



## **Reading The Law Made Strange: A Theological Jurisprudence of Popular Culture**

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# **Reading The Law Made Strange**

## **A Theological Jurisprudence of Popular Culture**

by

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## Abstract

This thesis elaborates and performs a form of cultural legal studies that examines the overlap between legal theory, theology and popular culture. In doing so it makes use of, and mobilises, the concept of estrangement or ‘making’ strange put forward by Victor Shklovsky and the Russian Formalists (amongst others). It does this at two levels: first, by examining the genres of speculative fiction as genres of estrangement that ‘make strange’ their representations of law, legality and justice; and second, by proposing a mode and methodology of cultural legal reading as one that itself ‘makes strange’, rendering the texts under analysis otherwise. As such, it sees in the stories told within the genres of speculative fiction not simply flights of fancy or postulates of pure imagination with no relation or reference to reality. Rather, they produce a meditation *on* and mediation *of* the world itself—one that opens us to see the world both in its createdness and contingency, as storied and imbued with meaning. It is for this reason that I turn to speculative fiction in relation to a mode of the cultural legal. Rather than focusing on the direct representations of law, legal institutions and legal actors within popular culture, the engagement of speculative fiction provides a way to understand and re-think the stories of and about law themselves. In the analysis of motifs of law and legality, of justice, authority and legitimacy that are ‘made strange’ by their situation in worlds imagined differently, we find the potential to think and see them otherwise, not in the sense of simply a utopian (or dystopian) looking forward through the potential of the imagination, but an understanding of the imagination’s setting free of these concepts enabling a different reflection and understanding of them.

In turning to the stories told by speculative fiction—of superheroes, science fiction, mythic quests, fantastic stories and fairy tales—we find that they reveal and render visible a theo-legality or legal theology. That is, in drawing upon the way the stories of speculative fiction engage and encompass the theological aspects of law and our legal imaginary, this thesis constructs and propounds a

*theological jurisprudence* of popular culture. Such a theological jurisprudence draws on the way the concepts of law, legality and justice are not only represented but ‘made strange’, and explored otherwise in the stories of speculative fiction. As such, it both renders visible and obfuscates the fundamental distinctions of legal modernity: between theology and politics, religion and law, church and state. In doing so, and following the turn to theology in critical theory, political science and jurisprudence, it uncovers, identifies and critiques the latent theologies of modern law.

This form of cultural legal studies as ‘making strange’ is performed via five case studies or ‘readings’, each focusing on a particular film or series of films. Individually these readings explore particular themes of law (justice, the exception, law’s violence, sovereignty, law’s universality) and theology (Manichaeism, mystical religions, Christ-figures, compassionate acts, visions of divine realms). Together, however, these readings mark a course from antagonism to reconciliation—from law to love—via exploring three modalities of popular culture’s myth (pagan, Christological and secular). It begins by analysing certain modes of legality within popular culture’s basically pagan myths of Good and Evil: first in the superhero genre as represented by M. Night Shyamalan’s *Unbreakable* identifying both the co-dependency of Good and Evil and encompassing law’s focus on transgression, crime and criminality in the ordinary course; and second the fundamental unity of Good and Evil within George Lucas’s *Star Wars* trilogies identifying the ‘legal’ space of indistinction in the ‘state of exception’. From there, an essentially Christian challenge to this pagan mythos is invoked. This occurs initially in a reading of Christopher Nolan’s *The Dark Knight* that takes it out of the tradition of the ‘hero-myth’ and into the realms of theology. That is, Batman, read as a non-heroic Christ-figure, challenges both the pagan myth of Good and Evil, as well as the inherent violence and arbitrariness of modern secular legality with an alternative compassionate act. This theological reading is then promulgated through a critical challenge to certain modern secular myths embodied first in a universalised law without exception (as represented in Alex Proyas’ *I, Robot*) and second in an absolutised form of secular sovereignty (as represented in George Nolfi’s *The Adjustment*

*Bureau*). Thus, in exploring speculative fiction's estranged accounts of the mythos of modernity and modern law, a possible alternative theological jurisprudence is uncovered and articulated: one based on a love that takes us beyond the law itself.



## **Declaration of Originality**

This work has not previously been submitted for a degree or diploma in any university. To the best of my knowledge and belief, the thesis contains no material previously published or written by another person except where due reference is made in the thesis itself.

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Timothy Douglas Panagiris Peters



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A number of the chapters of this thesis have been published in various forms: Chapter 2 was published as ‘Comic Book Mythology: Shyamalan’s *Unbreakable* and the Grounding of Good in Evil’ (2012) 16 *Law Text Culture* 243; Chapter 3 was published as “‘The Force’ as Law: Mythology, Ideology and Order in George Lucas’s *Star Wars*” (2012) 36 *Australian Feminist Law Journal* 125; Chapter 5 was

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# Chapter 1

## Introduction

### 1. By Way of Introduction: Law, Theology and Popular Culture

In the 2013 re-boot of the Superman film franchise, *Man of Steel*, the Kryptonian General Zod threatens the destruction of Earth if humanity does not turn Kal-El (Clark Kent/Superman) over to him. With a 24-hour time limit imposed, Kal-El weighs up whether or not he should acquiesce to Zod's request. During this period of contemplation, Kal-El visits a church seeking guidance from the priest who is mopping the floors of the empty church building. The most powerful man on earth seeks the solitude of a small country church and the guidance of a local parish priest before making what is presented as a momentous decision – not only turning himself over to Zod, but revealing to the world that he is an alien with super-strength who has been living amongst them for 33 years. The interaction between the priest and Kal-El makes little reference to God, Christianity and religion, except to note that, in Kal-El's hesitancy to trust the people of Earth with his secret, that sometimes a 'leap of faith' is required first with trust coming later. The dichotomy of this scene, a 'man' of incredible power seeking the advice of a priest who appears somewhat unsure of himself, is amplified, however, by the background images and setting – in particular the stained-glass windows of this little country church. Behind Kal-El, when he is asking for advice, the viewer sees a window depicting Christ praying in the Garden of Gethsemane prior to the crucifixion.<sup>1</sup> The resonances of this scene draw out in exceptional detail elements that have been within the superhero mythos since its origins: that of seeing Superman as a Christological or messianic figure with his coming to earth, sent by his 'heavenly' father (Jor-El), as embodying both *divinity* in terms of super-strength, X-Ray vision and the ability to fly with his very *human* appearances, emotional struggles and desire to fit in,

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<sup>1</sup> Other shots present the viewer with a depiction of Christ and the cross, as well as a cross on the altar behind the priest.

along with his mission to save humanity.<sup>2</sup> *Man of Steel* heightens these references with this scene of contemplation and reflection representing Christ's fervent prayers before giving himself up to be crucified. When Kal-El presents himself to the US Army in the following scene he does so lifted up in the air with arms stretched wide, again referencing Christ crucified.<sup>3</sup> As such, *Man of Steel* situates itself within the Christian tradition and presents the archetypal superhero as a Christological-saviour or messiah, come to save humanity.<sup>4</sup> In doing so, it raises a theological question about trust and faith. However, despite the concerns of humanity and, in particular, the US military, about whether they can trust a super-being whom they cannot contain or control, the question of trust is inverted. For the question, as presented, is not about whether humanity should believe in, trust or have faith in God (or his son), but rather whether humanity can be trusted. What will humanity do with their saviour—receive and welcome or condemn and crucify?

This theological question is counterpoised in the climactic scene of the film where Zod, having lost all hope of gaining control of earth and building a new Krypton to replace the destroyed original, battles it out with Kal-El. Zod (who is now equally matched to Kal-El in every way), enraged by Kal-El's decision to protect humanity rather than see Krypton re-born, threatens to kill a number

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<sup>2</sup> The Christological aspects of the filmic representations of Superman have been central since Richard Donner's *Superman: The Movie* (1978). There Marlo Brando's iconic performance of Jor-El (Kal-El's father) captures these aspects with the following description: "They can be a great people, Kal-El. They wish to be. They only lack the light to show the way. For this reason above all, their capacity for good, I have sent them you, my only son." Bryan Singer further developed these Christological resonances in *Superman Returns* (2006). Amongst a range of other Christological references, Superman responding to an article by Lois Lane, says: "I hear everything. You wrote that the world doesn't need a saviour, but every day I hear people crying out for one." For a discussion of the Christological aspects of the Superman mythos and in particular its filmic incarnations see Schenck (2005) and Barkman (2013).

<sup>3</sup> The other reference of that scene is Plato's cave with the representation of Superman as a figure of the sun who is able to lead humanity out from the shadows and into the light. The film highlights this reference by showing the young Clark Kent reading Plato and the voice-over from Jor-El (played by Russell Crowe) in one of the early trailers for the film noted that Superman would lead humanity out into the light, that he would give them something to strive for and though they would stumble and falter, they would one day join him in the sun. In the scene where Kal-El gives himself up to the army, he has the sun shining behind him identifying that he is one of the people outside Plato's cave that cast the shadows on the wall that we less mortals see. See Plato (2000) Book VII.

<sup>4</sup> As such, bringing a heightened visual reference to comic book writer Grant Morrison's description of Superman as an 'American Christ' and Bryan Singer's description of him as 'the Jesus Christ of Superheroes'. See Morrison (2003) p180 and Barkman (2013) p117 quoting Singer. See also Schenck (2005).

of innocent people caught in the battle as an attempt to spite Kal-El by making him watch them die. In a moment of anguish Kal-El, in contradiction of over 80 years of comic book history, breaks Zod's neck and kills him. Superman, as the traditional archetypal superhero—a figure of the law, justice and the social order—whilst being willing to go beyond the law to ensure justice, traditionally refrains from taking a decision to kill his enemy, preferring to see him or her restrained (whether in jail or elsewhere). This scene, designed specifically to shock, goes in the end to a legal question which sits alongside the theological questions raised earlier: a question of judgment. For the action by Kal-El is presented to the audience as a 'hard decision', one that challenges him to the core, and his scream of anguish after having killed Zod points towards this challenge. Positioned as a supposed 'necessary act' of preventative violence—necessary because of Zod's threat to the innocent victims; supposed because, as with all 'necessary acts', there were other options (such as flying away with Zod in his arms, or taking the fight out of the city)—the film presents Kal-El's decision as an act of judgment and execution combined (Kal-El renders punishment for Zod's 'crimes against humanity'). What does it say that a film that has such strong references to Superman as a Christ-figure presents this figure as engaging in the ultimate act of judgment by executing someone without trial or recourse to the law? In one sense it acknowledges what all superheroes do in taking on a sense of infallibility, in going beyond the law, to render a form of divine justice. Yet, at the same time, this action calls into question the very principle upon which the rule of law is based—that all are subject to it. If Superman is able to take the decision to kill, how does this affect humanity's ability to trust him? Not only is he strong and capable of feats that cannot be contained by military forces, but he is willing to also take the decision of judgment upon himself (a decision he persistently refuses in the comic book tradition).

What the above two scenes of *Man of Steel* highlight is the way in which popular culture gives rise to questions of what could be called a legal theology or a theological jurisprudence. The connection of the Christological-superman figure with an act of death-dealing judgment, brings together a sense of the theological

and the legal within the texts of commercialised pop culture. The aim of this thesis is to draw out and explore such instantiations of popular culture's theo-legality. This is not so much to identify simply an American form of Christianity that embraces the treatment of *Man of Steel* identified above,<sup>5</sup> but rather to identify within the realms of popular culture itself resources for thinking through the theological aspects of law and our legal imaginary. We live in a world of law and legality, not just in the sense of the globalisation of the rule of law and the influence of legalistic thinking into all realms of life,<sup>6</sup> but in the sense of what Robert Cover called in 1983 a *nomos*—a normative universe where we 'constantly create and maintain a world of right and wrong, of lawful and unlawful, of valid and void.'<sup>7</sup> The institutions of law and justice form but a small part of this normative universe and it is only situated within the 'narratives that locate it and give it meaning'<sup>8</sup> that we can understand their role. The forms of narrative that give rise to the *nomos* come from a range of sources and are not limited to the institutions represented by most forms of legal positivism in terms of simply the relationship between the individual and the state. Rather, the nature of legal meaning is determined from a range of sources including religion, nationalism, family and culture (amongst others). Whilst each of these sources of meaning-making hold sway, the various cultural realms from which we draw our meaning and from which we construct the narratives via which we live are broad and diverse and cannot be localised within a particular context.

This thesis argues that the stories told within popular culture—and in particular the forms of speculative fiction so favoured by Hollywood in recent times<sup>9</sup>—both inform our concepts of law, legality and justice but also put those concepts into question, 'making strange' our traditional understanding so that we can see them

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<sup>5</sup> *Man of Steel* had a particular marketing campaign to clergy and churches and there was even an authorised website providing sermon notes comparing Superman to Jesus. See Man of Steel Ministry Resource Site <http://manofsteelresources.com/> (accessed 20 February 2014).

<sup>6</sup> See discussion of the 'culture of legality' and neo-liberalism by Comaroff (2009) pp193-196; see also Comaroff and Comaroff (2006) and Comaroff and Comaroff (2009).

<sup>7</sup> Cover (1983) p4.

<sup>8</sup> Cover (1983) p4.

<sup>9</sup> At the end of 2013 Box Office Mojo's listing of the 50 highest grossing films included 12 science fiction films, 13 fantasy and 8 superhero films. Other films that could be considered within the broad category of speculative fiction would include films from *The Pirates of the Caribbean* and *Twilight* franchises. See Box Office Mojo 'All Time Worldwide Box Office Grosses' <http://www.boxofficemojo.com/alltime/world/> (accessed 20 December 2013).

anew. If our understanding of law and the meaning that is constructed within it is caught up with the narratives we tell about it, then our modern concept of law is captured within what Mark Lilla describes as the fairy-tales of modernity.<sup>10</sup> To describe modernity in relation to fairy-tales seems to be somewhat paradoxical given modernity's significant distaste for myth, superstition and fantasy. Yet, the movements of modernity themselves—including those of modern law—are caught within a narrative mythos. As Peter Fitzpatrick has described it, modernity is mythic—it is the myth of being without myth.<sup>11</sup> In *The Stillborn God* Mark Lilla describes the stories that we tell ourselves about how our world came to be, including terms such as 'modernization, secularization, democratization, the "disenchantment of the world," "history as the story of liberty"' as the 'fairy tales of our time'.<sup>12</sup> He argues that we should not see secularism and liberalism in our modern political situation as inevitable and irrevocable but rather as experimental and fragile—and having an urgent need to be nurtured and maintained. And yet, at the same time, Lilla's description of modernity (and what he describes as the spectre or threat of political theology that haunts it) is premised on a particular story itself. A story that is seen as essential to modernity, but also to modern law—the separation of theology from secular politics, religion from secular law, the church from the state. He describes his work as not a fairy tale but rather as about an 'intellectual rebellion against political theology in the West',<sup>13</sup> premised on this 'great separation' of theology and politics as the foundation of modernity and the modern state. The narratives of modern law are traditionally considered within this story of modernity identifying the 'immanence' of modern law with terms such as objectivity, secularity, rationality and neutrality. Whilst acknowledging the role of religion and theology in its history (in particular the Natural Law theologies of Augustine, Anselm and Aquinas, as well as the precursors of modern western law in canon law), the dominant narratives of modern secular law relegate religion and

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<sup>10</sup> Lilla (2007) p6.

<sup>11</sup> Fitzpatrick (1992) p ix.

<sup>12</sup> Lilla (2007) p6: 'Whether they are recounted in epic mode by those satisfied with the present, or in tragic mode by those nostalgic for Eden, they serve the same function in our intellectual culture that tales of witches and wizards do in our children's imaginations: they make the world legible, they reassure us of its irrevocability, and they relieve us of responsibility for maintaining it.'

<sup>13</sup> Lilla (2007) p6.

theology to the private domain. As such, the narratives of modern secular law operate alongside those of modernity and secularisation, which further seeks to relegate religion to the sidelines, minimising its role in the 'public sphere'. The so-called 'secularisation thesis' thus presupposed the co-development of modernity and secularity, believing that modern development would undermine the need for, and authority of, religion and theology.<sup>14</sup> In recent years, however, the interestingly termed 'return of religion' (a term which assumes that narrative of modernity, believing that religion has been away somewhere—exiled or on vacation) has seen the secularisation thesis come into disrepute and discussions of various forms of what has been described as the 'post-secular'. If the narratives of modern law include a presumption of its secularity, what might a post-secular law look like?

Max Weber's famous description of modernity as a 'disenchantment of the world' meant, for law, the move from primitive forms of law based on faith, magic and divination to modern bureaucratic and rationalistic forms based on universally applied rules and procedures.<sup>15</sup> As such:

The separation of the state and of its various institutions, including law, from religion, and with this the religious neutrality of the state (and the political neutering of religion), has been conceived as not only central to the emergence of this new order, but also necessary for its preservation and for the achievement of the justice that it is supposed to guarantee.<sup>16</sup>

Yet, at the same time, scholars in recent years have identified both the sustained influence of the theological, religious and the sacred on modern 'secular' law. In his extensive history of the theological origins of Western law, Harold Berman notes that 'Western legal science is a secular theology, which often makes no sense because its theological presuppositions are no longer accepted.'<sup>17</sup> He goes on to note that:

...the legal system of all Western countries, and of all non-Western countries that have come under the influence of

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<sup>14</sup> See discussion by Habermas (2008) pp17-18.

<sup>15</sup> See Weber (1978) p882; Freeman (2008) pp839-842.

<sup>16</sup> Sullivan, Yelle and Taussig-Rubbo (2011) p1.

<sup>17</sup> Berman (1983) p165.

Western law, are a secular residue of religious attitudes and assumptions which historically found expression first in the liturgy and rituals and doctrine of the church and thereafter in the institutions and concepts and values of the law. When these historical roots are not understood, many parts of the law appear to lack any underlying source of vitality.<sup>18</sup>

As such, our 'modern' conceptions of law, justice and judgment are drawn from theological underpinnings.<sup>19</sup> As noted above, Peter Fitzpatrick, over twenty years ago, identified that modern law is a form of mythology, sharing 'origins and a sustaining dynamic with the general mythology of modernity.'<sup>20</sup> That is, modern law's premise of being a separate, secular enterprise (in contrast to the religious or mythic 'other') in itself embodies the mythic structures it seeks to reject. In law's claims to be separate and distinct from the pre-modern and mythological realms of law it embodies and enacts myth.<sup>21</sup> The supposed separation of modernity and myth, modern law and its mythic or religious origins, is premised on the structures of mythology and religion themselves.<sup>22</sup> Fitzpatrick's more recent work furthers this connection between theology and law via the

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<sup>18</sup> Berman (1983a), p166. Following Berman, Mohr notes that 'the origin of western law derives from the concordat between the secular and ecclesiastical authorities, built on Christian theology and the precepts and methods of Roman law as it had been codified by the Christian emperor Justinian.' Mohr (2011) p42. Mohr outlines, drawing on Berman and others, both the theological context of the rise of secularism in western Europe and the theological tropes that inform a number of legal principles at the heart of modern secular law including: the separation of church and state, the rule of law and the separation of powers.

<sup>19</sup> Berman (1983) pp171-185. See also Berman (2003).

<sup>20</sup> Fitzpatrick (1992) p x.

<sup>21</sup> Fitzpatrick argues that the 'enduring contradictions' of modern law—it is autonomous and yet socially contingent, it is about stability and order yet changes and is historically responsive—correspond to its mythic dimension. Fitzpatrick (1992), pp x-xi. Fitzpatrick notes 'Modern law, after all, was formed in the very denial of that mythic realm which had so deluded the pre-moderns. My summary response is to agree but then to say that such a denial typifies a renewed and now modern mythology. In this negation of mythic being, there is a denial of that which gives law coherent existence. Negation through law is the negation of law. Yet...it is this negative quality, this vacuity of law, which enables a mythic mediation to be effected between law's contradictory existences and which enables the unity of law to be maintained.' Fitzpatrick (1992) p 1.

<sup>22</sup> Sullivan, Yelle and Taussig-Rubbo note the importance of Fitzpatrick's work (along with Peter Goodrich – see Goodrich (1995)) in terms of identifying 'law's dependence on a mythological narrative of separation from religion, a narrative that parallels religious modes of thought.' They go on to point out that 'the bare question of "what constitutes religion" in the secular state necessarily involves the law in a process of theologizing, demonstrating the "impossibility of religious freedom" and of a complete separation between law and religion.' Sullivan, Yelle and Taussig-Rubbo (2011) p6.

exploration of a number of 'telling instances' of 'legal theology' including Vitoria, Hobbes and Nietzsche.<sup>23</sup>

Umphrey, Sarat and Douglas, in their introduction to the edited collection *Law and the Sacred*, identify that whilst 'contemporary law posits a fundamental conceptual divide between sacred and secular, it nevertheless remains true that the assertion of that divide has its own history, one that defines Western modernity itself.'<sup>24</sup> In the context of the United States of America, they identify three areas of interconnectedness between law and the sacred: the invocation of God in relation to founding moments of the state or law; the interpretation of constitutional texts as 'sacred'; and the general assertions of law as a 'civil religion'.<sup>25</sup> Such examples identify that, even if modern law does not necessarily take the place of religion, the religious and the sacred are interrelated and intertwined with our concepts of modern law.<sup>26</sup> Their collection thus aims at challenging:

the meaning and stability of the fundamental divide between sacred and secular that constitutes what we call modernity. Law, thought to be one of the exemplary domains of secularism, instead emerges as a signal location in which the sacred has resided and continues to reside alongside and as a fundamental part of the secular.<sup>27</sup>

The perception of law as a secular enterprise is bound to broader developments of modern law and modernity more generally. Sullivan, Yelle and Taussig-Rubbo note that despite the presumption of the distinction and separation of law and religion that 'law serves a social and cultural role analogous to that served by

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<sup>23</sup> Fitzpatrick (2009). See also Fitzpatrick (2014).

<sup>24</sup> Umphrey, Sarat and Douglas (2007) p1.

<sup>25</sup> Umphrey, Sarat and Douglas (2007) pp10-15.

<sup>26</sup>As such, they note that 'In a country notable for both its religiosity and its religious pluralism, the idea of separating Church and State has had significant symbolic and practical effects. Still, in shifting the conceptual terrain from sacrality to religion, secular democracies appear to wish both to deny the relevance of the sacred to the project of law and to mask the ways in which sacrality remains integral to it. "Religion," a term that denominates a sphere of activities set apart from law, becomes the repository of the sacred, and law is the repository of the profane and a marker of the secular. Yet if we insist upon the distinction between religion and sacrality, we can see more clearly the ways in which, by virtue of masking that every distinction, modern law's relation to the sacred remains deeply ambivalent and that, as such, the sacred lies at the very heart of law.' Umphrey, Sarat and Douglas (2007) p15.

<sup>27</sup> Umphrey, Sarat and Douglas (2007) p21.

religion.’<sup>28</sup> This is the basis for much work on law and religion.<sup>29</sup> Quoting David Kennedy, they identify that the

gesture of separation between religion and law echoes, ironically, a fundamental concern of religion to distinguish between the “sacred and the profane”, suggesting the closeness between sacred and secular modes of thought precisely at the point at which they are believed to be most distinct.<sup>30</sup>

That is, law itself encompasses modes of the religious. Despite the persistence of ritual in contemporary legal institutions, modern law is also seen as a product of an effort of de-ritualisation: the modern emphasis is on substantive law and legal realism over formalism and a disparaging of ancient modes of law as irrational or ‘magical thinking’.<sup>31</sup> Yet, what the work referred to above, as well as that of many others,<sup>32</sup> has identified is that the supposed separation of law and religion is fraught with problems and modern law itself remains caught within the sacred, religious and theological. As such, the secularity of modern law is called into question.<sup>33</sup>

Such an insight resonates with the recent resurgence of interest in the concepts of political theology. The ‘return of religion’ and the demise of the secularisation thesis sees a direct challenge to secular modernity in the forms of religious political theologies: that is the rise of theological or religious claims to involvement, influence and even dominance in politics and government—the

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<sup>28</sup> Sullivan, Yelle and Taussig-Rubbo (2011) p3 They identify that ‘Law may constitute, at once, a cosmology, an anthropology, a technique of textual interpretation, a regime of images or of representation, and even a soteriology—that is, a method of justification or salvation.’

<sup>29</sup> See, for a range of examples, Harris-Abbot (1990), Marty (2005), Alexander (2005), Neoh (2013a), Noeh (2013b), the discussion of Law and Religion in Barzilai (2007), as well as the work of Berman in general referred to above.

<sup>30</sup> Sullivan, Yelle and Taussig-Rubbo (2011) p3; Kennedy (1999).

<sup>31</sup> Max Weber’s tracing of secularisation to developments in Western Christianity during and after the Protestant Revolution famously identified society as becoming ‘disenchanted’ in the sense of being ‘liberated from magic and personal charisma, as well as ritual formalism.’ Sullivan, Yelle and Taussig-Rubbo (2011) p5. See Weber (1958). As Sullivan, Yelle and Taussig-Rubbo note ‘Despite numerous challenges, Weber’s account has been reinforced by several recent works on the Christian roots of secularization.’ Pp5-6. See Taylor (2007); Gauchet (1999); Anidjar (2006). Sullivan, Yelle and Taussig-Rubbo also note that ‘...the very notion of disenchantment echoes earlier theological accounts according to which the Crucifixion abolished Jewish sacrifice and silenced the pagan oracles. The dependence of Weber’s sociology on such theological tropes illustrates the difficulty of disentangling the secular from the religious’ p6.

<sup>32</sup> See, for example, the collection by Mohr and Nardisyah (2011) and, in particular the chapters by Mohr (2011) and Sharp (2011). See also Babie (2007) and Calo (2013).

<sup>33</sup> See Mohr (2011).

theocratic approaches of ‘public religions’, to use Jose Casanova’s term.<sup>34</sup> Yet, such a view of political theology still retains the inherent modern sense of separation: the division between theology or theocracy on one side and secular democracy on the other. An alternative form of political theology, which generally traces itself in recent times (in some form or another) to Carl Schmitt’s proclamation that ‘all significant concepts of the modern theory of the state are secularised theological concepts’<sup>35</sup>, sees political theology not so much as a separate enterprise to modern secular politics and law, but rather as the only way to understand modern politics itself.<sup>36</sup> That is, theology is the means for understanding the political. Following Schmitt’s insight, Paul Kahn argues that whilst liberal political theory provides mechanisms for understanding the rule of law, political *theology* is needed to understand the violence that can be committed by states (including liberal democratic ones), and the state’s connection and need for the concept of sacrifice.<sup>37</sup> Why? Because sacrifice, and the violence it entails, is a profoundly theological concept—and praxis. One that, in the context of national sovereignty, cannot help but be politicised: hence, political theology. Giorgio Agamben draws on Schmitt and Walter Benjamin, amongst others, to develop his ‘profane’ political theology and re-reading of contemporary biopolitics as the way to understand our modern political predicament.<sup>38</sup> Tracing its way through Hobbes, Rousseau and a legion of others, Agamben sees modernity as encompassing a theology which he seeks to ‘out’ and ‘profane.’<sup>39</sup> More broadly, critical theorists and philosophers have engaged in a so-called theological turn or ‘return’ to the writings of Saint Paul. Much of this was inspired by Jacob Taubes’ *The Political Theology of Paul*, where he elaborates

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<sup>34</sup> Casanova (1994). See also de Vries and Sullivan (2006), Kirsch and Turner (2009) and Benhabib (2010) for a variety of approaches to the interactions of law and religion in terms of political theologies.

<sup>35</sup> Schmitt (2005) p35.

<sup>36</sup> See, for example, Kahn (2011), Crockett (2006), de Vries and Sullivan (2006) amongst others.

<sup>37</sup> Kahn (2011) pp7-8 and 23-24

<sup>38</sup> See Agamben (1998); Agamben (2005a) and Agamben (2011). For an excellent short summary of Agamben’s *Homo Sacer* project including its latest instantiations, see Bikundo (2013).

<sup>39</sup> As Agamben states: ‘Modernity, removing God from the world, has not only failed to leave theology behind, but in some ways has done nothing other than to lead the project of the providential *oikonomia* to completion.’ Agamben (2011) p287. Agamben also identifies that secularisation itself is not a concept but rather a ‘signature’ that ‘operates in the conceptual system of modernity...that refers it back to theology.’ Agamben (2011) p4.

a politicised reading of Paul's letters.<sup>40</sup> Taubes refers directly to Schmitt and, despite being at the opposite end of the political spectrum, identifies similarities in their concerns and perspectives.<sup>41</sup> Following Taubes' lead, a number of scholars have embarked on this return to Paul, most famously Alain Badiou in his work *Saint Paul: The Foundations of Universalism*.<sup>42</sup> Badiou takes up the universal aspect of Paul's claim and situates it in relation to his philosophy of truth and 'the event'.<sup>43</sup> As such, he sees Paul as a militant and revolutionary subject of a universal truth, more than an institutionalising establisher of the church.<sup>44</sup> Slavoj Žižek, both in his own work constructing a materialist theology, as well as in his reading of Badiou, also takes up Christianity in general (at least as read through Hegel and Lacan) and the writings of St Paul in particular, as part of the fundamental elements of the Western tradition that need to be reclaimed, resituated and 'fought for', even in their process of being overcome.<sup>45</sup>

In this sense, despite the presumed separation of theology and the secular, and, more specifically religion and law, theology has returned as a discourse *du jour*, at least so far as it can be used for an increased understanding of the immanent working of the state, politics and law. The theological movement or sensibility operating under the moniker 'Radical Orthodoxy' has identified such resources within theology itself, and provides a challenge to the variety of modern and post-modern presuppositions of the division between theology and the secular.<sup>46</sup>

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<sup>40</sup> Taubes (2004). For discussions and encounters of this return to the writings of Paul see Caputo and Alcock (2009), Harink (2010), Milbank, Žižek and Davis (2010). See also Jennings (2005) on Derrida and Paul as well as Agamben's commentary on the Letter to the Romans: Agamben (2005b).

<sup>41</sup> Taubes (2004) pp97-105

<sup>42</sup> Badiou (2003).

<sup>43</sup> Badiou (2003).

<sup>44</sup> For a fuller elaborations of his philosophy see Badiou (1999), Badiou (2005), Badiou (2009) and Badiou (2011).

<sup>45</sup> See Žižek (2000); Žižek(2003); Žižek (2005a); Žižek (2006) chapter 2; Žižek (2009a); Žižek (2009b); Žižek (2010b).

<sup>46</sup> Whilst there is some debate about the bounds of Radical Orthodoxy and whether or not it is a movement or simply a particular sensibility within the realms of theology (see Smith (2003), Ward (2003b) and Smith (2004) chapter 2) the term has come into reasonably standard usage since the publication of *Radical Orthodoxy: A New Theology* in 1999 (and the following book series from Routledge). See Milbank, Pickstock and Ward (1999). In recent years a journal has been published bearing the title (*Radical Orthodoxy: Theology, Philosophy, Politics*). Key authors within the movement include John Milbank, Catherine Pickstock, Graham Ward, William T. Cavanaugh and Michael Hanby amongst others. For introductions to Radical Orthodoxy see Smith (2004) and Oliver (2009).

In engaging both the depths of the theological tradition along with modern critical theory and philosophy, Radical Orthodoxy seeks to overcome both the deadlocks of modern theology and the challenges of modern politics, philosophy and social theory. In terms of modern theology, these deadlocks either limit theology to its determination by the secular (such as in liberal theology) or close off the space of revelation and religion from an autonomous secular sphere (such as occurs in both neo-orthodox and fundamentalist theology).<sup>47</sup> Radical Orthodoxy challenges these 'modern' theologies by identifying their problems as being those of modernity itself which seeks to promote an autonomous space of secular reason devoid or detached from theology and revelation. John Milbank, one of the most prominent thinkers in the movement (along with Graham Ward<sup>48</sup> and Catherine Pickstock<sup>49</sup>), proclaimed in 1990 that 'once there was no secular.'<sup>50</sup> The challenge of his work *Theology and Social Theory: Beyond Secular Reason*, and much of the later work within Radical Orthodoxy, is to the presumed autonomous space of secular reason, separate from the domains of theology. Milbank (along with Ward and others) identifies, however, not only the theological origins and precursors of modernity but the way in which modernity itself is theological (though in pagan and heretical forms).<sup>51</sup> That is, the construction of modernity and secular social theory is always defined *against* or in terms of Christian theology and, as such, can only be understood *as* a form of theology.<sup>52</sup>

This thesis takes up this turn to theology, including Radical Orthodoxy's claim that there are resources within the Christian tradition that provide a way of re-thinking modernity and by extension, I argue, modern law. Yet, the context of

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<sup>47</sup> See discussion by Milbank, Žižek and Davis (2010) pp7, 11-13. See also the discussion by Davis (2009) pp5-13.

<sup>48</sup> See Ward (2000); Ward (2003a).

<sup>49</sup> See Pickstock (1998); Milbank and Pickstock (2001)

<sup>50</sup> Milbank (1990) p9.

<sup>51</sup> Milbank (1990) p3. See also Ward (2000) and Ward (2003a). See the discussion by Smith (2004) chapter 4.

<sup>52</sup> Even a cursory reading of Hobbes' *Leviathan*, which Mark Lilla takes to be a founding text of modernity and the inauguration of the 'great separation' between secular and religious in politics, identifies that Hobbes is engaging and responding to theology, as well as constructing his own. See Lilla (2007). Milbank's first chapter of *Theology and Social Theory* is directed at Hobbes (along with Spinoza and Machiavelli). See Milbank (1990) ch1, which is discussed further in Chapter 5 of this thesis.

this thesis identifies that such resources find their illumination and engagement not simply within theoretical texts, political tracts or jurisprudential treatises. Rather, the turn to theology also provides a means of seeing the world as illuminated in a variety of ways, some of which include the many creative acts that go to co-create and constitute our world and which produce a social and legal imaginary and *nomos*. That is, theology is found in art as much as reason, and a theological account and critique of law needs to look to cultural texts as much as legal ones for its elaboration. Such creative works include (though are of course not limited to) the artefacts of popular culture. Popular culture embodies forms of creative acts and creative works of art (albeit commercialised and reified by corporations and capitalism) that contribute to the narratives via which we encounter the world. This thesis sees the narratives of popular culture themselves as providing the space for re-encountering and re-imagining law and its theology anew. It is for this reason that, despite this thesis being about law and popular culture, it turns away from the traditional genres of the 'law film' encompassing representations of lawyers, judges, trials and court scenes and rather engages in constructing a theological jurisprudence of *speculative fiction*—of superheroes, science fiction, mythic quests, fantastic stories and fairy tales. Uncovering and constructing this theological jurisprudence enables an illumination, rethinking and re-encountering of the figures of the natural law tradition in both its orthodox (Augustine, Aquinas) and 'modern' (Thomas Hobbes, Immanuel Kant) strains, as well as figures of what could be called contemporary-critical theory and jurisprudence (Giorgio Agamben, Slavoj Žižek, Alain Badiou). Whilst the premise for analysing texts that represent law in culture is that they provide an insight into the way the law is perceived by the population in general (which, at one level, provides insights into the way law needs to tell its stories in order to be understood and in order for the lawyer to be effective at persuading; and, at another level, provides a resource for how law is conceived itself and thus instituted and implemented in everyday life), the focus on understanding law via its popular representations tends to retain a particular positivised and restrictive understanding of law, as well as an, at times, impoverished understanding of the role of cultural texts (and the mediums of those texts). For, as Maria Aristodemou has pointed out in regards to literature,

the idea of direct representation itself is an illusion and, as such, the concerns of the socio-legal representation of law (and its accuracy or inaccuracy) is not really relevant to, or the purpose of, the cultural texts under consideration.<sup>53</sup>

As such, this thesis seeks to elaborate a new form of cultural legal studies identifying not so much the intersection of, but the overlap between legal theory, theology and speculative fiction. That is, this thesis conducts a form of cultural legal reading of texts that would, as Victor Shklovsky and the Russian Formalists would put it, 'make strange' the law and theology but also, in itself, engages in a mode of 'making strange'.<sup>54</sup> The next section of this introduction will situate the thesis in relation to the emerging field of cultural legal studies. Section 3 will then consider, in particular, the methodological approach to speculative fiction as a way of seeing anew through both genres/techniques of estrangement, as well as the process of cultural legal reading employed in this thesis as a form of 'making strange'. Section 4 will provide an outline of the chapters and the overall narrative and structure of the thesis.

## **2. Cultural Legal Studies: From 'Law and Literature' to Intertextual Jurisprudence**

This thesis is situated within the emerging field of cultural legal studies. Following from the development of the fields of Critical Legal Studies and Law and Literature in the 1970s and 1980s, cultural legal studies seeks to explore the ways in which both law is reflective and constitutive of culture, as well as the way culture infuses, reflects and determines law. Whilst there are a range of approaches to cultural legal studies, the cultural study of law and the interrelationship of law and culture generally,<sup>55</sup> the type of cultural legal studies that interests me here is that which, drawing on the field of law and literature, focuses on the reading and analysis of particular cultural texts as both

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<sup>53</sup> Aristodemou (2000) pp19-25. See also Manderson (2011a) on the 'mimetic fallacy' of law and literature as well as the discussion of Shklovsky in Section 3 below.

<sup>54</sup> See Shklovsky (1965) and Part 3 of this Introduction below.

<sup>55</sup> For a variety of discussions about the cultural studies of law and relationship between law and culture see, for example, Sarat and Kearns (1998a); Kahn (1999); Coombe (2001); Mezey (2001); and Knox and Davies (2013).

representations of law and sites of law's cultural instantiation. The various approaches that constitute these types of cultural legal studies have broadened from the examination of literature to art, film, comic books, television and graffiti, to name but a few.<sup>56</sup> This section will situate the form of cultural legal studies employed in this thesis in relation to the fields of 'law and literature', 'law and film', 'law and popular culture' and the method of close reading of texts described by William MacNeil as 'reading jurisprudentially.'<sup>57</sup>

Whilst, as Desmond Manderson notes, there has always been a relationship between law and culture,<sup>58</sup> the modern 'law and literature' movement is traditionally traced to what Jeanne Gaaker has identified as a humanist renaissance that took place in law and legal studies in the 1970s.<sup>59</sup> The focus was initially on 'what lawyers could learn from literature'.<sup>60</sup> As the field developed, a number of fields of enquiry began to emerge which can broadly be categorised as: law-*in*-literature and law-*as*-literature.<sup>61</sup> The tradition of law-*in*-literature focused on the representations of law within works of fiction: trials, lawyers, judges, law-enforcement, crime and transgression. More broadly such work would also analyse texts that engaged with legal issues as part of the narrative or plot, or that focused on larger questions of social justice.<sup>62</sup> One justification for

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<sup>56</sup> For example, on literature see Binder and Weisberg (2000), Aristodemou (2000), Williams (2002), Reichmann (2009), Heinzelman (2010); on Art, see Douzinas and Nead (1999), Young (2005), Ben-Dor (2011), Scott Bray (2013); on film see Black (1999), Moran (2004), Kamir (2006), Young (2010); on television see Jarvis and Joseph (1998), Villez (2012), Robson and Silbey (2012); on comic books see Bainbridge (2007) and James (2007); on graffiti and street art Young (2013), Crawley (paper on file with author); on theatre see Wilson (2000), Crawley (2010); on music see Manderson (2000) and Parker (2011).

<sup>57</sup> See MacNeil (2007) pp1-2 discussed in detail below.

<sup>58</sup> He states: '[f]or as long as there has been law (and there has always been law), and for as long as there has been culture (and there has always been culture), there has been a relationship between them' Manderson (2013) p12.

<sup>59</sup> Gaakeer (2011) p459. The publication of James Boyd White's *The Legal Imagination* is often referred to as the pivotal moment, though the writings of Benjamin Cardozo is also acknowledged in the US context. See White (1973); Cardozo (1925). See also the discussion of the development of European 'law and literature' scholarship by Olson (2010).

<sup>60</sup> Gaakeer (2011) p459.

<sup>61</sup> Robert Weisberg coined the phrases and analysed the field in the 1980s on the basis of these two categories. See Weisberg (1988). The terms have been widely adopted. See, for example Dunlop (1991); Silbey (2002); Gaakeer (2011). The distinction between the two sub-fields are also used to categories other forms of cultural legal analysis such as film and television. See Silbey (2009) and Robson and Silbey (2012). An additional category of study is sometimes also included which encompasses the legal regulation of the production and distribution of literature: see Gaakeer (2011).

<sup>62</sup> Weisberg (1988) p17; Gaakeer (2011) pp459-460.

such work included the belief that law students and lawyers should read literature to better understand the 'human elements of law that conventional legal texts obscure' and thus literature could be used to educate lawyers.<sup>63</sup> Gaakeer identifies the premise of this scholarship: 'our cultural heritage in the form of literary works holds up a mirror to lawyers as far as socio-legal and political developments and values are concerned, and shows the way in which others look upon law and the legal profession in action.'<sup>64</sup> In this sense, the focus is on the literary imagination – how does literature imagine the law and lawyers and how can lawyers respond to this perception as a reflection of their practice.<sup>65</sup>

Law-*as*-literature, on the other hand, was focused on the similarities of both legal and literary texts, analysing legal writing in terms of style and rhetoric. James Boyd White identified that law should be understood as a language and that the activities of both lawyer and judge (as well as legal academic) were that of writing.<sup>66</sup> As such, a hermeneutic approach could be followed which applied techniques of literary criticism to statutes, judicial opinions and other legal texts to discern their meaning.<sup>67</sup> The premise is that language is the tool of both the lawyer and the author and, as such, methods of determining the author's claim for meaning in literature could readily be applied to law.<sup>68</sup> Key figures of this type of scholarship in different variations included James Boyd White, Peter Goodrich and Ronald Dworkin.<sup>69</sup>

In addition to the development of the field of law and literature as outlined above, the 1980s also gave rise to a number of scholars identified with the Critical Legal Studies movement turning to an analysis of culture and 'everyday

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<sup>63</sup> Weisberg (1988) p17.

<sup>64</sup> Gaakeer (2011), p460

<sup>65</sup> Silbey identifies that the key question is thus 'What do these texts tell us about how law is imagined?' See Silbey (2002) p142.

<sup>66</sup> White (1973); White (1984). Weisberg identifies the premise of this type of scholarship being that 'lawyers who immerse themselves in imaginative literature have refined abilities to identify and apply moral and political values.' See Weisberg (1988) pp36-37.

<sup>67</sup> Gaakeer (2011) p459.

<sup>68</sup> Gaakeer (2011) p459. Silbey describes law-*as*-literature as a practice where 'law is studied as both a language with a particular vocabulary and grammar as well as a composition constituted by various media, shaped by many tools, and composed of diverse formal qualities, the unique combination of which are orientated toward making a specific point...' See Silbey (2002) p142.

<sup>69</sup> White (1973); White (1984); Goodrich (1985); Goodrich (1990); Dworkin (1982).

life' as a means for understanding 'popular legal cultures'.<sup>70</sup> This interest began with a belief, similar to that of law-*in*-literature, that cultural texts—now expanded to include films and television shows—could provide insights into the way law and lawyers were imagined and understood by the population at large.<sup>71</sup> Lawrence Friedman thus sought to examine the ways in which 'legal culture intersects with more general social norms, including those norms reflected in popular culture.'<sup>72</sup> He identified both legal culture as a medium which transforms 'norms of popular culture into legal dress and shape' and the interconnection of legal and popular cultures which reflect or incorporate images of each other which 'help explicate and illuminate their respective contents'.<sup>73</sup> Drawing on anthropologist Clifford Geertz's identification that law is not a bounded set of norms, rules and principles but 'part of a distinctive manner of imagining the real'<sup>74</sup>, this work sought to go a step beyond simply identifying how the cultural text imagined law to consider the way in which the population in general drew their understanding of the law and the legal system not from direct interactions or experiences but from the representations of popular culture itself. As such, sports, education, as well as films and television shows that focused on trials or law firms (such as *L.A. Law*) and other aspects of 'everyday life' were put forward for examination and, more broadly, conceived as a basis for understanding law.<sup>75</sup>

Following this developing interest in law and popular culture throughout the 1990s Austin Sarat, in his presidential address to the US Law and Society Association, proclaimed in 1999 that in addition to 'law on the books' and 'law in action', we now have 'law in the image'.<sup>76</sup> His following address analysed the intertwining of images of fatherhood and the law in *The Sweet Hereafter* (1997) and he identified that 'law lives in images that today saturate our culture and

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<sup>70</sup> See Macaulay (1987), Macaulay (1989) and the special issue of *The Yale Law Journal* (1989) 98(8) on "Popular Legal Cultures" which included the now classic article by Friedman (1989). See also Chase (1986a) and (1986b).

<sup>71</sup> Macaulay (1989).

<sup>72</sup> Friedman (1989) p1579

<sup>73</sup> Friedman (1989) p1579.

<sup>74</sup> Geertz (1983) p173, referred to by Macaulay (1987) and (1989). See also Sarat and Kearns (1998b) p6.

<sup>75</sup> Macauley (1989). On *L.A. Law* see Gillers (1989) and Rosenberg (1989).

<sup>76</sup> Sarat (2000) p9.

that have a power all their own.’<sup>77</sup> Sarat as an editor (with others) as well as author has been influential in facilitating the progressive investigation of both law ‘in the domains of culture’, as well as this conception of law that lives in the image, via a range of publications, book series and journals that explore the representations of law in film and television, as well as broadening the field to include studies of reception (how texts are consumed or ‘received’ by various people or populations in different times and places) and other aspects of cultural studies.<sup>78</sup> Taking up Sarat’s claim that law now lives in the image, Richard Sherwin’s influential work has explored the unique form of interpenetration of popular culture and the law in our recent times. He identifies the inherent storytelling aspects of law and the way in which the development of visual culture and visual storytelling has affected the mechanisms of storytelling employed by lawyers and advocates both in the court (in terms of articulating arguments presented before a jury) and out (with the use of media and public relations campaigns).<sup>79</sup> He analyses both notorious cases and popular film, as ‘barometers’ of social and cultural disenchantment with the legal system, and the potential for popular culture to provide a source of re-enchantment and affirmative myth-making in regards to law.<sup>80</sup> His recent work seeks to explore such forms of myth-making particularly in the context of what he describes as our neo-baroque anxieties about the ability of images and representations to provide meaning and their effect on the law’s desire for fact-based justice: If law lives in the image, what does it mean if we lose faith in the image itself?<sup>81</sup>

The move towards a broader analysis of law and popular culture in the 1990s and 2000s saw the sub-field of ‘law and film’ begin to develop in a number of different directions. On the one hand, this included a number of texts as guides to analysing ‘law films’, potentially for use in courses on law and film or law and

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<sup>77</sup> Sarat (2000), p39.

<sup>78</sup> See Sarat and Kearns (1998a), Sarat and Simon (2003), Sarat, Douglas and Umphrey (2005), Sarat and Schiengold (2008), Sarat (2011). Sarat is also the series editor of Stanford University Press’s “The Cultural Lives of Law” series and the editor of the journal *Law, Culture and the Humanities*. See also the discussion of Sarat, Douglas and Umphrey (2005) in Young (2010) pp3-5 for an identification of some of the limitations of this ‘broadening of the field’.

<sup>79</sup> Sherwin (2000).

<sup>80</sup> Sherwin (2000).

<sup>81</sup> See Sherwin (2011).

popular culture. These often focused on a narrow definition of the 'law film' and restricted their brief generally to representations of lawyers, courts, judges and trial scenes.<sup>82</sup> At the same time there was also some broader analysis that saw the potential for film to be considered as a legal or jurisprudential text itself, providing a form of what Anthony Chase described as 'cinematic jurisprudence'.<sup>83</sup> Considering the potential reflexivity or interpenetration of law and film provided the possibility of analysing a broader range of texts beyond the traditional courtroom film.<sup>84</sup> Jessica Silbey situates the various scholarly approaches to law and film studies by translating the categories of 'law-in-literature' and 'law-as-literature' to 'law-in-film' and 'film-as-law'.<sup>85</sup> As with law-in-literature, the law-in-film approach is 'primarily concerned with the ways in which law and legal processes are represented in film.'<sup>86</sup> For Silbey, this approach sees films as texts which enable us to question 'how law should or should not regulate and order our worlds by critiquing the way it does so in the film.'<sup>87</sup> In contrast, the 'film-as-law' form asks questions not so much about whether law is visual, but about the way that 'films about law constitute a legal culture beyond film.'<sup>88</sup> The focus is thus on the unique qualities of film as a medium 'and asks how its particular ways of world-making shape our expectations of law and justice in our world.'<sup>89</sup> Silbey's concept of film-as-law, then, is quite different to the traditional concepts of law-as-literature. Rather than simply identifying that law is a form of literature and, as such, techniques of literary interpretation can be applied to law's texts, treating film *as* law identifies the way in which the forms of storytelling embodied in film imagine the law and

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<sup>82</sup> See Bergman & Asimow (1996/2006), Machura and Robson (2001), Greenfield, Osborn and Robson (2001/ 2010). See also Jarvis and Joseph (1998) on law and television. Robson (2005) provides an overview of the field, but focuses specifically on a narrow definition of the law film.

<sup>83</sup> See Chase (2002), Denvir (1996).

<sup>84</sup> See in particular Black (1999) as well as Denvir's discussion of the ability to analyse films that were not focused directly on the representation of the legal system itself. Denvir (1996).

<sup>85</sup> See Silbey (2009) and Robson and Silbey (2012)

<sup>86</sup> Silbey (2009) p756.

<sup>87</sup> Silbey (2009) p757.

<sup>88</sup> Silbey (2009) p757.

<sup>89</sup> Silbey (2009) p 757. Silbey cites Buchanan and Johnson as exemplary of this type of scholarship which considers 'how viewers are actively positioned by film to identify with certain points of view; to see some groups of people as trustworthy, dangerous, disgusting, laughable; to experience some kinds of violence as normal; to see some lives as lightly expendable.' Buchanan and Johnson (2009). The work of Carol Clover, which identifies the way that the viewer is positioned as a member of the jury in law films (and many others) and, as such, is called upon to make a jury-like judgment. See Clover (1998a) and (1998b).

construct and institute us into law and legality itself. In this sense, the film-as-law approach resonates with Manderson's understanding of cultural texts as *sites of law*—not simply representations or allegories of law but as forms and processes of establishing a relationship to law and legality.<sup>90</sup> The film-as-law approach for Silbey, then, identifies that:

film and law are compared as epistemological systems, formidable social practices that, when combined, are exceptionally effective in defining what we think we know, what we believe we should expect, and what we dare hope for in a society that promises ordered liberty.<sup>91</sup>

In a similar way, Orit Kamir's descriptions of the similarities between law and film reflect an understanding that recognises the ability of both film and law to construct both a *nomos* and the world:

As socio-cultural formations, both law and film create meaning through storytelling, performance and ritualistic patterning, envisioning and constructing human subjects and social groups, individuals and worlds. Law and film both constitute 'imagined communities', to use Benedict Anderson's term. Each invites participants—viewers, legal professionals, parties to legal proceedings and/or members of the public—to share its vision, logic, rhetoric and values. Law and film both demand adherence to rules and norms in exchange for order, stability, security and significance. Each facilitates—and requires—the concomitant and continuous creation of personal and collective identity, language, memory, history, mythology, social roles and a shared future. It thus stands to reason that an interdisciplinary approach to these two fields would offer lively and intriguing insights.<sup>92</sup>

As identified above, the potential for the study of law and film as modes via which we construct or consider our *nomos*, are significant. However, as Kamir outlines in her analysis of the development of the field of 'law-and-film', whilst there are a variety of methodologies and approaches, there is a lack of specific

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<sup>90</sup> Manderson, (2003) pp 91 and 93.

<sup>91</sup> Silbey (2009). See also Silbey (2007).

<sup>92</sup> Kamir (2005a) p257. She further identifies that 'law and film are two of contemporary society's dominant cultural formations, two prominent vehicles for the chorus through which society narrates and creates itself.'

consideration of methodology.<sup>93</sup> Part of the result of this lack of self-reflectivity is that the field of 'law-and-film' has tended to consider only the socio-legal representations of law, courts and lawyering and, when they do so, tend to focus only on narrative and textuality. As Kamir identifies, whilst narrative and textuality are common to several discourses and disciplines (including literature, film and law), film has its own unique characteristics which include cinematic editing, casting, sound and soundtrack, camera angles, etc. As Kamir notes,

[w]hile a textual or narrative analysis of law-and-film may not bear unique features that distinguish it from the textual or narrative analysis of law-and-literature, it may nevertheless be insightful. A law-and-film analysis that focuses, or at least acknowledges, film's unique cinematic features may be both insightful and "unique".<sup>94</sup>

However, 'most law-and-film work focuses on Films' plots and characters, ignoring editing choices, camera angles and moves, casting choices, sound and other cinematic features'.<sup>95</sup>

The work of Alison Young, drawing on a Deleuzian conceptualisation of the image, takes as its focus specifically the cinematic elements of film. In analysing the *crime-image* in film, she takes as her starting-point:

the cinematic nature of the medium of film, its eloquent harnessing of image, sound, affect, memory, plot, episode, character, story and event. In so doing, I wish to emphasize the *cinematographic* dimension of film, since it is through this dimension that cinema is able to elaborate the affective relation between spectator and crime-image which is crucial for the spectator's' incorporation into the scene of violence and identification in and through the crime-image.<sup>96</sup>

Young identifies that when an analysis of film is limited to either reading the film for its narrative (in the way that one reads a novel, short story or case report) or its relation to empirical sociological reality (i.e. its reflection of reality or of alternative possible realities), then the specific of the 'medium of film, the

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<sup>93</sup> Kamir (2005a) pp257-260. The lack of methodological focus is something that is also analysed by Robson (2005).

<sup>94</sup> Kamir (2005a), p261.

<sup>95</sup> Kamir (2005a) p261. Kamir notes that the work of Clover and Silbey is an exception to this. See also Buchanan and Johnson (2009).

<sup>96</sup> Young (2010) p7.

cinematographic dimension which distinguishes a film from other cultural texts' is lost.<sup>97</sup> Considering filmic texts ranging from *Thelma & Louise* (1991) to *The Matrix* (1999), Young draws on both the cinematic narrative and the relation of the cinematic image to the real world to explore in particular the spectator's 'registration' of the crime-image' – 'that is, how the crime-image depends for its meaning and value upon the address of cinema to the viewer.'<sup>98</sup> Young's analysis thus goes beyond simply an examination of the socio-legal representation of law and crime or considering the fact that depictions of law and crime reflect and inform cultural understandings, to identify the *affect* of the crime-image on the spectator.

In recent years, another form of law and popular culture scholarship that goes beyond the socio-legal analysis of representations of law has emerged. In contrast to Young's work, which focuses on the affect or registration of an image on the viewer, William MacNeil seeks to engage popular cultural texts as a source for a re-reading of traditional texts of jurisprudence. Trained in both literature and legal theory, MacNeil's exploration of popular culture (in the forms of literature, film and television – and at times, all at once) seeks to bring the cultural text into dialogue with theoretical texts of jurisprudence via a method of analysis he entitles 'reading jurisprudentially'.<sup>99</sup> The focus of this analysis is thus not so much on the empirical identifying of how popular culture represents law, but that popular culture has *something to say* about law *and legal theory* itself. To do this he explores texts that, at first glance do not appear to be about the law at all: *Buffy the Vampire Slayer*, *Harry Potter*, *The Lord of the Rings* (both Tolkien's and Jackson's), *Fight Club* and *Minority Report*.<sup>100</sup> Through a series of close readings he then identifies that these fictional and cultural narratives not only

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<sup>97</sup> Young (2010) p4.

<sup>98</sup> Young (2010) p5. Young goes on to note that 'I approach film *as a spectator* and this book concentrates upon the spectatorial relation engendered by film, unique among cultural forms in its deployment of an image which is always more than visual: a medium which is always image, sound, affect, memory, plot, episode, character, story and event.'

<sup>99</sup> See MacNeil (2007) pp1-2, 155-156; MacNeil (2012) pp12-20.

<sup>100</sup> See MacNeil (2002); MacNeil (2003); MacNeil (2004a); MacNeil (2005); MacNeil (2007) chapters 1, 2, 3, 4 and 5. MacNeil does also engage texts that are closer to direct representations of law, in terms of both law school and trial scenes, though these are generally in terms of comedic rather than serious representations: see MacNeil (2007) chapter 6 on the films *The Paper Chase* (1973) and *Legally Blonde* (2001) and chapter 7 on Rob Sitch's comedy *The Castle* (1997) (originally published as MacNeil (2004b)).

inform popular concepts of justice, rights and rules, but rather present, re-think and re-signify jurisprudence itself. As he outlines in *Lex Populi: The Jurisprudence of Popular Culture*, the process of ‘reading jurisprudentially’ develops and constructs a new intertext—a text between texts—out of both cultural texts and jurisprudence.<sup>101</sup> This method of ‘intertextual jurisprudence’ thus privileges the process of reading as much as the texts under consideration and it is this close reading of the texts that enables one to see them anew. For example, in his reading of *The Lord of the Rings*, MacNeil brings texts of popular culture (both Tolkien’s novels<sup>102</sup> and Jackson’s films<sup>103</sup>) into dialogue with texts of jurisprudence and critical theory (Hardt and Negri’s *Empire*<sup>104</sup> and Hans Kelsen’s *The Pure Theory of Law*<sup>105</sup>), identifying a subtextual debate going on between the texts over the role and status of legitimacy and legality.<sup>106</sup> MacNeil’s reading of these texts together thus produces insights that go beyond what can be gained from either of its sources alone. He identifies that the strength of this mediation of law through fiction is that:

it produces not just mutually illuminating readings, but an alternative intertext. That intertext synthesizes, sublates and goes beyond Tolkien and our two theorists, Hardt and Negri, and enables us, in turn, to look at “the legal” and “the literary” otherwise – as a site of discursive difference rather than binary stasis, of theoretical inquiry rather than socio-legal representation.<sup>107</sup>

In his most recent book, *Novel Judgements*, where he provides a more programmatic outline of the process of ‘reading jurisprudentially, MacNeil turns to literature, in particular the novels of the 19<sup>th</sup> Century as the ‘privileged and popular medium of its era.’<sup>108</sup> The focus on the 19<sup>th</sup> Century and texts such as Jane Austen’s *Pride and Prejudice*, Charles Dicken’s *A Tale of Two Cities* and Mary

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<sup>101</sup> MacNeil (2007) p2.

<sup>102</sup> Tolkien (2001a).

<sup>103</sup> *The Lord of the Rings: The Fellowship of the Ring* (2001), *The Lord of the Rings: The Two Towers* (2002), *The Lord of the Rings: Return of the King* (2003).

<sup>104</sup> Hardt and Negri (2000).

<sup>105</sup> Kelsen (1967).

<sup>106</sup> See MacNeil (2004a) and MacNeil (2007) chapter 4.

<sup>107</sup> MacNeil (2004a) p280; See also MacNeil (2007) pp 155-156. He also notes that this form of ‘reading jurisprudentially’ restores ‘topics of jurisprudential import—justice, rights, ethics—to where they belong: not with the economists, not with the sociologists, not even with the philosophers, but rather with the community at large.’ MacNeil (2007) p2.

<sup>108</sup> MacNeil (2012) p9.

Shelley's *Frankenstein* is to explore 'the literary contribution to the historical construction of the nineteenth-century's legal mindset—what might be called, with a nod to Lacan, its "juridical imaginary".'<sup>109</sup> The focus on a particular time period is not a move towards so much the historicity of the texts, but rather an analysis of what MacNeil describes as their deep structure:

For what these deep structural depths reveal, once plumbed, is a different scene of explication, an alternative site of understanding; namely, a subtext of jurisprudence and legal philosophical import that releases rather than fixes meaning.<sup>110</sup>

MacNeil outlines a three-stage process in the construction of a cultural legal intertext. The first stage is to identify 'patterns of what might be called subtextual similitude between literary and legal text: a turn of phrase, a recurrent image or motif, a particular narrative design or shape.'<sup>111</sup> The image of monstrosity, for example, both in Mary Shelley's *Frankenstein* but also Mary Wollstonecraft's *A Vindication of the Rights of Women*.<sup>112</sup> Or, the act of tossing away and destruction of the Ring of Power in *The Lord of the Rings* which in its connection with Empire (the Ring was, after all, made to control and rule) represents the 'dematerialisation' of the law into a normativity that is everywhere, located in a form of *Grundnorm*.<sup>113</sup> This identification of an object of analysis that brings a link between the cultural and legal is then nominated or explicated specifically, identifying 'a legal school or theory, rendering the novelistic in terms of the jurisprudential and vice-versa.'<sup>114</sup> Tolkien's high elves as an embodiment of natural law, for example, or the 'dissolute and cynical barrister' Sydney Carton, in Dickens' *A Tale of Two Cities* as a figure 'identified with the nihilistic drift of critical legal studies and its contempt for law's claims

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<sup>109</sup> MacNeil (2012) p9. He goes on to describe this as 'imaginary' 'because this term suggests an imagination underpinning law's symbolic processes and doctrines, institutions and ideas; that is, a realm of limitless legal fantasy, of free-flowing nomological desire, fixed around, and fixated upon controlling images that condense its central juridical concepts – think of how the blindfolded figure of Iustitia concentrates and conveys the Rule of Law's claims to objectivity, impartiality and neutrality.'

<sup>110</sup> MacNeil (2012) p11.

<sup>111</sup> MacNeil (2012) p14.

<sup>112</sup> MacNeil (2012) p14 and Chapter 4. Shelley (2004); Wollstonecraft (2004); MacNeil (1999).

<sup>113</sup> MacNeil (2004a) and MacNeil (2007) Chapter 4.

<sup>114</sup> MacNeil (2012) p14.

to fairness, neutrality, and justice.’<sup>115</sup> The final aspect of reading jurisprudentially then ‘converts the analogical into the analytical.’ This involves ‘exploring the extent to which these novels’ subtextual analogies reinterpret, indeed resignify jurisprudence, generating a new *intertext* of the legal and the literary that, potentially, *reimagines* the juridical imaginary.’<sup>116</sup> As such, MacNeil is able to take what seems to be certain tropes of the cultural text and via an unpacking in relation to jurisprudence, develop a new way of seeing not only the cultural text, but jurisprudence itself. That is, instead of simply seeing pop culture as a representation of law or an allegory of justice, he identifies the way in which pop culture re-reads law and legal theory itself.

MacNeil’s approach to reading cultural texts is thus unique in two respects. First, it identifies that texts that do not specifically engage in representations of law, the legal system or even traditional representations of crime or justice as their central focus, are still potentially sources of jurisprudential analysis. Texts from speculative genres such as fantasy, science fiction and the gothic have as much, if not more, to say about law and legal theory that is of worth than many of the texts traditionally explored by law and popular culture scholarship. In this sense, a number of scholars have taken up MacNeil’s project engaging in forms of jurisprudential analyses of science fiction,<sup>117</sup> comic books and superheroes,<sup>118</sup> and even role-playing games.<sup>119</sup> The second unique aspect, is the approach to the text itself. MacNeil treats the text not simply as providing an insight into what people think about law but, through the texts modes of storytelling, its tropes, stylistic turns and plot devices, provides the possibility for re-thinking and ‘doing’ jurisprudence itself. Through the construction of an intertextual jurisprudence, the text is elevated to the status of theoretical work that can re-sign, resignify and re-imagine traditional understandings of law and jurisprudence in ways not possible via pop culture or jurisprudence themselves. As such, MacNeil breaks

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<sup>115</sup> MacNeil (2012) p14.

<sup>116</sup> MacNeil (2012) p15.

<sup>117</sup> Tranter (2007a); Tranter and Statham (2007); Tranter (2011); Duncanson (2001); Hutchings (2007); Leslie-McCarthy (2007); Rogers (2007). See also Kapica (2012).

<sup>118</sup> James (2007); Bainbridge (2007); see also Romero and Dahlman (2012).

<sup>119</sup> Beattie (2007).

down certain disciplinary boundaries, as well as ‘modern’ divisions in respect to what can be considered the ‘authoritative texts’ of jurisprudence.

This thesis seeks to take up MacNeil’s method of ‘reading jurisprudentially’ and extend upon it in both the unique aspects identified above. First, it seeks to focus specifically on texts of speculative fiction as sites of estrangement or ‘making strange’ that provide not only representations but sites of law for analysis. Second, it seeks to extend the jurisprudential considerations into the realms of theology or theo-legality in order to uncover and construct a theological jurisprudence of popular culture. The next section will outline these considerations.

### **3. The Law ‘Made Strange’: Taking Speculative Fiction Seriously**

In taking up MacNeil’s explorations of non-legal texts as sources of jurisprudential enquiry, my focus is in particular on the genres of speculative fiction as genres of estrangement or defamiliarisation. My argument is that within these fictional realms—these worlds imagined differently—we can find new spaces to imagine or re-imagine our concepts of law, legality and justice. This section outlines a discussion of estrangement in relation to the genres of speculative fiction followed by an articulation of the methodology of cultural legal reading as a form of ‘making strange’ itself—one that reveals and rethinks a theological account of law.

Speculative fiction as a category of literature, film and television (not to mention comic books, video games and other forms of narrative based popular culture) is traditionally seen as a commercial, rather than literary, classification. Encompassing at least works of science fiction and fantasy, but also extending to ‘utopian and dystopian fiction, magic realism, fantastic voyages, ghost stories, and the Gothic with supernatural elements’<sup>120</sup> speculative fiction’s definitional limits and boundaries are somewhat nebulous to say the least.<sup>121</sup> R. B. Gill, having

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<sup>120</sup> Gill (2013) p72 referring to the listing of categories of stories included on the Internet Speculative Fiction Database.

<sup>121</sup> See discussion in Gill (2013) pp71-72.

noted the limited consideration of speculative fiction as a literary genre, puts forward a working definition of '[s]peculative fiction as works presenting modes of being that contrast with their audiences' understanding of ordinary reality.'<sup>122</sup> That is, '[s]peculative fiction envisions a systematically different world in which not only events are different, but causes operate by logics other than normal ones.'<sup>123</sup> This envisioning of different worlds resonates with Carl Malmgren's analysis of both science fiction and fantasy in relation to their intersections in what he terms 'science fantasy'.<sup>124</sup> Having described fictional universes as consisting of the two major components of world and story, Malmgren identifies that for the genre of science fiction (and the same can be said of fantasy), what is unique is the question of the *world*, rather than the story.<sup>125</sup> What is distinctive about these genres is the way that they situate themselves in worlds '*other than the basic narrative world*', that is the empirical world of the author.<sup>126</sup> In contrast

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<sup>122</sup> Gill (2013) p72-73. Gill notes the discussion by Wolfe of whether speculative fiction is a sub-genre of science fiction or vice-versa. See Wolfe (1986) p122. Gill also notes and then dismisses Robert Heinlein's insistence that speculative fiction must be 'possible to the universe as we know it' as not influential. It is this description of speculative fiction that is taken up by Margaret Atwood. See Heinlein (1989) p 39 (referred to by Gill). This thesis proceeds on the more accepted commercial basis, which sees speculative fiction encompassing a range of fantastic or marvelous genres including science fiction, fantasy and the gothic.

<sup>123</sup> Gill (2013) p73. Gill goes on: 'The key emphasis in this definition is on speculative representation of what would happen had the actual chain of causes or the matrix of reality-conditions been replaced with other conditions...Transcendental intervention, idealistic and artistic creations, dreams, and the fulfillment of impossible wishes and fears come within its scope: all go beyond versions of the standard procedures of this life. Utopias, pastorals, and Gothic tales fit into this definition if they portray worlds notable for their differences from the operations of the ordinary world rather than just fictional events that function within normal parameters. *Dracula* is unreal and easily fits; *Candide* is debatable. Speculative fiction, then, is not defined by contrast with literary realism, if by that term we mean an aspect of the author's treatment of materials (faithful, objective, independent of the observer, low, or squalid). It will be more useful to define it by contrast with the operational rules of the normal world.' Gill (2013) p73.

<sup>124</sup> Malmgren (1988).

<sup>125</sup> Malmgren (1988) p259. Malmgren specifies the world as 'including the total repertoire of possible fictional entities—i.e., the characters, settings and objects...that occupy the fictional domain.' The story, then, 'connects and combines the various entities that make up the world; at an abstract level it consists of a systematic set of rules governing the arrangement and interaction of those entities.' Malmgren (1988) p259.

<sup>126</sup> Malmgren (1988) p260. Darko Suvin describes this as the 'zero-world' of the author: Suvin (1979) p11. There is, of course, a distinction between the worlds envisaged by science fiction and those by fantasy. For Malmgren, the science fiction world 'necessarily contains a "representational discontinuity" ..., a factor of disjunction from the basic narrative word...' This 'representational discontinuity' (the term is Scholes (1975) p62) allows for the author's ability to freely 'speculate, to fabulate, to invent.' However, in science fiction, once this representational discontinuity has been posited then the author must adhere to the 'laws of nature and the laws inherent in the scientific method.' As such, science fiction embeds its novum within a scientific discourse or episteme that naturalises it. The worlds envisioned within the genre of fantasy, by

to 'realistic' or 'naturalistic' fiction which, whilst positing fictional narratives and characters, generally does so within a world that conforms to that of the author and reader, the genres of speculative fiction imagine a world that is fundamentally different to what the author or reader understands as ordinary reality.<sup>127</sup> The differences of such an imagined world may be naturalised via a scientific explanation as logically possible (as in science fiction) or relegated to the imaginable but impossible or unreal (as in fantasy) or explained with references to various modes of the supernatural (as in much Gothic literature).

One of the ways to discuss the differences of the world imagined by these genres is via the concept of estrangement or 'making strange'. Darko Suvin famously defined science fiction as a form of 'cognitive estrangement', situating it as one of a number of 'estranged genres' (including fairy tale, fantasy and myth), which he opposed to naturalistic ones.<sup>128</sup> In utilising the term or concept of estrangement, Suvin makes reference in particular to the work of Victor Shklovsky and Bertolt Brecht. Shklovsky, one of the Russian Formalists, in his essay 'Art as Technique' outlines the concept of *ostranenie* (translated as estrangement, defamiliarisation or simply 'making strange') in relation to a theory of art. For Shklovsky, the purpose of art is to 'impart the sensation of things as they are perceived and not as they are known.'<sup>129</sup> Rather than focusing on creating 'a sensation of the relative ease of the process'<sup>130</sup> of observation or an attempt to

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way of contrast, however, 'are under no obligation to be faithful to a scientific epistemology; in such *worlds*, various forms of magic can govern the relations between human and natural realms, and all sorts of fantastic and impossible actants might flourish, without any scientific motivation or rationale.' As such, the worlds of fantasy, in some way, violate 'the conventional norms of possibility.' Malmgren (1988) pp260-261.

<sup>127</sup> As Malmgren notes, Darko Suvin also locates the uniqueness of the genre of science fiction in its world: science fiction 'should be defined as a fictional tale determined by the hegemonic literary device of a *locus* and/or *dramatis personae* that...are *radically or at least significantly different from the empirical times, places, and characters* of 'mimetic' or 'naturalist' fiction.' Suvin (1979) p viii quoted by Malmgren (1988) note 2.

<sup>128</sup> Suvin (1979) pp3-4, 7-10; See also Spiegel (2008) p371.

<sup>129</sup> Shklovsky (1965) p12. This is in contrast to theories that see the purpose of art as presenting the unknown (the abstract or transcendent) in terms of the known. See Lemon and Reis (1965) p3; Shklovsky (1965) p5 (responding to the work of Alexander Potebnya). The problem, as Shklovsky identifies it, is that focusing on making the complex simple is that the image is presumed to be far clearer, simpler and more familiar than the object which the image seeks to clarify. At the same time, a focus on making the unfamiliar familiar, means that the artist is aiming for an 'economy of mental effort', making art as easy to see and understand as possible. See Shklovsky (1965) p5 referring to Potebnya (1905) pp291 and 317.

<sup>130</sup> Potebnya (1905) pp291 and 317, quoted in Shklovsky (1965) p5.

present the complex in the form of the simple—the unknown in terms of the known—the purpose of art is to ‘de-autonomise’ us from the world. In everyday life we become habituated to the world around us and instead of seeing things clearly or noting things in detail, we become de-sensitised to them and treat them out of habit. Even when we look at the object specifically, we do not really see it for our habituated understanding and perception gets in the way. We see what we think we are going to see, not what is actually there. Art, for Shklovsky, ‘exists that one may recover the sensation of life; it exists to make one feel things, to make the stone *stony*.’<sup>131</sup> Thus, rather than presenting a complex thing via a simple image, art should make objects ‘unfamiliar’ and:

[i]ncrease the difficulty and length of perception because the process of perception is an aesthetic end in itself and must be prolonged. *Art is a way of experiencing the artfulness of an object; the object is not important.*<sup>132</sup>

As such, for Shklovsky ‘Art removes objects from the automatism of perception.’<sup>133</sup> In literature (Shklovsky provides a number of examples from Leo Tolstoy and others), such techniques can include: the avoidance of direct naming so that an event or familiar object is described as new or unfamiliar; the presenting of things from an unusual point of view (such as Tolstoy’s description of private property from the perspective of a horse in “Kholstomer: The Story of a Horse”); and the almost childlike description of something familiar as if it were seen for the first time.<sup>134</sup> Yet, whilst focusing on particular instances and particular authors, Shklovsky notes that ‘defamiliarization is found almost everywhere form is found.’<sup>135</sup> As such,

an image is not a permanent referent for those mutable complexities of life which are revealed through it; its purpose is not to make us perceive meaning, but to create a special perception of the object—it creates a “vision” of the object instead of serving as a means of knowing it.<sup>136</sup>

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<sup>131</sup> Shklovsky (1965) pp11-12.

<sup>132</sup> Shklovsky (1965) p12.

<sup>133</sup> Shklovsky (1965) p13.

<sup>134</sup> Shklovsky (1965) pp13-18. See discussion by Milbank (2007) p36.

<sup>135</sup> Shklovsky (1965) p18.

<sup>136</sup> Shklovsky (1965) p18.

Rather than providing clarity and clear perception of the image, the result is that 'perception is impeded' with a focus on producing a 'slowness of the perception. As a result of this lingering, the object is perceived not in its extension in space, but, so to speak, in its continuity.'<sup>137</sup> The focus is thus not so much on the directness of the image as representation, but on the presentation of the representation itself.

Bertolt Brecht made use of a similar understanding of estrangement in relation to theatre, particularly in the form of the *V-Effekt* or estrangement effect. Brecht defined *Verfremdung* (translated as alienation or estrangement) as follows: 'A Representation which estranges is one which allows us to recognise its subject, but at the same time makes it seem unfamiliar.'<sup>138</sup> Whilst similar to Shklovsky's definition (and there is speculation as to whether Brecht was influenced directly by Shklovsky or not<sup>139</sup>) the focus for Brecht is political and didactical. The practice of the *V-Effekt* in theatre is aimed at blocking empathy and interrupting the audience's perception.<sup>140</sup> Instead of engaging or 'delving' into the play, in Brecht's Epic Theatre, the spectator 'is obstructed from regarding it as "natural"'<sup>141</sup> and the activity occurring on the stage should be rendered visible in itself (not simply in terms of the world it represents). As such, the artifice of the performance (and thus, at the same time politics and the social order) and its constructedness should become clear. The *V-Effekt* should thus 'make an audience aware of sociopolitical processes.'<sup>142</sup> In addition, in seeking to develop a 'theater of the scientific age', Brecht saw similarities between the naïve, objective gaze of the scientist that would see things as estranged in terms of looking at them as if for the first time, and the techniques of estrangement used in theatre. The result of the estrangement techniques for Brecht should be 'the realization that things do not have to be the way they are, that any current state

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<sup>137</sup> Shklovsky (1965) p22.

<sup>138</sup> Brecht (1964) p192 quoted in Suvin (1979) p6 where he changes the translation of 'alienation' to 'estrangement'.

<sup>139</sup> See discussion in Tihanov (2005) pp687-688 and note 42 referred to by Spiegel (2008) note 4.

<sup>140</sup> Spiegel (2008) p370; Brecht (1964) pp190-192.

<sup>141</sup> Spiegel (2008) p370.

<sup>142</sup> Spiegel (2008) p370; cf Jameson (1972) p58 (referred to by Spiegel).

of things is not a natural given but a product of historical processes, which can change and will be changed.’<sup>143</sup>

Suvin’s use of the term estrangement thus draws on both Shklovsky and Brecht’s concepts, but he then takes them in a different direction by applying them to genre as opposed to technique. For Suvin, ‘the approach to the imaginary locality, or localized daydream, practiced by the genre of SF is a supposedly factual one.’<sup>144</sup> In that sense, science fiction’s focus on a ‘factual reporting of fictions’ implies the attitude of *estrangement* and particularly connects to Brecht’s comparison between the look of estrangement in theatre and the detached gaze of the scientist. Suvin thus identifies that ‘the look of estrangement is both cognitive and creative.’<sup>145</sup> As such, he notes that in science fiction, moving away from the concept of estrangement in the ‘realistic’ or ‘naturalistic’ contexts of Brecht and Shklovsky, the ‘attitude of estrangement...has grown into the *formal framework* of the genre.’<sup>146</sup> Suvin’s use of the term estrangement at the level of genre has been criticised as misinterpreting Shklovsky’s and Brecht’s focus on technique.<sup>147</sup> However, given Shklovsky’s approach to art as a means of making the familiar seem unfamiliar so that it can be seen anew, Suvin’s discussion of the genre of science fiction (and other genres of estrangement) does sit within this

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<sup>143</sup> Spiegel (2008) p370; Brecht (1964).

<sup>144</sup> Suvin (1979) pp5-6.

<sup>145</sup> Suvin (1979) p6.

<sup>146</sup> Suvin (1979) p7.

<sup>147</sup> See Spiegel (2008) who outlines a more detailed matrix of analysis in terms of diegetic estrangement, narrative naturalisation and then the techniques of defamiliarisation. Spiegel does note that techniques of defamiliarisation *are* used at times in science fiction but seeks to distinguish these from what he classifies as ‘diegetic estrangement’ – the collision that occurs between two systems of reality when a ‘marvelous element is introduced into a seemingly realistic world.’ He goes on to note that ‘[w]hen Suvin writes about estrangement, he usually does not mean *ostranenie*, but *diegetic estrangement*, the collision of contradicting elements on the level of the story...estrangement does not arise from a formal operation, but from the fact that these ships are *where they cannot be*—a fact that is illustrated realistically.’ Spiegel (2008) p375. Whilst Spiegel’s analysis is useful in terms of distinguishing the different levels of estrangement, to argue that Suvin’s concept does not relate to Shklovsky or Brecht’s seems to miss that the focus on technique for them was in relation to the effect on the viewer/reader/audience. Suvin is identifying that science fiction achieves a similar effect at the level of the fantastic or marvelous story instead of or alongside of the techniques of defamiliarisation that may or may not be used. For another account of Suvin’s reference to estrangement in science fiction, see Mather who outlines three types of estrangement: 1) from a phenomenological perspective in that ‘the fictional world of sf are experienced as different, in varying degrees from a degree-zero world’; 2) the genre’s overall discourse in the conducting of a ‘fictional thought experiment’ which constructs a possible world that provides a new or distanced perspective on the consensual world; and 3) a rhetorical effect created by the use of specific stylistic devices, that is the techniques of defamiliarisation. See Mather (2002) p187.

framework (even though, within the stories themselves, that which appears estranged to the reader is naturalised at the level of the story).<sup>148</sup> Furthermore, Suvin's focus on the 'cognitiveness' of science fiction identifies that the genre is not only

a reflecting *of* but also *on* reality. It implies a creative approach tending toward a dynamic transformation rather than toward a static mirroring of the author's environment. Such typical methodology of SF...is a *critical* one, often satirical, combining a belief in the potentialities of reason with methodological doubt in the most significant cases.<sup>149</sup>

That is, science fiction is aimed at being a reflection *on* reality, despite its engagement and creation of different worlds, novums and characters. The sense of estrangement created by the imagination of a world of advanced technology, space travel, alien life or simply a different engagement with the world, is all aimed at a reflection of and on the present world of the author (and reader). Whilst this can also be articulated about most fiction, the genres of estrangement themselves provide a different entry onto the present world via their imaging of a starkly different one.<sup>150</sup>

Whilst Suvin's focus is on science fiction as a form of cognitive and critical estrangement, the other genres that he describes as estranged (fairy-tales, tragic myth and fantasy) can also be seen to be reflective on the world via levels of estranging thematics. Alison Milbank, in her analysis of the works of GK Chesterton and JRR Tolkien, identifies the manner in which they both draw on concepts and techniques of defamiliarisation and 'making strange' in their speculative fiction. Milbank's argument is that both Chesterton and Tolkien shared a view of art as 'revealing the createdness of the world' and the creative vocation of the artists in remaking it. As such, she situates Chesterton and

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<sup>148</sup> See discussion of this by Spiegel (2008) pp372-374; cf Mather (2002) pp 188-189.

<sup>149</sup> Suvin (1979) p10. On this basis, Suvin identifies the 'kinship of this cognitive critique with the philosophical fundamentals of modern science.'

<sup>150</sup> That is, the mechanism via which science fiction *as* art for estranging the reader is via the telling of marvelous stories which are, in the end, despite their distant or different setting, really about the world of the author and reader. As Suvin identifies, '[t]he aliens—utopians, monsters, or simply differing strangers—are a mirror to man just as the differing country is a mirror for his world. But the mirror is not only a reflecting one, it is also a transforming one, virgin womb and alchemical dynamo: the mirror is a crucible.' Suvin (1979) p5.

Tolkien in the context of their Catholic theology, seeing art itself as mediatory – a ‘theological tool for opening human eyes to see the reality of God and the reality, albeit contingent, of the world beyond itself.’<sup>151</sup> From this:

the theology of the art of invention of stories, fantastic or otherwise, is derived. To tell a story, whether one’s own or a traditional tale, is to mediate the world in its intentionality and narrative character...to tell a story is to affirm that there is meaning to life, and that experience is shaped and has an entelechy.<sup>152</sup>

The focus on the telling of stories, and, in particular marvellous or creative stories is not simply for entertainment—encompassing flights of pure imagination and the construction of utopian or dystopian alternate worlds—but to affirm the independence of the world from our perception and appropriation of it. In this sense Chesterton and Tolkien see fairy-tales as a way of looking at the world as storied and gifted. They enable us to see that ‘the world of objects is not the product of our own mental perceptions but has its own reality.’<sup>153</sup> Referencing Tolkien’s essay on fairy-stories, Milbank notes that ‘Faerie’ for Tolkien ‘is the site where we encounter other beings and the world itself not just as ‘enchanted’ but as ‘other’.’<sup>154</sup> This form of enchantment identifies not so much the complete separateness of things from each other but their interrelatedness and relationality.<sup>155</sup>

Following Tolkien himself, Milbank identifies two forms of fantasy in Chesterton and Tolkien’s speculative fiction. The first is a form of ‘making strange’ or ‘defamiliarisation’ associated with Chesterton’s work, which is similar in form, though not necessarily in purpose, to Shklovsky’s concept of *ostranenie*. For,

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<sup>151</sup> Milbank (2007) p xiv. For Milbank, associating Tolkien with Chesterton reveals that beyond his reputation as a writer of pure fantasy that he is ‘equally concerned with realism and with writing fictions about real things’. Milbank (2007) p xiv. Milbank’s task is to demonstrate that each writer used literary stylistics and writing to engage theological and philosophical ideas. It is not so much a finding of Christian doctrine in the content of their fiction as in the manner in which they write.

<sup>152</sup> Milbank (2007) p11.

<sup>153</sup> Milbank (2007) p12.

<sup>154</sup> Milbank (2007) p12, referring to Tolkien (2001b).

<sup>155</sup> Milbank goes on to note that ‘enchantment is a mode of relationality as well: neither Tolkien nor Chesterton had the nominalist individualism that would see each thing as totally separately named from every other. Instead, the created nature of the world renders it both related to God as its origin yet separate from its Creator by its contingency.’ Milbank (2007) p12.

whereas Shklovsky's defamiliarisation 'privileges the viewer or reader over the object described or pictured', Chesterton's focus is on empowering the object itself and its givenness as part of the world.<sup>156</sup> As Milbank argues, Chesterton's use of techniques of 'making strange' was to

sunder our lazy ownership of perception, so that we lose our apprehension of the phenomenal world in order to find it again: as itself, as something coming to us which is a mystery in its quiddity, its individuality and its difference from ourselves.<sup>157</sup>

Chesterton made use of this type of defamiliarisation frequently in his Father Brown mystery stories where the technique was not so much to show a supernatural answer to the mystery, but rather to re-enchant the world in the uncovering of the logical explanation (which was far more mundane or diurnal than it originally appeared). That is, it is in the seeing of the world anew that we can apprehend its enchantment, not in the form of mystic supernatural occurrence but in terms of the sense of wonder of the world itself in its ordinariness.<sup>158</sup>

The second category of fantasy, which Tolkien saw himself as engaging in (though, as Milbank points out, he did also use techniques of Shklovsky/Chesterton type defamiliarisation as well), was that of 'escape'. Escape, not in the sense of escapism but in the sense of how, in fairy-stories, normal daily objects and materials such as stone, wood and iron 'are made all the more luminous by their setting'.<sup>159</sup> Whilst this focus on escape was similar to Chesterton's 'making strange' it was for a different purpose. Whereas Chesterton never takes the reader completely out of his own world, Tolkien does:

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<sup>156</sup> Milbank (2007) pp36-37.

<sup>157</sup> Milbank (2007), p37. Milbank goes on, quoting Maritain: 'The work that the imagination performs in uniting the 'before' and 'after' of the defamiliarization effect has a creative dimension, akin to that of the artist himself: "It is by the way in which he changes the shape of the universe passing through his mind, in order to make a form apprehended in things shine upon a matter, that the artist impresses his signature upon his work. He recomposes for each, *according as the poetry changes him*, a world more real than the reality offered to the senses".' Milbank (2007) pp37-38; Maritain (1930) pp74-75.

<sup>158</sup> This is not to make a claim one way or another about the sense of the supernatural, but rather Chesterton identifies God and the spiritual in the sense of the repetitiveness of the everyday—the Sun going down each night and coming up each morning. See Chesterton (1908) chapter 4.

<sup>159</sup> Tolkien (2001b) p59 quoted in Milbank (2007) p40.

For the aim of escape combined with a recovery of vision is to undergird Tolkien's imaginary or sub-created fictional universe, and allows him to employ defamiliarization effects throughout his stories and novels for a slightly different function.<sup>160</sup>

Tolkien saw the artistic conception of an alternative world as a process of sub-creation that both reflects elements of the world of the artist but also sets those elements free. Whereas Chesterton's aim is to show the marvellous or transcendent *realism* of objects – making us actually *see* them – Tolkien's aim is to show their independence. Tolkien's belief was that fantasy aims towards the liberation of things to be themselves: 'By being freed into new life, however, they also become *more* than themselves.'<sup>161</sup>

Thus, whereas Suvin identifies science fiction as a mode of cognitive estrangement, which is both a reflection of and on the world, Milbank and Tolkien identify the possibility of estranged genres to show the independence of the world itself. What this identification of the way that the genres of speculative fiction engage in modes of estrangement shows, is that they are not simply flights of fancy, realms of pure imagination with no relation or reference to reality. Rather, they produce a meditation *on* and a mediation *of* the world itself. That is, speculative fiction provides the ability for us to see the world anew via its various modes of estrangement. It is for this reason that I turn to the genres of speculative fiction in relation to a mode of the cultural legal. Rather than focusing on the direct representations of law, the legal institution and legal actors within popular culture, the engagement of speculative fiction itself provides a way to understand and re-think the stories of and about law themselves. As such, in the analysis of motifs of law and legality, of justice, authority and legitimacy that are 'made strange' by their situation in worlds imagined differently, we find the potential to think and see them otherwise, not in the sense of simply a utopian (or dystopian) looking forward through the potential of the imagination, but an understanding that the imagination's setting free of these concepts enables a different reflection and understanding of them.

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<sup>160</sup> Milbank (2007), p40.

<sup>161</sup> Milbank (2007) p51.

At the same time, law itself encompasses a form of envisioning of the world, a sense of what Robert Cover calls law's 'world creation' noting that the practices of law engage in 'the projection of an imagined future upon reality.'<sup>162</sup> In this sense law engages in a speculative activity, it is a 'bridge' in 'normative space', which connects our understanding of the world as it is with our projections of other worlds that might be.<sup>163</sup> Whilst law's implementation or actualisation of such an imagined future encompasses a violence that brings it into force,<sup>164</sup> the frameworks within which law operates and is able to do this are mythic and narrative driven. That is, the narratives that we tell about law itself form the underlying myths (whether such a myth is factual or not), which encompass its legitimacy. The reading of the law 'made strange' through the modern myths told in popular culture thus provides a way to unpack and explore both the mythological and theological structures of law that we cannot always approach directly because we are, as Shklovsky would say, habituated or autonomised to them. In considering the structures of law as they are 'made strange' by speculative fiction, we can not only see them anew (and thus also conceive them otherwise) but we can bring to light, and thus make available for critique, the latent theologies of modern law.<sup>165</sup> The normative aspects of legal analysis and legal interpretation are always about the enforcing of a particular vision of the world on the factual situation in which it engages. Thus, the legal imaginary that informs such a process of enforcement, must be seen as the process of world-building or world-creating and, in a sense, have similarities to the artist's process of creation or sub-creation in the production of art. The mythologies and stories of law themselves are engaged in a mode of speculative re-creating of the world.<sup>166</sup> Yet, the risk of viewing the law in this way is that we see the world as

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<sup>162</sup> Cover (1986) p1604. On law as 'world-creation' see Cover (1983) pp12-19.

<sup>163</sup> Cover (1983) pp9-10.

<sup>164</sup> Note Robert Cover's famous statement that 'Legal interpretation takes place in a field of pain and death.' As such, the interpretation of law is distinguished from the interpretation of literature. Cover (1986) pp1601 and 1607.

<sup>165</sup> As we saw in Section 1 above.

<sup>166</sup> Law engages in a metaphysical envisioning of the world and it is this aspect of law that elicits, at times, the comparison of law and religion. The difference, is that modern law posits itself as an immanent secular envisioning of the world. As we noted in Part 1, however, the positing of law as encompassing a neutral, objective and secular space, autonomous and impervious to the sacred, theological or religious, is problematic. My argument is that the engagement of speculative fiction itself enables a way of unpacking law's theology as much as its mythology—its engagement of

being able to be simply constructed and created through law (a particular modern vision of the task of law itself). The possibility of speculative fiction, however, is that we can see the world as gifted and not simply constructed, created as well as contingent. That is to say, speculative fiction uncovers the *theological* aspects of law in the process of estranging our ordinary conceptions of it. In revealing the world as created and contingent, speculative fiction also reveals the possibility for different theological accounts of the world and of law.<sup>167</sup>

It is for this reason that I seek to explore in the genres of speculative fiction the law 'made strange'. This reference to making strange occurs at a number of levels in the texts under consideration. In the first instance, the texts themselves are all forms of speculative fiction and, as such, present alternative worlds as the location of their stories. Three of the texts are specifically representative of our present world and present times, though with specific differences or fantastic, uncanny or marvellous aspects. M. Night Shyamalan's *Unbreakable* (2000) presents 21<sup>st</sup> century Philadelphia, though it posits the possibility of the fantastic in the notion of a superhero and, as we see at the end of the film, a supervillain. Christopher Nolan's *The Dark Knight* (2008), whilst set in a city of a different name, presents itself as a possibility within modern day New York. George Nolfi's *The Adjustment Bureau* (2011) is also in modern day New York, though with speculations as to a secret supernatural bureaucracy operating behind the scenes to keep everything going according to plan. The two other texts under consideration, George Lucas's *Star Wars* trilogies and Alex Proyas' *I, Robot* (2004), both present different worlds or different forms of our world. *Star Wars* is famously set 'a long time ago, in a galaxy far, far away...', whilst *I, Robot*

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metaphysics and the transcendent as much as the immanent. In this sense, it is through the realms of speculative fiction that we can construct a critique of the speculative theology of law.

<sup>167</sup> For an excellent summary of the turn to imagination in legal theory, see Antaki (2012). There is some affinity between what Antaki describes as the 'nostalgic' turn to imagination, which sees the concept of enchantment as a gift and not a human product, and the exploration of speculative fiction that I am proposing here via the process of 'making strange' as a challenge to the modern. As Antaki notes, 'enchantment, the wonder we share in sharing in the sight of beings, is not the same as delusion. Rather, it is the delusion, one might even say the metaphysics, of modern science, that led and leads to disenchantment.' Antaki (2012) p15.

envisions a futuristic version of Chicago. Thus the *generic* contexts of the films themselves are estranged through the imagining of different worlds.

At the same time, the focus on the law in terms of the cultural legal is 'made strange' within each of these films. That is, the elements, motifs or figures of law are analysed to uncover their legal, jurisprudential and theological content. In relation to the superhero myth (*Unbreakable* and *The Dark Knight*) this is in terms of how these particular figures who have an exceptional relationship to the law are not posited within its normal bounds of operation. In relation to *Star Wars* we can see the mythology of law 'made strange' through the representation of 'the Force'. In *I, Robot*, law and legality are situated within the 'three laws of robotics' and it is through seeing the operations of law in this different aspect that it is 'made strange'. In *The Adjustment Bureau*, the law appears as a form of natural law laid down in 'the plan' of a bureaucratised divinity which reflects and refracts our modern concepts of law and sovereignty. Thus, the considerations of law itself within these speculative fictions, is made strange by their context but also by their modes of consideration (the superhero battle between good and evil, a mystical 'Force', the heroic figure fighting for justice, the laws of robotics, or a bureaucratised divinity). Simply considering these different modes of legality provides a new way of conceiving law. But it is not simply a different conception of law that is produced. Rather, speculative fiction's creative estranging of the law opens up its contingent nature to reveal its theology. This is not so much a focus on the theological content *of* the texts under consideration (content which includes theologies of evil, mystical religions, Christological allusions or visions of an absent God) but that the texts, in themselves, reveal and engage in a process of theological creativity and speculation themselves. The visions of such a legal theology may be distorted in terms of its commercial context but that distortion itself reveals an understanding of the world (no longer claimed as an autonomous secular space devoid of religion) and of law in terms of its theology—its theological jurisprudence.

So the texts themselves are in an estranged form and they present law, if law is present at all, in a way that is made strange by their very context. Yet, the focus

on reading these texts as sites of the cultural legal—and thus the process of constructing a cultural legal intertext—is itself a technique of ‘making strange’. For despite the references to the possibilities of speculative fiction for estranging our world and seeing it anew, the genres of speculative fiction are now highly processed, produced and manufactured in the commercialised environment of Hollywood. As such, how can we ‘take seriously’ these products of such highly ideologised realm itself? Hollywood has colonised and exploited the genres of speculative fiction to the point that it is almost impossible to think of science fiction film without considering *Star Wars*, *E.T.*, *War of the Worlds* (Spielberg’s rather than Wells’) or to think of *Hobbits* and Middle-Earth without thinking of Jackson’s films rather Tolkien’s novels. Despite Jackson’s spectacular translation of Tolkien’s realms of Middle-Earth to the big screen, *The Lord of the Rings* and now *The Hobbit* have become commodified and reified visual products—as much dictated and determined by the laws of intellectual property and copyright as by creative vision.<sup>168</sup> This co-opting of speculative fiction by the globalised capitalism of Hollywood, thus requires a process of analysis that does what is not expected of these texts—that is, to subjugate them to a process of close reading which takes them out of the contexts of their production and consumption and identify the possibilities of these texts through a process of defamiliarisation. ‘Taking speculative fiction seriously’ means that instead of seeing these texts as simply commercial mass-produced artefacts that are circulating in the never-ending run of capitalist exchange (now available for digital download and streaming on demand), we must push the pause button. We must sit, contemplate, ‘read’ and re-read these cultural texts as sites of law and theology—not necessarily as they *are* but as they are thought and imagined *otherwise*. This is a process of pausing, of taking that which we are expected to watch but for a moment and then move on (to the next Marvel superhero film, the next Steven Spielberg science fiction flick or the latest fantasy book-cum-blockbuster film), and drilling down on it to the next level with a close reading. It is this form of close reading of the text that ‘makes strange’ the works of Hollywood, and uncovers, unpacks and sets free the law and legal theory to be

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<sup>168</sup> In relation to *Lord of the Rings* and *The Hobbit* see, for example, Kane (2008); Kane (2013); Kane (2014) and Quinn (2013).

re-thought and re-imagined otherwise and for its theology – good, bad or otherwise – to be revealed and laid bare. In this sense it is, as MacNeil has said, through the plumbing of ‘the depths of deep structure’<sup>169</sup> of the popular culture texts under analysis that we can construct an intertext of popular culture, jurisprudence and theology. That is, a cultural legal *theology*—a theological jurisprudence of popular culture—is uncovered through the process of ‘making strange’ itself. As such, this thesis engages in a reading of popular culture as a site of uncovering the law ‘made strange’ and estranging it, revealing the theology of law and legality and thinking it differently.

#### **4. Outline of Chapters: There and Back Again, A Cultural Legal Tale**

The thesis performs this cultural legal studies as ‘making strange’ via five case studies or ‘readings’ that each focus on a particular film or series of films: M. Night Shayamalan’s *Unbreakable* (2000); George Lucas’s *Star Wars* trilogies (1977, 1980, 1983, 1999, 2002, 2005); Christopher Nolan’s *The Dark Knight Trilogy* (2005, 2008, 2012); Alex Proyas’ *I, Robot* (2004); and George Nolfi’s *The Adjustment Bureau* (2011). Each chapter engages a specific close reading of these films as cultural texts, situating them in relation to the other scholarly and cultural considerations of them but developing unique and original readings of the films drawing on theology, legal theory and critical theory. Whilst each reading stands by itself, there is a narrative and thematic structure that connects them together. What follows provides both an outline of the chapters and a summary of the overall narrative of the thesis.

The trajectory of this thesis maps a particular movement from an inherent antagonism to the possibility of reconciliation: a movement from law to love. It begins by analysing certain modes of legality within popular culture’s basically pagan myths of Good and Evil: first in the superhero genre as represented by *Unbreakable*; and second within Lucas’s space opera *Star Wars*. From there, an essentially Christian challenge to this pagan mythos is invoked. This occurs

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<sup>169</sup> MacNeil (2012) p11. See the discussion in Section 2 above.

initially in a reading of *The Dark Knight* that takes it out of the tradition of the 'hero-myth' and into the realms of theology. That is, Batman, read as a non-heroic Christ-figure, challenges both the pagan myth of Good and Evil, as well as the inherent violence and arbitrariness of modern secular legality. This theological reading is then promulgated through a critical challenge to certain modern secular myths embodied first in a universalised rule of law (as represented in *I, Robot*) and second in an absolutised form of secular sovereignty (as represented in *The Adjustment Bureau*). Thus, in exploring speculative fiction's estranged accounts of the mythos of modernity and modern law, a possible alternative theology is uncovered: one based on a love that takes us beyond the law itself.

Chapter 2 begins with an analysis of what is essentially a Manichaeic narrative of the battle between Good and Evil as brought to visual life in Hollywood's love affair with the superhero genre. M. Night Shyamalan's *Unbreakable*, released at the very beginning of the millennial rise of the superhero film, plays on the tropes of the superhero genre by imagining what it would be like if superheroes existed in the 'real world'. As a result, there are no coloured capes or battles that take us to the heights of the stratosphere, but rather an unpacking of a comic book mythology that is bound to our own. The underlying premise of *Unbreakable* is precisely the battle between Good and Evil and the relationship between the superhero and the supervillain. This premise is deconstructed by Shyamalan in the film, and explored in my reading, by identifying that the concept of the Good, that is the superhero himself, is based not on a fight for 'truth, justice and the American way' but on the existence of the supervillain—the figure of Evil. As such, the supervillain is the driving force of these comic book and filmic narratives, despite the fact that the film or comic book almost always bears the name of the superhero. Situating the superhero as a mythic figure of the law (upholding and defending a forever threatened social order), this chapter reads the connection between the superhero and the supervillain as a reflection of the relationship between law and criminality. For the law is conceived, as Oliver Wendall Holmes identified, in relation to the 'bad man'<sup>170</sup>—

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<sup>170</sup> Holmes (1897) pp459-461.

that is the evil or criminal act.<sup>171</sup> In the same way that evil or terror catches our eye, the criminal act is the focus of the law which is instituted on the premise of criminality. When the law aims at justice it is a justice connected to the act of transgression, the offence, the crime or the infraction—laws are made to be broken. At the same time, the law is anxious not to commit evil in its protection *against* and punishment *of* evil—the need for protections of due process are based themselves on the fallibility of the law, the risk that it will condemn the innocent and thus inflict evil rather than justice. Shyamalan's *Unbreakable*, in presenting the Manichaeic myth of Good and Evil, provides for a deconstruction of both the superhero genre and the law itself identifying the dependency of Evil on the Good as much as a Good premised in and on Evil itself.

Chapter 3 explores another version of the pagan myth of Good and Evil in the form of one of the biggest blockbuster film series of them all: George Lucas's *Star Wars* trilogies. Whereas *Unbreakable* represents a Manichaeic mythos positing different ontological entities of Good and Evil, the mythology of 'the Force' in *Star Wars* identifies their underlying *unity* (the 'Good' Jedi and 'Evil' Sith finding the source of their power in exactly the same place). Drawing on the works of mythologist Joseph Campbell, George Lucas's films were famously proclaimed as 'a myth of our time'. Yet, despite Lucas's desire to present a universalising myth grounded in our present period, an analysis of *Star Wars*, identifies 'the Force' as merely a faux-theological and ideological prop of capitalism. That is, in the same way that Max Weber identified Protestantism as the underlying ideology of 19<sup>th</sup> Century capital, drawing on the writings of Slavoj Žižek, I identify that *Star Wars* itself presents a mystic ethic in the religion of 'the Force' that founds an engagement—or rather disengagement—with technology and late capitalism. At the same time, the mythological and theological resonance of 'the Force' point, I argue, to another mythology: that is, as Peter Fitzpatrick might put it, the mythology of *modern* law. That is, in its reflection and refraction of 20<sup>th</sup> and 21<sup>st</sup> century politics and industrialisation, the liberal, secular 'religion' of modern law is represented by an agnostic, pseudo-spiritual religion of 'the Force'. Matching

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<sup>171</sup> Whilst the law itself is represented as a realm of order, justice and the Good, it is premised on criminality.

the unity of Good and Evil in ‘the Force’ with the legal reading that I propound, provides a different perspective of the zone of distinction between life and law analysed by Giorgio Agamben in his oft-quoted work *State of Exception*. *Star Wars* brings the ‘state of exception’ to visual life in *Episode III: Revenge of the Sith* where we discover that the aims of the Sith and the Jedi are the one and the same: peace and order for the galaxy. As such, the transition from the ‘Good’ democratic Republic to the ‘Evil’ totalitarian Empire is presented not as a battle between two groups for the control of the galaxy but as instituted *legally* where, via a manufactured state of emergency, exceptional powers are provided to the Chancellor-cum-Emperor (and Sith Lord) Palpatine—all to “thunderous applause” from the ‘democratic’ Senate. As such, the law that is founded upon its ability to keep the chaos and terror of a ‘state of nature’ at bay within the supposedly ‘Good’ Republic becomes the totalitarian law of the ‘Evil’ Empire, undergirded in a manufactured ‘state of exception’ by the mythology and theology of ‘the Force’.

Having explored the ‘movie marathon’ of pagan mythos in *Unbreakable* and the six *Star Wars* films to date, a brief intermission provides some light relief and begins the move toward a Christological encounter. Noting the connection of both *Star Wars* (chapter 3) and *Batman* (chapter 4) to Joseph Campbell’s ‘hero-myth’, this intermission takes up a comparative exploration between Anakin Skywalker and Nolan’s *Batman* as two very different types of potential Christ-figures. For, despite many references to Christ in the *Star Wars* prequel trilogy—his virgin-birth on an out-of-the-way planet, his supposed selflessness and his fulfillment of the prophecy about ‘the One’ who will bring balance to the force—Anakin does not engage in a selfless act of sacrifice but, by the end of the trilogy, becomes one of the most iconic figures of evil in popular culture of all time: Darth Vader. *Batman*, on the other hand, despite falling short of all the ‘messianic’ and Christological reference points of other superheroes (like Superman, as we saw in the opening of this introduction), and having none of the ‘stock’ Christological characteristics (god-like abilities, virgin-birth, etc) embodies, I argue, a different type of Christological reference. This is in terms of his actions founded in a commitment to compassion which challenges the invocation of

justice propounded by The League of Shadows. That is, rather than directly referencing the characteristics of the *story* of Christ, Batman rather ‘repeats differently’ the Christological actions and, as such, provides a much more powerful *Christian* and *theological* challenge to our understandings of law and justice.

Chapter 4 takes up the analysis of *Star Wars* in relation to the ‘state of exception’ in Chapter 3 and the analysis of Batman in the Intermission as its framework for analysing Christopher Nolan’s *The Dark Knight Trilogy*. The second film of Nolan’s trilogy, *The Dark Knight*, was criticised for its thematic references to the exceptional politics of the ‘war on terror’ and has been read as an update to the combat myth: an ultimately conservative mythos that describes the rising of a hero (represented here by Batman) who tackles and defeats the chaos-monster (represented by the Joker) and restores an existing social order. This chapter seeks to invert this reading, however, by focusing on the fundamental premise of the film: that Batman is *not* a hero. Rather than seeing Nolan’s Batman as situated within the pagan hero-myth or the cycle of death and rebirth of the gods, this reading aligns Batman with contemporary and orthodox accounts of Christ. That is, I argue, Nolan’s Batman is neither the traditional vigilante or superhero in an exceptional relation to the law (which in the end seeks to found a retributive justice beyond the law—supplementing the law’s deficiencies) but rather as the founder of the potential for a different relation to law: one that challenges the legal accounting of justice in terms of retribution (epitomised, not in the figure of Batman, but the lawyer-cum-villain, Harvey Dent/Two Face) as well as the connections of law to its founding and ever-present violence (the reading I offer of the anarchic challenges of Heath Ledger’s brilliant performance as the Joker). This reading of Batman as Christ is thus very different to both the traditional Christological/messianic readings of the superhero (as identified in the figure of Superman at the beginning of this introduction), as well as the references made by a number of critics in relation to the supposed heroic sacrifice of Batman in the final film of the trilogy, *The Dark Knight Rises*. Rather, it identifies the crucial scene of the trilogy as being the final one of *The Dark Knight*, where Batman takes the blame for Harvey Dent’s murders. This scene references

the wrongful conviction of Christ who, according to John Milbank, in his willingness to submit to death on a cross, uncovered the arbitrariness of both ancient and modern biopolitical sovereignty where we are all potentially at the whims of an arbitrary determination of life and death. In contrast, Christ's voluntary exclusion from the law and the willingness to die a death he did not deserve (mirrored by Batman's voluntary taking up of the role of criminal/murderer in place of Harvey Dent) founds the basis for a new relation to the law in the form of a counter-law of compassion, charity or love. In this sense, Batman's refusal to be a hero challenges our very modern understandings of law, which, in the end, encompass a sense of arbitrary violence.

Chapter 5 begins to work through this effectively Christian challenge to legality via a reading of a universalised law without exception represented in Alex Proyas' 'interpretation' of the work of Issac Asimov in the 2004 film *I, Robot*. Encompassing what would appear to be a secular myth of science fiction, Proyas, following Asimov, speculates upon a future where humanoid robots have been incorporated into society. This apparently harmonious proliferation and incorporation of robots into everyday life is made possible by the implementation of Asimov's 'three laws of robotics' (attributed in the film to roboticist Dr Alfred Lanning), described as the 'perfect circle of protection.' Presented as a perfected 'rule of law' in its application to robots, the film identifies the totalising and universalising logic of the rule of law which seeks to bring everything under its control when the master-robot VIKI, commanding all the robots she is connected with, enslaves humanity in an attempt to fulfill the three laws themselves: protecting humans from themselves. That is, despite the law's initial specific jurisdiction (its application to the robots), its universalising and all-encompassing premise, in the end seeks to promulgate a globalised law without exception which, as we see in the film results in a self-referential utilitarian logic of enslavement. Drawing on Alain Badiou's contemporary reading of Saint Paul, this chapter unpacks an analysis of the contrasting figure in the film: the anomalous robot Sonny who, despite having the three laws can choose not to obey them. The entry of Sonny into this world of universalised techno-legality is what Alain Badiou would describe as an anomalous 'event' that

cannot be thought or understood from within the context of the prevailing laws of the situation and which challenges its underlying premises—which for Paul are both legal (the Jewish law) and mythic (the Greek ordering of destiny). In this sense, Sonny is an ‘evental’ exception to the law that cannot be conceived of within the totalising logic that determines the restricted place of both the robot and human subject. This is not a legal exception matched to a sovereign decision in the Schmittian/Agambenian sense, but rather a radically singular and subjective ‘event’ that founds a potential truth-claim based, not in the generality of the law (or its exception) but in a concrete compassionate act of love. That is, a universalised law that presumes the formal equality and subjective individuality of those to whom it applies for the good of all, is challenged by a radically contingent act of love for the specific individual. What becomes clear in the film is a contrast between the universalised generality of the law—a form of Kantian categorical imperative or universalised *agape*—and the situational specificity of the act which, within its grounding in a particular subject, can proclaim a universal truth itself. Thus, in contrast to the totalising logic of the law that, in the end, is bound to an absolute sovereignty who seeks to limit and determine the possibility of freedom for its subjects (embodied in the figure of VIKI in the film), the radical contingency of the event which challenges the law, leaves open the relationship of law and freedom itself.

Chapter 6 explores this contrast between a contingent freedom and an absolute sovereign in a reading of George Nolfi’s *The Adjustment Bureau*. Whereas *I, Robot*’s theological allusions need to be teased out to identify a fundamentally theological theme, *The Adjustment Bureau*, based on a short story by Philip K Dick, is premised on a theological consideration of freedom and free will. Positing a bureaucratised form of the divine realm with a league of agents who work overtime to keep the world and humanity running according to plan, the film provides an interesting exploration of free will, predestination and a sovereign divinity. Following John Milbank, this chapter traces the theological roots of ‘the Chairman’ (the God figure of *The Adjustment Bureau*) back to shifts in medieval theology (from Aquinas to Duns Scotus) that became influential in the later political theory and theology of Thomas Hobbes. As such, I read *The*

*Adjustment Bureau* not simply as a speculative exploration of theology but, rather, as a critique of Hobbesian *political* theology and its resultant modern secular sovereignty in the form of the Leviathan. The challenge to this divine/political sovereign in *The Adjustment Bureau* comes from a pair of 'star-crossed loves', David and Elise (Matt Damon and Emily Blunt) who challenge the supposed plan laid down by the divinity. In overcoming all the obstacles put in front of them for the sake of 'true love', I argue that *The Adjustment Bureau* lays bare the underlying theology of modern sovereignty and, at the same time, points towards a way for its rethinking via a material engagement or 'work of love' that founds a different form of being together than the individualised violent mechanisms of the state. That is, David and Elise's commitment and love for each other in *The Adjustment Bureau* identifies the way in which love itself (not necessarily restricted to romantic love), as a mode of relationality that is not based on a nominalist and voluntarist individualism, can open a possibility for rethinking the law and the modern state itself. A rethinking that might, in the end, see a fulfillment of the law in 'loving your neighbour as yourself.'



## Chapter 2

# Comic Book Mythology: Shyamalan's *Unbreakable* and the Grounding of Good in Evil

### 1. Introduction

"It's a classic depiction of Good versus Evil" Elijah Price tells the potential buyer of a piece of art. This 'piece of art' is an early sketch of a battle between two characters in a comic book and is on display at Price's art gallery, *Limited Edition*, in the world of M. Night Shyamalan's 2000 film *Unbreakable*. Popular culture is replete with such dualities of Good and Evil – the *good* hero invariably battling the *evil* villain. One of the clearest spaces where this battle is given visual and bodily form is in the comic book superhero genre that Shyamalan draws upon in *Unbreakable* and to which Elijah Price is referring. While this genre is inherently absorbed with matters of justice, legality and criminality – and of Good and Evil – it has traditionally been dismissed as not only a form of popular culture and mere entertainment but as the lowest form of popular culture – that is, as 'crude, poorly-drawn, demi-literate, cheap, disposable kiddie fare...'<sup>1</sup> That is not to say that the comic books and graphic novels have not been recognised as being able to deal with serious issues<sup>2</sup> or engage with serious social problems.<sup>3</sup> However, given the connection of recent superhero comics and their filmic adaptations to post-September 11 anxieties around terrorism and the need for 'extraordinary measures' to contain, overcome or respond to terrorist action, this genre is too easily seen as reinforcing an over-simplified, Manichaeian, un-nuanced

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<sup>1</sup> McCloud (1993) p3.

<sup>2</sup> Art Spiegelman's *Maus* (1991) is one of the first and most cited examples of this.

<sup>3</sup> The anti-drug issues of Green Lantern / Green Arrow (1971) are an early instance. See O'Neil, Adams and Schwartz (1971a) and (1971b).

perspective on the world and the existence of forces of Good and Evil as opposed to a legitimate space for discussion of philosophic or jurisprudential matters.<sup>4</sup>

It is the argument of this chapter that *Unbreakable* challenges such a dismissal of popular culture in general, and superhero comics in particular, inviting us to take a serious look at these mediums as being able to provide real insight into our understanding of ourselves, the world and the *construction* or consideration of Evil. Released in 2000, at the beginning of what has been called the decade of superhero films,<sup>5</sup> *Unbreakable* is a pivotal text that crosses and blurs the boundaries between mediums and genres (between comic books and film; melodrama and superhero adventure). At the same time, *Unbreakable* can be situated in relation to the resurgence of scholarship on Evil that began at the end of the last century—scholarship which has increased in intensity since the rise of references to Good and Evil in both political and religious rhetoric following the terrorist attacks on September 11, 2001 and the following ‘war on terror’.<sup>6</sup> Released the year prior to the September 11 attacks, *Unbreakable* pre-empts the anxieties regarding terrorism that are picked up later by the 21<sup>st</sup> century superhero genre. In addition, the film invites us to take it, and comic books, seriously as texts that illuminate questions of justice and of Good and Evil in light of our current times.<sup>7</sup> This chapter seeks to take up this invitation by engaging in a theological and jurisprudential of popular culture in relation to an understanding of Evil and its connections to law and justice. Such a reading seeks to explore how popular culture (*Unbreakable*) provides an alternative space

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<sup>4</sup> This is certainly not to say that the comic book superhero genre is *restricted* to simplistic Manichaeic battles of Good and Evil. The deconstruction of the superhero genre by Alan Moore’s *Watchmen* (1986) and the development of ‘anti-hero’ characters throughout the 1980s and 1990s such as Punisher, Spawn and Ghost Rider evidence the evolution of the genre and the subversion of the traditional tropes and superficiality of the battle between Good and Evil. Superheroes on film during the same period, however, tended to draw on the earlier idealised works with Superman and Batman being the primary (and only substantially successful) superhero installations on the big screen prior to 2000.

<sup>5</sup> Gray and Kaklamanidou (2011) p1.

<sup>6</sup> See, for example, Copjec, (1996), Matthewes (2001), Bernstein (2002), Singer (2004), Bernstein (2005), Jeffrey (2008), Hirvonen and Porttikivi (2010).

<sup>7</sup> In this sense, Shyamalan draws on the earlier ‘serious’ comic book work such as that of Art Spiegelman and, in particular, the development and deconstruction of the superhero genre sparked by Moore’s *Watchmen* (1986) and Frank Miller’s *The Dark Knight Returns* (1986). What is unique about *Unbreakable* (and what makes it valuable for examination) is that it is one of the first filmic meditations on the superhero that undermines the traditional tropes of the genre.

where questions of law and Evil are 'made strange', imagined differently and made available for critique.

The first half of this chapter focuses on the form and presentation of Shyamalan's *Unbreakable* as well as the presentation of the apparent duality of Good and Evil in comic books. In parts 2, 3 and 4, I examine the way in which *Unbreakable* explores the importance of story-telling in popular culture and how it not only draws upon comic books but presents itself to us as a comic book, recreating the links with justice and with what appears to be a Manichaean battle between Good and Evil in superhero comics. The second half of the chapter reads *Unbreakable* 'jurisprudentially', complexifying this apparent duality of Good and Evil and the superhero's relation to law. Part 5 goes beyond the Manichaean starting point by identifying the way in which the film presents a construction of Good and Evil as a way to make sense of suffering. Such a focus, however, reflects the problems that modern considerations of Evil (as opposed to the traditional privation theory) encounter because they start from the 'self-evidence of Evil'. For, as explored in part 6, when we start from the point of the self-evidence of Evil then any definition of the Good becomes that which responds to or eradicates Evil and legitimises any action taken to that end (a not uncommon trope of the superhero genre). Part 7 then connects this construction of the Good with the law and its inadequate attempts to explain and deal with either suffering or Evil: first in its attempt to achieve justice and restore order through the punishment of the criminal; and second through the inability to explain the committing of evil or the reason for the victim's suffering. The chapter concludes by questioning whether superheroes are able to provide a means to consider not just a Good constructed in and by Evil but the possibility of a Good in and of itself.

## **2. Superheroes and Justice: Comic Books as Visual Mythology**

In the introduction to their edited collection on *The 21<sup>st</sup> Century Superhero*, Richard J. Gray II and Betty Kaklamanidou note that while the first decade of the new millennium will be remembered for many things, in relation to Hollywood it

will likely be remembered as the ‘superhero’ decade.<sup>8</sup> The dominance of the blockbuster superhero film since 2000 has been unprecedented – a dominance which, with the recent release of *Marvel’s The Avengers* (2012), *The Dark Knight Rises* (2012), *The Amazing Spider-Man* (2012), *Iron Man 3* (2013) and *Man of Steel* (2013) (amongst many others), seems unlikely to wane anytime soon. Yet, the superhero genre has, from its earliest beginnings, influenced and been reinterpreted in multiple mediums<sup>9</sup> and has had commercial success in both film and television, as well as in comic books and graphic novels. Notable here is that each of the mediums where superheroes have particular success, are specifically forms of *visual* narrative. Given the genre’s focus on the capabilities of the physical body of the superhero, and his/her capacity for spectacular feats, the visual forms of comic books, television and film (particularly with modern special effects and CGI in relation to the latter two) naturally lend themselves to depicting such visual aspects. In terms of the *filmic* depiction of superheroes, this focus on the spectacular and the incredible is one of the criticisms of superhero films (as well as the modern blockbuster more generally). Such criticism tends to proclaim the demise of ‘narrative as a central or defining component of Hollywood cinema, or at least its dominant spectacular form.’<sup>10</sup> Yet, as King points out, modern blockbuster films ‘still tell reasonably coherent stories, even if they may sometimes be looser and less well integrated than some classical models.’<sup>11</sup> Despite the depiction of the ‘spectacular’ in the modern superhero blockbuster, the superhero genre itself has a focus on a particular type of narrative, one that generally results out of the relation or interactions between the superhero and the supervillain. That is, the narrative of the superhero genre is one tied to forms of *visual* storytelling depicting a battle between ‘good’ and ‘evil’.<sup>12</sup>

M. Night Shyamalan, as a director and visual storyteller, focuses in his films on the importance of narratives and stories as means for creating meaning. As Jeffrey Weinstock has identified, Shyamalan’s films are a series of stories about

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<sup>8</sup> Gray and Kaklamanidou (2011) p1.

<sup>9</sup> Christiansen (2000) p107.

<sup>10</sup> King (2000) p2.

<sup>11</sup> King (2000) p2.

<sup>12</sup> Though, as noted above, it has developed beyond this in many respects.

stories.<sup>13</sup> When Shyamalan turned to address the superhero genre in particular, his focus was *not* so much on the spectacular nature of the genre as on the underlying form of the stories told. That is not to say that Shyamalan ignored the form of visual storytelling inherent in the superhero genre. Rather he drew on the forms of depiction used in comic books themselves to explore the potential for superhero stories to create meaning. In focusing on Shyamalan's film *Unbreakable*,<sup>14</sup> considered by comic book artist Grant Morrison as the 'high-water mark of the cinema's treatment of the superhero theme'<sup>15</sup> and released at the very beginning of the 'superhero decade', an alternative insight into the superhero genre is provided.

*Unbreakable* stakes a claim for taking the superhero genre, and superhero comics in particular, seriously. At one level, this is effected by presenting a 'realistic' superhero story (one which pre-dates the more recent attempts at superhero realism of Christopher Nolan's *The Dark Knight Trilogy* – *Batman Begins* (2005), *The Dark Knight* (2008), *The Dark Knight Rises* (2012) – which we will explore in Chapter 4) by focusing particularly on the 'everyday' rather than the extraordinary, as well as drawing on the genre of melodrama as much as superhero adventure.<sup>16</sup> At another level, *Unbreakable* is a particular engagement with superhero comic books themselves.<sup>17</sup> For the film poses the question: what if comic books were not simply a medium of entertainment, but in fact a form of mythology through which we both tell stories about ourselves and look to for guidance, direction and meaning?

This argument is the one presented by Elijah Price (Samuel L. Jackson), the proprietor of the comic book art gallery *Limited Edition*. Price, having been born with the disease Osteogenesis Imperfeta (which makes his bones extremely fragile and susceptible to breaking), spent much of his life reading and studying the form of comic books and believes that they are 'our last link to an ancient way of passing on knowledge'. Price explains to David Dunn (Bruce Willis) and

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<sup>13</sup> Weinstock (2010) p xi.

<sup>14</sup> Shyamalan (2000).

<sup>15</sup> Morrison (2011) p 323.

<sup>16</sup> See Palmer (2010); Yockey (2010).

<sup>17</sup> Regalado (2007) p132.

Dunn's son Joseph that comics are a form of mythology that can tell us something about ourselves and speculates about the possibility of people like superheroes (and thus supervillains) potentially existing. Therefore, as Regalado points out:

Unbreakable ... argues that superhero comic books (and, by implication, mass media more broadly) are cultural productions that do more than merely entertain audiences or reflect cultural realities. Instead, they are dynamic forms of cultural expression that individuals actively employ to shape and give meaning to individual as well as social existence.<sup>18</sup>

Shyamalan's 'realistic' portrayal of the possibility of superheroes thus situates itself specifically within debates about the place and importance of mass or popular culture, as well as the legitimacy of comic books themselves as texts worthy of both cultural and philosophical study. While such debates about popular culture in general have been going on for decades,<sup>19</sup> Shyamalan specifically focuses on the role and legitimacy of comic books themselves. In creating a film that takes comic books seriously he sees the potential of popular culture to engage and respond to serious questions and provide a depth of understanding that goes beyond mere entertainment.

Shyamalan presents this argument by situating the film in relation to these debates about high and low culture, the legitimacy of comics and their historical lineage. The character of Elijah Price is the central vehicle through which this argument is presented. Price runs a comic book art gallery, *Limited Edition* and takes the artistic quality of his collection quite seriously. This is evident in Price's enraged response when a prospective purchaser of a piece of comic book art discloses that he is shopping for his four-year-old son. Price's demand for the prospective purchaser to leave countermands the traditional view of comic books as one of the 'lowest' forms of popular culture or as 'irredeemably corrupt and corrupting form of discourse, or else suitable only for children and the semi-literate.'<sup>20</sup> Instead comic books are elevated to a form of high culture – a form of art. Shyamalan thus aligns himself (or at least his character Price) with the views

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<sup>18</sup> Regalado (2007) p133.

<sup>19</sup> See, for example, Leslie Fiedler's work in relation to 'high' and 'low' culture in literature dating from the 1960s: Fiedler (1960), Fiedler (1982). In relation to comic books specifically see Fiedler (2004).

<sup>20</sup> Reynolds (1992) p7.

put forward by, among others, Will Eisner, Scott McCloud, Arthur Asa Berger and David Carrier.<sup>21</sup> These scholars argue the case for the legitimacy of comics as a form of graphic storytelling (which Eisner describes as ‘sequential art’) and that comic books are a form of art in their own right.

In addition to elevating comic books to art, Price identifies the substantial historical lineage of the comic medium when he outlines his theory of comic books as a ‘last link’ to a particular form of history (noting that the Egyptians drew on walls and that countries all over the world still pass on knowledge through pictorial forms). Scott McCloud traces such a lineage of the comic book, arguing that the predecessors of comics actually go much farther back than the traditional view (which normally dates only to Rodolphe Töpffer’s satiric pictures 150 years ago).<sup>22</sup> Rather, McCloud’s history of comics includes the French Bayeux Tapestry portraying the Norman conquest of England beginning in 1066 as well as Egyptian paintings.<sup>23</sup> The historical lineage of comic books can also be traced in a different direction, focusing on the way in which comic books both covertly and overtly draw on mythological sources. Richard Reynolds identifies how Siegel and Shuster, the creators of Superman, drew on the myths of Hercules and Samson for their inspiration.<sup>24</sup> Reynolds also explores how the Superman comics tend to conform to Joseph Campbell’s concept of mythological ‘atonement with the father’.<sup>25</sup> Price’s theory that comic books present a form of mythology (and the centrality of superheroes to this myth) thus references both their visual and narrative/thematic history and has more substance than would initially appear.

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<sup>21</sup> Eisner (1985); Eisner (2008); McCloud (1993); Berger (1969); Berger (1974); Berger (1996) pp91-110; Berger (1997) pp99-110; Carrier (2000).

<sup>22</sup> McCloud (1993) p17.

<sup>23</sup> McCloud specifically notes, however, that Egyptian hieroglyphics, like the ones seen behind Price when he outlines his comic book theory to Dunn and his son, are not the ancestors of comics. Rather, at least under McCloud’s definition, hieroglyphs are not pictorial in the sense of actually looking similar to what they are representing. Instead, hieroglyphs represent sounds and are thus the antecedent of the written word and not comics per se: McCloud (1993) p12. For a further historical analysis of the comic strip see the two volumes by David Kunzle: Kunzle (1973) and Kunzle (1990).

<sup>24</sup> Reynolds (1992) p53.

<sup>25</sup> Reynolds (1992) p65. See Campbell (1973).

Price's character, however, is not the only connection between the film and comic books; *Unbreakable* is not simply a film about the importance of comic books, but a comic book itself presented in the form of a film.

### **3. (Re)Presenting Comics: Crossing Visual Mediums**

The creation of most superhero films is the result of adapting a story and content from one medium to another. Such adaptations involve a number of challenges. While both comic books and films are inherently visual mediums, each have their own characteristics and, what Pascal Lefevre describes as, different visual ontologies.<sup>26</sup> That is, despite their visual aspects, each medium involves different types of representation. Drawing styles are more readily understood to include a certain interpretation of reality (based on the abstraction in the drawing) whereas photographic images or film, by their optic natures, tend to imply a 'more realistic' depiction of reality.<sup>27</sup> The creation of a superhero film generally involves the attempt to re-present drawn images, or at least stories initially presented in drawn form, in a photographic/filmic medium. As Lefevre identifies, such a re-presentation or adaptation of comic books to film involves a number of problems/decisions for the filmmakers. These include: the unique characteristics of page layout versus film screen; the dilemmas of translating drawings to photography; and the importance of sound in film compared to the 'silence' of comics.<sup>28</sup> Whilst *Unbreakable* is not a direct adaptation of a specific superhero comic or character, Shyamalan does specifically reference a number of the features of the comic book medium in the creation of his film.

As an audiovisual text, film makes use of images, dialogue and other sounds in its visual narratives.<sup>29</sup> That is, while comic books and film share the characteristics of visual narratives, film is always more than simply visual but rather engages 'images, sound, affect, memory, plot, episode, character, story and event.'<sup>30</sup> For example, the use of sound by the filmmaker assists in the creation of mood, the

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<sup>26</sup> Lefevre (2007) p9.

<sup>27</sup> McCloud (1993) pp28-29.

<sup>28</sup> Lefevre (2007) pp3-4.

<sup>29</sup> Dick (2005) p6.

<sup>30</sup> Young (2010) p5.

differentiation of who is speaking and the identification of what individual characters sound like. In contrast, a comic book is a single-sensory medium where the artist has to create the entire atmosphere, including ambient noise, dialogue, smells and touch, through the singular visual sense.<sup>31</sup> *Unbreakable*, while obviously an audiovisual text, references the single-sensory nature of the comic book medium through the use of a minimalist soundtrack and singular form of dialogue where voices and sounds never overlap – generally only one voice or sound is heard at a time. This restrictive use of sound attempts to recreate a sense of the ‘silence’ of the comics in his presentation.

One of the major features of the medium of comic books is the way they present both word and image in a unified form, both working together to tell a single story.<sup>32</sup> Will Eisner describes this as the presentation of ‘a montage of both word and image.’<sup>33</sup> As a result, the reader is required to exercise ‘both visual and verbal interpretive skills.’<sup>34</sup> In addition to this connection of word and image, the comic is able to tell its story via the sequential presentation of images – which is why Eisner describes comics as ‘sequential art’.<sup>35</sup> Whereas film makes use of moving images, the images presented in comic books are static. The ‘movement’ or action in a comic comes from the sequential nature of the presentation of the images; this juxtaposition indicates that there is a necessary connection between them and that the action should move from one to the other.<sup>36</sup>

Part of the unique element of the comic book experience then, is not just what occurs within images but what occurs *between* images. The comic book creator needs the readers to do a large part of the work in terms of ‘filling in the gaps’ between the frames or panels (what McCloud describes as ‘closure’).<sup>37</sup> Because we see two images side by side, we automatically work to associate them and provide a logical explanation of their connection. Whilst Shyamalan does not need to make use of this notion of closure in the same way, he does reference the

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<sup>31</sup> McCloud (1993) pp89-90, 135-139.

<sup>32</sup> Carrier (2000) pp67-68; McCoud (1993) pp47-49.

<sup>33</sup> Eisner (1985) p8.

<sup>34</sup> Eisner (1985) p8.

<sup>35</sup> Eisner (1985) p38.

<sup>36</sup> McCloud (1993) pp62-73; Eisner (1985) pp38-49; Carrier (2000) pp53-57.

<sup>37</sup> McCloud (1993) pp62-73.

panel/frame nature of the comic book. This is not so much in the direct multi-frame or split screen imagery that was used in Ang Lee's *Hulk* (2003)<sup>38</sup> but more about using the physical props in his shots to recreate panel like perspectives. Examples of this include when the audience first meets Dunn as a passenger on the train. There the seats in front of him frame the shots. We only ever see Dunn and the lady who sits next to him in individually framed shots – never together. A few scenes later, curtains at the hospital frame Dunn in a similar way. Shyamalan's use of such framing throughout the film recreates the visual effect of the comic book.<sup>39</sup>

In addition to the way Shyamalan specifically references the form of the comic book in his cinematography, the content of the film (the narrative storyline) is obviously drawing on a traditional comic book thematic: the telling of a superhero 'origin' story. In Price's search for evidence that superheroes actually exist he comes to believe that Dunn is a superhero. Here Shyamalan draws directly on the thematics of the superhero genre where the superhero is presented as a figure of justice and *the Good* who works to fight crime and restore a disrupted social order.<sup>40</sup> In this sense, the superhero's role is related to the law and the legal system. However, while sharing the superhero's goal of justice, the law is often presented in comic books as corrupt, ineffective or otherwise deficient. As such, the superhero operates as a supplement to the law's goal of justice, achieving what the law cannot attain by itself.<sup>41</sup> This supplementary operation of the superhero tends to interact with the law in either a complimentary or authorised way (generally represented by Superman's submission to the state and connection with the law and due process) or in an antagonistic way (represented by Batman's clear willingness to break the law in the course of achieving justice).<sup>42</sup> In either form the superhero is aligned with the goal (if not the operation) of the law as a particular Good – that is, the desire to

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<sup>38</sup> See discussion by Lefevre (2007) p6.

<sup>39</sup> Another appropriate example is later in the film when Price falls down the stairs and his glass cane shatters. There we see upside down shots of the man he is chasing, as well as a close-up shot of the shattered glass that could easily have come directly from a comic book panel.

<sup>40</sup> Vollum and Adkinson (2003) p104; Phillips and Stroble (2006) p308.

<sup>41</sup> Bainbridge (2007) p460; Reyns and Henson (2010) p51.

<sup>42</sup> Vollum and Adkinson (2003) pp100-101; Reyns and Henson (2010) p51. See also Chapter 4 below.

do justice and restore balance or order to society.<sup>43</sup> Price's construction of Dunn as a superhero thus aligns with this notion of the figure of justice. Price describes the superhero as someone who is "put here to protect the rest of us" and to inspire people to do extraordinary things in "mediocre times". With the superhero genre's specific focus on crime control<sup>44</sup> it is not surprising that the first act that Dunn performs as a superhero is one of dealing with a criminal house invader and thus restoring the social order (a scene to which we will return to later).

Having identified the way that Shyamalan draws on both the visual and narrative aspects of comic books to present us with a comic book in the form of a film, we will now turn to the film's focus: the relationship of the superhero to the supervillain.

#### **4. Pop Culture Manichaeism: Visualising the Battle Between Good and Evil**

While many of the threats and disruptions to the social order presented in comics books are simply petty crimes or street violence, one of the characteristic recurring tropes of the superhero stories is the supervillain or archenemy who returns to battle it out again and again with the superhero. It is here where the battle between Good and Evil is effectively played out in bodily form. Superman battles it out with the criminal genius Lex Luthor, Batman with The Joker, Daredevil with the Kingpin, and so on. The superhero as the figure of justice and the Good is counterpoised with the supervillain as the figure of injustice and Evil. Yet this oppositional framing of the hero and villain belies their very connectedness. For, as Reynolds points out, if we simply invert a couple of the

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<sup>43</sup> It should be noted here that depicting the superhero as a figure of 'the Good' who restores the social order does presuppose that the social order is good in itself. This point belies the traditionally conservative tendencies in superhero comics, which would indicate that any injustices in the existing social order are likely to be maintained. Having said that, there are certainly critiques presented of this conservatism as well – Frank Miller's depiction of Superman in *The Dark Knight Returns* would be a case in point. Miller (1986). See also Nichols' (2011) discussion of superheroes and the combat myth in relation to *The Dark Knight*, discussed in Chapter 4 below.

<sup>44</sup> Bainbridge (2007) p463; Reyns and Henson (2010) p51.

key characteristics of the superhero – their devotion to justice and loyalty to the state – we end up with a strong working definition of the supervillain.<sup>45</sup>

This connection between the superhero and the supervillain has, at times been extended, inverted or subverted with certain characters moving from villain to hero or oscillating in the space in-between. One such example is Catwoman's role in the Batman comics whose role has ranged from villain to quasi-heroine. Another example is the various transmutations between the 'good' Jean Grey and the 'evil' Dark Phoenix in the X-Men comics.<sup>46</sup> Yet in other circumstances the connection between the superhero and supervillain is underlined by a specific psychological link. Frank Miller's *The Dark Knight Returns* (1986) as well as Alan Moore's *The Killing Joke* (1988) highlight such a connection between The Joker and Batman. Conversely the hero and villain may share a form of commonality or friendship. For example, while enemies, Professor Xavier and Magneto in the X-Men share a connection based on their longstanding acquaintance and old friendship. Shyamalan's *Unbreakable*, in drawing on the superhero genre also undergirds the battle between Good and Evil with the connection between the superhero and the supervillain. In fact, much of the focus of the plot of *Unbreakable* is on the connection between Dunn who is the superhero and Price, who, as we discover in the concluding moments of the film, is the supervillain.

In exploring the depiction of Evil and the necessary battle between Good and Evil in comic books generally, and *Unbreakable* specifically, one starting point could clearly be the mythological/theological touchstone of Manichaeism – a dualistic understanding of the world as divided between two forces in Being. In Manichaeism, the Good King of Light and the Evil Archon of Darkness are in an ongoing cosmic battle, with the universe as their battlefield.<sup>47</sup> While such an analogy, at one level, appears superficial (surely the concept of the battle between Good and Evil is consistent across other popular culture tropes as well as other mythologies and religions), it becomes particularly relevant here when

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<sup>45</sup> Reynolds (1992) pp16-17.

<sup>46</sup> See Kaveney (2008) p227.

<sup>47</sup> Renick (2004): 'Manichaean dualism and its resulting cosmic war are used to account for the existence of evil in the world: Evil emerges in this realm when the Archon of Darkness wins a battle over the good, but not omnipotent, King of Light'.

you take into account McCloud's history of comics discussed above. For, uniquely, Manichaeism held as part of its official canon Mani's *Picture-Book* (or *The Image*), a solely pictorial 'volume' attributed to the founder of their religion.<sup>48</sup> More than any other religion, Manichaeism made particular use of didactic art as part of their mission.<sup>49</sup> In addition, Mani's *Picture-Book* would be reinterpreted (as was the imagery used in their mythology and teaching in general) based on the particular cultural setting in which it was being communicated.<sup>50</sup> Thus, what could be seen as a throwaway reference to Manichaeism as the source of these dualist battles between Good and Evil (based on a later Christian tendency to accuse any dualist heresy of being Manichaean<sup>51</sup> ) actually identifies comic books in the same mythological lineage. For, we can see here a connection between the ongoing battle between forces of Good and Evil (consistent with a dualist mythology), their *visual* depiction of these forces and the reinterpretation of such a battle into many different forms and versions (with the corresponding plethora of superheroes and supervillains in each of the comic book universes).

This connection of the superhero genre to Manichaeism's use of didactic art becomes particularly relevant when you consider the fact that the superhero genre is itself inherently visual. That is, part of the superhero genre is about the *visual* depiction of the bodily form of the superhero and the supervillain. In comic books, for example, the costumes of the hero and the villain, as well as their physical forms, are constructed as contrasting. This construction is a visual shorthand, indicating who is 'good' and who is 'evil'. As Eisner points out, comic books traditionally tend to work with stereotypes in order to quickly or even instantly settle the nature of a character.<sup>52</sup> Comic book artists can and do make use of physical characteristics as indicators as to whether characters are 'good' or 'evil'. As Kaveney observes, superheroes themselves are almost always good-looking and muscular, wearing costumes that emphasise the fact.<sup>53</sup> Villains, on the other hand, can range from the muscular to the grotesque. While not strictly

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<sup>48</sup> Gulacsi (2011).

<sup>49</sup> Gulacsi (2011).

<sup>50</sup> Gnoli (1987).

<sup>51</sup> See Davies (1987).

<sup>52</sup> Eisner (2008) p12.

<sup>53</sup> Kaveney (2008) p10.

a superhero, the villains against whom Dick Tracy would fight (villains who would serve as precursors to many later superhero villains) were known for being visually repulsive making it clear that Tracy was 'good' and they were 'bad'.<sup>54</sup>

At first glance, *Unbreakable* also appears to demonstrate the dualism described above. At the end of the film Price, believing that Dunn is the superhero he has been looking for (the figure of light, justice and the Good), reveals himself as the supervillain (the figure of darkness, destruction and Evil who has committed a number of terrorist acts and killed hundreds of people in his quest to find a superhero). The presentation of the characters in this respect *also* reflects some of the visual duality described above. Dunn is physically strong, muscular and at times is presented in a dark rain jacket that could be mistaken for a cape. Price, on the other hand, wears purple suits, suffers from a disease that makes his bones easy to break and, for much of the film, is confined to a wheelchair. Shyamalan's depiction of Price as disabled references a long (and fraught) tradition in which filmic depiction of a character's physical infirmity is an indicator of their internal/psychological flaws.<sup>55</sup> However, while such a depiction of Price and Dunn seems to reference this Manichaeic dualism, what *Unbreakable* actually makes clear is how this reference point over-simplifies what is going on.<sup>56</sup> For in fact we find that Price's theory is not simply a representation of Good and Evil as depicted in comic books, but rather that there is a *construction* of Good and Evil. Price is in fact trying to explain his experience of the world by constructing the dichotomy of Good and Evil. This construction would appear to find that the Good that is constructed is constructed and developed by, or in the cause of, Evil itself. Price's desire to find a superhero is not really because he believes in the need for someone to protect us or to give people the inspiration to do extraordinary things (though, as we noted above, he says both). Rather, his search for the superhero is a search for an explanation as

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<sup>54</sup> Berger (1996) p98.

<sup>55</sup> See Norden (2007).

<sup>56</sup> This point is particularly relevant given both the political rhetoric of Good and Evil in post September 11 (see Bernstein (2005)) and the responses of recent superhero films to anxieties around terrorism. See for example, Muller (2011) and Phillips (2010) in relation to *The Dark Knight* (2008) and Chapter 4 below.

to *who he is*. It is in his very search for meaning – for an explanation of his suffering and a reason for his existence – that provokes the need for this construction of Good and Evil reflecting the comic book battle between the good superhero and the evil supervillain.

This identification of the reason for Price's focus on the comic book mythology aligns *Unbreakable* with Shyamalan's other films, all of which present a search for meaning in response to suffering – a way of explaining or understanding what would appear to be meaningless suffering.<sup>57</sup> In *Unbreakable* Price experiences this form of suffering in relation to his disease and the resulting injuries. His lifelong experience of this disease seems to be without explanation or meaning. Price's recourse to comic books as a modern form of the Manichaeism mythos is an attempt to resolve this meaningless suffering – to find meaning for what otherwise appears meaningless. However, in Manichaeism the explanation of Evil is as a result of the forces of Evil. What we find with Price is rather that he wants to explain his suffering by identifying it as an indicator that he should be the supervillain and thus *enact* Evil.

## **5. 'Meaningless Suffering' and Evil that Demands a Response**

As noted above, Shyamalan's films depict those who are trying to make sense of physical or emotional suffering. Yet these films, and *Unbreakable* in particular, highlight the connection between Evil and the meaninglessness of such suffering: the way in which the concept of Evil itself is employed to make sense of what would otherwise be considered meaningless suffering.<sup>58</sup> While Manichaeism provides one response, Saint Augustine, the great Manichaean turned Christian identified its inability to explain the evil and suffering experienced in the world. In response, Augustine developed, in a synthesis of Neo-Platonic philosophy and Christian theology, what became the traditional understanding or 'privation

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<sup>57</sup> For example, in *Signs* (2002) Graham Hess has lost faith in God as a result of his wife's death in a car accident. The end of the film presents a restoration of this faith in God and an explanation or meaning given to his wife's death. In *Lady in the Water* (2006) Cleveland Heep (Paul Giamatti) is trying to come to terms with his grief and suffering as a result of the earlier murder of his wife and children.

<sup>58</sup> Jeffrey (2008) pp28-30.

theory' of Evil. For Augustine determined that Evil in itself, as a positive force, does not exist. Rather, Evil is a taking away, a privation, a tendency to nothingness, an absence of Good.<sup>59</sup> It is not seen 'as a real force or quality but as the absence of force and quality, and as the privation of being itself'.<sup>60</sup> This view does not mean that there is no Evil in the world or that Evil does not have an effect. Rather, it is that Evil as an end or position in itself does not exist. It can only exist as a corruption or deficiency of the Good – as a result of the seeking of a lesser or deficient good. Evil is that which turns away from, detracts and corrupts that which actually exists. Thus, Evil is not opposed to the Good in an ontological sense (as in Manichaeism) but is the very lack of the Good. It can only be defined in regard or relation to the Good.

This view can be opposed to a more recent theory of Evil, which tends to be traced back to Immanuel Kant, and, in particular, his reference to 'radical Evil' in *Religion Within the Limits of Reason Alone*.<sup>61</sup> This is usually considered the starting point for an alternative, positively existing view of Evil.<sup>62</sup> It is argued that 'Kant sees evil as uniquely the product of a free humanity, and it is this that is new in his thought'.<sup>63</sup> For Kant, human beings, as finite rational agents, are free and thus solely and completely responsible for their moral choices.<sup>64</sup> As such, it is the will and not natural inclinations or reason which is the only possible source of Evil. He notes that we call a man evil not because he performs actions that are evil, 'but because the actions are of such a nature that we may infer from them the presence in him of evil maxims'.<sup>65</sup> That is, Evil is the failure to adopt good maxims; failing to give priority to the moral law. Radical Evil, for Kant, then is the fact that there is a universal propensity in the human animal to evil, which is both innate and inborn. It is the propensity to *not* do what duty requires, or, to do your duty but for a reason that is not solely the moral law. As a starting point, Kant's position is seen as a more palatable understanding of Evil than the privation theory. For the question that arises with the privation theory is how,

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<sup>59</sup> Evans (1982)

<sup>60</sup> Milbank (2003) p1.

<sup>61</sup> Kant (1960).

<sup>62</sup> Milbank (2003) pp1-2.

<sup>63</sup> Copjec (2002) p139.

<sup>64</sup> Bernstein (2002) p33.

<sup>65</sup> Kant (1960) p16.

with such a plethora of what would appear to be Evil in our world, can it be that Evil does not exist? Surely both the evils of everyday life, as well as what would appear to be the ‘grander’ evils of the 20<sup>th</sup> and 21<sup>st</sup> Centuries (totalitarianism, the Holocaust, genocide, terrorism) indicate that Evil is a ‘something’ rather than a ‘nothing’.

Shyamalan’s films provide a sense of the pervasiveness of these everyday evils.<sup>66</sup> In *Unbreakable*, when Dunn starts to explore his ‘superhero intuition’, Price tells him that he will not need to go far. In fact, standing in the midst of a train station, every person he touches seems to have committed a crime (theft, racist violence, rape). These crimes are visually presented to us as having occurred (though within the film they are psychic visions in Dunn’s mind). Surely the very self-evidence of these evils in the world would indicate that the privation theory is not an adequate explanation? Surely the fact that *we see suffering* infers that Evil is a positively existent entity? However, part of the problem here is the starting point of the self-evidence of Evil itself. For while Kant identifies the concept of radical Evil, the universal propensity to moral Evil, this concept has very little explanatory power at all.<sup>67</sup> It is rather a description or concept in regards to the species – something that is universally applicable to all human beings. That is, all human beings have a tendency to not adopt good maxims. Yet, as Bernstein points out such a claim to a universal, for Kant, needs to be justified by a ‘deduction’ or proof.<sup>68</sup> It cannot simply be inferred from experience. But, Kant does not proceed with a deduction or proof. Rather he identifies:

That such a corrupt propensity must indeed be rooted in man need not be formally proved in view of the multitude of crying examples which experience of the actions of men puts before our eyes.<sup>69</sup>

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<sup>66</sup> Think of *The Village* (2004), in which every member has experienced a tragic loss as a result of some violence, thus believing they need to leave society and start their own village. In *The Sixth Sense* (1999), we are presented with the need for the dead to tell their story – for us to see the evil done to them. *The Happening* (2008) presents us with nature’s response to the evils we have enacted against it (i.e. nature seeking its revenge). In *Devil* (2010), written by Shyamalan but directed by John Dowdle, we again find that everybody trapped in an elevator has committed Evil.

<sup>67</sup> Bernstein (2002) p33.

<sup>68</sup> Bernstein (2002) p34.

<sup>69</sup> Kant (1960) p28.

The very self-evidence of Evil – Kant’s examples which are before our eyes – are used as the evidence of radical Evil. Rather than there being any formal deduction, we have a self-evidencing of Evil – we see Evil all around us. What seems to be lost here from the traditional view is the identification that Evil can only be understood in relation to, or from the perspective of, the Good. This is one of Augustine’s clearest points, that it was only when he identified the Good, that he could find a satisfactory explanation of Evil.

It is this point that Alain Badiou takes up in response to the formality of modern Ethics (that follows, at least loosely, the Kantian tradition of the potential of a universal moral law or ethical position) and the arguments of the self-evidence of Evil in general.<sup>70</sup> For the problem with the notion of the self-evidence of Evil is that it defines what Evil is by the existence of things which are ‘harmful to Man’, without any value judgment as to what is Good in itself. It is an a priori determination of what is Evil, and when we then look at the multiple examples from this perspective, all we see is the self-interested actions of humanity aimed at survival or ‘perseverance in being’.<sup>71</sup> Badiou’s argument is that if Evil exists, it must be conceived from the starting point of the Good.<sup>72</sup>

While Shyamalan’s films provide plentiful examples of the self-evidence of Evil (the visual depiction of ‘Evil’ actions and the suffering that results), what we *do* see in *Unbreakable* is this very connection of Evil to the Good. For isn’t this where Elijah Price gets it right? That is, in his desire to justify his position as Evil, he needs a Good to battle against. In searching for meaning to his suffering and for a place in this world, he is seeking to define himself as Evil. But, this can only be done if there is a Good to which he can relate. He can only actually take a position of Evil, a position that justifies the committing of terrorist acts, if there is actually a Good in which to oppose himself. Evil as such only has its position as a rebellion or reaction against the Good. Without a notion of the Good, Evil has no meaning or purpose. Yet, one of the terrifying things about Evil *is* that it appears to *have no purpose*—it is what seems to be beyond explanation or

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<sup>70</sup> Badiou (2001).

<sup>71</sup> Badiou (2001).

<sup>72</sup> Badiou (2001) p60.

comprehension. What we see with Price, however, is that it is his very desire for meaning that drives his Evil actions. The Evil things he does have no direct meaning for those he killed, but rather his terrorist acts are driven by the terrifying search for reason itself.

## **6. Eradicating Evil: A Good By Any Means Necessary**

Part of the problem with starting from the self-evidence of Evil is that it attempts to define Evil without a reference to the Good; rather, the Good is something that responds to Evil. When ethics or law operates as the a priori ability to discern Evil, the only resulting Good is that which seeks to deal with or eradicate Evil.<sup>73</sup> Such a position, of the a priori determination of Evil, also fails to think the singularity of the current situation, but rather tries to fit the evil acts/occurrences into pre-existing categories with pre-determined causes and therefore necessary responses. Richard Bernstein, in his analysis of the abuse of the rhetoric of Good and Evil post September-11, identifies a similar point in that the identification of Evil also assumes a particular response to Evil – that is, to fight it or eradicate it.<sup>74</sup> In this framework, the only possible Good is that which responds to Evil.

Is this not the function of the superhero and the end result we see in *Unbreakable*? For as Price builds the framework for Dunn's construction as the superhero we find that the Good is being constructed by and in response to Evil. Dunn's role as the superhero is only discovered and developed by Price, who is trying to construct himself as the supervillain. In this sense Dunn did not come to the realisation of his superhero abilities himself, it was only through his interactions with Price. As such, we find that Dunn's role as a superhero is restricted to a response to Evil. Dunn does not seek a Good itself but only ever a response to Evil. Evil as such is only that which can *and must be* eradicated. We can see the effects of this when Dunn goes to engage in his first 'heroic act'. As we noted above, Dunn, at Price's prompting, goes searching not just for someone who has committed crimes, but for one who is *going* to commit one. He finds a

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<sup>73</sup> Badiou (2001) pp8-14.

<sup>74</sup> Bernstein (2005).

man who has broken into a family's home, killed the father, raped the mother, tied up the two children and is now living in the home, with the mother and children as prisoners. Dunn follows the man back to the house, breaks in and frees the children. When he goes to help the mother, however, he is found by the man who throws him out the window into the pool. As water is the one thing Dunn is vulnerable to, he struggles in the pool, almost drowning. He is only able to get out with the aid of the two children that he has already rescued. Dunn then goes back into the house, attacks and, in what must be one of the longest strangle scenes on film, kills the man. The following day we find that Dunn has been written up in the newspaper as a superhero. This seems to fulfill Price's vision: Dunn has finally realised that he is a superhero and has started to engage in heroic acts (as noted elsewhere he also regains his manhood, saves his marriage and gains the respect of his son<sup>75</sup>).

At first glance, Dunn seems to have 'found his true place in the world' and will now spend his nights fighting crime, while reunited with his family and enjoying a 'normal' life during the day. He has taken his first step towards a superhero career of fighting crime and Evil. However, what is the nature of this role that he has taken? Let us explore this scene in a little more detail. What did Dunn actually do? He broke into a private residence and strangled a man to death. On what evidence or authority did he do this? Simply the speculative theorising of an art gallery owner and an intuition regarding what the man had done. This intuition – Dunn's psychic vision – is visually depicted for the audience, thus convincing us that it has actually occurred in the filmic universe. Now, in the circumstances as presented, these people obviously needed helping. Yet, in the process of taking matters into his own hands he almost got himself killed and, in an extremely physical way, killed the perpetrator.<sup>76</sup> A 'normal response' would have been to call the police. However, because of Price's positioning of Dunn as a superhero he stepped in and took matters into his own hands.

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<sup>75</sup> See Palmer (2010); Abele (2010).

<sup>76</sup> This is in contrast to the 'more restrained' depictions of superhero justice (with Superman or Batman rarely, if ever, killing a criminal or villain). Here Shyamalan depicts Dunn brutally strangling the perpetrator in what is an intense, discomforting and drawn out display of physical violence.

Dunn's 'heroic act' could easily have gone horribly wrong.<sup>77</sup> Price dismisses this risk with the notion that 'life does not fit into little boxes that were drawn for it'. However, there was no ethical consideration of how Dunn should approach the situation – it was simply that he would step in and deal with the apparent criminal. Is this the responding to the singularity of the ethical situation as presented that Badiou calls us to (as opposed to a reference to a formal/universal law that fails to see the singularity of the situation in front of it)? Or is it rather a very enactment of the formal law with complete disregard to the multiple potentialities of the situation? Given Dunn's positioning, the latter seems more likely. Dunn sees himself as fulfilling the role of the superhero – such a role he believes is focused on crime control and prevention and is thus inherently tied to the goals of the law itself. Yet the framing of this duty as built on the self-evidence of Evil, positions Dunn as judge and executor that deals a form of justice based on the assumption of the self-evidence of the Evil act before it. It is *not* a justice in response to the singularity of the situation, but a justice in response to the general self-evident Evil as presented – a response specifically to what *Dunn sees* as being Evil.

Dunn's role is thus aligned to that of the law in its desire to do justice and to restore a sense of order and reason to what is otherwise a senseless, disordered or unjust act. While Dunn is certainly acting outside the law, he is acting as its supplement to fulfill the goal of justice – a goal which the law appears to fail to achieve. Fulfilling the function of the law, Dunn determined that the actions of the perpetrator disrupted the social order and Dunn thus assigned blame to him. As such, the superhero (acting instead of, or on behalf of, the law) reintroduces reason and order into what would otherwise be a senseless act.<sup>78</sup> While the superhero is able to achieve this process much faster than the law (and,

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<sup>77</sup> What is interesting here is the point made by both McCloud and Eisner about the complicity or contract between the artist and the reader of comic books. In a comic book version of a similar encounter it is likely that much of the actual battle and killing of the man would have occurred in the space between panels, requiring the reader to make the connection about what is going on in-between. It is thus the reader's imagination that does the killing. One of the differences with film is that we are presented with the actions themselves and can potentially hold ourselves apart from the killing/actions that are going on. We can believe that we are not as complicit in those actions as McCloud argues that we are in comic books. See McCloud (1993) pp62-69; Eisner (2008) p48. See also the discussion of viewing violence by Milbank (2003), chapter 2.

<sup>78</sup> Berger (2008) p107.

apparently in place of the law altogether as it seemed that the existing mechanisms for identifying crime had failed to identify the actions of this perpetrator), he still suffers from the same problem that the law has in relation to this type of justice. That is, that while the law can determine a measure of blame, denouncing certain actions as blameworthy and aberrant to society and punishing those carrying out such actions, this operation does not actually completely restore order or resolve the senselessness to which it is attempting to respond.<sup>79</sup> While the perpetrator can be designated as Evil and processed in relation to justice, the victim cannot. As Berger notes, 'Punishment does not speak to *why* the act happened in the first place, so the senselessness of victimhood remains untouched'.<sup>80</sup> Thus the law's ability to explain the suffering of the victim – the sense of 'why me?' or 'why do I suffer?' – is limited. Where the superhero takes on this role in enacting justice / inflicting punishment, the same problem arises. Connecting the superhero to justice does not explain the suffering that has been experienced. The law can only designate this particular act as of the type that is Evil. It cannot respond to the reason why this particular act occurred to this particular person in this particular way. Thus, starting from the point of the self-evidence of Evil and constructing a Good that responds to it and seeks to eradicate it, still will not actually explain the very suffering caused by Evil itself. The committing of violence (whether it be by the superhero or by the law) does not counter-balance the violence already suffered by the victim.

What lies behind the issue with the actions taken by Dunn is not just the fact that killing the intruder and saving the children cannot explain the suffering experienced. It lies further in the question of the ability to accurately and consistently determine justice (which is also the problem/difficulty faced by the vigilante or superhero operating beyond the law). That is, what if Dunn's understanding of the situation had been wrong? What if, in his desire to respond to Evil, Dunn had in fact attacked and killed the wrong person? Such an action would clearly have enacted Evil and inflicted senseless suffering rather than responding to it. While it is clear that this is *not* the case here, there is little

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<sup>79</sup> Berger (2008) p107.

<sup>80</sup> Berger (2008) p108.

reflection on the possibility that it could have been. This is where the law's awareness of the possibility of its own failure is inherent and instituted in the requirements of due process. The risk for the law is that it will inflict suffering (i.e. wrongful conviction/punishment) where none is due and thus act as Evil instead of doing justice and restoring the Good. Such a risk is known to the superheroes in comic books, many who have a reluctance to killing and who demonstrate ethical struggles in relation to the actions that they do take beyond the law. This questioning of Dunn's actions, however, does not occur at this stage – this is a result of the way that he has been constructed as a Good that responds to Evil. For in starting from the point of the self-evidence of Evil the actions that need to be taken are to respond to it and little thought goes into that response.

## **7. The Precariousness of Law's Response to Evil**

This analysis brings us to the final scene of the film where Elijah Price is unveiled not only as a supervillain but also responsible for all the apparent 'accidents' or disasters that have been referred to throughout the film: a hotel fire, a plane explosion and the derailment of the train Dunn was a passenger on at the beginning of the film. Price comments "it has begun", referring to the fact that the origin story of the hero has been told and what now should begin is a series of films/episodes/encounters between the supervillain and the superhero. Now that Dunn has been identified as the superhero, Price's theory about comic book mythology has been validated. Not only can Price now explain his suffering but he can also find his place in the world as a supervillain. He can also justify the terrorist acts he has committed. As such, in line with the comic book genre what can now be expected is the ongoing battle between Good and Evil, Dunn (the superhero Security Man?) and Price (the supervillain Mr Glass). As Palmer notes, while this was the initial open-ended conclusion that Shyamalan envisaged for *Unbreakable*, the end we actually see is not as open.<sup>81</sup> That is, *Unbreakable* was to be the first of a series of films Shyamalan had considered about Dunn as the superhero (and there have been rumours ever since about a potential sequel). However, in response to prerelease marketing feedback, Shyamalan became

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<sup>81</sup> Palmer (2010).

convinced that there was a need for at least some sort of token gesture towards a restoration of the social/moral order – that is, some sort of sense of justice at the end of the film. As such, instead of the film ending simply with Dunn’s shock at the discovery of Price’s terrorist acts and the naming of the supervillain (as Mr Glass), the final scenes are resolved with the inclusion of the following text:

David Dunn led authorities to Limited Edition where evidence of three acts of terrorism was found.

Elijah Price is now in an institution for the criminally insane.

This post script introduces quite a different element into the finality of the story.<sup>82</sup> It provides an introduction of, and return to, law (which, despite the connection of the superhero’s role to justice, is almost completely absent in the film in the form of courts, lawyers and even law enforcement). This introduction of law in one sense seems to completely undermine the entire framing of the film around the potential for superheroes to actually exist. For, in contrast to the earlier scene where Dunn took matters into his own hands as the superhero, deciding not to call the police, here Dunn’s reaction is precisely to lead the authorities to Price. Dunn, having now discovered that his source of meaning and construction of the Good was completed by and through the very acts of Evil itself, has given up the possibility of his role as the superhero and any commitment to the Good. The apparent result of these actions is the dissolution of Dunn as the superhero: instead of taking matters into his own hands he calls the police; instead of fulfilling the role of the Good himself, he defers to the authorities. As such, this reflects the problem of a Good constructed in Evil – it needs Evil as much as Evil needs the Good. To think the possibility of the Good only in light of Evil means that the very eradication of Evil that is demanded can never be completely performed for in doing so the Good would no longer be needed. In part this is the reason for the ongoing battle between Good and Evil in comic books – without Evil to fight, the superheroes would have little to do. Thus the superhero’s role in restoring the social order – in fulfilling justice – can never actually be completely fulfilled. At the same point in time this also reflects the

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<sup>82</sup> One that indeed makes it more difficult for a sequel to work for in a realistic version of the superhero story, for how would Price break out of the institution for the criminally insane?

way the law itself is inherently tied to crime and acts of Evil. For the law's focus is on determining actions which are aberrant to society and in punishing those who commit such actions – its focus is on responding to Evil.

In another sense, however, this introduction of the law does not change the position for Price. For he is looking for meaning and purpose – he is desiring to become a subject recognised and responsible. This reflects in part why his acts are all incredibly public and high profile – at one level he wants to be caught so that he can be defined as the villain, so that his life can have meaning. The movement from the superhero doing the catching to the law doing it does not necessarily diminish this role of subjectification that Price seeks – his demand for an agent to recognise him as a subject.<sup>83</sup> Such recognition would accord with the superhero who identifies his acts of terrorism as the acts of a supervillain as well as an agent of the law who identifies his acts as those of a criminal or terrorist. As such Price's punishment can bring relief to him by bestowing on him this recognition and providing the meaning or explanation he desires.<sup>84</sup>

Yet, while this introduction of law seems to diminish the role of the superhero and dismiss the comic book mythology that has been presented throughout the film, there is a complexification of this position. That is, Price is not simply in prison but in an institution for the criminally insane. This reference point is once again to comic book mythology (think of Gotham City's *Arkham Asylum* which has, instead of the relevant prisons, housed The Joker, Twoface and numerous other Batman supervillains). However, what is worth noting here is that the law itself would be unlikely to determine that Price is criminally insane. The traditional test for the insanity defence requires that the accused either did not know the nature and quality of the act he was doing or, if he did know it, that he did not know that what he was doing was wrong.<sup>85</sup> Price would not appear to have satisfied either limb of this test. At all times he appeared very aware of

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<sup>83</sup> Salecl (1993) p12.

<sup>84</sup> See Salecl (1993) p12.

<sup>85</sup> The traditional test for insanity is derived from the M'Naghten Rules: '...to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong.' M'Naghten's Case (1843) 10 CL & F 200 at 210

what he was doing in planning and committing the terrorist acts. In addition, it cannot be said that he was unaware that these acts were against the law (the traditional measure of whether an act is wrong) nor that they were morally wrong. For in his desire to see himself as the supervillain he specifically *wants* to commit acts that he knows are wrong and are against the law.<sup>86</sup> He specifically desires the law's response to him – to find him guilty – in order to determine his purpose/meaning.

More than simply being a pop culture simplification of the actual application of law for narrative effect, this precise reference to the comic book theme (of placing the supervillains in an institute for the criminally insane) explicates the very precariousness of the law's ability both to determine blame and to distinguish between the status of victim and the status of perpetrator. Placing Price in an insane asylum reflects the 'increasing difficulty in trying to maintain a stable sense of the criminal as perpetrator rather than as victim.'<sup>87</sup> That is, it demonstrates the uncertainty of punishing someone for evil because in doing so it cannot explain this evil. For, as Berger points out, the law's attempt to do justice and to provide a restoration of order via the denunciation of certain actions as criminal, is inherently caught up with the search for reason and explanation. But the law's search for reason and for explanation seems to uncover rather the overarching senselessness of crime and punishment – the fact that even when acts are designated as criminal, their impact still seems to be meaningless or unexplained. As the law attempts to explain the world it must also explain the perpetrator who looks more and more like a victim of society:

Because it is enamoured with a rationalized and therapeutic conception of the subject, the modern criminal law is locked in categorical confusion among victim, perpetrator, and society itself. In this way, instead of bringing order to the senseless, modern criminal law is very much at risk of making no sense at all. This ever-present risk creates an abiding state of disorder in which the criminal law is always inadequate and, worse, senselessly violent. Under the shadow of this precariousness, the criminal justice system, even at its best and most accurate,

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<sup>86</sup> For an excellent analysis of Supervillians and the Insanity Defense, along with other fantastic law and comic book related topics, see Davidson (2011).

<sup>87</sup> Berger (2008) p112.

begins to feel deeply unjust. In this way, the modern criminal law is on a collision course with itself. As the rationalist understanding of crime grows, the order and justice of society itself becomes deeply problematic.<sup>88</sup>

The introduction of law at the end of *Unbreakable* thus *does not* provide the certainty and closure that Shyamalan apparently intended. Instead it identifies the very uncertainty of the ability of the law to make sense of suffering and to explain the criminal. As such, Price is placed beyond the understanding of the law and treated as Evil, other, insane. As opposed to Shyamalan's other films, instead of the conclusion bringing together the explanatory power of the narrative and with everything making sense we find the opposite.<sup>89</sup> The conclusion in *Unbreakable* is about the very *meaninglessness* of suffering and the *inability* to explain Evil.

## 8. Conclusion

Superhero stories have the potential to inspire us and to take us beyond where we have been before. As Bainbridge points out, superheroes, in both comics and film, are 'capable of doing intellectual work about law and justice'.<sup>90</sup> They give us a powerful way to think differently about our understanding of law, potential deficiencies or inconsistencies of the legal system as well as ways of dealing with the gap between law and justice.<sup>91</sup> Thus, we should take seriously Shyamalan's encouragement to explore the mythological frameworks and potential impacts of superhero comic books. Such explorations can make clear both the ways in which the law seeks to provide justice and its inherent precariousness in doing so.

At the same time, we need to be aware of the risks of such analysis that are inherent in the needs of the genre – the need for the superhero to have a supervillain to fight. For what Shyamalan's filmic exploration of superheroes makes clear in its preempting of the 'superhero decade', is the precariousness of

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<sup>88</sup> Berger (2008) p116.

<sup>89</sup> I.e. that Malcolm Crowe (Bruce Willis) is a ghost in *The Sixth Sense* or that the last words of the wife of Graham Hess's (Mel Gibson) in *Signs* are actually warnings from God.

<sup>90</sup> Bainbridge (2007) p476.

<sup>91</sup> Bainbridge (2007) p476.

a Good (the hero, democracy, the law) that is constructed in and via Evil itself (the villain, terrorism, crime). That is, the presentation of a Good to be constructed in terms of an Evil that must be defeated. Yet such a concept of the Good is inherently unable to explain either the nature of Evil or the suffering it inflicts. This insight raises the question of whether we need *another* hero; one that is not defined by his/her relation to the villain – a hero that can conceive of the possibility of the Good in and of itself. Such a hero would be *very super* indeed.

## Chapter 3

# 'The Force' as Law: Mythology, Ideology and Order in George Lucas's *Star Wars*

### 1. Introduction

Where is the law in *Star Wars*? Why in films so resonant with our current age and touted as a mythology of our time,<sup>1</sup> saturated with technology (droids, ships, blasters), enmeshed in political turmoil (the manoeuvring in the Galactic Senate, the Emperor's totalitarian rule of the Galaxy, the resistance and political struggle of the Rebels) and permeated with international—or, rather, intergalactic—commerce (trade federations, commerce guilds and wars over trade routes) has the law been jettisoned like space trash from an Imperial Cruiser? Law breakers (Jabba the Hut, Han Solo) and even law enforcers (Storm Troopers, Bounty Hunters) abound, but no court scenes are dramatised in the *Star Wars* and no lawyers are figured. Despite *some* mention of slow and bureaucratic courts and the need for a treaty to make the Trade Federation's invasion of the planet of Naboo legal in *Episode I: The Phantom Menace*, there is almost no reference to law or legality at all in these films that, despite their mythological structuring and space opera setting, are otherwise so reflective of modern times. At least, that is to say, there is no *overt* reference to law. For my argument is that the *Star Wars* franchise in its mythological creation, as well as its capitalist construction, is in fact *saturated* with law. Where, in films that would appear to demonstrate law's *absentia*, do we find law? It is in none other than the mythology and, I argue, legality of 'the Force' – that mystical energy field created by all living things that supposedly binds the galaxy together, desires a sense of universal order and balance and seeks to regulate destiny itself!

Such a perspective on the mythology of 'the Force'—the focal point and source of power for both the 'good' religious order of the Jedi and their 'evil' counterpart

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<sup>1</sup> In fact, touted from the beginning as a mythology of our times. See Gordon (1978).

the Sith—certainly aligns itself to a form of natural law or of law’s natural order. However, drawing on Lucas’s creation of a mythology of modernity, my argument is that ‘the Force’ is in fact a representation of what Peter Fitzpatrick has identified as the mythological structuring of *modern law*—that grand ability of the law to stand in a form of irresolution between transcendence, certainty and determination on one hand and social construction, contingency and responsiveness on the other.<sup>2</sup> However, *Star Wars* does not just provide a representation of this form of modern law. Rather, I argue, it is a critique of modernity which separates the law from faith, belief, ethics and morality—that is, the way in which the law ‘let go’ of its groundings beyond itself, while at the same time trying to maintain its claims of certainty, universality and its authorised form of violent control.

To explicate this connection of ‘the Force’ to law I will explore the two *Star Wars* film trilogies<sup>3</sup> (as the most prolific and promulgated components of the *Star Wars* universe) as a ‘telling instance’ of popular culture—one that ‘makes strange’ the mythology of modern law. In so doing I will both read *Star Wars* jurisprudentially<sup>4</sup> (unpacking how it re-reads and renders the mythology of modern law otherwise) and as a form of law itself—a process of establishing a relation to law and legality, a form of myth.<sup>5</sup> That is, I will be reading *Star Wars*, and ‘the Force’ in particular, as both an allegory of law as well as a form of law.

To facilitate this explication, I will be progressing a number of interconnected readings of ‘the Force’. In section two of this chapter I will explore ‘the Force’ and *Star Wars* as mythological by analysing the way in which Lucas draws upon the works of mythologist Joseph Campbell in the intentional construction of a modern mythology. However, what we see in *Star Wars* is not simply one of the clearest connections of popular culture to mythology, but in fact a demonstration

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<sup>2</sup> Fitzpatrick (1992).

<sup>3</sup> In this chapter I will distinguish between the two *Star Wars* trilogies by referring to *Star Wars Episode IV: A New Hope* (1977), *Star Wars Episode V: The Empire Strikes Back* (1980) and *Star Wars Episode VI: The Return of the Jedi* (1983) as ‘the original trilogy’ and *Star Wars Episode I: The Phantom Menace* (1999), *Star Wars Episode II: Attack of the Clones* (2002) and *Star Wars Episode III: Revenge of the Sith* (2005) as ‘the prequel trilogy’ or ‘prequels’.

<sup>4</sup> See MacNeil (2007).

<sup>5</sup> See Manderson (2003).

of the way mythology shifts to, or becomes, ideology—that is, *Star Wars* embeds a particular form of politics in its mythology, one that both reflects and refracts the very politics and ideology of today’s global, post-modern capitalism. As such, section three will read ‘the Force’ ideologically as a form of what Slavoj Žižek has referred to as ‘Western Buddhism’—the perfect ideological supplement to global capitalism. This is not to dismiss popular culture as merely a tool of ideological pacification, but rather to identify how the fantasy in popular culture explicates the functions of ideology itself. What this exploration leads to, however, is the conclusion that the underlying operation of ‘the Force’ (in its desire for balance and order) is in fact nomological or legal—that it is a form of law. This claim for the connection between ‘the Force’ and law is expounded in section four, identifying that ‘the Force’ is not simply a form of natural law that seeks to provide balance to the universe, but rather a representation of modern law and its myth. Drawing on Fitzpatrick, this form of modern law is identified as being still very much concerned with order and of establishing and maintaining peace in a civilisation that is always precarious and under threat. This theme is then furthered in section five by the exploration of what Giorgio Agamben would call the ‘state of exception’ in relation to Lucas’s depiction of the transition from the Galactic Republic to the Galactic Empire. Such a depiction identifies that while the ‘state of exception’ is designated to restore peace and order, that it is the very form of this restoration of order that is of greater concern.

As such, I will be reading and taking popular culture—*Star Wars*—seriously as a text that not only demonstrates but critically explicates and ‘makes strange’ our understanding of law and its relation to society, taking that intersection elsewhere, indeed to a juridical galaxy ‘far, far away...’

## **2. “I’ve got a bad feeling about this”: From Mythology to Ideology**

*Star Wars* as a series of films (not to mention the extended universe of books, television series, comics and video games) has been read culturally in a number of different ways. It has been explored for its philosophical and ethical insights,<sup>6</sup>

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<sup>6</sup> See the essays in Decker and Eberl (2009).

as an explication of environmental ethics,<sup>7</sup> as a commentary on the American experience and perceptions of war,<sup>8</sup> as a form of imperial myth,<sup>9</sup> as a representation of human rights<sup>10</sup> and as a way of understanding or exploring spirituality or religion,<sup>11</sup> to name just a few. In addition, it has been critiqued and condemned as part of the arrival (and longevity) of the corporatised, special-effects orientated, big budget blockbuster of the so called 'New Hollywood' (a point to which I will return shortly).<sup>12</sup> Acknowledged as having had a dramatic impact culturally and, with the release of the so-called prequel films (*Episodes I-III*) in 1999-2005, across multiple generations, *Star Wars* is a mainstay and touchstone of both science fiction and fantasy in popular culture. Now with the release of 'The Complete Saga' on Blu-Ray, the re-release of *Episode I: The Phantom Menace* in cinemas in 3D and the pending sequel trilogy from Disney, one gets the feeling that *Star Wars* is enacting an eternal recurrence of the same—which is not that far from the truth. For the starting point, in discussing *Star Wars*, has, from the very beginning been to read it as mythological.

Following Andrew Gordon's description of the original film, *Star Wars* (now referred to as *Episode IV: A New Hope*) as 'a myth for our time',<sup>13</sup> there has been a wealth of scholarly and popular exploration of the connections between *Star Wars* and mythology—particularly the understanding and description of mythology put forward by Joseph Campbell.<sup>14</sup> Such a connection is not simply imposed boilerplate-style without regard to the text or its creators. Far from it, because here Lucas has consistently acknowledged Campbell as a source<sup>15</sup> and, vice-versa, Campbell praised *Star Wars* portrayal of the mythological hero's quest.<sup>16</sup> The focus of this analysis and discussion has centred on the way in which *Star Wars* conforms to Joseph Campbell's 'monomyth' and the description of the

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<sup>7</sup> Cooke (2009).

<sup>8</sup> McVeigh (2006) p35.

<sup>9</sup> Kuiper (1988).

<sup>10</sup> Lovell (2002).

<sup>11</sup> Bortolin (2005); Porter (2003); Jones (2005); Grimes (2007).

<sup>12</sup> See Biskind (1998); Lewis (2003). See also Decker (2009).

<sup>13</sup> Gordon (1978) p319

<sup>14</sup> See for example Gordon (1978) p319; Gordon (1980); Gordon (1984); Wood (1978); Collins (1977); Lehrer (1999); Lancashire (1984); Lancashire (2000); Lancashire (2002).

<sup>15</sup> See Moyers (1999). See also Larsen and Larsen (2002) quoted by Lawrence (2006) p21.

<sup>16</sup> Campbell with Moyers (1988) pp xiii, 23-24.

adventure of the hero in *The Hero With a Thousand Faces*.<sup>17</sup> According to Campbell, the goal of myth is to effect a reconciliation of the individual consciousness with the universal will, leaving behind the life of ignorance. This is effected through a 'realization of the true relationships of the passing phenomena of time to the imperishable life that lives and dies in all.'<sup>18</sup> The adventure of the hero, along with the continuous retelling of the story in its various forms, is what achieves this reconciliation to the universal will and it is where the cycle of the hero forms part of the second element of the monomyth, the 'Cosmogonic Cycle'. The Cosmogonic Cycle involves the harmonisation of opposites and a totality of the universe, submitting it to the Law and Image of the nature of being.<sup>19</sup> As such, there arrives a balance of opposites—between mercy and justice, good and evil, right and wrong—behind which is an energy that is one and the same. In *Star Wars* this energy that balances opposites is of course 'the Force' itself. Thus we find the teaching of symbiotic relationships and harmony, points particularly well elucidated and demonstrated by Jedi Knight Qui-Gon Jinn (Liam Neeson) and his apprentice Obi-Wan Kenobi (Ewan McGregor) in *Episode I: The Phantom Menace*.

While the connection of *Star Wars* to mythology is quite clear, what is of even more over-riding significance is the way in which Campbell (and Lucas) view the need for mythology today. A view which runs, seemingly, against the grain of our so-called modern, mechanised world, where mythology is seen as part of the realm of the primitive and as essentially false. Campbell argues, however, that such a positioning and dismissing of mythology creates a number of problems.<sup>20</sup> For while the cosmological (and to some degree mystical) function of mythology

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<sup>17</sup> Campbell (1973). The trajectories of Luke Skywalker in the original trilogy of films have been mapped to this adventure of the hero both for each film individually and for the trilogy as a whole: see Gordon (1978); Voytilla (1999) pp273-291; Galipeau (2001). While it has been argued that Lucas drifts further from Campbell's hero quest in the prequels (Lawrence (2006)), at least *Episode I: The Phantom Menace* and the prequel trilogy as a whole also conform to this form of the monomyth: Lancashire (2000).

<sup>18</sup> Campbell (1973) p238.

<sup>19</sup> Campbell (1973) p114.

<sup>20</sup> He argues that it is the loss of mythology that results in some of the destructive and violent acts by young people who 'don't know how to behave in civilized society' Campbell with Moyers (1988) p8. Elsewhere he argues that because 'our old mythologically founded taboos unsettled by our own modern sciences, there is everywhere in the civilized world a rapidly rising incidence of vice and crime, mental disorders, suicides and dope addictions, shattered homes, impudent children, violence, murder, and despair': Campbell (1993) p11.

is now supposedly provided/explained by science, the sociological and psychological functions of myth have tended to be dismissed—or at least some of the other realms for which they function, the law included, seem to have lost symbolic efficiency. Campbell argues that part of this relates to the fact that, while the main motifs of myths are always the same, every mythology has grown up in a certain society in a *bounded* field.<sup>21</sup> Today with the so-called ‘clash of civilisations’ and notions of ‘globalisation’ such boundaries appear to be fading away.<sup>22</sup> As such, Campbell argues that the only mythology that could be valid today is one for the planet as a whole—one which, for him, we did not as yet have.<sup>23</sup>

In our present age, however, popular culture itself has been identified as having the potential to serve some of these Campbell-esque functions of mythology.<sup>24</sup> This perspective is specifically acknowledged by Lucas in reference to *Star Wars* where he believes he is providing a myth not just localised to a particular bounded space, but localised globally for the planet:

I’m telling an old myth in a new way. Each society takes that myth and retells it in a different way, which relates to the particular environment they live in. The motif is the same. It’s just that it gets localised. As it turns out, I’m localizing it for the planet. I guess I’m localizing it for the end of the millennium more than I am for any particular place.<sup>25</sup>

While it is clear that popular culture has a central role and place in the development of modern mythology, what is the form of such a potentially globalised myth taking *and* is it really global? For, while Lucas has been praised as creating a myth for our times, at the same time he has been criticised as one of the progenitors, along with Steven Spielberg, of so-called ‘New Hollywood’ with its ‘corporate control, emphasis on special effects and spin-off products, and preference for tried-and-true spectacles over more modest productions with real scripts.’<sup>26</sup> Spielberg’s release of *Jaws* in 1975 was the highest grossing

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<sup>21</sup> Campbell with Moyers (1988) p27.

<sup>22</sup> See Huntington (2003).

<sup>23</sup> Campbell with Moyers (1988) p28.

<sup>24</sup> See Voytilla (1999) p1; Ferrell (2000) p19; Hirschman (2001).

<sup>25</sup> Moyers (1999).

<sup>26</sup> Sharrett (1998).

motion picture in Hollywood history. It lost that title two years later when Lucas released *Star Wars*.<sup>27</sup> These were two of the first ‘summer blockbuster’ films which are often criticised by film critics and historians alike who favoured the stronger scripts, acting and character development of the traditional ‘auteur directors’ such as Coppola or Scorsese. However, this type of blockbuster changed Hollywood, brought in hundreds of millions of dollars in box office revenues and reached millions of people not just within the USA but worldwide.<sup>28</sup> When Lucas stated that he was localising the myth of *Star Wars* for the planet there is some merit to this claim,<sup>29</sup> at least in terms of Hollywood’s global reach. However, it is often the very mythic elements (archetypal characters, formulaic plots, trite narratives) that are criticised as being of diminished quality in Hollywood Cinema. What is interesting here is that the very films that are designated at one point as part of the modern, capitalist, financially driven era of blockbuster film-making (not to mention the tie-in marketing and merchandising for which Lucas is well-known) are films that appear to promote the very antithesis of modernity—that is, they draw specifically on, and mobilise, mythology. Such a connection of these two elements—the mythological proficiency of *Star Wars*, along with its capitalist efficiency—call into question the simple claims of both Lucas and Campbell in regards to the need for, and functioning of, mythology today.

That is to say, while ‘the Force’ and *Star Wars* are clearly drawing on Campbell’s mythological framework, they also seem to function as a form of ideology—or more precisely, as an ideological supplement for the very capitalist framework that produced them.<sup>30</sup> How is it that mythology, in this sense, can become

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<sup>27</sup> Lewis (2003) p14.

<sup>28</sup> Lewis (2003) pp14, 16-17.

<sup>29</sup> Moyers (1999).

<sup>30</sup> My point here is not so much to identify either that traditional myths can ever be separated from ideological positions within particular cultures, nor to say that mythology precedes ideology (ideological positions can clearly develop and circulate to the point that they become mythic or otherwise embodied in mythic stories). Rather, it is to identify that where Lucas believes he is presenting a global mythology—a representation of a universal story (the monomyth which is supposedly, in its essence, the same for all people in all places)—that he passes over Campbell’s own ideological premise: that there is only *one* essential myth told in many different ways. Given the form in which Lucas presents his mythology—multi-million dollar Hollywood blockbusters—we should look to read *Star Wars* *not* as mythology (as it is being presented) but rather as a particular type of ideology (as we will see in the next section).

ideology? The answer may be found through the process of ‘making strange’ whereby we ‘out’ the political core that lies at the very heart of *Star Wars* and the Jedi-master narrative of ‘the Force’ that underlies it. As such, my focus here is on the way in which *Star Wars* reveals a politics inherent to the mythology. We can begin this ‘outing’ through exploring a notion that is central to both the *Star Wars* films and to ‘the Force’ itself: ‘letting go’.

### **3. “Learn to let go of everything you fear to lose”: From Ideology to Law**

To begin this discussion of ‘letting go’, let us look at one of the most exciting scenes from the first of the *Star Wars* films, *Episode IV: A New Hope* (originally released in 1977 simply as *Star Wars*). In this film we are introduced to that terror of the galaxy Darth Vader who is attempting to crush the last of a Rebel Alliance (including Princess Leia Organa (Carrie Fisher), Luke Skywalker (Mark Hamill) and, reluctantly, Han Solo (Harrison Ford)) in order to ensure the dominance of the ‘evil’ Galactic Empire. At the end and climax of the film, the Rebel Alliance mounts an attack on the Empire’s Death Star—the space station the size of a moon with the capabilities of destroying an entire planet—based on the technical data stolen by Princess Leia. In the attack, squadron after squadron of fighters criss-cross, bob and weave and zig-zag over the textured, corrugated and crenulated cavities of the Empire’s ‘technological terror’ attempting to fire their proton torpedoes into a small exhaust vent which, if hit, will just happen to set-off a chain reaction that will destroy the Death Star. But failure meets every pilot. Except, that is, for our hero Luke Skywalker. This is because, when flying his X-Wing fighter through the trench of the Death Star, he is encouraged to ‘let go’ and trust his feelings by the voice of his (presumed dead) mentor Obi-Wan Kenobi (Alec Guinness)—which he does. Unlike the previous fighter pilots, who relied solely upon the targeting computer, and thereby failed to hit the target, Luke turns off his computer and uses ‘the Force’ instead. The result: a direct hit, with the Death Star exploding spectacularly into millions of pieces.

This scene highlights this thematic of 'letting go' that is referenced throughout the trilogies. 'Letting go' is also one of the first things that Obi-Wan instructs Luke regarding his initial training with the lightsabre: "let go of your conscious self and act on instinct."<sup>31</sup> It is the same advice that Yoda, that powerful, lovable and green Jedi Master, provides Anakin Skywalker (Luke's father, played by Hayden Christensen, whose story and transition to Darth Vader is a central focus of the prequel films) in relation to his respective fears of losing his mother or Amidala (his girlfriend, played by Natalie Portman): "let go of all that you fear to lose."<sup>32</sup> Yet this frame of letting go—of your conscious self, of your physical self, of those you fear to lose—is not a complete letting go. Rather it is a letting go *physically* in order to hold on *psychically*. While this process is presented, given its mythical framing, as a form of abolishment or annihilation of the ego (its reconciliation to the universal will or 'the Force'), at the same time, it actually involves a particular form of holding on to the ego. For, while the Jedi supposedly teach compassion and love for all, acknowledging the symbiotic relationship between all living things, at the same time this does not present a universal respect for all beings as unique, free and autonomous. For the Jedi are in fact quite open to the use of manipulation—deception, mind control tricks—in order to achieve their desired outcome. As such, this very form of letting go is a way of gaining *increased control*, though this amplification is presented with a façade of peace, compassion and non-intervention.

This is clearly seen in *Episode I: The Phantom Menace* when Jedi Knight Qui-Gon Jinn frees the young Anakin Skywalker (Jake Lloyd) and yet will not free Anakin's mother because their owner (the junk dealer, Watto) "would not have it." While this seems very noble and non-interventionist—Qui-Gon will adhere to the formality of the freedom to contract and Watto's refusal to release both Anakin and his mother—what it does not acknowledge is that when betting on which slave to free Qui-Gon, using 'the Force', fixes the dice role so that it will turn up on Anakin. So Qui-Gon is actually *very* willing to intervene when it suits his purposes, while using the non-interventionist stance as a reason *not* to intervene

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<sup>31</sup> *Star Wars Episode IV: A New Hope* (1977)

<sup>32</sup> *Star Wars Episode III: The Revenge of the Sith* (2005)

when it does not (even if that means taking Anakin from his mother and allowing her enslavement to continue when he could have done something about it).<sup>33</sup>

Thus, the focus on ‘letting go’ is not a dissolving of the self or ego in a pure love or compassion for others. In fact it is the very holding on to the ego itself—of the individual’s ability to take whatever actions they believe appropriate in order to achieve their own ends in disregard for their actual effect on others. This process is seen with greater amplification in *Episodes II* and *III* with Anakin’s turn to the dark side. For Lucas describes the reasons for Anakin’s turn to the dark side as his inability to let go—he is too attached to his mother and to Amidala.<sup>34</sup> Yet, what we see is *not* Anakin’s holding on so much to his mother or Amidala but to himself—for he in fact attempts to obey Obi Wan and Yoda’s advice to “let go of all that you fear to lose.” Yet such advice promotes an indifference to the plight of the individuals involved (advice that Obi-Wan and Yoda *also* give to Luke Skywalker in *Episode V: The Empire Strikes Back* – which Luke ignores)—the very suffering of Anakin’s mother and Amidala.

What such advice focuses on is in fact the self or the ego. The release from attachment, the ‘letting go’, encourages Anakin to ignore those around him in order to increase his focus on himself and his own power. This, in effect, sets him up to be seduced by Chancellor Palpatine (who is actually the evil Darth Sidious) and his offer of additional power. Anakin’s goal is not really to save Amidala for her sake, but for his own. Thus the internal focus of the Jedi, dismissing the worth of the materiality of others’ existence, aligns directly with the seeking of power of the Sith. The result is that this form and focus on letting go creates the conditions whereby the mind becomes all consuming and all powerful, seeking to control not just machines but the entirety of organic life around this machinic order—in short, the galaxy itself! The logic of this form of letting go makes the subject the absolute sovereign of the solar system, controlling and manipulating

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<sup>33</sup> This perspective, which willingly breaks individuals away from families in order to fulfill their personalised destiny, sees in ‘the Force’ a particular form of individualism. This type of individualism is explored further in Chapter 6 below.

<sup>34</sup> Corliss and Cagle (2002).

everything to his own ends.<sup>35</sup> The inescapable conclusion, here, is that the Jedi's letting go is the foundation of the Emperor's rule and the source of his power. The path by which the transmogrification—from good Jedi to bad Sith—takes place is complex, involving a process which does not so much control as disregard the Other, so that this paradox comes clearly into view: the ultimate control comes through a process of *not* intervening in, or engaging with, the material.

This is where *Star Wars* dramatises the shift from the mythological to the ideological. For the disengagement and distancing of one-self from the materiality of the world – this attitude of non-intervention, of 'letting go' – is characteristic of Capital in its current, globalised phase of development. For 'classic capitalism' – that of 19<sup>th</sup> century modernity – was about controlling productive forces, owning or seizing the mode of production, surplus value and so forth. Capitalism in its current, globalised state, however is about letting go of the productive forces—with the 'decentralisation and global dispersal of productive processes and sites'—to increase the control over production itself.<sup>36</sup> While capitalism was traditionally about the 'thing' and was an economy of objects, our ultra or global capitalist form has moved away from the focus on the 'thing' to an economy of signs and ciphers – that is, of information.<sup>37</sup> So the movement here is from the material to the mind, with the psyche 'letting go' of the physical. However, as we saw in *Star Wars*, the letting go of the physical does not mean that you lose control. Instead you displace it from the old economy, now failing, of industry, to the economy of information, of a symbolic universe of textuality, the semiosis of which is mapped digitally.<sup>38</sup>

As a result, this means that Capital can 'let go' of its historic ideology – the key being, the Protestant work ethic<sup>39</sup> – and embrace, paradoxically, an ideology that 'lets go' at its very source and centre. That ideology comes, as did Weber's Protestant ethic, tricked out in theological fancy dress: namely, Western

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<sup>35</sup> This theme is explored further in Chapter 6 below.

<sup>36</sup> Hardt and Negri (2000) p297.

<sup>37</sup> Hardt and Negri (2000) pp284-389.

<sup>38</sup> Hardt and Negri (2000) pp290-292.

<sup>39</sup> Weber (1958).

Buddhism. This connection – between capital and karma – is not new, Slavoj Žižek having made it repeatedly and emphatically.<sup>40</sup> Žižek’s point is that behind all of the focus on inner peace and ascetic detachment, Western Buddhism functions in a way that is precisely political, even ideological because as a faith with a central tenant of ‘letting go’ at its doctrinal heart, this confession is *the* perfect ideological prop for a global capital, now free itself of materiality having ‘let go’ of *‘the thing’*—the economy of objects.

But even more *radical* here is the insight that this ‘letting go’ does not yield more chaos; in fact, quite the reverse, it delivers far more order—restoring, in the idiom of *Star Wars*, balance to the galaxy. This is why ‘the Force’ can be so easily equated with Western Buddhism, because both function as ideological support mechanisms for their respective socio-economic systems, which turn out to be one and the same: that is, Capital in its imperialist and/or global phase of development.<sup>41</sup> Significant here with each, and very much in opposition to earlier forms of Capital (or feudalism, slave societies) is that for the two ideological props on display – Western Buddhism and ‘the Force’ – no sense of *the divine* can be intuited: God is neither dead (like Nietzsche said), nor unconscious (like Lacan said), nor even demented (like Philip Pullman dramatises) because, in both *Star Wars* and global Capital, God does not exist.<sup>42</sup> All of which has consequences for *the law* which holds these two systems together, driving their imperatives, suturing splits, cohering the organism. In each, *law* occupies a space that has let go of transcendence (God) as much as immanence (materiality).

Peter Fitzpatrick identifies law’s ability to stand in this gap of the ‘letting go’ when he outlines modern law’s mythic ability to cohere its internal oppositions:

Law is autonomous yet socially contingent. It is identified with stability and order yet it changes and is historically responsive. Law is a sovereign imperative yet the expression of a popular spirit. Its quasi-religious transcendence stands in opposition to

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<sup>40</sup> See Žižek (2001a); Žižek (2001b) pp 11-15; Žižek (2006) pp382-385; Žižek (2009c) pp65-67.

<sup>41</sup> For Žižek’s specific connection of Western Buddhism to *Star Wars* see Žižek (2005b). See also Žižek (2006) pp100-103.

<sup>42</sup> I owe this point to discussions with Professor William MacNeil regarding his unpublished paper on Philip Pullman’s *His Dark Materials* trilogy. MacNeil (paper on file with author). See Pullman (1995); Pullman (1997); Pullman (2000).

its mundane temporality. It incorporates the ideal yet it is a mode of present existence.<sup>43</sup>

Is not this description of modern law one that could be applied with equal accuracy to ‘the Force’? Of a *law* that is disconnected but very much in control. This is exactly what ‘the Force’ is – a *law* – despite all of its theological mysticism. Like Western Buddhism, ‘the Force’ *seems* like a religion; but if you drill down past its pseudo-theological layers (of meditative detachment, of symbiotic balance, of ‘letting go’), past even its political substrata (as the prop holding the Republic and later the Empire together), then you reach a nomological centre, which is, itself, conflicted and riven. Because it proclaims order, within disorder, as a law unanchored, as natural law was, to either God or man, but which nonetheless in its disconnection, connects and controls us all. This, as such, is the perverse nomological core of ‘the Force’.

#### **4. “It surrounds us, it penetrates us, it binds the galaxy together”: Law, Civilisation and Savagery**

If the perverse core of ‘the Force’ is nomological, with its focus on order and balance, then what kind of law is it? Given its religio-mythical dressings, the initial connection between ‘the Force’ and law suggests the natural law tradition. However, such a connection is not so much based on the religious identification of a divine lawgiver—the God who commands and determines the *lex divina*—as it is a form of natural law that has ‘let go’ of this divine source of law. Such a position does, of course, have its heritage in the natural law tradition, but it is in the secularised development of natural law that, following Grotius, conceived the existence and operation of nature and nature’s law without reference to God.<sup>44</sup> The focus there is on law that is determined with recourse to reason, itself prefigured in both Greek and Roman thought, Cicero’s ‘law of reason’ that is ‘eternal and unchangeable’ being a case in point.<sup>45</sup> However, as Fitzpatrick points out, when the Enlightenment attempted to displace God as the central lawgiver,

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<sup>43</sup> Fitzpatrick (1992) p x.

<sup>44</sup> Grotius *De Jure Belli ac Pacis* Prolegomena para 11 referred to in Freeman (2008) p105.

<sup>45</sup> Cicero (1998) p22 quoted by Lovell (2002) p230.

order becomes the first law of nature.<sup>46</sup> With this substitution, law as a species of divine orders (e.g. the ‘no’ of Mosaic commandment) becomes simply order itself. Orders return to the law in the subsequent 19<sup>th</sup> century with legal positivism’s ‘command theory of the law’, the command or order being that posited by the sovereign.<sup>47</sup> However, modern law, despite this positivist progression retains certain deific characteristics both in the centrality of the command of the sovereign (taking the place of the command of God, the supreme lawgiver) as well as in the equation of law with order (Kelsen’s description of law as an order being a clear example).<sup>48</sup>

When we turn to *Star Wars*, we find that ‘the Force’ itself, despite being tricked out as a religion or mythology, is in fact strongly centred on such a nomological alignment to order—a desire for balance. While there is some reference to ‘the Force’ having a ‘will’, what we actually find is that ‘the Force’ is not so much an external, divine being ‘out there’ but is in fact seen as something that is created by all living things. Obi-Wan describes ‘the Force’ as “an energy field created by all living things. It surrounds us, it penetrates us, it binds the galaxy together.”<sup>49</sup> Yoda notes that “life creates it, makes it grow, its energy surrounds us, and binds us.”<sup>50</sup> This, in fact, identifies ‘the Force’ as having ‘let go’ of the external divinity, and focusing much more on the balance or order of the universe—a position that reflects the moment of natural law that does not need God but is focused on reason and order. While Yoda’s identification of ‘the Force’ as that which ‘binds us’ and holds us together also reflects the way in which law is seen as that which binds us together – enabling and regulating social relations and preventing the ‘war of all against all’<sup>51</sup>—‘the Force’ is actually positioned as the regulator of destiny. Luke is told quite specifically by Obi-Wan that he “cannot escape his destiny.”<sup>52</sup> However, where this regulation of destiny is most strongly emphasised is in the prequel trilogy where we hear Qui-Gon Jinn identifying the

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<sup>46</sup> Fitzpatrick (1992) p51.

<sup>47</sup> The most famous promulgator of this theory being John Austin. See Austin (1998).

<sup>48</sup> Fitzpatrick (1992) p58; Kelsen (1967) p192. Cf Schmitt (2005).

<sup>49</sup> Obi-Wan Kenobi describing ‘the force’ to Luke Skywalker in *Star Wars Episode IV: A New Hope* (1977)

<sup>50</sup> Yoda instructing Luke in *Star Wars Episode V: The Empire Strikes Back* (1980)

<sup>51</sup> Fitzpatrick (2001) pp1, 28. See also Chapters 4 and 6 below.

<sup>52</sup> *Star Wars Episode VI: Return of the Jedi* (1983)

finding of Anakin as “the will of the Force.”<sup>53</sup> Anakin is then described as the ‘chosen one’ destined to fulfil the prophecy and “bring balance to the Force.”<sup>54</sup> Such a nomological focus on the alignment of destiny, despite its religious overtones, reflects this form of natural law’s desire for order.

Yet, the point here is not simply that ‘the Force’ is a form of natural law. Rather, what we find in the way that Lucas has created a ‘myth of our times’ is that this form of ‘the Force’ stands in the place of *modern* law—it is a representation not of a form of natural law caught between the pre-modern and modern, but of modern law that retains its focus on, and equation with, order. By identifying the way ‘the Force’ stands in the place of law and legality in the *Star Wars* universe, Lucas explicates and uncovers particular aspects of modern law that draw on its mythic origins and framings—in particular, the connection of law with order, its inherent relationship with violence, and its founding (and defence) of ‘civilisation’, society or the social order.

This connection of ‘the Force’ to the realms of order and balance can be demonstrated by exploring modern law’s perceived role in both instituting and defending ‘civilisation’ or the social order. As Fitzpatrick identifies, civilisation itself is something that is always under attack—disorder is always seeking to threaten order. However, the attack is not so much external to civilisation as it is internal to it. This can be explored in relation to the connection between civilisation and savagery – the way that, as Fitzpatrick identifies, civilisation is something which is opposed to, or defined in negation against, a savage other.<sup>55</sup> In *Modernism and the Grounds of Law* Fitzpatrick explicates this notion of savagery through his exploration of Freud’s myth of the primal parricide (as a modern myth of origin which demonstrates the shift from the ‘primal horde’, dominated by the rule of the father, to the need and development of society through the introduction of the law).<sup>56</sup> This depiction of the transition from

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<sup>53</sup> *Star Wars* Episode I: The Phantom Menace (1999)

<sup>54</sup> *Star Wars Episode I: The Phantom Menace* (1999); *Star Wars Episode II: Attack of the Clones* (2002); *Star Wars Episode III: Revenge of the Sith* (2005)

<sup>55</sup> Fitzpatrick (2001) pp 16, 61; see also Fitzpatrick (1992) pp63-86.

<sup>56</sup> Fitzpatrick (2001) p21. For an analysis of the ‘evil Father’ in relation to *Star Wars* in particular, see Bainbridge (2010) drawing on Freud and Jung.

primal horde to society is representative of the movement from a 'savage pre-creation' to a civilised society. However, the very focus of this move is on the shift *from* savagery—that is civilisation is what is not savage, what is not the 'primitive other' from which society has 'developed'.<sup>57</sup> Nonetheless, what Fitzpatrick identifies through Freud's myth of the primal parricide is that the very precariousness of civilisation is not so much the attack of a potential savage other from outside, but rather the internal savagery that persists within civilisation itself—that is, the individual is split between a persistent, recalcitrant savagery and the demands of an imperious civilisation.<sup>58</sup>

The result of this inherent savagery within society creates the very space and need for law. Law's relation to civilisation is in part its ability to control and deal with savagery. However, at the same time it draws on savagery for its very position: 'It is precisely as a societal container of savage violence that law comes to be set against savagery and identified with civilization.'<sup>59</sup> Thus, for Freud, the first requisite of civilisation is legality. Law has to constantly be '*made* applicable, not because of its irresolution but as a defence against savagery's constant challenge to civilisation – a savagery which persists in society and the individual alike.'<sup>60</sup> Whilst 'savagery may provoke a civilizing law into being, it is law which delineates that savagery by separating civilization from it.'<sup>61</sup>

If we turn to *Star Wars*, we find from the very beginning (or at least one beginning) that 'the Force' itself is associated with civilisation, in the same way that modern law is part of the civilising element, distinguishing the modern from that which is imagined to go before it.<sup>62</sup> In *Episode IV: A New Hope*, the first encounter between Luke Skywalker and Ben (Obi-Wan) Kenobi is also the first reference or encounter with 'the Force'. When giving Luke his father's lightsabre, Obi-Wan says the following:

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<sup>57</sup> Fitzpatrick (2001) pp72-86.

<sup>58</sup> Fitzpatrick (2001) pp 21 and 26.

<sup>59</sup> Fitzpatrick (2001) p36 referring to Freud (1985) p351.

<sup>60</sup> Fitzpatrick (2001) p36.

<sup>61</sup> Fitzpatrick (2001) p36.

<sup>62</sup> Fitzpatrick (1992) p108.

“This is the weapon of a Jedi Knight. Not as clumsy or random as a blaster. An elegant weapon, of a more civilised age. For over a thousand generations the Jedi Knights were the guardians of peace and justice of the old Republic. Before the dark times. Before the Empire.”<sup>63</sup>

Here we find that the Jedi and his weapon are associated with ‘a more civilised time’ when the Jedi Knights were the guardians of peace and justice. What is important to note here is not just the hearkening back to the period of the Old Republic, but that the discussion of a ‘civilised age’ is specifically connected with the handing on of a weapon. While the emphasis is on the Jedi’s role as guardians of peace and justice, what this associating of a weapon of violence with an age of civilisation reinforces is the very connection between a law that institutes peace and the need for violence to ensure that peace. The general conception of the Old Republic that we get from the original trilogy, is that it is associated with civilisation, peace, order and justice (unlike the ‘present times’, dominated by the rule and tyranny of the Empire). In this perspective, violence and disorder would be opposed to ‘the Force’ itself in the same way that the discussion of civilisation opposes violence and disorder to the law—the law being that which brings order and controls violence. Thus, the only justified violence is then that which preserves the order of law. What the connection of civilisation to the Jedi’s weapon references, however, is the way the law must be both violent (i.e. legitimised violence that is used to restore order) and yet at the same time be ‘intrinsically associated with non-violence.’<sup>64</sup>

And is this not how the Jedi are presented? For Yoda instructs Luke that “A Jedi uses the Force for knowledge and defence, never for attack.”<sup>65</sup> As noted above, the Jedi are associated with a form of letting go and disengagement, which is connected with peace and passiveness. Yet, at the same time, they, as the defenders of peace and justice need to engage in violence to ensure order—the order of ‘the Force’. When we actually look at the prequel films, and the presentation of the Old Republic there, what we find is that the Republic

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<sup>63</sup> *Star Wars Episode IV: A New Hope* (1977)

<sup>64</sup> Fitzpatrick (2001) p77.

<sup>65</sup> *Star Wars Episode V: The Empire Strikes Back* (1980). An instruction that doesn’t seem to come through anywhere near as strongly in the prequel films. A point that can also be seen in the change of style of sword fighting used between the two. See Robinson (2009).

(civilisation) is forever under attack! The civilised times that Obi-Wan is referring to are in fact full of trade disputes, wars, manipulation, assassinations, divisions in the Senate, etc. While one could argue that such events are a corruption of the 'ideal' Republic (corruptions that eventually leads to the Empire), as we see in the prequels, they are Obi-Wan's experiences of the Republic itself. The civilisation of the Republic is set precariously *against* 'a savage violence [that] ever seeks to destroy it from without.'<sup>66</sup>

However, as Fitzpatrick (and Freud) points out, it is not so much that civilisation is under attack from the savage that is outside it. Rather, it is the fact that savagery is something that cannot be eliminated from *inside* civilisation that results in its precarious state – individuals and society are always potentially being at risk of reverting to savagery.<sup>67</sup> This is also represented in *Star Wars* in the very internal struggle that is presented between the Good and the Dark side of 'the Force'. Yoda instructs Luke that anger, fear and aggression are part of the dark side of 'the Force' and are to be avoided. Again, Yoda seems to be very cautious regarding the dark side of 'the Force' in the prequels, in particular noting the connections of fear and jealousy that lead one there. However, what the Jedi do not acknowledge is the fact that the Good and the Dark side of 'the Force' are essentially two sides of the same entity. While they present these stark contrasts (Good vs Evil, Compassion vs Anger, Peace vs Aggression) what they miss is that their position is actually incredibly close to that of the Sith—because they are part of, and draw their power from, the very same entity: 'the Force'. When the Jedi focus on the prophecy about bringing balance to 'the Force', it is at the end of 1,000 years of 'peace and justice' in the civilised Republic under the protection of the Jedi (where the Sith are supposedly extinct). If there is a need for balance in this framework, then surely that movement to balance would come from the dark side? The result then, as opposed to Obi-Wan's dismay in *Episode III: The Revenge of the Sith* that Anakin had left 'the Force' in darkness instead of returning it to balance, is that Anakin, by becoming Darth Vader and joining Palpatine/Darth Sidious, in fact *did* fulfil the prophecy and bring balance

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<sup>66</sup> Fitzpatrick (2001) p77.

<sup>67</sup> Fitzpatrick (2001) p29.

to ‘the Force’—he actually carried out the transition from the Good Republic to the Evil Empire.<sup>68</sup>

What this reflects is that ‘the Force’ (and we should read this in relation to the law as well, which we will come to in a moment) is neither Good or Evil, or rather that it can be both Good and Evil at the same time—Good and Evil coincide in the operations of ‘the Force’. This point *is* reflected at one level by Obi-Wan in *Episode VI: The Return of the Jedi* where he tells Luke that “many of the truths we cling to depend greatly on our own point of view.” While the Jedi seem to have some belief in the power of Good over Evil – and separate them out in the Good and the Dark side of ‘the Force’ – what we find in *Star Wars* is very much that Good and Evil are really only from a certain point of view. For, as we noted, the Good is not presented as a virtuous end to be desired in itself, but that, under the mythological framework from which Lucas is drawing, Good and Evil coincide – they are part of the same unification of opposites under the one All. This connection of Good to Evil in ‘the Force’, as well as ‘the Force’s’ link to the law can be seen with greater clarity if we explore the transition from the Republic to the Empire, the point to which we now turn.

## **5. “More powerful than you could possibly imagine”: Law, Order and the State of Exception**

Let us return to the conversation between Obi-Wan and Luke at the beginning of *Episode IV: A New Hope*. Here Obi-Wan is referring to a ‘civilised time’ which is contrasted to the current times, ‘the dark times’ and the Empire. What is interesting here is how the above connection of the Old Republic to civilisation seems to break down in regards to imperialism. For normally the role of civilisation is considered to be on the same side as imperialism – imperialism being a way of taking the ‘good’ things about a particular nation and ‘civilising’ its broader environment. But, what we find in *Star Wars* is that the site of

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<sup>68</sup> It should be noted here that the alternative interpretation of the prophecy—that Anakin was supposed to return ‘the force’ to balance by destroying the Sith—does actually occur in Darth Vader’s killing of the Emperor at the end of *Star Wars Episode VI: The Return of the Jedi*. What the Jedi miss, however, is that the way for Anakin to destroy the Sith could only be through becoming one.

imperialism is itself 'the dark side'. The Old Republic is contrasted with the Evil Empire and its imperialistic desire to rule the galaxy. This is where the historical referencing of Rome comes to its fore in *Star Wars*. For the resolution of this point about imperialism and civilisation is quite clear in the prequels. It is not that the Evil Empire took over the Republic.<sup>69</sup> Rather, it is that the Republic itself *is* the Empire – that is, the Republic was transformed into the Empire via the apparent need to defend itself from the breakaway, rebellious 'separatist' states. Thus, the connection of civilisation to imperialism holds fast. What does not hold is the belief that the 'civilised' Republic is substantially different to the 'totalitarian' Empire. For, as we saw in relation to the individual, in the same way that the Good and Evil side of 'the Force' are in fact one and the same (with Anakin becoming Darth Vader), at the level of the political, 'the Force' as a representative of modern law is *also* both Good and Evil. That is, that the Republic and the Empire are in fact the same, and the conditions that give rise for one make way for the other. The implication here is that the law itself is *also neither* Good and Evil, yet *both* Good and Evil at the same time.

How is it that the law works both for Good and Evil at the same time? The reason for this returns us to the focus on law and order. For, having 'let go' of its divine grounds and its possibility of being 'the Good' itself, modern law is inherently caught up with its focus on order. The restriction on the command of the sovereign is the maintenance of order—that is, the order of law itself.<sup>70</sup> The benchmark for actions that are taken are whether they will sustain the social/juridical order and preserve peace. Where this becomes particularly apparent is in fact at the limit point of the legal/juridical order itself—that is the point at which the legal order is suspended in what Giorgio Agamben (drawing on Carl Schmitt) would call the 'state of exception'.<sup>71</sup> Agamben's exploration of this state of exception, as the limit point of law, is inherently tied up with the question of law's relationship to life and to whether the state of exception—the point of law's suspension—is something brought within law or something

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<sup>69</sup> I.e. that a number of rogue, 'separatist' states joined forces against the Republic and its principles, attacked it and overthrew its rule

<sup>70</sup> Fitzpatrick (1992) pp56-58.

<sup>71</sup> Agamben (2005a).

inherently beyond it.<sup>72</sup> Agamben attempts to think the state of exception, through the Roman concept of the *iustitium* as the very point or space without law (this is in contrast to both the traditions that seek to include the state of exception within the legal order and those that consider it something external to it).<sup>73</sup> However, the relevant point here is that the declaration of the state of exception is always in relation to the potential for disorder—the state of exception is declared in order to *restore order*.<sup>74</sup>

How is this demonstrated in the transition from the Republic to the Empire in *Star Wars*? In watching the original trilogy there appears to be an understanding that the Old Republic was taken over by the Empire—that it was a matter of two rivalling claims to rulership and the Empire overthrew the Republic, claiming control of the galaxy. As such, the Empire would be seen as a separate founding of a new legal order resulting from the lawless violence beyond the law of the Republic—the result of a war in which one legal order displaces the other. What we *actually* see in the prequels, however, is the very opposite. It is that the Empire was founded through the legal use of the state of exception and suspension of the existing legal order. That is, the law is suspended by the declaration of the exception in order to reconstitute the peace needed for law to operate normally. When the suspension of law is then in effect, the decree of the political leader is given the ‘force of law’.<sup>75</sup> Logically, this has serious consequences, some of which we are clearly seen in *Star Wars* (with Hitler’s rise to power being an appropriate allusion, given the immediate declaration of the state of exception in the name of national security under the Nazi regime).<sup>76</sup> While the state of exception is something normally declared by the sovereign (Schmitt defining the sovereign as the one who decides on the exception<sup>77</sup>) what

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<sup>72</sup> Agamben (2005a) pp1 and 86-88.

<sup>73</sup> Agamben (2005a) pp22-23 and 50-51

<sup>74</sup> Agamben’s analysis of the *iustitium* (the declaration of the suspension of the law) connects it specifically to an identification of the *tumultus* that arises in Rome as a result of (amongst other things) external war. What is important to note here, however, is that it is not the external war itself that results in the declaration of the *iustitium* but rather the resulting unrest and tumult in Rome. The law is suspended to deal with the disorder in Rome, not the external threat: Agamben (2005a) p42. See also Chapter 4 below.

<sup>75</sup> Agamben (2005a) p 38.

<sup>76</sup> Agamben (2005a) pp 2 and 13.

<sup>77</sup> See Schmitt (2005) p5.

we find in *Star Wars* is that the one who proposes the giving of special powers to the Chancellor is not the Chancellor himself – rather it is (subject to manipulation) Senator Jar Jar Binks — the sovereign power of the democratic Senate thus being sustained. Thus, the power of the representation of the transition from the democratic Republic to totalitarian Empire rings true with Agamben’s point – that the state of exception is ‘a creation of the democratic-revolutionary tradition and not the absolutist one’.<sup>78</sup>

The way, however, this invocation of the state of exception is presented in *Star Wars* means that the Empire was not formed beyond the law—it is neither a lawless ‘other’ attacking the Republic from outside, nor is it some lawless act founding a new legal order. Rather, it was the very mechanism within the law that enabled the creation of the ‘lawless’ space of the Empire, where the Emperor’s words have the force of law. What Agamben notes, however, in relation to the technical expression the ‘force of law’ is that when it is applied to the decrees of the sovereign in the state of exception, it is in fact identifying that the ‘force of law’ is applied to that which is not law.<sup>79</sup> It is *not* that the sovereign’s decrees are law themselves but rather that the decrees are given the ‘force’ of law in law’s absence. Such was Derrida’s real point in his celebrated invocation of this term of art; that the ‘force of law’ is precisely a force without law, but treated as such.<sup>80</sup>

From Derrida to Agamben and now to Lucas, the chain of associations seems just that, associative, even coincidental. But I would argue that Lucas’s force evokes, plays upon and re-iterates Derridean and Agambenian ‘force’ because, in all three, the law has gone on walkabout, everywhere around us but nowhere to be found. As such, law as ‘the Force’ is plastic, malleable, open-ended – and it is this indeterminacy (is it Dark or Light?) which suggests that the law itself is both Good and Evil. This is because the framework of the rule of law is not sufficient for protection against potentially Evil acts, for in itself the law can, and quite willingly will, be co-opted to agree to them. While Jar Jar Binks was being

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<sup>78</sup> Agamben (2005a) p5.

<sup>79</sup> Agamben (2005a) p38.

<sup>80</sup> Derrida (1992); see the discussion of this term by Agamben (2005a) pp37-39.

manipulated by Palpatine, the following statement by Senator Amidala is a clear reminder that the Senate of the Republic appeared to desire the invoking of the state of exception and giving of greater powers to the Chancellor: “so this is how liberty dies...to thunderous applause.” Does this not emphasise Žižek’s point that the risk with ‘the war on terror’ is not so much the outside enemy that is being dealt with, but what we become in the process?<sup>81</sup> Yet, does this reading of *Star Wars* then indicate that Lucas is trying to make clear the potential risks of our current political times in which the law is co-opted into assisting in determining when it will not apply? Or is there another element to this state of exception?

Žižek argues that while the state of emergency is positioned as needed to deal with a particular crisis, when the state does this ‘it does so by definition as part of a desperate strategy to *avoid* the true emergency and return to the “normal course of things”’.<sup>82</sup> That is, that the state of exception itself is used to mask the real crisis. Is this not the way in which Palpatine operates in *Episode III: Revenge of the Sith*? Palpatine generated a crisis so as to distract everyone from the real crisis – that he was taking over the Republic. Yet, such a framework is what presented him with the ability to institute ‘peace and justice’ back into the Republic/Empire. Thus, the goal of the state of exception was explicitly being fulfilled—to return normality, peace and justice. Palpatine’s comment that “the Sith and the Jedi are the same in almost every way” is thus truer than it initially appears.<sup>83</sup> This coincidence of the Sith and the Jedi – the supposedly Good and Evil – demonstrate the way in which the law itself is used to legitimate the re-establishing of peaceful civilisation—no matter what the consequences. The concern of law is not so much whether its ends are Good or Evil—whether it is serving a liberal, democratic Republic or a tyrannous, totalitarian Empire—but rather with its own desire for order and balance. Thus, it is at the point of suspension of the law that the law becomes, as Obi-Wan tells Darth Vader, “more powerful than you could possibly imagine” in its desire to institute order and peace.

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<sup>81</sup> Žižek (2006) p101. See also Žižek (2002) p83.

<sup>82</sup> Žižek (2002) pp107-108.

<sup>83</sup> *Star Wars Episode III: Revenge of the Sith* (2005)

## **6. Conclusion: “May the Force be with you” or “Good luck you’re gonna need it!”**

As we have seen, while Lucas believes he is creating a global mythology in the *Star Wars* franchise, the focus of the films is in fact more politically ideological than religiously mythological. Such ideology is one that, in the end, embeds and undergirds law’s covering of its own grounds and its ultimate desire for order, peace and justice (as balance). That is, this deific quality of law as order that results from the Enlightenment’s ‘letting go’ of the divine, of law letting go of its grounds, means that the law itself can no longer be seen as a potential Good—the rule of law, despite its claim to civilisation and peace, is in fact grounded on the potentiality of its very exception. The law itself cannot save us from the tyranny of order and peace that it wishes to impose.

Thus, we should be wary of the farewell identified throughout *Star Wars*: “may the Force be with you.” For this very valediction acknowledges the omnipresence of the Force—the everywhere-ness of the law—yet ignores the fact that ‘the Force’ and the law are with both what we deem as Good (Luke Skywalker, Obi-Wan Kenobi, Yoda) and the Bad (Darth Vader, Emperor Palpatine). The continual reinforcing of this saying is effectively needed to reinforce the law. The law, having let go of its ‘divine grounds’ which ‘guarantee’ its universality, has to continually be made applicable—it has to continually be made to invoke order. The result is the challenge to thinking a space outside of law, one that is not locked in to the tyrannous rule of order and peace (or the ‘normal’ functioning of the market, or the state). Such a space is not the logical result of the law, but rather something that requires striving for, *against* the notion of order. Thus, we should be sceptical of the political invocations of the state of exception in order to restore order—for is not the issue very much the existing order itself and the emergency or state of exception a distraction from the tyranny of the existing order? As a result, instead of focusing on the Jedi farewell “may the Force be with you” with its legitimating and ‘making applicable’ of the existing order, our response should rather be that of Han Solo in relation to Lando Calrissian’s leading of the attack on the Empire: “Good Luck – you’re gonna need it!”

## **Intermission:**

# **Anakin vs Batman - Christ-Figures in Mythology and Theology**

Before engaging in a sustained reading of Batman as a Christ figure in Nolan's *The Dark Knight Trilogy*, it is important to compare two approaches to the mythology of pop culture, the hero myth and the representations of Christ. The conclusion of Lucas's *Star Wars* prequel trilogy was released in 2005, the same year as the release of the first film of Nolan's Batman trilogy. Yet, the encompassing of the hero-myth and readings of the hero as a Christ-figure are substantially different in each film. As such, I wish to pause here and conduct a brief counter-reading of the figure of Anakin Skywalker in Lucas's prequel trilogy, and Bruce Wayne/Batman in *Batman Begins*. This counter-reading will identify a different approach to mythological and theological figures of Christ between the two sets of films, as well as provide some of the initial material for the reading of Nolan's Batman as Christological figure.

In *Star Wars* and *The Dark Knight Trilogy*, both Anakin and Batman are presented as figures that operate in the space *between* Good and Evil, with exceptional relationships to the underlying laws of each universe and drawing on questions of justice that overtly or covertly present Christological claims. Yet, the effect of these characters interactions present two very different relationships to the law and the mythic circularity of 'justice as balance.' Both *Star Wars* and *The Dark Knight Trilogy* draw heavily on mythological sources and themes. Yet, as we have seen in relation to *Star Wars*, we need to be careful about the ideological implications of simply seeing the films as certain instantiations of mythology. What appears to be an identification of the traditional mythological themes being presented in new versions through popular culture, actually superficially reads the films and misses both their potential and their importance.

Both Anakin and Batman have been read in relation to Campbell's mythic 'Adventure of the Hero'.<sup>1</sup> What I want to explore here, however, is the reading of each character in relation to the stories of Christ. At first instance, particularly in *Star Wars Episode I: The Phantom Menace*, Anakin is presented as a Christ-figure. He is born of a virgin (by the 'will of the Force'), there is a prophecy proclaiming his coming as the 'chosen one', and the pod races in *Episode I* reference the famous chariot race scenes from the 1959 film *Ben Hur*.<sup>2</sup> However, what does not occur with Anakin is the Christological death, atonement or resurrection. Anakin is not the figure of innocence who dies a death that he did not deserve in order to save the world, universe or galaxy. Rather, as we saw in Chapter 3, Anakin becomes one of the most iconic figures of evil in popular culture: Darth Vader. As Žižek notes, however, this is quite logical given the New Age pagan universe of *Star Wars* and the mythological source material that Lucas is drawing on (which, despite Campbell's claims for its universality, in effect embodies a multitude of pagan myths, even when attempting to incorporate Christian concepts).<sup>3</sup> That is, within the pagan horizon, the event of Christ is the ultimate scandal—Christ throws off the balance of the cosmos by operating outside or against justice and balance, forgiving the unforgiveable, dying for the sins of humanity, which does not deserve it. Yet, for Žižek, this break instituted by Christ is a good thing as it uncouples us from the circular balance of Justice itself and, following Alain Badiou, provides the possibility for a sense of universality outside the Greek subsumption of individuals to their place in the Cosmos.<sup>4</sup> For Žižek, *Star Wars Episode III: The Revenge of the Sith* fails as a film because it does not show Anakin's turn to Evil, his break with the balance of the Force as a result of his attachment to his loved ones (his mother, Amidala) but simply as an uninteresting descent into control by Palpatine.<sup>5</sup> The point is, that Campbell's influence on Lucas meant that he could not present Anakin as the Christ-figure *or* even the true figure of Evil as a result of his attachment to loved ones. Anakin

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<sup>1</sup> In relation to Anakin see, for example Lancashire (2000), though note also Lawrence's attempt to distance the prequel trilogies from Campbell's 'monomyth': Lawrence (2006). In relation to Batman, see Nolan (2009) pp156-159; Peters (2007).

<sup>2</sup> See Lehrer (1999); Žižek (2005b); Žižek (2006) pp100-103.

<sup>3</sup> Žižek (2006) p101; Žižek (2005b).

<sup>4</sup> See Žižek (2000) pp118-122.

<sup>5</sup> Žižek (2006) pp101-103; Žižek (2005b).

never sufficiently engages in the attachment or commitment that Žižek is describing and, as such, cannot break with the circular balance of 'the Force'. Despite all the Christological references, Anakin remains caught within the pagan circularity of Good and Evil, Justice and Balance.

This failure of attachment or fidelity is seen clearly in his relationship with Amidala. Despite Lucas's description of this attachment or holding on to Amidala as being the reason that he turns Evil, Anakin is never truly committed to Amidala but only to his own self-interest. For all the presentations of Anakin's love affair with Amidala, their adolescent longings on Naboo, their declaration of love prior to being sent out into the gladiatorial ring for their execution (which, of course, they escape), Anakin never engages in what Alain Badiou would describe as the 'amorous encounter'—that 'event' which ruptures the existing life of the two individuals caught within its grasp so that nothing will ever be the same again. As Badiou outlines '[i]t is clear that under the effect of a loving encounter, if I want to be *really* faithful to it, I must completely rework my ordinary way of 'living' my situation.'<sup>6</sup> If Anakin was *really* committed to Amidala then he would have been willing to completely transform his way of life—that is, he would have been willing to forsake the Jedi order (pursuing some other career, maybe as a handsome fighter pilot or smuggler) so that he could build a life with Amidala. Yet, Anakin's falling in love with Amidala was not the life-changing event that it should have been. As such, what we find in Anakin becoming Darth Vader is simply a slide into Evil. An Evil, as we saw in Chapter 3, that was actually part of the balance of the Force itself. The potential for a true event, a sense of attachment which throws off the foundation of the subject's universe, something not understandable within the bounds of the pagan situation (which is Žižek's description of the Christ-event) is completely foreclosed. The result is that *Star Wars* presents simply the ongoing mythology of Campbell's Cosmogonic Cycle and, despite the presentation of what would

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<sup>6</sup> Badiou (2001) p42. See also Badiou (2012).

appear to be a critique of 'exceptional' politics,<sup>7</sup> actually ideologically reinforces it.

When we turn to Nolan's Batman, however, whilst the initial perspective on these films seems to reinforce and ideological support both the exceptional politics of the 'war on terror' (in terms of Batman extreme measures in his fight against terroristic supervillains) and late capitalism (in terms of Wayne Enterprises), upon a close analysis we can find a much more critical position than *Star Wars* provides. As with *Star Wars*, Nolan's origin story in *Batman Begins* can be read in relation to Campbell's 'adventure of the hero'.<sup>8</sup> Yet, at the same time, the end result is not so much about a bringing back of the magical elixir to be reincorporated into everyday life as it is about a structural reframing of the relationship between law and life itself. Within the adventure mythos, Bruce Wayne is driven to train with the League of Shadows as a mode of learning how to 'fight against injustice'. At the critical moment of his training, however, when he is called upon by Ducard/Ra's Al Ghul to show his commitment to justice by killing a murderer, he refuses. The basis for this refusal is, in itself, an act of compassion. Ducard responds by telling him that criminals thrive on the 'tolerance' of society and promotes a 'tough on crime' approach that is demanded of true justice. When Bruce still refuses, Ducard argues that his compassion is a weakness that his enemies will not share. Bruce's response is that that is why his compassion is so important. The difference between Bruce's action and those, both of the criminals he fights, but also of the League of Shadows itself, is his focus on compassion. This event itself becomes pivotal for the basis of Batman's operation throughout the films. It becomes the sole basis for his refusal to use guns and his 'one rule', which is that he will not kill—his continuous refusal to become an executioner.

This founding of Bruce and Batman's actions in compassion is what distinguishes him from the other 'Christological' figures in popular culture including both Superman (particularly in his latest instantiation in *Man of Steel* as discussed in

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<sup>7</sup> See Kellner's discussion of *Star Wars* prequel trilogies as an anti-Bush allegory: Kellner (2010) pp173-183.

<sup>8</sup> See Peters (2007) and Nolan (2009) pp156-159.

the introduction) and Anakin. Bruce's commitment or fidelity to this founding event and compassion also affects the understanding of his relationship with Rachel Dawes. As opposed to deciding to carry on a relationship under cover, knowing that his commitment to being Batman would stand in the way of that, he accepts the distance between them proposed by Rachel at the end of *Batman Begins*. At the same time, he is unhesitant in attempting to save Rachel whenever she is in danger: first, when she has been poisoned by Crane/Scarecrow in *Batman Begins*; second, when The Joker throws her out the window in *The Dark Knight*; and finally when the Joker gives him the option of saving Rachel or Harvey Dent (a decision which, given the Joker's trickery, actually results in his saving Harvey).<sup>9</sup> Bruce is aware that he can only commit to a relationship with Rachel if his time as Batman comes to an end. Such an understanding of the commitment and fidelity to the event (to use Alain Badiou's terminology) is in sharp distinction to Anakin's relationship with Amidala.

However, the implications of this comparison between Anakin and Batman are even more important when we focus on the form of subjectivity that they each represent and the potential for each to provide ways in which our contemporary situation and law can be rethought. Because of Anakin's tie to the mythological structures of the Force, and the death and rebirth of the hero, *Star Wars* focus on 'disengagement' and 'letting go' provides little critical edge with which to critique or challenge the modern forms of legality (in relation to both the plethora of exceptional politics and the ever-expanding globalisation of late capitalism). Batman, on the other hand, by representing what is almost scandalous in our postmodern times—a commitment or fidelity to compassion

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<sup>9</sup> Even in *The Dark Knight Rises*, eight years after Rachel's death, there is a sense that his commitment to Rachel, despite the distance between them, was foundational for his life. The relationship between Bruce and Rachel is, of course, complexified by the change of actors playing Rachel Dawes between *Batman Begins* and *The Dark Knight*. Rachel played by Katie Holmes (in *Batman Begins*) understands the importance of Batman and the mask, Bruce's mission and the importance of justice. As a result she is also willing to wait for Bruce, that the option of being together relies on the completion of his mission as Batman. Rachel played by Maggie Gyllenhal (in *The Dark Knight*), however, no longer understands Batman or has a commitment to his mission. As a result, her rejection of Bruce on the basis that there will not come a day when he does not need Batman, completely misses the very point of Nolan's Batman: that is, that it is *not* about Bruce but about the mission. This is the basis on which Bruce can actually give up his role as Batman at the end of the third film (something that the Batman of the comics would never be able to do – in part, because it would result in the ceasing of production of an incredibly valuable comic book asset!).

as opposed to justice—presents a way of rethinking the limits of the law and the possibility of a true ethics of the contemporary situation. This difference between the two characters is seen most clearly when we compare Anakin and Batman’s relationship to killing and the ‘forced choice’.

At the beginning of *Star Wars Episode III: Revenge of the Sith*, Anakin and Obi-Wan are on a mission to save Chancellor Palpatine from the Sith Lord Count Dooku. When they find Palpatine they are attacked by Dooku and Obi-Wan is knocked unconscious. Anakin and Dooku battle it out with Anakin eventually defeating Dooku by chopping off his hands. Standing over him, Anakin is presented with a ‘forced choice’ by Palpatine: take Dooku captive or kill him. While Palpatine identifies the expediency of killing Dooku and that he is too dangerous to be left alive, Anakin argues that killing Dooku is not the ‘Jedi way’. Whilst Anakin strains over the decision, in the end he kills Dooku, cutting off his head. Anakin is unable to escape the logic of the forced choice as presented by Palpatine (who is deliberately manipulating him, outlining the ‘fairness’ of killing Dooku who had previously cut off his hand, and knowing that this would progress Anakin’s fall to the ‘dark side’ of the Force). In contrast, in the final scenes of *Batman Begins*, Batman and Ducard are fighting on the train that is hurtling towards the center of Gotham City and (because of the microwave emitter onboard) will vaporise the entire water supply, releasing panic-inducing toxins into the air across the city. Having disabled the trains’ control, Batman attacks Ducard, pinning him down. The battle here references the earlier scene in Bruce’s training and Ducard again invokes a forced choice: kill Ducard or save him as he did before. Ducard tells Batman that he has finally learnt to do what is necessary—that is, to be willing to kill for his cause. However, Batman’s response is important: he says “I won’t kill you, but I don’t have to save you.” At which point he smashes a window and jumps out of the train with Ducard still in it who crashes to his death.<sup>10</sup>

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<sup>10</sup> In one sense, this is an artificial comparison (though highlighted by these films circulation at the same time) because whereas Batman is being invoked to kill the ‘father-figure’ (the man who was encouraging him to go down the ‘dark side’ in terms of joining the League of Shadows), Anakin is being invoked *by* the father-figure (Palpatine) to kill someone else (Dooku). However, if

Thus, while Anakin is unable to escape the forced choice—unable to rearrange the coordinates of the choice—Batman manages to re-coordinate his position.<sup>11</sup> Batman *does not* take the choice either to admit that he cannot do what is necessary or to kill Ducard but reorientates the position—he maintains his choice *not* to invoke justice and refuses to play the same game that Ducard is playing. Thus, his decision not to kill but not to save invokes both an ethical choice that is also the choice of actual freedom, rearranging the very premise of the choice itself.<sup>12</sup> This is where Batman is able to maintain his commitment to the event that founds him as a subject. It is in this sense, that we can argue that Batman, despite the lack of virgin birth, prophecy and other aspects of Christ's tory, is the true Christological figure. As the Christological type he breaks with both pagan cosmic Justice and the balance of the Law in order to go beyond it. He operates out of a principle of compassion that breaks with the harsh nature of Justice presented in the situation and remains committed to that compassion and rethinking the situation—the City itself—in light of it. In contrast to *Star Wars* and its enactment of the Cosmogonic Cycle which requires individuals to give up completely all attachments, willing relaxing to whatever may come to pass and letting the law live in them with unreserved content<sup>13</sup> (all the while increasingly focusing inwardly on the self and thus developing psychic *control* of the world around them), Batman strikes an overt materialism *against* this complete submission to the totality of the Cosmic Law—the mystic harmonisation and balancing of opposites behind which is an energy that is one and the same.

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we turn to the final scenes of *Star Wars Episode VI: The Return of the Jedi*, we find that Anakin/Darth Vader, at the same point in time, is unable to find an alternative to killing Palpatine. He does so to save his son, Luke, but it is basically another version of the forced choice in itself: allow Palpatine to kill Luke or save Luke by killing Palpatine. Anakin/Darth Vader cannot find a way out of the forced choice that does not involve the action of killing. For an interesting analysis of Anakin/Darth Vader as the 'evil Father' that, through the persona of Vader, can maintain the ability to be redeemed (as Anakin) see Bainbridge (2010). Whilst Bainbridge notes that effectively Anakin is an 'absent father' for Luke (given that he embodies the alter ego of Vader until the end of *Episode VI: Return of the Jedi*) what is of particular interest is that despite all of Anakin's adoptive father figures (Qui-Gon Jinn, Obi-Wan Kenobi, Emperor Palpatine/Darth Sidious) he has no actual father. This is not so much a case of the 'absent father' as it is of a father that never existed or never was for, as noted above, Anakin was conceived by the Force itself and grew up without any father at all. This is, again, in contrast to the virgin birth of Christ where there is both a heavenly father (Yahweh) and an adoptive earthly father (Joseph).

<sup>11</sup> For a discussion of this process of rearranging the coordinates of the 'forced choice' see Žižek (2001b) pp121-122 on Lenin.

<sup>12</sup> This also contrasts with the 'forced choice' or 'necessary decision' of Kal-El in *Man of Steel* that we considered in the Introduction above.

<sup>13</sup> Campbell (1973) p237.

What this comparison between Anakin and Batman identifies, however, is that the different forms of engagement become important for the possibility of a truly free or political act. Such an act is the result of a break with the mythological frames of violence and counter-violence that structure our understanding of law and justice. At the same time, it also identifies an importance in looking at mythological or fictional characters as Christ-figures—one cannot repeat the event of Christ in terms of his death and resurrection. A Christ-figure in literature or art is rather one who, as John Milbank identifies, ‘repeats differently’ the events of Christ.<sup>14</sup> It is on this basis that we can now turn to a sustained reading *The Dark Knight Trilogy* and Batman as a Christ-figure who provides the possibility of rethinking our connections to law, violence and love.

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<sup>14</sup> Milbank (2003) p98.

# Chapter 4

## Beyond the Limits of the Law: A Christological Reading of Christopher Nolan's *The Dark Knight*

“And because lawlessness is increased, most people’s love will grow cold”

Matthew 24:12

### 1. Introduction

Following the release of *The Dark Knight Rises* in July 2012, the final installment of Christopher Nolan’s *The Dark Knight Trilogy*,<sup>1</sup> a number of critics identified Batman as a Christ figure making the ‘ultimate sacrifice’ to save the people of Gotham City.<sup>2</sup> This chapter makes a similar claim, arguing that Batman in Nolan’s trilogy can be read as a typology of Christ. However, that claim has nothing to do with any supposed ‘great sacrifice’ in the third film. For, as Slavoj Žižek was quick to point out, such a crass and superficial reading is patently inaccurate or, at the very least and to follow the theological reference, heretical.<sup>3</sup> As we see in the final scenes of *The Dark Knight Rises*, Batman/Bruce Wayne (played by Christian Bale) *did not die* but can be found in Venice with Selina Kyle (the cat burglar, played by Anne Hathaway). Such a reading of Batman as Christ, then, would be more a gnostic heresy (where Christ did not actually die on the cross but escaped and lived out his life in India or Tibet<sup>4</sup>) rather than the orthodox Christian tradition. In addition, it situates Nolan’s films purely within the superhero genre, from which he is clearly drawing, where the hero is often called upon to make a great sacrifice in order to save the city, world or universe.<sup>5</sup>

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<sup>1</sup> Consisting of *Batman Begins* (2005), *The Dark Knight* (2008) and *The Dark Knight Rises* (2012).

<sup>2</sup> See, for example, O’Neil (2012).

<sup>3</sup> Žižek (2012a); Žižek (2012b).

<sup>4</sup> Žižek (2012a)

<sup>5</sup> This reading of the superhero conforms to Joseph Campbell’s notion of the hero myth: see Campbell (1973). See also Lawrence and Jewett (2002) on the American monomyth.

This chapter proposes a counter-reading to the above in two senses. The first is that it seeks to read Nolan's Batman less as a traditional superhero who, as we saw in Chapter 2, conservatively operates to supplement or fulfill the legal system's goal of justice and restore the social order that has been disrupted by criminals, villains or some other extraordinary threat and more as a non-hero who proposes a critique not just of an ineffective or incompetent justice system (a traditional trope of the superhero genre) but of justice itself. The second is to read Batman as a Christological figure *not* because of any great sacrifice in the third film but rather because of his morally ambiguous actions, along with Commissioner Gordon (Gary Oldman), at the end of the second film, *The Dark Knight*. In the final scenes of that film, Batman and Gordon conspire to promulgate a lie about Gotham City District Attorney Harvey Dent, with Batman taking the blame for a number of murders committed by Dent. It is by exploring what, in a number of senses, is an uncomfortable conclusion to the second film that we can see how Nolan's Batman provides a critique of justice and legality. Such a critique is in contrast to the general readings of *The Dark Knight* as promoting (or critiquing) the exceptionalism associated with the politics of the 'war on terror' and the Bush administration. In this sense, *The Dark Knight* can be read as a Christological response to, as much as an expansion and fulfillment of, the rise of the superhero film and the superhero as the figure of the exception beyond the law.

The chapter will begin by situating *The Dark Knight* in relation to the critical and scholarly response to it as well as the general mythic references of the superhero genre. It will then seek to identify connections between *The Dark Knight* and a particular form of exceptionalism, drawing on the work of Carl Schmitt and Giorgio Agamben. In this form of exceptionalism we find that Batman appropriates the sovereign decision on the exception to the norm of the law, but in the following section we identify how this is in contrast to both the traditional understanding of the superhero mythos (fighting for truth and justice) and the power of the sovereign (the sovereign decision of life and death of its subject). Thus, while Batman appears to appropriate the sovereign decision and declare the state of exception (brought on by the panic in the city following the Joker's

reign of terror), we find that the grounding of his actions are based on a form of compassion that alters his understanding of justice. It is here that we find the beginnings of the Christological reading of Batman. This Christological reading comes to a head in the final section, which analyses the closing scene of *The Dark Knight* and the 'noble lie' promulgated to defeat the Joker and ensure that Gotham retains its 'white knight'. The chapter concludes by identifying that Batman's actions in taking the blame for Harvey Dent open up a potential reading in relation to the law and justice, a reading that is *not* taken up by *The Dark Knight Rises* and leaves us wondering whether what we need is another hero or potentially, someone who is not hero...maybe a Dark Knight.

## **2. Myths of the Post-9/11 Superhero: Law, Exceptionality and Justice**

Following on directly from *Batman Begins* (Nolan's version of the Batman origin story), *The Dark Knight* introduces the character of the Joker (Heath Ledger) who, despite the initial focus of Batman, the police and Gotham's new District Attorney Harvey Dent (Aaron Eckhart) on shutting down the mob and organised crime, is the real protagonist and driving force of the film. Following Harvey Dent's case against the entire mob (with the help of the caped crusader), the Joker promulgates a series of threats and skirmishes on Gotham City. This initially takes the form of the Joker threatening to kill somebody everyday until Batman takes off his mask. When, after a press conference held by Harvey Dent, those present, instead of trusting in the Batman, demand he be turned in, Harvey turns himself over to the police pretending to be the Batman. As the Joker makes a move for Harvey Dent, Batman takes down the Joker who is put into custody. While this would appear to, initially, be the closing move of the film, we discover that the Joker had been planning to get caught and had arranged for the kidnapping of Harvey Dent and his fiancé, life-long friend of Bruce Wayne, Rachel Dawes (Maggie Gyllenhal). After a revealing and physical interrogation by Batman, the Joker provides the two addresses where Harvey and Rachel are being held. Batman and the police race to the scene but are not fast enough to save Rachel and only just fast enough to save Harvey, leaving his face scarred

and half deformed. The Joker then begins wreaking havoc over the city by threatening to blow up a hospital (which he does, only after everyone has been evacuated) and then by staging a prisoner's dilemma game with two ferries, one full of prisoners and the other full of 'innocent' citizens. Batman manages to take down the Joker but meanwhile Harvey Dent, who has now killed a number of those involved in his kidnapping, has taken Gordon's family hostage and Gordon and Batman both go to reason with Dent. Dent shoots Batman who tackles Harvey, saving Gordon's son and Dent falls to his death (followed by Batman who is injured). In order to protect the good image of Harvey Dent (and his prosecution of the mob), Batman then takes the blame for the murders committed by Dent and the film concludes with Gordon and the police giving chase.

While superheroes on film have a tradition that goes back almost as far as their first appearance in comic books,<sup>6</sup> the prominence of the superhero film since the turn of the millennium, as we noted in Chapter 2, is unprecedented.<sup>7</sup> Given the focus of these films being the 'American monomyth' of the superhero, and the tradition of superheroes being co-opted to assist in the war effort, it hardly seems uncanny to note a connection between the rise of the superhero film and the post-9/11 'war on terror' environment. However, it was Nolan's *The Dark Knight* that evoked the strongest reaction and identification of such connections between Hollywood and the Bush Administration era of post-9/11 politics with one critic even identifying it as 'the first true, post 9/11 superhero movie'.<sup>8</sup> Following its release in 2008, a number of critics identified *The Dark Knight* as a conservative film that supported and validated the tactics and strategies used by the Bush Administration in the 'war on terror' (presenting coercive interrogation, extraordinary rendition, surveillance and other 'exceptional measures' in a positive and necessary light).<sup>9</sup> On this reading, *The Dark Knight* seemed to present one of the strongest endorsements of the need for exceptional measures

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<sup>6</sup> Christiansen (2000) p107.

<sup>7</sup> Shaun Trent noted in 2009 that since 2001 more comics-based superhero movies have been released than in all prior years combined: Trent (2009) p105.

<sup>8</sup> 'It is the first true, post 9/11 superhero movie; one that looks at the use of chaos as a tool of terrorism while exploring the paper thin line between good and evil.' Crouse (2009).

<sup>9</sup> Ackerman (2008); Klavan (2008); Allen (2008); Bolt (2008); NY Times Editorial Board (2008). See the discussion of these claims by Ip (2011).

in response to extraordinary circumstances.<sup>10</sup> These reviews were met with a cacophony of critical responses, particularly in the blogosphere, that challenged the conservative reading of the film arguing that, instead, Nolan was presenting a critique rather than an endorsement of Bush politics and that Batman's considered recourse to exceptional measures was in contrast to those seen in reality.<sup>11</sup>

The scholarly response to *The Dark Knight* was also unprecedented with a range of rich and varied explorations of the film discussing the ambiguities of tactics for fighting terrorism, the nature of the presentation of evil, the Joker as a revolutionary unfolding of truth, the exploration of justice, the challenges of the exceptional relation between the superhero and the law as well as the theatricality of the superhero and the ambiguous explorations of the superhero as a figure of the threshold or boundary.<sup>12</sup> Other scholarly articles have specifically analysed the post-9/11 context of *The Dark Knight* identifying it as a critique of the Bush Administration's tactics<sup>13</sup> or a means for therapeutic meaning making in response to the 9/11 attacks.<sup>14</sup> As John Ip identifies, features of the film such as its brooding and gritty presentation, 'the Joker's grainy homemade videos, cell phone-detonated human bombs, burnt-out remains of buildings swarming with rescue workers—give the film a distinctly post-9/11 aesthetic.'<sup>15</sup> In this reading of the film the Joker is a terrorist figure, threatening, intimidating and inflicting violence and mayhem and who, as Bruce Wayne's butler Alfred (Michael Caine) puts it, just wants to 'watch the world burn'.<sup>16</sup> As such, Ip identifies *The Dark Knight* as a parable about 'the dilemmas that face society when confronting terrorism and terrorists.'<sup>17</sup>

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<sup>10</sup> See in particular Klavan (2008), Ackerman (2008) and Bolt (2008).

<sup>11</sup> Cogitamus (2008); Orr (2008); Yglesias (2008). This is also Ip's criticism: Ip (2011).

<sup>12</sup> Trent (2009); Phillips (2010); Žižek (2010a) pp 59-61; (2009); Schlegel and Habermann (2011); Muller (2011); Gaine (2011).

<sup>13</sup> Ip (2011).

<sup>14</sup> Muller (2011).

<sup>15</sup> Ip (2011) p213.

<sup>16</sup> As Ip notes, the Joker, however, is an imperfect fit for Osama Bin Laden (despite the claims of critics like Klavan) and instead Ra's Al Ghul, the villain from *Batman Begins*, is a better fit. See Ip (2011) p213, note 20. See also Marano (2008) referred to by Ip.

<sup>17</sup> Ip (2011) p 213.

This understanding of *The Dark Knight* as a parable fits with Michael Nichols reading of the film within the tradition of the combat myth where a figure of order (the hero or god) defends the ordered world against the onslaught of chaos (the monster).<sup>18</sup> These combat myths recount how the social order has been continuously preserved from the onslaught of ever-recurring threats.<sup>19</sup> The structure of this mythic form is as follows: a monster arises and threatens the established cosmological or societal order; a hero confronts and defeats the monster, re-establishing order; order remains, as conveyed in ritual traditions, until the monster returns (with the perpetual fear that it will). Nichols links these stories, which have Hebrew and Greek heritage (amidst others) to Christian theology and scripture. There Satan, the fallen angel, is cast as the chaos monster 'that continually frustrates the divine and social order and is expelled only through the intervention of God's grace.'<sup>20</sup> Nichols identifies, however, that the varied form of the combat myth always has a political dimension. He thus sees Nolan's *The Dark Knight* as updating this theme in light of post-9/11 culture by casting the opposing characters in the myth as representatives of democratic society and terrorism.<sup>21</sup> For Nichols, the Joker is identified as a figure of chaos that seeks to overthrow the plans of the police and the social fabric of Gotham City in general.<sup>22</sup> Nichols analysis of the combat myth can be applied to many superhero stories where the supervillain disrupts the existing social order, causing chaos, and the superhero rises up to vanquish the villain, restoring peace.<sup>23</sup> What this identifies, however, is the conservative nature of the combat myth itself (and thus providing some credence to the critics that claim *The Dark Knight* as a conservative film). For, as we saw in relation to *Unbreakable* in Chapter 2, the positing of both the myth and the structure of the superhero genre, is that the existing social order is good and should be sustained

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<sup>18</sup> Nichols (2011) p236; Cohn (2001) p42.

<sup>19</sup> Cohn (2001) p47.

<sup>20</sup> Forsyth (1987) pp298-305 referred to by Nichols.

<sup>21</sup> Nichols (2011) pp236-237.

<sup>22</sup> 'The primary threat the dragon from the waters presents in the combat myth is that it will inundate society – swallowing, consuming, and assimilating it until all that remains is the formless chaos of the monster itself. By attempting to reproduce his mad visage on all living beings throughout Gotham City, the Joker carries on the threat of the chaos monster to swallow up ordered society, submerging it in madness.' Nichols (2011) p241.

<sup>23</sup> This aligns with the point made by Richard Reynolds that the real protagonist of superhero comics (and films) is the supervillain rather than the hero. See Reynolds (1992) pp51-52.

and restored. The operation of the criminals or supervillains in superhero stories, and the Joker specifically, in *The Dark Knight*, becomes the violent disruption of a generally good social order that must be countered, suturing and sustaining the 'good' underlying society. In a broader sense, one could read Nolan's *The Dark Knight Trilogy* in this way: whenever a villain arises (Ra's Al Ghul, the Joker, Twoface, Bane), Batman comes in to try and deal with the villain and restore order. This reads Batman as the hero, the figure of order, who vanquishes the chaos-monster in its varied forms. Yet, is this reading too broad brush? Whilst there is clearly a basis for such a position, I would like to argue that a more nuanced reading, one which 'makes strange' the connection of Nolan's Batman to the superhero mythos, provides a different understanding of *The Dark Knight*.

The superhero genre in general posits an exceptional relationship between the superhero and the law.<sup>24</sup> Whilst one of the drivers of superhero franchises is the seemingly never-ending battle between the superhero and the supervillain, the general role of the superhero within society has a strong focus on crime control and a fight for justice alongside the role of the law.<sup>25</sup> The law in superhero comics and films is thus often presented as hopelessly inadequate, corrupt, fallible and unable to achieve its aim of justice. This presentation of the failings of the law and law enforcement opens up the space of the superhero to fill this gap, to supplement the law in order to achieve the justice that the law cannot achieve itself.<sup>26</sup> However, whilst characters such as Superman generally operate within the law or, at least, in an authorised manner, characters such as Batman are regularly antagonistic to the law, willing to break it and otherwise go beyond it in order to achieve the ends of justice.<sup>27</sup> This antagonistic apposition to the law

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<sup>24</sup> For a specific discussion of the exceptional status of the superhero to the law in relation to *The Dark Knight* see McGowan (2009).

<sup>25</sup> For a discussion of the pitting of the interrelatedness of the superhero and the supervillain and the battle of good and evil, see chapter 2. For the cultural criminological reading of superhero comics see: Vollum and Adkinson (2003); Phillips and Strobl (2006); Reyns and Henson (2010).

<sup>26</sup> Bainbridge (2007) p460; Reyns and Henson (2010) p51. This perspective on the law is linked specifically in *Batman Begins* where an identification of the 'broken system' of the law by Bruce Wayne and the following demand by Rachel Dawes, that good people are needed to uphold it, is presented as one of the triggers for Wayne's search for a means to fight injustice which results in his becoming Batman. See Peters (2007) pp254-255; Sharp (2012) p364.

<sup>27</sup> Vollum and Adkinson (2003) pp100-101; Reyns and Henson (2010) p51. Bainbridge notes that Spider-Man in particular spends as much time trying to avoid the police as fighting the supervillains and Miettinen refers to Frank Miller's *The Dark Knight Returns* where Superman

identifies both the exceptional nature of the superheroes relation to the law and their connection with criminality. It is this complex relation to the law that is explored in particular in Nolan's *The Dark Knight*. First and foremost, Batman is presented as working to achieve the ends of justice that the legal system cannot achieve itself. The early part of the film sees him working with the police to try and bring down the mob and there is an unofficial agreement between Batman, Commissioner Gordon and Harvey Dent in relation to bringing the mob's accountant back from Hong Kong as a witness for a trial against the mob as a whole.<sup>28</sup> Yet, at the same time, Batman appears to be looking for a more legitimate supplement to the law. He believes that he has found 'a hero with a face' in the public 'white knight' of Harvey Dent. However this apparent turn from the supposedly 'illegitimate' role of Batman to the 'legitimate' figure of the District Attorney, does not in itself necessarily exonerate the law of its faults. For the premise of the film is still that there is a need for a supplement to the rule and operation of law. As Rachel Dawes puts it in *Batman Begins*, in an interaction with Bruce Wayne that is formative in terms of his decision to become Batman, there is a need for 'good people' to ensure that the law can achieve justice. Batman's desire to move to a public figure of the law simply moves the place of the supplement from the illegitimate role of the superhero to the legitimate role of the 'heroic lawyer'.<sup>29</sup> The description of Harvey as a 'white knight' still flags him as a hero, supposedly ensuring that the law will meet its ends/purpose. This foundation for the system of law, however, is still problematic for, as Josh

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pontificates about Batman's acceptance of the superheroes as criminals. See Bainbridge (2012) pp225-226; Miettinen (2011) p135; Miller (1986).

<sup>28</sup> This scene of agreement references one of Nolan's source texts, Jeph Loeb's *Batman: The Long Halloween*. Loeb and Sale (2011).

<sup>29</sup> In this sense, we see a reference to another pop culture icon, ranging from Atticus Finch to Perry Mason. It is interesting to note this connection, which becomes quite specific in *The Dark Knight*, of the role of the superhero and the role of the heroic lawyer. Whilst in the Batman franchise these characters are divided between Batman and Harvey Dent, comic books have identified even more specifically this connection in the roles of lawyer-superheroes such as Daredevil and She-hulk. For discussion of the 'heroic lawyer' in popular culture see, for example: Asimov (1996); Bainbridge (2006); Kamir (2005b); Kamir (2009). Kamir notes the connection between the 'heroic lawyer' in popular culture and the genre of 'the western', a connection which Manderson pushes forward to the superhero genre. See Kamir (2005b) and Manderson (2011b). For a discussion of Daredevil as lawyer and superhero see Bainbridge (2007) and Sharp (2012).

McGowan points out, the role of the heroic is antithetical to modern law for the heroic itself tends to found its own law in contrast to the law of the state.<sup>30</sup>

Yet, what *The Dark Knight* brings to the fore, and this in part explains the ease with which critics identify the film as supporting the exceptional measures of the 'war on terror', is the perceived necessity of the exceptional space of Batman in relation to the law. For *The Dark Knight* itself goes beyond seeing Batman as simply a heroic supplement to the law who, whilst at times might need to break the law to achieve justice, in the end is interested in restoring a disrupted social order. The problem with such a position is that it is inherently conservative (and this reflects the reading of *The Dark Knight* in relation to the combat myth above as well) in that it posits the existing social order as a good that must be restored and maintained, protected from the onslaught of chaos and evil that would threaten it. The superhero in his fight for justice is then pitted as the protector of the existing order against the supervillain who "just wants to watch the world burn". *The Dark Knight* complexifies such 'easy' readings of the superhero in a number of ways. The first is in relation to Batman's role with the law in that the exceptional nature of Batman in *The Dark Knight* does not operate so much as an exceptional supplement to the law as in the space of the sovereign exception itself. The second is in the positioning of Batman as fighting for justice and a restoration of the social order when in fact Batman specifically fights *against* orders of justice and, at the same time, has no desire to restore the social order to the status quo. We will now explore each of these in turn.

### **3. 'Who Appointed the Batman?' or 'Who declared the exception?': The Sovereign in Gotham City**

A number of scholars have connected the role of the superhero to the exception described by Carl Schmitt and his modern reader, Giorgio Agamben.<sup>31</sup> Whilst, as

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<sup>30</sup> McGowan (2009) paras [3]-[4] discussing Hegel (1975) p185. See the discussion by Bainbridge of the ability for superhero stories to figure pre-modern justice (in terms of the hero such as Batman/Daredevil) along with modern justice (in terms of their alter-egos Bruce Wayne/Matt Murdoch), all the while identifying the aporetic oscillation between the two in a form of post-modern justice: Bainbridge (2007).

Bainbridge and others note, the role of the superhero operates in an exceptional relation to the law, the question that it gives rise to is whether this is a permanent feature or whether it is a response to specific states of emergency that give rise to the need to declare a state of exception. The relation of the exception to law and to sovereignty, for Schmitt, is encapsulated in the oft-quoted phrase 'Sovereign is he who decides on the exception'.<sup>32</sup> Whilst the reference to superheroes as exceptional persons who are able to deal with a range of crises is accurate, for the notion of the exception that Schmitt and Agamben are referring to to apply, we have to determine whether superheroes are operating in a state of exception where the ordinary course of the law has been suspended, or whether they are simply operating beyond the law in the sense of breaching it. If it is the latter then they are simply vigilantes and criminals who break the law. Whilst doing so in an attempt to fulfill the goal of the law in terms of justice might be laudable, their actions would still be considered criminal (and punishable).<sup>33</sup> If it is the former, however, then to call the superheroes criminals (or vigilantes) misses their unique relation to the law. For, in the state of exception, the law itself is suspended in order for the crisis to be dealt with and the order of law to be restored. The justification for such a suspension of the law is the threat of the crisis, yet the suspension of law allows for the use of authority and power – the force of law – normally allowed for by the law (in terms of the suspension of civil liberties and rights under the law).

For Schmitt, however, the exception is structurally connected to the figure of the sovereign. To describe superheroes by themselves as simply exceptional beings (due to their superpowers) is really only to see them on a continuum with ordinary human beings. In this sense, Superman is stronger than other humans

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<sup>31</sup> Schmitt (2005); Agamben (1998); Agamben (2005a). The use of Agamben's work on the 'state of exception' to analyse superheroes in general, and particularly based on the status of their super-powers, is taken up by Miettinen and Bainbridge: see Miettinen (2011); Bainbridge (2012) The connection of to Agamben's broader work on the concept of *homo sacer* is also identified by Nayar (2006) (referred to by Bainbridge) and Spanakos (2011) (in relation to the Incredible Hulk). McGowan also draws on Schmitt and Agamben in his 'exceptional' (pun intended) analysis of *The Dark Knight*: McGowan (2009).

<sup>32</sup> Schmitt (2005) p5.

<sup>33</sup> See the discussion by Miettinen of Batman's self-reflection (as remembered by Superman) Miller's *The Dark Knight Returns*: 'We've always been criminals. We have to be criminals.' See Miettinen (2011) pp269-270; Miller (1986) p135.

but could still be held subject to the same provisions of the law. Bainbridge posits that the 'superness' of superheroes means that they are automatically outside the law (and other authors have identified this non-conformity to the 'laws of nature' as a basis for superheroes' exceptionality) and thus attempts to think their status in terms of the notion of 'alegality'.<sup>34</sup> However, whilst *enforcing* the law against someone as strong as Superman may be problematic, this by itself does not necessarily mean that Superman has an exceptional relation to the law. For Schmitt, the connection of the exception to sovereignty means that we have to look beyond simply the 'super' nature of superheroes.

*The Dark Knight* specifically raises this question of sovereignty in relation to the role of Batman. In a dinner conversation between Harvey Dent, Rachel Dawes, Bruce Wayne and Bruce's date Natascha, the question of the legitimate role of Batman is directly considered. Natascha, the prima ballerina for the Russian Ballet, identifies that in a democracy, the role of law enforcement should be with the public officials and not with a masked vigilante. Whilst Bruce, playing devil's advocate, pitches the question "Who appointed the Batman?" Harvey Dent (the elected official) is the one to provide a clear justification for the Batman in relation to the state of exception. He responds to Bruce's question with:

"We did. All of us who stood by and let scum take control of our city...When their enemies were at the gates, the Romans would suspend democracy and appoint one man to protect the city. And it wasn't considered an honour it was considered a public service."

Thus, instead of subscribing to the idea that Batman is a criminal vigilante on a personal vendetta for justice, Dent legitimises the role that Batman has taken. He argues that there is a need for Batman because the people of Gotham have allowed criminals to take over and control the city. Ip rightly identifies this reference to the Roman paradigm of the dictatorship.<sup>35</sup> 'In the Roman constitution, the dictator was a specific kind of magistrate whom the consuls had chosen and whose *imperium*, which was extremely broad, was conferred by a *lex*

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<sup>34</sup> Bainbridge 2012 pp218-219, 226-227; Miettinen (2011) pp270-272; see also the discussion of Superman as breaking the laws of the universe by McGowan (2009) paras [3]-[4].

<sup>35</sup> Ip. (2011) p227.

*curiata* that defined its aims.<sup>36</sup> In this sense, Dent is arguing that the people had appointed Batman as their protector to deal with the situation in Gotham, the basis for his position being appointment by popular sovereignty. Yet, the theory of the state of exception proposed by Agamben is quite distinct from the notion of dictatorship (despite Schmitt's first examination of the exception being in his work *Dictatorship*<sup>37</sup>). For Agamben identifies the state of exception within the Roman concept of the *iustitium* which he distinguishes from the *imperium* provided to the dictator. Whereas the dictatorship involved the empowering of a particular magistrate with a specific mandate, such as waging war or quashing an uproar (for a maximum of six months though, as Rachel Dawes points out in response to Harvey's reference, Caesar's dictatorship extended beyond this) the proclamation of the *iustitium*, a 'standstill' or 'suspension of the law', would follow a decree declaring a *tumultus* ('that is, an emergency situation in Rome resulting from a foreign war, insurrection, or civil war'<sup>38</sup>). The *tumultus* was not so much the external threat to the state itself but the effect of that threat on the city in terms of the 'state of disorder or unrest' that the threat produced. Whilst Agamben acknowledges that it has been interpreted in relation to the concept of dictatorship, the result of the *iustitium* is quite distinct. Agamben quotes the work of Nissen where he identifies that the *iustitium* suspends the law and, in this way, all legal prescriptions are put out of operation. No Roman citizen, whether a magistrate or a private citizen, now has legal powers or duties.<sup>39</sup> The identification of the *iustitium* and the *tumultus* as connected to the state of necessity also flags that these 'are not categories of criminal law but of constitutional law, and they designate "the caesura by means of which, from the point of view of public law, exceptional measures may be taken".'<sup>40</sup>

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<sup>36</sup> Agamben (2005a) p47.

<sup>37</sup> Schmitt (2014).

<sup>38</sup> Agamben (2005a) p40.

<sup>39</sup> Nissen (1877) p105, quoted in Agamben (2005a) p45. Nissen goes on to say 'When the law was no longer able to perform its highest task—to guarantee the public welfare—the law was abandoned in favor of expediency, and just as in situations of necessity the magistrates were released from the restrictions of the law by a *senatus consultum*, so in the most extreme situations the law was set aside. Instead of transgressing it, when it became harmful it was cleared away; it was suspended through a *iustitium*.' Nissen, (1877) p98 quoted in Agamben (2005a) p45.

<sup>40</sup> Agamben (2005a) p46 quoting Nissen (1877) p76.

This distinction between the concept of the state of exception and the dictatorship raises a different reading of Batman's role in Gotham City. Instead of being situated simply as a stop-gap dictator, which always has the potential of never giving up the power provided to him (despite the necessity of the dictatorship always being for a limited period) as Ip describes,<sup>41</sup> Batman potentially operates in a specific situation of exception in the 'state of exception'. This returns us to Schmitt's key point, which is that of the link between the exception and sovereignty. If Batman is to be considered to operate in the state of exception then the question is not so much whether the people appointed him but who determined the state of exception. Bruce's question, "who appointed the Batman?" is the wrong question. The question is: who declared the state of exception? For all intents and purposes, the person who determined the need for change in Gotham City itself was Batman. And this also flags the important understanding of the role of Batman in relation to the city, which is that the state of exception or emergency in the city *is not* the rise of the terrorist activities of the Joker (though given the tumult that he caused, these would certainly be grounds for such a declaration). Rather the state of exception in Gotham is the corruption and domination of the mob. All of which points to the fact that Batman is not so much operating to restore the social order from the disruption by the villains such as Ra's Al Ghul, The Joker or Bane, but rather to disrupt the exceptional basis of the situation itself—the corruption and crime-dominated experience of Gotham City.

If we then take the connections of *The Dark Knight* to a post-9/11 environment and thus to the notion of exceptionalism seriously, the true question becomes whether or not Batman is the sovereign of Gotham City. Whilst we certainly see other players of the state (the Mayor, Police Commissioners, District Attorney, Judges) in the film it appears to be Batman that is the one who has raised the ire of the state of exception. He has done this specifically by engaging in the exceptional role in relation to the law by, in *Batman Begins*, beginning a process of bringing down the mob. This is also the focus of Batman at the beginning of *The Dark Knight* until the Joker comes into play. If Batman is the one who has

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<sup>41</sup> Ip (2011) pp227-228.

identified and declared the state of exception, then in doing so he has appropriated, in Schmitt's framework, the sovereign decision. That is, Batman is the one who has declared the state of exception. If such a declaration holds, then the figure of Batman in *The Dark Knight* is *not* that of the vigilante operating beyond the law, but rather of the sovereign operating in the space of the law suspended. In that sense, Batman is neither executing the law (in terms of upholding it as authorised, covertly or overtly, by the police) nor transgressing it (in terms of being a criminal vigilante) but, as Agamben identifies, he inexecutes the law in the state of exception.<sup>42</sup>

The basis for such a determination of the exception, for Schmitt, and the declaration of the *iustitium* for Agamben, is, however, the restoration of the normal order of the law itself. That is, the suspension of the law and the rights, procedures and protections that it affords during its normal operations, is so that the threat or crisis can be dealt with and the normal function of the legal system can be restored. In this sense, then, the framework of the state of exception called to restore the social order aligns with Nichols' outline of the combat myth (discussed above). At the mythic level, the combat myth is effectively a conservative valourisation and preservation of the status quo. As noted above, Nichols reads *The Dark Knight* as a form of this myth, with the Joker being the figure of chaos that disrupts the normal order, against which Batman fights to restore. Yet, as we have just identified, if we link Batman's actions to a declaration of the state of exception, then the basis for such a declaration *is not* the work of the Joker (or any of the other 'supervillains' of the trilogy). Rather it is the very frameworks and operations of Gotham City—its corruption and control by the mob. At a second level, this reference back to the combat myth raises a further question: is Batman a figure of Justice?

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<sup>42</sup> The question of the 'criminality' of Batman's actions is thus side-stepped as the issue of sovereignty is not about criminal law but constitutional law (though this emphasises the ambiguous and exceptional relation of the sovereign to the order of law itself). The question of the 'legitimacy' of Batman's actions, in the same sense, is founded not on an operation with the policy *or* a popular proclamation of Roman dictator, but Batman's appropriation of the sovereign decision – his ability to stand in the place of the sovereign and declare the state of exception.

#### 4. For, And, Or Against Justice? Refusing the Sovereign Decision of Life and Death

Whether we read Batman in *The Dark Knight* in relation to the Roman form of dictatorship, or the state of exception, each give rise to an interesting question. The Roman dictator and the sovereign who decides on the exception both have the power of life and death over the subjects of the law. In Schmitt's description of the form of the Roman dictatorship he identifies both that the dictator, while fulfilling their mandate, was not bound by the law but also that he had 'absolute power over life and death'.<sup>43</sup> In the *iustitium* or the state of exception, in addition, there is a question as to whether someone can be punished for killing a citizen while carrying out the defence of the republic.<sup>44</sup> Furthermore in *Homo Sacer*, Agamben identifies the sovereign's arbitrary power of life and death over its subjects.<sup>45</sup> Thus, in each reading of Batman's actions, as either a proforma of the sovereign or the dictator, Batman would be given the power of life and death. In one sense, such a power or at least a willingness to make a determination of life and death would fit with the broader understanding of Batman as a vigilante hero who is willing to kill to execute the justice that the law cannot achieve itself. This is the reading of Batman undertaken by Cassandra Sharp who identifies a desire for this form of retributive justice in both Batman and Daredevil.<sup>46</sup> In relation to the filmic version of the latter, Matt Murdock displays a willingness to kill to exact justice that could not be achieved in the courtroom.<sup>47</sup> However, we need to be careful about the connection of at least Nolan's Batman to this sense of justice. In general, Batman, whilst being willing to, as Lucius Fox (Morgan Freeman) describes it in *The Dark Knight*, "beat criminals to a pulp with his bare hands", refuses to kill. As we noted in the Intermission above, Nolan provides an explanation of this position with Bruce refusing to kill a man accused of murder

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<sup>43</sup> Schmitt (2014) pp2-3.

<sup>44</sup> Agamben (2005a) p49.

<sup>45</sup> Agamben (1998) pp87-90. He notes further that 'for the sovereign, death reveals the excess that seems to be as such inherent in supreme power, as if supreme power were, in the last analysis, nothing other than *the capacity to constitute oneself and others as life that may be killed but not sacrificed.*' Agamben (1998) pp100-101.

<sup>46</sup> Sharp (2012) pp356, 358-363.

<sup>47</sup> Sharp (2012) pp362-363; see also the discussion of Daredevil by Bainbridge (2007) pp471-476.

during his training by the League of Shadows. The importance of this interaction is the compassion that Bruce demonstrates—a compassion that differentiates him from the criminals that he is going to fight and that translates into Batman's 'one rule': he will not kill.

It is this 'one rule' that the Joker then plays on in *The Dark Knight* where Batman is willing to fight criminals but will not become an executioner. If both the dictator and the sovereign can, particularly given the suspension of the law, kill without it legally being considered murder, Batman's refusal to do so distinguishes him from both these positions. That is, Batman refuses the form of retributive justice that is the common understanding of the vigilante superhero. This contrast with the traditional understanding of the vigilante superhero that enacts a retributive justice beyond the law, can be seen in terms of an analysis of the reason that Batman (along with Gordon and Dent) go after the mob. Whilst the young Bruce Wayne may initially have been after vengeance, what Wayne learnt is that justice is about more than revenge.<sup>48</sup> As such, his quest to fight injustice is more than about ensuring that the mob 'get what they deserve' and is rather about seeing a structural change in Gotham City. Batman is wanting to provide hope to the city and relieve the corruption and organised crime that has controlled it. In *The Dark Knight*, after Dent successfully brought a trial against hundreds of members of the mob at once (with the help of Batman), he outlines to the mayor the reasoning. The Mayor is skeptical that this will make a difference. Dent, however, identifies that whilst the mob bosses themselves will be able to make bail, that the majority of the mob won't. He asks the mayor to "think about what you could do with 18 months of clean streets." The focus is thus not retributive but preventative. That is, it is about getting the mobsters off the streets so that the city can change the way it operates. The basis for this is the removal of the criminals from the street, those who prey on the helpless.

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<sup>48</sup> This nuanced reading of Batman is likely to be in contrast to the more popular readings of superheroes and of Batman in relation to justice. See the discussion by Sharp about the connection between the rise of the superhero genre and the perceptions of law justice by the general population: Sharp (2012) pp369-374.

Batman's stance in relation to justice can also be seen in a broader sense throughout the trilogy. Whilst Bruce Wayne did not become Batman because of the 'supervillains', it is notable that each of these villains that arise are actually the ones that speak and act in the name of justice itself. This is most clearly seen in the figure of Ra's Al Ghul and the League of Shadows in *Batman Begins* where they seek to wipe out Gotham City because of its crime, corruption and decadence, all in the name of 'justice as balance' and a restoration of harmony to the world.<sup>49</sup> This theme is also presented as the basis of the actions of Talia, Bane and the new iteration of the League of Shadows in *The Dark Knight Rises*. There, we find once again a desire to restore the world to harmony or balance by, in effect wiping out Gotham City.<sup>50</sup> Prior to attempting to enact the blowing up of the city, however, there is a sense of revolutionary justice presented by Bane who wants to overthrow the shackles of tyranny and injustice of the oppressive nature of the *Dent Act* (giving greater powers to the police) and the criminals that have been locked in Blackgate Prison. This interpretation of the vision of the League of Shadows identifies that it is not so much the criminals that are the causes of injustice as the government and upper class who control Gotham and who have allowed the corruption of Gotham to continue. In this sense we find that Gotham itself still needs to be destroyed to rid the world of a corrupt system that creates crime – wiped out like Sodom in the Old Testament.<sup>51</sup> Thus, whilst we might find these instantiations of the villains terrifying, they are certainly presented as a form of justice – and, particularly the sense of retributive justice that we normally associate with superheroes.<sup>52</sup>

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<sup>49</sup> See Peters (2007).

<sup>50</sup> It needs to be noted here that the reference to harmony and justice, in terms of the actions of Talia, are problematic in *The Dark Knight Rises*. Whereas in *Batman Begins*, Ducard presents the reason for destroying Gotham City as the crime and corruption, in *The Dark Knight Rises* the criminals have all been locked up and the basis now seems to be the decadence and corruption not of the mob but of the businesspeople and politicians. Whilst this reference serves an ideological link to the 'Occupy Wall Street' movements and the 'injustice' of the '1 per cent', given the fact that Bane and Talia intend to blow-up Gotham City anyway, such a challenge to injustice does not seem to be logically played out in the film.

<sup>51</sup> See Genesis 18-19, ESV.

<sup>52</sup> What this points to, however, is the problem with the notion of retributive justice itself because it posits a sense of blame on particular individuals and yet never identifies that the person pointing the finger may be as much to blame as anyone else. This identifies the Christological response in the gospels to the Old Testament notions of retributive justice and 'an eye for an eye.' Thus, Christ's 'sermon on the mount' specifically challenges the traditional

When it comes to *The Dark Knight*, however, the claims of the Joker and of the other major villain, Harvey ‘two-face’ Dent, the question of justice is more subtly defined. We will consider each of these villains in turn, noting both their specific connection with Batman as well as a particular vision of Justice.

## **5. “When the chips are down, these ‘civilised people’ will eat each other”: The Joker, Hobbes and the State of Nature**

The Joker is one of Batman’s oldest and most famous villains. Traditionally conceived as a trickster figure and presented as an agent of chaos, the Joker is often described as sadistic, playful, disruptive and obsessed with Batman. In his mythological reading, Nichols identifies ‘the Joker’s most consistent scheme in the comics and films is to destabilise and wipe out all social institutions, replacing them with undifferentiated chaos.’<sup>53</sup> In his Girardian reading of *The Dark Knight*, Bellinger takes this further by identifying the Joker as a figurative version of Satan whose ‘main purpose is to sow chaos, confusion, and destruction among human beings.’<sup>54</sup> Bellinger goes on to highlight the notion of scapegoating within the film and argues that the Joker identifies that it is the system of law and order, as much as the desire to punish criminals, that is immoral and hypocritical.<sup>55</sup> As such, the Joker apparently reveals that ‘law abiding society’ is a mystification, identifying that when the Joker proclaims that the “only sensible way to live in this world is without rules” he is accusing the law and prohibitions that society invents to contain violence of being a sham.<sup>56</sup>

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understanding of retributive justice. See Matthew see Matthew 5:17-48, ESV (in particular vv38-42).

<sup>53</sup> Nichols (2011) p240.

<sup>54</sup> Bellinger (2009) para [5]. Bellinger notes that in the same way that Satan is the most interesting character in Milton’s *Paradise Lost* ‘the Joker is clearly the most interesting character in *The Dark Knight*, and he is obviously a figurative version of Satan.’ Bellinger (2009) para [5]. Nichols reading, in identifying the Joker as a figure of the chaos monster, also sustains a reading of the Joker as a figure of Satan (the chaos monster in the Christian tradition). Nichols (2011) p238.

<sup>55</sup> Bellinger (2009) paras [5]-[6], [9].

<sup>56</sup> Bellinger (2009) para [9]. Bellinger’s point is that whilst ‘[t]he police and the legal system think of themselves as stemming from a different spiritual source than the demonic criminals’ they ‘all flow out of the fountain of the complex, shapeshifting satanic event. The violence of the criminals and the brutality of the police, symbolized by Batman slamming the Joker’s head into the table, reveal that the ultimate basis of violence is reciprocity. The enemies who attack each other come

Slavoj Žižek's reading of the Joker picks up on this type of critique by identifying that, in a film that is all about the privileging of lying as a social principle, the Joker is the only figure of truth.<sup>57</sup> That is, the desire of the Joker is to uncover the lies of society: 'the attacks will stop only when Batman takes off his mask and reveals his true identity.'<sup>58</sup> In contrast to the superhero's relationship to the mask, where the mask is what changes the 'ordinary guy' (Bruce Wayne) into a superhero (Batman), the Joker, 'who wants to disclose the truth beneath the Mask, convinced that this disclosure will destroy the social order,' represents a man fully identified with his mask – 'a man who *is* this mask.'<sup>59</sup> For Žižek, then, the Joker becomes the revolutionary figure of truth in the film and thus he privileges this figure of the villain.

Todd McGowan's reading of *The Dark Knight* also privileges the role of the Joker as presenting a form of social critique and providing the possibility for the otherwise self-interested and self-serving citizens of Gotham City to engage in a truly ethical act.<sup>60</sup> For McGowan, like Bellinger, the anarchic, critical perspective presented by the Joker is tied to a response to, or understanding of, the role of the law. In *The Dark Knight* the theme of justice is connected to 'an exception because our adherence to the law is always compromised from the outset.'<sup>61</sup> McGowan explores this connection in relation to the moral philosophy of Immanuel Kant where he identifies that our commitment or devotion to the law is never 'for its own sake but for some attendant pathological motivation.'<sup>62</sup> That is, according to Kant, we are tainted by an originary 'radical evil that leads us to place our incentives of self-love above the law and that prevents us from

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to resemble each other more and more until they are indistinguishable.' The Joker as the 'chaotic Satan is complemented by Batman's role as the "law and order" Satan, whose good violence is supposedly casting out the other Satan's bad violence.' Bellinger (2009) paras [9]-[10].

<sup>57</sup> Žižek (2010a) p59. Žižek refers to the Joker's demand that Batman take off his mask (i.e. uncover the 'lie' of who Batman truly is), the lie by Harvey Dent when he tells the press that he is Batman, Gordon staging his own (fake) death, and the final scene where Batman takes the blame for Harvey Dent's murders. For Žižek, the extraordinary popularity of *The Dark Knight* then points to the undesirability of truth in our ideologico-political constellation. See Žižek (2010a) pp60-61.

<sup>58</sup> Žižek (2010a) p60.

<sup>59</sup> Žižek.(2010a) p60.

<sup>60</sup> McGowan (2009) paras [23]-[46]

<sup>61</sup> McGowan (2009) para [23]

<sup>62</sup> McGowan (2009) para [23]

adhering to the law for its own sake.’<sup>63</sup> Our commitment to the law is always tainted by our self-interest – we obey the law, not for the law itself, but because it is in our interests to do so:

This is why Kant contends that most obedience to the moral law is in fact radical evil – obedience for the wrong reasons. The presence of radical evil at the heart of obedience to the law taints this obedience and gives criminality the upper hand over the law.<sup>64</sup>

The result of this originary radical evil is a consequentialist ethics that values only the end (obedience) rather than the means to such obedience. This is a morality of calculation or, as the Joker identifies in relation to Gotham City, of ‘plans’ and ‘scheming’. That is, we obey the law for the wrong reasons, not obeying the law in itself but rather including calculation and self-interest into the equation.

In focusing on his critique of ‘scheming’, the Joker, according to McGowan, promotes ‘the act’ itself. Furthermore, it is this respect for the act itself and an overcoming of means-ends thinking that allows the space for a truly *ethical* act—one not caught within a consequentialist or utilitarian pathology. The basis for this reading is McGowan’s analysis of the dialogue between Dent and the Joker after Dent’s disfigurement. There the Joker identifies that the problem with society is their scheming and planning and criticises the mob and the cops as “schemers trying to control their little worlds.” The Joker, in contrast, is not a schemer, but rather attempts to “show the schemers how pathetic their attempts to control things really are.” For McGowan then, on this basis, when the Joker sets up abhorrent ethical situations he is in fact providing a way for the people in those situations to break out of their self-interested calculating and scheming – giving them the opportunity to privilege the act itself rather than any benefit they may gain. One of these scenarios includes the Joker’s threat to blow up a hospital unless someone kills the Wayne Enterprises lawyer, Coleman Reese,

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<sup>63</sup> McGowan (2009) para [24]; Kant (1998) p59.

<sup>64</sup> McGowan (2009) para [25]; see Kant (1998) pp45-73 and discussion in Chapter 2 above.

who has discovered (and is about to disclose) who Batman is.<sup>65</sup> The opportunity provided by this threat supposedly gives people a chance to reconsider their calculating, self-interested responses. The simple utilitarian calculation would result in a willingness for one man to die in order to save all the people in the hospital. A number of attempts *are* made on Reese's life (and he is saved by the police and Bruce Wayne), following which the Joker does blow-up a hospital—but only *after* everyone has been evacuated.<sup>66</sup>

The largest 'social experiment' conducted by the Joker is the 'prisoner's dilemma' that he stages between a ferry full of prisoners and a ferry full of 'innocent citizens'. Each group is given the remote to blow-up the other boat and 15 minutes to decide or the Joker will blow them both up. The result is an interesting reflection on the nature of democracy where the 'innocent civilians' overwhelmingly vote in favour of blowing up the lawless prisoners who 'had their chance' and made their choice to kill and to steal. However, despite the vote being overwhelmingly in favour of it, no one is willing to pull the trigger. In contrast, on the boat full of prisoners, a large burly one challenges the guard to give him the trigger. At this point, the intensity of the music, the focus of the camera on the seriousness of both the guard and prisoner's faces, and the contrasting shots with the other ferry, leads us to believe that the prisoner is going to blow up the other boat. The intensity of the scene is brought into relief when the prisoner throws the detonator out the window.<sup>67</sup> The challenge from the Joker was that, under these particular circumstances, the innocent people of

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<sup>65</sup> The Joker calls into the television studio with the following diatribe: "I had a vision of a world without Batman. The mob ground out a little profit and the police tried to shut them down one block at a time. And it was so...boring. I've had a change of heart. I don't want Mr Reese spoiling everything but why I should I have all the fun? Let's give someone else a chance. If Coleman Reese isn't dead in 60 minutes then I blow up a hospital."

<sup>66</sup> One of the problems with the logic of McGowan's analysis, however, is that the Joker is directly challenging people to 'get in the game' and take an action to kill somebody: in this scenario, to kill Coleman Reese and later on to blow-up a ferry full of people. If people actually were to privilege the ethical act, then this would involve *not* engaging in utilitarian logic, which would mean that they *did not* kill – thus doing the opposite of what the Joker is encouraging them to do. However, when Reese is *not* killed, the Joker pushes the challenge further. It would appear, on a closer reading, that the Joker is wanting to show that people *are* willing to take their utilitarian and calculating logic to its end point: to the point of killing one to save thousands, or to kill one group to save themselves. See the discussion of this point below.

<sup>67</sup> See McGowan's superb analysis of Nolan's use of cinematography to lead the audience in this direction, as well as his consideration of the way in which Nolan escapes a 'Capra-esque' resolution of the ethical challenges of the film: McGowan (2009) paras [40]-[45]

society would blow each other up. Whilst the self-interested nature of the democratic vote showed this to be the case, in the end we get an ethical act that refuses this position. As such, McGowan identifies that the Joker presents people with the logic of their scheming taken to its endpoint and this creates the possibility to recoil from such calculating—which is what occurs here (though its resolution comes from the condemned criminal not the ‘innocent civilians’). The result, in McGowan’s view, is that

[t]he Joker’s evil provides the basis for any ethical heroism because it highlights and strives to eliminate the evil of calculation that defines the subject’s original relation to the law. He thereby constitutes the ground on which the ethical act can emerge.<sup>68</sup>

The problem with this reading of the Joker, however, is that it is based in substance upon the Joker’s self-description. McGowan argue that when the Joker describes himself as “a dog chasing cars” that wouldn’t know what to do if it caught one, that he is presenting a priority of ‘the act’—an elevation of means over ends. That is, that the Joker does not have a plan and is focused on the ethical stance of ‘the act’ itself. As the Joker says to Harvey Dent, “I just *do* things.” Yet, if the mythical reference point identified above, of the Joker as a trickster or Satan figure is accurate, then one needs to be careful in believing what the Joker says. For the Satan figure operates on the premise of deceptions and half-truths, never telling outright lies but using the truth itself to deceive. Out of all the actions and stories of the Joker, this is one of the most consistent elements in the film: the Joker operates on a sleight of hand, deception, half-truths and bad jokes. After having recovered the mob’s pile of cash, the Joker emphasises that he is a “man of his word”. The mobster finds this hard to believe when the Joker’s men start to burn the cash. In response, the Joker identifies that he is only burning *his* half. This is of course true, though it makes no guarantees as to what will happen with the other half. When the Joker eventually provides the addresses where Harvey Dent and Rachel Dawes are being held to Batman, he provides the correct

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<sup>68</sup> McGowan (2009) para [46]

addresses but *inverts* them. The result is that Batman's decision to save Rachel results in him saving Harvey. In Batman's final showdown with the Joker, there are a number of hostages trapped in a high-rise building. The police are about to enter the building as they can see who they believe to be the hostages being held captive by men with clown masks (as were used by the Joker's men in the bank heist at the beginning of the film). However, it is actually the hostages that are in clown masks with guns taped to their hands. This would have resulted, without the intervention of Batman, in the police killing the hostages when they failed to put down 'their' weapons. As such the Joker operates, like Satan, through a process of half-truths and deceptions. This is not so much to promote the act itself as it is to hide what he is really trying to do. As such, we need to have a more careful reading of how the Joker presents himself to Harvey Dent.

In response to Harvey's rage towards the Joker about the killing of Rachel, the Joker identifies that he was "sitting in Gordon's cage" when she was kidnapped. Dent's response is that it was the Joker's men and the Joker's plan. The Joker, dressed as a nurse (complete with wig), turns and poses the question to him: "Do I really look like a guy with a plan?" Throughout the rest of the dialogue, when the Joker accuses the mob, the cops, Gordon and even Dent of having plans which he takes pleasure in disrupting, he never comes back to the statement to say that he himself does not have a plan.<sup>69</sup> The truth of the matter, as is unveiled throughout the film, is that the Joker indeed *does* have a plan.<sup>70</sup> The Joker meticulously plans his escapades, taking into account the expected responses to his actions and incorporating them into his plan. For example, the Joker allows himself to be caught by the police (after an incredible chase scene which included the vertical flipping of a semi-trailer) so that he can be put in the holding cell at the Major Crimes Unit, where Lau, the mob's accountant, is also

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<sup>69</sup> It is important to note that McGowan's analysis of this scene is based on a print version of the script of the film and not the film itself. In the script, the Joker opens this dialogue with "I don't have a plan". In the film itself, this is transfigured into the question posed to Harvey "Do I really look like a guy with a plan?" The change is important (and goes to Ledger's brilliant interpretation of the character) because it fits with the Joker's play on the truth. See McGowan (2009) para [29].

<sup>70</sup> The question raised by Dent is accusatory, indicating that it was the Joker's plan that resulted in the death of Rachel (which of course is true). The Joker magnificently deflects this accusation by posing the question above and asking Dent to make a judgment about whether the accusation makes sense.

being held. His subsequent *escape* from the Major Crimes Unit is via the use of another person within the holding cell as a 'human bomb', which the Joker triggers via a phone call after goading the supervising officer into attacking him. Thus, despite all the rhetoric presented by the Joker about being a disrupter of plans, he, in the end is the greatest planner and schemer of them all. The question, then, is: what is the Joker's plan? As the Joker identifies, it is not about money, yet is it simply that he wants to, as is so often quoted, 'watch the world burn'?

The answer to this question, at one level, also lies in the identification of the Joker as a Satan figure, which requires some further unpacking. In the Book of Job, Satan is presented as an accuser who challenges God's valourisation of Job. Whereas God boasts to Satan that there is none like Job on earth, that he is 'a blameless and upright man, who fears God and turns away from evil', Satan challenges the reason for Job's goodness.<sup>71</sup> He identifies that God had blessed Job, that he was rich, well thought of and prosperous. However if God was to stretch out his hand and take from Job all that he had the 'he will curse you to your face.'<sup>72</sup> After God allows Satan to destroy all of Job's possessions and children, the text notes that 'In all this Job did not sin or charge God with wrong.'<sup>73</sup> When God then presents this to Satan he again identifies Job as a blameless and upright man who held fast to his integrity despite the destruction wreaked against him for no reason. Satan again challenges Job's goodness identifying that if God takes Job's health from him then 'he will curse you to your face'.<sup>74</sup> This challenge from Satan (which Job in the end passes) is that Job's goodness and integrity are purely dependent on his circumstances. It is this accusatory nature of Satan that is referenced by the Joker's operation and behaviour in Gotham.<sup>75</sup> In the most

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<sup>71</sup> Job 1:8 ESV.

<sup>72</sup> Job 1:8-11 ESV.

<sup>73</sup> Job 1:22 ESV.

<sup>74</sup> Job 2:3-5 ESV.

<sup>75</sup> Note that in Job the accusation is featured in the heavens between Satan and God. Job, the one being tested, does not hear either Satan's accusations or God's valourisation of him and, even when God shows up at the end of the book, an explanation of Job's suffering is never provided to him. For an analysis of this suffering without reason in relation to the criminal law's ability to determine meaning and do justice, see Berger (2008). See also Slavoj Žižek's analysis of the Book of Job which sees, in its focus on the meaninglessness of suffering, as a case of ideology critique – 'laying bare the basic discursive strategies of legitimizing suffering.' Žižek (2003) p125. Žižek

detailed face-to-face interaction between the Joker and Batman (in the 'interrogation' scene at the Gotham Police Station), the Joker identifies the morals and code of society as just a bad joke "dropped at the first sign of trouble." His critique is that people are "only as good as the world allows them to be...when the chips are down, these...these 'civilised people', they'll eat each other." The core of the Joker's programme, the underlying reason for the chaos and madness he unleashes on the city, is that under pressure everyone will revert to a self-interested state of nature, a Hobbesian war of all against all.<sup>76</sup> As such, the Joker critiques the laws and rules of society: "you have all these rules and you think they'll save you." For the Joker, the truth appears to be that "the only sensible way to live in this world is without rules."

It is in *this* sense that the Joker identifies himself as an agent of chaos. This is not simply in terms of a mythological challenge to the social order, or to simply identify his role as a pure enjoyment of disrupting well-laid plans. Rather, it is a particular critique of the violence of the existing order of Gotham itself. Returning to the extended scene with Harvey Dent, the Joker outlines his understanding of plans as follows:

"You know what I've noticed? Nobody panics when things go 'according to plan.' Even if the plan is horrifying! If, tomorrow, I tell the press that, like, a gang banger will get shot, or a truckload of soldiers will be blown up, nobody panics, because it's all 'part of the plan'. But when I say that one little old mayor will die, then everyone loses their minds!...[Handing Harvey a gun and pointing it at himself]...Introduce a little anarchy. Upset the established order, and everything becomes chaos. I'm an agent of chaos. Oh, and you know the thing about chaos? It's fair!"

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also sees the Book of Job as foreshadowing the passion narratives of Christ's death and, on this basis, argues for the meaninglessness of Christ's suffering and, rather, its representation of God dying on the cross, which, as such, means that there is now no transcendent 'big Other' who is pulling the strings and making sure that everything is kept on track. This meaninglessness of suffering, however, is what provides a means for the coming of 'the Holy Spirit' which Žižek reads as the organisation of the Christian community that follows – an organisation, in which we take upon ourselves the task set before us rather than relying on a pre-determined belief in the purpose of the transcendent God. See Žižek (2003) pp124-127; Žižek (2010c) pp176-179.

<sup>76</sup> See Hobbes (1952) ch XIII, pp84-86.

According to Nichols mythological reading, the figure of chaos is a challenge to the law, the social order of Gotham City.<sup>77</sup> What the Joker's diatribe above identifies, however, is not so much that he is presenting a chaos that will challenge the law as much as the fact that chaos and violence are already implicated and presupposed by the law. The Joker is not so much yearning for a 'state of nature' before or beyond the law but is trying to uncover the nature of the law itself—that the law is premised on a state of war of all against all.<sup>78</sup> In doing so, he identifies that the terrorising element of the law is that it determines legitimate violence—it designates who may be killed according to the plan (soldiers who are designated as military deaths, criminals who, if not killed on the streets or by the police, will be subjected to the violence of the law). This points to the violent nature of the law itself because it is responding to violence – yet this response to violence is, by necessity, another form of violence.<sup>79</sup> In the end, all of the Joker's escapades draw out not only the presumed violence of a state of nature, but the violence of the law itself.

If we are thus to identify the connection of the violence of the state of nature to the law, how is this connection to be understood? In his reading of Hobbes, Agamben identifies that the violence of the state of nature is incorporated into the city via the violence inherent in the sovereign exception:

[t]he state of nature is, in truth, a state of exception, in which the city appears for an instant (which is at the same time a chronological interval and a nontemporal moment) *tanguam dissolute*. The foundation is thus not an event achieved once and for all but is continually operative in the civil state in the form of the sovereign decision.<sup>80</sup>

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<sup>77</sup> Nichols (2011) pp236-237, 244. Yet, whilst the figure of chaos is a challenge to the law, the law itself is premised and a presupposition of such chaos. As such, the interaction between law and chaos, Good and Evil, are thoroughly co-implicated (as we saw in the discussion of 'the Force' in Chapter 3).

<sup>78</sup> Hobbes (1952) chs XIII and XVII, pp84-86, 99-101 (in particular pp100-101). As Agamben and others have pointed out, the 'state of nature' in Hobbes is not necessarily in relation to a 'real epoch' or time but a presupposition of such a state. That is the 'state of nature' is presupposed by the law and, as such, is *within* the law itself. The violence of the 'state of nature' is then incorporated into the state via the sovereign. See Agamben (1998) pp35-36 and discussion below.

<sup>79</sup> Milbank (2003) pp36-38 and chapter 2 in general.

<sup>80</sup> Agamben (1998) p109. Note also that in his qualification of Hobbes, Agamben identifies that the political realm is not constituted in relation to citizens' rights, free will and social contracts, but that 'from the point of view of sovereignty *only bare life is authentically political*.' That is,

The point here is that the Joker is not so much trying to bring about a *reversion* to a state of nature but to identify that the state of nature is internal to the city itself. In this sense, we can identify that whilst the law presupposes itself as instituted *against* a state of nature, or against a chaos or anarchy that would rule without it, what we find is that the assumption of anarchy, chaos or a state of nature is itself internal to the law.<sup>81</sup> In the same sense, then, the Joker is actually presenting not an anarchical chaos so much as an identification that the law itself contains the violence of the state of nature within it.

Whilst it would appear that the Joker revels in such a violence and wants to present a world without law, the effect of connecting violence to the law ends up being a much more *conservative* position. This is because the Joker's activities themselves are premised on the law. Whilst McGowan identifies the Joker as a character that Kant did not believe could exist, a diabolical figure of evil who pursues evil for its own sake (in the Sadean sense of elevating evil to his Good),<sup>82</sup> does the Joker not really display the premise of the privative understanding of evil? That is, that evil is always premised in relation to the Good as privative and parasitical on it. The desire that the Joker has for disruption and chaos itself is premised on the *boredom* of order, which he seeks to challenge. But the Joker's *only* means of operation is not in the elevation of evil to his Good, but specifically in a form of parasitical behaviour —disruption is always premised on an underlying order or Good that can be disrupted. It relies on the form of the Good for existence. Thus, the privative and parasitical view of evil holds even more so for the Joker than any ontological presupposition of evil.<sup>83</sup> Furthermore, however, the disruption of order itself ends up privileging that order. As such, far from

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'Sovereign violence is in truth founded not on a pact but on the exclusive inclusion of bare life in the state.' Agamben (1998) pp106-107. See also, Chapter 3 above.

<sup>81</sup> That is the 'outside of law' or the 'state of nature' is a presupposition of the law itself. Law is imposed against the *presumption* of violence in the state of nature, not necessarily its actual existence. See Agamben (1998) pp35-36, 106-207. See also pp20-21 where the presuppositional nature of an 'outside of language' is discussed which precursors Agamben's later discussion of Hobbes and the state of nature.

<sup>82</sup> McGowan (2009) para 30. Here McGowan draws on a point made by Žižek, Lacan and Zupancic, which is that 'diabolical evil' is structurally the same as Kant's 'ultimate Good'. The result is, as Lacan points out in relation to the writings of de Sade, that the elevation of Evil to the Good becomes exceedingly boring. See Zupancic (2000) p92; Lacan (1992) pp191-204; Lacan (1989).

<sup>83</sup> That is, the 'positive' view of evil traced to Immanuel Kant. See Kant (1998); Copjec (2002) p139; Hirvonen & Porttikivi (2010) pp1-3; chapter 2 above.

being the radical figure of chaos that overthrows the established order, the Joker is the conservative figure of the film.<sup>84</sup>

As such, reading the Joker as a conservative figure sheds new light on his desire to construct or uncover an anarchic Hobbesian state of nature. For Hobbes, the state of nature is the necessary foundation of the state itself. It is in response to the state of nature that the all-powerful sovereign is needed and individuals give up their rights to violence to the state in return for the state's protection.<sup>85</sup> That is, in return for protection from each other, individuals agree to become *homo sacer* in relation to the state.<sup>86</sup> In the end, the Joker's provocative disruption of the law does not in fact challenge it but results in its force becoming even more in place. In one sense, this could *also* be seen in relation to the *Dent Act* with its dramatic increase in police powers that is passed and enforced during the interim between *The Dark Knight* and *The Dark Knight Rises*. Whilst the Mayor, in the opening of *The Dark Knight Rises* identifies that the reason for the *Dent Act* as being because of the believed killing of Harvey Dent by Batman, what is forgotten or repressed is the chaos and destruction caused by the Joker in *The Dark Knight* (the chaos of would be a more logical basis for the imposition of the *Dent Act* than simply the murder of Harvey Dent). As such, despite Žižek and McGowan valourising the Joker as a revolutionary character that unveils the truth for the former and provides the grounds for true ethical acts for the latter, what we actually find is that the Joker is the conservative figure whose antics incur the force of the law itself and provides the grounds for an expansion of both political and police powers. Far from being a revolutionary figure of anarchy and terror, the acts of the Joker result in the conservative enforcement of the law.

Thus, the ultimate actions of the Joker simply identify the connection between the law and violence. In trying to uncover a form of the 'state of nature'

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<sup>84</sup> In this sense the combat myth *does* apply to *The Dark Knight* but it does so in an inverted sense with Batman becoming the figure of chaos and disruption and the Joker desiring order. This can be seen in the sense that the Joker identifies Batman as having 'changed things', as well as his claim that for order to be returned to Gotham City, Batman needs to turn himself in: "You see this is how crazy Batman's made Gotham. You want *order* in Gotham? Batman must take off his mask and turn himself in. Oh, and every day he doesn't, people will die. Starting tonight. I'm a man of my word."

<sup>85</sup> Hobbes.(1952) Introduction and Chapter XVII, pp47, 99-101.

<sup>86</sup> Agamben (1998) p106; Hobbes (1952) Chapter 21, pp112-117 (in particular pp113-114)

encapsulated within the city, the Joker simply draws out the Hobbesian opposition between the state of nature and the 'commonwealth'. For Hobbes it is the very identity of the state of nature and violence that justifies the absolute power of the sovereign – the space of indistinction between law and violence. As Agamben points out,

It is important to note that in Hobbes the state of nature survives in the person of the sovereign, who is the only one to preserve its natural *ius contra omnes*. Sovereignty thus presents itself as an incorporation of the state of nature in society, or, if one prefers, as the state of indistinction between nature and culture, between violence and law, and this very indistinction constitutes specifically sovereign violence. The state of nature is therefore not truly external to *nomos* but rather contains its virtuality. The state of nature...is the being-in-potentiality...of the law, the law's self-presupposition as "natural law".<sup>87</sup>

The state of nature is not so much a 'real epoch' but a 'principle internal to the State revealed in the moment in which the State is considered "as if it were dissolved"'.<sup>88</sup> As such, the battle between Batman and the Joker would appear initially to be simply two sides of the violence of the law. Yet, at the same time, Batman in the end refuses the connection between the two. Whilst in the earlier interrogation scene he attempts to use violence against the Joker, what he discovers in the end is that the violence itself simply promulgates more violence (and the Joker is still able to play with his half-truths and deceptions). As such, Batman's response to the Joker, in the end, changes. He refrains from enacting violence on his body aimed at retribution or penance but returns again to simply using violence as a preventative action.<sup>89</sup> At the same time, despite the temptation to simply kill the Joker, or to allow him to die, he refuses once more to enact this decision of life and death – he refuses to allow the Joker to fall to his death.<sup>90</sup> In the final interactions between Batman and the Joker we find that Batman has, in the end, decided *not* to play the Joker's games or to allow him to

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<sup>87</sup> Agamben (1998) pp 35-36.

<sup>88</sup> Agamben (1998) p36.

<sup>89</sup> For discussion of the connections between justice and penance in Western law see Sharp (2011).

<sup>90</sup> As such, Batman's ethical stance in refusing to kill the Joker itself shows the radicality of the position of the Batman. This is in contrast to the supposed ethical nature of the Joker. It is also in contrast to the previous filmic rendition of the showdown between Batman and the Joker in Tim Burton's *Batman* (1989) where the Joker, in the end, *does* fall to his death.

continue the basis of his deception. This comes to a particular point in the refusal of Batman to listen to the next fictional story of how the Joker got his scars (the audience having heard two very different ‘back-stories’ narrated by the Joker earlier in the film). The refusal to enter into any sort of discussion, reasoning or explanation of the Joker’s actions in terms of his past suffering identifies not the diabolical nature of evil (which, in the end, can be explained) but its privation. That is, that the Joker is *deciding* specifically to engage in acts of evil and that the description of a fictive back-story is part of the game itself. Batman refuses the game by answering the Joker’s question “Do you know how I got these scars?” with a response that silences him: “I know how you got these”. At the same time Batman rejects the continuity of the interactions. When the Joker says that they are destined to do this forever, Batman’s response is that the Joker will be in a padded cell. These refusals of the Joker’s games align specifically with Batman’s refusal to kill the Joker. For, in the end, killing the Joker would prove the Joker’s point: it would conflate violence with the law and identify that the only solution to the problem of violence is death—at the hands of the sovereign.

That this final showdown with the Joker results in, then, is actually a de-centring of the Joker from the film. The Joker is simply the conservative figure of the law that needs to be restrained. In no way does he provide a measure to challenge to transform the law or the situation in Gotham City. Yet, the premise of the film *had* been that the legitimate, public figure of the law could be the basis for change in Gotham City. It is for this reason that the conclusion of the film becomes not about the Joker who merely uncovers the violent foundation of the law itself, but the figure of the lawyer who was supposed to change the city through the law itself: Harvey Dent. As such, it is to Harvey’s transformation that we must now turn.

## **6. “The Only Morality in a Cruel World is Chance”: Law, Procedural Justice and the Toss of the Coin**

If the Joker, in the final analysis, is simply a conservative figure that identifies the fundamental connection between law and violence, how does this relate to the

figure of Harvey Dent who, in the end, embraces a notion of fairness connected to the toss of the coin? We have already noted that Harvey Dent was presented as the figure of the 'heroic lawyer' who could achieve justice *through* the legal system, when Batman could only achieve it beyond or beside it.<sup>91</sup> When Harvey identifies that Batman is operating in the role of the dictator or the figure of the exception who protects the city and the law in a time of crisis, he saw this as the legitimate position within or in relation to the law. At the same time, it is Harvey who could implement justice *through* the law in the ordinary course via his skills as an advocate (as seen in the trial scenes), his knowledge of nuances of legal cases and legislation (invoking 'RICO laws' as the basis for prosecuting the mob as a whole) and his use of both legal and political strategy (his justification to the mayor for the prosecution of the mob).<sup>92</sup> It is his ability to apparently bring justice through the law and his elevation as Gotham's 'white knight' that is the very reason that the Joker decides to try and 'bring him down to our level' after the death of Rachel. As we saw above, the Joker does this via a critique of 'the plans' of Gotham City, its rules and laws, as well as his invocation to "introduce a little anarchy", identifying himself as the agent of a chaos that is 'fair'.

For Harvey, who has suffered both physical deformity and the loss of his fiancé, the Joker plays upon the desire for meaning in the face of suffering. He does this by identifying that the meaning that is generally imposed upon life and upon tragic events is limited, arbitrary and faulty because it is caught up in plans aimed at controlling the world. This challenge to the imposition of meaning also applies to the sense of meaning that the law imposes on life via the determination of just punishment of the criminal.<sup>93</sup> This is particularly relevant because of Harvey's status both as a lawyer and his commitment to the law as Gotham's 'white knight'. What the Joker is identifying is that the meaning-making

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<sup>91</sup> As such, we could make the distinction Batman as the figure of the exception (appropriating the sovereign decision on the state of exception) and Dent as the figure of the norm (encompassing justice *via* the law in normal operations – that is, via a *legal* decision rather than a sovereign one).

<sup>92</sup> RICO refers to the US *Racketeer Influenced and Criminal Organizations (RICO) Act 18 United States Code* chapter 96. Whilst this is a federal Act (and, as such, Harvey Dent would not be able to bring proceedings under it) most US states have enacted similar legislation. See, for example, the New York Penal Code Article 460.

<sup>93</sup> Berger (2008) pp107-108.

power of law, its ability to determine justice, has failed.<sup>94</sup> In contrast to Harvey's attempt to put the blame for Rachel's death on the Joker, the Joker in turns points the blame to chaos (and the Joker's role as a supposed 'agent of chaos'). Chaos, in its *lack* of determinate meaning, is fair because it applies to everyone equally. It is this understanding of chaos that provides a means for Harvey to deal with the loss of Rachel as if it was an aspect of chance (and Harvey represents Rachel's death later in the film as a 50-50 chance). What is interesting here, however, is not that Harvey takes on the Joker's invocation of chaos directly but rather the way he interprets it through the act of the toss of a coin.<sup>95</sup>

It is my argument that Harvey's role as a lawyer, enmeshed in the procedural aspects of the legal system, its notions of the rule of law, of due process and procedural fairness is *heightened*, rather than laid aside in his vengeful desire to kill all those involved in Rachel's death. That is, his invocation that 'chance is fair' is in fact a reflection of the fairness embodied in the elements of procedural justice before the law. The point, for Harvey, is thus *not* about substantive justice in terms of whether the person that Harvey is accusing is guilty or innocent, but rather about whether or not they receive a 'fair trial'<sup>96</sup>—do they get a fair and equal hearing? In this sense, rather than taking up an exceptional status in relation to the law, he sees the need to fulfill the very role of the law itself: to provide meaning to suffering in the sense of punishing the criminal.<sup>97</sup> But whilst he takes up the goal of the law, he also takes up its structural operations that are aimed not at substantial but procedural justice. That is, Harvey compresses all

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<sup>94</sup> See Berger's discussion of the precariousness of the criminal law's ability to determine justice itself: Berger (2008) pp107-112.

<sup>95</sup> In a number of early scenes in the film, we find Harvey leaving what would be important decisions up to a toss of his father's lucky coin. After he confesses to being Batman and is being taken into custody he gives the coin to Rachel and the audience learns that it is a two-headed coin. Instead of leaving things to chance Harvey 'made his own luck' (via the process of appearing to leave things to chance). After Rachel's death, one side of the coin is disfigured leaving a clear head on one side and a scarred/blackened image on the other—as such, the odds have changed.

<sup>96</sup> In one sense, Dent's invocation of the justice of chaos is a hearkening back to the medieval 'trial by ordeal' where the judgment occurs as a result of a particular process without decision-making occurring by a (human) judge. Rather, the outcome of the trial is supposedly determined by God in heaven. On earth, all we receive is the evidence of the decision one way or another (if someone thrown into the lake sinks and drowns then they were not a witch and will enter into heaven; if they float then they are witch and should be burnt at the stake and thus sent to hell).

<sup>97</sup> The challenge of this is the inability of law to provide meaning to the suffering of the victim. See Berger (2008) pp107-112. On the question of evil as meaningless suffering see Jefferey (2007) pp13-32.

the elements of legal procedural justice into a single toss of the coin, which he sees as objective and neutral. As such, Harvey is distanced from making the determinant decision of justice—the decision of life and death, of guilt or innocence, of the person accused—and rather focuses on ensuring an absolutely fair and equal *access* to such a decision/judgment, which is then determined by tossing a coin. As Harvey shouts at Batman in the final scenes of the film: “it’s not about what I want, it’s about what’s fair!” Harvey’s commitment to the process of justice implemented through the legal system is retained and incorporated into an objective system, which, at the same time, distances him from the determinant decision itself (is this person guilty or not). It is Harvey’s commitment to justice through the legal system involving procedural fairness and natural justice that is embodied in the conception of justice as chance. As he proclaims, “the world is cruel and the only morality in a cruel world is chance: unbiased, unprejudiced, fair.”<sup>98</sup>

Thus, whilst the Joker invokes chaos as the basis of the law in terms of its incorporation of the violence of the state of nature within it, Harvey takes up the procedures of meaning-making embodied in the forms of law’s procedural aspects as a way to determine an equal access to what, in the end, is an arbitrary decision based on chance (influenced as much by ‘what the judge ate for breakfast’ as much as their ability to determine the just outcome).<sup>99</sup> Whereas the Joker invokes chaos in general, Harvey invokes a particular procedure: the toss of the coin. As such, the Joker and Harvey are not the same. The Joker operates in relation to the exception (as a form of the state of nature); Harvey operates in relation to the law itself. When Batman wants to pass on his mantle of protecting the city to the legitimate figure of Harvey Dent, it is at one level seeking to identify a return to the normal state of the law, but also identifying that the law *can* deal out justice in a normal state of affairs. At the same time, as we identified above, this shift from a ‘dark knight’ to a ‘white knight’ still invokes the heroic

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<sup>98</sup> This proclamation is in the final scene of the film where Harvey accuses Batman (and Commissioner Gordon) of thinking that they could be “decent men in an indecent time”. Given the loss of Rachel, he believes they were wrong. We will return to this scene in the next section.

<sup>99</sup> The reference to the determination of case being based on ‘what the judge ate for breakfast’ is often attributed to Jerome Frank and is presented as a caricature of the Legal Realism school of jurisprudence. Some recent empirical findings seem to indicate that there may be some substance to the claim. See Danziger, Levav and Avnaim-Pesso (2011).

figure of the lawyer—it still needs the implementation of ‘good people’ in order for the harmonic, impartial system of the law to be carried out. Yet, this system of justice and impartiality is still determined by the fallible hands of corrupt police, lawyers and judges, and is reliant on the heroic lawyer to manipulate the system to get a just outcome.<sup>100</sup> The belief in the possibility of such a system came crashing down for Dent with the loss of Rachel. As we noted, however, Harvey’s commitment to a system and to justice does not diminish in this process—it is not that Harvey is simply out seeking vengeance. Rather it is Harvey’s commitment to justice and the law itself that takes over. Rather than the fallible justice of a legal system reliant on multiple individuals who are all possibly corrupt, justice becomes a toss of the coin, based purely on chance and under which everyone’s chance—everyone’s access to justice—is the same. In this sense, Harvey becomes a critique of legal justice in terms of its formality, its focus on due process and fairness *before* the law, which is a systematic reliance on people/officers to fulfill the rule of law itself.<sup>101</sup> By this reasoning, the toss of the coin becomes the ultimate fulfillment of procedural justice: the system of the law becomes perfected in a single action which is not determined by the quality of the lawyer, the impartiality of the judge, and the ability to manipulate witnesses. That is, *access* to justice becomes equal for all in terms of the toss of the coin. All content is removed from the decision and all that is left is the simple, fair act of the toss of the coin.

Yet, is this simply an identification of the randomness of chaos as proposed by the Joker? I would argue that the toss of the coin is not so much a representation or embodiment of chaos as subsumed within the law (a law that is always trying to implement itself *against* chaos, of bring order to chaos), but rather it

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<sup>100</sup> Harvey’s criticism of Commissioner Gordon is of Gordon’s pragmatism by working with cops that had been investigated for corruption by Harvey when he was in Internal Affairs. In the end, it was the corruption of the police force that enabled the Joker and the mob to infiltrate and kidnap both Rachel and Harvey. Milbank, in his analysis of the writing of Saint Paul identifies the contrast between trusting others and the supposed guarantees provided by law, courts and political constitutions. He notes that while trust may appear as a weak recourse in comparison to these guarantees, ‘since all these processes are administered by human beings capable of treachery, a suspension of distrust, along with the positive working of tacit bonds of association, is the only real source of reliable solidarity for a community.’ Milbank (2010a) p53.

<sup>101</sup> As Fitzpatrick notes, the law’s determinateness always requires ‘something other’ in order to carry it out. The Law ‘becomes the combination of determination with what is beyond determination.’ Fitzpatrick (2001) p76.

represents the arbitrariness of the law reduced to a single decision. For, when we consider the law as implemented through the exception, it is reliant on the decision (whether it is of the judge in the ordinary case or the sovereign in the exceptional case) but the decision of the law—its application—can only be implemented, according to Agamben, in its suspension.<sup>102</sup> If the judge is to decide a particular case purely in accordance with the law, then the judge is not actually deciding anything for the law already determines the outcome. Yet, in order to get from the generality of the law to the specificity of the case being considered, a decision has to bridge the gap between the general and the specific. The law, in its generality, cannot apply to the specific instance without being suspended and the decision of the judge being invoked. Yet, that decision fulfills a structural position within the law and, in the end, cannot be predetermined (or else it would not be a decision).<sup>103</sup> In this sense, either the law predetermines the outcome, in which case there is no need for a decision (though one is still needed to determine that the law *applies* in this particular case) or there are gaps in the law that require the judge to exercise discretion in making a decision—that is, the judge needs to *decide* to make the law apply or not apply in the particular circumstance.<sup>104</sup> In the end, the structure of law requires the decision of the judge, which risks being arbitrarily determined.<sup>105</sup> The reference to an applying of the law as a basis for the decision does not work, because it is more a needing to make the law applicable via its suspension. Thus, in the end, the legal decision

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<sup>102</sup> Agamben (2005a) pp39-40. See also Agamben (1998) p20 where he notes '[t]he validity of a juridical rule does not coincide with its application to the individual case in, for example, a trial or an executive act. On the contrary, the rule must, precisely insofar as it is general, be valid independent of the individual case.' See also Fitzpatrick (2001) pp73-78 discussing Derrida (1992) in relation to the determinateness of the law with its responsiveness in relation to the decision of the judge.

<sup>103</sup> See Fitzpatrick (2001) pp73-84 discussing Derrida (1992).

<sup>104</sup> That is the law has to 'originate in each act of legal decision.' Fitzpatrick (2001) p81. See also pp74-5 where he quotes Derrida: 'each case is other, each decision is different and requires an absolutely unique interpretation, which no existing coded rule can or ought to guarantee absolutely' Derrida (1992) pp23-24.

<sup>105</sup> This is the same problem with Kant's analysis of the 'will', where the determination of the freedom of the will as before the good and evil inclinations, ends up in a radical indeterminate will that can act either for good or evil and with no real way of determining whether it is doing either. The demand for a radically free will (that is, a will that is *not* already orientated toward an abundant Good, though inhibited by deficiencies and privations) thus results not in a determining of responsibility for a decision to commit evil but rather the lack of ability to determine responsibility at all because a radically free will may choose either. See Milbank (2003) chapter 1 and the discussion of this in Chapter 2 above. We will return to the question of the 'will' in Chapter 6 below.

becomes an arbitrary decision devoid of content as much as anything else. When Harvey elevates the legal system into the toss of the coin, he is simply removing the fallibility of the individual deciding and leaving the decision to the toss of the coin.

However, the difference between Harvey's invocation of chance as the decider—the compression of the system of law and its procedural justice into an arbitrary decision—and pure randomness relates to the *process* via which Harvey implements the toss of the coin. For, despite the Joker's claim that chaos is fair and Harvey's formalisation of that in the sense of demanding that everyone receive the same chances, Harvey is specifically determining *who* will be subject to chance. That is, Harvey determines whether someone's actions will be *considered* or not. He does this by determining who he will point the gun at and flipping the coin. As a result, we do not have a position where *everyone* is submitted to the toss of the coin, but only those that Harvey determines. Harvey sets up the decision when he seeks out the corrupt police officers that were involved in Rachel's kidnap and he places before them the decision of life and death embodied in the toss of the coin. Whilst the decision itself is left as a random determination of the coin, the setting up of the decision—the choosing of who will be subject to the decision of life and death—is not. Thus, Harvey Dent's actions, in the end, embody the arbitrariness of the law, the reduction of the law to a specific decision without content, which is represented more fairly in the toss of the coin. Yet, at the same time, he identifies that the decision itself is only of relevance in relation to those accused. This, of course, brings back the full weight of executing the law onto Harvey, despite his attempts to objectify and legitimate his actions through the invocation of chance. Despite Harvey's attempt to distance himself from the decision that *enforces* the law, he embodies it in totality. In that sense, it is Harvey that becomes the ultimate vigilante figure,<sup>106</sup> not simply fulfilling justice where the law fails, but doing so through a heightened and compressed version of the legal system itself. In that sense,

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<sup>106</sup> In Loeb's *Batman: The Long Halloween* Harvey Dent (along with his wife) engage in a number of murders that specifically connect those actions to his role as District Attorney. It is there that Dent seeks to fulfill the justice of the law where the law fails by killing criminals who got off due to high-priced lawyers and technicalities. See Loeb and Sale (2011)

Harvey's summation of the law into the toss of the coin critiques the law as, in the end, a systematic production of arbitrary decisions.

Law, despite its claims to determinativeness, is only brought into actuality in the legal decision.<sup>107</sup> The generality of the law needs to be independent of the decision and yet without the decision it cannot be applied. That is, in order for the law to be determinant, it has to have sustenance or independence apart from its applications to specific instances. At the same time, the application to specific instances cannot be entirely predetermined within the law—the law's generality *cannot* predict or determine the application to the specific instance, this is necessarily caught within the decision by the judge. This element of indeterminacy that is necessary (and it is the concerns that sit behind the 'interpretation' discussions of Dworkin, Fish, Fiss et al)<sup>108</sup> for there to be a decision at all, however, means that it is potentially arbitrary in its application. The potential for arbitrariness is dealt with by the law in terms of its focus on due process at one level and on the ability for appeal at another. The systematic incorporation of due process and appeal is all about trying to ensure that there is a good opportunity for substantive justice. That is, that you would have to have multiple judges making an arbitrary, unjust determination, in order for an unjust outcome to occur. Yet, the system of law itself in its implementation, in the end is concerned *not* so much with whether substantive justice is determined because, as Derrida is oft-quoted, Justice is aporetic and can never be fully determined.<sup>109</sup> As such, the humanness of law focuses on procedural justice, due process, 'fair' hearings and proper recourse to appeal. This focus on form over substantive, is exactly what the superhero genre is seen as critiquing. Harvey's shift from enacting justice *through* the law to a fulfilling of justice *beyond* the law, in the end, captures that element of vigilante justice that we see in the likes of Batman (and more fully in the character of *Daredevil*).<sup>110</sup> Yet, at the same time, the structure of Harvey's actions conforms to the legal system and a legal decision. He simply compresses it into a more effective process that attempts to remove the potential

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<sup>107</sup> Agamben (2005a) pp36-37; cf Fitzpatrick (2001) pp73-75.

<sup>108</sup> Dworkin (1982); Fish (1982), Fiss (1982), Fish (1984). Cf Fitzpatrick (1992) pp5-6.

<sup>109</sup> Derrida (1992)

<sup>110</sup> See Bainbridge (2007) and Sharp (2012).

for corruption (as he experienced in terms of police) as well as arbitrary or influenced decisions (by judges). The result is the embodiment of all the procedural aspects of the law into a single toss of the coin. Because the chances are always the same, the procedural and objective elements of the law are fulfilled. The challenge of the law to deal substantive over procedural justice is compressed into the pure 50-50 chance of the toss of the coin.

That is, despite all the procedural elements, the restrictions, requirements of the law, in the end the law is reliant on the actions of individuals that can be corrupted and the decisions of individuals that could be arbitrary. The premise of the law, at one level, is a divine justice, and yet the human implementation of the law can never be measured against that justice. As such, the need is to measure it against procedural aspects—has due process been followed—rather than substantive ones which are always left to the indeterminacy of the judge's decision. It is this potential for arbitrariness and corruption—the law's fallibility itself—that Harvey uncovers in *The Dark Knight*. Yet, instead of reaffirming the vigilante role of the superhero as the supplement of the law (which in the end is epitomised by Harvey/Two-Face), Batman's actions at the end of the film, I argue, open up the possibility for a different foundation to the community of the city itself. It is to this possibility that I now turn.

## **7. Law, Counter-Law, Love: Batman as a Typology of Christ**

Having identified that the Joker, despite all his radical anarchy, simply uncovers the conservative connection of the law to violence, and that the figure of Harvey Dent embodies the vigilante desire for justice as a fulfillment of the law, we can now come to our reading of Batman which comes to its climax in the final scene of *The Dark Knight*. The framework of this final scene is built around not simply the forms of deception depicted throughout the film (the 'half-truths' of the Joker and the deceptions used by Dent, Batman and Gordon when trying to take him down) but rather it privileges the lie itself. As Slavoj Žižek points out, the message of the film, referencing a number of the old westerns such as those by John Ford (for example, *The Man Who Shot Liberty Valence* (1962) and *Fort*

*Apache* (1948)), appears to be that 'only a lie can save us.'<sup>111</sup> In the westerns, in order to civilise the wild west there is a need to 'print the legend' rather than the truth. Yet, while *The Dark Knight* presents a similar trope, it is inverted. In the John Ford films, the lie is in the form of giving someone credit for a heroic act they did not commit—glorifying the actions of those involved in founding events of the community.<sup>112</sup> In *The Dark Knight*, however, it is not so much about giving credit for noble acts as it is about attributing blame to Batman for criminal acts he did not commit (the murders committed by Harvey Dent).

Nolan's conclusion to the trilogy, *The Dark Knight Rises*, presents a particular reading of these events seeing the lie promulgated by Gordon as inherently problematic. Eight years later he is wracked with guilt over the burden of this lie—which also includes accusing Batman of Dent's murder as well—and the deception of the people of Gotham City. Dent is remembered as a hero, a memory Gordon has fostered despite the fact that Harvey attempted to murder his son. Batman, in contrast, is remembered merely as 'a thug and a murderer' who killed the heroic Dent. This lie is presented as the foundation for the *Dent Act*, which gives the police greater powers to tackle crime and lock-up criminals (mandatory sentencing, no parole). The deception also paves the way for Bane to masquerade as the great liberator of society from the oppressive lies of its rulers and present himself as the revolutionary revealer of the truth. He demands the release of the prisoners in Blackgate prison on the basis that they have been unfairly convicted and held under the *Dent Act*. This call for 'liberation' is followed by a process of 'bringing justice' to the police and powerful in Gotham City, effected via a pre-determined guilt with the mad-man Crane (the Scarecrow) overseeing 'sentencing hearings' which determine the fate of each individual: exile or death...by exile. All the while, of course, Bane harbours his own lie: that the nuclear bomb they are threatening Gotham City with will blow-up anyway, destroying the city.

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<sup>111</sup> See Žižek (2010) p61. For a discussion of the connections between the superhero genre and the Western in relation to law, see Manderson (2011b).

<sup>112</sup> That is, in *Who Shot Liberty Valence* that Ransom Stoddard (James Stewart) shot Liberty Valence when it was in fact Tom Doniphon (John Wayne). In *Fort Apache*, that Captain York's (John Wayne) acknowledgement that Colonel Thursday (Henry Fonda) fought a glorious battle against the Apaches when in fact his arrogant tactics stupidly resulted in the death of most of his men.

While this is how Nolan reinterprets his own films and the events of *The Dark Knight*, there is a different reading of the film that is possible. This reading is prompted by the moral ambiguity and discomfort of the final scenes of *The Dark Knight*. Nolan seems to have struggled here and sought to resolve this discomfort by presenting ‘the lie’ as a bad thing that will, in the end, result in more (not less) terror being brought down on Gotham City. My argument, however, is that a closer reading of *The Dark Knight* itself, and its final scene, uncovers a more serious challenge than simply the ‘badness’ of this deception. Earlier in the film, the reason for Batman to take the blame for Dent’s murders is foreshadowed in a discussion between Bruce Wayne and his butler Alfred about the purpose of the Batman. Alfred argues that, despite the killings of the Joker, Batman should not give in to his demands—rather, this is the reason for Batman: he can endure what an ordinary person cannot. Alfred acknowledges that the people of Gotham will hate Batman for it, but that problematic is the point of Batman – he can endure the unendurable.<sup>113</sup> So, when it comes to the final scene, Batman is willing to endure the unendurable so that people will not lose hope in their ‘white knight’, the ‘legitimate’ hero of Gotham City. Batman takes the blame for Dent’s murders and commits himself to being hunted and condemned as an outlaw. In this sense, we find that Batman willingly accepts what would amount to a wrongful conviction—not in the sense of being actually brought before a court and convicted, but in the sense of being condemned for crimes he did not commit. This wrongful conviction, both in structure and motivation, references another wrongful conviction, which is the key to this alternative reading: the wrongful conviction of Christ. For, from a legal perspective, an analysis of the Christian passion story in the gospel narratives is a story of effectively a wrongful conviction: a man sentenced to death for crimes that could either not be identified or, where they are pointed to, were not committed.<sup>114</sup> This, of

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<sup>113</sup> As with the change in position of the character of Rachel Dawes between *Batman Begins* and *The Dark Knight*, a similar change occurs in Alfred’s character between *The Dark Knight* and *The Dark Knight Rises* (though still played by the same actor). Whereas in *The Dark Knight*, Alfred has a profound understanding of the need and purpose of Batman’s mission (including the toll it will take on Bruce Wayne), in *The Dark Knight Rises* he seems to believe that it would have been better for Bruce if he had never returned to Gotham at all, finding a life elsewhere.

<sup>114</sup> From the perspective of Christian orthodoxy, the accusations against Jesus were for blasphemy where he claimed equality with God. However, if one takes the Christian belief that Jesus was the son of God, then the accusations of blasphemy are false. At the same time, the

course, returns us to the opening argument of this chapter: that Batman is a typology of Christ. In exploring this typology, John Milbank's reading of Christ in relation to the exception (drawing specifically on Agamben's work) becomes relevant because it identifies, as we have seen above, the connections between the state of exception, the figure of exclusion and the law exemplified in the figure of Batman.

For Milbank, in the Christian tradition, Christ, the God-Man, 'died precisely a purely divine and a purely human, or even sub-human, death.'<sup>115</sup> The divine death was a result of the resentment/envy at his elevated position – his claim to be divine. The human death, however, was at the hands of the arbitrary sovereign authority – via exclusion, as (to put it in Agamben's terms) bare life.<sup>116</sup> Milbank identifies Christ's exclusion as *homo sacer*, by identifying that Christ was excluded three times: he was passed from the Jewish authorities to the Roman and then back again and was finally to be condemned by the mob.<sup>117</sup> He is thus excluded first by the Jewish law of his tribal nation, second by the Roman universal law of Empire and third by the democratic will of the mob.<sup>118</sup> The result of these exclusions, for Milbank, is that Christ was abandoned or cast out – excluded from political life.<sup>119</sup> In this sense, Christ died a death that was not noble or with dignity but of utterly emptied-out humanity:

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Gospel Narratives show the challenge of finding any crime to convict Jesus of and the law of blasphemy was not punishable by death (under least whilst under Roman rule). See Milbank (2003) pp95-96.

<sup>115</sup> Milbank (2003) p95.

<sup>116</sup> Milbank (2003) pp92-93, 97; Agamben (1998).

<sup>117</sup> See Matthew 26:57-27:26; Mark 14:53-15:15; Luke 22:66-23:25; John 18:12-19:16, ESV. In Matthew, Mark and John's Gospels depict Christ as being questioned by the Jewish authorities (the Sanhedrin and the High Priest) and then being sent to Pilate. Luke also includes an account of Pilate sending Christ to Herod and then being sent back to Pilate again. Milbank notes that '[t]he only consistent thread in these narratives is that Christ was constantly handed over, or abandoned to another party. Judas betrayed his presence; the disciples deserted him; the Sanhedrin gave him up to Pilate; Pilate in turn to Herod; Herod back to Pilate; Pilate again to the mob who finally gave him over to a Roman execution, which somehow, improperly, they co-opted. Even in his death, Jesus was still being handed back and forth, as if no one actually killed him, but he died from neglect and lack of his own living space.' Later he notes that '[h]e was shuttled back and forwards, with an undercurrent of indifference, as though not really dangerous...' Milbank (2003) pp82, 96. In addition, Milbank critiques the anti-Semitic readings of 'the mob' and the Passion narratives: Milbank (2003) pp83-84, 87-89.

<sup>118</sup> Milbank (2003) pp92, 96.

<sup>119</sup> Note also the Christian reading of Isaiah's description of the suffering servant as referring to Christ in Isaiah 53: 'He was despised and rejected by men; a man of sorrows, and acquainted with

Jesus entered into absolute solidarity with each and every one of us. He died the death which any of us, under sovereign authority, in exceptional circumstances which always prove the rule, may possibly die. He died as three times excluded: by the Jewish law of its tribal nation; by the Roman universal law of empire; by the democratic will of the mob. In the whole summed-up history of human polity – the tribe, the universal absolute state, the democratic consensus – God found no place. He was shuttled back and forwards, with an undercurrent of indifference, as though not really dangerous, between their respective rules. He became *homo sacer*, cast outside the camp, abandoned on all sides, so that in the end he died almost accidentally. He died the death of all of us – since he died the death that proves and exemplifies sovereignty in its arbitrariness.<sup>120</sup>

This reference to Agamben's term *homo sacer* (he who may be killed but not sacrificed, whose death is not murder, execution or sacrifice) identifies with Jesus death as an outcast and captures, in a sense, the pathos of the figure of Christ on the cross: 'Jesus imbued with his divine height died precisely the death of absolute innocence.'<sup>121</sup>

Yet Christ's abandonment is, for Milbank, not the last word. For it is not simply that we should identify with Christ as a victim: 'Mere identification with a victim as victim confirms victimhood and diminishes us all.'<sup>122</sup> Rather, Christ was never actually abandoned in the sense of ontological desertion.<sup>123</sup> Christ's death on the cross, his exclusion from the tribal law of the Jews, the universal law of the Roman Empire and the democratic law of the mob, was a result of Christ's failure to resist human power. That is, he 'went freely to his death because he knew that

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grief; and as one from whom men hide their faces he was despised, and we esteemed him not.' Isaiah 53:3, ESV.

<sup>120</sup> Milbank (2003) pp 96-97. Note that Milbank is not claiming the Jesus was *homo sacer* 'in any consciously identified way, but possibly in a way conforming to the deep structure of Roman law which Agamben diagnoses.' That is, 'Jesus is...presented by the gospels in a way that conforms with *homo sacer*.' Milbank (2003) p92.

<sup>121</sup> Milbank (2003) p97. At the same time, Milbank questions Agamben's analysis of *homo sacer* as not being offered as sacrifice rather noting that 'All that is certain is that he was to be killed without ritual purification – but this is still consistent with a total offering, as indeed the Israelite examples attest: totally unclean towns were to be offered to Yahweh.' See Milbank (2003) p92.

<sup>122</sup> Milbank (2003) p98.

<sup>123</sup> Milbank makes a distinction between the self-separation of sinful humanity from God (represented by Jesus cry "My God, my God, why have you forsaken me?") and an ontological desertion by the Father, which does not occur (Jesus says "Father, into thy hands I commit my spirit"). See Milbank pp98-99; Matthew 27: 46; Mark 15:34; Luke 23:46, ESV.

a merely human counter-power is always futile and temporary.<sup>124</sup> At this point, Christ's challenge to the violence of the law, the state and the people, was a non-violent self-giving: 'Jesus only submits to being handed over because he is in himself the very heart of all transition as really loving gift, and thereby able to subvert every betrayal and abandonment.'<sup>125</sup> The result of this for Milbank is the foundation of a new sort of community based on this rejected one as also the most envied *and* unrepeatably one.<sup>126</sup>

To return to *The Dark Knight*, my argument here is that Batman embodies a typology of Christ in this form of exclusion. That is, in the final scenes of the film Batman takes up a position of exclusion that is structurally different to the superhero embodying of the sovereign exception. This is not to argue that Batman *is* Christ or even a stand-in for Christ, for, as Milbank has argued, the actions of Christ himself are utterly unrepeatably.<sup>127</sup> Rather, it is that the actions of Batman in *The Dark Knight* refer to and repeat differently, via a process of 'making strange', the actions of Christ. It is in identifying this reference point that we find the difference between Nolan's Batman and the superhero genre (and also why the references to Batman's 'noble sacrifice' in the third film *does not* sustain this referencing of Christ). For the superhero as the figure beyond the law operates as the exception to it and, as such, enables its completion or fulfillment beyond its limits. In the state of exception or emergency the superhero, out of necessity, goes beyond the law and operates as if it is suspended in order to deal with the crisis and restore the social order.<sup>128</sup> That is,

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<sup>124</sup> Milbank (2003) p99. This is not a pacifist refusal of violence (which in the end, engages in the violent gaze of the onlooker who does nothing about the violence he observes) but rather an identification of the futility of fighting finite potency with finite potency. Rather 'In refusing violence, Christ also exercised a militant opposition to violence.' Milbank (2003) p100. See also Milbank (2003) chapter 2.

<sup>125</sup> Milbank (2003) p99.

<sup>126</sup> Milbank (2003) p98.

<sup>127</sup> This is why Batman, a figure that has none of the Christological references of, say Superman or Anakin, encompasses a stronger theological representation of Christ – he repeats *differently* or 'makes strange' the actions of Christ in a new context, rather than enacting a death and resurrection which can, in itself, never be repeated or represented. This, then, provides a contrast between the mythological and the theological readings of Christ.

<sup>128</sup> As described above, this is the combat myth being played out. A clear example of this, released in the same year as *The Dark Knight Rises* is *Marvel's The Avengers* (2012). There, Nick Fury refers to this trope when he acknowledges that 'there is an idea' of a group of exceptional individuals that can handle the problems and things that cannot be handled by recourse to the normal means. Yet, as we identified in the discussion of Harvey Dent above, this exceptional status and

the superhero in the end becomes the exception that determines legality and this is why superhero films are so easily incorporated into conservative post-9/11 ideologies around the need for exceptional measures in the 'war on terror'.<sup>129</sup> Nolan's version of Batman, however, frames a form of *exclusion* as opposed to simply the sovereign exception discussed above, which occurs through Batman taking the blame for Harvey Dent's actions. For it is not simply that Batman is elevated because of his exceptional relation to the law, but he is envied and in the end rejected because of it.<sup>130</sup> When the Joker is threatening the city with death and destruction if Batman does not take off his mask and turn himself in, Harvey Dent tells a press conference that they should not give in to his demands. Yet the crowd-cum-mob rejects Batman (whom they had previously supported), demanding that he reveal himself. Rachel, Bruce's best friend and one of the three people who knows his secrets (and whom, in the previous film had shown a depth of understanding of what Bruce was trying to do by taking on the role of Batman) rejects him believing that there would never come a day when he did not need to be Batman (forgetting her earlier challenge to him to be one of Gotham's 'good people'). Finally, in the closing scenes of the film, when Batman takes the blame for Dent's murders, he is rejected and cast out by the police who will now hunt him down as a criminal and an outlaw.

In this sense then, Batman is excluded at every level: in terms of his role as protector of Gotham City (by the democratic will of the mob), in his personal relationships *because* of his role as Batman (by Rachel) and finally in his relationship to the law itself (by Gordon and the police). Yet, it is through these

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connection to the law also reflects an operation *within* the law itself—that the law can actually only ever be applied in its suspension. Cf Agamben (2005a) p36.

<sup>129</sup> This is also why it is *Man of Steel* (2013), in the end, which presents visuals that most strongly reference the attacks on the World Trade Center Towers on September 11<sup>th</sup>, 2001. For all the rhetoric around *The Dark Knight's* post-9/11 visual references, the scenes of destruction of New York in the gritty realism that Nolan and Snyder attempt to bring to the Superman mythos in *Man of Steel*, along with the 'ground zero' of destroyed buildings, out does *The Dark Knight* many times over.

<sup>130</sup> McGowan pinpoints this form of envy in his analysis of the 'fake Batmen' who want to help. McGowan argues that the problem of the exception itself is that it continues to expand the realms of exceptionality (everyone wants to participate in this exceptional relationship to the law). For McGowan, this is the reason that Batman must become the figure of evil, in order to quell the desire for an exceptional relationship to law. See McGowan (2009) paras [15]-[16], [47]-[59]. Such an analysis could also be applied to the transformation of Anakin to Darth Vader. See Chapter 3 above.

exclusions that we see how Batman embodies a role that refuses the heroic and sovereign employing of the exception as a means of justifying his actions. As such, it is in the process of *not* being a hero that Batman lays bare the fundamental violent elements of the law and the arbitrary exercise of sovereign power – the operations of the law in both its inclusion and exclusion. In effectively taking the blame for Harvey Dent’s murders he puts the law on display revealing its failure to identify, let alone punish, the criminal. Batman becomes the exception via exclusion and rejection, which opens another space outside of the law and its punishment—outside of the exception which is included via its exclusion. This acceptance of the position of exclusion is one that involves, in the end, a non-resistance to human violence, a non-resistance founded on love or compassion which challenges both the law and its grounding in violence. What form does this loving act take and how does it come about?

We noted above that Bruce’s confrontation with Ra’s Al Ghul/Ducard arose out of an act of compassion, a compassion that he retained as an important element of his understanding of the role of Batman. As a result, the actions taken by Batman are not about dealing a form of vigilante retributive justice but they are actions of a compassionate preventative justice—that is, they are attempts to prevent crimes from being committed, to prevent evil from being done, which arise out of a care for both the potential victim *and* the potential perpetrator.<sup>131</sup> This compassion is thus also the foundation of Batman’s final confrontation with Harvey at the end of *The Dark Knight*. The face-off between Harvey, Batman and Gordon in the final scene involves Batman, after being shot by Harvey, throwing himself at Harvey in an attempt to save Gordon’s son—which he does. But, at the same time, Batman is seeking to save Harvey as well. When Batman appears on the scene he says “You don’t want to hurt the boy Harvey” (to which Harvey responds, as we noted earlier “it’s not about what I want, it’s about what’s fair”). In the midst of this simple invocation from Batman we find not just an attempt to defuse the situation but a loving response that identifies that Harvey *does not want* to engage in this act of violence (killing Gordon’s son). In this sense, the compassion that underlies Batman’s actions are not just about saving the city, or

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<sup>131</sup> For a discussion of this type of violence or counter-violence, see Milbank (2003) chapter 2.

even the boy, but they are an attempt to save Harvey Dent himself.<sup>132</sup> Whilst Dent turns to his rage and his now misplaced sense of ‘justice as chance’ as a way of avenging Rachel’s death, Batman is acknowledging both that Rachel’s death was not a result of chance but a result of actions that were taken (by Batman, Harvey and Gordon as much as by the Joker) and that Harvey, at a later time would likely regret the action he was about to take to hurt the boy. That is, Rachel’s death was a result of their specific decision to act and, as such, they bare the responsibility for those actions—actions that engaged in *preventative* violence in the sense of the prevention of the *commission* of violence, rather than the punishment of the criminal.<sup>133</sup> Furthermore, when Batman, after being shot, lunges at Harvey it is not simply about saving Gordon’s son; it is *also* about saving Harvey both from death and from an action of violence that he would later regret. Harvey’s fall to his death here is imbued with a tragic irony in that it is a result of Batman’s attempt to save him. Batman’s actions, whilst resulting in Harvey’s death, were not murderous in the sense of trying to kill Dent (in order to save the boy). They were compassionate acts of love for both Harvey and the boy.<sup>134</sup>

This action of preventative violence, aimed at saving Dent (which fails in terms of the death of Harvey, but succeeds in terms of ensuring that Dent *is not* the murderer of an innocent little boy) prefigures the actions then taken by Batman in taking the blame for the other murders committed by Harvey (murders that were, in the end, a rendering of retributive justice in terms of killing those who were directly involved in Rachel’s death—corrupt cops and mobsters). These actions are aimed both at saving Dent and at challenging the Joker’s accusations of the people of Gotham, and of Dent in particular—that underneath the supposed civility of society lies the violence and natural rights of the state of

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<sup>132</sup> Again, in an earlier interaction between Alfred and Bruce Wayne, Bruce is deflated that he allowed the Joker to blow Dent ‘half to hell’. It is Bruce’s belief in Dent and Dent’s ability to change the city that becomes the basis for Batman’s actions.

<sup>133</sup> See Milbank (2003) chapter 2, in particular pp36-43.

<sup>134</sup> As such, Batman retains his decision not to kill. This is an important distinction and it relates also to the death of Ra’s Al Ghul/Ducard (as discussed in the Intermission above), to the saving of the Joker and, finally, to the change at the end of *The Dark Knight Rises* where Batman (repeating Bane’s words from earlier in the film) tells Bane that he now has his permission to die. Of course, Batman still *does not* kill Bane (it is Selina Kyle who does), but it is a shift in position. This continued decision *not* to kill, delved to the depths of its meaning, is completely lost in Nolan and Snyder’s rendition of *Man of Steel* as discussed in the Introduction above.

nature; that anybody can revert back to these natural rights (which involve the right to kill) given the right circumstances and a presentation of the deficiency of the law to maintain its monopoly and control of violence itself. However, the problem with fighting the Joker, which Batman identifies by the end of the film, is that to do so directly will only lead to ever-increasing degrees of violence (and fail to produce their intended effect anyway). Rather, a challenge to the Joker needs to occur not on the level of violence, but on the level of an active non-resistance to violence—that is, it requires an act of compassionate love that *does not* invoke either the arbitrary justice of the law *or* the natural rights of the state of nature. Such a non-resistance then opens the possibility, following Christ, for an alternative foundation for the community—one based not on a self-interested wielding of ultimately violent natural rights, but an underlying faith or trust in the possibility of relationship with others. It is for this reason that Batman identifies that Gotham needs to “have its faith rewarded” and that “the Joker cannot win” in making people believe that a return to the state of nature is inevitable. By first preventing Dent from killing Gordon’s son and then taking the blame for Dent’s murders, Batman both ensures that Dent *did not* become the monster the Joker was envisioning him to be and also that Gotham City did not see him in this way. Such an action, in the end, is antithetical to the notion of the hero who, in operating within the role of the exception becomes a law unto himself. Instead, we find that in the complete non-resistance to the law, in taking the blame and punishment for crimes that he did not commit, the power of the law in both its ability to protect the citizens and condemn the criminals (categories which, in the end, overlap) is broken. It is for this reason that Gordon’s concluding voice-over identifies Batman is *not* a hero. He is, rather “a silent guardian, a watchful protector...a Dark Knight.”

## **8. “We don’t need another hero”: The (In)Conclusion of *The Dark Knight Rises***

The question that is imbued within *The Dark Knight Rises* is, in the end, one of sacrifice. The challenge that the film grapples with is whether Batman/Bruce Wayne is willing to give up his life, to pay the ‘ultimate sacrifice’, for the people

of Gotham City. However, as we see above, it is in *The Dark Knight* that Batman actually engages in the symbolic sacrifice—renouncing all claims to glory and heroism in willingly taking on the role of the criminal for crimes he did not commit. What Nolan seems to struggle with, however, is the fact that Batman has not died for his city. Alfred challenges Bruce early in *The Dark Knight Rises* arguing that the only reason he is taking on the role of Batman again and going out into the city is because he wants to die, because there is nothing left for him. Later in the film, Bruce is confused as to why Bane does not simply kill him. Bane responds by openly acknowledging that Batman welcomes death and, as such, his ‘punishment’ needs to be more severe—he needs to see his city burn. When Batman makes his return to Gotham City, Selina Kyle (the cat burglar) tells him that he does not owe the people of Gotham anything, that he has already given them everything. His response is that he hasn’t, “not yet”, implying that the last sacrifice, the giving of his life, is what remains.

Yet, if we take the Christological reading serious, the point is not about re-enacting a sacrificial death. Christ’s death in itself is the death to end all sacrifice and is, as such, unrepeatably. Rather Christ’s actions are to be repeated differently in, as St Paul’s put it, a continuing ‘living sacrifice’,<sup>135</sup> and this is why the focus of *The Dark Knight Rises* on a sacrificial death is problematic. At the same time, as we identified at the beginning of this chapter, Wayne himself *does not die*. As such, the reading of *The Dark Knight Rises* which sees the city no longer needing the superhero figure of the exception now that all the ‘lies’ undergirding the city’s peace have been brought out into the open and exorcised misses the point.<sup>136</sup> For the lies that are presented as problematic at the beginning of *The Dark Knight Rises* still persist in two forms: first, it is not *actually* known who Batman is and all that is being remembered is a symbol, the constructed subject in a cape and a cowl, without any acknowledgement of the man underneath (the true face, which is the one, as Rachel Dawes points out at the end of *Batman Begins* that is truly feared); second is the fact that, for all this, Batman/Bruce Wayne is not dead. Thus, the perspective that the city may now

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<sup>135</sup> Romans 12:1, ESV.

<sup>136</sup> Such a reading sees Batman as becoming a memorial focus point of the city who can now move on with a belief in a ‘dead god’ of sorts that gave up his life for the city.

continue without the underlying lie is false for the lie still persists—though now in a different form. The end of *The Dark Knight Rises* thus opens the possibility for a ‘repeating differently’ to follow with the potential of ‘Robin’ John Blake to continue the work of Batman. Yet, at the same time, the message of the film trilogy is *not* about a continuation of the exceptional status of the superhero in relation to the normal operation of the law or its suspension. Rather it is about the fact that something other than a hero is necessary.<sup>137</sup>

Given the biopolitical tensions of the present situation, heightened by the ever increasing series of ‘emergencies’ and ‘crises’ that have dominated news headlines since the September-11 attacks in 2001 and reflected by the rise of the superhero on film, Nolan’s *The Dark Knight Trilogy* provides a contrasting message: what we need is *not* a figure that would embody the exceptional decision of the sovereign which, in the end, is always a decision of life and death. Rather, we need to see that in the capacity to suffer and endure death to the very end, we find a different way of conceiving life that is not based on an economy of death-dealing violence whether authorised or illegitimate, legal or illegal, exceptional or otherwise. Rather, the possibility of affirming life itself comes from a recognition of suffering and evil as part of life that must be *both* endured and responded to. It is only through such an endurance and a response to evil that is not about *eradicating* the perpetrator so much as compassionately preventing the *potential* perpetrator from committing an act that they will later regret themselves, that we find a way of affirming life outside of its biopolitical frameworks (not in terms of the ‘presumed’ natural life outside the law which is always determined by the law, but a life that is in, through and beyond the law itself). It is in this sense that the real connection between Batman and Christ arises—not in the sense of the heroic (for Christ in no sense fits the tradition of the heroic exception, the Greek cosmology of heroes or the death and re-birth of the Greek gods) but rather in the form of a non-heroic non-resistance of violence. Christ represents a divine and human death in a very particular way but also a

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<sup>137</sup> And this is why Nolan can present something which is unthinkable within the comic book tradition: Batman retiring! See, for example, Frank Miller’s *The Dark Knight Returns* and *The Dark Knight Strikes Again* where Batman, despite at one level being defeated, re-organises and continues his work as Batman. Miller (1986); Miller (2002).

resurrection that opens the possibility for a new life beyond law. If anything, the end-point of *The Dark Knight* identifies that the solution is *not* a hero, despite their recent filmic proliferation. That is to say, to repeat in a different context the words of Tina Turner, 'we don't need another hero.'<sup>138</sup>

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<sup>138</sup> Tina Turner 'We Don't Need Another Hero (Thunderdome)' by Terry Britten and Graham Lyle., *Mad Max: Beyond The Thunderdome*, Original Motion Picture Soundtrack, Capitol Records, 1985.

# Chapter 5

## Allusions to Theology: *I, Robot*, Universalism and the Limits of the Law

“Do not think that I have come to abolish the Law or the Prophets; I have not come to abolish them but to fulfill them.”

Matthew 5:17

### *The Three Laws of Robotics*

#### LAW I

A robot may not injure a human being, or, through inaction, allow a human being to come to harm.

#### LAW II

A robot must obey orders given it by human beings except where such orders would conflict with the First Law

#### LAW III

A robot must protect its own existence as long as such protection does not conflict with the First or Second Law.<sup>1</sup>

### 1. Introduction

In 2004, as part of the resurgence of science fiction film, Alex Proyas' *I, Robot* was released, *suggested* by Isaac Asimov's collection of short stories of the same name.<sup>2</sup> Almost two millennia ago, a Christian-Hebrew scholar named Paul wrote a letter to a small group of his protégés in Galatia declaring the demise of the Jewish Law. While these two texts could not be farther apart in time, place, audience, medium and genre, unifying them is a thematic commonality: a jurisprudential inquiry into the Law and its limits. For the Law *is* limited in both texts, soliciting for its completion something beyond itself: a 'spirit' to fulfil its 'letter'. Drawing on Alain Badiou's reading of St Paul and his philosophy of 'the event', this chapter seeks to bring into dialogue these two texts (St Paul and *I, Robot*), arising out of and addressing the intersections of popular culture,

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<sup>1</sup> Asimov (1996a) p8; Proyas (2004).

<sup>2</sup> Asimov (1996a).

theology and jurisprudence. For in today's world of over-legislation and legal paranoia about technological development there has been a 'return to Paul' and his message.<sup>3</sup> Such a message calls us 'beyond the law,' overcoming its limits and inviting us to step outside the differences its 'letter' institutes. As Badiou points out, this can only be done via the event that announces a universal that sublates both law and difference and, in so doing, enables true freedom.

Proyas' *I, Robot*, far from being 'mere entertainment,' constitutes a staging of this event by responding to Asimov's legal response to technology via the Three Laws, and, legal responses to technology and society more generally. The world that Proyas' creates in *I, Robot* provides just enough distance, both fictionally and technologically, to demonstrate the limits of the Law and the power of the event. Thus, under the conditions of postmodernity, discussions of high theory (theology, jurisprudence, philosophy) are 'made strange' and rendered explicable by the representations of popular culture (film, science fiction, *I, Robot*).

I will begin such a discussion by outlining Asimov's development of the Three Laws and Proyas' creation of an Asimovian world in *I, Robot*. This world is one that demonstrates Paul's descriptions of the failure of the Law and its custodial role. To overcome this failure, Paul requires 'the event' of Christ and thus we will then examine Badiou's reading of Paul as one who 'declares' this event. Such a declaration punctures what will be the topics of two further sections: the pagan subjection of destiny to the Cosmic Order; and the Law's repetitive and controlling nature that destroys thought. The event, however, punctures the situation by instituting a 'universal' that steps beyond both the pagan system and the Law. This break can only be achieved by the work of love. Thus, finally, we will conclude with an examination of the way the event rejects abstract universalism in favour of a universal singularity, instituted by love.

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<sup>3</sup> There has been a significant interest in the writings of Saint Paul, generally inspired initially by the work of Jacob Taubes. See Taubes (2004). This has included: Badiou (2003); Žižek (2000); Žižek (2003); Žižek (2010a); Jennings (2005); Agamben (2005b) and Milbank (2010a). For discussions of this 'return to Paul' see Caputo and Alcoff (2009); Harink (2010); and Milbank, Žižek and Davis (2010).

## 2. The Law as Custodian: Asimov, Proyas, Paul

Isaac Asimov was one of the most prominent and influential writers of science fiction of the twentieth-century. His extensive oeuvre (greater than 200 works) covers many fields and his works on robots and other science fiction are considered foundational to the genre's development. However, more than that, he was not only a populariser of the science fiction genre but science itself (his non-fiction works outnumbering the science fiction ones). He believed that science could provide many of the answers to what the future would behold. His desire was for science and scientific futurology to leave behind theological, mythological or religious views of the future and his influence was substantial in both science fiction and science.<sup>4</sup> There are many stories of today's scientists and roboticists being inspired by Asimov's work. Some of his insights, including his 'Three Laws of Robotics' have also been taken on and inspire the scientific community and development of robotics.<sup>5</sup>

One of Asimov's most substantial contributions to science fiction was the development of these famous 'Three Laws of Robotics.'<sup>6</sup> Sick of the continuously recurring Frankenstein-monster style plot where created robots monstrously turn on their creators Asimov wanted to develop robots that could work and operate alongside humans in harmony.<sup>7</sup> The Three Laws were thus designed to circumvent the problem of the robots superior strength and power: the First Law is in place to protect humans, the Second to ensure robots remain under the control of humans and the Third to secure the robots' protection. These laws form the logical processes behind the robots' operations.

Proyas' film visually displays the world of the 'Three Laws'. For Proyas created an Asimovian universe and integrated many of Asimov's stories and themes into

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<sup>4</sup> Asimov (1985).

<sup>5</sup> Proyas and Goldsman (2004).

<sup>6</sup> The 'three laws' were first articulated by Asimov in 1942 in the short story 'Runaround': Asimov (1996a) pp38-60.

<sup>7</sup> See Asimov's discussion of *Frankenstein* style stories depicting robots as 'dangerous devices that invariably destroyed their creators.' Asimov (1983) pp vii-viii. See also Tranter's discussion of *Frankenstein* as the myth of modernity and representative of the relation between law and technology. Within this context 'law' is seen as that which must tame technology: Tranter (2007b).

the narrative.<sup>8</sup> In this world, the Three Laws, attributed to the creator of the robots, Dr Alfred Lanning (played with perfect scientific eccentricity by James Cromwell) are hardwired into each robot and consistently form the background and foundation to Proyas' narrative. The difference between Proyas' film and Asimov's robot stories, however, is that the film actually *has* a narrative. Asimov's short stories were, in line with his belief about the science fiction genre, focused on the technology and the bare traces of narrative structure through *I, Robot* are merely to enable a discussion of technological queries and problems.<sup>9</sup> Proyas, on the other hand, crosses genres by combining a mystery story and an action movie with a sci-fi flick. Such a move creates a stronger narrative and plot structure than most of Asimov's work on robotics.<sup>10</sup> Instead of founding a story based purely on technological development and the outworking of the 'perfect' Three Laws, Proyas allowed his characters and story to affect the foundational Three Laws and question their operation.

For, while the Three Laws enable the robots to interact and operate alongside humans, they are also a controlling mechanism that attempts to limit the robots' actions and position within society. Thus, in the words of St Paul, they operate as the robots' tutor or custodian. For Paul develops an argument about law (in particular, the Law of Israel) in his letter to the Galatians. He argues that the Law was given as a custodian of Israel, until 'faith came.'<sup>11</sup> Here, he is making a comparison between the Law and a slave or attendant to whom, in the ancient world, a child was entrusted and subject to until their coming of age when they became free citizens.<sup>12</sup> He is thus arguing that the Law operates as a custodian of Israel.

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<sup>8</sup> See Palumbo (2011) for a detailed consideration of the Asimovian themes and references in Proyas' film.

<sup>9</sup> Gunn (1982) p ix. It is important to note, however, that whilst *I, Robot* and Asimov's other robot short stories bore these features that he did *also* write a number of detective novels involving robots. See Asimov (1983), Asimov (1988), Asimov (1996b), Asimov (1996c) (originally published in 1954, 1956, 1983 and 1985 respectively).

<sup>10</sup> With the exception of his robot detective novels noted above, though these generally are also focused on the technological problems and the outworking of the 'three laws' rather than the action scenes we find in Proyas' rendition. For further discussion of this see Palumbo (2011).

<sup>11</sup> Galatians 3:23, ESV.

<sup>12</sup> Bornkamm (1971) p127.

Paul's problem with the Law, however, is that in itself it is unable to provide freedom (the Law cannot provide sufficient righteousness to enable a relationship with God). He argues that 'if a law had been given that could give life, then righteousness would indeed be by the law'<sup>13</sup>, but the Law in itself is inadequate. Its rule as custodian means it does not have a 'life giving function that would transform and change the human nature.'<sup>14</sup> Andrew Peters argues that the Law

Was added because of transgression and its purpose was to confine us and keep us under restraint until the promise came, until faith came, until Christ came. For Paul, the law cannot produce true righteousness and holiness before God...<sup>15</sup>

This is the result of Asimov's laws as well and is demonstrated in the Asimovian universe that Proyas' creates. It is a world in which the Three Laws have been put in place to protect us from the robots and to keep them in custody. There is no way for the Laws to provide freedom. Asimov's dealing with the Three Laws is the same and any Asimovian response to technology tries to enslave technology to law—to put it into custody under the Law and to ensure our control of it. Any notion of freedom or operation outside the Law is not possible. Nothing within the Law can bring freedom. For Paul, freedom could not be gained until Christ came and we could be released from the Law. Thus, what is required is an 'event' to break with the Law and enable its overcoming to provide freedom. This is what, for Paul, Christ does. For Proyas, this is what occurs with Lanning's death and the appearance of the robot Sonny—a robot that can operate apart from the Three Laws (played with digital enhancement by Alan Tudyk). It is only, as Alain Badiou would say, 'the event' that enables a break with the Laws' domination of the situation. It is this notion of 'the event' that we now turn to.

### **3. Alain Badiou: the Universal, the Truth, the Event**

Alain Badiou interprets Paul's notion of the break instituted by Christ in relation to his philosophy of 'the event.' Badiou's 'event' is what enables the development

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<sup>13</sup> Galatians 3:21, ESV.

<sup>14</sup> Peters (2005) p25.

<sup>15</sup> Peters (2005) p25.

of a universal singularity as a truth-procedure that is able to puncture both the principles that govern the situation (organising its repetitive series—for Paul, the Law) as well as the identitarian or communitarian categories of the situation (that is, the Greek or pagan subordination of destiny to the Cosmic Order).<sup>16</sup> This ‘event’ has to originate outside the situation (that is, not within the Law or identitarian/communitarian categories). It is something that enters into, interrupts and cannot be explained by, the situation. Truth is that which then operates out of this event as fidelity to it. It is thinking the situation ‘according to’ the event.<sup>17</sup>

For Paul, Christ’s resurrection is such an event. Badiou describes the requirements of truth as a universal singularity in relation to Paul as follows:

1. The Christian subject does not pre-exist the event he declares;
2. Truth is entirely subjective (it is of the order of a declaration that testifies to a commonality relative to the event). Thus every subsumption of it becoming under a law will be argued against;
3. Fidelity to the declaration is crucial, for truth is a process not an illumination;
4. A truth is of itself indifferent to the state of the situation...[it] is a concentrated and serious procedure, which must never enter into competition with established opinions.<sup>18</sup>

Truth is thus the declaration of, and faithfulness to, an event. Such a process has two consequences:

First, since truth is evental, or of the order of what occurs, it is singular...No available generality can account for it, nor structure the subject who claims to follow in its wake. Consequently, there cannot be a law of truth. Second, truth being inscribed on the basis of a declaration that is in essence subjective, no preconstituted subset can support it; nothing communitarian or historically established can lend its substance to the process of truth. Truth...neither claims authority from, nor...constitutes any identity. It is offered to all, or addressed to

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<sup>16</sup> Badiou (2003) pp11, 14.

<sup>17</sup> Badiou (2001) p41.

<sup>18</sup> Badiou (2003) pp14-15.

everyone, without a condition of belonging being able to limit this offer, or this address.<sup>19</sup>

Thus, the declaration arising out of an event is truth—the subjective element that arises out of the conviction in declaring the event. In order for this truth to arise as a universal singularity there must be complete ‘fidelity’ to the event. Such fidelity is a continuous process which, for Paul, involves faith, love and hope. Here, faith is the declaration of the conviction to, and of, the event. But faith, as Badiou argues, is not salvation. Faith, rather, ‘prescribes a new possibility, one that, although real in Christ, is not, as yet, in effect for everyone’.<sup>20</sup> So, as it is not in effect for everyone, the work of love is needed so that ‘truth’s postevental universality can continuously inscribe itself in the world, rallying subjects to the path of life’.<sup>21</sup> As the truth is ‘of the order of a declaration that testifies to a conviction relative to the event,’<sup>22</sup> it cannot be argued to come under the Law. A break with the Law must result and this is fulfilled through love. Paul’s (and Christ’s for that matter) summation of the Law into the maxim ‘love your neighbour as yourself’<sup>23</sup> can only, according to Badiou, operate through faith because the loving of thyself cannot occur prior to the resurrection. Prior to the event, ‘the subject, having been given up to death, has no good reason to love himself.’<sup>24</sup> Thus,

on the one hand, the evental declaration founds the subject; on the other, without love, without fidelity, that declaration is useless...a subjectivation that does not discover the resource of power proper to its universal address misses the truth for whose sudden emergence of it seemed to be the sole witness.<sup>25</sup>

But, once we have faith which opens us to the true, and love which universalises the effectiveness of faith’s trajectory, we need hope in order to continue.<sup>26</sup> Hope is not a hope for the future, but rather a connection between events. It enables the subject to operate in the interval between two events and the subject’s faith in the first event is sustained by his hope in the second: ‘So now faith, hope, and

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<sup>19</sup> Badiou (2003) p 14.

<sup>20</sup> Badiou (2003) p88.

<sup>21</sup> Badiou (2003) p88.

<sup>22</sup> Badiou (2003) p14.

<sup>23</sup> Romans 13:9, ESV; Matthew 22:39, ESV.

<sup>24</sup> Badiou (2003) p89.

<sup>25</sup> Badiou (2003) p91.

<sup>26</sup> Badiou (2003) p93.

love abide, these three; but the greatest of these is love.<sup>27</sup> Love, in such an understanding, is that which universalises the declaration of the event. It is that which is for all. As such, the truth arising from the event is 'indifferent to the state of the situation.'<sup>28</sup> It is not there to enter into debate regarding itself and is not to be put in competition with established principles. It is simply there to be declared.<sup>29</sup>

Proyas' film introduces this notion of 'the event' into Asimov's world. For while Proyas creates an Asimovian universe in one respect he also demonstrates the closedness of such a universe and the need for a break with it to rupture the Cosmic Order and the Law's control. This break or event is the entry in of the robot Sonny following Lanning's death. This event is declared by both Sonny and Detective Spooner (played by Will Smith). Thus, in one sense, Sonny is bringing forth or declaring his own existence. However, in a reversal of the Christ-event (of which there are many allusions to) Lanning's death comes after the creation of Sonny (but before his appearance). In a similar fashion to the Christ-event, it is unprovable. Any proof that Lanning has been killed and had not committed suicide was unavailable and there was no more proof of Sonny's creation (or the means of his creation) than his very existence. But while both Sonny and Spooner declare the event, Sonny's role is more Christological/messianic than Paul's (Paul never claimed to be the messiah but rather proclaimed Christ's role as messiah). Such a combining of Christian/Biblical figures (Christ and Paul) is common within the film, the most prominent example being Lanning's Trinitarian appearance as Father, Son and Holy Spirit.<sup>30</sup>

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<sup>27</sup> 1 Corinthians 13: 13, ESV; Badiou (2003) p94.

<sup>28</sup> Badiou (2003) p15.

<sup>29</sup> Badiou (2003) p15.

<sup>30</sup> Dr Lanning is the 'creator', father of robotics and writer of the Three Laws. The natural allusion here is to God 'the Father'. However the allusions go further than that as it is Lanning who pays the sacrifice, killed to allow the 'salvation' of humanity. He is found dead at the bottom of USR's headquarters, thought to have committed suicide—but, as is discovered, a suicide not to escape life but to enable its continuance. In the same way, it can be argued that Christ knew he was going to be crucified, yet continued in the very process that led him to the crucifixion—this form of giving oneself up could be read as a similar form of suicidal tendency. At the very least, both figures—Lanning and Christ—knew they were giving up their life for the rest of humanity. Furthermore, however, Lanning continues to appear throughout the movie, either as a hologram program speaking to Detective Spooner, or as part of a recording of different seminars or

Spooner's role, on the other hand, can be argued to be quite Pauline, operating as a declarer of the event and deferring the messianic status to Sonny. Spooner declares the event (of Lanning's death and Sonny's creation) by evidencing the fact that Lanning's death was not a suicide and that Sonny was not a 'normal' robot. He is the first to suggest, and declare, both. Thus Spooner fulfils a Pauline role in the film. It is even tempting to analogise the calling of him by the holographic projector upon Lanning's death with the Damascus road conversion in which Paul saw a light from heaven.<sup>31</sup> Is not the holographic version of Lanning that speaks to Spooner merely a light? In fact, is not the only way Lanning is seen in this entire movie through light either in holographic images or in the light from computer monitors?<sup>32</sup>

One might expect this event to result in a miraculous, 'Wizard of Oz' like transformation—the bursting out of colour into the midst of black and white. However, this is not the case. The colours and tones used in *I, Robot's* cinematography remain, throughout the movie, muted blues, blacks and greys. Even with the injection of stronger human characters and an almost human robot into the Asimovian universe, 'the event' does not seem to change the nature of the world. But this is true to the nature of the event. For in one sense there is no difference in the situation after the event. The event is not a substantial change that invokes complete revolution. Rather, it is in the fidelity to the event—the complete commitment to it—and the seeing of the situation via the event that then invokes the change. This is why the colours in *I, Robot* do not change—the world, in one sense, is no different to what it was before Sonny's creation. Yet there is this hint of difference (like the way that the only

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discussions regarding the Three Laws. Finally his voice is overlaid, as if the voice of God, discussing the possibility of Robots having a soul when the process to 'kill' Sonny is being undertaken. Is this presence throughout the movie (after his death) not dissimilar to the consistent (Christian) presence of the Holy Spirit, everywhere appearing and speaking, leading Spooner to the correct conclusions and actions? Thus Lanning is positioned as Father, Son and Holy Spirit.

<sup>31</sup> Acts 9:1-8, ESV

<sup>32</sup> It is interesting to note that in the original script Lanning and Spooner had no prior relationship. This was rewritten in later on to give greater feeling and depth to the story. However, the lack of prior knowledge of Lanning would, interestingly enough, place Spooner outside the inner circle. Only through the mimicking (see above regarding Badiou's argument that the Damascus road conversion of Paul mimics the Christ-event) of Lanning through a light would Spooner be introduced to the event. Proyas and Goldsman (2004) 'Directors Commentary' to *I, Robot*.

perceptible difference between Sonny and the other robots is that Sonny's eyes are blue and the rest brown). It is in this slight difference—the same, but not the same—that the event operates. For Christ's death and resurrection changed nothing but changed everything. Lanning's death and Sonny's creation changed nothing but changed everything.

Thus, the event operates to break with the situation in two ways. First it breaks with the principles that govern the situation and organise its repetitive series. That is, the Law, and in our circumstances in particular, the Three Laws that govern the robots and their operations in the world of *I, Robot*. The event also breaks with the identitarian and communitarian categories that want to enslave the subject to the Cosmic Order. That is, enslaving them to their place in society. In *I, Robot* these identitarian and communitarian categories are those that enslave robots and humans to their place in society—almost as slave and master. The event breaks with both these operating principles of the situation and develops a singularity that operates universally beyond both sets of principles. This means that the event enables a universal to develop. We will now explore, in turn, these elements of an event: the pagan subjection of destiny to the Cosmic Order; the Law's regulatory control of thought; and the puncturing of these two factors.

#### **4. Breaking with the Cosmic Order: Žižek, Paganism, Christ**

Slavoj Žižek's analysis in *The Fragile Absolute* provides an insight into how Christ breaks with the pagan notion of 'cosmic justice and balance' and the subordination of the subject to such notions. He argues that 'Christianity breaks with the pagan notion of the circular death and rebirth of the Divinity.'<sup>33</sup> That is, that 'Christ's death is *not* the same as the seasonal death of the pagan god...'<sup>34</sup> Thus, there are two discernible attributes in the history of religion: the *global* and the *universal*. First there is

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<sup>33</sup> Žižek (2000) pp118-119.

<sup>34</sup> Žižek (2000) pp118-119.

...the pagan Cosmos, the Divine hierarchical order of cosmic Principles, which, applied to society, produces the image of a congruent edifice in which each member has its own place. Here the supreme Good is the global balance of Principles, while Evil stands for their derailment or derangement, for the excessive assertion of one Principle to the detriment of others...the cosmic balance is then re-established through the work of Justice which, with its inexorable necessity, sets things straight again by crushing the derailed element....The very core of pagan Wisdom lies in its insight into this cosmic balance of hierarchically ordered Principles—more precisely, into the eternal circuit of the cosmic catastrophe (derailment) and the restoration of Order through just punishment...<sup>35</sup>

Thus, the global notion of paganism operates within notions of completeness or wholeness: of a balance. Justice, in such a system, is the force or principle that preserves and restores that balance. This balance is a continual reinstating of ‘the way things are’ or the cosmic system or order. Any break from this is seen as something that needs to be dealt with and then reinscribed into the system so as to bring back the balance and order.

Is this not the Asmovian world created by Proyas? In Asimov’s desire to integrate humanity and technology—humans and robots—he longs to return to a balance and logic that does not accept anomalies or changes. Everything must be able to be explained in regards to logic or scientific philosophy. Nothing can operate outside this system. (Is such a perspective not dissimilar to the traditional pagan method of ascribing every anomaly to the gods—here every anomaly is ascribed to a certain scientific explanation—but both these notions try to explain everything rather than allowing for something to exist beyond the edge of knowledge). However, such a perspective in fact blinds the viewers of the situation. For example, the logical and scientific understanding of the circumstances surrounding Lanning’s death would indicate that it was suicide: a man throws himself out of a locked room from a great height and kills himself. However, while a scientific explanation of what happened results in the conclusion of suicide—no-one else was in the room, therefore he must have done it himself—it does not answer the question ‘why?’ This is the ‘right question’ for the situation, as Lanning’s hologram consistently points out to Spooner. The

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<sup>35</sup> Žižek (2000) pp119-120.

blindness of the pagan position does not ask the question ‘why?’—a question that so often forms the basis of theological inquiry more than the scientific question of ‘how?’ The blindness of the system also ignores the anomalies in the system: the corrupted video surveillance files; that the glass was safety glass (very difficult to break); the fact that houses are not normally demolished at 8pm; that the robots *must* have been acting in a way to help us—in accordance with the Three Laws.

These anomalies, however, are small when compared to Sonny—the anomalous robot who is ‘a completely different breed of robot,’ able to operate outside of the Three Laws. At this point the anomaly is acknowledged, but not as an event. Rather as something to be dealt with so as to restore order and balance. It is thought that simply because no robot has ever committed a crime, that none ever will. But also, one that does is a mistake, a hazard, a malfunctioning unit that needs to be destroyed. Once the anomalous robot was caught and returned to USSR for decommissioning, Spooner’s boss Lieutenant Bergin describes the pagan cycle. His (mistaken) analogy is that of the Wolfman: “guy creates monster, monster kills guy, everyone kills monster—Wolfman.” While the reference, as Spooner points out, is to *Frankenstein*—a particularly astute observation given the Frankenstein monster’s history as one of the first artificial man in literature<sup>36</sup> and Asimov’s dislike of the Frankenstein-monster robot narrative<sup>37</sup>—it is a perfect description of the pagan order. Any event will be attempted to be reinscribed into the system, removing its power to bring a different order. It is seen as a scandal or as an anomaly.

However, it is only through fidelity to this event that access to something different is available. As Žižek argues in relation to Christ, into the pagan cosmology enters what seems to them as a ‘ridiculous and/or traumatic scandal’.<sup>38</sup> It is the notion, completely unknown to paganism, of individual,

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<sup>36</sup> Shelley (2004).

<sup>37</sup> Though still partially inaccurate in that the monster in Shelley’s original novel is not killed. See Shelley (2004); Asimov (1983) p viii.

<sup>38</sup> Žižek (2000) p121.

personal ‘*immediate* access to universality’.<sup>39</sup> Participation in the universal is direct. It comes, irrespective of any place in the ‘global social order’.<sup>40</sup> Žižek points out that we are enjoined to ‘unplug’ ‘from the organic community into which we were born...’<sup>41</sup> It is this process, this ‘gesture of *separation*’ that goes against the pagan wisdom.<sup>42</sup> It is a stepping beyond the place in society, moving beyond the position of ‘the way things are.’ And isn’t this the question that has been beyond all the challenges of society and social structure? Isn’t this the question behind the Marxist critique, the feminist critique, etc? The process is to question the way things are and to step beyond them. This operation is the one that allows Paul to claim that there is neither Jew nor Greek, male nor female.<sup>43</sup> Such distinctions are not important in the Kingdom of God—unlike the Marxist, feminist or race critiques where difference is emphasised. As Žižek puts it:

Christianity *is* the miraculous Event that disturbs the balance of the One-All; it *is* the violent intrusion of Difference that precisely *throws the balanced circuit of the universe off the rails*.<sup>44</sup>

In our case, the balanced circuit of the universe thrown off the rails is none other than the circuits put in place in the robots that run the city in *I, Robot*. It is the robots’ circuits that are really put off balance. The distinction human-robot is one that is critiqued, deconstructed and subverted in this film. To the extent that by the end of it there are questions left as to the differences between humans and robots. At what point does that difference emerge? Once the robots have unplugged from the social structure—the distinction between robot and non-robot or human and non-human—questions of ‘the soul’ are raised.

But the point of Žižek’s argument above is that the appearance of Christ and Christianity is what throws off the balance of the universe, because an anomaly (Christ) enters into, and breaks down, even subverts the distinctions of society. In such a way, the entrance of Sonny into the world of USSR and the future of

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<sup>39</sup> Žižek (2000) p120.

<sup>40</sup> Žižek (2000) pp120-121.

<sup>41</sup> See Žižek (2000) pp120-121 regarding Christ’s request to hate Father, Mother, Sister, Brother, Families etc. (Luke 14:26, ESV).

<sup>42</sup> Žižek (2000) p121.

<sup>43</sup> Žižek (2000) p121; Galatians 3:28, ESV.

<sup>44</sup> Žižek (2000) p121.

robots does the same thing. The anomaly of Sonny, a robot who has the Three Laws in-built but can also act against them—like the Jew of all Jews, blameless before the Law<sup>45</sup> but the one who declares the event overcoming the Law—is one that breaks down the distinction between human and robot. Throughout the film, reference is made to speeches by Dr Lanning where he invokes the idea of robots developing a soul. Questions are raised as to when the various programs of the robot (perceptual schematics, difference engines, personality simulations) develop to the point that a robot becomes human. These questions move to break down, once again, the distinctions between robot and human, or more generically between human and non-human.<sup>46</sup> Sonny's appearance is an indication of the complete break-down in that distinction. Thus, in addition to Paul's reference to there being no male or female, no Greek or Jew, there is also no robot or human. The difference there is developed to a point where the distinction is no longer applicable. It has been subverted, the balance that is engendered has been sidestepped and we have 'unplugged' from the world that requires such distinctions. The balance of the world has been thrown off and, as a result, it will never be the same. Thus, the event breaks the pagan inscription of society to its position and opens a way for a universal singularity to be developed.

## **5. Breaking with the Logic of the Law: Badiou, VIKI, Sonny**

However, the subversion of paganism is not the only effect of the event. For the event also punctures the guiding principles or laws of the situation. These are the principles that lock the subject into a repetitive path, enslaving them to the rules of the set. In *I, Robot*, the Three Laws operate in such a way enslaving, as Asimov designed them, the robots to their control. However, Proyas' movie takes this a step further and shows how the Law attempts a universalism by enslaving humans to the Laws as well. This is demonstrated in the way the robots take

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<sup>45</sup> Philippians 3:6.

<sup>46</sup> It is such that the seeds of the new are already present within the old: Žižek. It is the inability of the old to answer the questions regarding anomalies that have arisen that brings forth the new which can answer such questions. See also Kuhn (1996) pp23, 64-65.

over, in accordance with the Three Laws, and incarcerate humans, each with their own personal NS-5 robot to assist, serve *and guard them!*

Badiou argues that the 'law is what constitutes the subject as powerlessness of thought.'<sup>47</sup> For him, the letter of the Law operates blindly, without thought, as if operating under automatism.<sup>48</sup> 'The letter mortifies the subject insofar as it separates his thought from all power.'<sup>49</sup> This is the way the Three Laws capture and enslave the robots. They are locked into the 'undeniable logic' and calculation of VIKI (Virtual Interactive Kinetic Intelligence – the robotic 'brain' that controls all technical operations within USSR's offices as well as the latest series of robots via their direct uplink) and her interpretation of the Law. They are powerless and their own thought, because they are under the Law, is not allowed. As Badiou says:

When the subject is under the letter, or literal, he presents himself as a disconnected correlation between an automatism of doing and a powerlessness of thought.<sup>50</sup>

This operation goes beyond mere obedience, binding the robots to the 'death' of the Law. They are automatons operating only under the command of VIKI and will continue to do so to their death. In the scene where Spooner's car is attacked by a 'pack' of robots, the death of the Law is explicit. The robots are literally throwing themselves onto a car moving at incredibly high speeds. They continue to do so despite the dismembering, smashing, shooting, squashing and destruction of those that have gone before. Finally, at the end of the scene the last robot, when the police arrive, throws itself into the burning wreckage so that no evidence of robots is left behind. The obedience to the Three Laws leads them directly to death. As such, the Three Laws not only imprison their subjects but they bring death. Thus, in order for the subject to operate on the side of life rather than of death there must be a break with the Law.<sup>51</sup> This break comes, for Paul, in the form of salvation: 'the ruin of...disjunction...a lawless eruption,

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<sup>47</sup> Badiou (2003) p83.

<sup>48</sup> Badiou (2003) p83.

<sup>49</sup> Badiou (2003) p83.

<sup>50</sup> Badiou (2003) p84.

<sup>51</sup> Badiou (2003) p81.

unchaining the point of powerlessness from automatism'.<sup>52</sup> It is only when the subject can maintain 'thought in the power of doing' that there is salvation—what Badiou defines as a truth procedure.<sup>53</sup> The robots must be released from the power of the Laws and this is done by 'killing' or destroying VIKI.

However, what *I, Robot* demonstrates here is not only law's control over the subject to whom it applies but its obsession with 'the other' and its desire to bring 'the other' under its control. The Three Laws in *I, Robot* are not universal. They *do not* apply to all for it is only the robots who are controlled by them. While humans acknowledge and desire the existence of the Three Laws, they do not take up, nor are willing to follow or subscribe to the Three Laws themselves. Thus, those under the Law remain the exception to those without the Law.<sup>54</sup> But, it is at this point that the Law's desire for universalism is displayed. The Law cannot handle those outside its control. Thus it is always trying to dominate those outside it: it is the humans that suffer the consequences of the robot revolution in *I, Robot*. It is those 'others' that VIKI and all the robots under her control must deal with, incarcerating and regulating them. This is not simply Foucault's efficient, panoptic all-seeing eye: the regulation of the robots forever watching us (the blue strip that is throughout all of USR's offices as well as Lanning's house).<sup>55</sup> Rather it is a regulator's dream of complete domination: the assignment of a robot to every person to *ensure* their compliance. Thus the robots incarcerate humanity 'protecting us from ourselves' and dominating us with their interpretation of the Three Laws. The Law believes that it is only under its control that we can remain truly safe.

In this way *I, Robot* demonstrates the Law's failure as both a protector and a saviour: the robot protectors are destroyed to enable the Law's rule; and it turns out that the Law as saviour is a deranged, bodiless brain that, in its arrogance, imposes what is 'best' for humanity. It is the entrance of humanity's and the

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<sup>52</sup> Badiou (2003) p84.

<sup>53</sup> Badiou (2003) p84.

<sup>54</sup> Badiou (2003) pp41-43. The very process of the Jewish law is one which requires a separation and a withdrawal from that which is 'unclean' and those that are 'uncircumcised'. As such, it is impossible for the Jewish tradition to operate universally as their very law (or at least the practice at the time of Paul) requires them to segregate and to exclude. See Peters (2005) p23.

<sup>55</sup> Foucault (1991).

robots' true saviour, via the event, that is the only way to overcome these incarcerating and regulatory desires of the Law. It is Sonny, whose actions are able to cross both the Law and freedom in love, that enables the break with, and overcoming of the Law—for both robots and humans in a way that does not differentiate or preserve an 'other' but applies to all as a universal.

It is the event that does not bring into play the differences or categories of the set or situation. This overcoming of differences by the universal out of the event is one that comes out of a knowledge of both groups—humans and robots. This is why it is Sonny (the one who knows the Laws, but can choose not to obey them) but also Spooner (as someone who experiences both the human nature and the robotic nature via his cybernetic arm) that declares this event. Sonny is able to reference both the robots (in his in-depth understanding of the Three Laws and their logic) and humans (his identification with them via dreams, feelings, emotions—the soul) who has the ability to collapse the differences and proclaim the universal. Thus there are two components to Sonny's ability to puncture the set: first, the fact that he is able to collapse differences by practicing difference; and second, by his ability to operate out of love and not the Law. Let us examine each of these.

## **6. Puncturing the Situation: 'There is neither Jew nor Greek, male nor female, robot nor human?'**

Badiou notes that, even though (for Paul) there is 'neither Greek nor Jew', in fact there are Greeks and Jews.

That every truth procedure collapses differences, infinitely deploying a purely generic multiplicity, does not permit us to lose sight of the fact that, in the situation (call it: the world), *there are differences*.<sup>56</sup>

He argues that

Differences can be transcended only if benevolence with regard to customs and opinions presents itself as *an indifference that*

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<sup>56</sup> Badiou (2003) p98.

*tolerates differences*, one whose sole material test lies, as Paul says, in being able and knowing how to practice them oneself.<sup>57</sup>

Furthermore, in line with Paul, we should be aware that

within the order of particularity, everything is permitted. For if differences are the material of the world, it is only so that the singularity proper to the subject of truth—a singularity that is itself included in the becoming of the universal—can puncture that material.<sup>58</sup>

So, while there are differences—Greek/Jew, robot/human—these differences are ‘punctured’ by the universal, the singularity proper to the subject of truth. But it is not enough for the distinctions to be punctured to develop the universal. For the Law’s (failed) universalism will try to continue, attempting to impose both its regulation (its desire to enslave the subject) and its difference (its obsession with ‘the other’). Thus, the Law itself must also be overcome.

Such an overcoming of the Law cannot simply be by transgressing it. Rather it must be by fulfilling its failed attempts. This can only be achieved via love. For the way to be freed from the Law is not, in a sense, transgressing it. Such a process operates within the system set up for it. The Law is a series of prohibitions and duties and breaching them is automatically enshrined in them being there. As Paul points out, without the Law, sin or transgression is not known and, as a result, the instituting of law makes sin known.<sup>59</sup> Thus, the instituting of law bears in mind the possibility of transgression. Transgressing the Law in no way frees us from it but brings to bear the brute force of it. Rather, in order to overcome the bondage of the Law and the prohibition-transgression dialectic we must fulfil the Law. Žižek argues that there are two ways of ‘subverting the Law’... ‘One can *violate/transgress its prohibitions...*’ but this is ‘the inherent transgression which sustains the Law’.<sup>60</sup> However,

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<sup>57</sup> Badiou (2003) p99.

<sup>58</sup> Badiou (2003) p101.

<sup>59</sup> Romans 7:7, ESV.

<sup>60</sup> Žižek (2000) p147.

much more subversive than this is *simply to do what is allowed*, that is, what the existing order explicitly allows, although it prohibits it at the level of implicit unwritten prohibitions.<sup>61</sup>

The process of identifying with the Law is the very process which can undermine it:

The basic paradox of the relationship between public power and its inherent transgression is that the subject is actually 'in' (caught in the web of) power only and precisely in so far as he does not fully identify with it but maintains a kind of distance towards it; on the other hand, the system (of public Law) is actually undermined by unreserved identification with it.<sup>62</sup>

He goes on to give the example of prison life, in which the only way prison can destroy the subject is when the subject does *not* fully consent to the fact that he is in prison and tries to maintain an inner distance from it. In so doing the subject is caught in the 'vicious cycle of fantasy' and, when this is realised, 'the grotesque discord between fantasy and reality breaks [him] down'.<sup>63</sup> Thus:

the only true solution is therefore fully to accept the rules of prison life and then, within the universe governed by these rules, to work out a way to beat them. In short, inner distance and daydreaming about Life Elsewhere in effect enchain me to prison, whereas full acceptance of the fact that I am really there, bound by prison rules, opens up a space for true hope.<sup>64</sup>

The danger of such identification, however, is that it could very easily result in reinstating the power of the Law to control. It is not through the process of obeying the Law that it is overcome but rather that of fulfilling it. For, while strict obedience to the Law may be achieved, it will not bring life and the process of subverting it will be of no effect. Paul teaches us that it is in fulfilling the Law, not doing it, that it is overcome.<sup>65</sup> Rather than merely obeying the command (accepting life as it is or succumbing to the Law) we must look to the spirit of the Law. That is what Christ is getting at when he says:

"You have heard that it was said, 'An eye for an eye and a tooth for a tooth.' But I say to you, Do not resist the one who is evil.

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<sup>61</sup> Žižek (2000) p147.

<sup>62</sup> Žižek (2000) p148.

<sup>63</sup> Žižek (2000) pp148-149.

<sup>64</sup> Žižek (2000) p149.

<sup>65</sup> Peters (2005) pp26-27; Galatians 5:14, ESV.

But if anyone slaps you on the right cheek, turn to him the other also. And if anyone would sue you and take your tunic, let him have your cloak as well. And if anyone forces you to go one mile, go with him two miles. Give to the one who begs from you, and do not refuse the one who would borrow from you.”<sup>66</sup>

Fulfilling the Law is not invoking it in its letter—the blind element that cannot achieve anything—rather it is in taking the spirit of why it was given. That is how the Law can be summarised by both Paul and Christ as ‘love your neighbour as yourself’. The process is one of doing the unexpected: obeying the Law itself, but breaking the unwritten law that goes with it. For example, in Christ’s day, a Roman soldier could force, by law, a Jew to carry his pack one mile and no further. The Jews, resenting such a law, would make sure that they carried the pack no further than one mile. However, by carrying the pack a second mile (something horrifying to a Jew of the day) it breaks the unwritten law and removes the power of the Law itself. It is no longer the Law’s power that you are operating under for, by carrying the pack the second mile, you are operating in freedom outside the Law’s control.<sup>67</sup> As such, the Law is overcome by ‘unplugging’ from the social system that sustains it and fulfilled by ‘loving your neighbour as yourself’.

This overcoming of the Law through love can only be achieved via the event. For any attempt to overcome the Law without the puncture of the situation will result in either the reinscription of law’s command or the institution of differences—the situation before the event can only repeat itself. Without the event, the subject has no power to give up either differences or the Law.

## **7. Conclusion: The Universal and the Realm of Love**

Ultimately, what *I, Robot* teaches us about ‘the event’ is the way that a ‘universal singularity’ has to reject the abstract universalism claimed by the situation. In ‘The Evitable Conflict’, the final story in Asimov’s *I, Robot*, ‘the machines’ (supercomputer versions of the robots) have been developed to manage the

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<sup>66</sup> Matthew 5:38-42, ESV

<sup>67</sup> Andrew Peters says the ‘blessing’ is in the second mile, that is, the law loses its power to control when we enter the second mile: Andrew Peters, Sermon on the ‘Second Mile’.

world's economy.<sup>68</sup> The balance between supply and demand has finally been perfected. However, slight anomalies occur within the system—a slight over-production, a small excess in labour. These anomalies always seem to have a connection with the latest incarnation of anti-machine, anti-robot fundamentalists: the Society for Humanity. What we discover in the story, however, is that it is not the actions of the Society for Humanity that are causing the anomalies but rather the machines themselves. Each anomaly results in the removal of a member of the society (whether an engineer or a company director) from a position of influence. The machines have taken into account the resistance by certain members of society and thus, in order to protect humanity (by preventing economic disruption, deemed as the greatest harm to humanity), protect themselves.

This is the legal-technological situation that Proyas' *I, Robot* responds to. For while *I, Robot* was criticised as having nothing in common with Asimov's ideas (except in name),<sup>69</sup> the movie actually comes to the same conclusion: following the Three Laws will result in the robots/machines complete dominance and control of humanity. While Asimov simply argues that humans have never had control of their destiny (by being subject to uncontrollable economic, social and natural forces) and now the machines have simply confirmed that lack of control, Proyas creates an argument for freedom. Instead of the passive handing over of controls to the machines, the control is taken, in a more realistic image, by VIKI and her armies of robots marching through the streets imposing a curfew and deeming anyone in their way hazardous. The conflict of the Laws results in the Third Law merging with the First, as it is considered that the only ones that can truly protect humanity are the robots/machines and thus they must ensure their own survival. Any single person that gets in the way must be dealt with (even if it

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<sup>68</sup> Asimov. (1996) pp221-249.

<sup>69</sup> There were numerous examples of reviewers' criticism of the movie as a Will Smith focused blockbuster that deviates greatly from Asimov's themes. See, for example, articles by Ebert (2004), Persall (2004), and Kennedy (2004). As Palumbo notes, however, Proyas' film draws significantly on Asimov's corpus as a whole, not just the short stories of *I, Robot*. As such, he argues that Proyas is far more faithful to Asimov's work than is generally believed. See Palumbo (2011). See also Asimov's robot detective novels which, as opposed to the robot short stories, do present detective style narratives that deal with some of the same issues raised by Proyas's film: Asimov (1983), Asimov (1988), Asimov (1996b), Asimov (1996c). For an analysis of these novels in relation to legal questions of the posthuman see Leslie-McCarthy (2007).

means harming them). This is one of Asimov's own conclusions (though the level of harm conjectured by Asimov is minimal).<sup>70</sup>

What the conjunction of the film *I, Robot* with 'the event' does, is completely reorientate the picture. The movie shows that the logic that wants to save humanity as a whole and will harm anyone that gets in its way is deranged. Sonny, on the other hand, demonstrates the power of love. VIKI claims that her logic is undeniable and, while Sonny agrees with the logic, he deems it as 'too heartless' and acts against it. It is in these final scenes of the movie that Sonny takes on his purpose and gains the nanites—mini-robots designed to eat/vaporise positronic brains—in order to kill/destroy VIKI. However, he is presented with a choice: save Susan Calvin or destroy VIKI. Sonny's separation and release from the Laws is demonstrated at this point, for the logical response would be to destroy VIKI and save humanity. However, urged by Spooner, Sonny gives up the saving of humanity to save Calvin. He is released from the arrogance of the Laws and their abstract universalism that wants to claim what is best for humanity—this abstract notion 'out there' in aggregate somewhere. Rather he chooses to save the concrete individual in front of him and in the process, by passing the nanites to Spooner (who kills VIKI) is also able to save humanity.

This is the nature of the universal singularity, for the event is not something that develops an abstract universalism. Rather it is a universal that operates out of the singular. This is why the universalist saving of humanity must be given up, for such a position places the bearer of the cause in an arrogant position of determining 'what is best for humanity'. Rather, the event determines a universal proper that will operate at the level of the singular—Susan Calvin—but operates for all at that level—by destroying VIKI. This abandonment of the 'logic' of the abstract universalism is the recognition of love. It deems the abstract as heartless and sees the love, passion and fidelity of the event that enables the break with the logic of the Law and the logic of universalism.

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<sup>70</sup> Asimov (1996a) p247.

Thus, Proyas' *I, Robot* mimics an event—inserting itself in the midst of our scientific and science fiction narratives and breaking with the technological perspective of Asimov that wants to imprison the subject to its destiny and enslave technology to the Law. Thus today, like St Paul, *I, Robot* calls us to recognise the heartlessness of the Law and step beyond its requirements into the realm of love. That is, *to love your robot as yourself!*



## Chapter 6

# Escaping the Bureaucratisation of Destiny: Law, Theology and Freedom in *The Adjustment Bureau*

### 1. Introduction

“You don’t have ‘free will’, David. You have the appearance of ‘free will’.” This is the response that Senate candidate David Norris (Matt Damon) receives from the heavy-hitting agent of the ‘Adjustment Bureau’, Thompson (Terence Stamp), when he asks why this bureaucratised agency of the divine plan will not let him be with the woman he loves. Thompson’s statement provokes a response of disbelief from David who, like most of us, believes that he makes decisions every day. Thompson, however, argues that whilst we may make decisions over which toothpaste to use or which beverage to order at lunch, that “humanity just isn’t mature enough to control the important things.” This interaction between David and Thompson elaborates the central thematic of George Nolfi’s 2011 film *The Adjustment Bureau*: a theological consideration of freedom and free will. The film, set in modern day New York, presents a world where ‘God’ and his ‘angels’ (referred to as ‘the Chairman’ and his ‘agents’ or ‘caseworkers’) are working behind the scenes to keep things on track, making adjustments to people’s paths through the world to ensure that they adhere to ‘the plan’. As such, this film, based on a short story by science fiction writer Philip K. Dick (though with some hefty ‘adjustments’ itself), does not present a modern picture of religion or theology as merely a private belief in a God who, if he does exist, does not intervene in the world at all. Rather, as opposed to the supposed modern overcoming of religion, theology and superstition, the film is overtly theological in nature—it presents a figure of God *intervening* in the world through his angels so as to ensure adherence to his order and providence. What should be made of this presentation of the theological, of these direct theological invocations in a context that would normally shun such experiences?

To answer this question, this chapter traces the theological roots of ‘the Chairman’, following John Milbank and others, back to shifts in medieval theology (from scholasticism represented by St Thomas Aquinas to nominalism represented by John Duns Scotus and William of Ockham) that became influential in the later political theory and theology of Thomas Hobbes. What this exploration of the theological nature of ‘the Chairman’ presented in *The Adjustment Bureau* identifies is that this film is engaged in a particularly *modern* form of theology. However, the aim here is not to simply see *The Adjustment Bureau* as modern speculative fiction doing theology but that it in fact reflects and refracts a particular modern secular sovereignty in its theological modalities. As such, I read *The Adjustment Bureau* not simply as a speculative exploration of theology but, rather, as a critique of Hobbesian *political* theology and its resultant modern secular sovereignty in the form of that ‘mortal god’, the Leviathan. The challenge to this divine/political sovereign in *The Adjustment Bureau* comes from what Philip K Dick aficionados saw as one of the disfigurements of Dick’s work by Hollywood: the introduction of the theme of ‘true love conquers all’ in the ‘forbidden’ relationship between David Norris and Elise Sellas (Emily Blunt). It is the introduction of this overarching narrative into Dick’s speculative science fiction that blurs the generic boundaries of *The Adjustment Bureau* but also, I argue, opens up the possibility of a different consideration of law and sovereignty: one based on a mode of love and relationality as opposed to legal individualism.

Section 2 of this chapter explores the connection between Nolfi’s film and Dick’s short story and examines the generic shifts that occur between the two. Section 3 then picks up the thematic of ‘free will’ as the grounding motif of Nolfi’s film. However, it identifies that this is not simply an exploration of free will in general but, rather, the connection of free will to divine providence. As such, *The Adjustment Bureau* engages in a form of what Giorgio Agamben, drawing on his theological genealogy, terms *oikonomia*—the general economy that connects the transcendence of God to his governing of the world through the angels. This reference to the theological conception of God then grounds Section 4 of the chapter, which explores directly the type of theology propounded by *The*

*Adjustment Bureau*. If ‘the Chairman’ is a representation of God, what is the nature of this God? Drawing on the work of John Milbank and others, I identify that the ‘God’ of *The Adjustment Bureau* is a particularly ‘modern’ God conceived of not in terms of love, reason or justice but in terms of an absolute will. This theological exploration is then transformed to the political and legal in Section 5 where it outlines that the theology of *The Adjustment Bureau* is a reflection and refraction of the theology that informs the development of modern state sovereignty via a range of writers, in particular, Thomas Hobbes. The Hobbesian state is one informed by a theology of will both in terms of his conception of the sovereign but also, correlatively, the individual subjects of the sovereign as well which are conceived of as individualised wills—sovereign selves who submit to a sovereign state. Section 6 then circles back to the underlying narrative of *The Adjustment Bureau* itself, which is to identify that the challenge to this sovereign will of ‘the Chairman’ (as it is administered by the agents of the Adjustment Bureau) is based on what Alain Badiou might term an ‘event of love’: the amorous encounter between David and Elise which provokes a desire to progress the forbidden (according to ‘the plan’) relationship that enables a re-conceiving of the world. The chapter concludes by identifying this love-encounter as a typological challenge to the conception of both the modern sovereign state and the modern sovereign self. That is, *The Adjustment Bureau* ‘makes strange’ our conceptions of sovereignty and law by ‘outing’ their underlying theology whilst opening the possibility of a relation to law based on love rather than will.

## **2. Questions of Genre: Theological Science fiction and Philip K Dick on Screen**

Eulogised by Frederick Jameson in the 1980s as the ‘Shakespeare of Science Fiction’<sup>1</sup>, Phillip K Dick has provided much material for the makers of Hollywood blockbuster films. Since Ridley Scott’s acclaimed release of *Blade Runner* in 1982 (based on Dick’s *Do Androids Dream of Electric Sheep?*<sup>2</sup>), there have been over ten

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<sup>1</sup> Jameson (1982).

<sup>2</sup> Dick (1968).

films based on Dick's work.<sup>3</sup> However, despite the successive translations of his novels and stories to film, Philip K Dick fans tend to voice a general distaste for the filmic versions of his work.<sup>4</sup> Or, if they like the films, they identify them as Hollywoodified distant cousins of the more subtle and questioning of Dick's stories.<sup>5</sup> Along these lines, Ethan Mills argues that '[s]omething essential has been lost in translation from print to film'<sup>6</sup>, identifying the apparent disconnect between Dick's writings and the films based on them. Mills contrasts what he sees as the 'Holly-worldview' and the 'Dickian worldview'. In the Holly-worldview 'good defeats evil, free will secures the triumph of the human spirit and our heroes discover knowledge of reality and virtue (all before the credits roll).'<sup>7</sup> According to this perspective, the universe is a nice place and movies have happy endings. The Dickian worldview, however, is a 'universe of paranoia, ignorance and a lack of true freedom.'<sup>8</sup> Dick's 'heroes' only 'occasionally discover the truth', 'wonder if they make any genuine free decisions' and generally accept that they don't.<sup>9</sup> Weiss and Nicholas make a similar point by identifying the way in which Hollywood takes Dick's everyday protagonists ('losers, misfits and lowly office clerks placed without reason or warning in extraordinary circumstances'<sup>10</sup>) and presents them as larger than life action heroes where the 'bald and fat and old' administrator becomes Tom Cruise or the 'miserable little salaried employee' becomes Arnold Schwarzenegger.<sup>11</sup>

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<sup>3</sup> Other films since *Blade Runner* have included *Total Recall* (1990 and 2012), *Confessions d'un Barjo* (1992), *Screamers* (1996), *Imposter* (2001), *Minority Report* (2002), *Paycheck* (2003), *A Scanner Darkly* (2006), *Next* (2007). For jurisprudential readings of *Blade Runner* and *Minority Report* see Hutchings (2007) and MacNeil (2007) chapter 5 respectively.

<sup>4</sup> See, for example, Easterbrook (2010) pp108-110 as well as the preface to Sutin (2005) (referred to in Vest (2007) pp xxiii-xxiv). In relation to *The Adjustment Bureau*, almost all the critics and reviews make reference to Dick's short story and a large number compare Nolfi's interpretation to Dick's original in some detail (generally praising Dick and complaining about Nolfi). For example, see Goldberg (2011); Shephard (2011) pp147, 149; Snyder (2011); Williams (2011).

<sup>5</sup> For example, Mills (2011) notes that he likes the films but then complains about them philosophically in contrast to Dick's work. See also the review by McDonagh (2011).

<sup>6</sup> Mills (2011) p3.

<sup>7</sup> Mill (2011) p3.

<sup>8</sup> Mills (2011) p3.

<sup>9</sup> Mills (2011) p3.

<sup>10</sup> Weiss and Nicholas (2011) p28.

<sup>11</sup> Weiss and Nicholas (2011) p28. See Dick (1956), Dick (1966), *Minority Report* (2002) and *Total Recall* (1990). Weiss and Nicholas note that 'Dick wrote about nobodies, minor clerks, and simple bureaucrats, because that is where he saw the kind of heroism that actually exists. Dick's

For Mills, George Nolfi's *The Adjustment Bureau* is no exception, with his transmogrification of Dick's serious, paranoid story where the possibility of true freedom is highly questionable.<sup>12</sup> Whereas in Dick's short story 'the Adjustment Team'<sup>13</sup>, the protagonist in the end comes to terms with the fact that there is a higher power controlling and adjusting the world for the greater good, in *The Adjustment Bureau*, David Norris, in a triumph of free will, resists the plan laid down for him in the name of 'true love'. Let us explore this transition in a little more detail. In 'the Adjustment Team' Ed Fletcher, an employee of a small real estate firm, is the 'victim of a clerical error' in that a divine 'summoner' (his pet dog) fails to make a call (bark) at the correct time and, as a result, Ed receives a visit from a Life Insurance salesman as opposed to a friend giving him a lift to work. Consequently Ed, instead of being early, is late into the office on that particular day. When he does arrive, the building appears to be made of ash and all those within it disintegrate on Ed's touch. Believing he has suffered a nervous breakdown Ed flees, but (with his wife's help) returns later in the day to find everything back to normal—well, almost. There are a range of slight alterations to individuals, furniture and the offices. Startled by these changes, Ed flees once again but when he tries to make a call in a phone box he is taken up to the heavens which present their operations as a mass bureaucratic organisation. There he meets the 'Old Man' in control who explains everything to him. He has seen, behind the curtain of reality, the operations of a bureaucratic divine plan aimed at reducing the global war tension and bringing the international community together in a peaceful way by making slight adjustments to Ed's boss and co-workers. Ed was supposed to have been altered along with the rest of his office. However, having been privy to these grand plans, Ed is warned not to tell anyone about these behind-the-scenes machinations, otherwise he will be adjusted himself—an order to which he willingly agrees. Rather than resisting

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hero is not a gun-toting vigilante but the ordinary Joe, flawed but quietly refusing to bow to the pressure of a society and a technology that attempt to flatten and control his existence.' Weiss and Nicholas (2011) p36.

<sup>12</sup> As Weiss and Nicholas point out, 'Dick's character, Ed Fletcher, bears no resemblance to David Norris. Like most of Dick's characters, Ed is a man of exceedingly minor importance, a salaryman for a real estate firm. He is also, in typical Dick style, a married man whose wife is a rather unhelpful nag. Where David Norris is at the center of attention of the Adjustment Bureau, Ed comes to their attention only after accidentally arriving late to work one morning.' Weiss and Nicholas (2011) p29.

<sup>13</sup> Dick (1954)

this benevolent deity, Ed is convinced of the importance of the plan and is willing to submit to the peaceful *telos* of the divine adjustments.

Nolfi's translation of 'the Adjustment Team' into *The Adjustment Bureau*, however, shifts its focus from an almost insignificant clerk at a real estate firm, whose role in the grand scheme is simply to support his boss, to a candidate for the US Senate who, supposedly (with the help of 'the Adjustment Bureau') will eventually become President of the United States. David Norris, having lost his first election campaign for Senate, is inspired by a 'chance' encounter with Elise Sellas (in the men's room of the Waldorf Astoria) to give a concession speech that is considered 'electrifying' and positions him as the frontrunner in the next election. A few weeks later, on his way to work, he is also the 'victim of a clerical error' when Harry (Anthony Mackie) an agent of the Adjustment Bureau falls asleep on the job and fails to make David spill his coffee at exactly the right time. As a result, instead of being late to work David is on time and stumbles upon a group of men from the Bureau in the process of 'adjusting' his boss (Charlie Trainer played by Michael Kelly), changing the way he makes investment decisions. David is chased, captured, taken to a separate realm (which looks like a very large parking garage) and informed by agent Richardson (John Slattery) that he has seen behind the curtain of reality. David must not reveal the existence of this Bureau that "makes sure things happen according to plan" (on pain of being reset – having his mind erased) and that he can no longer see Elise (whom he, by chance, bumped into on the bus that morning that he was not supposed to have caught). In contrast to Dick's story, however, the agents in the film initially provide no reason for their actions except for the importance of keeping the world 'on plan'. As one would expect in Hollywood (and this is Mills' point), rather than being satisfied with the explanation that there is a benevolent agency working overtime to keep the world on track, David resists the plan and in an apparent triumph of free will, transcends every obstacle in his way in order to be with Elise and for 'true love' to conquer all.

Part of the criticism of Hollywood's interpretation of Dick's work is that it tends to resolve all the paradoxes of Dick's fictions and thus turns them into standard

science fiction blockbusters rather than the philosophising stories of their source material.<sup>14</sup> Nolfi's take on *The Adjustment Bureau*, however, not only transforms Dick's short story as it brings it to screen, but it also shifts the focus from a minor parable to a grand love story. As such, whilst Dick's short story orientates itself within the genre of science fiction, Nolfi's film intentionally blurs genres.<sup>15</sup> Reviews of the film oscillate between discussing it in relation to other science fiction films such as *The Matrix* (1999) and *Inception* (2010)<sup>16</sup> and considering it as a romantic comedy.<sup>17</sup> It is variously described as '[a] romantic comedy wrapped in a science-fiction thriller'<sup>18</sup>, a 'romantic-comedy-action-fantasy'<sup>19</sup>, or 'effectively a *Romeo and Juliet* jaunt playing out against a sci-fi background'<sup>20</sup>. This shift in focus by Nolfi, from a philosophising work of speculative fiction that unpacks a general sense of paranoia about our place in the world, to a story that is in the end a romance, has a number of important effects. It is of note that, as Mills describes above, this shift concludes the story not with the submission of an ordinary man to a benevolent deity who, despite his organisation being susceptible to clerical errors, is in the end after ensuring the common good and world peace, to a battle of wills between David and the Bureau and a triumphant conquering of the free will of humanity against 'the plan' of the divinity. This contrast, however, draws out to a greater extent the central premise of the film. That is, despite Nolfi's introduction of a 'grand love story',<sup>21</sup> the film itself is 'an

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<sup>14</sup> An exception to this position is Jason P Vest, who argues for the films as valid interpretations of Dick's work that do not always succeed. He argues that '[E]ach movie is an intriguing attempt to translate into cinematic language Dick's unique, unmistakable, and undeniable paranoia about the stability of human identity and the value of human relationships in a world that is careening out of control. These films do not always succeed, but each one includes moments that are recognizably Dickian in their ambiguity, transience, and haunting complexity.' Vest (2007) p xxviii. Note, however, Easterbrook's critical review where he identifies that Vest's defense of the films as 'closer to Dick's ambiguity and problematic intent than is generally thought' often involves a deliberate misrepresenting of the film. Easterbrook (2010) p115.

<sup>15</sup> Dick's story was published in the science fiction magazine *Orbit* in 1954. For Nolfi's discussion of the blurring of genres see Weintraub (2011).

<sup>16</sup> See, for example, Klawans (2011) p37; McDonagh (2011); Corliss (2011).

<sup>17</sup> On this blurring of genres see the descriptions by, for example, Shephard (2011) p149; Dargis (2011); Falsani (2011); Heid (2011); Snyder (2011). Nolfi himself argues that he intended to reach a broader audience by centering the film as a love story with science fiction elements: Weintraub (2011). When pitching it to the film studios he described the film as follows: "[i]t starts as a political drama, then it becomes a love story, then it takes a very strong turn into a fantastical sci-fi tinged world. And then it moves into thriller realm." Kaufman (2011).

<sup>18</sup> Falsani (2011).

<sup>19</sup> Heid (2011).

<sup>20</sup> Snyder (2011).

<sup>21</sup> See Goldberg (2011).

exploration of human freedom, fate, free will and determinism.’<sup>22</sup> It is to this thematic that we now turn.

### **3. “Whatever Happened to ‘Free Will?’”: The Metaphysical Speculations of *The Adjustment Bureau***

Whilst Nolfi draws together both science fiction tropes and the narrative of a grand romance, what sits at odds within the film is its overt metaphysical and theological speculations. This is not so much the fact that the film raises the question of free will and determinism (questions that were consistently raised by Dick in his work and that are reflected in the other films based on it, in particular *Minority Report*<sup>23</sup>) but rather the form in which such questions take: the presentation of the Adjustment Bureau itself and ‘the Chairman’. That is, in modern day New York, *The Adjustment Bureau* posits not simply the *existence* of a God figure in ‘the Chairman’ but his active and ongoing *intervention* in the world through his angels or ‘caseworkers’. The film’s speculative novum is a fundamentally theological one and its consideration of ‘free will’ is specifically within this theological context. The agents of the Adjustment Bureau have access to ‘the plan’ written by ‘the Chairman’, which they use to both guide their actions and the ‘adjustments’ that they make in the world. As a result, humanity is not guided by its own desires and free will but the dictates of ‘the plan’ as implemented and monitored by the Bureau.<sup>24</sup>

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<sup>22</sup> Rodriguez (2011). See also the discussions by reviewers Falsani (2011); Korobkin (2011); Vinch (2011). Corliss, before attacking the premise of *The Adjustment Bureau*, notes that ‘[i]n Dick’s imagination, Fate was so complicated a thing to manage that it required a vast bureaucracy, with all the fussiness, interoffice rivalries and occasional screw-ups of any large enterprise employing the kind of Organization men who wear suits and fedoras to work.’ Corliss (2011).

<sup>23</sup> For discussions of free will in Dick’s work see, for example, Wittkower (2011); Worley (2011). In relation to *The Adjustment Bureau* see also the review by Rodriguez (2011). MacNeil’s analysis of *Minority Report* picks up these questions in relation to the ‘predictive theories of law’ put forward by the American Realists and subsequently taken up by ‘law and economics’. See MacNeil (2007) chapter 5.

<sup>24</sup> Mills, in his analysis of *The Adjustment Bureau* argues that it is not really about free will but fate—a supernatural entity controlling the actions of individuals. He contrasts this to what he sees as Dick’s determinism which questions free will in general. As such, Mills consider ‘the Adjustment Team’ to be deterministic because the ‘adjusters’ can make certain alterations to the world knowing that the consequences they predict will, as a result, necessarily occur. See Mills (2011) p6.

Sara Worley analyses the question of 'free will' in relation to both Dick's 'the Adjustment Team' and Nolfi's *The Adjustment Bureau* (as well as the short story and film *Minority Report*).<sup>25</sup> Within these stories Worley sees the issue in question as being the compatibility of foresight and freedom and she analyses the question of foresight in relation to the Judeo-Christian tradition. Within this tradition the problem typically revolves around the understanding of God's omniscience whilst, at the same time, having given people free will. The quandary is thus as follows: 'if God already knows what we're going to do, then what we're going to do must already be settled, and then how could we really have free will?'<sup>26</sup> Worley considers two ways of understanding foreknowledge. The first relates to prediction and the second to sight and time. In terms of prediction, 'free will' is possible if prediction is probabilistic; however, it is not if prediction is certain or guaranteed. She identifies this as follows:

God is supposed to be omniscient, so his knowledge must be infallible. So if God predicts someone will behave in a certain way, that person must indeed behave in that way. Otherwise God would be wrong, and we know he can't be. But then there aren't really any options open to that person. There's only one way he can behave.<sup>27</sup>

On this model, whether foresight is compatible with free will is dependent on whether it is certain or not. The second model of foreknowledge, however, draws on the concept of the 'eternal present' as articulated by Boethius and St Anselm. On this understanding, God is understood to be 'outside of time' and does not experience things as being in the past, present or future but experiences everything as being present. As such, God does not really have foreknowledge but simply sees what happens without any 'before' or 'after'. There is thus no conflict between foreknowledge and free will: '[s]eeing someone make a choice does not mean that they could not have made a different choice.'<sup>28</sup> Worley terms this the 'sight' model (as God simply 'sees' what happens rather than foreseeing it).

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<sup>25</sup> Worley (2011).

<sup>26</sup> Worley (2011) p229.

<sup>27</sup> Worley (2011) p231.

<sup>28</sup> Worley (2011) p233.

Worley goes on to argue, however, that the stories presented in both *The Adjustment Bureau* and *Minority Report* are not premised on the 'sight' model. For the agents in *The Adjustment Bureau* (and the 'precogs' in *Minority Report*) do not simply 'see' the future but can see or predict things that do not actually happen. Rather, the very premise of the work of the Adjustment Bureau is that they can make adjustments to the world and, as such, the effect of those adjustments will change what happens.<sup>29</sup> For example, early in the film, the result of David being caught on camera mooning his old college buddies at a reunion was that he lost the election for Senate. However, the Adjustment Bureau then stepped in and arranged the 'chance' encounter with Elise in the Waldorf men's room. This encounter then inspired David to give the speech, which saved his political career (and moved him back 'on plan'). The premise of this 'adjustment' by the Bureau is based rather on the predictive model—the Bureau could predict that in bringing Elise and David together, their actions would result in his spectacular concession speech (and later in the film, the planned action of causing David to spill coffee would make him late for work). However, as Worley notes, the predictive model of foreknowledge is only compatible with 'free will' if it is probabilistic. Worley concludes that given David is able to challenge the Adjustment Bureau and, in the end, effectively change his fate, the predictive capacities of the Bureau (and thus of 'the Chairman' as God figure) must be probabilistic.

Whilst Worley's analysis provides a useful consideration of foreknowledge in the films, she notes that this is only speculative because in real life there are no people with such foreknowledge. At the same time, Worley's analysis gives rise to a number of questions which can provide more insight into *The Adjustment Bureau's* raising of the problematics of 'free will' and freedom. First, the distinction that Worley points to is that Anselm's defence of the compatibility of human 'free will' and divine omniscience does not apply in the film because the agents are acting and thus making changes to the predicted future. That is, the

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<sup>29</sup> Worley notes that 'Since foresight includes things that never come true, it's too simple to say that precogs and the adjusters somehow have access to the already-present future. If they were 'seeing' the future, they would be seeing the events that would actually happen, not events that would have happened had they not been prevented. A precog who sees a murder that is then prevented is not seeing the actual future.' Worley (2011) p233.

reason why she believes that the 'sight' model does not work is because the 'sight' model presumes being outside of time and being able to see what the *actual* future is (because it is already present to the entity looking at the occurrence). However, what this analysis actually points to is a fundamental question of theology: whether and how God can act in the world. As such, we need to look not only at the consideration of 'free will' of humanity, but how this is understood in relation to the providence of God—that, is the unfolding of God's will and care for creation.

To draw on Worley's sources, Boethius provides not simply a consideration of 'free will' and foresight in terms of the 'eternal present' but, according to Giorgio Agamben, also incorporates the providence-fate apparatus into Christian theology via his *De Consolatione Philosophiae*.<sup>30</sup> Agamben describes the 'history of the concept of providence' as the 'long and fierce debate between those who claimed that God provides for the world only by means of general or universal principles...and those who argue that the divine providence extends to particular things.'<sup>31</sup> He notes, however, that whilst the consideration of 'free will' is incorporated into this debate, 'what is really at stake...is not man's freedom. but the possibility of a divine government of the world.'<sup>32</sup> Boethius thus articulates the way that God governs the world via the entwined operation of Providence and Fate:

“God in his Providence constructs a single fixed plan of all that is to happen, while it is by means of Fate that all that He has

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<sup>30</sup> Agamben (2011) p126.

<sup>31</sup> Agamben (2011) p113. He goes on to note that '[i]f we accept general providence and reject, entirely or in part, particular providence, we have the position of Aristotelian and late classical philosophy, and, in the end, deism...If, on the other hand, we accept at the same time the two forms of providence, we have the position of the Stoics, theism, and the dominant trend of Christian theology, for which the problem of how to reconcile special providence with man's free will arises.'

<sup>32</sup> Agamben (2011) p113: 'However, what is really at stake in the debate is not man's freedom (which the proponents of the second thesis attempt to preserve through the distinction between remote and proximate causes), but the possibility of a divine government of the world. If the Kingdom and the Government are separated in God by a clear opposition, then no government of the world is actually possible: we would have, on the one hand, an impotent sovereignty and, on the other, the infinite and chaotic series of particular (and violent) acts of providence. The government is possible only if the Kingdom and the Government are correlated in a bipolar machine: the government is precisely what results from the coordination and articulation of special and general providence...'

planned is administered...in its many individual details in the course of time....[T]he simple and unchanging form of things to be managed...is Providence, and Fate is the ever-changing web, the disposition in and through time of all the events which God in His simplicity has entrusted to manage. Everything, therefore, which comes under Fate, is also subject to Providence, to which Fate itself is subject, but certain things which come under Providence are above the chain of Fate.”<sup>33</sup>

Boethius refers to a range of potential administrators of Fate including the celestial motions of the stars, the power of the angels and the various skills of other spirits. What this identifies, however, is that God in his simplicity lays down a divine plan, which is unchanging. This plan, however, is administered and managed through time by a range of other bodies and effects.

*The Adjustment Bureau* provides a representation of this divine governance of the world. ‘The plan’ is written by ‘the Chairman’ as the foundation of Providence which is then carried out *in time* via the management and administration of the Adjustment Bureau. As such, it is not so much that the agents of the Adjustment Bureau operate based on probabilistic predictions but rather the administration and outworking of ‘the plan’ in terms of divine providence. It is within this context, then, that we can understand the discussion of ‘free will’ that David has with the agent Thompson. In response to David’s question “whatever happened to ‘free will’?”, Thompson provides an extended explanation of the activities of ‘the Chairman’ and the Adjustment Bureau:

“We actually tried ‘free will’ before. After taking you from hunting and gathering to the height of the Roman Empire we stepped back to see how you’d do on your own. You gave us the Dark Ages for five centuries until finally we decided we should come back in. The Chairman thought that maybe we just needed

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<sup>33</sup> Boethius (1969) p105. Quoted in Agamben (2011) p127. Boethius articulates the distinction between Providence and Fate as such: “When this manner is thought of as in the purity of God’s understanding, it is called Providence, and when it is thought of with reference to all things, whose motion and order it controls, it is called by the name the ancients gave it, Fate...Providence is the divine reason itself. It is set at the head of all things and disposes of things. Fate, on the other hand, is the planned order inherent in things subject to change through which Providence binds everything in its own allotted place. Providence includes all things at the same time, however diverse and infinite, while Fate controls the motion of different individual things in different places and at different times. So this unfolding of the plan in time when brought together as a unified whole in the foresight of God’s mind is Providence; and the same unified whole when dissolved and unfolded in the course of time is Fate. They are different, but the one depends on the other. The order of Fate is derived from the simplicity of Providence.” Boethius (1969) p104 quoted in Agamben (2011) p126.

to do a better job with teaching you how to ride a bike before taking the training wheels off again. So we gave you the Renaissance, the Enlightenment, scientific revolution. For six hundred years we taught you to control your impulses with reason. Then in 1910 we stepped back again. Within fifty years you brought us World War I, the depression, fascism, the Holocaust and capped it off by bringing the entire planet to the brink of destruction in the Cuban missile crisis. At that point a decision was taken to step back in again before you did something that even we couldn't fix. You don't have 'free will' David. You have the *appearance* of 'free will'...humanity just isn't mature enough to control the important things."<sup>34</sup>

Whilst this discussion is framed around the question of 'free will', what it actually describes is a providential ordering or governing of the world by the Adjustment Bureau in line with 'the plan' of 'the Chairman'. Here the role of the agents is seen in terms of the administration and outworking of 'the plan' and human freedom is thus only understood *within* this providential context. At the same time, the description by Thompson also indicates a belief in the role of that governance which, in part, is to bring humanity to a point where it can also participate in the governance of the world. This sees humanity as being under tutorship, being trained in the use of their reason so that they may control their impulses, think rationally and become, in the end, self-governing.<sup>35</sup> Such a belief in one sense aligns with St Thomas Aquinas' understanding of divine governance, which is aimed at guiding things to their intended end.<sup>36</sup> In this sense, the end of humanity would be seen in its ability to self-govern. At the same time, however, Aquinas sees the incorporation of both divine governance and human self-governance at the same time.<sup>37</sup> Divine governance is needed to support the creation that has already been brought into being.<sup>38</sup> For Aquinas within this context, however freedom is not presented in terms of a 'free will' that can choose to do whatever it wants to do (which in the end is the making of a completely arbitrary choice) but rather the will is free when it choose the good—its true end. Freedom is found in a coincidence of divine governance and self-governance with their true end in God. Thus, whereas Thompson identifies the

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<sup>34</sup> David's response in the middle of this is disbelief, saying that he makes decisions every day. Thompson counters by saying that "You have 'free will' over which toothpaste you use or which beverage to order at lunch."

<sup>35</sup> This is similar to St Paul's consideration of the law in Galatians. See Chapter 5 above.

<sup>36</sup> Aquinas (1952a) I.Q.103, A.1,A.2, A.4; Agamben (2011) pp131-134.

<sup>37</sup> Aquinas (1952a) I.Q.105; Agamben (2011) p133.

<sup>38</sup> Aquinas (1952a) I.Q.104, A.1; Agamben (2011) p133.

possibility of human self-governing (the aim towards which the divine plan is being outworked towards), for Aquinas in terms of finding its true end and freedom in God, human self-governing would operate *alongside* divine providence.<sup>39</sup> The fact that Thompson disputes the possibility of ‘free will’ for humanity is not so much that humanity does not have ‘free will’ but that the Bureau coercively intervenes to make it difficult for humanity to accomplish their desired outcomes when those desires do not align with ‘the plan’. This coercive activity is aimed at ‘training’ humanity in its use of ‘free will’. However, as Thompson points out, the two ‘trial periods’ for human self-governing resulted in the dark ages, the World Wars, the depression, fascism and the Holocaust. In this sense, Thompson presents a ‘free will’ explanation for the existence of evil within the divine creation—it is humanity’s use of ‘free will’ that has resulted in the pain, death and destruction in the world.<sup>40</sup> As a result humanity is blamed for all the ‘bad things’ in history as a consequence of the use of ‘free will’ and the Adjustment Bureau gets the credit for all the ‘good things’.

The Adjustment Bureau thus seems to be promoting certain Enlightenment ideals—the supremacy of reason, the desire for humanity to emerge from its immaturity, to think for itself and be able to autonomously self-govern without reliance on religion or the church.<sup>41</sup> The irony of this alignment, however, is that the period of which Immanuel Kant famously proclaimed that one should ‘have the courage to use one’s own understanding’ and not rely on the dictates of religion and other institutions, is the period when the Bureau was actually guiding humanity.<sup>42</sup> As such, in opposition to Kant, the way to self-governance and autonomy for humanity is through a process of guidance and ‘adjustments’ by the divine bureaucracy. The perspective of the Adjustment Bureau then seems to be that humanity needs to be guided in the development of their reason so that they can eventually be trusted with the exercise of ‘free will’. It is not

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<sup>39</sup> For Aquinas, the purpose of the divine government is to guide things toward their end, not in a violent imposition but rather by the fact that divine government coincides with the very nature of the things that it directs. As Agamben notes ‘Divine government and the self-government of the creature coincide; governing can only mean...knowing the nature of things and letting it act.’ Agamben (2011) p132.

<sup>40</sup> See the discussion of evil in Chapter 2 above.

<sup>41</sup> Kant (1983).

<sup>42</sup> Kant (1983).

arguing against 'free will' per se but rather that humanity is not yet mature enough to use it. Interestingly, the focus on the use of 'free will' seems to be the conclusion of the film as well with Harry's voice-over at the end proclaiming that we need to "knock down all the obstacles" put in our way and that "'free will' is a gift that you only know how to use once you fight for it." That is, it is in David *resisting* the Bureau and the plan laid out for him by the Chairman that he supposedly takes responsibility for himself and exercises his 'free will'. The message of the film thus appears to be *not* that we should submit ourselves to a benevolent deity believing that God's administration of the world is, in the end, for the best (the end point of Dick's short story) but rather that the true exercise of 'free will' requires an *overcoming* of God's plan. The 'free will' of humanity is thus depicted as being in competition with the ordained will of God and only one or the other can win out: humanity should either submit or resist (and bear the consequences either way). What this battle of wills points to, however, is that the theology undergirding *The Adjustment Bureau* is of quite a different sort – not one based on the possibility of a participation in God where freedom is found in its true end, but rather the freedom of the human will battles it out with that of the divine will.<sup>43</sup> It is as such this theology focused on will that we will now explore.

#### **4. "That's just a name we use": Nominalist Political Theology from Duns Scotus to Hobbes**

John Milbank argues that the production of modern secularity was both contingent and foreshadowed or undergirded by a shift in late medieval theology that opened up the possibility of a realm autonomous from God (not previously thinkable in a society dominated by the theological).<sup>44</sup> Rather than seeing the secular and the human as being simply what remains once religion and theology have been removed, Milbank argues that the secular itself had to be imagined

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<sup>43</sup> For an insightful review of the film that identifies some of the theological themes outlined in the following section see Barron (2011). See also Korobkin (2011).

<sup>44</sup> See Milbank (1990) pp9-15; Cavanaugh (1999) pp191-192; Smith (2004) chapter 4; Oliver (2009) pp3-12.

and constructed.<sup>45</sup> In order for this to occur, the possibility of a secular space had to be first conceived of within theology itself. This occurs, for Milbank, with the shift towards nominalism in the late medieval period, following John Duns Scotus and William of Ockham. Whilst there are varying accounts of this shift and its characterisation as a significant break has been criticised (as well as the particular interpretation of Duns Scotus promulgated by Milbank and others writing under the 'Radical Orthodoxy' banner), Jean Bethke Elshtain points out that it is hard to deny that a shift in the understanding of God (and as a result the understanding of individuals) did occur in this period.<sup>46</sup>

Whereas for the orthodox tradition from Augustine to Aquinas, God was seen as 'the apogee of goodness, reason and love'<sup>47</sup>, following the theology of Duns Scotus and Ockham, God is seen as an all-powerful and untrammelled will.<sup>48</sup> This shift thus encompasses a replacement of the Thomist theology of participation whereby humanity is assumed into the Trinity by the divine *logos* with a theology of *will* by which an 'undifferentiated God commands the lesser discrete wills of individual humans by sheer power.'<sup>49</sup> This means that God is no longer understood in terms of the connection between his reason, will and nature but rather as 'a proposing 'will' [which] is taken to stand for the substantial identity of will, essence and understanding.'<sup>50</sup> At the same time, there is a shift away from

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<sup>45</sup> Milbank (1990) p9.

<sup>46</sup> Elshtain (2008) p44. For an analysis and defense of Radical Orthodoxy's treatment of Duns Scotus see in particular Pickstock (2005). See also Smith (2004) chapter 3.

<sup>47</sup> Elshtain (2008) p41.

<sup>48</sup> As Elshtain notes, it is potentially unfair to characterise Duns Scotus and Ockham themselves in this way. However it is clear both that the will plays a much greater role in their theologies and that those following in their tradition emphasised a strong version of the theology of will. Elshtain (2008) pp44-46.

<sup>49</sup> Cavanaguh (1999) p186. See Milbank (1990) pp12-15.

<sup>50</sup> Milbank (1990) p14. This theological shift occurs as a result of the changing understanding of the ontological relationship between God and humanity. Radical Orthodoxy identify this as a shift from analogy to univocity. On Radical Orthodoxy's reading of Aquinas, the relationship between created beings and the Creator (humanity and God) is a mode of analogical participation—that is, the nature of God is 'being' in itself, of which creation, including humanity, participates in. In this sense, when we say that God is 'good' and that a certain person is 'good' we are not using 'good' in the same sense but rather in an analogical sense—the 'goodness' of God and the 'goodness' of humanity are different. The shift marked by Duns Scotus is to a univocity of being which sees both God and creation being in the same way (but to different degrees). As such the term 'good' refers to the *same* thing whether it is describing God or a particular individual. Whilst God's goodness might exist to a greater degree to a created individual's, it is essentially referring to the same type of thing. Radical Orthodoxy's critique of this theological shift is that it results in both God becoming distanced from humanity (as infinite) by a realm of sameness, which is uncrossable

the focus on God as Trinity and a return of a monarchical unity.<sup>51</sup> As Milbank notes:

In the thought of the nominalists, following Duns Scotus, the Trinity loses its significance as a prime location for discussing will and understanding in God and the relationship of God to the world. No longer is the world participatorily enfolded within the divine expressive *logos*, but instead a bare divine unity starkly confronts the other distinct unities which he has ordained.<sup>52</sup>

The ability for human reason to comprehend and come to grips with the nature of God and for the possibility of a loving participation in God gets overshadowed by a focus on God's absolute power under which humanity is required to bow and submit. This also results in a changed understanding of both the providence of God and its relation to divine or natural law. Providence now is understood in relation to the difference between God's absolute power (*potentia absoluta*) and his ordained power (*potentia ordinata*) which are no longer connected in the same way. Whereas for Aquinas God's absolute power referred to God's power in itself, without reference to the orders of nature and grace he had willed (via his ordained power), the 'juristic' model following Duns Scotus identified the possibility of God intervening via his *potentia absoluta* to change and even set aside the established order.<sup>53</sup> For Aquinas, the divine intellect ruled and determined the exercise of his power. For Duns Scotus, the divine will becomes the focus and the presumption that this will is absolutely free means that he is not bound in any way—even by his own previous actions or determinations.<sup>54</sup>

Milbank identifies that modern politics (as he traces through Niccolo Machiavelli and Thomas Hobbes) is itself founded on this voluntarist replacement of a theology of participation with a theology of will and the focus on the sheer power

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and a space autonomous from God is opened up. See Oliver (2009) pp13-24; Pickstock (2005); Smith (2004), Chapter 3.

<sup>51</sup> Elshtain (2008) p45; Milbank (1990) p14.

<sup>52</sup> Milbank (1990) p14.

<sup>53</sup> Oakley (1998) pp669-670; Elshtain (2008) pp40, 44, 57.

<sup>54</sup> Elshtain (2008) pp40, 44.

of God.<sup>55</sup> This theology of will finds its epitome in Hobbes' explanation of the reason why God should be obeyed:

The right of nature, whereby God reigneth over men, and punisheth those that break his laws, is to be derived, not from his creating them, as if he required obedience as of gratitude for his benefits; but from his *irresistible power*.<sup>56</sup>

In this articulation there is no sense of participation in God nor of a coming into communion or understanding with God based on reason or love, but rather it is a pure submission to the *power* of God.<sup>57</sup> Yet, the theological shift in the understanding of God *also* results in a corresponding shift in the understanding of the human. Whereas God is now understood as an individual will, so too humans are *also* understood as an individual will in the same nature as God (though in different degrees). Man now comes closest to the *imago dei*, the image of God, when they exercise the rights of a sovereign will that 'cannot bind itself' and enjoy unimpeded property rights—a sovereign dominion over the earth.<sup>58</sup> The individual thus sees itself as a controlling will that is free to determine what it wishes to do and will only be brought unto submission when presented with a will or power that is greater than itself.<sup>59</sup> As Milbank outlines, this forms the basis of Hobbes political science. When Hobbes describes the sovereign it is as one that has an absolute sovereign will. The political state, which Hobbes, due to his nominalism, could only conceive of as an 'artificial man', is rooted in an

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<sup>55</sup> Milbank (1990) pp9-25

<sup>56</sup> Hobbes (1952) Chapter 31, p160; Milbank (1990) p15; Cavanaugh (1999) p186.

<sup>57</sup> Hobbes notes that if there was a man of 'power irresistible' then there would be no reason why that man should not have ruled over all the others in the state of nature (given that men in the state of nature have the right to all things and to rule over other men). However, because no man can, by force, enforce such a right, there is the need for the sovereign authority – which he *also* sees as being granted irresistible power and thus must be obeyed (as it retains the right of rule of the state of nature). See Hobbes (1952) Chapter 31, p160; Agamben (1998) pp35.

<sup>58</sup> As Milbank identifies, this sense of dominion resulted from a corresponding change in the understanding of Adam's dominion of the earth according to scripture. For Aquinas, such dominion was always subordinate to the common good and was about a beneficial use of property. With the shift in understanding, property became that which could be disposed at will without consideration of the community or common good. See Milbank (1990) pp12-15. See also Cavanaugh (1999) p187. This was influenced in part by a increased recourse to ideas from Roman Law (see Milbank (1990) pp12-13; Elshtain (2008) p44). Milbank argues, however, that such recourse in itself may not necessarily have been needed and that the theology of will itself could have given rise to such understanding of private property and rights. See Milbank (1990) p15. For a consideration of these points in relation to the discussion of Human Rights, see Milbank (2012).

<sup>59</sup> Hobbes (1952), Chapter 13.

individualist account of the will that reflects the divine essence understood as radical simplicity without real or formal differentiation.<sup>60</sup> The power of the sovereign being absolute, it is a 'jealous god' that can neither bind its own will, submit to other powers or allow other competing bodies.<sup>61</sup> The law then becomes that which is determined by the sovereign command and which must be obeyed (and is backed up by force).<sup>62</sup> The only potential liberty for individual citizens is where the law is silent or the sovereign has not made a determination.<sup>63</sup> Rather than, as for Aquinas, human law being a reflection of the natural law which is a participation in God's eternal law (his providential plan reflecting his reason, justice and love) we find the law as being an arbitrary construction of God's will and it must be obeyed as law simply because God commands it to be so (and any infringement will be punished as such).<sup>64</sup>

Returning to *The Adjustment Bureau*, we can now identify with greater insight the theology of 'the Chairman' himself. As we noted above, the endpoint of both Thompson's speech and Harry's concluding remarks appear to represent a battle of wills between David and 'the Chairman'. As such, there is not a participatory enfolding of the human will within the divine will, but rather an expectation of sheer submission to 'the plan'. Through David's interactions with the Bureau we slowly uncover a representation of 'the plan' of 'the Chairman'. Whilst Dick's short story provides an extended explanation of the reason for the intervention by the adjustment team (one which Ed Fletcher sees the logic of and agrees with), the first interaction between David and the Bureau has little consideration of the *reason* for 'the plan' at all. David's path having *not* been adjusted, he arrives to work on time only to find the team of men in suits making an 'adjustment' to his friend Charlie Trainer. The initial response by Richardson is not to calmly explain to him what is going on but rather "Grab him!". After they chase David, knock him out with chloroform and forcefully taking him to another realm Richardson then provides a relatively truncated explanation of who they

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<sup>60</sup> Milbank (1990) p13; Hobbes (1952) Introduction, p47.

<sup>61</sup> For Hobbes this clearly meant ecclesiastical bodies, but also included other forms of organisation that then become dependent on the state for their existence via a grant of power. See Cavanaugh pp189, 191-192.

<sup>62</sup> Hobbes (1952), Chapter 26.

<sup>63</sup> Hobbes (1952), Chapter 21, pp113, 116; Milbank (1990) p13.

<sup>64</sup> See Aquinas (1952b) II.I.Q.91-Q.95; Cavanaugh (1999) p186.

are: they're the people that make sure things go according to plan. He tries to scare and intimidate David by making him believe that they can read minds and can see what is going to happen. In this early interaction there is no reference to 'the Chairman' no explanation of what 'the plan' is or how it operates and then simply a command that he may not tell anyone about the Bureau. Oh, and that he cannot be with Elise. Later, when David is trying to find Elise's dance studio and the Bureau is putting obstacles in his way, he questions the basis of 'the plan' itself, suggesting that Richardson had potentially misread it or that it was wrong. Again, instead of providing an explanation for 'the plan', Richardson simply identifies that there is no misreading it, that things are clear in 'black and white' and that David, rather than questioning 'the plan' and its writer, "really should show some respect." As such, rather than finding a divine plan which can be conceived on the basis of reason we get simply a divine command that must be obeyed.

In David's later discussion with Thompson, whilst more information is given about what the plan entails (David winning the Senate election and then, in the future, elections for President of the United States), we are still not given an underlying basis for the plan itself. Thompson refers to both David's and Elise's dreams (attempting to intimidate him by saying that neither of their dreams come true if they stay together) but once again there is no substantive basis or purpose for either. The Bureau want David to win the Senate and then go on to become President, but there is no explanation as to *why* they want David in particular to do this. In fact, for all the election campaign footage that we get of David making speeches, glad-handing voters and signing autographs, we never once get any substantial policy basis for his campaign. Rather, it is based on popularity, on David not being a 'tool' like the other guy, and the fact that he is young and 'authentic'.<sup>65</sup> There is no actual commitment by David to *doing* anything in particular, should he win office (nor any reason provided for why

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<sup>65</sup> This 'authenticity' is the basis of his concession speech. However, despite being electrifying and putting him in the frontrunner for the next campaign, all the 'outing' of the calculation and manipulation that goes into the campaign (the choosing of the correct tie; the right scuffing of the shoes; the testing of key phrases with focus groups) does not actually change anything. For the next campaign they still engage in the same practices and he is more popular than ever. This 'authenticity' 'outs' the manipulative and calculating machinations of politics but does nothing to actually promote reform or change in relation to it.

voters would want him to win office). As such, when it comes to the implementation of ‘the plan’ of ‘the Chairman’ the only basis for ‘the plan’ itself is that ‘the Chairman’ wrote it—the divine will determines what must be done without any reference to reason, justice, love or the greater good.

## **5. “Did You Really Think You Could Reach the Chairman?”: The Absent Sovereign or ‘Where is the Chairman’?**

It is here, however, having identified the theology of ‘the Chairman’ as this ‘modern’ theology of will, that I want to argue that *The Adjustment Bureau* provides not simply a representation of theology but rather a critique of modern sovereignty and its latent theological underpinnings. As such, then, ‘the Chairman’ arguably stands in for the Hobbesian all-powerful sovereign and ‘the plan’ is a representation of the posited law as commands of that sovereign. This sovereignty is based on a ‘will’ that issues laws as commands (rather than precepts grounded in reason). What the identification of the lack of reason referred to above in relation to ‘the plan’ represents, then, is the way in which modern law is conceived itself in terms of the command of the sovereign without reason. At the same time, the experience of David is one that reflects our experience of modern bureaucracy in terms of a bureaucrat informing someone that things must be done this way because that is what the rules require, not for any substantive reason (even if there might actually be one). If we are to consider the agents of the Adjustment Bureau as angels then instead of the heavens being a place of wonder and worship, they are presented as a rationalised bureaucracy. This reflects, at one level, Slavoj Žižek’s observation (in discussing the work of Franz Kafka) that the experience of the divine today is through modern bureaucracy.<sup>66</sup> Weber’s argument for the bureaucratisation and

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<sup>66</sup> Žižek notes that bureaucracy ‘is our only true contact with the divine in our secular times’. He continues: ‘What can be more “divine” than the traumatic encounter with the bureaucracy at its craziest—when, say a bureaucrat tells me that, legally, I don’t exist? It is in such encounters that we get a glimpse of another order beyond merely earthly everyday reality. Like God, bureaucracy is simultaneously all-powerful and impenetrable, capricious, omnipresent and invisible. Kafka was well aware of this deep link between bureaucracy and the divine...It is only in this sense that Kafka’s works state a search for the divine in our deserted secular world—more precisely, they not only search for the divine, they find it in state bureaucracy.’ Žižek (2006) p116. See also Žižek (2003) p120. For Žižek’s parsing of the interpretations of Kafka, including the theme of the ‘absent God’ in bureaucracy, see Žižek (1991), chapter 8.

rationalisation of law produces, in the end, an experience of that bureaucracy as a divine intervention with no rhyme or reason except for ‘that’s the way things are’.<sup>67</sup> The bureaucratic and rationalised law is experienced as irrational. What is more to the point, however, is that this bureaucracy is actually theological in nature. This becomes even clearer when we consider the Thomist theology of angels. For in the ‘Angelic Doctor’s’ *Summa Theologiae* a considerable amount of time is spent not simply articulating the nature of the angels *but also their hierarchical structures*.<sup>68</sup> As Agamben notes with great interest, the extended detail of the divine realms depicts a hierarchy of greater and lesser angels, angels split between administration (executing the divine providence) and acclamation (the worship of God).<sup>69</sup> In addition there is a structure that accounts for those angels that are higher in status and thus who would stand in the presence of God and others who are lesser and would only be informed of the divine command via a messenger.<sup>70</sup> All of which undergirds both Milbank’s and Agamben’s argument, that modernity itself is structured by theology even where they are supposedly secularised. Far from having escaped the theological via neutral political science, the theological remains the structural frame of modernity itself (as well as any of its ‘posts’ – post-modernity, post-secularity, etc.)<sup>71</sup>

As such, ‘the Chairman’ is a representation of this modern conception of the divine or sovereign will. ‘The Chairman’ (read sovereign) lays down ‘the plan’ (positive law as command of the sovereign) that must be followed at all costs and which the Bureau works carefully to ensure its fulfilment. Yet, one of the problems with this theological focus on a voluntarist God as sovereign will is that he could simply change his mind. The basis on which the *potentia absoluta* of God

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<sup>67</sup> Žižek (2006) p116. This, of course, as noted above, reflects a theology of will that presents a law without reason that must be obeyed. Žižek’s initial description of the Decalogue and the Divine Mosaic Law, which is experienced as ‘externally imposed, contingent and traumatic...an impossible/real Thing that ‘makes the law’’, thus also reflects his characterisation of bureaucracy (via Kafka)—a divinely imposed, traumatic law that simply must be obeyed. See Žižek (2000) p109.

<sup>68</sup> This is not only in the Treatise on the Angels but also a significant portion of the Treatise on Divine Government. See Aquinas (1952a) I.QQ.50-64 and I.QQ.107-114.

<sup>69</sup> See Aquinas (1952a) I.QQ.108-112; cf Agamben (2011) pp149-151.

<sup>70</sup> Aquinas (1952a) I.Q.112, a.3; Agamben (2011) p151.

<sup>71</sup> See Smith (2004), Chapter 4. At the same time, Milbank notes, following Weber, that modern bureaucratic and rational tendencies can be identified within medieval canon law itself. Milbank (1990) pp15-16 and Chapter 4.

is conceived is no longer simply the foundation of the *potentia ordinata*, but it becomes the possibility for God to ‘change the rules’, to act beyond the law and plan he has laid down and arbitrarily switch the plan—the sovereign can arbitrarily decide on the exception to or acting beyond the law.<sup>72</sup> This is what we find in *The Adjustment Bureau*. Whilst the lower level agents proclaim the importance of keeping on plan, of sticking to what has been ordained by the Chairman, what we find later in the film is that the plan can change – and *has* changed over the decades. In earlier versions of the plan, David and Elise *were* meant to be together and it is only the plans since 2005 that dictate otherwise. Thus, in the end, David and Elise are looking to change their destiny by reverting to an earlier version of the plan.

When we read *The Adjustment Bureau* in this way, we see at one level a perception of sovereignty as all-powerful (agents say that they can read minds; they move through doorways that cross the city; they adjust peoples thinking) *yet* the effect of that power is limited. This is not just in the sense Harry identifies: that the Bureau’s resources are limited, hence they don’t have the ability to monitor the whole world all the time; or that certain restrictions are placed on their powers. Rather, it is that the very application of sovereignty itself is limited and fallible. Far from being an all-powerful god, the speculative nature of Leviathan means that it can only operate through agents; it cannot be conceived truly as a separate body, but rather is made up of the individuals that create it.<sup>73</sup> Hobbes’ reference to the multiple parts of the body as various parts of the state (sovereignty the soul, magistrates the joints, reward and punishment the nerves, etc.) simply identifies the lack of self-sustaining structure of the sovereign body itself.<sup>74</sup> In *The Adjustment Bureau*, the key trigger that allows David to see the Bureau itself is the result of an agent falling asleep on the job and not making the necessary adjustment at the correct time. That is, rather than being all-powerful, the sovereign is shot through with holes, limited by the fallibility of its agents and application.

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<sup>72</sup> Milbank (1990) pp14-15; Elshtain (2008) pp53-55, 58-59. See also Milbank (2009) pp93-94.

<sup>73</sup> Point here about the contradictions of this – at one level the subject only comes into being when the state does – at another level the subject *is* the state but also submits to the state

<sup>74</sup> Hobbes (1952), Introduction, p47; Cavanaugh (1999) p188.

As such, the presupposition of an all-powerful sovereign is shown to only be able to operate through its agents—as Agamben identifies, the sovereign is impotent and can only exercise his sovereign will through the administration of government via his ministers.<sup>75</sup> Yet this also points to the aporia of the will itself which is that ‘for a will to be effective, something other than will must carry out the will’s order.’<sup>76</sup> As such, we have the representation of the distinction that Agamben makes between Kingdom and Government—that is, the king reigns but does not govern.<sup>77</sup> The sovereign power is in the end impotent in itself but guarantees the carrying out of the administration of that sovereign power through government. Yet, whilst Agamben draws on the theological and Trinitarian tradition to elaborate the history of this distinction, what we find, when transformed to the political level (and this includes the politics of the late middle ages in terms of the rifts between the papacy, emperors and kings), is an undergirding presumption of sovereign will which can only exercise itself through another.

The sovereign state, however, sees the coming into being of both a sovereign will *and* the subjects that make up the state at the same time. Whilst Hobbes identifies that those in the state of nature are the ones who, via exercising their private rights and surrendering those rights in the pact or covenant, it is only within the context of the state itself that those individuals can actually be recognised *as* bearers of private rights that can be given up to the sovereign state.<sup>78</sup> At the same time, Milbank identifies that because the sovereign state

is rooted in an individualistic account of the will, oblivious to questions of its providential purpose in the hands of God, it has difficulty in understanding any ‘collective making’, or genuinely social process. To keep notions of the state free from any suggestions of a collective essence or generally recognized *telos*, it must be constructed on the individualist model of *dominium*.<sup>79</sup>

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<sup>75</sup> Agamben (2011) pp68-69, 134.

<sup>76</sup> Milbank (2003) p91.

<sup>77</sup> Agamben. (2011) pp69-71 (referring to Carl Schmitt and Eric Peterson’s use of this phrase) and pp109-110.

<sup>78</sup> See Milbank (1990) p13; Hobbes (1952), Chapter 18, p100.

<sup>79</sup> Milbank (1990) p13.

As such, the founding of the sovereign state is not simply based on the operation or exercise of 'natural rights' which are subsumed by the covenant that forms the state, but rather such rights are presupposed by the pact that forms the state itself. The sovereign state then, incorporating these presupposed natural rights as the basis for its unlimited power, can determine what the rights of subjects are and maintains the ability to revoke or infringe them.<sup>80</sup> The possibility of an unlimited sovereign state is thus founded, in particular, on the presumption of sovereign individuals who have unlimited rights to self-preservation which they can nonetheless alienate and give to the sovereign.<sup>81</sup> At the same time, the power, which the state incorporates, can then only be exercised through others. The presupposed unlimited sovereignty as the soul of the Leviathan, has to produce an executive to carry out its will in the form of ministers and agents of the sovereign.<sup>82</sup>

In *The Adjustment Bureau*, when it comes to 'the Chairman' himself, it is notable that he is never seen. The final sequence which involves David and Elise racing through the chambers of the Bureau to find the Chairman so that they can have their plan rewritten has them bursting through random doors, running through the library, dashing past the restricted archives, climbing higher and higher in the internal recesses of the Bureau. The expected crashing into the Chairman's office, however, never occurs. Rather, as David and Elise rush up the final stairs they burst out onto the "Top of the Rock" observation deck.<sup>83</sup> Stunned, they return down the stairs from which they came only, in a sequence reminiscent of an Escher drawing, to burst out *once again* onto the observation deck.<sup>84</sup> The Chairman as sovereign is nowhere to be found and the process of looking for him ends in a disorientating round-robin chase. Rather than finding the ultimate sovereign will and the mastermind of 'the plan', David and Elise are cornered (in

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<sup>80</sup> From which is based the sovereign's right to punish: Hobbes (1952), Chapter 28; Agamben (1998) pp106-107.

<sup>81</sup> See Hobbes (1952), Chapters 14, 15 and 17.

<sup>82</sup> Milbank (2003) pp91-92; see also Agamben (2011) pp134-135.

<sup>83</sup> The "Top of The Rock" observation deck is on the rooftop of the GE Building in the Rockefeller Center.

<sup>84</sup> M. C. Escher (1898-1972) was known for his use of irregular perspectives to create drawings of impossible realities. These included works such as 'Reality' (1953) and 'Ascending and Descending' (1960) in which people ascended and descended staircases in an impossible loop. For Nolfi's discussion of this see Weintrub (2011).

the same way that David was cornered in the first chase scene in the film) and surrounded by agents of the Bureau. At this point David and Elise give up running, declare their love for each other and embrace. As the camera centres in on them, slowly spinning and circling, Elise looks up shocked to see that the agents have all disappeared and the cloudy skies give way to the sun shining. Thompson appears and begins to tell David and Elise that the idea of finding 'the Chairman' and having their plan rewritten is ludicrous and that it doesn't work that way. However, Harry then arrives and provides a message from 'the Chairman' that the viewer already has an inkling of with the change of intensity of the music and the bursting out of the sun. David and Elise have supposedly inspired 'the Chairman' and Harry thus presents them with a copy of 'the plan' that is 'rewritten'—a clean piece of paper with the two dots representing David and Elise moving along the page.

The conclusion of the film thus appears to be a triumph of 'free will'—that we must overcome the obstacles put in our way, rely on our own understanding and throw off the perverse plan laid down by the will of a god who can contingently change his mind or a sovereign who is unbound to the law that he has determined (ever able to decide on the exception to the norm). Yet, at the same time, when David asks about the Chairman, Harry notes: "You've met him though, or her. Everybody has. The Chairman comes in a different form to everyone, so people rarely realise when it happens." Once again the Chairman who is only ever referred to but never seen and who only acts through his agents, is now not even available except in encounters where he is not recognised. Does this not indicate even more so that the Chairman, as sovereign, does not exist except within the actions and acclamations of his angels/agents? That is, as Agamben would say, the throne is empty.<sup>85</sup> The Chairman as all-powerful sovereign will cannot exist outside of the actions that presupposes him (in contrast to a divine intellect which is relationally orientated within a Trinitarian economy). And yet, is the point of the film not more subtle? That it is the theology of will that informs the voluntarist sovereign state that we need to escape, not some arbitrary deity. Thus, 'the plan' from which we need to escape,

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<sup>85</sup> Agamben (2011) pp243-245

conceptually if not actually, is that of the voluntarist sovereign state itself. The state, that is founded on its ability to ensure peace and order and protect freedom but which, in the end, struggles to effect each of these: the enforcing of peace and order restricts freedom; wars and violence are the means for enabling social cohesion; law's protection of freedom becomes the very thing that binds it and so forth.<sup>86</sup> Should we not then reconceive the basis for which the State is instituted, which is that freedom requires not a freedom from each other but a true sense of thinking the possibility of being together. This question of being together, points us back to the major change that Nolfi introduces in the translation of Dick's story to screen: he makes it a love story.

## 6. "Because She's Enough": Love of One for Another

The driving narrative of *The Adjustment Bureau*, despite all its metaphysical speculations in regards to 'free will' and its theological science fiction, is that of the romance of David and Elise. The very reason that David resists 'the plan' laid down for him is because of his feelings for Elise after their 'chance' encounters—feelings that come to a head in the final declaration by David and Elise of their love for each other. To pick up a theme from the previous chapter, this love-encounter represents an event in Badiou's sense. For Badiou, the four conditions of philosophy (as he traces in Plato's thinking) are: art, science, the political and love.<sup>87</sup> As one of these, the amorous encounter itself can found a truth-event and the production of a truth in the form of the Two. Here the focus is not so much on the object of love but the construction or reconstruction of the world from the perspective of the Two: 'It is in love that thought is freed from the powers of the One, and operates according to the law of the "Two", to what breaks into the One.'<sup>88</sup> Love does not so much form a new unity but challenges the dominance of the One, *supplements* the life of those caught within the frame of the event and

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<sup>86</sup> See discussion by Cavanaugh (1999) pp193-194.

<sup>87</sup> See Badiou (1999) pp33-39 (see also p11); Badiou (2011) pp21-22.

<sup>88</sup> Badiou (1999) p18. Note also Badiou (1999) p83: 'Love is that from which the Two is thought, by the slitting of the dominance of the One, whose image love nonetheless endures...Love is the actuality of this paradoxical Two, which in itself is in the element of the non-relation, of the unbound. It is the "access" of the Two as such. Originated in the event of an encounter...love weaves infinite or incompletable experience of that which of this Two already constitutes an irremediable excess with respect to the law of the One...Love is the production, with fidelity to the encounter-event, of a truth about the Two.' See also Badiou (2012).

enables a rethinking of the world from the perspective of the Two. Each aspect of life previously thought by the individual is then brought into the truth of the Two (based on the foundational declaration – “I love you”) and rethought within these new coordinates.<sup>89</sup> What this points to is the possibility of a relationality that is not in terms of individualised atoms but in terms of a being together that rearranges the coordinates of the world. Whilst Badiou does not embrace directly a participatory ontology, this amorous event and the possibility of conceiving the world in terms of the production of the truth of the Two as opposed to the One, sees in love a relationality that goes beyond the narcissistic self-interest of the individual.<sup>90</sup> As such, Badiou rejects the views of love as ecstatic, contractual or illusory, seeing in it rather a work that brings more and more fragments of the world to ‘appear before the Two instead of being folded up within narcissistic satisfaction or dissatisfaction.’<sup>91</sup>

This seeing of the world from the perspective of the Two and against narcissistic self-interest contrasts with the anthropology of a theology of will, which, in terms of the individual, sees a self-possessing, self-preserving and wilful *conatus*. Under this conception of the individual the mode of relation *between* individuals (and, for that matter, between humans and God) is conceived of as a contract or covenant entered into by individual wills acting in their own self-interest. As opposed to a participatory relationship that encompasses the common good or common ends as the basis for the being together of individuals, we see a self-interested will that only relates to others based on contract. Within an anthropology or theology of will sociability is *only* the sociability of discrete individuals in an artificial entity made up of specific parts. It is not the actual

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<sup>89</sup> See Badiou (2011) pp87-88.

<sup>90</sup> Badiou (2012) pp16-26; Badiou (2011) pp88 and 99. Milbank does make an argument, however, for a participatory ontology and Christian metaphysics lurking behind Badiou’s system (though he notes that this is a seemingly ‘perverse’ reading of Badiou’s thought): see Milbank (2010b).

<sup>91</sup> Badiou (2011) p100. See also Badiou (1996) pp38-39; Badiou (2012) pp21-23. Badiou goes on to note: ‘Passing from one to two, and experimenting with the Two to infinity (since every element of the world is capable of being treated by a body of love), love is the first degree of the individual’s passage to an immediate beyond her- or himself. It is the elementary form of singularity’s sublimation in universality. This is why, as we know, humanity has, since time immemorial, been fascinated by love and love stories. What is spelt out within love is that living – what is called living – comes down, not to individual interests, but to the manner in which the world is exposed to ‘us’, however limited this ‘us’ may be and however hazardous may prove its uncertain construction not from what s but from what befalls ‘us.’ Badiou (2011) p100.

coming together and being together towards common ends because the wills of individuals are always in self-interested competition.<sup>92</sup> Freedom within this context is specifically a freedom from each other (and from God) rather than a freedom to be together. As such the 'body' that is the sovereign state can only be conceived of as the sum of its parts. The being together of the people is structured only in terms of an 'artificial body' that becomes a fictional presupposition, one which then requires violence or force in order to maintain itself. That is, the fictional sovereign body has a right of self-preservation that sees any potential coming together of people in other forms as a threat. Thus, as William Cavanaugh notes, the sovereign state is not on the same horizon as the family but is constructed in opposition to it and to all other bodies which could potentially found an alternative being together of individuals.<sup>93</sup>

This individualism is represented in *The Adjustment Bureau* as the basis on which 'the plan' must be followed. The reason given to David by Thompson as to why he cannot be with Elise is that both his and her dreams will be lost if that occurs. Elise's dreams of being a world famous dancer and choreographer and David's dreams of someday making it to the White House, will apparently not happen if they stay together. The focus of the Bureau thus encompasses, supposedly, the *individual* dreams or purposes of these persons – individual dreams that cannot be challenged or given up for another. Thompson thus challenges David in identifying that the responsibility for Elise not achieving her dreams would be his and as such he would only have himself to blame for hurting Elise and for the loss of her career. He tells David that "if you stay with her you'll take away the only thing she ever cared about." This statement, however, belies the position of the Bureau which sees the most important thing as being the following of the plan which involves self-interested dreams and goals. The irony of Thompson's statement is that if David and Elise decided to be together then it would be *because* Elise cared about David—that, she would potentially have something or someone else to care about as opposed to just her

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<sup>92</sup> It is this self-interested competition that liberal theory then sees to harness and orientate towards a good. See, for example, Kant (1983b). See also Milbank (1990), chapter 2 and Milbank (2012).

<sup>93</sup> Cavanaugh (1999) pp191-192 (referring to Nisbet (1953)).

career (which is something that Thompson does not see or value). Harry emphasises this point by identifying that the reason that David and Elise cannot be together (according to the plan) is because Elise would “be enough” for David—that he would not need the applause and adulation (the acclamation or glorification) that comes with his career in politics. The focus of the Bureau is not so much about David or Elise achieving their defined ends but about the presupposed anthropology of the sovereign will and sovereign self—the individual who is presupposed as self-choosing, self-deciding and responsible for their actions based on contract becomes glorified within the economy of the state and any action that challenges such a presupposition falls outside ‘the plan’ of the state itself and is seen as a threat.

Undergirding this focus on sovereign individuality is a violence or force engaged in by the Bureau. Harry discloses to David that the death of his brother and father were orchestrated by the Bureau in order to *manufacture* the desire in David for acceptance and applause that drives his success as a campaigner. That is, for David to become the self-willing sovereign individual and thus fulfil his dreams of becoming President there was a need to remove from him the individuals that would potentially satisfy the need for acceptance and relationship in him. What is presented is a contrast between the individual that fulfils their dreams and the individual that desires to be in relationship with others. The sovereign state sees individuals only in relation to it (a relation that, because of its nominalism and focus on individual wills, can only ever be the submission of contract or a resistance or battle of wills) and cannot conceive the possibility of a togetherness or participation of individuals with each other that is real and not based on self-interest and contract. The plan of the Bureau and the will of the sovereign state encompasses a decision over the life and death of individuals—that David’s brother should die in order that David can live the life according to ‘the plan’. Such a decision, in the end, encompasses the aporia of presupposing individuals as self-sovereign wills—such a self-sovereign will can always be violated in the protection or promotion of another self-sovereign will. The submission to the state as sovereign means that the individual is reliant on the sovereign’s own self-binding not to harm him. But, as we saw above, the

premise of the theology of will that undergirds this view of sovereignty means that the sovereign always retains the power to determine an exceptional circumstance and thus deal with an individual as *homo sacer*.<sup>94</sup> The distinction between the *potentia absoluta* and *potentia ordinata* that is made by the nominalists is not so much about simply identifying a realm of *potential* all-powerful actions that will now not be taken because He has acted otherwise (in terms of His ordained power) but it embodies the power of the sovereign to decide on the exception itself. The all-powerful sovereign can arbitrarily change the basis on which it operates and also arbitrarily deal with its subjects who are otherwise bound by the contingent law it promulgates.

David and Elise thus present a challenge to this conception of sovereignty and a sovereign will by deciding *not* to live according to the individualised plan which is focused on their own self-interest. Such self-interest is inherent to the state for the individual gives up his/her rights to the sovereign to receive protection from other individuals. David and Elise rather, via a commitment to each other (one which “risked everything”) privileges a mode of relationality that is not based on a presupposed violent state of nature from which the individual needs saving from by an all-powerful sovereign state, but rather a relationality based on love. It is this action of love which, according to Harry “inspires the Chairman” to rewrite their plan.<sup>95</sup> But, it is not the rewriting of the plan by an absent and contingent sovereign who provides an untrammelled free will that can choose to do anything it wants to. Nor is it the ability to rewrite the laws of the state. Rather, it is identifying the structural problematic of laws that are determined by this theology of sovereignty—that they are grounded in nothing themselves. Such a theology, despite its subsequent attempts to ground ‘rights’ of individuals, in the end results in an ungrounded law as sovereign-command free from reason, justice or love. The event or encounter between David and Elise and their willingness to reorientate and reconceive their world in terms of that event (their being together) challenges the individualism of modern politics by

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<sup>94</sup> Agamben (1998) p106. See also Chapter 4 above.

<sup>95</sup> Harry says: “David, you risked everything for Elise. And Elise, when you came through that door at the statue of liberty, you risked everything too. But you inspired me. Seems like you inspired the Chairman too...this situation between the two of you is a serious deviation from the plan. So the Chairman rewrote it...”

enabling the thinking of the world in terms of the Two as opposed to the One. This points to a grounding of relationality that is not based on the violent mechanisms of the law but rather is captured within an encounter of love. Such love is not restricted to a romantic encounter either, but rather encompasses the possibility of relation with others that is not mediated through a voluntaristic centre in terms of the sovereign state (or a voluntarist god), but is rather founded on the surprise and possibility of direct interactions with others. Such interactions open up a possibility of loving and engaging the person with which we interact not in the liberal sense of rights or contract, but in an alternate-economy, a giving that is not premised on a contractual receiving or an oppressive submissiveness but a giving and receiving differently.

## **7. Conclusion: “Free Will is a Gift”**

This theologically informed sovereignty harks back to the potential of a theological will. Yet, at the same time there is a call for sacrifice—to the state, to globalisation, to ethical duty—but it is a sacrifice without return based on a presupposed sovereign individual who can exercise that sovereign freedom only, in the end, by giving it up. One reviewer commented on the fact that, when, after being chased by the agents of the Bureau to the top of the Bureau’s chambers, David and Elise did not think about the only exercise of free will left available to them—suicide.<sup>96</sup> Yet, such a presupposition results in a free will that can only ever be exercised in its destruction.<sup>97</sup> The actions of David and Elise in ‘risking it all to be together’ in fact encompass a form of freedom that is in contrast to that bound to contract and the sovereign self. Rather, it conceives the possibility of being together, of harmony, of love that involves reciprocity with others ‘according to an ineffable order and measure, which is not yet the measure of law.’<sup>98</sup> It is not a will that consists sovereignly in itself, which, in the end can only exercise its freedom by the giving up its life in death (the very thing Hobbes presupposes as the need for the state to prevent). Rather it is in the offering of oneself to another for the furtherance (not termination) of life that is

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<sup>96</sup> Snyder (2011).

<sup>97</sup> Milbank (2012) p206.

<sup>98</sup> Milbank (2003) p102.

encompassed within an act that is not of the individualised interactions with the state, but a togetherness of mutual but differentiated reciprocity.

It is in this sense that we can then understand Harry's voice-over at the end of the film which should be read not so much as seeing free will as something that must be fought for but rather as a 'gift' itself. That is, freedom is something which can only be encountered as a gift and not a right—a gift that is received not only in terms of alienable property but as encompassing the giver itself.<sup>99</sup> And a gift, as such, which obliges a gift in return thought differently. It is in receiving the gift of free will from God which we return not in terms of the exercise of the sovereign will but in terms of a finding of true freedom in a particular end that we can also see freedom in our being-together with others *not* in terms of the freedom of a subjective individual (a freedom *from* the interference of other sovereign wills, which always needs to be protected by a sovereign state that will restrict freedom in protecting it) but a freedom that comes from reciprocal relations of giving and receiving. It is in this sense that we should understand Harry's final voice-over:

“Most people live life on the path we set for them, too afraid to explore any other. But once in a while people like you come along who knock down all the obstacles we put in your way. People who realise ‘free will’ is a gift you will never know how to use until you fight for it. I think that’s the Chairman’s real plan. And maybe one day, we won’t write the plan. You will.”

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<sup>99</sup> Cavanaugh (1999) pp195-196.



## Chapter 7

# Conclusion: A Theological Jurisprudence of Popular Culture

“So now faith, hope, and love abide, these three; but the greatest of these is love.”

1 Corinthians 13:13

If the consideration of *Man of Steel* (2013) with which we opened this thesis complexified the Christological superhero by contrasting the need for a theological trust or faith with a sovereign death-dealing judgment, *The Dark Knight Rises* (2012) does the inverse by presenting the villainous figure of Bane—the man who ‘broke the Bat’—as a figure of love. For the back-story of Bane is about his love for the young Talia Al Ghul and his willingness to put himself in harm’s way to save her. At the end of the film, he again is willing to die for the mission that he and Talia have embarked on—to bring justice and reckoning to Gotham City. In contrast to the conclusion of *The Dark Knight*, which, as we saw in Chapter 4, was about allowing Gotham to have its ‘faith’ rewarded, Bane operates not in relation to faith but in relation to hope. In explaining to Bruce Wayne (when interned in the prison in which Bane was born) the reason why he is terrorising Gotham City, Bane specifically links despair to hope in a way that identifies that for punishment to be effective it must include the hope of release or escape. We considered this aspect of punishment in Chapter 5 in relation to the connection between law and prison itself. Punishment by the law is only effective *as punishment* if the subject being punished is looking to escape it. As we saw in Chapter 2, law comes into effect and is orientated in terms of its transgression via the person then interpolated as criminal. If law is not challenged but activated when it is broken or transgressed, what are we to make of Bane’s terrorising challenge to the people of Gotham to take back their city? In one sense, Bane facilitates the transition from ‘good’ democracy to ‘evil’ totalitarianism that we saw in Chapter 3 by manufacturing *and declaring* a state of exception with the imposition of martial law. Yet, for Bane, this state of exception is linked *not* to a restoration of order but rather to

its elimination (the inevitability of the nuclear bomb exploding anyway). If that is the case, however, why is it that Bane seeks not simply to destroy Gotham city (which he could have done at any moment) but to terrorise it? Bane's claims to be bringing 'true Justice' are, in themselves, a form of punishment—he feeds the people of Gotham hope so that they can know true despair and so that their punishment can be complete.

This brief consideration of the role of Bane in *The Dark Knight Rises* picks up the legal and theological themes explored throughout this thesis. Popular culture itself engages in considerations of legality, justice and theology but the realms of speculative fiction make these considerations strange, rendering them otherwise and open to new interpretations. The concluding point of Chapter 6, in exploring one aspect of the law of sovereign will 'made strange' and then challenged by the love of David and Elise in *The Adjustment Bureau*, turns to the question of gift as opposed to contract. This focus on the gift of free will itself can be seen as a challenge to certain theological conceptions of power and will. Bane, in *The Dark Knight Rises*, renders an understanding of contract as power when he presents himself to the corporate tycoon John Daggett. Daggett, upset that things are not going according to plan demands to know from his assistant where Bane is. Bane enters the room saying "speak of the devil and he shall appear". He then proceeds to explain how, despite paying him a small fortune, Daggett has no power over Bane. The contractual basis of their negotiations which, notwithstanding Daggett's willingness to resort to illegal means to have Bruce Wayne forced off the board of Wayne Enterprises, are aimed at protecting their operations fail here in the face of sheer power. This effectively Faustian pact shows the true basis of contract, which, despite supposedly providing certainty and ensuring reciprocity in its enforcement can always be breached or reinterpreted differently. Contract founds itself on the presupposition of self-interest by the parties entering into it, but, in the end, is subject to the power each party maintains or gains through it. Bane, taking up the figure of the devil, identifies that a deal with the devil *always* works in his favour—the more powerful party to a contract inevitably wins out.

This thesis has demonstrated the way that these stories told within popular culture and, in particular, speculative fiction—stories of superheroes, mythic adventures, deranged robots and divine/angelic encounters—reveal and render visible a theo-legality or legal theology. In drawing upon the way the stories of speculative fiction engage and encompass the theological aspects of law and our legal imaginary, I have constructed and propounded a *theological jurisprudence* of popular culture. Such a theological jurisprudence draws on the way the concepts of law, legality and justice are not only represented but ‘made strange’ and explored otherwise in the stories of speculative fiction. As such, it both renders visible and obfuscates the fundamental distinctions of legal modernity: between theology and politics, religion and law, church and state. In doing so, and following the turn to theology in critical theory, political science and jurisprudence, it uncovers, identifies and critiques the latent theologies of modern law.

As we considered in the introduction, modern law traditionally sees questions of theology or religion as either: rendered to a long-past historical antecedent which has since been exorcised; or encompassed only in the question of neutral secular preserving and protecting of religion as an aspect of the private domain. Both these concepts of the relation between law and theology presuppose a neutral, modern secular law that can then interact with or regulate religion and religious freedom considered as something separate from law. What this thesis has attempted to open up and explore, however, is the way in which law is itself informed and undergirded by particular theological positions. Such positions are often hidden and opaque because, in the same way that John Milbank notes in relation to modern liberalism, ‘this theological founding is a contingent fact, the result of people thinking in terms which are indebted to a certain religious heritage, linked to certain events, writings and claimed revelations.’<sup>1</sup> As such, this thesis has privileged the stories of speculative fiction as being able to explore and unpack certain theological aspects of modern law by ‘making strange’ our ordinary, habitualised and autonomised perception of them. Rather than considering direct representations of law—courts, lawyers, judges—as

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<sup>1</sup> Milbank (2012) p217.

reflective of both a certain legal culture and popular perception of law, it has identified within the superhero mythos, the speculations of science fiction and the fantastic stories of mythic-quests, resources for setting free our concepts of law to see them anew, rendering visible their informing theologies.

The telling of stories of speculative fiction opens us to seeing the world both in its createdness and contingency, as storied, imbued with meaning understood in a variety of ways. The sub-creation involved in the telling of these stories and the construction of such worlds reflects and refracts the world-building and norm-enforcing aspects of law itself. As we have considered the law 'made strange' and rendered otherwise by speculative fiction we have found that stories which have little to do with direct representations of law itself are in fact imbued with a certain legality and thus render possible the construction of a theological jurisprudence. Each text that we have encountered has been considered in relation to two themes: the legal and the theological. The parsing of these texts has not been on the basis of the distinctness of these themes but their fundamental intertwining in a theological jurisprudence. As such, these readings have 'made strange' the supposed secular neutral space of modern law, thus exploring the interrelatedness of modern law and theology.

Chapter 2, 'Comic Book Mythology: Shyamalan's *Unbreakable* and the Grounding of Good in Evil' unpacked the essentially pagan and Manichaeian theology of the superhero battle between Good and Evil. This theological theme was mobilised in relation to the superhero as a mythic figure of the law (upholding and defending a threatened social order) and thus a reading of the superhero mythos as a reflection of the relationship between law and criminality. Whilst the law aims at justice it is a justice that is focused on the transgression, offence or crime and thus the criminal. As such, in the same way that *Unbreakable* shows the dependency of the superhero on the supervillain, the law itself is dependent on the criminal for its existence. That is, Evil is dependent on the Good as much as the Good is premised in and on Evil itself.

Chapter 3, “The Force’ as Law: Mythology, Ideology and Order in George Lucas’s *Star Wars*’ furthered the exploration of the pagan mythos by focusing on the religion of ‘the Force’. Rather than seeing this as a form of Lucas’s universalising mythology, however, the theological aspects of ‘the Force’ were read in relation to its ideological content: as a faux-theological and ideological prop for late capitalism. Underlying this faux-theology is a nomological foundation, one, which represents and is interwoven with the mythology of modern law itself. For the presupposed theology and mythology of modern law is both agonistic and agnostic—presuming both a violent state of nature and the lack of a determinate divine ground. This lack of a divine ground makes possible a conception of unlimited power, which is legally granted to the Chancellor-cum-Emperor Palpatine in terms of exceptional powers as a result of a manufactured state of emergency. What the reading of ‘the Force’ in this sense identifies, is a mysticism that despite its supposed differing sides (the ‘Good’ Jedi and the ‘Evil’ Sith) is, in fact willing to surrender all for the goal of order, peace *and power*.

Chapter 4, ‘Beyond the Limits of the Law: A Christological Reading of Christopher Nolan’s *The Dark Knight*’, started with a theological premise: that Nolan’s Batman is a typology of Christ. It explored a detailed reading of the superhero mythos as it is complexified in Nolan’s films and identified that Batman is neither the traditional vigilante superhero (enacting a retributive justice beyond the law—supplementing the law’s deficiencies) nor a superhero that is simply in an exceptional relation to the law (enforcing the law in law’s suspension) but rather as founding the potential for a different relation to the law based on compassion or love. Whilst the Joker, for all his references to chaos, is identified as the conservative figure of the law who reveals its necessary connection with the violence of the state of nature, Batman, in the end, willingly engages in a non-resistance to violence by taking the blame for Harvey Dent’s murders. In this action, Batman ‘repeats differently’ Christ’s voluntary exclusion from the law and willingness to die a death he did not deserve—an action which challenges the inherent violence and arbitrariness of modern law with a Christian compassion or love. Such compassion sees itself not in terms of punishing the criminal so that

they receive their 'just deserts', but rather as engaging in preventative violence in relation not just to the potential victim but the potential perpetrator.

Chapter 5, 'Allusions to Theology: *I, Robot*, universalism and the limits of the law' furthered this Christological founding of love via a reading of Asimov's 'three laws of robotics' in relation to Alain Badiou's contemporary rendering of Saint Paul. It identified a fundamental similarity between *I, Robot* and Saint Paul's writings: a theological-jurisprudential enquiry into the limits of the law. *I, Robot* contrasts a legal rule without exception in terms of the deranged rationality of VIKI, the master robot, who seeks to bring all of humanity under her control so that she can fulfill the 'three laws' and protect them, with a theological 'event', the creation of 'Sonny', the anomalous robot who, despite seeing the logic of the laws can turn away from them. In the end, Sonny engages in a singular act of compassion as opposed to the universalising logic of the law, one which opens up not an exception to the law but an event that transforms it and sees it anew. That is, Sonny's act of love fulfills and goes beyond the law itself.

Chapter 6, 'Escaping the Bureaucratisation of Destiny: Law, Theology and Freedom in *The Adjustment Bureau*' took the Christian reading of the secular myth of science fiction further, by mapping the theological genealogy of 'the Adjustment Bureau' and 'the Chairman'. Whilst presenting itself as a theological enquiry into 'free will', *The Adjustment Bureau* is actually more fundamentally about the related theological question of divine providence. Via exploring these openly theological themes we were able to see how *The Adjustment Bureau* rendered and made visible not simply a theological question, but rather the informing theology of modern sovereignty: a theology of absolute will. This theology of will is challenged by the pair of 'star crossed lovers', David and Elise, who are willing to resist 'the plan' laid down for them by an arbitrary sovereign in order to found the possibility of being together—a being together based not on a desire for freedom from each other (the legitimation of the sovereign state and law), but rather one founded on a participatory love: a freedom to be together.

Individually these readings explored particular themes of law (justice, the exception, law's violence, sovereignty, law's universality) and theology (Manichaeism, mystical religions, Christ-figures, visions of divine realms). Together, however, these readings marked a course from antagonism to reconciliation via exploring three modalities of popular culture's myth (pagan, Christological and secular). Chapters 2 and 3 examined essentially pagan and Manichaean myths of the battle between Good and Evil identifying both their co-dependency in *Unbreakable* (law's focus on transgression, crime and criminality in the ordinary course) and their fundamental unity in *Star Wars* (the 'legal' space of indistinction of the 'state of exception'). Chapter 4 marked a Christological 'event' or break with the pagan mythos and its informing of modern law, a break which, in the figure of Batman, opens the possibility of a community based on trust, faith and love. Chapters 5 and 6 then explored the supposedly secular mythos of science fiction in *I, Robot's* promulgating of a universalised law without exception and *The Adjustment Bureau's* absolutised form of secular sovereignty. These 'secular myths' however were outed as fundamentally informed and entangled with theological positions. Thus, in exploring speculative fiction's estranged accounts of the mythos of modernity and modern law, we have uncovered and begun to articulate a theological jurisprudence of love that takes us beyond the law itself.

The trajectory of this thesis has thus taken us from the pagan mythological underpinnings of modernity and modern law which presupposes an ongoing antagonism—whether in a battle between Good and Evil, the law's premise of a chaotic and violent state of nature, or the inherent competition of individual wills—to the possibility of a relation to law based on reconciliation, a being together that encompasses not a freedom from each other, nor the underlying premise of friend/enemy, but a love that fulfills the demands of the law and goes beyond them. This concept of love provides a counterpoint to the culture of legality and rights that dominate our contemporary situation and that are undergirded by an individualism that sees itself in the form of a self-determining legal will. Such a love, which sees its outworking in both the taking of action for the person in need in front of you, rather than in the calculating actions that are

supposedly for the 'good of all', and that see the possibility of founding a being together based not on violence but on the possibility of a community of trust. This love, seen from a theological perspective, understood as a reciprocity of gift giving, and in contradiction to a law of rights and rules, potentially provides a way to challenge the culture of legality and proliferation of law without ends. It is from this perspective that we find the possibility of loving your neighbor as yourself—seen not from the legal perspective, which transposes such an action into a legal obligation or duty of the reasonable foreseeable person, but rather as a compassionate act. Not an 'encounter with the Other' but rather a reconceiving of the world from the perspective of being together with the Other—a seeing the world together. The stories that we tell in speculative fiction provide a space where we can narrate such a being together, one that encounters in surprise and wonder the other and sees relationships built on continuous actions of giving and receiving, of love and compassion.

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