

Sigmund Freud and International Law¹

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Since antiquity philosophers have debated the necessity of group differences and violent conflict. Analyzing the tensions in Sigmund Freud's modern contribution to this discussion reveals a symptomatic crisis in the history of his thought. Although most of his *oeuvre* commits Freud to a view that group differences are hereditary and biologically insuperable, his last published work, *Moses and Monotheism* (1938), for the purpose of saving the law of the father, elaborates a theory of group differences based on formal kinship rules. *Law, Culture and the Humanities* 2006; 2: 201–217

It is hard to know where to begin to write a review essay on “psychoanalysis and the law.” The topic, as befitting its parts – both of which demand attention to the past – raises problems of origins. Should one start with Freud and his descendants, reasoning that before Freud psychoanalysis as such did not exist? Or is it best to take the genealogy of the project further back, to at least Sophocles' Oedipus, where Freud himself began a fruitful exegesis that, as Peter Goodrich has so artfully demonstrated, provides the foundational lattices of law and psyche, or, to be more specific, of law and family,² institutions of alleged certainty that also require making decisions: what is the law for paternity? is this my father? was Moses Jewish or Egyptian? There is more than a parallel, but, in law and family, a metonymic and mutually enabling of the other. Without law, there is no family or nation and without family, no law. As law in Freud resonates in the synecdoche of the individual, really, the father, and his civilization, one way to find the universal in the particular is to focus on Freud himself and international law, the former being the most particular individual and lawgiver of psychoanalysis and the latter the most general statement of law's potential.

Freud was deeply preoccupied with explaining intra-group conflict and yet his efforts were not all that successful. In particular, his work in this area is marked by

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1. Many thanks to Marianne Constable, the anonymous reviewers, and especially to William MacNeil, for their helpful comments on an earlier draft.
2. Peter Goodrich, *Oedipus Lex: Psychoanalysis, History, Law* (Berkeley: University of California, 1995).

a peculiar and rather fascinating tension. On the one hand, Freud states a theoretical commitment to biologizing the conventions of group difference and hierarchy that are the hallmarks of state violence, ie individuals know from their genes the groups to which they belong and the struggles their ancestors faced, and on this basis accede to innate impulses toward domination and revenge. On the other hand, Freud does not stint in empirically describing the legal and contingent patterns that gave rise to national groups – Moses was *Egyptian* and made Jews Jewish by law – as well as legal foundational hierarchies, especially the name of the father. The tension between Freud’s organicism and his artisanism echoes in his unsettled views on evolution’s contribution to progress: he admires and draws on themes from both Darwin and Nietzsche. Freud finds in Darwin a proto-genetic understanding of an hereditary collective memory compelling commitments to one’s own people for the sake of their survival. Freud’s reading of Nietzsche, however, prompts him to make a decidedly anti-Darwinian proposal, that wars are symptoms of an underlying impulse toward *self-destruction*, not group preservation. Although Freud appears to recognize that his two most important muses have different commitments he nonetheless attempts a unity among his intellectual forebears. The “regression” and “involution” Freud reads in Nietzsche’s account of civilization are both unexpected symptoms of Darwinian “evolution,” Freud claims. Although it may be counter-intuitive and even illogical to expect people to believe that going backwards is part of moving ahead, this is precisely what Freud demands.

The key variable underlying Freud’s inability to coherently analyze group conflict is, not surprisingly, the figure of the father. Neither Freud, nor anyone else, can approach a world so that its firmest epistemological truth is founded on materiality (from the Latin *matrix*, meaning womb) and at the same time believe paternal authority (founded contingently, anxiously in law) is the fixed, resolute Archimedean point of order and difference. At the end of his career, Freud implicitly concedes that his effort to found the world on the materiality of the father’s genes has failed. Instead of the visible, the tangible, the obviously empirical that Freud’s scientism had been privileging over less concrete dynamics, Freud reverts to the old-fashioned rationalist Pythagorean sexing of the material (the devalued maternal principle) and spiritual (the exalted paternal principle). This new hierarchy means Freud essentially has abandoned 40 years of seeking truth in the biological, in what could be observed, either now or maybe later, when scientific technique would catch up with Freud’s intuitions. Moving Freud to this position were, I think, his fantasies about the irreducible material importance of the mother’s uterus and men’s need to compensate for this by becoming fathers, something that required if not created law. In the end, literally the conclusion of his last work published while he was alive, *Moses and Monotheism* (1938),³ Freud is forced to save the law of the father by turning, of all places, not to Darwin, not to Gobineau, not to any anthropology, but to Aeschylus’s “Oresteia,” an ancient Greek play seething with boys’ *ressentiment* of the mother, discussed below.

3. Sigmund Freud, *Moses and Monotheism* [1938], tr. Katherine Jones (New York: Vintage, 1967).

Freud's oscillation between drive and desire, materiality and intellection is especially acute in his deconstruction of the Jew as unique, as singular. The analysis in *Moses and Monotheism* is strangely at odds with Freud's ongoing commitments to biologism and social Darwinism. Indeed, by pointing out the nuts and bolts of group formation that the Egyptian Moses used to construct himself as law-giver to the Jews aligns Freud with his great interlocutor on international law: Albert Einstein, who was very attentive to the role sovereign legal systems play in perpetuating war. This essay will, first, address Freud's celebrated exchange with Einstein. In that debate, Freud lays out the lineaments of his schema for analyzing international law, and especially his commitments to Darwin and Nietzsche. I then turn to Freud's belief that group identity follows from a genetically-inherited group memory, a strangely neglected but strong motif in Freud's oeuvre, as adumbrated in a range of texts, but especially *Moses and Monotheism*. Although by the end Freud's argument self-destructs and he ultimately provides support – however unwittingly – for Einstein's position that law's violence is neither natural nor inevitable but (and Einstein does not make this next claim) may be thwarted if societies eliminate those laws compensatory to men's lack. In particular kinship networks must be established for the sake of the name of the father, the one whose barren body cannot reproduce himself without the legal edifice that leads straight to the only intergenerational groups on whose behalf people systematically on a large-scale will risk death and kill: the nation and the ethnicities, races, and families on which the latter are parasitic. (People will kill and die for religion, too, but strictly speaking this is an anti-intergenerational commitment, to death instead of birth.)⁴ Freud's work taken as a whole is symptomatic of this entire Pythagorean structure of thought anxiously privileging the form, the name of the father, over matter, the maternal body and her baby.⁵

4. These themes are explored in detail in Jacqueline Stevens, *Reproducing the State* (Princeton: Princeton University Press, 1999).

5. In the last several years the few psychoanalytic works engaging with questions of international law and human rights largely remain rooted in the familiar family scene of the Oedipal complex, meaning they accept the significance with which Freud and Lacan imbue the penis as the centerpiece for sex development and its attendant neuroses and psychoses (see eg, Costa Douzinas, *The End of Human Rights: Critical Legal Thought at the Turn of the Century* [Oxford: Hart Publishing, 2000], pp. 297–318; Peter Fitzpatrick, *Modernism and the Grounds for Law* [Cambridge: Cambridge University Press, 2004]; Anne Orford, "The Destiny of International Law," *Leiden Journal of International Law* [2004], vol. 17, pp. 441–76; Renata Salecl, *On Anxiety* [New York: Routledge, 2004], pp. 16–48). An exception to this in the Law and Society literature is work by Anne Orford, where maternal narratives are brought to bear on human rights discourses, in *Reading Humanitarian Intervention*, Cambridge: Cambridge University Press, 2003, esp. 186–219. There is a larger body of scholarly work bringing together psychoanalytic theory with international relations in political science. Here authors draw on object relations theory in particular, also ultimately rooted in the Oedipal complex, to criticize failures in the analysis and defense of violence in present international relations (eg Cynthia Enloe, *Bananas, Beaches and Bases: Making Feminist Sense of International Politics* (Berkeley: University of California Press, 1990) and *The Curious Feminist: Searching for Women in a New Age of Empire* (Berkeley: University of California, 2004); and V. Spike Peterson (ed.), *Gendered States: Feminist (Re)Visions of International Relations Theory* (Boulder: Lynne Rienner, 1992).

I. Why War?: Freud's Framework for Analyzing International Law

The absence of psychoanalytic frameworks from international law cannot be explained by the lack of interest in this field on the part of multilateralists contemporaneous with Freud. In 1932 Albert Einstein, under the auspices of the League of Nations, invited Freud to respond to the question "Is there any way of delivering mankind from the menace of war?" Einstein gives the question a first shot, stating that he himself is "immune from nationalist bias" but for those still compelled by such commitments, the only solution he sees is the "setting up, by international consent, of a legislative and judicial body to settle every conflict arising between nations."⁶ That this experiment was attempted, and despite good-faith efforts failed, leads Einstein to infer that "strong psychological factors are at work which paralyze these efforts,"⁷ and so he reaches out to Freud and asks him "why war?" in the hope that the latter's answer could explain and even treat the inner psychic troubles causing such destruction.⁸

Freud fails to answer Einstein's question, but Freud's reply to him, and other writings, do offer something of interest to the student of international law's limits, with Freud making six claims about group conflict that are refrains from earlier works. They provide cairns on a path that leads not only straight to war and its rationalization but, worse, Freud discourages efforts to obtain permanent peace. To Einstein's plea for insight into psychology that might result in measures that could establish a sovereign body of international law, Freud replied with a defense of fatalism, questioning why Einstein found war's deterrence valuable.

Freud's essay, drawing on his previous publications on this question, appropriates much of its form and substance from Darwin. Freud hypothesizes an original condition of humanity in its youth from which his own society has descended. In-the-beginning (Freud's mythic undated prehistory) a group's leader was the one with the greatest physical strength. This changed when the primal horde united together as the "might of the community" and used it to overthrow the single strongest individual.⁹ Freud stated that it was a "general principle" that "conflicts between men are settled by the use of violence" and that this is "true of the whole animal kingdom, from which men have no business to exclude themselves,"¹⁰ the force of a majority being force nonetheless.¹¹ This theme of the primal

6. Albert Einstein and Sigmund Freud. "Why War?" [1933], in James Strachey, ed. and tr., *The Standard Edition of the Complete Psychological Works of Sigmund Freud* (London: Hogarth Press, 1953), pp. 199–200.

7. Freud and Einstein, p. 200.

8. Freud is clearly uncomfortable with this practical charge, first pretending that Einstein was not even asking Freud for practical advice ("Why War?" p. 203) and then asking Einstein's forgiveness for having "disappointed you" ("Why War?" p. 215).

9. Einstein and Freud, "Why War?" pp. 204, 205.

10. Einstein and Freud, "Why War?" p. 204.

11. Einstein and Freud, "Why War?" p. 205.

horde killing the father and then establishing rules for equality among them appears first in *Totem and Taboo*¹² and is persistent in Freud's writings through *Moses and Monotheism*.¹³

The propensity to "problem-solve" by resort to violence stems from a fundamental drive humans share with animals, the instinct of aggression.¹⁴ Yes, individuals have life-affirming, or erotic drives as well, but, Freud writes, the "ugly and dangerous impulses against which we are struggling . . . stand nearer to Nature than does our resistance to them."¹⁵ Freud is not alone in having misread Nietzsche's *On the Genealogy of Morals* and *Beyond Good and Evil*,¹⁶ the latter to which Freud's "Beyond the Pleasure Principle"¹⁷ is clearly alluding.¹⁸ Nietzsche mocks earnest utilitarian social Darwinians who were eager to overturn the truisms of Christianity with those of natural selection. Rather than chuckling along with Nietzsche's scathing parody of scholars Nietzsche referred to contemptuously as "ape-genealogists,"¹⁹ Freud took literally Nietzsche's playful extrapolation from the terms of their analyses. If "survival of the fittest" is taken seriously, Nietzsche pointed out, then this must mean that "evil" (and, by Freud's extension, war and death) are signs of fitness. Whereas Nietzsche was trying to make uncomfortable those who propounded principles of evolutionary psychology, Freud believed he was taking a revolutionary step, and indeed he was, by taking Nietzsche literally and not understanding his critique of the entire sociobiological scholarly industry.

12. Sigmund Freud, *Totem and Taboo: Some Points of Agreement between the Mental Lives of Savages and Neurotics* [1912], from the *S.E.* (New York: W.W. Norton, 1989), pp. 178–9.

13. Freud, *Moses*, p. 102.

14. Einstein and Freud, "Why War?" p. 209.

15. Einstein and Freud, "Why War?" p. 211.

16. Friedrich Nietzsche, *On the Genealogy of Morals*, tr. Walter Kaufmann (New York: Vintage, 1967); Jacqueline Stevens, "On the Morals of Genealogy," *Political Theory*, 31 (4) (August, 2003): 558–588.

17. Sigmund Freud, "Beyond the Pleasure Principle" [1920], in the *S.E.*, vol. 18, pp. 7–64.

18. See Paul Roazen, *Political Theory and the Psychology of the Unconscious: Freud, J.S. Mill, Nietzsche, Dostoevsky, Fromm, Bettelheim and Erikson* (Open Gate: London, 2000). The topic of Nietzsche's influence on Freud has been a subject of debate, including the claim by one author that "Freud neither knew nor was much influenced by Nietzsche's philosophy" (Thomas Johnston, *Freud and Political Thought* [New York: Citadel, 1965], p. 17), which seems clearly incorrect in light of the two 1908 meetings of the Vienna Psychoanalytic Society dedicated to discussing Nietzsche's relevance to their own work (Roazen, *Political Theory*, Chapter Three). Freud writes in a note to the "Psychopathology of Everyday Life" [1904] that he adds in 1910, "[N]one of us has been able to portray the phenomenon [of selective memory] and its psychological basis so exhaustively and at the same time so impressively as Nietzsche in one of his aphorisms" and then Freud quotes from Nietzsche's *Beyond Good and Evil* (in the *S.E.*, vol. 6, pp. 146–47, note 2), a passage he quotes as well in his "Notes Upon an Obsessional Neurosis" [1910] (in the *S.E.*, vol. 10, p. 184). Freud's own anxiety about the influence is very clear. In his essay "On the History of the Psychoanalytic Movement" [1914] he writes, "In later years I have denied myself the very great pleasure of reading the works of Nietzsche . . ." (in the *S.E.*, vol. 14, pp. 15–16). However, in the 1932 revisions of his introductory lectures, Freud writes, "Following a verbal usage of Nietzsche's and taking up a suggestion by Georg Groddeck, we will in future call [the unconscious] 'id' [Es]" ("New Introductory Lectures on Psychoanalysis," [1933] in the *S.E.*, vol. 22, p. 72).

19. Friedrich Nietzsche, "On the Uses and Disadvantages of History for Life" [1873], in *Untimely Meditations*, 2d ed., Ed. Daniel Breazeale, tr. R. J. Hollingdale (Cambridge: Cambridge University Press, 1997), pp. 57–125.

Insofar as aggression and even a “death drive” are with us because and not despite our humanity, according to Freud, he believed that war, too, was not only unavoidable, but actually to be embraced as part of life. In response to an inquiry on how to end war, Freud, reprising his interpretation of Nietzsche, wrote:

We have even been guilty of the heresy of attributing the origin of conscience to this diversion inwards of aggressiveness. You will notice that it is by no means a trivial matter if this process is carried too far: it is positively unhealthy. On the other hand if these forces are turned to destruction in the external world, the organism will be relieved and the effect must be beneficial. This would serve for a biological justification for all the ugly and dangerous impulses against which we are struggling.²⁰

This is rather remarkable. On the doorstep of a world war that was to claim 55 million lives, Freud is worried that conscience is unhealthy! Abjuring conscience, Freud offers a “biological justification” for bloodshed so that the “organism will be relieved,” and this will be “beneficial,” at least for those who survive.

It is possible, of course, that although a practice is natural it might be altered, to wit, high rise buildings rather than cave dwellings. Freud recognized this but believed that here such efforts would fail: “there is no use in trying to get rid of men’s aggressive inclinations.”²¹ This is not a new belief, but echoes his views occasioned by the first world war. Noting that this apparent fall from civilization in the supposedly most advanced society in history should not come as a surprise, in “Thoughts for the Times on War and Death” (1915) Freud writes:

The fact that the collective individuals of mankind, the peoples and states, mutually abrogated their moral restraints naturally prompted these individual citizens to withdraw for a while from the constant pressure of civilization and to grant a temporary satisfaction to the instincts which they had been holding in check.²²

Just as a neurotic individual may “act out” and betray elements of childhood impulses as an adult, entire societies also may regress, an observation that, while deeply problematic, is very skillful on Freud’s part, allowing him to reconcile his embrace of Darwin’s theory of evolution with the observation that under particular circumstances societies have a “special capacity for involution – for regression – [because] . . . the primitive mind is, in the fullest meaning of the word, imperishable.”²³ Freud explains the absence of progress predicted by some social Darwinists, especially the

20. Einstein and Freud, “Why War?” p. 211.

21. Einstein and Freud, “Why War?” p. 211.

22. Freud, “Thoughts for the Times on War and Death” [1915], *S.E.*, vol. 14, p. 285.

23. Freud, “Thoughts for the Times,” p. 286.

British utilitarians, by pointing to the latent but omnipresent aggression present from infancy, in the individual and civilization alike.

“Thoughts for the Times on War and Death” makes this point in a manner that is especially frustrating for those who would favor international law. When undertaking to explain the causes of war at his own initiative in this first effort, not replying to someone else’s query, Freud avows his mission is to help orient people whose silly expectations of peace have left them confused, and not to lift a single theoretical finger to alleviate the destruction: “The individual who is not himself a combatant... feels bewildered in his orientation, and inhibited in his powers and activities. I believe that he will welcome any indication, however slight, which will make it easier for him to find his bearings within himself at least.”²⁴ But what Freud writes, advancing the proposition that humanity is innately prone to such fighting, cannot possibly contribute to any sense of ease. It is not clear why Freud thinks that if he proves that civilization is doomed that this will make people feel less bewildered than living with their doubts about civilization. Logically there is nothing especially compelling about the formulation that the sort of people for whom the possibility of war makes distraught will find comfort in war’s inevitability. The thinking here echoes Freud’s similar approach to individual level therapy, whereby alleviation of anxiety as a result of self-knowledge is episodically promised and denied.

Writing of the first world war in contrast with earlier ones, “Thoughts for the Times on War and Death” appears to offer a critique of the nation-state very similar to that offered by nineteenth-century anarchist Mikhail Bakunin: the state is hypocritical because it rewards actions against enemies in wartime, namely killing, that it seeks to limit and punish domestically and in times of peace. Writing of a war that “disregards all the restrictions known as International Law,”²⁵ Freud observes that people are rationalizing behaviors in the name of international conflict that would be intolerable if done in the name of individuals: “...the state has forbidden to the individual the practice of wrong-doing, not because it desires to abolish it, but because it requires to monopolize it, like salt and tobacco.”²⁶ While anarchists might offer such a stark observation as grounds to abolish the state, Freud reconciles the public to war because war reveals humanity’s true nature.

Freud’s social Darwinism makes him more “Hobbesian” than even Hobbes. Hobbes believes the drive to self-preservation triggers the social contract’s sovereign, the representative body (individual or collective) that will procure mutual security. Hobbes then reveals his system’s weakness: its failure to similarly repress competing sovereigns, who remain in the state of nature and hence war with each other. But whereas Hobbes provides a theory of sovereign elites able to compel violence on their behalf from self-interested and therefore otherwise unwilling soldiers, Freud suggests that

24. Freud, “Thoughts for the Times,” p. 275.

25. Freud, “Thoughts for the Times,” p. 278.

26. Freud, “Thoughts for the Times,” p. 279.

war provides an inevitable and beneficial outlet for the masses' pent-up death drive. For Hobbes the paradox is: why would subjects who have agreed to bind themselves with a sovereign in order to escape the threat of a violent death agree to serve in a war where they risk a violent death? For Freud the paradox is: why would subjects with a death drive desire a social contract in the first place? As *thanatos* trumps *eros*, according to Freud, the decision to leave the state of nature can be explained only by an instinct that senses more rather than less death would result from the grouping of people into organized armies and not just roving savages, and in fact this is precisely the argument that Freud puts forth five years later in *Beyond the Pleasure Principle*,²⁷ a reprise of Nietzsche's book "Beyond Good and Evil."²⁸

Associated with Freud's judgment that people tend toward an ineradicable aggression is his complementary view that societies function best when they reflect the outcome of such competition by being led by those who will advance that group's interests. This is entirely at odds with Einstein's proposition to Freud, that the chief obstacle to enforceable international law is this aggression of leaders, not citizens: "The craving for power which characterizes the governing class in every nation is hostile to any limitation of national sovereignty."²⁹ Whereas Freud believes America is an instance of leveled society with democracy run amok and would like more elite rule, Einstein asks "How is it possible for this small clique to bend the will of the majority, who stand to lose and suffer by a state of war? . . . An obvious answer" he concludes, is that the "ruling class at present, has the schools and press, usually the Church as well, under its thumb. This enables it to organize and sway the emotions of the masses, and make its tool of them."³⁰ Einstein believed that political elites were the trouble-makers, tending to stir up the masses in ways that overcame their intuitive resistance to aggression and war that would use them as fodder, as opposed to Freud, who thought the masses instinctively craved this.

Freud, in allegiance to a Darwinian worldview, ridiculed those pacifists, including Einstein, who were attempting to discredit the natural order of things, ie hierarchies reflecting the survival of the fittest:

A complaint which you make about the abuse of authority brings me to another suggestion for the indirect combatting of a propensity to war. One instance of the innate and ineradicable inequality of men is their tendency to fall into two classes of leaders and followers . . . This suggests that more care should be taken hitherto to educate an upper stratum of men with independent minds, not open to intimidation and eager in the pursuit of truth, whose business it would be to give direction to the dependent masses.³¹

27. "Beyond the Pleasure Principle," [1920], *S.E.*, vol. 18, pp. 7–64

28. Roazen, *Political Theory*.

29. Freud and Einstein, "Why War?" p. 201.

30. Freud and Einstein, "Why War?" p. 201.

31. Freud and Einstein, "Why War?" p. 212.

The notion that an “upper stratum” in “pursuit of truth” would lead sounds a lot like Plato’s *Republic*, and it is therefore not surprising that Freud himself dismisses this as a “Utopian expectation.”³²

Interestingly, the concession that leaders outside of utopia likely will be following irrational impulses still does not mean Freud prefers rational, egalitarian societies. Commenting on the democratic ethos he observes in the United States, Freud writes of a “danger” that develops when “individuals of the leader type do not acquire the importance that should fall to them in the formation of a group. The present cultural state of America would give us a good opportunity for studying the damage to civilization which is thus to be feared.”³³ This strain of thinking that appears in *Totem and Taboo* (1912) and is crystallized and elaborated at length in *Group Psychology and the Analysis of the Ego* (1921) suggests that the hierarchical organization of the army and Church epitomize the ideal form of community for which our psyches are best suited. The international order, the state, and the individual psyche are all hierarchical environments in which drives, not reason, determine actions and outcomes, a situation that may appear undesirable but is still preferable to efforts at stifling these urges, Freud believes.³⁴

It should come as no surprise that having demonstrated that people are innately aggressive, prone to war, and best organized hierarchically that Freud would credit the underlying linchpin of such enactments, in ways not that different from what Hitler himself proposed³⁵: a genetic affinity for one’s own national or racial group. Freud begins this line of thought in 1915, performing the stupidity of a universalism expressed in the name of Europeans:

We were prepared to find that wars between the primitive and the civilized peoples, between the races who are divided by the colour of their skin – wars, even against and among nationalities of Europe whose civilization is little developed or had been lost – would occupy mankind for some time to come. But we permitted ourselves to have other hopes. We had expected that the great world-dominating nations of [the] white race upon whom the leadership of the human species has fallen, who were known to have world-wide interests as their concern . . . – we had

32. Freud and Einstein, “Why War?” p. 213.

33. *Civilization and its Discontents* [1930], tr. James Strachey (New York: W.W. Norton, 1961), p. 74. As an aside Freud adds, “I shall avoid the temptation of entering upon a critique of American civilization; I do not wish to give an impression of wanting myself to employ American methods,” *Civilization and its Discontents*, p. 74. Freud’s anti-Americanism is most striking in his co-authored, posthumously published biography of Woodrow Wilson: Sigmund Freud and William Bullitt, *Thomas Woodrow Wilson: Twenty-eighth President of the United States A Psychological Study* (Boston: Houghton-Mifflin, 1965).

34. Freud says pacifism and communism reveal the failures of leftist efforts to radically redesign our social institutions.

35. Both Hitler and Freud mistakenly credit Nietzsche for this view.

expected these peoples to succeed in discovering another way of settling misunderstandings and conflicts of interest.³⁶

This is not an incidentally-racist period piece but an alarming statement that Freud had staked out a very particular piece of reactionary territory in the sociological debate about races and racism that engaged various German writers in this period, including Max Weber who voiced very different views about race and nation at this time.³⁷ And although Freud in some places (discussed below) disavows nationalism, his essay on war written in 1915 is definitely that of German partisan: “We live in hopes that the pages of an impartial history will prove that that nation, in whose language we write and for whose victory our dear ones are fighting, has been precisely the one which has least transgressed the laws of civilization.”³⁸ His subsequent rhetorical question (“at such a time who dares set himself up as judge in his own cause?”) only underscores that Freud sees the German cause as his own.³⁹

Less than two decades later, at the threshold of Hitler’s ascent and when the Jews of Europe were on the verge of being wiped out as a realization in part of the views Freud himself endorsed, Einstein will write that such nonsense mystifies him, as he was “immune” to nationalist feelings. But Freud takes a gratuitous swipe at Turks,⁴⁰ and suggests that birth control in Europe, which, he says, decreases the population of Whites, may be “leading to the extinction of the human race,” elaborating that “uncultivated races and backward strata of the population are already multiplying more rapidly than highly cultivated ones,”⁴¹ a sentiment not that far from the ones proclaimed by Nazis who were relying on the same social Darwinian, pseudo-Nietzschean references as was Freud.

Freud had recently written a preface for the Hebrew edition of *Totem and Taboo* [1930] stating that while he did not share the “nationalist ideals” of Zionists, he was “in his essential nature a Jew.” Freud writes of himself:

36. Freud, “Thoughts for the Times,” p. 276.

37. The key text in these debates was that of the French racist Arthur comte de Gobineau, *The Inequality of the Races* [1855], tr. George Mosse (New York: H. Fertig, 1999), published shortly before Darwin’s *Origin of Species* [1859]. Other scholars in the early 20th century were refuting these views, including W.E.B. Du Bois, *The Negro* [1915], in *The Collected Works of W.E.B. Du Bois*, ed. Herbert Aptheker (Milwood: Kraus-Thomson, 1975) and Max Weber, who was in correspondence with Du Bois. Weber was lecturing and writing critiques of Gobineau during this same period and his systemic attack on biological theories of race appeared posthumously in 1922, one year after Freud’s “Group Psychology” [1921]. See Max Weber, *Economy and Society* [1922], tr. Ephraim Fischhoff, et al. (Berkeley: University of California, 1978). In short, there was a debate then not unlike the one today about the hereditary basis of group difference. Freud chose to embrace genetic racist theories of group dynamics and to reject those that emphasized the legal basis of such groups and conflicts.

38. Freud, “Thoughts for the Times,” p. 270.

39. Freud, “Thoughts for the Times,” p. 270.

40. Einstein and Freud, “Why War?” p. 207.

41. Einstein and Freud, “Why War?” p. 214.

If the question were put to him: ‘Since you have abandoned all these common characteristics of your countrymen, what is there left to you that is Jewish?’ he would reply: ‘A very great deal, and probably its very essence.’ He could not now express that essence clearly in words; but some day, no doubt, it will become accessible to the scientific mind.⁴²

Freud is alluding to his theory of a “collective mind” that first appears in the conclusion of *Totem and Taboo*, where he writes that “mental processes occur just as they do in the mind of an individual,”⁴³ and that the data of the collective mind is transmitted in a biological medium through something like our genes – at this point DNA had not yet been discovered and chromosomes had not been observed. In today’s vernacular Freud is proposing that each individual’s DNA is akin to a computer chip transmitting memory of one’s group’s past experiences, from the primal horde’s slaying of the father to knowledge of its unique history and traditions.

Freud explains, “Without the assumption of a collective mind, which makes it possible to neglect the interruptions of mental acts caused by the extinction of the individual, *social psychology in general cannot exist* . . . I shall not pretend that . . . direct communication and tradition – which are the first things that occur to one – are enough to account for the process.”⁴⁴ In his last publication on social psychology, *Moses and Monotheism*, Freud again proposes an “inheritance of memory – traces of what our forefathers experienced, quite independently of direct communication and of the influence of education by example.”⁴⁵ When Freud says he is “essentially a Jew” he means that despite his atheism, his rational rejection of the god of Moses and the supernatural basis of the Ten Commandments, Freud’s DNA convey in and through him a national memory of his Jewish ancestors: “When I speak of an old tradition still alive in a people, of the formation of a national character, it is such an inherited tradition, and not one carried on by word of mouth, that I have in mind.”⁴⁶ By analogizing the memory of one’s ancestors’ experiences with animal instincts⁴⁷ Freud fixes difference and grudges as permanent, a situation in which Freud would quite sensibly extrapolate a gloomy prognostication for international law, for how can synecdochal laws erase diachronic genetically-induced national differences and proclivities?

42. *Totem and Taboo: Some Points of Agreement between the Mental Lives of Savages and Neurotics* [1912], tr. James Strachey (New York: W.W. Norton, 1989).

43. Freud, *Totem and Taboo*, p. 195.

44. Freud, *Totem and Taboo*, p. 196, emphasis added.

45. Freud, *Moses and Monotheism*, p. 127.

46. Freud, *Moses and Monotheism*, p. 127. Among the many contradictions that populate Freud’s life and work is that even more essential to his self-image of any Jewishness were those attachments of an upstanding Viennese burger and member of the fallen Austro-Hungarian empire, affinities he expressed for the German nation and culture as well. And yet for Freud to partake of the pleasures of the German collective mind and memory would occur only through education, not genetic inheritance.

47. Freud, *Moses and Monotheism*, p. 129.

Freud's insistence on a biological basis for differences in national character occur in the face of his own understanding that nothing in the science of his time supports this: "This state of affairs is made more difficult, it is true, by the present attitude of biological science, which rejects the idea of acquired qualities being transmitted to descendants."⁴⁸ Freud insists on this genetic account nonetheless because he feels that his entire theory of group differences depends on it: "If things are different, then we are unable to advance one step further on our way, either in psychoanalysis or in mass psychology. It is bold, but inevitable."⁴⁹ Just as Freud is honest in acknowledging that for the Oedipal narrative to account for paternal authority there must be something innately superior about the penis compared with female genitalia – a situation that has been somewhat disingenuously ignored or obfuscated by subsequent generations of feminist and other discursively engaged psychoanalytic theorists⁵⁰ – he is equally blunt in proposing that if there is a drive to preserve one's own group, then this too must be based in a specifically biological memory that would tie the synchronic individual to the diachronic group.

II. Freud versus Freud

Just as Freud's own astutely-provided details in his case studies often provides evidence for alternative interpretations of the material, Freud's information about group dynamics also enables different analyses. In addition, Freud is not always consistent and some of his formulations about civilization in general and law in particular contradict others, and not simply his own data. Freud's general preoccupation with the question of whether an individual's neurotic behavior had a biological etiology or was caused by something particular to one's home or cultural environments surfaces repeatedly in his discussion of political affairs writ large as well. In particular Freud is unresolved on whether laws help or hinder. Although Freud, as described above, remarks that laws "repress" instincts and that this leads to an explosion of aggression resulting in "involution," he remains firmly embedded in the Enlightenment. Whereas a counter-Enlightenment figure such as Rousseau would embrace the ideal of a noble savage as emblematic of a superior way of life that civilization destroyed,⁵¹ Freud denigrates these attributes. In the name of a narrative of progress that Freud disproves on empirical grounds – because war and aggression are fixed features of the human landscape – Freud seems nonetheless to value

48. Freud, *Moses and Monotheism*, pp. 127–8.

49. Freud, *Moses and Monotheism*, p. 128.

50. For a critique of feminist object relations theory and Lacanian theory that displaces and hence centers the penis without acknowledging the importance of birth and wombs, as noted in earlier Freudians such as Karen Horney, Richard Hunter, Ernst Jones, and Ida Macalpine, see Jacqueline Stevens, "Pregnancy Envy and the Politics of Compensatory Masculinities," *Politics and Gender*, June 2005, 1 (2), pp. 265–96.

51. Jean-Jacques Rousseau, "Second Discourse on Inequality" [1755], in *The Discourses and other Political Writings*, tr. Victor Gourevitch (Cambridge: Cambridge University Press, 1997).

civilization and peace and devalue savagery and war. Unlike Nietzsche, who was consistent in his contempt for linear narratives of progress, Freud believes in a telos and bemoans its betrayed promise. He writes that while evolution has led to the extinction of primitive species and hence to biological improvement, moral development has fared more poorly:

In the realm of the mind, on the other hand, what is primitive is commonly preserved alongside of the transformed version which has arisen from it that it is unnecessary to give instances as evidence. When this happens it is usually in consequence of a divergence in development: one portion (in the quantitative sense) of an attitude or instinctual impulse has remained unaltered, while another portion has undergone further development.⁵²

Similarly, Freud sees religious beliefs as archaic remnants of childhood fantasies that a developing civilization will overcome:

Our knowledge of the historical worth of certain religious doctrines . . . does not invalidate our proposal that they should cease to be put forward as the reasons for the precepts of civilization. On the contrary! Those historical residues have helped us to view religious teachings, as it were, as neurotic relics, and we may now argue that the time has probably come, as it does in an analytic treatment, for replacing the effects of repression by the results of the rational operation of the intellect.⁵³

Freud's analogy of the development of a child into an adult with that of civilization⁵⁴ betrays an evolutionary imperative consistent with Freud's bourgeois and conventional intuitions, beliefs that ultimately prevented him from using his analysis at the same high level of honesty and integrity that marked his observations.

Freud's neo-Darwinian idea of progress betrayed is different from Nietzsche's fundamental questioning of evolutionary theory's very foundation. According to Nietzsche, the depravity of his own civilization disproved not only evolution but involution as well: the entire edifice of development and regression is, according to Nietzsche, a modern narrative with no good use. Nietzsche deploys its discourse for purpose of ridicule and not description. Freud, however, incorporates Darwin into Hegel, accepting the Hegelian equation of rationality with progress. Freud's motive for his first essay on war⁵⁵ – comforting those whom the promise of civilization had disappointed – is written to assuage his own anxieties. Not only had the

52. Freud, *Civilization and its Discontents*, p. 16, and see also p. 20.

53. Freud, *The Future of an Illusion* [1927], tr. James Strachey from the *S.E.* (New York: W.W. Norton, 1961), p. 56.

54. Freud, *Future of an Illusion*, p. 57.

55. Freud, "Thoughts for the Times" [1915].

ease of his own bourgeois family life been shattered – his son on the battlefield, his country at war – but the promise of progress implicit in his own developmental theories had been betrayed as well. Rather than concede Darwin was wrong, Freud makes “involution” of a piece with evolution.

The most interesting of Freud’s tensions pertaining to the legal basis of the commitments to collective identity underlying international conflict appear in *Moses and Monotheism* (1938). Freud not only makes the incredibly provocative argument that the law-giver of the Jews was Egyptian, but, especially devastating to Freud’s claim that people have an inherited collective memory, he believes the ancestors of the Jewish tribe most crucial in establishing the Egyptian religion among the Israelites, the Levites, actually were Egyptian themselves:

It is not credible that a great gentleman like the Egyptian Moses approached a people strange to him without an escort. He must have brought his retinue with him, his nearest adherents, his scribes, his servants. These were the original Levites. Tradition maintains that Moses was a Levite. This seems a transparent distortion of the actual state of affairs: the Levites were Moses’ people.⁵⁶

In other words, Moses would not be the only Egyptian approaching the Israelites but would do so in the company of his fellow Egyptians, who were to become the main law-givers for these Jewish tribes and hence, by extension, the Egyptians, the Levites, would become Israelites themselves. This is stunning because not only is Freud claiming that Judaism’s basic tenets are Egyptian, his own genealogical logic requires the further inference that Jews, too, are Egyptian. Consistent with this argument that contemporary Jews are descendants of colonized and colonizing tribes – he says warrior Aramaeans are the early “Habiru” or Hebrews⁵⁷ – the only reasonable inference from Freud’s gene theory of memory would have to be that later Jews should have some sort of trace memory of these past events, and so should recall also that they are not simply Jews but Egyptian, too.

Curiously the conclusion of Freud’s book resists this evidence and makes a very different point. *Moses and Monotheism*, begun in Vienna and concluded after Freud’s escape to his own promised land of London⁵⁸ – Freud’s text with the most extended argument, really insistence, about the existence of a group’s “memory trace” in the psyche of its individual descendants – states something very different. Engaged with Nietzsche’s observation that history has uses and disadvantages, Freud answers the question of the use of his own history, which Freud already has demonstrated is one that is polymorphous and based on changing legal structures, by stating that his concept of a memory trace helps explain an unquestioningly pure Jewish tenacity: “With

56. Freud, *Moses and Monotheism*, p. 45, and see also p. 46.

57. Freud, *Moses and Monotheism*, p. 33.

58. Freud, *Moses and Monotheism*, p. 69.

an unexampled power of resistance [the Jewish people] has defied misfortune and ill-treatment, developed special character traits, and, incidentally, earned the hearty dislike of all other peoples. Whence comes this resistance of the Jew and how his character is connected with his fate are things one would like to understand better."⁵⁹ Historical excavations and the archaeology of Freud's own psyche taught him that the reason for Jews surviving and being loathed are one and the same: they really believe they are the Chosen People, leading everyone else to be exceptionally irritated.⁶⁰

This inference about the psychological basis of Jewish identity, persecution, and, by extension, Freud's explanations for the cause of lawless intergroup violence, based on primordially-recollected antagonisms, makes no sense: if the ideology and genes of so-called Jews are Egyptian, then this requires a very different interpretation of genealogy than that Freud offers. Kinship's well-known legal basis, which Freud himself acknowledges, explains what would otherwise remain a conundrum if one had only Freud's biologically-based "memory traces" to explain the origins and perpetuation of national differences across generations. First, at minimum the "chosen people," the Jews, are, in Freud's terms, culturally and biologically Egyptian, and should be genetically programmed to know this. Second, the Egyptians, Habiru, and all other groups populating Freud's histories and contemporary analyses of group conflicts can never be assumed to be purely biologically Egyptian, Habiru and so forth, as the putative original condition is itself an illusion wrought through the legal regulations of a society's kinship rules and not genetic descent.⁶¹

Crucially, if Freud is right about the political, fluid, and hybrid character of group identity, then there is no reason for his analysis to begin with the Egyptians and Habiru as themselves ready-made pure groups there in-the-beginning, as presumably these groups too carry traditions and populations from prior also political, fluid and hybrid groups as well. If the Jews – the epitome of a small, insular, stiff-necked people (Exodus 32:9) – are Egyptian, then why not allow for the probability that the Egyptians and any other putatively pure group also are constituted by a play of political and other accidents that led to their own presence, as would be the case for the kinship groups preceding them as well? If the Jews iterate a previous series of complicated overlapping identities, this must be a symptom of broader processes of identity formation more generally.

Freud, of course, has been read as himself a Moses figure, laying down the law of psychoanalysis as the therapeutic anti-religion. Freud notices that as a lawgiver himself his project may exceed his own intentions – a "work grows as it will and sometimes even confronts its author as an independent, even an alien creation"⁶² – as is the case for Moses' religion. But nonetheless

59. Freud, *Moses and Monotheism*, p. 134.

60. Freud, *Moses and Monotheism*, p. 134.

61. Stevens, *Reproducing the State*, chapters 3 and 4.

62. Freud, *Moses and Monotheism*, p. 133.

Freud fails to see that the Jews, too, are a work in progress and that their identity varies according to shifts in kinship laws, not genes. How else to explain that the Hebrew Bible states that Israelites descend through patrilineal ties to Abraham legitimated through marriage, while after the destruction of the Second Temple this rule changes and Freud is Jewish because generations of mothers made him so, a truth that is not overlooked, but, as we shall see, deliberately repressed?

III. Conclusion

The significance of Freud's analysis of the Egyptian origins of the Jewish people and religion for international law is that Freud's insistence on a biological basis for inter-group violence in general and anti-Semitism in particular – groups' memory traces in the individual psyche along with the death drive prompt war – is belied by the very historical record Freud himself compiles. This weakens the grounds on which Freud can claim a biological imperative for war. If Jews and, by extension, other national groups have biological origins in their supposed enemies then ostensibly inter-group conflict is really intra-group conflict and the problem of alleged particular differences dissolves into Einstein's question premised on an underlying universality of the human condition that knows only the singularity of humanness and the plurality of an infinitely deferred origin, a puzzle of tangled kinship rules and relations, not genetics.

Freud seems to have failed to narrate his empirical path with a theory that would account for his travels, the missteps marking Freud's symptom as a familiar one. Accounting for this is an intellectual habitus Freud shares with many writers today: a belief that religion and even nationalism are ideological paired with the intuition that nationality, ethnicity, and race are natural, given, biological. The psychic basis for religious drives is based on a neurotic repetition of a repressed desire to be united with one's father, expressed by Christians in their expiated guilt – the sacrifice of a son, Freud claims. This explains why Freud can reject the Jewish religion and still claim he is essentially Jewish. He can resist the neurotic attachments to which lesser souls are susceptible and at the same time, he cannot reject his allegedly biological Jewish memory. Indeed, even in the case of religion, Freud emphasizes its biological basis as well, the instinctual drive for reassurance against death. Rooted in fundamental psychic forces of infancy, when unacknowledged, civilization becomes neurotic and allays anxieties about mortality through religion, an illusion.⁶³

Freud's privileging of biological drives over conscious intentions throughout his work is apparently forgotten at the end of *Moses and Monotheism*, where he makes a very different claim: what supposedly renders law and paternity superior to biology and maternity are that the former embody ideas and not sensuality, not materiality. Referencing the transition

63. Freud, *Future of an Illusion*.

Aeschylus describes in the “The Oresteia” [458 BC] from a justice of blood vengeance to one of the rule of law, Freud writes: “This turning from the mother to the father . . . signifies above all a victory of spirituality over the senses – that is to say, a step forward in culture, since maternity is proved by the senses whereas paternity is a surmise based on deduction and premise.”⁶⁴ The context for this claim is even more interesting: whereas earlier Freud had been inferring from biology the urge to find in monotheism a god parallel to the omnipotent authority of the father, here he infers from the spirituality of monotheism a form of worship modeling the leap of faith necessary to obey the law of the father.⁶⁵ Although Freud consistently emphasizes his empiricism and the virtues of the scientific method, and *The Future of an Illusion* (1927) ridicules at great length the religiously devout as capitulating to mass neuroses, in *Moses and Monotheism* Freud asserts, “The progress in spirituality consists in deciding against the direct sense perception in favour of the so-called higher intellectual processes – that is to say, in favour of memories, reflection, and deduction.”⁶⁶ This is odd because earlier Freud presented “spirituality” as the childish illusion adults can banish.

How would such a religious condition have an even implicit progressive trajectory? And then Freud again states that an “example of this would be the decision that paternity is more important than maternity, although the former cannot be proved by the senses as the latter can. This is why the child has to have the father’s name.”⁶⁷ Freud’s *oeuvre* performs the symptom he discovers. But it is civilization’s childhood memory traces of language, not genes, that the Viennese in civilization’s middle-age displays, and it is the mid-life crisis of the Freudian father who needs marriage and hence law to assuage his own anxieties about death. It is a rather revealing, even poetic, fact that Freud’s own nationality, that of an Israelite, depends on the very matrilineality that Freud is explicitly disavowing. Freud, who spends a lifetime publishing refutations of law’s importance, is, forced by the failures of paternity to find peace with the Oresteia, with a law fathers can die with.

64. Freud, *Moses and Monotheism*, p. 146.

65. Freud, *Moses and Monotheism*, pp. 144–146.

66. Freud, *Moses and Monotheism*, p. 150.

67. Freud, *Moses and Monotheism*, pp. 150–1.