



Thomas Dreams of Separability

Charles E. Colman*

* Assistant Professor, William S. Richardson School of Law, University of Hawai'i at Mānoa. © 2017 Charles E. Colman.

This short story is — or, at least, occupies the place of — the fourth installment in a five-article series for the Harvard Journal of Sports & Entertainment Law. The series, originally entitled ‘The History and Principles of American Copyright Protection for Fashion Design,’ began as a sort of mini-treatise on the idiosyncrasies of the federal courts’ fashion-related copyright decisions. Readers of this piece will see that, whatever it is, it is not that.

Allow me to explain. Just before the third installment of the JSEL series went to press, the Supreme Court granted certiorari in a case, *Star Athletica, LLC v. Varsity Brands, Inc.*, 136 S.Ct. 1823 (2016), that had the potential to clarify, harmonize, and/or transform the law governing the copyrightability of fashion design (and other works of “applied art.”) This series was immediately put on hold pending the Court’s ruling in *Star Athletica*, which the author and editors hoped would prove to be a rich resource for further elucidation of the doctrines and themes to which the series was dedicated.

The decision handed down in March 2017 was emphatically not such a resource. The author of this series found himself flummoxed. Indeed, the “content” of Justice Thomas’s majority opinion was such that the fourth (let alone fifth) article of the planned series simply “wouldn’t write.” Eventually, the author — perhaps misguidedly and hubristically inspired by Michel Foucault’s unapologetic change of direction between the first and second books in the five-volume series, *The History of Sexuality* (which remained uncompleted at the time of his tragically premature death) — found it necessary to alter course. (The editors of JSEL were kind enough to indulge him.)

The fourth installment, the author decided, would look radically different from the first three. No mere change of title, theme, or method would enable him to engage with the *Star Athletica* decision, and all that it represented; a change of *genre* was necessary. The result was a fictional work, the first half of which is included here as (or instead of) the fourth installment of the JSEL series. The author will conclude the narrative, and the series, in a piece slated for the Spring 2018 issue of JSEL, to be published under the title “The Longest Transference.”

“Courts have twisted themselves into knots trying to create a test to effectively ascertain whether the artistic aspects of a useful article can be identified separately from and exist independently of the article’s utilitarian function.”

Masquerade Novelty, Inc. v. Unique Indus., Inc.,
912 F.2d 663, 670 (3d Cir. 1990)

“[A]pplication of this language [of the Copyright Act of 1976] has presented the courts with significant difficulty. Indeed, one scholar has noted: ‘Of the many fine lines that run through the Copyright Act, none is more troublesome than the line between protectible pictorial, graphic and sculptural works and unprotectible utilitarian elements of industrial design.’ PAUL GOLDSTEIN, 1 COPYRIGHT § 2.5.3, at 2:56 (2d ed. 2004).”

Pivot Point Int’l, Inc. v. Charlene Prods., Inc.,
372 F.3d 913, 921 (7th Cir. 2004)

“[A] clothing design that is intended to be used on clothing is copyrightable only to the extent that its artistic qualities can be separated from the utilitarian nature of the garment. How to conduct the conceptual separation is, in turn, what continues to flummox federal courts There are at least six distinct variations of that test.”

Galiano v. Harrab’s Operating Co., Inc.,
416 F.3d 411, 419, 417 (5th Cir. 2005)

“We turn now to a more vexing question in this case: whether [the allegedly infringed] designs are conceptually separable from the utilitarian aspects of such furniture. We must approach this inquiry mindful of the nebulous standard with which the [district] court was obliged to grapple.”

Universal Furniture Intern., Inc. v. Collezione Europa USA, Inc., 618 F.3d
417, 431 (4th Cir. 2010)

“Courts have struggled mightily to formulate a test to determine whether “the pictorial, graphic, or sculptural features” incorporated into the design of a useful article “can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the [useful] article” when those features cannot be removed physically from the useful article Through the years, courts and scholars have proposed or used [at least eight] approaches to conceptual separability.”

Varsity Brands, Inc. v. Star Athletica, LLC,
799 F.3d 468, 484 (6th Cir. 2015)

“The questions of whether or how to protect the aesthetically pleasing appearance of useful articles have yet to be resolved, despite over a century of debate. In no other area of U.S. copyright law is there a more extensive history.”

2 PATRY ON COPYRIGHT § 3:124 (2016)

“[A] feature of the design of a useful article is eligible for copyright if, when identified and imagined apart from the useful article, it would qualify as a pictorial, graphic, or sculptural work either on its own or when fixed in some other tangible medium.

Applying this test to the surface decorations on the [plaintiff’s] cheerleading uniforms is straightforward.”

Star Athletica, LLC, v. Varsity Brands, Inc.,
137 S.Ct. 1002, 1012 (2017) (Thomas, J.)

. . .

Your name is Thomas. You work at a company that creates and sells games—board games, puzzles, and the like. The company was founded many years ago by a man whose real name is unknown by all but a few employees, and whom no one has seen in many years. Most call him “the Founder,” usually with reverence. You revere him more than most; as far as you’re concerned, his word is gospel. You wish you could meet him (you have so many questions!), but you’re not even sure whether he’s still alive. That doesn’t change the nature of your obligations to him—it’s his company, after all . . . or, at least, his heirs’ company (who are they? where are they?)—but his *in absentia* status makes things difficult at times.

For one thing, the Founder didn’t always leave detailed records about the way the company is supposed to operate. But it’s not just that: no matter how detailed his records, current employees seem to disagree about the way they should be interpreted. Sometimes, it even seems like the more detailed the records are, the greater the range of views on what they mean! You’re not sure if some of these employees are reading the records selectively or if their disagreements are genuine. Fortunately, you usually understand what the Founder meant, or what he would have wanted, so it’s a good thing your view counts for more than most. No, that sounds bad, haughty (you can’t stand snobs!) What you mean is that it’s a good thing that someone who cares so much about fidelity to the Founder is the company’s Director of Testing and Guidance.

Which is not to say that T&G is the most important department at the company. There wouldn’t be any games to “test” without Development and Revision, and there wouldn’t be any customers to “guide” without Branding and Logistics. D&R is—well, it’s different things to different people, but you’ve always thought of it as the laboratory of the company, where the games are designed. Of course, D&R sometimes develops games based on ideas that a T&G guy proposed, and sometimes B&L forces an idea for a new game down D&R’s throat, saying it’s necessary for the company’s “contin-

ued success,” or something like that. But left to its own devices, D&R is basically there to come up with games that people will enjoy. Or, at least, that they think people will buy. Or games that people *should* buy.

Yes, it gets a bit hazy there, in part because the Founder’s records mention a variety of things that the company’s games are supposed to accomplish. And—this much, you can’t deny—there are *some* inconsistencies (no, that’s too strong a word . . . it would be more accurate to call them “differences of emphasis”) in the Founder’s goals for the company and its games across his records. Early on, as in the ‘40s and ‘50s, the Founder mainly talked, or rather, wrote—one can only rely with certainty on what he wrote down (and maybe what he said, *if* there is a contemporaneous written record of it, produced by a reliable source)—about the survival of the company. His records from the ‘60s and ‘70s are less . . . deliberate, which you find entirely understandable, since he wasn’t coming into the office as much by then. You’re not sure if you believe the company lore, but some say that by the ‘70s, the Founder had grown withdrawn and eccentric—not your word—creating games with odd names that he supposedly insisted were “good for customers,” whether they “knew it or not.”

You can’t ignore these “late games,” as people call them, but there are days when you wish the Founder hadn’t gotten so, well, ambitious. It’s tough for your team to answer questions about a game that can be understood—or, rather, *misunderstood*—in a lot of different ways. The key is to stick to the words of instruction manuals that the Founder approved. . . or, at least, would have approved. They usually tell your employees and the customers everything they need to know. It’s not your place—not T&G’s place—to start changing them willy-nilly.

Not everyone appreciates this, probably because they don’t see that it comes down to *humility*. That’s something you strive for yourself and always try to cultivate in your employees. Of course, you can’t force them to change—that’s why hiring the right people is so important—but you can continue to nudge them in the right direction. . . . Hence the framed poster with the “Litany of Humility” hanging on the wall of your office. Its wisdom, you figure, is bound to rub off on frequent visitors—and some of the employees who come to you most often (suggesting this, complaining about that) would do well to read it. You look over at the “Litany” and savor its familiar words:

That others may be esteemed more than I . . .
That, in the opinion of the world, others may increase and I may decrease . . .
That others may be chosen and I set aside . . .
That others may be praised and I unnoticed . . .
That others may be preferred to me in everything . . .
That others may become holier than I, provided that I may become as holy as I should . . .

You notice, mid-line, that some T&G employees are hovering just outside your open office door. Encouraged by your smile (you're proud to be such an approachable boss), the three team members shuffle in and arrange themselves in front of your desk. You're not annoyed by this visit, not at all. You always have time to spare for young people (at least, for young people who are enthusiastic and hardworking, and who understand what this job is about—though you note with dismay that the recent grad is carrying a pile of papers, which probably means they're not here for a friendly chat).

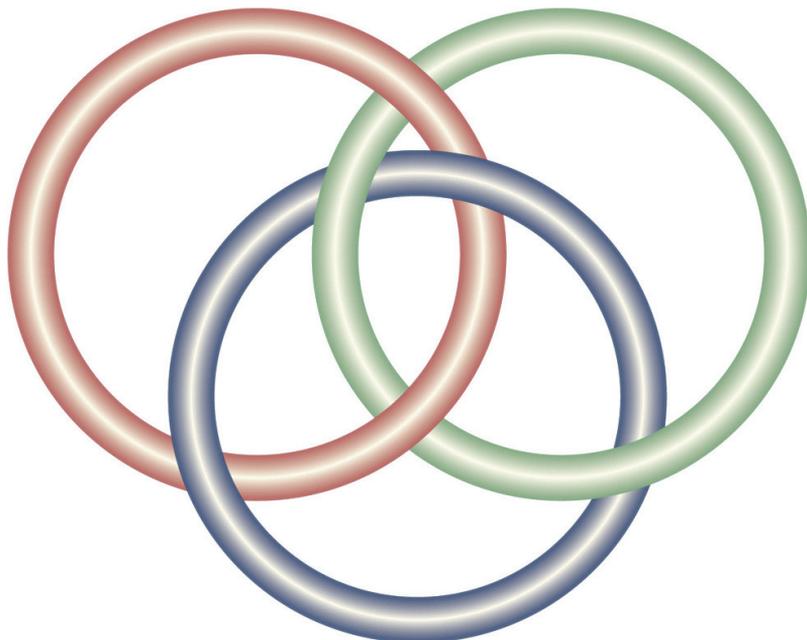
What's on their mind? A recent spike in customer complaints, you learn. Relating to one of the late games, *Separability*? (So odd that the Founder put a question mark in the name of the game, you think. Should one always say the word like a question?) But wasn't that game retired a while back? Yes, but it was relaunched when D&R cut back on new-game development, you're told. Since then, the company has been flooded with—the employee telling you this adopts a bizarre tone of voice that you gather is supposed to sound like an irritated customer—'Is the game missing pieces?' 'Did I get a defective version?' 'What's the point of this game?' and the like. You get the point. Have the team members Yes, they've consulted those records, scrutinized every word that might shed light on the Founder's intentions Some employees—not these three, a member of the delegation adds eagerly—even started to do outside research, which has led in some pretty strange directions. Since then, there have been some pretty heated disagreements among team members about what the game's instruction—one can't really say "instructions," as it's just a single sentence—means, and how to win, or even how to *play* the game Not only that (another team member jumps in), but some people don't think it's a *game* at all—you know, the Founder's experiments in the late games and all (Of course it's a *game*, you think. And every game is ultimately about the same thing.) The conversation stalls, and you find yourself lost in thought, until an employee, silent until now, pipes in (with a hint of impatience, if not impertinence, that annoys you) to say that all they really need to know is what you want them to tell unhappy customers.

You consider pointing out that it's not a question of what *you* want, but of what the Founder and the instructions already make clear, but you decide against it. If the team member hasn't gotten that by now You look at the pile of documents. You don't want to send the wrong message: your people shouldn't think of you as some oracle with privileged access to the Founder's intentions. If they're doing their jobs, they can and should reach the same conclusions as you, whatever the game might be. On the other hand, you've been at this for a lot longer than they have; you're more familiar with the way the Founder thinks than almost anyone. And if you agree to take a look at the game, you might notice something that your team members didn't realize was important, something that you'll see—and, more importantly, that you'll be able to teach them—is the key to the whole thing.

You've convinced yourself. You tell them you'll look over the documents and the game, which is tucked away somewhere in your office. They're pleased. They hand over the pile of papers and express their gratitude. They leave.

You get up and walk over to a cabinet you haven't opened in years. You remove one box after another, stacking them on a small sofa. (You inherited the sofa from your predecessor, but you rarely use it, and never to lie down. How would that look, for a department head to lie down at work?) As the stack of boxes grows to a precarious height, you spot what you're looking for. You dig the game out of its hiding place at the back of the cabinet, carry it over to your desk, and examine the faded cover:

SEPARABILITY?



You open the box and look for instructions. Alas, it's true: the only text explaining how the game is to be played is a single sentence printed directly on the unfinished-cardboard interior. You read the words slowly, deliberately:

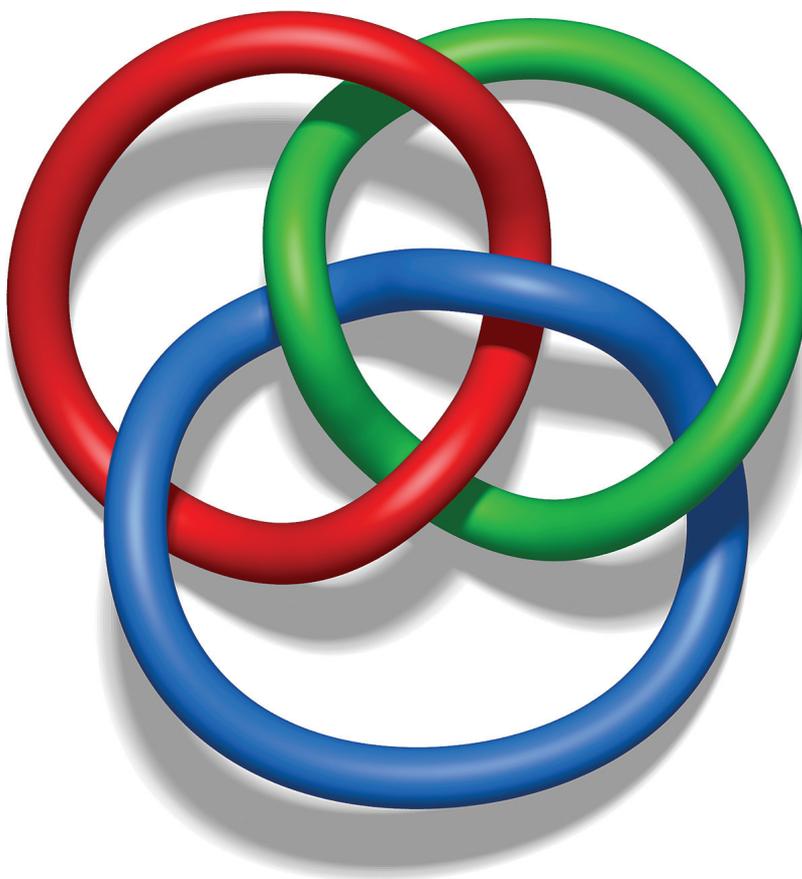
A player is made "(w)hole" if, and only to the extent that, s/he secedes in naming a feature of the enclosed article that can be identified separately from, and is capable of existing independently of, the ~~other~~ aspects of that article.

At first, you're not even able to engage with the meaning of the sentence; you're too disturbed—distressed—by the sloppiness of the text. How could this company, this venerable company, release a game containing a typo—"secedes"?!?!—in the *single sentence* making up its instructions? How could a game have gone to press with the word "other" marked for deletion, but never actually removed? And what the heck is "(w)hole" supposed to mean? The parentheses, the scare quotes . . . Is this supposed to be clever?

There's no way the Founder drafted this language himself, you think. You're certain that he shared your view that people should say what they mean—cleanly, plainly, decisively. The purpose of language is, of course, to

communicate information from one person to another. If you're not going to give that your best shot, why bother saying anything at all? No, this instruction was almost certainly drafted after the Founder stopped coming into the office in the mid-70s. If the guy who approved this text was still at the company, today would be his *last* day.

Trying to shake off your disgust, you turn to the remaining contents of the box, a rubber knot:



Okay, at least there are no surprises here: you've got a three-dimensional version of the image on the front of the box. You grudgingly reread the text, cringing at each typo and gimmick:

A player is made "(w)hole" if, and only to the extent that, s/he secedes in naming a feature of the enclosed article that can be identified separately from, and is capable of existing independently of, the ~~other~~ aspects of that article.

Obviously, you think, there are multiple “features” of the article that one can imagine existing independently of the other “aspects”: you’ve got three rings, any one of which could exist on its own. You’ve got three different colors, any one of which could be applied to countless other things besides rubber rings. You’ve got the notion of a circle—same deal. The game is so incredibly straightforward that you find yourself getting angry at your employees. But you try to calm yourself down: they must have had their reasons for bringing this to you. Most likely, this was meant to be played by children—you scan the sides of the box and lift it up to see if the packaging notes a recommended age range (it doesn’t)—but your team members proceeded on the assumption that it was for adults, figuring that there had to be more to it than meets the eye. Yes, this was probably just another instance of overthinking, a disconcertingly common problem among your employees.

To confirm your suspicion, you turn to your employees’ reports. You pick a random document and start reading:

The only possible answer to the question “Separability?” would seem to be “no.”

Suppose that a player “names” the “blue ring.” Has she “seceded” [*sic*] in highlighting a “feature” of the article that “can be identified separately from” the knot? One could, of course, physically clip the blue ring, causing it to “exist[] independently” of the other two rings (which would, perhaps significantly, become unlinked in the process.) But as soon as the ring is clipped, it is no longer a “ring” at all. Something now “exist[s] independently,” but it is not the same “feature” previously identified: the former is a blue string, the latter a blue ring.

It is true that the instruction says only that a feature must be “capable” of “existing independently,” not that a player must effectuate that existence. Simply naming the “blue ring” as a feature that can be *imagined* as “existing independently,” one might argue, is enough for a player to be made “(w)hole” [*sic*]. But it is not clear that an imagined blue ring, existing apart from a green and red ring that binds together, is in fact the same “feature” as a blue ring that is bound up with, and binds together, the other two. One can imagine a *second* blue ring, one that was never linked to a green and red ring, but that would seem to be a different object than *a blue ring that was previously linked to two other rings, which it kept linked together*.

In Jacques Lacan’s *Seminar XXIII* on the “sinthome” . . .

You stop reading. The employee has, as you suspected, overcomplicated matters. But there’s something else about this report that bothers you,

something you can't quite pinpoint. It's not just that it challenges your initial theory (you're always open to the possibility that you're mistaken about this point or that; that sort of openness is an important part of humility.) No, it's something bigger than that. But what? You close your eyes and try to follow the employee's reasoning to its logical endpoint. Let's see: if a part of something can *never* be separated—even *mentally*, even *hypothetically*—from the other parts of that thing without instantly becoming something different than it was a moment before, then . . . then . . . wouldn't that mean that one could never generalize about *anything*? Every object, every body, would (despite evident commonalities) have to be treated as singular, unique. *Maybe* that's true of God, you think, but not of people, and certainly not of inanimate objects. A ring is a ring is a ring . . . isn't it?

You want to know if this employee's thinking is an anomaly, so you skip to the next report and start reading at a random point in the middle of the page:

From my perspective, the question mark punctuating "*Separability?*" concerns not so much the specific three-dimensional object enclosed in the box, but rather the generally shared (but questionable and, by astute players of the game, newly questioned) understandings of "part" and "whole." This is suggested both by the curious spelling of "(w)hole" and the use of the strikethrough function on the word "other," which evokes the Heideggerian technique of placing terms and concepts "under erasure." This typographical allusion to a philosopher perpetually preoccupied with the under-theorized and often-undisclosed predicates of traditional Western ontology would seem to indicate that the game is designed to warn players of the epistemological errors and potential consequences of treating any object as "whole"—at least, once (purportedly) isolated from its context, or its *ground*.

The game's instruction suggests that any attempt to isolate any entity as freestanding—as "capable of existing independently"—from its context, to force it to "secede" from its background (even if, or maybe *especially where*, the animating impulse of that attempted secession is the desire to become "whole" oneself) is problematically ideological, in that it attempts to (however unsuccessfully) obscure the genealogy of that entity. Consider, for example, the irregular contours of the blue ring, which are required for the "impossible" two-dimensional image on the box cover to be rendered in three-dimensional space. One can try to imagine the oddly shaped blue ring "existing independently" of the other two rings, each of which has also been twisted to accommodate the others, but the effects of that accommodation persist—if only as a suggestion of a history, a broader embeddedness, an absent cause.

To one who managed to willfully forget these (or other/analogous) genealogical circumstances, of bringing about a sort of self-imposed amnesia, it

might seem that the “freestanding” ring was in fact a “whole.” But of course, no such technique exists: the closest approximation of deliberate amnesia in which people can engage is *repression*. The latter technique, however, does not eliminate traces of genealogical information, but rather conceals it—and incompletely, at that, because such repression often yields *affects* that signal that a concealing operation has occurred. Through this seepage of affect, one who has “secede[d]” in this way, through the repression of genealogy and the reality of interdependence, might actually feel a metaphorical “hole” with an intensity that increases in proportion to the vigor with which he aims to feel independent, untethered, and thus “whole.”

In my view, then, *Separability?* warns against taking for granted conventional distinctions between “self” and “other,” “free” and “dependent,” and similarly pernicious dualities passed down through the ages.

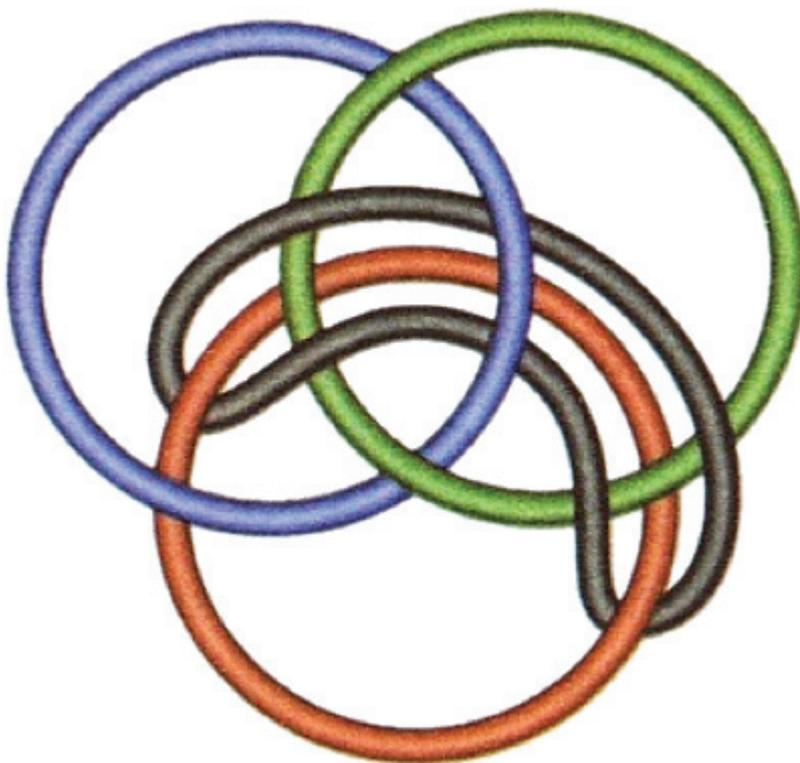
Unbelievable. . . This is even worse than the first one! Heidegger? Repression? (Wasn't the first discredited as a Nazi and the second debunked along with the rest of psychoanalysis?) Never in your (what, twenty-five?) twenty-some years as the head of T&G have you seen employee reports spouting so much pretentious, pseudo-intellectual nonsense. You are bewildered. There could be no possible justification for looking at this stuff in order to make sense of *Separability?* It's not as if the Founder was thinking about some imaginary problems with “traditional Western ontology” or reading the “Seminar XXIII” of “Jacques Lacan” when he created this game.

But, you think, your employees were obviously reading and thinking about this nonsense when they drafted these reports—and if you don't put a stop to that right now, God knows how that might affect the rest of their work. Unfortunately, you decide, you'll have to get a sense of what they've been reading; it's the only way to determine the nature and extent of the corruption. You have to know your enemy, so to speak; you'll have to acquaint yourself with the quacks and their “theories” that have caused the damage it now falls to you to undo.

You quickly discover that there are seemingly limitless resources about this “Lacan,” and the figures that influenced him—including the Nazi (of course)—on countless websites. You find transcripts of his “seminars,” in which he goes on at length about his bizarre and largely incomprehensible theories. When you finish reading—or just lose your patience for—one document, you find another one. You start to see the way this guy worked: everything he said seems to raise questions that the next installment promises to answer . . . but never does. This man used curiosity to create his own cult! And the members of that cult have, judging by the volume of

material they've produced, wasted years of their lives trying to decipher every nuance of "the Master's" wording—even when he unashamedly contradicts himself, even when he essentially admits (on rare but telling occasions) that he doesn't know what he's talking about! It almost seems as if his most zealous followers loved him *because* he was so obscure, which is just . . . sick.

These misguided souls seem to be fond a particular image—a drawing from one of Lacan's "seminars" in the mid-70s—which you are certain represents ground zero of the epidemic of overthinking among your team members:



This discovery, unfortunately, makes you no less alarmed. In fact, you're even more concerned to learn that your employees took as their starting point for their little flights of fancy an image in which the rings aren't even connected in the same way as the ones in *Separability*? It's inexcusable. It's an insult to the Founder.

Is there still time to speak to your employees today, you wonder? You check the clock, then do a double-take: it's after midnight. You've been

reading about this Lacan for, what, eight hours? You see how his acolytes could have fallen prey to his “teachings.” But not you—and not your people. You’ll set them straight first thing tomorrow morning.

You send out a notification of a department-wide meeting at 9 A.M. The problem can’t wait any longer than that, but this means that sometime in the next nine hours, you’ll have to think very carefully about what to say, what sort of cure should be prescribed here. Not tonight, though. You’re too tired. You head home and go straight to bed. In no time, you are asleep.

At some point during the night, you realize that you are not alone in your bedroom. You sit up and turn on the light. As a blurry figure comes into focus, you ask (with an odd lack of concern) “Who are you?”

“Who do you think?” is the only response—given in a strong French accent. By now, your vision has cleared up, and you see that the figure is . . . you. That is, it appears to be you. Yet somehow, that you is also Jacques Lacan. You’re both the familiar you, sitting up in bed, wearing boxer shorts and a white t-shirt, and the unfamiliar you, standing across the room in a colorful suit straight out of 1976.

“I don’t understand. Am I Lacan, too, or am I just Thomas?” you ask the figure.

“Are you not *précisément* Thomas, who is, among other things, a Thomas who is also a Lacan?”

This irks you. The gibberish, the heavy—almost theatrical—French accent, the unnecessary addition of French words (do you even know French? you can’t recall). . . It’s absurd. And the visitor’s manner suggests that he’s just getting started.

You, as Lacan, continue: “You might say that each of us is a mode of Thomas—or, should I say, Thomas *à la mode*?” You pause for a laugh from the you in the bed, but you refuse yourself even a courtesy chuckle. You look slightly hurt. “Surely,” you gently protest, as Lacan, “a man can assume that his interlocutors know Spinoza. . .?”

“You know very well that this ‘interlocutor’ does not . . . that *neither* of us does,” you insist, pointing back and forth between your identical faces.

“But *Saint Thom*, you must return to Spinoza,” you add, “if you wish to understand effect and cause.”

“Return?” you mumble, trying to recall whether Spinoza is one of the good guys. Wasn’t he a heretic? Wait, was he even a Christian? . . . No matter. “In English, we say ‘cause and effect,’” you say, hoping to knock the Lacanian you off his high horse. It feels good. You keep going: “And I won’t be reading Spinoza, or anything else you recommend. I know all about your ‘theories’ and your mind games; I’ve seen first-hand the damage they can do. Which reminds me . . . I have an important meeting in the morn-

ing—a meeting that I scheduled to fix the problems *you* caused—and I need to get a good night’s sleep. So I will *politely* ask that you leave my home.” You wait a few seconds, then add: “Go—you’re not wanted here!”

You, as Lacan, reflect for a moment, then respond: “*Mon Dieu, Saint Thom*, what a ‘Litany of Complaints!’” He pauses again, briefly, then adds: “And yet, in those complaints, one begins to hear echoes of your *sin, Thom*. . . .”

“What do *you* know about my ‘sin?’” you demand, only to realize in that this you—being yourself—might know quite a bit, perhaps everything, about you. That makes you deeply uncomfortable.

As if to egg you on, you, as Lacan, start to recite what sounds like a nursery rhyme: “The good *Saint Thom*, a *saint* among *hommes*. . . . So very *proud* of his ‘humble’ *sinthome*!”

“Stop calling me ‘Saint Thom!’” you shout, cutting yourself off.

You, as Lacan, pause to ponder the request, then declare: “*Non*, I will call you Saint Thomas—if only for the sake of clarity. . . or should I say *claritas*?”

Do you get the joke? You’re not sure. It has to do with Saint Thomas Aquinas—“*integritas, consonantia, and claritas*”? (was that it?) “*Unde quae habent colorem nitidum, pulchra esse dicuntur*” (was that it?). . . . Wait, you’ve just reminded yourself of something—something else, something about ‘vegetables’. . . . Your mind wanders, again. Then you catch yourself: this is exactly what he—what you?—wants, you realize, and you won’t give him—give you?—the satisfaction. You won’t let yourself fall into the trap of questioning what you know. Or what you don’t know you know, or what you know you don’t know. . . or what you don’t know you don’t know. . . . No, that way madness lies. (*Lear*? Yes, that’s it: “Your old, kind father, whose frank heart gave all— O, that way madness lies; let me shun that. . .” Amazing, what the mind retains!) Shun, indeed: “As far as I can tell,” you reply, belatedly, “clarity is decidedly low on your list of priorities.”

“Priorities,” you, as Lacan, repeat back to yourself. You let the word linger in the air for a moment, then say: “*Parfois*, clarity is *prior* to truth, but this does not mean one must remain in its priory. Indeed, not to stray from the priority is never to know the name of one’s prior. And that name, lying at the root of transference, is for many *analysands* the very stuff of which the *sinthome* is made. The stuff of which *Saint Thom* is made. . . .”

You know what you’re aiming at, and you’ll have none of it. “Listen, I’m not your *analysand*; I’m not a patient of yours. I don’t need—don’t want—whatever *cure* you’re peddling.”

You, as Lacan, shake your head in protest. “*Mon cher Saint Thom*, I offer no ‘cure.’ *En fait*, I am no less an *analysand* than those who come to me for

their *petites visites*. I too am a captive of *un grand discours* not of my own choosing, not of my own creation; I too am a prisoner in the *oubliette* of language. And yet I have something to offer: *practice*. For I have met many fellow prisoners while doing my time, and they have taught me a great deal about the hidden passageways, the locations of tiny windows, through which one can—while never escaping the *oubliette*, not in life—move about with fewer constraints, enjoy a breath of fresh air *de temps en temps*. But, of course, one cannot provide any form of assistance to a prisoner who refuses to acknowledge that he is not free. . . .”

“In that case, please consider me a free man.” You pause to consider the strangeness of the sentence you’ve just uttered. What does it mean? Do you just *consider* yourself a ‘free man,’ or *are* you a free man? And what are you—or aren’t you—free *from*? Free *of*? If you thought this man—this other you, that is—could impart to you freedom from, say, doubt, then you might try harder to hear what he has to say. But, it occurs to you (and this makes you angry), doubt is exactly what he—what you . . . are selling. In fact, it’s the only thing you’re selling. You’re trying to sell yourself a lose-lose game. Not only are you not offering a cure, you’re peddling a disease!

As if reading your mind (which, you suppose, is unavoidable in this situation), you, as Lacan, say: “The wish to be free . . . to be free of doubt, to be free of desire, to be free of others—to be ‘sovereign’—is, it seems to me, a very dangerous thing. Am I ‘peddling’ doubt? Am I ‘peddling’ an insatiable desire? Am I peddling something both necessary and impossible? *Peut-être*. . . . But what is the alternative, *Saint Thom*?”

“To be normal,” you answer, perhaps too quickly. You know the Lacanian you will have a field day with this unless you keep talking, so you add: “I don’t know exactly what you’re selling, and I don’t especially want to know, either. Because it’s clear to me that, whatever it is, whatever you call it, it’s very bad news.” (Wait—those words sound familiar. . . . Again, you know you’ve quoted something, but you can’t remember what. . . .) You need to keep talking, to distract him—to distract yourself?—from the word “normal.” You continue: “The last thing anyone needs is more bad news. . . especially from someone, from something, that isn’t even *real*.” You stop talking, yet there is only silence. Which, somehow feels worse than being interrogated about “normality.” You try to fill the void: “I don’t mean to be rude; I’m just telling it like it is.”

You, as Lacan, contemplate this response, as if to decide what warrants your immediate attention. After what seems to you, the familiar you, like an eternity—of feeling that you are being held in precarious suspension over a bottomless chasm—the Lacanian you speaks: “The impossibility of ‘telling it like it is,’ you say, “is only truth of which one can be certain. Telling it

like it is, *mon cher* Thomas, is *exactement* what neither you nor anyone else can ever do. For the ‘real’—in your extremely apt choice of words—is, by definition, more than one can possibly say. The *real* eludes creatures that dwell in language. One who dwells *on* language might catch a glimpse of the real from time to time, but rarely when he expects it. . . . Indeed, expectations are anathema to the real. Only when expectations are upset will it come into focus, if only fleetingly.”

“Look, ‘Docteur,’” you say, in a measured tone that you hope will sound academic and authoritative: “It is very late. You have entered my home without an invitation. You are disturbing my rest. You insist on calling me by a name that is offensive to my faith. And as far as I can tell, your ‘analyse’ consists primarily of repeating my own words back to me and making abstract and unsupported—indeed, unsupportable—assertions, which you seem to favor *not* for the sake of clarity but precisely because they violate the conventions of communication. I do not know by what bizarre trajectory you came to enjoy such games, and frankly, I do not care to know. I cannot speak more plainly than this: I have no interest in your theories, and I have no interest in you. So I ask you for the last time: kindly leave me in peace.”

You, the Lacanian you, know that you cannot do as you are asked. You wish to shout at this *américain*, this man who prizes his unshakable certainty and yet claims that he is guided by ‘humility,’ who boasts of ‘working for a living’ but tries desperately to avoid the work of living: “*Thomas, we must try to find where your truth lies! It is a question of ethics! You can never say what you mean, certainement not as long as you insist that you can, en avance, mean precisely what you say! You have pronounced the truth inter-dit; it is only between your words, in the banlieue of the interpretations that you have always already made on the order of l’Autre, that you can locate your lack. Only then can you mourn it! You refuse to speak the Nom du Père, because you are terrified by the Non-du-Père. Yet it is in your version du père that your père-version lies! You believe you are free because you and le discours that speaks you remain complètement inseparable!*” Yes, *inseparable*—of course! You have stumbled upon an idea (are not all ideas worthy of the name the result of stumbling, of *errance*?) You will try a different approach: you will tell Thomas a story.

“Let us make a deal, eh? I will tell you a *petite histoire*. An *espèce de* ‘fable.’ All I ask is that you listen until the end—which is also, in a sense, the beginning—and then I will leave, as you request, without posing even a single question about my *histoire* means to you, or for you, or—here you pause slightly, to ensure the carrot does not drop unseen— “for your troubles with this game you call *Separability*?”

You, the half-dressed Thomas, are surprised to find your ears, and your spirits, perking up. You had forgotten that, even after you tackle the general

problem of intellectual promiscuity among your employees, you'll still have to answer their questions about that inscrutable game. There's no harm, you decide, in sitting through a short story—especially if, once it's over, you will leave yourself alone. You nod in agreement.

You, as Lacan, begin: "Once upon a time, in the City of Athens, there lived a troubled young man named Plato. . . ."

. . . .

[As explained in the star footnote, above, the conclusion of this piece will appear in the Spring 2018 issue of *JSEL*, under the title *The Longest Transference*.]

