

TAKING RIGHTS SYMPTOMATICALLY

Jouissance, coupure, objet petit a

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This article seeks to re-theorise the notion of rights. Through the concepts of enjoyment, loss, displacement and non-identity as viewed through various postmodern discourses, the discussion argues that a non-enjoyment of rights is in fact their very enjoyment.

Introduction: Enjoy Your Symptom of Rights!

The central claim made by this article echoes one of the most orthodox injunctions of bourgeois-liberal legalism: namely, that we enjoy our rights! But the basis for this injunction is anything but orthodox; indeed, it is this article's intention to re-functionalise rights discourse, making it workable for postmodernity by predicating it upon something other than modernity's rights-fetishism. 'Enjoyment', I shall argue, provides that ground. The enjoyment enjoined here, however, must be distinguished from that of canonical rights jurisprudence. That latter 'enjoyment' is largely philosophical, deriving as it does from the 'pursuit of happiness' so prized by the *philosophes* of the Enlightenment. The former notion of enjoyment invoked in this article is, however, psychoanalytic, particularly in the way it gives back in reverse form that which is desired. For if this article urges the postmodern subject to enjoy her rights, then it is because that enjoyment is, ultimately, an enjoyment of non-enjoyment. And it is precisely this *failure* of rights — their very impossibility — which ensures, so I will argue, not only their inevitability but *success*. That success remains vital to this day because, in the wake of socialism's collapse, rights provide one of the few (if not sole) viable counter-hegemonic discourses available under postmodernity, capable of combating either the specious universalism of global Capital or the malignant particularism of a revived nationalism.

Both these universalist and particularist challenges render urgent the need for a re-theorisation of rights, one which this article will develop in four parts. First, *Jouissance* will locate itself at what might be called, with a nod to Derrida, the 'scene of righting': that is, at the site of rights'

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contemporary inscription, dissemination and critique. It is, however, with the last part of this process — critique — that I am most concerned in here because, more than any other interpretive operation, critique dramatises the circulation of enjoyment in the discursive economy of rights, particularly in its preferred hermeneutical move of proclaiming the ‘theft of enjoyment’. The next part (*‘Coupure’*) will complicate this notion of enjoyment, stolen or otherwise, in rights discourse. I will argue here that what may, in fact, distinguish rights is not so much enjoyment as what Lacan would call its ‘lack’.¹ This lack of enjoyment, I will contend, is the result of rights’ status as a signifier which, having been invested with signification’s executory force of *coupure*, cuts enjoyment from rights discourse by dispatching its libidinal source: namely, the *body* of the law. In *‘Objet Petit A’*, I will demonstrate how this enjoyment is not so much replaced by ‘lack’ as displaced by it. For enjoyment returns, restored by the language of rights in its construction of revived body of law organised around the fantasmatic *objet petit a*.

This return of repressed enjoyment points, structurally, to the article’s overriding and connecting thematic device: namely, the symptom. The leit-motiv of the symptom runs throughout each of the article’s parts, knotting them together, organising *their* enjoyment, nowhere more so than when it proclaims its superegoic injunction *‘Jouis!’* (‘Enjoy!’). And what this article urges all to enjoy is the *symptom* of rights. For rights *are* symptomatic; no matter how much liberals may wish them ‘pure’, they come stained by enjoyment: the enjoyment released by Capital and its hysterical excesses, either in its 19th-century national formation (the Marxist paradigm) or its 20th-century global formation (the postmodern paradigm). Now to enjoy this symptom may strike one as counter-intuitive, even downright dangerous — like loving one’s disease. After all, isn’t the symptom a sign of illness to be ‘worked through’ rather than enjoyed? But I shall argue, lastly, against this medical model of diagnosis and prescription, proposing instead the Lacanian-Zizekian alternative of the *sinthome* to that of the symptom. For the former is as much a sign of identification as the latter was of trauma, and, as a *sinthome*, rights hold out the prospect of an identity which, more than any other, has become *the* historical agent of our time, displacing that of the proletariat: that of the rights-bearing citizen-subject. I shall conclude in ‘The Letter Always Arrives’ that this rights-bearing identity is precisely what the decentred, dispersed subject of postmodernity not only desires but also *needs*, providing as it does an identic fulcrum — *point de capiton?* — against which to resist the triumphalist march of the market and global Capital. For rights supply us with some *Thing*, a core of being in us more than ourselves. It does so without falling prey to the static, Imaginary lures of identity politics, and its call and response of ‘my identity, your lack’, because, as a *sinthome*, rights discourse traverses its own fantasy. That is to say, rights supply a being which turns out to be a nothingness, a Thing which is

1 J Lacan (1977d) ‘The Subversion of the Subject and the Dialect of Desire in the Freudian Unconscious’ in *Ecrits: A Selection*, trans A Sheridan, WW Norton, p 320.

actually a fantasmatic object. In so doing, rights hold out the possibility for a politics which goes beyond identity by interpolating an identity of non-identity, the non-enjoyment of which rights enjoins us to 'Jouis!'

Between the Spirit and the Letter of the Law: *Jouissance*

For some time now, the language of rights has been subjected to an elaborate and sustained decoding procedure which some have misrecognised as a 'deconstruction'.² This procedure echoes, in many respects, the much earlier demystifying strategy of the Marxist critique of the law. However, unlike Marxist demystification which read rights *referentially* (as mediated expressions of ruling class power), this procedure reads rights *discursively*: as an act of translation, re-inscribing one discourse (rights) into that of another (usually, politics). But unlike other acts of translation in which something is ordinarily lost (be it euphony, nuance or sense), here something is gained, a surplus, what Derrideans might call a 'dangerous supplement'.³ In fact, what this discursive re-inscription of rights exposes is a *spirit* lurking behind the letter of the law, an 'imp of the perverse' which mocks the stately forms of the Symbolic Order, particularly the claims to transhistorical universality of its legal *point de capiton*:⁴ 'rights'. This spirit is what Žižek would call 'a remainder of the Real',⁵ what Lacan would call *jouissance*⁶ — or, more directly, 'enjoyment'.

Enjoyment saturates rights. By 'enjoyment', I mean that dark and driving force which Lacanian psychoanalysis, *inter alia*, has called *jouissance*, the libidinal energy of which defines the limits of the Symbolic, though nonetheless continues to cling to it, staining its signifiers. It is this enjoyment which smears rights discourse — or so the procedure of decoding finds. And this finding links the procedure (what might be called 'discourse analysis') with that of demystification (and the Marxism that deploys it). For in both modalities, rights are revealed as particular rather than universal, as a discourse 'enjoyed' by the one at the expense of the many. So, for example, the first generation of American critical legal studies, the 'Crits' of the 1970s, equated rights with the discourse of political power, and its enjoyment by, *inter alia*, the propertied *bourgeoisie*.⁷ Similarly, the second-generation

2 A term of art inaccurately equated in legal circles with 'trashing': M Kelman, 'Trashing' (1984) 36 *Stan LR* 293.

3 P Fitzpatrick (1991) *Dangerous Supplements: Resistance and Renewal in Jurisprudence*, Pluto Press. Derrida's notion of the supplement is most fully developed in 'The Double Session' in J Derrida (1981) *Dissemination*, trans B Johnson, University of Chicago Press.

4 J Lacan (1993) *The Psychoses 1955-1956: The Seminar of Jacques Lacan*, Book III, ed J-A Miller, trans R Grigg, Routledge.

5 S Žižek (1996) *The Indivisible Remainder*, Verso.

6 J Lacan (1982a) 'God and the *Jouissance* of the Woman' in J Mitchell and J Rose (eds), J Rose (trans) *Feminine Sexuality*, Macmillan.

7 See, for example, P Gabel, 'The Phenomenology of Rights-Consciousness and the Pact of the Withdrawn Selves' (1983-84) 62 *Tex LR* 1563; S Lynd, 'Communal Rights' (1983-84) 62 *Tex LR* 1417; A Hutchinson and P Monahan,

feminist school, the 'Femcrits' emergent in the United States in 1980s, identified rights with the discourse of phallic power and its enjoyment by, principally, the patriarch.⁸ Indeed, this exposure of enjoyment has become so pervasive and routine of late that a third generation of critical legal theory in the United States, the Critical Race Theorists of the 1990s, has now organised around the issue of race.⁹ They have argued, implicitly, that the real enjoyment at stake here is the enjoyment of the procedure of decoding itself, one carried out by a small group of so-called 'oppositional' academics — all products, ironically, of the linguistic, racial and class dominant — whose rights iconoclasm ignores the very real advantages (enjoyment?) which this discourse has, on occasion, proffered minority groups.

By shifting the emphasis here to the act of decoding itself, Critical Race Theory implies that what is really at issue in the critique of rights is not so much the object (rights) and the enjoyment with which it is saturated, as it is the subject (the decoder), intent on exposing, and thereby enjoying, what Žizek would call a 'theft of enjoyment' by one subject at the expense of the others.¹⁰ Accordingly, the not-so-hidden agenda of critique is a re-appropriation of enjoyment of and by the decoding subject in the very act of decoding. This act of decoding does more, however, than simply expose an ontology of enjoyment (eg that of the bourgeois, the patriarch or the coloniser) lurking behind the supposedly rational, deontic logic of rights; it effects, as well, a re-ontologisation of rights by decentring the hitherto dominant subject so that new subject-positions may emerge in rights discourse, including one, incidentally, (re)centred around the decoding subject itself. So, for example, both the Crits and the Femcrits propose 'reconstructive' agendas, consequent upon their 'deconstructive' critiques which reorganise enjoyment around a new subject-position, the axiology of which inverts the values of the old position. With the former, critical agenda, the enjoyment of socialist solidarity suffuses rights discourse, displacing that of bourgeois-liberal individualism, while with the latter, feminist agenda, the enjoyment of gynocentric connection permeates rights discourse rather than that of androcentric autonomy.

In organising enjoyment to such an extent, rights discourse comes to resemble nothing less than what Lacan called the *sinthome*, a neologism

'The Rights Stuff: Roberto Unger and Beyond' (1983–84) 62 *Tex LR* 1477; and M Tushnet, 'An Essay on Rights' (1983–84) 62 *Tex LR* 1363.

- 8 C MacKinnon, 'Feminism, Marxism, Method and the State: An Agenda for Theory' (1982) 7 *Signs* 227; C MacKinnon, 'Feminism, Marxism, Method and the State: Toward Feminist Jurisprudence' (1983) 8 *Signs* 635. See also F Olsen, 'Statutory Rape: A Feminist Critique of Rights Analysis' (1984) 63 *Tex LR* 387.
- 9 P Williams, 'Alchemical Notes: Reconstructing Ideals from Deconstructed Rights' (1987) 22 *Harv CR-CL LR* 401. See also K Crenshaw, 'Race, Reform and Retrenchment: Transformation and Legitimation in Anti-Discrimination Law' (1988) 101 *Harv LR* 7; and R Delgado, 'The Ethereal Scholar: Does Critical Legal Studies Have What Minorities Want?' (1987) 22 *Harv CR-CL LR* 301.
- 10 S Žizek (1993) 'Enjoy Your Nation as Yourself' in *Tarrying with the Negative: Kant, Hegel and the Critique of Ideology*, Duke University Press, p 206.

combining 'Saint Thom(as Aquinas)', 'synthesis' and, especially, 'symptom'.¹¹ I stress the last etymological ingredient because the *sinthome* is the Lacanian version of the Freudian symptom. The latter, though, was a somatic sign of repressed psychic trauma, while the former has been re-functionalised as enjoyment's structuring device, binding its centrifugal force, knotting its energy. It is this structuring of enjoyment which, according to Žizek, supplies subjectivity with a 'substance';¹² and it is with this symptomatic substance that the Lacanian subject ultimately identifies and through which that subject, ultimately, takes on identity. Hence, the Žizekian injunction to 'Enjoy your symptom!'.¹³ In other words, identify with that symptom and, through that identification, assume an identity. Surely there is no clearer illustration of such symptomatic identification under the regime of global Capital than rights discourse, the enjoyment of which increases, paradoxically, the 'more seriously' it is taken. And, strangely, the more seriously we are urged to take rights, the less serious (or efficacious) they become, as if there were some law of inverse proportion governing the relationship between their functionality and dissemination. In short, the less they work, the more symptomatic rights become, locking themselves into a cycle of hysterical overproduction as they endlessly expand their ambit, colonising and inhabiting not only persons but animals, the environment and even the realm of the inanimate (eg artwork, technology etc).

Though rights discourse comes to occupy the place of what Žizek, following Lacan, has called the 'ideological *sinthome*',¹⁴ it retains something of its Freudian function because it does more than just supplying something (eg an identity, substance or enjoyment). Rather, like the classic symptom, rights signal that something is missing; they signify, in a highly coded form, a gap, an interruption in communication. For the symptom, as Freud understood it, was basically a message, however scrambled and somatised, arising from a break in the signifying chain instigated by the trauma of the Real and repressed in the unconscious.¹⁵

Now given such an aetiology, one might well ask what trauma does rights discourse signify in symptomatic form? The answer to this question may lie in the very insistence with which this discourse enjoins one to

11 J Lacan (1987) 'Joyce le Symptome' in *Joyce avec Lacan*, Navarin. See also S Žizek's entry for (1992b) 'Symptom' in E Wright (ed) *Feminism and Psychoanalysis: A Critical Dictionary*, Blackwell.

12 S Žizek (1989a) 'Not Only as Substance, but Also as Subject' in *The Sublime Object of Ideology*, Verso, p 226.

13 S Žizek (1992a) *Enjoy Your Symptom! Jacques Lacan In Hollywood and Out*, Routledge.

14 S Žizek (1991b) 'The Ideological *Sinthome*' in *Looking Awry: An Introduction to Jacques Lacan through Popular Culture*, MIT Press, pp 137-46.

15 S Freud (1995) 'Symptomatic and Chance Actions' from *Psychopathology of Everyday Life* in AA Brill (trans and ed) *The Basic Writings of Sigmund Freud*, Modern Library.

'Enjoy!' (or 'I have my rights!'). The repetitive, indeed compulsive, nature of this imperative suggests, by the reverse logic of 'protesting too much', that there may be no enjoyment saturating rights, no spirit permeating the letter of the law. Enjoyment, then, and its penetration of rights discourse may function as a kind of 'screen memory',¹⁶ constructing a fantasy of obscene plenitude (an excess of the horrifyingly excremental as much as that of ecstatic transport) when the Real of the unconscious suggests quite the reverse: that is, a record of loss, trauma and emptiness. And this emptying of enjoyment is brought about by nothing less than the Law itself because, to paraphrase Scripture, the letter of the law kills its spirit.¹⁷

The Cutting Edge of the Letter of the Law: *Coupure*

How does the letter kill the spirit?¹⁸ Or to rephrase the question in a more psychoanalytic though no less metaphoric vein, how does the Law 'evacuate'¹⁹ enjoyment from rights? The answer which this article proposes is simple enough: through, as the Lacanians would say, a *coupure* — a cut.²⁰ The Law *cuts* enjoyment from rights, thereby displacing *and* realising the castration anxieties which haunt the psychoanalytic subject onto the juridical subject.²¹ This cut executed by the Law, however, can be distinguished from the one threatened by the castration complex. There, the object under threat was the penis — or, more figuratively, the phallus —, the excision of which, by its very anatomical nature, would activate only *male* anxieties. Here, however, what is cut is far more generalised and implicates, as I have argued elsewhere, both sexes.²² That object is nothing less than *the body itself*, the *ding-an-sich* of all being, the site of enjoyment, which is cut by the Law's dissection of rights.

From where, though, one might well ask, does the Law acquire its 'cutting edge' in the first place? Particularly an edge with enough sharpness to dispose of the body? I would like to suggest that the source of this *coupure* is the *letter* of the Law itself, its edge whetted and honed by its formal status

16 S Freud (1959) 'Character and Anal Eroticism' from *Jensen's 'Gradiva' and Other Works* in *The Complete Psychological Works of Sigmund Freud*, trans J Strachey, Hogarth, vol 9, p 167.

17 2 Cor 3: 3–6.

18 Parts of this section are indebted to (but also depart from) similiar arguments made in an earlier article of mine: W MacNeil, 'Law's *Corpus Delicti*: The Fantasmatic Body of Rights Discourse' (1998) 9 *Law & Critique* 1.

19 J-A Miller (1991) 'Language: Much Ado About What?' in E Ragland-Sullivan and M Bracher (eds) *Lacan and the Subject of Language*, Routledge, pp 30, 34.

20 J Lacan (1974) *Télévision*, Editions du Seuil, p 16. See, eg, M Dolar, 'I Shall Be With You on Your Wedding Night: Lacan and the Uncanny' (1991) 58 *October* 6, p 13.

21 See, eg, E Ragland-Sullivan (1991) 'The Sexual Masquerade: A Lacanian theory of difference' in E Ragland-Sullivan and M Bracher (eds) *Lacan and the Subject of Language*, Routledge, p 61.

22 MacNeil (1998).

as language. To state that the Law is language, however, is to say nothing particularly novel. In fact, such a claim is echoed throughout much of traditional jurisprudence, particularly positivism.²³ These echoes, however, are just that: resonances which trail off, leaving little or no lasting effect because the conception of language (and, ultimately, of the Law) advocated here differs markedly from that of positivism (and, indeed, most of mainstream jurisprudence). Positivism, *inter alia*, conceives of the language of the Law as full rather than formal, as a writing system infused by a 'metaphysics of presence':²⁴ specifically, that of the sovereign whose 'spirit' infuses and is self-identical with his or her speech-acts. This article, however, sees the language of the Law — and its privileged idiolect, 'rights', — in terms of an absence rather than a presence: that is, as an empty name, an abstract signifier, the content of which is, as Lacan would say, *lacking*.

Difficulties begin to emerge, however, the further one goes down the path of this Lacanian 'linguistic turn'. They become particularly acute when one goes *beyond* the point where words prevail over things so that they not only determine but displace things: that is to say, when the word actually comes to *substitute* for, rather than render access to, the thing, thereby dislodging the thing, even obliterating it. That obliteration is very tellingly characterised by the Lacanian tradition as a 'murder':²⁵ '*le mot est la meutre de la chose*' or 'the word is the murder of the thing' proclaims Jacques-Alain Miller, echoing Lacan, Kojève and Hegel.²⁶ Now the principal difficulty with this 'murder' is that it is not a victimless crime. Indeed, Lacanian forensics identifies a specifically gendered *corpus delicti*: namely, the *feminine*. It is the maternal body that the Lacanians equates with the murdered thing. In fact, not only is the murdered thing revealed as gendered here, so too is the dispatching word. It has an equally recognisable gendered source: that of the

23 Austin, for one, described the Law in largely linguistic terms, the type of which Saussure would have classified as *parole*: specifically, as an imperative utterance or spoken command. Hence, the sobriquet, 'the command theory of the law' for his theory: J Austin (1954) *The Province of Jurisprudence Determined and the Uses of the Study of Jurisprudence*, Weidenfeld & Nicolson. Bentham, to name another, went even further than Austin in characterising the Law as an 'assemblage of signs', a phrasing proleptic of Saussure and his notion of *langue*: J Bentham (1994) 'Of Laws in General' in MDA Freeman (ed) *Lloyd's Introduction to Jurisprudence*, Sweet & Maxwell.

24 J Derrida (1976) 'Structure, Sign and Play in the Discourse of the Human Sciences' in A Bass (trans and ed) *Writing and Difference*, University of Chicago Press.

25 By naming this act as a murder, Lacan equates the 'linguistic turn' (now revealed as, literally, a 'turn': that is, a trope — of metaphor, of substitution — the word for the thing) with an offense which has been identified throughout history, across a wide array of cultures and in a variety of texts. In the Bible, it is the murder of Abel by Cain: Gen 4:2-17. In *Totem and Taboo*, it is the murder of the primal father by the sons: S Freud (1985) 'Totem and Taboo', trans J Strachey in Albert Dickson (ed) *The Origins of Religion: Totem and Taboo, Moses and Monotheism and Other Works*, Penguin.

26 Miller (1991) p 30.

paternal prohibition, the 'No' to incest of the Oedipal father, *le Nom du Père*. Now this recasting of thing and word in expressly gendered terms (as the Mother's body, as the Father's name), is potentially dire in its consequences for anyone seeking to rehabilitate Lacanian notions of the Law in the service of critique of the gender system. This is because Lacan seems to *exacerbate* rather than de-naturalise the Oedipal complex's gender bias by conflating its *dramatis personae* (Mother, Father) with the word/thing antagonism, transforming the murder of the word by the thing into another story about male violence against women's bodies.

An out and out dismissal of Lacan as phallocratic, phallogocentric or phallogocentric would prove, however, untoward as well as premature, as some critical legal feminists have cautioned. Ann Barron, for one, and Drucilla Cornell, to name another, have both demonstrated amply how valuable and relevant Lacan remains for rethinking the relationship between subjectivity, signification and the Law.²⁷ Each would argue that the Lacanian notion of *coupure*, even though it excises the feminine from the Symbolic, promises a release from an anatomy long held to be destiny. To this way of thinking, it is the biological body, and particularly the maternal body, which supports and sustains a gender system in which the seemingly unalterable facts of physical sexuation are confused with, and prevail over the more malleable units of gender signification. Once delivered by this cut from the 'biologised' maternal body, feminist critique can begin to remake gender roles, as these roles would no longer turn on the anatomical question of who has the vagina and who the penis. Instead, these roles would turn on the more open and, hence, revisable process of identification with a sign.²⁸

Thus, the foreclosure of the maternal body by the Law of the Father's Name should not be read as a defeat of femininity by a triumphant masculinity. Quite the contrary: Lacan's psychoanalysis authorises, as much if not more than Foucauldian historicism, the performativity of gender roles. But I would like to stress that fact that Lacan's value may lie not so much in what he gives us (gender instead of biology, signification instead of substance) as what he deprives us of jointly. For an over performative reading of Lacan — that is, of endless identic re-invention²⁹ — threatens to obscure the fact that,

27 A Barron (1993) 'Illusions of the I: Citizenship and the Politics of Identity' in A Norrie (ed) *Closure and Critique: New Directions in Legal Theory*, Edinburgh University Press; D Cornell (1992) 'Gender, Sex and Equivalent Rights' in J Scott and J Butler (eds) *Feminists Theorise the Political*, Routledge; and also D Cornell (1991) *Beyond Accommodation: Ethical Feminism, Deconstruction and the Law*, Routledge.

28 That sign is literalised by Lacan in his parable of the railway passengers, as the 'Ladies' and 'Gentlemen' of the station's toilet facilities caught sight of through the carriage window by the passengers, their mutual gazes — the man at 'Ladies' sign; the woman at the 'Gentlemen' — functioning as a metaphor of gender interpellation: J Lacan (1977a) 'The Agency of the Letter in the Unconscious or Reason Since Freud' in *Écrits: A Selection*, trans A Sheridan, WW Norton, p 151.

29 See, for example, J Butler (1993) 'The Lesbian Phallus and the Morphological Imaginary' in *Bodies That Matter: The Discursive Limits of 'Sex'*, Routledge.

in his psychoanalytic theory, both masculinity and femininity experience defeat through this foreclosure, each having sustained a loss which will haunt them both forever, and for which both of them will search, everywhere in vain: the loss of enjoyment or *jouissance*. This loss is sustained jointly because the site of originary enjoyment for both men and women is, as Lacan instructs, the maternal body, the surface of which is 'enjoyed' for its intensities, fluxes and pulsions. It is this enjoyment which is foreclosed from the Symbolic Order by the Law's primal signifier (the word) as it, in Lacan's own language, 'carves up' the maternal body (the thing).³⁰ And this dissection — the unkindest cut of all — accounts for why there is no spirit of enjoyment, no *jouissance* lurking behind the Law. *Jouissance*, enjoyment, the spirit: such content has been drained from the body of the Law because that body has been anatomised by form, the word, indeed, the 'letter' of the Law itself.

The Agency of the Letter and the Subversion of the Subject: *Objet Petit A*

This cut of the maternal body, hived off by the paternal signifier, immediately calls forth the question, posed specifically by Renata Salecl,³¹ but asked generally (and, in exasperation) by all feminists, 'Why is Woman the symptom of rights?'. Why is it she who is the sidelined, the expelled, the abjected of this discourse? A sociology of 'the margins' looms implicitly in this question, focusing attention on the legal status (or lack thereof) of women under the regime of rights. Though this socio-legal project is, ultimately, of overriding significance, I would like, nonetheless, to return to the threshold issue of the body in and of legal discourse by questioning the question itself. For the question as phrased — 'Why is Woman the symptom of rights?' — not only distorts the force of the feminine in rights (as much a persistent presence as an abjected absence, whose indeterminacy may be best captured in the Derridean term, 'trace'),³² but falsifies the way in which this discourse is predicated upon, not in spite of 'Woman'. For I would argue that the rhetoric of rights *reverses* the grammatical ordering of this question, substituting its subject for its object, and vice versa, so that rights discourse, far from being symptomatised in 'Woman', is, *itself*, the *symptom of Woman*.

Why are rights the symptom of 'Woman'? Precisely because 'Woman', as Lacan so (in)famously proclaimed, 'does not exist' (*'La Femme n'existe pas'*),³³ her nothingness signifying that being of lost *jouissance* — the maternal body — which rights, as an instantiation of the phallic signifier, excises. The pain of this excision, however, will haunt the phallic signifier, rousing its instantiation, rights, to summon up, in the manner of a seance, its ghost,

30 J Lacan (1990) *Television*, trans D Hollier et al, ed J Copjec, WW Norton, p 6.

31 R Salecl (1994) 'Why is a woman a symptom of rights?' in *The Spoils of Freedom: Psychoanalysis and Feminism After the Fall of Socialism*, Routledge.

32 J Derrida (1982) 'Ousia and Gramme' in *Margins of Philosophy*, trans A Bass, University of Chicago Press.

33 Lacan (1982a) p 144.

thereby calling forth, as Derrida would say, a 'hauntology'³⁴ rather than an 'ontology'. For the subject which the structure of rights recalls to life is a phantom, an incorporeal corporeality: namely, the ghost of the maternal body. This conjuration is a trick of mediation, much like that of Freud's infant grandson in the celebrated '*fort/da*' parable.³⁵ There, Freud's grandson recuperated the presence of his absent mother's body by imaginarily re-staging her departure and return through the loss ('*fort*') and finding ('*da*') of a spool of thread. Here, rights recuperate the lost body similarly, though the mediation is effected through words rather than things, being a construct of *lexias* and *semes*, signs and tropes: in short, all the resources of language. The language of rights restores the body to discursive life, metonymising and metaphorising body parts such as mouth, hands, feet, even genitals, as rights of free speech (mouth), movement (hands and feet) and privacy (genitals).

Now the interesting point here is not so much that rights discourse 'writes the body', an insight much commented upon in the feminist³⁶ and critical legal literature,³⁷ but that the body that it writes is one that has undergone a gender transformation, changing from the feminine to the masculine. For the body which rights construct, as the historical record of their juridical theory and judicial application only too clearly reveals, is male, be he the father of patriarchy or the sibling of the 'regime of the brother'.³⁸ The question, thus, becomes: how has the body in and of rights changed from the maternal into either the paternal or fraternal? How has this transgenering occurred? I would like to suggest that this startling sex change is possible because the body parts which rights refashions as male rather than female are fantasmatic, though formal rather than factual: that is, of the order of Lacanian *objet petit a*³⁹ rather than Kleinian part-objects.⁴⁰ For Lacan's *objet petit a* is an empty modality (eg the gaze, the voice etc), utterly lacking even the ambiguous materiality of Klein's part-objects (eg the good or bad breast), and, as such, enjoys an ontological status which is uncertain, contingent, even undecidable.

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- 34 J Derrida (1994) *Spectres of Marx: The State of Debt, the Work of Mourning and the New International*, trans P Kamuf, Routledge.
- 35 S Freud (1989) 'Beyond the Pleasure Principle and Other Works' in P Gay (ed) *The Freud Reader*, WW Norton, pp 599-601.
- 36 H Cixous and C Clement (1975) *The Newly Born Woman*, trans B Wing, University of Minnesota Press. See also AR Jones, 'Writing the Body: Towards an Understanding of *L'Ecriture Feminine*' (1981) 7 *Fem Stud* 1.
- 37 J Grbich (1991) 'The Body in Legal Theory' in M Fineman and N Thomadsen (eds) *At the Boundaries of Law: Feminism and Legal Theory*, Routledge.
- 38 JF MacCannell (1991) *The Regime of the Brother: After the Patriarchy*, Routledge.
- 39 'little piece of the other': J Lacan (1977b) *The Four Fundamental Concepts of Psychoanalysis*, trans A Sheridan, ed J-A Miller, Hogarth, pp 83, 268-74.
- 40 M Klein (1975) 'The Importance of Symbol Formation in the Development of the Ego' in RE Money-Kryle et al (eds) *The Writings of Melanie Klein*, vol 1: *Love, Guilt and Reparation and Other Works, 1921-1945*, Hogarth Press and the Institute of Psychoanalysis.

This is not to say, however, that the discourse of rights lacks *any* kind of anchoring fixity. In fact, quite the reverse, as rights discourse's very formalism lends itself to an all too easy superimposition of content from a variety of competing ideological fantasy frames. For example, the fantasy frame of that most transhistorical and transnational of ideologies — patriarchy — routinely 'misrecognises'⁴¹ the *objet petit a* of rights discourse as its own 'sublime object of ideology':⁴² namely as the 'tool' of phallic power, the penis. Similarly, the fantasy frame of colonialism has further qualified this discourse, restricting its ambit not just to the rights of *man* but to the rights of *white* men because colonialism's *objet petit a* is, of course, skin, and, more specifically, white skin, that being the skin colour privileged by this most Eurocentric of projects. Finally, within the fantasy frame of bourgeois-liberalism, rights have become equated with, indeed identical to the fetish of property, reduced (*ad absurdum?*) to the rights of ownership and contract, thereby trivialising free speech, association and belief as marketplace functions.

What distinguishes the discourse of rights, however, from these other discursive constructions is that none of their fantasy frames ever succeeds in totalising rights. *Something* always eludes ideological capture, escapes hegemonic closure. That *something*, as it turns out, is a *no-thing*: namely, a tear or a rip in rights' discursive fabric through which gapes the trauma of the Real. This Real split resists (at the very same moment it invites through the *objet petit a*) suture, thereby defeating any sort of discursive totalisation by ensuring that rights never achieve an equilibrium but, in fact, always *exceed* their fantasy frames. In short, rights *disseminate* because of this Real fracture, and, in so doing, reconfigure their various fantasy frames' respective *objet petit a*. So, for example, patriarchy's 'rights of man' give rise to, and, indeed, are countered by the 'rights of women', proclaimed, as an alternative formulation (by, eg, Wollstonecraft,⁴³ de Gouges⁴⁴) to phallic power at the very inception of the discourse (the 1791 *Declaration of the Rights of Man*⁴⁵). As well, colonialism's 'rights of white men' releases, however inadvertently, a discourse of insurgency, providing a language of independence, self-governance and autonomy, enabling the subaltern, irrespective of race, to narrate itself as a nation⁴⁶ (eg the invention of India by lawyers like Gandhi).⁴⁷

41 J Lacan (1977c) 'The Mirror Stage as Formative of the Function of the I as Revealed in Psychoanalytic Experience' in *Ecrits: A Selection*, trans A Sheridan, WW Norton, p 6.

42 S Zizek (1989b) *The Sublime Object of Ideology*, Verso.

43 M Wollstonecraft (1988) *A Vindication of the Rights of Woman*, WW Norton. For a more sustained treatment of Wollstonecraft's contribution to rights discourse, see my forthcoming article: W MacNeil, 'The Monstrous Body of the Law: Wollstonecraft vs Shelley' (forthcoming) *Austr Fem LR*.

44 O de Gouges (1979) 'Declaration des Droits de la Femme et de la Citoyenne' in DG Levy et al (eds) *Women in Revolutionary Paris 1789-95*, University of Illinois Press.

45 *Declaration of the Rights of Man and of the Citizen* in W Laquer and B Rubin (eds) (1979) *The Human Rights Reader*, Dutton.

46 For a more developed version of this point, see: W MacNeil, 'Enjoy Your

Lastly, liberalism's fetishised rights of ownership and contract presuppose a circulation of not only goods (that is, things) but information (that is, words), thereby bringing into being freedoms of speech, movement and, especially, association, which will empower, ultimately, a 'social' redefinition of rights, predicated on working class connection (the tradition of 'positive' liberties,⁴⁸ expressed in the International Covenant of Economic, Social and Cultural Rights) rather than bourgeois autonomy (the canon of 'negative' liberties,⁴⁹ articulated in the International Covenant of Civil and Political Rights).

What drives this disseminatory doubleness? Why do rights endlessly critique, reformulate and replicate themselves? What mechanism enables this cycle of (over?)production? I would like to suggest that the reason for this 'cloning' capacity lies in the *nature* of rights discourse, itself doubled, being split between what Žižek might call the 'fictitious' as much as the fantasmatic.⁵⁰ According to Žižek, a symbolic fiction operates on the level of the signifier, the letter of which, as I have pointed out above, is castrating in its effect. And what the fictitious letter 'castrates' is nothing less than enjoyment itself, cutting the *objet petit a* which is its source, by installing a subject of 'lack' which, in turn, clears a space for the reconfiguration of *jouissance* through an ever-changing succession of fantasmatic objects. And it is precisely this *differance* of objects of enjoyment brought about through the signifying cut of the subject of symbolic fiction which enables rights to re-invent itself, disseminating from men to women, the coloniser to the colonised, the bourgeois to the workers and beyond: to children, animals, artworks and the environment. All which is to say that, if rights disseminate, then it is because, to echo Lacan, *the letter of the Law always arrives*.⁵¹

Towards Closure: The Letter of the Law Always Arrives

What is meant by invoking, if only by way of paraphrase, the Lacanian aphorism, 'the letter always arrives', particularly in connection with the idea of rights' dissemination? After all, isn't the whole notion of 'dissemination' deconstructive *par excellence*? And isn't dissemination the very antithesis of the strong closure (indeed suture) evoked by the saying 'the letter always arrives'? In fact, wasn't it Derrida himself, the arch deconstructor, who, in *The Post-Card*, took Lacan to task specifically over this phrase, arguing that

Rights! Three Cases from the Postcolonial Commonwealth' (1997) 9 *Public Culture* 3.

47 S Kaviraj (1996) 'The Imaginary Institution of India' in R Guha (ed) *Subaltern Studies: Writings on South Asian History and Society*, Oxford University Press.

48 I Berlin (1969) 'Two Concepts of Liberty' in *Four Essays on Liberty*, Oxford University Press, pp 122–30.

49 Ibid, pp 131–41.

50 S Žižek (1997) 'The Seven Veils of Fantasy' in *The Plague of Fantasies*, Verso.

51 J Lacan (1988) 'Seminar on "The Purloined Letter"', trans J Mehlman, in J Muller and W Richardson (eds) *The Purloined Poe: Lacan, Derrida and Psychoanalytic Reading*, Johns Hopkins University Press.

the arrival of the letter will always be thwarted by the dissemination of language, the differences and deferrals of which which are the result of the disseminatory play of *differance*?⁵² So, to return to my initial question: what is my point in juxtaposing such diametrically opposed elements as the notion of dissemination and the expression 'the letter always arrives'?

The point being made here is that this opposition between dissemination's *perepeteia* and the letter's arrival is a false one. This is because dissemination conduces to, rather than confounds, the delivery of the letter: that is, the letter 'arrives' — or the subject is only constituted in rights — by the *very departure* for subjectivity which the letter provokes, on the part of the rights-bearer, through its installation of a 'lack'⁵³ of a body (and, perforce, enjoyment) by reason of its signifying force of *coupure*. That departure is the basis for, rather than the bar to, rights discourse's subjectivity (as deconstruction's critique of psychoanalysis would have it) because its structure of being is predicated upon a non-being, organised around a thing which turns out to be nothing, the enjoyment of which is destined to end in non-enjoyment. All of which is to say that the efforts of deconstruction (as well as post-structuralism, post-modernism, post-Marxism etc) to de-centre the subject — whether it be philosophical, political or judicial — are, at the end of the day, supernumerary. This is because the subject is, as Lacanian psychoanalysis shows us, 'always/already' decentred: that is, split, barred, crossed out by a fracture between being and nothingness.⁵⁴

Nowhere is this fracture more in evidence than in the judicial subject — that is, the rights-bearer — whose putative decentring by critical legal, race and feminist theorists opened this article. In each case, however, this decentring operation has backfired; far from decentring rights discourse, all of these critical positions were decentred by it, each, inevitably, having to face the fact that the rights-bearing subjectivity they had appropriated through 'critique' (the critical legal subject, the critical feminist legal subject, the critical race legal subject) turned out, in the end, to be a non-subjectivity.⁵⁵ So

52 J Derrida (1987) 'Le Facteur de la Verité' in *The Post Card: From Socrates to Freud and Beyond*, trans A Bass, University of Chicago Press.

53 Lacan (1977d) p 320. See also J Lacan (1982b) 'The Subjective Import of the Castration Complex' in J Mitchell and J Rose (eds), J Rose (trans) *Feminine Sexuality*, Macmillan, pp 112, 119.

54 The use of this term is, more properly speaking, Derridean rather than Lacanian. See J Derrida (1991) 'Of Grammatology' in P Kamuf (ed), G Chakravorty-Spivak (trans) *A Derrida Reader*, Columbia University Press, p 46.

55 In being decentred by discourse, these three critical positions of Crits, Femcrits and Race Crits resemble nothing so much as characters in Poe's 'The Purloined Letter'. The characters in that story, like the critics here, were constantly being positioned and repositioned (also in groups of three — the King, the Queen and the Minister; the Minister, the Police and Dupin) by their changing relationship — particularly their blindness and insight — to the story's eponymous and ever circulating 'purloined letter'. Lacan, in his celebrated seminar on the text, interpreted the letter as a metaphor for discourse, and its scopical economy of characterological possession or dispossession as an allegory of discourse's interpellation of the subject within the ternary structure of the

the decentring carried out here was not the result, as was suggested at the opening of this article, of a hermeneutical act performed by the subject (the Crits) against the object (rights discourse), but the reverse: one where the object seized control of the interpretive process, and turned the tables on the subject who, in turn, was decentred by *it*. This reversal occurred because rights discourse pre-empted the Crits by anticipating their principal theoretical ‘move’ of decentring by decentring itself through its own internal division between fantasy and fiction, between subject and object. This internal division not only renders critique, in many respects, superfluous (but also inevitable) because rights discourse is always/already decentred, but further problematises the utilisation of this discourse as a political strategy in the politics of identity.

Rights are problematic for identity politics because they ultimately undo, rather than sustain, the controlling fantasy of that politics, a fantasy which holds that identities *do, indeed, exist*, either on a macro-level (the absolutising subject of Reason) or micro-level (the pluralised subject of difference). This claim — that rights undo identity politics’ fantasy — may seem puzzling, given the speed, facility and ease with which rights discourse has responded, at least initially, to the identic demands placed upon it. ‘*Che vuoi?*’ (‘What do you want?’) asks this discourse, standing in here as the instantiation of the Other (*Grand Autre*).⁵⁶ ‘I want an identity’ is the answer it has received from a range of what is referred to in the critical literature as ‘the margins’: from feminists, from minority groups, from workers and their class allies. And identities are what they have received, as rights discourse has re-invented and disseminated its subject-positions throughout and among a variety of jurisdictions and their constituents. But by entering into identity politics, fantasy space of endless identic difference and dispersal, rights discourse, paradoxically, ends the fantasy by carrying it through to its logical conclusion in what Lacanians like Žizek call ‘traversing the fantasy’:⁵⁷ namely, by exposing the subject as a fantasmatic object, the objective fantasy of which is hived off, in turn, by a symbolic cut of subjectivity.

It is, however, *because* (and not in spite of) rights discourse’s traversal of this and other fantasy spaces (eg that of the bourgeois male coloniser) that redeems this discourse as a strategy to be used, a *symptom to be enjoyed*. That enjoyment, however, must be distinguished from the enjoyment evinced by, as Renata Salecl would say, the current ‘hyperinflation’ of rights discourse, currently underway globally.⁵⁸ For the enjoyment which I enjoin would recognise this hyperinflation for the pathology which it so clearly is:

Symbolic, the Imaginary and the Real: Lacan (1988). The theorists of the contemporary critical legal studies movement mime this triangulated relationship, assuming each of the positions around which the letter of the law — rights — circulates in a dialectical movement of blindness and insight, possession and theft.

56 Lacan (1977d) p 313.

57 S Žizek (1994) ‘Superego by Default’ in *The Metastases of Enjoyment: Six Essays on Woman and Causality*, Verso.

58 Salecl (1994) p 155, fn 10.

namely, as a kind of hysteria, endlessly symptomatising the traumas of postmodernity (the contradictions of post-Fordist Capital, the *anomie* of post-liberalism). But this recognition of rights discourse as pathological in no way suggests, as an earlier generation of Freudo-Marxists would have it, that rights discourse is a symptom of the ailing *socius* to be 'worked through' in favour of some sort of 'socialist legality'. Indeed, the foundering of socialist legality across the former Soviet bloc is warning enough to those polities which attempt to go 'beyond the Law'. For the integrity of the polity and, more importantly, the dignity of the person depends more and more in postmodernity on a revived rights discourse, pluralised to the extent that it can be enjoyed by all, ensuring, as Žižek would say, 'To each her own fantasy'.⁵⁹ That pluralisation of enjoyment only becomes possible, however, when the *failure* of rights discourse is understood as, paradoxically, the basis for its success. That is to say, in proferring, in absolute terms, a non-enjoyment — the result of rights traversing its own fantasies of gender, race and class power by dislodging its respective 'sublime objects': the One of the phallus, skin or property — rights discourse ultimately *guarantees* the reinvention of enjoyment and its own discursive persistence. That postmodernisation of the jurisprudence of rights discourse, though, is yet to come, activists, scholars and subjects of rights continuing to 'take rights seriously' rather than 'symptomatically'. Until they do, this article will persevere in urging the 'postmodern turn' in rights discourse, echoing the Marquis de Sade's call to the French nation by saying, 'Rights-bearers! yet another effort if you would be free!'.⁶⁰

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59 S Žižek (1991a) 'Formal Democracy and Its Discontents' in *Looking Awry: An Introduction to Jacques Lacan through Popular Culture*, MIT Press.

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