

**MAIN STRANDS IN LEGAL PSYCHOANALYSIS. THE LEGAL TEXT UNDER PSYCHOANALYTIC HERMENEUTICS**

Mihai GIURGEA\*

**ABSTRACT:** *We have tried in this article to identify the unconscious mechanisms behind the legal discourse, whether it is the decision-making process by the judge, the substantiation of a court decision or a doctrinal opinion in the legal sciences. We have also tried to identify the unconscious processes that trigger the criminogenic behaviour and those that condition the positioning of the individual in relation to the law. Moreover, we have tried to show that the legal text is no stranger to the unconscious mechanisms of the person who creates it, his / her own traumas, suppressed desires or drives. Thus, we can firmly sustain that a court ruling or a legal opinion can never be clearly separated from the very unconscious of the person who "sets the law", and that the judge, who theoretically "sets the law", becomes the one who "makes the law".*

**KEY WORDS:** *court judgment, legal text, unconscious, legal psychoanalysis, law, symptom*

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**1. INTRODUCTION**

The first necessary explanation is that legal psychoanalysis is part of what has been called applied psychoanalysis. According to the somewhat circular definition of the "Larousse Dictionary of Psychoanalysis", applied psychoanalysis "designates the psychoanalysis where it applies its theoretical science and method to objects outside the field of the cure (such as literary and artistic works, but also institutions, ... *justice*<sup>1</sup>)" (Anon., 1997). We shall use this concept of applied psychoanalysis in considering the role and capacity of psychoanalysis to discover a hidden meaning in the legal text and discourse.

The second license assumed is to treat the legal text and the legal doctrine *as text*. Indeed, psychoanalysis can explain the unconscious aspects of the legal text in the first instance, but also to the extent that the legal doctrine is accepted as text or discourse. It becomes necessary to stop at first instance at the legal doctrine depicted as text, and only then to make the step of facing the legal institutions and institutions of psychoanalysis.

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\* PhD, Lawyer - Cluj Bar, S.C.P.A. GIURGEA, GHIDRA & ASOCIATII, ROMANIA.

<sup>1</sup>Regarding the notion of "justice", see also (Lazăr, 2011)

We shall first examine the ability of psychoanalysis to give an interpretation of the text in general, then of the legal text in particular. Thus, we shall discover whether the enthusiastic application by the first Freudian psychoanalysts of the psychoanalytic interpretation scale proves to be valid in the case of the discourse in general, if the text can be decrypted by psychoanalytic techniques, and, moreover, if this interpretative approach fulfils, besides the imperative of legitimacy, the *profitability*<sup>2</sup>, that is, if it opens the path of what has been called in the Western doctrine the *legal critique*. The legal critique is for the legal discourse, in Western reading, what literary criticism is for literary discourse (Caudill, 1997). At first approximation, the relationship between psychoanalysis and text or discourse allows three clear perspectives, otherwise endorsed by commentators interested in the topic.

## 2. TEXT AS A SELF-ANALYSIS TOOL AND THE "FREE ASSOCIATION"

The first perspective is the one that sees the *reader* as the end point of the psychic analysis. In other words, the psychoanalytic investigation follows the effect that a written work, a text, itself produced by the unconscious, produces within the reader. It is, in fact, an individualised psychoanalysis performed by each reader on contact with the text, having the text as a self-analysis tool. The perspective is only profitable from this perspective, i.e. it would facilitate a self-psychoanalysis for anyone, conditioned by the reader's commitment, especially affective, in reading. The abandonment of this application of psychoanalysis is related precisely to the fatal need to individualise the analysis; the reaction that a text produces in a particular lecturer is dependent on the reader's emotional commitment to reading, his / her level of culture and understanding of the text, his / her interest, etc., and rarely similar to that of another subject.

Therefore, in the extreme version, this version can only be used "therapeutically", analogous to the classical psychological tests that require the patient to describe to the therapist what he / she distinguishes from a more or less abstract drawing, or what the text read suggests through a "free association". In the generalised version, namely the one that addresses the general response of the mass to a particular text, psychoanalysis has little to say, the reader is the key here.

## 3. THE SECOND PERSPECTIVE: THE UNCONSCIOUS OF THE TEXT

The following two interpretational perspectives are in fact conditioned by opposing meanings: the first is that which applies psychoanalysis as an "instrumental", ancillary and ready-made science, despite the fact that there are opinions that rise against the first-generation psychoanalysts who considers psychoanalysis a ready-made doctrinal body and adequate for instrumental application. In other words, the meaning of movement and interpretation is one that goes towards the text, *gives priority to the text, to the work, to the detriment of the author*. Jean Bellemin-Noel (Noel, 1996) follows this trend, using the concept of *textual analysis*. The argumentation is relatively bizarre: Jean Bellemin-Noel assures us that in the case of any text there is an *unconscious of the text*, "an unconscious labour of the text", therefore we can give legitimacy to a "psychoanalysis of the text"

<sup>2</sup> For a study on the concept see also (Lazăr, 2016).

independently and distinctively of the author of text, his / her mental system. In a nutshell, textual analysis would be the "analysis of a text, of a single text, ... defined as a coherent, limited, closed, context free assembly (author, collection of works)" or the "reconstruction of a discourse of the desire unrelated to the author nor the other works"<sup>3</sup>. The only exception that could allow the author inside the interpretive labour is to be himself / herself a character in the work, admissible in the case of literary text but inadmissible in the legal discourse. The interpretative version proposed by the textual analysis includes a number of arguments in its defence but also some derogations to the classical psychoanalytic doctrine adopted by Jean Bellemin-Noel. A relatively solid argument put forward by the author in support of the principle of the primacy of the text and of the dispensability of the author in interpretation is that there are valuable texts without a known author or collective author, texts hiding a "personal unconscious", texts that cannot be psychoanalysed otherwise than as finished products, independent of the author. These texts should be interpreted, the author tells us, as if they were the only topics to be listened to, without considering that they encompass the "secret soul of their creator." The argument can be dismissed relatively easily, reminding us that the texts referred to by the author, listed exhaustively (fairy tales, epics and ballads), point out, without recourse to ethnology, something can be termed as "national soul" or "collective unconscious". Freud responds in advance to this challenge, asserting that myths, legends, and fairy tales are likely to be "deformed vestiges of the phantasms of entire nations, corresponding to the secular dreams of the youth of humanity" (Freud, *fără an*). Therefore, the text cannot be interpreted by abstraction of the author, be it collective, but gains meaning only by reference to the person who wrote it. Of course, things are not so clear, and the current hermeneutics shows us, or even tries to prove, the opposite. The lack of reference to the author and the focus of the interpretative attention exclusively on the text, is very popular. Here we can recall descriptively the last attempts of an author such as Paul Ricoeur. The suspension of the hermeneutical labour from the author to the text in the direction of moving the interpretation from the supposed "hidden" meaning that the author wanted to deliver to the openings offered by the "world of work" is just an example. If we can consider the "legal" text as having a world of its own, a world that we can interpret by avoiding references to the one who conceived the law, we shall better understand the movement that takes place within the current hermeneutics.

However, the deviation that the author of the text is allowed from the psychoanalytic doctrine is a little more serious; if, as one can observe, the text is interpretable as a product of the unconscious, anticipating, similarly to the dream, then we must consider the Freudian imperative of interpreting it necessarily in relation to the author. It is impossible, in other words, to interpret a dream or other production of the unconscious (fantasy, regression, symptom, etc.) without recourse to the one experiencing that condition, that is, to the patient's condition. Moreover, the Freudian rationale tells us that seemingly distinct phantasms, seemingly individualised symptoms, successive dreams of the same night, have in fact a significant correlation, are often interpretable in solidarity simply because, although they can reflect different states of the patient they, nevertheless, originate from the same individual. Therefore, it is necessary to admit the correlation between a text and its author, on the one hand, and his / her other productions on the other. Or this

<sup>3</sup> Ibidem, p. 75.

forgetfulness of the author and the rest of his / her creation in favour of the text as a closed work is the programmatic point claimed by Jean Bellemin-Noel.

The third perspective. The legal text as a "symptom" of a compromise between desire and its prohibition

Finally, the third perspective is, we say, the most coherent one. It is announced by Freud, enthusiastically embraced by the first wave of psychoanalysts, challenged in its appendix by psychoanalysts of later generations, but capable of retaining a core of concepts and conclusions somewhat intangible and untouchable by opponents. This perspective seems to give preference to the author in the psychoanalytic interpretation of the text. The premise on which this type of interpretation is based is in fact an old but a fundamental discovery of psychoanalysis, namely that there is a continuum of substance between the child and adult, civilised and primitive, pathological and normal, fantasy and reverie, infantile play and creations of maturity, etc., that the productions of myths, legends, jokes (witty words), dreams, missed acts or poems are in fact all the productions of the unconscious. Any literary or legal text is a "symptom" of a compromise between desire and its prohibition (Kofman, 1985). The creative trajectory is analogous to the oneiric labour.

The text-making mechanisms are similar to the mechanisms of the dream or phantasm, be it displacement or condensation. The text thus becomes a decipherment enigma, an "enigma in which nothing is free, everything signifies", a cryptogram that must and can be deciphered. The interpretative approach thus becomes an "unmasking", which does not necessarily mean, but it may mean, discovering another text behind the text and observing the author's past behind the text. Moreover, and perhaps more seriously, the meaning that the author believes to give to the text is not the authentic and original meaning of the text, precisely because of the secondary processes. In summary, we are dealing with a manifest content, namely the text itself as a consumable product and latent content, i.e. what it signifies, what hides behind the text, figurative, condensed<sup>4</sup> and displaced (Bellemin-Noel, fără an) manifest content.

Similarity with the oneiric labour stops at one point; in the case of the creation of texts, conscious processes take place, in addition to unconscious secondary processes, either strictly related to the discursive technique, or those related to the impression the author wants consciously to leave to the reader or the normative he / she seeks to establish. The psychoanalytical interpretation of the text can only follow the opposite direction of the drafting. Starting from the similarity of structure and origin to the other productions of the unconscious, among which the dream, the interpretative labour is on a similar interpretation to the interpretation of the oneiric productions, with the clear consciousness that the conscious processes enter into the process of creation. Concretely, psychoanalytic interpretation separates the latent content of the manifest content, identifying the mechanisms of condensation, displacement, etc., and finally "disrobing" the author and the text.

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<sup>4</sup>Condensation is the mechanism of the oneiric labour through which an unconscious representation concentrates the elements of a series of other representations. (Larousse)

#### 4. USEFULNESS OF PSYCHOANALYSIS IN THE INTERPRETATIVE APPROACH OF THE LEGAL TEXT

Admitting therefore that the psychoanalytic technique may be useful in interpreting the text, we will be able to approach the legal text as an object of psychoanalysis. The usefulness of this approach seems evident in a report that is established between the text and its author. As Costas Douzinas shows, "some of the best jurisprudential analyses look at the paradoxical relationship between law and emotions. Legal theories have found a prominent interest in the "emotional life of the law," and they begin to recognise the difficulties faced by attorneys caught between their own passions and devotion to the law. While the law expresses the power, the logic of institutions, tradition and reason, yet our personal experiences, our own history with its traumas and symptoms, somewhat determines how we relate to this logic."<sup>5</sup>

Perhaps the most accurate certification of the usefulness of psychoanalysis in the interpretative approach of the legal text is given by David Caudill, who shows that "multiple aspects of the law are unconscious, repressed, and irrational"<sup>6</sup>. Therefore, the first purpose of legal psychoanalysis is to bring the unconscious and subjective into the analysis of legal institutions and legal discourse. However, psychoanalysis was not the first without suspicion on the legal discourse. Psychoanalysis has long been perceived as a threat or form of too personal knowledge to be admitted into the world of legal discourse. The study of the unconscious, of the drives, of the body or the desire was not considered to be related to the legal discourse. Then psychoanalysis threatens to disturb the comfy truths in which the modern legal discourse has been indulged, to question the rationality of the legal discourse by "scandalously" introducing the unconscious into the legal institutions. It is indeed inadmissible, if we can say, from the comfy, positivist perspective of the modern legal discourse, to allow the association of "rational" legal institutions with the unconscious and subjective "institutions" of psychoanalysis. It is indeed inadmissible, if we can say so, from the comfy, positivist perspective of the modern legal discourse, to allow the association of "rational" legal institutions with the unconscious and subjective "institutions" of psychoanalysis.

The introduction of psychoanalysis in the reading of the legal text requires a proper reading method, namely a double reading that takes into account the conscious and unconscious dimension of the subject and of the legal text. Petre Goodrich, guided by his predecessor, Pierre Legendre, leads the interpretation of the legal text to the somewhat risky level of considering the legal institutions in the legal text as being a social subject as if they had a personal body and an unconscious. The recourse to psychoanalytic technique in interpreting the legal discourse is a "counter-dogma" (Pierre, 1974) that gives us a recipe for the contemporary legal tradition, received with a natural reserve and coldness by

<sup>5</sup>Some of the best texts in recent jurisprudence concerned the relationship between legislation (law) and affects. The legal theory has regained interest in the affective life of the law, and hesitantly admits the difficulties encountered by lawyers caught between their dedication to the law and their personal passions. While the law expresses the power and logic of the institutions, our tradition and reason, our personal experiences, our own history with its traumas and symptoms, determines how we attach to this logic" in (Costas, fără an).

<sup>6</sup>All these papers are characterised by the fact that they use psychoanalysis to explain how the law works, how authority is projected over the law, how the law works to create and / or satisfy needs and desires, and most importantly, how many aspects of the law are unconscious, repressed and irrational, in (Caudill, fără an).

the partisans of a non-critical assumption of the law. In Goodrich's words, psychoanalysis reveals the masks, distances and political compromises of modern academic subject matters. It does this by its persuasive force referring to the spectres of sexuality, to the figure of the desiring subject, the place and role of the eros, the Christian charity, love, etc. (Peter, fără an)

Of course, the history of legal psychoanalysis is related to the authorities of the field, to the sound voices that constitute the doctrinal markers of psychoanalytic jurisprudence. Despite the "pure" followers of psychoanalysis who, with utmost condescension, look at a move that seems insane to them, such as legal psychoanalysis, it has been imposed in far-reaching legal schools. Odd enough, the extreme psychoanalysts are not pleased with the association of their science with the law, and the extremist lawyers do not exult at the time of the invasion of their science by psychoanalysis; the first, as they consider that the proximity of their purely conceptualised and intellectual field of such a concrete scope as law to be ludicrous, and the others, on the contrary, deem the association of the legal scientific approach to a field still too unclear and too often assimilated to madness, sexuality or obscurity, such as psychoanalysis in the popular sense, to be null and void.

In a balanced version, the association of the two sciences proved profitable and resisted the proof of time. Thus, the approximation between psychoanalysis and the legal field took place for the first time in the 1930s-1940s, when psychoanalysis as a scientific approach gained some legitimacy and at the same time had become a trend. The enthusiasm of the quasi-universal use of psychoanalysis as a theoretical instrument that gives new meanings and decrypts the occult significations of any discourse is certified by the publication of "*Essais de psychanalyse appliquee*", a collection of articles written by Freud between 1910 and 1923, translated and reunited by Marie Bonaparte in 1933. Probably, as we do not have all the data available, the first psychoanalysis text applied to the judicial field is Jerome Frank's work "*Law and the Modern Mind*" (Jerome, 2001), published in 1930. The book already embodies the association of authority with the image of the Father, an association that will be certified quasi-unanimously by all figures of legal psychoanalysis. In 1950, Franz Rudolf Bienenfeld (Bienenfeld, 1956) resumed the Oedipus myth and identified it as the one who is at the origin of the Law, at the intersection of interdiction and desire in "*Prolegomena to a Psychoanalysis of Law and Justice*," and Joseph Goldstein published in 1968 the *Psychoanalysis and Jurisprudence* (Goldstein, 1968)

The gaps in the development of the new branch of law science (or legal psychoanalysis) have been present, so we can say that the real debut of legal psychoanalysis was in the 1980s with Pierre Legendre, Petre Goodrich and David S. Caudill, who all the authorities around whom all other figures of the field gathered. Legendre, a representative of the French school, historian and legal expert, is interpreted and reinterpreted by Goodrich, a professor of the British school, approaching psychoanalysis from the law school and the historic school, representing the European and Freudian inspiration side of legal psychoanalysis. Moreover, good part of Goodrich's studies is, whether declared or not, owed to Pierre Legendre, who became known to English psychoanalysts only by Goodrich's translations. This line of thinking includes those who embrace the idea that the contemporary legal unconscious – the things that have been repressed, denied, exiled or forgotten – is revealed in the historical analyses of the text of the law. On the other side of the ocean, David Caudill represents the legal

psychoanalysis of the Lacanian influence. Professor of the law school as well as lawyer, Caudill gathers around him the American authors of psychoanalytic and legal texts.

However, the most important events in the evolution of legal psychoanalysis were the conference "Law and Post-Modern Mind" at Cardozo School of Law in 1993 and the symposium "Legal Studies Forum", edited in 1996. Indeed, whether it has become a trend, or the American and European environment have intuited an untapped but "cost-effective" area of law and psychoanalysis, legal psychoanalysis has imposed itself as a central vector of what has been called legal critique.

### 5. CONCLUSIONS

Whatever the prospective and the approach between the legal text and his author, the legal text can never be dissociated from the unconscious of his author. Thus, the decision that the judge rules, which he believes to be purely logical and exclusively based on proofs is always based on his own traumas, suppressed desires or drives. Consequently, his sentences and his decisions, as a written text are never stranger to his unconscious, precisely because of the secondary processes. In summary, we are dealing with a manifest content, namely the text itself (sentences, decisions of the judge) as a consumable product and latent content, i.e. what it signifies, what hides behind the text, figurative, condensed and displaced manifest content.

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