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THE TRAP *

ABSTRACT. A professor is brought before a secret tribunal in his law faculty for the purpose of deciding the appropriateness of a student's grade. The grounds of the grade appeal are that the professor had taught critically instead of practically and that he had done so with an academic bias and prejudice. He is also alleged to have taught philosophy rather than law. After many hours of examination and cross-examination as a defendant and as an expert witness, the professor, Flink, begins a dialogue with a spirit in an effort to understand the nature and identity of law. Flink comes to appreciate that law is a displacing discourse rather than a structure of categories signified in an official writing. The analytic method familiar to officials in common law jurisdictions, Flink comes to understand, excludes the experiential meanings that are manifested through unwritten gestures and rituals. Officials embody signs with experiential expectations and past assumptions. The embodiment of meaning brings life into legal language. But such an embodiment is forgotten as officials decompose textual fragments and reported social events into analytic units. Legal analysis is so successful that officials even forget that they had forgotten something so important as the embodiment of meaning.

The professor and the spirit also ask whether justice is an 'ought' and where one can locate such an 'ought'. They conclude that there is a structure within which legal officials reason. The exteriority of the structure is an unwritten 'ought' realm. But the structure possesses a gap, which enters into such an unanalysable object-less realm. Analytic reasoning has assumed that reason can take an official only so far until she or he must journey outside the structure to an unanalysable realm of personal values. However, the embodiment of meanings also incorporates unwritten collective values of which officials, precisely because of the success of the analysis project in forgetting that something was forgotten, have never been conscious. It is such an unanalysable realm that grounds or authorises the analytic project. The exterior authorising origin of the analytic units of the structure rests upon a possibility that requires faith on the part of the officials, a faith that there exists a foundation, radically different from the analytic units, on the other side of the structure. The officials can, at best, imagine or picture the authorising origin, located as it is in the unanalysable object-less realm exterior to the written language of the structure. The imagined origin takes the 'form' of a bodiless spirit. The officials (and the professor and spirit) are haunted by the possibility that the structure of humanly posited rules are ultimately authorised by a spirit.

KEY WORDS: analytical jurisprudence, education, memory, nature and identity of law, phenomenology

* *The Trap* was written for and first read as a three Act play on Sunday May 24th, 1987 at the Critical Legal Studies Study Camp at Chaffey's Locks, Ontario, Canada. The theme of the study camp was 'different voices'. It was subsequently read in part at the

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[Two rows of officials face each other in a courtroom not unlike an ordinary faculty council room. The one row has a lawyer, an articling student and a professor who has become the defendant in a hearing. Facing them, there are another lawyer, a law student and a second professor who functions as an expert witness. Elevated above both rows and at the head of them there are three law professors, gowned in black, appearing as judges. One judge has his middle finger of his right hand touching a tape recorder. The courtroom door is shut and locked by the last person who enters the court room.]

The defendant professor thinks to himself: I'm stuck in the muck. I've always believed that we lawyers could create a world that was humane and sensitive to experience. And now, I find myself entrapped in a structure where I am expected to play a role rather than to live my ideals. My being is on trial. Here I am considered the guilty party, the perpetrator of legal harm, a judge of the merits of another human being, a hierarchiser of human beings. And yet, I feel an outlaw, excluded from the story being told, a contaminator of the purity of legal analysis. My students over there allege I have taught critically instead of practically. And that I have taught philosophy instead of law even though I only took one philosophy course in my whole life! They claim I have been biased – an academic bias, mind you. They repeat this allegation twenty-seven times in the statement of claim. Can you imagine the crap I've been through? First, I receive by registered mail an officious thirty-six page letter with forty-five numbered paragraphs. Then there follow lawyers' letters, pleadings, a written record, three adjournments over four months, judges, examination in chief, cross examination, and an expert witness with an objective one right answer to my exam.

Canadian Law and Society Meeting at McMaster University during the summer of 1987 and in whole at the Faculty of Law, University of Windsor during the autumn of 1987. *The Trap* has also been produced during the last day of my first year constitutional law class since 1993 when I have had three spirits respond to those students' questions that I had inadequately addressed during the year-long course. On the last occasion when *The Trap* was produced, I had twelve actors with Flink playing a minor, and therefore, major role. I have re-written the present version for a reading audience, writing being something that concerns my characters in *The Trap*.

Some themes of *The Trap* are developed in my *The Invisible Origins of Legal Positivism* (Dordrecht: Kluwer, 2001; Law and Philosophy Library, vol. 52), *The Phenomenology of Modern Legal Discourse: The Juridical Production and Disclosure of Suffering* (Aldershot, Brookfield USA, Singapore, Sydney: Dartmouth/Ashgate, 1998), *Images of a Constitution* (Toronto: University of Toronto Press, 1989), and *The Structuralism of Analytical Jurisprudence* (forthcoming).

And to top it all off, can you imagine? There I am peeing in the urinal during an adjournment. My lawyer enters the loo and stands next to me. My brain is on fire. My eyes would have burned the pages if I had been allowed to refer to my course notes instead of my memory of arguments, case names, and statute sections. I have survived hours of the lawyers' scrutiny of the inner sanctum of my mind. Their scrutiny, frozen in time and locked in space, has been characterised by oppressive formality, petty questions, a malevolence of my *bone fides* and a profusion of "Excuse me, my lord, but as a matter of personal privilege . . ." or "if it please the Court, this question is irrelevant to the issue at hand." As if any lawyers, even my former students here, may control what I can and cannot think and feel! I am desperate for a human relationship.

So, there I am in the loo, as I was saying. Without a flinch and with a calm and self-confident voice, though with that subtly strained sense of self-doubt that has forever plagued me, I ask, "how do you think I am doing?" Though all alone, my lawyer and I, he anxiously looks over his shoulder as if the whole world were gazing at us peeing. Opens his mouth as if to reply. Shuts it. Opens it again. And what does he say? Can you imagine? He cuts me off as if I were a child unworthy of a human response: it's improper for me to talk with the client during the cross examination! So that was what Civil Procedure was all about! I'm caught in a trap. Nothing is left of me. No ideals. No voice of my emotional self. No *esprit de vivre*. This is what I deserve for my humanities tilt. How naive I have been about law teaching. Not a shred of fibre from the enlightenment at coffee or in our teaching materials or even in our exams! What have I been doing all these years?! I've been trapped from the start all the while that I believed I could change legal consciousness. Every single colleague has participated in my trial as the drafts-persons of the senate by-law, as voters of the by-law in the senate, as re-readers of my student's appeal, as the decanal instigators of the hearing, as the judges on the allegation of an academic bias and prejudice, as the lawyer for the university, and as president of the university.

Lawyer for the student: Please advise the Court, Professor Flink, did you or did you not include 'Crown immunity' in your course lectures?
A voice: [whispering in the professor's ear] With respect, Professor Flink, this is your day in court.
Flink: Huh? Who said that?
Voice [whispering again]: With due respect, climb the trap's wall before you sink further into this muck.

Flink: But it is 99% humidity and 102 degrees F. It is late Friday afternoon in the summer. I have been drilled since 8:30 this morning and it is now 4:40. And all this, after three hours of examination in chief of me yesterday afternoon. My body is exhausted. My head is spinning. I'm finished. I couldn't care less how it turns out. This was the mistake of my life. To hell with principles. Ronald Dworkin never had to go through this! I should never have showed up.
Voice: [more strident]: Flink, don't give up now.
Flink: Where did you come from anyways? Clare Hall in the 1300's? You're not supposed to be here. Who are you? [Flink strains his eyes past the lawyer before him.] Students couldn't appeal their grades then. [Exasperated] And this due process thing is progress?
Voice: How can there be a just outcome if the process is unfair?
Flink: What do you mean?
Voice: The right to appeal a grade, the right to counsel, the right to expert witnesses, the right to cross examine the professor, the right to place the onus upon the professor to give compelling reasons why the grade was this or that. All this adds up to procedural justice as do all the other checks and balances: the initial re-reads, the Specials, the re-reads of the Special, the Supplemental and this very formal hearing: these procedures ensure a just outcome, is this not so?
Flink: Do you mean that I can't even consider the way she smiled at me at the reception?
Voice: Excuse me, Professor Flink!
Flink: You can imagine, at least, can't you? That magnetic smile that immobilised me into a puff?
Voice [extremely agitated]: Oh my gods, Flink. Are you not conscious of what would happen to you if you ever shared your felt experiences out loud? An avalanche of social and legal hassles would envelop your life to the bitter end. And the cost . . .!
Flink: [mystified] Do you mean that I can't even e-mail her?
Voice [Beside itself]: With the greatest of respect, Professor Dr. Flink, get control of yourself! Leave that sort of thing for your fantasies. This is reality! Your reputation is on the line. Your articles and books do not count here. This trial is all or nothing. If you win here, the lawyer over there is going to ask for a re-hearing before the Divisional Court on the basis of a procedural irregularity. He has laid the foundation for the re-hearing. Just imagine what will happen to your reputation when that case is reported! No, a court room is not a place for smiles, nor even a faint memory of a smile. Why are you imagining this smile?
Flink: Hmmm.

Voice: The point is that a physical gesture, such as a smile, or a ritual, such as one's clothes, function as structural constraints which address the role of the official. Unwritten gestures are just as important as are written expressions such as a *factum*. Gestures and rituals can be studied and questioned just as can the *facta* and oral argument. Now. As to the smile of the student in the hallway, I bet you're forty with a wife and two kids. Grow up man! Expel the memory of such a smile from your living consciousness!

Flink: And what kind of world do you imagine we'd have if I expelled memories of gestures from my reality, pray tell? How am supposed to desire to know without my lack of an object in my life such as a smile? I know that Plato himself considered wisdom the absence of categorical objects in the *Theaetetus* and in the *Symposium*, but wasn't he wrong to exclude experienced meanings from legal knowledge? Didn't he indirectly admit such in *The Laws*? But wait. He did admit to the importance of *eros* for knowledge. But *eros* emanates from the experiential body. Just play a role, you're telling me, as if I had no emotional self, no desires, no vision of a better world.

Voice [relieved]: Now, you're getting the picture. I submit that you must cleanse your body of all your subjective feelings and experiences – even that rush that comes to you when you remember her stunning smile. We're after procedural justice here and only procedural justice. Anyways, why isn't she here if she really meant that smile for you and not that taller guy behind your shoulder?

Flink: Please permit me to ask: where have you been? This trial is secret because grades are confidential. My sense of professional ethics in my institutional framework constrains me from sharing my experiences.

Voice. Oh. I didn't realise that. You *are* in need of some of my practical advice. This formal hearing is needed to guarantee procedural justice. What is the alternative, anyway?

Flink: I thought you were on my side. Who the hell are you? You're getting me off track here. I have to respond to the crown immunity question. Let's be done with this court room struggle and then, after a good night's sleep, I will be able to reflect with you about a utopian legal order.

Voice [with a stern deep level]. You are an official here as are all your former students and your colleagues. As an official, you play a role that dictates that you be impartial, objective, distanced and analytic.

Flink: Again, how am I supposed to dialogue with you unless I know your name?

Voice: I have no name. And without a name, you cannot classify me like lawyers usually do.

Flink: I can't get a handle on what is happening here. Please. Please. Give me a hint.
Voice: I am the spirit of an O-P-E-R-A,
Masked and gowned,
Wordless,
Verbless,
All lawyers of the world try to trace me down
as if I had a name,
and lived in fame.
I am the Spirit of an O-P-E-R-A.
Flink: Is this going to be on the exam?
Voice: There you go again. Thinking like a lawyer.
Flink: What does it mean to think like a lawyer?
Voice: Well, we already appreciate that the most important thing is that we play a role rather than just be our experiential selves. You gain your role from a structure of expectations. This structure, you must accept, existed before you became a lawyer and it will survive after you. The structure sets constraints as to what evidence and arguments officials may accept as relevant, weighty and strong.
Flink: You say you are a spirit, do you? How do I accept your advice as practical if I am seen talking with a spirit? I would just reinforce the allegation that I taught philosophically rather than practically. Can you just imagine if I told my students over there that . . .
Voice: With respect, Professor Flink, they are lawyers, not your students.
Flink: [Resigned] Oh, all right. Lawyers, then. If I gave [with disgusting voice] *that lawyer* over there some one liner about Crown immunity and then cited a spirit for my authority. Or if I had given the student over there an F and noted on the record that I had worked out the exam answer by listening to an invisible voice. The student would be in the Dean's office in a minute! Can you imagine the whispering in the hallways? How can the rule of law be ultimately grounded upon an imperceptible source such as a spirit? Who are you, anyways?
Voice: No precedent haunts me,
no statute to which I'm bound
though lawyers hound for my intent
as if my mind were cement,
and chase after my will
as if my body were a hill.
I'm the author of all the Law's music,
fatherless, I am the Founding Father
motherless, I bring magic names into the world.
I am the Spirit of an O-P-E-R-A.

Flink: If this is an opera and I'm trapped on a stage, oh Spirit, how do I escape? This is crazy.

Spirit: That is precisely part of the problem – this craziness thing. Craziness is defined by whomever defines the word, craziness, and it is the 'we' who define it, not the person who is labelled crazy. The problem is that we lawyers just don't understand the languages of the crazies and other outsiders except through our own official language – you know, all this stuff about 'fee simple' and 'the doctrine of consideration' and 'mens rea' and 'compelling state interest test'. We write through our own very special vocabulary. Ours is a written language. In fact, can't you and I agree at this point, Flink, that what we lawyers have hitherto taken as legal knowledge is just a surface level of writing. Is it not so that the more precise our conceptions and the more rigorous our analysis, our reasoning conceals the pain and suffering which others – the non-lawyers – have experienced? Can we really hear the particular other when we transform her or his meanings into configurations of signs that we officials, not the indigenous voices, recognise as our own?

Flink: Hmmm. It seems that you are making a few jumps there, Spirit. Do you mind if I call you Spirit, by the way?

Spirit: Well, as we hear each other's words, the words remain mere fragments until we associate cognitive objects with our signs. We identify a feature or justificatory criterion of the object, compare and contrast the feature with the features of other cognitive objects, identify a common feature, and build a new category about the common core so that it transcends the earlier versions, and we then continue the process by similarly decomposing the new category. In this analytic act, we forget the voices that have been transformed into the vocabulary, grammar and analytic units of our professional language. This, we call legal knowledge.

Flink: Are you and I doing that here?

Spirit: No, because, unlike a monologue, I complete what I say so as to give you a chance to respond. Our dialogue has taken a life of its own.

Flink: Do lawyers monologue?

Spirit: Especially lawyers, I submit, because we analyse and write as if one author wrote the narrative.

Flink: But I always thought that justice could be found in our juridical language.

Spirit: Look, I need a case, as I was a lawyer in my earlier life. Let's assume I have been an employee in a business for thirty years or that my family has worked a farm for many generations. Personal guarantees had been given to a financial institution. The interest rate suddenly climbs to new heights and, on the basis of new expectations, a financial insti-

tution calls the business loan. Overwhelmed by emotional events, I am immobilised. My outstanding cheques are dishonoured and an agent for the financial institution takes control of all business and personal assets of the owners. Do you really believe that the lawyers' vague language, such as "reasonable time," – this being the code word that common law courts have historically read into demand notes – will recognise context-specific pain of my concrete being?

Flink: Hmmm.

Spirit: Or let us assume that I have been sexually assaulted. How will I feel when teams of lawyers play roles with all their magic code words, such as the objective versus subjective test for consent, and their gestures, such as their genuflexion before the judge?

Flink: Hmmm.

Spirit: It is the lawyers' language, not mine that matters here, soaked as I am in the secret memories of the horror of my pain.

Flink: Well. At least you will get your turn to tell your side of the story in a court room with all kinds of procedural protections!

Spirit: That may be so. But it is the legal officials who ask the questions and fit my evidence into a coherent story that can be categorised inside or outside the official language. My guilt and humiliation will be unspoken or, if spoken, forgotten. My story, if I have the strength to tell it again through my language, is coded by the official language.

Flink: So, are you saying that I can never get justice in this world of lawyers and courts?

Spirit: Not when the lawyers and judges speak a monologic language that transforms experiential meanings into analytic units of a structure.

Flink: Com'on. What about the substantive justice of the content of the rules?

Spirit: Well. If I decompose writing into analytic units of the structure, it really doesn't matter what the substantive content of the legal answer really is.

Flink: Hmmm. So we end up like legal positivists who are preoccupied with the human posit of a rule which, when binding, excludes a consideration of the substantive 'ought' content of the rule?

Spirit: That's it! We law teachers do not really care about the substantive content of an answer, despite our rhetoric at the annual law teachers' meetings. It is the rigour of our analysis of the rule that matters.

Flink: Hmmm.

Spirit: We must concede that there are two types of justice and only two, is that not so?

Flink: I suppose if we are talking about a modern sovereign state with lawyers and judges.
Spirit: OK. I'll concede that for the moment.
Flink: And we'll have to put Hegel to the side too, for the time being.
Spirit: That is so.
Flink: Alright. Let's continue. First, there is a procedural justice that guarantees that if the process at arriving at a judgement or legislative enactment is fair, the outcome will be just. And then there is substantive justice.
Spirit: With respect. I'm used to spending time in the Court of Appeal. What is substantive justice?
Flink: Substantive justice goes to the substantive content of the rules and principles, not to the procedural conditions that lie in the deliberation about the content.
Spirit: So, substantive justice contradicts legal positivism?
Flink: Hmmm. How so?
Spirit: Well, legal positivism has had many different strains, but there is one common element to all theories of positivism: that a binding law is separate from an evaluation of the substantive 'ought' content of that law.
Flink: Permit me to ask you one simple little question. If an official's decision or action were valid because the official had acted within the appropriate jurisdiction, which the institutional structure had posited, what is the authorising origin of that institutional structure? If an official's decision is valid because its justification can be traced to some rule of recognition, what is it that the rule of recognition recognises? And is that recognised object an element of legal reality? That is, does it exist legally speaking, Spirit? That is, is the authorising origin accessible through our written scientised language?
Flink: Hmmm. Do you mean to say that all these years – no, all these centuries – we lawyers have assumed the existence of valid laws when the ultimate authorising origin of the humanly posited laws may have been non-existent?
Spirit: Remember. Hobbes wrote about civil institutions, which gained their authority from the "authors" – his term – who had just gained a language to communicate with each other and to express their wills. But once the authors had expressed their wills through a social contract, the civil officials – Hobbes called them "actors" – could never return to the pre-authorial condition where wolves, children, men and women could only pursue their self-interests through their bodily struggle. And John Austin grounded legal institutions in the habits of the bulk of the populace and yet, such habits were considered 'political' or non-legal, according to Austin. The authorising origin of laws properly so-called – the habits of the people

– were exterior to the written language of *analysanda*. And Hans Kelsen insisted that a hierarchy of humanly posited norms was pure without any contamination from the social and moral world outside the structure of norms and yet, of all things, the authorising origin of that structure was "presupposed", a "pure" thought, voiceless, unwritten, before language. What could be more alien to humanly posited norms than a pure thought unrecognised in the written language of humanly posited norms? And even H.L.A. Hart too admitted that the ultimate foundation of the legal system of a modern state could only be "approximated" – his term – by a rule of recognition. The rule of recognition itself, according to Hart, recognised experiential bonding amongst officials. The latter was considered "pre-legal." Remember?

Flink: So, when I teach, do I include in my analysis what all the positivist jurists and officials have excluded as pre-legal or primitive?

Spirit: But, Flink, one more thing. Once one realises that the moment of the pre-legal experiential bonding – including gestural meanings signified by a smile – is very important, there is something far more vital to law than inquiries into procedural and substantive justice. But if we analysts lop off the bonding as if it were non-existent, we intellectualise about categories and signs. We *produce* judicially defined persons such as legal officials.

Flink: Do you mean that I am a disembodied official? Was Kafka correct to so describe the effect of the disembodiment of expert knowers? In this precise moment, as I feel here and now, the analytic method of these lawyers here freezes my body by categorising my actions *vis-à-vis* the recognisable signs in legal discourse. The effect is to punish me for the substantive content of my teaching.

Spirit: You aren't punished for thinking these questions!

Flink: Well, what the hell do you call eleven and a half hours of cross-examination about my course content – a Sunday school picnic?

Spirit: I think your old Admin Prof was right. When you asked him 'where is any talk about justice?' what did he say to you, Flink? "If you have a conscience, young man, then just put it asleep for three years, but make sure it awakens when you leave."

Flink: Now there's a joke if I ever heard one. As if my conscience would ever awaken after three years of learning vocabulary, grammar and the analytic method!

Spirit: Jesu. This is a law school, Flink – not a finishing school.

Flink: No one told me that He was a rabbi when I went to Sunday School.

Spirit: Don't get off track with all this religion stuff. Ours is a secular world. You're also taking all this too personally, Flink. You are victimising yourself. You are a legal official, not a poet nor a human being with a

stream of context-specific, lifetime experiences. You were trained to be calm, impartial, objective, rational and distanced from any social upheaval. Oh yes, and a-historical for legal history begins with the analysis of a rule. This is just another case. You have a role to play. Like Captain Vere in Herman Melville's *Billy Budd.* You have to answer to the structure's officials, not to your personal conscience. Anyways, there is more to justice than substantive justice and as I wanted to say before you interjected with your self-pity, the last thing we should do is to identify justice with an 'ought.'

Flink: Huh? [With full sarcasm.] Gimme a break! No emotional self? No 'oughts'? What if I get a headache?

Spirit: Well, I reminded you that legal positivists and modern natural law thinkers – indeed, the whole analytical tradition of law teaching – postulates a structure whose boundaries exclude subjective 'oughts' from legal existence. The traditional analytical approach has been to envision justice as addressing 'oughts.' But 'oughts,' dwelling in some unanalysable and unrecognisable realm exterior to the structure of legal categories, thereby reinforce the very structure which, I should have thought, it was the goal of justice thinkers to critique.

Flink: Yes. Go on. Go on. Where is justice if not in our 'oughts'?

Spirit: Justice lies concealed *inside* the discourse of the structure.

Flink: So we're going to have to read these hundreds of cases for each course after all? Do you mean that I'm not going to find justice in Plato or Aristotle or John Rawls and that law students should not be expected to read Julian Barnes' *History of the World in 10 1/2 Chapters* or Camus' *L'Étranger* or Kafka's *The Trial* or Sophocles' *Antigone* or even Ovid's *Letters of Exile* or to write plays and poems?

Spirit: Don't get ahead of me, Flink. One step at a time.

Flink: Yes, we are agreed that it is absurd to focus upon procedural justice without, for example, first examining the referent, justice.

Spirit: And the first mistake is to assume that justice is an 'ought'.

Flink: Go on.

Spirit: Well the legal structure itself – the inter-related structure of legal institutions and doctrines and principles and arguments and narratives – delineates a legal reality (the 'is') that intercedes between the official on the one hand and traditional inquiries into the Good life on the other. Right?

Flink: Right.

Spirit: The postulate of the association of legal existence with a structure is the blind spot in analytical jurisprudence. Analytical jurisprudence examines the identity of laws – whether rules, principles, values, interests, or policies as if they can be decomposed into smaller and smaller units. Offi-

cials decompose, differentiate and intellectually recompose the analytic units into a coherent structure. Without ever questioning the structure, analytical jurisprudes proceed to ask 'what is the ultimate authorising grounding of the assumed structure – a rule of recognition? A *Grundnorm*? the People? an invisible Author? a group of historical authors? a purified law beyond law?

Flink: Oh. Oh. Let's assume you are right, Mr. Spirit.

Spirit: I don't have a body, so please, with respect, do not call me a he or a she.

Flink: Hmmm. In fact, the more I think about it, all of we lawyers are like spirits 'cuz we don't have biological bodies in the eyes of the law: we are juridical persons who have been constructed from the many combinations of signs that represent rights and duties.

Spirit: But that is precisely my point. We lawyers do not have experiential bodies either. We dis-embody ourselves in order to take the internal standpoint of the structure. We deny that we even have *praejudicia* or 'prejudgements'. Why else do you think we officials wear black but to assimilate all incoming colour-signs?!

Flink: I'm supposed to ask the questions!

Spirit: There you go again. You talk as if the legal voice can only come from one source – as if you were the fountain or source of knowledge and as if I were a passive recipient of your categories.

Flink: Well, how else could it be?

Spirit: You see, you have been treating me from the standpoint of a committed participant in the legal structure. That said, you do not recognise my voice. You decompose your own categories in order to enclose my voice, to render an identity to me, and to make legal sense of my words.

Flink: So, the problem is to stop categorising?

Spirit: That would be a start. But 'how do we stop categorising and yet remain in a legal discourse' is the question of the day.

Flink: Doesn't the analytic project ensure that we remain entrapped within categories?

Spirit: You are right up to a point. There is something about legal reasoning that requires lawyers to universalise particulars. We have observed how even you classified me as a (Christian) angel in order to 'understand' me.

Flink: I get it. And once we start to classify, we treat the particular other as a generalised commodity or thing to be used in the exchange of one sign for another?

Spirit: So, no matter what the class, gender or race of the judge, the judge inevitably categorises and it is that very classificatory character that violates the particular concrete subject.

Flink: That is it. But there is more to it than metaphysics. Just changing our consciousness will not revolutionise the world, contrary to Duncan Kennedy's viewpoint in his earlier essays. For we signify the classifications of our mind through chains of signs – gestural as well as verbal, unwritten as well as written.

Spirit: So what we must do is to shift from a paradigm of consciousness to a paradigm of language? For we just cannot think a universal without a sign to represent the universal? The consciousness of universals encourages us officials to believe that we can be at one with the particular other?

Flink: Yes. Right on.

Spirit: And this leads us to believe that we can initiate a cultural revolution by replacing the men with women at the apex of civil institutions! We are not going to cause any social revolution unless we account for the scientised discourse in which the categories are signified.

Flink: But I have always understood violence as a metaphysical violence. By that I mean that the legal categories of the bourgeois class are posited onto the workers, of the men onto women, of the first world onto the third, of whites onto blacks, of profs onto students.

Spirit: But such a sense of violence is just too simplistic if it fails to account for the complex, subtle, unwritten, gestural signs that displace signs that signify the violent categories.

Flink: Yes, we find it difficult to appreciate how one discourse violates another in the act of discursive displacement. This difficulty especially occurs because the professional discourse sanitises its violence as if the legal categories were natural, a-political, and objective. Legal terms exhibit a magic that excites us lawyers as if our decomposition of the terms into analytic units nears reality. The units are like categorical boxes that block us from the context-specific meanings of concrete others.

Spirit: These boxes immunise us, as officials, from all the social and psychic turmoil, which I myself have been facing today: the very emotional struggle over 'what is my role as a teacher?' 'does my role permit me to talk about my personal and professional experiences?' 'what is practical law?' 'what is critical law?' 'am I moral or a-moral to show up for this hearing?' 'why are analytic units identified as legal?' 'is mine an imperial project as I assimilate the voices of others into my sanitising discourse?' 'am I imposing a disguised religious foundation to human laws by having faith in the existence of the invisible authorising origin of the laws?'

Flink: And am I pro-fessing a violent displacement of my professional language over the heterology of voices? Does our sanitising discourse render *us* – the teachers, students, advocates, judges and scholars – the producers of suffering?

Spirit: Are you saying that no matter how ethnically, gender-wise, religiously and morally diverse are the lawyers and judges, there is still something about legal reasoning that encourages racism, sexism and social violence?
Flink: That is it. So long as we have to analyse through a highly scientised language with all its compartmentalised referents, the problem remains. It is not just a metaphysical violence but a discursive violence.
Spirit: So, when we speak or write as lawyers, our discourse is violent in two respects. First, the spatial boundaries of our categorical referents exclude as well as include. Second, the officials are knowers of the magic signs that signify the exclusionary categories.
Flink: And by claiming that the categorical boxes differentiate outsiders from insiders, we postulate a knowledge of the outside in order to identify the inside. The very words, 'the rule includes' or 'she comes under the rule', connote a sense of space as if a fence demarcated the legal from the non-legal. But how can an official know that the fence includes some analytic units and excludes unanalysable units without actually having intellectualised about the other side of the fence? Even analytical knowledge, in order to claim that analytical units exist, assumes a knowledge of the non-analytic realm.
Spirit: There is something else that we must consider before we can set our minds at rest, my friend.
Flink: Oh no!
Spirit: We have agreed that meaning is lived when we bring our bodily experiences *into* signification, is this not so?
Flink: Right.
Spirit: But how do I teach lived meanings?
Flink: You must admit that there is no one around here who puts it better than Socrates when he describes teachers as midwives who draw knowledge from students.
Spirit: Only I would add 'from within the experiential bodies of students' for, after all, it is a body, not a pure idea of the mind, with which mid-wives are concerned!
Flink: Oh. I thought there was something wrong with analytical jurisprudence but forgot what was wrong. I have come to accept that rules, tests, *analysanda*, and special magic vocabulary constitute legal existence. In fact, I have forgotten that I had forgotten the experiential meanings that the legal discourse transforms into analytical units imagined as spatial-like boxes of universal categories. I've assumed that I cannot derive an 'ought' from this existence, all the while failing to realise that the legal

'existence' had entirely forgotten the most important element of practice: the experiential pre-legal.

Spirit: So, if we ultimately embody meaning, then isn't all legal reasoning subjective? Have we not derived an 'is' (legal existence) from an 'ought' (subjective values)?

Flink: Well, let us look closely at these so-called subjective values. The lawyer over there believes that because I required my students to read Aristotle's passages on citizenship in the *Politics*, I posited my own subjective values onto the students.

Spirit: Surely they were correct to say that you were subjective.

Flink: Yes. That is my weak point. I'm still trapped!! Forget this bloody trial! I don't care whether I win or lose at this point. You're right. I've lost even if I win, in fact.

Spirit: Stay in rational control, Flink. We must begin again. You have said that legal reasoning focuses upon arguments that are balanced against each other (you know, free speech versus due process in the press cases; equal protection versus free speech in the election financing cases). And that that balance is resolved in favour of the posit of a subjective value.

Flink: Yes, that is how the Supreme Court analyses. But is it possible to measure these values as if they were ping pong balls in the spinning machine at the front of the bingo hall? Call out the numbers please.

Spirit: Keep focused, Flink. Let us start with a case. Let us surmise that a judge had had an abortion as a teenager or was verbally abused or sexually molested or had had her parents interned. I would probably say that these factors were crucial in understanding and predicting the particular judge's posit of one value over another. The experience may even have been forgotten by the judge and we law profs invariably lack the scholarly skills or the arsenal of issues to know how to incorporate such personal experiences into our analysis of one of her judgements.

Flink: But our job, in an institution of the enlightenment, is surely to recognise the forgotten personal values!

Spirit: Oh! And that is all?

Flink: Yes, that is a good explanation of the way we progressive lawyers often think about the law. Identify the values and policies underlying a judgement: that is where politics enters legal reasoning.

Spirit: Hummm. Have you never heard of Karl Jung nor of Northrop Frye?

Flink: Look. When the Supreme Court of Adanac or a jurist such as Joseph Raz talks about the inevitable posit of one value over another in the deliberation about norms, they appeal to *personal* values – you know, like 'does she believe in God?' 'does he eat brown toast in the morning?' 'is capital punishment immoral?' or 'does free speech override due process

in all cases?' Judges normally incorporate their personal values about the substantive content of a rule when they reason. Even analytical jurisprudence recognises the importance of the posit of subjective values in the deliberative phase of legal reasoning.

Spirit: But these personal values are very different from collective values.

Flink: Oh?

Spirit: Collective values are implicit structures within which we reason and posit personal values. We *collectively* share the structures with others as we write and speak. The structures are part of our *Umwelt* or environing world. The structures pre-censor how we perceive and understand the world as we hear others speak and read through gestures and writing. The structures, in turn, are constituted from *praejudicia*. Collective values are what Jung called archetypes. Yes, personal experiences help to mould the collective values – especially the personal professional experiences of law students and lawyers. But here in Adanac, we the judges and lawyers are never conscious of the collectively shared boundaries. Perhaps this unconsciousness arises from our belief that the analytic units stand for the structure as if the units were metonyms.

Flink: Explain?

Spirit: Well, we ratiocinate about the analytic units or *analysanda* of the implicit structure, not about the *praejudicia* of that structure. We decompose the *analysanda* as if they were equal to the whole structure. So we never have to address 'what are the collective values that embody the structure with experiential meanings?' The latter issue is expelled as non-legal or pre-legal.

Flink: And yet, these structures of meaning delineate the boundaries to which we implicitly refer when we exclude evidence, an argument, a precedent or when we generally reason analytically.

Spirit: Hmmm. Is it possible to teach without prejudgements? Was there ever a time when we were conscious of our collective prejudgements?

Flink: How could we have ever forgotten collective pre-judgements if we were never conscious of them in the analytic project?

Spirit: Please permit me to explain what I mean. To begin with, there is not one experience that works to produce a structure in our environing worlds. There is a stream of experiences over a professional lifetime.

Flink: I'll go along with that.

Spirit: And collectively, this multiplicity of experiences moulds our collective prejudgements about the boundaries of legal reality as we, as officials, respond to each other by decomposing each other's analytic units.

Flink: But our very collective consciousness in analytical reasoning encourages us to expunge the admission of these very shared experiences

from our identity as juridical persons. We reject them as unwritten, as pre-legal or as primitive.

Spirit: That's it, Flink! Though fundamental to legal reasoning, the collective *praejudicia* are rejected as non-law for they are unwritten and the legal language of a modern state is believed to be written by distinct and assignable authors, such as legislatures and courts, in a particular measurable time and space. That is, our collective values about legal analysis exclude the very consideration of our *praejudicia* into the analytical enterprise.

Flink: So we deny the most important condition of legal reasoning at the very moment when we, as officials, begin to de-compose and then rationally integrate the *analysanda* together into a cohesive whole.

Spirit: And we deny the experiential social practice as we assume that language can only be written.

Flink: [excitedly] And do you think that the unwritten part – or, at least, what the judges and lawyers consider unwritten – is really binding after all? [incredulously] Are you saying that I and my former students across the table have been living in some fantasy world and that the expert witness from the Mall Law School just reinforced that fantasy world by offering the one right answer to my exam?

Spirit: Finally we are getting somewhere, Flink.

Flink: So justice is not ratiocinated from statutes and cases?

Spirit: And yet, we just agreed a moment ago that the collective prejudgements are unwritten and that they cannot be retrieved from our memory. Analytical jurisprudence, on the other hand, proceeds as if our memories were suspended in time and as if the experience of our collective prejudgements were unexperienced. For, as soon as we officials become conscious of the need for a sign that represents our collective prejudgements, the latter become analytical units that represent the structure as a whole.

Flink: So justice is located in the unwritten, in what we have hitherto discarded as exterior to the structure.

Spirit: The problem is more than that, I regret to say. Not only have we discarded the most important arena – the unwritten – but also the analytical enterprise proceeds as if legal existence were constituted only from the *analysanda* or analytic units. Our analytic reasoning, though, has forgotten the collective pre-articulated meanings. We have forgotten that we had even forgotten something so important as the experiential.

Flink: And so my legal mind is a tomb and my legal memory the mummy enclothed inside the tomb. And yet, we lawyers have hitherto taken the

tomb as real despite the dead vocabulary and grammar and style, purged as it is of the living collective values of experiential bodies.
Spirit: So justice is inaccessible and there is no hope of escaping the trap!!!
Flink: But there *is* hope if there is an engine to drive me, as a lawyer, to unconceal the past collective structures of my professional discourse?
Spirit: I have it! What is absent from us drives us on. If justice were like a Gap T shirt for $98 or a legal right or some other commodity which we could exchange, depending upon our personal values at a measurable time of a particular day, then justice would be quantifiable, exchangeable and invoiced. But justice dwells in precisely what jurists have expelled as pre-legal. This realm of the pre-legal is the location of our implied structures of reasoning and of our experiential bodies that we bring *into* what we have hitherto considered legality.
Flink: So, justice is absent to our official legal language so long as we associate legal language with the written? We jurists have excluded the locale of justice as savage (John Locke), primitive (Thomas Hobbes, Hans Kelsen and Joseph Raz) and pre-legal (H.L.A.Hart). But to institutionalise the inaccessible is just impossible. Don't forget that officials and analytical jurisprudes assume that legal language is written. So, working within such a conception of legal language, the unwritten is external to that language. Until we revise our sense of justice to include unwritten as well as written, gestural as well as verbal, and the embodiment of meaning as well as the significatory, the problematic of the exteriority of justice will remain.
Spirit: Is there nothing that is immune from your critique, Flink?
Flink: And yet, the statutes and cases and arguments and principles are still with us and we are now cognisant that justice lies concealed inside the analytic enterprise!
Spirit: Then, everything is left! The official discourse does remain important!
Flink: My mind is in a twirl. My body, too distraught to think any more. And my students over there just demanded for the second time to explain why I had not included the topic of 'Crown immunity' in my course when the course calendar announced such.
Spirit: [with extreme excitement]: Nothing is left!
Flink: We've reached a consensus about that, yes. The statutes and judgements do not just provide *analysanda*. They signify our collective prejudgements. Officials share an immediacy or presence with such signs. A structure delineates our collective *praejudicia* of what is law and what is non-law.

Spirit: But that raises another question:. You have been charged with being critical instead of practical. How are you, as a lawyer, going to advise a client?
Flink: Well. To begin with, I would identify the gestures and rituals that we lawyers take for granted today. I would ask 'what do officials mean by the gestures?' That is, what meanings do the officials embody into the gestures.
Spirit: This would require that I study the social biographies of officials and the social history of the evolution of the gestural sign-posts over time.
Flink: Secondly, I would identify the boundaries of the lawyers' intellectualisation of social life and, once done, examine the relationship between the paradigmatic gestural meanings and the intellectual pre-judgements in the field. Do they conflict and if so, how does the conflict manifest itself? In social violence, for example?
Spirit: And does the structure exclude officials from even examining the gestural meanings, for example?
Flink: And I would, thirdly, study how the analytic method transforms the heterology of voices into unilingual *analysanda.*
Spirit: As if a single *analysandum* were a metonymy.
Flink: And, fourth, I would study how this transformation of meaning is violent *vis-à-vis* the everyday meanings of non-lawyers.
Spirit: And, fifth, how is justice concealed and forgotten as a heterology of voices all the while that analysts claim to reach closer and closer to justice.
Flink: At that point, sixth, we should ask whether the archetypical boundaries are shifting.
Spirit: So, the practical lawyer must methodically and systematically work through each stage before she or he intuits advice to a client.
Flink: When advising a client, I must always gaze towards the boundaries of the structures of prejudgements that officials experience and then isolate whether the client's context-specific meanings are located in an opening to the invisible.
Spirit: Yes, to understand the deliberative acts of judges as ending with the posit of a personal value or rule is entirely misdirected.
Flink: But do we still maintain the separation of 'is' from 'ought' in this phenomenological approach to law?
Spirit: Well, we have agreed, have we not, that every modern state possesses a legal structure that separates 'is' from 'ought.'
Flink: Justice has been traditionally associated with the 'ought.'
Spirit: So we profs and students must expose collective *praejudicia* that postulate a structure that differentiates 'is' from 'ought'?

Flink: Yes, the *praejudicia* will remain unwritten until we bring them to the light. Even then, 'newer' unconcealed intuitions or prejudgements will become relevant to our study.
Spirit: And we still have personal subjective values that end our reasoning about posited rules, as Raz would have us. But the problem is that lawyers understand values as personal and as retrievable from their memories. But analytic officials have never consciously reflected about the collective *praejudicia* nor can they. For, the collective *praejudicia* have not been in the analysts' memories and, therefore, they cannot be remembered. One can only forget something, after all, if one has been conscious of it at some time in the past.
Flink: We can now appreciate that law teaching has been misdirected to the extent that it has assumed that officials reason as if legal existence were constituted from the decomposition of *analysanda*.
[pause]
Spirit: Tell me, Professor Flink, why are you always joking in class?
Flink: I don't know. I never thought about it, I guess. Anyways, once I was lecturing about Kelsen's and Raz's notion of the official's internal standpoint of the structure. I became stuck. So I excused my slowness in class 'cuz I had forgotten to take my Ginkgo biloba. For reasons that escape me to this day, my students, like hyenas, laughed so hard they almost fell off their squeaky chairs. Then, the next term, when I taught the same course at the Mall Law School, I offered the same excuse for my inability to awaken the students. Dead silence. Can you imagine? At the end of term, I received an officious letter from the Associate Dean to the effect that I had exceeded the traditional boundaries of pedagogy in a professional law school.
Spirit: I guess the joke thing didn't work. But you are re-reading history, Flink. You know and I know that you exceeded the institutional role of professor because you held office hours in the Faculty Club and even purchased tea for the students.
Flink: In addition to breaking down the spatial boundaries of legal categories, joking exposes the pretension of associating *analysanda* with reality to the exclusion of our collective *praejudicia*.
Spirit: [Hushed] What language are *you* speaking, Professor Dr. Flink?
Flink: Allow me to clarify my idea. We officials cannot be practical without being critical; can we? Nor critical without retrieving the boundaries of the concealed collective *arche* structures that our reasoning presupposes? And we cannot do that without retrieving how our official discourse displaces a heterology of voices as we analyse?

Spirit: And justice is not some transcendent idea of the Good life. Nor moral right and wrong. Nor a cohesive narrative structure. Nor blameworthiness. We are misdirected when we search for justice in some 'ought' world on the other side of the boundary of the legal structure.
Flink [agitated]: So we law profs and students do not have to be anxious about the abyss of Nothing-ness beyond legal reasoning and legal institutions? Why, indeed, should I even be critical since justice is no longer an 'ought'?
Spirit: Because justice lies in the heterology of voices whose embodied meanings have been silenced by analytic reasoning.
Flink: Yes, my body has suffered because my voice – the voice of a human being rather than of a lawyer – has been silenced. I have had only you with whom to talk. Even then, we have talked through a language that the lawyers over there might not even recognise as their own.
Spirit: My spirits!!!!
Flink: So legal reasoning really fantasises about legal existence. We give names to people: refugee, citizen, stateless. We attach legal doctrines to the names. The doctrines signified by the names are dead categories. Sometimes, concrete human beings fall outside the categories. Sometimes, inside. Either way, the official discourse violently displaces the lived meanings of others. We throw people into jail, confiscate their property, torture them, de-naturalise them in fact and in doctrine, massacre them. We do all this in the name of the Law, a totalising law, a law that protects a sovereign state as if it were entitled to the privacy of a human being.
Spirit: We do all that?
Flink: We do it authoritatively as if the legal discourse binds us.
Spirit: Indeed, now that I think of it. In the name of the sovereign state, we killed 80 million of our own between 1900 and 1990 in circumstances where officials claimed the authority of law. Even Stalin 'executed' half of his alleged fifteen to thirty million under the colour of legal authority.
Flink: Then, something has to be done.
Spirit: We officials must actually believe in spirits.
Spirit: Why?
Flink: Precisely because the authorising origin of binding laws is inaccessible through our official written language, at least as we define and understand that language. We have to envision or picture the origin. And the closest that we can reach the inaccessible origin is an imagined bodiless spirit.
Spirit: I'm starting to feel guilty, Flink.
Flink: Why?

Spirit: Well, it could be a 'left-over' from my Kantian up-bringing, I admit, but I'm worried I have led you astray from the Crown immunity question. By the way, did you know that Eichmann actually cited Kant in his trial for his 'moral' grounds for over-ruling Himmler's order to discontinue the gas chambers?

Flink: What are we going to call our new form of legal reasoning?

Spirit: Hmmm. I have it!!! Let's call it FLINKING!!!! After all, we need an original sign, undifferentiated from any other familiar sign in our official language, to signify intuitive feeling and thinking combined.

Flink: Oh no. We can't call it Flinking. Then, we'd just be like all the old-fashioned lawyers: we'd be labelling a thought, taking possession of it, calling it ours and thereby becoming its coloniser. I bet I could even register the whole thing under copyright law and hire a gang of lawyers to protect my right to flink in a court of law.

Spirit: My gods. You're right. But what else can we call this quest? Let's just call it flinking and not tell anyone else about the experience that led to the labelling. Then lawyers could cite it in their arguments, play games with it, feel that they were bound by it, call it law, and feel relieved that they had fulfilled their role.

Flink: On the other hand, if we ever brought experiential meanings into the light by writing about them, then it would be for the readers to question the boundaries of our archetypical structure, our *praejudicia* of our collective consciousness – yours and mine – in order to reach a practical judgement.

Spirit: So we're agreed. Flinking shall be its name. We're freed from the chains of the past language if we flink!!!

Flink: Just a minute. All we have done is to posit a new name for something that may well have existed in the past under an old name. Do you really believe that that new name is going to bring on a cultural revolution in the legal fraternity????

Spirit: You're right, the last thing we desire is a closure that comes when we name an object.

Flink: Stop! I just can't go on. You've pushed me too far, to the brink of madness.

Spirit: But we are almost there.

Flink: Permit me to re-phrase the question, then. How are we going to gain justice?

Spirit: By continual flinking. Only by continually flinking can we ever become self-conscious of our collective boundaries of our archetypical images. How else do you think we spirits of the law can claim to be a part of a university?

Flink: How can our students use flinking to get their B's?
Spirit: And how can we use flinking to get us published in the big time analytic law journals?
Flink: 'Usefulness' is a tool which got us to a nuclear abyss with half the world starving and with 80 million killed within sovereign states in the last century, all in the name of the authority of the sovereign state.
Spirit: All my gods.
Flink: All my images!!!
Spirit: And is there not even a 'law beyond the law' where my fellow angels can fly around with messages from Hercules to Hermes to the juridical 'princes' of our empire? Is there not a juridical paradise at the authorising origin of legal reasoning where all rational contradictions have been ironed out into one grand cohesive narrative?
Flink: A narrative structure still assumes an outside – the experiential preferences or intuitions and *praejudicia* – and an inside (moral/political arguments).
Flink: You're right, Spirit, there has to be more than magic ideas and names to encourage us to flink. The ideas may change our legal consciousness, but why would a lawyer ever want to change her consciousness?
Spirit: I flink I know.
Flink: Again, legal language produces a second level of harm, one sometimes more painful perhaps than the first, as in our cases of the call of a loan or a sexual assault. I've already talked about my own silence of suffering today. What could be more painful than to have a voice to which no one responds except in their untranslatable language?
Spirit: And did the university lawyer play a role here?
Flink: He didn't even show up.
Spirit: Shameful. So analysed norms become more and more like disjointed waves in a dream. We intellectualise *about* bodily pain and as we do, our analytic categories become distant from the pain itself at the same time that they enclose the pain.
Flink: And what legal analysis forgets – and forget it must so long as we lawyers feel constrained to deeply believe in the collective archetypes that we ourselves construct – is the suffering of experiential bodies.
Spirit: We reason *after* the bodily suffering and, as a consequence of our superimposition of our discourse upon the language of the sufferer, we produce another level of suffering. Suffering alone, not abstract analysable concepts of the mind, binds us to a former time represented by the infamous picture of Eli Weisel – naked, starved, waiting in the live coffin for his turn.

Flink: Suffering of the body alone is the social engine of critique.
Spirit: Are you discarding Aristotle's forms of justice, Hobbes' social contract, Hume's utility, Kant's categorical imperative, Rawls' original position and even Dworkin's rights as trump? You mean, do you, that all these grand theories of law cannot bring us any closer to the unconcealment of pain and suffering?
Flink: These theories are just that: theories, concepts, abstractions. The theories reinforce the forgetting of the act of forgetting of the bodily suffering.
Spirit: Pain and suffering are unencumbered by abstraction. Suffering emanates from the experiential body. Because it is unencumbered with universals and abstractions, suffering is a more realistic engine to critique our social inter-relations with each other. Suffering alone – not some notion of an 'ought' – is the engine of social critique.
Flink: So that is why the trial against Flink harms everyone concerned even though few know that it is taking place.
Spirit: Well, what role has the modern law school played in all this?
Flink: I must admit that it is true that we did succeed in inculcating a monologic language. The more that we could brag that we had been in 'practice', the more respect our students accorded us and the more funds we attracted from alumni.
Spirit: Did you help to inculcate the blind spot in legal reasoning?
Flink: Oh yes. But it certainly helped that most students back in the 70's and 80's were male jocks, red wing fans, anti-intellectual, and pictured women as Christmas trees. And it sure helped that they identified with the universals of our language.
Spirit: Then, if we flink, may we rightly call our judgements authoritative?
Flink: No, authoritativeness reinforces the image of the sovereign state as the author of the monologic language.
Spirit: Then, whose flinking counts?
Flink: Huh?
Spirit: Well, let us defer to flinking when it has flowor-ity. One possesses flowor-ity if one unconceals the experiential body inside legal discourse. Anyways, the daffodils have begun to sprout. It's spring. No one else has to know why we have attributed flowority to flinkers. After all, many lawyers of the modern state, if asked, would not be able to explain how the 'balancing of values test' of equal protection evolved from the utilitarian archetype. Anyways, flinking leads to a full blooming of legal understanding.
Flink: Are there special officials who represent flowor-ity? Is it perceptible? Objective? Practical? Where does it lead us?

Spirit: We really can't say where flinking will lead us because we are so overwhelmed with the positivist and formalist rhetoric of valid objectives, the balancing of values, the means tests, the proportionality of the means *vis-a-vis* the objectives, the rationality tests, the supremacy of the legislature, and all the rest.
Flink: Can we have no blueprint of justice?
Spirit: If we had a blueprint, then we would be doing the common thing of violently superimposing an 'ought' upon others in the name of some assumed Good.
Flink: Ha. And what's more, we'd be out of a job.
Spirit: Ha Ha. This is quite a joke. That is precisely how we keep our jobs – by thinking like everyone else, protecting our own discourse, establishing a pro-fession of it, and then enforcing its doctrines under the claim of authority.
Flink [anxious]: No more struggle, Spirit!!
Spirit: No. There can never be an end to struggle.
Flink: Right. The analytic units of a structure neither represent the structure as a whole nor finalise legal reasoning. We analyse the units more and more rigorously as if the structure existed. Despite the optical illusion that the units exists, analytic reasoning is the most impractical subject imaginable because it must have faith that something – its authorising origin – exists exterior to the structure all the while that the analytic method denies such a very possibility.
Spirit [excited]: So the *analysanda* and the structure – the matter of our livelihood – are imagined! But what finalises legal analysis? My gods! We spirits finalise analytic reasoning!
Spirit [inquisitive]: How so?
Flink: Only analysable units inside the structure are considered legally existent. We spirits are not analysable. Only writing can be analysed according to the tradition of analytical jurisprudence. We spirits dwell exterior to the structure.
Spirit: And yet, analytic reasoning needs finality in order for the units to be binding. The legal analytic reasoning must thereby postulate some object radically other to the analysable units. Such a radically different object is imperceptible and inaccessible through the lawyer's written language. The authorising origin of humanly posited laws is invisible. We spirits lie at the end of analytic reasoning! Serious analytic lawyers and jurisprudes paradoxically depend upon us invisible spirits for the authority of their laws!! The King is dead. Only we invisible spirits can save the king! And, even then, only in the imagination of legal officials and theorists!!!
Flink [the supreme moment of excitement]:

Finkers of the world unite!
And when all we lawyers stare
as if the Law were out there
beyond our vision of an end,
As if we were trapped in a prison
where we need not dare envision,
and where legal reasoning adds seasoning
to its reality divided into sissions.

We have nothing to lose but our chains
of names
of monologic games
and of rituals,
and unwritten gesturals
whose existence we deny,
and of experiential meanings we demean
in praise of the clean.

Spirit: Flinkers of the world unite!

We have nothing to lose but our chains.
We lawyers,
masked and gowned,
haunted by the spirit
of some nameless ground
as if our reasoning were a game
that our Fathers had found.

Flink: Flinkers of the world unite,

We have nothing to lose but our chains,
All our gods!
All our images!
Nothing's left.
Everything's left.
Let's dialogue. It's free.
Perhaps there is even some radical other in thee.

Lawyer for the student: And so Professor Flink, allow me to ask one last time. If you fail to reply, I shall be in the Divisional Court tomorrow morning to have you cited for contempt of court! Did you or did you not teach 'Crown immunity' in your course as represented in the Faculty Calendar?

[Flink slowly rises from his chair. Tries to walk to the end of the room opposite the judges. Stumbling, his body tilts to the left; his weight shifts

to his left knee. Body shaking as if in a seizure. With right fist clenched, Flink's right arm uplifts to the sky. First, the plaintiff's lawyers and then Flink's lawyers, one by one, rise from their chairs with their arms half-lifted and with their faces manifesting complete surprise. Then the judges rise from their comfortable cushioned chairs: their arms half cocked, their hands open-faced and their faces in total incomprehension.]

Flink: And so it may well come to pass,

that a particular other lies hidden in thee,
An other who causes us to flee
from the *analysanda*
of a reasoning
whose structure
and sign-posts
command all of us to pee

And legal structures
Now don't forget,
they don't march in the streets,
nor do their founding fathers
begin our authority
as if we lived alone in a sorority
where time is measured by a clock
and space by a jock.

Ours is a flowor-ity, you see,
whose origin
we know not from whence it came,
whose blueprint,
we know not where it goes
nor cause of violence to impose
nor progress to bring us shame
And then all in the founder's name.

We're all together now
we shall overcome
all conquering of the other
who ain't a mere sum
nor exchangeable for a mere fee
In dialogue,
we shall be
with thee.

With a mind,
without design
whose sole desire
to unconceal our pre-vision
of the other
as a discursive partner
whose role it is not to smother
As if a lesion.

With a body,
whose *eros* aims to acquire a lost memory
of our shared prejudgements
as if an authentic family.
And with a spirit,
who never draws our talk to a close
and who brings life into our catter and datter
Whose rules, they lack matter.

That is our calling, I say
A struggle
A climb,
Beware of falling,
Hand in hand
we're all together now,
thee with me
and me with thee.

[Flink collapses to the ground. The lights burn out.]

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