

THE LACANIAN SUBJECT IN THE CONTEXT OF US LEGISLATION

A.C. RATH-BOȘCA

Albert-Camil Rath-Boșca

Faculty of Law, West University of Timișoara, Romania

<https://orcid.org/0009-0004-6815-9509>, E-mail: camilend@yahoo.com

Abstract: *The notion of the subject is one met in different areas of the human and real or hard sciences. From literature to biology, the subject is omnipresent but rarely notion that holds the same fundamental substance or role. In the case of law, psychology and grammar we are speaking of the nucleus of analysis in all three areas of study. In this article we will try and see if there is any connection beyond this apparent fact through the lens of Lacanian psychoanalysis and how can all these three areas connect further in order to conjure up new paths of understanding*

Keywords: US law, legal subject, Lacan, Psychoanalysis, legal theory.

1. *We came as Romans (Introduction)*

The concept of the "subject" serves as the bedrock of all fields of study centered on human behavior, yet its definition shifts radically depending on the field of study and of the scientist analyzing the subject itself. In economy, the subject is the person that creates or loses capital and the method by which it happened, in legal theory, more specifically, in the American legal system, a natural or legal person that can acquire rights and obligation, in sociology, the subject is the person as part of a society and in psychology and psychiatry the human which shows certain symptoms or issues that hinder the normal functions of a person is the subject.

We can go further and claim that even hard sciences like physics and chemistry is still bound by the subject. The difference is that the subject is not the studied, but it's the researcher. The researcher becomes the subject studying and reaching new information or confirming ideas previously known or studied. This side of subjectivity is not of interest for our current pursuit.

Political ideology serves as another step in the formation of the subject. Marxism has a long and storied tradition not only of political analysis, but also of cultural, sociological, literary, economic and even scientific analysis with its own presuppositions and ideas that are either taken as fact or combated in order to further the Marxist analytical tradition. On the contrary liberalism and conservatism have similar traditions, even if there is a rarity in seeing someone claim conservatism in academic circles. There is no universally applicable definition of a subject that can satisfy all humanistic researchers and can unify field fully into universal humanistic research. An economical subject of great interest to the economist and be presented as a great example of capitalism may be a horrendous monster from the standpoint of sociology or psychology for the way he achieved his wealth.

Jacques Lacan posits that the subject is a "split creature," born from a linguistic encounter and defined by a fundamental "lack". We will further explain this in the next section, but we wish to start from this point due to the originality of the notion. Throwing what should be the stable nucleus of a science to the wind is bold, if not irresponsible.

The legal system demands a high degree of stability, coherence, and clarity. In legal theory, the "legal subject" is an entity—either a natural person or a legal person (such as a corporation or NGO)—capable of holding rights and fulfilling obligations.

Unlike the Lacanian subject, which is shattered by its introduction to the "symbolic order" and the "real" during the mirror stage of childhood, the legal subject must be a predictable unit that can sign contracts, commit deeds, and be held accountable for its actions. The law operates on the presupposition that the subject is a functional, whole entity. A more common name for this presumption is that of the rational actor. The tension between these two definitions creates a complex intersection: how can the law, which requires a stable actor, account for the Lacanian reality of a split subject which is never whole and never concrete and functional.

In this article, we will navigate these two notions in order to find not only connections, but also form new pathways of approaching the legal subject in the American legal system

2. *Ghost in a Shell (The Lacanian Subject)*

When we think of a subject in psychology, we obviously perceive the patient on Freud's couch or of a stereotypical movie scene of a middle-class American pondering on what makes them miserable. For the most part, this is not a wrong perception in the gaze of contemporary psychological practices. One psychoanalyst that may disagree with this perception is of course Jacques Lacan. In his theories he discussed broadly how the psychoanalytical subject appears. For Lacan, the subject is never a coherent stable notion, it is a split creature that appears only when he is spoken, not spoken too, not spoken of, but spoken by language.

How does such a subject work then? In Lacanian psychoanalysis the subject is not a continuum that holds coherence and as such can be studied like a dissected frog or a medical patient. For our intents and purposes, we will accept that a psychological subject is the result of action and is birth of linguistic encounter, or as Lacan would have it, "a subject is that which cannot be an object". This aforementioned definition, simple as it may appear, further obfuscates our search for a subject. A better way to understand the Lacanian subject is through the lenses of the Cartesian cogito. Rene Descartes pondered the famous maxim, "*cogito ergo sum*", I think, therefore, I am. This phrase in itself has been used by many in order to appear profound but most phenomenologists have argued against the notion and the positions it forms.

We can strictly criticize the maxim by deducing the contrary, if one doesn't think, they do not exist. This would create an ontological nightmare. If we are to take the cogito as a given in the domain of criminal law, for example, a defense such as "my client did not think when he stabbed the victim, therefore, he cannot be accused of the deed, he did not exist at that given time in that specified space". This of course is ridiculous, but technically valid. Lacan approaches this differently, he embraces this dualism of being and non being. The way he goes about it is to differentiate the I that thinks from the I that exists. This is the key to how we should understand the subject. The I that thinks it's unconscious, while the I that exists is conscious.

The subject is split between the state of being in action and not being in thinking. This is the ontological notion of the subject, and yet, it still doesn't achieve a clarity that allows us to work and expand on the original purpose of our little intermission (Bruce Fink, pp.43-45). Let us think of how the subject is formed in its early childhood. In Lacanian psychoanalysis, a child will unavoidably enter what is called a mirror stage. Around 6 months, the baby will be able to perceive itself in the mirror, hence the name, before that the child could only self-actualize through the language used by the parents and other objects.

The moment a child gazes consciously in a mirror it has an epiphany and a split. The mirror shows the child, but the child knows that it is not all. It intuits that there is more to itself than the mirror image. The child having been slowly exposed to the symbolic order by interacting with its parents, relatives, family acquaintances and objects, it slowly formed a logic

of reality but seeing itself in the mirror it will have the shattering introduction to the real. Since the baby will unavoidably approach the mirror stage and find out that its reflection is not a wholistic image it will shedder and form the split subject.

Driven by lack, it will function as a split subject presupposing its own coherence by simply living. It will chase objects that fulfill desire temporarily and end up never truly being whole by obtaining the goal of the phantasy or the formation of a coherent subject. The subject is defined ultimately by the lack and the impossibility of wholeness. It is a presupposition needed for everyday life, both psychological and physical. With this in mind we can finally understand the previously stated definition, the subject is that which cannot be an object, that is to say whole and apparently coherent.

The Lacanian subject is a human who is split in its day-to-day function, the unconscious side is a language that we cannot fully comprehend and the conscious is the human that signs contracts, commits criminal deeds and has to live with the consequences of the thoughts it acts.

3. *Shell in the Ghost (the legal subject)*

When it comes to the subject of rights and obligations, we have an easier time comprehending the notion. It is a generally well understood that a subject of rights or a legal subject is an entity that can and does hold rights and obligations. By legal entity we of course refer to the functional binary of legal persons and natural persons. We call it a binary due to the obvious differences in form and function of individuals and associations of individuals that have a pecuniary or non-profit motive to exist.

There are obvious legal differences between the legal person, and the natural person. The natural person is born while the legal person has to be formed by bureaucratic means, there are rights exclusive to one or the other, there are different institutions that handle that the entity has fulfilled their duties towards the state and law and of course, there is a different social value and role for both (Katrina Geddes, pp.8-10). For the sake of example, we will look at how these legal entities answer in front of a criminal court and how they are allowed to carry out commercial business, both similarities and differences.

Firstly, let's ponder upon the way they show themselves to a criminal court. A natural person is capable of a wider variety of deeds that may lead to a criminal conviction. Be it the way that murder is structured into degrees in common law or the clear-cut codification of the German-Roman legal tradition, we can generalize some basic infractions that all legal systems condemn and frown upon. Murder, manslaughter, theft, muggings and assault, these are all fundamentally considered criminal behaviors by most if not all legislations. We can call such deeds direct crimes, by direct we mean to say that there is a clear culprit and victim of which the rights were infringed. Of course, not all crimes are committed with clear intentions to harm others. For a crime to be punished at its highest degree there must be proof of *mens rea*. If the mental element of a criminal action cannot be proven the classification and punishment will be changed accordingly.

A corporation or an NGO can contribute to such actions, however, there is a lack of clarity in the process of premeditation or in the chain of actions that caused a non-premeditated tragedy to happen. What we mean by clarity, is the multiplicity of a legal person. There is rarely a singular mind that leads an organization to committing a criminal act. There must be a few people to contribute to any and all criminal actions. And since we have talked about the crimes that generally involve a natural person, there are some criminal deeds that can be achieved either by a group of people or by a legal person. Acts such as tax evasion, racketeering,

trafficking both in illegal goods and people and all other manner of economic crimes are generally bound to legal persons.

What separates the crimes we can associate with the natural person done by a group of people associated by the desire to commit a criminal deed and a legal person doing it through a proxy or by mandate is the objective of the person. As we previously stated, the way a natural person and a legal person is formed is obviously different, and the each operates is obviously different. A natural person presents itself in a court of law while a legal person is a multiplicity of moving parts. A crime committed by a group of natural persons out a personal vendetta or the desire to earn ill-gotten moneys is ultimately the equivalent of a unicellular operating in a material and social biome directly. The group fulfills a purpose and then it continues to exist or it seizes once the genetically embedded reason or reasons for the deed stop existing.

Let's take the case of Ken McElroy for example (<https://www.youtube.com/watch?v=rYmYL1umRuU>). Mr. Ken was known as the bully of the town he resided in. He lived in Skidmore, Missouri, USA. The town itself was terrorized by behaviors such as shooting at the town's grocer or harassing the town priest. On June 30, 1981 he was killed while a crowd of at least 30 people were witness. The coroner's report stipulated that he was shot by two different firearms, and yet, not a single town resident said anything about his death. The desire of the town was clear, to get rid of a person who got away with numerous infringements of the law and good morals. It was a clear vendetta against a reprehensive human, hence, not even the legal system made the attempt to find a culprit. The whole town could have been investigated, a whole bunch of people saw the deed being committed but out of a shared, universal and unicellular desire to get rid of the town bully. It was not a legal or moral decision, but it was un understandable one.

A legal person is not a unicellular formation of chance or necessity. A legal person is a machinic being. It has to operate according to the wires, gears and engines of its choosing. There is no ad-hoc legal person, it is a concrete formation that has to accomplish a clear objective; however, it is still bound by human desires and intentions.

Is the secretary or newest employee of Jordan Belfort (<https://collider.com/wolf-of-wall-street-true-story-behind-movie-jordan-belfort/>), better known as the wolf of Wall Street, a part of this manipulative scheme, or just innocent bystanders to his individual corruption. Between the head honcho and the participant of crimes committed by legal persons, there is a great deal of distance that separates many natural persons in a long and unclear chain of causality.

The natural persons as legal subject in criminal law exist in a state of clarity, while the legal person is mired in multiplicity and as such, the justice system has to unwind webs of thoughts in order to prosecute the real culprit. When it comes to civil law, the differences are still bound to the formation of these persons but they are also bound to human anthropology and evolution. Again, natural persons being formed through biology has a different set of rights and obligations from a legal person, birth from abstraction and made concrete by the fulfilment of clear legal steps. The one right that a natural person holds and cannot be achieved by legal persons is of course marriage and all rights that surge from the existence of family and blood ties. The formation of a family is a fundamental endeavor to the furthering of society, the primary step of making a family is to get married, or if possible, enter a fac simile such a civil partnership.

The legal person, cannot form a familial unit, just as the natural person cannot have access to certain financial mechanisms allowed only to financial organizations or NGO's. In the US most charities are tax exempt (<https://www.state.gov/bureau-of-democracy-human->

[rights-and-labor/releases/2025/01/non-governmental-organizations-ngos-in-the-united-states](#)), a general rule that is followed by most legislations. In most countries, businesses can request certain tax exemptions and returns for costs that are part of running set business.

Again, by the separation of how these persons are formed allows for differential rights and obligations. The other side of separations is purpose. In the case of civil law we have a reversal of the clarity issue. Natural persons can have a wide variety of purposes, while a legal person has to state its purpose clearly when it is formed.

A natural person may buy a butcher's knife in order to become a better cook, or to commit a murder. A legal person has to bureaucratically record the purchase any object and clearly state each item's use and purpose on inventories and tax returns. Some scholars would argue that the legal subject is of an essential nature when it comes to upholding legal order, while some other would argue that we are faced with the death of the legal subject.

Traditionally, theorists constructed the legal subject in accordance to positive law theory and that different societies posited a different notion of the legal subject. If we are to take Hart's ideas to heart, we are to believe that even primitive humans were legal subjects to some degree (E. Richard Gold, pp. 85-86, 2025). Even if we can hold that true, there is still an issue of infinite regress. Primitive humans had laws, but not rules of recognition and of obligation which determine the modern legal subject. It has a level of advancement which allows us to study the legal practices. Where infinite regression appears is in the root, if there is a separation of rules what is the real root of any laws?

It very much exists outside of the law (E. Richard Gold, p.87, 2025). If we are to apply this idea of infinite regression, we find out that law does not originate of morality or of law, those two ideas require a level of social and political power. Such powers are obtained by means that exist both in legal and illegal paradigms, but it does not purely originate of some original law. In more modern perceptions, such as legal pluralism, there is a stronger focus on the normative aspect of law. Norms can originate outside of law and eventually become a law. Norms are internalized by the subject and as more subjects decide to adopt certain ideas they will transform into laws, be them social, professional, or official legislation (E. Richard Gold, p.93).

On the opposite side, there is a strong argument in regards to the death of the legal subject as we understand it. How can we assert the death of the legal subject if it is of the essence? By forming a new perception of what a subject is according to the institutions that apply the law. By the death of the legal subject, we don't mean to say that the theoretical notion has disappeared, but that the form of the subject that has been accepted by most legal schools of thought in order to give birth to a new algorithmically engineered subject (Katrina Geddes, p.26, 2023). Instead of a human facing the consequences of decisions, good or bad, we now have a long string of algorithms that represent a human, even more than a lawyer would be able to represent its client. A judge is less reliant on its own life experience and humanity as data and probability become the primary source of knowledge from which decisions are derived. The great error and reasonable fear that surges from such a switch is obvious, beyond data not always being sufficiently precise, data abandons the humanity of the subject. Subjectivity is built on the human experience; the statistical subject is built on data. This is not limited to the legal codes or the laws of the land, it is built on an inequality inherent to capitalism and the way it separates the capitalist from the laborer.

In the current US political climate, we observe a devolution towards a form of technological feudalism by which some wealthy barons have become holders of the true power and colonizers of the human mind (<https://www.youtube.com/watch?v=SUTbnjIHfkg>).

By this process of colonialism, we observe how all humans start to copy and merge with the internet, becoming part and parcel of the internet as it seeps into reality. The internet is no longer a place, it is an overlay of the physical world. We become machinic, and lose the subjectivity of the human experience.

The scariest application of the algorithmic subject is the work of the American state working with Palantir (<https://www.nytimes.com/2025/05/30/technology/trump-palantir-data-americans.html>) in order to compile data on the population. This data will unavoidably seal the coffin of the traditional, human legal subject and the birth of the algorithmic subject. We birth a pre-condemned subject that can always be interpellated by the state (Strathausen, Carsten, pp.3-6, 1994)

Regardless of legislation, the legal subject has to have a coherence and a clarity of definition. This is the way law can operate in a functional way, all matters must be clear or gain clarity by trial in the case of common law. Holding this in mind, how are we supposed to merge the Lacanian notion with the necessary stability of legal theory.

4. *To Kill a Mockingbird*

We now understand that the Lacanian subject is a presupposition of necessity that we use to describe the human as it exists and that legal subject refers to any person, be them legal or natural that can acquire rights or be bound to fulfill obligations. As stated in the introduction, the notion of the subject is the fundamental aspect of any science but it is different for every body of knowledge. Is there a form where these two perceptions of the subject can meet?

We can argue that yes, there is a point of connection between the Lacanian and the legal subject. As humans develop and form themselves as subjects of all manners, psychoanalytic, legal, social or economic, they share the fundamental aspects of the human experience. What makes humans humane, is the flaw of living.

All creatures are flawed to some extent or in some form or fashion. The flaws of humanity are bound to appear and repeat both in natural and legal persons. Lacan extensively wrote about two forces that shape our subjectivity and the quality of being a subject, to be precise, he conceived of the ideas of “The Big Other” and the “objet petit a”.

The Big Other, refers to the law that is formed by the paternal figure in a child’s development. While the maternal figure will provide the child with love the father will impose the no, the limit, the blockage of desire. This first no will be repeated through life as the child matures and becomes an adult, it will metamorphize into the laws of behavior in society.

The object A is the disappearing object of desire. Many times, we find ourselves wishing for different things, job promotions, a new car, a different house to rent or buy, and the moment we attain set thing that forms the object of desire we may find ourselves hollow. It’s either not what we imagined, or we just enter the routine of having that object. Lacan theorizes that we don’t desire the object as much as we desire the process of obtaining the thing in itself. The objet petit a does a disappearance trick every time we think we grasp it.

These two forces work in a jagged circle. While the human will search to reach object A, it must traverse the negations of the Big Other, of the paternal no. Here we see the concrete relation between the Lacanian subject and the legal subject.

The natural person will operate through life struggling to attain the object cause of desire and will struggle against legal requirements in order to achieve its purpose. Even if the law in itself requires clarity and imposes rules it still has to deal with the messiness of humanity. Some will choose to fight the paternal interdiction, as such, the legal system must intervene and seize the intention and the path chosen by the subject.

Again, the split subject, a presupposition we engage with in order to analyze human behavior and how we act is hit by the rigidity of laws. The law has to deal with the lack of coherence which defines the split subject. So how does law deal with that?

We have a double axis of interpretation. We have the obvious aforementioned legal and natural person, but we also have the axis of capital power. We have a plethora of cases from the American justice system to justify our axis.

We already spoke of the lack of clarity in criminal cases that involve legal persons. In this lacanian interpretation, this lack of clarity becomes even more confounding and yet it gives us a better resolve. In the social hierarchy of a legal person, many legal formations overlap on each other, the law in itself, the company rules and ultimately the social norms. All of these legal systems will pull at the split subject and for the most part, the system which grants better access to the object cause of desire will win out.

For the previous example of the Wolf of Wall Street, his secretary may have known about all of his shady dealings, but silence and respecting the true laws of the company may have been more satisfactory than respecting the US legal system.

The issue of natural persons committing a criminal act by having a logic to how they function still works in the lacanian paradigm. Even if the cogito and the being are different, in the aforementioned instance of Ken McElroy. The action of murdering the person was the easiest path to obtain a commonly shared desire, that is, to get rid of the town bully. We see the same story play out in the decision making of a group of people that are not legally bound into a legal person, but natural persons sharing into a desire and grouping themselves in an immoral but understandable deed.

This logic is furthered in civil law, keeping the notion of clarity as a decisive factor in how persons are judged. The natural person has to fabricate a reason for his civil action, there is no contradiction between the split subject and the legal subject there. Lacan thinks of all of our actions as being thought after, in moments when we can decipher the unconscious.

The legal person is however in a strange predicament. The law enforces a clarity of all intentions and purposes when its subjecthood is questioned. If any action undertaken by the legal person lacks in motivation it becomes a liability that opens up the gate of felony or criminality. There is always a return to the chaos of the split subject as legal persons are still formations of natural persons with differing intentions, psychological persons and factors that form the individual.

The role of capital in the equation serves as the split subject of the legal system and state itself. America being the fatherland of capitalism as we know it now, it unfortunately serves its progeny to a greater extent than other nations.

The trial of Sean Combs very much elucidates this. By clever legal tactics and by the power of purchase that allows some to acquire the services of great lawyers, we are left with the ugly situation of a monster being condemned to about 4 years in prison even if there is credible proof of him doing far more heinous deeds than those he was convicted of.

What we can say with some degree of certainty is that the shift towards the algorithmic subject will unavoidably diminish the role of the Lacanian and human subject in the court of law. It is very much a passing from the symbolic register, which encapsulates legal interactions, or as previously presented, the No of the father, and the creation of the imaginary system of laws in which the judge stands as a placeholder, not as an integral part of the human law.

What comes after, is a system of legal judgment that uses humans not as decision makers, but as pure imaginary beings that serve a predetermined decision in which no human has intervened, but a set of data decided what is to be done.

5. *Freudian Slip (Conclusion)*

What we have achieved by dissecting the legal subject from a Lacanian perspective is a deconstruction of the norm. We have proven that the legal subject is a concrete notion but it has to battle with the human psyche.

While most humanities subjects require the subject to be clear and articulate as a being, the fact of the matter is that no human is a pristine logical being. We are human, all too human, and this magical trait is both a curse and a blessing. It creates the unique perspective, rich in abstraction and feelings no other species that we know of can achieve.

This state of being human however, comes at the cost of a rich and treacherous psychological existence. The subject of humanities is forever an incoherent mess given shape purely by speech and the analysis that results from set speech. The rules of different fields of study form a further split using its internal logic and language in order to further form a working presupposition used for deeper analysis.

Legal language, both that used by the American legislator or magistrate is functionally a new form of subject splitting to reach its purpose of maintaining social order. Unavoidably, we happen to have errors due to the chain of splitting aspects, never allowing a judge to fully comprehend the mind of the parties he is seeking justice for.

There is no clear solution to this issue. All humans existing as split subjects will unavoidably end up judging pieces of others, and even more sinister, humans will remain split or exaggerate the inner separations and become unable to act with the apparent coherence we engage with when confronted with the force of the law.

What is certain, and must be avoided at all costs, is the extension of the algorithmic subject as it is being developed by the American legal system in tandem with the political and economic systems that are slowly mutating towards the non-human, machine driven legal system that benefits the one who built set machine.

Even if the flaws of a regular legal system that is driven by the humanization of cold legal doctrine, paradoxically, human errors is necessary in order to achieve a fair decision regardless of any case.

REFERENCES

6. <https://collider.com/wolf-of-wall-street-true-story-behind-movie-jordan-belfort/>
7. <https://www.youtube.com/watch?v=rYmYL1umRuU>
8. Katrina Geddes, The Death of the Legal Subject, 25 Vanderbilt Journal of Entertainment and Technology Law 1 (2023)
9. Bruce Fink, *The Lacanian Subject*, Princeton University Press, New Jersey, 1995
10. <https://www.youtube.com/watch?v=SUTbnjIHfkg>
11. E. Richard Gold, *Navigating Normative Complexity: The Legal Subject's Critical Role in Forging and Upholding Legal Order*, Review of Constitutional Studies, Volume 29, Issue 1, 2025
12. Strathausen, Carsten (1994) "Althusser's Mirror," Studies in 20th Century Literature: Vol. 18: Iss. 1, Article 7