

From Hunger to Love: Myths of the source, interpretation, and constitution of law in children's literature

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Part I A head without a world¹

CHILDREN, LITERATURE, AND THE LAW

Once upon a time, law was myth. So much we are told in no uncertain terms. Peter Fitzpatrick begins his study, it is true, by dryly observing that “Modernity, for a start, is not supposed to be about myth.”² But he soon embarks on a demonstration of the very myth of the absence of myth that lies at the heart of modern law. Thus in HLA Hart, the

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¹ Sections headings derive from Elias Canetti, *Auto da Fe*, trans C. V. Wedgwood (New York: Continuum, 1981).

² Peter Fitzpatrick, *The Mythology of Modern Law* (London: Routledge, 1992), p. ix.

legal order emanates from the “primal scene”³ of a king and his subjects, whose slow mythical accretion of the attributes of modern sovereignty parallels, for Hart, the growing legitimacy of his commands. Indeed, one is struck by the constancy of this trope of emergence in the fables of Western law. Moses, Cain and Abel, Antigone and Creon⁴, Billy Budd and Captain Vere⁵ — time and again, our legal culture retells the story of how we sacrificed the state of nature and submitted instead to a legal order marked by objectivity and obedience. Indeed, the objectivity of the law and the obedience of its subjects seem precisely to be the terms of this new settlement. The story is always told as a tragedy and as a loss of innocence, but nonetheless necessary for that. “[A]n angel of God!” says Captain Vere of his noble savage. “Yet the angel must hang!”⁶ The reconciliation of ‘civilized’ law to its subjects and victims would appear to be a very important myth indeed.

Freud locates his primal scene in the murder of Oedipus,⁷ and the productive guilt in response to which the children constitute for themselves norms of behavior that are binding as a symbolic resuscitation of the absent father. Derrida asks an awkward question. If this is meant to be the origin of law, if there was no law *before* the primal parricide, where exactly did the guilt come from? “To have felt remorse the brothers must have already transgressed a prior law, not produced it...”⁸ But of course that is

³ HLA Hart, *The Concept of Law* (Oxford: Clarendon Press, 1961), p. 195.

⁴ Sophocles, *Antigone*, ed. & trans. A. Brown (Wiltshire: A & P Press, 1987).

⁵ Herman Melville, *Billy Budd, Sailor and Other Stories*, ed. Harold Beaver (Harmondsworth: Penguin, 1967).

⁶ *Id.*, at 75.

⁷ See Peter Rudnytsky, *Freud and Oedipus* (New York: Columbia University Press, 1987); and see also the introduction to Peter Goodrich, *Oedipus Lex: Psychoanalysis, History, Law* (Berkeley: University of California Press, 1995).

⁸ Richard Beardsworth, *Derrida and the Political* (New York: Routledge, 1996), p. 31.

precisely the point: myth aims to reconcile the contradictory assumptions of a structure or way of thinking and, by setting them in some distant past that is before or out of time, to prevent us from asking too closely how it is that they got there. A myth is protected by the sacred rituals that surround it.⁹

For Claude Levi-Strauss, myth is the collection of symbolic resources that mandate and prefigure the structure of social relations;¹⁰ with, in Hans Blumenberg's work, a specifically theistic content.¹¹ This would accord with the origin of *mythos* in Ancient Greek, meaning not just a narrative – from the word for a mouth – but the proper register in which to speak of the Gods. At the same time this spiritual element has been radically eviscerated in much contemporary thought. Thus Roland Barthes, in his immensely influential *Mythologies*, discovers in contemporary society the continuance of myth as immanent in the everyday.¹² Yet several features of myth might yet allow us to find common ground amongst these various interpretations. Myth is a collection of narratives that are world-creating and, no less important, world-legitimizing and world-harmonizing. One might even say that in creating their *own* world in time or space (a Valhalla, for example, an Olympus, a Dreamtime, or a Middle Earth) they legitimate and harmonize *ours*. In that sense, they are essentially conservative.¹³ They speak of the foundational distinctions in language and society in a manner that presents them precisely

⁹ Claude Lévi-Strauss and Wendy Doniger, *Myth and Meaning* (New York: Schocken Books, 1995).

¹⁰ *Id.*

¹¹ Hans Blumenberg, *Work on Myth* (Cambridge, Mass.: M.I.T. Press, 1979).

¹² Roland Barthes, *Mythologies* (Paris: Editions Seueil, 1970).

¹³ For further on the idea of narratives as 'world-maintaining', see Robert Cover, "Nomos and Narrative," 97 *Harvard Law Review* 4 (1983).

as natural or ordained by the gods. Myths therefore elevate and at the same time defuse conflict. Their resolution is foundational and aesthetic.¹⁴

The first point that I wish to draw our attention to, then, is this: a myth is a psychological cummerbund. It dramatizes and ornaments the cleavage that lies at the origin of any normative system, the moment of its foundation, making a virtue of necessity. All law must have a foundation in non-law, in illegality or violence, which is only capable of being legitimated after the fact. Hans Kelsen acknowledged this difficulty through the myth of the *Grundnorm*, but believed that this was a problem only at the very moment that a legal system was established. The law that sets in motion the multitude of laws that follow and refer to it is itself not referable to an anterior law. But for Kelsen, once the system was underway, it was basically self-functioning.¹⁵ Nevertheless, on the contrary, every legal judgment, *every* act of interpretation, in as much as it is not conclusively referable to some prior text, statute, or case, suffers from the momentary aberration to which Kelsen gave the name *grundnorm*: each and every such decision is an exercise of choice whose legality can only be determined by its confirmation *thereafter*. The non-legal lies immanent in the legal and vice versa. In any legal decision the one can be distinguished from the other only retrospectively. This temporal paradox besets all the interpretative judgments we make, leading Beardsworth to insist that “the aporia of law *is* the aporia of time.”¹⁶

This is just one example of the ways in which the crises in foundation or legitimacy of social structures are continually being reproduced and experienced in miniature. There is a constant and parallel need, therefore, to reaffirm the stories that sanctify the moment of origin and the structural choices of a society. In this way, then, myth can be understood as narratives *about* the gods – those whose status is eternal and foundational – yet which are nevertheless sustained by their constant echoes *in* the everyday – that which is

¹⁴ See Geoffrey Galt Harpham, “Aesthetics and Modernity,” in George Levine, ed., *Aesthetics and Ideology* (New Brunswick: Rutgers University Press, 1994) 124-128.

¹⁵ Hans Kelsen, “The Pure Theory of Law,” 50 & 51 *Law Quarterly Review* 291 (1934-35).

¹⁶ Beardsworth, *supra* n 8 at 101.

contingent and responsive. That was Levi-Strauss' point, it was Pierre Bourdieu's,¹⁷ and it was no less Barthes': myth provides a rich complex of semiotic resources that find resonances throughout society, giving colour and force to the myths and the values they represent. At every level from the founding of the State, to the iconography of sporting heroes, to advertisements for Persil and Porsche, myths are drawn upon and in the process sustained.

I have not yet identified what I take to be two further and related features of these discourses. Secondly, then, myth *constitutes* legal subjects in accordance with the values it narrates.¹⁸ Myth, to cite a most suggestive phrase, "constellates our grasp of reality."¹⁹ A constellation is a way of ordering the random. It allows us to find patterns of meaning and capacities for recognition in amongst the spatter of stars. Different societies will do so differently, for the patterns are not 'in' the stars but in the stories under the influence of which they are approached and indeed rendered comprehensible. So a constellation uses stories and imagination to make sense out of random astronomical objects. And myth does the same thing with respect to social facts. It provides us with a frame of reference that allows us to draw recognizable patterns of meaning from the jumbled world around us. It is a means of orientation in the world, and the means by which we come to have an orientation. The result is, for those who navigate their lives in accordance with a particular set of myths, they *become* the kind of person that these myths demand of them. Myths constitute our relationships, to ourselves, to others, and to institutions. They are neither true nor false, but a way of becoming-true, and of making us true to their premises and promises.

Thirdly, they do so by means of narratives. The element of narrative is absolutely essential to this constructivism, since it is what gives to myth its transformative power.

¹⁷ Pierre Bourdieu, *Language and Symbolic Power* (Cambridge: Polity, 1991); *Masculine Domination* (Stanford: Stanford University Press, 2001).

¹⁸ Roland Barthes, "Myth Today" in *Mythologies* (Paris: Editions Seueil, 1970); see also Robert Segal, ed., *Structuralism in Myth* (New York: Garland, 1996).

¹⁹ Jamake Highwater, *Myth and Sexuality* (New York: Meridian, 1991), p. 14.

Stories do not prescribe behaviour: they do not lay down laws for us. Instead, they inscribe behaviour: they lay down ways of being in us.

For every constitution there is an epic, for each Decalogue a scripture. Once understood in the context of the narratives that give it meaning, law becomes not merely a system of rules to be observed, but a world in which we live. In this normative world, law and narrative are inseparably related.²⁰

The process of culture formation through constitutive narratives continues in one way or another throughout our life. National anthems and poems, advertisements in newspapers and television programs, sporting events: all partake of the mythological, as Barthes showed us so well.²¹ Myth, therefore, is not the exclusive province of childhood but a constant transformative experience throughout our lives. Nevertheless it operates, as we will see clearly in unravelling the connotative dimensions of a specific children's story later in this essay, by drawing on a complex web of associations, memories, histories, and structures. While this web gets ever more complicated as we grow, the impact of each new strand is correspondingly less. Each new strand sets in train a pattern of harmonic resonances with the strands already in place, vibrating with the strength of the whole that supports it. Myths, and the stories and images through which they are told, begin to effect us subliminally, almost imperceptibly. They work, in other words, by setting off echoes and vibrations in our memories. In childhood, on the other hand, the weight that each new strand must carry in the structures of understanding that are thus being formed are correspondingly heavy and singular. Consequently, the experience of myth-making is felt with unusual force and influence in childhood.

Indeed, the two privileged sites for the discussion of myth are the savage and the child. We might ask what these two have in common. According to Freud, savage parricide resulted in the emergence of the Oedipus complex and the transformation of the relationship between father and son. But for evidence of this proposition he draws on the

²⁰ Robert Cover, *supra* n 13.

²¹ Barthes, *supra* n 18.

“ambivalent father-complexes of our children”.²² So too Freud’s assertion as to the replacement of the absent father by the realm of the sacred in primitive societies is supported by his analysis of animal phobias in children.²³ Even more explicitly, Freud acknowledges the importance of the “primitives of our time, our children” in providing a basis for understanding totemism.²⁴ On a similar note, Jürgen Habermas relies on Jean Piaget’s theories of childhood to sustain the notion that societies go through three stages: the mythical, the religious-metaphysical, and the modern.²⁵

Childhood is a time of permeable boundaries and of slowly emerging subjectivities, a time in which the web of myth can be seen weaving its magic most clearly and with greatest effect. Certainly the scholars of myth have thought so, and have found themselves attracted to children’s behavior as a laboratory for their theories. But there is a logic here that has not yet been adequately pursued. For if childhood is a province of myth, and if myth itself is to be understood as central to the origin of our understanding of society and law, then the mythological elements of children’s stories ought *themselves* to be regarded as an essential site for the emergence of particular understandings of law. I want to demonstrate that proposition in this essay by focusing on one such story in particular, with a view to establishing its mythic qualities and at the same time asking exactly what relationship to law and authority is thereby being constituted.

Children’s fables are without a doubt pedagogical and normative; we would not set such store by them were it not so.²⁶ They are profoundly influential in the child’s constitution.

²² Peter Fitzpatrick, “Traversing *Terra Nullius*: Legal Origins and Freudian Fictions,” 4:1 *Law/Text/Culture* 18 (1998), p. 29

²³ *Id.*, at 22, 33.

²⁴ *Id.*

²⁵ P. Condlifee, “Law, Language and Culture,” 8 *Queensland University of Technology Law Journal* 105 (1992), p. 109.

²⁶ See Fanny Népotte-Desmarres, *La Fontaine, Fables* (Paris: UPF, 1999); Andrew Clader, *The Fables of La Fontaine: Wisdom Brought Down to Earth* (Genève: Droz, 2001).

Stories transport us, and the younger we are the more absolute is our transportation. They are for children worlds to inhabit. The authority of the story derives from its experiential force, coupled with the child's ability to summon it up again and again and to respond to it as they will. The story has a power over the very young that it may never have again; but part of the power it has is the power to conjure that it permits children themselves to exercise. In particular in the lives of smaller children, books have a sacred quality and are often surrounded by rituals that heighten their emotional significance for the child. At the same time, these books exist as *events* in the lives of children who are only gradually capable of distinguishing different kinds of reality. We are none of us born with boundaries between fiction and reality, self and other. This we learn, and books teach us. But paradoxically, a children's story also undermines those boundaries, or more precisely, uses the early malleability of those boundaries in order to constitute them, from the inside as it were. In that sense, such stories are of course rather like a Constitution: an act of absolute and unlimited sovereignty which commits to binding itself and to placing limits on that sovereignty... happily ever after.

The authority of a children's story, then, in part derives from the way it transgresses the rules in the very process of introducing us to them. This is part of the connection between myth, the sacred, and ritual. It is why so many ancient rituals are governed by ecstasy, possession, or hallucination;²⁷ here too, the messages imparted have a peculiarly powerful quality because they reach in below the level of the conscious mind and its customary barriers to cognition. But children do not need to take mind-altering drugs to alter their minds.

Do we not yearn to recapture something of this excitement in our later years?²⁸ — this feeling of absolute submission to an external force and yet absolute freedom over it, a feeling that we look for in 'literature', in 'adventure', and even in love. Of each, we talk about getting lost or falling as somehow the goal. They are subconscious choices we make because we desire this transgression, this loss of control. Indeed, in Lacanian mode one might argue that these are just instances of desire itself, the desire to be transformed, to be transfigured, to lose our sense of earth-bound mortality by becoming someone or

²⁷ Peter Furst, *Hallucinogens and Culture* (New York: Chandler & Sharp, 1976).

²⁸ Andrew Weil, *The Natural Mind* (Boston: Houghton Mifflin, 1972).

somewhere else. To be otherwise-than-ourselves *is* desire.²⁹ Literature and adventure are modes of apprehension of the power of myth to transform us. But we are far from the ancients, and in a world where mythlessness is our greatest myth, these constitutive and transcendental experiences are surpassingly rare. Children's books often hold a powerful place in our emotional memory precisely because they harbour between their covers myth in its first and purest form.

There is nothing mysterious about myth. It shines in the most mundane of environments: a bedroom at night, on a parent's knee or under the covers, by a study light or the glimmer of a torch, silently or out loud, read or off by heart. These everyday contexts should not distract us from the significance of its function in the lives of children. In this regard, children are not metaphors for primitives; childhood is the scene of the mythic emergence of sociability in each and every life, repeated and constantly renewed. Children's literature, then, is not *like* myth. It is myth. Children's literature is not a source of information *about* social structures of subjectivity in our society. It is the very site of their emergence. Children's literature is not a series of texts *about* the law. It is a source of law.

Perhaps this is not yet mainstream jurisprudence, but it is hardly controversial either. The school of legal pluralism has done much in recent years to emphasize that law is fundamentally not a product of canonical forms and statutory enactments. It is learnt, and practiced, in specific cultural contexts, in diverse and disparate fashions, on an everyday basis. The interpretative battles over the meaning and functions of law take place not as a spectacle in the courts of law's empire, but as daily events in the streets, societies, and homes all around us.³⁰ Law is a product of dialogue and discourse all about us: in the things that we read and say, in the music we listen to³¹, and the art we grow up with.³² I

²⁹ Emmanuel Levinas, *Otherwise Than Being or Beyond Essence*, trans. Alphonso Lingis (Pittsburgh: Duquesne University Press, 1981, 1974), esp. pp. 153-61.

³⁰ Cover, *supra* n 13; John Griffiths, "What is legal pluralism?" 24 *Journal of Legal Pluralism and Unofficial Law* 1 (1986); Hendrik Hartog, "Pigs and Positivism" *Wisconsin Law Review* 899 (1985); Roderick A. Macdonald, *Lessons of Everyday Law* (Montreal: McGill – Queen's University Press, 2002).

³¹ Desmond Manderson, *Songs without Music* (Berkeley: University of California Press, 2000).

want to extend that contention in this essay by arguing that there *are* nevertheless texts that provide an important discourse through which we develop assumptions as to the meaning, function, and interpretation of law; assumptions that are tested and implemented in those daily events throughout our lives. The texts that play this important role are not the *Magna Carta* or *Marbury v Madison*. They are our children's books.

Any claim as to the privileged status of children's literature depends, of course, on a particular social context. Philippe Ariès' ground-breaking book, *Centuries of Childhood*, traces to about the seventeenth century the social pre-occupation with childhood as a distinct category of life.³³ The twin concepts of the *individual*, unique and vulnerable to death (*devant la mort* as he wrote elsewhere³⁴), and *society*, a force capable of rendering productive that individual across many lifetimes, led to an altogether new significance being afforded to children — the wellspring of that individual, the clay of that society, the promise of triumph over that mortality. In light of these specific expectations and anxieties, the family began to develop its modern form as an intense structure of *affect* centred on the care of children,³⁵ and with it developed an intense narrative of nostalgia and desire for the innocence and promise of youth. Childhood “is the age of innocence, to which we must all return, in order to enjoy the happiness to come...,” we are told. It is “the golden age of human life...”³⁶

³² Nicholas Kasirer, “Larger than Life” 10 *Canadian Journal of Law and Society* (1995) at 185.

³³ Philippe Ariès, *Centuries of Childhood: A social history of family life* (NY: Knopf, 1962). See also E. Becchi *et al*, *Histoire de l'enfance en occident*.

³⁴ Philippe Ariès, *L'homme devant la mort* (Paris: Editions du Seuil, 1977).

³⁵ Ariès, *supra* n 33 at 369-72.

³⁶ Quoting F Guérard in *id.*, at 110.

But at the same time childhood began to be thought of as a time of danger both in terms of children's vulnerability, and by virtue of their essential difference from the norms of adulthood. In this too, it is apparent that the child prefigures the inherently ambiguous status of the 'noble savage', by turns vulnerable, innocent, immoral, and dangerous. The parallel is rendered explicit in William Golding's well-known novel, *Lord of the Flies*.³⁷ Just so, the imperative of compulsory education foreshadows the later rationales of compulsory colonialism. The duty to educate becomes, like the duty to civilize therefore, a moral necessity in order to protect society from the contamination of children no less than the other way around. Ariès continues,

The idea of childish innocence resulted in two kinds of attitude and behavior towards childhood: firstly, safeguarding it against pollution by life, and particularly by the sexuality tolerated if not approved among adults; and secondly, strengthening it by developing character and reason.³⁸

"The two concepts of childhood," as an innocence to be cherished, and yet as a weakness to be corrected and a danger to be suppressed, from then on march lockstep into the modern world. The memory of childhood past was glazed in nostalgia while at the same time the experience of childhood present was smothered with a hefty and frequently violent discipline.³⁹

By the logic of this reverse alchemy, what was loved about childhood nevertheless had to be ruthlessly destroyed. *Up*-bringing traces a teleology of loss. Childhood became a normative experience, a question of standards and expectations, progress and control, surveillance and measurement.⁴⁰ Many institutions were marshaled for the task, schools

³⁷ William Golding, *Lord of the Flies* (New York: Coward-McCann, 1962).

³⁸ Ariès, *supra* n 33, at 119.

³⁹ *Id.*, at 130-33.

⁴⁰ *Id.*, Part II generally.

of course most significantly of all. But even here there was a movement from the end of the eighteenth century away from the methodology of violence and oppression and towards more subtle strategies.

Henceforth it was a question of awakening in the child an adult sense of responsibility and dignity. The child was not so much opposed to the adult...as prepared for adult life. This preparation could not be carried out brutally and at one stroke. It called for careful, gradual conditioning.⁴¹

“The idea of awakening the man in the child”⁴² describes a concept of socialization of the young that is still very much with us. The criminal law, to provide but one example, recognizes the child as a legal subject at that moment when it attains the capacity to distinguish right from wrong. It is in this context that a distinctly children’s literature developed, and by which that literature is still largely evaluated. The bed-time story is the contemporary instrument of this subtle, loving, but relentless socialization by which the child becomes fit and fitted out for adult life and law. This is the necessary corollary of contemporary legal pluralism. Since law exists in the everyday, then it must be learnt in the everyday too; its content and its techniques – the two, as I will argue, are mutually imbricated – must be entirely continuous with the pedagogical and discursive practices of the modern world. This is precisely the point that Macdonald makes in *Lessons of Everyday Law*.⁴³ I want to push the point in this essay by insisting that children’s books, because of their mythic power, because of their capacity to instill resources that echo throughout our life, are a crucial point of origin for those life-long practices.

It is somewhat shocking then to discover how few scholars have taken the opportunity to explore the development of legal understanding through the medium of children’s literature. On the one hand, children’s writers have, of course, known all this in their

⁴¹ *Id.*, at 264.

⁴² *Id.*, at 265.

⁴³ Macdonald, *supra* n 30; see Daniel Jutras, “The Legal Dimensions of Everyday Life” 16 *Canadian Journal of Law and Society* (2001) pp 164-66; Martha-Marie Kleinhans and Roderick Macdonald, “What is a Critical Legal Pluralism?” 12 *Canadian Journal of Law & Society* (1997).

bones for a very long time, and there is a tradition of myth-making as explicit social constructivism throughout the history of children's literature that extends from the versification of bible stories, through Charles Kingsley's *Water Babies*,⁴⁴ to T.H. White's re-telling of the Arthurian myths of English nationhood in *The Sword in the Stone*.⁴⁵ On the other hand, there have been, especially in recent years, many significant analyses of the cultural, sociological, and most certainly mythic dimensions of children's books.⁴⁶ But in all this, its jurisprudential aspects have been roundly ignored. French legal sociologist Chantal Kourilsky has written compellingly on the socialization of legal concepts by children,⁴⁷ and I shall have much more to say about the pioneering sociological work on this question by Jean Piaget . But what is surprising is to see how little there has been reference to particular children's texts as performing particular jurisprudential work. The law and literature movement, where one might expect such specific and specifically pluralist studies, has until recently focused on a particular and somewhat orthodox, though gradually expanding, corpus of adult texts. There was simply no analysis at all of literature written with a child audience in mind. The interdisciplinary workshop on law and children's literature held only last year at the Socio-Legal Research Centre in Brisbane deserves to be hailed, therefore, as marking a significant breakthrough.⁴⁸ The scholars who gathered there pursued an unusual breadth

⁴⁴ Charles Kingsley (1818-1865), *The Water Babies* (New York: Watts, 1961).

⁴⁵ T.H. White, *The Sword in the Stone* (London: Collins, 1938).

⁴⁶ See especially Bruno Bettelheim, *The uses of enchantment: the meaning and importance of fairy tales* (New York: Vintage Books, 1977) and see also the discussion of Bettelheim's analysis of myth in Robert Segal, *Theorizing about Myth* (Amherst: University of Massachusetts Press, 1999); Robert Darnton, *The Great Cat Massacre and Other Episodes in French Cultural History* (New York: Vintage Books, 1985); Ellen Spitz, *Inside Picture Books* (New Haven: Yale University Press, 1999). For an outstanding recent socio-cultural analysis of Dr Seuss' *The Cat in the Hat* and *The Cat in the Hat Comes Back*, see Louis Menand, "Cat People", *The New Yorker*, Dec 23 & 30, 2002, pp. 148-54.

⁴⁷ Chantal Kourilsky, *Socialisation juridique et modèle culturel* (Paris: LGDG, 1996).

⁴⁸ Socio-Legal Research Centre, Faculty of Law, Griffith University, *Kidlit as Law-and-Lit: An Interdisciplinary Workshop on the Law and Children's Literature*, 14 July 2001.

of materials. Even here, however, two important caveats are warranted. First, much of the discussion focused on texts for older readers precisely in the capacity that they might speak to an adult audience, an audience of jurists. The question of the impact of these texts on their *intended* audience was not, it seems to me, uppermost. Secondly, the approach throughout was to treat those texts as depicting a legal world and then to analyze the implications of, and within, such a world. The text then becomes a law unto itself.

This much is true, I think, even of the sophisticated work of William MacNeil, whose writing on *Harry Potter*⁴⁹ and *Buffy the Vampire Slayer*⁵⁰ is distinguished by its attention to detail and its theoretical complexity. Particularly in his recent and as yet unpublished work on Tolkein's *Lord of the Rings*, MacNeil makes the case for his theoretical project with eloquence and clarity, describing it in terms of "clear[ing] the debt, long overdue, that jurisprudence owes so clearly to literary criticism."⁵¹ In other words, the agenda here involves the use of legal tropes to enrich literary meaning, and not the other way around. MacNeil appears less interested in the implications of his analysis for the construction of legal persons and norms in an Earth that is not Middle. The way in which this work has developed over the past several years confirms my previous remarks. Law-and-literature continues to mean literature as gleaned by "*lawyers* — especially of a critical stripe."⁵² To describe the law *in* Harry Potter's world is not yet to speak of Harry Potter *as* law, nor yet to think through the processes by which one becomes the other in the lives of young readers.⁵³ Every fictional world, it is true, must have a law no less than a geography or a

⁴⁹ William MacNeil, "'Kid Lit' as 'Law-and-Lit': Harry Potter and the Scales of Justice," *Law and Literature* 14 (2002), 545.

⁵⁰ William MacNeil, "You Slay Me! Buffy as Jurisprude of Desire," *Socio-Legal Research Centre Seminar Series*, Griffith University, Brisbane Australia (2002).

⁵¹ William MacNeil, "One *Recht* to Rule Them All! Law's Empire in the Age of *Empire*" [unpublished paper on file with the author].

⁵² MacNeil, *supra* n 49, at 3.

⁵³ It is worth emphasizing that my thinking on this point has been significantly influenced by MacNeil's work on Frankenstein, "The Monstrous Body of the Law: Wollstonecraft vs Shelley"

history or a science, and the more complex the world the more detailed it will be. But the question for me, and the point at which my approach parts company with that of others in the field, is this: how does this pertain to or effect the law (or the history, or the science) in the world of those who read it? That would seem to be the task that yet awaits us.

I want to introduce such an analysis in this essay, parsing a children's text in light of the material conditions that govern its reading and the social conditions that structure children's up-bringing; in consideration of the actual ways in which it would be understood by the children who read it; and furthermore to think through exactly how such a text might indeed constitute the child's own understanding of and relation to law in their everyday lives. It is this *relationship* of text to world that marks out children's books not just as stories but as myths in the strong transformative sense I have advocated. As Robert Cover insists, "the creation of legal meaning... takes place always through an essentially cultural medium."⁵⁴ Children's books are precisely such a cultural medium. What is at stake is the proposition that literature holds the key to the constitutive myths and narratives that begin to organize our relationships to law.⁵⁵ What is at stake is a claim that would dissolve the boundary between law and literature once and for all.

12 *Australian Feminist Law Journal* 21-40 (1999), and on Dickens, "Beyond Governmentality: Justice in 'Great Expectations'" 13 *Australian Feminist Law Journal* 98-118 (1999). The strength of this work stems precisely from the way in which his analyses carefully integrate law and literature into one mutually constitutive field.

⁵⁴ Cover, *supra* n 13, at 6.

⁵⁵ James Boyd White, *The Legal Imagination* (Chicago: University of Chicago Press, 1985); *Heracles' Bow: Essays on the rhetoric and poetics of law* (Madison: University of Wisconsin Press, 1985).

WHERE THE WILD THING ARE

For these reasons the present study takes as its principal concern perhaps the most influential and best known of all books for very young children on the cusp of literacy and, as we will see, the verge of legality. *Where The Wild Things Are* has become a, or even the, classic of children's literature.⁵⁶ Since its first publication in 1963, it has gone through innumerable printings, been translated into dozens of languages, received all imaginable plaudits, and been subject to varied scholarly analyses.⁵⁷ In the year 2002 alone, there has been a major retrospective of Maurice Sendak's work, entitled *Where The Wild Things Are*,⁵⁸ a video and DVD just released,⁵⁹ and a film version slated to begin production. For forty years Sendak's book has been loved for its textual lyricism, its illustrative wit, and its emotional depth. Yet when it first appeared, Sendak's book was not universally praised. So violent and hostile a reaction did it provoke that some libraries even banned it. Sendak recalls:

When that came out, there were psychologists who said, This is a bad book. Any mother who sends their child to bed without dinner is a terrible mother. They objected to that, they objected to him being so rude to his mother, they objected to her yelling back at him, they objected to the Wild Things being too scary. They objected to everything. When it was first published it was very novel and different. In fact, [Bruno Bettelheim] said that. He did take that back later in life. He did me a lot of damage at the beginning. Now it's a classic and cult book and showered with

⁵⁶ Maurice Sendak, *Where The Wild Things Are* (New York: HarperCollins, 1984, 1963). References to the text of the book in this essay will be to this edition by way of in-text citation.

⁵⁷ Again, see especially Spitz, *supra* n 46; Selma Lane, *The Art of Maurice Sendak* (New York: Abrams, 1993).

⁵⁸ Skirball Cultural Center, Los Angeles: September 20 2002 — January 5 2003.

⁵⁹ *Where The Wild Things Are and Other Maurice Sendak Stories* (New Video Group, 2002).

praise. And I know it's going to be on my tombstone, I just know it. And of course, I won't care, 'cause I'll be dead.⁶⁰

Although the eponymous monsters were said to be too frightening for young children, it was the fear that Sendak stirred up in adults that lay behind their antipathy. Sendak's story respects children's behavior, and represents not only their intelligence but their emotional ambivalence. In so doing, like all good literature, *Where The Wild Things Are* transformed the field.⁶¹ On his tombstone I would engrave the following: Maurice Sendak took children, and children's literature, seriously.

Where The Wild Things Are is a book about the emergence of law. It is the story of a little boy named Max who is sent to bed without supper and, like HLA Hart, becomes a King in his dreams. It is also the story of how Max, through the dream, comes to understand something of the necessity of law and our responsibility in relation to it. Finally, it is a story that stages the child's movement from a state of disorder to participation in the human community of law, and therefore (mythologically) helps to constitute a parallel movement in its readership. Yet neither law nor literature sustain themselves as decretals. Their legitimacy stems from their ability to speak with us and through us, not merely *at* us. This is the message of the text, about law, and it is convincing precisely because it is expressed with the openness of literature. By showing compassion to its readership and by acknowledging the listening child's emotional complexity, *Where The Wild Things Are* transcends the status of a pallid primer. The influential best-seller, *Why Johnny Can't Read*, had in the 1950s incited the process of transforming children's literature from "horrible, stupid, emasculated, pointless, tasteless little readers" into something of actual experiential relevance to the child.⁶² *Where The Wild Things Are* exemplifies that transformation. By becoming literature, inviting the reader to make their *own* judgments and contributions, it becomes part of the child's life,

⁶⁰ <http://www.post-gazette.com/movies/20010810video0810fnp7.asp>

⁶¹ Jacques Derrida, "Before the Law" in *Acts of Literature*, ed Derek Attridge (New York: Routledge, 1992) pp. 181-220, at p. 215.

⁶² Rudolf Franz Flesch, *Why Johnny Can't Read* (1955) discussed and quoted in Louis Menand, "Cat People", *The New Yorker*, Dec 23 & 30, 2002, p. 148.

and so succeeds pedagogically. So too its story transcends the status of an instructional manual on the importance of obedience. By introducing responsibility, inviting the reader to make their *own* judgments and contribution, its ideas, too, become part of the child's life, and so succeeds as law. Like all myths, it works through an alliance of form and content that leads people not merely to be told certain things, but to experience them and work through them in themselves. *Where The Wild Things Are* might stand as the paradigm for a definition of myth that sums up the argument developed in this first Part, and that it will be the burden of the following Parts to demonstrate. Myth is the *fusion* of law and literature.

My demonstration of the power and relevance of *Where the Wild Things Are* as both an argument about law, and a way of constituting a specific form of legal subjectivity in children, will take us step by step through the pages of Sendak's little epic. In Part II I commence this project. The story begins with a domestic drama of disobedience, for which Max the mischievous child is sent to his room to reflect on the error of his ways. "Before the Law" explores this primal scene of law-giving through the lens of Norbert Elias' sociology of childhood. He argues that children's process of up-bringing is precisely a miniature re-enactment of the development of modern civilization in the West. It is explicitly represented as such in Sendak's book. One orthodox position would have it that a civilized child learns to 'obey' their parents. But Sendak's text dramatizes the inherent difficulties that children face in understanding what it *means* to be obedient. My argument is that these difficulties are insoluble, endemic, and intensely felt. To understand a civilized relationship to law as children begin to perceive it requires us to develop a more complicated jurisprudential position. "The Civilizing Process" takes us further on in Max's story, into the dreamworld that he imagines and that represents his own internal struggle between his desires for freedom and to win the approval of his parents. In order to understand how these tensions are resolved in the development of legal consciousness, we must supplement Elias' sociology with Piaget's psychology. Jean Piaget makes a passionate case for an idea of justice that emerges in and through children themselves and that is not centred on mere submission to authority. But I will endeavour to demonstrate that Piaget's answer to the question of how and why this justice emerges in the child is no more satisfactory than that of Elias.

The third and concluding section of Part II, "The Dawning of Responsibility," takes this argument to its conclusion, arguing that Max's resolves his proto-legal dilemma, at the end of the dream sequence that forms the centerpiece of the book, through an idea of legal responsibility that is distinct from that of legal obedience. Max becomes civilized, in Elias' terms, by learning to think about his relationship to others, in Piaget's terms. Unlike Piaget, however, I want to argue that children's own experience in their families itself sustains such a more complex understanding of what 'obeying the law' entails. In

Sendak's book, the moment at which Max thinks of his family with love is depicted as the dawn of responsibility. It is the moment at which he abjures forever the kingdom of the "wild things" and heads for the comforts of home. Is Sendak suggesting that Max is promised love in *exchange* for obedience to his parents' laws? I do not think so. I will argue that a better reading of *Where the Wild Things Are* would ask us to understand love and law as institutions that require us to think about what they are *for*, in order to interpret what they mean. To love the law, or to promise to honour the law of the family one loves, demands an on-going commitment to think about its purposes and its justice. HLA Hart to the contrary, such a commitment is incommensurable with literalism, legalism, or positivism.

The argument that is developed here, therefore, is a reading of Sendak's narrative through the lens of certain normative commitments. Indeed, it is precisely my argument that *all* interpretations of texts, including legal texts, must be so normatively engaged. My own reading of Sendak is not obedient to the text, but responsible to its purposes, just as the concept of law that the text constitutes involves the child who reads it in a growing responsibility to the laws and principles around them, rather than a mere formal obedience to them.

Sendak's text is a myth that constitutes in children a certain relationship to law. It dramatizes, on my reading, a debate about what it means to interpret the law properly. In Part III the argument moves, like Max's story, from the interior dialogue of the subconscious mind back to the real world. Max's adventure ends when he returns home, newly civilized, to his supper. In "Learning Sendak 'off by heart'" the essay likewise thinks about the actual conditions under which *Where the Wild Things Are* might be experienced and read by children. Who reads this story, how, and in what kind of environment? How do these questions relate to our understanding of what the story itself seems to be saying? I argue that the meaning of such a story will depend in many different ways upon the social conditions in which it is read: meaning emerges not from some objective content, whether we are talking about a children's story or a legal statute, but rather from the discourse which governs how that text is received and interpreted. Nevertheless, I argue that the governance of children, at least in some families and in some times, will indeed sustain the complex normative reading of legal obligation that I have defended. The web of the world resonates to the tune of Sendak's myth.

In the essay's Conclusion, I draw upon the ethical theory of Emmanuel Levinas to further explain my particular reading of Sendak and of law. Levinas gives us the resources to make sense of the controlling metaphor of *Where the Wild Things Are*: food. Hunger, after all, drove Max to mischief in the first place; food was the medium of the sanction

meted out to Max for his disobedience, and it is the reward that he receives, on the last page, for his newly civilized behavior. For Levinas, the distinction between hunger and love is fundamentally the distinction between egotism and altruism. Max's hunger initially drives him to selfishness. But by the end of the story food comes to symbolize the love that binds him to and with his family. Now, at last, he seems capable of thinking about his behavior in relation to others, and therefore of interpreting his parents' laws purposively, which is to say, responsibly. Love and responsibility emerge in our lives together; we cannot be good legal citizens without them. Sendak appears to be saying no less.

Part II The world in the head

BEFORE THE LAW

*That night Max wore his wolf suit and made mischief of one kind
and another
his mother called him "WILD THING!" and Max said "I'LL EAT YOU UP!"
so he was sent to bed without eating anything.*

*That very night in Max's room a forest grew and grew –
and grew until his ceiling hung with vines and the walls became the world all around
and an ocean tumbled by with a private boat for Max & he sailed off through night & day
and in and out of weeks and almost over a year to Where The Wild things are.⁶³*

⁶³ Sendak, *supra* n 56, at 4-19. The book is unpaginated; for the purposes of this essay I have paginated it myself beginning with the title page.

Where The Wild Things Are dramatizes both (a theory of) childhood and (a theory of) law, and unifies them in narrative form. It treats them both as elements of what the great German sociologist Norbert Elias termed *The Civilizing Process*.⁶⁴ Elias argues that civilization is the “self-consciousness of the West.”⁶⁵ It stands, as Mirabeau observed in 1760, equipoised between barbarism and decadence.⁶⁶ But Elias focuses on civilization not as a natural gift, nor as the inevitable progression or the eternal condition of a culture, but as a specific mode of affect developed over many centuries. This affect might be characterized by the growth, from the end of the medieval period onwards, of a sense of individualism and privacy, leading to increasing physical and emotional restraint across all aspects of social life. Elias goes straight to the daily experience of people’s lives. How do people eat together? Do they sleep in the same room? Do they use cutlery or handkerchiefs or must their hands suffice? What is the intensity of their public emotional state? Elias argued that what we call ‘civilized’ behaviour is the result of the physical, emotional, and psychological distancing effects in which we are raised.

People who ate together in the way customary in the Middle Ages... such people stood in a different relationship to one another than we do. And this involves not only the level of clear rational consciousness; their emotional life also had a different structure and character. Their affects were conditioned to forms of relationship and conduct which, by today’s standard of conditioning, are embarrassing or at least unattractive.⁶⁷

The civilizing process, which begins merely as a kind of imitation, deepens over time. It operates psychologically through the transformation of restraint into self-constraint, “partly [in] the form of conscious self-control and partly that of automatic habit.”⁶⁸ The

⁶⁴ Norbert Elias (1897-1990), *The Civilizing Process*, trans. Edmund Jephcott, ed. Eric Dunning, Johan Goussblom and Stephen Mennell (Oxford: Blackwell, 1994, 1939). Originally published in two separate volumes as *The History of Manners* and *State Formation and Civilization* (1939).

⁶⁵ *Id.*, at 5.

⁶⁶ *Id.*, at 39.

⁶⁷ *Id.*, at 60.

⁶⁸ *Id.*, at 375.

outward and bodily openness in relation to others that marked the medieval world becomes, over the course of centuries, transmuted into an internal discipline. Fear is likewise displaced inwards, and becomes anxiety — the psychological illness of the civilized.

Elias' contribution to the theorization of childhood is two fold. In the first place, he recognizes how important the children's primer or textbook of manners is in our attempts to understand the affective world of the past and the development of modern and obsessively refined notions of bodily propriety. Erasmus' *De civilitate morum puerilium* (*On civility in children*) (1530),⁶⁹ which Elias studies with great care, is a transcendent moment, since Erasmus thereby "gave new sharpness and impetus to the long-established and commonplace word *civilitas*" which became thereafter "fixed into the consciousness of people with the special sense it received from his treatise."⁷⁰ Coloured though it is by his gentle irony, Erasmus' little work is particularly illuminating both because he took the importance of etiquette in the formation of character seriously, and because his precepts show us at once the corporeal elements at the heart of the civilizing process, and yet how far we have traversed from that time to this:

It is disgusting to spit out chewed food and put in on your plate.
If you happen to have eaten something that cannot be
swallowed, you should discreetly turn away and toss it
somewhere.⁷¹

Secondly, Elias insisted that it is through the social and habitual education of children that the civilizing process of the centuries is performatively re-enacted, in miniature, in the course of each and every life. The child must learn very quickly to accept the patterns of control and self-discipline that took our societies many centuries to adopt. They must learn, in a few short years, the privatization of impulse and the shame of the body. Yet this socialization is imperative to the structure of modern law, which depends at every

⁶⁹ Erasmus, "On good manners in boys", trans. Brian McGregor, in Erasmus, *Collected Works vol 25*, ed. JK Sowards (Toronto: University of Toronto Press, 1985, 1530), pp. 269-89.

⁷⁰ Elias, *supra* n 64, at 55.

⁷¹ *Id.*, at 283.

turn upon a basic fabric of autonomy, self-restraint, and distance. It makes possible the intercourse of daily life, and the very freedom that might otherwise undo it. Elias notes, with considerable prescience, how we take for granted the predictability and stability of social relations that this affective restraint affords us, and the complex webs of interaction it thereby permits us to weave in safety. Only place us in a context of renewed and unpredictable external fear, and see how quickly we succumb to extreme and irrational responses.⁷² Civilization, in the sense that Elias uses it, must be constantly re-instilled if it is to maintain the *habitus* on which our legal and social structures unhesitatingly depend.

Furthermore, as each generation increasingly re-organizes its social structures on the assumption of just the kind of affective restraint that permits greater personal security and social inter-dependence, society demands at each turn a gradual *intensification* of this discipline. There is a process of amplification at work. Indeed, only by the extended discipline of children can such discipline be learnt.⁷³ No doubt it seems that, on the contrary, children have much more freedom than they used to, say one hundred years ago. Yet that is, as Ariès noted, a change in the theories by which we believe discipline and education can best be instilled. At the same time, it can hardly be doubted that the length of childhood has steadily expanded over the centuries, until now it would hardly be an overstatement to imply that children do not properly grow up and leave the nest until they are twenty-five. Or thirty. Or forty. Ariès' theory then is surprisingly Lamarckian, which is to say not genetic but 'socio-genetic': as we stretch like giraffes towards the farthest leaves, we transmit our attenuated necks — so much more agile, so much more fragile — to our offspring, through a process of socialization reproduced in slightly more extended form at each succeeding iteration. Max lies at the farthest end of some twenty-five generations of socio-genetic evolution. No wonder he finds civilization, at first, a little hard to stomach.

Children's stories then are agents in the transmission of discipline to children, not merely by their immediate instructive power but through their deployment of myth and their capacity not only to narrate the stories of a civilization but to echo and to contribute to

⁷² *Id.*, at 441.

⁷³ *Id.*, at 365-400.

the echoes of these myths as they suffuse the child's world. Sendak's story provides a particularly striking example of the operation of subliminal influences that is inherent in myth's process of resonance imaging. Indeed, not only are Sendak's readers unaware of the mythic and historical dimensions which the story evokes and with which it resonates across many centuries, but it is entirely probable that the author is too. Yet the associations are too clear to be ignored or dismissed. I am drawn to an unusual conclusion – we do not set out to tell myths; myths tell us.

Max begins the story, like all children, as “a wild thing”. The tropes of his wildness are not hard to find. “That night,” we are first told, “Max wore his wolf suit.” (4) The head of the suit looks particularly lupine, with its large whiskers and its great pointy ears that conceal all Max's hair and cheeks. (5) Now the image of the wolf has for a long time been synonymous in human society with ideas of alienation from human society, and abundant with connotations of uncontrollable animal fury. In *De civilitate morum puerilium*, Erasmus himself cautions his young charge not to set upon dinner with ravening greed. “That is the behaviour of wolves...”⁷⁴ Emmanuel Levinas, drawing on the language of Thomas Hobbes, asks us to consider whether “man is a wolf for man.”⁷⁵ To wear the suit of the wolf is to reject all the accoutrements of law and society and return instead to a solitary life of predatory behavior.

The “lone wolf” has long been a symbol not just for an outsider to the social order, but precisely for an *outlaw*. An outlaw is a grave threat to community. He is not a barbarian, the enemy at the gates but, far more perilously, the enemy within. And the Latin term was *caput lupinum*: wolf's head;⁷⁶ in Anglo-Saxon or Germanic sources, *wulfesheud* or *wargus* and sometimes *werewolf*. All are liminal figures, neither man nor beast but as Agamben writes, “[he] who dwells paradoxically within both while belonging to neither.”⁷⁷ Wild, and a thing. But the wolf's head was not simply a legend. It was a legal

⁷⁴ Erasmus, *supra* n 69, at 282.

⁷⁵ Emmanuel Levinas, with Philippe Nemo, *Ethique et Infini* (Paris: Fayard/Livre de Poche, 1982), pp. 74-75. Translation mine.

⁷⁶ *Hall v Hebert* [1993] 2 SCR 159 *per* McLachlin J (Supreme Court of Canada).

⁷⁷ Giorgio Agamben, *Homo Sacer* (Stanford: Stanford University Press, 1998) pp 104-05.

term with precise legal consequences as far back as (and before) the laws of Edward the Confessor which demand of the outlaw that “he bears the wolf’s head from the day of his expulsion.”⁷⁸ So too Bracton⁷⁹ writes in the most famous text of thirteenth century jurisprudence, *De Legibus et Consuetudinibus Angliæ*:

An outlaw also forfeits everything connected with the peace, for from the time he is outlawed he bears the wolf’s head, so that he may be slain by anyone with impunity, especially if he resists or takes to flight so that his arrest is difficult.⁸⁰

This is not to say of course that children reading this story are expected to know their Bracton, nor even that Sendak did. That only makes such a demonstration of the way in which cultural connections and myths are sustained and reinforced, unconsciously and over great stretches of time, all the more remarkable. Clearly the *Wild Things* simultaneously draws on memories of these associations, and finds them in its readers’ mind. So the web of meaning has been thickened by yet one more strand. Many are the children now who may someday read their Bracton with *Sendak* in mind.

On the next page, Max is depicted, *caput lupinum*, terrorizing the family dog with a fork. (7) What is a dog, after all, but a wolf that has been civilized – an inlaw not an outlaw? As for the fork, its role as a harbinger of civilization can scarcely be overstated.⁸¹ Elias notes that the fork enters the West only in the late Middle Ages. Its arrival served the needs of neither practice nor hygiene.⁸² Its first recorded use was by a Byzantine

⁷⁸ *Id.*, 105.

⁷⁹ Henry Bracton (1210-1268).

⁸⁰ Bracton, *De Legibus Et Consuetudinibus Angliæ* (Thorne Edition, Vol. 2, p 362, lines 12-15). <http://supct.law.cornell.edu/bracton/Unframed/English/v2/362.htm>

⁸¹ See James Giblin, *From Hand to Mouth: or How We Invented Knives, Forks, Spoons, and Chopsticks & the Table Manners to Go with Them* (New York: Crowell, 1987).

⁸² Elias, *supra* n 64, at 107.

Princess who, arriving in Venice at the close of the tenth century, appears to have been adjudged shockingly decadent on account of it.⁸³ James Giblin quotes a contemporary source:

Instead of eating with her fingers like other people, the princess cuts up her food into small pieces and eats them by means of little golden forks with two prongs... God in his wisdom has provided man with natural forks — his fingers. Therefore it is an insult to Him to substitute artificial metallic forks for them when eating.⁸⁴

Margaret Visser argues that the development of conventions of eating, or etiquette, and in particular the use of cutlery, served to enhance bodily security, since it allowed nobles to leave their knives outside of dining halls – blunter and more specialized implements were provided for dinner guests inside.⁸⁵ Yet as Elias insists, the function of the fork is primarily aesthetic. It expresses and in time *produces* a distaste for the bodily production of food; it distances us from it, and from all those who share it with us. The history of European culinary practice may be described as the alienation of alimentation. We do not eat from a common bowl with our fingers any more. We are served on personal platters, and the food travels from plate to mouth by means of dedicated instruments.⁸⁶ Touching food directly seems not so much wrong as disgusting, and it is one of the earliest and most fundamental steps in the civilizing of young children to ensure that they *feel* that disgust themselves. To use a fork once seemed decadent; to use one's fingers now seems barbaric. That is the civilizing process in miniature. Max shows himself, however, radically insensible to the proper use of cutlery, instead brandishing the fork as the very weapon that it was intended to abolish, and thereby reminding us once again that in his socio-genesis, he remains very much a denizen of the early middle ages.

⁸³ Peter Robb, *Midnight in Sicily* (London: Harvel Press, 1999), pp. 61-67.

⁸⁴ Quoted in Giblin, *supra* n 81.

⁸⁵ Margaret Visser, *Much Depends on Dinner* (Toronto: McClelland and Stewart, 1987).

⁸⁶ Elias, *supra* n 64, at 90-120; and see generally Giblin, *supra* n 81.

Finally, on the third page, and as the apogee of this lawlessness, Max threatens to eat his mother. (8) It is this that allows Sendak's story to resonate most clearly with the stories about the savages of the Cannibal Islands whereto (perhaps) he later travels. The Western myth of cannibalism expresses our profound horror at behavior that seems at once the ultimate breakdown of the most basic of social contracts and legal norms, and the ultimate in bad, bad manners.⁸⁷ It is this scandalous transgression that leads to Max's banishment and sets in train the psychological logic of his awakening.

Outlaw, barbarian, cannibal, Max has most assuredly broken the law – a law, one might add, that has the backing of no less an authority than the *Code Civil*, which in Quebec, for example, now provides by Article 597 that “every child, regardless of age, owes respect to this father and mother.” But the meaning and enforcement or even the enforceability of such a provision is a vexed question.⁸⁸ Parents, naturally, have their own and distinct sanctions to apply. Max is “sent to bed without eating anything.” (8) Bracton notes likewise it was illegal to feed an outlaw after his expulsion.⁸⁹ This is serious punishment indeed for a little boy who has communicated, with his every word and gesture, nothing but a need to be fed. Perhaps one might be led to believe from this that civilization is commensurate with learning obedience. Do what you're told — or suffer the consequences. The story of *Where The Wild Things Are* has been criticized, in the

⁸⁷ My claim does not relate to any actual or supposed practices of human flesh eating in any community, about which the meaning, nature, and extent is strongly contested. My claim is rather about the way in which a certain image of cannibalism has lodged itself in the Western mind, and the way in which that image is constructed as a fearful archetype of savagery and a test, therefore, of what we might in this context describe as civility. It is a question of the way in which the symbols of cannibalism have been developed and used within this particular culture: Lawrence Goldman, *The anthropology of cannibalism* (London : Bergin & Garvey, 1999); Reay Tannahill, *Flesh and blood : a history of the cannibal complex* (London : Abacus, 1996); W. Arens, *The man-eating myth : anthropology & anthropophagy* (New York: Oxford University Press, 1979).

⁸⁸ Art. 597 (S.Q. 1991, c. 64); Nicholas Kasirer, “Honour Bound” 46 *McGill Law Journal* 237 (2001).

⁸⁹ Bracton, *supra* n 80, p 361, line 33. I am indebted (yet again) to Peter Goodrich for pointing me in the direction of Bracton.

influential work on ‘picture books’ by Ellen Spitz, for example, for its ethical shallowness in this respect.⁹⁰ But on the contrary Sendak provides us with intimations that invite a far more ambiguous and complex reading of the questions of legality and ethics. No doubt textual meaning is a function of social context, as we shall see: we get the Max we deserve. One might read Sendak as a parable on the necessity for obedience to authority. But this essay will insist that a careful reading of Sendak’s work soon problematizes the simplicity of its apparent legal formulations. The text is alive with the tension between authority and desire, and if we are to find a resolution within it, a way of satisfying both, it cannot be solely on the basis that we should do what our betters tell us or, to put it another way, that we should *only follow orders*. There is a more ethically compelling reading available that starts from and is continually aware of the ambiguity of Max’s position as he sits alone in his room. *A punishment* for being barbarian? Where is the justice in that?

Max is depicted as experiencing the paradox that sits at the origin of any legal system, and that marks, moreover, the very entry of the child into law and the symbolic order. The child’s first encounter with law leaves him or her feeling, ironically, the subject of an injustice. Children are ‘before the law’ in precisely the dual sense that Derrida draws out of Kafka’s parable.⁹¹ That is, they are both ignorant of the legal order and yet subject to it. A child is a pre-legal subject and yet the quintessential object of regulation. Their lives are an experience of rules that are learnt only through the process of breaking them. Derrida’s point, and he makes it again in ‘Force of Law’ and elsewhere, is that this structure is inherent in the iterability of language itself.⁹² Since interpretation is always a judgment on and after an act, and cannot be entirely pre-determined, there is a sense in which the proper meaning of law is incapable of being understood in advance. Meaning is like the rear-view mirror, judged only retrospectively and from a moment that has past. In this sense, “the passage of time and the violence of law form two sides of the same

⁹⁰ Spitz, *supra* n 46.

⁹¹ Derrida, *supra* n 61, at 185-96; Franz Kafka, “The Parable of the Law” in *The Trial*, trans. Wilma and Edwin Muir (New York: Schocken Press, 1956), p. 303.

⁹² Jacques Derrida, “Force of Law: The Mystical Foundation of Authority,” 11 *Cardozo Law Review* 919 (1990).

coin.”⁹³ The force of law, then, contaminates every moment of its expression. While Hans Kelsen, therefore, would insist that only the *Grundnorm* — the first law of a community that establishes the conditions under which it takes place — suffers from this deficiency, Derrida argues that every norm contains within it a tiny fractal *Grundnorm* of its own, some decision or judgment that remains unmandated by the past.

One might take the analysis back, as Derrida does, to the Bible.⁹⁴ God mandated that Adam and Eve should not eat of the fruit of the tree of knowledge. But the two “make mischief of one kind and another” and are duly punished for it. Like Max, they must learn the penalty for disobedience. Yet how ought they have known what disobedience *was*, let alone its consequences?⁹⁵ This question it seems to me lies at the heart of the very idea of obedience. It derives, to be sure, from the Latin *audire* meaning to listen, but it implies something rather more than mere comprehension. To obey requires a kind of action in response to or *ob-*, which is to say, ‘on account of’, our having listened. So to obey is to submit to the decision of another, regardless of our own judgment, and to comply with their instructions. One cannot obey without our obedience manifesting in a mandated course of action (or in this case, of inaction), and on the other hand one cannot disobey without an intention to act otherwise. Disobedience is an act of defiance against authority, just as obedience is an act of conscious submission to it. But Adam and Eve live in a world before such a distinction has been formed. How were they to know the wrongful character of disobedience, which is to say its implications for the authority against which it is set, when they had not yet experienced it — and moreover when the very means by which they could have learnt to distinguish good from evil was prohibited them? It was only by eating the fruit of the tree of knowledge that they *became* aware of the distinction between obedience and disobedience. In which case, there is no sense in which they could appreciate the meaning or implications of their actions *prior* to their capacity to reflect on them. They were, in the fullest possible sense of the word,

⁹³ Beardsworth, *supra* n 8, at 101.

⁹⁴ Jacques Derrida, *The Gift of Death*, trans. David Wills (Chicago: University of Chicago Press, 1995).

⁹⁵ I am grateful for conversations with Mark Antaki which have helped clarify my ideas on this point.

innocent. The punishment of God was a lesson in the meaning of disobedience, but it must itself have been unjust.

This is particularly true, of course, of children, like Max, who discover that they have ‘gone too far’ *only* by experiencing the punishment for having done so. Indeed, it is precisely the purpose of children’s play to learn the boundaries of propriety through a process of trial and error. Children are common lawyers: they provide a constant series of cases and ask for judgment upon them. And they are experimental sociologists whose parents are the rats in their mazes. They play, and in playing they learn the law. This experimentation, this *tasting* of apples, is the means by which the knowledge of good and evil is learnt. But in what sense can we characterize their behavior as wrongful when it depends only on the distinction between play and mischief that cannot be determined in advance? One might say that Max is being punished for his ignorance of a law impossible to determine. One might go further and suggest that he is being punished for his very efforts to discover the law.

This might be characterized as the problem of ‘original innocence’, hitherto known as ‘original sin’ precisely in order to beg the question of the *injustice* that authority thus metes out. Those who would circumscribe our responsibility to law in terms of pure obedience to an already-established order, attempt to cauterize in two ways this injustice. Let us take the poster-boy of modern jurisprudence and that whipping-boy of postmodern jurisprudence, Herbert Lionel Adolphus Hart, as our exemplar. First, although HLA Hart concedes that the “rule of recognition”⁹⁶ by which we discover what the law requires of us, is itself an exercise in violence or politics, he argues that this is merely of concern at some preliminary or pre-legal moment. Yet we have seen, it contaminates not only the first law but all laws, since all laws contain within them moments of newness whose extent can be discovered only in the breach. Secondly while conceding that *some* laws cannot be properly determined in *some* circumstances, he insists that this problem is only “penumbral” to the experience of language. On the contrary, law is mainly preoccupied with “a hard core of settled meaning”⁹⁷ that enables all of us, once we become familiar with the words of the rule of law, to modify our actions accordingly. In other words,

⁹⁶ Hart, *supra* n 3, 92-107.

⁹⁷ HLA Hart, “Positivism and the Separation of Law and Morals” 71 *Harvard Law Review* 593 (1958), 614.

obedience to law, which is to say acting under instructions without judgment, is largely unproblematic.

By contrast, to soften the distinction... is to suggest that all legal questions are fundamentally like those of the penumbra. It is to assert that there is no central element of actual law to be seen in the core of central meaning which rules have, that there is nothing in the nature of a legal rule inconsistent with *all* questions being open to reconsideration...⁹⁸

The notion of obedience and the theory of hard-core meaning are necessarily connected. Obedience requires the following of rules without any reconsideration of them and therefore requires them to have some objective content that can be determined by the law-giver, alone and in advance. And Hart's lesson for a child like Max would be this: we expect you to learn the law, and to do so you need only obey the words we tell you. On such an analysis, legal civility would be a function of one's obedience to the pre-determined meaning of articulated norms.

But a hart is no match for a wolf. In evaluating such a theory of legality, one could do much worse than to look it from the perspective of a child. There are few so literal as a child. They appear therefore well placed to test Hart's contention that words have an unambiguous "core of central meaning." Max is being punished because he has been judged by his parents to have exemplified a "core instance" of the prohibited behavior known as "mischief." Clearly the more unambiguously mischievous his actions, the more disobedient his actions, and therefore wrongful. Hart again, *mutatis mutandis*:

If we are to communicate with each other at all and if, as in the most elementary form of law, we are to express our intentions that a certain type of behavior be regulated by rules, then the general words we use — like ["mischief"] in the case I consider — must have some standard instance in which no doubts are felt about its application.⁹⁹

⁹⁸ *Id.*, at 615.

⁹⁹ *Id.*, at 607.

Two elements present themselves as candidates for this unambiguous core of meaning. The first element is his mother's proclamation that he is a "wild thing!"¹⁰⁰ What was it that justified this declaratory judgment? Was it the wolf suit? The mischief? The fork? For Max, all of these components were simply part of the fantasy world that he had created. Whilst Max was allowed to play however, it seemed that there were implicit limitations placed on the *types* of games he could play. Yet Max, as a child who is before the law in his understanding of the operation of language and context, is unable to properly decipher the guidelines. Lon Fuller, quoting Ludwig Wittgenstein, offers a similar scenario:

Someone says to me: 'Show the children a game'. I teach them gaming with dice and the other says, 'I did not mean that sort of game'. Must the exclusion of the game with dice have come before his mind when he gave me that order?¹⁰¹

The limitations that words embody are penetrable only in light of a context of common purposes and objectives. So much is a familiar argument that Lon Fuller developed, and that critical legal studies later elaborated, precisely in response to Hart.¹⁰² As Derrida notes in "Force of Law", "the violence of an injustice has begun when all the members of a community do not share the same idiom throughout."¹⁰³ The study of children demonstrates just how difficult, how cultural, and how important is the ascription of purposes to words as an integral part of learning to make sense of them. It places this problem of interpreting idioms not in terms of some cross-cultural difficulty or some sociological difference, but at the heart of how every single one of us actually learns about law and rules. It is the gradual emergence of children's understanding of their *context*, not those words, which marks their emergence from a state of primitivism. So this is what children first learn about law: that it is something that cannot be properly

¹⁰⁰ In the following discussion I am indebted to the work done on Sendak by Ellie Parker in the course *Law & Discourse* at the University of Sydney.

¹⁰¹ Lon Fuller, "Human Purpose and Natural Law," 53 *Journal of Philosophy* 697 (1956), at 700.

¹⁰² Lon Fuller, "Positivism and Fidelity to Law," 58 *Harvard Law Review* 630 (1958).

¹⁰³ Derrida, *supra* n 92, at 951.

applied without reference to a purposive context of which they are only gradually aware. Children's mischief is precisely evidence of the importance of, and their ignorance of, a normative context, an understanding of what the laws are *for*. Moreover, their playful literalness, in which their mischief so often consists, demonstrates with considerable clarity the impossibility of arguing otherwise. Children very often act mischievously – either intentionally or otherwise – precisely when they take a rule literally and fail to consider its purpose in a wider context. HLA Hart's theory of language is the experience of *none* of us: not as children, not as parents.

The second element that might serve as the unambiguous core of meaning of the word 'mischief' appears to be his threat to "eat you up". (8) Is this not a standard instance of wrongfulness? Yet even here, or perhaps especially here, the complexity of the process by which contexts determine meanings becomes apparent. Sendak himself recalls the origin of the phrase in his own life.

I remembered how I detested my Brooklyn relatives as a small child... I remember how inept they were at making small talk with children. There you'd be, sitting on a kitchen chair, totally helpless, while they cooed over you and pinched your cheeks. Or they'd lean way over with their bad teeth and hairy noses and say something threatening like, 'You're so cute I could eat you up'. And I knew that if my mother didn't hurry up with the cooking, they probably would. So on one level, at least, you could say that wild things are Jewish relatives.¹⁰⁴

Sendak's account illuminates just how difficult and contextual is the process by which even simple structures of prescription are developed and stabilized. There is no such thing as a standard instance of the phrase "I could eat you up." It is apparently a metonym of affection in one context, and of wickedness in another. Indeed, later on in the story, the monsters that Max visits in his dream proclaim, "Oh please don't go — we'll eat you up — we love you so!" (34) leaving alarmingly unclear whether they mean to speak metaphorically or literally. In those primitive societies in which some version of

¹⁰⁴ Harry Morton, ed., *The Art of Maurice Sendak* (Tokyo: Abrahams Publishing, 1980), p. 93.

‘cannibalism’ may have been practiced, it is typically *both*: a symbolic expression of love through the physical incorporation of parts of the dead into the bodies of the living.¹⁰⁵

The child’s legal challenge then is precisely to determine the meaning of norms and prescriptions, and the interpretations to be given to his own statements, in a world utterly bereft of any context that would stabilize them. One begins to see that there is a certain traumatic irresolution in the child’s earliest encounters with the law. *Obey*. But obey what and how? How is Sendak to know that his relatives did not really intend to eat him up? How is Max to know that mischief-making does not belong to the repertoire of accepted play? And why will no-one tell him these things before — rather than by the very act of — sending him to bed? Max’s bewilderment before the law, in the twin sense of his subjection and his ignorance, is hardly surprising.

These are difficulties the man from the country has not expected;
the Law, he thinks, should surely be accessible at all times and
to everyone...¹⁰⁶

The regulatory framework in which the child immediately finds themselves, at home, requires not an isomorphic mapping of words onto objects — since that cannot by itself adequately create meaning in the child’s world — but rather a subtly complex reflexive equilibrium that children develop only gradually and through suffering. The child’s challenge is not simply to accept and obey the commands of a sovereign, but to understand the variable contexts and purposes that give meaning and value to them. This, not Hart’s fantasy of primitive cultures, is the concept of law that children learn at first hand. In the first part of the story, Max experiences his relationship to law as a crisis. The question I now pursue is exactly what he learns about law and his relationship to it, that allows him to resolve this crisis; allows him, in other words, to become civilized.

¹⁰⁵ See especially Goldman, *supra* n 87; Maggie Kilgour, *From Communion to Cannibalism: An Anatomy of Metaphors of Incorporation* (Princeton, N.J.: Princeton University Press, 1990); Peggy Reeves Sanday, *Divine Hunger: Cannibalism as a Cultural System* (Cambridge: Cambridge University Press, 1986).

¹⁰⁶ Kafka, *supra* n 91.

THE CIVILIZING PROCESS

*And when he came to the place Where The Wild things are
they roared their terrible roars and gnashed their terrible teeth
and rolled their terrible eyes and showed their terrible claws
till Max said "BE STILL!" and tamed them with the magic trick
of staring into all their yellow eyes without blinking once
and they were frightened and called him the most wild thing of all
and made him king of all wild things.*

"And now," cried Max, "let the wild rumpus start!"

*"Now stop!" Max said and sent the wild things off to bed
without their supper.¹⁰⁷*

Max's re-enacts through the language of a dream, (10-15) Freud's "royal road" to the unconscious, "the civilizing process," our "awakening" to a sense of propriety that is also a sense of obligation to law. The 'wild things' themselves are encountered only after Max's unconscious has traveled for almost a year over an ocean, to a land of forests, vines, and palm trees. (15, 19) Sendak again plays with the inherent instability of language in the experience of a child, taking Max's mother's standard instance — "his mother called him 'WILD THING!'" (8) — literally. Like something out of Ovid's *Metamorphoses*, the 'wild things' have been transformed from metaphors into beings.¹⁰⁸ It might even be said that this anthropomorphism or literalization is a classic strategy of myth-telling. But what sort of beings are they? Monsters. Radically other, beings that *monstrare* or show themselves, in deed and not in thought or language. Both in scenery and in characters it appears that we have returned to Jean-Jacques Rousseau,¹⁰⁹ and the

¹⁰⁷ Sendak, *supra* n 56, at 20-32.

¹⁰⁸ Ovid, *Metamorphoses*, trans. Arthur Golding (Baltimore: John Hopkins, 2001); and see also J Hillis Miller, *Versions of Pygmalion* (Cambridge, Mass: Harvard University Press, 1990).

¹⁰⁹ Jean-Jacques Rousseau (1710-1778), *Discourse on Political Economy and The Social Contract*, trans. by Christopher Betts (Oxford: Oxford University Press, 1994); Terry Ellingson, *The Myth of*

imperialist myths of the South Pacific he spawned. Max finds himself in a land of noble savages and cannibal kings.¹¹⁰ (18-21) One might even say that Sendak's images of the wild things, equal parts monstrous and loveable, amounts to a finely balanced depiction between the savage and the noble. Nothing could be clearer: a child is a savage and a savage is a child. Erasmus would certainly not have approved. His analysis of civility begins with the body and moreover with the eyes, "calm, respectful, and steady...not darting and rolling, a feature of insanity...nor staring like those of idiots."¹¹¹ Max's lack of civility marks him as the king of the wild things. (22-23)

At this point, Max's subconscious permits him to take on the role of authority denied to him in the waking world. He is depicted with all the trappings of law-making. (24) It is an authority that rapidly reproduces the law of the mother. He first permits and indeed participates in a wild rumpus that endures the whole night long. (26-31) It resembles nothing so much as the kind of pagan (or savage) religious bacchanalia common to many societies. As I have already noted, such festivals are prime sites for the transmission through ecstatic narrative of myth, and the constitution thereby of community. Yet Max's ambiguous relationship to this community is already a symptom of his modernity and will ultimately lead to his decisive rejection of the wild things. Just like his mother, he sends them off to bed (very late) without their supper. (32)

In Elias' terms, this transition represents the history of the civilizing process: from rumpus to sleep. And of course it is not just a story. Max's dream represents a child's growing up in terms that are embedded in the myths of the history of the West; its multiple layers echo, resonate, and parallel the emergence of civilization from savagery and the emergence of modernity from feudalism. For the dance that Sendak depicts is

the Noble Savage (Berkeley: University of California Press, 2001); Maurice Cranston, *The Noble Savage: Jean-Jacques Rousseau, 1754-1762* (Chicago: University of Chicago Press, 1991).

¹¹⁰ Frank Lestringant, *Cannibals* (Berkeley: University of California Press, 1997); Barbara Creed and Jeanette Hoorn, eds., *Body Trade: Cannibalism and Colonialism in the Pacific* (Sydney: Pluto Press, 2001); Jonathan Lamb, Vanessa Smith and Nicholas Thomas, eds., *Exploration and Exchange: A South Seas Anthology 1680-1900* (Chicago: University of Chicago Press, 2000).

¹¹¹ Erasmus, *supra* n 69, at 274.

gloriously intense in its affective intensity. The wild things, like medieval knights in some *chanson de geste*, go from hostility to love, and from violence to dancing, with a speed that appears perplexing.

Much of what appears contradictory to us [about the medieval world] — the intensity of their piety, the violence of their fear of hell, their guilt feelings, their penitence, the immense outbursts of joy and gaiety, the sudden flaring and the uncontrollable force of their hatred and belligerence — all these like the rapid changes of mood, are in reality symptoms of one and the same structuring of the emotional life. The drives, the emotions were vented more freely, more directly, more openly than later.¹¹²

It is worth noting that this intensity of mood was the *condition* of feudal structures of legal obligation, built as they were around the radical legitimacy of violent aggression and punishment on the one hand, yet stabilized on the other by cascading and interwoven structures of personal tribute and loyalty. Notions of fealty and revenge were the pillars of feudal law. They created personal and emotional obligations — not generalized normative ones — through and between every level of government.¹¹³ Such a legal order requires a way of binding subjects to it through affect. It is to be sustained not by legal science but by legal romance.¹¹⁴ Peter Goodrich has perhaps been almost alone in taking this argument seriously.¹¹⁵ The *chansons de geste*, therefore, were the major jurisprudential texts of the period. Friendship was glorified, as never before and indeed as never since, because it was a public virtue and indeed a public necessity. Max, for his part, calls to mind nothing so much as King Arthur in his pomp with jaunty crown and

¹¹² Elias, *supra* n 64, at 168.

¹¹³ Desmond Manderson, “*Statuta v. Acts: Interpretation, Music, and Early English Legislation*,” 7 *Yale Journal of Law & the Humanities* 317 (1995), 327-36.

¹¹⁴ Kevin Brownlee and Sylvia Huot, eds. *Rethinking the Romance of the Rose: Text, Image, Reception* (Philadelphia: University of Pennsylvania Press, 1992).

¹¹⁵ Peter Goodrich, *Law in the Courts of Love: Literature and other Minor Jurisprudences* (London: Routledge, 1996).

scepter high; surrounded by courtiers — wild things — who have avid eyes for him, eyes delicately calibrated between loyalty and ambition. (30-31)

“Now stop!” Max says (32) and reproduces his mother’s law, the law of restraint and interdiction. This reproduction of discipline comes with a psychic loss, but a necessary one, if the child is to participate in the modern world. He finds that he cannot join the ecstatic community of the wild things, that he is with them but does not belong with them. In us, the intensity of emotional exchange, the meaning of friendship and the value of passion, has been privatized, “everything is more subdued, moderate and calculated, and ... social taboos are built much more deeply into the fabric of our drive-economy as self-restraints.”¹¹⁶ We have locked up our rumpuses in rooms,¹¹⁷ and set apart our wildness and our wilderness.¹¹⁸ Max’s recognition of the need for order is nothing but the disciplining of the wild things of his own subconscious, and therefore precisely the internalization of self-restraint that Elias insists *is* “the civilizing process.” Whilst Max’s obedience remains contingent only on the threat of punishment, he remains a barbarian. The internalization of the necessity for restraint indicates his socio-genesis: *Where The Wild Things Are* reproduces in the space of a page many centuries of historical development, and that which would no doubt take “almost over a year” in the life of a child.

Yet the capriciousness of this *volte-face* comes as something of a shock to the reader, as no doubt it did to Max when he was its victim. “‘Now stop!’ Max said and sent the wild things off to bed without their supper.” Neither is Max content to revel in the power of his position. Having reproduced the legal order that first demanded his obedience, he

¹¹⁶ Elias, *supra* n 64, at 168.

¹¹⁷ The development of the bourgeois home from its origins in sixteenth century Holland is a history of the relentless privatization of public space and specialization of social function. This history forms yet another and highly significant aspect of the physical and quotidian ways in which the West constituted an ever-increasingly discipline and self-restraint amongst its members: Witold Rybczynski, *Home: a short history of an idea* (New York: Viking, 1986).

¹¹⁸ For a discussion of the history of the changing concept of wilderness over the past two centuries, see Simon Schama, *Landscape and Memory* (New York: Knopf, 1995).

finds himself “lonely” and dispirited. (32-33) I want to take seriously the nature and implications of this emptiness and where it leads Max. The essay now moves to consider the ways in which children *experience* moral development in terms of their understanding of rules, and it is the dimensions of this question that justifies our move from Elias’ sociology to Piaget’s psychology. Again I want to argue that there is a tension here between different kinds of relationships to law that might be described in terms of obedience (or the suspension of judgment) on the one hand, and responsibility (or the exercise of judgment) on the other. Because Piaget is concerned with the internal world rather than the external conduct of children, he recognizes the tensions between different normative and interpretative approaches as Elias does not, but Piaget’s resolution of them is altogether too schematic. I will argue in the next section that Max’s “loneliness” dramatizes just this tension, and a careful reading of Sendak’s book will lead us to an alternative resolution of the question it poses as to what it means to be legally civilized.

Jean Piaget¹¹⁹ continues to be of central importance to the field of educational psychology. Undoubtedly Carol Gilligan is correct to remark upon his somewhat authoritarian treatment of his child informants, and his willingness to entice, demand, and even force their responses into the unyielding matrix of his pre-determined categories of moral development.¹²⁰ In all this he is distinctly a creature of the nineteenth century: a structuralist, with all the taxonomic effrontery that applies. All the same, Piaget’s arguments for the stages by which questions of morality and judgment are developed within children, remain persuasive.¹²¹ Although over-simplified, Piaget’s work is constantly inventive and, moreover, founded on a respect for how children learn and an attention to what they say, that remains, even in this day and age, quite radical. Let us look, says Piaget, at a context in which rules really *are* important to children — a game of marbles, for example — and let us observe the way in which their understanding of

¹¹⁹ (1896-1980).

¹²⁰ Carol Gilligan, *In a Different Voice* (Cambridge, Mass.: Harvard University Press, 1982).

¹²¹ Jean Piaget, *The Moral Judgment of the Child* (NY: Free Press, 1997, 1932).

rules matures.¹²² Let us acknowledge, in other words, the idea of play as the origin of law.

Amongst very young children, rules are treated as absolute and inviolable, and obedience to them a sacred duty. As we have seen, however, punishment for something done without intention is at the same time both unfaithful to the notion of yet inherent in the experience of disobedience amongst children. It was just that dilemma in which Max found himself at the beginning of our story. In order to make sense to themselves of the way in which the *fact* of a disobedient act may itself merit punishment, children begin life as moral realists. Even a child of seven or eight may speak of a bridge that collapses as punishing the child who had been forbidden from crossing it; or the scissors that cut them as exacting vengeance on the child that had been barred from using them.¹²³ A six-year-old may display finely-honed Jesuitical skills in the art of casuistry.

What happened? — *The bridge cracked.* — Why? — *Because he had eaten the apples.* — If he had not eaten the apples, would he have fallen into the water? — *No.* — Why? *Because the bridge would not have cracked.*¹²⁴

In the animist and literal world of the young child, everything is filled with a consciousness of rules and the will to enforce them. Piaget concludes, “for since he takes rules literally and thinks of good only in terms of obedience, the child will at first evaluate acts not in accordance with the motive that has prompted them but in terms of their exact conformity” with the rules.¹²⁵ This is part of the logic behind Max’s abrupt announcement that sends the wild things off to bed without their supper. Max is not expressing his mother’s *judgment*, but a fact about the world that inherently applies to wild things. He still understands law as being fundamentally descriptive rather than

¹²² *Id.*, at 13-108.

¹²³ *Id.*, at 252-58.

¹²⁴ *Id.*, at 253.

¹²⁵ *Id.*, at 111-12.

prescriptive. Going to bed without their supper is what wild things *do*. Just like Max. As Piaget makes clear, the question of fault or intention is not even relevant at this point.¹²⁶ Rules have consequences, and do not embody judgments at all.

The reason for this moral realism is not hard to find. According to Piaget, children's early experiences of the nature of law are strongly influenced by the rules laid down by their parents, and these would often appear to the child as if accompanied by an absolute authority on the one hand and an absolute obligation of obedience on the other. In order to make sense of the punishment of mere ignorance and experiment, childhood's inherent predicament, children appear committed not only to the transcendent status of rules but to their parents' unblemished authority in divining them.¹²⁷ The natural realism of the rules is coupled with the privileged position of parental authority as the channel of their proclamation. This comes close to sacralizing obedience and transforming parenthood into a priesthood.

And how did your daddy know [the rules]? — *My Daddy just knew. No one told him.* — How did he know? — *No one showed him!* -- ... Tell me some people older than your daddy. -- *My grand-dad.* — Did he play marbles? — *Yes* — Then he played before your daddy? — *Yes but not with rules!* [said with great conviction].¹²⁸

At this point, Elias and Piaget part company. For Elias the sociologist, inculcating in children an habitual obedience to external rules of conduct constitutes civilized self-restraint unproblematically. For Piaget the psychologist, nothing could be further from the truth. The externalized and sacred objectivity that parental demands instill *inhibit* self-restraint. While Elias tends to treat physical habits as the natural progenitor of habits of mind, Piaget, for his part, focuses instead on what Hart might call “the internal perspective” of the *habitué*. Piaget here is particularly critical of the connection between

¹²⁶ *Id.*, at 260-70.

¹²⁷ *Id.*, at 60-62.

¹²⁸ *Id.*, at 55.

obedience and morality insisted upon by Emile Durkheim.¹²⁹ Durkheim's mistake, according to Piaget, lay in reducing morality to "a body of rules sanctioned by society...which we obey because it is authority and for no other reason."¹³⁰ But a civilized relationship to law requires far more than obedience to it, as Elias clearly recognized and as Hart himself affirmed. We need to internalize its demands and the habits of mind it depends upon in order to function: we need to value it and to be able to interpret it *for ourselves*. This step is essential for the development of self restraint and discipline that is the hallmark of modern man. But the nature of language being as ambiguous and slippery as it is, no mere principle of obedience can constitute this figure. Children understand, through their own bodies, that to be able to apply laws themselves, *a priori*, and not just to be a victim of them, *post hoc*, requires a sense of law's justifications, its contexts, and its purposes. Only then, positioned as an interpreter and not just as a recipient of law, can one internalize the restraints and norms of society and treat them as one's *own*, as civility demands. Only then will we move, in the language of Hart, from being an object obliged to follow orders, to a legal subject who feels a genuine sense of obligation to the law.¹³¹

The problem as Piaget sees it, is that the structure of absolute obedience of a child's early life ill prepares them to take on these added burdens. On the one hand, the idea of obedience demands of the citizen nothing but the conformity of their outward actions: it asks of them no opinions, no judgments, no beliefs. On the other hand, its unilateralism encourages a balancing egotism in the child (or the subject): since they are not expected to think for themselves, they can hardly be expected to think of others. In attaining a bilateral *relationship* to legal rules, then, Piaget sees the unilateral respect that initially underscores absolute parental authority as an obstacle to be overcome. In this, Piaget displays a bracing hostility to the function of parents in the child's attainment of moral knowledge. Autonomy and justice make their way in the lives of children "at the expense of the adult and not because of him."¹³² Piaget postulates two incommensurable moral

¹²⁹ *Id.*, at 353-70.

¹³⁰ *Id.*, at 354-55.

¹³¹ Hart, *supra* n 3, at 79-88.

¹³² Piaget, *supran* 121, at 198.

orders,¹³³ the first unilateral and authoritarian, the second based on mutual respect. This latter model teaches the child about the importance of intention and motive, the relationship of justice to equality, and the need to interpret laws in terms of their contexts and purposes. Piaget provides powerful evidence for the emergence of this new language from the age of about eight onwards and attributes it to “the intervention of a new factor.”¹³⁴ The supervening factor, according to Piaget, is to be found in the way that children begin to engage with each *other* on terms of reciprocity and equality. The emergence of genuinely co-operative relations, particularly through informal institutions of play, transform the child’s comprehension of law, its purposes and its creation, not only enriching the child’s understanding but allowing for its internalization. The civilizing process is accomplished, then, by children themselves — despite their parents.

There is much that seems right in this analysis: above all, Piaget shows compassion and respect for children’s abilities. But just as Elias (and Durkheim *a fortiori*) assimilates the constraints of obedience to the emergence of co-operation, treating the former as the natural origin of the latter; so Piaget segregates the two, treating the latter as a radical departure from the former. In Piaget the two models of reasoning are utterly heteronomous;¹³⁵ one supercedes and indeed “drives out” and even “delivers the child”¹³⁶ from the other. Is there no relationship between the two then? This hardly seems tenable. A careful analysis must move from the conflation of these modes of legal reasoning on the one hand, or their separation on the other, to their dialectic. And in this regard, *Where The Wild Things Are* proves an instructive text. In the next section I will look at Max’s ‘return to civility’ with this problem in mind. In the prescriptive reading I propose, Max returns home not simply as an obedient child, but, which is more, as a responsible one. The emergence of this newly-responsible legal subject is the crowning feature of the myth of civilization that *The Wild Things* constitutes in its readership. Furthermore, I hope to demonstrate how Max’s story suggests that the emergence of

¹³³ *Id.*, at 327.

¹³⁴ *Id.*, at 275.

¹³⁵ *Id.*, at 110.

¹³⁶ *Id.*, at 187.

responsibility requires no *deus ex machina*, as in Piaget, but is already immanent in children's own experience of obedience.

THE DAWNING OF RESPONSIBILITY

*And Max the king of all wild things was lonely
and wanted to be where someone loved him best of all.
Then all around from far away across the world he smelled good things to eat
so he gave up being king of Where The Wild things are.
But the wild things cried, "Oh please don't go — we'll eat you up — we love you so!"
And Max said, "No!"¹³⁷*

Let us begin to think about the transition from an authoritarian to a more responsive understanding of law. First, mere obedience to a text — *just do as I say* — leads inexorably to injustice: saying and meaning are two different things. The injustice is both original and continuing. One does not have to be playing with other children in order to become aware of this. Children's sense of unfairness is acute and frequently vociferous. Max experiences this injustice himself, then imagines inflicting it upon others, and is left, perhaps, reflecting on his own capacity for violence. In *Where The Wild Things Are*, the inadequacy of mere obedience as a model for law — understood, as I have argued, as mandating actions and behavior that conform without question to the authoritative demands of another — is scarcely articulated. Nevertheless Max is depicted as lonely and unhappy: neither as the giver nor as the recipient of commands, neither as master nor as slave, is he content. Secondly, the theme of the inadequacy of literal meanings is developed throughout the text, right from the literalization of wildness incipient in the *incipit*. Literalism leads *of its own nature* to an awareness of the necessity for a contextual and purposive reading of texts. Children have particular cause to be aware of the difficulties involved in determining the relevant context of a legal principle. They

¹³⁷ Sendak, *supra* n 56, at pp. 32-34.

learn about these problems just by being children; they explore them in the games they play and the mischief they make.

It is not too much to say that since the imperfections of an authoritarian model of law are immanent within its own linguistic and structural postulates, Max's exploration of it in the realm of fantasy may provide his readers with a way to begin exploring other possibilities. The child does not require deliverance *from* the oppressive model of obedience; he or she requires only to reflect *upon* it. Immanent critique — this is of course the Hegelian move. The tools of that critique already press hard upon the child's own imaginative and emotional world. Piaget gives too little credit, therefore, to the child's ability to critically analyze, over time, the contradictions and injustices of an orthodox model of law. To speak of the tools of analytical reflection, means of course those tools that are properly adapted to the child's own state of development and interests. Children's books and role-playing games are the principal means by which they imagine themselves living in other contexts and circumstances. It is the singular strength of *Where The Wild Things Are* that it develops the substance of a role-playing game through the form of a book. Both the reader of and the character in the book, therefore, experience a moment of reflection.

Finally, Max's emptiness leads him to conclude that he "wanted to be where someone loved him best of all." (32) This is the pivotal moment in the book and I will argue that it can be read as suggesting a complex turn in the legal argument of the book. On one level, it portrays obedience as a condition of belonging in which subjugation to absolute parental authority is traded – for love. It is an invitation for Max to return, then, suitably disciplined, to a world that promises to provide him, in return, with an inexhaustible love and protection. Ariès' argues that the depth of emotional investment in the lives of their children is what leads the modern family to insist so adamantly on their training and awakening.¹³⁸ Love and citizenship are correlative. Max must trade in his wolf suit — it is the price of his domestication. As the necessity and the desirability of this change and exchange dawns on Max, he experiences an "awakening" or *Aufklärung* of his own. He becomes a legal subject before our very eyes. And not to put too fine a point on it, Sendak's illustration likewise depicts sleeping monsters, and a solemn boy, all lit by a rosy-fingered *dawn*. (32-33)

¹³⁸ Ariès, *supran* 33, at Part III, pp. 339-410.

The parallels with Elias are unmistakable and convincing. This is a text of legal awakening. It enacts and realizes the child's path to law. But I begin here and in this part of the essay to move beyond Sendak's text towards a normative position to which Sendak's text only gestures. I would use Sendak's book as a canvas from which to draw out an argument about the way to think about our relations and obligations to law. Here I think the text is open to different readings and what the children who read it will take from it will depend on who is reading it. Of course, this tension is faithful to children's own experience too, since our desire to be wild is not by any means easy to reconcile with our desire for approval.

Specifically, I do not think that *Where The Wild Things Are* either can or should – since a manner of reading necessarily involves the taking of normative positions¹³⁹ – be interpreted as the glorification of obedience, the obeisance to authority, or the commodification of love. Such an approach does no justice to our best relationships either to law or to each other. Max has been offered solidarity and belonging, which is just what he cannot find as a wolf amongst the wild things. But one might initially observe that the idea that obedience needs to be *justified*, in terms of an obligation on the authority figure to provide something in return, already invites the child to evaluate the purpose of laws in determining their meaning.¹⁴⁰ One no longer simply obeys the law “for no other reason”.¹⁴¹ In *Antigone*, to have momentary recourse to another foundational myth of law, the distinction is well dramatized in the argument between King Creon the law-maker and his son Haemon:

Creon: Shall Thebes prescribe to me how I must
 govern? ... Whose business is't but mine how
 Thebes is governed?

Haemon: A city is none, that to one man belongs.

¹³⁹ See Fuller's elegant deconstruction of Hart's own rejection of the claim in the first two pages of Lon Fuller *supra* n 102.

¹⁴⁰ *Id.*

¹⁴¹ Piaget, *supra* n 121, at 355.

Creon: Is it not held, the city is the king's?

Haemon: Finely thou'dst rule, alone, a land dispeopled!¹⁴²

A contextual approach has already begun to prise apart the “strict and complete legalism”¹⁴³ of the very young child.¹⁴⁴ The child is beginning to see that the ‘why’ of law and the ‘what’ of law are inextricably connected. This is what Fuller calls its “external morality” and no system of interpretation can function without it.¹⁴⁵

Furthermore, the promise of obedience in exchange for love establishes something like a social contract and certainly establishes a relationship which is most assuredly *no longer* unilateral in its structure. Indeed, the text makes the bargain explicit. “Then all around from far away across the world he smelled good things to eat, *so* he gave up being king of Where The Wild things are,” Sendak continues. (33) And when he returns home “into the night of his very own room” the bargain is consummated and consumed “where he found his supper waiting for him.” (38-39) Once obedience is understood to derive not from the “command of the sovereign”¹⁴⁶ *qua* sovereign but, conditionally, in terms of the *benefits* it makes possible to a community, destabilizing elements of critique— equality, justice, and participation – have already been injected into our understanding of law. For the love that is offered in return for obedience is already social, is enduringly purposive.

¹⁴² Sophocles, *Antigone* (442 BC) in *Sophocles: The Theban Saga*, Charles Robinson, ed., (New York: F Watts, 1966), p. 167.

¹⁴³ Chief Justice Sir Owen Dixon, 35 *Commonwealth Law Reports* xi at xiv (1952) (High Court of Australia).

¹⁴⁴ See the similar parallel between the growth of modernity and children in Jerome Frank, *Law and the Modern Mind* (New York: Berntano's, 1930).

¹⁴⁵ Fuller, *supra* 102, at 638-43.

¹⁴⁶ See John Austin (1790-1859), *The Province of Jurisprudence Determined* (Aldershot: Dartmouth, 1998, 1851).

The pact of civilization between parents and their children, forged on a battlefield littered with tears and tantrums, allows us to see the *transition* between Piaget's two moralities, and not just their disjunction. Again, the transition is necessitated by an instability inherent within the orthodox model and not just antagonistic to it. Piaget sees justice as a social and interpretative exercise and finds it only in the community of children *inter se*. But the social and interpretative meaning of justice is already present even in a model of obedience that simply cannot sustain its legitimacy — even to children, especially to children, though it may for a time sustain its power — without the commitment of love. In that sense, therefore, a parent must already be “a collaborator and not a master”¹⁴⁷ in the social life of their children.

Something more must be said about the too facile notion of community.¹⁴⁸ Sendak is there before us. Clearly, Max's difference from the wild things makes him feel lonely. But the love for which he abdicates his crown is not simply a return to a familiar place where everybody is just the same as him. I do not want at this stage to enter upon a taxonomy of love, or the distinctions between *filia*, *eros*, and *agape* in the literature. But I think it a fair claim that love in its various forms, when it is understood as a positive constitutive force, is built upon the recognition of difference. It is therefore distinguishable from forms of narcissism that merely seek or reproduce sameness. The very word *relationship* is integral to most understandings of love; it implies a connection between two bodies that maintain their distinctness. To say ‘you are just like me’ is just a way of talking about me. Emmanuel Levinas explained this paradox through the experience of desire. The danger of desire is that it “tends to bring the object ‘close enough’ to be engulfed” by the self, and consequently destroys the sensation of difference that generated the attraction in the first place.¹⁴⁹ Such desire, like a parasite, consumes the host that makes it possible. Love, for Levinas at least, if it is to survive, promises to respect difference and not to obliterate it.

¹⁴⁷ Piaget, *supra* n 87, at 404.

¹⁴⁸ See Jean-Luc Nancy, *The Inoperative Community*, trans. Peter Connor, Lisa Garbus, Michael Holland, and Simona Sawhney (Minneapolis: University of Minneapolis Press, 1991).

¹⁴⁹ Joseph Libertson, *Proximity: Levinas, Blanchot, Bataille and Communication* (The Hague: M Nijhoff, 1982), pp. 180-81.

To further develop this idea, Levinas sharply distinguishes love from hunger, sign of an elemental need which drives *Where The Wild Things Are* from first page till last. Hunger may be characterized as the means by which the “alterity of nutriment enters into the same.”¹⁵⁰ In other words, eating takes components from the external world, and processes them into forms capable of appropriation and use by the body. It destroys the other in order to turn it selfish use. This is the child’s first process of pleasure-seeking, and it is applied to every object that comes within reach: he or she grasps, brings close, and tries to *eat*. “All enjoyment is in this sense alimentation,” Levinas notes.¹⁵¹ But as Max discovers, the desire to be loved is not simply a kind of hunger. Love involves a gesture outside of oneself, and not just the grasping of things to convert them into *part* of oneself. Love is not just fuel; it must be a burning bush, alight but *unconsumed*.¹⁵² “We’ll eat you up — we love you so,” say the wild things, no doubt in their broad Brooklyn accents, neatly conflating hunger for another with love of them. (34) But Max and his readers have already understood on some instinctive level that this consumption is an utterly terrifying threat: it is a perversion of love, the impossibility of any enduring community, and it augurs the annihilation of the child. It is nothing but emotional cannibalism. ‘And Max said, “No!”’ (34) Of all Max’s exclamatory negations — “be still!”, “now stop!” — this is by far the most courageous and decisive.

To be loved best of all is not then to be cannibalized. It is not only his difference from the wild things but his difference from those who form part of *his own* community that structures the terms of his new-found relationship to law. When Max says ‘No!’ he displays a characteristic of the modern legal subject of profound importance, which Elias called its consciousness.

...Children in all societies still offer examples of people for whom the ability to see themselves and their companions from a distance, like spectators from the window of a building while at

¹⁵⁰ Emmanuel Levinas, *Totality and Infinity*, trans. Alphonso Lingis (Pittsburgh, Duquesne University Press, 1969, 1961), p. 129.

¹⁵¹ *Id.*, at 111.

¹⁵² *Exodus* 3:ii.

the same time walking along the street, is still quite unattainable
....[T]hey are not 'individuated'.¹⁵³

Once one understands that difference and not sameness is the necessary condition of any enduring relationship within a community, the implications for the legal subject are significant. Jacques Derrida, not only in 'Force of Law' but also in *The Gift of Death*,¹⁵⁴ argues on this basis against the commodification or codification of justice. No system of rules can do justice to justice, since to treat like cases alike according to some pre-set formula, without more, would sacrifice the element of the *judgment* of difference that is equally necessary.

In short, for a decision to be just and responsible it must in its proper moment, if there is one, be both regulated and without regulation: it must conserve the law and also destroy it or suspend it enough to have to reinvent it in each case, remystify it, at least reinvent it in the reaffirmation and the new and free confirmation of its principle.¹⁵⁵

A rule can never capture the complex process of judgment that must always be experienced as both bound and unbound, unique and universal. To be responsible is precisely to *respond* to the particularities of a situation, and to make a choice in relation to it. Merely to apply in rote fashion the words of a rule is no exercise of responsibility at all, because it involves no decision at all; it is, in fact, to claim that one's hands are tied. No one would ask a machine or the wind to act *responsibly*. Obedience, then, is the polar opposite of responsibility. The recognition of difference, and the necessity of continually making judgments that attend to that difference, marks the end of the possibility of unquestioning obedience and the true dawn of responsibility.

¹⁵³ Elias, *supra* n 64, 276.

¹⁵⁴ Derrida, *supra* nn 92 & 94.

¹⁵⁵ Derrida, *supra* n 92, at 961.

It is not too much to contend that the production of the responsible subject is the dearest wish of modern law. But too often it is forgotten that this means the subject who thinks, interprets, and makes choices in the application of *and* in their response to legal rules. The two are intimately connected. Neither the juridical agent who enforces nor the legal subject who respects legal rules can express their obligation in terms of simple obedience – actions in conformity with the instructions of authority. Indeed, the story itself strongly suggests that obedience without more is a condition of savagery. On one level, the only truly obedient subjects in the story are, ironically, the wild things themselves. They are stilled when told to be still, rumples when told to rumpus, and sleep when sent to bed. (32) In all this, they are unlike Max. They are caught in vassalage, tossed between extremes of violence and loyalty — unthinkingly, which is to say irresponsibly.

Ironically, the poverty of obedience contaminates the law-maker who demands it no less than the loyal subjects who provide it. As Piaget insisted, on the evidence of his psychological studies, the relationship of parents and children are, in their unilateralism, defective yet self-sustaining. It is striking how similar his argument is to Hegel's analysis of the relationship of 'master and slave.'¹⁵⁶ The absolute authority of the Master (or, in Piaget, the parent) effectively *relieves* the Slave (or the child) from all responsibility, and permits, subject only to its commands, an utter egotism. Obedience removes the obligation to think, and in particular to think of others. Yet at the same time the Master, like King Creon, has only his own desires to realize. He too, need never think, and certainly not of others. "Finally thou wouldst rule, alone, a land without people," as Haemon put it. Both master and slave, for comparable reasons, find themselves walled up in an endless self-absorption. Perhaps it is significant that as king of the wild things, Max's crown looks a lot like the headdress of his wolf suit, which it almost conceals but does not at any moment displace. (24-33) The unquestioning obedience of slaves may be, Hart blithely concedes, "deplorably sheeplike"¹⁵⁷; while the sovereign whose absolute authority demands it is nothing but a wolf in golden clothing.

¹⁵⁶ Georg Hegel (1770-1831), *Phenomenology of Spirit: Selections*, trans. and annotated by Howard Kaintz (University Park, Pa.: Pennsylvania State University Press, 1994, 1807), at Chapter IV.

¹⁵⁷ HLA Hart, *supra* n 3, at 114.

On another level, Max's own obedience to and reproduction of the rules laid down only intensifies his disquiet. Perhaps Max sensed that it was irresponsible of him to send the wild things off to bed without their supper, in obedience to his mother's rule but without the exercise of judgment as to its meaning and purpose. This arbitrary injustice *together with* their unquestioning subservience to it — this mutually sustaining obedience — leads him eventually to think more reflectively on his own difference from the wild things (33) and the difficulty of acting responsibly towards them, and thereby exhibits a movement beyond Piaget's first-phase morality. So Max wisely decides to return to a community. Not, it must be said, a community in which the problem of judgment is solved because everybody is the same. But a community in which, nevertheless, he will be able to take responsibility.

His new-found responsibility will be manifest not in his simple obedience to the rules laid down, but rather in the growing intelligence of his interpretation of them. Moreover, the dream has told him something about the purposes of the rule that ought to guide his judgments about, for example, the distinction between 'play' and 'mischief'. Those purposes are characterized in *Where The Wild Things Are*, in terms of parental or filial 'love'; hardly a detailed explication in Sendak but nevertheless, in the vocabulary of very young children, a powerful beginning to the interpretative project of a lifetime. Childhood, like feudalism, is a legal system bound by affect.

Love as I have previously noted, has many different theoretical frameworks and foundations. Sendak, unsurprisingly, does not provide one. The question is therefore, what, in terms of the legal argument we have been developing, does the claim of love imply here? What is being asked of Max that is justified by love? I think that the love of a parent and a child for each other ultimately involves the child (and the parent no less) in the awareness of the importance of a relationship that lies *outside* of him or herself. Understanding what it means to love another human being breaks down the wall of self-sufficient egotism that Piaget argued derived from the unilateral authority invested in the parent.¹⁵⁸ The experience of loving another, of being loved by another, will lead Max's readers, and sooner rather than later, to be aware of just this *otherness*, this difference which it seems to me is the necessary condition for the very possibility of love. It is not too much to say that love involves a sacrifice as both its desire and its token. There can be no sacrifice unless we differ from each other, for if we were just the same, what would

¹⁵⁸ Piaget, *supra* n 121, e.g. at 90-94.

I be giving up?¹⁵⁹ If we were not different, how could protecting your interests be distinguishable from furthering my own?

Children begin therefore to think about the consideration for differences that their play ought to show; moreover, that consideration becomes the very expression of their love for another. They sacrifice, they give up something for somebody else. Thus we love and thus we show our love. In light of the purposive structure of love that the story introduces, Max's mischief consisted in the lack of consideration he showed for the different needs of others (such as peace and quiet) in his play. Without love — from the perspective of the pure 'enjoyment' of the infant — his mother's rule seemed to impose a constraint which was unjust, incoherent, and therefore ultimately impossible to fulfill. With it — from the perspective of the child's developing community that necessarily includes an appreciation of his difference from others — the rule has suddenly developed both purpose and content. Max can at last make sense of it. Now he can play responsibly.

One might ask if the responsibility that has been awakened in Max is itself a purely unilateral burden. Do not then these reflections require of his parents a more responsible sensitivity to Max's own childhood in *their* obedience to the rules of play they have enacted, so as not to reproduce the injustice under which Max first suffered? Undoubtedly, and the dawning of their own responsibility can be observed in what Max finds on his return: his supper. To conserve the law, they have suspended it.

¹⁵⁹ The argument is developed in many places in recent literature: see Jacques Derrida, *The Gift of Death*, trans. David Wills (Chicago: University of Chicago Press, 1995), itself indebted to the work of Emmanuel Levinas discussed *infra*.

Part III The head in the world

LEARNING SENDAK 'OFF BY HEART'

*The wild things roared their terrible roars and gnashed their terrible teeth
and rolled their terrible eyes and showed their terrible claws
but Max stepped into his private boat and waved good-bye
and sailed back over a year and in and out of weeks and through a day
and into the night of his very own room
where he found his supper waiting for him*

*and it was still hot.*¹⁶⁰

Every aspect and dimension of Sendak's "parable of the law" maps precisely the odyssey described psychologically by Piaget and sociologically by Elias. But *Where The Wild Things Are* must be understood in two additional ways. First, the story confronts a jurisprudential argument – an argument about legal ethics – as to the best way to approach the interpretation of law. The relationship to law that the story develops problematizes rather than merely sustains a lesson in obedience. Instead, it invites children to begin to see themselves as actors in the play of legal interpretation, and to reflect on the purposes and meaning of law and not just on its force. Perhaps this is even what the Civil Code means when it obliges children "*à tout âge*" – which is to say, all of us, all the time, since who is not a child of some age? – to "respect" our parents. Not to obey, but to respect or to "honour", which as we have seen is a far more sophisticated demand.¹⁶¹ In which case, the Code itself contains within it an interpretative paradigm that might destabilize, from within, the strict positivism that has often plagued it. We ought to honour the law not just to obey it. The transition from obedience to responsibility which Sendak portrays therefore moves beyond the synthesis of the two in

¹⁶⁰ Sendak, *supra* n 56, at pp. 35-40.

¹⁶¹ Kasirer, *supra* n 88.

Elias and the antithesis of the two in Piaget. Whereas Levinas characterizes both these models as ways of remaining mired in stasis,¹⁶² Sendak provides resources that might enable children to grow *as* legal subjects, *à tout âge*. Max ceases to be wild. But, unlike the wild things, he will not be tamed either.

Secondly, the story confronts a jurisprudential argument – an argument about legal pluralism – as to the best way to approach the sources of law. It is entirely inadequate to think of this as a story about the law, or even as a story that portrays how children think about the law. It is not law “and” literature. Rather, the story helps form and develop the mental attitudes to law of the children who read it. It does not just illustrate but inaugurates legal subjectivity. It is law *as* literature and literature *as* law, which is to say, myth. *Where The Wild Things Are* is not a legislative instrument; its authority and influence on our habits of thought and life is more profound than that. Ariès calls children’s books “propaganda”¹⁶³ but that is too hostile a judgment. Such stories, are, in the fullest sense of the word, *constitutional* documents. They are the epics and scriptures that sustain and direct our normative commitments at a formative stage of our development.¹⁶⁴ They provide strands in a web of meaning that resonate throughout our lives.

If so, then the third stage of our analysis must move beyond the hermitage of the text in which law and literature studies have too often been cloistered, and consider the process of its actual reception. Reading is not of course an abstract process, and the material and social circumstances in which it takes place will have specific effects on what is

¹⁶² Levinas, *Totality and Infinity*, *supra* n 150.

¹⁶³ Ariès, *supra* n 33, at 412.

¹⁶⁴ Of course many of these assumptions about childhood and parental influence might be challenged from the perspective of genetic determinism, given such prominence recently in work, for example, by Judith Rich Harris, *The Nurture Assumption* (New York: Touchstone, 1999) and Steven Pinker, *The Blank Slate* (New York: Viking, 2002). Suffice it to say that not only is the argument grossly overstated in these authors, but they simply do not address questions of *value* formation at this level. To attempt to elide this distinction, as Pinker has a tendency to do, is nothing short of crass polemics.

understood by it. How is the text apprehended phenomenologically and in what ways does this supplement its meaning?

The word ‘reader’ is itself ambiguous as between the reader *of* something and the reader *to* someone. In silent reading, the two aspects come together. In children’s reading, the roles are initially distinct. This adds a significant complexity to our understanding of the constitutive process. The first English statutes, likewise, were written for an entirely private audience.¹⁶⁵ When they first began to exhibit normative aspirations, around the end of the thirteenth century, still they spoke to an audience that was essentially illiterate. So it was that they were read in public, and often enough the statute itself would contain instructions

...that Cries shall be solemnly made in all Counties, Hundreds, Markets, Fairs, and all other Places where great Report of people is, so that none shall excuse himself by ignorance.¹⁶⁶

Here too, the young child finds himself or herself in a medieval world. They do not read, they attend to the reading of others. They listen to sounds, and they listen over and over again. In all those who commented on this essay from their own position as parents or their memories as children, it was in fact the sound and rhythm of Sendak’s words that formed the physical basis of their recollections. What has been particularly striking is just how solidly entrenched in memory are words that have been heard repeatedly. Even years afterwards, many people can still recite much of the book from memory — ‘by heart’ as the colloquialism rather evocatively has it — and make complicated assessments about whether the music or dynamic of a phrase would have been better served by the substitution of this word or that.

Clearly then, oral reading profoundly enforces and reinforces, by a structure of complete dependence, the position of authority of the master of the text, and may well be thought to confirm the message of obedience that forms one of the strands, most assuredly, of a

¹⁶⁵ Manderson, *supra* n 113, at 327-30.

¹⁶⁶ *Statutum Wynton*, 13 Edw. I, Stat. 2, ch 1 (1285) in *id.*, at 343.

book like *Where The Wild Things Are*. One can almost hear the voice of Piaget: the child's first morality makes obedience to parental authority a sacred duty. To the illiterate child, the text is nothing but *hieroglyphs*, which is to say, 'priestly signs', and the parent is the priest who accedes to the mystery and the authority of the text. The child experiences meaning only through the intercession of god's vicar on earth, which is to say, vicariously.

The actual meaning of this powerful process of recitation, of ritual, will depend on the social conditions that accompany it. This is a point of central significance to our study of legal meaning in this or any other context. Too often literary texts are treated as self-sufficient entities. The *governance* of the text and not just its *meaning* is the proper subject matter for the study of law and literature. This is what is meant by legal discourse: specific, embodied, interpretative practices that work to stabilize the meaning of floating signifiers.¹⁶⁷ Children's literature provides the paradigmatic example of the implications of this general proposition. The text is not just aural, it is also kinetic: a phenomenon connected in the life of the child to the room in which it is read, by whom, and under what conditions. In every society and in every household there are laws that govern the reading of books, as well as laws discovered in and through the reading of books.¹⁶⁸ In the argument that follows, I am undoubtedly hypothesizing a particular kind of family environment in order to conceive of the circumstances in which the normative theory of law I wish to advance might come to fruition. I would not for a moment suggest that such a reading-environment is predominantly or even typically the case. No doubt it is quite possible to imagine the child's obedience being enforced by a home environment that is also authoritarian, where reading is a reward for good behavior or punishment for bad, and the child's role is purely passive. Be still, sit quiet, and listen. In such an environment, *Where The Wild Things Are* would form part of a larger discursive strategy, and perhaps Spitz was right to criticize such an ethical implication.¹⁶⁹ But I have argued against the inevitability or indeed the justice of that understanding. A

¹⁶⁷ Peter Goodrich, "Law and Language: An Historical and Critical Introduction," 11 *Journal of Law and Society* 173 (1984).

¹⁶⁸ Derrida, "Before the Law," *supra* n 61, and see also other essays collected in *Acts of Literature*, *supra* n 40.

¹⁶⁹ Siptz, *supra* n 46.

normative argument is naturally a kind of fantasy of aspiration. A careful reading of Sendak's parable offers the potential to instill, under the appropriate social conditions, a much more complex understanding of legal subjectivity.

Many features of the contemporary model of 'reading to'¹⁷⁰ offer even to the youngest listener ways of *participating* in giving meaning to the text, and offer therefore a path to responsibility. In the first place, the question of ownership is important. Typically, while the adult reader possesses the key to the meaning of the book, the child possesses or is physically entitled to the book itself. The split subject of the book, divided between proprietorship of its physical form and its ideational content, must be reunited if it is to have any meaning at all. So the child's physical authority over the book goes some way towards countervailing the interpretative authority of the adult reader. The nature of this empowerment, moreover, contains within it lessons in mutuality. The relationship of divided possession here is surprisingly complex and might well be summed up, both in legal and in psychological terms, as a *trust*. The legal institution of the trust divides ownership in much this way, between the one who owns the physical form of something and one who is entitled to benefit from the use of it. At the same time only the social institution of trust between parent and child can effectively reunite its physical form and the beneficial meanings it contains. The child is well aware of the double identity of the book, possessed by both and neither without the other; it gives them a sense of the necessity for co-operation and shared communication which Piaget, for one, does not recognize until children begin to play with other children. The constructive trust implicit in the act of reading demonstrates that a parent is already "a collaborator and not a master".¹⁷¹

Since the book itself is external to the direct relationship between parent and child, as if it were a third party, it presents the possibility of an interpretative experience in which both the speaker and the listener can participate. Nor is interpretation solely linguistic. It is also aural and pictorial, and those pictures provide a pre-literate child with the opportunity to read, to interpret, and to contribute their own observations on the unfolding story. Sendak's illustrations are decidedly an important element of any

¹⁷⁰ Thus see S. Moyer, *Read to Baby and Children*.

¹⁷¹ Piaget, *supra* n 121, at 404.

adequate interpretation of the text. Furthermore, the exegesis of the text is typically open-ended in its possibilities. Like Talmudic *mishnah*, the verses of a book like *Where The Wild Things Are* form the framework for a conversation: about the story, about Max's experience of the story, about the child's own and parallel experiences. In all these ways, the story provides a dialogic space for the acknowledgment and for the mediation of children's own emotions. It is standard practice for analysts and therapists of many kinds to use the technique of story-telling to encourage a child to narrate in the third person traumatic experiences that might be too difficult to confront directly. Precisely because it takes a form *external* to the child's own being, the story provides a safe and important medium through which the child feels at liberty to enlarge upon his or her own predicament. It may even provide a little child with an opportunity to express their anger at injustice. A careful parent will listen to the unfolding analysis of a book by their children with equal care and attention, and will invite an extended discussion in every direction — at least until dinner is served. Sendak made just this point in accepting the prestigious Caldecott Medal in 1964:

[W]hat is just as obvious — and what is too often overlooked — is the fact that from their earliest years children live on familiar terms with disrupting emotions, that fear and anxiety are an intrinsic part of their everyday lives, that they continually cope with frustration as best they can. And it is through fantasy that children achieve catharsis. It is the best means they have for taming Wild Things.¹⁷²

Crucially, the text is not just a description of this cathartic event, but an occasion for the event itself, an invitation to a dialogue about feelings and experiences that both parent and child might share.

Above all, the discussion of the textual world of a children's book invites readers to explore the intentions and motives of its characters. It therefore introduces readers to a certain mode of interpretation. *Why do you think Max did that? What do imagine he is thinking? Why is he sad?* It is scarcely possible to look at a picture in a children's book without oneself posing those questions. The sparseness of both text and illustrations, implies a secrecy that demands investigation. Like the *Mona Lisa*, a good children's

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<http://www.eyetomorrow.com/embracingthechild/Bookspecialsendak.htm>.

book is inscrutable enough, and seductive enough, to incite its own supplement. Such gnomic utterances are not foreign to literature or philosophy: parables and aphorisms, meditations and *pensées* all rely on similarly sparse structures.¹⁷³ The supplement is called forth by the form: more, it is the strength of the form. Children's imagination as well as their skills are thereby engaged (it is precisely on these grounds that the highly minimalist designs of Dick Bruno¹⁷⁴ have been widely praised). Indeed for many children, as I have been told by more than one of my colleagues, the highlight of a reading of *Where The Wild Things Are* comes at the moment of the 'wild rumpus' in which the wonderfully exuberant images that continue over three double pages — unencumbered by written text of any kind — invites or requires an imaginative supplement through the improvisation of sounds of rumpus to which parents and their children both contribute. But this approach is anything but a literal analysis of textual facts. On the contrary, it invites the child to make meaning by getting *behind* those facts. This is the exercise of judgment that the child's reading mandates; the judgment that the text alone cannot hope to provide. Children become masters in the art of interstitial interpretation on the basis of their growing but always insufficient comprehension of the social world around them. They learn that meaning is terminally and constructively incomplete.

Children first experience reading, therefore, in a social environment — as catechism and antiphony. This inculcates in them a practice of textual responsibility that goes far beyond the bounds of obedience. It is perhaps obvious to note that this practice is particularly well suited to the interpretation of laws that are themselves no less marked by a fundamental insufficiency in face of the social world they seek, and fail, to capture. The gnomic utterance is hardly more foreign to statute law than to literature; in the common law tradition, at least, a case is perhaps best understood as a parable; the *Code Napoleon* is full of its aphorisms and *pensées*. But more than this, *Where The Wild Things Are* is not only an example of how to do justice to texts. It is a dramatization of it. There is a parallel between the form of the book and its content. Max's mother's rule

¹⁷³ Franz Kafka, *Parables and Paradoxes* (Philadelphia: Janus Press, 1963); *Complete Short Stories*, trans Wilma Muir; Friedrich Nietzsche, *Basic Writings* (New York: Modern Library, 1968); *Beyond Good and Evil*, trans Walter Kauffman (New York: Vintage Books, 1965); Blaise Pascal, *Pensées: Selections* (Cambridge: Cambridge University Press, 1945); René Descartes, *Meditations and Other Metaphysical Writings*, trans. Desmond Clarke (Penguin: New York, 1998).

¹⁷⁴ For example the 'Miffy' series: Dick Bruno, *Miffy at the Zoo* (Kodansha International, 1997).

was itself a complex norm that required Max to develop a far better understanding of social contexts and purposes in order to enable him to interpret it responsibly, which is to say, to exercise judgment. So the text informs its own reading practice and the reading practice informs its own text. In the book, Max had to supplement the words of the norm in order to give it meaning. In the world, his readers must supplement the words of the book of the norm in order to give *it* meaning. There is, of course, no closure to this expanding contextualization. Rules are by their very nature inscrutable and in need of interminable supplementation if we are to interpret them and judge them. To read a law, then, is a process of endless *différance* which “incites from its place of hiding.”¹⁷⁵

As children grow older, they develop their own semiotic competence. Suffice to emphasize the importance of the structure of reading itself in the civilizing process. As has been often noted, reading is a way of disciplining the mind and organizing society. It instills habits of abstraction and reflection.¹⁷⁶ It encourages us to imaginatively observe the lifeworlds of others, “the ability to see [our]selves and [our] companions from a distance.”¹⁷⁷ In permitting readers, therefore, to think of themselves as others and to think of others as themselves, we provide them with the skills to objectify and distance themselves from their present emotional state. This is precisely, of course, what Max does in the story when he creates a fictional text, a dream, and places himself within it in order to explore and analyze his emotions. These techniques encourage exactly the habits of self-restraint and emotional reflection, as opposed to reaction, that Elias insists are essential to the freedom and legal structures of the modern world. But it is not just Max who uses a fiction to achieve these ends. All his readers, in reading, do.

¹⁷⁵ Derrida, “Before the Law,” *supra* n 61, at 205. See also Jacques Derrida, “Différance” in *Margins of Philosophy*, trans. Alan Bass (Chicago: University of Chicago Press, 1982) at pp 1-27. I should note that I consider it one of the highlights of my intellectual career to be able to place Miffy and Derrida in successive footnotes, although some might suggest that this was where it has been heading all along. One might even describe it as the very quintessence and *reductio ad absurdum* of the project of *différance*.

¹⁷⁶ Marshall McLuhan, *The Gutenberg Galaxy* (New York: Signet, 1969); Ivan Illich and Barry Sanders, *ABC: The Alphabetization of the Mind* (London: Penguin, 1988); Ivan Illich, *In the Vineyard of the Text* (Chicago: University of Chicago Press, 1993); Jack Goody, *The Logic of Writing and the Organization of Society* (Cambridge: Cambridge University Press, 1986).

¹⁷⁷ Elias, *supra* n 64, at 276.

The skill of reading texts allows the unfolding of complex chain of events far into the future and long in the past. Without the ability to represent what is not present, without the capacity therefore to project oneself or one's ideas into an absence, there can be no morality (the point is a familiar Kantian one). And without a system of iterability by which we can reincarnate or *re-produce* those representations accurately and consistently across time and place¹⁷⁸ there can be no law, either. If morality is temporal projection, then law is temporal introjection. Both require highly sophisticated practices of writing and reading.

CONCLUSION

Sendak's *Wild Things* is a myth that traces the emergence of modern subjectivity in a young child and, through its power, works to constitute that subjectivity amongst its readership. It is a parable of civility and legality that sustains and resonates with background myths of savagery and dimly perceived memories of feudalism. It is a *chanson de geste* of modern jurisprudence, a *Bildungsroman* in the dual sense of a novel about *bildung* and a novel that builds. Like all myths, it is neither true nor false, but strands in a complex web that *becomes* true in all those who learn it 'off by heart'. So important are such texts that we need to take them seriously, to think through the many implications of the text and the context of its reception in order to properly assess the relationships to law thus constituted. These relationships are by no means unambiguous; in *Where The Wild Things Are*, for example, there is clearly a tension between obedience and responsibility running right through the book.

The book does not, of course, offer a regulatory solution or a philosophical resolution to these tensions, but rather an aesthetic and emotional one. Let us dwell for a moment on the love that recalls Max and that Max recalls. It hinges on the trope of hunger that gnaws incessantly at one from first page till last. Sendak describes a movement from

¹⁷⁸ Jacques Derrida, *Of Grammatology*, trans. Gayatri Chakravorti Spivak (Baltimore: John Hopkins, 1976, 1967).

hunger to love which, as Emmanuel Levinas points out, is likewise a movement from the enjoyment of consumption to the goodness of non-consumption. Relationships with others require, first and foremost, not the satisfaction of our own needs (narcissism is merely the relationship between a person and their own image) but the desire to preserve, respect and attend to the difference of another.¹⁷⁹ This is “a non-possession more precious than possession, a hunger that nourishes itself not with bread but with hunger itself.”¹⁸⁰ Such a desire is unquenchable, “the desired does not satisfy it, but increase it.”¹⁸¹ Max, no doubt, gets his supper in the end, and it is still hot. (40) Yet it would appear to have undergone a sea-change in the course of Max’s ocean voyage. It is no longer merely the enjoyment of a need fulfilled. As in most cultures, food has become the symbol of a love and not by any means a substitute for it. (39) It is no longer to be ‘eaten up’ but on the contrary to be kept constantly replenished. The supper to which Max returns is not just rain but a rainbow: the promise of enduring relationship. One might well say then that Max returns with a greater and more difficult hunger than he began with, for it is now “the *Other’s* hunger — be it of the flesh, or of bread”¹⁸² — or for peace and quiet, one might add — that concerns him. This is what it means to be responsible for another. It is nothing but a matter of “calling into question my spontaneity” – Max’s wildness – by the presence of the Other.¹⁸³ The importance of this calling into question, as restraint and as a responsibility to others, was what Max learnt in the course of the book. It would therefore be wrong to say that love is the *exchange object* or *reward* in return for which Max agrees to accept a certain responsibility.¹⁸⁴ On

¹⁷⁹ Levinas, *Totality and Infinity*, *supra* n 150, Section III, pp. 187-219, and Conclusions, 287-305, and for the particular distinction to the concept of need, see in particular 50, 62, 117, 304-05.

¹⁸⁰ *Id.*, at 183.

¹⁸¹ Emmanuel Levinas, *Le Visage de l’autre*, illustrated by Martin tom Dieck (Paris : Editions du Seuil, 2001), no pagination.

¹⁸² Emmanuel Levinas, *Difficult Freedoms: Essays on Judaism*, trans. Séan Hand (Blatimore: John Hopkins, 1990, 1963), p. xiv.

¹⁸³ Levinas, *Totality and Infinity*, *supra* n 150, at 84; *Le Visage de l’autre* (no pagination).

¹⁸⁴ *Id.*, Section II.

the contrary, responsibility and love are coeval.¹⁸⁵ Each is the condition of possibility of the other.

Max has been enriched by becoming decentred.¹⁸⁶ Just like the experience of a good book or an adventure, and through the medium of the one about the other, he has “lost himself” and thereby discovered something immeasurably more. This too Sendak manages to convey visually, for Max’s private boat was labeled “MAX” outward bound to the land of the wild things, which is to say as he journeyed inward to face the demons of his own subconscious. (17) But his boat shows no such name as he is turns for home, which is to say as he journeys outward to be reunited with his family. (37) Max no longer inhabits a purely egotistical vessel. There is a place for others *in* him: he is “otherwise than Max.”¹⁸⁷ This is particularly apparent in the final illustration, in which for the first time Max is depicted bareheaded, his headdress pulled off and crumpled round about his neck. (39) An outlaw, says Bracton, “is bound to no-one, nor anyone to him.”¹⁸⁸ But Max has at last discarded the *caput lupinum*, and returned home a responsible legal subject.

The contention of this essay has been that an adequate understanding of our responsibility to others requires of Max both this radical de-centring of his place in the world, which Levinas explored in *Totality and Infinity*¹⁸⁹, and a radical expansion of his interpretative horizons, which Levinas explored in *Otherwise Than Being*.¹⁹⁰ Without the former,

¹⁸⁵ Levinas, *Otherwise Than Being*, *supra* n 29, at 124-25.

¹⁸⁶ Levinas, *Totality and Infinity* *supra* n 150 refers instead to the “eccentric,” or ex-centric subject, which is to say the subject whose centre of gravity is outside himself: at 303-5.

¹⁸⁷ The reference of course is to *Otherwise Than Being*, *supra* n 29.

¹⁸⁸ Bracton, *supra* n 80, p 363, line 8.

¹⁸⁹ Levinas, *Totality and Infinity* *supra* n 150.

¹⁹⁰ Levinas, *supra* n 29.

responsible love is not possible — only consumption. Without the latter, responsible law is not possible — only obedience. Without both, there can be no communication between individuals. This is what binds the two steps together. Without the capacity to communicate with others, across differences in time and across the differences between people — the very differences that make communication desirable in the first place, and a constant struggle withal — there could be neither love, nor law. For his part, the myth of Max inspires, which is to say, breathes life into, his readers' sense of their own agency. This animating and constitutive force is the very province of myth, which operates not propositionally but narratively and emotionally. Without this capacity to be affected *from the inside*, none of us would be capable of growth and change.

Sendak's readers have set in place, through the medium of Max's story, the stanchions of a web that asks them to accept a responsibility to understand and make choices affecting others, that they cannot evade or pass on. This is what the emergence of subjectivity in human beings means: our subjection through responsibility to others.¹⁹¹ It implies, clearly, a radical orientation to the meaning and purpose of law and the function of the civilized citizen in relation to it. It should therefore not surprise us in the least to note that only recently a conscious attempt has been made to place Levinas' ethical principles, which I have lightly drawn on here, in the simplest and most powerful of normative forms: between the covers of a children's picture book.¹⁹²

¹⁹¹ *Id.*, at 146.

¹⁹² Levinas and tom Dieck, *supra* n 180.