IMPUTABILITY AS A BENEFIT [1]

by Giacomo B. Contri [2]

SUMMARY

The author claims that the concept of imputability should be considered the common ground connecting the juridical science developed by Hans Kelsen with the psychoanalysis invented by Sigmund Freud.

Imputability links a condition with a sanction: a process at the core of both authors' thought. Imputability is crucially different from causality since causality links a cause with an effect.

Causality and imputability neatly define Medicine and Law. Medicine (causality) identifies and treats the body without imputability. Law (imputability) builds a case for imputability without body. Freud's discovery of the human body as the body characterized by drives creates a third case: the body defined by its own imputability. It is the beginning of the psychoanalysis.

The author articulates the Freudian concept of drive (Trieb) in light of the juridical concepts of sanction and obligation. Sanction and obligation become the foundation of the relationship between a subject and another subject. As a result: 1) The concept of drive is redeemed from views tending to reduce it to an animal instinct or to a model of the mind; and 2) Imputability becomes the foundation to distinguish between pathological and sane thinking.

[1] Translation by Elisabetta Passinetti and Elena Benzoni. Revised by Luca Flabbi and Rosanna Pediconi.

[2] MD, Psychoanalyst, President and Founder *Società Amici del Pensiero - Sigmund Freud*. This text is a revised version of "Anima e paura. Studi in onore di Michele Ranchetti" published in Italian in *Quodlibet*, 1998, pp. 381-391. I am delighted to dedicate these pages to Michele Ranchetti, also for personal reasons which will perhaps be quite evident in the style of the text, which is characterized by narration and by a fragmented or aphoristic tone rather than by an argumentative one. Ranchetti has honoured me by introducing my work *La tolleranza del dolore. Stato diritto psicoanalisi*, Milan 1977, in Florence at the *Gabinetto Scientifico Letterario G. P. Vieusseux* (published in "Antologia Vieusseux", number LV, July September 1979, pp. 33-46). I do not think I need to remind Michele Ranchetti, Church historian, of the relevant passage written in 1977 by the theologian and canonist, Eugenio Corecco, then Bishop of Lugano, who died in 1995. In this passage he characterised the Second Vatican Council as having "subtle anti-juristic aspects" (*"Ordinatio Rationis"* o *"Ordinatio Fidei"? Appunti sulla definizione della legge canonica*, in "Communio" 36, 1977).

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A body can exist without imputability: this is the first case we will make.
Imputability can exist without a body: this is the second case.
We will suggest the possibility of a third case, which is the existence of imputability in relation to a body.
Imputability is the condition of the relationship, of every (universal[2]**)** relationship[3].

1. The body without imputability

The first case relates to Medicine and it is easily and immediately understood: illness, which is the physician's responsibility, is not a sanction but an effect[4] as is the possible medical recovery. It is perhaps precisely because of the body's constitutional lack of imputability during medical treatment that we yearn more and more for a future social order which would no longer be medical or organic, as in the past, but biomedical[5].

2. Excursus

We will move onto the second and third case in a little while after a brief digression to describe the development of my research over the years. I began to formulate my research in 1976 when I started to link Hans Kelsen's work with Sigmund Freud's[6]. I eventually came to the conclusion that the theme of Freud's work as well as Kelsen's is imputability, namely, the connection between a condition and a sanction, or in other words the distinction, in science and experience, between causality and imputability[7].

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[2] The world depicted in Freudian universality is a juristic world: this is my thesis.
[3] Cognitivism is nowadays the philosophy of non-imputability (but this same philosophy also has other names). From an important lexical point of view, cognitivism has substituted the word "interaction" for the word "relationship". Many psychoanalysts are now also doing the same thing.
[4] That does not alter the fact that physicians are also consulted by patients whose illness is not one of causality but one of imputability: this is how I define neuroses and all psychopathology in general. The bibliographical references I could make here would be numerous.
[5] I would like to point out that for "biomedical" you can now read "bio-ethical". Nowadays "ethical" becomes anti-juristic. The two branches of bio-ethics encircle the juristic system and even if they do not overwhelm it, they succeed at least in isolating it. The line of thinking I am proposing is drastically different from the one used by M. Foucault in *Naissance de la clinique. Une archéologie du regard médical*, Paris, PUF, 1963; and in *Surveiller et punir*, Paris, Gallimard, 1975.
[6] This connection between Kelsen and Freud is supported by the fact that they met on two occasions when Kelsen was Freud's guest and on each occasion he spoke to Freud about a text that he had written. The first of these texts was *The concept of the State and social psychology – with special reference to Freud's group theory*, published in "Imago" VII (1922), pp. 97-141. I translated this text into Italian and French, and wrote an introduction to it.
[7] In this case we are talking about "juristic causality" as distinct from "natural causality", as well as about "psychic causality" as distinct from "natural causality". This is, in the best cases, an example of acceptable linguistic tolerance but one which is open to ambiguity.

We can illustrate the respective positions of Freud and Kelsen, focussing on the theme of imputability, with two sentences, one from each author:
Kelsen says: "A man is not imputable because he is free: he is free because he is imputable"[8]. The consequences and correlations of this assertion are strictly speaking immense, that is to say, they are yet to be measured .

Freud says: «we have to recognise a new limitation to the effectiveness of analysis; after all, analysis does not set out to make pathological reactions impossible, but to give the patient's ego *freedom* [it is the Author himself who underlines this word] to decide one way or the other.» [9]. We note that when Freud uses the word "limitation", it is not in a negative sense, perhaps in the name of scientific modesty[10] and the limitations of science as well as reason, but rather in a good way: in that there is the possibility of transferring[11] the subject from the compulsive order (which does not however mean from cause and effect) of the pathology to a new order which is qualified as free by the "determinist" Freud. The fact that it is possible to choose one solution (pathological-imperative) or another one (normal-normative), means precisely that the subject is moving onto the imputability of the emerging behaviours in one solution or the other.

[8] I have just summed up the original sentence by Kelsen which in its entirety reads : "One does not impute a sanction to an individual's behaviour because he is free, but the individual is free because one imputed a sanction to his behaviour*."* (H. Kelsen, *La dottrina pura del diritto*, (*The pure theory of law)*, Einaudi, Torino 1975, p. 118). We can leave aside for now the Kelsenian subordination of causality to imputation. Let us only remind ourselves of the fact that imputation signifies the possibility of defining an "end point" in a set of behaviours, facts or phenomena, whereas natural causality does not recognize an end point. In my elaboration, the Kelsenian concept of an end point *was* very important in order to determine the concept of "satisfaction": there is satisfaction when a motion can completely come to an end without that end signifying death (death and the death of motion coincide). One is death and the other is the death drive.

[9] S. Freud (1923), in *The Ego and the Id,* vol 19, p.50. In addition to this quotation from Freud, I refer the reader to another quote, which can be regarded as addressing the issue in the same way: «But if we proceed the reverse way, if we start from the premises inferred from the analysis and try to follow these up to the final result, then we no longer get the impression of an inevitable sequence of events which could not have been otherwise determined.» (S. Freud, 1920, *The Psychogenesis of a Case of Homosexuality in a Woman*, S.E. vol. 18, p. 167)

[10] Modesty as a virtue does not derive from a sense of limitation (physical, economic or mathematical): if this were the case miserable people, from a material or psychic point of view, should be more versed at being modest. Yet, we know only too well that they are not. Modesty is a quality of perfection, so we should conclude that it does not exist. Moral issues have, in any case, been reinvigorated by the observation that perfection and satisfaction are conceptually identical, an observation that is totally absent in "classical" thinking.

[11] This verb appears here neither by chance nor equivocally. *Übertragung* or transfer (this is the discordant English translation of the Freudian word from the French 'transfert') is, in the final analysis, this possibility of transferring to another, new order.

3. Imputability without a body

Let us consider the second case: that of imputability without a body. This is the case of imputability – as a legal concept, not a moral one[12] - in the Law we call State law. It is this concept that Kelsen worked on. Yet, this manner of expressing oneself alludes to another Law (a positive one – not a moral one nor an ideal "natural law" which would be written or registered who knows how, why or by whom).

It concerns what we can describe as the mystery of the law, or of the juristic norm, in the same way as Marx spoke about the mystery of commodities[13].

Kelsen insists on the fact - and he is right to do so - that the connection in an imputation, that is, between a sanction[14] and a condition or behaviour (theoretically defined in a specific case), is not dependent on any external or prior cause of this connection. Here is a typical example: you are not imputed (in this case from a criminal point of view) because you have killed someone, that is to say, that the basis of this legal statutory norm is neither the fifth commandment nor a widespread moral sentiment (against murder) in humanity, or in the majority of people in a specific period of time.

Moreover we can say that knowledge about the norm is knowledge about only two terms (the condition in its connection with the sanction) and not about a third one, the agent, related to this specific condition or conduct. Therefore the "defendant" in the juristic norm of the State is strictly the conduct, the act and not the agent, physical person or subject. This subject is related to the norm by an "of" (the actions *of* this person) only from a purely grammatical and not legal point of view: in imputation by the State, grammar is ineffectual in transforming the law (in a well-known lexicon: grammar is an impotent force when used to transform juristic acts). In the norm investigated by Kelsen, this "of" refers to nothing more than a newspaper story based on a criminal event[15]. If this connection were juristic, not just grammatical, State law would be one case if not *the* case of imputability in relation to the body. Yet, State law is the failure of the

[12] I do not concede that there is a morality which is not immediately of a juridical nature. See, G.B. *Il pensiero di natura* Milano 1995. And a previous version in: G.B. Contri, *Leggi*, Milano 1989 and G.B. Contri, *La questione Laica*, Milano 1991.

[13] We should distinguish between mystery and enigma. Regarding this matter, it is worth mentioning Viŝinsky's (1883-1954) objection to Kelsen that law is not an enigma.

[14] The idea that the sanction – the *concept* of sanction – is above all penal and perhaps never meritorious dates back to the beginning of the modern age, although there are extensive antecedents. The only exception to this view is H. Kelsen. Moreover it has taken many years to establish a precise distinction between sanction and revenge.

[15] In the past, at least from the 1920s, there has been a debate on the meaning of punishment that has developed in a lengthy, varied, never decisive and sometimes comical way. See Karl Menninger (1893-1990) *The Crime of Punishment*, New York 1968 and Albert A. Ehrenzweig, *Psychoanalytic Jurisprudence*, New York 1971 (italian traslation *Giurisprudenza psicoanalitica*, La Salamandra, Milano1982). See also M. Rejsner, *Un giurista sovietico e Freud*, Sic-La Salamandra, Milano 1979

juristic connection between imputability and the body: that is why this area of law is the sphere of imputability without a body.

There is a film which unintentionally relates to what I have been briefly describing so far. It is the really Kelsenian episode of a famous film, *The Phantom of Liberty* by Buñuel. One character - depicted in the film with completely anonymous features and with the motives for his behaviour also not known – randomly kills several people in a crowd with a precision rifle from the top of a skyscraper. Pointedly, the director does not even address a consideration of this madness, something that would be still too empirical, despite the abstract nature of the "reasons" for this madness. All that happens is that he kills repeatedly using his rifle until the police arrive: they arrest the protagonist of this action, who is immediately processed according to the highest ideals of judicial procedure and then condemned to death. Yet the judge, as soon as he has pronounced the sentence, or in other words accomplished the ritual of State law's imputative connection to the action, approaches the "murderer" and shakes his hand. The latter is now free to go and they all leave the courtroom, in the glare of the photographers' flashlights.

If we consider the Kelsenian distinction, between the order of nature, the reality of *sein* or what "is" as the reality of the efficacy of cause and effect, and the order of (State) law, the reality of *sollen*[16] or what is described as "ought" as the reality of another distinct efficacy, we can see that in this film's episode, which is a theoretical drama, the reality or *sein* is all reduced to ritual: the bodies do not exist as actors but as actors in a ritual drama (no great consolation for prisoners, who find themselves physically taken by force to prison when their bodies have not been imputed – the black humour of the prisoner's *da–sein*).

The possibility of progress in imputability implies ensuring that it keeps at least two of its promises: one of releasing an action from the enslavement and dissatisfaction of an infinite series of actions (there is an "end point"[17], as Kelsen says), and one of providing a principle for determining what is blatantly inadequate, the personal identity of someone who can be imputed by law.

Let us now set out at least some aspects of the three different orders:

- the medical one, which is culturally sublimated by bioethics, in which the being, *sein* or reality of the body is not imputable;

[16] In contrast to *Sein*, translated here as "is" (but more strictly speaking as "to be"), translators have translated S*ollen* as "ought to be". Having worked as a translator myself on difficult texts (first of all: J. Lacan, *Ecrits*, Seuil 1966), I sympathise with all translators who are faced with problems in translating complicated texts, whatever solution they arrive at. I still think that, even though it may be a loose translation at least in some Kelsenian contexts, the Kelsenian verb *Sollen* should be simply translated as "ought" without resorting to the hybrid "ought to be".

[17] Rest is an indication of this "end point" and sleep is just a particular example of this rest.

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- the juristic order of the state described by Kelsen[18], in which the imputation is missing the being, *sein* or reality of the body;
- and the one I have barely alluded to, that is conceivable and can be activated[19] starting with Freud, which I will try to describe more fully now…

4. The imputable body

I will proceed with a brief explanation, as the aim of this short paper is to explain and not to demonstrate. My way of demonstrating is *almost* similar to the Kantian one rather than the Freudian one – with moral law as the system of producing universal legislation[21] – but in radical antithesis to the Kantian distinction between the moment of moral law[22] and the moment of natural law, the first one relating to interiority and the second one already relating to exteriority (an exteriority that is then finally completed in State law[23]). The principle of universal legislation is established for us in one single moment, and incorporates the principle of psychological legislation (one of my/our[24] theses is that psychic life *is* juristic life[25]). Therefore (*via* Freud) law, morality and psychology are three names for the same concept.
Freud has brought back the human body - that is to say, the laws of motion[26] relating to the human body, because when we talk about the body, we are talking about the laws of motion of this body – to the place from where it had been deported, a real Babylonian exile[27] of the body from its promise. Freud has brought it back to:

[18] It is indeed strange that Kelsen could have been accused of justifying the existing political order. If anything, because he did nothing but describe an absurd mystery, he should have been accused of being subversive.
[19] To what extent can this third order be activated? Beyond what any mental concoction permits? For years, my answer to this has been: this order can be activated in psychoanalytical practice, because this is a practice which relates to another, more complete law.
[21] See G.B. Contri, *Leggi* where three universal legislative outlines by Plato, Kant and Freud are compared as laws of motion of the human body. See also the two essays G.B. Contri, *Il dis-ordine di Platone. L'inconscio demiurgo e l'*inadequatio *dell'ordine*, and G.B. Contri, *Kant con Lutero. La giustizia e la legge*, both in: *Di-segno. La giustizia nel discorso*, G. Dalmasso (ed.), Jaca Book, 1984, Milano.
[22] Freud had already felt the need to contextualize Kantian moral law as "super-ego". We no longer stop at the *concept* of the super-ego, which is perfectly incomprehensible today. In this sense Lacan has helped us in qualifying it as "obscene and cruel" and Kant as perverse. See J. Lacan, *Kant con Sade*, in: *Ecrits*, op. cit.
[23] The Lutheran distinction of interiority and exteriority has been adopted in a secular manner by Kant. See *Kant con Lutero. La giustizia e la legge*, in: *Di-segno. La giustizia nel discorso*, op. cit.
[24]'Ours' for these and other ideas are shared by a group of colleagues called the *Società Amici del Pensiero - Sigmund Freud*, to which I belong.
[25] "Psychic life as juristic life" is for a second year the title of one of the Seminars by the *Società Amici del Pensiero - Sigmund Freud*. See on the website http://www.societaamicidelpensiero.com/
[26] Anatomy, physiology and biology are sciences, but they do not deal with the laws of motion of the body.
[27] It is not the natural sciences that are Babylonian but the deportation programme to them of a "Psychology" that for a century – this programme dates to even well beforehand – has created a concentration camp for

1° being a body to which has been imputed, without its own merits, an aim (*Ziel*) of satisfaction, or health (even if health is a word that could or should remain indeterminate). We could say that initially it was a law of motion which became a well-structured law (pressure-source–object–aim, *Drang-Quelle-Objekt-Ziel*);
2° the system of obligation and sanction (two juristic concepts) deriving from it;
3° the development of individual acts by this body which are, above all, acts of obligation and sanction, that is to say, juristic (legislative) acts[28].
It is clear that I am describing the Freudian concept of "drive"[29] as the concept of the normal-normative (and not imperative) law of motion of human bodies within the universe of these bodies. At this point I will not give an account of my work in the patient reconstruction of this law, let alone a graphic illustration[30] of it. I will just try to explain this law with the following sentence, used a hundred times before, which describes the way a child can implement it in his relationship with his Others:
a (source-*Quelle*) "Nursing me my mother …
b (pressure-*Drang*) ... excited me, that is motivated me[31] …
c (object-*Objekt*: I will shortly explain why I have mentioned the object at this point) … to the need to be satisfied
d (aim-*Ziel*) ... by means of Another (and as such, i.e. on condition that, she is representative of the Universe of all the Others)".
The verb "nursing" can be substituted with any transitive verb of the adult experience.

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psychology as one of individual psychological competence, which is a juristic competence. Adapting a famous adage: "Psychology is theft".
[28] See G.B. Contri, "…*and God did not create the unconscious"* in *The lay question* op .cit., pp. 77-105 to legislative work on the individual. Whether or not God exists, every right constitutes precisely what in any case God did not "create". It is easy to understand that the first concept to be attacked or distorted in the history of psychoanalysis has been that of repression, that is to say, the concept of an act and an agent, an act within the limits of which all possible actions will then follow. This is not an obscure concept or a pseudo-concept: I illustrated it using the famous quote by Scarlett O'Hara in *Gone with the Wind*, when she is faced with a question that she cannot or does not want to deal with, she chooses the solution "Tomorrow I'll think of some way ... after all, tomorrow is another day!". This legal offence – which is not an action but rather an omission – is followed by that true and proper juristic sanction which has been called the return of what is repressed. The agent of this sanction is the so called "unconscious" which represents the memory of the active law of motion in the face of the violation of the law itself. In order to avoid the juridical nature of the unconscious – only in the particular case of the psychic life as juristic life – there has been an attempt to abolish the very concept of repression, or to reabsorb it into a mythical primitive repression.
[29] I have translated " Trieb" as "drive".
[30] See G.B. Contri, "*Il pensiero di Natura*" pp. 21 and 157.
[31] The doctrine of excitation as a motivation is central to Freud's development of these topics and his own lexicon. See S. Freud (1915), *Instincts and their Vicissitudes*, S.E. 14.

This law, which lends itself to universal legislation, is:
1) economic: *demand and supply*, with respect to the distinct positions of Subject and Other, where both are Subjects;
2) juristic (a): there is *obligation*, which is neither an imperative nor a compulsion nor an automatism. It is the presence of the obligation which makes the economic law[32] juristic;
3) juristic (b) there is an *act* where the Subject and the Other come together to create an obligation. As a result of this, a range of possible actions will follow that are generated by that act;
4) juristic (c): there is a *sanction* – by the Subject against the Other – when there is no compliance *(pacta sunt servanda*[33]) with the obligation[34] that has been created. More so than in State law, this law *non excusat*[35] even in the case of ignorance. Indeed it goes further than that in considering ignorance itself to be a kind of crime.
This is therefore a positive right, that is, one established by legislative acts[36.] These are acts of demand (by the Subject) and supply (by the Other subject) with regard to the composition of the law of motion of the body towards an aim, where the Subject and Other designate first and foremost the interchangeable places they will occupy, without any hierarchical or sexual determination.
It was therefore necessary to elaborate at length[38] on the Freudian concept of "drive" (this is one of those cases in which double or triple quotation marks should be used). The long history of the

[32] This is not the case of juristic-state law in a geographically given country where the juristic law can be distinguished from the economic law (supposing there are economic laws).
[33] *Pacta sunt servanda* (agreements must be kept) without the need for any secular or divine moral presupposition: it is enough to consider the (economic) fact that there has been an investment. The investment cannot be nullified. And it is not "forgivable" in the common, or indeed, inane meaning of the word, which presumes the nullification of the investment. This idea of the nullification of investment is (in the psychiatric lexicon) maniacal: but it is well-known that the maniac does not invest. At most he overacts. Nowadays the word "forgiveness" is not even debated: it is purely and simply a meaningless word. See G. B Contri, *SanVoltaire*, Guaraldi, Rimini 1994.
[34] Arriving at the distinction between sanction and revenge has been a result of the formulation of my ideas over the last year.
[35] The complete Latin sentence would be: *ignorantia juris non excusat*; in English: ignorance of the law excuses no one.
[36] We have unwillingly attributed to this other right the ancient and obscure term of "natural right" as distinct from State law. Unwillingly, not only because of its historical obscurity but also because of the inconclusiveness of the age-old, and later modern, debate about it, but above all because the history of such a debate is indeed the history of the refusal to recognise the fact that we are talking about a positive law, i.e. an established one, that is on an equal footing to State law. It is therefore this obscurity and lack of conclusion that relate to the foundations of sovereignty.
[38] For several years in the past I worked on a thesis for a *Doctorat du troisième Cycle* (Doctorate in the Troisième Cycle) at the EPHE, Ecole Pratique des Hautes Etudes, (which then became EHESS, Ecole des Hautes Etudes en Sciences Sociales), having as Directors of Studies firstly Roger Bastide, then Roland

incomprehension, and partial incomprehensibility of the concept, has compelled it, despite the best good will,[39] to being reconsidered again as an instinct or a device or even a model ("of the mind"[40]).

What has to be understood, and I am still recapitulating here, is:

1. that "drive" is *a* possible as well as an historical definition of a law of motion of the body, in the same way that Galileo's laws of physics deal with the law of motion of bodies, with the difference being that in this case we are talking about the laws of motion in relation to human bodies, but namely bodies that are also physical or bio-physical;
2. that such a law is legislation: consisting of four articles (pressure, source, object and aim), and valid at the same time as the only law relating to the motion of at least two real bodies in two juristically distinct places (the body of a Subject and the body of an Other subject);
3. that such a law is universal legislation in as much as it is the law of motion of a body in the universe of all the Other bodies;
4. that such a law is positive, i.e. established and neither innate nor imposed;
5. but that above all, with regard to imputability, such a law is positive, in other words, *also* established by the Subject himself - after the original imputation of satisfaction, an imputation that points the way to legislative work. The Subject is then also the agent and not only the executor, or a more or less diligent interpreter and even innovator (traditionally a fundamental problem with jurisprudence): the Subject is not only or predominantly the agent, the first - or the subsequent one –, of his own actions, but above all the agent of his own law of motion (an individual legislative faculty accessible to all: in the Kantian lexicon). It is on this point – the legislative act before physical action – that we can legitimately talk about imputability in relation

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Barthes and finally Claude Lefort. The thesis was entitled *Loi symbolique et loi positive* (Symbolic law and positive law). In those days, at least at first, I was still pursuing an unenlightened belief in the existence of a "symbolic law". I did not finish this thesis in Paris, but rather continued my work in the writings that are mentioned in this paper.

[39] And even the best psychoanalytical brains, all noteworthy and documented, including Lacan who could not avoid treating 'drive' as an "assembly" and as a "device" that has also been termed "discourse". See J. Lacan, *Les quatre concepts fondamentaux de la psychanalyse* (S XI) , 1964, Seuil 1973

[40] The polarity between what is innate (the case of instinct) and acquired or learned (models of the mind, device) has proved to be very reducible, as demonstrated by the story of cognitivism, the follower, heir and successor of behaviourism. This concurs with what we are saying on this one and only point: that the law of motion of the human body does not exist – in the universe of bodies – unless it takes place (I recall at this point the Freudian expression *psychisches Geschehen*, i.e. mental functioning) *post hominem natum* (after the man was born) in the same way as we say *post Christum natum* (after Christ was born). The chosen expression is *post hominem* and not *post puerum* (child) because this latter term carries with it the age-old prejudice related to a connotation of immaturity: on the contrary, the law of motion known as "drive" is at once the most mature form of the law of motion of a body. Child developmental psychology has not yet stopped causing harm, first and foremost to children, ahead of causing theoretical damage. When will we understand the harm caused to children by certain theoretical mistakes?

to the body, and no longer without it. Only the legislator – the individual as legislator – is imputable in his body, because the law which has given the body itself motion[41] is imputed to him: here finally grammar and law coincide where there is no longer the *problem* (that has vexed jurists, psychologists and moralists not only in this century) of the transition from the ineffectiveness of grammar into the juristic act which is neither weak nor strong, but simply an act. The juristic act is the act of the Subject as legislator[42]. The agent of the juristic act is the recipient of an imputation: this is something new compared to the doctrines of legislation and those of the source of legislative power. Now, it does not matter whether the legislative act comes from God, or the Devil – but not Death – or from man. You can see that I do not even contemplate that second part of the Romantic triad (God, Death and the Devil) which is Death, because I reject the idea that Death is legislative[43]: Death is not imputable, on the contrary it is the definition itself of non-imputability, or of the abstract concept of justice and injustice, without any regulation.

It is not possible to discuss the whole topic in this brief way, but I would just like to mention this idea as well: that the traditional pairing of justice and law has an inherent injustice, that of treating justice as if it were extraterritorial, that is, 'extra' juristic, in other words like a "function" that has to knock on Law's door in order for it to be opened. From the perspective that I have just described, that of imputability in relation to a body, categorised as the third case in addition to medicine and State law, I am talking about a justice which is already "within" the norm.[44]

At all levels of my experience, the point that I have identified as being the most difficult for everyone – subjectively, i.e. in practice and not theoretically – is that of the object according to its position in the legislative act, or even of the demand on its legislative power.[45]

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[41] In the light of this, we can improve the concept of responsibility: I am not responsible for anything else but my body, in so far as this means the law of motion of my body (with regard to satisfaction, aim or end point) in relation to any Other body in the universe of all the Others.

[42] In the last few years, the writer and Others have discussed and written about the sovereignty of the body's Subject.

[43] This is just a brief explanation of the developments, consistent with those mentioned in these pages, attributed to the irrefutable discovery that Freud called the "death drive". See S. Freud (1924), *The Economic Problem of Masochism*, S.E. vol. 19.

[44] Among the many open questions, there is this one: whether in relation to the other imputability we are talking about here – which is another Law – the fundamental problems of distributive justice would not be reabsorbed into those of retributive justice, as a justice based on reward before penalty. (See also J. Rawls, *A Theory of Justice*, Harvard University Press, 1971). And this would immediately lead to another question: whether this other law would involve, as a norm, the penal sanction. (See also Kelsen, *Il problema della giustizia*, op. cit.)

[45] In the law of motion that I am trying to illustrate, the pairing of 'being able to' and 'wanting to' corresponds to the pairings of 'demand' and 'supply', and 'Subject' and 'Other', as two distinct positions in the legislative work of Subjects (there are no non-Subjects: this is also a theological truth). For an articulation of how the

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How and where (the topic[46]) is it the case that the Subject (the individual of modern times, renewed by Freud) actively acts as legislator of and in the universe of all the Others? It is in the case of the "object", in the practical way (practical reasoning) in which the object is dealt with. The use of inverted commas here is still justified, since I am using one of the most uncertain as well as confused words in our history, and the history of psychoanalysis has not shed any new light on it beyond the pure Freudian topic that positions (in "positive" law) the object as one of the four articles of the law as set out.

Before going on to reach a brief conclusion, we should note that there are two questions that now arise:
1) the first sounds banal, or naïve: what are these objects that we can deal with from the position (the "topic") of articles of positive law?
2) under what conditions do we deal with these objects in a legislative way? (I would remind you that we are talking about juristic legislation with acts, obligations and legal sanctions). I recall that, in scholastic terms, legislative means universal, that is to say, it is valid for all Subjects within a defined sphere of validity. A positive law means that – with a Marxist emphasis – we need to create the universe, before getting to know it.

Let us try to answer these two questions:
1) What are the objects that a Subject could include in the formation of a positive law of motion?
Let us draw up a simple list, at random. We could include one's own material resources, one's own body both as an erotic object as well as a useful one, a specific or "partial" part of one's own body, one's various thoughts or (if you like) one's ideas, one's own language resources in the most comprehensive meaning of the expression, one's Others (just as we say "Let me introduce you to …": the act of introducing someone is a serious one). In general, the object as something that could be put, in a positive way, at the disposal – a concept of a legal system - of Others.[47] A simple list to be redrafted as a legal expression which gives meaning to it.

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characteristics of the couple subject/other are at the same time juridic and psychoanalytic see G. B. Contri, *Leggi* and G. Contri, *Lexikon psicoanalitico e Enciclopedia*, Sic Edizioni, Milano 1987.

[46] The word "topic", which has not only a rhetorical but also a juristic meaning (I am thinking in particular of the book by Theodor Viehweg *Topic and Law*, Milano 1962) was appropriately chosen by Freud. We are therefore moving away from Lacan in his interpretation of the topic as topology, that is to say *more geometrico* (in the geometrical manner) rather than *more juridico* (in the juristic manner) as we interpret it.

[47] I mention almost in passing that the fundamental Freudian rule – or norm – advises the Subject to put these objects into a discussion, without holding anything back, at the disposal of Another, known as the "analyst", and not even to start an analysis or to discontinue it if the Subject does not do so. See G. B Contri, *Il bene*

In general, Freudian psychoanalysis has removed the most generic list of objects from the sphere of naïvety, since – by increasing the value of certain so-called "partial" objects, their relativity to the body's orifices,[48] the relativity of such objects and orifices to the body's physical exterior in erotic terms – it has still anchored the whole world of objects to the body, the very body that I say is rendered imputable by juristic law.

The above-mentioned list is also removed from the sphere of naïvety if we consider that suffering, misery, pathology, emotions (those distinct from affection) and judgements can also be dealt with as objects in the relationship with the Other. Freud described melancholy as a pathological law in which these terms function as objects (visual and auditory) for the laws of a melancholic universe.

2) What conditions? Let us consider the well-known parable of the talents, whether you are a believer or not. So, there are two types of conditions: 1. those well known to economists, and perhaps even more so to businessmen and financiers when it comes to "letting one's talents bear fruit", passing over for now the different types of capital: in any case we are talking about an economy that is distinct from law; 2. then there is a second condition, which I call "negative talent", an expression taken from M.me de Stael's writings.[49]

What does this mean?

The definition of "negative talent" can be compared to a condition of *no* objection (the negative form of "no" is the only negative of such a condition). It means *not* to deal with any of the objects in the former list as if they were the source of an objection on principle, to what?: to the benefit that may be received[50] from Another, whoever – in universal terms – the Other might be, and whatever the content of the benefit might be as long as it is considered to be a benefit. In order to illustrate the counter-argument I'll take a short cut: all psychopathology, in its anti-economic and anti-juristic character, is indeed all forms of objection, in its very objects raised in objection, to the ability to receive the benefit or satisfaction via Another by the sole virtue of them being so, namely a source of benefit. In other words we are talking about an objection to their universe. If the thousands of forms of non-objection, or of objection, to the benefits that may be received were described simply they would form the basis of a jurisprudence no less important than the other, and worthy of Justinian scholars.

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dell'analista, in *Da inconscio a inconscio. Considerazioni sul problema dell'attenzione fluttuante in psicoanalisi*, A. Guida Ed. Napoli, 1994, pg. 89-101.

[48] Objects plus orifices give us the four drives: oral, anal, scopic, phonic (there is no space here to justify this broad classification). To treat speech as a drive, i.e. as a motion and a law of motion of the body, involves consequences that have not yet been measured.

[49] In G.B. Contri, *Il pensiero di Natura*, op. cit., p. 118 and pp. 225-226

[50] This verb describes the Freudian concept of *Besetzung* (investment), as an activity or investment on the part of Another towards a Subject; the fact that through demand, that is by treating his own objects as negative talent, a Subject sets the Other to work.

Putting the object in a legislative position[51] (protecting it from the position that is always embarrassing and inhibitory of being an object of the law) transforms the economy into law, beyond the traditional and unsolvable aporia of the distinction between economy and law. The imputability – in this case considered a reward – of negative talent establishes imputability as something good, which justifies the title of these pages.

And so it is at least plausible to assert that anguish is the sign of an absence of imputability[52]. A judgement - that only an age-old prejudice would consider to be a condemnation – then becomes an object of desire and no longer obscure. Judgement – only in imputability can a judgement say "you are this" without "this" being considered to be vile – is the solution to obscurantism.

5. Other chapters

Imputability is the recurring theme, but I am not able to set out a thorough summary here.

It would be enough to touch upon the fact that the debate on nihilism could be enlightened by it (the Enlightenment): one's being is either imputable or it is not. To be is to be imputable. The history of philosophy, or the history of thought, of existence, has omitted to consider one's being as imputable.

But even before that, it would be a matter of allowing the thinking on imputability to generate the thinking of two Cities: what I call the augustinianism of reason.

Re-capitulating another chapter - the history of thought has prevented psychopathology from being admitted to the City of thought. It has also prevented the acknowledgment that psychopathology is the imputability of an act of suppressing imputability or, at worst, of the denial (the Freudian *Verleugnung*) of any imputability.

The juristic meaning of the word "soul", but also "person" and even "God" has always been disputed.

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[51] The questions are becoming rather too numerous: in this case I am referring to the distinction between legislation and jurisdiction.

[52] I put forward this definition as being equivalent to the one given by Freud of anguish being the sign of the Ego. See S. Freud (1925), *Inibitions, Symptoms and Anxiety*, S.E. vol. 20.

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