

LAW AS TRAUMA & REPETITION

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I said once to a boy, aged five, that he need not be afraid of a lion, for the lion would run away if only he would look him straight in the eyes. His next question was: "And a lamb can sometimes eat up a wolf, can't it?" "You didn't believe my story about the lion," said I. "No, not really—but don't be cross with me for it," answered the little diplomatist."¹

*You remember the old fable . . . where the lion complained that he should not be so misrepresented "when the lions wrote history."*²

*If a lion could talk, we could not understand him.*³

*The lion was sleeping. Remember?*⁴

We all sleep from time to time and with a peculiar regularity. Sleep comes

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1. SÁNDOR FERENCZI, *Transitory Symptom-Constructions During the Analysis*, in FIRST CONTRIBUTIONS TO PSYCHO-ANALYSIS 193, 203 n.5 (Ernest Jones trans., Karnac Books 2002) (1912).

2. Letter from Wendell Phillips, Esq. to Frederick Douglass (Apr. 22, 1845) [hereinafter Phillips Letter], in NARRATIVE OF THE LIFE OF FREDERICK DOUGLASS, AN AMERICAN SLAVE, WRITTEN BY HIMSELF 10 (William L. Andrews & William S. McFeely eds., W. W. Norton & Co. 1997) [hereinafter DOUGLASS, NARRATIVE].

3. LUDWIG WITTGENSTEIN, PHILOSOPHICAL INVESTIGATIONS 223 (G.E.M. Anscombe trans., 3d ed. 1968).

4. Astrid Grahn-Farley, before turning two, in conversation with author.

to the high palaces and the low places, to those in bondage as to the free, sleep being the most universal of republics.⁵

This article is about trauma, repetition and transference. Wherever there are lions and cages, there is history and conflict. Wherever there is history and conflict, however, there is everything needed for the bringing into being of a transference relationship. In the transference, one repeats a prior relationship through a new one. The transference relationship is a neurotic relationship.⁶ This is true in psychoanalysis and in jurisprudence. In the former, the neurosis is contained by the analytic situation; in the latter, it is contained by the juridical situation.

What is to be done? Transference, like any neurotic symptom, is a reflection of the past.⁷ Transference, unlike a neurotic symptom, has the potential to become a reflection on the past.⁸ The analytic situation may enable the analysand to know and not merely repeat. Such a situation exists wherever history and conflict have been woven into symptoms of law. The strands of that which was undone in the primal scene of accumulation are brought together as the perfect veil for the return of the master-slave relationship. Legal methods are the imaginary threads that guide us back to slavery.

Courage is required to make our interpretations.⁹ Our ability to interpret the dreambook is the help we can extend to clients.¹⁰ We are experts in legal method, yes, but we are also caged and therefore prone to the very same symptoms. But this need not be a cause for despair. Two or many may sometimes be able to regain their shattered completeness, provided only that their sharing, of insight and blindness, takes place in a free association, a coming together in the spirit of mutual aid and direct action.¹¹

“The lion was sleeping. Remember?”¹² Something within the dream itself awakens the dreamer to a duty that must be performed in the world: “The passing on of the child’s words transmits not simply a reality that can be grasped in these words’ representation, but the ethical imperative of an awakening that

5. “Oh sleep! it is a gentle thing, Beloved from pole to pole!” SAMUEL TAYLOR COLERIDGE, *THE RIME OF THE ANCIENT MARINER* 18 (Vintage 2004) (1949).

6. MICHAEL S. ROTH, *PSYCHO-ANALYSIS AS HISTORY: NEGATION AND FREEDOM IN FREUD* 176 (1987).

7. *Id.* at 137–92.

8. *Id.*

9. See C.L.R. JAMES, *THE BLACK JACOBINS: TOUSSAINT L’OUVERTURE AND THE SAN DOMINGO REVOLUTION* 25 (Vintage Books 2d ed. rev. 1989) (1963). James describes the effect of French antislavery literature on Toussaint L’Ouverture: “Over and over again Toussaint read this passage: ‘A courageous chief only is wanted. Where is he?’”

10. See *id.* at 377.

11. Anthony Paul Farley, *The Station*, in *AFTER THE STORM: BLACK INTELLECTUALS EXPLORE THE MEANING OF HURRICANE KATRINA* 147–59 (David Dante Troutt ed., 2006) (on mutual aid and direct action).

12. See *supra* note 4.

has yet to occur.”¹³ “The lion was sleeping. Remember?” The dream is possible only within sleep, but the duty requires an awakening; the child insists. There is a science of law but its method—legal method—is only the dream repeated. The legal form is the endless undernetting¹⁴—the suffering—the slave dreams of escaping.

“The lion was sleeping. Remember?”¹⁵

The dream itself awakens the sleeper to the reality from which it has turned away.

Sleep brings dreams. If lions are subjects of the kingdom of dreams, as they are subjects of the republic of sleep, then what dreams may come must come also to lions, even to such lions as may be forced to sleep in cages. But what is a cage to a dream? Dreams are the free citizens of the universal republic of sleep; nothing can halt their comings and goings.¹⁶ A lion, caged and sleeping, may have been so since birth, but dreams are born free and must so remain forever. To dream in a cage, then, is a kind of freedom. If caged lions dream, they dream of freedom.

The official histories of captivity contain few, if any, usable records of any such freedom dreams. This lack of freedom experienced as a lack of words is the beginning of lion literature:

[T]hey’ve no fear of death left in them; they’re nothing more nor less than madmen; and then they aren’t worth the price of a rope to hang them with; they’re not men any more, they’re lions.¹⁷

If it is true that people can be turned into beasts, “lions,” then it is also true that lions can speak. Abolitionist attorney Wendell Phillips, introducing the *Narrative of the Life of Frederick Douglass: An American Slave, Written by Himself*, witnessed one such lion. Phillips began his letter, “My Dear Friend”: “You remember the old fable of ‘The Man and the Lion,’ where the lion complained that he should not be so misrepresented ‘when the lions wrote history.’ I am glad the time has come when the ‘lions write history.’”¹⁸

Phillips’ epistle appeared under the date April 22, 1845. Douglass, writing of freedom ten months after Phillips’ words, recalled his enslavement, “The

13. CATHY CARUTH, *Traumatic Awakenings (Freud, Lacan, and the Ethics of Memory)*, in UNCLAIMED EXPERIENCE: TRAUMA, NARRATIVE, AND HISTORY 112 (1996) (examining Jacques Lacan’s analysis of the Freudian concept of traumatic repetition as noted in the dream of a father who has lost his child).

14. See *infra* note 23.

15. See *supra* note 4.

16. *Acts* 22:26–29 (New Revised Standard).

17. MARCEL PROUST, REMEMBRANCE OF THINGS PAST (VOL. I) SWANN’S WAY 95 (C.K. Scott Moncrieff & Terence Kilmartin trans., Vintage Press 1982) (1922). The passage quoted above, a comment on soldiers marching off to war, and “lions,” that war makes of them, is followed by the comment, “For by her way of thinking, to compare a man with a lion, which she used to pronounce ‘lie-on,’ was not at all complimentary.” *Id.*

18. Phillips Letter, *supra* note 2, at 10.

degradation to which I was then subjected, as I now look back to it, seems more like a dream than a horrible reality."¹⁹ So lions have been writing history for some time. Despite this, we are still in our cages, still dreaming of freedom.

This essay, then, is about the lions' dreambook; specifically, this essay is about how to use our freedom dreams. The dreambook is the history we have written and our inability to use it to obtain our freedom.²⁰ The dream, told over and over and over again, recorded both in and as our "struggle for law,"²¹ is always the same. Within the iron bars of its cage, the lion dreams of "the Promised Land."²²

In the Zoo, imagining the lion's waking, looking into the lion's "eyes and seeing mine warning me to read the signs carefully"²³ and recalling that "'the religious reflex of the real world' never recognizes itself, or presents itself, as such,"²⁴ I turn, now, to the question of forgetting.²⁵

Emancipation did not take place. Neither Douglass, nor any child of his pride who followed after, ever managed to escape slavery.²⁶ The endless night

19. Letter from Frederick Douglass to *The Liberator* (Feb. 27, 1846), in DOUGLASS, *NARRATIVE*, *supra* note 2, at 94.

20. Would we be able to read a history written by lions? What do we have in common with lions? What points of translation exist between us? Other than the fact of captivity, the cage, the selfsame fact that makes *their* story *ours* to tell? Captivity is a many-splendored thing; it is hard to know when it ends or where it begins. Freedom, on the other hand, is what it is, a question as deep and dark as our always-unknowable essential nature. Would we be able to read a history written by lions? The question leads to a deeper and darker question: Would the lions be able to read their own dreambook?

21. RUDOLPH VON JHERING, *THE STRUGGLE FOR LAW* 21, 21–30 (John J. Lalor trans., Hyperion Press 1915) (1879).

22. On April 3, 1968, the Rev. Dr. Martin Luther King Jr., at his Gethsemane, perhaps still within the folds of his 1963 Dream of a future republic, saw "the Promised Land," and on the very next day, April 4, 1968, the very first anniversary of his denunciation of the millions of murders committed by the American Empire in Vietnam, white power sent him, with the *deliberate speed* and *majestic instancy* of a bullet, to join all the martyrs of all the resistances.

23. NICO, *The Fairest of the Seasons, on CHELSEA GIRL* (Polydor 1990) (1967). Nico's voice comes to me from somewhere in the "undernetting":

Now that the dreams have given all they had to lend
I want to know do I stay or do I go
And maybe try another time
And do I really have a hand in my forgetting?

Now that I've tried
Now that I've finally found that this is not the way,

....
I want to know do I stay or do I go

....
And do I really understand the undernetting?

Id.

24. CARMEN CLAUDIN-URONDO, *LENIN AND THE CULTURAL REVOLUTION* 129 (Brian Pearce trans., Humanities Press 1977) (1975).

25. *See id.*

26. The lion's writings first reached the world bearing the imprimatur of the Boston Antislavery Office, and Boston conjures a certain Celtic spirit:

of slavery is still falling and we, the fallen, have managed only to perfect our degraded condition. Time has not passed²⁷:

The unconscious . . . knows no time. . . . Owing to its wish-fulfilling tendency it is obvious [sic] to time and space. Out of this dissonance between the conscious (which cannot exist without time) and the unconscious (which will not exist [within] time) are begotten some of the neurotic's uncertainties and doubts. Between reality and fantasy there is a borderland in which the concepts of time vacillate. The extent of this borderland furnishes an excellent measure [of] the intensity of the neurosis.²⁸

We sleep and in our sleep disguise our desire for death with dreams of freedom. The manifest content of these dreams is law. The slave dreams of equal justice under law. That is a dream fit for a slave, for such a dream always returns the slave to itself, to its self-same slavery. The perfection of slavery is the struggle for law.

Sometimes it happens that a person escapes, seemingly unharmed, from a place where she has suffered an incredible shock. The passage of time, however, brings with it serious mental and physical symptoms, which can only be attributed to the shock and whatever else happened at that moment. The past, in other words, is carried forward into the present as a traumatic neurosis.²⁹ The victim never crosses the horizon of the traumatic event.

I feel that there is much to be said for the Celtic belief that the souls of those whom we have lost are held captive in some inferior being, in an animal, in a plant, in some inanimate object, and thus effectively lost to us until the day (which to many never comes) when we happen to pass by the tree or to obtain possession of the object which forms their prison. Then they start and tremble, they call us by our name, and as soon as we have recognised their voice the spell is broken. Delivered by us, they have overcome death and return to share our life.

And so it is with our own past. It is a labour in vain to attempt to recapture it: all the efforts of our intellect must prove futile. The past is hidden somewhere outside the realm . . . in some material object (in the sensation which that material object will give us) of which we have no inkling.

PROUST, *supra* note 17, at 47–48. The material object, I argue, is time. The material object is the time, labor-power congealed in commodities of which the dead have been dispossessed and which the living are made to serve.

27. The cage is created by the creature's lost time. At the moment of capture, at the moment the creature is captured by the commodity form:

[T]ime sheds its qualitative, variable, flowing nature; it freezes into an exactly delimited, quantifiable continuum filled with quantifiable "things" (the reified, mechanically objectified "performance" of the worker, wholly separated from his total human personality): in short, it becomes space.

GEORG LUKÁCS, *Reification and the Consciousness of the Proletariat*, in *HISTORY AND CLASS CONSCIOUSNESS: STUDIES IN MARXIST DIALECTICS* 83, 90 (Rodney Livingstone trans., MIT Press 1971) (1968) [hereinafter *HISTORY*].

28. WILHELM STEKEL, *Time in its Relationship to the Neurotic* (1912), reprinted in *TWELVE ESSAYS ON SEX AND PSYCHOANALYSIS* 285, 299–300 (S. A. Tannenbaum trans. & ed., 1922).

29. 23 SIGMUND FREUD, *MOSES AND MONOTHEISM*, in *THE STANDARD EDITION OF THE COMPLETE PSYCHOLOGICAL WORKS OF SIGMUND FREUD* 66 (James Strachey trans. & ed., 1957).

Slavery is death, death only, and that continually. Sometimes someone gets away, apparently unharmed, from an accident, from a death that they only belatedly and incompletely apprehend, only to develop a neurosis, or a psychosis.³⁰ The Middle Passage is akin to such an accident and the history of the Emancipation, the struggle for equal justice under law, is just such a neurosis, or, when slavery perfects itself, just such a psychosis.

The slave is made so by law. The slave, following Emancipation, makes law. And that law, in turn, makes slaves who make laws that make slaves who make laws and so on and on and on. The instrument of repression—the equal rights that are thought to turn away the white-over-black imperative—becomes the vehicle of return for that very same imperative. The emancipated slave endlessly defers the Emancipation by its endless deference to the rule of law.

The struggle for law is the slave's symptom, the symptom of slavery, of death, of death's presence and practice in the renunciation of the future in favor of a not-understood past. There is no rule of law. There are the rulers and the ruled, each bound to its Other by its own forgetting. To see this, one has only to pay attention to the undernetting and the hand we play in our own forgetting.³¹

The cage door opens and the lion emerges. In the dreambook, the coming of such a day appears in the form of glad tidings of great joy. In dreams, our eyes have seen the glory but, alas, the bright morning never comes. The dreambook records scene-shifts from slavery to segregation to neosegregation, from white-over-black to white-over-black to white-over-black, from slavery to its perfection, from harmony to harmony.

What is true of the cage is true of the text. The lion cannot read its own dreambook. In both cases—and they are really one—each being the other side of the same lock, the lion lacks the key. The manifest content of the dreambook conceals something, something that would disturb and so must remain securely within the undernetting.

What disturbs sleep is the very condition that the lion attempts to escape through dreaming. The dreambook, read using the cage itself as the interpretive key, shows only the movement from white-over-black to white-over-black to white-over-black, like iron bars. Neosegregation is white-over-black, segregation is white-over-black, and slavery is white-over-black. White-over-black is the inaugural moment of slavery, slavery is death, death only, and that continually. The latent content of the dreambook, then, is the desire for death.

The slave professes death through its appeal to the law, an appeal that takes

30. The *neurotic* knows and does not know that he will be late and likely miss his train. The *psychotic* knows and does not know that the train has already left the station. Both conditions have to do with fetishism. On one track, the fetishist does not recognize the time of the train's departure. On another track, however, the fetishist takes full account of that fact. The two tracks exist side-by-side, at times, in all of us. And at such side-by-side times the tracks are the bearers of our *neurotic* thoughts. When the two tracks run parallel, like rails to infinity, they bear our *psychotic* thoughts.

31. See NICO, *supra* note 23.

place only after its so-called Emancipation. After Emancipation, the slave bows down before the law. The slave prays for legal relief. The slave thus submits to the rule of law. *The rule of law is the slave's own creation.* The rule of law is the trauma-conceived idea that escapes the slave's mind only to stand over and above the slave as a god. The slave becomes truly a slave only after its so-called Emancipation.

The lion cannot help but wonder what it has done to merit the terrible trespasses committed against it. The lion, its skin having been sold whilst it was still in it, now begins to work, hallucinating capital, to earn its confinement. The commodity that the lion produces via its work of hallucination is law. Here is how it works:

To get past the pain, to get to a place before the trauma, the lion fashions a god and gives it reason, rationality, and a categorical imperative. The boisterous blur of tooth and talon, the sum and substance of the white power by which the lion is bound, is thus given form and flesh from beneath the undernetting. When the "oppressed creature,"³² the crucified lion, commends its everlasting spirit in this fashion, "it is finished"³³ before it begins. And it does begin, over and over again, world without end, with all the eternity of death.³⁴ The reason the lion gives to its god is its own. The lion disowns its reason, and in that act creates all the reasons of state.

"Transference is indeed a cross."³⁵ Slavery is traumatic. The slave was

32. KARL MARX, A CONTRIBUTION TO THE CRITIQUE OF HEGEL'S "PHILOSOPHY OF RIGHT", in EARLY WRITINGS 243, 244 (Rodney Livingstone & Gregor Benton trans., Penguin Books 1992) (1844) [hereinafter MARX, CRITIQUE].

33. *John* 19:30 (New Standard Revised). See also *James* 1:14–16 (New Standard Revised) ("But one is tempted by one's own desire, being lured and enticed by it; then, when that desire has conceived, it gives birth to sin, and that sin, when it is fully grown, gives birth to death. Do not be deceived, my beloved.")

34. Marx describes the virgin birth and timelessness of the creature I have described as the crucified:

However long a series of periodic reproductions and preceding accumulations the capital functioning today may have passed through, it always preserves its original virginity. As long as the laws of exchange are observed in every single act of exchange—taken in isolation—the mode of appropriation can be completely revolutionized without in any way affecting the property rights which correspond to commodity production. The same rights remain in force both at the outset, when the product belongs to its producer, who, exchanging equivalent for equivalent, can enrich himself only by his own labour, and in the period of capitalism, when social wealth becomes to an ever-increasing degree the property of those who are in a position to appropriate the unpaid labour of others over and over again.

This result becomes inevitable from the moment there is a free sale, by the worker himself, of labour-power as a commodity. But it is also only from then onwards that commodity production is generalized and becomes the typical form of production

1 KARL MARX, CAPITAL: A CRITIQUE OF POLITICAL ECONOMY 733 (Ben Fowkes trans., 1990) (1887) (emphasis added) [hereinafter MARX, CAPITAL].

35. Letter from Sigmund Freud to Oskar Pfister (June 5, 1910), in PSYCHOANALYSIS AND FAITH: THE LETTERS OF SIGMUND FREUD & OSKAR PFISTER 39 (Heinrich Meng & Ernst L. Freud

made a brute, made a lion.³⁶ Emancipation seems to be the end of the affair, but the affair never ends. The slave turns away from the trauma, which is thus manumitted to the timelessness of the unconscious. And this timelessness is only measurable by our repetitions, our symptoms, which multiply as the injury, the fatal injury of slavery, perfects itself through law.

There is no past, no moment before the pain, no end to slavery's timeline. Slavery destroyed that past, that moment, that timeline. The master *is* the accumulation of the slave's time. Law is that which keeps the slave unconscious of this reality. Kelsen, in a candid passage appearing under the heading "The Legal System as Chain of Creation," wrote:

Tracing the various norms of the legal system back to a basic norm is a matter of showing that a particular norm was created in accordance with the basic norm. For example, one may ask why a certain coercive act is a legal act and thus belongs to a certain legal system—the coercive act of incarceration, say, whereby one human being deprives another of liberty. The answer is that this act was prescribed by a certain individual norm, a judicial decision. Suppose one asks further why this individual norm is valid, indeed, why it is valid as a component of a certain legal system. The answer is that this individual norm was issued in accordance with the criminal code. And if one asks about the basis of the validity of the criminal code, one arrives at the state constitution, according to whose provisions the criminal code was enacted by the competent authorities in a constitutionally prescribed procedure.³⁷

Tellingly:

If one goes on to ask about the basis of the validity of the constitution, on which rest all statutes and the legal acts stemming from those statutes, one may come across an earlier constitution, and finally the first constitution, historically speaking, established by a single usurper or a council, however assembled. What is to be valid as norm is whatever the framers of the first constitution have expressed as their will—this is the basic presupposition of all cognition of the legal system resting on this constitution.³⁸

eds., Eric Mosbacher trans., 1963).

36. See DOUGLASS, NARRATIVE, *supra* note 2, at 45 ("[T]he dark night of slavery closed in on me; and behold a man transformed into a brute!"). See also *supra* note 17 and accompanying text (discussing Proust's framing of war as turning men into lions)

37. HANS KELSEN, INTRODUCTION TO THE PROBLEMS OF LEGAL THEORY 57 (Bonnie Litschewski Paulson & Stanley L. Paulson trans., Clarendon Press 1992) (1934).

38. *Id.* So, too, the slave has no past:

The white race deems itself to be the dominant race in this country. And so it is, in prestige, in achievements, in education, in wealth and in power. So, I doubt not, it will continue to be for all time, if it remains true to its great heritage and holds fast to the principles of constitutional liberty.

The lion's search for lost time is its fatal error. Every page of its dreambook is a repetition of the first trauma of accumulation, of the moment it was netted and caged, of the moment it died the death that is slavery.

The lion's knowledge of the death it died arrives belatedly. The lion, it seems, must write history to go forward to meet its death, to achieve its perfected slavery. The lion makes its master the ceiling of its ambition when it strives for legal equality and this it does when it bows down before the law in prayer for relief from its condition of captivity. Depersonalized, atomized³⁹, the lion imagines its situation, its fragmentation, as a virtue, wishes it upon everyone, and then dreams up an entire noumenal kingdom, a kingdom not of this world, peopled by categorical imperatives and based upon its trauma-born notion of *equality*. As Pashukanis observed, "The idea of the equivalent, this first truly juridical idea, itself originates in the commodity form."⁴⁰ The lion is the commodity form from whose atomization or depersonalization the idea of equality, the first legal idea, originates.⁴¹

The slave is the commodity that thinks. It creates the basic element or foundation of legality, the notion of equality. It wants to rule its beastly past; it wants some control over what has happened and what will happen in the future. It wants to gather the fragments of its unremembered completeness. It wants order, but creates law. The slave thus gives reason to the teeth and talons of its otherwise mindless master. The slave's sigh, its prayer for relief, its search for equality of right, its beating "heart of a heartless world,"⁴² ironically makes a god of the very beast that brutalized it. The slave is itself, in itself, the "soul of soulless conditions."⁴³ The law that appears is the slave's belated understanding of the death that was—and is—slavery but it cannot be understood within the dream, that is, within the juridical horizon, within the world bounded by law. Each windowless monad, each atom of the slave's utterly shattered whole, reflects the cage as the world and the world as the best of all possible worlds:

Plessy v. Ferguson, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting).

39. Trauma atomizes us in this way:

If the shocks increase in number during the development of the child, the number and the various kinds of splits in the personality increase too, and soon it becomes extremely difficult to maintain contact without confusion with all the fragments, each of which behaves as a separate personality yet does not know of even the existence of the others. Eventually it may arrive at a state which—continuing the picture of *fragmentation*—one would be justified in calling *atomization*.

SÁNDOR FERENCZI, *Confusion of Tongues Between Adults and the Child* (1933), reprinted in FINAL CONTRIBUTIONS TO THE PROBLEMS AND METHODS OF PSYCHO-ANALYSIS 165 (Eric Mosbacher & Michael Balint trans., 1994).

40. EVGENY B. PASHUKANIS, THE GENERAL THEORY OF LAW & MARXISM 168 (Barbara Einhorn trans., 2002).

41. Pashukanis observed, "[T]he juridical idea, or the idea of the equivalent, is first clearly delineated and objectively realised at that level of economic development where this form becomes as common as equalisation in exchange." *Id.* at 170.

42. MARX, CRITIQUE, *supra* note 32, at 244.

43. *Id.*

Besides the World, that is, besides the aggregate of finite things, there is some dominant unit, not only as my soul is in myself, or rather as my ego itself is in my body, but manifesting a much higher reason. For the one being which dominates the universe not only rules the world, it also makes or creates it. It is superior to the world and, so to speak, beyond the world, and is therefore the ultimate reason of things.⁴⁴

The original accumulation—in which the lion's skin was sold whilst it was still in it—now becomes the god of all things, the “ultimate reason of things.”⁴⁵ The original accumulation is the invisible hand that creates and sustains the cage as the best of all possible worlds. The original accumulation, repeated over and over and over, is the law and all the prophets.⁴⁶ “The reasons for the world are therefore concealed in some entity outside the world, which is different from the chain or series of things, the aggregate of which constitutes the world.”⁴⁷ The original accumulation occurs during “a time out of mind.”⁴⁸ It is the unconscious of law. The original accumulation marks the end of the before-time and, strangely, the beginning of time and, even more peculiarly, the end of time. All that is measured has been made measurable by the original accumulation. Moreover, the original accumulation is precisely what law represses. In this way, the original trauma of accumulation is repeated forever. In other words, the original accumulation, if not faced, becomes immortal.

Marx observed, “the veiled slavery of the wage-labourers in Europe needed the unqualified slavery of the New World as its pedestal.”⁴⁹ The “veil” obscured the fact that:

The discovery of gold and silver in America, the extirpation, enslavement and entombment in mines of the indigenous population of that continent, the beginnings of the conquest and plunder of India, and the conversion of Africa into a preserve for the commercial hunting of blackskins, are all things which characterize the dawn of the era of capitalist production. These idyllic proceedings are the chief moments of primitive accumulation.⁵⁰

The “idyllic proceedings” are memories of the bloodstained gate through which the slave enters slavery.⁵¹ Memories of the bloodstained gate through

44. GOTTFRIED WILHELM VON LEIBNIZ, *On the Ultimate Origination of the Universe* (Nov. 23, 1697), reprinted in *MONADOLGY AND OTHER PHILOSOPHICAL ESSAYS* 84, 84 (Paul Schrecker & Anne Martin Schrecker trans., 1965).

45. *Id.*

46. See MARX, *CAPITAL*, *supra* note 34, at 742 (“Accumulate, accumulate! That is Moses and all the prophets!”).

47. VON LEIBNIZ, *supra* note 44, at 85.

48. ST. GEORGE TUCKER, 1 *BLACKSTONE'S COMMENTARIES* 69 (1803).

49. MARX, *CAPITAL*, *supra* note 34, at 925.

50. *Id.* at 915.

51. As Douglass recalled:

[Master . . . would at times seem to take great pleasure in whipping a slave. . . . The

which the slave enters slavery are repressed by legal method, recall Kelsen's basic norm and Blackstone's time out of mind. Legal method is the repression and, therefore, repetition, of the primitive accumulation, slavery, that inaugurated capitalism. The slavery that is capitalism required (and requires⁵²) black skin as its veil, hence, "the commercial hunting of blackskins." The commodity that thinks inaugurates the struggle for rights and thereby takes a hand in its own forgetting.⁵³ The struggle for rights is dispossession that no longer recalls its origin, capture (for example, "the conversion of Africa into a continent for the commercial hunting of blackskins"), except in the form of repetition. Masters maintain their status as masters while the dispossession continues to force the production of dreams. These dreams, as laws, become the training routines or abuse rituals that enable the next phase of production to take place without revolution, and the next and the next and the next. The lions are always prescient, "gifted with second sight," because they always have knowing non-knowledge of just how much it will take to maintain the lock, white-over-black, and also their own fealty to white-over-black, against their trauma-compromised struggles.⁵⁴ At a certain point, perhaps at any point, a dreamer may wake from a dream. That is why the dreamwork, the disguising of the disavowed desire for slavery that is the latent content of every dream of legal equality, of the rule of law, must be done wisely and well by our jurists to make certain all the repetitions of hell.

Another world is possible:

What is essential is to realise that the capitalist state should be seen and evaluated as a historical phenomenon even while it exists. It should be treated, therefore, purely as a power structure which has to be taken into account only to the extent to which its actual power stretches.⁵⁵

louder she screamed, the harder he whipped; and where the blood ran fastest, there he whipped longest. He would whip her to make her scream, and whip her to make her hush I remember the first time I ever witnessed this horrible exhibition. I was quite a child, but I well remember it. I never shall forget it whilst I remember any thing. It was the first of a long series of such outrages It was the blood-stained gate, the entrance to the hell of slavery, through which I was about to pass. It was a most terrible spectacle.

DOUGLASS, NARRATIVE, *supra* note 2, at 14–15.

52. Marx describes the virgin birth and timelessness of the creature I have described as the crucified. *See supra* note 34.

53. NICO, *supra* note 23.

54. As W.E.B. Du Bois famously observed:

[T]he Negro is a sort of seventh son, born with a veil, and gifted with second-sight in this American world,—a world which yields him no true self-consciousness, but only lets him see himself through the revelation of the other world. It is a peculiar sensation, this double-consciousness, this sense of always looking at one's self through the eyes of others, of measuring one's soul by the tape of a world that looks on in amused contempt and pity.

W.E.B. DU BOIS, *THE SOULS OF BLACK FOLK* 3 (Bantam 1989) (1903).

55. GEORG LUKÁCS, *Legality and Illegality*, in *HISTORY*, *supra* note 27, at 256, 261 (emphasis

The neurotic (and the psychotic) transforms its present surroundings into "repetitions of specific historical scenes To do this the neurotic must always disregard one important element, viz.: time."⁵⁶ Law is the method by which this neurotic disregard of time is enacted. "The lion was sleeping. Remember?" Recall, again, Blackstone's "time out of mind" and Kelsen's "basic norm" and one sees that law becomes law when, through the neurotic or psychotic disregard of time, it enables the endless repetition of a specific historical scene, the primal scene of accumulation. The slave is the creation and creator of law. Legal method produces its neurotic best guesses and psychotic certainties through the disregard of time. The slave's devotion to legal method is its refusal to look at the "capitalist state as a historical phenomenon."

Transference, in psychoanalytic discourse, describes the relationship existing between an analyst and analysand in which infantile feelings, feelings from a before-time, are directed by the latter onto the former. The prerequisites for transference are history and conflict.⁵⁷ These prerequisites which exist in the analytic situation between analyst and analysand also exist in the juridical situation. The relation between the slave and its jurists is akin to the relationship between the analyst and her analysand. That which is revealed through transference in the analytic situation may resemble that which is revealed through transference in the juridical situation. The transference provoked by the analytic/juridical situation itself is key to interpreting the juridical freedom dreams of the brutalized slave. To do this one must carefully distinguish between interpretation *in* the transference and interpretation *of* the transference. Legal method is interpretation *in* the transference. The method I outline here is interpretation *of* the transference, in other words, a reflection *on* and not merely *of* the past.

Law is sublime. Sublimation, for psychoanalysis, is the release of infantile impulses (impulses from the before-time) in socially-acceptable forms. Law is made by the responsible subalterns, willing commodities, slaves who toil at creating equal rights and rule of law. Law is the sublime pain of the primal scene of dispossession. Law is sublimated slavery.

Jhering's work is particularly helpful in understanding the way that the law is built up, struggled for, by and through *resistances* to certain injuries.

Resistance to injustice, the resistance to wrong in the domain of law, is a duty of all who have legal rights to themselves—for it is a commandment of moral self-preservation—a duty to the commonwealth;—for this resistance must, in order that the law may assert itself, be universal.⁵⁸

omitted).

56. STEKEL, *supra* note 28, at 290.

57. ROTH, *supra* note 6, at 137-92.

58. VON JHERING, *supra* note 21, at 30.

Jhering wrote of “an inner voice” that tells the wronged party:

that he should not retreat, that it is not the worthless object that is at stake but his own personality, his feeling of legal right, his self respect—in short, the suit at law ceases to appear to him in the guise of a mere question of interest and becomes a question of character.⁵⁹

Further, Jhering, providing the three examples of the military officer who struggles for honor, the peasant who struggles for land, and the merchant who struggles for credit, stated “[the merchant’s] credit is to him what honor is to the officer, and property to the peasant,”⁶⁰ described the willingness of each to bring suits in those areas, and concluded, “[E]very man possessed of a legal right defends the moral conditions of his existence when he defends his legal right.”⁶¹ For Jhering, each has “the correct feeling of the peculiar conditions of his existence.”⁶²

The lion is caged. Its resistance, then, is in every direction. The lion, king of the beasts, thus represents a universal class, a class that can only be liberated by an overcoming of *all* the resistances. If the military officer struggles for honor, the peasant for land, and the merchant for credit, then the slave struggles for equality, *the very first purely legal idea*.⁶³

Every wounded person plays a role, each fights, struggles, for law by taking care to resist the wrongs, the injuries that she feels in the place that separates a person from a beast. *This is the injury that each experiences as other than a cost-benefit calculation. This is the injury to one’s self and not one’s interests. This is the injury to the part of the capitalist system that has been introjected by the injured party.* But the lion is a beast. The black is wounded, brutalized, made a beast, a lion, and caged. The cage totally separates the black from people and from personhood. The cage is its skin. Remember that the lion’s skin was sold whilst it was still in it. The black, then, is *injured* in total. So it must be, for the black is to be the commodity. Its place is not to feel the injury in only one particular part of its being and then to draw the rule of law across that particular split in the surface of things; its place is not to struggle to bind a single injury with right. Rather, the lion’s skin was sold whilst it was still in it; the black, the slave, was sold entirely and is therefore all and only injury. The lion’s skin has always already been sold. The slave, skinless, must struggle, therefore, to bind itself entirely within right in order to remain a slave; the lion, binding itself within the undernetting, thereby plays the lead role in its own forgetting.⁶⁴

What can the lawyer, the one trained to navigate the archive of dispossession, offer? Not leadership. The dispossessed, out of their dis-

59. *Id.* at 29.

60. *Id.* at 45.

61. *Id.* at 46.

62. *Id.* at 43.

63. See PASHUKANIS, *supra* note 40, at 168.

64. NICO, *supra* note 23.

possession, will themselves create "the organization, the forms, and ideas which . . . emancipation demands."⁶⁵ The lawyer *cannot* lead. The lawyer *can* be a mirror. In the mirror of transference that is the legal archive, the dispossessed may come to see the repetitions *as* repetitions and the world that they have been dreaming of as the one they themselves already possess the power to make. The injury to one is the injury to all. The slave, the black, the sentient commodity, the dreamer of rights, the lion, is all and only injury, and that continually. The lion may see itself in the looking-glass of the transference and the way in may become the way out. The dispossessed may come to understand the repetitions and that they already know that their emancipation is beyond the juridical horizon.

65. C.L.R. JAMES, GRACE C. LEE & PIERRE CHAULIEU, *FACING REALITY* 91 (1974).