

The Bellarmine Law Society Review

Volume XI | Issue I

Article 5

The Oedipal Origins of the Law

Peter Klapes

Boston College Morrissey College of Arts and Sciences, klapes@bc.edu

THE OEDIPAL ORIGINS OF THE LAW

PETER KLAPES*

Abstract: The law and language are inextricably connected. The human individual's first encounter with language—and, thus, the law—occurs early in life, through what the psychoanalyst Sigmund Freud calls the Oedipus Complex. It seems that the law, as we colloquially understand the term, bears roots in the human individual's experience of the Oedipus Complex. In what follows, I argue that the law not only bears Oedipal origins, but also that it seems the law is the only possible way that we might establish relations with others.

Introduction

In a nod towards (Hobbesian) Nominalism, the psychoanalyst and philosopher Sigmund Freud outlines what he sees is the connection between language and the ontological status of civilization itself: “[t]he man who first flung a word of abuse at an enemy instead of a spear was the founder of civilization.”¹ For Freud, it seems that civilization comes about as a result of linguistic mediation—the use of words is precisely what precipitates the genesis of civilization.

Admittedly, however, not every civilization is founded with such haste; in fact, there has likely never existed a civilization founded as a result of one man's verbal insult. Rather, it seems the formation of laws—always linguistic in nature—marks the birth of a civilization. For reasons

* Peter Klapes is a student in the joint B.A./M.A. program in the Department of Philosophy at Boston College. His philosophical interests include the psychoanalysis, literary theory, and the philosophy of law. Over the past few years, Peter has presented his work at various international philosophy conferences and his work—on topics including the philosophy of literature, the philosophy of religion, and psychology—has appeared in multiple journals.

¹ Sigmund Freud, *On the psychical mechanism of hysterical phenomena: a lecture* (1893). In *The standard edition of the complete psychological works of Sigmund Freud, volume III* (1893–1899). James Strachey (Trans.). London, England: Vintage Books. p. 36.

I shall outline, it seems that the law (or language) serves—exclusively—as the constitutive force of our interpersonal bonds. A civilization becomes a civilization only when it is named such and when people come together, not as a result of kinship or bloodlines, but rather as a consequence of the law.

In what follows, I aim to give an account—based on psychoanalytic research—of the origin of the law. Specifically, I aim to demonstrate exactly *why* the law is the only possible bedrock of human civilization. In so doing, I will consider how various psychic maladies, including paranoia and psychotic delusions, point to a connection between law and the nature of human psychic life (mainly the Oedipus Complex).

Before proceeding, we must first identify the connection between law and language, not least because I see both as interdependent entities. For example, law is certainly always language-based. The connection has its root in the Proto Indo-European root *leg*, which led to the Greek verb λέγω (*lego*), and later, the English verb *to legislate*. Moreover, in ancient Greek, the word for *word* is λέξις (*lexis*), and in Latin, the word for *law* is *lex*. The word for *word* in Latin can also be *lexis*. This evolution of language as it is based in Latin roots serves as an illustration of the inherent interconnectedness of language and the law.

Experience of the Law in Infancy and in the Family Unit

Each human individual's first experience with the law (and, for that matter, language) occurs in the context of the Oedipus Complex, via the child's father. Perhaps most concretely, this relationship becomes evident when a newborn's father becomes jealous and resentful of his infant's intimate physical and emotional union with the former's wife, after which he administers

what the French psychoanalyst Jacques Lacan calls the *law-of-the-father*.² Emanating from the fact that he does not lactate and that the mother's pregnancy often strains his ability to engage in sexual intercourse, the father's jealousy causes a traumatic and rather hasty separation of mother and child. Such separation necessitates the child's use of language to communicate, as the child must use language to demand nutrition and sustenance in a way that was not necessary when he was in the womb. Furthermore, the father's attempt to reclaim his wife's attention and body causes the father to physically distance the child from the mother, which, again, deems language a necessity for the child.

In the above account, we see that the law (and language) serves two purposes: (1) to enable relations with others subsequent to the child's separation from his mother, and (2) to guard against a continuation of the incestuous physical relationship shared by mother and child.³ It seems impossible not to posit that these are ends of all laws—from the Mosaic Law, to Hammurabi's Code, to municipal ordinances.⁴ In fact, there seem to exist two sorts of legal codes: (1) those that establish relationships between people and which structure people accordingly, and (2) those that prohibit behavior that might be societally or individually calamitous. Some laws may serve both functions. The father's law, as Lacan calls it, is one of such laws. It separates the child from his mother and commands that the child-mother relationship be mediated not through the body, but

² Jacques Lacan, *Écrits: A Selection* (London 1997) p. 218. Jacques Lacan (1901-1981) was a French psychoanalyst and psychiatrist who gained notoriety through his commentary on, and development of, Freudian psychoanalytic theory. Lacan's own theories attempt to understand the subject and his relation to language and the law, and in his "The Instance of the Letter in the Unconscious," posits that "the unconscious is structured like a language." For further discussion, see Muller, J. P., & Richardson, W. J. (1994). *Lacan and language: A reader's guide to "Écrits."* International Universities Press, Inc.

³ As Sigmund Freud remarks to his friend and colleague Dr. Wilhelm Fliess, "The father forbids the child from realizing its unconscious wish to sleep with his mother." (Letter of October 15, 1897).

⁴ Throughout human history, laws have served to mediate intersubjective relationships. For instance, Hammurabi's Code and the Law of Moses both established standards for human relationships. Hammurabi's code, the Babylonian civilization's legal code, dealt with debt collection, commercial interactions, and physical altercations, among other things. And the Law of Moses established regulations for how one ought to treat his neighbor and how one ought to relate with God.

through language, which ensures that the child will be able to function and interact alongside others in society.

Though this evidence may point to the conclusion that law emanates from every living (or deceased) individual's Oedipal experiences, we must also reflect on whether, in the individual's *adult form*, such Oedipal experiences continue. In what follows, I will demonstrate the ways in which the law as a concept and in its many tangible forms continues to mirror these Oedipal experiences of infancy.

Experience of the Law in Adulthood and Society

Psychosis—especially persecutory delusions and paranoia—emanate, as Sigmund Freud establishes in his write-up of the case of Judge Daniel Schreber, from repressed filial attraction and affection. As Freud writes in his case study: “The patient's struggle with Flechsig [Schreber's doctor; Schreber's father was also a doctor] became revealed to him as a conflict with God, and we must therefore construe it as an infantile conflict with the father whom he loved; the details of that conflict (of which we know nothing) are what determined the content of his delusions.”⁵ Though the exact content of psychotic delusions has not been widely discussed in contemporary psychological literature, especially given the advent of symptoms-based research and treatment, it can be estimated that close to all paranoid and persecutory delusions relate to authority, alleged governmental action, or, most broadly, the law.

Take for example the story of John Forbes Nash Jr., as featured in *A Beautiful Mind* (2001), who suffers from paranoid schizophrenia. In *A Beautiful Mind*, we see Nash struggle with paranoid

⁵ Sigmund Freud, *The Case of Schreber*, in *The Standard Edition of the Complete Psychological Works of Sigmund Freud*,” tr. James Strachey in collaboration with Anna Freud, 1911-1913. p. 55. Sigmund Freud (1856-1939) was an Austrian neurologist and the ‘father of psychoanalysis,’ a method which seeks to uncover unconscious conflicts through dialogue between psychoanalyst and patient.

delusions that relate to government and authority: he fears that he is being pursued by Soviet spies and he mistakenly believes that he has been taken to work with the Department of Defense, breaking top-secret codes. Such delusions, which involve the government, authority, and the law are far from rare. Nonetheless, as Freud establishes in the aforementioned case study, in cases of paranoid and persecutory delusions, the patient often bears hidden affection for the person—or institution—whom he believes is pursuing him. Thus, since the delusional patient cannot actualize and act upon his affection (recall that the child's intimate relationship with his mother was curtailed by his father), the patient turns the alleged pursuer against him so that he may palliate his now deviant desire for uninhibited affection and intimacy. As we have seen, the father and the law bear a symbiotic relation, and thus, in these cases, the law (i.e. the government) seems to stand as the father for whom the child, due to paternal jealousy, social mores, and the incest taboo, cannot properly demonstrate affection. After all, again, most psychotic delusions pertain to the government or other authority figures.

In the case of Denis Lorte, for instance, the French-Canadian Corporal who shot over a dozen government employees at the Parliament Building, Lorte claimed that he saw the face of his father in the Quebecois government and, in the moment of the shooting, saw the face of his father in the guard who denied him entrance to the Parliament Building. The relationship a child has with his father is similar to that which he has with the law, as well: both relationships are mediated by language. Both are also mediated by prohibition. If paranoia and persecutory delusions only come about as a result of repressed affection for the patriarch, then the government—which is, more times than not, the 'butt' of such delusions—must, itself, stand as the patriarch.

The law, moreover, comes about as a result of our desire to relinquish and defer responsibility. In the Oedipal situation, the father serves as the bearer of both responsibility and

culpability. He both causes and curtails desire's progress—he stands in the way of the child's pursuit of his desires (for his mother) and also creates desire itself. For not only does the child *desire* (or *lack*) because he is separated from his mother, but the father also serves as a sort of foil, demonstrating, through his possession of the phallus, the child's mother's lack (her vulvic 'wound,' as Freud calls it) and, thus, her incompleteness and perceived inability to fully provide for her child and his desires. In a congruent way, the law is a foil for us: it demonstrates our incompleteness, inabilities, and disabilities. It exists because we are not perfect in our own right. We must be commanded and guided, and our actions, many times, must be curtailed. The law commands the repression of our unjust desires, self-destruction, and chaos. It ensures that we function well in society and as a society. The psychotic's condition is distinct from that of the neurotic in one way: anosognosia. For the psychotic, an imagined scapegoat (though he surely does not call it a scapegoat) controls his entire life: his actions and his contemplations. The psychotic's condition is one that emanates from the law. For him, the law is the scapegoat, which has allegedly caused his behavior (the authorities pursuing him, the government recording his conversations, the tax bureau pilfering his business's assets). In this same way, we all obscure and defer our maladies and our illicit desires in the name of the law. We forget about our incestuous and parricidal desire—we do not commit incest and parricide merely because they are illegal and might land us in prison. The law keeps us from having to painfully impose certain inhibitions upon ourselves. We are not responsible for our own prohibitions, for the law bears responsibility for our behavior. In this way, the law is our scapegoat.

Law's ability to bring about a deferral of control and responsibility is exemplified in Saint Paul's Letter to the Romans:

I do not understand what I do. For what I want to do I do not do, but what I hate I do. And if I do what I do not want to do, I agree that the law is good. As it is, it is no longer I myself who do it, but it is sin living in me. For I know that good itself does not dwell in me, that is, in my sinful nature. For I have the desire to do what is good, but I cannot carry it out. For I do not do the good I want to do, but the evil I do not want to do—this I keep on doing. Now if I do what I do not want to do, it is no longer I who do it, but it is sin living in me that does it. So I find this law at work: Although I want to do good, evil is right there with me. For in my inner being I delight in God's law; but I see another law at work in me, waging war against the law of my mind and making me a prisoner of the law of sin at work within me (Romans 7:15-23).

As we see here, sin (which, of course, exists only as an aspect [and result] of the law) is seen as a sort of foreign body that acts upon an individual. The individual does not act; it is the 'law of sin' that acts within him. When he 'does what he does not want to do,' he considers the law to be good—it is the law that is responsible for his 'good behavior.' He does not self-castigate; he does not need to. The law does this painful thing for him. The law, we see again, is the individual's superego, a welcome addition to his psychic life—a scapegoat, responsible for his behavior.

Conclusion

In sum, it seems that the law bears Oedipal origins. The law is a father-figure—we relate to it via language and it both produces desire (lack) by curtailing our pursuit of pleasure, but, also, hinders desire, for it makes us do exactly—as we see in Saint Paul's words—what we do not want to do. As an example, the psychotic's experience is most telling of this interchangeability of the father and the law. His delusions emanate from unrealized love. Most of his delusions pertain to the law. Therefore, he must love the law—for he surely loves his father.

Bibliography

- Freud, Sigmund, On the psychical mechanism of hysterical phenomena: a lecture (1893). In The standard edition of the complete psychological works of Sigmund Freud, volume III (1893–1899). James Strachey (Trans.). London, England: Vintage Books.
- Freud, Sigmund, *The Case of Schreber*, in *The Standard Edition of the Complete Psychological Works of Sigmund Freud*,” tr. James Strachey in collaboration with Anna Freud, 1911-1913.
- Freud, Sigmund, J. Moussaieff Masson, and Wilhelm Fliess. 1985. The complete letters of Sigmund Freud to Wilhelm Fliess, 1887-1904. Cambridge, Mass: Belknap Press of Harvard University Press.
- Lacan, Jacques, *Ecrits: A Selection* (London 1997).
- Legendre, Pierre. *Law and the Unconscious: a Legendre Reader*. Palgrave Macmillan, 2014.