

HOWLING AT THE BLIND LADY, COMMUNICATION BARRIERS BETWEEN MINORS, PARENTS AND THE LAW

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Abstract: *In a world of eternal accelerations old issues such as miscommunication between the representatives of the law or of the state in general and the minor or the familial unit are bound to aggravate. In this article we will present the general situation of the right of the child to be listened as it is imposed by international law and adapted for our respective legislations. After this we will offer a possible explanation as to why these laws seem to fail despite sincere efforts towards a betterment of the situation.*

Keywords: *Italy, Romania, family law, criminal law, Jacques Lacan, Alenka Zupancic, psychoanalysis, psychology, repression.*

Introduction

In 2012 Amanda Todd, a 15-year-old Canadian girl, took her own life after suffering a prolonged period of cyberbullying (<https://www.bbc.com/news/world-europe-67787843>). Before the event, Amanda had told her story and tried to ask for help even through a YouTube video. All prior attempts to find any solace or help have failed.

Despite attempts to report her abuse, authorities responded in an insufficient manner and failed to protect her. The case highlighted the serious shortcomings in the support system for young victims of bullying and the inability of educational institutions. Societal structures that are essential to the healthy development of a child or adolescent have failed to intervene on behalf of minors in situations of psychic harm and the abuse that creates such damage.

This unfortunately proves itself not to be a single instance of such occurrences or a sinister exception to the normal order of things. Suicide amongst minors, particularly teenagers, has become a reality of the European and American continents. When we look at both Italy and Romania, we observe similar situations.

In more recent cases, a Romanian youth committed suicide due to low grades in school (<https://stirileprotv.ro/socant/un-elev-de-clasa-a-viii-a-din-navodari-s-a-sinucis-din-cauza-notelor-mici-de-la-scoala.html>) and a 17 year old Italian girl has committed suicide after being the victim of a gang rape 2 years prior (https://www.tgcom24.mediaset.it/cronaca/agrigento-17enne-si-uccise-dopo-violenza-di-gruppo_61162841-202302k.shtml). Why is this happening? Why are our youth committing to such violent acts against the self and others?

What does it really mean to "listen" to a minor? How important is it to listen to minors in judicial proceedings? Article 12 of the United Nations Convention on the Rights of the Child

HOWLING AT THE BLIND LADY, COMMUNICATION BARRIERS BETWEEN MINORS, PARENTS AND THE LAW

states that every child has the right to express their opinions; however, often, this is precisely what is missing whenever authorities have to engage with set minors.

After the establishment of the aforementioned article, some research was conducted in the European context which highlighted how minors do not feel involved in decisions that concern them, as a matter of fact, as many as 2/3 of children in Europe are not satisfied with the way in which they are heard in their living environment and how it interacts with them (The Europe Kids Want, 2019).

The resulting recommendations, therefore, call on decision-makers to greater involvement of children and young people in political dialogues at European, national and local levels, as well as invite the European Union to intervene to establish mechanisms for the participation of minors in decision-making processes on issues that concern them. Minors constitute a key and essential element in the creation of inclusive civil societies.

The research encapsulated by the study "Our Europe, our rights, our future", which in 2021 saw the participation of thousands of minors between the ages of 11 and 17, underlines that, regardless of background, the vast majority of those interviewed would like to participate more in the choices they concern them if given the opportunity, with greater interest found in the female gender. Even if children feel listened to in the family environment, the same cannot be said in other spheres of social life such as school. But above all the minor feels failed mostly by social and health services, expressing that professionals often prefer to talk to parents rather than with them.

A considerable percentage of participants even reports that, for the purposes of greater protection of their rights, minors should not interface with additional professional figures, with particular reference to social workers, as they are not considered helpful figures who value and listen to opinions and wishes of minors.

In light of what emerged, the European Commission, in order to encourage and strengthen mechanisms for young people's participation in decisions that concern them, in 2022 established the "European Union Children's participation platform", a space dedicated to giving voice to the opinions of young people, who are called to share their priorities, as well as to suggest effective and participatory strategies for the real exercise and respect of their rights.

The progressive evolution of national and international regulations regarding the necessity of listening to minors highlights a growing recognition of the importance of children and adolescents having a voice in proceedings that concern them. Even if there are sluggish improvements towards a better tomorrow, something still feels hopeless and rings hollow. We should never scuff at the betterment of any societal ill, but, we must stay vigilant and aware of what is being done and why.

I. The law

As previously stated, the United Nations Convention on the Rights of the Child imposes upon all signatory countries the right of the child. This notion was conceived in 1989, as such, it was there before the youth of today became more prone to heinous actions against the self. The language used by the convention itself poses a couple of notable problems.

Firstly, point one of the article specifies that the age and maturity of the child are to be considered essential factors in how important the statements given by the child will be in a

court proceeding. The general issue here is the loose nature of what age and maturity may be considered. Culture plays a major role in the perceived maturity of the child.

A society that has more traditional values may instil that a child should be responsible for themselves at an earlier age but put less emphasis on how these children feel, while a more progressive society may allow more leeway in their development and be more receptive to the issues expressed by kids. The room for error in the development of a child is of the essence in many instances where a child is directly or marginally involved in any court proceedings.

Secondly, the possibility of the child being represented creates conundrum. How is the child able to speak truthfully if they are represented and not the speaker of its own ills? This little detail shall be important down to road of our research.

The minor must be listened, generally, in two instances. Be it in family proceedings or in a criminal court from the standpoint of the witness, the victim, or the perpetrator. Of course, such roles played by the minor in the court of law involve different conjunctures and offer different results in the judge's decision, and yet, there is sufficient similarity for it to be analysed as a unit.

We are in no way claiming that family and criminal law proceedings are identical, we are stating that the child being the subject of the research their right to speak should be analysed in both of these branches. It is not about creating difference, it's about a more general issue of the child being voiceless in the face of bureaucracy

In the Romanian legislation the Civil Procedure Code grants the child that has reached 10 years of age (Romanian Civil Code, art.264) to speak by themselves without any representative in the case of a family hearing, however, it is for the judge to decide if a parent, a tutor, or any other person should be present (Romanian Civil Procedure Code, art.266). Another caveat is where the child is heard. The children must be heard out in a council room as they may be influenced by the present of other people (<https://lege5.ro/gratuit/gyztaojtgy/art-226-ascultarea-minorilor-codul-de-procedura-civila?dp=g43temjuga4dg>).

In the realm of Romanian criminal law, we have observed some modification that are towards the better listening of the child. In 2023 the Criminal Procedure Code has made the presence of a psychologist mandatory when listening to a minor.

Art. 111, point d), number (8) and (8¹) ensures that if the victim of any crime is a minor they have to be interviewed by the authorities only in the presence of a psychologist. Further than that, number (8³) of the same article and point imposes another form of protection, mainly, if one of the parties standing accused in a case where the minor under their care or education is the victim, there must be a representative from the tutelary authority or a relative that's "sane of mind".

In the case of the minor that is a witness to a crime, the same rules apply according to art.124. at point 4 of the aforementioned article states expressly that none of the actions cause any psychic damage to the child.

When the minor is the perpetrator of a crime, they are offered special jailing conditions as to not affect their physical, mental or moral development according to art.244 of the Criminal Procedure Code. Art.244¹ ensures again that there is always an adult with the child while they are being interrogated by the authorities.

In Italy, there is a storied course of the voice of the child being considered valuable. Already in the 1980s, Italian law had begun to consider the possibility of hearing minor

HOWLING AT THE BLIND LADY, COMMUNICATION BARRIERS BETWEEN MINORS, PARENTS AND THE LAW

children during separation and divorce proceedings, but only if the President of the Court deemed it necessary.

In the international legal landscape, it was the 1989 New York Convention on the Rights of the Child that established the principle of the child's right to freely express his opinion on matters that concern him in judicial proceedings. Subsequently, the ratification of the Strasbourg Convention on the Exercise of the Rights of the Child in 2003 made it mandatory for children to be heard in judicial proceedings on matters relating to their custody.

The introduction of article 155 of the Italian civil code, called "Powers of the judge and listening to minors", further underlined the importance of listening to minors in the legal field. The article, in fact, establishes the judge's obligation to order the hearing of the minor child who has reached the age of twelve, as well as of a younger child if capable of discernment.

The art. 336 bis of the Civil Code states that hearing the minor is a fundamental right, but does not impose a categorical obligation on judges. In other words, the law provides for a discretionary assessment by the judge, who must consider some factors such as the age of the minor, his capacity for discernment and the specific circumstances of the case. Similarly, the "manifest superfluity" clause allows the omission of hearing in situations in which the information is already ascertained or uncontested, or in cases where hearing the minor does not add useful elements to the sentence.

However, this provision has raised concerns about the child's right to be heard, even in circumstances involving mutual separation or joint divorce proceedings.

The filiation reform has strengthened the right of minors to be heard, introducing principles of flexibility and discretion which allow the judge to evaluate the need to hear the minor on a case-by-case basis. This approach aims to balance the child's right to be heard with the need to protect their wellbeing, however, the application of such ideas has difficulties in implementation still.

II. Around the law

The legal texts in both countries are relatively clear. The voice of the child is an important factor in all the court proceedings that have to do with its wellbeing, and yet, the truth as espoused by a judge or an institution is finicky and unreliable to the same extent the law is not functional.

If both of our countries and many others have provisions to give the child a voice and the right to express what they wish why are they still feeling and acting as if their opinions are not taken into consideration when they speak of their ills?

For a possible answer we must look beyond the law. We wish to present a hypothesis based in psychoanalysis and ethics.

3.1. Repression of power:

When we simply look at the definition of repression we find out that it is "*the process and effect of keeping particular thoughts and wishes out of your conscious mind in order to defend or protect it*" (<https://dictionary.cambridge.org/dictionary/english/repression>). This definition, as functional as it is, is somewhat dissatisfying, hence, we wish to use the ideas elaborated by Jacques Lacan. Before we start understanding his notion of repression we must

offer a disclaimer. Lacanian psychoanalysis is complex and intricate, as such, we will dwell only on the necessary, we shall link a video explainer for a better understanding (https://www.youtube.com/watch?v=67d0aGc9K_I&ab_channel=LacanOnline).

One of the first aspects worthy of discussion is the general disgust Lacan felt towards psychology as a field of studies, calling psychologists people immersed in a judicial astronomy (Lacan, p.676) due to their failure to fully comprehend the signification chains that build the conscious and unconscious. This is the essential notion of Lacan, everything is signs and connections. The human is born and bound to a symbolic order of meanings built before they were born. We are chained by signifiers and unable to escape representation.

This chaining as it was of the subject results in a paradoxical state of being and non-being at the same time. The subject in itself is bared, it's not a clear person or notion, it is a formation of human subjectivity by which we exist and function. The "I" is strict nonsense when taken as an isolated signifier of the self. In order to offer "I" any meaning, we must explain actions and relation to other objects or selves (Lacan, 679).

-I am standing.

-I am strutting.

-Who shouted? I did.

The self in the absence of context is nothing, as such the coherence of the subject becomes secondary to the action and the thoughts that resulted in set action. Even the differentiation of thinking and being is important here. Being, or doing, differs from thinking by temporal and procedural vicissitudes. When we act, we exist in a conscient state where we interact with the material world or other humans. When we think, we are engaging in an unconscious manner by which we "find excuses" for being retroactively.

This is a basic formulation derived from Lacan's critique of the Cartesian "cogito". The famous saying goes "*I think, therefore, I am*". Realistically, the opposite is true, only by being one may engage in thinking for a retroactive signification of events. This is the split of the subject. We never exist and think at the same time. We are split between living and thinking as symbiotic actions that define the "I" (Lacan, pp.731-735)

These two notions were necessary before we can speak about repression as Lacan presents it. We will also take some creative freedom in the interpretation of both forms of denial, of the demand and the desire.

The need is contaminated by language, by thought and expression. A need gives birth to a demand in order to fulfil what we require to quench a biological necessity. The easiest example would be the infant crying. An infant is crying due to presumed hunger, the symbolic mother refuses set demand as they fed the child not too long ago. Here we see the primal repression in Freudian psychoanalysis, the denial of the thought to manifest in conscious form.

This first denial is associated with the symbolic mother, which is not necessarily the mother or even a woman. The symbolic mother is the person to which we express the fundamental demand for love, for recognition. The symbolic mother could be a husband, a manager, a nanny, a grandmother, and any other person to which we express the demand for love.

The repression of desire is fundamentally bound to the symbolic father, the "*Grand Outreau*", and the *petite object a*. The symbolic father (<https://nosubject.com/Father>) operates as the entity which forbids the person from fulfilling a desire. This again, doesn't have to be a

*HOWLING AT THE BLIND LADY, COMMUNICATION BARRIERS BETWEEN MINORS,
PARENTS AND THE LAW*

father. By the evolution of the subject, the symbolic mother and father are being displaced. In reality, as we grow up we have to deal with these two paradoxical figures haunting us, observing them in all social, hence, linguistic forms. The father is both a protector and a figure of prohibition. The mother is the figure of both love and sexuality.

The denial of desire fulfilment results in the formation of the big other. The big other serves as an automated symbolic father. While developing, one learns the rules of society. It develops an internal presence of set rules that makes the symbolic father technically useless

The way repression appears is by denial. Denial of demands by the symbolic mother and denial of desire by the symbolic father leads the person to have repressed. Repression is not necessarily a bad occurrence in itself or not even concurring with the dictionary definition.

Lacan concludes that repression in its excess leads to the formation of the neurotic subject. The neurotic is in a state of questioning, depending on the content of the question, the neurotic subject can be hysteric, obsessive, or develop phobias.

3.2. The repetition of the meek

These structures of repression form themselves throughout the psychic life of the subject and unavoidably repeats in structure. It repeats on the individual scale and on the social scale. If we are to think of a society, there is a common psychic shared by all members through culture.

Repression on a socio-political scale, comes in the metamorphosis of the symbolic mother in the political and administrative sphere and the law takes up the role of the symbolic father. How does this happen?

The political sphere is elected by us, citizens of a state. This choice will lead to an ideological basis upon which administration, both at the state and local level, appears or shifts. Certain governments will apply certain ideologically driven solutions to the demands expressed by the voter. These solutions, no matter how good or bad, will end up dissatisfying a sector of the population, it will fail to fulfil some needs of the social psyche. We are socially bound to the politically driven administration to see it as the symbolic mother.

As for the legal system, it fits perfectly in the paradoxical nature of the symbolic father. If the citizen has an issue, they are bound to solve it through interpersonal means with the other, if this fails, the citizen will go to an administrative body, and if that fails, the citizen will address it's now formed desire to a court of law.

The court of law will fulfil the function of prohibition and protection at the same time. One party will seek protection, the other will have to face prohibition. In this regard, it is up to the legal apparatus to decide how to exercise this power.

Whenever we address the administration or the legal system, we don't talk to the abstract notions, we talk to a representative of these powers. We insert a further form of representation. Both systems represent the people in different ways, the administration is the will of the people, the legal system is the regulatory body of the people. They do however both gain a monolithic nature of being an independent abstract entity, ulterior to this, they require representation via an emissary. Regardless of which of the two abstract notions we approach we are confronted with a representative that we can broadly call a bureaucrat.

3.3. God in the role of a bureaucrat

On last notion to grasp is the idea of the bureaucrat. Again, going to the dictionary we find out that a bureaucrat is “*a person who is one of the people who run a government or big company and who does everything according to the rules of that government or company: a person who is part of a bureaucracy*”.

In her essay *The Subject of Law*, psychoanalyst Alenka Zupancic speaks of the notion of diabolical evil as Kant envisions it through the lens of Lacanian thought. Her conclusion is that truly diabolical evil resides in the God who believes himself a mere bureaucrat. Her example is the willingness of the Nazi soldier to execute heinous actions (Zupancic, p.57).

The Nazi soldiers were not bureaucrats that believed themselves god over those in the concentration camps, they believed themselves to be bureaucrats in a system anointed by God to be holy and righteous. This is a pretence in reality, they would not be willing to embrace their true desires of hurting the other as it was formed by Nazi ideology in the brain of the fascist.

The reason that this reading of Kantian morals is important to us is simple. By the way that both administrative and legal systems operate, they are bound to produce diabolical applications, not by some evil intention, but by perpetuating a form of psychic malpractice.

In many cases, the representative of law and administration may develop a sincere sense of moral authority granted to them by the law of men. This can easily lead to them unavoidably developing an incidental diabolical pattern of actions. This leaves place for both the godhood of men obtained through the subjective self to be bureaucratized or for bureaucrats to think themselves wicked gods.

III. Folding dirty laundry

An old Romanian saying says that “you should never wash your clothes in public”. The real meaning behind this wisdom is to never discuss private matters in public. This is oddly representative of the nation as a whole, it is repression imposed by tradition and perpetuated by cultural norms. This is not a particular, it is an eerily similar function as the repression formed by the familial structure that repeats itself between family and state.

Even if the laws in both our respective countries, Italy and Romania, have been doing some progress in regards to listening to children, there is still a long way to go and there are still unresolved issues that reside in the deepest recesses of the social and individual psyche.

The symbolic orders and dichotomies are eternal chains of representation and reconfigure the actors but not the roles. The child will unavoidably face repression in its development in their household. This situation seems to repeat itself in how the child interacts with any authority. In the household of the average family, more and more commonly we see the creation of excessive repression through miscommunication. Due to generational gaps and the excess of accelerated feelings we see both the repression of demands and desires appear in surplus.

This interaction repeats itself through the discursive actions of the parent and the state, be the state represented by a judge or clerk, a representant of their respective abstractions themselves. The family has to interact, in many instances and through many institutions and branches of law, in order to achieve the satisfaction of a demand or a desire.

Here lies the real problem, these repetitive chains of representation are bound to create repression of the social conscience, to the familial unit, and to the child who remains voiceless

HOWLING AT THE BLIND LADY, COMMUNICATION BARRIERS BETWEEN MINORS, PARENTS AND THE LAW

by most studies. It's repression, repeated against the meek family or individual members of the family. The generalised form of repression that develops in the interactions between the child, the family and the state, forms an endless chain of neurotic subjects, a factory of issues that produces with such efficiency that the neurotic becomes the normal.

Normalising the image of the voiceless and incapable child in the processes of legal and administrative matters leads to the tragedies that we have started the studies with. A child being cyberstalked forms neurotic behaviours when the basic demand for human recognition was forbidden by many emissaries of the state and by family. A child killing himself due to low grades and the pressure of both social and familial structures denying the demand to be human and fail. An adolescent girl becoming neurotic and untrusting of systems to protect her from her trauma and the initial traumatic event, gone to suicide.

All of these cases are the chains of repression institutionalised and repeated on all levels choking the youth of our nations and of all nations in the contemporary life of accelerated movement that offers no solace or calm for them to grow and develop in a healthy manner. A hermeneutic of suspicion is no longer a good philosophical tool to question what is and what isn't, it's the status quo of all humans from birth. The symbolic order is plagued by this acceleration and institutionalised repression.

In Italy, we of course have the infamous case of the Trial of the Angels and Demons (<https://www.corrierepl.it/2022/06/28/bambini-strappati-intervista-allavvocato-francesco-miraglia/>) which shows us that bureaucrats can act as god and impose their own will on human life, treating humans as means to an end and not as a meaning in itself. This would not be possible if the gods operating as bureaucrats in the courts and administration would not allow such events to happen.

In Romania we see a similar situation happening to the elderly in what have been dubbed the Asylums of Horror by the media (<https://www.euronews.ro/articole/dosarul-azilele-groazei-trimis-in-judecata-fostul-sofer-al-gabrielei-firea-se-af1>). We again, see bureaucrats acting as gods by the permission of gods acting as bureaucrats.

By following the law as it stands, without constant revisions of the morality and the efficiency of laws, structure become diabolical by error leading to forge the chains of repression again and again in new generations.

Conclusions

As we have stated *at nauseam* at this point, there are slow and meaningful changes occurring in both our countries and at a global level, and yet, unless we can elaborate manners by which the chains of repression can be fully broken at a systemic level and left at normal, necessary levels for the development of children, we will never manage to offer the children a voice to pronounce their pains and issues clearly towards the legislator or the family.

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