

Law, Meaning, and Violence

The scope of Law, Meaning, and Violence is defined by the wide-ranging scholarly debates signaled by each of the words in the title. Those debates have taken place among and between lawyers, anthropologists, political theorists, sociologists, and historians, as well as literary and cultural critics. This series is intended to recognize the importance of such ongoing conversations about law, meaning, and violence as well as to encourage and further them.

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Law and the Postmodern Mind

Essays on Psychoanalysis and Jurisprudence

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masculine. If one accepts this, then the Feminine is *defined* as lack, the feminine voice is *defined* as no-voice. Our speech as women has been defined away and is no more speech than the barking of dogs.⁷⁷

As feminists we must strive to rewrite the Feminine—or write her for the first time. We must emphasize that the myth of castration is *imaginary*. It is a myth both in the negative sense of delusion and in the affirmative sense of a story we tell to give meaning to our lives. Unmediated relations with others cannot be a forever lost and infantile state that we can only mourn *precisely* because this state never existed. We did not even become individuals with the potential for relationship until the moment of mediation. In Hegelian terms, to return to our unmediated state is to regress to the lonely abstraction of free will, and to stay at the level of simple mediated relationships identified by psychoanalytic theory is to remain at the inadequate, unsatisfactory, and “cold-hearted” level of abstract right. The feminine as unmediated relation is, therefore, a desire, a dream, and an inspiration. The feminine will never be *recovered* because she has not yet come into existence. She will be a creation, like the subject.

At this point perhaps all we can say is that abductions from the male position are not unique or inevitable. But will we ever be able to make our *jouissance* eloquent? Will there be a moment when the Vestal ceases to be *fascas*, *virgin*, *matron*, or *man*, and becomes *The Woman*?

I am not the only feminist who has called Lacan on this example. Jacqueline Rose, in her introduction to a book of essays by Lacan and his followers on feminine sexuality makes precisely the same point. Rose, *supra* note 44, at 51. I am not suggesting that the ineptness of one example necessarily disproves the core ideas of Lacan's theory of feminine *jouissance*. I do, however, find it suggestive.

77. Jeanne L. Schroeder, “Subject: Object,” 47 *U. Miami L. Rev.* 1, 6–7 (1992).

Chapter 5

Love Me, Love My Dog

Renata Salecl

Why is the dog such an attractive animal for human beings? From antiquity, there is the well-known case of the philosopher Diogenes, who actually found in the dog life the ultimate model for human life and had himself decided to live like a dog. Diogenes was thus barely dressed, lived in a barrel, and liked to masturbate in public, all to show his contempt for civilization and praise for nature. With his rude behavior, Diogenes liked to provoke his fellow man, in order to prove that they were too flimsy to compete with him. He thus boasted that no one dared to go hunting with such a distinguished dog as he.

Recently, the Western art world got a new dog-like human being in the persona of the Russian artist Oleg Kulik. He usually has a doghouse built in the gallery, where he then lives day and night being totally naked, behaving in a dog manner, walking like a dog, barking, etc. But Kulik's fame really began when at two art shows (in Zurich and in Stockholm) he started biting the visitors of the show. In both cases, the organizers of the shows called the police, who then enchained Kulik and took him to the police station for questioning. The shocked policemen first did not believe that Kulik was invited to the exhibition to act like a dog. But, when the story was confirmed from the side of the organizers of the show, Kulik was released, since it became unclear what offense he could be accused of.¹

Before dealing with the problem of what it means to behave like a dog, let me point out that I personally do not see a great artistic practice

1. Kulik's imprisonment in Stockholm was a paradoxical event, since the organizers of the art show knew beforehand about Kulik's troubles with the police at the show in Zurich. However, they thought that was just part of the game. But when Kulik started biting visitors in Stockholm, the organizers were so shocked that they themselves called the police.

in Kulik's biting the visitors. The Kulik affair, however, can help us to deal with some theoretical issues that concern the divide between human beings and animals, which is for Jacques Derrida the last metaphysical divide not yet deconstructed.² But first let us see how Kulik's case undermined the naive belief in the idea of artistic dialogue and, second, how the whole dilemma of the East-West relationship was restated.

The Interpol exhibition in Stockholm was presented as an attempt to establish a dialogue and a new form of communication between artists coming from the East and from the West. If one does not understand communication only in terms of the Habermasian ideal speech situation, where the parties involved tolerantly exchange their ideas thus creating an ideal democratic universe, but one takes into account also some contemporary psychoanalytic and poststructuralist reasoning, then communication becomes much less ideal. We know from the theory of Foucault, as well as from Deleuze and Guattari, that communication, dialogue, and exchange of ideas are all means for various forms of power struggle. And the debates about the violence of language, about so-called hate speech, have clearly proven that a simple speech act can contain the most aggressive racist attack.³ On the one hand, dialogue and communication can involve a great deal of violence. But, on the other hand, someone can easily understand violence and destruction as a way to communicate. Thus, if the organizers of Interpol want to have dialogue as the form of the exhibition, they should not be too surprised if some artists use violence and destruction as a mode of communication.

The paradox of the second dilemma was that Kulik was invited as a particularity—as a Russian dog. I am certain that if an American artist played a dog, he would be of much less interest to the international art scene than the Russian artist. We all know that the majority of people in today's Russia live a dog-like life. And the first association a Westerner has in regard to Kulik's performance is that he is representing this reality of contemporary Russia. Kulik-dog is therefore of interest for the Western art world because of the fact that he is the Russian "dog."

2. See Jacques Derrida, "Eating Well, or the Calculation of the Subject: An Interview with Jacques Derrida," in *Who Comes After the Subject* (Peter Connor and Jean-Luc Nancy eds., 1991).

3. See Renata Salecl, "See No Evil, Speak No Evil: Hate Speech and Human Rights," in *Radical Evil* (Joan Copjec ed., 1996).

The trauma of the West in regard to Russia in recent years is that the West regards Russia as a superpower, but only on condition that it does not act as one. And, in regard to Kulik's performance, it can be said that the East finds an aesthetic pleasure in observing the Russian "dog," but only on condition that he does not behave in a truly dog-like manner. When Kulik ceased to be the decorative art-object—the Eastern neighbor who represents the misery of the Russian dog-like life—and started to act in a way that surprised his admirers, he quickly became designated as the enemy. His performance (together with the performance of another Russian artist Alexander Brener, who at the Interpol show destroyed a work by Chinese-American artist Wenda Gu) was described as a "direct attack against art, democracy and the freedom of expression," and as a "classical model of imperialist behavior."⁴ Here we encounter a similar deadlock as in the way multiculturalists tend to treat the other. The other has to be a passive, submissive victim-like other; but, when the other does not act in this way, he or she quickly becomes designated as imperialistic, fundamentalist, totalitarian, etc. (Remember how the Bosnians who ceased to play the role of victims and started to arm themselves quickly were named Islamic fundamentalists?)⁵

The paradox of Kulik's performance is that he does not want to expose his particularity of being a Russian artist, but tries to give an answer to the universal dilemma of the man-animal relationship, man's place in nature, etc. In the catalog of the recent Manifesta show in Rotterdam, where Kulik played Pavlov's dog, we get some answers to this dilemma in the form of the program of Kulik's art, written by his collaborator Mila Bredikhina.

The program very much resembles the theory of so-called deep ecology and its criticism of anthropocentrism. Kulik thus propagates a new agricultural revolution, which would bring new symbiosis between humans and animals; he wants to limit human population to a third of its present size in order to establish a new balance in the biosphere; but, especially, he wants to encourage studies of the psychology of animals, which would result in a new dialogue between animals and human beings. In this program, we also read that man should stop per-

4. See *Open letter to the art world*, *Siksi* 1 (1996).

5. For the analysis of the Western media's representation of the victims of the Bosnian war, see Renata Salecl, *The Spoils of Freedom: Psychoanalysis and Feminism After the Fall of Socialism* (1996).

ceiving animals, not as the non-anthropomorphic Other, but as his alter ego. However, this will only be possible when we question the entire logic of the organization of human society and especially the nature of democracy. For Kulik,

True democracy can only be established on the politically inclusive idea of zoocentrism, (*i.e.*, man is but a part, rather than a measure of, our planet's biosphere). Zoocentrism integrates man as a sub-culture in the larger whole of a united culture of noosphere (derived from noos: the ability to smell, to feel).⁶

Since ideal democracy is not possible, one should recognize that actual democracy looks like a jungle, where some inhabitants take advantage of the fact that they are stronger or faster than others. Thus Kulik concludes:

A jungle is in fact a more efficient society, devoid of the oversophistication that is currently stifling humanity. The main thing is that the jungle is the only place where the strong, the wise, and energetic can bring all their capabilities into play.⁷

However, Kulik's program also demands some improvements for the "democratic law of the jungle" which include "the further escalation of political inclusiveness, legal foundations of bioethics, universal suffrage, etc."⁸

The theoretical position of deep ecology is much more radical than traditional ecology or environmentalism. In its demand for the protection of nature, the latter still takes the human being as the center of the world. It therefore claims that nature has to be protected because it presents a vital environment for humans. Deep ecology opposes such a view, since in its perspective we need to give up on anthropocentrism totally in order to create a new form of society that would rely on a symbiosis of nature and human beings.

6. See the catalog of *Manifesta 1* (Biennial exhibition, Rotterdam, 1996).

7. *Id.*

8. *Id.* "This law is to become political reality when all the biological species of the planet enjoy equal political rights. The first step on this road has already been made: the Political Laboratory of Biosphere and the Party of the Animals [Kulik's party] have been successfully functioning in Russia for two years." *Id.*

Deep ecology has many troubling theoretical stands, but, for the purpose of my argument I will invoke only two—the problem of the Cartesian subject and rights. Deep ecology finds the main culprit for the lack of symbiosis between humans and animals in the notion of the Cartesian subject. Critics usually focus on Descartes's perception of animals as soul-less machines and on his devalorization of nature. However, deep ecologists make a mistake when they regard the Cartesian subject as the ultimate anthropocentric notion, when it is actually with the advent of Cartesianism and the Copernican revolution that was tied to it that the subject lost its rooting in nature as well as its central place in the universe. On the one hand, the subject became pure substance-less subjectivity, with no determined place in nature or culture, but, on the other hand, the subject also became one among many elements of the universe.

On the basis of this subject, the modern notion of rights was established. Although in the contemporary understanding of rights, nature and especially animals are getting more and more legal protection, it is clear that the human subject is still perceived as the dominant bearer of rights. In their fight for the equalization of the rights of humans and animals, deep ecologists rely on utilitarian theory and its claim that each being wants to maximize its happiness and avoid suffering. As Peter Singer says, "it is not in my interests to suffer. If I am suffering, I must be in a state that, insofar as its *intrinsic* properties are concerned, I would rather not be in . . ." ⁹ For deep ecologists animals are similar to human beings in this avoidance of suffering, which is why they need to be treated in the same way as humans.¹⁰

If psychoanalysis teaches anything, it is that human beings are not inclined to achieve happiness. On the contrary, they find special enjoyment in suffering. And the whole history of psychoanalysis is concerned with discovering the mechanisms that drive the subject on this path of self-destruction. The ecologists' insistence on the avoidance of

9. Peter Singer, "The Significance of Animal Suffering," in 13 *Behavior and Brain Sciences* 11 (1990).

10. Daniel C. Dennet points out the distinction between pain and suffering in animals and humans. He agrees with the ecologists' stand that animals feel pain, but not with the claim that the notion of suffering applies to animals in the same way as to humans: "Snakes (or parts of snakes!) may feel pain . . . but the evidence mounts that snakes lack the sort of over-arching, long-term organization that leaves room for significant suffering." Daniel C. Dennet, "Animal Consciousness: What Matters and Why," 3 *Social Research* 707 (1995).

suffering might be true for animals, for whom it can be said that they are driven by the instinct of self-preservation; however, for humans, it is the opposite—as beings of language they are essentially marked by a force of self-annihilation, i.e., the death drive.

Precisely because the human being is not anymore a natural being, he or she has lost the ability to instinctually avoid suffering; however, to say it with Kant: by ceasing to be a natural being, the human being has acquired freedom because of which he or she will also be able to feel sympathy with the suffering others—the animals, for example—and develop responsibility toward them. Thus: “We have seen men sacrifice their lives to protect whales . . . ; [while] the reverse is far less common.”¹¹ It can also be said that a man biting an animal is treated as responsible for his behavior and might be punished for his violent act, while in the reverse case one cannot speak about responsibility. Here Kulik’s claim that he is a dog who bites also opens up the question of responsibility.

When Kulik was taken to the police station in Stockholm, at some point he stopped playing the dog and started to give reasons for his act. He put some blame for his behavior on the visitors who treated him as a dog by teasing him, kicking him in the head, etc. Kulik also complained that the organizers had put him on a too long chain, which allowed him to trespass the warning sign “Dangerous dog!” It was crucial for Kulik—the-person not to take responsibility for the behavior of his other self, Kulik—the-dog. However, while at the police station, he also did not want to be treated like a dog—without any rights to explain his action.

In medieval Europe, animals were treated as responsible for their wrongdoings. There are well-known cases of the weevils who were put on trial because they invaded the vinyard, the leeches who were prosecuted for their invasion of the lake, and so on.¹² In court, animals were represented by counsel chosen for them, who usually defended their action by claiming that, as creatures of God, animals have the same rights to live in a certain environment or consume plants. There were many trials where the animals won the case, and as a result the municipality had to give them compensation in the form of a land where they could freely live without intruding into the lives of humans. As can be

11. Luc Ferry, *The New Ecological Order* 41 (1995).

12. *Id.*, see also Jean Vartier, *Les procès d’animaux du Moyen Age à nos jours* (1970).

expected, the insects weren’t too pleased with such a decision and thus rarely moved to the designated place.

From the position of deep ecology, the laws that protect the animals and nature in general are rejected because they treat the latter only as property of humans. And the new equalization of the right of animals and humans on which deep ecology insists should primarily change the status of animals as property, so that animals will not be protected because of the interests of humans but because of their own interests and inherent values.¹³ One can easily get the impression here that before the emergence of capitalist society and its notion of property, animals were better treated by the law. But the paradox here is that the very idea of animal protection itself emerged only when the law started to regard them as property.¹⁴ Thus it is only in the early nineteenth century that the anticruelty statutes became an essential part of Anglo-American law. These anticruelty laws first applied to domestic animals like cattle, and it took some time before pets like dogs and cats were perceived as property, too, and thus got legal protection. Since the dog is regarded as property, this also implies the responsibility of the owner: it is the owner who is prosecuted if his dog bites people.

I assume that Kulik would support the deep ecologists’ claim that animals should not be treated as property: however, in practice, Kulik acts differently. Whenever Kulik is invited to a show, he insists that he cannot travel alone, but needs to be accompanied by his owner—his wife. Now, let’s speculate that Kulik’s offense would be tried in court, and that, at the same time, a judge would actually take him as a dog and not as a human being who is just playing a dog. Since we no longer follow the medieval law that puts animals themselves on trial, the only way for the law to deal with Kulik’s offense is to put on trial his owner—his wife.

As for Kulik’s attempt to create a new “united culture of noosphere,” which would be grounded on “noos”—the ability to smell, or feel—one can only say that culture as such (in contrast to nature) was established at the moment when the human being ceased to rely on his smell.

13. For a detailed analysis of the ecologists’ objection to the treatment of animals as property, see Gary L. Francione, *Animals, Property, and the Law* (1995). See also the well-known book by Tom Regan, *The Case for Animal Rights* (1983).

14. See Jerrold Tannenbaum, “Animals and the Law: Cruelty, Property, Rights . . . Or How the Law Makes Up in Common Sense What It Lacks in Metaphysics,” *Social Research* 3 (1995).

Jacques Lacan points out that what prevents the dog from rising to the level of man is his strong ability to smell.¹⁵ Through the sense of smell, the dog still has a direct relation to objects, while with man this ability has been lost. Here we can take into account Freud's thesis that in the history of humanity it was crucial when the human being stood up and stopped orienting himself primarily with the help of his smell, but instead with the help of his eyes. At that moment, excrement also became perceived as something that smells badly and as something by which one is disgusted. Freud especially points out that with young children, one does not yet find the disgust over excrement; on the contrary, excrement is perceived as part of the body. It is only socialization that introduces disgust over excrement: the child's anal eroticism has to undergo the phase of "organic repression" when the child is being formed into a social being.

Freud also says that "man scarcely finds the smell of *his own* excreta repulsive, but only that of other people. Thus a person who is not clean—who does not hide his excreta—is offending other people; he is showing no consideration for them."¹⁶ We perceive such behavior as an abuse, and sometimes we say that such a dirty person is behaving like a dog. However, Freud concludes that

It would be incomprehensible . . . that man should use the name of his most faithful friend in the animal world—the dog—as a term of abuse if that creature had not incurred his contempt through two characteristics: that it is an animal whose dominant sense is that of smell and one which has no horror of excrement, and that it is not ashamed of its sexual function.¹⁷

In contrast to the animal, the human being, by gaining his erect posture, has not only lost his ability to smell, but also the ability to copulate in an animal way. As is well-known from the history of psychoanalysis, the human being in the process of becoming a speaking subject undergoes symbolic castration which introduces a bar, a lack, because of which the subject will be forever deprived of the wholeness that animals still have. This will also prevent the subject finding sexual satisfaction in simple copulation. As Freud points out, with the erect posture,

15. See his unpublished seminar, *Identification* (1961–62).

16. Sigmund Freud, *Civilization and Its Discontents* 288–89 (1985).

17. *Id.*

ture, it is not only anal eroticism that falls victim to organic repression, but the whole of the subject's sexuality.

The animal therefore still has wholeness, as well as the ability to obtain sexual satisfaction, which the subject lost upon entrance into language. Animals and humans thus differ essentially because of language. Lacan deals with this difference in his seminar on identification, where his argument is that it is not only the subject who lives in language but also domestic animals; only their relationship toward language is different. To exemplify this point, Lacan takes the case of his own dog Justine, named after the Marquis de Sade's novel. By observing how this dog behaves toward her owner, Lacan, one can say that the dog speaks, communicates with him, shows her love and affection, even shows jealousy. The dog is therefore in language. But for Lacan it is crucial to point out that the dog has a very different approach to language than man. First, the dog speaks only when she needs to speak, because of some inner pressure or need. Only then does the dog establish a relationship toward the other, but this other is not the big Other in the meaning of the social symbolic order. So, the dog is in language, but she, however, does not relate to the chain of signifiers—the big Other.

Let us exemplify this point by taking into account the famous Pavlovian experiment.¹⁸ As is well known Pavlov tried to show that a repetition of some act—feeding the dog at the sound of a bell—at some moment produces the effect, so that the very sound of a bell, without being accompanied with food, incites the dog to salivate, which otherwise happens only in reaction to food. The animal therefore develops a conditional reflex, which is no longer linked to some real stimulus (food), but to a purely symbolic one (the bell). Lacan's thesis is that Pavlov actually behaved as a structuralist *avant la lettre*, since his experiment confirms the function of the signifier and does not, as Pavlov thought mistakenly, simply give evidence about the functioning of the dog's brain. In Pavlov's view, the experiment was supposed to prove that with dogs the conditional reflex always exists, while Lacan points out that such a conclusion is purely ideological, since it masks the fact that it is only the signifier that incites this reflex.

Lacan further points out that the subject of Pavlov's experiment is

18. See Jacques Lacan, *The Four Fundamental Concepts of Psycho-Analysis* (1981); Jacques Lacan, *L'Acte psychanalytique* (1967–68) (unpublished seminar); Jacques Lacan, *L'Angoisse* (1962–63) (unpublished seminar).

not the dog, but actually Pavlov himself. The dog has no interest in the bell but only in the meat. The experiment also had no intention of introducing some change: to amend or to impair the condition of the dog. As such the experiment was of interest only to the experimenter Pavlov. It can even be said that the experiment proved the existence of none other than Pavlov, or as Lacan says, "there is no other subject here [in this experiment] than the subject of the experimenter."¹⁹ What does this mean? The bell has a meaning only for Pavlov: it is the signifier which represents the subject of science (Pavlov) for another signifier—the production of saliva. The subject of the experiment was therefore all the time Pavlov: he was the agency of the experiment, and he was also the one who got satisfaction out of the knowledge that the experiment was supposed to establish.

Does not Kulik's *Manifesta* performance also simply demonstrate the existence of the experimenter? The paradox of Kulik is that he pretends to be Pavlov's dog, while in actuality his role is none other than Pavlov's. Kulik thus wants to be a dog, but ends up actually representing Pavlov, since here it is also Kulik himself who is the subject of the experiment. But this time he is the scientist who does not need the dog anymore to validate his theories—the best results are gained when the scientist becomes the dog himself. Kulik's performance in the final instance proves Lacan's point that the dog does not care about Pavlov's experiment—so why deal with the proper dog? Now the trouble with Kulik is that he tries to look and behave as much as possible like a real dog and does not recognize it is only a human being who can enjoy this game—that is why there are no dogs who come running to see his show.

If Kulik with his experiment cannot prove anything other than his own existence as the experimenter, what then is his enjoyment in the show, and also why is the public attracted to his performance? And continuing this line of thought, what is the enjoyment of the dog as such whom the artist tries to imitate?

For domestic animals it is crucial that they live in language, since we cannot say that a dog, for example, behaves in the same way when it lives in nature as when it lives in a house. Language introduces change in the dog; in the case of Pavlov's dog, it can even be said that language makes the dog neurotic. However, this neurosis is in no way

19. Lacan, *Fundamental Concepts*, *supra* note 18, at 228.

similar to the hysterization of the human being, which is essentially linked to the subject questioning the desire of the Other.²⁰ In Pavlov's experiment it is not the case that the dog becomes troubled with the desire of the experimenter. Dogs do not question the desire of the Other. And this is what distinguishes them from human beings. However, this nonquestioning of the desire of the other is also what makes dogs more lovable than humans.

Now, how come this happens? Why are we so much in love with our pets, that we even act against their well-being—for example, by dressing up dogs and cats? One possible explanation of this love is that humans see in these animals some lost freedom, wildness, animality, etc., that they do not have anymore. The animal would thus stand for the natural object, which is forever lost for the human being and which he or she still nostalgically mourns. Another explanation is that the animal presents for the human being an ideal other. It can even be said that the dog became man's best friend, because of the impossibility of man being man's best friend.

The fact that a domestic animal lives in language means that it has been trained, pacified in the way that suits humans. However, the fact that the animal nonetheless is not barred by language and is thus not marked by a constitutive lack also means that the animal is not submitted to the logic of desire. The lack that marks the speaking subject forever prevents the subject from finding satisfaction, from fulfilling his or her desire—the subject is thus endlessly perturbed with his or her own desire and with the desire of the Other.

The problem of the subject of desire can best be illustrated with the help of Kafka's famous story, "A Fasting Showman." The main character of this story gets immense pleasure from public fasting; his only complaint is that he is not allowed to fast longer than 40 days. When at some point people get bored with his fasting performances, the circus

20. For Lacan, our relationship in regard to the big Other, the symbolic order, is always marked by this hysterization. It can even be said that the subject as such is a hysteric for the simple reason that he or she is a speaking being. The main dilemma for the hysteric is: what does he or she represent for the Big Other, what kind of an object is he or she for the Big Other? That is why the hysteric endlessly searches for the Other that would provide the proper answer and thus end the uncertainty that the hysteric has in regard to her being. Through this question, the hysteric tries to overcome the constitutive lack that bars the subject and thereby tries to find confirmation for her identity. However, the subject never finds the satisfactory answer to his or her dilemma of bankruptcy, since the Other is also barred, marked by a constitutive lack.

becomes the only place where he can still perform, but even there he gets little attention. Totally forgotten by the public, he is finally able to fast as long as he wants. One day, the circus overseer decides to use the presumably empty cage of the fasting showman for some better purpose; however, when cleaning the cage, he discovers that the fasting showman is still half alive under the dirty straw. With his last strength, the fasting showman reveals his secret by saying that he shouldn't have been admired for his fasting since fasting was something he simply had to do. Or, better, he could not do anything else but fast. To the overseer's inquiries as to why not, the fasting showman responds, "speaking . . . right into the overseer's ear, so that no syllable might be lost, 'because I couldn't find any food I liked. If I had found any, believe me, I should have made no bones about it and stuffed myself like you or anyone else.'"²¹

With the revelation, the fasting showman gives us the perfect definition of what the logic of desire is all about. The subject who is masked by an essential lack never finds the object that would fill this lack: as in the fasting showman's case, there is no proper object (food, for example) to satisfy the subject. One way to deal with this dilemma is that the subject endlessly goes from one object to another, while always remaining unsatisfied. And the second option is that the subject, similarly to the fasting showman, gives up the search for the proper object and finds a special enjoyment precisely in this abstinence—for example, in fasting.

One finds an example of such a restraint in anorexia. Psychoanalysis understands anorexia as a form of hysteria, which primarily has to do with the subject's dilemma of her desire. This impasse of the subject's desire is essentially linked to the dilemma of the mother's desire. Lacan points out that with the anorexic one usually discovers that as a child she was nurtured with too much love, even to the point of being fed too much. In this case the child's refusal of food paradoxically has to be understood as the way the subject deals with her own desire in regard to the mother's love. The mother's love blocked the child's desire, thus for the child the rejection of this love in the form of the refusal of food is the only way to keep her desire in motion.

Psychoanalysis links anorexia with the hysteric's demand that her desire remain unsatisfied. This dissatisfaction is connected to the fact

21. Franz Kafka, "A Fasting Showman," in *Wedding Preparations in the Country and Other Stories* 173-4 (1978).

that the subject never finds the object that would fill the lack, thus in the final instance there is no way to escape the bar that marked the subject when she entered language. In the case of the anorexic, however, one finds a very peculiar way for the subject to deal with this lack. The anorexic would thus not be a subject who does not eat, but the subject who eats precisely this "nothing"—the lack itself. Similarly, the fasting showman fasts because he did not find the food that would satisfy his desire. The deadlock of his desire brings him to the point of self-destruction: until his very death he eats the "nothing" in order to keep his desire unsatisfied.

For both, the fasting showman and the anorexic, it is crucial that they need the big Other who observes their doing and whom they are trying to convince that they can go even further in their sacrifice. This need for recognition is what is essential for the hysteric. In Kafka's story, the fasting showman wants to be recognized by the Other even when he is dying, thus he tells his story in the overseer's ear so that nothing be lost.

At the end of Kafka's story we learn that the circus authority later put a young panther in the fasting showman's cage. In contrast to the fasting showman, the panther has no problem with his desire. Thus one would not expect the panther to find enjoyment in fasting. This is so because the panther "lacks nothing," not even freedom:

[H]is noble body, furnished almost to bursting point with all that it needed, seemed to carry freedom around with it too; somewhere in his jaws it seemed to lurk; and the joy of life streamed with such ardent passion from his throat that for the onlookers it was not easy to stand the shock of it. But they braced themselves crowded round the cage, and did not want ever to move away.²²

The fact that in the case of the panther no lack has been introduced by language gives him a mark of self-sufficiency, which makes him at the same time attractive and horrifying.

Kulik also tries to obtain this animal wholeness and self-sufficiency by playing a dog. It can be said that Kulik tries to realize in the flesh the desire of deep ecologists to return to the state of nature. Kulik thus hopes to rediscover in his dog-like body the lost object of desire in

22. *Id.* at 174.

order to attain wholeness that man lacks. However, Kulik cannot escape the burden of being a human subject. This is very much proven by the fact that he desperately needs the audience, the gallery, or in general the big Other. Kulik, like his predecessor Diogenes, finds enjoyment in posing as a dog only when being observed by others. Thus it might be harder for humans to learn self-sufficiency from the dogs than it is for dogs to learn language.

A man who behaves like a dog hopes to escape the big Other and find true enjoyment, the lost animality of human nature. However, here we can invoke Lacan's famous reversal of Dostoyevski's phrase, "If God doesn't exist, then everything is permitted," into "If God doesn't exist, then nothing at all is permitted any longer."²³ Thus the man who rejects the restraints of human rituals and behaves like a dog will not find the desired enjoyment, but even more prohibitions. For Lacan, only a saint with his asceticism might find enjoyment that is not linked to the big Other. But this also means that there are no gallery openings for the saint's performance.

23. Jacques Lacan, *The Seminars of Jacques Lacan, Book II: The Ego in Freud's Theory and in The Technique of Psychoanalysis 1954-1955* at 128 (Jacques-Alain Miller ed. and Sylvania Tomaselli trans., 1991).

Chapter 6

The Identity of the Constitutional Subject

Michel Rosenfeld

[J]e pense où je ne suis pas, donc je suis où je ne pense pas.

Jacques Lacan

The identity of the constitutional subject is elusive and problematic as uncontroverted foundations are hard to come by in contemporary constitutional regimes. The notion of the constitutional subject is itself ambiguous because it is not clear whether it refers to those subject to the constitution, or to the makers of the constitution, or to the subject matter of the constitution. Moreover, to establish constitutional identity over time it is necessary to weave together the past of the framers, one's own present, and the future of unborn generations. The problem, however, is that the past as much as the future is uncertain and open to conflicting possibilities.

Ultimately, constitutional identity is problematic because, in addition to remaining opposed to, and distinct from, other relevant identities, such as national, ethnic, religious, or cultural identity, constitutional identity is inevitably forced to incorporate them partially to acquire a sufficiently determinate meaning. Accordingly, the key question becomes how constitutional identity can distance itself sufficiently from the relevant identities against which it needs to forge its own image while, at the same time, incorporating enough elements from these identities to remain viable within its own sociopolitical environment.

Jacques Lacan, *Écrits* 517 (1966) ("I think where I am not, therefore I am where I do not think") (my translation).