

RE-CONSTRUCTION OF PARENTAL RESPONSIBILITY: PROTECTION OR MARGINALIZATION OF CHILDREN?

Chiu Man-Chung Andy

Head of department of Law and Business, Associate Professor, Shue Yan University,
Hong Kong

Abstract: The consultation paper and a related bill was issued by the Hong Kong Government in 2015. They discussed, in the context of child custody, the possibility of replacing the traditional concept of parental rights with parental responsibility, aiming to construct and provide stronger entrenchment of the best interests of children. This paper investigates whether the proposal can manufacture better protection on the one hand, while on the other, genuinely enhancing children's rights, by using four different jurisprudential paradigms – Deleuze, Zizek, Buddhist and Daosit. The author argues that only by de-aging law, can children's rights and voices be respected.

Keywords: De-aging; schizophrenia; hysteria; transformation; reversion

In 2005, the Law Reform Commission 香港法律改革委員會 of Hong Kong published a Report on Child Custody and Access, and after shelving the report for a decade, in 2015, the Labour and Welfare Bureau of the Hong Kong SAR Government issued a consultation paper, titled *The Proposed Legislation to Implement the Recommendations of the Law Reform Commission Report on Children Custody and Access* ('Consultation Paper' hereafter) together with a Bill titled 'Children Proceedings (Parental Responsibility) Bill' ('the Bill'). The Bureau agree that under the current regime, the courts always award one parent, after divorce, sole custody rights. This phenomenon has resulted in 'dwindling contact between the child and non-custodial parent'.¹ The Consultation Paper

1 Labour and Welfare Bureau, Consultation paper titled *The Proposed Legislation to Implement the Recommendations of the Law Reform Commission Report on Children Custody and Access* (Hong Kong: Printing Department, 2015). Available at: [http://www.lwb.gov.hk/parentalresponsibility_consult/doc/Consultation_Paper_\(Eng\).pdf](http://www.lwb.gov.hk/parentalresponsibility_consult/doc/Consultation_Paper_(Eng).pdf) (visited 3 Sept 2016).

proposes the following major recommendations:

1. [B]oth parents retain the parental responsibility... The newly introduced range of court orders (including: child arrangements order, prohibited steps order and special issue order), simply regulate the exercise of particular aspects of parental responsibility. (emphasis added, para 13, 19, 24, 35 and 46)
2. The removal of the limitation on the rights of third parties (such as grandparents) to apply for court orders in relation to the child. (para 13, 33)
3. A “child” is proposed to be a person under the age of 18 years. (para 16)
4. The Bill proposed a check list of ‘best interest of the child’²:
 - 4.1 *‘the views of the child’*;
 - 4.2 the child’s physical, emotional and educational needs;
 - 4.3 the nature of the relationship of the child with each of the child’s parents and with other persons;
 - 4.4 the child’s age, maturity, sex, social and cultural background, as well as any other relevant characteristics;
 - 4.5 any harm or family violence that the child has suffered or is at risk of suffering; and
 - 4.6 the practical difficulty and expense of a child maintaining contact with a parent.’ (emphasis added, para 19)
5. ‘[A] child should not be required to express his or her views as to do so would place the child under pressure by one or both parents to take sides in a dispute concerning the child’s best interests.’ (para 39)
The Bill proposes that a court may make an order for the independent representation of a child’s interests by a solicitor, or by a solicitor and counsel in any dispute relating to parental responsibility for, or guardianship of, a child, with the following persons being entitled to apply for such a court order –
 - 6.1 the child;
 - 6.2 a parent or guardian of the child;
 - 6.3 a person who is named as the person with whom the child is to live in a child arrangements order which is in force; and
 - 6.4 persons who are entitled to apply for a child arrangements order in respect of the child as provided in the proposed legislation. (para 43)

2 The welfare principle, i.e. the best interest of children, is always the paramount consideration in cases involving child custody. See *Re Y (minors)* [1984] HKLR 204.

‘It is then up to the court to determine the weight to be given to such views.’ (emphasis added, para 40)

As the Law Society of Hong Kong (‘Law Society’ hereafter) comments in their response paper: “the current law on child custody dates back to 1970s and is ‘highly undesirable’, as the law *commodifies* ‘children’, emphasizing the parents’ ownership of their children,³ yet fails to encourage separating parents to ‘act in a manner which is in the best interests of their children.’⁴ (emphasis added) The Law Society also points out that the title of the Bill is very misleading as it does not only cover the proceedings or parental responsibilities, but ‘a wide range of children-related matters’.⁵ The Law Society, agreeing with most of the recommendations, urges the Government to enhance and to strengthen the social service and support available for families, parents and children. (Part 8) While the Law Society simply states that ‘solicitor advocate’ should be added to the list of people who can represent children,⁶ the Hong Kong Bar Association explicitly supports the provision of independent legal representatives for children.⁷

The gist of the Consultation Paper and the Bill is the introduction of the concept ‘of parental responsibility’, which means ‘the right and duty to look after a child during childhood. It includes...the right to give consent to a child’s medical treatment and to take decisions about their education.’⁸ The shift of paradigms (from parent-centred to child-focused, and from ‘parental ownership’

3 According to Mr. Justice Moylan, the concept of parental rights comes from two cases tried in England, 19th Century: *R v. Gyngall* [1893] 2 QB 232 and *Handley v. Handley* [1891], p 124. For details, please see Moylan, “England & Wales: A Paradigm Shift from Custody, Care & Control to Shared Parental Responsibility” in Lynch, Katherine and Scully-Hill Anne (eds) *International Perspectives on Disputes about Children and Child Protection* (Hong Kong: The Chinese University of Hong Kong Press, 2015), p 20.

4 Law Society of Hong Kong, Response paper: *The Proposed Legislation to Implement the Recommendations of the Law Reform Commission Report on Child Custody and Access: Submissions*. (Hong Kong: Law Society of Hong Kong, 2016), para 7. Available at: http://www.hklawsoc.org.hk/pub_e/news/submissions/20160329.pdf (visited 3 Sept 2016).

5 *Ibid.*, para 13.

6 *Ibid.*, para 48.

7 Hong Kong Bar Association, Response paper: *Response on Children Proceeding (Parental Responsibility) Bill* (Hong Kong: Hong Kong Bar Association, 2016), para 47. Available at: <http://www.hkba.org/sites/default/files/Children%20Proceedings%20%28Parental%20Responsibility%29%20%20Bill%20-%2024%204%2016%20%28final%29.pdf> (visited 3 Sept 2016).

8 Diduck and O’Donovan, “Feminism and Families: Plus Ça Change?” in Diduck, Alison and O’Donovan, Katherine (eds), *Feminist Perspectives on Family Law* (New York: Routledge-Cavendish, 2006), p 69.

to ‘parental responsibility’) and the invention of ‘parental responsibility’ are in fact a transplantation of law -- the concept originates in England and Wales, where the Law Commission, in 1988, stated that the traditional concept of ‘parental rights’ ‘appears more concerned with whether one parent can *control* what the other parent does...*than* with ensuring that each parent properly meets his [/her] responsibilities while the child is with him [/her]’, and hence introduced the concept of parental responsibility.⁹ (emphasis added)

Children would seem to be de-commodified under the transplanted concept during divorce proceedings, and their voice and ideas can be more respected by the court and legal assemblages. 紐結: ‘[I]f the child were of any reasonable age, the court would hardly desire to determine that question without seeing and speaking to the child and ascertaining its own views on the matter.’¹⁰

If children really become the focus of the proposal, as pointed out by the Law Society, then why does the Bill suggest independent legal representation of children on the one hand, while on the other, re-emphasizing that whether children can enjoy the service of independent legal representation and whether children’s views will be accepted totally depends on the courts’ decisions? The reason is obvious: ‘children’ remain second-grade human subjects.

Children, as a legal-medical-philosophical concept, was devised in the 17th century, and was (still is) defined as the Others to adults, so children are constructed as immature, innocent, irrational, emotional and dependent.¹¹ Children then become outsiders of the legal system / assemblage, where independence, logicity and reasoning (the marks of adults) are the key markers of maturity and competency, and children thus need to be protected and controlled, as they can be easily influenced and can become dangerous:

It (i.e. children) is a body said to need protections more than freedoms. And it is a creature who cannot consent to its sexual pleasure, or divorce its parents, or design its education – at least not by law.¹²

What is paradoxical and ironic is that there is no scientific or universal definition of childhood: should it refer to biological age and / or mental

9 Moylan, “England & Wales: A Paradigm Shift from Custody, Care & Control to Shared Parental Responsibility” in Lynch, Katherine and Scully-Hill Anne (eds), *International Perspectives on Disputes about Children and Child Protection* (Hong Kong: The Chinese University of Hong Kong Press, 2015), p 27, p 28.

10 In *re McGrath* [1893] 1 Ch. 143, per Kay LJ.

11 Stockton, Kathryn Bond, *The Queer Child* (Durham and London: Duke University Press, 2009), p 40- 41.

12 *Ibid.*, p16.

sophistication, there is no certain answer.¹³ The dilemma is best demonstrated in *Gillick v. West Norfolk and Wisbech AHA*,¹⁴ where the court decided that a competent child is a person of sufficient age and understanding so that s/he could be responsible for the consequences of her / his actions, it seems that the legal assemblages decided to use maturity and rationality as a reference to define a person. Nonetheless, the court also indicated that the definition of maturity and rationality would still be decided by a court, made up only by adults, and age remains a vital decisive factor.

The problem is: does law really need to reproduce a category of fragile human subjects titled ‘children’? If yes, why? If it is impossible to define clearly a category of human subjects, why do we have to insist in manufacturing such a concept. In the following, I will use poststructural concepts, re-engineered by Deleuze and Žižek, and traditional Han-Chinese concepts – Buddhism and Daoism, to investigate the questions.

Deleuzian Schizophrenia 精神分裂of Law: Becoming Children 孩子轉化生成

When discussing the formation of human subjects (for example: children and adults), schizophrenia is a term frequently used and referenced by Deleuze (and Guattari). Schizophrenia, according to Deleuze and Guattari, is not apropos of, in terms of psychology, types of disabilities, defects, craziness, out-of-mindness, lack, deficiency or alienation from common sense reality; it refers to a dynamic experience and destabilizing strategy, in the socio-cultural-legal milieu, by which normal and common sense worldviews are being or can be challenged and antagonized, so that a more categorized, intensive and delusional real can be revealed and subverted.¹⁵ In other words, schizophrenia is a machine, that produces, motivates and transforms desire, with a vision of radical freedom, so as to replace the paranoia of heritage with a vision of radical freedom. As Holland

13 Gillespie, Alisdair, *Child Pornography: Law and Policy* (New York: Routledge, 2011).

14 *Gillick v West Norfolk and Wisbech AHA* [1986] AC 112.

15 Schuster, Aaron, *The Trouble with Pleasure: Deleuze and Psychoanalysis* (London: The MIT Press, 2016), p 157. Deleuze and Guattari do not agree with Lacan / Žižekian theory of psychosis, that assumes schizophrenia results from disturbance of the interaction between a subject and symbolic order / law-of-the-father. As Schuster properly points out: both Freud and Lacan seems to advocate that there can be a complete and smooth access of the subject to the language order. For details, see Schuster, Aaron, *The Trouble with Pleasure: Deleuze and Psychoanalysis* (London: The MIT Press, 2016).

argues, '[s]chizophrenia is the potential for revolution'.¹⁶ By 'revolution', Guattari means:

...something of the nature of a process, a change that makes it impossible to go back to the same point... A process that produces history, taking us away from a repetition of the same attitudes and the same significance.¹⁷

Deleuzeans contend that capitalism, through the internet, globalization and commodification, questions the essentiality of borders and citizenship; on one hand it attaches and fixates desire with specific areas of the body, law and society (including family), i.e. re/territorialization; while on the other hand, it releases and decodes desire which it itself fails to re-capture, i.e. deterritorialization. The reason and logic are straight-forward: Capitalism needs to stabilize societies and subjects (including human subjects) as it has to intensify and smooth the flow of capital, hence rendering familial solidity essential. In the process of re/territorialization再/轄域化 human subjects are defined and organized with reference to hierarchies of consciousness, rationality and self-regulation (for example: law and morality).¹⁸ Through re/territorialization, Chiang 張小虹 argues that: substances can be codified and reduced to commodity, and the surplus value will become as capital accumulation.¹⁹ Nonetheless, capitalism simultaneously reduces all connections to flux of money, and inevitably 'provokes a generalized dissolution of social bonds'.²⁰ Deterritorialization非轄域化(for example: deconnecting children-adult / parent(s) bonding, debonding age-human qualities relation) thus makes recoding possible. The loop of 'territorialization -> deterritorialization -> reterritorialization -> deterritorialization' is thus created, whose non-stop repetition re-generates and reproduces the schizophrenia of the (human) subject (including, of course, children and adults).²¹ Please note: this cycle would not generate or repeat itself, but create differences; Holland uses the metaphor of jazz improvisation to describe the mechanism:

...since a composed piece is supposed to be performed more or less the

16 Holland, Eugene, *Deleuze and Guattari's A Thousand Plateau* (London and New York: Bloomsbury, 2013), p 100.

17 Guattari, Felix and Rolnik, Suely (trans., Clapshow, Karel and Holmes, Brian) *Molecular Revolution in Brazil* (London: Semiotext(e), 2008), p 258.

18 Braidotti, Rosi, "Feminist Philosophy: Coming of Age" in Braidotti, Rosi (ed) *After Poststructuralism: Transitions and Transformation* (Durham: Acumen, 2010), p 229.

19 Chiang, Hsiao-hung (2016) *Fashioning Modernity*. P. 354.

20 Schuster, Aaron, *The Trouble with Pleasure: Deleuze and Psychoanalysis* (London: The MIT Press, 2016), p 171.

21 Holland, Eugene, *Deleuze and Guattari's Anti-Oedipus Introduction to Schizoanalysis* (London and New York: Routledge, 1999), p 93.

same way every time, with only a small degree of ‘expressive freedom’ allowed to the performer...however, improvisation becomes possible and there the ration of difference to repetition increases exponentially, so that creative repetition replaces bare repetition.²²

Deleuze and Guattari both agree that the family is the machine where fixed subjectivities (including childhood and adulthood) are produced and desires are institutionalized. So, ‘one of the principal aims of schizoanalysis...is to free schizophrenic desire from the nuclear family.’²³ Simply put, schizoanalysis understands that desire operates under familial hegemony and thus aims to liberate desire from that machine.

Legal Line of Flight* 逃逸线: *Deterritorializing Child-Adult / Parent Spectre

Deterritorialization always happens, but how and when it is going to occur could not be prefixed, since when desire is decoded, a consequence of such debonding, that goes back and initiates (another) deterritorialization, is always ferocious and creative. Despite the fact that deterritorialization is never complete, as a trace of re/territorialization exists,²⁴ revolution (or transformation) ignited by desire decoded by deterritorialization, according to Guattari, will therefore ‘rupture radically with the forms they had yesterday!’²⁵ As unruly desire cannot be directed and pre-programmed intentionally, pragmatic strategies that are open-ended and diversified need to be developed and devised so as to orchestrate desire and related energy, otherwise transformation would not be engineered and desired goals cannot be accomplished.²⁶

The groundbreaking book of Deleuze and Guattari, *What is Philosophy?*, proposes that there are two stages of deterritorialization – relative and absolute.²⁷ Relative deterritorialization is the condition of the latter, which concerns historical connection and physical format. In the history of family law in Hong Kong, there were several occasions of relative deterritorialization – the

22 Holland, Eugene, *Deleuze and Guattari's A Thousand Plateau* (London and New York: Bloomsbury, 2013), p 8-9.

23 See n 20 above, p 19.

24 Gashé, Rodolphe, *Géophilosophy: On Gilles Deleuze and Félix Guattari's What Is Philosophy?* (Evanston, IL: Northwestern University Press, 2014), p 19.

25 Lorraine, Tamsin, *Deleuze and Guattari's immanent ethics* (New York: State University of New York Press, 2011), p 67.

26 Braidotti, Rosi, *The Posthuman* (Cambridge, UK: Polity Press, 2013), p 140.

27 Deleuze, Gilles & Guattari, Felix, *What is Philosophy?* (New York: Columbia University Press, 1994).

establishment of an opposite sex monogamous system (which abandoned and replaced the traditional polygamous marriage format. For details see section 5, Marriage Reform Ordinance (Cap 178, LHK).), the enactment of Human Reproductive Technology Ordinance (Cap 561, LHK), the amendment of domestic violence law (which accepts same sex cohabitation. For details see the Domestic and Cohabitation Violence Ordinance (Cap 189, LHK)) and recognition of transgender marital rights (*W v. Registrar of Marriages*)²⁸. Absolute deterritorialization is a creation of concepts, based on the material foundation constructed by relative deterritorialization; examples include same sex marriage, parental responsibilities and children's rights, which are initiated by different desires and not yet actualized (in legal assemblages). Concepts created by deterritorialization do not run in a working order, or will be incarnated in an avowed channel. Concepts, at this stage, do not only produce indeterminacies, characterized by multiple possible connections that are not accepted by the existing socio mega stratum',²⁹ but also balance the paradox of forces and start to design possible actualization strategies.

Only if we can design and implement strategies (of war machine) by which ideas and concepts generated during absolute deterritorialization can be optimized and reoriented, will socio-legal transformation and social revolution become commendable. In other words, what a strategy has to do is to bridge and link up the ideas created by desire and decoded by deterritorialization, with the machine constructed by reterritorialization. Only through this strategy, can ideas, which were virtual, be actualized via retuning the political and the legal. Reterritorialization (both relative and absolute) in this context, can thus manufacture and enjoin machines and assemblages so as to substantiate and actualize the concepts and recode the desire.³⁰ Legal reterritorialization always happens when ideas constructed by absolute deterritorialization are becoming perceptible through legislative procedure, or succumbing to the judiciary, and become part of the authoritative law machine. The issue of the Consultative Paper and the Bill illustrate how reterritorialization kicks off and works.

Strategizing Becoming = Deageization?

Deleuze and Guattari state that deterritorialization has to kick-start and

28 *W v Registrar of Marriages* (2013) 16 HKCFAR 112.

29 Braidotti, Rosi, "Becoming-world" in Braidotti, Rosi, Hanafin, Patrick and Blaagaard, Bolette (eds) *After Cosmopolitanism* (New York: Routledge, 2013), p 15.

30 Schuster, Aaron, *The Trouble with Pleasure: Deleuze and Psychoanalysis* (London: The MIT Press, 2016), p 93.

go through a process of becoming.³¹ According to them, due to the non-stop (not repetitive) cycle of re/decoding desire and the resulting schizophrenic cycle of de/re-territorialization, the human subject will inexorably undergo a process of becoming other / powerless.³² Becoming contains two parts: the destruction of the dominant subject position; and the possible construction of new subject positions, which also means new possible futures.³³ Becoming children then, I argue, is necessary to deterritorialize familial hegemony and the children-adult dichotomy that silence the non-adult powerless, if children are to be totally de-commodified and respected in and by legal assemblages.

Becoming children means the annihilation of monolithic and omnipotent subjectivity, and the disavowal of an ossified understanding of the body and aging. It is not easy and can be painful: it does not simply mean an unlearning of adulthood and parenthood;³⁴ it is the opening of oneself to impact from an unknown and perhaps threatening ‘outside’: a person needs to feel, and sustain the influence of that impact. As Braidotti rightly puts it: ‘Becoming is a personalized overthrowing of the internal simulacra 擬真 of the self’.³⁵ Becoming is hence a shift of parameters and destabilization of subjectivity’s boundaries; and becoming children should start with mutating and dissolving the legal definition of children and adults.

Becoming children thus provides us with a theoretical framework by which multiple and shifting identities are respected, and a rigid adulthood-childhood dichotomy can be thwarted. But how can this line of flight be formulated and permeated in legal assemblages and the machine of family law?

Body with Organs (BwO hereafter) 無器官身體 is the philosophical perspective, exhorted by Deleuze and Guattari, by which bodies can be affectively connected and problematized. Different body organs are always traditionally assigned with certain functions, and consequentially, create grudging social strata. BwO subverts that mega social-biological project and ‘launch(es) forth on the thread of a tune to self-organize in a multitude of different ways.’³⁶ Schuster asserts that BwO starts with repelling the usage of any particular body organs

31 Braidotti, Rosi and Dolphijn, Rick (eds), *This Deleuzian Century* (Leiden: Brill, 2014), p 30.

32 Braidotti, Rosi, “Nomadic European Identity” in Gielen, Pascal (ed) *No Culture, No Europe: On the Foundation of Politics* (Amsterdam: Valiz, 2015).

33 Braidotti, Rosi, *Transpositions* (Cambridge, United Kingdom: Polity, 2006), p 77.

34 Blaagaard, Bolette and Van Der Tuin, Iris (eds), *The Subject of Rosi Braidotti: Politics and Concepts* (United Kingdom: Bloomsbury, 2014) p 85.

35 Braidotti, Rosi, *Transpositions* (Cambridge, United Kingdom: Polity, 2006), p 169.

36 Holland, Eugene, *Deleuze and Guattari’s A Thousand Plateau* (London and New York: Bloomsbury, 2013), p 94.

as a mirage of human subjects (for example, sex organs, skin and DNA); it then appropriates and re-arranges body organs on its own surface, creating another mark of multiple and temporary identities. BwO makes a body submitted to:

...a further development, becoming a field of intensities. These intensities are based on gradients of attraction and repulsion...the repulsion of the partial objects...and their attraction on to a recording surface...³⁷

Following this line of argument, ignited by BwO, we should then ask: why do we have to rely on body and age, as a reference, to define a human subject? What are the connections between age with independent thinking, critical rationality, passion for justice and a sense of care – the attributes that are assumed to be found in a mature adult? If there is no such natural connection, should we simply de-age the legal assemblages? Legal deageization will not have an immediate impact on the body organization of the subject (i.e. children in this case), but will affect the social edifice assigned to human subjects (by the familial and parental hegemonic machine).

Breakdown of Fantasy 幻想 – Žižekian *Jouissance* 暗爽

Like Deleuze and Guattari, Žižek also finds that capitalism, in the age of internet and globalization, has become so powerful and dominant as it, like law, becomes part of the symbolic order. In order to maintain the inexorable operation of capitalism, ideologies (part of the Lacanian fantasy) continue to flourish and grow in power.³⁸ Capitalism, through telling human subjects, what symbolic order 符號界 / Big Others 大寫他者 (including law and norms) wants from them, with the assistance of super-ego 超我 (Foucaultian Discourse of Discipline)³⁹ instructs people to enjoy consumerism and family life:

The good of the ‘family’ is put forward as the rationale and justification for increasingly extreme measures: since the ‘family’ is sacred, everything can be done in its name, including killing.⁴⁰

Happy family life and a harmonious children-adult / parent relationship work as a Lacanian 拉康 / Žižekian 齊澤克 fantasy – the (seemingly) formidable formula of (opposite sex) ‘marriage → natural birth of offspring’ continues to be glorified and become emblematic of a ‘perfect’ and good life plan – they promise happiness

37 Schuster, Aaron, *The Trouble with Pleasure: Deleuze and Psychoanalysis* (London: The MIT Press, 2016), p 167.

38 McMillan, Chris, Žižek and Communist Strategy (Edinburgh: Edinburgh University Press, 2012), p 102.

39 Wells, Charles, *The Subject of Liberation* (New York: Bloomsbury, 2014), p. 89.

40 Aristodemou, Maria ‘The pervert’s guide to the law’ in De Sutter, Laurent (eds) (2015) 13-31, 25.

so a human subject has to follow their scripts. However, failure to achieve the goals of an ideal family life (for example: divorce and infertility) is not taken as a total failure, as the desire will be deferred to the next stage (for example: the arrangement in regard to custody and care of children after divorce, the artificial reproduction of the next generation). Legal assemblages can hover to continue the fantasmatic picture of happy family life. Family law, under the parental-adult-centric 成年家長本位 symbolic constellation, is always patronizing and commanding, as it can merge multiple conflicts and possible challenges into the tautology of power – even where there are all sorts of conflicts (for example: domestic child abuse, transgender / same sex marriage), they are reduced to legal issues which can be settled in the courtroom – as a consequence, law is becoming more and more powerful and grandiose. Divorce and child custody like class struggle within global capitalism, therefore becomes the modality of the Real 真实界, operating to provoke the defense machine of familial-parent-adult-centric order. The Consultation Paper and the Bill, which advocates that both parents, after divorce, should still have to work together, so as to pursue the best interests of the children, is a good example.

Harmonious family life (i.e. caring opposite-sex parents plus natural-born children, and a pseudo-perfect family life promised after divorce), as a fantasy, can work smoothly and properly only by reproducing and relying on *jouissance*, which ironically itself will start self-transformation / revolution:⁴¹ after a human subject enters the symbolic order through castration, s/he would always want to fill up that particular lack and retain fullness of body, and this longing creates *jouissance* – a substitute satisfaction and excessive enjoyment in this process. This satisfaction can also be conducted and enacted through fantasy by being instructed to achieve ‘impossible yet ideal’ life targets – the construction and conduct of a perfect and peaceful familial life (even after divorce) is definitely one of them. *Jouissance*, the product of following and obeying a (dominant) ideology (for example: heterosexual family life), hence makes us happy with the current situation (the idiosyncratic familial life formula), but less happy with any (possible) changes (for example: same-sex marriage and transgender partnerships);⁴² the natural consequence is that human subjects will indulge more and more in *jouissance*. In the contemporary familial-child-adult / parent politics of Hong Kong, *jouissance* means the noncompromising obedience of the patriarchal spectre of family life: if one cannot enjoy family life, that is because s/he does not work hard enough – no matter whether a person really desires to follow it, or whether obediently following it can bring pleasure initially (being appraised as

41 Wells, Charles, *The Subject of Liberation* (New York: Bloomsbury, 2014), p. 31.

42 Rickert, Thomas, *Acts of Enjoyment: Rhetoric, Žižek, and the Return of the Subject* (Pittsburgh, PA: University of Pittsburgh Press, 2007), p 20.

a good and co-operative parent, even after divorce) - it nevertheless transforms into pain in the end: the burden of maintaining a harmonious familial life and working with a divorced ex-marital partner is inevitably difficult and heavy to bear, but people are still instructed to enjoy it, following the scripted formula. We all understand that family life can only be a consistent background of a quasi-universal life style, which itself is full of inconsistencies and conflicts – different forms of domestic violence and erotic partnerships do exist. Žižek gives a very good example, showing how family life can be *jouissance*:

[I]n the private sphere, I am unhappily married, I mock my wife all the time, declaring my intention to abandon her for my mistress whom I really love, and while I get small pleasures from invectives against my wife, the enjoyment that sustains me is generated by the indefinite postponement of really leaving my wife for my mistress.⁴³

Children Act – Hysteric 精神失常 Construction of a New Future

Jouissance also engineers a Žižekian act – the starting point of transformation / revolution. As argued by Žižek –human subjects, after being part of symbolic order, start to understand Big Others is always divided, and no one can completely understand what the Others exactly want from human subjects,⁴⁴ so their lives are only curtailed and controlled completely by an illusorily consistent symbolic order, they will start an act naturally, so as to revoke the instruction to enjoy and make responsible decision. The aim is to create a possibility of constructing / articulating another Master Signifier, so they can enter (and produce) a symbolic order via a different pathway. An act, as Žižek argues, always starts at the unexpected location of a dominant rhizomic Real, challenging the way the symbolic network is reproduced (i.e. the transformation / revolution).⁴⁵ A Žižekian act is a voluntary, ‘groundless’, violent, excessive and ‘transstrategic’ intervention towards a symbolic order,⁴⁶ which redefines what is possible and

43 Žižek, Slavoj, *Event* (London: Penguin, 2014), p 78.

44 Charles Wells explains: ‘The true answer to the question ‘*Che vuoi?*’ What does the Other want from me?’ is that the Other *doesn't know*. To be more precise, insofar as they are expressions of the parent’s unconscious sexual desire, the enigmatic messages received by the child concern precisely the parent’s primordial traumatic encounter with his her or her *own* parent’s unconscious desire.’ (Emphasis original) Wells, Charles, *The Subject of Liberation* (New York: Bloomsbury, 2014), p. 50.

45 McMillan, Chris, *Zizek and Communist Strategy* (Edinburgh: Edinburgh University Press, 2012), p 138.

46 Sharpe, Matthew and Boucher, Geoff, *Zizek and Politics: An Critical Introduction* (Edinburgh: Edinburgh University Press, 2010), p 185; Žižek, Slavoj, “From Politics to Bio politics...and

creates the enigma where the impossible can be possible.⁴⁷ A Žižekian act does not mean the total destruction of a symbolic order, it only ‘does the impossible within the *existing* order.’⁴⁸ (emphasis original) An act, therefore, is always taken and viewed as a moment of hysteria, an echo of Deleuzean schizophrenia – it is always unplanned and is never well scheduled.⁴⁹ An act 行動, breaking out during an event,⁵⁰ can disturb the fantasy and subvert the Master Signifier (for example: parent-adulthood), which is why an act will always end up with a reconstitution of subjectivity and politics.⁵¹ An act starts as a risk, without any legitimatization, but will retroactively create its own justification.⁵²

Zizekian hysteria does go further than Deleuzean schizophrenia: it will identify a suitable agent and the possibility of making law right.⁵³ An act in family law is likely to be initiated by children, as they are the only agent that is at the same time the most powerless and yet the most ‘dangerous’ -- they occupy only peripheral subject positions in the familial rhizome, but they are the natural and biological element of a healthy and harmonious family pattern. Like the lumpenproletariat 缺乏階級意識的無產階級 in a class struggle, who are warded off by (‘authentic’) Marxists, children are often proscribed and remained as powerless, in the name of the ‘best interest of children’, a concept that is defined repetitively by adult-centric courts and lawyers.

If children want their views and voices to be respected and heard in legal assemblages, a strategic act must be employed and must operate. In order to fully utilize an act, we always need to prepare a possible framework, otherwise political intervention and ultimately revolution / total transformation cannot happen. It is in this context that deageization is, again, a possible framework. Through deageization, whether a subject’s views and will are respected in legal

Back” (2004b), 103 (2/3) “The South Atlantic Quarterly” 511.

47 Žižek, Slavoj, *Iraq: The Borrowed Kettle* (London: Verso, 2004c), p121.

48 Devenney, Mark, Žižek’s Passion for the Real (New York and London: Continuum, 2007); Paul Bowman (Editor) and Richard Stamp (Editor), *The Truth of Žižek* (New York and London: Continuum, 2007), p 64-81.

49 Zizek, Slavoj, *The Ticklish Subject: The Absent Center of Political Ontology* (London: Verso, 1999), p 374.

50 Event must be a shocking incident, totally unprepared, and disrupts the order. All parties involved will be affected, and will not remain idle. They affect and are affected. For details, please see Hazma, Agon “A Plea for Žižekian Politics” in Hamza, Agon (ed) *Repeating Zizek* (Durham and London: Duke University Press), p 232.

51 Butler, Judith; Laclau, Ernesto and Zizek, Slavoj, *Contingency, Hegemony, Universality: Contemporary Dialogues on the Left* (London and New York: Verso, 2000), p 123-124.

52 Žižek, Slavoj, *Disparities* (London: Bloomsbury, 2016), .p. 249-250.

53 Wells, Charles, *The Subject of Liberation* (New York: Bloomsbury, 2014), pp. 28, 31.

assemblages should no longer depend on age, as age has no unambivalent and natural relationship with the attributes law is looking for – put simply, children should no longer be defined by age, but by their position in an interpersonal network, and the adult-centric courts should have no discretion other than to accept and consider all affected children’s views.

Karmic因果 destabilization of subjectivity and hierarchy: Buddhist *Vijnanamatra*唯識

Buddhism, like Euro-American poststructuralism, problematizes the enigma of hierarchical metaphysics through its axiom of karma. Karma, one of the universal Buddhist principles, focuses on the constitution of subjectivities; it discusses meticulously and critically ‘what is inherent to them, what is coproduced with others, and what is conditioned generally about this “self”.’⁵⁴ Karma enlightens us with the interactive connections between subjectivities and the action / effects cycle: human subjects’ actions, performed in response to the *samskaras* (impulses業報), resulting from the dialogue between pre-existing causes and conditions, will produce karmic effects on the subjects themselves; these impacts and affects will further re-produce pre-existing causes and conditions for future actions. There are two aspects of karma: predetermination, and free will; a subject can always choose to create and plant *bija*, thus producing new karma.⁵⁵

The concept of Karma is further elaborated by *Mahayana Vijnanamatra* (the consciousness-only school of philosophy), which holds that *samskaras*業報 arise with *vijnana* (consciousness識). As Vasubandhu 世親 advocates, there are eight *vijnana*: the five *vijnana* in response to visual, auditory, olfactory, gustatory and tactile perception (the five senses), *mano-vijnana* (mind-consciousness意識), *mana-vijnana* (ego-consciousness末那識) and *alaya-vijnana* (storehouse-consciousness阿那耶識). *Samdhinirmocana-sutra*⁵⁶ 解密深經 states that the first five elements are indeed the consciousness of the senses which constitute the biological human body, and *mano-vijnana* is responsible for moral determination and interconnects with the existing external world order. A mental representation of reality and a temporary ‘I’ image are created when the five senses connect with the material world and are given meaning by *mano-vijnana* – the machine titled *paratantra-svabhāva* 依他起自性. The images then work with *mana-vijnana* and

54 Kyabgon, Traleg, *Karma* (Boston and London: Shambhala, 2015), p 9.

55 Coleman, James William, “Toward a Non-Eurocentric Social Psychology: the Contribution of the Yogacara” 8(1) (2010) *Human Architecture: Journal of the Sociology of Self Knowledge*, p 102.

56 Powers, John (trans.), *Wisdoms of Buddha: Samdhinirmocana-sutra* (Berkeley: Dharma Publishing, 1995).

formulate an imaginary ideology of firm 'I'. This 'I', intertwining with a 'strong sense of grasping and desire'⁵⁷ in this matrix, does not only mean 'myself', but 'my idea and my experience' (*abhūta* 虛妄), which is a part of history and / or (by imagination and assumption) what will happen in the future: idea and I are never a kind of binarism; a permanent self can only be constituted if s/he assumes that s/he can possess identify with a permanent concept or substance.⁵⁸ When this machine of '*paratantra-svabhāva*' is connected with *mana-vijnana* and an insistence on an illusory real is manufactured, then the machine is also called '*parikalpita-svabhāva*' 遍計所執性. The illusory *abhūta* is stored as *bija* in *alaya-vijnana*.⁵⁹ *Alaya-vijnana* which 'collects and stores the effects or seeds (*bija*) of experience until they mature and give rise to new experiences'⁶⁰, is the impetus underlying the exercise of above seven *vijnana*.

According to the teaching of *vijnanamatra*, we can ask these questions: Is the children / immature vs. adults / sophisticated binarism a precipitated parallax only created by *parikalpita-svabhāva*? Would a daughter / son be the father / mother, in a previous life, of the father / mother in their current life? If identity (for example: children) is only a temporary veneer, does it have any natural connection with abstract attributes (for example: maturity, reasoning and logical thinking?) As Ng 吳汝鈞 argues, *vijnana* altogether can create and project the universe and all the imaginary insistentcies – that is why human subjects always resist changes and that causes suffering -- this economy of misrepresentation lies at the root of all vulnerable strata and inequalities.⁶¹ Lusthaus summarizes the argument accurately:

Since Buddhism rejects the notion of the metaphysical self entailed in the self / other, self / transcendent etc, dichotomies, alterity, for Buddhists, means the perpetual, moment-by-moment 'becoming other-than-it was' of a self, which is to say, a non-self, since this becoming other precludes the possibility of an

57 Coleman, James William, "Toward a Non-Eurocentric Social Psychology: the Contribution of the Yogacara" 8(1) (2010) *Human Architecture: Journal of the Sociology of Self Knowledge*, p 103.

58 Lusthaus, Dan (2002) *Buddhist Phenomenology* (London: Routledge), p.539.

59 Ng, Yu-kwan 吳汝鈞, *Concepts and Philosophical Methods in Buddhism* 佛教的概念與方法 (修訂本) (Taipei: The Commercial Press, 2000), p 108.

60 Koller, John, *Asian Philosophies*, (New Jersey: Prentice Hall, 4th edn, 2002), p 222; Yang, Wai-zhong 楊維中, *Research into the Nature of Mind in Chinese Buddhism* 中国佛教心性论研究 (Beijing: Religious Culture 宗教文化, 2007), p 288.

61 Gross, Rita, *Buddhism after Patriarchy: A Feminist History, Analysis and Reconstruction of Buddhism* (Delhi, India: Sri Satguru, 1993), p 158; Ng, Yu-kwan 吳汝鈞, *Concepts and Philosophical Methods in Buddhism* 佛教的概念與方法 (修訂本) (Taipei: The Commercial Press, 2000), p 101, p 106.

invariant identity.⁶²

Transmutation of Vijnana to Jnana: Beyond a monolithic world view

Through the teaching and enlightenment of *vijnanamatra*, Buddhist philosophers derive the following three immanent rules: The Dependent Arising of *alaya-vijnana* 賴耶緣起, Non-Insistence 諸法無我 and Non-Permanence 諸行無常. The Dependent Arising of *alaya-vijnana* describes the mental constitutive reception of every activity and phenomenon that can never be a fixed and universal essentiality, but is a virtuality recreated and renewed by the non-stop *vijnana* and *bija* 種子 activities in a milieu (for example: marriage is the guarantee of a happy life and the start of child bearing). This rule also indicates that a forever mutating set of connections between different subjectivities and social force (for example, enactment of new law) itself can be a (new) product of *bija* activity. This principle devises the other two rules: Non-Insistence, or ‘Self-less-ness’ (*anātman*) – i.e. absence of universal truth;⁶³ and Non-Permanence: since subjectivities are never stable, due to the *vijnana* and *bija* exercise, there is no forever eternity and essentiality in the common sense world. In other words, since the compositions of *bija* keep on changing, it is impossible to have any monolithic and universal subjectivity or social structure; and if the common sense world, the related activities and phenomena are only and partly a psychological illusion, initiated by a set of *bija* and ending up with the production of another cluster of *bija*, all grand narratives are then only virtualities.

In order to rebut monolithic essentiality in the common sense world and leave the karmic cycle of *bija* activities, *Mahayana* Buddhism and *vijnanamatra* suggest ‘transmutation of *vijnana* to *jnana*’ 轉識成智, which will be followed by the acceptance of multiplicities and the elimination of fixed subjectivity. It, in short, means the elimination of dichotomous dualism:

[T]he contemporary psychoanalytic fascination with self-multiplicity appears to stem at least in part from a desire to challenge monolithic views of mental health that are implicitly conformist in nature. The emphasis in the Buddhist conception of no-self is on decreasing the sense of existential isolation, by emphasizing the constructed nature of the boundary between self and others

62 Lusthaus, Dan (2002) *Buddhist Phenomenology* (London: Routledge), p.428.

63 Chan, Stephen 陳佐人, “Buddhism and Human Rights” in Smith, Rhona & Van Den Anker, Christien (eds) *The Essentials of Human Rights* (Spain: Hodder Arnold, 2005), p 25. According to Jiang, selflessness does not mean solely no self, but *not* self also. Buddhism, in short, opposes all kinds of metaphysicality. Jiang Tao, *Contexts and Dialogue: Yogacara Buddhism and Modern Psychology on the Subliminal Mind* (Honolulu: University of Hawai’i Press, 2006).

and the interdependence of all living beings.⁶⁴

This transmutation, which is also a type of ‘*paratantra-svabhāva*’, certainly needs two essential elements (so as to differentiate itself from ‘*parikalpita-svabhāva*’): *bija*, which desires the change, and an appropriate material environment. Only when such *bija* is perfumed (*vāsanā*薰習) by the environment, can the machine of transmutation start and work continuously.

From this perspective, we can therefore understand that any revision of law (for example: the suggestions tabled by the Consultation Paper and the Bill) would definitely impact / perfume the livelihood of the people (for example: the living environment of children, and the emotional relationship between children and parents), and consequently their perceptions of world and life, which may be carried forward into the next life. Law as a term and word which reveals perceptual fields is a very perfume instrument. It can construct the perspective of experience and vision. In order to leave this cycle, people have to start giving up and letting go the fixed and universal worldview (for example: children would always be constructed as too immature to choose their own lifestyles), and everyone (children and adults) is becoming respected equally under all circumstances (including in the courts). When the *bija* perfumed and changed overweigh the *bija* which insist fossilized subjectivity and support discriminatory hierarchies, each *vijnana* will be transformed into *jnana*, and the subject can understand the three ultimate Buddhist rules and act accordingly. This transformation will subvert the monolithic worldview. The problems of this theory are: (1) Where can a human subject locate and develop the *bija* that are willing to be perfumed? (2) Where can we find and produce such an appropriate material environment? (3) If such *bija* and environment exist already, why do we still need transmutation? The answers take us back to *bija* itself.

According to Coleman, there are three types of *bija* in *alaya-vijnana*: (1) common *bija* 本有種子 that come from primordial time;⁶⁵ (2) uncommon 習氣種子 *bija* that are contemporary and instantaneous, since they are caused by current decisions and actions, and thus produce a flow of new *bija* and the karma of freewill; and (3) independent *bija* 自緣種子, that do not only respond to external circumstances, are always changing and interacting within themselves, and that

64 Safran, Jeremy, “Psychoanalysis and Buddhism as Cultural Institutions” in Safran, Jeremy (ed), *Psychoanalysis and Buddhism: An Unfolding Dialogue* (Boston, MA: Wisdom Publication, 2003), p 23.

65 According to Ng, this creates the origin of an individual’s consciousness in her / his current life – which comes from when the life is formed in the mother’s body. For details, please see Ng, Yu-kwan 吳汝鈞, *Concepts and Philosophical Methods in Buddhism* 佛教的概念與方法 (修訂本) (Taipei: The Commercial Press, 2000), p 2.

create corresponding manifestations, ideas and actions.⁶⁶ It is the independent *bija* that can themselves initiate the transmutation; and the ripple effect is that other *bija* (like uncommon *bija*) will also start becoming perfumed. In other words, independent *bija* can themselves construct an environment (for example: making new laws) and start transmutation. However, even when all human subjects have independent *bija*, whether the independent *bija* of a subject tend to transmute and whether they are powerful enough after transmutation to outweigh the *bija* which hold opposite views, cannot be preprogrammed, and perhaps is a matter of accident. As every living (including human) subject is different and therefore has a different combination of *bija*, in order to empower and enhance the *bija* which are willing to change, human subjects need non-stop practice in the environment where equality and Non-Insistence are reconstructed and stressed.⁶⁷

The machine of perfume starts with the five senses, *mano-vijnana* and *mana-vijnana*, and finally *alaya-vijnana*; and then *alaya-vijnana*, will in turn influence the seven *vijnana* when energizing them:

1. Five senses → *Krtyanusthana-jnana* (Wisdom of Successful Performance 成所作智): the biological body would be equipped with adequate knowledge, skills and technique which help in abandoning hierarchies and maintaining equality and justice.
2. *Mano-vijnana* → *Pratyaveksana-jnana* (Wisdom of Wonderful Contemplation 妙觀察智): this engineers the emergence of the ability to conduct critical examination and self reflection.⁶⁸ It assists us to explore and respect differences and particularities.
3. *Mana-vijnana* → *Samata-jnana* (Wisdom of Equality 平等性智): This transformation marks the disappearance of the rigid 'I' (i.e. a rigid subjectivity and insistencies) and the wisdom of going beyond the self / others split. It sensitizes human subjects towards equality and justice, and helps in constructing a perspective of equality.⁶⁹ It can see the same emptiness in all being.
4. *Alaya-vijnana* → *Adarsana-jnana* (Wisdom of Great Mirror 大圓鏡

66 Coleman, James William, "Toward a Non-Eurocentric Social Psychology: the Contribution of the Yogacara" 8(1) (2010) *Human Architecture: Journal of the Sociology of Self Knowledge*, p 101.

67 Ng, Yu-kwan 吳汝鈞, *Concepts and Philosophical Methods in Buddhism* 佛教的概念與方法 (修訂本) (Taipei: The Commercial Press, 2000), p 163-165.

68 Zheng, Shi-yan 鄭石岩, "Vijnanamatra and Psycho-Health" 唯識法門與心理健康 Available at: http://www.unigate.com.tw/print_one.php?paper_16=168 (visited 2 Feb 2004).

69 Taisho Tripitaka Editorial Committee 大藏經刊行委員會, *Vijnaptimatratasiddhi-sastra, Taisho Tripitaka* 大正新修大藏經 (Taipei: XinWenFeng 新文豐, 1985), Chapter 31.

智): This stage means the complete disappearance of *vijnana*. Human subjects reaching this level will ignore all kinds of physical differences and discriminatory strata.⁷⁰

The machinic process of transmutation, as shown above, is complicated and extensive, so the environment must be omnipotent. Ng argues that such an environmental machine should best be the words and teaching of Buddhism. I argue that law, a powerful structure, that respects the powerless and the concept of equality, developed from the Buddhist teaching, can join hands with the preaching of Buddhist principles and formulate a powerful assemblage.⁷¹ If the Consultation Paper and the Bill can create the effect of perfume, like I argue above, certainly law which substantiates the concept of equality can have the same impact in this context. The proposed law can perfume independent *bija*, the *bija* perfumed can create a new *bija* with the same nature, which will then create new law, that is similar (perhaps not identical though) to the nature of the law of the preceding moment. In short, law can turn negative / good desire into positive / bad desire: ‘[d]epending on the seeds [*bija*] of good or evil that have already been planted, various real and concrete good and evil activities occur’.⁷²

This explains why we have to de-age family law soonest – only when age is no longer a definitive factor, can courts and lawyers understand and realize that attributes of human subjects (for example: critical and logical reasoning) have no natural connection with the physical / biological condition, thus destabilizing the imaginary children / immature vs. adults / sophisticated binarism. Moreover, only with such new law, can more *bija* be perfumed and the transmutation of *vijnana* to *jnana* (inadvertently) start, thus recognizing that subjects are psychological illusions, and hence fissuring the rigid binarism and transubstantiating equality among human subjects.

Daoist principle of Actionless: Active elimination of the Fixed Mind

成心:

Lao Zi 老子 and Zhuang Zi 莊子, two profound Daoists, like the poststructuralists and Buddhist philosophers, expose the impossibility of a universal metaphysics. According to Lao Zi and Chuang Zi, *Dao* is the origin of

70 Hung, Te-jen 洪德仁, “Buddhist Doctrine of Equality” 佛教的平等觀, 7 *BeiYe* 貝葉 43, Available at: file://C:\WINDOWS\TEMP\K0N3C66H.htm (visited 27 June 2004).

71 Ng, Yu-kwan 吳汝鈞, *Concepts and Philosophical Methods in Buddhism* 佛教的概念與方法 (修訂本) (Taipei: The Commercial Press, 2000), p 103.

72 Jiang Tao, *Contexts and Dialogue: Yogacara Buddhism and Modern Psychology on the Subliminal Mind* (Honolulu: University of Hawai’i Press, 2006), p 37.

the universe, including humanity, law and society.⁷³ To quote Lao Zi:

The Great *Tao* [*Dao*] flows everywhere.

It may go left or right.

All things depend on it for life, and it does not turn away from them.

大道汜，其可左右。萬物恃之以生而不辭。⁷⁴

Liao (廖咸浩) further elaborates that *Dao* is ‘both an immanence that underlies all beings and the source of all becomings. The relationship between the Tao [*Dao*] and the world can be summarized as: if people in influential positions attains to Tao [*Dao*], the world will become of itself.’⁷⁵ *Dao* is mobile and full of aesthetic creativity; It is always changing and it is always everywhere.⁷⁶ *Dao* also has the power and authority to rule and control. From this perspective, Daoism, like Buddhism, also emphasizes Non-Permanence, the only essentiality in the universe.⁷⁷ If human subjects cannot understand the status and nature of *Dao* rationally, they are not able to *feel* the exercise and nature of *Dao*, and will be suffering from a ‘Fixed Mind’ 成心— Fixed Mind is a product of consciousness, from which human subjects project a self image of well-equipped individuals, who can survive and exist on their own, and are able to therefore leave *Dao* and be independent of *Dao*. Human subjects, with Fixed Minds, firmly believe that they are always correct and perfect, so there is no problem when imposing their own value judgement on others, resulting in the construction of discriminatory social hierarchy. Daoist concept of Fixed Mind, as Wang 王汎森 argues, is hence the equivalent of Buddhist concepts of *mana-vijnana* and related insistencies.⁷⁸

Levelling All Things 齊物論, written by Zhuang Zi, attempts to construct

73 Wang, Ze-ying 王澤應, *ZiRan Yu DaoDe 自然與道德* (Changsha: HuNan University Press, 2003), p 98; Wang, Qing-jie 王慶節, *Heidegger and a Hermeneutical Interpretation of Confucianism and Daoism* (Beijing: RenMin University Press, 2004), p 149; Fei, Xiao-bing 費小兵, *Research on Lao Zi's Legal Perspective <老子>法觀念探微* (Beijing: China University of Political Science and Law Press, 2013), p 4, p 75.

74 *Lao Zi* 老子, Chapter 34. See Chan, Wing-tsit 陳榮捷, *A Source Book in Chinese Philosophy* (Princeton: Princeton University Press, 1963), p 157.

75 Liao, Xiao-ping 廖小平, “Filial Piety and the Moral Situation of Minors in Chinese Culture” (2008) 32 (4) *Journal of Xiangtan University (Philosophy and Social Sciences)*, p 129-134.

76 Schwartz, Benjamin, *The World of Thought in Ancient China* (Cambridge, MA: Harvard University Press, 1985), p 225.

77 Zhan, Kang 詹康 *Zhenglun zhong de zhuangzi zhutilun 爭論中的莊子主體論* (Taipei: Xue sheng shuju 學生書局, 2014), p 9.

78 Wang, Fan-sen 王汎森 (2010) *Zhangtaiyan de sixiang 章太炎的思想* (Taipei: HUA-MU-LAN CULTURE PUBLISHING COMPANY, 2010), p 14; Mou, Zong-san 牟宗三, *Zhuangzi qi wulun yili fenxi 莊子齊物論義理分析* (Taipei: Bookman Books Co., Ltd., 1999), p 65.

a philosophical framework, by which Fixed Minds can be dissolved; only when all Fixed Minds disappear, multiplicities can be accepted and ultimate equality can be actualized:

Heaven, Earth, and I are simultaneously produced, and the myriad creatures and I are one. 天地與我並生，而萬物與我為一。⁷⁹

The attempt, with what is not even, to produce what is even will only produce an uneven result; the attempt, with what is uncertain, to make the uncertain certain will leave the uncertainty as it was. 以不平平，其平也不平；以不徵徵，其徵也不徵。⁸⁰

In order to eliminate the influence of Fixed Mind, Zhuang Zi suggests that human subjects should go beyond the closure of ‘self’ (not abandonment of ‘self’, as *anātman* proposes), and be receptive towards different and possible connections between the self and others, and the resulting becomings.⁸¹ In the language and linguistic machine of familial legal politics, according to the philosophical perspectives of Zhuang Zi, no one should exploit or impose any perspective on others, and everyone should respect the differences among people and accept the singularities of others on an equal footing.⁸² Going back to the Consultation Paper and the Bill, a Daoist would argue that the new law should not impose any hegemony (i.e. adult-centric socio-legal structure), by privileging the parents / adults over the underage in law suits related to custody, for example: law should make adults (court and parents) listen to the voices of children.

Zhuang Zi 莊子, according to Mou 牟宗三, further elaborates the line of argument that the universe and the common sense world are already full of biases, so human subjects should be ‘actionless’ 无為. ‘Actionless’ does not mean ‘no action’ – contrarily, it means human subjects must take action to put aside (undo) their existing (attached) insistencies / monolithic worldview, a result of consciousness, and merge again with the origin of the universe, i.e. *Dao*: ‘letting things work to their perfection naturally’ without any additional value judgements.⁸³ This however does not mean that human subjects cannot hold any

79 *Chuang Zi*, Available at: http://users.wfu.edu/moran/zhexuejialu/Zhuang_Zi_2.html (Visited 18 April 2014).

80 *Chuang Zi* 莊子 · 列禦寇, Chapter 32. Available at: <http://nothingistic.org/library/chuangtzu/chuang49.html> (visited 14 May 2006).

81 Wang, You-ru, *Linguistic Strategies in Daoist Zhuangzi and Chan Buddhism* (London: RoutledgeCurzon, 2003), p 40-42.

82 Wang, Qing-jie 王慶節, *Heidegger and a Hermeneutical Interpretation of Confucianism and Daoism* (Beijing: RenMin University Press, 2004), p 144.

83 Koller, John, *Asian Philosophies*, (New Jersey: Prentice Hall, 4th edn, 2002), p 288; also see Mou, Zong-san 牟宗三, *Zhuangzi qiwulun yili fenxi* 莊子齊物論義理分析, (Taipei: Bookman Books Co., Ltd., 1999), p 46.

viewpoints or make any decisions, but they have to admit that there is an absence of a single and universal paradigm which can be applied in all circumstances. Human subjects, therefore, according to Liao, should therefore ‘relinquish the goal-oriented or destination-bound mindset...and “settle oneself in one action”’. For only then can they see “the unadorned nature of things”’.⁸⁴ Applying this theory in analyzing the Consultation Paper and the Bill, we can therefore ask, if age has nothing to do with human attributes, then should age be a kind of ambivalent insistency which should be undone?

Mou also uses the principle of ‘actionlessness’ in analyzing our understanding of the human body – with the concept of fixed mind, human subjects always want to know and locate the authentic understanding of the body. But the body is simply a lump sum of different organs, and the importance and vitality of organs depends on our changing and contextual understanding and evaluation of them. So, is there really any authentic understanding?⁸⁵ This perspective echoes perfectly with the Deleuzean BwO. Embedding the principle of actionlessness in investigating the family law reform proposal, we can then argue that Daoists would also agree with the strategy of deageization, by which law can be made simpler, by not privileging a particular set of ideologies and age-related politics, i.e. an adult-centric socio-legal structure.

Conclusion: addressing the needs and rights of the individual, not adults or children

Juxta-positioning the theories constructed by Deleuze, Žižek, Buddhism and Daoism, we can understand why any philosophy insisting on a universal metaphysic (including opposite-sex marriage and adult hegemony) is doomed to failure. It is impossible to have a forever-unchanged concept that can remain unmutated. But whether the destabilization can be complete and successful depends on whether a sufficiently critical and meticulous strategy can be devised and designed. It is in this context where I again propose that legal deageization is a possible stratagem. The approach in fact is very simple and straightforward: law should not control or consider the elements and factors that it can never define – the desexualization of marriage law and law controlling sexual assault are other

84 Liao, Xiao-ping 廖小平, “Filial Piety and the Moral Situation of Minors in Chinese Culture” (2008) 32 (4) *Journal of Xiangtan University (Philosophy and Social Sciences)*, p 129-134.

85 Mou, Zong-san 牟宗三, *Zhuangzi qiwulun yili fenxi* (莊子齊物論義理分析) (Taipei: Bookman Books Co., Ltd., 1999), p 37.

examples, which I have explored and discussed elsewhere.⁸⁶ De-aging law means that law, including family law and law controlling the custody of children, should put the focus on the needs and rights of individuals. This approach is partially accepted by the European Court of Human Rights, where comparison of human rights, not welfare principles, is used as the ultimate principle, which in the eyes of academics, means that the right to pursue children's vision of a good life should be privileged:⁸⁷

Children are individual citizens, and governments have a moral obligation to recognize their human rights.⁸⁸

This also implies that fairness, within a familial interpersonal network, should be addressed – and that the dignity and self determination of both adults and children must be respected.⁸⁹ Children in a family should no longer be defined with reference to age, but by their positions within the interpersonal network.

In addressing the agency of transformation / revolution in this article, I suggest that children themselves have the agency and power to start the change. Like the lumpenproletariat, as McMillan suggests, children are positioned at the margin of the (socio-familial-legal) rhizome, and cannot be ignored, as they are always the topic of legal arguments. Children, like LesBiGay and Transgender, who are also peripheralized, are powerful enough to bring different transmutations to family law – for example, Transgender have the right to form legally-recognized erotic partnerships / families and can be quality parents: the Hong Kong Bar Association, when responding to the Consultation Paper and the Bill, pointed out that the Bureau failed to recognize the marital rights of transgender (recognized

86 Chiu, Man-chung, “Beyond colonialism: osmotic reconstruction of gender / sexual justice” (2009)

10(3) *Inter-Asia Cultural Studies*, p 399-421;

Chiu, Man-chung, “Going Beyond Globalization and Localization: Articulating a Theory of Justice in Han-Chinese Culture” (2010) 21 *Law and Critique*, p 93-110;

Chiu, Man-chung, “Un/Controlling Desire, Becoming Others: Negotiating Justice in the Hong Kong milieu of Mainland Pregnant Women Influx” (2012) 3(3) *Beijing Law Review*, p 92-102;

CHIUI, Man-chung (ed) “Resisting and Reproducing: Reconstructing the matrix of sexual politics in Greater China and Singapore” (2015) 15.2 *Reconstruction*.

87 *Re S (A Child)* (Identification: Restrictions on Publications) [2005] 1 AC 593. Please also see Choudhry, Herring and Wallbank, “Welfare, rights, care and gender in family law” in Wallbank, Julie; Choudhry, Shazia and Herring, Jonathan (eds) *Rights, Gender and Family Law* (London and New York: Glasshouse, 2010), p 5.

88 Seneviratne, Mary (2001) ‘Ombudsman for Children’ 23(2) *Journal of Social Welfare and Family Law* 219-221, 217.

89 Ribot, “How much Family Conduct do we need to Regulate through Family Law?” in Maclean, Mavis and Eekelaar, John (eds), *Managing Family Justice in Diverse Societies* (Oxford: Hart, 2013), p 289.

in *W v. Registrar of Marriages*),⁹⁰ which means that they could be parents and have children.⁹¹

But what is the next step after de-aging family law? If children cannot express and construct their views in a legal discourse effectively and accurately, how can adult-centric courts make acceptable and just judgements? No strategy can be implemented effectively without affecting others and being affected.⁹² Adults, not only children, must take part in implementing the strategy. A successful deageaization policy, accordingly, will not only have an impact on children, but on parents / adults, and it will start with legal assemblages and will impact everyone. How people react will certainly affect the influences and consequences of the policy, which will then start deterritorializing the temporary connections between the law and related stakeholders, acting to replace age as the Master Signifier and constructing a possibility to construct a new Master Signifier.

As I argue above, the machinic process starts with becoming children, which means having to unlearn ‘becoming adults’ (for example: giving up the privileges enjoyed by adults); so, if children are not capable of articulating their positions in a court room or other legal context, it is not for them to have to learn the legal language, or receive assistance. Adult judges and lawyers should also be trained and assisted by different professionals (for example: psychologists and counselors) so that they can understand the language and views of children. While the children’s view will be translated and mediated to the court, can the court also make sure that the discussion and the decision will be translated fully for the children affected? Becoming children thus is not merely empowering the underage (though this is not an either-or dichotomy), but becoming powerless. It does not simply mean listening to children but, when deciding their future, the court is becoming children, take into account their concerns, assume their perspectives, and balance their rights with those of others when making decisions. The best practice example lies in Belgian law, that respects the rights of people under 18 in relation to Euthanasia, the first such case being tried in 2016.⁹³

90 *W v Registrar of Marriages* (2013) 16 HKCFAR 112.

91 Hong Kong Bar Association, Response paper “Response on Children Proceeding (Parental Responsibility) Bill” (Hong Kong: Hong Kong Bar Association, 2016), para 12, 13. Available at: <http://www.hkba.org/sites/default/files/Children%20Proceedings%20%28Parental%20Responsibility%29%20%20Bill%20-%2024%204%2016%20%28final%29.pdf> (visited 3 September 2016).

92 Massumi, Brian, *Politics of Affect* (Cambridge, United Kingdom: Polity, 2015), Ix; Nail, Thomas *Returning to Revolution: Deleuze, Guattari and Zapatismo* (Edinburgh: Edinburgh University Press, 2015) p 127.

93 Available at: http://news.mingpao.com/pns/dailynews/web_tc/article/20160918/s00014/1474133961844 (visited 18 September 2016).

Two laws have been passed in Greater China, signifying the first time in the respective jurisdictions' history that a legal effort has been made to tackle and control family violence on the mainland: these are the Anti-Domestic Violence Law in Mainland China (enacted in 2015) and the Law on Preventing and Combating Domestic Violence in Macao (enacted in 2016). While the former does not put any emphasis on the protection of children, the latter contains a number of articles (articles 3(1), 6, 14(2), 16(1), 18(3)(1) and 24(4)) which address the case of child victims particularly. While the approach adopted by the Mainland Chinese has been criticized,⁹⁴ the foci of the law are put on the levels of violence involved and on the weakness of the victims: articles 16, 21 and 23 offer examples of the different court orders and approaches that could be adopted in response to different levels of seriousness of violence. From the perspective of deageization, the fact that the Mainland Chinese Law does not use 'age' as a reference perhaps is a good starting point, but the question is: do the courts provide sufficient and adequate mechanisms by which the voices and will of children can be presented and listened? The Macao law, on the other hand, in providing different kinds of protection, may be able to offer better all-round protection, perhaps, because of the singular situation in Macao. Although becoming a child underpins any framework for bringing equality before the law for children, how the strategy is devised and realized depends on the particular context, and there is an absence of a universal timeline.

References

English

Blaagaard, Bolette and Van Der Tuin, Iris (eds), *The Subject of Rosi Braidotti: Politics and Concepts* (United Kingdom: Bloomsbury, 2014) p 85.

Braidotti, Rosi (ed) *After Poststructuralism: Transitions and Transformation* (Durham: Acumen, 2010), p 229.

Braidotti, Rosi, *The Posthuman* (Cambridge, UK: Polity Press, 2013), p 140.

Braidotti, Rosi, Hanafin, Patrick and Blaagaard, Bolette (eds) *After Cosmopolitanism* (New York: Routledge, 2013), p 15.

Braidotti, Rosi and Dolphijn, Rick (eds), *This Deleuzian Century* (Leiden: Brill, 2014), p 30.

Braidotti, Rosi, *Transpositions* (Cambridge, United Kingdom: Polity,

94 "Expert Suggestion: an independent chapter on special protection for the underage" (tran., 專家建議：應設專章強調未成年人特殊保護) Available at: <http://npc.people.com.cn/BIG5/n/2015/0507/c14576-26962900.html> (visited 8 Sept 2016).

2006), p 77, p 169.

Butler, Judith; Laclau, Ernesto and Žižek, Slavoj, *Contingency, Hegemony, Universality: Contemporary Dialogues on the Left* (London and New York: Verso, 2000), p 123-124.

Chiu, Man-chung, “Beyond colonialism: osmotic reconstruction of gender / sexual justice” (2009)10(3) *Inter-Asia Cultural Studies*, p 399-421.

Chiu, Man-chung, “Going Beyond Globalization and Localization: Articulating a Theory of Justice in Han-Chinese Culture” (2010) 21 *Law and Critique*, p 93-110.

Chiu, Man-chung (ed) “Resisting and Reproducing: Reconstructing the matrix of sexual politics in Greater China and Singapore” (2015) 15.2 *Reconstruction*.

Chiu, Man-chung, “Un/Controlling Desire, Becoming Others: Negotiating Justice in the Hong Kong milieu of Mainland Pregnant Women Influx” *Beijing Law Review*, 3(3) (2012) p 92-102.

Chuang Zi, Chapter 32.

Coleman, James William, “Toward a Non-Eurocentric Social Psychology: the Contribution of the Yogacara” *Human Architecture: Journal of the Sociology of Self Knowledge*, 8(1) (2010), p 101, p 102, p 103.

De Sutter, Laurent (ed) (2015) *Zizek and Law* New York: Routledge

Dean, Jodi, *Žižek’s Politics* (New York: Routledge, 2006), p 12.

Devenney, Mark, *Žižek’s Passion for the Real* (New York and London: Continuum, 2007)

Diduck, Alison and O’Donovan, Katherine (eds), *Feminist Perspectives on Family Law* (New York: Routledge-Cavendish, 2006), p 69.

Gashé, Rodolphe, *Géophilosophy: On Gilles Deleuze and Félix Guattari’s What Is Philosophy?* (Evanston, IL: Northwestern University Press, 2014), p 19.

Gielen, Pascal (ed) *No Culture, No Europe: On the Foundation of Politics* (Amsterdam: Valiz, 2015).

Gillespie, Alisdair, *Child Pornography: Law and Policy* (New York: Routledge, 2011).

Gross, Rita, *Buddhism after Patriarchy: A Feminist History, Analysis and Reconstruction of Buddhism* (Delhi, India: Sri Satguru, 1993), p 158.

Guattari, Felix and Rolnik, Suely (trans., Clapshow, Karel and Holmes, Brian) *Molecular Revolution in Brazil* (London: Semiotext(e), 2008), p 258.

Hamza, Agon (ed) *Repeating Žižek* (Durham and London: Duke University Press), p 232.

Holland, Eugene, *Deleuze and Guattari’s A Thousand Plateau* (London and New York: Bloomsbury, 2013), p 8-9, p 94, p 100.

Holland, Eugene, *Deleuze and Guattari’s Anti-Oedipus Introduction to*

Schizoanalysis (London and New York: Routledge, 1999), p 93, p 19.

Hong Kong Bar Association, Response paper *Response on Children Proceeding (Parental Responsibility) Bill* (Hong Kong: Hong Kong Bar Association, 2016), para 12, para 13, para 47.

Jiang Tao, *Contexts and Dialogue: Yogacara Buddhism and Modern Psychology on the Subliminal Mind* (Honolulu: University of Hawai'i Press, 2006), p 37.

Koller, John, *Asian Philosophies*, (New Jersey: Prentice Hall, 4th edn, 2002), p 222.

Kyabgon, Traleg, *Karma* (Boston and London: Shambhala, 2015), p 9.

Labour and Welfare Bureau, Consultation paper titled *The Proposed Legislation to Implement the Recommendations of the Law Reform Commission Report on Children Custody and Access* (Hong Kong: Printing Department, 2015).

Law Society of Hong Kong, Response paper *The Proposed Legislation to Implement the Recommendations of the Law Reform Commission Report on Child Custody and Access: Submissions*. (Hong Kong: Law Society of Hong Kong, 2016), para 7, para 13, para 48.

Lorraine, Tamsin, *Deleuze and Guattari's immanent ethics* (New York: State University of New York Press, 2011), p 67.

Lynch, Katherine and Scully-Hill Anne (eds) *International Perspectives on Disputes about Children and Child Protection* (Hong Kong: The Chinese University of Hong Kong Press, 2015), p 20, p 27, p 28.

Maclean, Mavis and Eekelaar, John (eds), *Managing Family Justice in Diverse Societies* (Oxford: Hart, 2013), p 289.

Massumi, Brian, *Politics of Affect* (Cambridge, United Kingdom: Polity, 2015), ix.

McMillan, Chris, Žižek and Communist Strategy (Edinburgh: Edinburgh University Press, 2012), p 102, p 138.

Nail, Thomas, *Returning to Revolution: Deleuze, Guattari and Zapatismo* (Edinburgh: Edinburgh University Press, 2015), p 127.

Paul Bowman (Editor) and Richard Stamp (Editor), *The Truth of Žižek* (New York and London: Continuum, 2007), p 64-81.

Powers, John (trans.), *Wisdoms of Buddha: Samdhinirmocana-sutra* (Berkeley: Dharma Publishing, 1995).

Rickert, Thomas, *Acts of Enjoyment: Rhetoric, Žižek, and the Return of the Subject* (Pittsburgh, PA: University of Pittsburgh Press, 2007), p 20.

Safran, Jeremy (ed), *Psychoanalysis and Buddhism: An Unfolding Dialogue* (Boston, MA: Wisdom Publication, 2003), p 23.

Schwartz, Benjamin, *The World of Thought in Ancient China* (Cambridge, MA: Harvard University Press, 1985), p 225.

Schuster, Aaron, *The Trouble with Pleasure: Deleuze and Psychoanalysis* (London: The MIT Press, 2016), p 93, p 157, p 167, p 171.

Seneviratne, Mary (2001) ‘Ombudsman for Children’ 23(2) *Journal of Social Welfare and Family Law* 219-221, 217.

Sharpe, Matthew and Boucher, Geoff, Žižek and Politics: An Critical Introduction (Edinburgh: Edinburgh University Press, 2010), p 185.

Smith, Rhona & Van Den Anker, Christien (eds) *The Essentials of Human Rights* (Spain: Hodder Arnold, 2005), p 25.

Stockton, Kathryn Bond, *The Queer Child* (Durham and London: Duke University Press, 2009), p16, p 40- 41.

Wallbank, Julie; Choudhry, Shazia and Herring, Jonathan (eds) *Rights, Gender and Family Law* (London and New York: Glasshouse, 2010), p 5.

Wang, Qing-jie, *Heidegger and a Hermeneutical Interpretation of Confucianism and Daoism* (Beijing: RenMin University Press, 2004), p 144.

Wang, You-ru, *Linguistic Strategies in Daoist Zhuangzi and Chan Buddhism* (London: RoutledgeCurzon, 2003), p 40-42.

Wells, Charles, *The Subject of Liberation* (New York: Bloomsbury, 2014).

Žižek, Slavoj, *Event* (London: Penguin, 2014), p 26, p 78.

Žižek, Slavoj, “From Politics to Bio politics...and Back” (2004b), 103 (2/3) “The South Atlantic Quarterly” 511.

Žižek, Slavoj, *Iraq: The Borrowed Kettle* (London: Verso, 2004c), p121.

Žižek, Slavoj, *The Ticklish Subject: The Absent Center of Political Ontology* (London: Verso, 1999), p 374.

Žižek, Slavoj, *Disparities* (London: Bloomsbury, 2016).

Chinese

Chuang Zi, Chapter 32. (莊子 · 列禦寇)

“Expert Suggestion: an independent chapter on special protection for the underage” (tran., 專家建議：應設專章強調未成年人特殊保護) Available at: <http://npc.people.com.cn/BIG5/n/2015/0507/c14576-26962900.html> (visited 8 Sept 2016).

Fei, Xiao-bing (費小兵), *Research on Lao Zi’s Legal Perspective* (<老子>法觀念探微) (Beijing: China University of Political Science And Law Press, 2013), p 4, p 75.

Hung, Te-jen (trans., 洪德仁), “Buddhist Doctrine of Equality” (trans., 佛教的平等觀), 7 BeiYe (貝葉) 43. Available at: file://C:\WINDOWS\TEMP\K0N3C66H.htm (visited 27 June 2004).

Lao Zi (老子), Chapter 34. See Chan, Wing-tsit (陳榮捷), *A Source Book in Chinese Philosophy* (Princeton: Princeton University Press, 1963), p 157.

Liao, Xiao-ping (廖小平), “Filial Piety and the Moral Situation of Minors

in Chinese Culture” (2008) 32 (4) Journal of Xiangtan University (Philosophy and Social Sciences), p 129-134.

Mou, Zong-san (牟宗三), *Zhuangzi qiwulun yili fenxi* (莊子齊物論義理分析) (Taipei: Bookman Books Co., Ltd., 1999), p 37, p 46, p 65.

Ng, Yu-kwan (吳汝鈞), *Concepts and Philosophical Methods in Buddhism* (佛教的概念與方法(修訂本)) (Taipei: The Commercial Press, 2000), p 2, p 101, p 103, p 106, p 108, p 163-165.

Taisho Tripitaka Editorial Committee (trans. 大藏經刊行委員會), *Vijnaptimatratasiddhi-sastra, Taisho Tripitaka* (大正新修大藏經) (Taipei: XinWenFeng (新文豐), 1985), Chapter 31.

Wang, Fan-sen (王汎森) (2010) *Zhangtaiyan de sixiang* (章太炎的思想) (Taipei: HUA-MU-LAN CULTURE PUBLISHING COMPANY, 2010), p 14.

Wang, Qing-jie (王慶節), *Heidegger and a Hermeneutical Interpretation of Confucianism and Daoism* (Beijing: RenMin University Press, 2004), p 149.

Wang, Ze-ying (王澤應), *ZiRan Yu DaoDe* (自然與道德) (Changsha: HuNan University Press, 2003), p 98.

Yang, Wai-zhong (杨维中), *A Research of the Nature of Mind of Chinese Buddhism* (trans., 中国佛教心性论研究) (Beijing: Religious Culture (宗教文化), 2007), p 288.

Zhan, Kang (詹康) *Zhenglun zhong de zhuangzi zhutilun* (爭論中的莊子主體論) (Taipei: Xue sheng shuju (學生書局), 2014), p 9.

Zheng, Shi-yan (鄭石岩), “Vijnanamatra and Psycho-Health” (trans., 唯識法門與心理健康). Available at: http://www.unigate.com.tw/print_one.php?paper_16=168 (visited 2 Feb 2004).

Zhuang Zi (莊子), Available at: http://users.wfu.edu/moran/zhexuejialu/Zhuang_Zi_2.html (Visited 18 April 2014).