
LAURENT DE SUTTER

# Contents

# After Law

Laurent de Sutter
Translated by Barnaby Norman

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# Dedication

*For Serge Gutwirth*

# *Translator's Note*

The English translation of *Après la loi – After Law* – presents a particular problem, apparent in the final word of the title and traversing the entire text until the last sentence of the Postlude. Put simply, the English language collapses two concepts that are separated in the French terms 'loi' and 'droit' into the single all-embracing 'law'. In some ways, this is a striking confirmation of one of the central theses of the work: that over the course of Western history, the law, 'la loi', with everything it entails in terms of abstraction and normativity, has come to dominate and determine the concrete and casuistic 'droit'. The obvious solution, and the one used throughout this work is to translate 'loi' with 'law' and 'droit' with 'right'. This procedure is not, however, perfect, and carries certain risks. The most significant of these is that 'right' in English has come to be associated almost exclusively with the 'rights' of the 'subject', which is to say the individual rights the subject embodies within a political construct. 'Right', as it is predominantly used in this work, is better understood in its opposition to 'Law': a disruptive activity of *becoming* that challenges, perhaps deconstructs, the *being* of Law. All this becomes most explicit in the 'Postlude', which returns to all the oppositions in play throughout the work as it passes through a global series of legal traditions. Throughout the English text, as it builds to this finale, I have, therefore, capitalized 'Law' and 'Right' when they are clearly to be understood in the tension of this opposition. This is intended to serve as a visual reminder that neither 'Law' nor 'Right' quite map onto the common meanings the terms carry in English, and it will be to some degree the responsibility and the experience of the reader to come to an understanding of how they operate across this text.

# *Foreword*

## Avital Ronell

Our relation to the law is not easy to untangle or tame using merely historical narrative. Fortunately, Laurent de Sutter provides us with a scanning apparatus, hermeneutically fine-tuned, by which to measure essential prompts of juridical life. With the care of a relentlessly searching analysis, his text hands us a number of flagged contracts to renegotiate and, where necessary, to repudiate.

We know that, beginning with Cleisthenes' fateful intervention, philosophers bristled while they defended the *demos*, worried about the takeover of a mob primed to go off locked and loaded, lawless and intemperate. *After Law* offers a sweeping historical account of conceptual overhauls that are responsible for boosting democratic tenacity in the face of so many obstacles and their punctual power failures. Perhaps now more than ever our legal and juridical inheritance presses upon us, urging a review of a speculative jurisprudence that involves an untold history and stealth attack plans.

Timely and incisive, this work repurposes our juridical scaffolding, making allowances for wide-ranging effects of existential fallout in the political realms that affect us today. It faces down the transcendental assumptions that fuel our relation to the law and its legally constellated satellites. Without explicitly calling up psychoanalytic theory, *After Law* locates the power-pump of social narcissism and forms of *drivenness* that undergird an abiding relation to the law. We are given to understand that, like Kafka's man from the country, one's condition of

sheer stuckness ‘before the law’ cannot be abrogated. This predicament holds for a diverse and often incompatible cultural rhetoric of law and governance, a temporal span that involves the subtle implications of finding oneself called *before* the law only to be snagged *after* the law’s epoch of authority.

On civic alert, Professor de Sutter examines the moves that were made historically in order to supplant familial logic with the idea of Law and the implementation of human rights. He trains his analysis on distinctions drawn by the fundamental juridical structures reconfigured under structural mutation, their emergence and inherent instabilities – in some cases, their unapologetic takeover stratagems. The text’s questioning looks at the foundational yet elusive facets of law and aporias of power. Its microanalyses interrogate the workings of Law, constitutions, penal codes, institutions, acts of positing and the co-implicating force of hypothetical judgement that hold them together as well as apart. The account of juridical presuppositions reflects the processes of corresponding historical changes in political vocabularies. So that ‘no tyranny could ever return’, the reigning god or legislator in Greek legal arbitration had to be replaced by the City itself, a repartition involving a new understanding of *sharing* together with an ever new distribution of civic responsibility. The strife between human *nomos* and divine *nomos*, in the limited yet self-replicating instance of ancient Greek philosophy, has had to be renegotiated at crucial junctures in modernity. At one point, the agonistic terms of law-giving powers reappear with the *Spaltung* (split-off) discussed in Walter Benjamin’s reflections on law and violence in terms of the striking force that differentiates human from divine law. Yet, how do we live with a relation to law whose authority is eroding?

In Freudian terms of social pessimism, it may well be the case that we will never be able to effect a jailbreak from narcissistic lockdown and expunge the vacuity of shameless self-promotion that pervades our times, exercising a reckless disregard for the rule of law and its principled apportionment of equality. We're neither the only nor the first ones to contend with encroaching morphs in despotism, the chokehold of a lawless political organization. De Sutter's argument indicates that every social body on record has been tempted by tyrannical excess.

Ensnarled in familialisms and archaic structures of troubled coexistence, each phase of civilization has registered a will to break free of local bullying tendencies, hoping to dissolve tenacious political strangleholds. The tyrannical impulse exposed by Plato's legendary analyses and the refinements of Aristotle's political warning system exemplifies philosophical pushback on autocratic incursions. In the assertive span of Athenian juridical life, Cleisthenes was the first to call up Greek democracy. Not everyone in the history of philosophy was on board with the initial rallying call, and certainly no philosopher proved more ready to march along with a destructive politics than Martin Heidegger in 1934. What does this tell us about philosophers –not to say of formations of will-to-power, and the enduring appeal, whether heeded or dismissively cast, made in theoretical studies of Law?

By now, we know this much: the tyrant, whether on the loose or held in place, is always ready to pounce, breaking out of a republic of unchecked phantasms and into states of lawless abandon. According to the tag-team of Plato and Freud, one falls into tyranny when betraying the democratic model of paternal legacy, squeezing out the law internalized, honoured, remembered. Superego and the *inheritance* it implies are kicked to the curb, fully divested

by the tyrant who, according to Plato, has snuffed out paternal mimesis and regulatory hand-downs.

The law and its representatives are disseminated by various institutions and positing acts that exercise a provisional flex of power. Where regulatory habits are disdained, if arbitrarily applied, and surveillance mechanisms idle on the edge of lawful intrusion have spread with viral tenacity, we need to contend with crucial questions of a primary order. Why are we governed by laws, and who gets to escape their alternatively crude and sophisticated forms of punishing inscription? How do we account for the historicity and cultural codifications of Law that reassert its authority – or expose transcendental principles as problematic and wobbly? And, to introduce a perspective covered in Derrida's reflections on Benjamin's essay 'The Critique of Violence', what is the force of Law? How does it determine or overdetermine culpability, axioms of retribution and various forms of juridical sentencing? Is the regime of legal violence inescapable once a subject is placed in signifying chains?

Jean-François Lyotard, for his part, takes up the juridical shortfall in *The Differend*, a theoretical rollout citing the need for a pushback on legal falsification, gestures that could not be registered by techniques of legal review: a nervous tic, a blush, a hysterical cough, yet another somatic outbreak such as hives, or the resolute silence of a torture victim. Lyotard folded these unlitigatable shudders into what he named a 'phrasal regimen'. The phrasal regimen covers an entire syntax of extra-legal efforts to speak a truth before a court without reverting to a strictly coded and pre-authorized rhetoric. These efforts involve releasing new types of information on the semiotic build-up of a distressed body under interrogation, its attendant symptomatologies, including the inability to say what one has witnessed or recount the violence to which one has

been made to succumb. In *Masochism: Coldness and Cruelty*, Gilles Deleuze outlines the masochist's presuppositions of lawful adherence, whereas Jacques Lacan, in 'Kant with Sade', brings up the rear with his anal-sadistic location shot for the juridical disposition. There's more to this line-up because the cartography of the legal impingement on our lives – intimate, body-bound and insidious – is as complicated as it is prevalent. In the wake of Kafka's grammar of hypothetical speculation, it has become impossible, argues Lyotard, to prove one's innocence. Kafka was already driving while Black, steering a minority's literature of legal despair.

In these times, what still passes for 'human relations' seems irremediably beholden to legal institutions and conceptual grids. The prediction made by de Tocqueville about the modern democratic state rings true: the citizenry will have complied with the *juridification* of all relations. No moment of interiority will be spared legal assignment, interrogation or potential dispute. (I amp up for effect. Alexis de Tocqueville had enough problems on his hands without having to trifle with a presumed subject's 'interiority' and other Hegelian acrobatics.) Tyrannical breakouts have separated off from paternal law – and, we could add, calling upon a pending Kleinian politics, that the tyrannically seized soul has failed to internalize the good breast, to learn repair or submit to reparative justice. Is the commitment to reparative justice still something we can imagine, if only as a regulatory ideal, an aneconomic gift? It seems as though we must do so, imagine and commit to repair, even if Heinrich von Kleist has made the aporias of repair undefeatable for us moderns.

# PRELUDE

§A. *Law.* For more than two thousand years, the West has lived under the rule of Law – a jealous rule, which tolerates infractions only insofar as they are the means by which offenders come to recognize anew its incontestable supremacy. This dominion was not built in a day, and has not failed to provoke resistance; but the *legal proposition* possessed, it would seem, a persuasiveness that its rivals did not: it won. Looking carefully at its contemporary form, it is possible to understand why: behind Law, there extends a whole domain of thought, valorizing order, reason, coherence, power and security. Even today, this domain of thought constitutes the default regime for everything, from university research to café conversation – from the perspective of this regime, anything escaping the parameters of the domain in question would lead to chaos. And the fear of chaos is without doubt the dominant psychological factor in the ecology of Law: the fear that something should flee, dodge, escape the lawful state of things, and in this way, reveal it to be nothing. *The real is what Law fears*: the whole history of the progressive triumph of the idea of Law in the West can be reread in light of this maxim, which might be thought of as embodying, in an originary way, its inexpressible. By this, we must understand that what Law fears most is not the real as such, but *its* own real, everything that traverses it and makes it possible – but that makes it possible only by being excluded from its discourse. Excluding its own real is, moreover, the most essential task to which the category of Law has been devoted since the beginning: Law is what works to exclude its own real – Law is what accomplishes its own closure on its blind spot. This beginning is Greek and philosophical, where the real that the category of Law sought to exclude was that of Right, as though Law only existed to make Right impossible except under its exclusive direction.[1] In this way, the most precious juridical treasures

were forgotten, and with them countless inventions allowing for the imagination of unregulated lives and societies that would yearn for movement. After Law, we will have to learn to remember them.

## Note

1 NB. For the way in which ‘Law’ and ‘Right’ are used through this text, see the Translator’s Note.

## Note

§A. – On the concept of the real: Jacques Lacan, *The Seminar of Jacques Lacan IX: Identification*, trans. Cormac Gallagher from unedited French manuscripts (London: Karnac Books, 2002); Alenka Zupancic, *Ethics of the Real. Kant with Lacan* (London: Verso, 2000); Slavoj Zizek, *The Most Sublime Hysteric: Hegel with Lacan* (Cambridge: Polity, 2014); Massimo Recalcati, *Il vuoto e il resto. Il problema del reale in Jacques Lacan* (Milan: Mimesis, 2013); Alain Badiou, *À la Recherche du réel perdu* [*In Search of the Lost Real*] (Paris: Fayard, 2015). See also Laurent de Sutter, *Théorie du kamikaze* [*Theory of the Kamikaze*] (Paris: PUF, 2016).

# *1*
# *NOMOS*

*§1. Isonomia.* Tradition has forgotten Cleisthenes; of all the great ‘legislators’ of ancient Greece, however, he is doubtless the one whose decisions have produced the most serious consequences – and have enjoyed the most enduring legacy. Unlike his predecessors Draco or Solon, he left just a spectre of his existence; we know of his life only through Herodotus’ account – and of his laws only through the criticisms of his opponents. But it is a spectre that has forever haunted the history of Europe, as though, at a moment that was as crucial as it was unexpected, it had bestowed on it the decisive direction towards what, for modern man, it was destined to become. When we speak of Greek ‘democracy’, of the political moment when, suddenly, a new concept bursts into the history of governance and breaks the old equilibrium of aristocracies, it is really of Cleisthenes that we are speaking. Because it was Cleisthenes who, in order to block the attempt to establish an oligarchy in Athens after the tyrant Hippias had been forced out at the beginning of the fifth century BCE, decided, for the first time, to call on the *demos*. Where the former equilibrium had been based on a familial logic, in order to reform the city’s institutions so that no tyranny could ever return, Cleisthenes chose to embrace a geographical logic. Until then, Athens had been governed primarily by the aristocratic members of the four major Ionian tribes; from now on, it would be governed by the inhabitants of the one hundred ‘demes’ into which he divided the city’s territory. To this new equilibrium, the name ‘*isonomia*’ was given – equality in the attribution to each of the share to which they were entitled in the city’s governance, guaranteed by the institutions that Cleisthenes had created to this end. We should even, perhaps, be more precise: *isonomia* did not just define a form of equality in the attribution of stakes; most importantly, it defined a form of equality before the instrument of this attribution.