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The critical perspective in psychological jurisprudence Theoretical advances and epistemological assumptions

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1. Introduction

This article describes five leading approaches to engaging in critical law–psychology research. These include the perspectives of: (1) anarchism, (2) critical legal studies, (3) feminist jurisprudence, (4) postmodernism, and (5) chaology. Summarily presenting these perspectives, along with their corresponding assumptions, is noteworthy especially as researchers increasingly question the field's capacity to produce meaningful and sustainable change for people and for society (e.g., Fox, 1991, 1993a; Melton, 1992; Ogloff, 2000; Roesch, 1995). As I demonstrate, the critical or radical agenda considerably advances the aims of citizen justice and social well-being, values integral to the founding of the American Psychology–Law Society (AP-LS) (Arrigo, 2001a; Fox, 1999; Haney, 1993). Thus, each radical orientation, as a basis for critique and as a recipe for change, tells us something quite distinctive about how to decenter organized (and mainstream liberal) psychology and displace the legal status quo, such that wholesale transformation can occur. Further, as a blueprint for radical change, the theories and their corresponding assumptions collectively embody a new, different, and necessary direction for doing law–psychology research. As I conclude, it is this very agenda that dramatically reframes the debates in the academy, returning the AP-LS back to its future of making real the call for justice in theory, research, and policy.

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2. Critical perspectives in psychological jurisprudence

2.1. Anarchism

There are many varieties of anarchist thought (e.g., Marshall, 1992). Interestingly, however, the perspective that has generated the most attention and controversy is the mutual aid strain of criticism as developed by Peter Kropotkin (e.g., 1902, 1912). What makes this orientation so provocative are its “scathing and sophisticated attacks against the state and its apparatus of legal control” (Ferrell, 1999, p. 94). This critique is not merely a condemnation of institutionalized authority through destructive political efforts for the sake of negation or chaos alone. Instead, the anarchist assault on legal and state-sanctioned regulation is merely “a transitional phase in which the old [is] destroyed so that the new might emerge, [leading to] a better social order” (Shatz, 1972, p. xii).

Based on the foregoing comments, it is easy to see how the anarchist agenda has “much to say about the social psychology of law, social organization, and the centralized state” (Fox, 1993b, p. 98). In order to understand the perspective and its utility for radical law–psychology inquiry, it is necessary to review the theory’s underlying epistemological assumptions.¹ These suppositions include the belief that change, ambiguity, and difference are to be celebrated and that mutual aid and shared responsibility are integral to the social fabric of our existences. Comprehending these matters dramatically reframes the law and human behavior relationship, suggesting an entirely different set of psycholegal questions to explore in theory, research, and policy.

2.1.1. *The celebration of change, ambiguity, and difference*

Kropotkin (e.g., 1902, 1912) extolled the virtues of change, believing that individual freedom and, thus, civic consciousness, were lodged within its liberating grip. As the Russian anarchist Bakunin (1974) observed, endorsing Kropotkin’s vision, “let us put our trust in the eternal spirit which destroys and annihilates because it is the...creative source of life. The passion for destruction is a creative passion, too” (p. 58). Anarchists recognize that this “creative passion” produces life-affirming opportunities. The value of change rests in “its unlimited capacity to [establish] new vistas of meaning in work, leisure, religious preoccupation, political action, or other expressions of human social interaction” (Arrigo, 2000a, p. 20). In the philosophy of anarchism, the seamless thread of change is wedded to ambiguity and difference. Ambiguity or unpredictability “constitute fertile ground for new ideas and identities and, at their best, overwhelm any attempts to achieve final solutions or final authority” (Ferrell, 1999, p. 96). Difference represents a state of existence that “allows people to be who and how they are in their communities, freed from

¹ As Ferrell (1999) notes, “any attempt at creating a list of anarchist assumptions should probably begin with that most basic of anarchist assumptions: there can be no definitive list. ... [A]narchism operates less as a set of fixed principles than as an ongoing process of discovery, change, and reconstruction” (p. 95). This notwithstanding, a few of the perspective’s more generally acknowledged convictions can be enumerated.

the normalizing and external constraints of regulatory and disciplinary regimes (e.g., the mental health system, the criminal justice apparatus)” (Arrigo, 2000a, p. 12; Williams & Arrigo, 2001).

Mindful of how the anarchist assumptions of change, ambiguity, and difference underscore individual identity, some law–psychology researchers have drawn attention to the theory’s critical potential for large-scale reform. For example, Fox (1993a) explained how the mainstream emphasis on procedural justice and law’s legitimacy assumes “that the rule of law is always superior to nonlaw [and how it] assumes that the procedurally correct application of general principles is best even when it brings patently unfair results in particular cases” (p. 237). Not only does this logic foster the felt experience of injustice for the sake of law’s omnipotence, it dismisses the uniqueness of individual identities, with all their ambiguities, inconsistencies, anomalies, and differences. As Fox (1993a) therefore urged, espousing the virtues of the anarchist cry for radical change,

[i]n seeking a liberating identity instead, psycholegal scholars should reexamine their assumption that law is sufficiently redeemable and should concentrate on replacing law with nonlegal solutions to human problems. . . . Instead of searching the law for values congruent with our own, we should find our values in our psychological theory, political ideology, and personal and organizational ethics. *Law is simply irrelevant to conceptions of what is psychologically desirable* (emphasis added) (p. 239).

2.1.2. The centrality of mutual aid and shared responsibility

Anarchists accept, rather than tolerate, people as they are. The different identities borne of anarchism increase prospects for mutual awareness, and it is this mutuality that makes community not only possible but sustainable (Williams & Arrigo, 2001). Indeed, in anarchist communities people are “more free to be themselves, and at the same time, [are] more directly responsible for themselves and others, than they are in situations regulated by external authority” (Ferrell, 1999, p. 97; Marshall, 1992). Thus the psychological sense of community anarchists envision is one that is based on mutual aid and shared responsibility (Kropotkin, 1902, 1912).

Mutual aid implies localism, regionalism, or decentralization wherein people participate actively and directly in crafting the identity of their neighborhood or locale (Morland, 1997; Sonn, 1992; Tift & Sullivan, 1980). As an anarchist assumption, mutual aid “grants the best chance of survival to those who best support each other in the struggle for life” (Kropotkin, 1902, p. 115). It follows, then, that shared responsibility entails the recognition that meaningfully living in a community is an intricate tapestry of vital social relations; one that is “woven tightly enough to care for others but loosely enough to preserve [individual] differences” (Ferrell, 1999, p. 97; Morland, 1997; Sonn, 1992).

Proponents of the anarchist perspective recognize that the legal system cannot ensure the optimal quality of individual life and social well-being intrinsic to this radical agenda (e.g., Bankowski, 1983; Godwin, 1971/1793; Goldman, 1969; Sonn, 1992). Moreover, critical psychological researchers, supportive of the anarchist critique, have demonstrated how legal principles or state-mandated practices limit prospects for social justice and thwart basic

human needs and values [e.g., Fox, 1991, 1997; Fox & Prilleltensky, 1997; Sarason, 1982; see also Prilleltensky (1994, 1999) for related political psychological commentary].

For example, Fox (1993b) examined three areas “where legal doctrine seems especially ambivalent from an anarchist perspective” (p. 102). These included the law versus equity distinction, jury nullification, and the Ninth Amendment to the United States Constitution. What makes each of these phenomena ambivalent is the extent to which they more or less function to neutralize law’s dominance in the lives of people, as citizens balance their need to exist autonomously and freely against a psychological sense of community. Indeed, equity manifests itself, at times, outside the confines of law; jury nullification subverts or, at least, recasts the rule of law doctrine in the interest of justice; and the Ninth Amendment attempts to curtail constitutional rights that may infringe on others retained, but not enumerated, by people.

The dismantling of state-sponsored authority implied in each of the above cited legal doctrines demonstrates how “trends toward legalism, centralization, hierarchy, and authority are dangerous to human beings who would be better off in a vastly different society” (Fox, 1993b p. 106). The anarchist assumption of mutual aid and shared responsibility, so integral to the communal nature of our existences, renounces the law’s dominance over people (Morland, 1997; Tift & Sullivan, 1980). Indeed, as Fox (1993b) concluded in his assessment of psychological jurisprudence and the anarchist perspective, “looking to the law for justice is looking in the wrong place, because even when short-term victories may be obtained. . . in the long run the trend is in the other direction. . . . [L]aw is not healthy for people” (p. 106).

2.2. *Critical legal studies*

The Critical Legal Studies (CLS) movement emerged in the 1970s, informed by neo-Marxian analysis (e.g., Gramsci, 1971) and Frankfurt School social theory (e.g., Habermas, 1975). More recently, however, the movement has been persuaded (mostly) by French deconstructive inquiry (e.g., Derrida, 1992, 1994), providing critical examinations of “underlying, unstated assumptions that inhere in case opinion [traced] to particular interest groups” (Kelman, 1990; Milovanovic, 1994, p. 96). Underpinning the CLS movement are a series of epistemological assumptions. The most prominent of these include a critique of law’s legitimacy function and a critique of law as politics.

2.2.1. *Critique of law’s legitimacy function*

Although Marx (e.g., 1974/1867, 1984/1859) did not develop a detailed theory of law or of judicial decision making, much of his work has been appropriated as a worthwhile backdrop for describing a unique perspective on law (Pashukanis, 1978) and the society of which it is a part (Althusser, 1963, 1971). More pointedly, Marxist jurisprudence “manifest[s] the legitimizing functions of law as a contributor to ideological distortion and as a solidifier of the political status quo. . . , unmasking. . . law’s. . . participation in domination and oppression” (Bellioti, 1995, p. 3).

One school of thought sympathetic to this enterprise is structural Marxism (see e.g., Arrigo, 1998, pp. 41–44, 1999a, pp. 4–9 for a brief, though accessible, overview of Marxist

thought).² Structural Marxism is generally of two kinds: commodity exchange (Pashukanis, 1978) and structural interpellation (Gramsci, 1971). Pivotal to the latter perspective, particularly in the context of the CLS movement, is the notion of legitimacy. One of law's functions is to legitimize domination by power elites (e.g., Hunt, 1986; Kelman, 1990; Stanford University, 1984). Borrowing from Gramsci (1971), CLS theorists contend that this legitimation occurs through hegemony and reification (e.g., Kairys, 1992). Reification is a process in which people or groups, knowingly or not, "help create the very structures and institutions that dominate them" (Milovanovic, 1994, p. 95). These structures and institutions (e.g., the system of corrections, the institution of medicine) are esteemed, with the help of the law, by the public who assign objective-like value to these ideological apparatuses (e.g., Tushnet, 1991). The psychiatric courtroom functions as a reified, state-supported apparatus (Arrigo, 1996a, 1997a). Hegemony, or the dialectics of struggle, is a process in which ruling elites govern by the willing and active, though often unconscious, consent of those who are oppressed (e.g., Henry & Milovanovic, 1991; Milovanovic & Thomas, 1989). Psychiatric consumers who petition to the mental health court for release from sustained institutional confinement experience the hegemonic effects of their appeal (Arrigo, 1996b, 1996c), even when the court grants their request (Arrigo, *in press*).

CLS scholars argue that the legitimacy function of law is problematic because, following late capitalism, the state increasingly intervenes to address fiscal crises which can often lead subjects to withdraw their support from the economic system and the rule of law (Habermas, 1975). Indeed, given the structural Marxist approach as delineated above and in order to stave off these legitimation crises, the state actively formulates rules to some specific end. In the realm of the courts, this amounts to interest-balancing (Milovanovic, 1986); a process in which the citizen's liberty (e.g., the right to be free from civil commitment) is weighed against a state objective (protection against harm from persons identified as mentally ill and dangerous (Arrigo, 1996a).

It is this activity of interest-balancing that is itself problematic. With the advanced form of capitalism, one's status as prisoner, mental patient, juvenile, laborer, teacher, etc., and one's membership in and allegiance to an identified (interest) group, represents "the paradigmatic legal relationship [one has with] the corporate state" (Fraser, 1978, p. 165–166). In other words, with late capitalism, rights-claiming is less a function of contractual arrangements and more a function of identification with and participation in officially sanctioned groups. To maintain this relationship, "the state and its functionaries, particularly the judiciary, must increasingly create myths that justify existing exploitative socioeconomic relations" (Milovanovic, 1994, p. 76). The myth of mental illness (Szasz, 1974) and the media-manufactured harm caused by persons with psychiatric disorders (Isaac & Armat, 1990) is but one example. Under these conditions, hegemony (i.e., person's or groups already oppressed actively

² Structural Marxism as employed here is distinguished from Instrumental Marxism. The latter's hard economic determinism failed to account adequately for the effects of advanced, state-regulated capitalism. As Klare (1979) observed, with the advanced form of capitalism, "the state sets the ground rules for most economic transactions" (p. 125). In this way, the state has some autonomy and is "not an empty shell to be filled at the whim of the ruling class" (Milovanovic, 1994, p. 77).

advancing their own oppression, consciously or unconsciously) takes on increasingly subtle, inventive, and hidden forms.

Applications of the Marxist-informed CLS agenda regarding law's (misplaced) legitimacy function, hegemony, and interest-balancing are abundant (Hunt, 1993, pp. 139–181, 211–226). To illustrate, some theorists have explained how legal education interpellates law students, stifling prospects for alternative models of juridic sense-making and disempowering the learners through “scripted” indoctrination in the lawyering process (Granfield & Koenig, 1990; Kennedy, 1992, p. 52). Similar studies are found in such areas as antidiscrimination law (Freeman, 1992), contract law (Gabel, 1977), criminal law (Kelman, 1981), and tort law (Abel, 1982).

A related trend is found within radical law–psychology research. For example, critics of clinicolegal practices draw attention to the power disparities between clients and psychiatry (McCubbin & Cohen, 1996), the political economy of tardive dyskinesia (Cohen & McCubbin, 1990), the treatment–control paradigm underscoring civil commitment determinations (Dallaire, McCubbin, Morin, & Cohen, 2000), the ethic of proxy decision making for incompetent mentally ill patients (McCubbin & Weisstub, 1998), and the hegemonic discourse of psychiatry that renders mental health citizens ideological (and then sociological) prisoners of civil and criminal confinement (Arrigo, 2001b). In instances such as these, “the interests of clients diverge from the interests of other actors involved in the mental health system...[and] the personal and political power of clients to advance their interests is small compared to the power wielded by other actors” (McCubbin & Cohen, 1996, p. 1). According to the Marxist-based CLS perspective, what lurks behind these situations of differential or unequal power is the state apparatus (e.g., the mental hospital, the prison, the legislature) grappling with its increasingly complex and contradictory role in the economic system where legitimation crises are manifold, where the competitive pressures of differing groups are intense, and where the values underscoring the capitalist system nevertheless must be sustained (Arrigo, 1993a). Thus, it follows that those who exercise political and economic power in the mental health and justice systems establish the form, frequency, and duration of citizen justice and social well-being found within the forensic domain.

2.2.2. *Law as politics*

The Marxist-based CLS agenda recognizes that all law is ideology (e.g., Kerruish, 1991). In order to demonstrate the veracity of this statement, several theorists rely on the interpretive tools of deconstructive analysis, specifically the work of Jacques Derrida (e.g., 1992, 1994).³ As Balkin (1987) notes, deconstructive thought is useful in the legal arena because it provides a critical methodology for investigating juridical doctrines and discloses how legal arguments

³ For purposes of this article, the CLS movement's reliance on Derrida's philosophy should not be confused with the subsequent discussion on the critical perspective of postmodernism and the linguistic turn in psychoanalysis. Admittedly, Derrida's insights generally fall within the domain of postmodernist and, more specifically, poststructuralist thought; however, CLS commentators have appropriated Derrida's deconstructive methodology in order to expose the politics embedded in the law (e.g., Altman, 1990; Kelman, 1987).

are merely veiled representations of embedded ideological positions (p. 744; see also, Derrida, 1992).

There are several facets to Derridean deconstructionism (Caputo, 1997). In short, however, the strategy is one of transforming a text so that hidden values are made visible, and absent terms or expressions in a code, statute, or constitution are made present (Cornell, Rosenfeld, & Carlson, 1992). This activity discloses the mutual interdependence of binary oppositions (e.g., competent/incompetent, reasonable person/unreasonable person, mental health/ mental illness), displacing the privileged status of the first value and affirming the status of the second term in the binary relationship (Arrigo & Williams, 1999b, pp. 400–408). In this way, CLS scholars contend that deconstruction aims to expose beliefs and perspectives that would otherwise remain dormant, repressed, and, consequently, devalued in a court of law, a case opinion, or a legal code (Altman, 1990; Desilva Wijeyeratne, 1998; Unger, 1986).

Some critical law–psychology researchers, indirectly supportive of the CLS critique that law is ideology, have drawn considerable attention to various mental health practices and policies that exploit and alienate individuals employed⁴ in the psychiatric and justice systems. Indeed, as observers note, these victimizing effects are endemic to the overlapping and interdependent operation of the medical and legal systems (e.g., Isaac & Armat, 1990; Prilleltensky & Gonick, 1996; U'Ren, 1997). For example, critics have challenged the surplus power mental health decision brokers appropriate from psychiatric patients, devaluing them in the process (Prilleltensky, 1999), have described the contradictions, crises, and changes in the psychiatric consumer empowerment movement in the United States (McLean, 1995), and have chronicled the abusive and marginalizing mental health care policies from the asylum period to the community treatment era (Grob, 1991). While these and related law–psychology investigations rely somewhat tangentially on the CLS agenda regarding the politics of law for theoretical support and guidance, it is clear that these insights underscore this law–psychology scholarship because the CLS movement “makes explicit connections to sociological and psychological phenomena. . .providing a philosophical basis for the. . .study of. . .oppression and domination” (Jost, 1995, pp. 399–400; see also Newnes, Holmes, & Dunn, 1999).

Additional psycholegal inquiries directly informed by the logic of the CLS movement and the method of deconstructionism are discernible. For example, relying in part on a Marxist-based discourse analysis, I have demonstrated how the value of paternalism in mental health law is a historically driven and ideologically anchored “commodity” that sustains the alienation and victimization of psychiatric patients (Arrigo, 1993a, 1993b). Elsewhere, I have shown how the precedent-setting case law on mental illness and civil commitment in the United States esteems the discourse of medicine, notwithstanding a host of alternative and contradictory interpretations lodged within these appellate rulings that more fully embody the voice of and way of knowing for psychiatric citizens (Arrigo,

⁴ The use of the term “employ” refers both to agents of the legal and medical establishment (e.g., physicians, nurses, lawyers, police officers), as well as to those mental health patients whose forced treatment (e.g., civil confinement, drug therapy) transforms them into unwilling laborers (i.e., users) of psychiatric services (Szasz, 1977).

1993d). And finally, relying on the interpretive insights of Derridean logic, Arrigo and Williams (1999b) have argued that questions of competency, treatment, and execution for mentally disordered individuals on death row are founded on ideological values that masquerade as juridical facts and scientific truths. These and similar studies expose the manner in which marginalizing forces (e.g., cost and fiscal factors in deinstitutionalization, the disease model of psychiatry, the relegation of difference to deviance and dangerousness), embedded in the discursively constituted linguistic framework of the medico-legal apparatus, significantly impede prospects for citizen justice and social well-being at the law–psychology divide.

2.3. *Feminist jurisprudence*

Feminist legal criticism⁵ and its agenda of radical reform emerged in the late 1980s (e.g., Dahl, 1987; MacKinnon, 1987, 1989; Menkel-Meadow, 1988; Rhode, 1991). At the core of the “fem-crit” assault was the belief that the fundamental assumptions of conventional legal theory and logic (including the wisdom of the CLS movement) inadequately accounted for the lived experiences of women in society (e.g., Frug, 1992; Goldfarb, 1992). To substantiate this perspective, radical feminist theory offers a sophisticated critique of knowledge and identity. It is to these matters that I now briefly turn.

2.3.1. *The critique of knowledge*

The maxim, “the personal is empirical” (McDermott, 1992, p. 237), summarizes the liberal feminist approach to knowledge. Women’s experiences can be retrieved, recorded, and counted; they are statistical variables that can be used, among other things, to convey clearly and compellingly “the magnitude and implications of any gender difference[s]” (Frazier & Hunt, 1998, p. 8; see also Eagly, 1995) found in a given data set. However, as I caution in my assessment of mainstream legal thought, the *empirical is personal*; it is “the site of power and therefore [it] may also advance the subordination of those who experience differently” (Arrigo, 1995a, p. 461). Thus, for example, radical scholars of feminist jurisprudence question the values embedded within the logic of quantitative law and social science inquiry (Bartlett & Kennedy, 1991). Some have argued that it is so phallogocentric (male-dominated) that “any issue brought before the court that substantially deviates from this body of knowledge is less likely to attain a hearing and a favorable resolution” (Milovanovic, 1994, p. 105).⁶

The pervasiveness of malestream thought in legal analyses and doctrines is not to be underestimated (MacKinnon, 1987; Smart, 1989; Smith, 1995). To substantiate this perspective, several philosophy of law scholars supportive of the critical agenda in

⁵ Feminist jurisprudence (e.g., Smith, 1995) is not synonymous with studies on gender and the law (e.g., Frazier & Hunt, 1998).

⁶ This position stands in stark contrast to those psycholegal scholars who suggest that explanatory rationales about the law should be driven by “the values that make up conventional knowledge of the community of scientific psychology” (Wiener, Watts, & Stolle, 1993, p. 93).

psychological jurisprudence have explained what is at stake for women. For example, I have argued that the prevailing legal logic encompassing such notions as burdens of *proof*, a demand for *factual evidence*, *actual* legal intent, *expert* testimony, and *causes* of crime are values steeped in masculine reasoning and sensibility (Arrigo, 1992, 1995b). This approach to legal decision making “celebrates the logical, rational, sequential, and, by its proponents’ own deductive reasoning, therefore reliable and ethical form of judgements” (Arrigo, 1995b, p. 89). Consistent with this line of analysis, Smart (1989, 1995) asserts that these masculine claims to sense making are veiled statements about power, conveying circumscribed truths that dismiss or neglect other ways of experiencing and knowing, including the perspective of women.⁷ Indeed, as Bottomley (1987) concludes, the question is not whether the law

oppresses women’s styles of existence and conversely privileges those of men, but whether the very construction...of legal discourse [and the] representation of the discourse in the academy...[are] the product[s] of patriarchal relations at the root of society (p. 48).

2.3.2. *The critique of identity*

Radical proponents of feminist jurisprudence recognize that working within the legal apparatus can produce some positive change (e.g., Coombe, 1992; Crenshaw, 1988; Williams, 1987). However, juridical categories reinforce the “legitimacy of the legal apparatus, the rule of law ideology, and, in the end, the rule of men...” (Milovanovic, 1994, p. 106). This dilemma has led some feminist jurisprudes to consider whether women are formally equal to men under the law, wherein they receive identical rights. But the issue of identical rights is itself vexing for women. “Equality doctrine requires comparisons, and the standard for comparison tends strongly to reflect societal norms. Thus, equality for women has come to mean equality with men—usually white, middle class men” (Bartlett & Kennedy, 1991, p. 5; see also Naffine, 1990). Smith (1995) provocatively describes this dynamic. As she ponders it:

[the question is] whether women, being different, should argue for equal rights or for special rights. Equal rights (i.e., identical rights)...disadvantage women sometimes (e.g., as to pregnancy benefits)...and special rights accommodate women’s special needs and circumstances. [However], only equal (i.e., identical) rights should be claimed because any special needs or differences acknowledged by women are always used to limit women in the long run, and special rights will be viewed as special favors that accommodate women’s deficiencies. The problem is that if that is the way the issue is formulated, then women lose either way because the (unstated) norm is male. After all, who is it that women are different from? Whose rights (if equality is the standard) should women’s rights be equal to? And if women’s rights should sometimes be different from men’s, why is it women’s rights that are characterized as special? Why not formulate rights in terms of women’s needs and

⁷ The contention is not that masculine values of sense making are meaningless; rather, they inadequately and/or incompletely embody the experiences of women as conveyed through the prevailing ideology, imagery, and logic of legal thought (Fraser, 1997; MacKinnon, 1989; Smart, 1995).

characterize men's rights as special? One way makes as much sense as the other. The question is, who is the norm? (p. 281, n 16).

The problem identified above is intensified when race is factored into the equation (Crenshaw, 1988; Harris, 1991). In other words, for example, does a Latina woman use the standard of white women for reasonableness in arguing her battered women's syndrome defense in a case where she is accused of murder (e.g., Bartlett, 1991; Russell, 1998)? Would it matter if the Latina woman was a third generation Brazilian American, fully acclimated to the social norms of life in the United States? Questions such as these draw attention to one of the most contentious issues facing radical feminist legal theory today. In short, the concern is that of essentialism and the "underlying basis of the legal subject" (Milovanovic, 1994, p. 107). Is there something to which we can turn that constitutes an "essential 'woman' beneath the realities of differences between women" (Harris, 1991, p. 242; see also MacKinnon, 1991, pp. 81–91)? Or would it be more consistent with feminine ways of experiencing to acknowledge the multiplicity of a woman's existence, implying, then, that "differences [between them] are always relational rather than inherent" (Collins, 1990; Harris, 1991, p. 250).

This latter approach, popular among several critical feminist legal scholars, produces knowledge that is "situated, contingent, and partial" (Bartlett, 1991, p. 389). In this model, identity is a function of epistemological standpoints (e.g., Currie, 1993). Describing the juridic subject entails locating "where and how women and minorities with their differential statuses in society continue to experience exclusion in... legal practices" (Arrigo, 1995a, p. 455), and then privileging these statuses because they "give [us] access to oppression that others cannot have" (Bartlett, 1991, p. 385).

Critical application studies in psychological jurisprudence embracing radical feminist theory have drawn upon the insights of Gilligan (1982) and Gilligan, Lyons, and Hanmer (1990) to articulate a radical vision of gendered justice (Fraser, 1997). Selected works describe how the law can embody the unique concrete experiences of woman in juridical reasoning (Arrigo, 1992), in the articulation of sexual violence, including rape (Arrigo, 1993c), and in the development of psychological theories of equality (Wilkinson, 1997). In addition, researchers, persuaded by the work of MacKinnon (1983, 1989), have appropriated the psychological values of consciousness-raising, narrativity, and interpersonal truth (e.g., Lahey, 1985; Littleton, 1987; Mossman, 1986; Smart, 1995) to establish a feminist legal method. As I explain (Arrigo, 1995b), these investigations reframe our understanding of woman in juridical thought and, consequently, in legal practice. Indeed, the model of feminist (psychological) jurisprudence envisioned here calls for the reconstitution of human social interaction and the communities that we all inhabit.

[A] rediscovery of ritual, not law, constituted by neighbors, not judges, informs this "village" aesthetic as personally meaningful. The metaphors of experience and storytelling displace the language of rules and facts. A communal gathering of residents preempts the calculated courtroom trial. The concerned search for "authentic" justice replaces the mental exercise of legal manipulation (Arrigo, 1995b, p. 91).

2.4. Postmodernism

The formal origins of postmodern⁸ thought can be traced to political and intellectual developments in France during the 1960s (Arrigo, Milovanovic, & Schehr, 2000). As it pertains to the law, postmodernism represents a considerable assault on the construction, imagery, and logic of conventional juridical reasoning (e.g., Arrigo, 1993d, 1996a; Cornell, 1993; Henry & Milovanovic, 1996; Milovanovic, 1992). In brief, postmodern legal scholars endeavor to demonstrate how the ideology embedded in the law is a function of language (i.e., words, phrases, statutes, cases), conveying a multitude of hidden assumptions and implicit values that produce violence in speech and thought (Butler, 1997; Sarat & Kearns, 1992) and harm in social consequence (e.g., Conley & O'Barr, 1998; Sarat & Felstiner, 1995; Sarat & Kearns, 1992). The violence and harm perpetrated by language principally occurs when only certain meanings, consistent with the values of the discourse in use, are unconsciously "selected out" and are esteemed as truth, knowledge, or fact, dismissing in the process an array of different interpretations, and the discourse used to talk about them, because these alternative coordinates of meaning are not compatible with the prevailing ideology (e.g., Rosenau, 1992).⁹

The postmodern assault flourished in the decade of the 1990s (Best & Kellner, 1997) and, most recently, has taken on a decidedly psychoanalytic edge (e.g., Arrigo, 2000b; Caudill, 1996, 1997; Goodrich, 1997; Schroeder, 1998).¹⁰ One of the principal architects of psychoanalysis has been Jacques Lacan (e.g., 1977) and, as Milovanovic (1994) observes, he is "the key figure in the fundamental reorientation to postmodernist thought" (p. 156). In order to appreciate the "linguistic turn" in law, Lacanian psychoanalysis, and the relevance of these ideas for psychological jurisprudence, some commentary on assumptions is warranted. For purposes of this inquiry, the most significant of these presuppositions is the critique of subjectivity and discourse.¹¹

⁸ There are many types of postmodernism: some emphasize deconstructionism; others incorporate the insights of semiotics and poststructuralism; and still others rely on hermeneutics and related interpretive modes of discourse analyses (e.g., Best & Kellner, 1997; Dews, 1987; Rosenau, 1992). It follows, then, that the domain of postmodern law is at least equally vast, encompassing these and related strains of thought. For an accessible overview of these matters in the legal arena, see Arrigo (1995a).

⁹ These observations are consistent with the previous section on the CLS movement, Derridean deconstruction, and law's ideology. However, postmodern psychoanalysis is in search of richer, more complete expressions of sense-making or vocabularies of meaning that embody one's uniquely felt and lived being (Arrigo, 2000b). Henry and Milovanovic (1996) term these different vocabularies of meaning "replacement discourses" (p. 219).

¹⁰ Social constructionism (e.g., Gergen, 1999, 2000) notwithstanding, the focus of postmodernism, especially in law, has principally been linked to psychoanalytic theory (e.g., Arrigo, 2000b; Butler, 1999; Cornell, 1993). Thus, the best way to appreciate the contributions of postmodern legal analysis as a critical perspective in psychological jurisprudence and as a valuable approach to advancing the original objectives of the law–psychology movement is to assess the epistemological assumptions of psychoanalysis.

¹¹ Other noteworthy assumptions include Lacan's evaluation of speech production (1977), his assessment of knowledge and its constitution (1991), and his critique of feminine sexuality (1985). For a psychological overview of these presuppositions, see Malone and Freidlander (2000). For applications in psychoanalytic jurisprudence, see Caudill (1997).

2.4.1. *The critique of subjectivity and discourse*

Lacan was a Freudian revisionist (Fink, 1995; Julien, 1994), interested in the inner workings of the unconscious and the manner in which subjectivity (i.e., identity, agency) and language (i.e., speech, words) were inextricably connected (Bowie, 1991; Bracher, 1993). In other words, for Lacan (1977), the two could not be separated. Underscoring this inherent relationship was desire. “Desire is the core of psychoanalysis... [It is] at the heart of our strivings, despairs, passions, beliefs, and fears” (Arrigo, 1997a, p. 34). Thus, the person who speaks always communicates (someone’s) desire and every expression of language is itself the manifestation of (someone’s) subjectivity (e.g., Bowie, 1991; Evans, 1996; Lee, 1990).

Several scholars have drawn attention to the critical potential of Lacanian psychoanalysis to facilitate our understanding of the dynamics of speech and its capacity to obscure the subject’s being while conveying circumscribed meaning. For example, Williams (1998) demonstrated how civil commitment determinations abrogated the identity of the petitioner, producing outcomes that first “linguistically and then socially marginalized the juridic subject” (p. 180). Shon (2000) explained how police officers embraced “cop talk” (p. 171; see also Manning, 1988); a mode of communication that denied them access to better opportunities for reconciling peacefully their interactions with citizen-suspects. Stacey (1996) examined how the gendered and raced dimensions of juridical language deprived Aboriginal women in South Australia their legal identities, wherein “the orthodox, modernist legal narrative [could] not transcribe, [did] not have the words to write of, women, race, and identity outside the [prevailing] discourse of law” (p. 287). And Voruz (2000) explored the psychotic’s relationship to legal responsibility, arguing that Lacanian psychoanalysis reveals how one’s mind is on trial and, thus, how the psychotic’s “grammar should be summoned to the courtroom” (p. 148). As such, she concluded that the law must “be mobilized to respond—not in a way that categorically forgives or condemns...but in a way that de-realizes the offense while humanizing the criminal” (Arrigo, 2000c, p. 130).

The relationship between subjectivity and discourse is especially noteworthy in the domain of psychological jurisprudence. Echoing the CLS (and feminist) critique of ideology embedded in the law, Lacanian psychoanalysis questions the extent to which the taken-for-granted discourse of law and psychology merely reflects certain assumptions about the individuals and agencies constituting the mental health and/or justice systems (e.g., Arrigo, 1994; Milovanovic, 1996; Schroeder, 2000; Shon, 2000). These are presuppositions that unconsciously value (and privilege) certain ways of talking about, experiencing, and interpreting people and their behavior, dramatically impacting legal decision making (Goodrich, 1997). The point is that “language structures thought in ways that are not neutral, in ways that both conceal the individual’s being and reveal systemic meaning, always and already embodying, and, thus, announcing a circumscribed discourse that *speaks for* the...desiring subject” (Arrigo, 2000c, p. 129; Caudill, 1997; Williams, 1998; Williams & Arrigo, 2000).

Given the cloaked nature of language, critical scholars of psychological jurisprudence suggest that future investigators would do well to assess how only certain forms of desire are manufactured in the clinicolegal sphere (Arrigo, 1996b), how only certain types of knowledge are therefore produced (Arrigo, 1996c), and how other articulations, although dismissed or

repudiated, could yield a fuller sense of justice than the one presently realized (e.g., Arrigo, 1997b; Arrigo & Schehr, 1998). In these explorations, the question is one of coming to terms with whether the discourse of prevailing psycholegal theory, research, and policy is spoken in such a way that it can advance the aims of prosocial change, citizen well-being, and humanism (Williams & Arrigo, 2000).

2.5. *Chaology*

The field of chaos theory emerged in the natural sciences, initially in the domain of physics and mathematics (Gleick, 1987). Chaology or nonlinear dynamical systems theory¹² empirically questions the researcher's ability to forecast accurately the behavior of complex systems (Briggs & Peat, 1989; Cohen & Stewart, 1994; Stewart, 1989). Systems (including people) are thought to be complex if they behave in ways that are unpredictable, discontinuous, unstable, or anomalous (Barton, 1994; Butz, 1992). Much like the other critical perspectives identified in this article, chaos theory is based on a number of assumptions about human interaction and social conduct. For purposes of my investigation of psychological jurisprudence, two presuppositions are most relevant. These include the critique of order within chaos and the critique of order out of chaos.

2.5.1. *The critique of order within chaos*

The assumption that order lurks within supposed randomness entails the operation of several chaos theory principles; however, the most significant of these concepts is the attractor. Attractors "are patterns of stability that a system settles into over time" (Goerner, 1994, p. 39). Attractors function in the way that their name suggests. They "exert a 'magnetic' appeal for a system, seemingly pulling the system toward it" (Briggs & Peat, 1989, p. 36). It is this attraction or pull that produces order and stability in an otherwise disorderly, complex system (Stewart, 1989; Williams & Arrigo, 2002). This order represents a certain end point or point of status.

Attractors can also encourage systems to settle into seemingly nonfixed, disorganized patterns. Behavior governed by this magnetic pull is called strange or "butterfly" attraction (Kellert, 1994). The dynamics of the strange attractor is such that the activity of the system never traces the same path twice. In other words, plotting the pattern out over time reveals order within apparent randomness (Abraham, Abraham, & Shaw, 1990; Barton, 1994; Prigogine & Stengers, 1984). The butterfly attractor is "the epitome of contradiction, never repeating, yet always resembling, itself: infinitely recognizable, never predictable" (Van Eenwyk, 1991, p. 7).

Critical scholars in the field of (psychological) jurisprudence have examined the manner in which the system of law behaves as a point (and potentially a strange) attractor. For example,

¹² Chaotic systems are a subset of nonlinear dynamical systems theory. The larger field of investigation, encompassing both chaotic systems and nonlinear dynamics, is general systems theory. For a lucid explanation regarding the relationship among these domains, see Morin (1990). For purposes of simplicity, however, I focus on chaos theory as a form of nonlinear dynamics.

Brion (1993) explained how community hysteria associated with false reportings of child sexual abuse are endorsed by “legal processes and institutions. . .functioning in various ways to initiate and maintain social hysteria” (Caudill, 1997, p. 99; see also Gardner, 1992). The legal apparatus relies on its own, limited system of communication (i.e., legalese) to ascertain the facts, filters these facts through the narrow prism of a court or other legal tribunal, and restricts the focus of the dispute (i.e., what happened, was there harm), declaring these judgements to be final and the source of truth and justice (Brion, 1993).

Relatedly, Arrigo and Schehr (1998) examined the victim offender mediation process in juvenile cases, arguing that the restoration dialogue fails to produce optimal prospects for justice. As they noted:

Th[e] choreography [of speech] is especially problematic for juveniles. They are made to conform to procedural and organizational strictures which *already* represent certain values about how to interact with others (i.e., their victims). Although not spoken, these rules are unconsciously organized to produce limited outcomes consistent with the. . .coordinates of meaning representing the discourse of victim offender reconciliation. . . . [T]he flow of communication is pre-configured. It is designed to result in definable, self-referential outcomes. These outcomes are to be consistent with the language of restoration and reconciliation as ensured, as much as is possible, by the mediator who, by definition, only speaks to clarify, moderate, reconcile. (p. 647).

In instances such as these, the magnetic pull of the formal and informal justice system harnesses individual behavior, restricting it to routinized patterns of interaction, wherein legal identities become fixed, settled, predictable. Lost in the process are opportunities for sense-making and understanding beyond the confines of that which the legal point attractor imposes upon its subjects.

2.5.2. *The critique of order out of chaos*

Barton (1994) describes self-organization as “a process by which a structure or pattern emerges in an open system without specifications from the outside environment” (p. 7). In other words, a system may be able to display an order which is *generated from within*, largely independent of influences from without (Williams & Arrigo, 2002). Researchers have variously referred to this phenomenon as “the spontaneous emergence of order” (Davies, 1989, p. 501) and “antichaos” (Kauffman, 1991, p. 79). In brief, the position states that when a system experiences a critical level of disorder, it will “spontaneously self-organize into a new, more complex order” (Butz, 1992, p. 1052). In this context, chaos assumes an important role, enabling a system to transition from a nonadaptive state of order to one that is conducive to the demands of contemporary life (Goerner, 1994). Indeed, this disorder compels an orderly but stagnant system into a new, more adaptive order necessary to meet the changing demands of the evolving system in relation to its external and internal environment (Williams & Arrigo, 2002).

Radical scholars have examined how the mental health (e.g., Barton, 1994; Butz, 1997; Chamberlain & Butz, 1997), justice (e.g., Brion, 1995; Schehr, 1997), and psycholegal systems (e.g., Arrigo, 1994; Arrigo & Williams, 1999a) function as instruments of social

control that impede or deny natural adaptation. For example, Butz (1994) explains how psychopharmacological intervention is antithetical to the logic of self-organization. Psychotropic medication is “the portent of mechanistic linearity with its self-ascribed ability to control and predict human behavior through drug intervention” (p. 692). Extending this logic to the matter of treatment refusal, Williams and Arrigo (2002) note that “pushing through” chaos (Chamberlain, 1994, p. 48) to restore order relegates people to the status of machines that occasionally need fixing. And, in their discussion of civil commitment, Arrigo and Williams (1999a) explain how involuntary hospitalization decisions essentially operate to police public hygiene (Foucault, 1965, 1977). Confinement most often prohibits people from naturally adjusting to the changing conditions of their environment, in their own way and on their own terms.¹³ This artificial remedy is potentially counterproductive especially since the individual is not given the chance to adapt to his or her circumstances as part of “one’s continual evolutionary process” (Williams & Arrigo, 2002, p. 175).

Each of the above cited instances dismisses the human potential for self-healing, redemption, and personal growth, instead favoring forced interventions that control behavior in ways consistent with prevailing standards of acceptable comportment. Proponents of chaos theory and the notion of order-from-chaos observe, however, that this strategy of containment, regulation, and compliance is extremely dangerous, producing deleterious consequences. Indeed, Barton (1994) summarizes these dangers in his assessment of drug treatment rather than self-organization as the preferred method of efficacious intervention. As he perceptively cautions:

If one [administers] a psychopharmacological agent and it does stop chaotic patterns, have we not also wiped out the seeds of a more adaptive psycho logical order—an order that may have taken days, weeks, months, or even years to develop in the complex electrochemical organization of the brain? (Barton, 1994, p. 695)

Thus, as critical psycholegal scholars sympathetic to the perspective of chaos theory note, justice demands that all forms of medical care be reevaluated, especially when treatment masquerades as cure (Szasz, 1977), preventing citizens from enjoying their self-actualized autonomy, dignity, and humanity (Williams & Arrigo, 2002).

3. Summary and conclusions

The critical perspectives of psychological jurisprudence identified above, along with their corresponding epistemological assumptions, reflect a radical agenda for change at the law—

¹³ The dilemma of confinement identified by radical scholars of psychological jurisprudence is extremely problematic, given the order-from-chaos assumption of self-organization. This is especially the case when we consider that with few exceptions persons suffering from mental disorders, in general, pose no greater risk for violence than their nonmentally disordered counterparts (e.g., Monahan, 1996; Monahan & Steadman, 1994).

psychology divide. Although not exhaustively reviewed, the individual theories represent different approaches by which structural reform can be enacted and citizen well-being can therefore be realized. Collectively, the critical perspectives and their attending presuppositions challenge conventional wisdom about prospects for transforming (i.e., humanizing) the legal apparatus. I submit that the future viability of the law–psychology movement, and its overall utility for society, considerably depends on its capacity to facilitate and secure such widespread change.

By focusing on critical theoretical inquiry, this article makes painfully clear that much of what is wrong with the legal system, especially in its interactions with and interpretations of people, cannot be amended or solved through it. Indeed, as Roesch (1995) observed, “changes in the justice system will never be sufficient to create a just society, nor will within system changes by themselves ever have much of an impact on individuals who come into conflict with the law” (p. 3). I agree. Accordingly, it is time to move on and, where necessary, to look elsewhere for guidance.

The radical agenda in psychological jurisprudence represents a provocative strategy, providing a meaningful basis for critique and a sustainable basis for reform. Both are integral to the call for justice embodied in the founding of the AP-LS decades ago. Realizing this challenge, however, remains an unfulfilled dream. Thus, the task that awaits is to apply the insights of critical psychological jurisprudence to relevant areas of research and policy. I submit that the academy can ill afford to dismiss this task. Indeed, in the final analysis, to do so would not only defer prospects for justice but would destroy its very possibility, especially for citizens disillusioned by the status quo and desperate for change that makes a difference.

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