Treating Life Literally

By giving the name *Oedipus Lex* to his erudite 1995 psychoanalytical history of common law, Peter Goodrich put his finger on one of the conditions of possibility for the psychoanalytic turn in Anglo American jurisprudence. This turn, which could just as well be described as a return, is predicated on the assumption that, as Goodrich notes in his chapter by the same name, “the law of the father equiparates with that of the sovereign.” Goodrich offers this observation as part of his broader argument that rhetoric is the premodern form of psychoanalysis: because rhetoric, since Aristotle, has placed the study of tropes alongside its inquiry into affect and moods, on the one hand, and into law, on the other, “psychoanalysis and jurisprudence can, therefore, draw on a common language and certain shared themes.” But Goodrich’s argument also begs a fundamental question. While there is certainly truth to the claim that, as George Kennedy would put it, Aristotle’s *Rhetoric* is “the earliest systematic discussion of human psychology,” Freudian psychoanalysis claimed to have differentiated itself from prior psychologies through its achievement of the status of a science, and that claim, in turn, was grounded not in rhetoric, to which Freud no doubt did turn for logical models, but in classical tragedy, from which Freud would take both the symptomatology and the problematic for his new science. Absent the account of castration Freud and Lacan would eventually derive from *Oedipus Rex*, psychoanalysis has no claim on certainty and hence no claim to science. Goodrich’s argument thus takes on a paradoxical status. Though he turns to an Oedipal framework to suggest that lawyers’ concept of an orderly and reasonable law is reducible to a projective attempt to compensate for their own disaggregative legal training and in this he renews Jerome Frank’s argument about law’s spurious stability, Goodrich’s proposition that rhetoric is the premodern form of psychoanalysis has the effect of withdrawing psychoanalysis from the epistemological ground of its claim to have discovered the laws of the unconscious. Without necessarily undercutting Freud’s claim to have learned of Oedipal laws through his own self analysis, Goodrich’s circumvention of psychoanalysis’s own
institutionalized origin story still opens up room to reconsider the epistemological basis even of his own claim that legal study can be explained by the laws of the Oedipal complex. The implicit thrust of *Oedipus Lex* is that *Oedipus Rex*, and hence psychoanalysis, is both necessary and unnecessary to gain an understanding of legal studies’ melancholic loss of object.

This same ambivalence is apparent in the *Witz* of Goodrich’s title. Its substitution of *Lex* for *Rex* announces the desire manifest in Goodrich’s text: not only to render law intelligible within the Oedipal framework upon which psychoanalysis is based, but also to institute psychoanalysis as a privileged domain for legal study. But, as a *Witz* in the best sense of the word, the equiparation of *Lex* and *Rex* also expresses an unconscious wish, which, in this case, takes a disciplinary form. Ernst Kantorowicz has shown how the method of “equiparation,” which he defines as “the action of placing on equal terms two or more subjects which at first appeared to have nothing to do with each other,” was employed by jurists at a moment when the art of jurisprudence was being formalized into a science. From Kantorowicz’s account, it would indeed appear that there is a long genealogy behind psychoanalysis’s ability to equiparate *Lex* and *Rex*. Kantorowicz’s research suggests that the substitution of the former for the latter was the paradigmatic concern of equiparation’s modern iteration, and that the transfer of powers from the king to the sovereign laws of nation states was, in turn, the basic problem around which scientific jurisprudence originally formed. But if this is true, then the psychoanalytic study of law within the framework of *Oedipus Rex* particularly insofar as it is predicated on the productively errant exchange of *Lex* for *Rex* would be less the antithesis of modern jurisprudence than a repetition of the questions that generated the discipline of modern jurisprudence in the first place. Conversely, since Freud would recognize the very method of equiparation as a mechanism for the production of the compromise formations he called “symptoms,” this repetition would, in psychoanalytic terms, point to a very clear corollary. In order to come into its own as a self conscious approach to the study of law,
psychoanalysis would have to first work through the conditions of possibility of not only its own profound purchase on problems in legal theory, but also, and more fundamentally, the conspicuous ease with which its ostensible challenges to or attempted disruptions of traditional jurisprudence ultimately dovetail with the latter’s longstanding institutional concerns.

Far from explaining the law, in other words, psychoanalysis’s application to the law obliges us to attempt an explanation of psychoanalysis itself. Institutionalizing as jurisprudence a narrative which depends for its coherence on the contingency that the king who is the source of all law and command Oedipus Rex is also a son who usurps the place of his father would seem to foreclose on the possibility of analyzing legal problems in which no relation at all exists between sovereignty and patriarchy. Strangely, precisely this non relation seems to pertain in the Roman Law in which especially Pierre Legendre grounds his psychoanalytic jurisprudence. As James Leigh Strachen Davidson argued in his 1912 text Roman Criminal Law, “no Roman writer, so far as I knew, has ever attributed the patria potestas either to the magistrate, whether king or consul, or to the sovereign people itself, and there is no trace of the powers exercised by the State authorities developing out of those exercised by the head of the family. The very basis of the domestica disciplina, the right of ownership, is wanting in the state,” the basis of which, Strachan Davidson goes on to argue, following Rudolf von Ihering, is instead the specifically military right of command or imperium. But just as a jurisprudence founded in Oedipus thus risks becoming incapable of asking whether the powers of the king and the rule of law might have nothing to do with kinship relations arranged around the father, and vice versa, so too are questions regarding law, sovereignty, and paternity by no means settled within the psychoanalytic tradition itself. Freud famously strained Oedipal frameworks to make sense of the psychotic Dr. Schreber who, it bears mentioning, was both a judge and, beginning in 1893, Austria’s senate president. And in 1972, Gilles Deleuze and Félix Guattari were able to show that, confronted with the schizophrenic, even the Lacanian
psychoanalysis that originated in the study of psychosis fails to establish the universality of Oedipus in psychic life. Yet while psychoanalysis was unable to say much about the delirium of the psychotic, it is perhaps precisely psychosis that recent, all but unchecked exercises of sovereign power oblige us to understand today. For as Foucault said in his précis of Euripides’ tragedy *The Phoenician Woman*, “power without limitation is directly related to madness.”

To turn to Oedipus to explain contemporary relations of law and sovereignty would thus seem to be triply undesirable. It would seem to risk repeating, rather than working through, the traditional categories of the discipline of jurisprudence, even as the latter’s ostensible renewal through psychoanalysis risks reducing psychoanalysis itself to a new positivism to a set of conceptual instruments that, however useful, are no longer themselves open to critical inquiry that is unable, for its own part, to shed light on the crisis of sovereignty that is, arguably, one of law’s definitive contemporary conditions. Rather than tie these knots tighter by using psychoanalysis to interpret law, this essay begins loosening them by inquiring into the way that, prior to its employment by legal studies, psychoanalysis’s very emergence as a body of knowledge was already made possible by a certain problematization of life and law. Reading Goodrich from this angle, I take his intriguing claim about rhetoric as the beginning of a response to Jacques Alain Miller, who, in his 1988 critique of Michel Foucault, dared anyone to go ahead and just try to write the archaeology of psychoanalysis. It is probably true that Miller’s bravado, which was predicated on his active forgetfulness of the earlier work of Michel de Certeau, Luce Irigaray, Jean Laplanche, and Jean Pierre Vernant, not to mention Deleuze and Guattari, on precisely this question, is cocksure in tone to the degree it is unsure in conception, expressing, despite itself, the wish that psychoanalysis could somehow find a way back to the universality it possessed prior to its traumatic historicization by archaeology. Still, by re-reading Goodrich’s claim about equiparation as a diagnosis of a symptom internal to the discipline of psychoanalysis itself, we become able to ask a question that, quite apart from
its relation to whatever anxieties Miller may be suffering, is highly pertinent to legal studies in the humanities today. It permits us to ask why psychoanalytic jurisprudence seems unable to avoid conferring the halo of sovereignty upon the kinship relations it studies and the laws it interprets.

“African Tragedy”

To take up this line of inquiry, I turn to the work of the psychoanalyst Wulf Sachs. Sachs, who lived and wrote in Johannesburg from 1922 until his death in 1949, became the object of a focused burst of scholarly attention beginning in 1996, when Jacqueline Rose and Saul Dubow offered detailed and insightful introductions to their co-edited reissue of Sachs’s 1937 Black Hamlet: The Mind of an African Negro Revealed by Psychoanalysis. Yet despite this attention, Sachs’s work has for the most part remained a mere curiosity for mainstream Lacanian psychoanalytic scholarship. His texts might therefore seem an inappropriate choice as a point of departure into the broad questions I have just posed. But if, on the contrary, Sachs’s work teaches us more than can even Lacan’s about the psychoanalytic turn in jurisprudence, it is because the colonial encounter that defines Sachs’s texts exposes the limits of the claim on culture presupposed by psychoanalysis itself. Sachs’s texts teach us about the limits of psychoanalysis as a framework for the study of law because his attempt to extend psychoanalysis’s frontiers to fight racism and imperialism recoils upon itself in an interesting way, stripping self-evidence from the concepts of law and sovereignty psychoanalysis attempts to formalize into a science.

The text to which I now turn is one of a number of Sachs’s writings that neither Rose nor Dubow read in their otherwise exhaustive analyses. Entitled “African Tragedy: The Life of a Native ‘Doctor’,” the text is an unpublished, undated typescript which is held in the archives of the University of Witwatersrand in Johannesburg, South Africa. It is the first draft of not only Sachs’s 1937 Black Hamlet, but also his 1947 Black Anger which was published exclusively in the U.S. At first glance, the texts seem quite similar. Each narrates, in slightly different but highly significant ways, the life story of
John Chavafambira, a Manyika *inyanga* or “healer,” as Chavafambira negotiates the forces of racism, migration, medicine, and urbanization in the Southern Rhodesia now Zimbabwe and Johannesburg of the 1920s and 1930s.\(^\text{26}\) What’s particularly interesting about “African Tragedy” is that it narrates in greater detail than its later iterations John Chavafambira’s encounter with the South African legal system, and that its narration of this encounter invokes an actual court case. The figures and events in the court case “African Tragedy” narrates were also described in numerous 1933 newspaper accounts and summarized that same year in *The South African Law Reports* as *Rex v. Mbombela*.\(^\text{27}\) A man named Mbombela whom Sachs calls “Mdlawini” was arrested for killing a small boy he mistook for a ghost. Chavafambira was implicated in this killing at a time when witchcraft was illegal in South Africa as in much of sub Saharan Africa.\(^\text{28}\) Sachs’s text says that, on Chavafambira’s advice, Mdlawini armed himself against the “tokolosh” a small mythic creature akin to a dwarf, zombie, monster, or ghost who comes out at night and eats people in their sleep that, Chavafambira warned, would otherwise kill him. The defense wanted to show that, because Mbombela’s act was based on a *bona fide* belief in ghosts, the killing was an accident that could not have been foreseen. Because it was not intentional but was a mere mistake of fact, they argued, Mbombela was guilty not of murder, the penalty for which was death, but only of culpable homicide.\(^\text{29}\) The prosecution replied by asserting that in order for a belief to serve as an extenuating circumstance, it must not only be *bona fide* but also reasonable, and that because belief in ghosts was not reasonable, it could not serve as the basis for a mistake of fact argument.\(^\text{30}\) The defense countered by arguing that, in a multiracial society like South Africa, belief in ghosts is, in fact, reasonable. Advised by the judge that, even if the accused did truly believe that he was killing an evil spirit, there was still no room for a verdict of culpable homicide, the jury convicted Mbombela of murder and sentenced him to death.

The defense’s appeal, which also hinged on the test of the “reasonable man,” put Judge Etienne de Villiers in the difficult position of deciding on the reasonableness of
belief in ghosts. In what would seem to have been a concession to the defense, de Villiers found that “reasonableness” could only be defined in terms of “what is known to all or most of the inhabitants of the state civitas.” But he also asserted that only one standard of reasonableness exists in the eyes of the law. And this standard, he argued, could bear no heed to differences of “race” or “idiosyncrasy,” and therefore could not include belief in spirits. “It seems to me,” he wrote, “that the standard to be adopted in deciding whether ignorance or mistake of fact is reasonable, is the standard of the reasonable man, and that the race, or idiosyncrasies, or the superstitions, or the intelligence of the person accused do not enter into the question.”

Though Mbombela’s bona fide belief in ghosts was, on these grounds, held to be both irrational and irrelevant to the court’s account of his act, de Villiers nevertheless found that the Judge had wrongly instructed the jury that there was no room in Mbombela’s case for a verdict of culpable homicide. And so, despite the fact that his own definition of the test of the “reasonable man” had removed any grounds for a finding of culpable homicide, de Villiers proceeded to substitute that verdict for the jury’s own verdict of murder. Mdlawani’s death sentence was reduced to twelve months of hard labor.

**First Test of the Reasonable Man**

Even though we find in Sachs’s text a trial that is, on all crucial points, the same as *Rex v. Mbombela*, it is still not possible to read this case as the fact to which the fiction “African Tragedy” refers. On the contrary, what makes “African Tragedy” intriguing is the way it throws into question what Montaigne would call “the legitimate fictions” upon which South African law attempted to found the truth of its claim to justice. Nowhere is this clearer than in “African Tragedy”’s narration of Mdlawini’s jury trial, in which we receive an account of the way the judge arrived at his decision regarding the meaning of the concept of “reasonableness.” We find that the judge’s decision on the test of the reasonable man, which was ostensibly itself to have been reached through reason, proceeded instead through recourse to a certain violence, a violence directed against one of the defense’s most
promising arguments. The defense had clearly concluded that if it could prove that action taken on the advice of witch doctors was reasonable in ways “known to most or all of the inhabitants of the state,” then the judge would have to recognize witchcraft as a legitimate standard of reasonableness, and the court would have to rule the killing culpable homicide rather than murder. The defense thus decided on an eminently reasonable strategy: call as many natives to the stand as possible in order to demonstrate that actions informed by a belief in witchcraft proceed on the basis of what is known to most or all of the inhabitants of the state.

This line of argumentation would no doubt have been unsettling to an early 20th century, white South African judge. Even in its most coherent form, the test of the reasonable man was always an explicit hypothesis or judicial fiction. The legal anthropology of the 20th century also fixed on it as a site where questions regarding cultural difference gave rise to a serious rethinking of problems of universalism in law. Rightly so: understood in terms of the Enlightenment imperative to govern one’s destiny by means of reason alone, the notion of cívitas and the “test of the reasonable man” would gain their validity precisely through their opposition to and distinction from practices like “witchcraft” and “belief in ghosts,” which allow destiny to be determined by superstition. Applied in the colony, the test of the reasonable man would then require law to confront an antinomy in the strict sense of the word. To sustain the legitimacy it derives from its claims to generality and equality, colonial law would not be able to rule out in advance the possibility of recognizing as a source of law the customs of the majority of inhabitants living within its jurisdiction. And yet, insofar as those customs included belief in ghosts and in witchcraft, the model of the “reasonable man” colonial law would thus be compelled to recognize would be, at least according to nineteenth century European science, “unreasonable.” If it preserves its legitimacy by recognizing the customs and ways of life of the inhabitants of the state, colonial law would be forced to concede the reasonability of unreason and the illegitimacy of colonial law. But if, refusing to recognize the
reasonability of belief of ghosts, colonial law also refused to recognize the customs of those living in its jurisdiction, it would be forced to confront, if not exactly its own illegitimacy, then at least its dominance without hegemony.

Enter, at this point, the violence to which “African Tragedy” testifies. What’s notable in this account is that Sachs does not narrate what the judge says; he only narrates what the judge’s saying does. In Sachs’s narration, then, we encounter the judge’s word from the position of someone whose very life is at stake in its meaning, yet who has not been given a chance to understand it.

At the end of each cross examination the advocate asked the witness whether he believed in spooks, spirits, and poisons, to which they all, without hesitation, answered in the affirmative, and also admitted that they would, when in danger, go to a witchdoctor for protection. He even asked if they were confronted with a spirit, especially if warned beforehand by a witchdoctor, how would they act? But to John’s indignation the advocate was interrupted by the council for the prosecution, the judge said something, and the advocate sat down. He had heard before that white people didn’t want to know the real truth about Africans; now he was convinced of it.36

Here where “the judge says something,” Sachs narrates the judge’s word taking effect as a pure performative, an act of saying the substance of which consists less in its content than in the felicity, as it were, of its enactment. By narrating colonial law in this manner, Sachs’s text exposes the specifically mute character of law’s violence. This violence is very much what Walter Benjamin describes as “law preserving violence” and what various students of Kafka have described as law’s capacity to remain in force without also retaining its capacity to signify.37 Because the judge’s mute word excludes the testimony that would have spared Mbombela a death sentence, the effect of his interpretative or even procedural decision is immanent to and continuous with the effect the guillotine would have had on Mbombela’s neck had de Villiers not intervened. But by that same token, the judge’s mute word fails to solve the antinomy in which colonial law here finds itself. It is hardly surprising that, given this suppression of testimony on the question of the reasonability of belief in witchcraft, even de Villiers would eventually find that the test of the reasonable man must apply without regard to race or idiosyncrasy. The judge’s mute
word here is not simply then, as we might say today, a “prejudicial” act. It is more precisely a \textit{pre veridical} act, an act of violence prior to the judge’s definition of reasonableness that nevertheless then contributes to the law’s definition of reasonableness itself.

\textbf{The Unconscious of Law?}

As clear as these claims may seem to be, we cannot let them stand without also raising questions regarding their epistemological foundations. For what, exactly, is the status of Sachs’s text here? How do we think about the truth of an unpublished novel that claims to bear witness to violently suppressed courtroom testimony? Should we consider Sachs’s text to be reliable testimony? Or, since it narrates nothing less than the ease with which testimony can be suppressed, should we take it to call into question the very idea of reliable testimony? What, really, does it mean for an archived typescript to contest or even undermine a ruling whose finding on the “reasonable man” is now, despite or perhaps because of its violence, a functional part of South African law? \textit{Rex v. Mbombela} has been cited at the appellate level as a precedent more than forty times in South Africa since 1933 to substantiate three curiously interrelated points: that “reasonability” should be defined in relation to the citizen, or “ordinary” man\textsuperscript{38}; that to qualify as an extenuating circumstance, a belief must not only be \textit{bona fide} in “good faith,” or \textit{subjectively} genuine but also reasonable\textsuperscript{39}; and that, in applying the test of the reasonable man, the law should pay no heed to racial peculiarities.\textsuperscript{40} The last point, in particular, would play a crucial role in free speech cases during the most suffocating period of apartheid governance. At least twice during the 1960s, the apartheid state’s prosecutors would cite the test of the reasonable man set forth in \textit{Rex v. Mbombela} to argue successfully for the suppression of anti apartheid poetry and public speech. Because \textit{Rex v. Mbombela} established that the reasonable man was to be defined without reference to racial peculiarities, the state was able to argue for the illegality of poetry or speech that mentioned racism in a way that was likely to inspire or impassion the ordinary, reasonable man to turn against the law.\textsuperscript{41} In the
same gesture that *Rex v. Mbombela* allowed South African law to define the reasonable man without regard to race, it also allowed the law to regard as unreasonable any person who claimed South African law was racist.

This is why *Rex v. Mbombela* cannot be interpreted as a pure and simple fact to which the fiction “African Tragedy” then refers. What “African Tragedy” proposes to record is the way that *Rex*, which is to say, the sovereign, establishes the jurisdiction of South African law over Mbombela, the non-native native, by violating the principles that distinguish law from mere violence. The text would then contain a trace of the injuries to law’s subjects, as well as to law’s legitimacy, that were a constitutive part of the way colonial law preserved its *imperium*. In this archived iteration of Sachs’s text, and in this iteration only, we would therefore find the scar of a contradiction between colonial law and colonial sovereignty, namely, that colonial law’s desire to maintain the sovereignty of its jurisdiction forced it to violate the very principle of reason that presumably conferred upon it its supremacy and its right to rule in short, its *arche*.42 By tracing the disjunction between *Rex* and *Lex* in “African Tragedy” in this text that has never really seen the light of day we find writing that would seem to qualify, in the strictest and most disruptive sense possible, as the unconscious of law.43

*Pharmakos*

Yet before signing onto this reading, we are obliged by our opening questions to cut a little deeper. For quite apart from the way “African Tragedy” proposes to undo *Rex v. Mbombela*, is it not the case that there is already a certain concept of law operating in, perhaps even as, the unconscious of “African Tragedy” itself? Consider the epistemological grounds on which Sachs’s text lodges its opposition to colonial law. Repeating a theme readily available in Plato and in St. Paul, Sachs traces colonial law’s injustice to its *literalism* that is to say, to its unbending, inflexible, unswerving, and irreversible character as writing. Law’s very literality, Sachs here seems to suggest, is the surest sign of its injustice. It is inanimate and cannot relate without violence to the truly
animate. Against law’s literalism, Sachs champions what he calls—once without quotation marks, once with—a “human” interpretation of the law. Referring to cases where Africans are accused of crimes but, for linguistic reasons, are unable to answer questions posed to them by white officials, Sachs describes a situation where “the black accused and the white officials of justice represent two different worlds, and between them is the dry, ruthless letter of the law, that even in ideal circumstances, seldom permits a human interpretation of the deeper, real motive of crime.”

Later in his text, Sachs returns to the same distinction. “The strict letter of the law,” he worries, “might prevent the judge from passing the ‘human’ sentence the circumstances of Mdlawini’s case demanded.”

On the one hand, the adjective “human” here clearly carries the sense it receives in nineteenth century humanitarianism, where to be “human” was to be sympathetic or compassionate, to take pity or to show mercy upon the weak, the powerless, or the unfortunate. The trouble with this strain of humanism is how neatly it meshes with the imperial paternalism of la mission civilisatrice. Sachs’s humanism no doubt participated in this tradition, as we shall see, but it would be off the mark to claim that that it belonged wholly to it. On the contrary, what makes Sachs interesting is the way he attempted to cut out the root of the systems of thought that, like literalism, created the conditions for racism. Sachs’s scientific work, for example, consisted not of a request for sympathy but of an assertion of equality. In his 1933 essay on insane natives, Sachs drew on contemporary psychiatric methods to demonstrate that madness took the same forms in Africans as in Europeans, inferring from this the fundamental similarity of the human psyche regardless of race. At a moment in South Africa when segregation was beginning to be formalized into legal apartheid, Sachs’s thesis would have had a decidedly sharp political edge. It would have contradicted the natural scientific core of the doctrine of “separate development for separate peoples,” even if the psychic equality Sachs claimed to have discovered was, in a twisted way we shall trace in a moment, ultimately commensurable with the misleading formal equality asserted by de Villiers in Rex v. Mbombela.
Sachs’s later inyanga trilogy combined psychoanalysis, biography, and tragic drama to achieve the same purpose, while also aiming at an even more precise anti-racist objective. In his 1943 essay entitled “Racism: A Study in Social Psychology,” Sachs argued that racism could be understood by examining the psychological economy through which political communities heap their ills on a scapegoat they then expel. The psychological root of racism, Sachs argued, lay in the unconscious aggressions that produce this scapegoating. In his 1944 essay called “Racism: The Solution,” Sachs suggested that the antidote to irrational aggression was knowledge of the true laws of cause and effect.

The disappearance of irrational ways of thinking, of the God-priest relationship, of the magical explanation of nature, man, and events, in short, their replacement by the dialectical way of thinking in terms of cause and effect, will eliminate racism forever. When people cease to believe in magic—which is nothing more than a substitute for their ignorance—they will seek the real causes of their misfortunes in a rational manner, and there will be no more need to look for scapegoats. The irrational projection of evil and misfortune onto external ‘enemies,’ foreigners and strangers, people of different language or colour, will cease to operate because there will be no necessity for it.

For Sachs, then, the scapegoating at the core of racism was not inevitable but avoidable. It was not intrinsic to the structure of political community as such, but an effect of a particular kind of erroneous thinking. We can understand, therefore, why Sachs would have structured Black Hamlet, a text he called a “literary form of psychoanalytic biography,” around such a familiar figure. To address his English speaking audience a narrative configuring an African witchdoctor as Hamlet would have been to superimpose the paradigmatic pharmakos of European modernity upon one of the strangest and most foreign figures known to Europe—perhaps even on the Enlightenment’s very emblem of African irrationality. Sachs’s application of a tragic schema and a psychoanalytic diagnostic to the inyanga would no doubt have captured the latter in a decidedly European framework. But if Sachs’s 1943 article is any indication, the purpose of this capture would have been to provide exactly the antidote—familiarity and knowledge—that would have removed the root cause of Europeans’ desire for scapegoats and, hence too, for racism.
For precisely this reason, though, Sachs’s efforts would have to stop short of asking whether tragedy itself is not also related to that desire. Sachs wants to humanize John by casting him as Hamlet and by demonstrating the applicability of Oedipal models to this African witchdoctor. But can there be a tragedy without a scapegoat? Particularly because Oedipal frameworks presuppose segregation, colonialism, and imperialism even as they flatten out the national, racial, and often racist dimensions of psychotic delirium, Sachs’s employment of a tragic model to fight racism, colonialism, and imperialism would appear to be a highly contradictory endeavor. Let us therefore press Sachs’s text on this point, asking whether an inquiry into tragedy cannot eventually disclose the unformulated theory of law that has animated psychoanalysis from its very beginning. What will interest us in Sachs’s effort to extend the frontiers of psychoanalytic knowledge is the way that the failure of that effort will strip a certain vital self-evidence or obviousness from the theory of law that is implicit in Sophocles’ Oedipus Tyrannos and encrypted deep within the psychoanalytic tradition that takes Oedipus as its model. Grasping this failure will require a short, but essential, detour.

**Detour I: Tragedy and Law**

Aristotle traces the peculiar power of tragic drama to a specifically mimetic operation. Classical tragedy stages a relation between a powerless chorus and a hero whose likeness to that chorus is significant enough to solicit its pity eleos yet not so great as to prevent it from recoiling in fear phobos at the hero’s alien fate. This adjudication of likeness in turn incites tragedy’s spectators, who are positioned as the counterpart of this chorus, to recognize in themselves their own resemblance to this piteous and terrible hero. The tragic hero pharmakos, who is usually either a hubristic quasi divine king or a scorned quasi animal scapegoat, is in any case a figure who, though defiled by his crime, intended to commit no crime. Philippe Lacoue Labarthe thus argues that classical tragedy achieves its cathartic effect when its mimetic play of likeness implicates its spectators’ affect into the bind of a specifically juridical problem: the immanence of guilt
and innocence. The *pharmakos* is an object of fear because he has committed the deed of an awful crime, but he is simultaneously an object of pity: since he did not intend to commit that crime, he is in a certain decisive sense innocent of it as well. The juridical notion of *hamartia* or involuntary harm is then more than just the content of Greek tragic drama. It is part of tragedy’s very form: its mimesis and catharsis could not function without it.

Philippe Lacoue-Labarthe argues that this applies particularly to Oedipus. “Defined in the true sense,” Lacoue Labarthe suggests, “the tragedy of Oedipus is not so much about the impossibility of self knowledge,” as Freud argues. Instead, he continues, tragedy becomes possible “when guilt responsibility for a sin and innocence come together in one and the same being.”54 If Lacoue Labarthe’s reading is on the mark, then *contra* Freud *Oedipus* could not be so easily interpreted as a drama of destiny.55 Rather, its primary concerns would be juridical and political. The basic problem it poses for itself would pertain to the order of equality that governs the *politeia*, and, more precisely, to the twist through which Oedipus excludes himself from that order. “The identification of Oedipus and his own children,” writes Jean Pierre Vernant, “the assimilation of mother and wife in the person of Iocasta make Oedipus the equal of himself, that is, turn him into an *agos* a bearer of extreme miasma , an *apolis* being incommensurable and without equality with other men, who believing himself to be an equal of a god in the end finds himself to be the equal of nothing at all.”56 Because of his exceptional embodiment of equality, up to and including the equality of guilt and innocence, Oedipus at once *exemplifies* the order of equality in the city and *counts himself out of* that same order. By posing as an explicitly juridical problem the question of how the city can depose a king who despite his crimes wants to retain this kind of power,57 *Oedipus Tyrannos* differs from other classical tragedies only in degree. Vernant shows that tragedy was one of the primary ways in which the city formulated its very idea of law,58 so much so that Plato’s *Laws* could even claim that law itself is already a tragedy “the best kind the legislator
knows how to write.” Just as the very mimetic form of classical tragic drama pivots on the immanence of guilt and innocence implicit in the concept of hamartia, so too do the interlocutors in the Laws struggle with the question of how to distinguish voluntary from involuntary deeds, and whether or not to punish involuntary deeds that cause damage. The Athenian’s initial attempt at a definition, in that dialogue, is so unclear that he is compelled to concede that no one has ever succeeded in clearly demarcating between the two types of action, which, despite this perplexity, have nevertheless been recognized as distinct by every legislator. The over-arching reason for this perplexity, at least according to Vernant, is that tragedy requires as part of its dramatic form a conflict between two orders of dike, and thus too between two opposed understandings of the causes of human action: dianoia, which is to say, mathematical or calculative thought, and daimon, a power from beyond. The effect of this conflict, Vernant claims, is to strip destiny and fate of their self-evidence and obviousness and to pose, for the first time, the question of human responsibility for action itself. Only in this way, says Vernant, does the religious concept of misdeed give way to a new idea of crime.

Keeping in mind Lacoue-Labarthe’s observation that even the term “theory” derives etymologically from the same Greek root as the term “theater,” Vernant’s studies permit us two hypotheses regarding the status of law in Oedipus Tyrannos. First, if what Vernant and Lacoue Labarthe argue is true, we should be able to find in tragic drama something like a “theory” of law and justice. Second, insofar as psychoanalysis derives its basic concepts from Oedipus Tyrannos, we should be able to trace the way that psychoanalysis draws on this theory in its understanding of law.

Second Test of the Reasonable Man

What do we learn when we bring these hypotheses to bear on Sachs’s “African Tragedy”? Let us consider the passages in which Sachs turns explicitly to psychoanalysis in order to offer what he calls a “human” interpretation of the law. This turn takes place in
Sachs’s lengthy narration of the moment in the trial where Mdlawini’s advocate cites psychoanalytic research in Mdlawini’s defense.

The advocate spoke at length, an unusual occurrence in the annals of native trials. Though he spoke well, and at times reached heights of oratory, it was the general opinion that his speech was too drawn out and too highbrow for the ordinary type of man in a jury.

The advocate then analysed imaginary things. He demonstrated the modern psychological theory, a theory he had learned from John’s doctor friend, that an imaginary sensation or emotion does not exist.

'There is no such thing as imaginary pain,' said the advocate, and recaptured the attention of the jury. Pain, suffering, the symptoms of disease affect us all, and every man is interested in them.

'There is no such phenomenon as imaginary pain, or imaginary seeing something,' the advocate repeated. 'It might appear so to others, but not to the sufferer. When a doctor tells a suffering patient, a neurotic or hysterical patient, as he describes him, that his pains, sensations, and symptoms are imaginary, that doctor is either ignorant or he does not look properly for the cause.

To be told that one imagines pain, appears to the patient as an accusation of malingering; of telling a deliberate lie. Naturally such a person, disgusted, seeks out the first quack who is clever enough to show belief in the patient’s story, or to offer an instantaneous and magically complete cure.

Actually a sensation can be real or pretended. It cannot be imagined. What is so termed cannot at the present state of scientific knowledge, be explained. For the cause might be unconscious as well as conscious.

What I have said about imaginary pains,' the advocate continued, 'applies to our civilised attitude to the belief of the primitive in the supernatural. We have acquired, I wonder?, the certainty of the mechanical law of cause and effect, which banishes unreasoning fear in the knowledge that nothing can harm us which is not conformable with the laws of nature. We civilised people have achieved this state of comparative security, at the price of the comforting conviction that there still exist magicians and witchdoctors. The primitive African, on the contrary, still fears malicious spirits, which he actually perceives, sees and hears. According to his outlook, everything in nature is active, is animate, and can suddenly and capriciously turn hostile towards him. Consequently he lives in constant fear, and turns automatically to the one compensation vouchsafed to such people, to the witchdoctors, in whom he places unconditional belief and trust.

To the accused, a typical backward African, from a remote and little civilized part of Nyasaland, evil forces are real. They are not imaginary. He has a reasonable, bona fide belief in them. His fight against them is equally reasonable. That evil spirits were acting against him, as he at first intuitively guessed, was definitely confirmed by the woman Emily, and by another witchdoctor. This is a reference to Chavafambira, who is seated in the courtroom. Certainty brought terror and despair, and prompted him to take desperate measures. These forces drove the accused to the tragedy of that fatal night; these forces impelled that terror stricken, trapped primitive to this court, to be tried for his life.

My lord, gentlemen of the jury, civilised men find it desperately difficult to get away from our way of thinking, and have difficulty in visualising what is going on in the mind of a man whose way of thinking and acting is so foreign and unintelligible to us.

The state has provided but one law for all, whether black or white, primitive or civilised, but in the administration of that law it has not prohibited a human interpretation. The accused admits that he killed the deceased. But we deny that
there was intent to kill a human being, much less the deceased David, and we plead, my lord, and gentlemen, for the verdict of culpable homicide. A twisted but consistent logic emerges in these passages. We can see that the advocate evokes both pity and terror in his attempt to move the jury. But why exactly does he claim that the crime is a tragedy? Because forces beyond Mdlawini’s control drove him to commit the crime. The real cause of the murder is the accused’s ignorance of the laws of cause of effect. How then does he know about this ignorance? Because he knows that, lacking the dianoia of the mechanical law of cause and effect, the native lives in a world governed by the daimonan of evil forces and evil spirits; because, seeing the action of these forces everywhere, the native lives in a constant state of unreasoning fear; because, confusing succession in time with causal succession, the native is unable to distinguish random events from causally linked ones; and because, lacking knowledge of the laws of nature, the native cannot relate to himself as a cause: he cannot be the cause of his own action. The advocate knows that the native should be exonerated not because he has not killed someone, but because his ignorance of the law of cause and effect leaves him incapable of issuing this law to himself, of apprehending himself as the cause of his own actions, of being autonomous, or, in short, of being a culpable subject of law. The native deserves the law’s mercy and we should not forget that “mercy” is the term used in the New Testament to translate eleos, tragic pity because he is incapable of law governed subjectivity.

The psychoanalyst understands this tragedy. Intimately. And in more than one way. For much of the advocate’s testimony is, curiously enough, identical to passages at the opening of Sachs’s 1934 textbook, approved by Freud himself, entitled *Psychoanalysis: Its Meaning and Practical Application*. In these passages, Sachs repeats “the advocate’s” arguments about the law of cause and effect. We are, by now, doubly familiar with his claim, for it is the same point Sachs would make in 1943 in his essay on the causes of racism. And so, we enter into more twisted but consistent logic. To avoid treating witchdoctors like Chavafambira as scapegoats, Sachs will recommend doing away with
magical thinking, yet magical thinking is precisely the sort of thinking Sachs attributes to the same natives he wants to protect from scapegoating. Sachs’s confidence in the law of cause and effect ties him in knots. It provides him with the epistemological ground for his solution to racism and for his plea for a humane or merciful verdict from colonial law, but it also permits him a psychoanalytic thesis about the permanent immaturity of the native that, in legal and political terms, amounts to an endorsement of the same type of custodial guardianship that characterized colonial administrative governance.70

The primitive man goes to the magician, the witchdoctor, for treatment of every ailment. To the primitive the magical element of treatment is just as natural as a cure by an operation is to the civilized. We may safely accept that the primitive feared the evil spirit causing his disease much more than we the surgical ailment, but as a compensation he had a greater belief in the magician than we in our surgeons. According to his Weltanschauung everything in nature was animated and could suddenly turn hostile towards him, and consequently he lived in constant fear, while we acquired I wonder? the fearless knowledge of mechanical law of cause and effect, which implies that nothing can harm us which is not compatible with the laws of nature. Our conception is certainly a tremendous achievement compared with the primitive’s point of view, but this advantage had to be paid for with the conviction that there are no magicians in this world and no wonder cures a belief which was difficult to give up.71

This passage seems to introduce the reader into a hall of mirrors. We cannot tell if we are reading a psychoanalyst quoting a legal advocate’s closing argument, a novelist’s fabrication of an advocate’s closing argument that has now been recycled as an introduction to psychoanalysis, or whether it was this text that the advocate quoted, in the first place, when he quoted modern psychological theory as part of his closing argument. The law of cause and effect does not help us sort out from who or where, in this dizzying circuit of relationships, this passage is derived. But if we read psychoanalysis for the way it draws on tragic drama for its theory of law, we can see that it makes little difference, in the end, whether Sachs is either, on the one hand, quoting a real closing argument that, in turn, quotes his own real textbook on psychoanalysis, or, on the other hand, whether he is simply indulging his own fantasy that psychoanalysis could unsettle colonial law by bearing witness to the fact of fantasy itself. The objective of Sachs’s text, in either case, is to oppose the Freudian account of cause and effect which Sachs understands to be the thesis
that all merely imaginary effects necessarily have a real cause to the legal concept of cause and effect where behind every deed there is a punishable doer. Because Sachs knows, on the authority of Freudian theory, that imaginary beings necessarily and universally possess psychic reality, he is able to assert with certainty that even though Mdlawini is undeniably guilty of killing a boy, he is also completely innocent, since, quite beyond the advocate's arguments about a reasonable and bona fide belief in ghosts, Mdlawini's fantasies leave him constitutively unable to commit any sort of rational deed, much less to understand, and thus be culpable for, the juridical consequences of his own action.

Yet if this is indeed the most powerful testimony yielded by Sachs's turn to psychoanalysis, we may wonder not only about the epistemological grounds of its certainty, but also how different, in the end, is the specifically legal appeal of Freudian theory from the theory of hamartia we find in Sophocles' Oedipus Tyrannos. It would seem that the advocate in Sachs's text is able to propose a more human interpretation of the law primarily because his Oedipal understanding of the African allows him to grasp the complete immanence of innocence and guilt the strict letter of the law can only divide and distribute into mutually exclusive gradations of innocence or guilt. Sachs would then be able to judge the fictiveness of colonial law's legitimacy because the tragic grasp of hamartia he inherits from Oedipus, and raises to the status of a science through the disciplinary terms of psychoanalysis, enables him to understand the limits of the judge's recourse to the juridical fiction of the reasonable man. Sachs would be able to critique the way the law arrives at its concept of the reasonable man because his psychoanalytically formalized knowledge of law's tragic limits leaves him a more reasonable man than the law. The judge's presumption that imagined causes do not possess their own psychic reality would then itself become intelligible, to the psychoanalyst, as a fantasy, as the fantasy without which colonial law would be unable to assert its right over the life and death of the native. Colonial law's fantasy would become intelligible to the psychoanalyst as the idea
that the native is sufficiently reasonable to be sentenced to death, yet not reasonable enough to govern his own life.

Is psychoanalysis here the antithesis of modern jurisprudence? Or, given its claim to be more reasonable than the law, is it not even more invested than law in the custodial fantasy that grounds colonial governance? Sachs wants mercy for Mdlawini, this much cannot be doubted. He thinks law would be more reasonable if it were not so strict or literal, so inflexible or unbending, in its punishment of this native who perhaps knew not what he did. And yet it is precisely the way Sachs opposes colonial law from the standpoint of the reasonability to which law itself aspires that ends up twisting his arguments into agreement with the basic principles of colonial governance. How is it that these apparently antagonistic principles turn out to concur with one another? How might the apparent coldness of an unswerving and inflexible clumsy and merciless letter of the law work as part of the same logic as the ostensible warmth of a humanism which, not despite but because of its charity, ends up serving the same principle, the same archē, as the law it opposes? To respond to this question, we will need to take a second detour.

**Detour II: Hamlet**

In the interpretation that especially Lacoue Labarthe has given to the concept of catharsis, mimesis functions as a kind of homeopathic medicine. Tragedy is supposed to purge guilt from its spectators, and mimesis the imitation that relates original to copy, model to reproduction is the means by which tragedy is supposed to accomplish this purge. If a tragic drama has truly accomplished its purpose, and if its spectators reproduce within themselves the affects of terror and pity modeled by the pharmakos, then when the pharmakos is banished from the city, so too should the spectators’ terror of punishment and pity for the innocent be purged, cathartically releasing the polity from the disturbing affects that previously defiled and disordered it. Not least because Greek juridical ideas about equilibrium, judgment, and the balance of justice emerged from Greek medical thought, tragedy’s juridical operation cannot be separated from its specifically medical
function. When Freud moved away from the cathartic method and adopted a “talking cure” based on Oedipus as a diagnostic, he by no means abandoned the concept of recuperative mimesis. On the contrary, he isolated and clarified its powers, studied its effects in and on the body of the hysteric, refined its transfers and its field of application, formulated a theoretical terminology appropriate to that field, and developed a play of silence and speech, an entire theater of listening, designed to concentrate its restorative potential. Psychoanalysis is nothing if not a theory and practice of mimesis in the ontogenesis of the subject.

In *Hamlet*, however, mimesis does not seem to lend itself to cure. Nicolas Abraham observes that “the final scene of the *Tragedy of Hamlet* does not close the dramatic action, it simply cuts it off. Sophocles’ *Oedipus the King* ‘purified’ the soul, as Freud has shown, by directly uncovering the unconscious. Not so Shakespeare’s play.” In contrast to *Oedipus*, the last act of which cathartically restores the relation of law to justice, *Hamlet* merely “grinds to a halt stripped of protagonists. As the curtain falls, only corpses and riddles are left, silent like the night of Elsinore. Having lost all hope of seeing the mystery unraveled, the spectator remains bewildered.” Lacking a properly purgative catharsis, *Hamlet* also fails to return justice to law: its resolution involves no harmony or equilibrium of forces. If *Hamlet* is therefore less a tragedy in any classical sense than what Walter Benjamin calls a mourning play, it would make sense were a psychoanalytic reading of *Hamlet* to permit the play to open up to question psychoanalysis’s presupposition of *Oedipus*. But despite the fact that mourning appears nowhere in Aristotle’s *Poetics*, Ernest Jones turns precisely to Aristotle’s account of tragedy in his attempt to provide support for Freud’s assertions of continuity between *Oedipus* and *Hamlet*. Interpreting Shakespeare’s own mourning on the basis of what Derrida has called “psychobiographical reading,” Jones’s application of classic tragic models to *Hamlet* is as unhesitating as it is forceful, and does not such much confirm the universality of the Oedipal tragedy as suggest that there is in *Hamlet* something that resists psychoanalytic reading altogether.
Jacques Lacan’s interpretation of Hamlet, in contrast to Jones’s, centers directly on the problem of mourning. At the core of the mourning that takes place in Hamlet, Lacan argues, is a crime. Taking up Freud’s suggestion that Hamlet marks the decline or degradation of the Oedipal complex, Lacan says that the crime Hamlet mourns is essentially the same crime that Freud discovered in Oedipus Tyrannos and formulated, more systematically, in Totem and Taboo. From the Oedipal myth, Lacan suggests, Freud learned that “the order of the law can be conceived only on the basis of something more primordial, a crime.” In Oedipus, the father restores justice to law by embodying the punishment he himself prescribes: Oedipus obeys his own command that the one who brought the plague down upon Thebes should be banished from it. In Hamlet, which Lacan calls a “second Oedipus Rex,” this same structure remains in effect, but appears in a more developed form. Whereas Oedipus unfolds the series of events that eventually lead the king to banish himself according to his own command, in Hamlet the king is excluded from the order of the law from the very outset. The command that haunts Hamlet “Revenge his foul and most unnatural murder” is doubly exterior to law: not only does the Ghost enjoin Hamlet to seek justice outside the rule of law since it orders Hamlet to slay the usurper who now wrongly embodies sovereignty but, more importantly, it offers unreliable testimony about an unverifiable crime which is why, according to Hegel, Hamlet hesitates before taking revenge: he knows that he does know whether there is truth to what the Ghost says. In Hamlet, unlike Oedipus, the crime that grounds the order of the law the crime to which the Ghost testifies calls into question law’s very relation to language: not only law’s monopoly on legitimate command, but also its ability to discern true from false testimony.

Lacan interprets the Ghost’s speech as an effect of Hamlet’s mourning, suggesting that the lost object Hamlet mourns is the phallus. The phallus, for Lacan, is not so much the penis as the “signifier of power, of potency.” It is, as Louis Althusser puts it, “the emblem of the Father, the emblem of right, of the Law, the fantasy image of all Right.”
It is less the language of law per se than the idea that there was once a truly judicious
discourse, a manner of speaking that was as true as it was just. When Hamlet mourns
the loss of the phallus, he in effect grieves the loss of the fantastic language law wants to
have been. Where there is no potential for truth and justice, not only language but also
law becomes senseless: the state starts to appear rotten and the hero’s words begin to seem
mad. Because of this original interpretation of Hamlet’s mourning, Lacan is able to offer
an unusual account of Hamlet’s famous hesitancy. Lacan suggests that Hamlet hesitates
before committing revenge not because he doubts the veracity of the Ghost’s testimony,
but because even though the Ghost commands him to reclaim the phallus from Claudius,
Hamlet also knows that the phallus will only ever be present in its absence, and that
slaying Claudius will not restore it to its full presence. Hamlet’s doubt over the Ghost’s
language – its testimony and its command – thus corresponds to his knowledge that the
Ghost’s disembodied sentences are the most substantial form the phallus will ever take.
Hamlet hesitates because he knows that the apparition of sovereignty is sovereignty’s
purest form, and yet the apparition beckons him to embody it.

What’s intriguing about this account is the disciplinary transfer it effects and on
which it depends. Lacan’s interpretation of Hamlet hinges on his argument that the
psychoanalytic concept of the phallus is substitutable for the sovereignty the Ghost
implies Claudius has usurped. Lacan enjoins the reader of Hamlet to “replace the word
‘king’ with the word ‘phallus,’ and you’ll see that that’s exactly the point – the body is
bound up in this matter of the phallus and how but the phallus, on the contrary, is
bound to nothing: it always slips through your fingers.” To support his assertion that
phallus and king are one and the same thing, Lacan turns to the passages in Hamlet that
refer to the legal fiction of the King’s Two Bodies.

Rosencrantz: My lord, you must tell us where the body is, and
go with us to the king.
Hamlet: The body is with the king, but the king is not with the
body. The king is a thing
Guildenstern: A thing, my lord?
Hamlet: Of nothing.
Hamlet’s witty antimetabole evokes the same decomposition of the kingly Name into a nameless thing that Kantorowicz traces in *King Richard II*. It is this decomposition that Lacan wants to emphasize in his equiparation: the phallus can be substituted for the King’s second body not despite but precisely because of the way it fades away. In the process, however, Lacan’s interpretation assumes a clear relation to the royalist jurisprudence that takes the halo that sign of an immutable, perpetual being, of an immortal force untouched by the contingencies of time to be the very emblem of sovereign power. The phallus Hamlet mourns is sovereignty in its purest form: it is the sovereignty of a timeless body, of a perpetual sovereignty that can be disembodied from the physical body of any given king. Yet without preserving perpetuity and immutability even and especially in their negated forms, Lacan would not be able to establish a relation of substitution between a lost sovereignty and the mourned phallus. When Lacan places the phallus on equal terms with the King, he thus demonstrates more than merely a homology between psychoanalysis and jurisprudence. He also reveals the extent to which there can be no analysis of Oedipus that does not imply some kind of relation to *Tyrannos* or *Rex*. When Lacan confers upon the father’s discourse the attributes of a supra temporal Law, he graces the merely flesh and blood father with the same halo Kantorowicz traces in his account of jurists’ transfer to the State of the sovereignty once possessed by the King. Because of the way the King’s immutable body provides Lacan with a paradigm for the phallus, it should come as no surprise that contemporary psychoanalysis would devolve into a political theological fiction of a kind of “Father’s Two Bodies,” in which “the Law of the father” names not only an immutable and timeless potency that sexes the bodies it differentiates but also the father who fails to fully embody this potency. Likewise, when Goodrich defines culture itself by referring to the same *dignitas* that royalist jurists once used to characterize the immortality of the King, he demonstrates the extent to which psychoanalytic jurisprudence helps preserve in its analytic categories the very sovereign power the loss of which it claims to interpret in the social. Lacan’s interpretation of
Hamlet is intriguing, then, because it provides a chance to understand the disciplinary conditions under which psychoanalysis arrives at its claim to understand the law that permits entry into human culture as such. Psychoanalysis here depends for its intelligibility on a theory of sovereign power that is preserved through its negation. It also suggests a pitfall for the psychoanalytic jurisprudence that does not question the conditions of possibility of its own interdisciplinarity. Despite its avowed desire to disrupt traditional jurisprudence, or even to show how the discipline of legal studies mourns the loss of its own object, the psychoanalytic jurisprudence that does not ask whether its study of the unconscious might be predicated on a misrecognition of Tyrrannos or Rex leaves itself vulnerable to a repetition or even an acting out of the sovereign power it presupposes yet almost never explicitly mentions in its numerous shorthand references to Oedipus. Interpreting both paternity and law primarily on the basis of their loss of sovereignty’s halo, uninterrogated psychoanalytic jurisprudence risks failing to understand all three.

Perhaps the most interesting problem illuminated by Lacan’s reliance on the legal fiction of the King’s Two Bodies is that it allows him to resist the most extreme implications of his own interpretation of the Ghost’s speech as Hamlet’s mourning. Let us look again at the passages where the Ghost of Hamlet’s father enjoins Hamlet to revenge his most foul and unnatural murder. The revenge the Ghost here commands is inseparable from a concept of law as that which is inflexible, unyielding, and unswerving in its application. The law the Ghost commands is *lex talonis*, it is law as the strictest possible mimesis: eye for an eye. It is therefore curious that when the Ghost tells Hamlet of his father’s murder, it likens its very act of telling to a poisoning, as if the tale in which mimesis had become revenge were itself the very opposite of a cure.

Ghost: I am thy father’s spirit,  
Doom’d for a certain term to walk the night,  
And for the day confined to fast in fires,  
Till the foul crimes done in my days of nature  
Are burnt and purged away. But that I am forbid  
To tell the secrets of my prison house,  
I could a tale unfold whose lightest word  
Would harrow up thy soul, freeze thy young blood,
Make thy two eyes, like stars, start from their spheres,  
Thy knotted and combined locks to part  
And each particular hair to stand on end,  
Like quills upon the fretful porpentine:  
But this eternal blazon must no be  
To ears of flesh and blood. List, list, O list!  
If thou didst ever thy dear father love

Hamlet: O God!
Ghost: Revenge his foul and most unnatural murder.

When the Ghost here tells Hamlet that the “lightest word” of this tale could “harrow up thy soul, freeze thy young blood,” it warns Hamlet that listening to its tale of poisoning could have the same effect on Hamlet’s blood as a poison administered through his ear. Assuming that after issuing this warning the Ghost then does indeed proceed to tell its secret, would it not be the case that, as Abraham suggests, the Ghost unfolds in Hamlet’s very blood words that poisonously command revenge? If in Hamlet mimesis is not a cure but a poison, is it not then because mimesis in Hamlet takes the form of revenge? Would Hamlet’s lesson for legal scholars then be that revenge works like poison, that law and life are poisoned when justice is turned into an unswerving mimesis of crime? Ophelia drowned by grief at Hamlet’s melancholy and senseless words, Polonius stabbed because of a chance semblance to the king, Hamlet, Claudius, Gertrude, and Laertes poisoned like the Ghost, and Rosencrantz and Guildenstern dead by the written command they themselves carry to their executioners if there is no catharsis in Hamlet, isn’t it because the vengeful mode of mimesis at work in the play could only yield a purge, a purification from the state of anyone tainted by the rot of its illegitimate sovereignty?

Lacan does not pose these questions, and yet they are implicit in his attentive reading of the Ghost’s speech. Consider the crime about which the Ghost testifies. The wrong the Ghost seems to want Hamlet to right appears to pertain to the law of succession, and in particular to the usurpation of sovereign power: Claudius appears to have interrupted the law of primogeniture that guarantees the transmission of sovereignty from king to prince. Strange, then, that the relevant passages in Hamlet should make no mention of the law of primogeniture and that no such law was in force in the Denmark of
which Hamlet was the prince. Here where the Ghost’s capacity to testify doubles as an ability to poison the one he claims as his own son, we find not quite the law of succession but only an old concept of legal right that, at least according to Hegel, is as illogical as it is unjustifiable, but that has nevertheless remained an important source for the modern concept of political sovereignty: patria potestas, or the right of the father to dispose with the life of the son. When Hamlet, having been warned that Ghost’s secret could act like a poison, nevertheless says to the Ghost, “Speak. I am bound to hear,” he would seem to recognize and to submit precisely to his father’s right to take his life. The passages in which the Ghost unfolds its secret and commands revenge would thus seem to pivot on a paradox. The strong implication of the Ghost’s testimony is that the transmission of sovereignty from father to son has been usurped by Claudius. But because the poisonous revenge the Ghost commands threatens to do away with the life of the very prince who obeys him, its words endanger the same primogeniture it appears to want to grant to Hamlet. The son who here stands to inherit the paternal right to take the life of the son is also the son whose life can rightfully be taken by his father. The command in which the Ghost orders Hamlet to acquire sovereignty would then itself be an exercise of sovereignty, since it would seem to actualize the father’s right to kill his son with impunity. If the Ghost’s command to Hamlet to take back the crown were indeed to operate like a poison, its successful communication would also be its failure. This paradox is deepened by Ghost’s own claim to be subject to a command, one that seems to prevent it from telling the same secrets that would poison Hamlet. “But that I am forbid to tell the secrets of his prison house, I could a tale unfold whose lightest word would harrow up thy soul.” Even though the Ghost refers in this passage to the modality of its own speech, Lacan’s otherwise scrupulous interpretation of the Ghost’s speech inquires neither into the Ghost’s reference to its untellable secrets nor into the way the unspeakability of those secrets might be related to Hamlet’s melancholy. Part of the difficulty of interpreting the Ghost’s reference to its secrets relates to its being trapped in purgatory. Being in
purgatory would require the Ghost to confess its secrets, since this purge would be necessary before it could qualify for God's grace.\textsuperscript{116} And yet confessing its secrets would, by the Ghost’s own word, be like poisoning the one he addresses as his own son. The paradox of primogeniture is thus deepened by a paradox of secrecy: the Ghost seems unable either to keep its secrets or to tell them.

We learn something interesting about this paradox by rereading the passage where the Ghost puts a name to the poison that killed Hamlet’s father. Because the Ghost likens its own telling to an act of poisoning, the name of this poison will be decisive for understanding exactly what kind of poison the Ghost’s command to commit revenge in effect is. But scholars of Shakespeare have rightly been confused by what the Ghost says in this passage. The poison it mentions “hebenon” or “hebona” cannot be found in any botany or pharmacopoeia.\textsuperscript{117}

\begin{quote}
Brief let me be. Sleeping within my orchard,
My custom always of the afternoon,
Upon my secure hour thy uncle stole,
With juice of cursed hebenon in a vial,
And in the porches of my ears did pour
The leperous distilment; whose effect
Holds such an enmity with blood of man
That swift as quicksilver it courses through
The natural gates and alleys of the body,
And with a sudden vigour it doth posset
And curd, like eager droppings into milk,
The thin and wholesome blood: so did it mine;
And a most instant tetter bark’d about,
Most lazar like, with vile and loathsome crust,
All my smooth body.\textsuperscript{118}
\end{quote}

Despite the position of “hebenon” as a metonym for the Ghost’s speech as a whole it does to the Ghost’s blood what the Ghost says its own tale could do to Hamlet’s there is a reasonable argument to be made that the poison named in these passages is nothing more than a \textit{clinamen}. Because the folios that together constitute Shakespeare’s \textit{oeuvre} are littered with misspellings and errors, and because standardized spelling was not yet in effect in Elizabethan England, there is no textual ground for the argument that an author named Shakespeare actually intended “hebenon” to appear in these passages. Even though
*Hamlet* establishes a set of relationships between poisoning, revenge, and the Ghost’s testimony that together indicate that the name of this poison is that part of the Ghost’s speech that could represent the modality of its speech as a whole, the fact that this name is a misnomer is quite probably due to nothing more than a copyist’s error. It is an argument of this type that Ernest Jones makes in his 1948 rereading of *Hamlet*.

The source of this mysterious poison has been traced as follows. Shakespeare seems to have taken the name, incidentally misspelling it, from the juice of ‘hebon,’ mentioned in a play of Marlowe’s, who himself had added an initial letter to the ‘ebon’ ebony of which the walls of the God of Sleep were composed Ovid. Shakespeare apparently went on to confound this narcotic with henbane *henbane* , which at that time was believed to cause mortification and to turn the body black. Two interesting beliefs about henbane are mentioned by Pliny: 1 that it is a remedy for earache, and 2 when poured into the ear it causes mental disorder.119

Yet here again we may wonder whether Jones’s psychobiographical reading, as well as the historicism that supports it, does not permit him to resist reading “hebenon” even and especially if it appears in the text as nothing more than a misspelling. For it is not Shakespeare who speaks here where telling has acquired the likeness of poisoning. The text attributes the speech in question to the Ghost of King Hamlet, which is to say, to an apparition, a being that would be true to its own nonbeing, to its own kingly nothingness, were its speech to appear to represent nothing at all.120 What is it, after all, that the Ghost’s misnomer misnames? “Hebona” or “hebenon” is the name of the poison that, according to the Ghost, killed Hamlet’s father. If the Ghost were prohibited to tell the secrets of its prison house, yet if it were also obliged to purge its sins by confessing the secrets that imprisoned it in Purgatory in the first place, then perhaps the Ghost’s misnaming of the poison that ended its life may in some way be a substantive part of its very tale. Especially if the Ghost can neither tell its poisonous secret nor keep it, misnaming the poison that killed it would acquire a very precise function. A misnomer would almost permit the Ghost both to tell its secret and to keep it. To misname the poison that killed Hamlet’s father would be, on the one hand, to take precautions against Hamlet’s mimetic application of the very same poison to his uncle. It would thus spare
the recipient of its tale from being poisoned by acts of revenge. But, on the other hand, it would also allow the Ghost the confession required of it in order for its soul to rest in peace. The Ghost’s misnomer would thus be doubly merciful. It would index the divine mercy any purgatorial Ghost would want to receive by purging itself of its secrets as well as the mercy the Ghost is obliged, by virtue of that same purgatorial status, to show to the living since it would safeguard against his son’s vengeful application of the same poison to his brother.121 “Hebenon” would then be a graceful misprision that permits the Ghost to escape the paradox of primogeniture as well as the paradox of secrecy. By sealing its potent tale of poisoning safely in the vial of a misnomer, the Ghost would be able to communicate the right of sovereignty to Hamlet through a circuitous yet exact route. Even as the shell of its discourse shows Hamlet the image of a sovereignty usurped from Hamlet’s father by Claudius, its kernel— the “lightest word” of the Ghost’s tale, which, on this read, the Ghost would not ultimately unfold— would offer Hamlet a right that is at once exclusively sovereign and, not despite but because of the murder to which the Ghost attests, already within Hamlet’s power to exercise: the right of grace.122 The intolerable secret the Ghost could not bear to communicate in its tale would then be that Hamlet should not seek revenge for his father’s murder,123 since vengefulness poisons the one who acts on it, and since revenge is contrary to the grace that is at once the highest principle of the sovereignty the Ghost wants to bequeath to Hamlet as well as the very power that haloes the king’s natural body with the immortal body that makes him a King.124

Even though this reading of the Ghost’s speech is not unavailable to a Lacanian approach, especially if we understand the phallus as a signifier without a signified,125 its precise problematization of public right lends it more to the account of Hamlet’s hesitancy Walter Benjamin offers in the book Gillian Rose calls his “philosophy of law,” The Origin of German Trauerspiel.126 Benjamin argues that the genre of the mourning play exemplified by Hamlet demonstrates, quite contra Carl Schmitt, that the true emblem of sovereign power is the inability to decide.127 Inability to decide over what? Benjamin says
explicitly that princely indecision is the complement of bloody terror,\textsuperscript{128} which is to say, the sovereign power to make die. But in his long exposition of guilt, fate, life, and providence, Benjamin also seems to imply that Hamlet in effect mourns his own inability to let himself live, as if his lost object were mercy, as if it were because of his abandonment from grace that Hamlet is melancholy.\textsuperscript{129} If sovereign power is the power to make die or let live, then Hamlet’s inability to decide would correspond very precisely to the indiscernibility with which the Ghost’s speech not only communicates but also exercises both sides of this power. Hamlet may indeed incorporate the Ghost’s word, as Lacan suggests,\textsuperscript{110} since he literally inscribes that word in his body: “thy commandment all alone shall live/Within the book and volume of my brain.”\textsuperscript{131} But if “hebenon” is a metonym for the very substance of that command, if it is perhaps even a graceful misprision designed to suspend the actualization of the same revenge it commands, then Hamlet’s incorporation of the Ghost’s command would take place alongside his introjection of the signifier of the Ghost’s secret mercy.\textsuperscript{132} This might be why, even though Hamlet does seem to take the Ghost’s speech literally as a call for revenge, mercy reappears in almost every death scene in Hamlet. When Hamlet kills Polonius, he responds to Gertrude’s question “what hast thou done?” with “Nay, I know not,”\textsuperscript{133} thus sarcastically reversing Luke 23:34 “Father, forgive them; for they know not what they do”. Hamlet’s rather equivocal request for a pardon from Laertes,\textsuperscript{134} meanwhile, prepares the way not only for Gertrude’s casual request for the King’s pardon as she disregards his order not to drink the wine he has poisoned\textsuperscript{135} but also Laertes’ own plea to Hamlet before their deaths: “Exchange forgiveness with me, noble Hamlet;/Mine and my father’s death come not upon thee,/Nor thine on me!”\textsuperscript{136} But the passage in which Hamlet’s inability decide would be at its most intense would be Act III, Scene III, in which Hamlet finds Claudius praying and decides to spare his life. Claudius’s prayer consists of a soliloquy on the impossibility of repenting for his crime. It pivots on a distinction between pardon and forgiveness. Claudius knows that the wicked prize itself, the crown, could permit him to buy out his guilt before the law; but since the
crown itself is one of the ongoing effects of his crime, he also knows that a royal pardon issued through it would not amount to forgiveness.

Claudius: Is there not rain enough in the sweet heavens
To wash it his “cursed hand” white as snow? Whereto serves mercy
But to confront the visage of offence?
And what’s in prayer but this two-fold force,
To be forestalled ere we come to fall,
Or pardon’d being down? Then I’ll look up;
My fault is past. But, O, what form of prayer
Can serve my term? ‘Forgive me my foul murder’?
That cannot be; since I am still possess’d
Of those effects for which I did the murder,
My crown, mine own ambition and my queen.
May one be pardon’d and retain the offence?
In the corrupted currents of this world
Offence’s gilded hand may shove by justice,
And oft ‘tis seen the wicked prize itself
Buys out the law: but ‘tis not so above;
There is no shuffling, there the action lies
In his true nature; and we ourselves compell’d
Even to the teeth and forehead of our faults,
To give in evidence. What then? what rests?
Try what repentance can: what can it not?
Yet what can it when one can not repent?

Hamlet, who hears none of this, decides that justice would not be served were he to kill Claudius in the midst of prayer. To kill Claudius after he has made a full confession of his secrets, after he had purged his soul, would only send Claudius to heaven. It would be a mercy killing, but because Hamlet’s father’s soul was not purged when he was killed, Claudius’s punishment would not fit his crime. Hamlet thus decides to spare Claudius’s life so that he can take a more horrid revenge later, when he can not only kill Claudius but also deny his soul salvation. Hamlet’s decision gives voice to revenge but it takes the form of mercy. It is not a decision at all: it is an inability to decide between the power to let live and the power to take life. In Hamlet’s decision, a silent exercise of the sovereign right of grace and a spoken wish for lawless revenge become as indiscernible as two sides of the same piece of paper. It is as if both the shell and the kernel of the Ghost’s speech had reappeared at once. If mimesis in Hamlet yields a purge but not a catharsis, it not simply because the rules in Christianity for granting or withholding eleos translated as lordly mercy are incommensurable with the principles that define classical tragic drama’s
discharges of eleos translated as pity. It is also because in Hamlet mimesis communicates the poison of sovereign indecision.

**Pharmakon**

Even though what is true for W.S.’s Hamlet is also generally true for W.S.’s Black Hamlet, mimesis plays itself out in Black Hamlet in an unpredictable way. Sachs’s first two texts narrate in clinical detail the reasons why Chavafambira is not experiencing a catharsis. Sachs’s diagnosis is that John is suffering from a condition of “Hamletism,” which is to say a systemic inability to act Sachs cites Jones on “aboulia.” John’s decision finally to take action against racial injustice only takes place in Black Anger, when Sachs describes himself reading a copy of his second text Black Hamlet aloud to Chavafambira and his wife, Maggie. Saul Dubow calls this passage of the text “cathartic” with good reason. It marks the point of greatest difference between Black Hamlet and Black Anger. Up until this point in the narrative, Black Anger is almost identical to Black Hamlet; from this point forward, Black Anger is entirely different from Black Hamlet, particularly with regard to political action. Yet in their readings of this passage, both Dubow and Armstrong elide the difficult set of mimetic relations Black Hamlet and Black Anger open up with Shakespeare’s Hamlet. Just as Shakespeare’s Hamlet is a play the drama of which pivots on the performance of a play within a play “The Murder of Gonzago” whose plot to that point resembles its own, so too is Sachs’s Black Anger a book that pivots on the reading of a book within a book whose plot to that point likewise resembles its own. When in Black Anger Sachs rereads Black Hamlet, that rereading is therefore already a rereading of Shakespeare’s Hamlet. Matters are even more complicated by the fact that Black Anger’s imitation of the play within a play in Shakespeare’s Hamlet alters, in a subtle way, the reading of the book within a book that already appears in Black Hamlet. Black Hamlet’s scenario of self reading occurs not between Sachs, John, and Maggie, as it would in Black Anger, but between Sachs and himself, alone with his conscience in the silence of the night. Imagining himself on trial before the “educated
Africans” who had just criticized the way he had been conducting his relationship with Chavafambira, Sachs rereads his case study notes on John and rethinks the epistemological ground of that relationship. The narrative event Dubow calls “cathartic” is not only what de Certeau might call a “theoretic deficit,” which is to say, a point at which psychoanalytic knowledge reconstitutes itself on the basis of its response to the suffering of the other. Because it corresponds to that point in Hamlet where Hamlet stages a play within a play to test the theory the Ghost has put in his head, it has the status of an attempt to verify an undecidable command. But whereas Hamlet finds in his play a confirmation of the Ghost’s theory, Sachs’s rereading of his notes consists of a reflective judgment on psychoanalytic theory that seems to throw into question the justice of applying its laws to John.

A desire came to me to review my knowledge of John, to delve deeper into his personality. Perhaps I had been wrong in the psychological diagnosis I had made of the Manyika. I took out the voluminous notes I had made about him and tried to forget the sophisticated interpretation I had previously made, the comments I had written at the time. In order if possible to obtain a more impartial attitude, I tried for the first time to see John the human being and not the subject of psychoanalytical studies. It seemed to me that in spite of my sympathy and external freedom in relationship with him, he nevertheless had remained chiefly a psychoanthropological specimen: the main aim had been to collect his dreams, his fantasies, and find out the workings of the primitive unconscious.

Castigating himself for permitting John to slip into “self destructive actions,” Sachs then imagines that John’s actions “might be the direct result of his John’s sudden and abrupt severance from me,” a severance that he, Sachs, could only have allowed if Chavafambira were “only a subject of experiment, a case of psychic vivisection,” rather than a “patient” proper. Away from the daylight of publicity, Sachs thus realizes his culpability for John’s melancholic desire for suicide. This abyss of Sachs’s rereading marks a point where the epistemological foundation of his understanding of John seems to fall away altogether. The mode or affect of this groundlessness is not despair but a kind of fatherly care.

According to the psychobiographical reading of Hamlet Sachs himself offers, Sachs would be positioned in his own text as the Ghost is in Shakespeare’s, namely, as an introjected figure of Shakespeare’s own dead father. It is in the apparent clarity of this transference,
for which Sachs was criticized by the psychoanalytic establishment, that he reveals a John who now appears devoid of any analytic mediation whatsoever. “Now in the stillness of the night my main concern was for John’s safety and well being. A new man separated himself from the pages I was reading. The human: the real John. And the whole panorama of his life unfolded itself vividly before me.”

It is not insignificant that Sachs’s professional U.S. readers found this cathartic moment, which is very much an instance of what Giorgio Agamben would call “anthropogenesis,” or “the becoming human of the living being,” one of the most attractive parts of his book. Both of the reviews that recommended Sachs’s Black Anger for inclusion in the Book of the Month Club News cited with approval the shift from “case study” to anthropos in their reader’s reports. This shift, which would seem to suggest the success of the solution for racism Sachs outlined in 1943 since its function would seem to be to cure us, the reader, of our unfamiliarity, would also seem to clinch the case of the psychobiographical reader hunting for evidence that Sachs has projected his own desires onto John. For whereas Black Hamlet reads, “the whole panorama of his life unfolded itself before me,” Black Anger reads, “the whole panorama of his life unfolded itself vividly before him.” Sachs’s epiphany in Black Hamlet is thus re written in Black Anger as Chavafambira’s catharsis. John’s transubstantiation from written character to person as Sachs reads to himself in Black Hamlet becomes, in Black Anger, John’s recognition of his own image in the book that Sachs, reading aloud to him and to Maggie, pours into his ear. The text in which John is inscribed, typecast, and typeset makes what Sachs calls “an impression” a stamp or mark on John himself. Not only in his ear but also for his eye: as John listens to Sachs read, he reads along with Sachs. Upon hearing his life story read aloud to him, Chavafambira, and not Maggie, experiences the moment of discovery or self recognition the anagnorisis that, according to Aristotle, defines the cathartic moment of classic tragic drama. After recognizing himself in Sachs’s biography, John has a political awakening and decides to begin protesting the racism of South African society. He
realizes not only that the time is out of joint that South African sovereignty is illegitimate but also that he was born to set it aright.

One of the problems with the psychobiographical reading of these passages is that it inquires neither into the way these passages position Chavafambira as the primary addressee and ideal reader of Sachs’s text nor into the mechanism of Sachs’s strange attempt to cure this reader, the way in which Sachs’s antidote to racism works in the scapegoat himself. What the genre of biography adds to Sachs’s already anthropological and psychoanalytic text is the condition of possibility without which Chavafambira’s “apathy” or “aboulia” would remain untreated: time. Whereas classical tragedy is the genre that implicitly poses the question, “to act or not to act,” Hamlet is, as Deleuze puts it, “the first hero who needed time to act.” If Sachs’s configuration of Chavafambira as Hamlet exposes the limits of the claim on culture presupposed by psychoanalysis even more than does Lacan’s reading of Hamlet, it is because of the way time itself emerges in Sachs’s text as the very substance of the cure. Whereas time for Lacan is the time of castration anxiety—a time that threatens to cut life short, to cut life off, to hurry it up, and in the process to precipitate subjectivity itself—time for Sachs is the solution that constitutes the cure itself. Sachs’s biographical treatment of Chavafambira’s Hamletism claims to work its cure by adding this time to Chavafambira’s otherwise inactive, repetitious, essentially vegetative life. By his own account, Sachs restructures the disconnected manner of John’s own discourse in strictly linear chronological order. When Sachs notes the difficulty of narrating John’s story, he makes a point of saying that John cannot tell past from present, ghosts from the living. He then adds that John’s failure to distinguish one from the other is due to his filling in the blanks with whites.

Now that I come to relate the story of John’s life in Johannesburg, I find it impossible to do so in the way that he told it to me. For he would invariably confuse past and present events; often he would start to tell me of his difficulties during his early days in the city, and then suddenly switch over to his present life in the yard and the connecting link between past and present was always his hardships and oppression by the white people.
Sachs’s diagnosis is clear: the way that the “time is out of joint” for John is *itself* out of joint. John’s grievance about white people is out of line with Hamlet’s protest about time itself. Joins and joints—properly temporal connecting links between past and present, city and slum—are different, Sachs wants to say, than oppression caused by white people. Possessed of the capacity to tell the difference, Sachs is able to read John’s confusion about causation with temporality for the symptom that it is. When he articulates John’s biography to and for him, when he adjusts the time of his life story, the curative solution he will pour in John’s ear is a life arranged according to empty, homogenous time. Not white time but blank time. Calculable time, the time of calendars and watches, the time of the modern nation state, the time of the city or urb. Deleuze would say Kantian time. But time that, in any case, will have a direct effect on John’s life. Because by rearranging John’s life story on the basis of calculable time, Sachs’s text will enable John to separate merely *temporal* succession from the more substantial underlying domain of *causal* succession. Sachs’s biographical treatment of John’s life will surgically cut at the root cause of John’s ignorance: the error of *post hoc ergo propter hoc*. This cut will permit John to separate himself from his immersion in *zoe* and to recognize in himself the capacity to cause effects. Sachs’s text would cure John of his aboulia, his “Hamletism” it would invite him to become a doer of deeds, to participate in the making of culture itself by supplementing his life with time. The very time implicit in biography would then be the substance that treats John’s illness and incites his catharsis.

With this we reach the core of Sachs’s claim to be more reasonable than the law. To do justice to John in a way the strict letter of the law never could to treat John’s life so literally that this treatment itself literally cures John’s life will be the sole privilege of the genre of biography. Yet Sachs’s biography and the time it applies presuppose a very definite relationship of life to law. The time Sachs understands to be a solution for John’s Hamletism is the time of the subject, it is the time that posits and presupposes a subsisting substance that alterations then affect. As the time that permits knowledge of
causality, this time institutes the very capacity to cause effects that is also the indispensable condition for culpability before the law. The time with which Sachs cures John of his inaction is thus, in a very direct way, the time of the law. Not only the law of natural science—the capacity to distinguish between temporal and causal succession—but also positive law in its most prosaic form since without recourse to magical thinking, John is without the ignorance that would otherwise confer a quotient of innocence upon his acts. Sachs would cure John by reading to him John’s inscription as a subject whose life is answerable at every turn to some law: the function of Sachs’s biography, Legendre might put it, is “to institute” John’s life. But in this Sachs treats John’s life more literally, not less, than does the inanimate letter of the law. Sachs’s biography treats John's life not on the basis of a single action, as the law would, but by transcribing into linear time the entire set of events, including imaginary ones, that John has haphazardly narrated to him. And whereas colonial law can only deal with the witchdoctor by opening up a contradiction between law and sovereignty, the position from which Sachs reworks John’s magical thinking is, like the Ghost whose position Sachs occupies and whose gestures he imitates, above and beyond law altogether. When Sachs’s biography rearranges John’s circular, repetitive life according to rectilinear time, when he applies the form of law directly to John’s form of life, he presupposes the capacity to decide the relation between zoe and bios. Sachs’s biography can produce its anthropogenetic effect—it can articulate or join John’s zoe to a bios, it can put inanimate law in its place because it is written with the arm of sovereign power.

Sachs’s cure for John’s introjection will, like the substance the Ghost pours in Hamlet’s ear, have its own poisonous effects. Even though configuring Chavafambira as Hamlet provides the familiarity that, on Sachs’s theory, could provide a solution for racism, Hamlet is also a figure who resolves his sovereign indecision with bloody terror. One of the main subplots in all three of Sachs’s texts involves Chavafambira’s “nagging” wife Maggie. Sachs, like Lacan, interprets woman as man’s symptom: Maggie’s nagging,
which is connected to her lame foot, is the exemplary figure of John’s inaction. But what exactly does it mean to nag? Nagging is not simply irritating language. It is also repetitive irritation, irritation that goes nowhere, that incessantly does not progress, that persists. As a mode of annoying, worrying, or scolding discourse, nagging also has a specifically generative form. To nag is to urge, drive, compel, impel, provoke, or spur to movement or action. Nagging is agitating: it is a form of criticism that is productive of agency. But Maggie’s protest, which is voiced in the repetitive form proper to zoe, is not the form of agency the absence of which Sachs is prepared to find by reading John as Hamlet. In the catharsis Black Anger proposes both to effect and to record, John’s acquisition of the ability to protest a time that is out of joint is conjoined to an attempt to silence Maggie’s nagging once and for all. Whereas Hamlet’s release from aboulia begins with him revenging himself on Polonius, Chavafambira’s release—his “revolt,” as Sachs puts it, which in Sachs’s politicized psychoanalysis doubles as a cure and as a solution for racism—arrives when Chavafambira is ready to revenge himself upon his uncle and reclaim the rightful place of his father, but takes it out on the wrong person. Sachs recognizes that Chavafambira has reached the point of readiness to revolt when Chavafambira attempts to murder Maggie.162

The attempt comes when John attempts to poison Maggie with a dose of what he calls the doctor’s “white” medicine.163 “I killed Maggie. I put poison that I got from your room, Doctor, in her tea the night we went away. Now she is dead.”164 The objective of John’s attempted murder is clear. In the archived text only: “Her ceaseless nagging was forever still.”165 But Maggie does not actually die. John has misread the label of the bottle he has stolen from the white doctor. He misreads it because he reads it literally. The poison is indeed labeled as poison: “the bottle had a black label, and POISON in red letters.”166 But the red letters do not refer to the contents of the bottle. After John confesses this murder to the doctor, the latter demands a description of the “purloined medicine.”167

John produced the poison labelled bottle. The doctor examined it, and with a sigh of relief, put it down beside the candle. He gazed fixedly at John. So here was the explanation of his behaviour on the journey! John stared back, that bleak hawk like stare. For a moment he had the illusion that the doctor had become scarlet robed;
a judge who would pass sentence on him. He wanted to run away. It was too late. John realised that the doctor was speaking, half in irritation, half in amusement. He listened in amazement. The bottle had not contained real poison. The label was put on because of the law. The pills could not kill Maggie, even if she had swallowed the whole lot. She would sleep heavily, probably for twenty four hours, and would wake with a heavy head, nothing worse.\textsuperscript{168}

Even if Sachs’s \textit{Black Hamlet} does not exactly have its Ophelia in Maggie, Sachs’s desire to right John’s time absolves John’s violent silencing of Maggie’s protests. John’s attempted murder is, for Sachs, not a punishable crime but an involuntary action, a \textit{hamartia} that the reasonable man would interpret on the basis of the antinomy at work in it. The significance that Sachs finds in this attempted murder can be discerned by reading Sachs’s texts together as a whole. The object of the homosocial, mimetic rivalry between the two doctors, the witchdoctor and the psychoanalyst, is not so much Maggie as medicine itself, or, more precisely, a certain kind of poison. Sachs’s text returns repeatedly, almost obsessively, to problems of jealousy\textsuperscript{169} and poison.\textsuperscript{170} It is fascinated by the poison that, according to a longstanding theme in anthropology, \textit{is} jealousy and by the jealous watch John keeps over others’ power to poison. John’s relation to poison interests Sachs because John’s entire “Hamlet” complex pivots on it. Charlie, the uncle who married John’s mother after his father’s death, won’t teach John the art of poisoning until he reaches the appointed age.\textsuperscript{171} In the archived text only we read that Charlie, the “poisoner of poisoners,”\textsuperscript{172} also opposes the young John’s learning to read and write.\textsuperscript{173} Until the age of thirty, according to Charlie, John’s only vocation was to be healing. He is a \textit{inyanga}, not a witchdoctor. Witchdoctors poison, \textit{inyangas} heal. When Sachs interprets Chavafambira’s attempted murder of Maggie as the sign of the cure, he thinks he has witnessed Chavafambira killing his introjections. For Sachs, the very fact that Chavafambira has attempted to use poison at all would mark his cure because it would indicate that he had finally appropriated for himself the power to poison he understands to be his destiny yet which his uncle had prohibited him from acquiring. Poisoning his wife is a way to come into own name: in Shona, Chavafambira’s mother tongue, “Chavafambira” means “the reason you are here.”\textsuperscript{174} Not only does the attempted murder permit Chavafambira to
accomplish his destiny against his uncle’s wishes, but in his harmless satisfaction of his fantasy, he also finds that the white medicine lacks the poisonous power its label claims it possesses. Chavafambira’s act thus also teaches him that the law his life in effect is the idea that the reason he is here is to become an inyanga is superior to the inanimate character of the letter of the law. The law may be able to pass sentences and take life, its image may cause hallucinations of fear, but in its relation to the higher power not only to poison but also to heal, the law is a dead letter, a mute and dumb misnomer that only a melancholic would take literally, that can give life only by not applying, by erring. Sachs cures the pharmakos of his Hamletism and his magical thinking by reintroducing him to his life as an experience of time. But Chavafambira, as the ideal reader and patient of the text designed as his therapy, has a lesson to teach its other readers too. The white medicine that Chavafambira appropriates occupies the same position in the narrative as does the blank time that organizes the text itself: it is that which both joins and separates the two doctors. It is a metonym for the potion the text in effect is. Chavafambira’s use of it to kill reintroduces us, the text’s lesser readers, to Sachs’s treatment as an experience of poison. To ask how Maggie might have read Sachs’s text is to be left with nagging doubts about its felicity as cure.

**The Law of the Unconscious?**

Strange as it may seem, these passages of Sachs’s biography in which life, time, law, and writing become indistinct give us an angle from which we can begin answering our question about the concept of law that remains unthought in psychoanalysis. Derrida has argued that, from the very outset of Freud’s research during the last years of the nineteenth century, “Freud, like others, wanted to write a history of law.” What then did Freud find? How might a concept of law be implied in the origins of Freud’s research? In Freud’s self analysis of his dream of Irma’s injection, which Lacan calls the “inaugural dream” of psychoanalysis and Derrida calls the “exemplary example” of a dream, Freud wonders what it means that he is able to see a formula for a chemical solution, trimethylamine, written in
heavy type before him. In his own account of his self analysis in The Interpretation of Dreams, Freud even places Lösung in inverted commas to call attention to the way that, in his dream, trimethylamine signifies both a chemical solution and the solution to a puzzle or riddle. Freud then discovers in the chemical solution for trimethylamine the analytic solution for the riddle put to him by his dream: he discovers a word distorted by the mechanism of pre conscious censorship, from which he is then able to deduce the status of the unconscious as wish fulfillment in general. Lacan, characteristically attentive to Freud’s intertext, interprets the triadic structure of the dream of Irma’s injection with reference to Freud’s 1913 article on the place and function of the Moeræ in Shakespeare’s The Merchant of Venice, where Freud writes about the Three Fates who, in Greek and Roman mythology, controlled the life, birth, and death of mortals. Yet Lacan’s account depends for its coherence on the translation of Atropos, the third of the three Fates, merely as death. “The last term is death, as simple as that. That in fact is what it is all about.” Death is no doubt as central to Freud’s interpretation of the Moeræ as it is to his interpretation of Irma’s dream, but his interpretation in the former case especially is hardly as Heideggerian as Lacan would perhaps prefer. By completing the work of Lachesis and Clotho, Atropos yields a mortal life complete from beginning to end. The cut of Atropos is not then simply a cut that ends a lifetime. It is also the cut that, in ending a lifetime, constitutes it as a properly human life, a bios. In his 1913 account of Atropos, Freud argues that earlier concepts of fate, such as the Graces and the Hours, referred to the passage of time in nature. The Hours signified “the abiding law at work in the passage of time: the Hours thus became guardians of the law of Nature, and of the divine order of things whereby the constant recurrence of the same things in unalterable succession in the natural world takes place.” When the Hours morphed into the Moeræ, Freud continues, the concept of a law at work in and through time became applied to the lives and deaths of specifically human life. The invention of the Moeræ signified the transposition to humanity of the “ineluctable severity of law” from which humanity had hitherto imagined itself exempt. “The Moeræ were
created as a result of the discovery that warned man that he too is a part of nature and therefore subject to the immutable law of death *unabänderlichen Gesetze des Todes*.\(^\text{183}\)

Rather than accept that *bios*, the specifically human life, is subject to the same laws that govern *zoe*, animate life in general, humanity gave itself over to fantasies of exemption from these laws, “for it is only with extreme unwillingness,” Freud adds, “that man gives up his claim to an exceptional position.”\(^\text{184}\) Freud then suggests that it was in order to sustain the idea of a *bios* that would in some way remain distinct from *zoe*, in order to imagine that there is a choice of fate that would somehow not be the choice of death, humanity invented another fate, the Goddess of Love, to take the place of *Atropos*. The desire to decide on *Aphrodite*, who is also the third of three sisters, is a symptomatic way to reconcile the fantasy of choice with the unswerving necessity of *Atropos*. In the myth of the Fates, Freud concludes, we find the wish that we could somehow choose our “inevitable fate *unentrinnbaren Schicksals*.”\(^\text{185}\)

Freud’s remarks confirm that a problem other than the philosophical anthropological question of authentic finitude is at work in his thinking on *Atropos*. *Atropos* provides Freud with a figure that permits him to differentiate the law of animate life as death from the unconscious wish, proper to humans, to somehow remain exempt from this law. *Atropos* thus helps Freud pose the question how an exception to law, such as the fantasy of timelessness, might function to preserve law itself, in this case the law of time as a law of death. As an historian of law, Freud surely knew that *Atropos* has a similar function in Book XII of Plato’s *Laws*. The immediate context of its appearance is the question of how to preserve the laws the interlocutors have issued in the *Laws’* prior eleven books. The Athenian Stranger who is the dialogue’s central figure turns to *Atropos* to name a lack in their lawgiving, namely, that the laws they have issued have not yet been implanted with a “capacity for irreversibility.”\(^\text{186}\) The interlocutors’ response to this lack is to propose that the best possible city, the regime that mixes elements of timocracy with elements of democracy, would be governed by what they call a “Nocturnal Council of Rulers.” This
college of elite guardians would exercise an intelligent if secret custodianship of the democracy that would preserve the likeness of its laws nomos to intellect nous. In the Laws, Atropos thus signifies the very opposite of death. It marks a way to endow law with permanence. It permits the lawgivers to give a name to the defect that inheres in the fact of law being written, namely, that it is without life and cannot speak for itself. Atropos provides a way for the interlocutors of the Laws to theorize a living form of law that would possess the attribute of irreversibility and that could, as such, outlive the mortals who inscribed it in the first place. Read to the letter no, without swerve, return, Atropos is nothing more than a figure for the bare form of the unswerving, irreversible, or inexorable itself, of that which cannot be reversed or undone. It is as much a name for the preservation of law’s writing as it is for a bios properly constituted as such by its death.

What then can this teach us about Freud’s understanding of law? If Atropos is indeed, as Lacan argues, the real source of anxiety governing the triadic ‘solution’ Freud finds in the dream of Irma’s injection, Atropos will have a central place and function in the interpretation of those laws; it is in this dream, after all, that Freud discovers the laws of the unconscious and founds psychoanalysis as a discipline. Lacan would almost certainly say that Atropos is a figure for time understood as the time of castration anxiety, since it is she that cuts life off. But if Atropos is also the name of a problem internal to jurisprudence, namely, the problem of how to bring law’s writing to life, then there would be another reading of Atropos available to us, one that becomes particularly exposed by Sachs’s attempt to cure John Chavafambira’s life by treating it as literally as possible. Atropos would here be the figure on the basis of which life conceived on the model of the laws of nature could be differentiated from life conceived on the model of sovereignty. It would be the form that permits the psychoanalyst to distinguish the life that lacks, wants, and wishes for timelessness from the life that is subject to the law of time as a law of death. Before Freud would have been able to ask why and how the specifically human life wants to arrange itself in the form of an exception to the law of death, he would have first needed to presuppose a
concept of this law. As the figure for the immutable, inexorable Unabwendbare, and specifically silent destiny, inevitability, or fate that psychoanalysis finds working itself out in and as the biography of the split subject, Atropos would even provide Freud with the condition of possibility for his 1900 reading of Oedipus Rex as a fate play. When Freud suggests that Sophocles’ tragedy made “a voice within us ready to recognize the violence of fate Gewalt des Schicksals,” it is his presupposition that fate takes the form of unswerving death that permits him to read the play as a violence to our unconscious wish for immortality. When Freud would argue in 1915 that “to endure life is the first duty of every living being,” he would then still be trying to diagnose the unendurable quality of the fantasy of exempting oneself from law, since his argument concludes with his counsel to accept the law of death as the law of life. But, in both instances, Freud’s presupposition of Atropos as the form of law a human life in effect is, would not so much emphasize life’s finitude as refer to the law from which the unconscious seeks to exempt itself. Even though Freud wanted to think through human life as a life that arranges itself around the law of its own death if Freud was a thinker of human life as a law of death, as the unfolding of a fate or destiny the living being is obliged to endure insofar as it is mortal and not immortal he was primarily a thinker of an animal force, an “exigency of life,” whose wish, as it were, is our command. But where Freud confers upon the living being’s demand for pleasure not only the capacity for command but also the halo of timelessness, he comes close to configuring the animate life of the pre Oedipal animal as the bearer of a kind of sovereign power. Freud’s warnings about the unendurable fantasy of being exempt from the law of death would then come into view as a misrecognition of animal life, and its libidinal vestiges, as if it naturally took the form of Rex or Tyrannos. The by now familiar sense in which psychoanalysis understands the drives and the instincts to articulate pleasure as an imperative to be obeyed “Enjoy!” could come back into focus as an interdisciplinary transference of an old royal prerogative, namely, that “what pleases the Prince has the power of law.” And we could finally return anew to the Witz of Goodrich’s title. If it is true that
psychoanalysis haloes naked life as the bearer of a kind of sovereign power, then we can say that Goodrich’s substitution of Lex for Rex reveals Freud's famous saying, “where id is, there ego shall be,” to host a specifically jurisprudential unthought: where Rex was, there Lex shall be.

The trouble this unthought can cause is most apparent in the psychoanalytic jurisprudence that attempts to take law and sovereignty as objects of knowledge without first asking whether particular concepts of law and sovereignty do not already determine the way it poses problems for itself. The recursive effect of understanding law and sovereignty on the basis of a tragic hero whose ability to embody their split also implicitly promises their reconciliation, is the limitation of psychoanalytic jurisprudence to repetitive commentary on law’s originary crime – on the sense in which law is illegitimate, is itself predicated on a murder – in a way that precludes it from attempting to rethink, in an explicit way, the ontological conditions under which law is forced to seek its foundation in violence.\textsuperscript{196} Hamlet more clearly than Oedipus teaches us that to problematize law on the basis of its lost sovereignty is to succumb to a trap, to a ruse of sovereign power, for to pose the question this way is to offer no resistance to the application of law to life through law’s withdrawal. But while psychoanalysis brilliantly explicates the mechanisms of this trap, its own account of the formation of the law-governed subject in and through a necessarily violent foreclosure repeats the same drama in miniature form. Its metatheoretical acting out of this drama, meanwhile, is nowhere so clear as in the interpretation of Oedipus Rex Freud would offer at the end of his life. Summarizing his 1900 claim that Sophocles’ play causes us to recognize the violence of fate within ourselves, Freud’s 1940 interpretation of the play refers only to “the inevitability of fate der Unerlässlichkeit des Schicksals.”\textsuperscript{197} Freud here turns to Atropos in the same way as does Plato’s Athenian: he draws on it to confer irreversibility on the violently founded law his work both describes and, ultimately, prescribes. Psychoanalysis does not want to pose questions of law’s relation to life outside a field already defined by the presupposition of an originary
guilt. And yet it is this presupposition that provides sovereign power, not to mention fate, with its ultimate point of reference and reason for being.
Endnotes.


Another way to put this would be to say that Sachs's texts pose more explicitly than do Lacan's the problem of the relationship between psychoanalysis and anthropology. Whereas Lacan systematizes the concept of law first developed in the structural anthropology of Claude Lévi Strauss see, on this point, Judith Butler, Antigone's Claim: Kinship Between Life and Death New York: Columbia U P, 2000 : 15 - 17, Sachs's psychoanalysis enters into an uneasy partnership with anthropology that ultimately functions to throw into question the legislative generality of psychoanalytic knowledge. Rose and Khanna, more than other Sachs scholars, attend to this dynamic in Sachs's work by framing their reading of his texts in terms of Ernest Jones's 1924 debate with Malinowski over the universality of the Oedipus Complex. The importance of the Jones Malinowski debate, however, is not that so much that it indexes a disagreement between the two disciplines as that it reveals a basic point of agreement, or at least a shared desire. Turning to Jones's intervention into this debate, we read that the anthropologist and the psychologist “can only profitably approach each other in a spirit of mutual benevolence and co operate together in their work until they are both superseded by a race of anthropologists who are experienced in field work and also trained in the methods of modern psychology.

The first reason of this race, however, has yet to make his appearance” Psycho Analysis and Anthropology, “in Psycho Myth, Psycho History: Essays in Applied Psychoanalysis, Vol. 2. New York: Hillstone, 1974 : 115. Without yet concluding the Sachs either is or is not an example of Jones's über anthropologist, it is worth noting that Jones looms large in Sachs's psychoanalysis. Sachs's interpretation of Hamlet explicitly follows Jones's see Wulf Sachs, Psychoanalysis: Its Meaning and Practical Applications London: Cassell & Co., Ltd., 1934 : 197, while Sachs's 1933 “The Insane Native” opens with the argument that, “wherever possible, a close co operation should be established between the psychologist and the anthropologist in this research work i.e. the study of normal and abnormal natives” Wulf Sachs, “The Insane Native: An Introduction to a Psychological Study,” South African Journal of Science 30 October 1933 : 706. As Khanna shows, this interdisciplinary is a constitutive part of the narration of Sachs's text 237 - 242. It is therefore strange that much of the recent scholarship on Sachs should simply take one side or another of the psychoanalysis anthropology couplet, as if the two disciplines were separable. Bertoldi will affirm the universalization at work in Sachs's application of Oedipus and Hamlet to Chavafambará 248 9, 255, while Armstrong and Crewe will read Sachs on the basis of the anthropological assumption of cultural incommensurability. Their readings and even to some extent Khanna's 268 accept as a foregone conclusion that Sachs's text on Chavafambará is, in some way, an act of “projection.” While this reading appears more epistemologically canny than does Bertoldi's, it fails to resolve a number of decisive problems. It does not adequately ask about the continuity between its own presupposition of the self evidence of cultural incommensurability, on the one hand, and the manifest content of apartheid laws, on the other “separate development for separate cultures”. And despite its epistemological sophistication, it traps itself in a double bind by forming a subtle pact with a certain style of psychobiographical reading. I discuss the mechanism of this reading below in note 150 below.

In this, Sachs's text performs some of the same “counter disciplinary” work Foucault describes in The Order of Things. In his study of the interdisciplinary interlocking that constitutes the human sciences Order of Things, 358, Foucault confers special status upon psychoanalysis and ethnology which he defines as the study of “peoples without histories” 376. He calls these two disciplines “counter sciences” and argues that they are structured in such a way as to be able to call the human sciences into question and unsettle their epistemological grounds 379. He then imagines the mode of knowledge that could emerge if the two disciplines were to systematically join forces 380. His answer is much different than Jones's very similar
reflection on this same joining see above, note 22. Foucault suggests that something like the science of linguistics—“a pure theory of language,” a set of questions about “what language is in its being”—would be the mode of inquiry that emerges at the point where ethnology and psychoanalysis touch. It is this, as it suggests, to any study of the law in the humanities, that this paper takes as the horizon of its inquiry.  

24 Wulf Sachs, “African Tragedy: The Life Story of a Native ‘Doctor,’” Manuscript #A2120 no date, University of Witwatersrand, Cullen Library, Department of Historical Papers, Johannesburg, South Africa. Included in the manuscript is a note indicating that “draft” was written on the spine of the manuscript, and that it was purchased as item No. 684 of the “Hoernlé” sale. The Hoernlé in question is likely Reinhold Friedrich Alfred Hoernlé, a prominent professor of philosophy at the University of Witwatersrand and sponsor of Sachs’s 1932-3 lectures on psychoanalysis at the same institution. See Sachs, Psychoanalysis, vii.  

25 In 1947, Little, Brown & Co., Inc. Boston released both Black Anger and Black Hamlet. And though the 1947 Little, Brown & Co. edition of Black Hamlet was published with the sub title, “First published as Black Anger,” the truth of this assertion was limited to the United States, where Black Anger was published, indeed, prior to Black Hamlet. In the same year, Grove Press brought out Black Anger in paperback as an “Evergreen Book” E 60. A decade later, it would bring out Black Hamlet as well. In 1968, Greenwood Press New York published a small run of Black Anger. In the following year, Grove Press re released Black Anger in its prestigious “Black Cat” series B 206, alongside works by Frantz Fanon, Malcolm X, and Jean Genet. Sachs’s work cannot therefore be limited to South African literary history, though, as I note below, it cannot be separated from it either.  

26 In literary historical terms, Sachs’s text is an example of the convention called “Jim goes to Jo’burg.” According to Michael Chapman, the texts that constitute this genre include Douglas Blackburn’s Leaven: A Black and White Story 1908, Enoch Guma’s U Nomalizo 1918 and Henry Ndawo’s U Nolishwa 1931, both written in Xhosa, W. C. Scully’s Daniel Venanda: The Life Story of a Human Being 1923, and Laurens Van der Post’s In a Province 1928. See Michael Chapman, Southern African Literatures: New York: Longman, 1996: 132-3, 141-2, 185-6. Significantly, “Jim going to Jo’Burg” is also the theme of R. R. Dhlomo’s An African Tragedy, A Novel in English by a Zulu Writer 1928, whose text not only bears the title of Sachs’s first, but whose brother, the exemplary “New African” H. I. E. Dhlomo, would figure as a central character in Black Hamlet and Black Anger, and whose work was published, under Sachs’s editorship, in The Democrat.  

27 See Rex v. Mbombela, South African Law Reports April 1933: 269-275. Without yet attaching any special value to this argumentation, let me nevertheless suggest that the court case narrated in Sachs’s text is the same court case rendered in Rex v. Mbombela. The case, which Sachs says is “fully reported in the newspapers,” was “first on the roll at the criminal sessions of the High Court in Johannesburg, after the Easter Recess” “African Tragedy,” 275, 273. In Rex v. Mbombela, which was heard on April 19 & 24, 1933, Judge Etienne de Villiers found that “mistake of fact in order to be a defence in criminal law must not only be a bona fide belief, but must also be a reasonable belief” 269. On April 25, 1933, the Johannesburg Star reported that “the judge had told the jury that accused’s bona fide belief that the thing in the huts was evil spirit was not enough to excuse him, but he had further to satisfy the jury that his belief was reasonable” “Went to Kill Evil Spirit And Killed a Child,” Johannesburg Star, April 25, 1933; see also “Murder Through Superstition: Native’s Appeal,” Johannesburg Star, April 20, 1933. “African Tragedy” but neither Black Hamlet nor Black Anger contains the following description of a judge’s ruling. “You can accept that Mdlawini, under the influence of misfortunes proved by the defence to have befallen him, was in a state of intense overpowering fear; the fear of being persecuted by supernatural forces. So I say to you, gentlemen, with the fullest appreciation of the possible consequences of what I am saying, the evidence points to a bona fide belief by the accused that the deceased, on the night of the crime, was an evil spirit. But that is by no means all. You come, now, to the second point, and unless the defence has succeeded in respect of this also, it must be taken to have failed. Not only must the evidence satisfy you that the accused believed the object he killed was a ghost, but it must also persuade you that such a belief, such an impression, on the accused’s part, was reasonable. I mean, such a belief as a reasonable person of the age of the accused would, in the circumstances, himself have entertained” 294. As I argue below, what is at issue here is not the question of “fact” and “fiction,” but what Foucault would call the differing “modality of existence” of juridical and archived énoncés. The reading that follows by no means considers Rex v. Mbombela to be, as Derrida might have put it, “outside of writing in general,” but takes up that case as a question of the text.  


35 Hahlo and Kahn note that “in South African law, as in other modern legal systems, custom is relatively unimportant as a formative source of law” H. R. Hahlo and Ellison Kahn, The South African Legal System and Its
Background  Cape Town: Juta & Co., 1968 : 302 . However, they also explain that the by laws and regulations of local authorities, as well as the rules and regulations passed by provincial authorities, were, as distinct from laws passed by the laws of the South African parliament, subject to a test of reasonableness that would be violated in cases of “partiality and inequality, manifest injustice and oppressive or gratuitous interference with rights” 54 . While nothing in this test would then oblige colonial law to adopt customs as laws on the contrary, a custom must first be found reasonable before it can be so adopted - it also cannot rule out customs in advance, as a rule, particularly insofar as it aspires to the generality and equality to which it explicitly aspires 31 , cf. 55 61 .

60 Sachs, “African Tragedy,” 277, emphasis mine.
61 On Benjamin’s concept of law preserving violence, see Jacques Derrida, “Force of Law: The ‘Mystical Foundation of Authority,’” Cardozo Law Review 11 1990 : 981. Deleuze and Guattari argue that “the order of law as it appears in the imperial formation” is originally characterized by an “indifference to designation.” “It is in the nature of law to signify without designating anything” Anti Oedipus, 214 . Agamben intensifies this argument in Homo Sacer when he asks, “what, after all, is the structure of the sovereign ban if not that of a law that is in force but does not signify?” Homo Sacer, 51, emphasis in original. It is worth noting that although Derrida and Agamben in particular derive their understandings of Kafka’s teaching on law by reading “Before the Law,” which first appeared as part of The Trial, Kafka only wrote the latter after writing “In the Penal Colony,” which takes up, in an explicitly colonial setting, the problem of a law in force without significance.
73 See Wulf Sachs, “Racism: The Solution,” The Democrat January 20, 1944 : 15 16. Sachs went on to argue that a socialist legal system would be the jurisprudence most able to dissolve irrational racist aggression. Not only would laws be made rather than god given, he suggested, but socialism would channel aggression toward the “conquest of the blind forces of nature” 16 . That same year, Sachs’s translation of Konstantin Simonov’s Stalin Prize winning 1942 play, The Russian People would be published by Medical Aid for Russia Johannesburg, South Africa. Clearly, as the anthropologist Ellen Hellman noted in her 1949 obituary, Sachs was not an “armchair Socialist, but participated actively in a number of movements and agencies” “Dr. Wulf Sachs: A Tribute,” The Zionist Record Friday, July 1, 1949.
77 Vernant, “Greek Tragedy,” 277.


69 Psychoanalysis, after all, is not immune to these arguments. In 1927, two years before Sachs would visit London, his future training analyst Theodor Reik was arraigned in Austrian courts with the violation of ancient Austrian “quackery” laws. And in his 1934 Logic of Scientific Discovery, Karl Popper would argue famously that psychoanalysis was merely a “pseudo science” since its concept of causality was not falsifiable, and that, as such, it was akin to “primitive magical practices.” That psychoanalysis was considered by some in South Africa to be an ethnoscience is clear enough from Pierre Bosman’s 1936 essay, “The Ghost Chasers,” which concluded by inveighing against what he called “gipsy fortune tellers.” “The normal man’s life is too filled with activity and activities for him to concern himself with the prognostications of the penny snatching fakirs who undertake for a fee to set his psyche to rights.” See Pierre Bosman, “The Ghost Chasers,” The South African Opinion February 7 1936 : 16.

70 See Mbembe, On the Postcolony. 33 5.

71 Sachs, Psychoanalysis, 11.

As both the judge and the psychoanalyst know. For just as the judge rejects the advocate’s recourse to psychoanalytic testimony “the philosophical and psychological discussions of the defence you must disregard” “African Tragedy,” 294, so too does psychoanalysis sets forth a concept of causality that is foreign.
to the law. In the first of three articles on the topic written under a pen name “P.A. Lyst” for the radical Johannesburg weekly The Democrat, which was edited and sometimes even mostly authored by Sachs, we read that law fails to achieve its own end because it misunderstands the criminal on the question of the cause of the criminal act. “The main reason why the Law fails in its treatment of the criminal lies in the fact that it never considers that crime is not an act of free will by a person freely using his reasoning powers, but one of many forms of abnormal human behavior. The underlying motives of the crime are not as obvious as those laid bare in court, they spring from unconscious desires and conflicts which the court has not taken into account.” See P. A. Lyst, “Crime and Punishment,” The Democrat October 5 1946. 


77 Benjamin, Origin of German Tragic Drama, 118.
80 See, on this point, Vernant, “Greek Tragedy,” 292; and Deleuze and Guattari, Anti Oedipus, 159;
84 Lacan, “Desire and the Interpretation of Desire in Hamlet,” 42; see also Eissler, Discourse on Hamlet and Hamlet, 386.
89 William Shakespeare, Hamlet, Prince of Denmark, 1.5.25
94 In a lecture delivered the year before his seminar on Hamlet, Lacan calls the phallus “the signifier intended to designate as a whole the effects of the signified i.e. the image with which a term is associated , in that the signifier conditions them by its presence as a signifier” “The Signification of the Phallus,” Écrits: A Selection, Trans. A. Sheridan New York: Norton & Co, 1977: 285 . The phallus, we might say, here stands in for the possibility of fully self present speech, or, more precisely, speech in which the being or materiality of language presents no problem for the possibility of fully self conscious knowledge in language. Lacan concludes his lecture by noting what he calls “the most profound relation” of the phallic signifier, which he describes as its ability to embody both Nous reason or intellect and Logos speech. 291 . I believe this is a helpful passage for understanding how to read Lacan’s thought in relation to the history of the philosophy of law more generally. By characterizing the phallus in this way, Lacan situates it in a very precise relation to Plato’s concept of law. This becomes clear from the useful footnote that appears in R. G. Bury1926 translation of Plato’s Laws. Commenting on the passage where the Athenian defines law as “reason’s ordering,” Bury notes that the Athenian’s definition of law is composed of “ a double word play: nous = nous = nous nomos , and the signifier is daimon a daimo a s daimon a s. Laws, being the ‘dispensation of reason,’ take the place of the ‘daemons’ of the age of Cronos: the divine element in man daimon a s, which claims obedience, is reason
96 Which Jones diagnosed as “specific aboulia” Hamlet and Oedipus, 52.
98 See, on this point, Gallop, Reading Lacan, 160.
101 Kantorowicz explains that the halo “indicated the bearer and executive of perpetual power derived from God and made the emperor the incarnation of some kind of ‘prototype’ which, being immoral, was sanctus, regardless of the personal character, or even the sex, of its constituent.” The halo also corresponded to a certain nominalism. “In late antique art,” Kantorowicz writes, “we often find the halo bestowed on such figures as might impersonate a supra individual idea or general notion. This special mark of distinction indicated that the figure was meant to represent in every respect a continuum, something permanent and sempiternal beyond the contingencies of time and corruption.” Kantorowicz goes on to explain that the convention of capitalizing certain notions is supposed to index their supra temporal character or continuity within time. With this practice, he says, “we actually are ‘haloing’ the word or the notion and are indicating its sempiternity as an idea or power.” See Kantorowicz, Kings Two Bodies, 79 80; cf. “Mysteries of State,” 304.
102 On this point, see Foucault, “Truth and Juridical Forms,” 24.
103 Butler, Antigone’s Claim, 21, cf. 75.
105 Shakespeare, Hamlet, 1.5.1. 25
109 Shakespeare, Hamlet, 1.5.99
110 In this interpretation of these passages, however, Stephen Greenblatt glosses over the Ghost’s reference to his secrets. See Hamlet in Purgatory Princeton: Princeton U P, 2001: 253.
111 In the medieval christian imaginary, a soul was sent to purgatory not so much because it was sinful but more because it had not made a full confession of its secrets, in which case it would be refused God’s power of grace. See Peter Brown, “Vers la Naissance du Purgatoire: Amnistie et pénitence dans le christianisme occidental de l’Antiquité tardive au Haut Moyen Age,” Annales: Histoire, Sciences Sociales 6 November/December 1997: 1256.
113 Shakespeare, Hamlet, 1.5.59 72
115 Developing a reading of this type, Ratcliffe will argue that the missing identity of the plant whose poisonous juice is in the vial “is not a ‘failure’ on the part of Shakespeare or his interpreters—but a manifestation of the physical absence on stage of said juice in said vial neither of which can be seen because the event the Ghost remembers in these words is not just not performed physically on the stage but never in fact happened except in these words” “What Doesn’t Happen in Hamlet,” 142.
On the incommensurability of revenge with purgatory, see Greenblatt, Hamlet in Purgatory, 237.

12 In The Metaphysics of Morals, Kant suggests that the right of grace Begnadigungsrecht is "the only one which deserves to be called a right of majesty." Yet according to Kant's extreme view, it is only when a sovereign has been personally injured that he can grant pardons. Since only in the right of grace the full splendor of sovereignty is present, and since, as Kant elsewhere writes, extreme limitations ought to govern all attempts by the "human race" to use "means of grace," the monarch can have recourse to the right of grace "only in case of a wrong done to himself crimen laesae maiestatis." See Immanuel Kant, The Metaphysics of Morals, Trans. & Ed. M. Gregor. Cambridge: Cambridge U P, 1966 : 109 110, emphasis in original; cf. Immanuel Kant, "Religion Within the Boundaries of Mere Reason," in Religion and Rational Theologie, Trans. A. Wood & G. di Giovanni. Cambridge: Cambridge U P, 1996 : 206 215. On this read, King Hamlet's Ghost would be able to grant mercy not despite but because he was murdered.

13 See, on this point, Eleanor Prosser, Hamlet and Revenge. Stanford: Stanford U P, 1967 : xii "We have long assumed that 'the first premise of Hamlet is that sons must avenge their fathers.' Might it, however, be possible that Hamlet's real duty is not to kill Claudius?"

14 Kantorowicz, King's Two Bodies, 47, 141.

15 Kantorowicz, King's Two Bodies, 140.


17 Benjamin, Origins of German Tragic Drama, 71. See also Agamben, State of Exception, 52 63.

18 Benjamin, Origins of German Tragic Drama, 71.

19 Benjamin, Origins of German Tragic Drama, 158.

20 Laca. Desire and the Interpretation of Desire in Hamlet, 37.

21 Shakespeare, Hamlet, 1.5.102 3.

22 On the distinction between incorporation and introjection, see Nicholas Abraham and Maria Torok, "Mourning or Melancholy: Introjection versus Incorporation," 125 132.

23 Shakespeare, Hamlet, 3.4.24 5.

24 Shakespeare, Hamlet, 5.2.236 255.

25 Shakespeare, Hamlet, 5.2.301.

26 Shakespeare, Hamlet, 5.2.338 342.

27 Shakespeare, Hamlet, 3.3.51 67.

28 Sachs, Psychoanalysis, 201.

29 Sachs, Black Anger, 283.


31 Armstrong, Shakespeare in Psychoanalysis, 111.


33 Sachs, Black Hamlet, 287.

34 Sachs, Black Hamlet, 287.

35 What Dubow, Rose, and Crewe call "projection" a kind of appropriative side effect of Sachs's sympathetic "identification" with Chavafambira Sachs actually calls "introjection." Projective, Sachs argues, "is a defensive process whereby the ego transfers on to the external reality unconscious wishes and ideas, which, if allowed to penetrate into consciousness, would be painful to the ego." Sachs, Psychoanalysis, 133. In projection, Sachs argues, "the individual narrows his ego to such a degree that processes actually belonging to the ego are perceived as of an external origin" 147. In "introjection," on the other hand, "the ego is widened so as to enable it to include within it what really belongs to other persons and objects" 147. Introjection, according to Sachs, is the ego's assimilation of or expansion into "everything that is a source of pleasure." If the argument that psychobiographical reading wants to put forward by turning to the concept of projection is that Chavafambira's story is "appropriated" by or "subsumed" within Sachs's, then the unconscious operation in question would, on psychobiographical terms, not be projection, but introjection. Even though, as Sachs notes, "both terms are used interchangeably" 147, such that, at points in his text on Chavafambira Sachs does indeed conflate "projection" and "introjection," Sachs's coupling of the concept of introjection to the notion of the "lost object" suggests that he himself would not read his own text in terms of projection. The necessity of attending to the problem of introjection in Sachs's work becomes clear in Black Hamlet, where Sachs diagnoses Chavafambira with a case of introjection. John believes implicitly that the midzimu come and speak to him, giving him advice and help. This is an interesting case of what psychologists call an introjection of an object. In Black Anger, "...what psychologists call total introjection of an object" 16, emphasis mine. Through this mechanism John was able to retain his lost father and mother who were so dear and important to him." Black Hamlet, 83. It becomes even clearer in Sachs's 1934 Psychoanalysis, where he explicitly diagnoses not only Hamlet but also Shakespeare with a case of introjection. Sachs opens his chapter on Hamlet by citing Ella Freeman Sharpe's 1929 The Impatience of Hamlet. "To read Freud on the subject of the unconscious introjection, in its relation to mourning and melancholia alongside with Hamlet, is to be impressed again with the majesty of human achievement" 197. Later Sachs returns to this point, offering an analysis of Hamlet based on introjection. Hamlet suffers, as elucidated earlier, from a state of melancholia. He is in a state of...
natural mourning resulting from the loss of his father, followed by the loss of his mother and Ophelia. *Mourning needs the factor of time.* Melancholia needs longer still. But Hamlet could not tolerate this waiting time. His withdrawal from reality is not real insanity. In melancholia, after a loss of a loved object, there is always an unconscious identification with this object. By identifying oneself with the lost object of one's love, one avoids the pains of the unbearable loss and pangs of conscience. But, at the same time, one is in danger of treating oneself as the lost object identified with the ego. The ego thus becomes the object of revenge and destruction, and *peace will only come when the introjection is killed* 208, emphasis mine. To read Sachs in the strictest psychological sense would then be to depart from the psychobiographical charge of projection and to read Sachs's text instead in terms of "killing" the introjection.


149 A. Canfield writes, “w hat delighted me was that Dr Sachs got so interested in his subject as a man, rather than as a case, that the whole case of black versus white shapes up in this book almost as in a good novel, with a minimum of psychiatric talkie talk, and with a maximum of characterization” "Reader's Report," *Book of the Month Club Communication*, Reproduced from the Collections of the Manuscript Division, Library of Congress . R. Pick's impression was more or less the same: "it seems that the author, bent on a psychoanalytical sic study only, got so interested in John, his native kraal, his wanderings through the white man's world, etc., that the book became a large anthropological account of John the man, that is, on the black population of South Africa a subject we have heard about very little thus far" "Reader's Report," *Book of the Month Club Communication*, Reproduced from the Collections of the Manuscript Divisions, Library of Congress.

150 Crewe, Rose, and Dubow all ask whether Sachs's story of Chavafambira isn't ultimately a "projection." Strikingly, their analyses depart from and return to rhetorical questions. "Whose desire or fantasy are we dealing with here?" Rose asks of *Black Hamlet*. “What does Wulf Sachs want of John Chavafambira?" Rose 39. “Who...in saving Chavafambira, is Sachs also trying to save?" “Whose Hamletism is this?" Crewe 428 , "Whose life is this?" Crewe 428 . "A key question the reader of *Black Hamlet* needs to bear in mind at all times...is whose voice we are sic hearing?" Dubow 16. The trouble with this style of reading, aside from providing grounds for the problems I have indicated above see notes 22 and 145 above , is that by posing the question "who is speaking?" as a self evidently rhetorical question, it forecloses on the question of the materiality of Sachs's text, that is to say, the question of the mode of being of its language see note 23 above . Instead, psychobiographical reading understands Sachs's text merely as the transcript of an encounter, almost as a record of Sachs's relation with Chavafambira. This would seem to configure Sachs as a reliable first hand witness whose information about the native must be taken at his word. But it is actually the premise for the key claim of the psychobiographer, namely, that the matters described in Sachs's book are not entirely objective. Only on the basis of the assumption that the text is a kind of transcript or report is psychobiography able to criticize the text for instead being marked with a little bit of Sachs, with Sachs's viewpoints and training, with his subjectivity determined biographically and juridically as persona. And yet the very narration psychobiography relies upon as evidence transcript, record to prove Sachs’s projection becomes unreliable to the extent that it begins to appear as a product of that projection. By reading Sachs's text as a transcript or record, the psychobiographer must conclude that the book itself is the chief effect of the projection that the transcript transcribes and the record records. No longer a record of the deed, the book itself is the deed. But this result of psychobiographical reading recoils upon its premise, for if the entire book is possibly nothing other than projection, then on what basis is it possible to read any part of it as a transcript or report? Psychobiography thereby compromises itself. It wants Sachs's narration to remain adequate enough to its object to yield sufficient evidence to prove that the same narration is also inadequate, that is, to prove that Sachs is not simply telling Chavafambira's story, but is also projecting his own. The most extreme implication of this compromise is that psychobiography shares the same will to knowledge that structures Sachs's text. Both presume the capacity to apprehend Chavafambira's life story as object of knowledge and as objective for knowing. The psychobiographer is even a rival of Sachs's text, competing with Sachs for a more sympathetic knowledge of the native doctor whose life Sachs claims to represent. With Sachs rather than against him, psychobiographical critique conjures as desideratum the possibility of a complete understanding of the inyanga. The chief objection of psychobiographical criticism of Sachs is not that biography is not naturally adequate to life, but that Sachs is a mediator or middle man, that Sachs's narration of Chavafambira's life story stands in the way of a proper understanding of Chavafambira's life story. But in the same gesture that psychobiography criticizes Sachs for writing about himself in and instead of Chavafambira's story, psychobiography finds itself incapable of avoiding a repetition of the same error. In order to document the way that Sachs puts his words in Chavafambira's mouth, in order to render unto Sachs what is Sachs's, to distinguish Sachs's proper name from Chavafambira's, to keep their life stories both straight and separate, it is first necessary for psychobiography, like an addict, to make one last recourse to biography. Yet since Sachs's is only biography of the two that has been sheltered by the archive, the psychobiography that wants to criticize Sachs for displacing Chavafambira's life story with his own must begin by repeating that life story e. g. Armstrong 96.


22 See, on this point, Bruce Fink, “Logic and the Precipitation of Subjectivity,” in *Reading Seminars I and II*, 373.

23 Sachs, *Black Hamlet*, 91. What changes between “African Tragedy” and the two published texts is that whereas Sachs’s narration of Chavafambira is continued in “African Tragedy” 9, in the publications he adds not only section breaks, but he pointedly temporizes the encounter. Thus Chavafambira “arrives punctually” 9, Sachs notes events “at this point in his narrative” 105, that are different the “next day” 107, and so on see also 83, 107, 109 118.


28 Agamben, *The Open*, 59, 75.


37 See “African Tragedy,” 6, 32, 37, 72, 123, 161, 233, 269; *Black Hamlet*, 80, 86, 95, 99, 120, 155, 157, 224, 244, 246, 248, 250, 256, 299


45 Freud, “Interpretation of Dreams,” 111 121.


49 Freud, “The Theme of the Three Caskets,” 298.

50 Freud, “The Theme of the Three Caskets,” 299.

51 Freud, “The Theme of the Three Caskets,” 299.

52 Freud, “The Theme of the Three Caskets,” 297.

53 Plato, *Laws*, 600d 8, see also 957b4; cf. Plato, *Republic*, 620e5 621a1

54 Plato, *Laws*, 638a4 62, see also 957c9 10

55 If one were to succumb to the lure of reading the Ghost’s speech literally if, like Hamlet, one were to madly attempt to discern what the Ghost’s reference to “hebenon” really does mean *Atropos* would reappear in the most uncanny way. Recall that in “The Murder of Gonzago” the play within a play in *Hamlet*, Hamlet instructs one of the players, Lucianas, to call the poison that kills the play’s Italian King a “mixture rank, of midnight weeds collected.” Hamlet arranges it to confirm the theory the ghost has put in his head, namely, that his uncle has killed his father and usurped his right to the throne. Hamlet and Horatio agree that his theory is confirmed when the play’s mimetic representation of a poisoned king causes Claudius to rush out of the room, symptomatically betraying his own secret: his occulted guilt. But how might this reference have caused Claudius to realize that his secret was out? In what sense might Hamlet understand “midnight weeds” and “hebenon” to serve as synonyms for the same poison? Jones, as we have seen, is tempted to resolve the entire problem by reading “hebenon” as “henbane.” This is the best guess of contemporary historicism too: Hoeniger argues that the poison to which the Ghost refers is “henbane” which also goes by the name “Deadly Nightshade” or, in Italian, “Belladonna” *Medicine and Shakespeare in the English Renaissance*, 255. It would be an insane confusion of temporal order to find any
significance in the fact that, a century after the appearance of *Hamlet*, Carl Linneaus decided to collapse both “Henbane” and the “Deadly Nightshade” into the more proper Latin name, *Atropa Belladonna* See Richard Pultney and William Watson, “A Brief Botanical and Medical History of the Solanum Lethale, Bella Donna, or Deadly Nightshade, By Mr. Richard Pultney, Communicated by William Watson, F. R. S.,” *Philosophical Transactions* 1663–1775, Volume 50 1757–1758: 65. No reasonable person would support the claim that Linneaus’s act of proper naming really did cut to the essence of the thing he names, and no reasonable person could therefore conclude that *Atropos* is the secret the Ghost wants to encrypt by referring to “henbane” as “hebenon.” And it would be a crazy confusion of words and things—a real instance of magical thinking—to try to make any sense out of the fact that, in his pre psychoanalytic studies, Sachs uses a chemical solution called “atropine” to test the responsiveness of the sympathetic nervous systems, the zoe, of the insane natives he studies. Wulf Sachs, *The Vegetative Nervous System: A Clinical Study* London: Cassell & Co., Ltd., 1936 : v. 38, 42, 55 6, 79 & passim. Speculations like these are like Hamlet’s own words: senseless. They are without the potential for either truth or justice and they teach us nothing about psychoanalysis or law, except insofar as they demonstrate the lure to which Hamlet and others succumb by reading the Ghost’s speech literally.

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189 Freud, “The Theme of the Three Caskets,” 296, 298, 299, 301.
190 Freud, “The Interpretation of Dreams,” 262.
194 On the Freudian account of libido as “the most irresistible, the most imperious, the most tyrannical force,” see Irigaray, *Speculum of the Other Woman*, 93.
195 Kantorowicz, *King’s Two Bodies*, 151.
198 On guilt and fate, see Benjamin, *Origins of German Tragic Drama*, 129; on guilt and sovereign power, see Agamben, *Homo Sacer*, 65 6.