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Mad Money: Wall Street's Bonus Obsession

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MAD MONEY: WALL STREET'S BONUS OBSESSION

Jeanne L. Schroeder.

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. Professor of Law, Benjamin N. Cardozo School of Law, Yeshiva University, New York City. I would like to thank the participants in the Georgetown University Law Center Critical Perspectives on Law Faculty Workshop for their comments.

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I. INTRODUCTION

A. *Is Money the Root of All Evil?*

The common adage “money is the root of all evil” is a mistranslation of a phrase from St. Paul’s first Epistle to Timothy. “*Radix omnium malorum est cupiditas*”¹ means “the love of money is the root of all evil.” Cupidity, or avarice, is one of the seven deadly sins: “not merely a wrongful act, but a disposition that corrupts the soul.”²

Shifting the source of evil away from the subject of the sin (the lover of money) to its object (beloved money) seems to relieve the sinner of his responsibility. To Immanuel Kant such attempts to shift blame is *itself* a form of “radical” evil—a banal evil that lies at the root (*radix*) of all human action.³ Nevertheless, when viewed through the prism of Jacques Lacan’s psychoanalytic theory, this mistranslation of St. Paul is unintentionally insightful.

The real estate bubble and its subsequent pricking, and the market meltdown in 2008, looked crazy in the colloquial sense of the term.⁴ From the perspective of psychoanalysis, Wall Street culture exhibits a specific pathology: obsessiveness.

What does market madness have to do with the evil of money?

An obsessive obsesses about obtaining an object because he subjectively experiences it as the *cause* of his desire. Obsession is insatiable because it is deluded. The obsessive does not really desire the ob-

¹ 1 *Timothy* 6:10. Of course, St. Paul wrote in Greek. The Latin translation is from St. Jerome’s *Vulgate*. During the Reformation, this was sometimes changed to the anti-Catholic acronym *radix omnium malorum, avaritia*.

² Jeanne L. Schroeder, *Envy and Outsider Trading*, in *MARTHA STEWART’S LEGAL TROUBLES* 299, 304 (Joan MacLoed Heminway ed., 2007). St. Paul’s statement is the antithesis of the stereotypical trader’s creed, “greed . . . is good.” The memorable line is, of course, spoken by the villainous Gordon Gecko in the movie *WALL STREET* (Twentieth Century Fox 1987).

³ See *infra* text at notes 185–196.

⁴ Some have gone so far as to suggest that the most notorious villain of the financial world, Bernard Madoff, is literally insane, a psychopath. See, e.g., Julie Creswell & Landon Thomas, Jr., *The Talented Mr. Madoff*, *N.Y. TIMES*, Jan. 25, 2009, at BU1. All good stories need a good villain. Madoff’s monstrous crime seems to make him a good candidate. Madoff was not, however, representative of the excesses of the 2000s. At most, he was symptomatic of structural flaws in the economy. The superheated financial and real estate markets were not caused by Ponzi schemes. But, large, long-term Ponzi schemes can probably only exist in a superheated market in which (i) there is a large pool of new investors willing to invest because they are convinced that the market has nowhere to go but up and (ii) a large pool of old investors who do not withdraw their investments because they are convinced that the market has nowhere to go but up.

ject, but something else he cannot admit to himself—the love of others.⁵ The pursuit of the object is a fool's errand that can spin out of control leading to breakdown and paralysis. On Wall Street, the annual bonus can function as the object cause of desire. As such, although money is not the root of *all* evil, it can function as the cause of some very destructive behavior.

In this Article, I examine the ethics of the trader culture. I do not, however, attack capitalism per se. Nor do I consider the social, political, economic, or legal implications of the size of Wall Street compensation or income disparity in this country. Rather, I address the obsessional logic of the bonus.

Although I discuss the obsessive aspect of the trader culture, I resist armchair psychoanalysis of specific individuals. Such distant diagnoses—such as journalistic speculation as to whether Bernie Madoff is psychotic or merely obsessive compulsive⁶—are doomed to triviality. What is useful about the Lacanian diagnostic categories is that they are not based on specific symptoms but on structures.⁷ Trader culture is itself structured in the obsessional way. Obsession is one neurotic approach one can take with respect to the universal human condition of alienation and desire.⁸

Finally, although I discuss psychoanalysis in this Article, I do not work within the currently fashionable field of behavioral economics. I argue that the stereotypical trader acts as the economically rational man in pursuing his goals—it is just that his goals are not those predicted by neoclassic economic theory.

B. *The Use Value of Money.*

1. What is Money?

Money is both familiar and unknown. Although people who desire money are conventionally condemned as being “materialist,” there may be nothing less material, indeed more “spiritual,” than money. Money is an article of faith.⁹

⁵ As Bruce Fink explains, “[h]uman desire, strictly speaking, has no object. . . . When you get what you want, you cannot *want* it anymore because you already have it.” BRUCE FINK, A CLINICAL INTRODUCTION TO LACANIAN PSYCHOANALYSIS 51 (1997).

⁶ See *supra* note 4.

⁷ See *infra* text at notes 41–51.

⁸ See *infra* text at notes 22–32.

⁹ Simon Critchley has recently made a similar point in his blog. Simon Critchley, *Coin of Praise*, N.Y. TIMES OPINIONATOR (Aug. 30, 2009, 8:40 PM), <http://opinionator.blogs.nytimes.com/2009/08/30/in-cash-we-trust/>.

For the purposes of this Article, I start with the common understanding of money as a convention for measuring, amassing, and preserving value or wealth.¹⁰ It enables people to commensurate their subjective use value in their property into objective (i.e., intersubjective) exchange value so that buying and selling may occur.¹¹

Because of this, it is commonly thought that people seek money only derivatively—we do not care about money per se but about what money can buy.¹² If we seek to accumulate and save money now, it is only so that we can consume something in the future—either directly by ourselves, or vicariously through our heirs. This seems definitional. If money is a mere measuring device, a temporary receptacle of exchange value to be used to acquire things having use value, then money should have no use value of its own.¹³

2. Bonus Culture

Despite this, in the trader culture, one form of money has taken on a life of its own. Media coverage of the “bailout” of financial firms has

¹⁰ Russell W. Belk & Melanie Wallendorf, *The Sacred Meanings of Money*, 11 J. ECON. PSYCHOL. 35, 35 (1990) (“In the conventional economic view, money is a utilitarian commodity that acts as a medium of exchange, a unit of account, a store of value, and a standard of deferred payment.” (citation omitted)). Sociologists, by contrast to economists, recognize that societies in fact imbue money with a wide variety of other meanings. *See id.*; *see also* VIVIANA A. ZELIZER, *THE SOCIAL MEANING OF MONEY* (1997); Bruce G. Carruthers, *The Meanings of Money: A Sociological Perspective*, 11 THEORETICAL INQUIRIES L. 51 (2010).

¹¹ JEANNE LORRAINE SCHROEDER, *THE TRIUMPH OF VENUS: THE EROTICS OF THE MARKET* 223–29 (2004) [hereinafter, SCHROEDER, VENUS]; Jeanne L. Schroeder, *The Laconomics of Apples and Oranges: A Speculative Analysis of the Economic Concept of Commensurability*, 15 YALE J.L. & HUMAN. 347, 380–86 (2003).

¹² As Georg Simmel has stated, “[m]oney is the purest form of the tool . . . it is an institution through which the individual concentrates his activity and possessions in order to attain goals that he could not attain directly.” GEORG SIMMEL, *THE PHILOSOPHY OF MONEY* 210 (David Frisby ed., Tom Bottomore & David Frisby trans., 2d ed. 1990). In Guido Calabresi’s words, “‘desire for wealth’ is not a meaningful starting point, because while one may be able to give meaning to a desire for happiness, say, apart from other characteristics, one cannot give meaning to ‘wealth’ and hence to a desire for wealth in such an abstract state.” Guido Calabresi, *About Law and Economics*, 8 HOFSTRA L. REV. 553, 555 (1980).

¹³ Being nonsensical (in the strict sense of having no sense or value of its own) and empty, money anchors the market by serving as the placeholder for both the use and exchange value of other commodities. SCHROEDER, VENUS, *supra* note 11, at 246–50. One might be tempted to say that traditional coins made out of precious metals have use value. But, this begs the question as to why precious metals should be deemed precious—they can’t be eaten, burned for energy, or otherwise consumed. They can, of course, be fashioned into jewelry and other items of beauty. Nevertheless, precious metals only serve as money when they are commodified into fungible coins, ingots, and other repositories of value. Gresham’s law (bad money—debased coins—drives out good) reflects this tension between the use value of precious metals and the exchange value of coins.

alerted the public to the industry's practice of paying so-called "bonuses"¹⁴ to its employees, particularly those who are literally traders.

The practice of paying bonuses originated when investment banks were organized as general partnerships. Typically, partners pay themselves relatively modest salaries and divvy up profits—if any—remaining at the end of the year. Because partners receive distributions only if the firm is profitable,¹⁵ they are incentivized to work hard personally. Because they are each personally liable if the firm suffers a loss, they are also incentivized to monitor each other to make sure that no one engages the partnership in overly risky transactions.

This practice of paying year-end compensation in excess of stated salaries continued, however, after investment banks reorganized themselves as corporations and sold their equity to the public. This raises the classic conflicts caused by the separation of ownership and control familiar to all corporate lawyers.

The culture is epitomized by the slogan "eat what you kill." Originally, this expression encapsulated a modern hunter's ethic of limitation. That is, one should not kill any more animals than one could personally (with one's family or friends) actually eat.¹⁶ This ethic reflects a disgust of obsessional killing for killing's sake. "Eat what you kill," however, has been perverted by the trader's culture as an antiethic of freedom from limitation. That is, one is metaphorically entitled to eat whatever one kills in the sense that the person who brings in business is entitled to keep all of the financial benefits and not share gains *or losses* with the firm (and its shareholders) as a whole.¹⁷

Prior to the market meltdown there was a substantial legal literature concerning management remuneration in operating companies, but virtually none concerning the financial industry. Since then, a wine-dark sea of ink has been spilled about whether the structure of Wall Street's bonuses encouraged overly risky practices that contributed to the bubble

¹⁴ I put scare quotes around my first use of the word "bonus" because the colloquial use of the term bears the connotation of a discretionary payment that constitutes a relatively small portion of an employee's compensation. By contrast, Wall Street "bonuses" typically form a large majority of a trader's compensation, and are frequently a contractually obligated form of "incentive" compensation. Steven Brill, *What's a Bailed-Out Banker Worth*, N.Y. TIMES, Jan. 3, 2010, § MM (Magazine), at 32.

¹⁵ This was my experience as a "partner" of a law firm (actually, as we were organized as a professional corporation, I was a shareholder and director, but the same principle applies). See Peter Weinberg, *Wall Street Needs More Skin in the Game: Partnerships Were One Way of Aligning the Interests of Money Managers and Investors*, WALL ST. J., Oct. 1, 2009, at A21. Of course, there are exceptions, such as when a partnership awards a bonus to particularly productive contributor in a year when the firm (and other partners) do not make profits.

¹⁶ See, e.g., T. Edward Nickens, *The Manifesto: Eat What You Kill*, FIELD & STREAM WHITETAIL 365 (Dec. 1, 2009), <http://www.fieldandstream.com/blogs/hunting/2009/12/manifesto-eat-what-you-kill>.

¹⁷ Paul McFedries, *eat what you kill*, WORDSPY (June 3, 2003), <http://www.wordspy.com/words/eatwhatyoukill.asp>.

and bust and whether a restructuring would better align the interests of traders, on the one hand, with those of stockholders and the public, on the other. I do not, however, wade into this debate.

What interests me is why financial firms seem so resistant to substantial internal reform and remain so tin-eared about public reaction to their practices. That is, although it may be understandable why any individual trader would resist a change in his personal bonus, it is less clear why management doesn't jump at the chance to make meaningful change in firms' compensation structure.

Wall Street firms argue that the bonus system is necessary in order to recruit and retain top talent.¹⁸ To an outsider, this explanation sounds disingenuous at best. Whether or not this is true of a small cadre of top individuals, given the numbers of layoffs in 2008 and 2009, one would presume that there was a buyers' market for talent.¹⁹ A related populist opinion, voiced by Barney Frank, the chairman of the House Financial Services Committee: "Let 'em quit. Who needs them? How can we reward the same people who screwed up in the first place?"²⁰

I suggest that one reason for the persistence of the bonus system is that it appeals to the obsessive personality. In the trader culture, money—in the specific form of bonuses—has attained a use value in addition to the exchange value money is traditionally supposed to have. What is important is less the total amount of compensation paid than the fact that it is largely paid in the form of the bonus. The bonus has become what Lacan calls an *objet petit a*—an object that inflames the subject's desire.²¹ This suggests that the compensation system incentivizes

¹⁸ James Surowiecki, *Taxing the Banks*, NEW YORKER BALANCE SHEET (Jan. 13, 2010), <http://www.newyorker.com/online/blogs/jamessurowiecki/2010/01/taxing-the-banks.html>; see also, e.g., *Big Think Interview with Bill George*, BIGTHINK (Dec. 23, 2009), <http://bigthink.com/ideas/17908> ("If you don't pay them for their performance, you'll lose them. It's much like professional athletes and movie stars." (quoting Bill George, a member of Goldman Sachs's board of directors)). Of course, even if this analogy is valid, it begs the question as to whether the compensation paid to athletes, either individually or as a profession, reflects actual performance. Perhaps the most well-known sustained critique of the link between pay and performance is MICHAEL M. LEWIS, *MONEYBALL: THE ART OF WINNING AN UNFAIR GAME* (2003). One liberal commentator has suggested that professional athletes are overcompensated because sports are highly subsidized by governments, and makes the obvious analogy to the pay at "bailed-out" firms. Daniel Archer, *What Do Professional Athletes Have in Common with Bankers?*, HUFFINGTON POST (Dec. 21, 2010, 11:28 PM), http://www.huffingtonpost.com/daniel-adler/what-do-professional-athl_b_400148.html. Perhaps the better analogy is to baseball players who take steroids. Mike Vogel, *Justice Department: Yankee Si, Wall Street No*, N.Y. GRITTY (July 20, 2011), <http://newyorkgritty.net/?p=1508>.

¹⁹ As one commentator has put it, "[i]t's unlikely that many good people will leave, but if they do move to smaller institutions that are not Too Big To Fail, that's good for the rest of us." Simon Johnson, *It's Time for a Supertax on Big Bank Bonuses*, NEW REPUBLIC (Jan. 11, 2010, 12:23 PM), <http://www.tnr.com/blog/simon-johnson/its-time-supertax-big-bank-bonuses>.

²⁰ Quoted in Brill, *supra* note 14, at 34.

²¹ See *infra* text at notes 28–32.

not the productive but the most solipsistic and most destructive aspect of capitalism.

3. Obsession and Objects

A *Wall Street Journal* column commented on the demise of the infamous *Trader Monthly* magazine in early 2009.²² This publication, having the slogan “See it. Make it. Spend it,” compiled lists of the “best” traders in the country, based largely on the size of bonus compensation. It also reviewed luxury goods to acquire with bonuses, such as a \$300,000 stereo turntable. The comment pointed out, however, that these reviewers did not emphasize the pleasure these luxuries would give to their buyers—indeed, even before the days of compact discs, how could a turntable designed for home use conceivably have a use value of \$300,000? In this case, the magazine recommended the turntable because owning it would be like giving “a huge middle finger to everyone who enters your home.” In other words, to the magazine’s readership the relationship between wealth and consumption is the reverse of what is usually thought. The trader does not seek wealth in order to obtain luxury items like ridiculously priced turntables.

The commentator implicitly assumed that traders seek to acquire objects to impress *others*. At least since Thorstein Veblen coined the term,²³ sociologists have posited that much “conspicuous consumption” is done less for personal pleasure than to enhance prestige. Similarly, in their noted article *De Gustibus Non Disputandum*, Gary Becker and George Stigler argue that the reason why there is no arguing about tastes is not because tastes are subjective and, therefore, incommensurable.²⁴ Rather, tastes are objective. We can’t argue about tastes because we all share the same tastes very broadly defined—including the desire to be respected by others. One obtains specific objects only as means to achieve these more general goals. This analysis (no doubt unintentionally) reflects Hegel’s theory as to the “logic” of property and contract: legal relations are merely means of achieving the end of self-actualization through intersubjective recognition.²⁵ Lacan would argue that *this* desire is hysterical (rather than obsessive) in nature, which is

²² Thomas Frank, *Wall Street Mocked American Values*, WALL ST. J., Feb. 11, 2009, at A15.

²³ THORSTEIN VEBLEN, *THE THEORY OF THE LEISURE CLASS* (Penguin Classics ed. 1994) (1899).

²⁴ George J. Stigler & Gary S. Becker, *De Gustibus Non Est Disputandum*, 67 AM. ECON. REV. 76, 77 (1977); see also GARY S. BECKER, ACCOUNTING FOR TASTES 5, 87 (1996).

²⁵ I explicate Hegel’s theory elsewhere. My most complete accounts appear in SCHROEDER VENUS, *supra* note 11, at 42–64, 74–76; and JEANNE LORRAINE SCHROEDER, *THE VESTAL AND THE FASCES: HEGEL, LACAN, PROPERTY, AND THE FEMININE* 27–52, 262–85 (1998) [hereinafter SCHROEDER, VESTAL].

why he called Hegel the “most sublime hysteric.”²⁶ The hysteric’s desire is the desire of the other.²⁷

The obsessive’s relationship with his *objet petit a*—the object cause of his desire—is more complex. The obsessive seeks his object not to impress or establish dominance over others, but to gain control over *himself*.²⁸ If a hysteric fixates on other subjects, an obsessive obsesses over objects in a vain attempt to convince himself that he does not need other subjects. Paradoxically, by doing so he unwittingly reveals that his real concern is the others he pretends to ignore. In fact, he has no confidence in his own self-assessment of his worth. He can only judge himself through the eyes of others. He wants to think of himself as independent of others, but the very existence of others threatens his pretense to independence. He therefore obsesses about obliterating others. The object is a means to *this* end.

The obsessive doesn’t want to consume objects. He wants to amass and possess them. Consequently, there is no reason why the object of his obsession need be a physical one, let alone a conventionally desirable one. Bruce Fink, a Lacanian psychoanalyst on whom I heavily rely in this Article, goes so far as to suggest that, at least in late Lacan, his use of the term “object” might be a misnomer—a leftover from an earlier moment in “the evolution of his own thought over time.”²⁹ I argue, by contrast, that Lacan is working within the tradition of Hegelian philosophy of property that identifies “objects” as anything other than the subject himself. Indeed, Hegel would agree with Lacan that the archetypical object is not, as is colloquially thought, tangible. Rather it is an intangible object.³⁰

Similarly, Lacan argues that most powerful *objets petit a* are complete abstractions, such as the voice or the gaze—anything that can

²⁶ JACQUES LACAN, THE SEMINAR OF JACQUES LACAN, BOOK VII: THE ETHICS OF PSYCHOANALYSIS, 1959–1960, at 38 (Jacques-Alain Miller ed., Dennis Porter trans., W.W. Norton & Co. 1986) [hereinafter LACAN, SEMINAR VII].

²⁷ As Lacan elaborates:

To put it in a nutshell, nowhere does it appear more clearly that man’s desire finds its meaning in the desire of the other, not so much because the other holds the key to the object desired, as because the first object of desire is to be recognized by the other.

JACQUES LACAN, SPEECH AND LANGUAGE IN PSYCHOANALYSIS 31 (Anthony Wilden trans., 1981). Žižek points out that Lacan is speaking about the hysterical subject specifically. SLAVOJ ŽIŽEK, THE INDIVISIBLE REMAINDER: AN ESSAY ON SCHELLING AND RELATED MATTERS 167 (1996) [hereinafter ŽIŽEK, INVISIBLE REMAINDER].

²⁸ I discuss this dynamic *infra* text at notes 163–173. As the following discussion shall make clear, my use of the masculine pronoun is intentional.

²⁹ FINK, *supra* note 5, at 52.

³⁰ Jeanne L. Schroeder, *Unnatural Rights: Hegel and Intellectual Property*, 60 U. MIAMI L. REV. 453, 464–66 (2006); see also SCHROEDER, VESTAL, *supra* note 25, at 35–37, 39, 111–12, 118–19. Of course, this means that “possession” should not be thought of as the physical holding of a tangible thing. Rather, it is the right to exclude others from enjoying one’s object.

serve to incite the subject's desire.³¹ It is precisely the abstract, vacuous nature of these "objects" that better able the obsessive to project his fantasies on them—they are blank screens. Money—the one object in the marketplace without content—is a perfect candidate for this role.³²

4. Wealth Maximization

Economic rationality—at least as that term tends to be used in legal literature—is instrumental or ends-means reasoning. It is the ability to choose means calculated to achieve one's ends.³³ Psychoanalysis, despite its many differences with neoclassical economics, would agree the obsessional subject acts as though he were economically rational. Psychoanalysis differs from economics, however, in its view of the end the subject pursues.

Economists generally assume that subjects seek to maximize "utility,"³⁴ although economists claim to be neutral as to what object will bring utility to any individual. However, when the object is obtained, the subject consumes it in the blazing flame of pleasure.³⁵ Rather than being a utility maximizer, however, the obsessive trader follows the alternative goal of economically rational activity once proposed by Richard Posner.³⁶ Posner argued that judges should interpret laws in such a way calculated to maximize the aggregate *wealth* of society, not its utility.³⁷

³¹ FINK, *supra* note 5, at 52.

³² *See supra* note 3.

³³ Behavioral economists in the legal academy do not disagree with this definition. They just believe that, as an empirical matter, economic actors deviate from this ideal in certain predictable ways. Christine Jolls et al., *A Behavioral Approach to Law and Economics*, 50 STAN. L. REV. 1471, 1476–78 (1998).

³⁴ Mark Blaug describes the neoclassic notion of rationality as follows:

For the economist . . . rationality means choosing in accordance with a preference ordering that is complete and transitive, subject to perfect and costlessly acquired information; where there is uncertainty about future outcomes, rationality means maximizing expected utility, that is, the utility of an outcome multiplied by the probability of its occurrence.

MARK BLAUG, *THE METHODOLOGY OF ECONOMICS, OR, HOW ECONOMISTS EXPLAIN THINGS* 229 (2d ed. 1992). Although economists differ as to precisely what "utility" is, for our limited purposes we can think of it as something like "happiness" or "satisfaction." This is, of course, another version of the theory that economically rational persons acquire wealth for the sake of eventually buying things that they can consume.

³⁵ A noted exception is Gary Becker who argues that economic actors should be viewed as *producers* rather than as mere consumers of utility. BECKER, *supra* note 24, at 128–29.

³⁶ Richard A. Posner, *Utilitarianism, Economics, and Legal Theory*, 8 J. LEGAL STUD. 103, 103–05 (1979).

³⁷ Posnerian wealth maximization has both positive and normative aspects. The latter posits that "judges should interpret . . . statutes to make them conform to the dictates of wealth maxi-

Posner's critics countered that whether or not wealth maximization could cure the widely recognized problems with utilitarianism, it is not obvious that subjects actually do, let alone should, maximize wealth.³⁸ Lacan's theory, however, suggests that many people are, in fact, *wealth* maximizers. Nevertheless, the theory would also agree with Posner's critics, questioning why society would want to encourage this neurotic behavior. Mild obsessive behavior can be very productive. But, as the market meltdown shows, extreme obsession can be destructive of self and others. Ovid gave us in *Midas* the great cautionary tale of where the obsession with wealth, as opposed to happiness, leads.³⁹ I am reminded of Ronald Coase's great observation: "There is no reason to suppose that most human beings are engaged in maximizing anything unless it be unhappiness, and even this with incomplete success."⁴⁰

II. SUBJECTIVITY

A. *Lacan*

The psychoanalytic theory I follow here is not the more familiar Freudian one.⁴¹ Jacques Lacan referred to his project as a "return to Freud"⁴² in the sense of a *rereading* with a ruthlessly critical eye. Although he confusingly retained much of Freud's terminology, Lacan eventually rejected Freud's depressing anatomical determinism in favor of a more abstract, retroactive—indeed philosophical—account of the development of human subjectivity that located him as much in the company of Kant and Hegel as with Freud.

One of the advantages of Lacanian psychoanalysis for jurisprudential theory is its simple diagnostic system. The *DSM-IV*, the diagnostic handbook promulgated by the American Psychiatric Association, lists

zation." RICHARD A. POSNER, *OVERCOMING LAW* 173 (1995). Whether, and to what extent, Posner still holds this position is beyond the scope of this Article.

³⁸ See, e.g., Jules L. Coleman, *Efficiency, Utility, and Wealth Maximization*, 8 HOFSTRA L. REV. 509 (1980); Ronald M. Dworkin, *Is Wealth a Value?*, 9 J. LEGAL STUD. 191 (1980); Lewis A. Kornhauser, *A Guide to the Perplexed Claims of Efficiency in the Law*, 8 HOFSTRA L. REV. 591 (1980); Anthony T. Kronman, *Wealth Maximization as a Normative Principle*, 9 J. LEGAL STUD. 227 (1980).

³⁹ OVID, *THE METAMORPHOSES* (Brookes More trans., 1922), available at <http://www.theoi.com/Text/OvidMetamorphoses1.html>. I discuss the relationship between the Midas myth and wealth maximization in SCHROEDER, *VENUS*, *supra* note 11, at 205–08.

⁴⁰ R.H. COASE, *THE FIRM, THE MARKET, AND THE LAW* 4 (1988).

⁴¹ Most specifically, I reject as unhelpful the crude Freudian theory that acquisitiveness springs from infantile anal retentiveness. See, e.g., SIGMUND FREUD, *From the History of an Infantile Neurosis*, in 17 *THE COMPLETE PSYCHOLOGICAL WORKS OF SIGMUND FREUD* 7 (James Strachey ed. & trans., 1955).

⁴² See, e.g., PHILIPPE JULIEN, *JACQUES LACAN'S RETURN TO FREUD: THE REAL, THE SYMBOLIC, AND THE IMAGINARY* (Devra Beck Simiu trans., 1994).

297 different syndromes.⁴³ The reason why the *DSM-IV* has so many diagnostic categories is that it identifies syndromes by individual *symptoms*, which may be potentially as numerous as there are individual people. By contrast, Lacan deemphasizes symptoms as diagnostic tools⁴⁴ and categorizes syndromes structurally—that is, by the logically possible ways an analytic subject can approach law and desire.⁴⁵ Consequently, Lacan identifies only three broad categories—psychosis, perversion, and neurosis—and a limited number of subcategories.⁴⁶ Neurosis is divided into the “masculine” neurosis of obsession and the “feminine” neurosis of hysteria.⁴⁷

Consequently, when I say that trader culture is obsessive, I am not arguing that individual traders exhibit the symptom of obsessive-compulsive disorder (although no doubt some do). Rather, I am saying they adopt a specific “position” with respect to desire.

By deemphasizing symptoms as diagnostic tools,⁴⁸ Lacanian practice looks more forward than backward. To perhaps oversimplify, traditional psychoanalysis sees symptoms as resulting from a trauma in the analysand’s early life. A trauma is an event that is literally unspeakable in the sense that the analysand repressed it and is unable to integrate it into the symbolic order of language, which is why it manifests itself in symptoms. The talking cure is supposed to occur when the analysand articulates the trauma, at which point the symptom should dissolve, by definition. The problem with this is, as analysts soon found, that as an empirical matter, analysands lovingly cling to their beloved symptoms even after articulation.⁴⁹

In Lacanian psychoanalysis, “cause” is less a historical event, than a retroactive reconstruction—what is called an “abduction” in logic. A

⁴³ AM. PSYCHIATRIC ASS’N, THE DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (rev. 4th ed. 2000).

⁴⁴ For example, Fink points out that many non-Lacanian psychoanalysts see hallucinations as conclusive evidence of psychosis. Lacanians reject this because even “normal” persons at times see and hear things that don’t objectively exist (as when a bereaved spouse “sees,” out of the corner of his eye, the dead sitting in her usual chair). FINK, *supra* note 5, at 82–83. Consequently, Lacan abandoned Freud’s attempt to distinguish between obsessive and hysterical neurotics by their symptoms. *Id.* at 114–17.

⁴⁵ *Id.* at 75–78.

⁴⁶ *Id.* at 115–18.

⁴⁷ It is unclear whether phobia should be considered a third subcategory of neurosis. *Id.* at 163. Phobia is beyond the scope of this Article.

⁴⁸ That is not to imply that the study and treatment of symptoms is not of the utmost importance in Lacanian psychoanalysis. It is rather that the commonplace association of certain symptoms with certain syndromes should not form “a hard and fast rule and does not afford a reliable distinction between obsession and hysteria.” FINK, *supra* note 5, at 115. Fink continues: “[a] *predominance* of [certain] symptoms in a patient’s clinical picture may suggest a diagnosis of hysteria, but one still needs to look further” because such symptoms “can be found in a number of different clinical categories.” *Id.*

⁴⁹ SLAVOJ ŽIŽEK, THE SUBLIME OBJECT OF IDEOLOGY 74 (1989) [hereinafter ŽIŽEK, SUBLIME OBJECT].

symptom does not simply exist because a terrible thing happened in the analysand's life. Rather, we speculate that there must have been a trauma because of the existence of the symptom—symptoms are “the actuality of trauma.”⁵⁰ As such, Lacanian analysis is not forensics. It does not so much seek to discover the actual historical causes of a trauma: “Lacan does not share Freud's concern with first causes, devoting his attention to logical processes instead.”⁵¹ Instead, it helps the analysand restructure him- or herself so that he or she is no longer so dependent on his or her symptom. To put this another way, to Freud, meaning is something one *finds* in the past and articulates. To Lacan, meaning is something one *creates* through articulation. Traditional analysts seek to discover what is lost; Lacanians seek to interpret that which is here.

B. *The Liberal Subject*

Lacan's theory of subjectivity, like Freud's, is based on a theory of childhood development. Lacanian psychoanalysis does not start with the founding assumption of all schools of classical liberalism that underlies most Anglo-American jurisprudence and neoclassical economic theory: that is, some vision of the subject as the autonomous individual in a hypothetical state of nature. Psychoanalysis, by contrast, echoing Continental speculative philosophy, posits that individuality is not natural, but artificial—a hard-earned achievement that is literally manmade. In psychoanalytic terminology, the liberal individual is the “ego,”⁵² a subject's self-image that is a “fantasy.”⁵³ Like all fantasies, it is created through the psychic order called the “imaginary.” The terms of art “fantasy” and “imaginary” denote neither that the ego is nonexistent nor that the subject is delusional.⁵⁴ Rather, they imply that one's self-image is

⁵⁰ JEANNE LORRAINE SCHROEDER, THE FOUR LACANIAN DISCOURSES, OR, TURNING LAW INSIDE-OUT 109 (2008) [hereinafter SCHROEDER, FOUR DISCOURSES]. In Fink's words, “our only ‘proof’ of the existence of the repressed is its return, its manifestations in the form of disruptions or interruptions. The existence of a symptom . . . is the only proof psychoanalysis has or needs of repression.” FINK, *supra* note 5, at 114.

⁵¹ FINK, *supra* note 5, at 162. As Fink admits, the

“defining characteristics” [of the different neuroses] are not etiological in nature; I have not sought to answer here the question of why someone becomes hysteric or obsessive (except parenthetically in my commentaries on the preceding cases), confining my attention to the what of hysteria and obsession. I have sought to use Lacan's most far-reaching distinctions to indicate what hysteria and obsession are and how they differ from each other.

Id. at 161.

⁵² *Id.* at 24.

⁵³ For a discussion of fantasy, see SCHROEDER, FOUR DISCOURSES, *supra* note 50, at 11, 133.

⁵⁴ For example, in Fink's words, “when Lacan said that ‘meaning is imaginary’ . . . [he] did not imply that meaning does not exist, or that it is simply something that we dream up in our

subjective (personal, idiosyncratic) as opposed to intersubjective (symbolic).

I see the distinction between liberalism and speculative theory as follows. Both are concerned with the actualization of individual freedom. Because liberalism sees the individual as the norm, it struggles to explain the creation of society. Speculative philosophy, by contrast, sees the social as the norm, and struggles to explain the creation of the individual.⁵⁵ Individuation is, therefore, not something one finds, but creates.

As an empirical matter, human infants are born helpless. Physical survival and maturity requires a lengthy tutelage. An infant can achieve subjectivity only through interrelationships with others—i.e., it enters what Lacan calls the “symbolic” order of law and language.⁵⁶

The paradoxical fact of the human subject is that although he is born into, and can only exist within, a social order, nevertheless he can only participate in the social order insofar as he is an individual—just as liberalism intuits. This is because participation in a human society requires that one be *recognized* as a *unique* and identifiable member of that society by other members. Recognition, therefore, requires individuation and separation. A human symbolic order is not like a beehive or an anthill where each individual is merely a part of the whole, similar to the way that cells are component parts of a single body. Rather, the subject is always to some extent separated, and therefore alienated, from the society in which he is located.

This leads to a second paradox, which is essential to the analysis of obsession. Although when viewed from the position of the symbolic order of language and law, the subject is an *individual*, when viewed from the position of the subject, he is what Simon Critchley has called a “dividual.”⁵⁷ That is, subjectivity is divided—characterized by a fundamental, internal split.

imagination. He implied that it is tied up with our self-*image*.” FINK, *supra* note 5, at 24.

⁵⁵ Most importantly, although speculative philosophy is critical of liberalism, it does not so much reject liberalism as seek to supplement and go beyond it.

⁵⁶ Lacan posits that the subject is split between three orders—the symbolic, the imaginary, and the real. See JACQUES LACAN, *THE SEMINAR OF JACQUES LACAN, BOOK I: FREUD'S PAPERS ON TECHNIQUE, 1953–1954*, at 80 (Jacques-Alain Miller ed., John Forrester trans., Cambridge University Press 1988); JACQUES LACAN, *Introduction to the Names-of-the-Father Seminar*, in *TELEVISION: A CHALLENGE TO THE PSYCHOANALYTIC ESTABLISHMENT* 81, 88–89 (Denis Hullier et al. trans., 1990). In Fink's formulation:

What are symbolic relations? One simple way of viewing them is as one's relation to the Law, to the law laid down by one's parents, one's teachers, one's religion, one's country. Symbolic relations can also be thought of as the way people deal with *ideals* that have been inculcated in them by their parents, schools, media, language, and society at large, embodied in grades, diplomas, status symbols, and so on.

FINK, *supra* note 5, at 33.

⁵⁷ SIMON CRITCHLEY, *INFINITELY DEMANDING: ETHICS OF COMMITMENT, POLITICS OF*

The hypothesis that the subject is artificial does not mean that he is *unnatural* or that nurture dominates over nature. Like all other human creations, the subject is created from natural components and is subject to natural limitations. Indeed, I read Lacan as completely rejecting any and all concepts of transcendence in favor of a completely materialist conception of the world. For something to be possible, it must be actual.⁵⁸ To put this another way, humans could not become individuated subjects unless they had the preexisting biological capacity for individuation. Nevertheless, the mere biological capacity for individuation, does not mean that a specific human being will successfully achieve individuation, let alone self-actualization. Some people are enslaved by others. Some enslave themselves: they obsess.

C. *The Split Subject*

We are all scarred in the battle for individuation, although some are left more badly injured than others. Most normal subjects emerge from this process as neurotics—either obsessives or hysterics. Those who don't make it remain as psychotics or perverts.

Lacan spoke of the normal (i.e., neurotic) adult as the split or barred subject—i.e., alienated, empty.⁵⁹ One reason why the subject is split and self-alienated is that what he experiences as most himself—his individual personality—comes from outside of him- or herself—from social relations. The subject is split between his or her own idiosyncratic desires and aspirations and the demands of others.⁶⁰ Lacan coined the neoplasm “extimacy” to describe this uncanny relationship of the individual subject to his own self.⁶¹

There are a few points to emphasize now that I address later. First, because the subject feels alienated and incomplete, he or she is filled with desire. Indeed, subjectivity can be thought of as nothing but the

RESISTANCE 11 (2007). This is why in Lacan's various diagrams and formulae, the subject is represented by the “*matheme*” “ \mathfrak{S} ” with a bar bifurcating the capital “S” standing for subject. BRUCE FINK, *THE LACANIAN SUBJECT: BETWEEN LANGUAGE AND JOUISSANCE* 173 (1995) [hereinafter FINK, SUBJECT].

⁵⁸ This is one of the meanings of Hegel's oft-misinterpreted statement that “what is rational is actual, and what is actual is rational.” G.W.F. HEGEL, *ELEMENTS OF THE PHILOSOPHY OF RIGHT* 12 (Allen W. Wood ed., H.B. Nisbet trans., Cambridge Univ. Press 1991) (1821) [hereinafter HEGEL, *PHILOSOPHY OF RIGHT*]. In Hyppolite's words, “Hegelian philosophy rejects all transcendence . . . There is no world, nothing in itself, no transcendence.” JEAN HYPOLITE, *FIGURES DE LA PENSÉE PHILOSOPHIQUE* 1 (1991).

⁵⁹ SCHROEDER, *FOUR DISCOURSES*, *supra* note 50, at 14–15.

⁶⁰ Jeanne L. Schroeder & David Gray Carlson, *Psychoanalysis as the Jurisprudence of Freedom*, in *ON PHILOSOPHY IN AMERICAN LAW* 139, 146 (Francis J. Mootz III ed., 2009).

⁶¹ Jacques-Alain Miller, *Extimité* (Françoise Massardier-Kenney trans.), in *LACANIAN THEORY OF DISCOURSE: SUBJECT, STRUCTURE, AND SOCIETY* 74 (Mark Bracher et al. eds., 1994).

capacity for desire.⁶² Consequently, Lacan's insight is that "alienation is not a condition that the self can overcome, even with the best therapy, but part of what fashions it from the ground up."⁶³

Second, because the subject only became conscious and aware of his or her split when he or she matured and entered the symbolic order, the subject wrongly imagines that there really once was a time when he was not split (i.e., that alienation is a condition that one can overcome). Viewed from this fantasy, individuation is felt not so much as the gain that it is, but as a loss.⁶⁴ This will lead to the intuition of the *objet petit a*. The subject desires. He incorrectly concludes that he desires because he lost something. He therefore tries to identify a missing object whose loss would seem to explain his desire—to function as its cause. In the retroactive logic of the psyche, the temporal relationship of cause and effect are reversed. That is, the fact of desire precedes the assignment of a "cause" of the desire.⁶⁵

III. DEVELOPMENT

A. *The Mirror Stage*

The first step in the process of individuation is "alienation" in the "mirror stage." Psychoanalysis starts with a proposition that the newborn has little if any awareness, certainly little if any consciousness, of where he ends and the outside world begins. Indeed, it is not even clear that the infant realizes that there is an outside world.⁶⁶ At some point in the first few months of life, however, he begins to understand himself as a separate self by becoming aware of the existence of an "other." This is initially a binary relationship between the infant and one other—the

⁶² SCHROEDER, FOUR DISCOURSES, *supra* note 50, at 18.

⁶³ Perry Meisel, *The Unanalyzable*, N.Y. TIMES, Apr. 13, 1997, § 7 (Book Review), at 12 (reviewing ELISABETH ROUDINESCO, JACQUES LACAN (Barbara Bray trans., 1997)).

⁶⁴ See *supra* text at notes 50–51.

⁶⁵ In Žižek's words

A, the big Other, the symbolic order, is inherently "barred", hindered, structured around the void of a central impossibility; it always falls short of its notion; this central impossibility is its condition of possibility, and the *objet a* is precisely the paradoxical object which gives body to this impossibility. In this precise sense, *a* is the object-cause of desire: *it does not effectively pre-exist desire as that which arouses it, it merely gives body to its inherent deadlock, to the fact that desire is never satisfied by any positive object*; that is to say, apropos of every positive object, the subject's experience will always be a "this is not *that*".

ŽIŽEK, INVISIBLE REMAINDER, *supra* note 27, at 144 (footnote omitted).

⁶⁶ FINK, *supra* note 5, at 119 ("[T]here being, at the outset, no sense of 'self,' no sense of where one person or object leaves off and another begins . . . experience takes the form of a continuum, not of discrete, separate entities.").

intuition that I am not that. The mirror stage is the discovery of the subject-object distinction.

The first other is the mother (which, in English, can be punningly written as the mOther).⁶⁷ More accurately, as the infant is not yet able to differentiate individual persons per se, the mOther is not really a mother, but the maternal function that includes the infant's entire external world at this stage of its emerging consciousness. Consequently, this role is not necessarily played by the infant's biological mother, another woman, or even by a single person.⁶⁸

This identification of the other with the maternal is an example of the retroactive logic of the psyche. Almost every time I have spoken with a skeptic of psychoanalytic theory, he has prefaced his remarks with something like "this doesn't apply to me because I was raised by [fill in the blank: father, grandmother, aunt, etc.] *rather than by my mother.*" From the psychoanalytic perspective the only relevant words in this sentence are "rather than by my mother." This is an implicit admission that the adult speaker *now* recognizes that his caretaker was performing a role that our society ascribes to mothers.⁶⁹

Prior to the mirror stage the infant does not yet recognize either itself or the mOther as a person because it does not yet have awareness of selfhood. Rather, the mirror stage is the first realization that it is an entity distinct from the everything else—literally that this hand is part of me, but that breast (the voice that I hear, the fuzzy blanket I feel, etc.) is not.⁷⁰

Prior to the mirror stage the infant just had needs (e.g., to eat, to sleep) that were either met or not met.⁷¹ In the mirror stage need is now supplemented by *demand*.⁷² Demands are different from needs in that they are always addressed to another person. That is, the infant now

⁶⁷ *Id.* at 232 n.8.

⁶⁸ As Alfredo Eidelsztein states, "'mother' is a function that could be fulfilled by the father or the grand-mother." ALFREDO EIDELSZTEIN, *THE GRAPH OF DESIRE: USING THE WORK OF JACQUES LACAN* 4 (2009). That is, "'[m]other' and 'father' are places the structure, structural functions that can be fulfilled by any person no matter the biological relationship he or she has or has not with the subject." *Id.* at 17 n.5.

⁶⁹ See, e.g., Robin West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1 (1983). I criticize this approach in SCHROEDER, VESTAL, *supra* note 25, at 70–72.

⁷⁰ Initially, Lacan seemed to have thought that the infant's growing awareness of his individuated bodily integrity arose in part when he literally first recognized himself in a mirror. Over time Lacan moved away from such literal-mindedness in favor of a more abstract analysis. The infant sees himself figuratively mirrored back in his mother's recognition of, and response to, his actions. Insofar as actual mirrors are involved, it is because mothers frequently hold infants up to a mirror to see their own reflection, saying things like "Who's that in the mirror? It's you!" The infant, however, would be reacting less to his own image than to the reflected image of his mother's reaction to his reaction. FINK, *supra* note 5, at 88. In Eidelsztein's words, "it is not the mirror, but in the mother's look when turning around, where the infant finds the captivated image." EIDELSZTEIN, *supra* note 68, at 4.

⁷¹ ELIZABETH GROSZ, *JACQUES LACAN: A FEMINIST INTRODUCTION* 59–60 (1990).

⁷² *Id.* at 61.

addresses the mOther and demands that she fill its needs for food, protection, and, most importantly, attention. Perhaps more importantly, the infant starts becoming aware that the mOther makes demands upon it.⁷³ Being completely dependent on the all-powerful mOther, the infant fixates on how it can meet these demands.

A recent pop-psychology book called *The Philosophical Baby*⁷⁴ seeks to counter the supposedly common misimpression that infants are inert mindless creatures who only later learn to think.⁷⁵ According to this book, infants are engaged in the intense intellectual work of trying to figure out their place in the world from the day they are born (and perhaps earlier).

Without wishing to address this book on its specifics, Lacanian theory responds, in effect: How could anyone suppose otherwise? An infant's entire waking life (and presumably dream work) consists of (psycho)analytical activity. Lacanians go so far as to say that infants are natural (and the most effective) psychoanalysts, constantly interpreting those around them.⁷⁶ To a Lacanian, the typical young toddler's constant questioning is not merely innocent curiosity—it is a deadly earnest life-and-death struggle.⁷⁷ That is, in the mirror stage, the helpless infant begins to realize that his physical survival is at the mercy of the mOther.

Although we sentimentalize maternal love as perfect and unconditional, the relationship of infant and the mOther has an aggressive and antagonistic side. The infant, being so dependent on the mother, fears her as much as he loves her. In Lacan's grotesque metaphor: "A huge crocodile in whose jaws you are—that's the mother. One never knows what might suddenly come over her and make her shut her trap. That's what the mother's desire is."⁷⁸

This is perhaps partly because the infant-analyst understands that actual parents always harbor some hostile feelings toward the little stranger that has so drastically disrupted their lives. It is partly because

⁷³ FINK, *supra* note 5, at 177–78.

⁷⁴ ALISON GOPNIK, *THE PHILOSOPHICAL BABY: WHAT CHILDREN'S MINDS TELL US ABOUT TRUTH, LOVE, AND THE MEANING OF LIFE* (2009).

⁷⁵ I personally find it hard to believe that anyone who has ever seen a human infant could believe this, let alone believe that it is a belief commonly held by others.

⁷⁶ In the words of child psychoanalyst Catherine Mathelin, "[c]hildren are always in a position to be their parents' therapists, which, as we well know, is not necessarily a good thing for them." CATHERINE MATHELIN, *LACANIAN PSYCHOTHERAPY WITH CHILDREN: THE BROKEN PIANO* 181 (1999).

⁷⁷ Accordingly, Lacanian analysts believe that they can (and sometimes should) begin treating troubled children at extremely young ages—within weeks or even days of birth—when they start exhibiting symptoms of their parents' repressed traumas. As Mathelin says, "babies do 'understand' what is said to them. Clinical practice with infants seems to offer fresh proof of this every day." *Id.* at 162.

⁷⁸ JACQUES LACAN, *THE SEMINAR OF JACQUES LACAN, BOOK XVII: THE OTHER SIDE OF PSYCHOANALYSIS* 112 (Jacques-Alain Miller ed., Russell Grigg trans., W.W. Norton & Co. 2007).

he fears that the mother will fail to meet his demands and he will starve. But, in addition, the infant literally fears being engulfed.⁷⁹ The infant incorrectly abducts from the fact that he is only now becoming aware that the mOther is alien, there must have been a time in the past when they were one.⁸⁰ Perhaps mOther might try to reestablish this earlier stage. Consequently, the infant is desperate to learn and meet her demands not only because he loves her, and not only because he wants her to reciprocate, but because the infant is terrified that if he doesn't sate her, she will eat him.

(Re)union with the mOther is, therefore, a possibility to be both desired and feared. On the one hand, separation is experienced as a loss. The infant becomes aware that he does not merely have needs that may or may not be filled by some unknown process. The infant learns that fulfillment is either bestowed or withheld by mOther who may or may not be hostile. Needs are now supplemented by demands that must be addressed to someone. Consequently, demand contains within it the possibility of rejection.

As such, the infant is not only in the jaws of a crocodile, he is on the horns of a dilemma.⁸¹ On the one hand, alienation is a gain. It is the first step in becoming a free independent subject capable of self-actualization. On the other, merging back with mOther could be an ecstatic reacquisition of a lost state of integrity before the possibility of rejection. He both wants to keep his new-found consciousness while also rejoining with mOther. Perhaps he can do this by engulfing mOther before she can engulf him. But, if he destroys her, he destroys the beloved mirror that he needs to see himself. This vicious circle that is the human condition results in an erotic excitement that is to be both desired and feared, of pleasure in pain and pain in pleasure, called *jouissance*—a term of art only roughly equivalent to its closest English cognate, “enjoyment.”⁸²

The mirror stage is when the infant enters the “imaginary” order. The imaginary is, as the term implies, the realm of images. It is the stage where the infant first creates a self-image that will eventually become his ego.⁸³ The imaginary reflects the binary structural logic of the mirror stage. The imaginary is the order of simple either-or dualism in

⁷⁹ FINK, *supra* note 5, at 173, 177–78.

⁸⁰ In fact, “[t]here is no mother-infant symbiosis, since from the out set there exists a third term, a lack on the basis of which all interaction is organized ‘Before the child is born . . . [t]here is already *alienation*’.” MATHELIN, *supra* note 76, at 152 (quoting Solange Faladé).

⁸¹ This dreadful aspect of the mOther is perfectly captured in the character of the Other Mother in the animated film *CORALINE* (Focus Features, Laika Entertainment & Pandemonium 2009) based on the children’s book by Neil Gaiman. Despite the Lacanian-sounding name, I have no reason to think that Gaiman has any knowledge of Lacanian theory.

⁸² FINK, *supra* note 5, at 8–9; SCHROEDER, VESTAL, *supra* note 25, at 96–97.

⁸³ FINK, *supra* note 5, at 250 n.44.

which the choices are either complete conflict or complete harmony.⁸⁴ The mature subject will only emerge when the child enters the “symbolic” which will supersede, but not eliminate, the imaginary.

B. *The Oedipal Stage*

1. One and One Implies Three

The second stage in the process of “individuation” is the “Oedipal stage,” in which the duality of the imaginary is supplemented by a third term. If the binary figure is the mother, the tertiary is the father. The existence of the third creates the symbolic order of complex intersubjective relations.

Lacan sometimes calls the paternal function the “Name-of-the-Father”⁸⁵ because it is symbolic, and therefore grammatical (and legal) in nature. The paternal function is to give the law that will bring the child into the symbolic order of adults.⁸⁶ The “first” law written in the Oedipal stage will be the law as prohibition. This is the paternal “No!”⁸⁷ as in “No, you cannot be one with the mother, so you must give up your fantasy and nightmare of reuniting with her, become individuated, and take on your role in society as a subject!” This is Lacan’s rewriting of Freud’s notorious “incest taboo.”

The paternal function was latent in the mirror stage. But it existed only as the fact of the cut between baby and world. In the Oedipal stage, it begins to function as an independent presence.⁸⁸

Once again, the paternal role is not the same thing as an empirical father. In the traditional patriarchal family, the empirical father is supposed to play the role of lawgiver. But the paternal function is performed by any person or institution whose negative presence interferes in the relationship of the infant and the maternal figure in his life.⁸⁹ In order to be paternal, one does not have to act as the archetypically stern patriarch.

A person can be a “father” who prohibits the child’s reunion with the mother merely by taking up some of the mother’s time and affection.⁹⁰ By serving as the object of the mother’s desire, the “father’s”

⁸⁴ Fink emphasizes the role of rivalry in the imaginary order. *Id.* at 32.

⁸⁵ *Id.* at 80.

⁸⁶ *Id.* at 79–81.

⁸⁷ *Id.* at 81–82.

⁸⁸ *Id.* at 91.

⁸⁹ *Id.* at 79 (“This function may be fulfilled despite the early death or disappearance of the father due to war or divorce; it may be filled by another man who becomes a ‘father figure’; and it may be fulfilled in other ways as well.”).

⁹⁰ Indeed, as Fink notes, because “[t]he paternal function is a *symbolic function* [it] can be

very existence shows the child that it is impossible for the child to merge with her (in that she belongs partly to the father).⁹¹ But more importantly, it means that his mother is not the all-powerful, all-encompassing, terrifying, wondrous, child-obliterating, crocodilian mOther-thing of his fantasies.⁹² She is just a subject. This is the moment when the child first starts to develop the lexigraphic concept of lack.

The child comes to realize that mother not merely demands, she *desires*. The child hypothesizes from this that she must lack something that is desirable. The fact that she desires the father suggests that he might have that thing. To Lacan, it is this (retroactive) abduction, not the sight of genital difference, that accounts for the reason why we associate castration (lack) with the maternal and lack of castration with the paternal. This is why Lacan adopts the Freudian term of art for the hypothesized “thing” that the maternal function lacks (and desires) and the paternal function supposedly has—the “phallus.” Only retroactively, when the child recognizes that our society identifies the paternal role with the male parent and the maternal role with the female parent, will the child conflate the phallus with the anatomical organ that males have and females lack. Lacan’s confusing terminology is designed to replicate this conflation.

Merely by serving as a third, the father disrupts the simple black-and-white, dualistic order of the imaginary. The world does not consist of just infant and everything else. The existence of a third suggests a multiplicity, perhaps an infinity, of possibilities. The child is no longer doomed to be his mother’s mirror image and antagonist. He can now seek to be individuated as a unique subject so that he can love her also as a subject. He now seeks not merely to fill his own needs, nor meet the mother’s demands, but to confront both the child’s and the mother’s desire.

just as effective when the father is temporarily absent as when he is present The paternal function . . . is served by the noun ‘father’ insofar as the mother refers to it as *an authority beyond herself* an ideal beyond her own wishes (though in certain cases she may be appealing to it simply to prop up or lend credence to her own wishes).” *Id.* at 81.

⁹¹ *Id.* at 80 (“[T]he father keeps the child at a certain distance from its mother, thwarting the child’s attempt to become one or remain forever one with the mother, or forbidding the mother from achieving satisfactions with her child, or both.”).

⁹² As Eidelsztein explains, this dynamic is also seen in the common fury a two- or three-year-old child experiences when his mother doesn’t understand what he says. This does not represent frustration with his own ability to communicate:

It is not the fact of not being understood, but the recognition that the language . . . is not of the mother. That is, that the mother does not understand the mother tongue. That is why they despair. The incomprehension of the mother undermines her omnipotence: the omnipotence whose attack anguishes him the most, the other’s not his. For the child it is not the undermining of his own omnipotence what anguishes him, rather the Other’s.

EIDELSZTEIN, *supra* note 68, at 61.

The introduction of the paternal function is not only the beginning of law, it is the beginning of language. The paternal “no” is a metaphor in the sense that the father’s “no” takes the place of the mother as the source of the child’s *jouissance*.⁹³ From now on the child will not have an immediate access to *jouissance*. *Jouissance* will be mediated by the symbolic—the intersubjective order of social relations, including law, language, and sexual identity.

2. The Big Other

The demand encountered in the mirror stage is now supplemented in the Oedipal stage with desire. Indeed, subjectivity is nothing but the capacity of desire.⁹⁴ The subject desires because he lacks—in Lacan’s terminology, he is split or castrated. Desire can never be fulfilled precisely because language prevents us from ever achieving the immediacy that we associate with our memories of being one with the mother prior to the mirror stage.

Let’s step back. We are obviously a long way away from Freudian theory. To oversimplify, we have seen how in the mirror stage the infant not only makes demands on the mOther, he is an analyst of her demands. He wants to meet her demands not only so she will meet his, but also so she will not turn on him and engulf him. In the Oedipal stage, this demand will be overwritten by the desire for recognition and love.

Following Hegel, Lacan argues that one becomes a subject when one is recognized as such by a fellow subject. This is why subjectivity requires the symbolic order of intersubjective relationships.⁹⁵ Consequently, the child, who desires to be desired, wishes to grow up and be recognized as a member of society. In order to mature the child must submit to the laws that constitute society, learn language, and take on a sexual identity.

As a result of this, as the child matures into a subject, he encounters the uncanny experience of extimacy. That which is most himself—personhood, subjectivity—comes from the outside—from others, from the symbolic order. This is one reason why he experiences himself as split. Although subjectivity is a gain (i.e., the achievement of identity), it is experienced as a loss.

In the mirror stage, the infant confronted a single other—the rest of the world perceived as a monolithic maternal function. Now, as he starts

⁹³ FINK, *supra* note 5, at 91.

⁹⁴ SCHROEDER, *FOUR DISCOURSES*, *supra* note 50, at 18.

⁹⁵ This parallel between Lacan and Hegel is the subject of the first chapter of SCHROEDER, VESTAL, *supra* note 25, ch. 1.

entering adulthood, the defining otherness is replaced by the symbolic order itself, sometimes referred to as the Big Other⁹⁶ or just the Other.⁹⁷

Because this Other (the symbolic order) is made of subjects, and because all subjects are split, the symbolic order itself is defined by the same split. Individuation requires that each subject become *identifiable*. This means that each subject must become distinct from every other, unique and individuated. Paradoxically, this means that the symbolic order's own existence requires that each of its members not be perfectly integrated into society—we remain alienated not only from ourselves, but separated from others.

The imaginary order created in the mirror stage was one of either-or, black-white, simple binary oppositions. This also implicitly means that the imaginary order is imagined as complete—the whole world consisted of infant and mOther. Being complete also means it is closed and static.

By contrast, all symbolic relationships—including language, law, markets and sexual identity—can never be closed and whole in the way the primal fantasies of the imaginary are. Rather, they are imperfect, incomplete, and unsatisfying. Language and law are necessarily ambiguous for logical and functional, not merely practical, reasons.⁹⁸ But this means that the symbolic is also open and dynamic. Nevertheless, the imaginary order will not be replaced by the symbolic order, just overwritten by it. The imaginary will remain in our fantasies of the possibility of obtaining completeness. We will return to this because obsession is based on precisely such fantasies.

As we have seen, Lacan retains Freud's anatomical vocabulary and says that the subject is castrated and has lost the phallus. The terminology of castration captures a number of important aspects of the theory. The first is that individuation is felt as a loss not a gain. Second, this loss is experienced as an imagined lost state of wholeness or integrity, a oneness of the world imagined as the maternal. This leads to the fantasy that one could regain integrity if one could acquire the lost thing.⁹⁹ That is, that one's desire is caused by the lack of an object and could be

⁹⁶ SCHROEDER, FOUR DISCOURSES, *supra* note 50, at 15.

⁹⁷ FINK, *supra* note 5, at 232 n.8. Note, the Other stands not only for the intersubjective regime in which the subject is located, but for other subjects that make up that regime.

⁹⁸ SCHROEDER, FOUR DISCOURSES, *supra* note 50, at 9, 41, 116–20.

⁹⁹ That is, “the subject calls for recognition on the appropriate level of authentic symbolic exchange—which is not so easy to attain since it's always interfered with—is replaced by a recognition of the imaginary, of fantasy.” JACQUES LACAN, THE SEMINAR OF JACQUES LACAN, BOOK III: THE PSYCHOSES, 1955–1956, at 15 (Jacques-Alain Miller ed., Russell Grigg trans., W.W. Norton & Co. 1993) [hereinafter LACAN, SEMINAR III]; see also SCHROEDER, VESTAL, *supra* note 25, at 109. In Lacan's words, “[t]he fantasy is the support of desire; it is not the object that is the support of desire.” JACQUES LACAN, THE SEMINAR OF JACQUES LACAN, BOOK XI: THE FOUR FUNDAMENTAL CONCEPTS OF PSYCHOANALYSIS 185 (Jacques-Alain Miller ed., Alan Sheridan trans., W.W. Norton & Co. 1978) [hereinafter LACAN, SEMINAR XI].

sated by acquisition of that object.¹⁰⁰ This is the logic that, at its extreme, becomes obsession.¹⁰¹ Finally, the metaphor of castration implies that we experience our current state as being *caused by someone* that did something violent to us.¹⁰² To a certain extent this is correct in the sense that “castration” is the result of submitting to the intersubjective realm of relationships with other people that is inevitably ruled by grammar imposed upon us and laws of behavior that restrain our actions.

The two sexes are just two different ways of dealing with this universal sense of lack. The punch line, however, is that there is no *thing* missing. Our abduction that the reason why we feel lacking is because we lack something is objectively wrong. The phallus does not exist. It is the symbol for the subject, but the subject itself is pure negativity—the capacity of desire. It is lexigraphic in the sense that it stands for a lack that we cannot perceive directly but can only hypothesize retroactively from the perspective of a specific symbolic position.¹⁰³

Another definition of the phallus is the lack of a lack. In the “natural” world, to negate a negation is to create something positive. This logic of the double negative leads to the abduction of the *objet petit a*. Lacan’s logic of the phallus is, however, that of imaginary numbers. He notoriously said that the phallus is the square root of negative one—the definition of an “imaginary” number. This is precisely correct. The phallus is a concept so negative that, paradoxically, even when multiplied by itself, remains negative.¹⁰⁴ The fantasy of the *objet petit a* is an attempt to positivize this lack.

¹⁰⁰ The *objet petit a* is “the chimerical object of Fantasy, the object causing our desire and at the same time—this is the paradox—posed retroactively by this desire.” ŽIŽEK, *SUBLIME OBJECT*, *supra* note 49, at 65. “The paradox of desire is that it posits retroactively its own cause, i.e., the object a” SLAVOJ ŽIŽEK, *LOOKING AWRY: AN INTRODUCTION TO JACQUES LACAN THROUGH POPULAR CULTURE* 12 (1992) [hereinafter ŽIŽEK, *LOOKING AWRY*]; *see also* SLAVOJ ŽIŽEK, *THE ABYSS OF FREEDOM/AGES OF THE WORLD* 79 (1997) [hereinafter ŽIŽEK, *ABYSS OF FREEDOM*].

¹⁰¹ *See infra* text at notes 133, 163–64.

¹⁰² SCHROEDER, *VENUS*, *supra* note 11, at 79–80.

¹⁰³ To draw on Lacan’s example, if one were to see two books marked “Vol. I” and “Vol. II,” a space, and a third book marked “Vol. IV,” one could not see that Vol. III is missing. This is because the concept of “missing” requires that one is already located within a specific symbolic system. However, one might abduct from one’s knowledge of the convention of numbering books in a series coupled with one’s knowledge of Roman numerals that there is probably a book marked “Vol. III,” that it would conventionally be stored in the space between the books marked “Vol. II” and Vol. IV,” and, ergo, there is probably a hypothetical Vol. III that is missing. In other words, a lack can only be *retroactively* posited from some future perspective. Lack is a concept that can only be expressed in the future perfect—I do not see a lack, but after thought, I will have seen it. FINK, *supra* note 5, at 177.

¹⁰⁴ Literal-minded critics, assuming that the phallus is the male organ, hold this statement up to particular scorn. ALAN SOKAL & JEAN BRICMONT, *FASHIONABLE NONSENSE: POSTMODERN INTELLECTUALS’ ABUSE OF SCIENCE* (1998). Lacan’s metaphor is an attempt to capture the radical negativity of subjectivity that is symbolized by the phallus. When the subject invents the concept of the phallus, she is using the logic of the double negative. That is, the subject feels she

3. Law and Sexuality

Freud posited that the Oedipal family romance is “resolved” and mature sexuality created when the child submits to the primal law of the incest taboo. To Freud this is, quite literally, the patriarchal injunction that thou shalt not kill the father, or have sex with the mother.¹⁰⁵ Freud took this so seriously that, in *Totem and Taboo*¹⁰⁶ and again in *Moses and Monotheism*,¹⁰⁷ he argues that the first human societies were created when a band of brothers literally murdered (and ate) their tyrannical father in order to get access to his wives (i.e., their mothers and sisters). Subsequently, out of guilt, they wrote laws to prohibit these crimes. That is, the brothers wrote the law against incest retroactively to explain their guilt for acts that were not yet crimes at the time they were committed.¹⁰⁸

Once again, Lacan keeps Freud’s vocabulary, but rewrites his imaginary account as a symbolic function. The child becomes an adult by submitting to the symbolic order of language and law, thereby achieving subjectivity and sexual identity.¹⁰⁹ The patriarchal injunction of the incest taboo is now a paternal metaphor¹¹⁰—something that substitutes for something else. Freud’s “thou shalt not have sexual relations with your mother” is now “you must give up the dream of merging back with the maternal.” “Thou shalt not kill your father” becomes “identify with the symbolic order of social relations and become a subject.” This law of the father prohibits and, thereby, takes the place of the mother as source of *jouissance* (i.e., erotic excitement). The law of prohibition, therefore, enables desire to function precisely by prohibiting the satisfaction of desire. This is a very complex concept that we cannot fully explore here but will touch on very briefly later.

is negative and lacking and assumes that this is because *something* is lacking. The subject wants to negate this feeling of negation—she wants to replace her lack with a lack of a lack. Under ordinary real number mathematics, a negative multiplied by a positive, i.e., the lack of a lack, produces a positive. This suggests, ergo, that phallus (the lack of a lack) must be something affirmative that someone (i.e., men) could have. However, the vision of integrity is a fantasy, it is imaginary not symbolic. The phallus never existed. The logic of imaginary numbers is phallic in this sense. The square root of negative one cannot exist because it is that which is so negative that it remains negative even when it is multiplied by itself. Although the square root of negative one cannot exist, the entire field of quantum mechanics requires that we act as though it does. This is the logic of the phallus.

¹⁰⁵ SIGMUND FREUD, *TOTEM AND TABOO* 152–53, 177–78 (James Strachey trans., 1952) [hereinafter FREUD, T & T].

¹⁰⁶ *See id.*

¹⁰⁷ SIGMUND FREUD, *MOSES AND MONOTHEISM* (Katherine Jones trans., 1939) [hereinafter FREUD, M & M].

¹⁰⁸ FREUD, T & T, *supra* note 105, at 177–78.

¹⁰⁹ SCHROEDER, *FOUR DISCOURSES*, *supra* note 50, at 15–17.

¹¹⁰ FINK, *supra* note 5, at 91.

Freud is a utilitarian in the sense that he seems to think that the reason why the child accepts the patriarchal bargain is because the father promises a satisfaction that compensates for the loss of the mother.¹¹¹ Lacan is not so sanguine. When the child gives up the maternal, he receives split subjectivity—the negative status of pure desire. Desire is nothing but the lack of satisfaction.¹¹²

To Freud, the two sexes are defined by castration: the normal female is castrated and the normal male avoids castration. To Lacan, castration is the *universal* initiation rite of subjectivity. The two sexuated positions are two inconsistent ways of confronting this shared reality—denial versus acceptance.¹¹³ “Men” are not necessarily anatomically male humans, but those subjects who cannot face the fact that they are castrated. They claim to be whole and complete despite all evidence to the contrary.¹¹⁴ This is a fantasy, an attempt to remain totally within the imaginary. One strategy that “men” use to maintain this fantasy is obsession, to which we will soon turn.

Similarly, “women” are not necessarily anatomically female humans, but those subjects who accept their fate, and face the awful truth.¹¹⁵ One result of this can be hysteria.¹¹⁶ I explicate the feminine position extensively elsewhere and, in this Article, consider hysteria only insofar as it is necessary to contrast it with obsession.

IV. MENTAL SYNDROMES

A. *Structural Distinctions*

As introduced,¹¹⁷ in contrast to mainstream American psychology, Lacan’s diagnostic schemata does not emphasize the specific symptoms exhibited by the analysand. Instead, they are structural: the three basic diagnostic categories of psychosis, perversion, and neurosis relate to the

¹¹¹ RENATA SALECL, *THE SPOILS OF FREEDOM: PSYCHOANALYSIS AND FEMINISM AFTER THE FALL OF SOCIALISM* 102 (1994).

¹¹² As Fink says, the father “never offered [the child] anything in return [i.e., for giving into the paternal prohibition], never provided [him] with substitute satisfactions.” FINK, *supra* note 5, at 93; *see also* SCHROEDER, VESTAL, *supra* note 25, at 85; SLAVOJ ŽIŽEK, *FOR THEY KNOW NOT WHAT THEY DO: ENJOYMENT AS A POLITICAL FACTOR* 230–31 (1991) [hereinafter ŽIŽEK, *FOR THEY KNOW NOT WHAT THEY DO*].

¹¹³ SCHROEDER, *FOUR DISCOURSES*, *supra* note 50, 15–17. In the words of Jacques-Alain Miller, “[h]ysteria presents the divided subject at its purest. Such a subject assumes its division. The obsessional, on the contrary, conceals this division, tries to mop it up, attempts to annul it.” Jacques-Alain Miller, *H₂O: Suture in Obsessionality*, *THE SYMPTOM*, Spring 2003, <http://www.lacan.com/suturef.htm>.

¹¹⁴ SCHROEDER, *FOUR DISCOURSES*, *supra* note 50, 127.

¹¹⁵ *Id.* at 151–52.

¹¹⁶ LACAN, *SEMINAR VII*, *supra* note 26, at 53.

¹¹⁷ *See supra* text at notes 43–47.

two developmental stages. The psychotic enters the mirror stage, but never finds the exit.¹¹⁸ He remains imprisoned in the black-and-white, either-or nightmare of the mirror world's threat of eat or be eaten. As such, he can descend into homicidal destruction. The pervert, unlike the psychotic, leaves the hall of mirrors and enters the Oedipal phase. Unlike the neurotic, the pervert is unsuccessful in negotiating the contract that releases him from the sexual panic of the family romance and into the symbolic order.¹¹⁹ The three perversions—sadism, masochism and fetishism—are three ways the pervert endlessly and unsuccessfully tries to establish a law to complete castration and cut him loose from the ties that bind.¹²⁰

Those of us who are alienated in the mirror stage and separated in the Oedipal stage end up as subjects who are, in most cases, neurotic, to some extent or another. Most of us are able to handle our neuroses most of the time, despite occasional twinges of loneliness, self-doubt, etc. Indeed, it is one of Lacan's fundamental points that we actually *enjoy* the neurotic symptoms that we unconsciously cultivate over our lives.¹²¹ As introduced, *jouissance* (enjoyment) is a term of art that designates not pleasure, but an erotic excitement associated with the fantasy of reuniting with the maternal. Consequently, it is not that our symptoms make us happy, but that they give us a certain short-lived thrill.¹²²

When the neurotic experiences a break, however, his or her symptoms stop working, he or she can no longer get off on them. When the neurotic seeks "help" from a therapist, it is not because he or she wants to be cured in the sense of losing his or her symptom. Rather, he or she wants the symptom to be fixed so that he or she can go back to the way things were.¹²³

B. *Objet Petit A*

Lacan thought the object cause of desire (the *objet petit a*) was his most important innovation in psychoanalytic theory.¹²⁴ Certainly it is

¹¹⁸ FINK, *supra* note 5, at 87–90.

¹¹⁹ *Id.* at 175–76.

¹²⁰ Note that the term of art "perversion" does not have the colloquial meaning of sexual weirdness. Rather, like neurosis and psychosis, it refers to a specific relationship the subject can have with law. It is thought that as an empirical matter, a large majority of perverts are males.

¹²¹ Fink starts his *Clinical Introduction* with the old joke "How many psychoanalysts does it take to change a light bulb? Only one, but the lightbulb must really want to change." FINK, *supra* note 5, at 1. This caricature of American Freudian practice is inapt to Lacanianism, which holds that analysts never *want* to change because they *love* their symptoms.

¹²² FINK, *supra* note 5, at 8–10.

¹²³ *Id.* at 8–10.

¹²⁴ FINK, SUBJECT, *supra* note 57, at 83 ("With object *a*, Lacan felt he had made his most significant contribution to psychoanalysis. Few concepts in Lacanian opus are elaborated so

one of his most difficult concepts and one that he constantly refined and modified over his career. Consequently, we will only skate over certain aspects of the idea most directly related to the points made in this Article. To do this, we shall return to Lacan's theory of development, this time illustrated by a set of diagrams developed by Fink.

To repeat, prior to alienation in the mirror stage the infantile pre-subject can be diagramed as such—with the infant and mOther being one.¹²⁵

Diagram 1

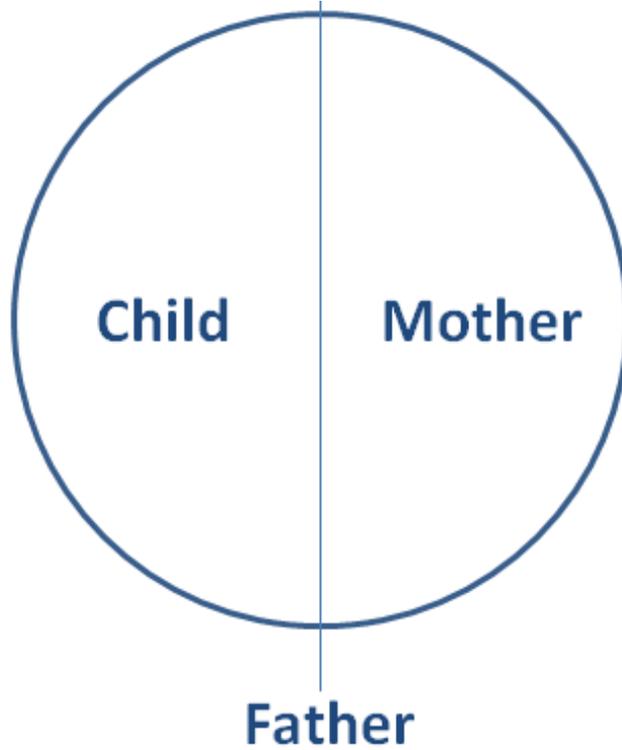


In the mirror stage, the child sees itself as being differentiated (alienated) from the mother, but not yet completely separated from her. The child's world now consists of self and other. The protopaternal function is not yet broken out as a third element, but merely exists as the boundary of alienation.¹²⁶

extensively, revised so significantly . . . , [and] worked over from so many different perspectives" (citations omitted)).

¹²⁵ FINK, *supra* note 5, at 91.

¹²⁶ *Id.* at 92.

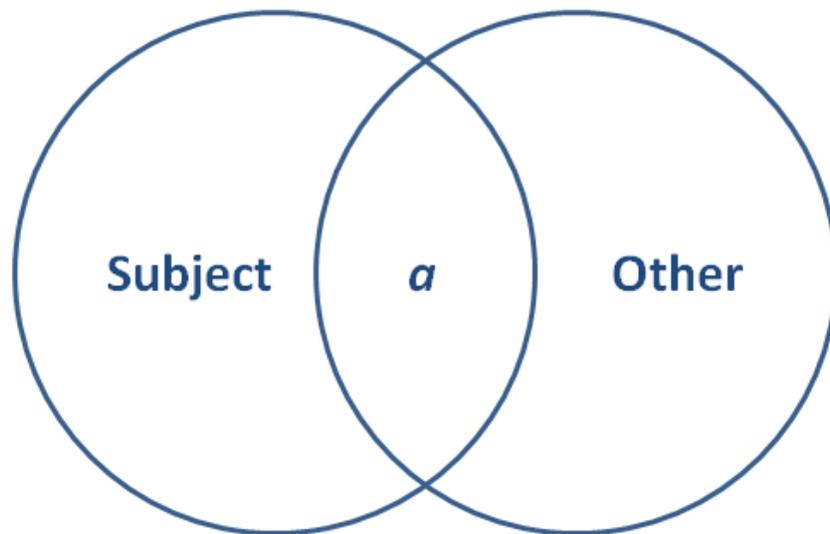
Diagram 2

During the Oedipal stage, the child becomes separated from other persons and the fantasy memory of the imagined lost union takes on an independent role. This precipitates out as a trace, a lost thing.¹²⁷ This is designated by the little *a* (for the French word for other, i.e., *autre*). Consequently, the person who passes through the Oedipal stage can be diagramed as such.¹²⁸

¹²⁷ *Id.* at 119.

¹²⁸ *Id.*

Diagram 3



The child is now a subject. The Big Other of the symbolic order of relationships with others substitutes for the mother as original other. We have a fraught relationship with the Big Other. On the one hand, we desire it because it created our individuated sense of self that is the precondition of freedom. On the other hand, we hate it because its very existence thwarts our competing desire to merge back with the mother and achieve wholeness.

The paradox that the subject is simultaneously individuated and alienated from, and dependent on, the social order is represented by the overlap. The fantasy trace of merger—the *a*—lies in this overlap.¹²⁹

The problem is that, just as the original union with the maternal is a fantasy, so is the *objet petit a* an imaginary trace of this nonexistent

¹²⁹ In Žižek's words:

However, what we must avoid at any price is conceiving of this left-over as simply secondary, as if we have *first* the substantial fullness of the Real and *then* the process of symbolization which “evacuates” *jouissance*, yet not entirely, leaving behind isolated remainders, islands of enjoyment, *objets petit a*. If we succumb to this notion, we lose the paradox of the Lacanian Real: there is no substance of enjoyment without, prior to, the surplus of enjoyment. *The substance is a mirage retroactively invoked by the surplus*. The illusion that pertains to *a* qua surplus-enjoyment is therefore the very illusion that, behind it, there is the lost substance of *jouissance* in other words, *a* qua semblance deceives in a Lacanian way: not because it is a deceitful substitute of the Real, but precisely because it invokes the impression of some substantial Real behind it; it deceives by posing as a shadow of the underlying Real.

SLAVOJ ŽIŽEK, TARRYING WITH THE NEGATIVE: KANT, HEGEL, AND THE CRITIQUE OF IDEOLOGY 36–37 (1993) (footnote omitted).

unity. Nevertheless, the subject searches for an actual object that can serve the function of the *missing* object.¹³⁰ The logic here is the abduction that the reason I desire must be because I am missing *something*. If I could just identify which missing thing is causing my desire, then I can sate my desire by acquiring that thing. Of course, the search for such an object is necessarily vain because the object cause of desire is imaginary. If one were to acquire the actual object identified by the subject, one would have to confront the fact that one still desired and, therefore, that the particular object does not explain one's desire. One would have to find another object to take the place of the first in one's fantasies. This is one reason why it is best to identify an obscure object of desire that can never be truly captured.

Once again, this helps explain how the elusive bonus can perfectly serve as an *objet petit a*—one never completely captures it even when one acquires it. That is, as an annual recognition of worth, the trader is always looking forward to *next* year's bonus even as he receives this year's. Moreover, the value of each bonus exists in its relative size not only in relation toward bonuses given to others, but to the size of the previous year's bonus. Consequently, the obsessive trader can sustain his fantasy that the bonus causes his desire, even as though (or, perhaps, just because) the bonus never satisfies.

Even the vocabulary of the "bonus" supports this interpretation. Although the Latin word merely means a good thing, and, in fact, Wall Street bonuses are frequently contractually obligated, the connotation of the English word is something more, over and above, what is expected.¹³¹

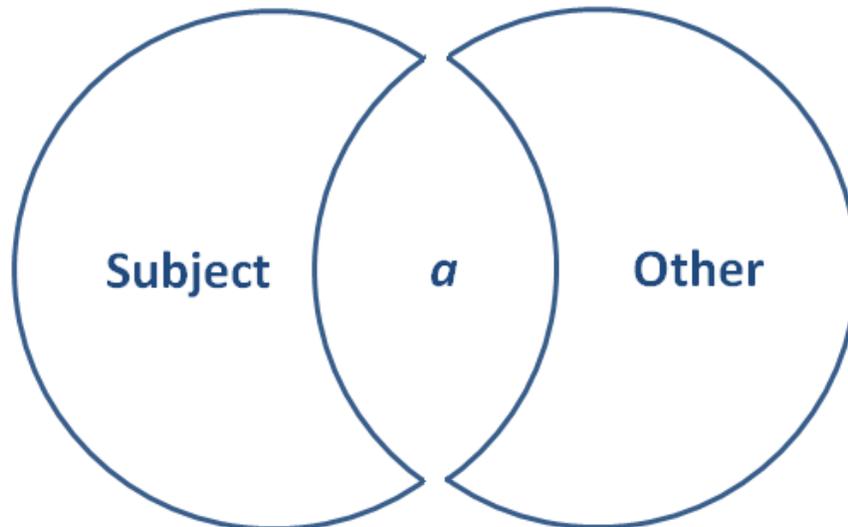
Fink's diagrams might suggest that after alienation we are left with two complete but overlapping circles. This is precisely the misinterpretation formed in the imaginary. Not only the subject, but the Big Other of the symbolic order, which is just an unstable coalition of subjects, are split and incomplete.¹³² Their point of overlap is, in fact, this shared lack.

Consequently, we can make this clear by separating the two "circles" as follows.

¹³⁰ In Eidelsztein's words, "we permanently want to make the two-dimensional [i.e., imaginary] object *a* three-dimensional. Why? In order to find it in the real world." EIDELSZTEIN, *supra* note 68, at 7.

¹³¹ I thank Heidi Feldman for this insight.

¹³² Consequently, Lacan eventually replaced the "A" that was his symbol for the Other (standing for the French *Autre*) with a barred "%." This bar that splits the "A" is the same bar that splits the matheme of the subject (Æ). SCHROEDER, *FOUR DISCOURSES*, *supra* note 50, at 15.

Diagram 4

C. *Sexuation*

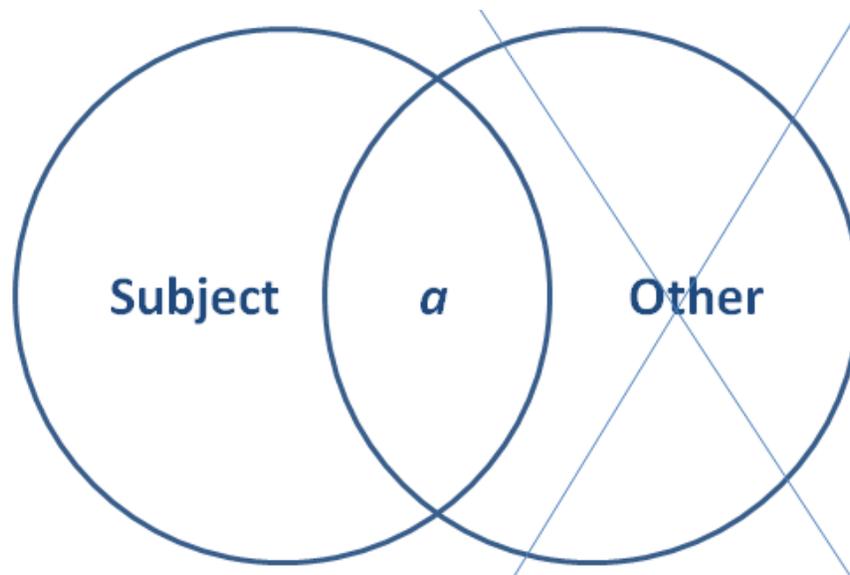
The true desire of any subject is to become whole, and to cease desiring while retaining the freedom and self-consciousness of subjectivity. Wholeness is imagined as reunion with the maternal universe. This is paradoxical because regressing back before separation would be the destruction of subjectivity. This is an “impossible” situation. The subject’s desires are, therefore, contradictory and impossible. Consequently, the subject looks for a way out of this whirlpool of desire.

Both obsession and hysteria are unsuccessful attempts to solve the dilemma of subjectivity and desire by choosing one horn and forgetting about the other. The masculine subject tries to deny his dependence on others, to deny desire, in order to claim to be whole. The feminine subject admits her dependence on others and seeks to become whole by satisfying the other. Both sexes do this through the fantasy of the *objet petit a*: the object cause of desire that acts as the imaginary substitute for the symbolic (lost) phallus. Once again, these “sexuated” positions are structural, legal, or logical, not biological. Although as an empirical matter males are more likely to tend toward the masculine position, and females toward the feminine, persons of either anatomic sex or sexual orientation can be a “man” or a “woman.” Or more importantly, no subject can be completely a man or a woman. We all vacillate between the two sexuated positions.

The subject, in effect, tries to complete *one* of the two circles of the subject and the Other. To do this, the subject not only tries to fill in the missing piece of the chosen incomplete circle with the *objet petit a*, he or she also represses the existence of the rejected incomplete circle. The masculine neurosis of obsession is the attempt to complete the left-hand circle of subjectivity and ignore the right-hand circle of the Other. The man, who can't face the fact of his own castration, tries to obtain an *objet petit a* to stand in metaphorically for that which is lost.¹³³

Diagram 5

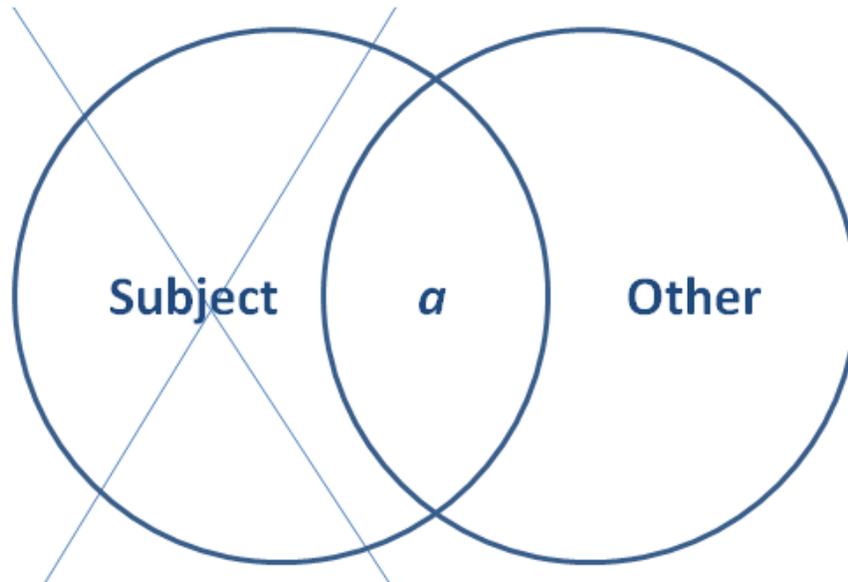
Obsession



The feminine position of hysteria is the attempt to complete the right-hand circle representing the big Other and repress her own subjectivity. The hysteric subject, therefore, seeks to be the object cause of the Other's desire.¹³⁴

¹³³ FINK, *supra* note 5, at 120. "In the obsessive's fantasy . . . unity or wholeness is restored to the subject by addition of the object." *Id.* at 119.

¹³⁴ *Id.* at 120.

Diagram 6**Hysteria**

In other words the “obsessive attempts to overcome or reverse the effects of separation on the *subject*, whereas the hysteric attempts to overcome or reverse the effects of separation on the *Other*.”¹³⁵

D. Obsession

We are finally in the position to discuss the neurosis of the trader culture. It may be tempting to assume that both the inflation of the bubble economy and its subsequent popping are examples of hysteria. This is because the colloquial definition of that term is somewhat different than the technical one. Rather, it is my thesis that the characteristic behavior of the classic banker and trader is obsessional and that the Great Recession resulted from an obsessional breakdown. This should not surprise us. From a psychoanalytic perspective, as Tom Wolfe’s expression “Masters of the Universe”¹³⁶ implies, traders pride themselves on their machismo. Anecdotal evidence supports this interpretation. A “short, unscientific survey” by *Esquire* magazine during the 2010 bonus season found that, “[d]espite being 6.75% more likely to receive a bo-

¹³⁵ *Id.*

¹³⁶ TOM WOLFE, *THE BONFIRE OF THE VANITIES* (1987).

nus, the men who didn't receive bonuses were 24 times more likely to think it was 'unfair' [while] [o]f the nine women who received bonuses, five thought they were fair, three thought they deserved more, one thought she deserved less."¹³⁷

Elsewhere, I argue that to be effective and ethical the practicing attorney needs to take on the "feminine" position of hysteria.¹³⁸ Moreover, I have shown that Hegel's theory of implicit "logic" of property, contract, and market relations is not merely erotic, but hysterically so.¹³⁹ Consequently, it would be a good thing if the financial markets were a little more, not less, hysteric.

According to Hegel, the sublimely hysteric person acquires property and engages in contractual relationships not for their own sake, as the obsessive thinks he does, but derivatively as a means of achieving his true desire—recognition by another subject.¹⁴⁰ The legal relations of property and contract are means of achieving subjectivity by making oneself unique and, therefore, recognizable. The problem with the *neurotically* hysterical subject is that she represses the "logic" of her position. The subject desires the desire of the Other because he wants to become a *subject*. But by seeking to be the *object* of the Other's desire, the hysterical subject denies herself and shirks the ethical mandate of subjectivity.

By contrast, the obsessive denies his split by trying to deny his dependence on the Big Other and fantasizes that he *has* the object cause of desire.

As schematically represented . . . the obsessive takes the object for himself and refuses to recognize the Other's existence, much less the Other's desire. The obsessive's fundamental fantasy can thus be adequately formulated using Lacan's general formula for the fundamental fantasy ($\exists \diamond a$), as long as it is understood that the obsessive seeks to neutralize or annihilate the Other.¹⁴¹

The obsessive claims to be whole and uncastrated. He wants to be an entirely conscious thinker with no unconscious, completely aware of his thoughts and in control of his actions.

[T]he obsessive's [primary question] is "Am I dead or alive?" The obsessive is convinced that he is, that he exists, only when he is con-

¹³⁷ Foster Kamer, *The Truth About Wall Street Bonuses in 2010: A Survey*, ESQUIRE POLITICS BLOG (Dec. 21, 2010, 9:30 AM), <http://www.esquire.com/blogs/politics/wall-street-bonuses-2010>.

¹³⁸ SCHROEDER, FOUR DISCOURSES, *supra* note 50.

¹³⁹ SCHROEDER, VENUS, *supra* note 11, at 13, 43.

¹⁴⁰ *Id.* at 48–50.

¹⁴¹ FINK, *supra* note 5, at 119. The formula for the fundamental fantasy ($\exists \diamond a$) is read "the split subject has a relationship with the object cause of desire." That is, the obsessive fantasizes that he actually has or could capture his beloved object.

sciously thinking. Should he lapse into fantasy or musing, or stop thinking altogether . . . he loses any conviction of being. His attempt to come into being or continue to be involves the conscious, thinking subject—the ego—not the divided subject who is unaware of certain of his own thoughts and desires. He believes himself to be the master of his own fate.¹⁴²

Consequently, he doesn't just tend to be nonreflective, he refuses to reflect. In the words of *Newsweek* business columnist Daniel Gross, “[i]nvestment bankers are among the least reflective of financial birds. They deal with the problem at hand without asking too many questions about how it got there.”¹⁴³ Terrified that he will cease to exist if he ceases to think and act, the obsessive person engages in frenzied behavior. This is reflected in the workaholicism that is the hallmark of the trader profession, where work weeks of 80 or 100 hours are not unusual. Indeed, “hours” themselves function as an *objet petit a* to be endlessly amassed.

The obsessive refuses to acknowledge “the unconscious—that foreign discourse within us, that discourse we do not and cannot control.”¹⁴⁴ This lack of self-awareness may explain the extraordinary tone-deafness of the investment banks that announced plans to pay record bonuses within a year of the federal bailout, as epitomized by Goldman Sachs chairman Lloyd Blankfein’s “witticism” that traders are “doing God’s work.”¹⁴⁵ Of course, in this case, in the light of public opprobrium, Blankfein blinked. After persistent rumors that he would receive a bonus of up to \$100,000,000 for 2009, he “only” received a bonus of about \$9,000,000, payable in stock.¹⁴⁶ Of course, only in a world in which number like \$100,000,000 can be spoken without a red face, can the word “only” with respect to \$9,000,000 be spoken with a straight face.

In Fink’s words, “[t]he obsessive . . . views himself as a whole subject . . . not as someone who is unsure of what he is saying or what he wants—in other words, not as someone subject to lack. He fiercely refuses to see himself as dependent on the Other.”¹⁴⁷ As such, “[t]he perfect obsessive is the Ayn Randian ‘self-made man’ who believes he doesn’t owe anyone anything and that he made his fame and fortune in a

¹⁴² *Id.* at 122.

¹⁴³ Daniel Gross, *Inside Job: What Henry Paulson’s New Memoir Misses About His Own Responsibility for the Global Meltdown*, SLATE MONEYBOX (Feb. 8, 2012, 10:05 AM), <http://www.slate.com/id/2244026>.

¹⁴⁴ FINK, *supra* note 5, at 122.

¹⁴⁵ Lloyd Blankfein made this notorious statement in an interview with the *Sunday Times* of London. John Arlidge, *I’m Doing ‘God’s Work’: Meet Mr. Goldman Sachs*, SUNDAY TIMES (London), Nov. 8, 2009, at 1.

¹⁴⁶ *Blankfein Gets Bonus of \$9 Million in Stock*, N.Y. TIMES DEALBOOK BLOG (Feb. 5, 2010, 5:19 PM), <http://dealbook.nytimes.com/2010/02/05/blankfein-gets-bonus-of-9-million-in-stock/>.

¹⁴⁷ FINK, *supra* note 5, at 122.

completely ahistorical context, independent of any particular economic system government, industry or persons.”¹⁴⁸

Because he cannot recognize the subjectivity of others, the obsessive is not merely self-interested, he is destructive of others. Even in his relationship with his lover, “[h]is partner is annulled and neutralized, and he does not have to consider himself dependent on her, or on her desire for him in any way.”¹⁴⁹ Consequently, “the annulling of the Other . . . is omnipresent in obsession.”¹⁵⁰

Why is this so? Precisely because the very existence of the Other belies the obsessive’s claim to be independent. But his struggle with the Other reveals his dependence. The obsessive dynamic is that of Hegel’s famous “master-slave” dialectic.

In his *Phenomenology of Spirit*,¹⁵¹ Hegel hypothesizes a primitive society—modeled on archaic Greece—prior to the development of modern subjectivity. In ancient societies, slaves were typically persons captured in battle. In Hegel’s primitive society warriors try to obtain recognition through the fight to the death.¹⁵² Each man claims to be a self-consciousness and seeks to have this claim confirmed by another.¹⁵³ However, each also mistakenly thinks that the other’s claim to self-consciousness is an impediment to his claim. He sees self-consciousness as a zero-sum game of “winner take all.” Consequently, they battle until only one is left standing.

This is self-defeating. If a warrior dies he cannot be recognized; if he kills his rival, there is no one to recognize him.¹⁵⁴ Eventually one warrior recognizes this contradiction. Because he realizes that there can be no self-consciousness without life (both his and his rival’s) and without recognition by another, he lays down his arms and submits.¹⁵⁵ This warrior who lays down his weapon in order to be recognized by the other is hysteric—a neurosis that is ethically more advanced than obsession. Consequently, as I will discuss, the first stage in treating an obsessive is to hystericize him. Nevertheless, although more advanced, hysteria is still a neurosis and an ethically dubious position. Indeed, Hegel shows how his capitulating warrior becomes a slave, debased and quaking with fear before his idiotic master.¹⁵⁶

¹⁴⁸ *Id.* at 130.

¹⁴⁹ *Id.* at 123–24.

¹⁵⁰ *Id.* at 124.

¹⁵¹ G.W.F. HEGEL, HEGEL’S PHENOMENOLOGY OF SPIRIT (A.V. Miller trans., 5th ed. 1977) [hereinafter HEGEL, PHENOMENOLOGY].

¹⁵² *Id.* at 112–13.

¹⁵³ *Id.* at 113.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 115.

¹⁵⁶ Although Hegel talks of the slave’s fear, the slave does not lay down his sword out of fear, as is often thought. Rather, he does so as an ethical act—he is not afraid to die, he is unwilling to kill. SCHROEDER, FOUR DISCOURSES, *supra* note 50, at 40. The slave only quakes with fear *after*

Another way to put this is that neurosis is created by a form of negation called “repression.” Repression is not, as popularly thought, merely another word for forgetting. One of the fundamental principles of psychoanalysis is that “repression and the return of the repressed are one and the same.”¹⁵⁷ Although in repression the neurotic forces a thought or emotion out of his conscious, it is always there for all to see in his speech and behavior. This is what is meant by the unconscious. Lacan rejects the metaphor that the analyst is like Columbus discovering a new continent, finding something that is unknown. Rather, he is like Jean François Champollion—the translator of the Rosetta Stone—who helps reveal the meaning of that which is front and center.¹⁵⁸ The obsessive represses his dependence on the Other. The return of this obsessive’s repression of the Other is an obsession over denying the Other.

A final way of describing this is that the masculine “logic” is one of “either-or”—as in either I am alive or he is. This is the obsessive’s question, “Am I dead or alive?”¹⁵⁹ But the obsessive, like Hegel’s warrior, assumes this means that either *I* or *you* are alive so that for me to be alive, I must destroy you.

As such, he tries to reproduce the imaginary realm of eat-or-be-eaten. However, the obsessive is not a psychotic who is trapped in the mirror stage and forecloses (rather than represses) even the possibility of recognizing the big Other (i.e., intersubjective relations). The obsessive lives in the symbolic order of intersubjective relations. The trader’s life revolves around the intersubjective realm of the market, and he depends on the bonus given to him by a firm—a collection of other subjects. He tries to “destroy” the Other, not literally through murder, but symbolically by ignoring the contributions of other people and humiliating his rivals.

This is to be contrasted with the feminine hysteric logic of “neither-nor.” At first blush, the hysteric’s question, “Am I a man or a woman?” sounds like an either-or proposition (i.e., I am either a man or a woman). This is a misinterpretation. Lacan’s point is that the hysteric is always asking “*Che vuoi?*”—What do you want (i.e., from me)?¹⁶⁰ “How can I inflame your desire—do you want me to be a man or a woman?” Since she only exists as the object of the Other’s desire, either they both exist or neither does.

he has disarmed himself. David Gray Carlson & Jeanne Schroeder, *The Role of Fear in Hegel’s Master-Slave Dialectic*, MONOKL (2009) (on file with author).

¹⁵⁷ LACAN, SEMINAR III, *supra* note 99, at 86. In Lacan’s terms, they are two sides of the same coin. *Id.* at 12.

¹⁵⁸ *Interview with Jacques Lacan*, PHIL. EXPLORATIONS HUM. MIND (Sept. 19, 2011), <http://braungardt.trialectics.com/sciences/psychoanalysis/jacques-lacan/interview-with-jacques-lacan/>.

¹⁵⁹ FINK, *supra* note 5, at 161.

¹⁶⁰ See ŽIŽEK, ABYSS OF FREEDOM, *supra* note 100, at 81–82.

Perhaps this dynamic is illustrated in the relationship of Goldman Sachs and American International Group, Inc. (AIG). According to published reports, AIG sold “insurance” to Goldman protecting the latter’s investment in certain real estate–related investments. As the real estate crisis intensified, Goldman squeezed AIG in two ways. First, it made claims concerning the losses on its guaranteed holdings and refused to allow AIG to present third-party valuations disputing these amounts. Second, as AIG’s credit ratings dropped (partially because of Goldman’s demands), Goldman insisted that AIG post more and more collateral securing its guarantee obligations.¹⁶¹ Goldman, of course, can take the position that it merely engaged in smart business. From the perspective of a former transactional lawyer, it seems almost incomprehensible how AIG could have entered into contracts that did not provide for a procedure for the valuation of losses, but, given that it did, why should not Goldman exploit this? Nevertheless, from the position of an outsider, it is striking that Goldman would persevere in its position to the extent of bringing AIG to the brink of bankruptcy. Of course, its wager paid off when the Federal Reserve intervened with Troubled Asset Relief Program funds to make Goldman and other counterparties whole. To put this in another way, Goldman “correctly” guessed that the Fed, unlike Goldman, would not act like an obsessive and seek to destroy the Other, but would act as a hysteric and seek to preserve the Other.

The symbolic destruction of the Other through the denial of dependence on others may also help explain the persistence of the bonus system both before and after the bailout. Traders insist that they *deserve* the bonuses they earn. They are *entitled* to eat what they killed. They refuse to consider that the extent to which their success is part of the collective activity of the entire enterprise and that profits are supposed to belong to the shareholders, not management of a corporation. Firms such as Goldman Sachs, which paid back bailout money, seem oblivious to a public opinion that cannot be merely reduced to envious populism. Once again, they think they deserve the fruits of their own efforts, suppressing the fact that profits are to a large part dependent on the contributions of other factors such as low-interest loans from the Fed, made possible by conversion to bank holding company status.¹⁶²

¹⁶¹ Gretchen Morgenson & Louise Story, *Testy Conflict with Goldman Helped Push A.I.G. to Precipice*, N.Y. TIMES, Feb. 7, 2010, at A1.

¹⁶² See, e.g., Glenn Greenwald, *The Events Preceding Goldman Sachs’ New “Blowout Profits,”* SALON (July 13, 2009, 6:14 AM), <http://www.salon.com/2009/07/13/goldman/>.

E. *Bonus as Object*

The obsessive accumulates an object in an attempt to possess the ever-elusive object cause of his desire. The irony of this position is that, in fact, the obsessive who wants to ignore the Big Other does everything for the sake of the Big Other. The obsessive who wants to ignore the Other, who is always there, needs to destroy the Other, which means, in turn, that he obsesses about the Other at all times. As a result, in a vain attempt to convince himself of his wholeness, he tries first to convince others of it so they will reassure him with envy or, better yet, their humiliation. This is the faulty logic of the foolish naked emperor who hoped that the cheers of the crowd would prove the existence of the beautiful new clothes that he himself could not see. It is

the Other who passes on the law and whose *jouissance* is ensured by the obsessive's accumulation of publications, titles, money, property, awards, and so on. This is but one illustration of how the neurotic, while positioning him- or herself in such a way as to avoid being the cause of the Other's *jouissance*, unwittingly sacrifices *jouissance* to the Other nevertheless.¹⁶³

Let us once again return to the concept of an "object" and why the so-called "bonus" can serve as such. The Lacanian object is completely abstract. Fink suggests that the terminology is misleading—a remnant from an earlier stage of Lacanian thought. Rather, I argue, it results from the increasingly philosophical turn in Lacan's thought over time. The late Lacan's definition of "object" reflects that of Kant and Hegel—not a physical "thing" but anything that can be distinguished from the subject himself.¹⁶⁴ Or, perhaps more importantly, in the case of the obsessive, what he believes can be distinguished from the Other.

To recap, early Freudian theory was literal and prospective. It held that if the infant initially did not experience himself as separate from the external world that provided the satisfaction with his needs, his initial experience of individuation required the recognition of a specific external physical object—e.g. the maternal breast.¹⁶⁵ Personality, therefore, comes from object relations with actual physical objects that are substitutes for the breast, the phallus, etc.

Lacanian theory, by contrast, is an account abducted retroactively from the perspective of an adult looking back on an infancy he or she

¹⁶³ FINK, *supra* note 5, at 129.

¹⁶⁴ HEGEL, *PHILOSOPHY OF RIGHT*, *supra* note 58, at 38.

¹⁶⁵ Sometimes even Fink describes this dynamic prospectively in terms of the child's relationship with the breast. *See, e.g.*, FINK, *supra* note 5, at 119.

cannot literally remember. The lost “object,” therefore, is the trace of the imagined (in the technical sense of the term) lost unity with the mOther. The obsessive imagines that he could once again achieve wholeness if he could (re)acquire this trace.

Accordingly, the “object” that the obsessive seeks is not necessarily, or even characteristically, a physical “thing.” It is just that which the subject thinks is external to himself that is missing. The more abstract the “object,” the better it serves this purpose.

I suggested that “money” in the form of the annual “bonus” serves this purpose. It has at least two advantages. First, the bonus is always missing. An *objet petit a* must, by definition, be a missing thing because if one had the thing, one would no longer desire it.¹⁶⁶ If one actually acquired one’s “object,” one would be confronted with the fact that the object does not satisfy. Consequently, one would have to immediately identify another “object” to fulfill this role. Conveniently, the bonus is an object that one never completely acquires. No matter how many bonuses one receives and no matter how large they are, one never completely acquires the bonus. There is always next year’s bonus.

As I have said, the very word “bonus” implies something extra, something more than what exists.¹⁶⁷ The obsessive concern with the “bonus” as opposed to the amount of compensation paid briefly became a cause of amusement in the New York City press during the 2010 bonus season. Apparently, in response to public concern over the bonus system, investment banks chose to raise the base salaries of certain employees in lieu of including them in the year-end bonus pools. Reportedly, despite the fact that the economic position of these “Zeroes” remained the same, they were viewed with contempt by their colleagues (and by themselves) and wandered zombielike through the halls of banks.¹⁶⁸

¹⁶⁶ As Žižek notes:

For Lacan, human desire (in contrast to animal instinct) is always, constitutively, mediated by reference to Nothingness: the true object-cause of desire (as opposed to the objects that satisfy our needs) is, by definition, a “metonymy of lack,” a stand-in for Nothingness. (Which is why, for Lacan, *objet petit a* as the object-cause of desire is the originally lost object: it is not only that we desire it in so far as it is lost—this object is nothing but a loss positivized.)

SLAVOJ ŽIŽEK, *THE TICKLISH SUBJECT: THE ABSENT CENTER OF POLITICAL ONTOLOGY* 107 (1999) [hereinafter ŽIŽEK, *THE TICKLISH SUBJECT*] (footnote omitted). In other words, “the ‘cause of desire’ must be in itself a metonymy of lack—that is to say, an object which is not simply lacking but, in its very positivity, gives body to a lack. . . . a ‘something that stands for nothing’.” SLAVOJ ŽIŽEK, *THE PLAGUE OF FANTASIES* 81 (1997) [hereinafter ŽIŽEK, *PLAGUE*].

¹⁶⁷ See *supra* text at note 131.

¹⁶⁸ According to *The New York Times*, “[e]ven though employees will receive roughly the same amount of money, the psychological blow of not getting a bonus is substantial, especially in a Wall Street culture that has long equated success and prestige with bonus size.” *This Bonus Season on Wall Street, Many See Zeros*, N.Y. TIMES DEALBOOK BLOG (Dec. 20, 2010, 2:03 AM), <http://dealbook.nytimes.com/2010/12/20/this-bonus-season-on-wall-street-many-see-zeros>.

The reason why the obsessive obsessively tries to accumulate his *objet petit a* is precisely because, although the object acts as though it were the cause of his desire, in fact his desire precedes its “cause.”¹⁶⁹ The subject’s true desire is to be *both* whole (to be one with the maternal) and to be a subject (to be an individual recognized by the paternal), but this is not possible. He is only a subject insofar as he is recognized as such by others. This means that the obsessive’s true desire is the same as the hysteric’s—the desire of the Other. Consequently, when the subject acquires the object that he imagines causes his desire, his desire continues and increases. The obsessive, who will not admit his emptiness, tries and tries again to convince himself and others that he is whole. He wants to convince himself that he does not need others, by outdoing others.

We saw this dynamic in the *Trader Monthly* article discussed above.¹⁷⁰ The obsessive trader wants a \$300,000 turntable, not because he needs a turntable, but because he wants to give the other traders a big middle finger, as though this phallic display could prove that he has the phallus. This is not, however, the pop-culture point that men want to prove that “his” is bigger than his rivals. Rather, the turntable is a weapon, with which the obsessive can bludgeon his rival.

In the words of Alenka Zupančič:

the *objet petit a* designates nothing but the absence, the lack of the object, the void around which desire turns. After a need is satisfied, and the subject gets the demanded object, desire continues on its own; it is not “extinguished” by the satisfaction of need. The moment the subject attains the object she demands, the *objet petit a* appears, as a marker of that which the subject still “has not got,” or *does not have*—and this itself constitutes the “*echte*” object of desire.¹⁷¹

Second, the obsessive’s pursuit of his object is an attempt to obliterate others. In contrast with what neoclassic economics preaches, the obsessive does not seek money for the sake of consumption. To the obsessive, the point is the accumulation of points.

The obsessive tries to maximize wealth, rather than utility. Paradoxically, the obsessive who asserts his independence from the Other *always* ends up living for the Other. In Lacan’s words: “‘Everything for the other’ says the obsessive, and that is what he does, for being in the

¹⁶⁹ As Žižek says, “[t]he paradox of desire is that it posits retrospectively its own cause, i.e., the object *a* is the object that can be perceived only by a gaze ‘distorted’ by desire, an object that *does not exist* from an ‘objective’ gaze.” ŽIŽEK, *LOOKING AWRY*, *supra* note 100, at 12.

¹⁷⁰ See *supra* text at notes 22–23.

¹⁷¹ ALENKA ZUPANČIČ, *ETHICS OF THE REAL: KANT, LACAN* 18 (2000).

perpetual whirlwind . . . of destroying the other, he can never do enough to ensure that the other continues to exist.”¹⁷²

He only exists through his endless competition with the Other. Fink asserts that

[i]n a sense the obsessive . . . lives for “Posterity” and not for today [he] transfers all *jouissance* to the OtherThe obsessive lives posthumously, sacrificing everything (all satisfaction in the here and now) for the sake of his name—having his name live on. The name . . . is in some sense the Other who passes on the law and whose *jouissance* is ensured by the obsessive’s accumulation of publications, titles, money, property, awards, and so on.¹⁷³

The reason why he keeps asking himself whether he is alive or dead is because he unconsciously understands that he lives his life as though he were always already dead.

In other words, the obsessive ceaselessly acts out a spectacle for others because he only knows himself as alive through the Other’s applause. His objects serve as props that he desperately juggles to get his audience’s attention.

An obsessive is unwilling or unable to admit to his problem because to do so would betray his fantasy that he is whole and that he does not need others. Unlike the hysteric, the obsessive does not seek treatment. The obsessive only sees his problem when he is forced to confront the dependence on the Other that he desires.¹⁷⁴ A typical example is when an obsessive loses his job, or his business fails.¹⁷⁵ Of course, the problem with the trader culture only was recognized when the real estate bubble burst. This event, which awakens him to the demands of the Other, “hystericizes” him.¹⁷⁶

When the obsessive has a break, he feels like a fake, a pretender—which is precisely what he is. Ultimately, like Shakespeare’s great obsessive, Macbeth, he realizes that the reason he “struts and frets his hour on the stage” is because he “signifies nothing.”¹⁷⁷ He has lived his life posthumously, he is always already dead. In Wall Street parlance, he is a “Zero.”

Nevertheless, the obsessive, who believes that he should be a master of the universe, rarely initiates analysis on his own. That would be to admit publicly that he is a fake, a split subject who needs others. It would require the type of self-criticism that he desperately tries to

¹⁷² Quoted in FINK, *supra* note 5, at 118.

¹⁷³ *Id.* at 129.

¹⁷⁴ *Id.* at 131 (“The obsessive is shaken up by such manifestations of the Other’s desire, and can no longer successfully nullify or neutralize the Other and his dependence on the Other.”).

¹⁷⁵ Which is the example that Fink gives in the case analysis he presents of an archetypical obsessive. *Id.* at 135.

¹⁷⁶ *Id.* at 131.

¹⁷⁷ WILLIAM SHAKESPEARE, *MACBETH* act 5, sc. 5.

avoid. Rather, he tends to go because someone in his life insists that he try it. In this case, the only person who could do this is the state, in the form of the Fed, the SEC, or whatever.

Even within analysis, the obsessive resists analysis.¹⁷⁸ He does not want to change and give up his insistence on being whole. He does not want to become cured of his obsession, he wants the pretense of obsession to be reinstated. Consequently, his “hysterization is fragile and short-lived; the obsessive often reverts quite quickly to shutting out the Other and denying any kind of dependence.”¹⁷⁹ The obsessive tries to take over his analysis. He becomes the expert, “to talk on and on, to associate and interpret all by himself, paying no heed to the analyst’s punctuations or interpretations.”¹⁸⁰ There is no real attempt to confront his internal reality, merely to formulate a canned response.

This, of course, raises the problem of “too big to fail.” The paradox of a bailout is that although on the one hand it demonstrates to others how every firm and trader in the financial industry is dependent on others—both other firms and the government—by allowing firms to continue in business, it allows them to maintain the fantasy that they are separate from others. Bonuses have been reinstated because bankers once again believe that they deserve to eat what they kill. During the crisis, venerable investment banks such as Goldman reorganized as bank holding companies. Now, as soon as the immediate crisis seems to be over, the industry is fighting any meaningful regulatory reform that might forestall the next crisis.¹⁸¹

Successful analysis of an obsessive analysand requires that his hysterization be prolonged, that his subjectivity be restructured from an position that sees only the object of desire, and does not merely ignore, but actively tries to destroy the Other, to a position that actively seeks to understand the Other’s desire.

In 2009 and 2010 “traders” attempted to address public outrage over the bonus culture by paying a large percentage of bonuses in the form of stock as opposed to cash.¹⁸² The hope was that this might better

¹⁷⁸ FINK, *supra* note 5, at 130. Even when he “realizes he has problems [he] engages only in ‘self-analysis,’ keeping a journal, writing down his dreams, and so on.” *Id.*

¹⁷⁹ *Id.* at 131.

¹⁸⁰ *Id.*

¹⁸¹ As widely reported in the press, the investment banking industry, which donated generously to the Obama campaign and the Democratic party during the height of the crisis in 2008, experienced “buyer’s remorse” and contributed to the Republicans in the 2010 congressional elections. *See, e.g.*, David D. Kirkpatrick, *Irked, Wall St. Hedges Its Bet on Democrats*, N.Y. TIMES, Feb. 8, 2010, at A1.

¹⁸² *See, e.g.*, Graham Bowley, *Wall Street '09 Bonuses Increase 17% to \$20 Billion*, N.Y. TIMES, Feb. 24, 2010, at B8; Graham Bowley & Eric Dash, *Goldman Chief's \$9 Million Bonus Seen by Some as Show of Restraint*, N.Y. TIMES, Feb. 6, 2010, at B1; Eric Dash, *Top Pay List for Bankers: Fresh Names*, N.Y. TIMES, Feb. 11, 2010, at A1; Nancy Cook, *The Bonus Babies are Back*, NEWSWEEK (Jan. 21, 2010, 7:00 PM), <http://www.newsweek.com/id/231892>.

align the traders' incentives with the interests of shareholders, the investment public, the government, or the citizenry in general. This may or may not be true. In my analysis, this change in the material form of the "object" is irrelevant to the dynamics of obsession.

The psychoanalytical approach is slightly, but crucially different. The issue is whether changes in the bonus practices can restructure the trader culture to make it more hysteric in the sense of making traders admit to themselves and accept their dependence on others.

Some changes in 2010 bonuses—such as paying bonuses in restricted stock—was a step in this direction. But incentives are about better aligning the interests of traders with the longer-term interests of the stockholders of their employers. However, so long as most compensation is based on providing traders with the individual bonus that is the obscure object of their desire, rather than on obligations to the Other—whether in the forms of the firm or society—firms encourage obsessional behavior.

V. MORALITY V. EVIL

A. *Radical Evil*

The archetypical trader is an obsessive who identifies his bonus as his *objet petit a* and experiences money as the cause of his behavior, which, at the extremes, is not only self-destructive but destructive of others. But, is money then the root of all evil?

At the beginning of this Article, I referred to the fact that the common adage mistranslates St. Paul's condemnation of the *love of money* in such a way as to shift attention away from the subject of sin to its object.¹⁸³ It is this attempt to exonerate the sinner from responsibility that is pernicious. This is precisely the obsessive move that makes the *objet petit a* the cause of a preexisting desire. Immanuel Kant would say that this move is *radically* evil. In his seventh seminar entitled *The Ethics of Psychoanalysis*,¹⁸⁴ Lacan implicitly suggested that he would agree.

Kant identified three forms of radical evil.¹⁸⁵ By radical, he did not mean an extraordinary or demonic evil,¹⁸⁶ or another form of particularly heinous sin. Rather, he was referring to the often banal evil that lies

¹⁸³ See *supra* text at note 1.

¹⁸⁴ See *supra* note 26.

¹⁸⁵ IMMANUEL KANT, RELIGION WITHIN THE BOUNDARIES OF MERE REASON 117 (Allen Wood ed., George Di Giovanni trans., 1998) [hereinafter KANT, RELIGION].

¹⁸⁶ The association of the term "radical evil" with demonic evil probably comes from Hannah Arendt's attempt to distinguish banal evil. HANNAH ARENDT, EICHMANN IN JERUSALEM: A REPORT ON THE BANALITY OF EVIL (1963).

at the root (*radix*) of human nature and keeps any of our actions from being purely moral.¹⁸⁷ It is the philosophic analog to the theological concept of Original Sin—a fundamental corruption that underlies our best efforts to be holy.

To oversimplify, Kant thought that morality required that one act purely out of duty to the moral law.¹⁸⁸ To do this, one must act as an autonomous, rational person, free from external pressures, or “pathology.”¹⁸⁹ This is a broad term that includes all empirical considerations including our emotions. (Kant goes so far as to say that if one feeds a starving child out of compassion the act might be good, but it would not be moral because it is not done purely out of duty.¹⁹⁰) Because no man can fathom the depths of his own soul,¹⁹¹ no one can ever be completely sure of his own motive and know whether he is acting out of morality or pathology. This is why Lacan thought that Kant, and not Freud, was the father of psychoanalysis.¹⁹²

The three forms of radical evil are lies we tell ourselves in order to try to justify deviations from morality and indulgence in pathology. The most serious form of radical evil is the hypocrisy of “wickedness.”¹⁹³ The wicked makes no honest attempt to discover the moral law but tells himself that the moral law just happens to coincide with his desires. This allows him to indulge in his pathology while insisting all along that it pains him to do so—he is only following his duty.

The second and less serious radical evil is “impurity.”¹⁹⁴ The impure subject recognizes his duty to the moral law and understands that its dictates are distinct from his pathological inclinations. Nevertheless, he seeks a strategy so that he can have his cake and eat it too—indulge his pathology while purportedly obeying the moral law. He does this by disingenuously interpreting the law narrowly in order to find loopholes

¹⁸⁷ KANT, RELIGION, *supra* note 185, at 59 (“This evil is *radical*, since it corrupts the ground of all maxims; as natural propensity, it is also not to be *extirpated* through human forces.”).

¹⁸⁸ IMMANUEL KANT, CRITIQUE OF PRACTICAL REASON 38, 93, 102 (T.K. Abbott trans., 1996) [hereinafter KANT, PRACTICAL REASON]; Jeanne L. Schroeder & David Gray Carlson, *Kenneth Starr: Diabolically Evil?*, 88 CALIF. L. REV. 653, 671–72 (2000) (reviewing multiple works of Slavoj Žižek).

¹⁸⁹ Kant’s term “pathology” does not have the conventional connotation of diseased. Rather, it refers to our emotions, desires, instincts, and any other empirical motivation we might have for action other than duty to the moral law. SCHROEDER, FOUR DISCOURSES, *supra* note 50, at 80–83; ZUPANČIČ, *supra* note 171, at 7.

¹⁹⁰ HENRY E. ALLISON, KANT’S THEORY OF FREEDOM 186 (1990); Schroeder & Carlson, *supra* note 188, at 671.

¹⁹¹ IMMANUEL KANT, THE METAPHYSICS OF MORALS 196 (Mary Gregor ed. & trans., 1996) (“The depths of the human heart are unfathomable.”).

¹⁹² Indeed, according to Žižek, Lacan identifies the *Critique of Practical Reason* as the “birth of psychoanalysis.” ŽIŽEK, FOR THEY KNOW NOT WHAT THEY DO, *supra* note 112, at 229.

¹⁹³ KANT, RELIGION, *supra* note 185, at 54; Schroeder & Carlson, *supra* note 188, at 653, 675–77.

¹⁹⁴ KANT, RELIGION, *supra* note 185, at 53–54. I have called this elsewhere “legalism.” Schroeder & Carlson, *supra* note 188, at 675–76.

that would permit him to follow his pathological inclinations. That is, he tells himself that he is obeying the law when he is really just trying to skirt the law. He tries to avoid the spirit of the law by parsing its letter.

The final, most venal, and perhaps most common radical evil is “frailty,” or weakness of the will.¹⁹⁵ The frail subject may know in his heart that he does wrong, but claims that he couldn’t help himself. The spirit is willing but the flesh is weak. The devil made me do it. Money, rather than my love of money, is the root of my evil. Kant believes that regardless of the degree of temptation or coercion, one always chooses one’s actions and bears moral responsibility for one’s failures. Consequently, he insisted that “you can because you must.”¹⁹⁶ Frailty is the characteristic radical evil of neuroses, generally, and obsession, specifically.

To understand this, let us return yet again to the psychoanalytic account of individuation.

B. *Forced Choice*

Lacanian ethics is heavily influenced by Kantian ethics. The vulgarized notion of psychology is victimology—I am the product of my upbringing and, therefore, somehow not fully culpable for my behavior. Lacanianism rejects this as psychobabble.

As we have seen, subjectivity is created by submitting to the paternal law—the “incest taboo.”¹⁹⁷ As Freud makes clear, this primal law is not a command, but a social contract.¹⁹⁸ We do not merely obey the law, we agree to it. Freud seems to have understood this in terms of a utilitarian-type bargain.¹⁹⁹ The child agrees to the social contract because he believes that by doing so he will achieve greater happiness. The loss of direct access to the mother and the repression of one’s polymorphously perverse infantile desires is initially painful, but the child is compensated by the pleasures of maturity and the more satisfying relationships of marriage and parenthood.

Lacan rejects such romantic notions.²⁰⁰ The child experiences the achievement of subjectivity as painful—this is one reason it is called

¹⁹⁵ KANT, RELIGION, *supra* note 185, at 53.

¹⁹⁶ See SLAVOJ ŽIŽEK, THE METASTASIS OF ENJOYMENT: SIX ESSAYS ON WOMAN AND CAUSALITY 99–100 (1994).

¹⁹⁷ See *supra* text at notes 105–112.

¹⁹⁸ FREUD, M & M, *supra* note 107, at 103–04.

¹⁹⁹ See *supra* text at note 111–112.

²⁰⁰ In Žižek’s words:

Lacan rejects all usual attempts to . . . present it as a “reasonable” decision which provides a greater amount of long-term pleasure . . . contrary to Lacan for whom the prohibition of incest is unconditional, since it is radically unaccountable. In it, I give

castration. Freud seems to assume that subjectivity has some affirmative content that will make up for the loss of the fantasy of unity with the mother. For Lacan, subjectivity and freedom are abstract and negative. To become individuated and recognizable as a subject is to become alienated, lonely, and tormented by desire. Consequently, the bargain that society offers the child is questionable at best. It has its consolations—individuation allows us to love, desire allows us to create, the cut of castration leaves us unbounded and free. Nevertheless, Mick Jagger is right: we “can’t get no satisfaction.”²⁰¹

Nevertheless, Lacan agrees with Freud that subjectivity is a legal status created by contract. The child cannot become an adult subject unless he accepts an offer made in the father’s name. If the bargain is so questionable, why do most of us accept it?

Because it is a forced choice.²⁰² The paternal bargain is the Godfather’s offer you can’t refuse.²⁰³ Lacan uses the analogy of the hold-up man’s offer of your money or your life.²⁰⁴ The child experiences his parents as so overwhelmingly powerful that he tells himself that cannot hold up against their bargaining power.

The existence of psychotics, however, *reveals that we are lying to ourselves*—we could have refused the paternal offer. A psychotic is a person who never exits the mirror stage. He does not merely refuse to accept the paternal offer. He “forecloses” (refuses to even acknowledge) the very possibility of the paternal function and the symbolic order so that he might retain his dualistic, imaginary relationship with the maternal.²⁰⁵ The rest of us who gave in to the paternal bargain because we claim we had no choice, reveal the radical evil of frailty. The psychotic, by contrast, never swerves from what he believes is right. As such, from a Kantian perspective psychosis is created by a purely moral act.

However, just as the brave soul who, in Lacan’s example, refuses the gunman’s bargain loses *both* his money and his life, the psychotic pays dearly for his moral stance with insanity. In other words, if the reward the symbolic order offers the child for accepting its bargain is inadequate to compensate for his sacrifice, the consequences to the infant of not accepting it are dire.

something in exchange for nothing—or (and therein consists its fundamental paradox) in so far as the incestuous object is in itself impossible, I give *nothing in exchange for something* (the “permitted” non-incestuous object).

ŽIŽEK, FOR THEY KNOW NOT WHAT THEY DO, *supra* note 112, at 230–31.

²⁰¹ Mick Jagger & Keith Richards, (*I Can’t Get No*) *Satisfaction*, on *OUT OF OUR HEADS* (London Records 1965).

²⁰² In Miller’s words, “Lacan defines alienation as a ‘forced choice.’” Miller, *supra* note 113; see also ŽIŽEK, THE TICKLISH SUBJECT, *supra* note 166, at 18–19, 90–98, 298–99.

²⁰³ THE GODFATHER (Paramount Pictures 1972).

²⁰⁴ LACAN, SEMINAR XI, *supra* note 99, at 212.

²⁰⁵ FINK, *supra* note 5, at 79–82.

The classic M’Naghten test sees insanity as the inability to know the difference between right and wrong.²⁰⁶ To a Lacanian, this gets the test backwards. Although the normal neurotic knows that there is a difference between right and wrong, he is never completely sure which is which. He keeps asking the Big Other what it wants of him, but it never answers.²⁰⁷ Morality is born from uncertainty in the sense that it is the precondition of free will. In Kant’s tragic metaphor, if we could actually see the mind of God and know what our duty was, we would not become moral. Rather, we would be mere automatons.²⁰⁸ Our actions would have no moral purchase because there would be no choice.

This is the position of the psychotic. The psychotic always “knows.”²⁰⁹ Indeed, God frequently speaks directly to him.²¹⁰ Paradoxically, therefore, although the psychotic’s rejection of the paternal bargain is itself an ethical act, it leaves him incapable of acting ethically in the future.

The goal of psychoanalysis is personal responsibility.²¹¹ Consequently, although the neurotic’s choices may have been “forced” upon him by his parents, they are nevertheless always choices. The subject, therefore, bears *and deserves to bear* ethical responsibility for these choices. Indeed, perhaps this is why Freud, despite his tendency toward determinism, stated that one must take responsibility even “for the evil impulses of one’s dreams. What else is one to do with them?”²¹²

C. *Obsession and Hystericization*

If the process of individuation, generally, reflects the radical evil of frailty, then the obsessional response is a specific example. The obsessive refuses to take responsibility for his subjectivity. He refuses to face the fact that he is nothing but the desire that is the desire of the Other. Rather, he insists that he desires because of the object that he chooses to act as the object cause of his desire. By deflecting his desire from his soul to an imagined cause, he makes money not the root of *all* evil, but makes it act like the cause of a very specific evil.

²⁰⁶ M’Naghten’s Case, (1843) 8 Eng. Rep. 718 (H.L.).

²⁰⁷ SCHROEDER, FOUR DISCOURSES, *supra* note 50, at 166. In Lacan’s words, “[c]ertainty is the rarest thing for the normal subject.” LACAN, SEMINAR III, *supra* note 99, at 87.

²⁰⁸ KANT, PRACTICAL REASON, *supra* note 188, at 123.

²⁰⁹ FINK, *supra* note 5, at 84–85.

²¹⁰ *Id.* at 84.

²¹¹ Perhaps this is why Lacanians believe that although they can be treated, psychotics cannot be cured. *Id.* at 82.

²¹² SIGMUND FREUD, SOME ADDITIONAL NOTES UPON DREAM-INTERPRETATION AS A WHOLE (1925), *quoted in* Ernst Lewy, *Responsibility, Free Will, and Ego Psychology*, 17 INT’L J. PSYCHOANALYSIS 260 (1961).

By doing so, the obsessive avoids confronting himself and others. He can tell himself that he is *homo economicus*—the rational individual who logically follows incentives and chooses the best means to achieve his pre-given ends. His morality is reduced to utilitarianism.

Consequently, the behavior that led to the market meltdown may be completely understandable within classic economic analysis and Lacanian psychoanalysis, without any reference to behavioral theory. The trader culture has chosen money in the form of “bonuses” as its *objet petit a*. The trader’s life, which means the business of trading, revolves around finding the best means of achieving the bonus per se rather than engaging in any productive activity. The obsessive concentrates on his *objet petit a* as a way of avoiding his dependence on, and responsibility to, others. It is hardly surprising, then, that the trader enters into deals that generate bonuses regardless of the risk imposed on his firm and the possible losses to its shareholders.

This is absolutely economically rational given the trader’s choice of maximand. But, is this ethical?

In *The Ethics of Psychoanalysis*, Lacan suggests that the only ethical rule that psychoanalysis can offer is: do not give way with respect to your desire.²¹³ At first blush, this might seem like the antithesis of ethics: indulge in your pathology or solipsism. Specifically, it might seem to be an endorsement of obsession: chase after your *objet petit a*. On further reflection, it means quite the opposite. The injunction not to give way with respect to one’s desire, does not mean to give *in* to one’s pathologies.

The true desire is not the *objet petit a*. The only way the obsessive can be true to his true desire is to give up his obsession with the *objet petit a*, and turn his attention to the Other that the obsessive has in the past tried to deny and destroy. Consequently, just as Lacan insisted that the first stage of psychoanalyzing an obsessive consists of hystericizing the analysand,²¹⁴ hystericization is also the first moral step for an obsessive. Consequently, I have argued extensively that legal ethics requires that the attorney who represents clients must take on the feminine position of hysteria.²¹⁵

In the business world, hystericization would mean recognizing one’s dependence on, and responsibility for, others, at least within one’s own firm. This sense of acting as though one did not have a self is pre-

²¹³ LACAN, SEMINAR VII, *supra* note 26, at 319.

²¹⁴ FINK, *supra* note 5, at 130–31.

²¹⁵ SCHROEDER, FOUR DISCOURSES, *supra* note 50, at 154–60; Jeanne L. Schroeder, *The Four Discourses of Law: A Lacanian Analysis of Legal Practice and Scholarship*, 79 TEX. L. REV. 15 (2000).

cisely Benjamin Cardozo's definition of fiduciary duty in the seminal case of *Meinhard v. Salmon*.²¹⁶

²¹⁶ 249 N.Y. 458 (1928).