



UNIVERSITY OF CALIFORNIA PRESS  
JOURNALS + DIGITAL PUBLISHING

## Cardozo School of Law

---

Somewhere in Time: A Response to Zizek, Santner, and Reinhard's *The Neighbor*

Author(s): Joseph Jenkins

Source: *Law and Literature*, Vol. 20, No. 2 (Summer 2008), pp. 159-176

Published by: [University of California Press](#) on behalf of the [Cardozo School of Law](#)

Stable URL: <http://www.jstor.org/stable/10.1525/lal.2008.20.2.159>

Accessed: 02/07/2013 01:35

---

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at  
<http://www.jstor.org/page/info/about/policies/terms.jsp>

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org.



University of California Press and Cardozo School of Law are collaborating with JSTOR to digitize, preserve and extend access to *Law and Literature*.

<http://www.jstor.org>

# Somewhere in Time: A Response to Žižek, Santner, and Reinhard's *The Neighbor*

Joseph Jenkins

*Abstract.* This paper considers, with respect to property law critique, both synchronic and diachronic causes that emerge from the Lacanian Real. All too often property law reforms (and legal reform in general) are discussed only in the synchronic dimension (e.g., redistribution of property rights, distributive justice more generally) without sufficient awareness of the importance of also (perhaps firstly) thinking law as such as an intergenerational claim that places older and younger generations in distinct conflict. If we provide this critical awareness with the additional insight, refined by Žižek, Santner, and Reinhard, that no intervention into the symbolic (into law and language) can be effective without passing through the dimension of the Real (the painful, sadistic “evil” of the Real, the beyond of the symbolic dimension of justice to which the symbolic dimension is always knotted), then we are prompted to consider the superego, thought in its Real dimension, as both the most significant site of synchronic human relations (a crucial site, an unavoidable swerve, through which horizontal ideas such as “equality” and “justice” must be thought) and the place where law passes vexed between generations.

These considerations need to be brought to bear on property law, insofar as private property has become the primary site of political power. The aspect of private property that needs to be looked into is its temporality, its diachronic aspect that aggravates relations between forebears and followers. What needs to be looked into is the long-unexamined presupposition that private property rights must be Eternal to effectively motivate participation in economic production. From a Lacanian perspective, this emphasis on “effectiveness” and “rational economics” not only disavows the theological resonances of the idea of “Eternity.” Just as importantly, such an emphasis ignores the Real relations to which the Symbolic realm of justice is irrevocably knotted.

**Keywords:** inheritance law reform, wills, hereditary reserves, private property, private property rights, property law, Lacan, Lacanian Real, Lacan's Symbolic order, Lacanian Thing, Immanuel

*Law & Literature*, Vol. 20, Issue 2, pp. 159–176. ISSN 1535-685X, electronic ISSN 1541-2601. © 2008 by The Cardozo School of Law of Yeshiva University. All rights reserved. Please direct all requests for permission to photocopy or reproduce article content through the University of California Press's Rights and Permissions website, at <http://www.ucpressjournals.com/reprintinfo.asp>. DOI: 10.1525/lal.2008.20.2.159

*Kant, Blackstone, superego, individual superego, cultural superego, Freud, Civilization and Its Discontents, aggression, right to testate, primal father, the neighbor, sovereign male, Levinas, election, state of exception, homo sacer, Giorgio Agamben*

“Miracles happen when, upon registering their ‘historical truth,’  
we are able to act, to intervene into these symptoms and enter  
into the space of possibilities opened thereby.”

—Eric Santner, 2005

This writer has published on the question of inheritance law reform in several journals concerned with law and humanities.<sup>1</sup> Yet this is an issue that can be addressed through a broad variety of idioms. Even some billionaires have recently made public their concerns about property inheritance (more on this below). Whether or not a billionaire, most people have found themselves emotionally engaged with some family inheritance story that does not shine favorably on those involved: the son who believes himself socially superior because of his father’s wealth, yet also feels oppressed by the ways the elder keeps him from controlling it; the widower who spends the family’s money to attract, at the expense of his children’s “expectations,” a much younger wife; etc. The very use of the term “expectations” reveals a prior leaning: the presupposition of U.S. law that property rights are granted to the wills of individuals, with only an easily rebuttable presumption that the owner wills (or “Willed when he or she passed”) that his or her family share in those rights. This presupposition does not always hold, even in other major Western states, including Germany, France, and Italy.<sup>2</sup> There the head of a family, usually the father, has a *duty* to his spouse and children *not to waste* private property assets; and he is *not* free upon his death to “Will” his property as he wishes. These limitations on the right to testate are known as “hereditary reserves,” granted by law in favor of “legitimate” offspring and, more recently, of surviving spouses.<sup>3</sup> The effect of these European laws is to constitute private property rights as predominantly familial rather than individual.

These are major conceptual differences that go to the heart of the private property idea. The most advanced economies of the West operate under conflicting assumptions regarding the “individuality” of their participants—and thus regarding the nature of the “private” property right itself. Which is the privacy (“private”-ness) being protected: that of the family or that of

the individual? And just what secrets does this privacy mean to keep tucked away from one's neighbors? Perhaps we should analyze with more penetration Blackstone's definition of the private property right: the absolute right to use *and abuse* a thing.<sup>4</sup> Maybe this "thing" that is secretly abused, with the help of the law of private property, is as much the neighbor's thing as that of its owner. The reader may note the reference here to Lacan's *Seminar VII: The Ethics of Psychoanalysis*.<sup>5</sup> She may also recall various references by Lacan to Blackstone's near contemporary, Immanuel Kant, whose second critique remarks, in a somewhat offhand manner, that an action in accord with Kant's proffered "moral law"—his "categorical imperative" guaranteed by critiques of reason—should be recognizable by the experience of *pain* that invariably accompanies it. Insofar as private property law is believed to be both rational and moral, a reading together of Blackstone, Kant, and Lacan may be of some impact.

On this and related matters, this paper engages both with Freud and Lacan and with Žižek, Santner, and Reinhard, whose recent three essays on the political theology of the neighbor are extremely compelling.<sup>6</sup> These three join Lacan in locating the superego (a split in the subject through which law is transmitted) at the site of an unbearable kernel of real enjoyment, which is aggressively linked to a similar site in the neighbor. One important result of thinking through this topography is its presentation of a single site, the superego, that can be analyzed through both diachronic and synchronic perspectives. Imaginary relations with the neighbor (neighbor as the one whose strange surplus of enjoyment seems somehow a usurpation of my own) are a kind of horizontal/synchronic knotting with my unbearable fantasy of enjoyment—which fantasy is, according to Lacan, a kernel of the "Real" of my existence, a Real that is merely mediated and kept at a certain distance by the use of language and other societal conventions (by what Lacan calls the "Symbolic" register).

According to Reinhard, Santner, and Žižek (stated by each in different ways), this synchronic cause in the Real *coincides* with the diachronic cause more familiar to readers of Freud: superego as internalization of the law of the father. This internalization takes place, for Freud, through both identification with the father's power (the wish to be like the father) and aggressivity toward the father (the wish to vanquish and replace the father).<sup>7</sup> What Lacan emphasizes is that this ambivalence is the site of the death drive and of drive (*Trieb*) more generally: a repetition compulsion that locks the subject into symptomatic

behaviors whose aims are inflected by the traumatic Thing in the Real, but forever avoid confronting it directly.<sup>8</sup>

In the context of private property law critique, it is crucial to consider both synchronic and diachronic causes that emerge from the Lacanian Real. All too often property law reforms (and legal reform in general) are discussed only in the synchronic dimension (e.g., redistribution of property rights, distributive justice more generally) without sufficient awareness of the importance of also (perhaps firstly) thinking law *as such* as an intergenerational claim that places older and younger generations in distinct conflict.<sup>9</sup> If we provide this critical awareness with the additional insight, refined by Žižek, Santner, and Reinhard, that no intervention into the Symbolic (into law and language) can be effective without passing through the dimension of the Real (the painful, sadistic “evil” of the Real, the beyond of the symbolic dimension of justice *to which the symbolic dimension is always knotted*), then we are prompted to consider the superego, thought in its Real dimension, as both the most significant site of synchronic human relations (a crucial site, an unavoidable swerve, through which horizontal ideas such as “equality” and “justice” must be thought) *and* the place where law passes vexed between generations.

These considerations need to be brought to bear on property law, insofar as private property has become the primary site of political power. While this is a notion widely received today (e.g., free-flowing capital as more powerful than states, able to cross borders and thereby negotiate internationally for changes in state law; media capital as controlling votes through mechanical reproduction of superficial slogans; etc.), there is an inextricably related point that follows from the insights of Lacan and of Žižek, Santner, and Reinhard: that the aspect of private property that needs to be looked into is its *temporality*, its diachronic aspect that aggravates relations between forebears and followers. What needs to be looked into is the long unexamined presupposition that private property rights must be *Eternal* to effectively motivate participation in economic production. From a Lacanian perspective, this emphasis on “effectiveness” and “rational economics” not only disavows the theological resonances of the idea of “Eternity.” Just as importantly, such an emphasis ignores the *Real* relations (among jealously sadistic neighbor/Things lorded over psychically by father gods obscenely issuing impossible commands to love them) to which the Symbolic realm of justice is irrevocably knotted.

## I. FREUD'S *CIVILIZATION* ON PROPERTY AND AGGRESSION

The wager of this paper is that psychoanalysis may inform possible interventions concerning inheritance law. The first problem is to indicate precisely the *purpose* of such interventions: in support of what value(s) would they be attempted? In *Civilization and Its Discontents*, Freud notes that “the purpose of human life has been raised countless times; it has never received a satisfactory answer and perhaps will not admit of one. . . . [T]he idea of life having a purpose stands and falls with the religious system.”<sup>10</sup> Freud retreats to the “less ambitious question of what men themselves show by their behavior to be the purpose and intention of their lives”<sup>11</sup> and finds that “they strive after happiness”—i.e., they follow “the programme of the pleasure principle,” which “dominates the operation of the mental apparatus from the start . . . and yet the programme is at loggerheads with the whole world.”<sup>12</sup> Freud then describes how men “moderate their claims to happiness” via the “more modest reality principle.”<sup>13</sup>

The effect of Freud’s stance here is to remove the question from the realm of metaphysics to that of the empirical. Years of psychoanalytic practice authorize Freud to tell his readers, “This is what people do.” Each reader is then free to use that data in connection with whatever project she is pursuing. The project of this paper is to consider reform of inheritance law as an intervention to ameliorate the *violent* tendencies of political and social actors. No leap to metaphysics is required to discern that violence is a serious problem throughout today’s world. Neither must one depart from immanence to perceive at least the possibility that vast private property disparities—even when accompanied by gentle manners and looks of concern by the rich—are themselves a kind of violence.

A first response might claim that Freud himself would not agree. In *Civilization* Freud states unequivocally, “Aggressiveness was not created by property.”<sup>14</sup> He ridicules communists for not understanding that the “human love of aggression” is much more fundamental and much more ancient than property law:

In abolishing private property we deprive the human love of aggression of one of its instruments, certainly a strong one, though certainly not the strongest; but we have in no way altered the differences in power and influence which are misused by aggressiveness, nor have we altered anything in its nature.<sup>15</sup>

This is Freud's position, but it must be read in the context of *Civilization* as a whole. The book's thrust overall is: first, to relate the price paid in human happiness for subjection to the restrictions of civilization (*Kultur*); second, to pinpoint the superego as a crucial site of intervention, inasmuch as it inflicts perhaps unnecessary pain on human subjects; and, third, to describe a kind of psychoanalytic "therapy" for larger sociopolitical formations, for "some civilizations, or some epochs of civilization—possibly the whole of mankind—[that] have become 'neurotic'."<sup>16</sup>

Freud ends his book with an outline of what such a therapy might be like, modeling it on the experience he has had in treating particular human analysands. He also cautions that he cannot be the prophet that revolutionaries, as much as religious believers, clearly desire.<sup>17</sup> It is here that Freud contends directly that the neighbor-love commandment functions as a kind of cultural superego—one whose extreme aggressiveness, whose impossibility to obey, mirrors the "reproaches" Freud has made in his practice "against the superego of individuals":

What a potent obstacle to civilization aggressiveness must be, if the defence against it can cause as much unhappiness as aggressiveness itself! . . . At this point the ethics based on religion introduces its promises of a better afterlife. But so long as virtue is not rewarded here on earth, ethics will, I fancy, preach in vain. I too think it quite certain that *a real change in the relations of human beings to possessions would be of more help* in this direction than any ethical commands; but the recognition of this fact among socialists has been obscured and made useless for practical purposes by a fresh idealistic misconception of human nature.<sup>18</sup>

Both Lacan and Žižek, Santner, and Reinhard have taken up Freud's challenge: a "line of thought which seeks to trace in the phenomena of cultural development the part played by the super-ego."<sup>19</sup> But none of these thinkers has taken a cue from the language emphasized directly above. Freud points here to *human relations with possessions* as a promising site to address the cultural superego, to address it with the aim of ameliorating human aggressiveness and thereby increasing human happiness. His only caveat is to avoid the naive view that private property law is the primary *cause* of human violence, rather than one of the *instruments* used by a more fundamental human aggressiveness. It is precisely a focus on the *temporality* of property law that allows us both to follow Freud's cue and to mind his caveat. Reexamining the presupposition that property rights must be *Eternal* to be effective would most likely

involve, in practical terms, defining the property right as terminating at the moment of an owner's death (in effect, this would involve a limitation on the right to testate even stronger than that of Germany, France, and Italy—a limitation that would guarantee a property remainder for the benefit of the polity as a whole, rather than benefiting “legitimate” family members only). Freud's caveat would be satisfied by such a reform, because far from depending on humans' innate good will, such a reform would *hold hostage the children* of powerful societal actors to the good of the coming generation as a whole. Changing inheritance law would reform the illusion (or, at the least, eliminate the practical possibility) that a wall of private wealth could protect one's children, even following one's death, more than one's children would be protected by *all* actors, and especially the parent, modeling ethical conduct conducive to the health and happiness of the coming generation *as a whole*.

It is no answer to this that no one can truly know just what will be “good” for coming generations. The issue of what is best for them would become the central question of politics (with the most persuasive actors gaining the right—including the problematic Real pleasure involved—to be seen deploying parts of the substantial public fund that would be created by commingling property inheritance). This reform aims at the most obvious conflict of interest (the juridico-*structural* encouragement—we might say “commandment”—to protect one's own child at the expense of others), which weighs down powerful actors today in every field. The reform also draws attention to, and perhaps alleviates, the *intergenerational* conflict between forebear lawgiver and his follower (i.e., attention to issues concerning temporality of law). The ethical modeling encouraged by the reform would be to promote laws and norms that facilitate the *means* of a future generation's development rather than dictating an *end* imaginable by a particular finite father. To the contrary, limiting followers to such ends (the ends of finite imaginations that happen to be endowed with private property) is the tendency of U.S. inheritance law today.<sup>20</sup>

## II. VICISSITUDES OF THE SUPEREGO: FREUD AND BEYOND

Kenneth Reinhard, in the first of *The Neighbor's* three essays, situates the subject of psychoanalysis at a kind of impossible pivot between the commandment to love God and the neighbor-love commandment. The first persists, despite modernity's estrangement from belief in the God of the Hebrew and



Christian scriptures, in much the same way the primal father (of Freud's modern myth) functions even more effectively (as prohibitory agency) once the band of brothers kills him. Both modernity and the brothers kill the object of their strongest emotions (of their love/hate ambivalence for God and for the primal father, respectively) and then, in mourning, take that object inside, thereby transforming object cathexis to identification.<sup>21</sup> The pain and preclusion resulting from this process stem from both guilt at the murder of a loved one and incorporation into the ego of the same loved figure as also despised.

Otherwise put, for Reinhard, the commandment to love God, with all its ambivalences, is structurally a part of the modern psyche, whether or not a particular subject believes that he believes. This structure is what affectively ties the subject to the order of language and law, Lacan's Symbolic order. Reinhard elaborates convincingly in his essay a link between this primal father (an imaginary figure that *both* founds a Symbolic regulatory order presenting itself as a universal totality *and* represents the possibility of an all-enjoying exception to that order's rules) and the sovereign exception made famous by the writings of Carl Schmitt and his critics. As clarified by Reinhard, there is a theological aspect to every modern juridical order, an affective response to a kind of commandment ("commandment" in the sense of a psychic structure that cannot be denied) to "love God" in two ways: both to identify with the legal order the "Great One" has founded *and* to identify *with the exception* to the law that the Great One represents. This paradoxical interpellation, or calling to the law, locates the possibility of Real pleasure (Lacan's *jouissance*) at the moment of transgression of the legal order. This is the very moment that Paul describes in Romans 7: sin taking its opportunity from law's promulgation.<sup>22</sup>

This structural motivation toward transgression, toward being the exception to all rules, is one way of elaborating the "human love of aggression" described by Freud in *Civilization*.<sup>23</sup> But it is the way, according to Reinhard, of only one of two types of Lacanian subject. It is only those subjects who have unconsciously "decided" on male sexuation, rather than female, that are entirely determined by this structural motivation toward transgression. The woman is also determined by this, but not entirely so. *Not-all* of the woman is subject to this phallic structure. Woman, in her "singularity, subtracts something from the totality of knowledge"<sup>24</sup> that the Symbolic order insists upon:

Unlike the case of men, for whom there is a unified category, "all men," that they are identified as being members of, women are *radically singular*, not examples of

a class or members of a closed set, but *each one an exception*. They are an exception, however, not to a “rule,” but to an open set, an infinite series of particular women, into which each woman enters “one by one.”<sup>25</sup>

Reinhard proposes the open set of women as a detotalized set that is indeed subject to the phallus (that is indeed interpellated into and thus “castrated” by the symbolic order of language), but only “‘somewhere’ . . . not everywhere.”<sup>26</sup> This is a “decision to say no to the superegoic insistence on All, on jouissance as an *obligation*; as Slavoj Žižek has recently formulated it, this is to reserve the right *not to enjoy*, to desist from the insistence of the sovereign exception.”<sup>27</sup>

Reinhard succeeds in making the connection between the female choice of sexuation and the *Real* encounter between neighbors. Both are supplements that de-totalize identifications with an other. The “commandment” to love the neighbor, to be exposed to the kernel of the neighbor’s enjoyment, is not only structurally unavoidable on a day-to-day basis; indeed, according to Reinhard, following Lacan, exposure to the Real in the neighbor is the founding moment not only of the subject’s imaginary identifications *but of cognition itself* (which begins with the subject “symbolizing the difference between the [neighbor’s] Thing and its attributes and identifying with that difference”).<sup>28</sup> Reinhard proposes a political theology of the neighbor as a kind of serial (dis)organization of open sets inspired by the female sexuation choice, a (dis)organization of neighborhoods *not totalized by specifications of their members’ differences*. There would have to be something else that brings these sets together, something not entirely contained by the realm of symbolized difference. At the same time, however, meaning would play a role: Reinhard proffers his political theology of the neighbor neither as completion nor replacement of male/sovereign political theology, but rather as that which might *supplement* and *de-complete* the sovereign male.

### III. INHERITANCE REFORM AS INSTANTIATION OF REINHARD’S POLITICAL THEOLOGY OF THE NEIGHBOR

Inheritance law reform, as suggested in this writing, seems to instantiate the political theology of the neighbor, as described by Reinhard. This reform keeps male sovereignty in place, yet attenuates it—much as female sexuation,

in Reinhard's terms, submits to the phallus "with reserve."<sup>29</sup> Put into effect, the reform<sup>30</sup> would keep the existing juridical order in place and would not affect the military's mandate to protect the State. But there would be a change in citizens' psyches over time.<sup>31</sup> In Reinhard's terms, citizens would be subject to the phallus (subject to State law), yet with a certain "reserve." With respect to amassing fortunes sufficient to impact not only lives in being but future generations as well (i.e., fortunes pretending to be significant as inheritances), citizens' strivings would be attenuated. What would be created is that certain "somewhere" not subjected to the law of the phallus, a "somewhere" freed from the primal father's commandment to enjoy, to transgress the law's limits—today, to become a billionaire. And since this "somewhere" will have been created by a constitutional amendment informed by the temporality of law, it could be said that this "somewhere" is in time.

The reform is more conservative than it might first appear. With it, Reinhard's open "somewhere" takes its place only in citizens' expectations concerning the effects of their actions after they have died. An alternative—not focused on legal temporality—might be a more abrupt "synchronic/horizontal" opening during one's lifetime—i.e., a present letting-go of the legal separations that today privilege (by means of military force) a certain wealthy segment of the world's population. And yet there can be no "opening to the world"<sup>32</sup> that would be of political significance, unless today's principal legal separation, private property attribution, is ameliorated. The proposed reform accomplishes this in an always deferred manner. It allows the opening to occur over generations. The only alternatives are much more violent: a sudden taking of the wealthy segment's property privileges; or continuation of current structures, which pit military pressure protecting privilege against the (increasingly threatening) insistences of those oppressed thereby.<sup>33</sup>

This seems enough to encourage more research concerning the reform. There is need for a more precise analysis of the psychic effects (perhaps super-egoic effects) likely to be produced by it. Will potentials for violence be decreased (or perhaps distributed in more bearable ways) by revised expectations on rights of wealth at death? Note that the standard by which to judge here should not be utopian. A comparison with *actual* potentials for violence would be more just.

In each of the "six theses," with which Reinhard concludes his essay, it would in fact be possible to replace the words "political theology of the neighbor" with "the reform" (as described in this writing). For instance, with

respect to thesis 3, the reform would involve the “condition of the particular com[ing] to stand for the possibility of the universal, not in the reduction of differences, but by determining what is *singularly universal* in them. Hence, justice [would be] not a function of equalizing differences, but [would] depend on sublimating in thought the different to the condition of the same.”<sup>34</sup> Reinhard has, throughout his essay, emphasized the Lacanian Thing as that which inflects the Symbolic and Imaginary registers of *every* subject. The Thing is a “singular universal,” as distinct from a totalizing concept of the subject, insofar as the Thing is knotted to the *limit* of language and thus cannot be bound by the resources of language alone. The reform, which presupposes that its citizens are importantly constituted by aggressive Things, holds their Imaginary identifications with their children (by which they are also importantly constituted) *hostage* to the good of the Symbolic order (the third link in the subject’s Borromean knot). The wager is that this, to some degree, would “drain” the law of *jouissance*, of obscene violence.<sup>35</sup>

#### IV. IMAGINARY HOSTAGES AND HOSTAGES IN THE REAL

This reference to hostage-taking resonates—though subject to important differences—with Slavoj Žižek’s critique, in the same *Neighbor* volume, of Levinasian ethics. An important point by Žižek is that the “three” of the symbolic (as inflected by the trauma of the impossible Real) *itself constitutes* the “two” of engagement between the subject and its singular neighbor (the very “two” Levinas foregrounds as an ethics of the face-to-face that precedes ontology itself).<sup>36</sup> Thus Levinas’s claim that the “I” is utterly and irreplaceably responsible to the neighbor, even to the point of serving as the neighbor’s *hostage*, is strongly resisted by Žižek. He sees Levinas’s emphasis on the face-to-face with the neighbor as being trapped in a kind of Imaginary lure caught up in the idea of eyes as windows to a vulnerable soul.<sup>37</sup>

Žižek, to the contrary, recommends thinking politics and ethics together, with the “two” of ethics (the particular engagement between neighboring subjects) inflected *both* by the “three” of the Symbolic (not only State law but the realm of language as such: metaphor, metonymy, reason, etc.) *and* by the Real to which the other two are tied in a kind of symptomatic knot. The suggested inheritance law reform is aligned with Žižek’s position as follows: the “two”

(engagements between particulars, including particulars within the family) is structured by the “three” (inheritance law), all inflected by the radical estrangement of the “I” and the neighbor (and each to itself) in the Real.<sup>38</sup> As Žizek puts it, deriding Levinas: “What is still missing here is the notion (and practice) of antagonistic universality, of the universality as struggle which cuts across the entire social body, of universality as a partial, engaged position.”<sup>39</sup> The reform’s structure, its holding of the children of the powerful as hostages to the good of the coming generation as a whole, is a “partial, engaged position” of “antagonistic universality” of which Žizek should approve.

## V. ELECTION RIGHT AS LAW’S OBSCENE SUPPLEMENT

Žizek also takes Levinas to task for what he calls “anti-Spinozan arrogance.”<sup>40</sup> Rather than thinking the subject as an immanent part of a “network of reality,”<sup>41</sup> Žizek’s Levinas succumbs to a kind of guilty struggle concerning his very right to exist; Levinas’s figure for this guilty existence is a tree that robs those in its shadow of light and sustenance. For Žizek, this is liberal guilt, which implicitly confers upon itself centrality of position, a kind of belief in metaphysical *Election*. From where else could come an existent’s *right* to exist than from some kind of beyond? Otherwise put, Levinas’s concern (that his existence may be burdensome) may be borne out, but ironically so: not that his body’s requirements take sustenance that might have been used by other living things; but rather that his *thinking* is obscenely supplemented, and thus made aggressive, by belief in his own Election from above. This irony is related to the link (drawn in this writing at Section I) between philanthropy and restraint on followers.

Similarly, an underlying Election structure holds current inheritance law in place, as its obscene supplement, thus saturating the juridical order with concentrated points of *jouissance*. Current inheritance law grants to the bourgeois subject (in a manner fixed tightly to male sexuation) a kind of *Election power*. Despite talk of “modern” (“liberal,” “rational”) property law, this Election substructure is closely aligned with premodern “Divine Right of Kings.” What keeps the aging bourgeois male affectively tied to this premodern substructure is the *jouissance* that flows from the *potential* power it gives him—power usually grasped tightly to the end—to elect one or more others to significant private property status, either by Last Will or by inter vivos gift. With

this, the aging male is able to extract, from the principally *younger* objects of his desire, gestures of affection and respect he would not receive otherwise. This is the dirty underside, the obscene supplement to current law. Regardless of the attractiveness (or repulsiveness) of his remaining attributes, an owner of significant property can usually find an attractive young body sufficiently threatened by her surroundings to enter into one of many sordid yet long familiar bargains: freedom for “security” (i.e., marriage with someone she would not have otherwise chosen); acceptance of mistress status vis-à-vis the owner in the hope of extracting gifts; the child of wealth who shapes his or her life (who *cringes*<sup>42</sup>) so as not to register disagreement with the overbearing parent on whom he or she remains financially dependant into adulthood; etc. The suggested reform aims at the obscene supplement that lines these kinds of sordid bargains.<sup>43</sup>

This Election substructure is an effect of a certain legal temporality: one which presupposes a founding Will that moves through generations and controls them.<sup>44</sup> This Will is modeled on “God’s Will,” from manifold Jewish and Christian traditions, while the proposed reform is aligned with the Spinozan view of nature, which avoids presupposing metaphysical Will of any kind.<sup>45</sup> Also relevant is Spinoza’s politics, particularly as described by Etienne Balibar.<sup>46</sup> Sovereignty is here “envisaged from a non-formal perspective”<sup>47</sup>: not as enforcement of a controlling limit, but as a mode of self-governing that fosters creative activity at the level of particular members.<sup>48</sup> The reform is also aligned with the arguments of current critics of information privatization, such as Jack Balkin, Lawrence Lessig, Anupam Chandler, and James Boyle. The ultimate value implicitly defended by these critics is something like human (or “post-human”) participation in continuing creation, as opposed to being relegated to something like a passive consumer role.<sup>49</sup>

## VI. AN OPENING THROUGH BILLIONAIRES

The danger, of course, exceeds passive consumerism. Billionaires materialize the state of exception; and those who get close become something like the cringe of the *homo sacer*.<sup>50</sup> The delicate problem of suspending this state of exception could not be more crucial. Whether or not the billionaire is “nice” and refrains from attempting harm to those with less power, it is his *potential* to do harm that makes the other cringe. The other cringes even in the hope

that the sovereign exception will smile on him. Any other's utterance in proximity to the billionaire will manifest the kind of "signifying stress" that Santner's essay tells us calls out to be redeemed.<sup>51</sup>

Those billionaires who have publicly stated that there is a problem with inheritance of family wealth<sup>52</sup> have acted on that problem, as they see it, by establishment of charitable trusts of one kind or another. To the extent funds are placed in such trusts, children's "expectations" of property inheritance are disappointed, one could say betrayed. The billionaire Warren Buffet has gone so far as to contribute substantial funds to a foundation that carries the name of *another* billionaire (Bill Gates). While this is an act that addresses *one* recurring structural problem of inheritance (its support in the tendency to desire that one's name be memorialized upon one's death, which often ties up resources that might be otherwise deployed by those still living); still Buffet's step in the right direction does not address the problematic structure of the sovereign exception and the *homo sacer*—because he nonetheless *could* choose, right until his death, to Elect anyone he encounters to exaggerated private property status (or to hurt that person very badly—or perhaps do both).

It is too often forgotten, in references to Giorgio Agamben's *Homo Sacer*, that the sovereign too is a *homo sacer* reduced to bare life. It is only a matter of time until this begins to show. This is the point that Benjamin makes in his book on the German mourning play:<sup>53</sup> no human being can ultimately withstand the pressure of keeping an important juridical order in place through his will alone. This can be seen after death, for example, as kingdoms are lost by foolish sons, entails are broken by later-born lawyers, and, even where the dead sovereign's name remains inscribed by fiat, those who see it can no longer link it with that which the sovereign had hoped to represent.

And even during life the billionaire cringes. This can be witnessed by the signifying stress of the man from whom everyone he meets wants something—something that is not quite the bearer of those billions "himself." This of course is the crucial point of Lacan and the *Neighbor* volume: *no* one, including the billionaire, escapes estrangement from both neighbor and self; *everyone* is split between his Symbolic status and his Real enjoyment. But the billionaire is certainly a limit case whose symptoms warrant further study. Certainly one would find radically manifested here the broader problem of the capitalist father's *potential* power: of the ways it renders particularly difficult intimacy with his child (or with anyone). It is likely that the very public

statements of billionaires concerning family inheritance are symptoms of failed intimacy.

The Real intervention, the *suspension* of exception, must go beyond a billionaire's disrobing himself of his own potential in capital. That would but result in another poor Lear. The Real intervention would engage those billions in political campaign for inheritance reform.

1. "Heavy Law/Light Law: Walter Benjamin, Friedrich Nietzsche, Robert Bork, Duncan Kennedy," 17 *Law and Literature* 249 (2005); "Detour About *The Viper's Nest* Through Hegel, Adorno, and Mann's *Dr. Faustus*: Temporal Views of Subject/Object Convergences," 33 *Studies in Law, Politics, and Society* 25 (2004); "Inheritance Law as Constellation in Lieu of Redress: A Detour Through Exceptional Terrain," in 24 *Cardozo Law Review* 1043 (2003); "Inheritance Law Reform and Theological Election," forthcoming in *Umbr(a)*; and "Dead Hand Rising: Dialectics Beyond Last Wills in *The Merchant of Venice* and *The Tempest*," forthcoming in *Law, Culture, and the Humanities*.
2. See, for example, French Civil Code Article 760 and Article 912 *et seq.*
3. The changing tensions in the last two centuries, between (i) French law's guarantee of relatively equal inheritance treatment among "legitimate" children (initially advocated in 1791, by Mirabeau on his deathbed, then argued by Talleyrand in Mirabeau's name in a speech to the Constituent Assembly) and (ii) evolving attitudes toward "discrimination" against children born outside the marriage bed, would require their own extended treatment. See the 2000 Judgment by the European Court of Human Rights, Strasbourg (*Mažurek v. France*, Application 34406/97), holding that Article 760 of the French Civil Code, which restricts the inheritance rights of adulterine children to one-half a "legitimate" child's hereditary reserve share, is discriminatory.
4. Here is William Blackstone's definition of the "right of property," at Book 2, Page 1 of his *Commentaries on the Laws of England* [1765–1769], ed. Wayne Morrison (London: Lawbook Exchange, 2001):  

". . . that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe."
5. Jacques Lacan, *Seminar VII: The Ethics of Psychoanalysis*, ed. Jacques-Alain Miller, trans. Dennis Porter (London: W. W. Norton, 1992). "Das Ding" (the Thing) is a major theme of this Seminar.
6. Slavoj Žižek, Eric L. Santner, and Kenneth Reinhard, *The Neighbor: Three Inquiries in Political Theology* (Chicago: University of Chicago Press, 2005).
7. See Sigmund Freud, *Civilization and Its Discontents*, trans. James Strachey (New York: W. W. Norton, 1961), 92–93.
8. Lacan's Thing may be considered as a kind of traumatic remainder effected by the originary loss of the full maternal object and by interpellation of the subject—what Lacan calls "castration"—into language itself. For one of many possible elaborations of the Thing, see Reinhard, *supra* note 6 at 30–31: "The Thing materializes the constitutive ambiguity of the primal object, the trauma of its uncertain disposition between excessive presence and radical absence." See also Slavoj Žižek, "Ethical Socialism? No, Thanks!" 129 *Telos* 173–89 (2004) ("... drive is not an infinite longing for the Thing which gets fixated onto a partial object—'drive' is this fixation itself in which resides the 'death' dimension of every drive. Drive is not a universal thrust (toward the incestuous Thing) braked and broken up, it is this brake itself, a brake on instinct, its "stuckness," as Eric Santner would have put it").
9. For further elaboration, see this writer's "Heavy Law/Light Law," as well as the introduction to this issue.



10. See Freud, *supra* note 7 at 24–25.
11. *Id.* at 25.
12. *Id.*
13. *Id.* at 26. See also the same book's conclusion, at 111 ("One thing only do I know for certain and that is that man's judgements of value follow directly his wishes for happiness—that, accordingly, they are an attempt to support his illusions with arguments").
14. *Id.* at 71.
15. *Id.*
16. *Id.* at 110.
17. *Id.* at 111.
18. *Id.* at 109, emphasis added.
19. *Id.*
20. Often, perhaps always, attempts to bind followers by law are motivated by a concern for *memorialization* of a "founder's" name (see this writer's "Heavy Law/Light Law," citing, *inter alia*, Jacques Derrida's *La carte postale*). Moved by this concern, powerful actors may conceive "important projects," for which they issue orders meant to bind beyond their deaths. These projects are often, but not always, avowedly philanthropic; some are restraints on actors' children, such as the entail and the spendthrift trust. Restraint may be the obscene supplement to most philanthropy. More on this below.
21. Freud early on believed such phenomena to be signs of pathological "melancholia," but later saw these outside/inside, object/subject transformations as the very process by which the ego forms. See, *inter alia*, "On Narcissism: An Introduction" (written in 1914), "Mourning and Melancholia" (1917), *Group Psychology and the Analysis of the Ego* (1921), *Beyond the Pleasure Principle* (1919–1920), *The Ego and the Id* (1923), *Civilization and Its Discontents* (1929), and *Moses and Monotheism* (1934–1938) in *Complete Psychoanalytic Works*, ed. James Strachey (London: W. W. Norton, 1974).
22. In *Seminar VII*, at 83, Lacan playfully inserts his term "the Thing" for Paul's references to "sin" in his Romans letter. See also Lacan, *supra* note 5 at 177 ("Transgression in the direction of *jouissance* only takes place if it is supported by the oppositional principle, by the forms of the law.")
23. The references here to Reinhard's essay delete, for lack of space, his precise and compelling elaboration of a third "Real" father relevant to the movement into modernity. In modernity, the Real father holds open the gap between the imaginary father of the primal horde (of sovereign exception) and the symbolic father (of science and rational legal divisions).
24. See Reinhard, *supra* note 6 at 57.
25. *Id.* at 58.
26. *Id.* at 60, citing Alain Badiou.
27. *Id.* at 60.
28. *Id.* at 33. See also *Id.* at 35, stating that the Name of the Father (the signifier of lack that interpellates the subject into the Symbolic register) "should demarcate the difference between *das Ding* and the world of representation and hold the space open between them."
29. *Id.* at 59.
30. For example, the reform could be effected by a U.S. constitutional amendment fixing Federal Estate Tax at 100%, with the proceeds of this tax placed in a government trust to be used only for "the good of the coming generation of U.S. citizens." The fact that repeal could only take place through another constitutional amendment would fix citizens' expectations sufficiently to have some psychic effect. What that effect might be is the question of this paper.
31. This claim echoes that of Tocqueville in *Democracy in America*: that the law of inheritance has constitutive effects on all other laws.
32. This is important feature of the "female/generic set" described by Alain Badiou and cited by Reinhard at 59 ff. Reinhard makes clear that the opening he recommends is inspired by the "Event," on which Badiou has written widely. An important feature of Badiou's Event, not cited by Reinhard in this essay

- yet extremely relevant, is that it must involve a public declaration of *universal address* that is *without recourse to totalizing legal divisions* (see generally Alain Badiou, *Saint Paul: la fondation de l'universalisme* (Paris, 1997)). Since private property attribution is the most totalizing legal division of our time, it is difficult to imagine an Event that could occur without detotalization of such attributions. In fact, this call for inheritance law reform, if followed “faithfully,” has the potential to satisfy Badiou’s definition of the Truth Event declaration.
33. Relevant here are the mutually engaged insistences of constitutive and constituent power. See this writer’s “Inheritance Law as Constellation in Lieu of Redress,” citing Negri and Hardt’s *Empire*.
  34. See Reinhard, *supra* note 6 at 75.
  35. See *Id.* Query whether *jouissance* could ever be “drained” from the law. Perhaps a more precise term might be “redistributed in space and time to more bearable levels.” The suggested term may seem too close to the utilitarian economics of “goods” (including ideas of “the Good”) denigrated by Lacan in *Seminar VII*. But *this* redistribution would be concerned with the Real *beyond* the Symbolic order (and thus beyond “goods”). The aim of this paper (to reduce tendencies toward violence) might be translated as redistribution of *jouissance* in the Real. A cue might be taken from Freud’s *Beyond the Pleasure Principle*, trans. James Strachey (New York: W. W. Norton, 1961), in which he describes the “unpleasure” of the pleasure principle as an *increase* in “quantity of excitation that is present in the mind but is not in any way ‘bound’” (4). Freud cautions that this increase must be factored with respect to “*a given period of time*” (4, emphasis in original). Thus assuming, as is likely, that this increase of unbound excitation has something to do with what Lacan calls *jouissance*, redistributions of *jouissance* in time (the aim of the proposed reform) could reduce unpleasure to more bearable levels—even if it remains theoretically impossible to “drain” the law of *jouissance* in absolute terms. For instance, the sudden increase in unbound excitation caused by subjection to a terrorist bomb (ever more likely under current structures) might be exchanged for bearing over time the anxieties involved with more direct exposure (through inheritance reform) to the strange foundationlessness of the law (to the Real, to which the Symbolic is knotted).
  36. Žizek criticizes the “inherent insufficiency of [Levinas’s] rendering of the encounter of the Other’s face as the primordial face.” Among other things, Žizek here argues that Levinas’s “rendering is wrong on its own terms, as a phenomenological description, since it misses the way the Third is always already here.” See Žizek, *supra* note 8 at 184.
  37. Relevant here, though not cited by Žizek, are Lacan’s comments, in *Seminar VII*, that the idea of the good (sacrifice based on identification) misleads to the extent it poses as the limit of the law. Lacan aligns this misleading idea (similar to the Levinasian self-as-hostage idea) with an oversimplified reading of Aristotle on tragedy’s operation “*through* pity and fear.” What Lacan finds more important is *another* limit beyond that of “the good” (and beyond that of sacrificial economies of “goods” more generally): that of beauty effects *aligned with outrage*, the realm of living death, *through* (i.e., *beyond*) pity and fear. (The Greek preposition used by Aristotle, *dia* plus genitive, which might be translated literally as “through,” not only means “by means of” but also “beyond.” See Lacan, *supra* note 5 at 244 *et seq.*) Beauty effects occur, for Lacan, when the object is brought toward the dignity of the Thing—which is another way of saying that the limit of the law must be gotten *beyond*, not just transgressed for the sake of identification (for the sake of pity and fear). Merely identificatory limit acts (one might call these a kind of “pseudo-transgression”) would fall under the sway of the commandment to enjoy issued by the Imaginary (primal) father. At bottom, Žizek sees Levinas’s idea (of the subject’s responsibility for the other to the point of self-sacrifice and giving the self as hostage) as a mere pseudo-transgression in Imaginary identification with the neighbor as the subject’s *semblable*.
  38. See also Žizek, *supra* note 8 at 185 (“... in order to arrive at the “neighbor” we have to love, we must pass through the “dead” letter of the Law, which cleanses the neighbor of all imaginary lure, of the “inner wealth of a person” displayed through his or her face, reducing him or her to a *pure subject*.”).
  39. *Id.* at 154.

40. *Id.* at 156.
41. *Id.* at 155.
42. For further elaboration of this term, see Santner's essay in *The Neighbor*.
43. The reform would relieve the private property owner not only of the right to Elect by Last Will, but also of the right to Elect by inter vivos gift. Only the sharing of an asset's present use (and only until the owner's death) could be granted to another under the reform—unless the other gives “adequate (“arm's length”) consideration” in return. This is a distinction already made under U.S. tax law. See provisions of the U.S. Internal Revenue Code, especially Section 482, requiring “arm's length” consideration with respect to “related party transactions.” Limitations on gifts are also provided in connection with European “Hereditary Reserves.”
44. See this writer's “Heavy Law/Light Law,” citing Nietzsche's *Genealogy of Morals*.
45. Although the idea of *creation ex nihilo*, crucial to Lacanian psychoanalysis, may seem inconsistent with Spinozan immanence, the Lacanian idea in fact describes a psychic structure, the advent of which is a violent cut in human being effected by an interpellating signifier. While, from the speaker's perspective, this advent is experienced as something like subjection to *creation ex nihilo* (to a violent cut by an overwhelming power), belief in the wide applicability and explanatory power of this psychic structure does not require belief in a Divine Will beyond immanence. Rather than relying on Divine Will as the beyond of the universe, Lacanian psychoanalysis describes an immanent “Real” as the beyond of language.
46. Etienne Balibar, *Spinoza and Politics*, trans. Peter Snowdon (New York: Verso, 1998).
47. *Id.* at 31.
48. Space constraints make difficult further elaboration of Spinoza's relevance here. See this writer's “Critique of Will,” forthcoming.
49. Again, space constraints do not permit a fuller elaboration. See Jack M. Balkin, “Digital Speech and Democratic Culture: A Theory of Freedom of Expression for the Information Society,” in 79:1 *New York Law Review* 1–58 (2004); Lawrence Lessig, “The Creative Commons,” in 55 *Florida Law Review* 763–77 (2003); Anupam Chandler, “The New, New Property,” in 81 *Texas Law Review* 715–97 (2003); James Boyle, *Shamans, Software, and Spleens: Law and the Construction of the Information Society* (Cambridge, MA: Harvard University Press, 1997).
50. For evidence of a cringing U.S. Congress, see recent attempts to make permanent the repeal of the Federal Estate Tax—a tax only applicable to estates that exceed several million dollars (i.e., a tax paid only by multimillionaires and billionaires).
51. Space constraints have not allowed an adequate engagement with Santner's excellent *Neighbor* essay—particularly its mapping of legal temporality through virtual archives of signifying stress that indicate forgotten failures to act due to pressures from dominant ideologies (see especially 88–90). Hopefully Santner might agree that the proposed reform works toward an “event of meaning” similar to the “miracles” he himself aims at unfolding.
52. See, for example, [www.responsiblewealth.org](http://www.responsiblewealth.org), including “Is Unlimited Inheritance Un-American?” by Jim Grote, [http://www.responsiblewealth.org/tax\\_fairness/Estate\\_Tax/Estate\\_Tax\\_History\\_Grote.html](http://www.responsiblewealth.org/tax_fairness/Estate_Tax/Estate_Tax_History_Grote.html) (site last viewed on March 27, 2008).
53. Walter Benjamin, *The Origin of German Tragic Drama*, trans. John Osborne (London/New York: Verso, 2003).