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TRANSLATING LEGENDRE OR, THE POETICAL SERMON OF A CONTEMPORARY JURIST

*Peter Goodrich**

In deference to the occasion and to the theme of this colloquium I will not endeavor to provide any coherent, systematic, or sustained introduction to the work of the French jurist and psychoanalyst Pierre Legendre.¹ I will begin instead with a brief history of a dual absence, that of psychoanalysis from law and of the writing of Legendre from the curriculum of contemporary jurisprudence. My question initially will be that of what can be predicated of this absence. What does it mean that the legal institution and specifically those that Legendre terms the moralists and bureaucrats—the “indolent pedagogues” of the legal academy—act as if psychoanalysis did not exist and as if the texts of Freud and Lacan would soon disappear from circulation?² Specifically, I will recount the history of a particular failure to translate the work of Legendre into Anglophone jurisprudence and I will subsequently comment upon the politics of that censorship or repression and the threat that accompanies the promise of a properly “analytic” interpretation of law.

The story, as the saying goes, is stranger than fiction or, in more classical terms, is a matter of *factio figura veritatis*—fiction in the figure of truth. It begins at a conference in 1988. The editor of an established and well-reputed socio-legal periodical was seeking to commission articles on “major theorists” who have “substantially influenced contemporary understanding of law and society.”³

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¹ I have endeavored to provide a sustained introduction to Legendre’s work in PETER GOODRICH, *LANGUAGES OF LAW: FROM LOGICS OF MEMORY TO NOMADIC MASKS* 260-96 (1990). For critical commentaries on his work, see Alain Pottage, *The Paternity of Law, in POLITICS, POSTMODERNITY, AND CRITICAL LEGAL STUDIES: THE LEGALITY OF THE CONTINGENT* (Costas Douzinas et al. eds., 1994); Yifat Hachamovitch, *One Law on the Other*, 3 *INT’L. J. FOR SEMIOTICS LAW* 187 (1990); Alain Pottage, *Crime and Culture: The Relevance of the Psychoanalytical*, 55 *MOD. L. REV.* 421 (1992); Anton Schütz, *Sons of Writ, Sons of Wrath: Pierre Legendre’s Critique of Rational Law-Giving*, 16 *CARDOZO L. REV.* 979 (1995).

² PIERRE LEGENDRE, *PAROLES POÉTIQUES ÉCHAPPÉES DU TEXTE* 12 (1982).

³ See Hugh Collins, *Roberto Unger and the Critical Legal Studies Movement*, 14 *J.L. & SOC’Y* 387, 387 n.* (1987).

I suggested a proleptic article on the French legal philosopher Pierre Legendre, who in terms of bulk publication, I argued, if not necessarily by reputation, was a major theorist. He was even then author of twelve books and by any accounting a significant figure within Parisian circles and the French speaking and Francophile jurisdictions.⁴ (In brief, although the editor had never heard of Legendre, an article was commissioned, a word limit was agreed upon and certain editorial dictates were communicated. Specifically, the article was to be accessible to students, it was to be written in a clear style with frequent practical examples, and it would ideally be the kind of article that would be "useful" to colleagues. Undaunted, I undertook the commission.)

Some months later I completed a draft of the article and forwarded it to the editor of the Law Review. Allowing for certain stylistic digressions and an expansive view of the word limitation, I was confident that the article provided an introduction to the work of a significant and prolific juristic thinker and, in that sense at least, fulfilled its commission. Upon receipt of the article, and here I rely upon a variety of corroborative accounts, the editor of this prestigious review panicked. Knowing that I was associated with disreputable currents within jurisprudence and, specifically, with critical legal studies, and with the founding of the British critical legal studies journal, *Law and Critique*, he surmised that the article was quite likely an account of the work of a nonexistent jurist intended as satire and likely to bring the hitherto reputable journal into disrepute. He immediately embarked upon an inquiry into whether or not Legendre existed. The issue was not that of the content of this psychoanalytic interrogation of law, nor of its impact upon legal thought. It was an altogether more essential question, that of the being of Legendre, that of whether or not such an author could exist, whether or not so dark and continental a figure of thought could claim a reality. Eschewing anything so obvious as ringing the University of Paris or, indeed, international directory inquiries, he contacted the Quain Professor of Jurisprudence at the University of London for specialist advice on the ontological status of Pierre Legendre. The Quain Professor of Jurisprudence had no immediate answer to the problem and so promised to make further inquiries and then to report back.

⁴ Legendre is listed as an "eminent Lacanian" in ELIZABETH ROUDINESCO, JACQUES LACAN & CO.: A HISTORY OF PSYCHOANALYSIS IN FRANCE, 1925-1985, at 688 (Jeffrey Mehlman trans., Univ. of Chicago Press 1990) (1986).

The Quain Professor of Jurisprudence discussed the problem with a colleague at Lincoln College in the University of Oxford. They agreed that the name Legendre was suspicious—it sounded invented, legendary even—and that the easiest way to pursue the matter would be to see if the Bodleian Library at Oxford held any books by this author. The Oxford Fellow undertook to check the Bodleian catalogue and some days later responded with news that was at best equivocal. There were no books by Legendre in the Bodleian and there were only three references to articles by him, but these were in journals so obscure as not to be kept in the Bodleian Library. The conclusion must be that Legendre probably did not exist and this was the report returned to the commissioning editor of the *Law Review*. The Quain Professor of Jurisprudence also informed the publishing house, in which a book of mine was to appear in a series which he edited, that one chapter of the book was devoted to the work of a legal philosopher who in all probability did not exist.⁵

The journal editor forwarded a one sentence letter of rejection of the article. Such was not the end of the story. Some months later when the Quain Professor of Jurisprudence and the editor were jointly teaching a summer course in Hong Kong, they forwarded the following postcard from the Orient (Fig. 1). The picture was of an old Chinese man against a white background. The ideographic inscription to the side of the old man was added at the request of the editor and translates as “man with no shadow.” On the reverse of the picture (Fig. 2) was the message “Legendre unearthed in H K—with someone thought to be Mensonge. In-depth interview projected.”⁶ It was signed in the name of both parties, Phil Thomas and William Twining. In short, Legendre still did not exist, his thought was to remain untranslated and the threat which he represented was left unexamined. Legendre, the leading French Lacanian jurist, was not ready for export, he was turned back at the border, kept out of the market. Other disciplines might allow the unfamiliar, the indecipherable, the bizarre or obscure, but lawyers had no need of such importations. Common lawyers in particular could be proud of their history and continued resistance to conti-

⁵ My book was entitled *PETER GOODRICH, LANGUAGES OF LAW: FROM LOGICS OF MEMORY TO NOMADIC MASKS* (1990), and was to appear in the “Law in Context Series.” The publisher’s response was to raise the question of Legendre’s existence. The publisher was satisfied by my bringing to a meeting a copy of *PIERRE LEGENDRE, L’AMOUR DU CENSEUR: ESSAI SUR L’ORDRE DOGMATIQUE* (1974).

⁶ The reference is to the satirical novel *MALCOLM BRADBURY, MY STRANGE QUEST FOR MENSONGE: STRUCTURALISM’S HIDDEN HERO* (David Lodge trans., 1987).

老馬湖立老翁



老翁湖立老翁
Old man at Lukma lake, Sha Tin, Hong Kong
[國語] 老翁湖立老翁

Let your own feet, on the road
of human thought, be the "steering"
In a deep, calm sea of wisdom.
Greetings,
Phil Dennis W. Lee T. Y.

POST
CARD



Dr Peter Goodwin
Dept of Law
University of Lancaster
LANCASTER
ENGLAND

BY AIR MAIL
航 空 寄 件

PUBLISHED BY [Logo] [Name]

mental traditions with their sophistic or simply foreign ways. The common law will continue, as it always has, acting as if the insular tradition was somehow autonomous; as if the continent and the written law were both external and alien; as if the practice of interpretation would somehow be confused by theories of the text; as if the legal compulsion to repeat in the form of custom and precedent would somehow be rendered meaningless by the intrusion of psychoanalysis.

The figures of this negation are necessarily significant. The unconscious, as Freud observed early on, thinks in images.⁷ The image of the old Chinese man, it can be argued, has multiple significances. The Orient is by tradition the most threatening or perilous of the forms of the alien; it is the most complete "other" to the occidental. Its age or antiquity is again a form of threat; not only does it represent the oldest of traditions of writing and of written law, it also represents an indecipherable and inscrutable code. The antiquity of the Oriental law further indicates a dangerous sophistication; another script or writing which in its very historicity and particularity is unsettling to the mythologies of Anglo-American legal order. The old Chinese man represents an oracular truth, an opaque or indecipherable wisdom, an absolutely alien text beyond the tradition and compass of common law. Like psychoanalysis and like writing, the image of the Oriental man conjures the ignorance of the common law and of the unwritten tradition, and also signals the relative brevity of its historical form. The story suggests that Legendre and psychoanalysis are most dangerous and undesirable figures; they represent the threat of an internal stranger or of a certain foreignness within. I will elaborate that threat in terms of one aspect of Legendre's project—his theory of law's textuality and, specifically, of a revolution in textual interpretation.

The most common anecdote of Legendre's teaching is that of his appearing late at class and apologizing by saying "I had a wild night . . . amongst my texts."⁸ Love of the text and terror of the text are an essential theme in his historical reconstruction of the decay of dogmatic tradition or, more simply, of the death of the law. Certainly, to understand law is to understand writing and, specifically, the written reason, or *ratio scripta*, of the legal tradi-

⁷ SIGMUND FREUD, *THE INTERPRETATION OF DREAMS* 82 (James Strachey ed. & trans., Avon Books 1971) (8th. ed. 1930) ("*Dreams, then, think predominantly in visual images . . . what are truly characteristic of dreams are only those elements of their content which behave like images . . .*").

⁸ Anecdotal, University of Paris 1.

tion. It is a question of returning to the text and of recounting "the war of texts."⁹ It is a question of reading and re-reading the materiality of law, the science of literality, of manuscripts and books that form a system, institution and life to which Western Culture still finds itself bound.¹⁰ The radicality of Legendre's work does not, however, simply reside in a return to the foundational texts of the western institution, namely the *Corpus Iuris Civilis* and its ecclesiastical equivalent the *Corpus Iuris Canonici*.¹¹ His work is radical and is also threatening in a deeper sense: it seeks to understand the reality, in Lacanian terms the trauma, of the institution. In returning to the roots of textual tradition Legendre, from his very earliest philological scholarship, has been concerned with listening to and reconstructing the "undesirable texts"; the failed or flawed or forgotten texts, the ambivalent, uncertain, and uncomprehended aspects of the textual tradition, its symbolism, images, and lost poetics.

The twelfth-century reception of Roman law established a highly specific, if complex, system of texts as law. The texts were a design for social life; they instituted life and established the legal subject as a child of the text.¹² While the Lacanian injunction to think of the unconscious as being like a language goes some way towards suggesting, both in style and in substance, the productive power of the text, Legendre goes further. The unconscious is a jurist and the soul a species of written law. The legal subject, the *persona*, the mask or image of the civilian tradition, is an unconscious body of Roman law. The law instituted life in a sense we no longer remember but have lengthily repressed. To recoup the meaning, the interior space, of that repression is both an historical and a biographical enterprise; a matter of social and subjective genealogies. What is, in individual terms, a question of slips, dreams, symptoms, and lapses, is in institutional terms, a matter of recol-

⁹ PIERRE LEGENDRE, LEÇONS VII: LE DÉSIR POLITIQUE DE DIEU. ÉTUDE SUR LES MONTAGES DE L'ÉTAT ET DU DROIT 205-384 (1988).

¹⁰ On this theme, see particularly, PIERRE LEGENDRE, LEÇONS II: L'EMPIRE DE LA VÉRITÉ. INTRODUCTION AUX ESPACES DOGMATIQUES INDUSTRIELS 131-87 (1983); LEGENDRE, *supra* note 9; PIERRE LEGENDRE, LEÇONS VI: LES ENFANTS DU TEXTE. ÉTUDE SUR LA FONCTION PARENTALE DES ÉTATS 183-272 (1992).

¹¹ On the relationship between the two great compilations, see HAROLD J. BERMAN, LAW AND REVOLUTION: THE FORMATION OF THE WESTERN LEGAL TRADITION (1983); PIERRE LEGENDRE, ÉCRITS JURIDIQUES DU MOYEN AGE OCCIDENTAL (1988); PIERRE LEGENDRE, LA PÉNÉTRATION DU DROIT ROMAIN DANS LE DROIT CANONIQUE CLASSIQUE DE GRATIEN À INNOCENT IV (1964).

¹² The canonical maxim is that of a law which seeks to institute life (*institutare vitam*), a theme which was first elaborated in PIERRE LEGENDRE, JOUIR DU POUVOIR. TRAITÉ DE LA BUREAUCRATIE PATRIOTE (1976).

lecting or of reconstructing the madness, delirium, and desire of political power, of subjective attachment to the institution. I will emphasize two aspects of this collective history of political love embedded in the tradition and theory of interpretation of the texts of law.

First, I will simply avert to the most standard of protocols of legal reading: it is not the letter but the spirit that determines the meaning of the law. The text is composed of dead letters (*litera mortua*);¹³ the rule is no more than a "mute judge," a sleeping form,¹⁴ requiring the interposition, *anima legis*, of jurist or judge. What is significant is not that the law is an unconscious text, a symptom, intensity, or spirit, but rather that the meaning of the law is internal to its living body, *viva vox iuris* or *lex loquens*, its image, interpreter, or legislator. In classical terms it is spelled out by reference to something beyond words: "to know the law is not to know the words of the law, but its force and power."¹⁵ In a renaissance formulation we are similarly told that "no words, forms, niceties, or propriety of language is of any regard in the Civil Law, in comparison to truth, faithfulness and integrity. For *verba menti, non verbis servire debet*; words, are made as instruments to serve and express the mind, and not to command it."¹⁶ Truth, in other words might be captured by writing but it could only be discovered by an interpretation that went beyond the words and participated in the delirium of the text. In Sir Edward Coke's formulation: "in reading it is not the words but the truth which ought to be loved (*in lectione non verba sed veritas est amanda*)."¹⁷ What is it which the jurist requires the reader to love, what passion or truth or spirit is

¹³ This Pauline distinction can be found in FRANCIS BACON, *THE ELEMENTS OF THE COMMON LAWS OF ENGLAND* A 2 a (London 1630).

[F]or if it be true that *silent leges inter arma*, it is also as true, that your majesty is in a double respect the life of our lawes: once, because without your authority they are but *litera mortua*, and again, because you are the life of our peace, without which lawes are put to silence

Id.

¹⁴ See particularly 2 SIR JOHN DAVIES, *A Discourse of Law and Lawyers*, in *THE COMPLETE WORKS OF JOHN DAVIES OF HEREFORD* 275-77 (Alexander B. Grosart ed., London, private circulation 1878) (1615). In a different context, see JOHN SELDEN, *THE DUELLO OR SINGLE COMBAT: FROM ANTIQUITIE DERIVED INTO THIS KINGDOM OF ENGLAND* 21-22 (London, I. Helme 1610). For commentary, see DONALD KELLEY, *THE HUMAN MEASURE: SOCIAL THOUGHT IN THE WESTERN LEGAL TRADITION* 165-86 (1990).

¹⁵ Celsus libro XXVI digestorum. Scire leges non hoc est uerba earum tenere, sed uim ac potestatem DIG. 1.3.17 (Celsus) [*reprinted in* 1 *THE DIGEST OF JUSTINIAN* (Alan Watson ed. & trans., Univ. of Penn. Press 1985)].

¹⁶ SIR ROBERT WISEMAN, *THE LAW OF LAWS OR THE EXCELLENCY OF THE CIVIL LAW ABOVE ALL HUMANE LAWS WHATSOEVER* 70 (London, Royston 1664).

¹⁷ SIR EDWARD COKE, *REPORTS* Pt. III fol. C 7 b (London, Rivington 1777 ed.).

referred to as being within the text but not of the text? What form of meaning can only be found in the soul or heard beside or beneath or beyond the text, *subauditio* or *subintellectio* as an intuition, image, discretion, or unconscious form?¹⁸

What the rule of interpretation recollects is not only the power of law but the subjectivity of the legal institution. The love, passion, or delirium of the text was precisely the life of the law, the spirit of the institution, the bonding of word to thing and of body to soul. At the level of the institution and of its representations of the legitimacy of sociality, legal thought has yet to come to terms with the art of writing as being historically and conceptually the quintessential legal art. The dream of a science of law was instituted as a species of poetics. The children of the text are not simply those that love writing or that inhabit texts and the protocols of their circulation. The twelfth-century revolution in interpretation—the reception of Roman and Canon law in the West—instituted the text as the image and form of the social and instituted also a tradition in which books were “devoured” and writing was attached to the flesh or held in the heart, archive, or breast of the sovereign: *omnia iura habet in scrinio pectoris sui*.¹⁹ Again, however, this love of the text, this writing which devours and inscribes within, which is loved as truth and read in faith, is itself in need of interpretation. What kind of social subject was instituted by a law infinitely written across fifty books of fragments of law? How could there be a legal culture without faith or without political love when the law itself was self-evidently too expansive, too extensive, and too vast to be known even after a lifetime of legal study? What other reason inhabited an institution whose texts were too fragmentary and contradictory to be systemized, too laden with symbols and glosses to be understood, too archaic and arcane to be of any practical relevance to the dominions which received these holy books of law?

Legendre suggests, perhaps uniquely, that a reinterpretation and recuperation of the revolution in interpretation will return jurisprudence to a living text, a speaking law. He offers no definite prognosis of the fate of such a jurisprudential poetics save to reiterate its necessity and to mark the lines of its resistance to contempo-

¹⁸ On the significance of *subauditio*, and *subintellectio*, see IAN MACLEAN, INTERPRETATION AND MEANING IN THE RENAISSANCE: THE CASE OF LAW 166-75 (1992).

¹⁹ This maxim is lengthily worked through in LEGENDRE, *supra* note 9, at 36. It is also discussed in LEGENDRE, *supra* note 2, at 91-108. See also ERNST KANTOROWICZ, THE KING'S TWO BODIES (1958).

rary positivisations of law. He evokes a tradition, established at the very birth of the reception of Roman law, that of peripatetic scholarship, of excluded figures and solitary teachers, of "undesirable texts," of passionate and delirious texts, of discourses which waver in reflection of a life which is over soon and not without its share of contingencies and uncertainties.²⁰ He offers the "danger" of poetry as the only possible mechanism for comprehending, or equally and just as productively for failing to understand, the love and the power of the text, the obscure notion of a life lived in, or more properly as a commentary upon, the text. There is no legal subject without an obedient soul, no letter of the law without the *anima legis* of its interpreter, no text without its bearer, no exterior court without its predicate in an interior judgment or court of conscience. The stake of the reception was nothing less than the combination of two laws and two courts, those of spirit and of sense, body and soul, but also spiritual and temporal, an external and internal species of law.

Were I in turn to evoke an historical image of Legendre's massive and "immodest" project it would be to turn to the second feature of the radicality of his thought, namely that it seeks to recollect and release the originary resistances, the poetics and the play, the mixing of genres and of styles that the earliest satires of the reception threw in the face of the glossatorial tradition. The tradition of written law, of scripture and text, as well as of scribes, chirographers, and tablers of rolls and fines, always had its internal critics, its oracles, seers, madmen, artists, and poets who would not submit to the mere authority of texts or who dissented from the dogma of their repetitions. I will offer one example, that of a twelfth-century text which was for a long time unattributed and of uncertain authenticity: the *Sermo de legibus* or "poetical sermon on the laws." In 1943, Herman Kantorowicz located the author of this work as the twelfth-century jurist Placentinus and published a definitive version compiled from the various surviving manuscripts.²¹

For Placentinus, law was writing and writing was a woman, or a woman was writing. The *Sermo de legibus*, an address to commencing law students, is an attempt in verse to spell out the condi-

²⁰ LEGENDRE, *supra* note 2, at 227 ("I have chosen to live my life in the company not of intellectuals, but of poets and of all those whose discourse wavers (*tous ceux dont le discours vacille*).").

²¹ Herman Kantorowicz, *The Poetical Sermon of a Medieval Jurist Placentinus and His "Sermo de legibus,"* 2 J. WARBURG & COURTAULD INST. 22 (1938).

tions and, specifically, the interior space of law. At one level one might say that law binds through indetermination, through the image and through rhetoric and its uses of the *ars praedicandi*. The law for Placentinus can only be addressed initially through a forcible and emotional appeal to the spirit or what the medievals termed the "ghostly power" of divine rule.²² The sermon is also a prayer, a song, an invocation of divinity or *rerum divinarum* and, as such, the study and interpretation of law necessarily addressed an interior space or *foro interiori*. The subject of law was first conscience—*insitum cordibus nostris*—and its practice was the practice of virtue while its science was that of ethics or of the *Ethica vetus*.²³ The images which Placentinus chooses to represent this ethics, or ancient virtue, are those of *aurora* and most specifically of *Jurisprudentia*—a goddess, a woman.²⁴ It is as a woman, as a virtue, and as justice that the poetical sermon can take the form of a satire which variously and vigorously castigates the inherited tradition, the *ager vetus* of Justinian's *Digest*, and the science of law or *legalis scientia* of the glossators, the sophists of the *literae* or dead letters of the text.

The dramatic form of the satire, a genre which combines vehemence, conceit, and polemic is entirely appropriate and historically exemplary of the critique of law. Placentinus writes against custom (*contra morem*) and against the ascetic and interminable character of legal study in the irreverent and fictive form of an encounter between our mistress ignorance (*domina Ignorantia*) and legal science (an old, deformed, ugly, and disfigured woman).²⁵ Legal science dissembled the pedagogy of morals and of virtue while in truth it killed its subject with too much study, having first confused it with phantasms and disfigured it through privation. The science of legality, the scribal and sophistic observances of a glossatorial practice, which merely relayed and repeated the authorities was dismissed not only as a stultifying science (*stulta scientia*), but further condemned as a murderous and self-nihilating undertaking:

*Dum corpus tuum afficis
Tu te ipsam interficis
Tu es homicida!*

[While you use your body in this way

²² On "ghostly powers," see Peter Goodrich, *Salem and Bizarre: A Short History of the Two Laws*, 15 *RENAISSANCE AND MOD. STUD.* 1 (1994).

²³ The reference is to Aristotle, *Nicomachean Ethics*. See Kantorowicz, *supra* note 21, at 34.

²⁴ *Id.* at 26.

²⁵ *Id.* at l. 80.

you are destroying yourself
 you are a murderer]²⁶

The glossatorial tradition offered affectation rather than authenticity: law was against life through being proprietary, jealous, and without desire. It offered tears, confusion, starvation, and a death within life: "*Tu morieris in vivendo/Atque vivis moriendo.*"²⁷

The satirical poem or *prosimum* belonged, even if only through antithesis, loss, or repression, to the foundational discourses of law. It argued against the weary and desiccated texts of the exegetes with an image of vitality, youth, and creativity in the form of a woman and in the form of a savage and satirical ignorance—a prestoic cynicism. Here the scene of public life was the stage upon which to act out the great themes of the soul, fate, fortune, and desire as the laws of an interior prescience. The law thus always sought an interior attachment or juridical soul and Placentinus is remarkable only for the satirical and extreme version of the argument which he presents. It is that satire or cynicism which I intend to invoke as the flaw or failure through which the rewriting of the legal arts can take hold. It is that project to which Legendre's lessons can also be attached in the disparate figure of the immoralist, satirist, polemicist, poet, and interior peripatetic.

Returning to the postcard, I am inclined to draw a close parallel between the tradition represented by Placentinus and that founded in the *Laboratoire Européene pour l'Étude de la Filiation* by Pierre Legendre. Bearing in mind a biography which I am not prepared to relay, save in observing that Legendre's first specialism was twelfth-century law and the philology of the pre-Accursian reception,²⁸ I am minded in even the briefest of terms to note the following. The *Sermo de legibus* is a vituperative medley of prose and verse and is a genre which, through the Palestinian Menippos of Gadara, probably came in the third-century B.C. from the Orient. It is certainly taken up by Placentinus in the taunting and cynically hedonistic spirit of an internal Orient, a conscience at odds with its place and its peers. Let us go further. While Placentinus

²⁶ *Id.* at ll. 104-06 (my translation). *Interficio* also has the meaning of cutting up, of dissecting into small pieces, of cutting up with law's pedantry, sophistry, or "chop-logic."

²⁷ *Id.* at ll. 99-100. [You are dying in the midst of life/and you live while deserving to die] (my translation).

²⁸ See Pierre Legendre, *Fragment d'un manuscrit perdu de la Summa Institutionum de Placentin*, 33 *REVUE HISTORIQUE DE DROIT FRANÇAIS ET ÉTRANGER* 436 (1956); Pierre Legendre, *Recherches sur les Commentaires Pré-Accursiens*, 33 *REVUE D'HISTOIRE DU DROIT* 354 (1965). Both are collected in PIERRE LEGENDRE, *ÉCRITS JURIDIQUES DU MOYEN ÂGE OCCIDENTAL* (1988).

was popular as a teacher, he was vilified by the other doctors of law. His peripatetic lifestyle indeed began, we are told, when he ridiculed another Bolognese doctor, Henricus de Bayla, "and this man, who was at the same time a powerful knight, made a nocturnal assault on Placentinus, who fled in terror."²⁹ He taught law, so to speak, while on the run from its doctors, casuists, and other assiduous savants. He was not afraid to warn of the death of the law or of the decay of tradition while equally flouting its laws and mixing its genres.

Legendre too seeks the poetic right to interior freedom or to what Lacan termed that ignorance which puts knowledge to work. More than that, Legendre's style is most directly that of the cynic and satirist whose work is gauged to offend the university, to mock the "sophisticated imbecillity"³⁰ of his academic colleagues. His work is addressed, not to the academy, but to its students, to those not yet seized in the ascetic, yet nonetheless delirious, apprenticeship to the science of law. The space of legal science is a space of silence, of rules and not of speech: "the institution confines within a linguistic prison (*prison langagière*), a mystic prison which we ignore as such . . . convinced that poetry, mad or delirious words have no place there, in the space we call power."³¹ The poetical sermon of the contemporary jurist expresses an interior difference and is designed to align writing—the art of the lawyer—with the gentle incomprehension of those whose discourse has the poetic strength to waver, to give up its certainties, its pretention, to science and engage instead in the hedonistic theater of interpretation. So too his colleagues have complained of his immoralistic teachings and have attempted to silence them. His popularity certainly does not lie in the constituency of the doctors of the civil law, nor is it likely that they would see a juridical face in the satirical mirror of his prose. In other words, it is not only the common lawyers who are fearful to admit the existence of a psychoanalytic interpretation of law and of the exposition of our love of the censor.

No matter, however, that Legendre has lived before even if his contemporary existence is subject to question. No matter that his precursor represented, not least etymologically (the name deriving from a Latin *placenta*), a nascent art of legal poetics. The issue is a broader one. While some are keen to label Legendre's enterprise as nostalgic, pessimistic, and obsessive, the stronger interpretation

²⁹ Kantorowicz, *supra* note 21, at 25.

³⁰ LEGENDRE, *supra* note 2, at 12.

³¹ *Id.* at 58-59.

would trace the undecidability, the indefiniteness or fluidity of his poetical sermon to the originary flaw in writing itself. Legendre professes and practices a love of the text and that love costs him dearly. It still has to be asked, however, what threat this affection and this writing represent. At one level it could be said that the poetical sermon threatens by evidencing the identity of law and writing, of surface and substance in the same text. In another sense it displays the historicity of law and threatens through indicating the contingency of the norm. The more expansive point, however, is that Legendre's work traces the great absence within contemporary legal science. It is the absence of interpretation in its most technical and most poetic sense.

The poetical sermon of the contemporary jurist makes no effort to persuade and is quite indifferent to communication. It is satirical in style, it is figurative and in many respects hedonistic, but it rests, as does all writing, upon a sense of the history and fate of its genre. Legendre's work has endlessly belabored the history of legal interpretation. It has done so by way of tracing the fate of the two laws: spiritual and secular, external and internal. One law is enfolded in the other, and neither can be understood alone. The history of *utrumque ius* is also a history of the negation of the spiritual power, its denial and incorporation within the temporal law. Legendre's concern is to recollect the spiritual power of law and the discourses that expressed and contained that power in a written form: "The lesson of Baldus was again the following: the great lubrications of power, which is to say those which make the body walk with the soul, those which move the unconscious to death, can only be expressed poetically, because power is organized around images and fictions . . ." ³² It is the poetic art of law alone which can mobilize an *amor fati* long lost to a positivistic tradition of law in a soulless modernity. It is the history of the two laws which gives its peculiar force to Legendre's work, suggesting, as it does, not only the mystic body of the state but also the essential correlation of exterior and interior courts. *Amor fati*, to which theme Legendre increasingly returns, translates as a coming to terms with the unconscious, and this, in turn, suggests the prescient ability to think for oneself and so to live, if not poetically, at least with a certain degree of art.

The poetical sermon of a contemporary jurist suggests in the genre of satire and in the hedonistic style of *amor fati* a certain resistance, or more properly, interruption, to the laws of writing.

³² *Id.* at 212.

That interruption or interposition is poetic only in the sense that it demands a right to thought. In seeking an image to capture that right, I can think of nothing better than a variation on a well-worn theme: the parable of the countryman before the law. In a seventeenth-century treatise defending the Catholic Church against the Protestant charge of idolatry, the cleric Thomas Godden tells the story of a peasant before the law:

[A] gentleman at Court passing through the Guard Chamber, saw a countryman there engaged in dispute with three or four of the yeomen. The clown, it seems, would have gone into the Presence covered. They pulled him back, and told him when he went into that room, he must pull off his hat. He asked for whom or what, for he saw no thing but a chair and a canopy. They told him it was the King's Chair of State, and he must do it to the chair out of respect for the king.³³

In the description of the ensuing debate the countryman is concerned with the question of whether or not "any worship at all were due the chair or no?"³⁴ His argument being that if any worship was due to the chair, it was either the same or distinct from that owed to the king. If it was the same, then regal worship would be given to something beside the king, which would be treason. If distinct, then the chair itself would be worshipped with regal honor for itself and not relatively, "which were for a man to submit himself to a piece of wood."³⁵ Godden's argument against his adversary, the Anglican ecclesiastic Stillingfleet, is that the attitude of the peasant is absurd; a relative honor can be given to the Chair of State because it is possible to distinguish a "proportionate reverence" which is given to the graven image or chair: *honor est in honorante* [honor resides in the mind that gives it]. That proportionate honor owed to a relative presence represents the transmission of power, both its internality but also its objectivity, its transference from visible to invisible, from word to spirit, *litera* to *anima*, *verbum* to *veritas*.

The mystical presence of the Crown in the unoccupied Chair of State, as also the presence of law in the court, is the signature of a hidden power, unconscious or fate which Godden's countryman or peasant has poetically failed to perceive. The stake of legality, as also of the discourses which frame it, those of fate, nature, or

³³ THOMAS GODDEN, CATHOLICKES NO IDOLATERS OR A FULL REFUTATION OF DR. STILLINGFLEET'S UNJUST CHARGE OF IDOLATRY AGAINST THE CHURCH OF ROME 179 (London, 1672).

³⁴ *Id.*

³⁵ *Id.*

necessity, is that of the transmission of power from person to person and from place to place by invisible means. Power is unseen, it can only be imagined through the surfaces upon which it is inscribed.³⁶ The image, symbol, or rite represents the stake of law and enacts, again in a parable, in allegory or image, the institution of legal writing as the lawful institution of life. The tradition of legal writing begins with the narrative of the decalogue or ten commandments. They inscribe the law through and across the destruction of an idol. The text takes the place of the image, the text becomes the image or incorporates or embodies an image displaced from statuary to text. The peasant in resisting that law perhaps recognized the idol or plurality within the architecture of power, the image that remains in the text, the unconscious or poetic possibility of writing. The history of the image within secular doctrine is the history of the repression of plurality—it is that of the theater of the icon, of the semblance, simulacrum, or unity of law's presence. It is significant then to recollect the satirical critique of law made by the youthful and feminine figure of *Ignorantia*. Law, *Legalis scientia*, had become old, disfigured, ugly, and deformed. It was a murderous discipline, a logic which cut into pieces and killed. In terms of the story with which these remarks began, it is salutary to recollect that law still kills; in terms of that anecdote it is psychoanalysis which was killed—which was denied an existence or representative—by the ascetic, austere, and unconscionable word of law.

³⁶ LEGENDRE, *supra* note 9, at 65 ("Consciousness occurs each time there is a surface such that it can produce what is called an image. That is a materialist definition.").

