexually charged erotics of a lovers' contract. It may even be the undoing of the origin of the legal in favour of the primal. To approach the enjoyment of law this book puts forward eight critical vignettes of power, pleasure and close reading. These vignettes aim to develop the idea of 'enjoying law', be it through 'more law', nihilistically deconstructing the social contract, or even more speculative methods of retrieving that certain 'legal' flavour that inhabits popular cultural media. While the critical materials of this book vary from case law to case studies from literature, cinema, philosophy and psychoanalysis, always the focus is on how law

is iterated through enjoyment and, more radically still, how enjoyment is iterated by legality.¹

The opening chapter briefly outlines the psychoanalytic coordinates of this volume's attempt to read law in popular cultural media. It explains something of this work's connection to current trends in cultural legal studies and why the theories of a French psychoanalyst like Jacques Lacan can prove useful to unravelling the legal in the cultural and *vice-à-versa*. The critical method of how the subsequent chapters move between psychoanalytic readings of law in cultural media to a cultural-legal reading of psychoanalysis is also explained.

The second chapter examines the fundamental question: why law at all? In many a romantic vision of the State dominating the aggressive nature of human beings, the yoke of anarchy stirs. But in our postmodern era, such a vision commits itself to a fundamental legal-epistemological dilemma: once you know the law, you cannot go back to a 'no law' space. This has led some theorists to follow Robert Nozick in seeking the meagre assurances of private property and open markets to regulate in the absence of a state apparatus that is too conflict-ridden, too corrupt to be remedied. However, it is the view of this chapter that such a theoretical purview misses several crucial features of the psyche of the contemporary Australian law revealed by Lacanian psychoanalysis. In the wake of this psychoanalytic reframing, this chapter proposes a commentary on law's relation to anarchy as the path to enjoying in the law.

The discussion then moves to the ontological coordinates of law in chapter three. Drawing on contemporary philosophical debates about the necessity of contingency, the impossibility of knowing, and the logics (*logos*) of order, this chapter explores the foundation of any possible imagining of an Ur-law in the wake of law's presence. Examining the debate about contingency between Slavoj Žižek and Quentin Meillassoux in detail, this chapter connects enjoyment and law to the way that law must go beyond itself as a *logos* that sees the world from a perspective rather than as a totality. Rather than fixity, this chapter underscores how contingency is vital to understanding the institutionalisation of law and its *logos*.

The fourth chapter delves deeper into the established questions of legal knowledge by examining the structure of jurisprudence as a *Wissenschaft* or interpretative science in the work of Max Weber. This discussion shows how the gap inherent to Weber's distinction of charismatic and rational authority reveals what type of satisfaction is possible through jurisprudence as a vocation. By critically discussing the limits of rational authority, this chapter moves the view of rational authority beyond an elementary reading of Weber and towards the concept of jurisprudence as *Wissenschaft* that is a science of rational limits.

Moving to a more acute assessment of the 'promise' of knowledge in the wake of jurisprudence as a *Wissenschaft*, the fifth chapter unravels the analytic of knowledge that makes legal training difficult in a university discourse. Taking the

1 As Lacan tells us in *Seminar XX*, there is no *jouissance* of the law, only the law of *jouissance*.

Wissenschaft of jurisprudence seriously as a vocation, this chapter examines the desire to enjoy knowledge that is constitutive of the university discourse imposed by the modern law school, as it increasingly becomes the only entry into the legal profession. The discussion takes aim at the nihilism of technical knowledge of the rules and how this, in itself, appears sufficient but remains fantasmatic: you can never know enough about legal knowledge.

The sixth chapter marks the end of the methodological discussion and the opening of the cultural case studies in this volume. As a text at these interstices, the discussion turns to perhaps the most culturally volatile force in the jurisprudence of justice today: restorative justice in cases of sexual assault. The discussion examines how the non-legal or para-legal process of restorative justice seeks to normalise the humanist gesture of elevating emotion as an end in itself – but at what price? The changing face of the legal profession and legal processes envisaged by restorative justice is a brave new, criminological world where law becomes the victimisation of the perpetrator and their prey. It is shown how the critical question hinges on the formulation of enjoyment at the heart of alternative dispute resolution debates that motivate the restorative justice methods.

Moving to a closer examination of the perception of transgression at the heart of alternative dispute resolution, the discussion in the seventh chapter then examines the formulation of law and transgression in the psychoanalytic philosophy of Slavoj Žižek and Franz Kafka's micro-story *The Cares of a Family Man*. This chapter is the first of the 'cultural legal case studies' in this book and it elucidates Žižek's unique and counter-intuitive formulation of law as it intersects with Kafka's tale. It also seeks to answer why Kafka's work more generally is attractive to legal philosophy.

The eighth chapter changes pace to focus on what might be termed 'the reverse of the law' or 'the other side of the law'. Through the vantage of Neil Gaiman's gothic young adult novel *Coraline*, this chapter examines questions of how authority is internalised, how fantasies of the commands of the sovereign become the glue of social discourse. This chapter offers a critical analysis of Gaiman's enterprising tale of Lovecraftian beings in alternative realities and familial blackmail. By critically evaluating this in(ter)vention of kinship, it will be shown how the story of *Coraline* develops an alternative to the normative coding of childhood imaginings as fantastical escapism. We shall see how the world of *Coraline* is not reducible to a psychical projection of the girl-child protagonist but is instead a radical move towards trying to bring to light the unnameable distortion that founds kinship and authority.

The ninth chapter ventures a return to the work of Žižek for a further discussion of the tension between the unsettling distortion and the modulation of authority. Using a comparison of the science fiction neo-noir thriller *Minority Report* and the postmodern spy tale *The Recruit*, it will be seen how the Freudian reading of authority revolves around a triptych of paternal figures that secure access to language, enjoyment and reality. However, Žižek's Lacanian return to these Freudian Fathers in *The Ticklish Subject*, *The Fragile Absolute*, *The Puppet and the Dwarf* and *The Parallax View* reveals some grave problems for those ready to enjoy as

agents of law in post-modernity. This discourse examines the permutations and patricide of authority that open onto the existential world of 'homo sucker' to see whether Žižek can give some clues as to where authority will turn after the eclipse of prohibition and the colonisation of enjoyment.

The tenth chapter seeks the power of love as a contractual allegory in HBO's supernatural melodrama *True Blood*. This chapter attempts a clarification of the Lacanian concept of enjoyment beyond enjoying: *jouissance*. While *True Blood*'s Sookie Stackhouse might seem to long for the sun, she endlessly devotes herself to what is in the undergrowth of enjoyment of Bon Temps' polite civil society: vampires, werewolves, shape-shifters and more. This chapter aims to unearth the erotics of Sookie's *jouissance* – *jouis-sens*, *jouis-sans* and *j'ouis-sens* – that allows her, and specifically her alone, access to this undergrowth of the cultural Imaginary. Particular attention will herein be paid to how this *jouissance* gives Sookie 'a time for love' in the vein of what Jacques-Alain Miller calls 'the erotics of time'.² Herein, it is hoped that one might imagine Sookie as having something to say back to Miller, the analyst, which emphasises a different type of temporality, another psychical feminine *jouissance*. Sookie's erotics of time will herein be shown to perforate the modes of *jouissance* in a different way than those put forward by the phallic voices within contemporary Lacanian theory such as Miller, Chiesa and Stavrakakis.

Power, nationalism and *jouissance* in China Miéville's speculative fictional novel *The City & The City* form the focus of the eleventh chapter. This chapter critically examines the construction of law in China Miéville's weird detective narrative. The discussion charts the excesses of law's embodiment in Detective Tyador Borlú of the Beszel *policzai* with and against the primordial natural law discourse of the Law of Breach, and carefully examines the ways that this Law interdicts the commons in both parts of the fictional split city Beszel-Ul Qoma. Using the psychoanalytic concept of *jouissance*, this paper unveils some of the modulations of authority presented by the novel's unusual arrangement of politics, common law and natural law.

The final chapter examines the systemic politics of enjoyment created by contractual agreement and licence arrangements for objects that commodify and sell *jouissance* on a massive scale: massively multiplayer online videogames. Taking the exemplary case of science fiction MMO *Eve Online*, this discussion locates the way players move between the socio-legal subtext created by the corporate entity of CCP Games and player interactions. Taking the semiotics of the game and metagame space seriously, this discussion explores the place of *jouissance* in player revolt, the consolidation of political power, and the very contractual obligations imposed by the game itself.

Lastly, I would like to acknowledge the prior publication of some discussions and inspiration for continuing with some debates. The discussion of law's forced

2 J.-A. Miller, 'Introduction to the Erotics of Time', B. P. Fulks (trans.), *Lacanian Ink* 24/25, 2005, p. 13.

choice first appeared in the *Griffith Law Review* 21(2) in 2012. The discussion of *The City & the City* first appeared in *Law, Culture and the Humanities* 9(1) in 2011. I am indebted to my colleagues John Mandalios, William MacNeil, Roshan de Silva Wijeyeratne and Gideon Baker for helping me to refine some of the ideas in this book in the course of informal discussions, seminars and reading groups with the School of Humanities, Griffith Law School, and the Socio-Legal Research Centre at Griffith University. The kaleidoscope of cultural legal topics in this book speaks to the intellectual strength and diversity of those groups during my time at Griffith University from 2004 to 2014.

Reading law with Lacan

When *Le livre noir de la psychanalyse*, edited by Catherine Meyer, appeared in 2005, the world once again heard that the time of Sigmund Freud was over. By eulogising neuroscience and cognitive behaviour therapy's critique of psychoanalysis, the funeral oratory of the volume attempted to write psychoanalysis out of history. But not all were as keen to uphold the fashion of flaying Freud. Against this critique, Slavoj Žižek has asked: haven't we been here before?¹ Throughout the twentieth century, challenges to psychoanalysis, particularly Freud's classical models, came and went with peculiar repetition. Again and again the supposedly dead and outmoded discourse of psychoanalysis was attacked for being methodologically questionable but nonetheless enlivened with immense explanatory power for those who would dare to engage with it. What is so dangerous about psychoanalysis for its critics? Can we locate that which makes psychoanalysis the object of such sustained, repeated, seemingly interminable trashing?

Unlike sciences of the brain, psychoanalysis is a science of the mind. Or, to be more appropriate, it takes aim at the product of a self-conscious animal's failed attempts to find happiness in civilisation. The emphasis of psychoanalysis is on this tension between the organic and the man-made; the ancient trope of the alienation and unhomeliness of humankind allegorised by Homeric verse. Therapy in the psychoanalytic clinic does not aim to make one happy. Instead, the aim is to bring the patient or analysand closer to understanding the reconfiguration of their conscious life by civilisation. To put it somewhat simplistically, symptoms, tics and other parapraxes are just as real for the analysand as the external demands that are empirically verifiable. The challenge of the analytic session is different from case to case. However, it is coming to terms with this torsion of lived life that remains central to the processes of the clinic, despite whether I am a neurotic, pervert or in the grip of a psychosis.

Law was never far from what Freud called 'civilisation', the great motivator of parapraxic blunders. When Freud and his family fled to London at the outbreak

1 S. Žižek, 'Is Psychoanalysis Really Outmoded? Apropos the 150th Anniversary of Freud's Birth', *Journal of European Psychoanalysis* 23, 2006, pp. 3–9.

of the Second World War, his work turned from the intricacies of cases in the psychoanalytic clinic to the case of civilisation and its regime of power at large. In *Civilisation and its Discontents*, Freud traced the powers and promises of Western civilisation with his characteristic scepticism.² For the late Freud, civilisation was a force of collective sublimation of the organic aggressiveness of the human animal. Law is central to this process of giving up one's own welfare or self-interest for the benefit of a neighbour who may not feel especially generous but in whom one must entrust one's well-being. Freud questioned whether it was even rational to expect the golden rule of 'love thy neighbour as thy self' to manifest in another person when we ourselves know how uncomfortable or counter-productive such love can be for our own self-interest in pleasure and, ultimately, survival.

It is more than a coincidence that modern legal systems in common-law jurisdictions such as Australia, Canada, the United Kingdom, Hong Kong and the United States of America perform this function of promising happiness and future pleasure at the price of one's own individuality noted by Freud. Rather than having a particular person in mind as my neighbour, the commons of the common law creates and regiments a collectivised image of neighbours whose essential characteristic is assured by the arbitrary authority and enforcement of law. While the discourses of positive and negative liberty engaged the circle of seeking freedom from others, where these others are the condition that measures such freedom, Freud sought a somewhat simpler and more critical questioning of the *nuovo organon* that appeared in the wake of the ever-deferred pleasures of civilisation. Unlike advocates of positive liberty who may elevate law and its rights as tools of progress, Freud's new organ of thought is never quite at ease with 'progress', yet nor is it of a particularly radical political persuasion.

Written in 1929, *Civilisation and its Discontents* was out of step with many of the more fashionable modes of thought of the period. It was even unwelcome for psychoanalytic schools that had become hyper-clinical or scientific, evolving ever more methods and modes to entreat political and economic support. By the end of the Second World War this puzzling image of psychoanalysis achieved a kind of cultural apogee in Europe and America where psychoanalysts appeared in Hollywood films as savant-experts. The 1945 film *Dead of Night* particularly exemplifies the psychological fiction of the era. In the tale, a ventriloquist called Maxwell (Michael Redgrave) and his dummy become embroiled in a series of murders. By the conclusion of the film, a therapist rushes towards Maxwell's cell while the police guarding him treat him as a crazy man with a puppet. The therapist knows all; knows that the puppet is the puppeteer, that the ventriloquist is dangerously close to losing himself in the identity of the puppet, to have his

2 First published in German under the title *Das Unbehagen in der Kultur*. *Unbehagen* is commonly translated to English as 'discomfort', but for Freud's English translator James Strachey the term 'discontent' was closer to the way that psychoanalysis views our subjective participation in a world beyond the end of our own noses while contorting our bodily selves to serve drives and desires that aren't always our own.

ordinary self ventriloquised through the substitution of his voice with the puppet's. But the therapist is too late, and Maxwell becomes ventriloquised by the voice of the puppet Hugo. The therapist then explains exactly what psychological processes came to pass for Maxwell, in a long, obscure excursus. The emphasis is extremely unpsychoanalytic in that it argues about one identity supplanting another, by insisting on the epistemological rather than empirical issues at hand.

In a curious way, *Dead of Night* appears to echo the logic of the attacks on psychoanalysis since the 1940s. Far from being a death by a thousand cuts, psychoanalysis is ventriloquised by new methods and modes that its own heritage has spawned, participated in or influenced. Psychoanalysis is now always in danger of being a guest in its own house: an odd situation that its own narrative of a decentred *nuovo organon* is all too ready to listen to.

The fate of Maxwell in *Dead of Night* also stands as a metaphor for the subject of law and psychoanalysis. In both discourses, a meta-definition used to describe a topology of relations overdetermines the thin self-interest of the individual. As the famed legal philosopher John Austin argued: without weight, without sanction, the commands of law lack the substance to compel action.³ And similarly for Freudians like Jacques Lacan who return to Freud's texts rather than dismiss classical theories as detached from the genealogy of contemporary ideas about psychology, the compulsion to repeat an action against one's own self-interest is about the recognition and internalisation of the demand of an authority – to bear the weight of the command for oneself.⁴ For both discourses, law has to be believable and not merely authoritative.⁵ The *Dead of Night* narrative shows that the identity of Hugo has the power to compel the liquidation of Maxwell's self-interest in his own mind. Whatever the complementary ideas and parallel arguments between law and psychoanalysis, it is important to recognise them as distinct discourses. Therefore, readers of the intersection of these discourses, readers of this book for example, may need to engage in a little brainwashing *à la* Hugo, because reading law psychoanalytically eventually arrives at a legal reading of psychoanalysis.

While psychoanalysis in general is a useful tool for reading law, few analysts have been as embraced by academic legal inquiry as Lacan. Lacan has historically

3 As all good students of legal history know, Austin's positivist jurisprudence defined Western legal philosophy for a century. Many of the developments in legal thought during the twentieth century arose as symbiotic and parasitic reactions to Austinian positivism.

4 There is an underriding distinction here between Hartian positivism, which relies on the self-reference of the legal system to maintain the regime internalised by those subject to law, and the earlier Austinian model, which proposes a more coherent account of the legal subjects thrown into the maw of legal power who do not experience the source of law as anything more than obscure.

5 See in particular William MacNeil's insightful discussion of John Austin with Jane Austen in his *Lex Populi: The Jurisprudence of Popular Culture*, Stanford: Stanford University Press, 2007.

been one of the only analysts to be invited to continue his psychoanalytic discourse in an academic legal frame. Yet despite the popularising work of Slavoj Žižek, Lacan stands as one of the most impenetrable and obscuritanist of all Freudian thinkers. After the linguistic turn in philosophy in the wake of Ludwig Wittgenstein and logical positivists such as A. J. Ayer, obscuritanism has lost favour. Yet as Žižek and others have shown, the obscure can be far more instructive about some existential matters than can the jargon of plain language truths. Classing Lacan as either reflexively Lacanian or outwardly Freudian is one of the naming conventions that attempt to demystify his work. By designating Lacan as Lacanian, there is an attempt to signal a break with Freud, and Lacan's own auto-critique. But Lacan himself admonished any disciples announcing themselves as Lacanian: his proper class was 'Freudian' and by extension so was theirs.

The mystification of Lacan's work is part of the construction of his difficulty for new readers. Against decrying Lacan as simply difficult or incomprehensible we should instead approach him with greater regard for the context and structure of his *oeuvre*. Let us begin by approaching several common distinctions that are made about Lacan's *oeuvre* by biographers, commentators and editors of his life and work. Firstly, we must read Lacan in reverse. Contrary to current academic practices of writing a book or article and then discussing the findings in a seminar, Lacan used his seminars as the main event of his discourse. The documents compiled in the *Écrits* are exegetical-come-symbolic texts that are thick with intertextual connections to the seminars, Freud's body of work, puns, and some unusual medieval sources. Lacan is a thinker whose texts may be best read as hypertext. Secondly, we must read Lacan's seminars as qualifications and attempts to resolve problems, sometimes without success. This means that Lacan's ideas change over time and also that turns to new neologisms such as *sinthome*, a contraction of 'symptom' and 'Saint Thomas', are not static concepts but are instead active processes connected with the intra-textual temporality or precedent of Lacan's *oeuvre*. Thirdly, we must read Lacan as a re/turn to Freud. Rather than merely reading Lacan as a psychoanalytic critic or Freudian stooge, we instead must be aware of the double-edged quality of much of his reading of Freud. The return to Freud is as much an anchor for Lacan's discourse as it is a departure point. Fourthly, we must recognise the way that the reception of Lacan's ideas in the Anglophone world has primarily centred on the early seminars. These seminars appear in the aftermath of Lacan's doctoral thesis on paranoia in the 1920s and are an attempt to interact with the rise of structuralism.⁶ More millennial writing on Lacan, particularly what has followed in the wake of Lacan's rearticulation by the prolific Žižek throughout the 1990s and 2000s, has gone some

6 Lacan's doctoral thesis was catastrophic for its subject, incarcerated actress Marguerite Pantaine. And some have speculated that it may have prolonged her incarceration. Biographer Elisabeth Roudinesco has noted that he 'borrowed' various writings and photographs from Pantaine but refused to return them. Whatever the moral indignation, Pantaine was incarcerated at the time and the rules of the period could bend to enable Lacan to hold onto these items.