

THE CHARACTER OF THE ORIENTAL DESPOT IN CLASSICAL JURISPRUDENCE

*Piyel Haldar, School of Law, Birkbeck College, University of
London**

Introduction

Banal it may seem, but the crucial problem that colours western jurisprudence regarding the types of behaviour that ought to be permitted and those that ought to be subject to censure actually gives rise to much more interesting issues than those of morality. The proposition pursued in this article is that a close reading of Plato's foundational texts that give expression to these jurisprudential concerns suggests a much more complex contribution to Western notions of statecraft and despotic regimes. Jurisprudence in this sense means more than the care or guardianship of the law. Rather, taken at the level of broader political and legal theory, classical jurisprudence places under scrutiny the care of the state and the emotional welfare of its subjects. That is to say that what an ideal state permits of its subjects must be such that each individual subject should be able to say 'I am happy'. And collective happiness, in turn, strengthens both the social bonds within the state and the very nature of that polity itself. As such, certain *pleasures* must be allowed. The current debates surrounding casinos, late night licences for pubs and so forth are determined not simply by economic factors. They are also embedded in a fine jurisprudential tradition that has regard for 'pleasure' as a central component of all strong societies.

A fine tradition it may be, and it is tempting (even incumbent) to embrace such thinking 'to the max'. But the component of pleasure brings about a further and difficult concomitant problem regarding the types of behaviour that exceeds pleasure. For the purposes of this article this zone of what lies beyond pleasure will be labeled 'excessive enjoyment'. It is here, in attending to these differences between mere pleasure and excess enjoyment, that juristic wisdom places under interrogation not simply different types of behaviour, but the character and reputation of different systems of interdiction and styles of government. For Plato, 'excessive enjoyment' is not that which is indulged in, or permitted, by liberal states. Far otherwise, it is seen to be a characteristic fault of the most fiercely despotic states. What will be argued is that Plato inaugurates a structural link between despotic regimes and excess enjoyment. Moreover, these regimes, for Plato and thus for the whole of Western legal and political theory, are fantasised as being located in the East. The term 'fantasy' is intentionally chosen and, as shall be explained, points to the limits of legal language; but the word should not blind us to the ineludible structure of this link between despotism and excess

* P.haldar@bbk.ac.uk. I owe a debt of gratitude to Linda Mulcahey and Sally Wheeler. Thanks also to Shaun McVeigh and Lyndsay Farmer provided comments on a much earlier draft. This article forms an explanatory backdrop of sorts to a wider study of Oriental Excess that is to be published under the title of 'The Jurisdiction of the Lotus-Eaters' (2007).

enjoyment. The preliminary point to note, however, is that what emerges from Plato's jurisprudential motif of pleasure is nothing other than an influential and forcible strand of Orientalism. Put differently, Orientalism emerges as a specific question of legal doctrine.

The broad synoptic structure of the argument pursued in this article might be rendered as follows. First, the proposition that pleasure is a central component in the jurisprudence of state concerns will be expanded upon. Here, we will examine both the key texts of Plato and the manner in which this theory has informed a broad range of literature concerned with the examination of a particular, and seemingly innocent, aspect of social regulation. The second part of this article consequently examines the problem of excess enjoyment that inheres in Plato's theory of pleasure. It is here that we note the emergence of a strong link between excess enjoyment and Oriental non-legality. Again, it seems pertinent to examine the extent to which Plato's Orientalism structures a number of disparate elements of social thought and attitudes towards the East. By way of conclusion, this article proposes that a return to Plato's texts offers us a non-interdisciplinary account of the manner in which law is inherently and automatically already engaged with issues of Orientalism and colonialism.

Plato's Doctrine of Pleasures

In book two of the *Laws*, Plato writes of the educational benefits of drinking parties which, he tells us, do not necessarily stimulate us into 'bacchic frenzies'. On the contrary, the ideal legislator has to permit among his people a degree of pleasure essential to their happiness. The art of enjoying oneself is essential to the moral salvation of society and pleasure ends up doing the work of law. Transgression is encouraged. For the Athenian, the primary goal of legislation should be to promote and enable self control which is basic to the management of friendship and larger social groupings. A degree of inebriation is valuable since resisting temptation when mildly drunk enables men to acquire the self control necessary for the moral well being of the soul and the community. Control trains and directs the soul towards an idea of the 'good that is beyond essence' (conceived in philosophical terms as *agathon*).¹ "The individuals attitude towards himself. . . and, the form of supremacy he maintained over himself were a contributing element to the well-being and good order of the city."²

An additional argument concerns the physical state of happiness. The animal 'man', he says, is born with essential and profound gymnastic energy; "born into the world completely mad: it bawls uncontrollably, and as soon as it can get on its feet it jumps with equal abandon."³ When Dionysus presented the world with wine his intention was not to seek revenge by driving men insane, but to provide us with a medicinal cure. By drinking wine the body is reminded of its natural gymnastics and is incited to sing and dance! Drink awakens the natural rhythm and harmonies with which man was born. The

¹ The principle of *agathon* as 'the good beyond essence,' is discussed by Jean Luc Nancy, 'Gift, Desire, *Agathon*' in J. Librett tr. *Sense of the World*, (1988) p.50.

² Michel Foucault, *The Use of Pleasure; The History of Sexuality* volume 2 Robert Hurly tr. (1985) at p.70.

³ Plato, *The Laws*, (1986) 2:672.

child and the drunk thus indulge in the same pleasure which might be described as the pleasure of self-discovery, self-control and prudence. The gymnastic torsions common to both is simply indicative of the process of getting to know ones own self. The body becomes its own object that must be known, appropriated, colonised.

The ability to master the correct forms of singing and dancing during these drinking parties not only leads to physical fitness (an essential feature of self control), but leads to a well developed sense of judgement through which the individual may distinguish between the merits and demerits of musical form or the rectitude of tradition. Furthermore, it aligns us with the harmonious forces of nature. Even in its cultic form, Dionysian energy educates, harmonises and cures. This 'pharmaceutical' side of Dionysius is given stronger expression by Euripides:

"His powers are manifold;
But chiefly, as I hear, he gave to men the vine
To cure their sorrows; and without wine, neither love
Nor any pleasure would be left for us."⁴

For Euripides, it should be noted, Dionysius helps man reconcile the two opposing sides to his nature. On the one side exists the rational and civil qualities that stabilize communities. On the other side lies *daimon* life; the life of spirit and instincts that liberates man from tedious responsibility. Both are essential qualities, both exist as 'undeniable fact.' The wages of failing to recognise this are high. The *Maenads*, those women possessed of the Bacchic spirit, become repulsive and bestial only when we ignore the life of pleasures, when we concentrate solely on the conventional, and when we assume the sovereignty of civility:

"Bulls, which one moment felt proud rage hot in their horns
The next were thrown bodily to the ground, dragged down
By hands of girls in thousands; and they stripped the flesh
From the bodies faster than you could wink your royal eyes."⁵

Such cultic considerations are not lost on Plato. Throughout the corpus of Plato's work pleasures provide a theory and a practice of ethical conduct and an essential element of social order. The *Philebus*, for example, provides the most sustained philosophical engagement with the question of pleasure, by employing a dialectical method in order to synthesise pleasure and knowledge into the ingredients of a good life and a life of dignity. In the *Symposium*, the pleasures afforded by the drinking party sets the backdrop against which the discourse on friendship emerges. Pleasures are not, therefore, antithetical to the law.⁶ Justice does not wrestle Eros into defeat and so, in this respect, it would be wrong to characterise law as being 'dead from the waist down'. For Plato, law neither exists in a state in which

⁴ Euripides, *The Bacchae*, (1986) lines 797-799

⁵ Euripides, *The Bacchae*, lines 745-748.

⁶ While this proposition constitutes an ethical theory of conduct it should not be confused with hedonism. Although. It should be noted that for Epicurus, pleasure must be guided by reason and prudence.

passions are absent (*apatheia*), nor in a state of indifference towards them (*adiaphora*). All that remains is for the nocturnal council to draw up category of approved acts (*kathekonta*).

Moreover, the treatment of pleasure as an essential social energy does not dry up even in invectives directed against hedonism. Cicero, for example, famously barks at the egoism inherent in the Epicurean pursuit of pleasures. Yet, even in his most morally vituperative work, *De Finibus*, he cannot help but recognise a fundamental relationship between justice and pleasure:

“[Affection] which, coming into existence immediately upon our birth, owing to the fact that children are loved by their parents and the family as a whole . . . gradually spreads to influence beyond the home, first by blood relations, then by connections through marriage, later by friendships, afterwards by the bonds of neighbourhood, then to fellow citizens and political allies and friends, and lastly by embracing the whole of the human race. This sentiment . . . is termed justice.”⁷

The role such pleasures continue to have in cultivating and regulating the subject’s relationships to himself, to others and to the general well-being of society, can be traced across the broad range of literature that deals with the place of pleasure and entertainment within modern society. Stephen Orgel’s examination of the importance of the spectacle during the English renaissance claims that the illusion of theatre had a specific impact on audiences by exemplifying the princely virtues of magnificence and munificence.⁸ The pleasures associated with masques and balls expressed both power and the principle of magnanimity as a political virtue. These were images of the good to which participants and spectators should aspire. In terms of the project of colonialism (which, in fact, forms the background concern of this article) the range of pleasures attached to Imperial rule could also be noted. Riding, polo, pig sticking, hunting, shooting etc., were diversions that both constituted British social life in India and helped to vest the participants with authority and qualities of bravery, power, and heroism.⁹ The importance of the Hill stations as a location where power and entertainment mixed should not be underestimated. These were cool summer retreats, restorative areas of leisure, which nevertheless, re-invented the idea of a colonial ruling class with all the attached privileges.

Such pleasures, however, are embedded even deeper into the social strata of existence, and the idea that they are essential to the governance of social order has been pursued most famously by Mikhael Bakhtin.¹⁰ For Bakhtin,

⁷ Cicero, *De Finibus*, (1999) 5:23.

⁸ Stephen Orgel, *The Illusion of Power: Political Theatre in the English Renaissance*, (1991).

⁹ There are of course a number of accounts. Among the more frequently referenced are Captain Thomas Williamson, *Oriental Field Sports being a Complete, Detailed and Accurate description of Wild Sports of the East* (1805); Charles Doyley, *The European in India*, (1813); R.V. Vernede (ed), *British Life in India* (1997). Charles Allen, *Plain Tales from the Raj* (1975). For more analytical accounts see, Denis Kincaid, *British Social Life in India 1608-1937* (1973); Dale Kennedy, *The Magic Mountains: Hill Stations and the British Raj* (1996).

¹⁰ Mikael Bakhtin, *Rabelais and His World* tr Helene Iswolsky (1993).

the carnival is a vestige of pre-modern urges which nevertheless survive modernizing programmes. Yet again, the carnival is not anti-thetical to the law. On the one hand, it provides a social safety-valve in order to release a build-up of tensions between those in authority and those subject to that authority. The carnival creates an illusion of freedom by permitting an enunciative platform from which to criticise or satirize wrong-headed authority. Thus, on the other hand, carnivals might simply propose an alternative social structure by calling for the re-ordering of wealth according to fairer principles of equity. The power of the quotidian to effect reform and their potential to reorganise the 'republic' for the better have been well analysed. Furthermore, these licensed festivities, that are always in danger of 'kicking-off', regenerate power and authority in order to re-legitimise them. Or, as Stallybrass and White argue, the energies of the carnival have become sublimated, turned into a spectacle providing "voyeuristic glimpses of a promiscuous loss of status and decorum which the bourgeoisie had had to deny as abhorrent in order to emerge as a distinct and 'proper' class."¹¹ In this sense, modern carnivals share with the more carnivalesque rituals of early modern Europe, the staging of a symbolic fight between desires and thought, between appetites and temperance. Such carnivals typically render extra-vulgar the desires associated with the lower body; belly, food, genitals, cod-pieces.¹²

We see similar ideas to those expressed above, behind the medieval office known as the 'King of Misrule', more tellingly known in Scotland as the 'Abbot of Unreason.' These mock dignitaries were appointed in all royal and mayoral courts, and, often, in houses of noblemen along with a retinue of officers and musicians. Their duties, which were to direct festivities and symbolically ritualised horse-play, derived from the ancient Roman saturnalia where public businesses, the law courts and the schools closed for the duration of the holiday. These festivities, encouraged and sanctioned in all rule based societies and communities, such as universities, schools, the inns of court and modern offices, provided more than freedom from restraint. These revelries should not be thought of merely as a release from the pressures of work. They were designed to the opposite effect in order to re-establish moral and social bonds and in order to give meaning to prohibitions and interdictions. Indeed, from an anthropological and somewhat trans-historical perspective, ritual licence makes obvious the human horror of nature and the carnality of birth. Rituals lend themselves to repetition. They give communities a sense of history. They thus mark a distance from animal life. What is celebrated is man's entry into a civilised, legislated and symbolic order in which he emerges as autonomous and independent from the filth of the bestial.

In addition to these legislative functions, the idea of a doctrine of pleasures has had more obvious impact on the numerous theories of capitalist economy. As Georges Bataille argues, while it may seem that pleasurable indulgences are useless and deprive the worker of his ability to participate in the production of labour, it nevertheless produces satisfaction and "this satisfaction in its collective form, determines the value of wealth, and thus

¹¹ Stallybrass and White, *The Politics and Poetics of Transgression*, (1986) at p.292.

¹² Edward Muir, *Ritual in Early Modern Europe*, (1997).

the nature of economy.”¹³ Whatever the theory, the carnival and other licensed forms of pleasurable activity, survive as an authorised form of transgression with specific legislative and social functions and effects.

All in all, pleasure gathers together a number of activities that cohere social life so that at least one commentator (Huizinga) has designated man as *Homo Ludens*.¹⁴ Aside from the anthropological connotations of this term, the collection of mischief makers, carnival characters and so forth are bona fide legal figures; they might be described as Law’s darlings. To be certain, such figures are deficient, they insult, provoke, fuss and bother, but, nevertheless, they possess a productive efficiency, accidentally discovering things, inventing fire, re-inventing reason, determining rules or provoking the most essential of decisions. Above all, like a proud parent overlooking his cheeky daughter, these forms of transgression are in fact nothing more than the emergence of a sometimes fiercely independent autonomous subject trying to forget her genealogy and do things for herself.

In this sense, the court jester, the office fool, or, indeed, the mischievous child belong to a group of institutional favourites in a tradition that dates back to Plato. In embodying specific pleasures, around which whole communities play, they become the very personification of the law. Indeed it is obvious that for Plato (or, at least to the Plato who wrote the *Laws* rather than the *Republic*), the moral and social benefits of pleasure are not made available simply through partying. The pleasure offered by a work of art, for example, has an effect on moral character since individuals are fixed by a desire to imitate the good represented in plastic forms. The pleasure of art is the pleasure of the virtuous. The artist becomes a law-giver, and as law-giver, must take pains to ensure that injustice is never portrayed as a means toward happiness. What binds the community spirit, establishes friendship, and trains good judgement, are not the positive forms of regulation, but those forms of almost innocent misconduct sanctioned and carefully managed by the law. Inculcating prudence and self control, as the primary aim of legislation, is achieved neither through repression nor censorship, but through the cultivation of moderate indulgence and harmless pleasures. The specific pleasures to be enjoyed when, temporarily, the law *seems* to suspend itself is what enables a sense of autonomy and self control.¹⁵

The Despotism of False and Unlimited Pleasures

Nevertheless, for Plato, the danger of exceeding the normative limits of pleasure persists, and such over-indulgence is in danger of contributing to the demise of social stability. Plato’s sense of enjoyment is one which by necessity has to be limited and a moderate, if not, austere economy of pleasures soon emerges. If the ideal citizen has to exercise self control (via the use of pleasures), the question arises as to what constitutes the normative zone and what constitutes an excess. He concludes book two of the *Laws* by warning future legislators against treating drink as “recreation pure and simple [where] anybody who wants to can go drinking and please himself

¹³ Georges Bataille, *The Accursed Share*, vol. I, (1991) at p.119.

¹⁴ Johan Huizinga, *Homo Ludens* (1970) at p.198.

¹⁵ Slavoj Žižek *The Metastases of Enjoyment*, (1994) p.55.

when and with whom he does it, and do whatever he likes at the same time.”¹⁶ Drinking must be directed towards social justice and the happiness of all. It cannot become an unfettered and useless means of recreation.

Similarly, in the *Republic*, Socrates warns his interlocutors that the use of pleasure has to be moderated:

“The drone-type will, as we said, be swayed by a mass of such unnecessary pleasures and desires, gets a taste of the drones’ honey and gets into brutal and dangerous company, where he can be provided with every variety and refinement of pleasure.”¹⁷

On the one hand, excess enjoyment is both physically and psychologically harmful; “pleasures that exceed by their force and intensity [drive] foolish people to near madness and to shrieks of frenzy.”¹⁸ A fierce bestial nature takes over when the reasonable part of us is asleep and relaxed, when we are completely unaware of sense and shame. A man possessed by animal nature, for example, does not “shrink from attempting intercourse (as it supposes) with a mother or anyone else, man, beast or God, or from murder or eating forbidden fruit.”¹⁹ On the other hand, therefore, what Plato finds so offensive about extreme hedonism is not simply the manner in which it corrupts natural bodies, but the manner in which it distances human action from the sphere of reality. Thus, in the *Philebus* the enjoyment of a presumed state of affairs are deemed to be profoundly misjudged since such forms of enjoyment are illusory and directed at appearances and deceptions. They are described as *phantasmata*, and properly belong to the Platonic class of the unlimited and to the series of simulacra; those bad copies that falsely claim affiliation to the ideal. As we shall see, the paradigm figure who indulges in these phantasmatic pleasures is that of the tyrant or despot: “The philosopher’s pleasures are the most real of all pleasures: all others are to some extent mixed with pain and therefore illusory, particularly the pleasures of the tyrant.”²⁰

A distinction has therefore to be drawn between *pleasure* on the one hand and *excess enjoyment* on the other. Where pleasure is essential to the composition of the legal subject (who is self aware, able to control himself, able to conduct himself in social gatherings, and able to live in friendship with others), excess enjoyment is simply and profoundly useless. Where one is innocent and moderate, the other is dangerous and extreme. Where one performs a law-like function, the other exceeds the law. Thus, the democratic character is one who “restrains himself from those [excess enjoyments] that lead to expense rather than profit.”²¹ And, in the more

¹⁶ Plato *The Laws*, *op. cit.*, n.3 at 2: 674.

¹⁷ Plato, *The Republic*, (1987) at 9:8:7, paras.559 d-e.

¹⁸ Plato *Philebus*, (1993) at 45d-e. Also, “The desire for a more varied and luxurious diet is . . . physically harmful and psychologically damaging to intelligence and self-discipline.” *The Republic*, *op. cit.*, n.17 at 9:8:7, para.559b.

¹⁹ *The Republic*, *op. cit.*, n.17 at 9:8:9, para.571 c.

²⁰ *The Republic*, *op. cit.*, n.17 at 9:8:9, para.583.

²¹ *The Republic*, *op. cit.*, n.17 at 9:8:7, para.558 d. In the *Philebus*, *op. cit.*, n.18, Plato distinguishes between pleasures which are ‘unmixed’ or which have not

philosophical terms set out in *Philebus*, pleasure must always be in the process of becoming, “it comes to be for the sake of some being.” Excess enjoyment, on the other hand, is absurd since it is pleasure that exists only for its own sake.²² The point to stress, is that the type of enjoyment we are concerned with here is not simply an aberrant criminal energy that can be put right. It is not the notion of civic vices as the opposite of civic virtues. Rather, these are phantasms and deliriums that haunt Plato from beyond any comprehension.

Even the Epicureans who admitted to the primordially of particle chaos as the condition of all life, and celebrated friction as the cause of fires and galaxies, recognised the dangers of excess. For Lucretius, a man satiated with sex would be thwarted in love. The violence of excessive passion “destroys the normal gentleness of what we find pleasing; it destroys what is ordinary, regular and domestic.”²³ By extending the bodily sensations beyond the confines of sanctioned pleasure, excess enjoyment explodes and disrupts the norms characteristic of liberalism. Such behaviour marks out an illicit domain where everything is in excess, where there is too much excitement and stimulation, where the superabundant vitality of individuals marks the collapse of society.²⁴ And, its illusory quality threatens identity.

The prohibition of excessive enjoyment is, therefore, not simply one which is designed to maintain a healthy body (whether the body natural or the body politic). It is necessary for the very faith and respect required for laws to work in the first place. Since Plato, institutional life and the legislative state, cannot help but rest on this fundamental interdiction. The same is implied in Freud’s analysis of the myth of totem and taboo, which he uses to show the emergence of guilt, “of social organization, of moral restrictions and of religion.”²⁵ The murderous behaviour of the ‘primal horde’ is a reaction against what they perceive to be the excessive polygamous enjoyments of the *urvater*. It is only once prohibitions are installed to prevent the horde gaining access to the wives of the murdered father and therefore to their own enjoyment, that order re-establishes itself. The respect shown for the law is subsequently played out in annual rituals honouring the dead father (thus, in Freudian terms, phantasies of what are forbidden are essential in positioning a focal point around which identity is established).

A further theme has yet to emerge and, in this sense, Freud’s assertion that the *urvater* is a tyrannical and violent father figure alerts us to a key factor in the interdictions against excess. For Plato, it is not merely the citizenry who should be forbidden a life of excessive indulgence. It is more important, in fact, that government officials, political leaders, legislators and monarchs should abstain from such behaviour. Moderation is associated with justice. And so, since Plato, the idea of excessive enjoyment has become inextricably

been preceded by a sense of craving, and those which are mixed, or which satisfy the appetite.

²² Plato *Philebus*, *op. cit.*, n.18 at 52e.

²³ Lucretius, *De Rerum Natura*, (1995) bk V.

²⁴ “enjoyment as such emerges only in this surplus, because it is constitutively an excess. If we subtract surplus we lose enjoyment itself.” Slavoj Žižek, *Sublime Object of Ideology* (1989), at p.52.

²⁵ Sigmund Freud, ‘Totem and Taboo,’ in *The Origins of Religion* (1990), p.203.

linked to the mischief of unqualified authority and to the political concepts of tyranny and despotism. For Plato, the tyrannical character is one who is superficially similar to the criminal type insofar as he “combines the characteristics of drunkenness, lust and madness. Life is a round of extravagant feasts and orgies”²⁶ But the madness and criminality are merely subsidiary passions (‘an extra crop of desires’) that he has to employ in order to “plunder from all available sources [or else] his life will be torment and agony.”²⁷ The tyrant is in fact subject to a greater force, and he has to feed his ‘master passion’ with all the pleasures of a dissolute life.

It ought to be noted then that for Plato, the tyrant is neither one who breaks nor rises above the law, but one who obeys another law. He may be an unconstitutional sovereign, or an absolute power unlimited by the law, but he is nevertheless one who has surrendered himself to a different supremacy. Tyranny cannot be judged according to specific acts. The extreme enjoyment being described here is not, as some classical scholars would claim, an aberrant erotic energy that can be re-educated towards civic virtue.²⁸ Rather, it is phantasmatic enjoyment itself that is tyrannical and that characterizes tyranny and that compels an individual to tyrannize others. This as a ‘master passion’ is therefore another more extreme version of the law-like function performed by pleasure. “His [master passion] tyrannizes over him, a despot without restraint or law, and drives him (as a tyrant drives a state) into any venture that will profit itself.”²⁹ To indulge in extreme enjoyment means to be possessed by another law of a completely different (xeno)genesis, and this in itself puts into question the very idea of law.

The theme of self-control inculcated through Plato’s recommended drinking parties, is therefore, paradoxically characterised as a freedom. The practice of innocent pleasures helps save man from acting in servitude to *aphrodisia* and the more excessive forms of desire. In mastering the base appetites, the citizen avoids being tyrannised by excess desires and the leader avoids the exercise of tyrannical government. As Foucault puts it; “in order not to be excessive, not to do violence, in order to avoid the trap of tyrannical authority over others, the exercise of political power required, as its own, principles of internal regulation, power over oneself.”³⁰ A state of ‘ethical negativity’ exists in being passive to the base and dangerous appetites.

The argument may be pursued upon more psychoanalytical grounds. If institutions inscribe pleasures as a means of self-regulation, they do so at the level of the unconscious. As the French Legal Theorist, Pierre Legendre argues, our desires are determined by our subjection to the law. Consequently, studies of transgression are to be located “at the level of the relationship between enjoyment and law.”³¹ Transgression, art, the poetics of rebellion, non-violent protest and the efficacy of the subaltern voice – all

²⁶ Plato *The Laws*, *op. cit.*, n.3. 2: 573 d-e).

²⁷ Plato *The Laws*, *op. cit.*, n.3. 2: 573 d-e).

²⁸ See for example, Waller R. Newell, *Ruling Passions; The Erotics of Statecraft in Platonic Political Philosophy* (2000). Leo Strauss, *On Tyranny* (1968).

²⁹ Plato, *The Laws*, *op. cit.*, n.3 at 2: 575 a.

³⁰ Michel Foucault *op. cit.*, n.2 at p.81.

³¹ Pierre Legendre in Peter Goodrich ed. *Law and the Unconscious: A Legendre Reader*, P. Goodrich, A. Pottage, and A. Schutz tr. (1997) at p.113.

these forms of defiance are conditioned by law and contained within a pre-established zone of pleasure. It is unclear, from reading Legendre what price there is to pay for exceeding this limit of pleasure. At times, he suggests there is no possibility of excess. Elsewhere any excess release of energy is “paid for dearly in the currency of guilt.”³² And yet, further on, he claims what lies beyond the zone is madness; “a basic maxim of the western tradition suggests that the enemies of the faith are both mad and delirious (*dementes vesanosque*).”³³

Oriental Jurisdictions

What is clear, however, is that as a consequence of a properly instituted legal subjectivity, the sensation of extreme enjoyment is unimaginable and, as we have already noted, illusory. Or, to use Plato’s own terminology, extreme enjoyment is *phantasmatic*. One cannot think about the idea of enjoyment that disrupts conventions without succumbing to those conventions circumscribed by language and the law. It is beyond experience, language and law and this is precisely why it is phantasmatic and beyond the ‘correct’ apprehension of reality. Indeed, an excess of enjoyment is what we can only imagine and fantasise to be had by others. The importance of this last observation is that enjoyment is something that happens to others elsewhere than at home. In Plato’s case, those others turn out to be the Persians. In book three of the *Laws*, Plato has the Athenian characterise the Persian monarchs as tyrannical since they lived a riot of debauchery and unbridled pleasure.³⁴ While they granted liberties to their subjects, allowed free speech, and listened to opinion on policy matters, the monarchs never considered the benefits of correct education and handed their children over to a “womanish education” conducted by the royal harem. This education was one of extreme luxury and unsuitable in acquiring traditional Persian skills required to produce hardy shepherds and soldiers. So that, when these children succeeded to the throne, driven out of their senses on liquor and lacking self-control, all they knew was how to live a life of unrestrained debauchery. It was through a lack of education in the delicate art of pleasure and abstinence, that the Persian monarchy was to fall from grace:

“So, when [his children] succeeded to their inheritance on the death of [King] Cyrus, they were living in a riot of unrestrained debauchery. First, unwilling to tolerate an equal, one of them killed the other; next, he himself, driven out of his senses by liquor and lack of self control, was deprived of his dominions by the Medes and the Eunuch.”³⁵

In this respect, it is interesting to note how the Persian monarchy continued to be demonised by the early Christian church, in terms of excessive enjoyment. The early church fathers, Tertullian and Minucius Felix, both express their shock that “the Persians consort with their mothers..[and laugh]

³² Pierre Legendre, *op. cit.*, n.31 at p.127.

³³ Pierre Legendre, *op. cit.*, n.31 at p.127.

³⁴ Plato, *The Laws*, *op. cit.*, n.3, 3:5.

³⁵ Plato, *The Laws*, *op. cit.*, n.3, 3:5: 695.

at the tragedy of *Oedipus*.³⁶ It is around such fantasies that classical Orientalism revolves.

The theme of de-territorializing and locating excess enjoyment elsewhere is one that is repeated again and again throughout the history of what might be termed 'minor jurisprudential' works on pleasure and enjoyment. What Freud's myth of Totem and Taboo shares with Plato's doctrine is the idea that such enjoyments belong to other communities, and other, usually Eastern, cultures. It is always primitive, or foreign communities such as Persia which mark the domain of illicit enjoyment. On the surface of it, this observation may be contradicted by pointing out that in *the Republic* even democratic governments, in their thirst for liberty, may produce prohibited and anti-social behaviour since the democratic character is one for whom all types of pleasures hold equal value:

"If anyone tells him that some pleasures, because they spring from good desires, are to be encouraged and approved, and others, springing from evil desires, to be disciplined and repressed, he. . . says all pleasures are equal and should have equal rights. . . one day it's wine, women and song, the next water to drink and a strict diet; one day it's hard physical training, the next indolence and careless ease."³⁷

However, (in spite of Plato's famously anti-democratic sentiments) the democratic character is not yet on a par with the licentious and libidinous tyrant; "when he was still democratically minded and under the influence of the laws and his father, [this swarm of pleasures] only appeared in his dreams."³⁸ His vice is corrupted by virtue. To be purely licentious, he has first to mix with brutal and dangerous company and *then to leave home*. He has to cut the paternal tie, and become a foreigner. Such characters, Plato emphasises, "will emigrate and take service with a tyrant elsewhere,"³⁹ and "the young man of unnecessary pleasure goes off to live with the lotos-eaters."⁴⁰ The accusation of an excessive life lived elsewhere is here given the sanction of myth. The lotos-eaters, it ought to be remembered, feature briefly in Homer's *Odyssey*. Living in "state of dreamy forgetfulness and luxurious ease" they enticed visitors to their Island. Having fed on the honey-sweet *Lotos* plant, even Odysseus's men, had cause to forget their friends and homes, preferring "to dwell for ever with the lotos-eating me, feeding upon lotos and letting fade from their minds all memory of home."⁴¹ The fantasy of excess has a location but only on what Tennyson in his poetic adaptation of the myth of the Lotos-eaters calls the 'alien shores' where 'slumber is more sweet than toil.'⁴²

At the risk of merely compiling a dossier on this particular aspect of classical Orientalism, it need only be noted how this theme of the 'location-elsewhere'

³⁶ Tertullian, *Apologeticus de Spectaculis*, (1984) 9: 16. See also Minucius Felix, *Octavius*, 31.3 (1984).

³⁷ Plato, *The Republic*, *op. cit.*, n.17 at 9: 8: 561 c.

³⁸ Plato, *The Republic*, *op. cit.*, n.17 at 9: 9: 574 e.

³⁹ Plato, *The Republic*, *op. cit.*, n.17 at 9: 9: 575 b.

⁴⁰ Plato, *The Republic*, *op. cit.*, n.17 at 9: 8: 560 b.

⁴¹ Homer, *The Odyssey*, T.E. Lawrence tr. 1991) Bk 9.

⁴² Alfred, Lord Tennyson, 'The Lotos-Eaters' in *Poems* (1947) pp.45-50.

of enjoyment is repeated in, and structures, the works of both Pliny and Quintilian. As George Didi-Huberman has shown, for Pliny, unproductive expenditure, excess or transgression is linked to the aesthetic concept of *luxuria*. *Luxuria* threatens “the immemorial quality of an autochthonous juridical world but also the theoretical model of a genealogically conceived resemblance.”⁴³ The origins of this heinous threat to the juridical and familial order lies, again, somewhere in Asia. It was “the conquest of Asia that first introduced luxury into Italy.”⁴⁴ A similar contra-distinction between acceptable and unacceptable uses of ornament, or embellishment, in forensic speech is made by Quintilian. Asian rhetoric is exuberant, frivolous, degraded effeminate and excessive. It exceeds the pleasures afforded by the beauty of a properly measured rhetoric. By overindulging in the use of ornament, Asian rhetoric lacks any function or cognitive value. Attic rhetoric, on the other hand, is virile and noble.⁴⁵

To suggest that there is a strand of juridical or philosophical thought that seeks to establish excess enjoyment as belonging elsewhere, and as having no place here at home, may seem a little trite. Is this after all, not the same distinction that distinguishes between sinful heathens and Christians, between savages and those who are more civilized? Immorality, or sin, however problematic as concepts, belong to the philosophically, religious and criminologically defined category of ‘experience’. These are instances of behaviour that lend themselves, at least in theory, to empirical measure. Excess, on the other hand, is characterised as breaking away from juridical order of genealogy, and of being phantasmatic. As phantasy, excessive enjoyment, belongs to an area closed off to inquiry. It is foreign both to ‘our’ way of thinking and to thought itself.

Aristotle’s Domestication of the Despot

One of the consequences, listed by Plato, of the effects of excessive enjoyment, is that those who find themselves surrendering to the phantasmatic law of excess enjoyment are forced to plunder their fathers wealth. In terms of the law, the repercussions are profound. This is no ordinary crime of theft. What is at stake in following the imperative of despotic enjoyment is the interruption to the principle of paternity. Roman law would eventually install a dogmatic logic of reproduction according to which paternity itself would determine the very cycle of life in terms of subjectivity, power, ownership and rights. Law, by regarding itself as the

⁴³ Georges Didi-Huberman, ‘The Molding Image: Genealogy and the Truth of resemblance in Pliny’s Natural History, Book 35, 1-7. in Costas Douzinas and Lynda Nead, eds., *Law and the image: The authority of Art and the Aesthetics of Law* pp.71-88 (Chicago 1999).

⁴⁴ Pliny, *Natural History*, bk33, para.148 cited in Didi-Huberman *op. cit.*, n.46 at p.86.

⁴⁵ Piyel Haldar, ‘The Function of the Ornament in Quintilian, Alberti, and Court Architecture’ in Douzinas and Nead, *Law and the Image op. cit.* n.43. See also, Roland Barthes ‘the Old Rhetoric: an aide-Memoire’ in *The Semiotic Challenge* (New York: Hill and Wang, 1988) at p.29.

progenitor of subjective life, claims the status of paternity. To steal from the father would be to confound the juristic order of genealogy.⁴⁶

This introduces a crucial difference between Plato's Orientalism and what might be termed Aristotle's domestication of despotism. The essential differences between the Platonic and Aristotelian formulations of despotic enjoyment can be summarised as follows. Where, Plato has the despot cutting the familial and paternal ties, Aristotle has the despot actually occupying the place of fatherhood. It is paternity itself which, for Aristotle, raises the very possibility of despotism. It is the father figure that determines the zone of pleasure, and as such, it is capable of defining the contours of licit pleasures far too widely. Indeed, for Aristotle, the despot is the head of the domestic household. Despotic enjoyment is treated as a domestic problem, and is located, in the first instance, at the level of household management. It characterises the relationship between master and slave, husband and wife, or fathers and children. The exercise of rule over the domestic slave is despotic in so far as it exists only for the benefit of the master and not for the good of the community or the *polis*. The father rules over slaves and not free men.⁴⁷ Despotism, the relation between master and servant, is based on force and, the tyrant rules "without any form of accountability, and with a view to his own advantage rather than that of his subjects."⁴⁸ Yet, the enjoyment of despotic power for Aristotle is not transgressive; the tyrant is still capable of attaining a state of 'half goodness'.⁴⁹ And, of the master-slave relationship, Aristotle maintains that it is possible to exist in "a community of interest, and a relation of friendship."⁵⁰ Indeed, just as the King is prone to tyranny, so the tyrant is capable of honour and aiming (however partially) at what is good.

By analogy, this corrupt form of mastery over slaves, might be used to describe a tyrannical government which exercised power without considering the good of the community. But this power need not break the law. It is a form of government that "is conducted in obedience to the law."⁵¹ It is also a form of government that can be exercised over consenting subjects. For, it is always possible to rule over consenting subjects as a master rules over his slaves if that rule is exercised with a view to personal advantage. Kingship and tyranny overlap. Where a King aims at what is good, the despot grasps at wealth. But, Kings are subject to passions and so are prone to tyranny. All forms of sovereignty are capable of despotic injustice. For Aristotle, it is unnecessary to seek examples away from the Greeks. The tyrants of *Politics*, like Pisistratus, all reside at home. In this Aristotelian sense, the surplus enjoyment of the *Politics* may be equivalent to the surplus-value determined by the law of capitalism.⁵² Here excess may be described as a surplus that can be commodified and exchanged, stolen and retrieved.

⁴⁶ On the juridical question of genealogy see generally the works of Pierre Legendre, *Law and the Unconscious op. cit.*, n.34.

⁴⁷ Aristotle, *Politics*, George Barker tr., (1998) at 1:3.

⁴⁸ Aristotle, *Politics*, *op. cit.*, n.47 at 5:11.

⁴⁹ Aristotle, *Politics*, *op. cit.*, n.47 at 5:11.

⁵⁰ Aristotle, *Politics*, *op. cit.*, n.47 at 1:6.

⁵¹ Aristotle, *Politics*, *op. cit.*, n.47 at 5:10.

⁵² Slavoj Žižek, *On Belief*, (2001).

This form of enjoyment, however, is markedly different to the transgressive enjoyment of Plato's fantasies of the Persian monarchs, or Homer's Lotos-eaters. It already obeys a recognisable law and is both a measured and a measurable excess; "one could know in principle, if Ajax, Antigone, or Creon, Caesar or Brutus surpassed the measure and one could know which measure was being exceeded."⁵³ This enjoyment is already something different to the phantasmatic and unimaginable fantasy of enjoyment that Plato uses to distance other cultures.

Conclusion

What does it mean then to concentrate on Plato's formulation of Oriental despotism and excess enjoyment?. Two answers propose themselves.

Law, as an institution, has an in-built attitude towards the East that revolves around differences in political rule. The question as to what forms of behaviour are best suited to civilised society are measured against a suspicion that the Orient developed forms of behaviour that were not simply aberrant but unimaginable in their excess. The torrid zone demarcated by the East came to be regarded as everything the West was not, or, ought not to be. This suspicion or set of fantasies continued and remained influential throughout the history of Orientalism. Classical jurisprudence, or indeed any line of thought that treats the moderation of behaviour is implicit in this set of fantasies. Consequently, an appreciation of a broad range of discourses and disciplines (Orientalism; the history of colonialism, postcolonial theory, globalization, development studies, etc) that deal with the relationship between East and West must surely be obliged to take into account the abstractions of legal thought. Moreover, any legal or state sanctioned reckoning of proper modes of conduct (especially civilised forms of pleasure) must also take into account the idea that such conduct is regulated by the fantasy of what is radically improper. In the most abstract terms, the East and Oriental excess might be regarded as having some sort of determinative and tutelary function. As a result of its negation by Occidental jurisprudence, the fantasy of the Orient paradoxically performs a crucial and indispensable function.

At the level of least abstraction, this article hopes to illuminate the relevance of Orientalism to the study of law. Every domain on the law school curriculum has, to some extent or other been touched by the influence of cultural or critical studies. None more so than the study of jurisprudence. The most erudite courses are now capable of teaching students about the centrality of western concepts of law to questions of gender, race or to the history of oppression and colonialism. In spite of the sometimes ulcerative responses elicited by students and scholars these questions remain crucial without too much of a drift in focus. However, part of the argument that has been attempted here is that one need not borrow from other disciplines in order to make the doctrinal point about the relevance of Orientalism to the study of law. Jurisprudential debates about correct forms of government and regulation are always already implicit in Orientalist fantasies. These fantasies borne in the foundational texts of Western jurisprudence determine what Occidental forms of legality, administration and governmentality ought

⁵³ Jean-Luc Nancy, 'Human Excess' in *Being Singular Plural*, (2000) at p.180.

not to be. Law, therefore, is always already implicit in the Orientalist encounter with the East. At a time when the relationship between East and West is fragmenting, at a time when the relationships between secular and religious orders needs urgently to be examined, lawyers need to enter debates fully informed of the manner in they have been shaped by jurisprudential concerns. Never before has the dichotomy between theory and practice in Jurisprudence seemed so false.⁵⁴

⁵⁴ Georges Pavlakos, 'Theory and Practice in Jurisprudence: A False Dichotomy' in 55 *NILQ* 337.