

DIES IRAE

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Jean-Luc Nancy or Justice as Ontology of the 'With'

Carlo Grassi

Justice does not come from the outside (what outside?) to hover above the world, in order to repair it or bring it to completion. It is given with the world, given in the world as the very law of its givenness. Strictly speaking, there is no sovereignty, or church, or set of laws that is not also the world itself, the severed [or carved up] trace that is both inextricable from its horizon and unaccomplishable. One might be tempted to say that there is a justice for the world, and there is a world for justice. But these finalities, or these reciprocal intentions, say rather poorly what such justice is. In itself, the world is the supreme law of its justice: not the given world and the 'such that it is,' but the world that springs forth as a properly incongruous incongruity.

—(Nancy, 1998, 189)

This text by Jean-Luc Nancy, presented in 1982 at the conference 'How are we to judge? Building on the work of Jean-François Lyotard', is dedicated to the theme of justice understood as an ontology of being as tying.

Nancy focuses on two main questions: what is the scope of the interrogation 'how to judge'? In what sense

can one say that who judges is at the same time judged by his own judgment, incessantly measured with the duty of judging?

By addressing these issues, Jean-Luc Nancy examines the description of the lawsphere as a harmonic balance with different components. This equilibrium, he underlines, would be possible only if the nature of the social actions could directly derive from a logic recognisable and obvious for all. As if there was not an assiduous and recurrent dispute between issues and opinions, findings and appreciations, being judgment and value statements: between the being of things, where meaning is accepted as identical for all members of the group, and the value of things, which is different for all members. Nowadays we have to accept that rules themselves can no longer be deduced from a single supreme principle to measure all others. In the absence of either any unconditioned criteria to trace back to, or any generalised metalanguage able to reconcile the discrepancy between rights and powers, the law unsettles, disrupts, disjoins, loses the possibility to act as a general equivalent and devotes itself to incommensurability. Unable to govern the lack of any common measurement, law appears more connected to rightness than to justice: more to adjustment or justness than to the *métrion* (the right measure) or to the *koinôn métron* (the common measure).

This condition does nevertheless not entail a larger freedom: it does not discharge itself from the obligation to decide; it is not exempt from the duty to pronounce and to tackle judgments. The 'falling short of the law', this breach to the law and of the law are, on the contrary,

what 'condemns [it] to the day of judgement'. It is precisely the non-deductibility of judgment, indeed, that decrees the '*dies irae*': that opens wide the doors to the time of apocalypse, the final verdict, the last judgment. Once the earth is Nietzschean-fashion unchained from its sun, once inside the dimension that Maurice Blanchot defined as the 'disaster'ⁱ, once discarded the use of a normative original prototype accredited to confer legitimacy to all that is compatible with his paradigm, the sentence of judging and being judged is the very *last instance*, without any further recourse: it excludes any option of appeal and derogation. Not only this; it makes evident that each proposition contains an implicit judgment, but also it obliges each to define and declare the rules of that judgment.

Consequently, freedom is no longer guaranteed by any legal, political or economic pattern. Hence, the results overlap with the imperative injunction of the responsibility: 'responsibility for what is neither knowledge nor revelation, for what is not available, for what does not even have concept or signification' (Nancy, 1999a, 291–292). Thus, freedom finally coincides with an unconditional demand or an unavoidable requirement to the ethical norm that exposes the individual by detecting its fini-

ⁱ 'If disaster means being separated from the star (if it means the decline which characterizes disorientation when the link with the fortune on high is cut) then it indicates a fall beneath disastrous necessity. Would law be the disaster? The supreme or extreme law, that is: the excessiveness of uncodifiable law – that to which we are destined without being party to it?' (Maurice Blanchot, 1980, p. 2)

tude, and performing its limits. Borderlines and freedom hit each other in the sense that they ‘figure’, they open to the ‘with’: because it is on the shadow line of the former that the latter begins. Experience of freedom, according to Nancy (1996, 69, 37; 1988a, 71), is the judgment day: the ‘spacing of compearance’, the ‘distancing and spacing which is that of Being and, at the same time, that of the singular and the plural’, the threshold that insists, repeats, starts and restarts, begins and recommences, each time more irreducible. It renders justice to existence because liability both binds and puts together: ‘freedom is immediately linked to equality, or, better still, it is immediately *equal to equality*. Equality does not consist in a commensurability of subjects in relation to some unit of measure. It is the equality of singularities in the incommensurable of freedom’.

Immeasurable, the world itself has a law and remains a law unto itself: the law of being at the same time singular and plural; the coexistence of singularities that incessantly reaffirms and disavows themselves from being confined to this world, without reciprocity, without measure, since ‘always and never affected, the limit is in sum both inherent to and exterior to the singular: it is *ex-posed*’ (Nancy, 2000, 104): an elusive world this, a trace of the border that exposes singularities to each other, which defines this and which leaves them taking place within itself. Today, indeed, as Nancy writes (2012, 15; 2005, 195, 196; 2002, 55), ‘the destitution of the Supreme Being has the direct and necessary consequence – the obligation of creating a world’. Hence, the world can no longer be understood ‘as a *cosmos*, according to the harmony that the Greeks

saw'; and even 'as a world created-separated by a creator located elsewhere'. It is, rather, 'an environment where we are and that it is not conceivable that from within. We live in a world, and not in front of it. Thus, one can say that we never see a world: we are there, we inhabit in it, we explore it, we are and we get lost'. It can be said that 'this world is coming out of nothing, there is nothing before it and that it is without models, without principle and without given end, and that is precisely *what* forms the justice and the meaning of the world'.

Inferred and not built, judgment imposes dogmatically itself on its subject matter and constitutes the latter as a result whose consistency is subordinated to logical prerequisites considered as valid always and everywhere. Rational necessities predate, include, and govern this coherence – that presupposes that they can illuminate hidden links of it without any doubt. In this case, judgment appeals to a totality, to terror and totalitarianism pertaining to it.

In contrast, there is the judgment that happens, the effective and deliberate verdict. It incorporates a body of work and proscribes in different contexts and in all sorts of sub-contexts. It embodies a multiplicity of movements as gesture performances, discursive acts, texts. It agrees not to be in charge of the preconditions and to not having knowledge of them except when carried out in practice. In this case, it introduces a different pattern of legal normativity: it allows the emergence, between laws and facts, of an independent order of combination of rule and case. Then, while not eliminated, the aporias of normativity defer from the ideal of the decision to the decision in

a certain place. In short, to the faculty to be, not indices of this compound, rather factors of related connections: to be builders of new and unknown relationships into the series in which they appear and they initiate. Disputes no longer appear in a network of concepts defined in advance, but they acquire a new relevance by investing into the margins that normally circumscribe the dimensions of the field and constitute the circumstances. Therefore, the link between facts and categories looks as if it is challenged, refuted, by the importance that indeterminate plurality of conjunctures acquires in opposition to the localised extension of norms.

Viewed in this way, the question posed by Nancy folds and enfolds in two margins that balance and overlap each other. On one hand, the law that is absent. A negative aspect that becomes a positive condition, the advantage of a bond, the usefulness of a tie: we have to create the law. On the other hand, the non-coincidence of law with the law of nature: the dissolution of any preliminary guarantee requiring the faculty of judging to transform its disproportion when measured.

These margins, briefly, obliterate the distinction between legal norms, which refer to a code, and the rules of the games, establishing programs. These norms bear reference to a specific system that will enable them. The rules structure the processes and are justified by the game itself: by the only motive that the guidelines leave possible to carry out. The former need a reason to depend on and to respond to: a theory or an ideology that claims an authority and ensures that it is legitimate. The latter, contrariwise, are self-sufficient: it is simply enough to play

the game that stems from them. Which means that it is not supposed to trace back to a primeval norm to reproduce mimetically, but to recognise the obligation to establish rules. This is the law of the law, which judges reason, handing it to judgment.

Once we consider the differentiation boundaries, intersection and dispersal related to the antithesis between code and program, then we may address the principle by which we cannot pass a judgment about something if we have not previously defined the object on which to output an assessment. We next interrogate the fact that, because community and disparity of intents, agreement and disagreement, communication and negotiation become possible, we need a preliminary and prejudicial discrimination between two distinct plans of correspondences: between assessments and appreciations, reality and thought, ontology and noology. We pose the query, in other words, about the immeasurable structuring between, on one side a figurative aspect, designation, reality itself that solicits us or asks us something; and, on the other side, a discursive aspect, commentary, meaning, a desire to stop the flow of opportunity and to frame it in a more or less stable hierarchy. Alternatively, quoting Jacques Derrida (1980, 119) on Heidegger (1938a, 131–132; 1938b, 90–92), emphasising the world understood as a 'presence (*Anwesen*) which seizes man or attaches itself to him rather than being seen, intuited (*angeschaut*) by him', where it is the 'man who is taken over and regarded by what-is': where the man is 'also an object, *Gegenstand*'. And yet on the other hand retaining 'an idea as an image in and for the subject, an affection of the subject in the form of a

relationship to the object which is in it as a copy, a painting or a scene.

There is thus a sharing, in the twofold meaning of stripping away and partaking, as a contraction between inside and outside: two-steps and a flow of reduction and amplification between legal norms and rules of the game. 'The one' – Derrida insists (1967, 369–370) cited by Nancy (1982a, 249) – 'seeks to decipher, dreams of deciphering a truth or an origin which escapes play'. 'The other, which is no longer turned toward the origin, affirms play'. The *telos* of rules, Nancy concludes (*Dies Irae*), is not something given in advance, an original model to join or to resume, but it answers to another disposition: 'to inhabit the world'.

Being affected by the game rules environment means that everything connected to the realm of the sacred fades from the body of law. *Lex aeterna* and *lex naturalis* abandon the field at the sole initiative of the *lex humana*, leaving the latter exposed to a new freedom because it finally finds in itself the strength and the sense that it requires. Within such a framework, normativity follows a double prescription. On the one hand, in the judgment is introduced the infinite remoteness of its *telos*. On the other hand, declining to establish the effectiveness of a judgment over an authority that foreruns and overwhelms it, the law ends by accepting the justification based on its simple performativity. That is to say, its ability to make valid and actual the generalisation of a system of singular plural dispositions through a function of agency and pacification.

Lacking a source of authority stemming from a previously established power, the law is in charge of legitimising this same power: it accomplishes this, by establishing itself as its own decisive limit. Authority, therefore, presents itself as *legibus alligata*. Exposed to laws, the authority accepts a general and preventive restriction that may decide on its revocability: limitation acting as controller, but at the same time, giving to authority the eminent *dignitas* that assures its recognition. This issue concerning the origin of power has very important consequences for social organisation. If the force of authority has an extra-human origin, societies cannot freely choose to structure themselves in one way or another: they must observe obsequiously the dictation of a transcendent will. When, on the contrary, we put the emphasis on its political source, we may entrust the legitimation to the experimental action (*praxis*) of the *universitas civium*.

Nomos and *exousia*, law and power expose each other. That is how, from one side, the first encloses the other but does not exist separately, and then also depends on it. While, from the other side, the second does not automatically equate with oppression or coercion. The strange in-betweenness of this couple exposes to us, not to itself, and we are exposed to it. As Nancy writes (2014, 43), 'it can expose—in the sense of make appear [*faire paraître*]-the exposition, in the sense of a limitless endangerment'. Hence, in the exposition, the compearance of the *demos*, the people, the ones with the others, offers itself as a body where *energéō* (ἐνεργέω) and *katargéō* (καταργέω), pow-

erful and powerless, will to power and will to chance, become interdependent and intermingle. Once enforced, they both cannot escape criticism and challenges: ‘the people’ – Nancy continues (ib., 33) – ‘remain or operate from within a compulsion to dissolve/reinvent the bond (of the law). Dissolution opens onto the infinity and absenting to oneself [*à soi-même*]. But reinvention is not a simple, determinate identification since sovereignty exceeds the law that it disqualifies [*réfuse*] while founding it’.

In contrast with ‘the polarity subject/citizen’, Nancy (1993, 112) rejects the tradition that, as Hannah Arendt (1961, 157) describes well, ‘is almost unanimous in holding [that] freedom begins where men have left the realm of political life inhabited by the many, and that it is not experienced in association with others but in intercourse with one’s self’. This indicates a public freedom, anteriority over a private or interior freedom. Or, to be more precise, for Nancy (1993, 115; 1988a, 72) ‘the common will’ of the population acts as fraternity and is superior to any other authority in the sense that fraternity ‘is not the relation of those who unify a common family, but the relation of those whose Parent, or common substance, *has disappeared*, delivering them to their freedom and equality’. That is ‘fraternity’ without father or mother, anterior and posterior to all law and common substance. Or if it were possible to conceive of ‘fraternity’ *as* Law and *as* substance: incommensurable, nonderivable. And if it is necessary to put in these *seizure of speech* (*prise de parole*): the emergence of passage of some *one* and every *one* into the enchainment of sense effect’.

At the outset, groups of co-citizens or fellow citizens fraternise in a social relationshipⁱⁱ. Like Nietzsche in *The Gay Science* (1882a, § 335, 212), they say 'we, however, want to *become those we are* – human beings who are new, unique, incomparable, who give themselves laws, who create themselves!ⁱⁱⁱ. By their conscious and voluntary association, 'with and in "civil"["*concitoyenne*"] coexistence as such' (Nancy, 1996, 31), current actions of all co-citizens and of each person create and develop a body of valuable rights in a territory and for an alliance of people. They design a set of rules whose validity does not derive from the society as a whole, nor from the *polis* as an abstract body, source, state or centre of the authority, but rather from the concerted actions of the very same men, who produce, use and judge it^{iv}.

Nancy emphasises (1988b, 89; 1988a, 74; 1996, 83), that these co-citizens live in 'an age in rupture. Which

ⁱⁱ Émile Benveniste (1970, 274; see also Balibar, 1989 and 2012) explains that the meaning of '*civis*' is precisely 'co-citizen.' 'The Greek word *polites* and the Latin word *civis*, both of which we translate as citizen, i.e., the active member of a "city" (...). In Latin the word *civis* is often constructed with a possessive pronoun, such as in *civis meus* or *cives nostri*. Once again, we find ourselves compelled to profoundly question the common translation with "*citoyen*" ("citizen", "*Bürger*"). For what could "my citizen", spoken by any person, possibly mean? The construction with the possessive reveals in fact the true meaning of *civis*, which is a term of reciprocal value and not an objective designation: he who is *civis* for me is someone for whom I am the *civis*. The best approximation would be the name "co-citizen" or "fellow citizen", in terms of a mutual relation.'

ⁱⁱⁱ '*Wir wollen die werden, die wir sind - die Neuen, die Einmaligen, die Unvergleichbaren, die Sich-selber-Gesetzgebenden, die Sich-selber-Schaffenden!*' (Nietzsche, 1882b, § 335).

^{iv} 'Creation is not first of all production, but expression, exposition or *extraneation* of the "self"' (Nancy, 1999b, 275).

means also: they take responsibility for this age, because the questions they are discussing, and especially here, obviously engage in all the ethical and political challenges of our time'. They therefore allow themselves to replace the royal palace with the public space (political space or the political as spacing) of the *agora* (even if 'the images of the *agora* or *forum* could be misleading') and feel free to do so because they look at the past with eyes that no tradition distracts. In this sense, they trigger a commencement that is more than a starting point. It is a continual creation of a plurality of origins: 'it is both a principle and an appearing; as such, it repeats itself at each moment of what it originates.'

To put it in a different way, they open a breach in which it can finally get its consistency:

- i. a freedom experienced by acting and associating with each other's;
- ii. an authority without mores and customs;
- iii. norms established empirically no longer subject to time-honoured standards and patterns.

There is, Nancy writes (1988b, 92), 'not freedom as the property of a subject ("the subject *is* free"), but freedom as the very experience of coming into presence, of being given up, necessarily/freely given up to the *to* (the *to* of the "towards", of the "for", of the "in view of", of the "in the direction of", of the "along side", the *to* of abandoning to, of the offering to, of "to one's core", of the "with regard to", of the "to the limit", and also of the "to the detriment of", "to the bitter end": freedom is wherever it is necessary *to make up one's mind to...*)'.

These *condives futuri*, 'children of the future,' '*Kinder der Zukunft*,' are open to the *adveniens*. Likewise in *The Dawn of Day* of Nietzsche (1881, 8), they are in fact initiated into the mystery of Trophonius; in order to access his cave they must drink consecutively Lethé's water, which clears the mind of the memory of the past, and Mnemosyne's water, which enables the holding back of what would otherwise happen^v. Therefore, they reach the contents of their alliance in the darkness of becoming and moving: in an interval between event and form, *nunc fluens* and *nunc stans*, in an 'interspace between world and toy,' between 'stream and stone'^{vi}.

Otherwise, in the words of Emmanuel Lévinas (1957, 47), they touch the thickness of their link in the dark vault: 'a future already sensed in the present, but still leaving a pretext for decision' and hence in a wave of the time to come considered as a strength and not as a burden. Namely, Nancy highlights (1999a, 293, 295; 1991, 372), the future intended 'not in the sense of something that will "definitely be there tomorrow" but, on the contrary, in the sense of something risked in the manner of the unknown and unforeseeable character of what is still to come.' Consisting in 'an encounter, a work, an event; and

^v 'We children of the future. We "conserve" nothing; neither do we want to return to any past periods.' '*Wir Kinder der Zukunft*'. *Wir "konservieren" nichts, wir wollen auch in keine Vergangenheit zurück*' (Nietzsche, 1882a § 377, 338; Nietzsche, 1882b, § 377, 277; see also Nietzsche, 1887, *Second Essay: 'Guilt', 'bad conscience' and related matters*, § 24).

^{vi} (Rilke, 1911–1922, 30, 16), *Duino Elegies*: 'im Zwischenraume zwischen Welt und Spielzeug', *The Fourth Elegy*; 'zwischen Strom und Gestein', *The Second Elegy*.

once the future has become present, once the encounter has taken place, the work realized, the event faded, then sense—their own sense—moves along again, passing beyond and elsewhere.’ Where we live as it was ‘the Day of Judgment’. The *dies irae*, the day of divine wrath is, undeniably, ‘no longer a day at all but a night from which our days are obstinately woven.’

From there, continues Lévinas (ib., 42, 47, 50, 51), starts the conjunction and the adjustment between memory and imagination that testify ‘at the same time being and experience of being’, ‘control and possession, as a field of forces in which human existence stands, in which it is engaged’. Where ‘the self that is in their grasp decides, is engaged, takes responsibility’. Where, he concludes “‘to exist” becomes both a transitive verb like “to take” or “to seize”, and a reflexive verb like “to feel” [*se sentir*] or “to stand” [*se tenir*]. The reflectivity conveyed by this verb is not a theoretical vision, but already an event of existing itself; not a consciousness, but already engagement, a *way* of being, qualified by all the circumstances one would have been tempted to take for settings’. This state of being alive, ‘in which the existent is both separated from everything and engaged in this everything, is associated with the social experience in which the autonomy of personal existence is not separated from belonging to the group.’

In this way, the co-citizens build a particular rule that steers against the supposedly objective law. Leading to a deconsecration of the *auctoritas* morphed to a simple device, left without the function of general equivalent and thaumaturgy for resolution of disputes. They claim

their heterogeneous subjectivity, 'singular plural', by which normativity is legitimate solely when it respects and enforces the inevitable presence of the *différend*: exclusively when it derives from conflict and negotiation between separate, different, antagonistic, even conflicting positions. They thus dethrone the metajudicial principle related to *lex aeterna* and *lex naturalis* insofar as they – the co-citizens – consider that these two elements are not able to define the *commune mensura* that tames the excessiveness of the 'singular plural': they underscore that the two aspects are pure and simple choices.

They also overturn the hierarchy granting the state the role of absolute source of authority understood as collective consciousness synthesising and safeguarding the spiritual and material interests of the society's members. Bounded by law, subject to the law, a government can create or change laws, but after that, it must comply with it. A government remains devoid of valid investiture and becomes wrongful usurpation when it concentrates a higher power than that allowed by the regulations in force, when it disregards laws, interprets *contra natura*, or when, to preserve the exercise of power, uses intimidation or restriction of rights. 'The institution of the law by the will' – Nancy writes (*Dies Irae*) – 'is itself designated only through submission', but 'undoubtedly, the mode of this submission is not that of subservience to a constraint that would be incompatible with freedom.' The law, as Hannah Arendt (1961, 187, 189, 166) points out, is not a command given to subjects by a power, but the capacity to relate co-citizens: 'the original meaning of the word *lex* is "intimate connection" or relationship, namely some-

thing which connects two things or two partners whom external circumstances have brought together'. Therefore, the law does not 'require a transcendent source of authority for its validity, that is, an origin which must be beyond human power', but only an 'organized multitude whose power was exerted in accordance with laws and limited by them'.

The *populus*, meaning the complete *populus* without any exceptions, i.e. *universitas concivium*, 'primordial plurality that co-appears', 'simultaneity of being-with, where there is no "in itself" that is not already immediately "with"' (Nancy, 1996, 67, 68), is the ultimate source of legal authority for the simple reason that *quod omnes tangit ab omnibus approbari debet*: each one must approve what pertains to everyone. Obviously, if what affects everyone must be approved by any other actor, by extension the exercise of political power is legitimate only in established boundaries: a political power that does not set any limitation is nothing else than tyranny or 'empire'. Law pilots the government and provides the verification procedures by the popular assent without which government itself loses any legitimacy.

From this standpoint, there is a new priority afforded to a jointed/disjointed multiplicity of 'lifetime' as a political node. This primacy grasps and gives voice to everyday life. It neutralises thus the coherent rational argument as unique possibility and pushes forward the recourse to sensitive intuition, enabling the acceptance and understanding of contradiction and paradox. The trust in personal responsibility and in individual initiative becomes

the key fulcrum of the social organisation. Finally, uninterrupted communication brought forward by personal media encourages an active and concerned participation of any singularity within public debate. It promotes the dissemination of organised groups and free associations. Often excluded from the political area, the co-citizens can then be auto-structured in the form of specific affiliations promoting their own statutes. These co-citizens thus introduce unusual relations that displace the political game and jeopardise the regulation of its related policy frameworks by refusing the dispositions with which the latter would like to capture them. They indeed bring to light the presence of multitude: the obscene world of the uncountable, incalculable and innumerable.

This particular law '*concitoyenne*' has not the character of a codification: it bypasses the established measures that serve primarily to be applied. It performs indeed a dynamic process of a simple look-up table correlating facts and their respective qualifications and, drawing on Jacques Derrida (1980, 124), in this context, it announces 'a coming to disclosure, to appearance, to patency, to phenomenality rather than the prepositionality of an objective being-before'. It improves an engagement that privileges innovation over continuity. Far from finding its groundings in the anamneses of the past, it emerges as a project at the end of a collective effort of designing, duly circumscribed in its course, and its origin and its end. That is a common program, which, beyond all individual, social, and cultural differences, is the invitation to create a proper aggregation, not by virtue of the same origin but of shared aims.

This adverts to the denial of all systems and of all beliefs that reflect the authority of the good old days, and displays concomitantly the renunciation of the natural world as basis of legitimation. From the common program emerges the pervasiveness of what occurs in a mutual agreement: its core purpose is the revolt against pre-established conditions and the refusal of not only tradition as such, but the authority of all traditions. This prevalence is characterised also by the scepticism around cultural heritage. The diffidence towards a frozen image of the past assaults the *a posteriori* identification with what has been successful in former times. From this position, the idea that all that has already happened becomes immutable is collapsed, and we stop to side with the last or the most recent winner. The main outcome is an open experience of history according to which the past manifests itself as charged with the time of now, as a choice but also as an occasion: as a memory that is constantly erased and renewed, within which what is valued the most is the capacity to pursue freely chosen objectives, to reach independently established goals. By prioritising the becoming rather than the belonging, the pre-eminence of the future helps to make more habitable a world that defies us all the time. The emerging present, always 'to come', gains primacy over ageless roots as the starting point. Equally, metamorphosis predominates over the familiar and the habitual; hence, alterity prevails over identity and disruption over convergence. This process enhances the prerogatives of plurality, disparity, heterogeneity, chance, and thus we reach what Nancy (1996, 202; see also Esposito and

Nancy, 2001) calls the 'unachieved and unachievable essence of the "with"'.

Law inevitably contains in its corpus many series of unavoidable contradictions. On the one hand, it provides descriptions that refer restrictively to itself and its own ordinations. The archaic potency that anticipates and prefigures legal normativity becomes unnecessary, so confining its implication within its specific set of rules. It refers mainly to a movement of thought that does not take into account any previous knowledge and which rids itself of its author. Nevertheless, on the other hand, it frames actions, establishes a univocal meaning and then crystallises the principles and values landscape shared by the community. In other words, it wedges a hierarchy of priorities that is generally also a moral one; it ballasts the plasticity of social processes, and finally places restrictions on the actions and on meaning freely attributed by social actors.

Thus, Nancy focuses on the necessary reciprocity of the legal relationship between those who temporarily manage public affairs and the population to whom they belong. This intersection provides that the ruling class does not curate the power, but performs a function that is subordinate. Through the quality of administrators, they are subservient to the charge they are responsible for, because they are not masters, but servants of the public singular plural who is the real *dominus*. Therefore, by drawing from the law its *potestas*, the right to rule, law needs to subordinate itself to its own provisions. These are therefore put on the agenda, those issues concerning the demarcation of governmental action and the

obligation of public recognition, the active participation of groups of co-citizens in political life and affirmation of fundamental human rights: 'this is, to be sure, a matter of *human rights*, but, first of all, as the *rights of human beings to tie (k)nots of sense*' (Nancy, 1993, 115).

In this frame, rather than the ideal of totality, Nancy (1999a, 289) affirms the 'disjunctive conjunction' of 'singular plural' which means that each singularity corresponds to all other singularities. In this sense, becoming a man means to put each other in the double position of judging and being judged.

Far from invoking a universal tablet of rules that we should strictly observe, it must appear through exposure, it must '*compear*'. At any time, to be 'responsible for being, for God, for the law, for death, for birth, for existence'. In judging – he writes (*Dies Irae*) – 'I venture a "reason" (or an unreason), that is so judged by what it attempts or risks'. Consequently, I do expose myself to freedom, to the will of chance, into my own body understood as a *res intensa*: tragic hiatus (spacing-opening) of irremediable disputes never solvable. I am judged against the measure of the world that I attempt, for which I try my chance, and not against the measure of a world that is already established. Every attempt is my final judgement^{vii}.

vii "La *comparution*": refers to the act of appearing in court having been summoned. "Summoning" carries a much stronger notion of agency than the more disembodied *comparution* and lacks the commonality implied in the prefix. The Scottish commonlaw term "compearance" - although foreign to most English ears - conveys the meaning exactly and I have retained it' (Strong, 1992, 371).

All this reveals how the sphere of law at the last correlates with a constitutive plurality of irreconcilable factors. It governs the past because it decides upon the resulting consequences and thus adjudicates the last stage of its meaning. It governs the future, on which rests the weight of the attributions of responsibilities arising out from its given interpretations. However, its power is fully carried out only in the present because, until a judgment is pending, it opens a breach in the chronological window: time is petrified for the subjects who remain unable to move forward or backward until the final ruling. Even more dramatically in case of minors, it opens a little *not-space-temps* at the core of time and time just progresses without moving because it stays always hovering and teetering on the edge of the decision. 'Thus, of itself, what is positive intervenes in the law as the contingent and arbitrary, but only to *put a term to the process of decision*' (Nancy 1982b, 141).

The option of choice Nancy concludes (1991, 372; 1993, 111; 1990, 147), entails a common condition that exposes the little *not-space-temps* to us: 'we compare before it - neither "post" nor "pre". But it is the present that is made for us'. This common condition has no denouement. It is a strange loop lacking conclusion and untying: 'without any end other than the enchainment of (k)nots'. The jurisdiction brings into play a sort of 'art of the weaver', an 'infinite tying' that makes up a network of the '*communicability*' where the *conceives futuri* can inhabit 'neither *cosmos* ("smile of the Immortals") nor *mundus* ("vale of tears")', but the very place of sense.

Surviving themselves and events, bodies and actors (*personae*) guarantee, judge, arbitrate. They create storylines in which they try to compose a logic, tie and untie the contradictory knots correlating the assertion of the presence/absence of something with the description of a meaningful context. Between document and monument, trace and memory, autopsy and archaeology, they testify and question the complex relationships between who relates, who listens, who tells a story. Between firstly those reports to refer to and, secondly, those records that are received, who testifies is at the same time the hearer of a story in which *he himself is told*. *He himself is revealed* in the sequence of events, in what he says, in what he means, in what he omits, in what he leaves out, in what the others recall directly and indirectly: clear, convinced, precise, or uncertain, vague, confused, hesitant. The difficult research for an acceptable description, for each one and for all, passes through a narrative pragmatics that presents just a few options among the plethoric possible scenarios: accepting that, at the end of the process, only a few stories prevail. The result is composite histories, coherent-incoherent agglutinations of snippets torn to pieces, arbitrarily arranged, awkwardly adjusted, clumsily adapted, unskillfully pasted together.

At the last (*Dies Irae*; see also Nancy 1999b and 1999c), ‘the day of judgement is not *dies irae*, the day or rather night of religion and fear, it is only *dies illa*, that illustrious day, the sublime day when freedom, law, and the other give me order and the gift of judging’.

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Dies Irae

Jean-Luc Nancy¹

for Hélène

One must have confidence that the court allows the majesty of the law its full scope, for this is its sole duty. Within the law all is accusation, advocacy, and verdict; any interference by an individual here would be a crime. (Kafka)²

Those two races still preserve pagan terms. They have no word for Christmas (which they call 'Jul') or for the Last Day or General Judgment. This they call 'Ragnarok.' (Joyce)³

¹ This document is a transcription of the paper presented by Jean-Luc Nancy at the conference 'Comment juger? À partir de Jean-François Lyotard' ('How are we to judge? Building on the work of Jean-François Lyotard'), directed by Michel Enaudeau and Jean-Loup Thébaud, at Cerisy-la-Salle, 24 July – 3 August 1982, at the Centre Culturel International de Cerisy-la-Salle, directed by Edith Heurgon. We wish to thank Jean-Luc Nancy and Edith Heurgon for permitting us to publish this text in English translation. The bibliography was created by Carlo Grassi.

² Franz Kafka, *Advocates*, trans. Tania Stern and James Stern, in *Collected Stories*, ed. Gabriel Josipovici (New York: Alfred A. Knopf, 1993), 417.

³ James Joyce, *Letter to James Stephen*, 7 May 1932, in *Letters of James Joyce*, ed. Stuart Gilbert (New York: Viking, 1957), 318.

And so let us begin at the beginning. That is, with the Greek. If I take the name 'Lyotard' and separate the two syllables (as Baruchello did on the cover of *Au juste*, published in English translation as *Just Gaming*), and pronounce it in Greek: 'luô tar', I find that it reads 'I judge, know it!', 'I loose, I separate (luô), I judge, yes, you can trust me on that!' (*tar* is a crasis for *toi ara*, 'to you, then', which can be translated as 'I tell you', 'know it'). Lyotard himself says 'luô tar' when he claims: I write for political reasons, because it could be useful, because, for example, it seems to me that the prescriptions of what I call paganism should be followed.⁴

I judge, then. Lyotard, ultimately, has continued to emphasise this obvious fact in his latest work, or more precisely he has continued to call us to face this obvious fact (as others call a speaker to order): I judge, we judge. We impute actions, attribute values, assign aims. A whole vein of becoming-modern and postmodernity in thought, art, and politics has been conducted according to one of its specific traits, that of presenting itself as purely 'constative', in the manner of a sort of infra-Hegelian necessity (while of course claiming to be anti-Hegelian). They made statements about the era's destiny and its tendencies. They described a collapse, a fragmentation, mechanisms, connections, desires, and pleasures. Lyotard reminded us that all that involved judgement—in both senses of the expression: it already included a judgement, and it called for judgement. He therefore roused this modern reasoning

⁴ Jean-François Lyotard and Jean-Loup Thébaud, *Just Gaming*, trans. Wlad Godzich (Minneapolis: University of Minnesota Press, 1985), 17.

from its anti-dogmatic slumber. It no longer believed that it judged, it recoiled at the very suggestion that it enforced the law when all our sentences, as it believed, had already been passed or were being passed. It had nourished itself in private on Hegelian judgement, this judgement pronounced simultaneously by all things (since ‘all things are a judgement’)⁵ and by the . . . ‘world’s court of judgement.’⁶ But in reality it judges and must judge, and with a very different sort of judgement from that of the world’s court of judgement. Lyotard judges that we judge, and that we must judge. And I judge this with him—by which I mean more and something different from simply recognising the importance of his work or subscribing to certain propositions. I *share*—in the strongest sense of the word—in the movement of this judgement. And my only aim here today is to explain this sharing, that is, a commonality of movement that precedes by a long way any discussion of theses, and a difference in the manner of responding to it, a difference which undoubtedly gives rise to discussion (that *discussion* that Patrice Loraux warmly recommended to us yesterday), but which does not lead to a confrontation. Although I shall try to respond in a different way to the question *how are we to judge?*, I will not be confronting Lyotard’s own response with an antagonistic one. For, as we know, this question brings into play the very game

⁵ Georg Wilhelm Friedrich Hegel, *Encyclopedia of the Philosophical Sciences in Basic Outline: Part 1: Science of Logic*, ed. and trans. Klaus Brinkmann and Daniel Dahlstrom (Cambridge: Cambridge University Press, 2010), §167, 243.

⁶ Georg Wilhelm Friedrich Hegel, *Outlines of the Philosophy of Right*, ed. Stephen Houlgate, trans. Thomas Knox (Oxford: Oxford University Press, 2008), §340, 315.

(or system) of response. But nor will I be idly playing a language game of my own, in parallel with Lyotard's. More 'seriously', if I may say so, but without the 'seriousness' of the metaphysical phrase (that sentence whose criterion is always-already guaranteed by its own terms), I am trying to ask: what does the question, *how are we to judge?*, want from us?

This attempt cannot be, and does not aim to be, systematic (but you may well judge that it is already too systematic . . .). On principle, by the principle of the very absence of principle that is inscribed at the heart of the question, I shall avoid producing a sustained and unitary form of speech. I also feel bound to a certain poverty, and thus to a certain slowdown in answering this question. What does the question want from us, since it precludes a response, any response that would be full, direct, and truthful (let us say, an onto-theological response)? And yet what does it want from us, since it is asked, and it is asked because, in fact, we judge? We must first respond to the insistence of the fact of the question, rather than the demand or interrogation as such. To 'respond' then means to experience and obey. We must experience this insistence, and obey it, and so commit to taking it up, repeating it (which means, in Latin, to ask again) several times and in several ways. I shall try to repeat, to recite the question, the fact and the question of judgement—to let us feel the weight and insistence of their demands. Since I am—since we are—already caught in these demands, and already judged by them.

We will come back to this later, but I shall say this much without any further delay: when I judge, I am judged. At

every moment I am measured against the demands of the duty to judge, and measured against the insistence—perhaps beyond measure—of the question of judgement. That moment when I judge, whether yesterday, today, or tomorrow, is always the day of my judgement: *dies irae*. For these reasons I shall speak in discontinuous fragments (seven of them), without recourse to any theory of fragmentation, but quite simply responding to that insistence and that poverty—or again, to that aspect of the question that forestalls my speech, interrupts my discourse. For judging is not the same thing as discussing; even less so, being judged.

ONE.—Lyotard deploys Kantian resources—or one fundamental Kantian resource—to respond to a question that is not in itself Kantian. The question *how are we to judge?* does not present itself to Kant, who is instead concerned with showing the soundness of the judgement employed in critical reason, which both makes it capable of judging itself, and unfailingly reveals to that critical reason the rule that it must follow. The question is no sooner posed than it is resolved—better still: the fact of its being posed is already its resolution. As the introduction to the ‘Transcendental Doctrine of the Power of Judgement’ states, transcendental logic has the privilege of not abandoning judgement to its nature as a ‘peculiar talent’ that ‘cannot be taught’,⁷ since ‘besides the rule . . . it can also specify *a priori* the instance to which the rule is to be

⁷ Immanuel Kant, *Critique of Pure Reason*, trans. Norman Smith (London: MacMillan, 1929), 178. [Translation modified].

applied', and this instance is one in which we are limited to the 'sensible condition' of experience.⁸ Correlatively, the faculty of judgement, which is excluded for that very reason from theoretical reason (its dialectical *lapsus* with regard to the unconditional) returns as a practical *factum* of reason, which urges it to judge (and to act) according to the unconditional and universal. Since this universal—this final end—could not be made present, we shall judge it analogically, or *as if*, by a regulative Idea or a postulate—which will be for example, and more than just an example, a *kingdom of ends* in the form of a community of reasonable beings.

It seems to me that *Just Gaming* retains the essence of this argument. I shall not repeat here a reading of this book (and in any case, I cannot concern myself at present with all sorts of other propositions or suggestions in the book which intersect with this argument without always being strictly subordinate to it; nor shall I concern myself with the differences between *Just Gaming* and later texts by Lyotard: for they do not affect, as I see it, the essence of this 'regulative' argument). The rule, in *Just Gaming*, is precisely 'the Idea of a totality of reasonable beings', which is valid only as a 'postulate [that] is only postulated . . . as a horizon . . . , an Idea, without any reality'.⁹ And this rule is provided by 'a reflective use of judgement, that is, a maximization of concepts outside of any knowledge

⁸ Kant, *Critique of Pure Reason*, 179.

⁹ Lyotard, *Just Gaming*, 76–7. Lyotard is referring to the idea of a 'whole of rational beings', in Immanuel Kant, *Groundwork of the Metaphysics of Morals* [1785], ed. and trans. Mary Gregor (Cambridge: Cambridge University Press, 2011), 62.

of reality'.¹⁰ The difference with Kant, however, is found in the nature or the content of the Idea: in place of the Kantian Idea of a final totality or unity, we must substitute 'the horizon of a multiplicity or of a diversity',¹¹ and the goal of 'the idea of a justice that would at the same time be that of a plurality'.¹² Lyotard is perfectly aware of what he is getting himself into. He states that, 'when one thinks of justice according to a nonunitary teleology, one tends merely to reverse what was implied in Kant's doctrine'.¹³ And it seems that we should read this critique of a 'simple reversal' as being homologous to the critique that Heidegger directed at Nietzsche on the subject of Platonism. Lyotard overcomes or outplays the difficulty by appealing to the irreducibility of language games (narrative, prescriptive, etc.), which justice maintains in their irreducibility to one another, a justice that therefore leads us finally to the constitutive plurality of language, to the absence of 'universal language or generalized metalanguage'.¹⁴ From this point, justice consists in never speaking *the* law—one law for all language, the terror. And the single paradoxical prescriptive of universal value 'prescribes the observance of the singular justice of each game'.¹⁵

I am not sure that the difficulty he recognises is entirely overcome in this way, nor that he has eliminated the risk of remaining in a 'reversal' of Kant, and furthermore we might wonder how far he actually reverses a Kantian idea

¹⁰ Ibid. 75.

¹¹ Ibid. 87.

¹² Ibid. 95.

¹³ Ibid. 96.

¹⁴ Ibid. 98.

¹⁵ Ibid. 100.

of community that is a long way, if we look closely, from excluding diversity and plurality in favour of a simple totalisation.¹⁶ In fact, we find ourselves faced with the functioning of two terms: on the one hand we have the *Idea* of plurality as such, which subsists, if I may put it this way, as an *Idea*, which is the *Idea* of the law as law of language, or language as law, and which expresses itself as such, in something like a universal singularity; on the other hand we have the given, established, exposed particularity of language games, which is also, as Lyotard emphasises, a dynamic, inventive, or creative particularity, modifying its own rules, producing new ‘moves’, and testing the limits of each singular field of play. The logic of their functioning is that the two terms must judge one another. In the first case, the *Idea* judges the particularity. That is, since it makes no prescription about how the particularity should be dissected, it prescribes only that there must be a universal presence of particularity. And, in these conditions, either the *Idea* continues to act as a final, unitary, totalising (but not totalitarian) *Idea*—it remains an onto-theo-teleological *Idea*, even though it is actually only an ‘*as if*-onto-theo-teleology’ (after all, how does the ‘the ‘*as if*’, change its structure? It inscribes it with the mark of unreality: but isn’t that nothing more than a reversal of ontological realism?)—, or alternatively (or rather at the same time, since the two hypotheses are not mutually exclusive), the particularity to which we

¹⁶ This same point also emerges from Lyotard’s later work on Kant’s political thought. Cf. Jean-François Lyotard, *Enthusiasm: The Kantian Critique of History*, trans. Georges Van den Abbeele (Stanford: Stanford University Press, 2009).

must do justice presents itself empirically and without any Idea of itself other than the general Idea of particularity, according to the circumstances, games, inventions, and modifications at hand. Lyotard says that justice must intervene to purify impure games, such as narrations that are infiltrated by prescriptions¹⁷: but from what standpoint can the types of ‘purity’ in question be determined? Once again, either from the empirical—if there can be such a thing as empirical purity—or from an Idea which would then exceed the limits of the simple Idea of particularity *in general*. In this first case—or, perhaps, in this first moment of functioning—it would therefore not be impossible that we might stay trapped in the classic opposition between the ideal and the empirical, which allows for both of these elements, whether dialectically or not, to be satisfied. But this satisfaction is very unlikely, as we know, to be that of justice. There can be a terrorism of particularity, even if Lyotard himself is beyond suspicion on this count.

In the second case—or second moment—the given, effective, and inventive particularity would judge the very Idea itself. It would not let the Idea stand—at least, this is a possibility—only as the Idea of particularity in general, but would prescribe such and such a particularity. At most, or at worst, it would establish a law of *its own* particular particularity—and once again we run the risk of terror—and at least, or, at best, it would disturb, destabilise, or set adrift the very universality of the Idea, and arouse the suspicion that one cannot only prescribe

¹⁷ Lyotard, *Just Gaming*, 96–7.

a respect for particularity, that the law perhaps prescribes something else again, which would be neither particular nor universal. In other words, this second moment would make us ask whether the quantification of the prescriptive is sufficient to guarantee its legitimacy.

What I call the 'quantification of the prescriptive' amounts to positing two possible cases of 'judging well': for Kant (according to Lyotard), it was according to the rule of totality; for us, it must be according to the rule of plurality. But there are two cases—manifested throughout history—of response to the single question: How are we to judge *well*? How are we to judge *correctly, rightly*? We presuppose that the law can only be the law of what is done *well*, of *rightness* or *orthotès*. And this is indeed the horizon or 'orthonomic' background of Kantian law, in accordance with the rationale that I reconstructed earlier. Transcendental judgement detaches justness from a determining judgement limited to the sensible condition of experience, and offers the unconditional form of the Idea as the norm of practical judgement. This unconditional form would function hypothetically *as if* it were determinant, but precisely in this case it will nonetheless determine its rule according to what Kant calls the *type*, namely the analogon of a schema (or the legal constitution of a phenomenon): and this *type* is that of a legal rectitude and conformity under the appearance of a *nature*. In this reasonable and moral nature we find, if not the actual aim that was to be reached, then at least the type to be imprinted on every judgement and in (or by) every action. We can either conceive of this nature as totality, or we can conceive of it as diversity and particularity.

However, I am far from sure that Lyotard is ready to conceive of the 'kingdom' of particularity, if I may call it this, as a 'nature', if only because he attempts to conceive of it as language. Undoubtedly we could push our analysis further, and go as far as suspecting that the Lyotardian concept of language covers another sort of 'nature', that is, a sphere of simple orthonomy (in the plurality of 'games' and their 'purities'). But I shall instead give him the credit of thinking that, through the themes of particularity, mobility, and the inventiveness of 'language games' and their 'moves', it is the specific difference between language and the general idea of 'nature' that he is calling into question. From this point, it seems to me that he is calling on himself to take up his own demand in a different way. And therefore also to take up and play out in a different way his relation to Kant.

And perhaps too from the following precise point, which we must now consider: Lyotard actually doubly distances himself from Kant. First, by substituting plurality in place of totality, and then by criticising Kant's presupposition of the Idea as an idea of totality, and for not making judgement '*absolutely* undetermined'.¹⁸ There are therefore two demands: one in relation to particularity, the other in relation to the indetermination of judgement. However, it is not certain that the satisfaction of the first demand necessarily leads to the satisfaction of the second. It is not certain that it is enough to posit particularity for us to have an 'undetermined' judgement (that is, in Lyotard's sense, a non-determining judgement, a judge-

¹⁸ Ibid. 87. Translation modified.

ment that does not construct and therefore does not dogmatically impose its object: for Lyotard, totality as Idea and totalitarianism, or terror, are connected). This is what I tried to show a moment ago: particularity can function, in a way, as if it were a totality, by a sort of return of the *as if* mode we could call Lyotardo-Kantian . . .

The 'indetermination' of judgement therefore plays out somewhere other than in the assignation of particularity. Perhaps it plays out—and this is, once again, the direction in which I think one of Lyotard's demands leads—less in the content of the Idea than in the status or nature of judgement itself. And, for this reason, it would respond less to the determination of the question 'how are we to judge *well*?' (which is ultimately the normal, orthonomic meaning of the question *how are we to judge*?) than it responds to the insistence of what we must call the question of the question 'how are we to judge?', or the insistence of the question: How does judging happen? What is at stake? What does judging want from us?

Only by examining the status of the judgement in question (or that which questions us) will we perhaps be able to address both the difficulties and the relation to Kant—or to discover that Lyotard's thought involves, inadvertently, a different Kant from the one that he presents most explicitly.

The judgement in question is reflective judgement. Lyotard characterises it as 'a maximization of concepts outside of any knowledge of reality'.¹⁹ Kant's text undoubtedly allows us to corroborate this definition in several

¹⁹ Ibid. 75.

respects. It does not, perhaps, allow us to be satisfied with it. On this definition, reflective judgement directly pursues the trajectory of determining judgement, extrapolated outside the limits of possible experience. And on the condition of the hypothetical mode of ‘as if’ or of ‘analogy’, this judgement would determine (how could it not?) an object that would no longer be an object, an Idea under which would be subsumed the maxims of actions, just as the sensible determinations of the object are subsumed under a concept. In both cases, the manner of obtaining legality would be the same (and this is also what would support, to a certain extent, the logic of ‘nature’ as *typical* legality).

But reflective judgement is perhaps not simply the extrapolated analogon of determining judgement. In this respect—if you will permit me a brief digression—, we must first recall that determining judgement, acting in the sole sphere of knowledge, is itself dependent, for its possibility and its functioning, on ‘synthetic principles of pure understanding’ which, at least as far as dynamic principles are concerned (the *analogies* of experience and the *postulates* of empirical thought), are not ‘constitutive’ but ‘regulatory’, and ultimately offer, over the course of Kant’s work, the prefiguration of reflective judgement.²⁰ These principles are regulatory because they ‘are to bring the *existence* of appearances under rules *a priori*’; however, this ‘existence cannot be constructed.’²¹ Regulation is that which is concerned with existence, with the unconstruct-

²⁰ Kant, *Critique of Pure Reason*, 194.

²¹ *Ibid.* 210.

ible effectiveness of that limit-concept, which is the very 'concept' of being according to which existence is not a predicate of the object, but rather its position in being, either given or non-given, happening or not. This position *in* being is a position *of* being, or rather being itself as a position: this is 'Kant's Thesis about Being' according to Heidegger, a thesis that 'belongs to that which remains unthought in all metaphysics,' for the presence of 'posited-being' is not being (which, itself, is not), but that which being 'allows to be.'²² Unconstructible existence is that which being *allows* to be, it is not necessary, it relates to a gift (and not to a *datum*) and with a becoming (and not with a construction). Regulation in general concerns a gift and a becoming (which appear here as preceding theoretical possibility itself). It concerns the becoming of a world, a *fiat*, but a *fiat* that is only an allowing-to-be. And the *fiat* may be inseparable from the *dies irae*, the creation of a world of judgement, even if we must conceive of them both without God.

Reflective judgement corresponds above all to the situation in which the law is not given (and if, as I have just outlined, we must place the third *Critique* 'before' the first, that would mean that the law is never given, from any point of view). But this negative condition—the absence of construction and of a law of construction—corresponds to a positive condition—or at least a condition that has

²² See Martin Heidegger, *Pathmarks*, (Cambridge: Cambridge University Press, 1998), 377, footnote n° 1, *Kant's Thesis about Being* 1. Originally published in *Southwestern Journal of Philosophy*, vol. iv, no. 3 (1973), pp. 7–33. Present version edited and revised by William McNeill, Ted E. Klein Jr., and William E. Pohl.

the positivity of a constraint, an obligation: the obligation to find the law. 'If . . . only the particular is given and the universal has to be found for it, then the judgement is simply *reflective*.'²³ Reflective judgement *must find* (*soll finden*). It must invent the law, it must produce the universal by itself. But it must not produce it as a phantom, a fiction of an object or objectivity that would more or less fill in a lack in the theoretical possibilities of reason. Certainly, this tone or suggestion is also present in Kant's text, and especially when he is warning the reader against the *Schwärmerei* that hypostatizes regulatory Ideas. But essentially it is not fiction in this sense that does the work of reflective judgement. It is *fiction* in the strict sense of fabrication, the *poiesis* of the universal—a *poiesis* that immediately and fundamentally opens onto aesthetic (*poietic*) judgement, unless it is turned entirely, through this aesthetic judgement, towards a *praxis*.

Aesthetic judgement will then be said to have a 'claim to universality'. But this *claim* has nothing to do with 'pretense' in the ordinary sense of the term, that is, the arrogant presumption of a subjectivity. In truth, this claim to be valid for everyone is a tension towards, a pro-tension, the pro-position or the project of a universality still to be realised, and which is, in a way, *already in action* in the judgement that lays claim, or in the pro-position of judgement. What makes this judgement non-determining is that there is no need to show or know this universal as an object. But what makes it reflective is not the substitution,

²³ Immanuel Kant, *Critique of Judgement*, ed. Nicholas Walker, trans. James Meredith (Oxford: Oxford University Press, 2007), 15.

by default, of a given object with the fiction or projection of its idea (which would then be an image; the hypothetical 'as if' would be a 'semblance'): it is the project, not the projection, that constitutes the 'object' of reflective judgement. And this is the project of an existence, or its pro-position: that is, the project of allowing-to-be—or to make a becoming by allowing-to-be—which cannot be *constructed*. What I shall provisionally, and rather awkwardly, call the regulatory 'project' could indeed constitute a reinterpretation or a return to play of Heideggerian *being*, with its Kantian source, its openness, and its destinality. If there were an ontological thesis underlying my argument (and, of course, there must be one . . .), it would be the thesis of being as judgement. Let us stay on the subject of judgement for now.

The law of this judgement, then, is not a simulacrum of a law of nature. It is, above all, and long before it is applied to the auxiliaries of 'as if' and of 'type', a law that the reflective faculty of judgement gives to itself. That is, a law for judgement, a law that tells it and impels it to judge universally, to make a project of a universal, that is, of a reason. And not, once again, to play with a fiction of reason but to make a project out of reason, its own project, or its proposition.

For sure, all the values of the *Aufklärung* make themselves felt here, from autonomy (which Lyotard rightly takes issue with, and I shall return to this) to rationality and progress, and these values already offer themselves to be picked up in turn by Hegel and by the rational servitude of the *project*, in the critical sense that Bataille gives to this word.

But, as you will have understood, I am not using this word in Bataille's sense at all. If reflective judgement is a project, or creates a project, and not projection, it is because it casts itself beyond itself, so to speak, in the reality of a universe still to be made, invented, and not because it submits itself to the teleology of a totalising Idea. It is in fact, I repeat, the 'project' of a pro-position, a position of existence (that of a 'kingdom') that is not fictively anticipated, but *in the course* of positing itself in and from the judgement itself. At least, this is how we must simultaneously combine and share out two necessary readings of Kant, which therefore now entail two necessary readings of Lyotard.

The project of reflective judgement therefore remains *undetermined*. Kant states this explicitly with regard to the 'ideal purposiveness of nature': the 'presupposition' of a final union of the heterogeneous laws of nature remains 'so indeterminate'²⁴ that we are prepared to be satisfied with a multiplicity of laws that ultimately remain irreducible. This means, furthermore, since we are concerned here with the 'very remarkable pleasure' and 'admiration' connected to the discovery of a principle of union in general, that we can be 'satisfied' with a lack of pleasure, or a non-terminal pleasure—or in short, perhaps what Freud would come to call, both sexually and aesthetically, a yield of pleasure. The project is not simply and univocally the project of termination and totalisation. It is, at least, also the project of the undetermined of the *unbestimmt* in the very determination of a

²⁴ Ibid. 23.

judgement of ends. And the *Bestimmung* of judgement, that is, its determination and destination, is the *Bestimmung* of the *unbestimmt*, the destination towards the undetermined. That is, once again, towards judgement itself, which ‘must find’, and must invent in an undetermined and interminable way the advent of a reason. The Idea, in this respect, is not an Idea of reason projected in the guise of a fictive *telos*, but the Idea *is* the very reason that emerges from itself, from determining rationality, and which ventures to *judge*. Judgement is the risk of reason. And what it exposes itself to, necessarily, is *being judged*. For I no longer judge, here, in order to verify afterwards the justness of the relation that I have established with some datum of experience, but in judging I venture a ‘reason’ (or an unreason) that is so judged by what it attempts or risks. ‘Possible experience’, in this case, is the very experience of this risk. Reason should not be measured against the model of a given universal reason. As reason, it is the chance that is taken to make (and to allow-to-be) a universe—and this chance judges it. I am judged against the measure of the world that I attempt, for which I try my luck, and not against the measure of a world that is already established. Every attempt is my final judgement.

(I shall add, only parenthetically, as I shall not dwell on it, that we must apply this same logic to understanding the hypothetical mode of *as if*: although it is a fiction and, let us say, *mimesis*, it is not the illusory imitation of a universal model, but rather the mimetic *poiesis*, without model, of a universe, of the Idea of a universe or of a ‘kingdom’. The *typic* of practical reason must at the very least be read according to the two possible directions of

mimesis. This brings us to a *typographic* complexity, and I yield this subject to one who is present here today*, who is an expert on this matter).

Two.—At the end of the first section of *What Does it Mean to Orient Oneself in Thinking?*, Kant writes:

But the need of reason [the need for ‘orientating ourselves in thought—i.e. in the immeasurable space of the supra-sensory realm which we see as full of utter darkness’, as he states earlier, p. 241] can be regarded as twofold in character: *firstly*, it has a *theoretical* use, and *secondly*, a *practical* use. The first of these has just been mentioned [he has just been discussing the subjective assumption of an intelligent Creator of the world], but it is quite plain that it is merely conditional—that is, we must assume that God exists if we *wish to pass judgement* on the first causes of all contingent things, especially in the ordering of those purposes which are actually present in the world. Much more important, however, is the need of reason in its practical use, because this is unconditional, and because we are compelled to assume that God exists not only if we *wish* to pass judgement, but because we *must* [*müssen*] *pass judgement*. For the practical use of reason consists in the formulation of moral laws. All of these lead, however, to the idea of the *highest good* that is possible in the world, in so far as it is attainable by means of *freedom* alone—i.e. to *morality* [*Sittlichkeit*]; and on the other hand, they also lead to something which depends not just on human freedom, but also on *nature*—namely the greatest *happiness*, in so far as its distribution is proportionate to that of morality. Now reason *needs* to

* The reference is to Philippe Lacoue-Labarthe, colleague of Nancy, who was present at the conference ‘Comment juger? À partir de Jean-François Lyotard’ and published several books about the concept of typography [Editors].

assume [the existence of] a *dependent* highest good of this kind, and for this purpose, it must also assume [the existence of] a supreme intelligence as the highest *independent* good. It does so not in order to derive from it the binding authority of the moral laws or the motive for observing them – for they would have no moral value if the motive for obeying them were derived from anything other than the law alone, which is apodictically certain in itself. It does so only in order to give objective reality to the concept of the highest good—i.e. to prevent the latter, along with morality [*Sittlichkeit*] as a whole, from being regarded merely as an ideal, as would be the case if the [being] whose idea is an inseparable accompaniment to morality [*Moralität*] did not itself exist.²⁵

Practical reason therefore *must* judge. There is a constraint (a *müssen* and not a *sollen*) that is simultaneously the consequence of the presence of ‘certain’ law within us, and a sort of archi-ethical obligation, under which the law makes itself known. This constraint is that of reason, since ‘the practical use of reason consists in the formulation of moral laws’. However, this pure practical use is not employed *ad libitum* and is not derived. Reason is practical in itself, and this is even what distinguishes it from theoretical reason, which is not strictly theoretical in itself without the vigilance of critical judgement. In itself, or in its *Trieb*, theoretical reason is associated with *Schwärmerei*. Practical reason, on the other hand, does not have any need of a critique (only its use has need of

²⁵ Immanuel Kant, *What is Orientation in Thinking?*, in *Political Writings*, ed. Hans Reiss, trans. Hugh Nisbet (Cambridge: Cambridge University Press, 1991), 237–49 (242–3).

a critique, as the second *Critique* tells us). We should not imagine that it has eliminated its *Trieb* in advance, as if it were a bad instinct, but rather that its *Trieb*, as it were, exists within it as a practical rather than a theoretical element. Its *Trieb* leads theoretically to the positing of an illusory unconditional, but practically it demands a *practical* unconditional. What is ‘anterior’ or ‘superior’ to critique is the fact that reason is practical in itself. We could call this a *praxis-orientated ontology* that would underlie the whole process of critique (which we would perhaps have to rethink entirely, as far as ‘ontology’ is concerned, just as we still have to think through how the *Critique of Pure Reason* is itself a *consequence* of the archi-ethical obligation of practical reason, and how judgement on the theoretical obeys the practical constraint. We should, for example, consider this first ‘need’ of reason, identified in the first *Critique*, which is the need for transcendental reflection as a judgement of our faculties of knowing).²⁶

What cannot be derived is not only ‘the authority inherent in moral laws’, according to the terms of the text cited above, as if this authority issued directly from an absolute and transcendental principle, but, in a sense, the authority of this authority, that is, the *fact* that reason is practical in itself. ‘Before’ the law, in essence, reason *judges*—and more than that, it *is* judgement. But this is also why there is no ‘before of the law’. As soon as there is reason, there is law. That does not mean that the law is rational, but rather that ‘reason’ signifies ‘that which is in essence subjected to the obligation to judge’. Not to the obligation of a law

²⁶ Kant, *Critique of Pure Reason*, 276–7.

that would pre-exist it, but to the obligation to make the law. Making law is the law that reason must obey. It is the law of the law—and which judges reason, assigning it to judgement.

The law is the very law of morality, that is, the actualisation of judgement in freedom. It is the law that I freely carry out the law. This is the highest good. It is not an *ideal*: it is the *idea* of a *nature* in which the ‘happiness’ of freedom is actualised. It is the project of this actualisation, or the pro-position of it. A nature of this sort is a ‘dependent highest good’: it requires the guarantee of a God who allows nature to be compatible with freedom—a God who allows the very project of judgement. This is the *idea*. It does not make us *know* anything, but paradoxically this is how it grants ‘objective reality’ to the moral project. What, then, is this strange objective reality? Considered as a quasi-object, or as a fiction intended to stimulate morality, it would be both theoretically useless (there is no ‘quasi-object’) and practically weak (it would transform the categorical imperative into a hypothetical one). It would ruin Kantian logic itself (for example, by this same reading Nietzsche accused Kant of having shut again the cage of morality, after having opened it).²⁷ But this is precisely why this ‘objective reality’ must be considered strictly for what it is: it is a *practical* reality, not quasi-theoretical or fictive; it is not, perhaps, what Lyotard calls a ‘maximization of the concept’ (unless by ‘maximization’ Lyotard had meant the ‘becoming-a-maxim’ of

²⁷ Friedrich Nietzsche, *The Gay Science*, ed. Bernard Williams, trans. Josefine Nauckhoff and Adrian del Caro (Cambridge: Cambridge University Press, 2001), §335, 188.

the concept . . .). A *practical* objective reality means the *reality of duty*. Morality *must* be, and freedom *must* be actualised in the world. 'The concept of freedom is meant to actualize in the sensible world the end imposed by its laws.'²⁸

God, then, is not an ideal; he has the reality of duty, and he has only this reality (many texts in the *Opus Postumum*, in particular, confirm this proposition). This does not even mean that duty is a God for Kant. Undoubtedly, he comes close (especially in the *Opus Postumum*) to the internalisation and the subjectivisation of God, and the transformation of theology into anthropology, which would lead to the accomplishment of the death of God. But Kant is neither a theologian nor a murderer of God (which, as it happens, amounts to the same thing). He simply leaves God to Himself, and man to his duty. The claim that morality *must* be therefore means first of all that duty, which cannot be derived, is first the duty to name and put into action the objective reality of freedom. I cannot dwell here on the connection between 'naming' and 'putting into action', and on what is undoubtedly at stake in the name and naming in general, in normative performance (can the name of freedom be anything other than the name of a free being, for example? And can the name of God be such a name? I shall leave these questions to one side). Above all, I wish to emphasise this: the Idea is not the subjective 'Idea' of a reality whose objectivity would be eternally unverifiable; the Idea has, and *is* the *practical* objective reality of freedom. That is, of

²⁸ Kant, *Critique of Judgement*, 12.

duty. In practical usage, we *must* posit the Idea, because we *must* judge.

In other words, we do not judge without Idea. Not in the sense that we need an idea—a criterion—in order to judge. But firstly, and fundamentally, in the sense that the Idea is the duty to judge, to the extent that this duty is nothing if not the practical objective reality of freedom taking action. Duty is not the text of an obligation, displayed or archived somewhere in the offices of reason. Duty is the being of reason, in that it is practical in itself, and in that reason itself incessantly proclaims: *lyo tar*, 'I judge, know it!' This amounts to constantly submitting itself to the tribunal of freedom, that is, to exposing itself to the last judgement, to the *final* judgement of freedom. This judgement does not consist in what Sartre called being 'condemned to freedom.' First, because the freedom in question here is not the same as Sartre's. But especially because it is not a question of condemnation; it is a question of what exposes, yields, or abandons reason to the law, before and independently of any punishment or reward.

To the extent that reason, as a practice, is judged by the duty to judge which brings it into being, it is first judged in that it experiences an *interest* for the law, and a '*feeling of pleasure . . . in the fulfilment of duty*', as Kant claims in the third section of the *Groundwork of the Metaphysics of Morals*.²⁹ Within the *factum rationis* of morality, this unconstructible and underivable *factum* that is nothing other than the being-in-practice of reason, we also

²⁹ Immanuel Kant, *Groundwork of the Metaphysics of Morals*, 64.

find the fact that man ‘does really take an interest’ in the law³⁰—and Kant states later on that this interest constitutes an originary interest of reason.³¹ I am therefore, as it were, exposed or delivered to a pleasure of duty, and this is how I *must* judge. The ‘*lyo tar*’ would in effect be the *ego sum* of a being of pleasure (a matter of holding on to something of the libidinal), devoted to the law of the pleasure of the law. However, this ‘originary’ pleasure is absolutely incomprehensible: ‘it is quite impossible to see, that is, to make comprehensible a priori, how a mere thought which itself contains nothing sensible produces a feeling of pleasure or displeasure.’³² Whether or not pleasure is comprehensible in general is a question that we must put to Kant, since ‘pleasure and displeasure . . . [contribute] nothing to knowledge,’³³ and also because it is uniquely the relation to pleasure and displeasure that constitutes ‘the enigma in the faculty of judgement’³⁴ and demands to be treated by critique as a distinct entity. I shall leave this question open. In any case, if the pleasure of the law were comprehensible, it would immediately produce a *condition*, in the form of ‘some interest laid down as a basis’, and then the law ‘would not be the moral law, that is, the supreme law of freedom.’³⁵ The law of freedom is unconditional, the pleasure of the law is unconditioning, but we take pleasure precisely in the

³⁰ Ibid. 63–4.

³¹ Ibid. 65.

³² Ibid. 64.

³³ Kant, *Critique of Judgement*, 36.

³⁴ Ibid. 5.

³⁵ Kant, *Groundwork of the Metaphysics of Morals*, 66.

unconditional nature of the law, in an ordinary and necessarily incomprehensible way.

However, this brings with it the following implication: just as pleasure cannot condition the execution of the law, the law is no more capable of governing pleasure. Kant writes in the third *Critique*, as if he were answering Lacan in advance: ‘An obligation to enjoyment is a patent absurdity. And the same, then, must also be said of a supposed obligation to actions that have merely enjoyment for their aim, no matter how spiritually this enjoyment may be refined in thought (or embellished), and even if it be a mystical, so-called heavenly, enjoyment.’³⁶ The law is not pleasurable, and pleasure is not obligatory: the pleasure of the law is, in the law itself, in excess of the obliging nature of the law. But that does not mean that it goes beyond obligation, as is the case in the consequence of submission to a conditioned constraint (by submitting myself to the condition, I obtain satisfaction), on the contrary, it means that its ‘excess’ resides in obligation, or in the fact of being-absolutely-obliged itself. The law is the pleasure of reason through an incentive that is not a condition. That is to say, if I may be permitted a play on words, that the law is the very mobility (*mobilité*)³⁷ of reason, and its enjoyment [*jouissance*]. Judgement according to the law is the *jouissance* of pure practical reason—which is practical in itself precisely because it is enjoyed in this way. But it takes *jouissance* in noth-

³⁶ Kant, *Critique of Judgement*, 40 n. 3.

³⁷ [*Translator’s note*: The term in the French text is ‘mobilité’, combining the meanings of the English words ‘mobility’ and ‘incentive’ (‘mobile’ in French).]

ing but the law, and the law does not allow itself to be appropriated. It is not enjoyment that defines the law, but rather the inverse—and from this point enjoyment is not defined as ‘enjoyment of . . .’, but as the exposure—in the strict sense—of reason to its own impossibility of giving a reason for its being-practical, that is, to the impossibility of making the law pleasurable and pleasure obligatory. This exposure takes the following form, in the last lines of the *Groundwork of the Metaphysics of Morals*: ‘we do not indeed comprehend the practical unconditional necessity of the moral imperative, but we nevertheless comprehend its *incomprehensibility*; and this is all that can fairly be required of a philosophy that strives in its principles to the very boundary of human reason.’³⁸

The two questions, *why* we judge and *how* we are to judge, are perhaps not as separate as Lyotard suggests (even though, in another way, he also suggests the opposite, such that we might well ask him if the underivable fact of the plurality of language games, in whose name he eliminates the ‘why’,³⁹ would not occupy in its own way the position of ‘*jouissance*’ that I have just been discussing). If the incentive of practical reason is not to be found in any satisfaction, but in the exposure to the uncontrollable ‘mobility’ of its freedom, it is because we must always judge while exposing ourselves to this freedom. We must judge in such a way that the very law of freedom will always be left over or in excess in relation to that which my judgement has been able to determine,

³⁸ Kant, *Groundwork of the Metaphysics of Morals*, 66.

³⁹ Lyotard, *Just Gaming*, 49–50.

and in relation to that which has been able to determine it. This is undoubtedly the meaning of the third formula of the imperative: the human person as an end (if we do not forget that the person is the character of a practical reasonable being that is intelligible to itself) is the other who cannot, as a person, offer me a pleasure that would condition my judgement, and it is the other whom I cannot oblige to feel pleasure. We must judge in such a way that the law, in the other and of the other, judges at the same moment my own judgement. The last judgement is also this judgement of the other that is the *end*, but the other as an end is the law itself.

THREE.—‘The effect of the moral law as incentive is only negative’,⁴⁰ states the second *Critique*, precisely because all it does is to expose to me the impossibility of my appropriating, as it were, the ‘mobility’ of this mobilising force. It does not offer me a *good* in the capitalisable sense of the term. On the contrary, the law as incentive ‘strikes down my pride’⁴¹ by revealing to me that there can be no perfect good in me. Pleasure, therefore, is not in this case the principle of desire: this is the whole hypothesis of the second *Critique*, as set out in its preface. It is, rather, the law that is the principle of desire, since it is law of freedom. However, the faculty of desiring ‘is a being’s *faculty to be by means of its representations the cause of the reality*

⁴⁰ Immanuel Kant, *Critique of Practical Reason* [1781], trans. Mary Gregor (Cambridge: Cambridge University Press, 2015), 61. [Gregor’s translation ‘incentive’ keeps the Kantian sense of *Triebfeder* as *elater animi*, but it cannot render the French relation mobile/mobility.]

⁴¹ *Ibid.* 64.

of the objects of these representations'.⁴² As for freedom itself, if we maintain its transcendental definition, it is 'an *absolute spontaneity* of the cause, whereby a series of appearances, which proceeds in accordance with laws of nature, begins *of itself*'.⁴³ The faculty of desiring mobilised by freedom is therefore the faculty to be, by one's own representations, the cause of the beginning of a series of appearances which would be the real objects of these representations: in other words, the faculty to begin a world. This means that freedom is nothing other than the faculty of desiring considered with regard to such a beginning, that is, without external and natural support for the representations that, as representations of freedom (in both senses of the genitive), will be the cause of the reality of a beginning. Freedom is desire with the absolute power of beginning. (We can put it this way at least for the time being. For a *beginning* is undoubtedly never absolute. It is not an *origin*. It takes place *in* time and in accordance with a rupture in the causal sequence. We shall come back to this point later.)

We are poised here on the very sharpest crest—in German, *die Kante*—of the edifice of Kant's work (which is, precisely, *not* an edifice, but only its 'plan',⁴⁴ or indeed its project, the project for a philosophical judgement and for a judgement of philosophy). If freedom is desire with the absolute power of beginning, and if the law of freedom is the unique incentive of the desire to judge, then absolute desire is the incentive of desire. The eras-

⁴² Ibid. 7.

⁴³ Kant, *Critique of Pure Reason*, 411.

⁴⁴ Ibid. 573.

ure of all incentive for pleasure in incomprehensibility liberates all at once, at least in principle, the great figure or modern structure of the desire for desire, of the will towards will, and this absolute sovereignty of subjectivity that, from Sade to a certain Nietzsche, makes the object of law—as Lacan says in his *Kant with Sade*—no longer a universal law that would be only a thing-in-itself, but the *Dasein* of the ‘I’ that enjoys [*jouit*].⁴⁵ Taking account of this and still in accordance with Lacan, this *Dasein*, which is not the effective existence of someone experiencing *jouissance* but the point of emission of the maxim, entrusts this emission to the voices heard by President Schreber . . . We should add: the emission of the maxims of all totalitarianisms—using this term in its conventional sense. The will towards will engenders the law as delirium.

But Kantian desire, even if it opens up this possibility on one side of the crest, on the other side slips away from the modern deployment of the infinitely autotelic nature of desire. That is, it also slips away, in general, from the *autonomy* that Lyotard rightly rejects in Kant’s work. It is not a self-producing and autotelic desire (or will): measured against the desire of modern subjectivity, it is a diseased desire. But this disease of desire perhaps creates the opportunity for a freedom that is, once again, not the autonomy of will. The desire of the law is ultimately not

⁴⁵ Jacques Lacan, ‘Kant with Sade’ (1963), in *Écrits: The First Complete Edition in English*, trans. Bruce Fink in collaboration with Héloïse Fink and Russell Grigg (New York: Norton, 2006), 645–68 (650–1).

auto-mobile, self-mobilising (that is, both self-sufficient and mechanical) and it does not convert itself into a law of desire, because its incentive, the law, escapes it just as surely as it is made only of itself. Once again, this formulation is very insufficient, and would simply lead to the dialectical negative inscribed in principle in *auto-mobile* desire: to the representation of desire (or of freedom) that is infinitely spoiled both in itself and in the flight of its object. However, this representation is still *jouissance*, and even *the* form of *jouissance* for modern thought, from Romanticism to Lacan. But all autonomous representation that issues from its own autonomy falls short of the faculty of desire that must begin a series of events, or in other words, that must judge. The representation of *jouissance* falls short, or again: the representation *and* its *jouissance* fall short, which also means that there is a lack of this representation or presentation of *jouissance* as lack, or as lacking, which provides the dialectical resource of *auto-mobile* desire. In very general terms, Kant's achievement perhaps lies in having proposed that we should consider desire—that desire inscribed at the foundation of metaphysics and subjectivity—as duty. That is, not to make duty into a desire, nor desire into a duty, but to substitute, *at the very site of* a teleological mobilisation of the subject (appetite, will, conatus, or desire), a praxis of reason in place of a dialectic of consciousness.

And so, 'the feeling that arises from consciousness of this necessitation [of the law] . . . , as *submission* to a law, that is, as a command (indicating constraint for the sensibly affected subject) . . . therefore contains in it no

pleasure but instead, so far, displeasure in the action.⁴⁶ Clearly, since there is no pleasure, it is not a question of masochism; and no less clearly, since there is also no pleasure for the law that commands, it is not a question of sadism. Certainly, as we have seen, there must be a pleasure—one that is incomprehensible. But regarding this pleasure, of which we know nothing, we know at least, with the greatest certainty, that it is not the pleasure of displeasure. We know this not only by the whole structure that we have been examining, but also by Kant's consideration of pleasure in general: 'Gratification (no matter whether its cause has its seat even in ideas) appears always to consist in a feeling of the furtherance of the entire life of human beings and, hence also of their bodily well-being, i.e. their health. And so, perhaps, Epicurus was not wide of the mark when he said that at bottom all pleasure is bodily sensation.'⁴⁷ This comment is found at the beginning of the long 'remark' on laughter that concludes the 'Analytic of the Sublime'.

The imperative of the law is without pleasure as an imperative (and yet there is not the law *plus* the imperative, but rather it is the imperative that is and enacts the law). It is without pleasure, and it is (therefore) imperative, because 'pleasure is the representation of the agreement of an object or of an action with the subjective conditions of life, i.e. with the faculty of the causality of a representation with respect to the reality of its object'⁴⁸—

⁴⁶ Kant, *Critique of Practical Reason*, 67.

⁴⁷ Kant, *Critique of Judgement*, 159.

⁴⁸ Kant, *Critique of Practical Reason*, 7.

and consequently, with the faculty of desiring. However, this agreement of the object or the action with desire or freedom *must* be—this is the objective practical reality of the Idea—but it is not given. The representation attached to the imperative is that of this must-be of the agreement, not of the agreement itself. The *faculty* in relation to the *reality* is not given and is not guaranteed. If it were, there would no longer be *duty*—and there would no longer be any risk nor chance of judgement.

So is the desire for law a vain one? Is this splendid risk of the judgement of freedom simply an ineffective illusion, and can it be reduced to ineffective intention? There is no need for me to take up again those well-known texts in which Kant anticipates and vigorously opposes the trap of a morality of intention (which would ultimately be no more than a soothing and saccharine version of the modern psychosis of desire). These texts can also be illuminated by Kant's discussion of a related criticism: that of creating a confusion, in his definition of desire, between desire and a powerless *wish*. This discussion undoubtedly presents, in an anthropological form, what is at stake in the praxis-ontology of freedom. Far from defending a firm distinction between desire and the wish, Kant endorses illusory desires, not because they are illusory, but as 'a beneficent disposition in our nature' which 'regenerate[s] the activity of the human being, so that he does not lose the feeling of life', while making us aware of our own power; for 'it would seem that were we not to be determined to the exertion of our power before we had assured ourselves of the efficiency of our faculty for producing an object, our power would remain to a

large extent unused. For as a rule we only first learn to know our powers by making trial of them.⁴⁹ Let us add: freedom, all the more so, cannot be *known*, and can be ‘known’ only by our ‘making trial’ of it. The desire for the law is not a vain desire, but it shares in common with vain desire the fact that it cannot be guaranteed in advance of its own power to realise a judgement. It is therefore first of all an intensification of the feeling of the practical life of reason—of the feeling of duty—and the attempt (the *project* is an *attempt*) at a judgement which should not be measured against empirical and theoretical possibility, but rather against the ‘impossibility’ of freedom. For example, against the ‘impossibility’ of a reasonable community.

The analogy with the wish ends here. In the wish, ‘the mind is allowed continually to relapse and become languid upon recognition of the impossibility before it.’⁵⁰ But this cannot be the case for judgement, which, as a judgement that must make a decision about a beginning of freedom, is not initially concerned with an ending, but in its decision, as judgement, has already entered the kingdom of freedom. The desire of the law is always confronted with the ‘impossibility’ of the law. But this ‘impossibility’ is also that which, in reality, takes place when we judge. The kingdom of ends begins with each judgement (but it remains true, if this needs repeating, that both judgement

⁴⁹ Kant, *Critique of Judgement*, 14, and *Anthropology from a Pragmatic Point of View*, ed. and trans. Robert Louden (Cambridge: Cambridge University Press, 2006), 175.

⁵⁰ Kant, *Critique of Judgement*, 13–14 n.1.

and beginning only have meaning when everything possible is done to reach an ending).

FOUR.—Reflective judgement is regulatory. What, in general, is the *rule*? The rule is a non-constitutive principle. That does not mean a vague or approximate principle. Rules are not distinguished from constitutive principles ‘in certainty—both have a certain *a priori*—but in the nature of their evidence, that is, as regards the character of the intuitive . . . factors peculiar to the latter.’⁵¹ The rule is a principle deprived of the intuition of its object. For example, the first of all rules, in the order in which they are set out in the *Critique*, and which is also in a way the rule of rules, is the rule of causality, which first appears at the very beginning of the ‘Transcendental Deduction of the Categories’ and is fully explained in the second of the ‘Analogies of Experience’: I must be able to connect that which occurs to a cause that precedes it, but it is impossible for me to have the intuition of causality itself, that is, of the efficiency with which that which occurs would be the *product* of the cause. There is no intuition of *causation* as such, and for example, and peculiarly, there is no intuition of what it might be to produce a world (to create), or what it might be to cause the reality of the object of my representation.

Reflective judgement does not *see* what it produces as a rule. If I judge that the maxim of my action can make universal law (for this is the real practical judgement: it is not directly a universal judgement, but it is a judgement that

⁵¹ Kant, *Critique of Pure Reason*, 211.

my maxim can become a universal law), I do not judge according to a universal that I would have seen, but nor do I judge blindly, I judge *on* the universal, or in other words, I make a decision about it. I make a decision about the *universum*. And for this reason the particular nature of the rule is not to be found in its lack of vision, or its vision by default, but rather in an entirely different vision, which would be the vision of this ‘decision’.

In the *Opus Postumum*, Kant reproduces this maxim of Lichtenberg’s: ‘*He who would know the world must first manufacture it—in his own self, indeed.*’⁵² And in the surrounding pages, the world, or the *universum*, *universitas rerum*, is the theme of a reflection on its construction, which is related to the demand of practical reason. For example:

A *Kosmotheoros* who creates the elements of knowledge of the world himself, *a priori*, from which he, at the same time, an inhabitant of the world, constructs a world-vision [*Weltbeschauung*] in the idea. . . It is necessary in practical reason’s doctrine of purposes to proceed not from parts to the whole, but analytically, from the idea of the whole to the parts.⁵³

Insofar as we must undoubtedly interpret this fragment in the context of a slippage from transcendental idealism towards speculative idealism (this is the central problem addressed in the *Opus Postumum*), it illuminates a *con-*

⁵² Kant, *Opus Postumum*, ed. Eckart Förster, trans. Eckart Förster and Michael Rosen (Cambridge: Cambridge University Press, 1993), 240; Lichtenberg, *Vermischte Schriften nach dessen Tode aus den hinterlassenen Papieren*, 64–6.

⁵³ *Ibid.* 235.

trario the rigorous critical position: the position according to which there is no *Kosmotheoros*, and no manufacturing of the world, if the manufacture, in the strict sense of the *Critique*, is the mathematical process that constructs the concept by presenting the corresponding intuition. If practical reason is not a *Kosmotheoros*, then it has instead the Ideal of being a *Cosmopolitès*, a citizen of the world, which is also the characteristic of the *Kosmotheoros*, ‘an inhabitant of the world’. But the *Cosmopolitès* does not act *as if* he were a *Kosmotheoros*; he does not idly muse that he has created a world. He is, one might say, the *practical Kosmotheoros*, who does not construct the world but makes a decision about it, who judges it according to the *rule* of what we might call the inhabitation of the world. This rule is not the application of an Idea that is already given, whether or not this Idea is accessible to human faculties. But it is the rule of the formation of the Idea, or the rule of the Idea of the formation of a *cosmopoliteia*, which is nothing like a *kosmotheoria*. The Idea is not, despite its name, an Idea that can be seen. It is rather, inasmuch as it is a visible Idea, constantly *in statu nascendi* in the rule. It is born of judgement—each judgement is always a new birth of the Idea. It is not given, nor constructed, it *comes*, it *arrives* in judgement. The inhabitation of the world (which is also, as it were, the *Idea* of a construction) is itself something that *arrives*. This does not mean that it will be accomplished within a certain period of time, but rather, and in conformity with the rule of causality: the inhabitation of the world arrives and can only arrive through a free causality, which is that of judgement. (Or to put it yet another way: if we do not judge, and if we do

not judge according to freedom, if the Idea of freedom does not judge within us and does not judge us, we will not inhabit the world.)

What I called the project of judgement is therefore determined more precisely, and with a greater distinction from 'projection'. The project of judgement is that, as a maxim of action, it *makes* the inhabitation of the world *arrive*. It pro-poses this habitation. That is, to borrow a very felicitous turn of phrase from Guillermit, that we must find 'in the sphere of *practical* knowledge, in the form of an unimpeachable—that is, unconditionally necessary—*task* (*Aufgabe*), the positive signification that an inevitable and natural illusion attempted in vain to assign to a *theoretical problem* (*Aufgabe*), one that is insoluble in the sphere of speculative knowledge.'⁵⁴ The *task* is, in essence, the practical conversion of theoretical 'impossibility'; it is the practical objective reality of *duty* (*Aufgabe* is also the German term for what we call the duty of a school pupil's 'homework'). Judgement is a task both in that it is an obligation and in that it has the task of bringing about the arrival of a world, and the inhabitation and citizenship of a world.

However, the *task* should not be understood in its *labourious* value (although it is inevitably difficult), nor in its *productive* value (even though it also involves a *poiesis*). Certainly it can and must involve working, operating, bringing to fruition, taking responsibility, even militating. But the task as such designates the judgement that is

⁵⁴ Louis Guillermit, 'Les Trois espèces de l'apparence', *Bulletin de la Société française de philosophie*, 75.4 (1981), 111–26 (125).

assumed: the Latin word *taxare*, from which the word *task* is derived as well as ‘to tax’,⁵⁵ means to estimate, evaluate. And ‘to take up the task’ is to assume responsibility for an evaluation, take it or receive it as an obligation. For example, this is the meaning employed by Lyotard in his video with Guiffrey: ‘It is clear that painting, since Cezanne at least, was indeed given the task of presenting that there is something unrepresentable’ . . .⁵⁶

The rule is therefore the rule of a task, the principle of a task, and not the principle of an object or a substance. The principle of a task is not a principle in the sense of a foundation or an *archè*. It is not the beginning (the task itself must be the task of a beginning, an inauguration), it is the bidding of the task: ‘Act . . . !’ If the world—the ‘inhabited’ world—were made visible to intuition—as a triangle may be—it would also reveal its principle or its foundation, and then there would be neither task nor imperative. But such a world as this, made visible to intuition, would nonetheless presuppose the judgement that would have made a decision about its concept. Concepts are always predicates of possible judgements, and this is why, as is set out in the same passage of the ‘Analytic of Concepts’, ‘the *understanding* may therefore be represented as a *fac-*

⁵⁵ [Translator’s note: the French term ‘*tâche*’ (used in the original French text) and the English term ‘task’ share a common root in the Latin verb ‘*taxare*.’]

⁵⁶ Jean-François Lyotard, *Video Conversation Guiffrey / Lyotard on the Colour White, the Line and the Unrepresentable (Fragments)* (Studio of the artist, 1982), in *Writings on Contemporary Art and Artists / Écrits sur l’art contemporain et les artistes*, vol. IVb, *Textes dispersés II: Artistes contemporains / Miscellaneous Texts II: Contemporary Artists*, ed. Herman Parret, trans. Vlad Ionescu, Erica Harris, and Peter Milne (Leuven: Leuven University Press, 2011), 163.

ulty of judgement'.⁵⁷ From this position, there would have been judgement, and the task of creating this world would have been incumbent on a freedom. The situation of having to judge is well and truly a situation of principle.— In an analogous way, Ernst Bloch analyses judgement as being necessarily presupposed by the concept, and not the opposite, in order to inscribe this judgement in the order of becoming, of the possible, of growth and invention, whose reason is 'the enigma that is still, for itself, the being of the world in its totality'.⁵⁸ In this respect, and in the terms and the pathos peculiar to Bloch, the final judgement, that of the 'apocalypse, that is, the coming in intention of a new sky and a new land', must be understood 'as the irruption, at last, of the real genesis: at the end, and not at the beginning of the world'.⁵⁹ The last judgement is the *final* judgement and task of a beginning, a bringing-into-the-world of the world. And this is why, as Kant writes, 'pleasure in the morally good is no doubt necessarily bound up with an interest, but not with one of the kind that are antecedent to the judgement upon the delight, but with one that judgement itself for the first time calls into existence'.⁶⁰

Such is the rule. But, if the object of the rule—the *end* or the *birth*—cannot, by definition, since it is a task, be

⁵⁷ Kant, *Critique of Pure Reason*, 106.

⁵⁸ Ernst Bloch, *Experimentum mundi: Question, catégories de l'élaboration, praxis*, trans. Gérard Raulet (Paris: Payot, 1982), 219. This reference does not imply any endorsement of the general theses put forward by Bloch, only that, on this point, he extends the thought of Kant.

⁵⁹ *Ibid.* 219.

⁶⁰ Kant, *Critique of Judgement*, 181.

seen, the rule itself must then make something be 'seen' one way or another. So what does the rule make visible, and what sort of 'seeing' is involved?

This is precisely the question at the centre of the essential moment of Heidegger's interpretation of Kant—at least in the *Kantbuch*—, that is, the analysis of the schematism and the way it reveals the fundamental role of transcendental imagination. I shall not repeat this analysis, nor shall I assume it is beyond discussion—but this is not our immediate problem. I shall draw from it only what is necessary for understanding the rule, and which is quite separate from the points that, for my own part, I would wish to dispute or alter in the analysis as a whole.

The rule is that which predetermines, or more precisely pre-designs (*vorzeichnet*) 'how something in general must appear', such as a house (by chance, we are concerned once again with habitation), 'in order to be able, as a house, to offer the appropriate look [*Anblick*]'⁶¹ This design (*Auszeichnen*)—which is found in the structural position of the scheme as non-sensible image and as 'monogram, of pure *a priori* imagination'⁶²—results from the determination, according to the rule, of the insertion of the concept in a possible view. The rule rules on how the house-concept must be inscribed or designed (*Hineinzeichnen*) in a possible view of an empirical house. The rule also makes something 'be seen', both the *Vor-* and the *Hinein-**zeichnen*, the prescription and inscription of the concept. It is not a question here of an 'immedi-

⁶¹ Martin Heidegger, *Kant and the Problem of Metaphysics*, trans. Richard Taft (Bloomington, IN: Indiana University Press, 1997), 67.

⁶² Kant, *Critique of Pure Reason*, 183.

ate, intuitive *view* of a concept (*immittelbaren anschaulichen Anblick des Begriffes*): when it comes to the concept, there can never be such a view as this. However, since it is a ‘view’, it is necessarily an ‘immediate view’ (‘view’ is used here to translate *Anblick*, that is, the sort of view that we see, for example, on a postcard). And so this ‘immediate *view* is not meant [*gemeint*] in a strictly thematic way, but appears as the possible object of the presentation whose mode of regulation is represented. The rule is made manifest in the empirical *view* precisely according to the mode of its regulation (*an unmittelbarem Anblick notwendig mit vorkommt, ist nicht eigens thematisch gemeint, sondern als mögliches Darstellbares der Darstellung, deren Regelungsweise vorgestellt wird. So kommt im empirischen Anblick gerade die Regel in der Weise ihrer Regelung zum Vorschein*).⁶³ The rule is therefore the rule of the presentable, the regulation of the presentability of the presentable in a presentation. The view that it produces is not ‘strictly thematic’, that is, it is not a view of the object, of the presentation of the present object, but of its presentability as this object—the house, a house.

Already at this stage we could say that all regulatory functioning obeys this logic. Regulation is never concerned with the given, the present (whether empirical or ideal), and nor is it concerned with an unrepresentable, an Idea that is forever inaccessible and for which we form a fictive substitute. It is concerned with the *presentability* of something in the event that the sensible conditions

⁶³ [*Translator’s note*: As the French and English translations of Heidegger’s German text diverge substantially, we have chosen here to translate the French text used by the author. See also Heidegger (1991).]

are such that this thing has to be presented, in the event that *it happens* that this thing is presented, in the event that an *existence* happens to occur. The rule makes visible how, if it so happens that there is a house, it must *be* in order to be a house. It is not the thematic view of an object, it is the a-thematic 'view' of that which the object must obey. This 'duty' is also the only possibility if it is actually to come to pass that there is a house. But it is not an essence that precedes or founds an existence. It is the 'essence' of existence, that which makes it be by letting it be what it *must* be, its *end* or its destination. For example, inhabitation, domestic or economic inhabitation, or indeed cosmopolitical inhabitation. Heidegger then writes:

If what is thematically represented [that is, the 'design'] is neither the empirical look nor the isolated concept, but is rather the 'listing' [*Verzeichnis*] of the rule governing the providing of the image [*Bildbeschaffung*], then this also requires further characterization. The rule is represented in the 'How' of its regulating, i.e. according to how it regulates the presentation dictated [taking account of the double meaning of the word *diktieren* that means 'to dictate' and 'to impose'] within the presenting look. The representing of the 'How' is the free 'imaging' [*Bilden*, 'to form, build'] of a making-sensible as the providing of an image in the sense just characterized, an imaging which is not bound to a determinate something at hand.⁶⁴

The rule is therefore the rule of a free *Bilden*, it is the principle of that which is not subjected to any principle nor bound to any given presence. The rule is the principle

⁶⁴ Heidegger, *Kant and the Problem of Metaphysics*, 68.

when nothing is given, and what it makes visible is the possibility that something might be given, somewhere in the world or as world. This possibility, this presentability (this 'givability'), is not made visible by the rule—either in its preliminary design or in its monogram—in the same way that an object is made visible, for the monogram is not an object and is nowhere other than in the rule. And so there is no thematic view. But the rule 'dictates' and imposes the monogram 'in' the view (*hineindikiert*).

The monogram is defined elsewhere as 'a mere set of particular qualities . . . forming rather a blurred sketch'.⁶⁵ It is therefore close to the Idea when it is specified as a *normal idea* with regard to the Ideal of beauty: the *Normalidee* is 'something intermediate between all singular intuitions of individuals, with their manifold variations—a floating image (*das schwebende Bild*) for the whole genus'.⁶⁶ It is therefore 'not derived from proportions taken from experience as *determinate rules*: rather it is according to this idea that rules for judging first become possible. . . . It is, as the famous *Doryphorus* of *Polycletus* was called, the *rule*', which Kant insists is not 'the complete *archetype* of *beauty* in the genus'.⁶⁷ The *normal idea* is normative, but not based on an archetype to be reproduced. Rather, it offers an archetype *for* a completion, which is itself abandoned to the genius of the artist. A 'complete archetype' would simply be a model. The rule is both more and less than this—a sort of fluttering (*battement*) of the model.

⁶⁵ Kant, *Critique of Pure Reason*, 487.

⁶⁶ Kant, *Critique of Judgement*, 65.

⁶⁷ *Ibid.* 65.

The rule dictates the monogram. It dictates it as one dictates an order. It dictates, it is dictated, in fact, because the unity of the concept, which it represents or which it brings about, does not have value here as the completed thematic unity of a given presence, but, as Heidegger says, it has value 'in that it is unifying', in that its unity is the *task* of a bringing-into-the-world of an image. The rule prescribes the concept as a task, the task of *bilden*. The rule, then, is by nature imperative even before it is the rule of a moral imperative. And the categorical imperative is perhaps nothing other than the imperative of category in general, the imperative of the concept, since the concept, as unifying rule, cannot present the unity of an object but only order it. (As for this unity itself, we should not rush to conceive of it as a totality, in the sense that totality would exclude multiplicity. A *view* of the rule of the house leaves the field open for the diversity of architectural conceptions and, inversely, there are several abodes in the house of the father.)

To the extent that the rule is independent of the *datum*, its *dictation* is also the *gift* of the possibility of a representation. In section 22, Heidegger recognises *time* as that which 'as pure intuition . . . procure[s] a look [*view*] prior to all experience', in line with Kant himself, whom he cites: 'the pure image . . . of all objects of sense in general . . . [is] time.'⁶⁸ Time is therefore, for the pure concepts of understanding, 'their sole, pure possibility of having a certain look [*view*] [*Anblicksmöglichkeit*]. This unique possibility of having a certain look [*view*] shows itself in

⁶⁸ Heidegger, *Kant and the Problem of Metaphysics*, 73.

itself to be nothing other than always just time and the temporal⁶⁹—and this to the extent that time is ‘pure self-giving’.⁷⁰ The rule is therefore originally concerned with time, that is, with the gift according to which something *occurs* in general. Judgement according to the rule is not a judgement in time, but a judgement according to time, or even the judgement of time, which dictates that that (the concept, Idea) must *occur*, must be brought-into-the-world. For that to occur is strictly the *end* of time, inscribed at each moment as the rule of judgement.

This is also why, when Heidegger, in section 30, connects practical reason with transcendental imagination, his analysis implicitly relates to the logic of the rule. In respect, there is a revelation of receptivity as submission and abandonment to Faith, and also of spontaneity as ‘the free self-affecting of the law’.⁷¹ This double structure is that of the imagination, which is receptive to the view and the given which, at the same time, it *bildet* and *dictates* itself. Therefore, concludes Heidegger, we can understand why, ‘in respect, the law as much as the acting self is not to be apprehended objectively. Rather, both are manifest precisely in a more original, unobjective, and unthematic way as duty and action, and they form the unreflected, acting Being of the self [*Selbst-sein*].’⁷² Once again there is a correspondence between the unthematic nature of the law and duty: the inobjectivity of the preliminary design

⁶⁹ Ibid. 74.

⁷⁰ Ibid. 76.

⁷¹ Ibid. 112.

⁷² Ibid.

implicates it as being *prescribed*. And, reciprocally, the only possible status of an imperative, at least for a categorical imperative—this *a priori* synthesis of affected will and pure will, as described in the *Groundwork of the Metaphysics of Morals*⁷³—is an unthematic status, both with regard to its object (the presentability of the Idea) and its subject: who dictates the law? This subject cannot be presented more than its object. In truth, it is not a subject, nor I, nor God, who dictates, but the essence of the law is to be always only dictated. Its being is a being-dictated, in relation to which the thematic question of the subject has no relevance. That which dictates it is precisely the injunction that it should dictate. It dictates, at every moment, the end of time. (For the same reasons, the imperative is indeed an obligation, but not a constraint; it demands, it does not force, since it is deprived of any means of execution; it does not have the nature of what is known by the name of ‘commanding’. Freedom could not be commanded—but it is imperative.)

FIVE.—It is the imperative that designates the kingdom of ends, rather than the other way around. The kingdom of ends is not a *final* kingdom (in the sense, for example, of the ‘final struggle’). It is the kingdom in which ends are sovereign. But they are not sovereign as objects, nor as subjects. Besides, sovereignty is never the fact of either an object or a subject: Bataille was in no hurry to think otherwise. Ends are sovereign as *ends*, that is, as tasks. We should here rehabilitate *teleo*-logy, which we always

⁷³ Kant, *Groundwork for the Metaphysics of Morals*, 58–9.

relegate to the closure of discourse, or, to speak like Lyotard, to the ‘archi-teleological grand narrative.’ There are two concepts of the end—or rather, presumably the end itself constantly divides itself into two concepts: the *skopos* and the *telos* (the Stoics are well versed in this distinction). The *skopos* is the goal that one has in sight and that one aims for, it is the target, clearly present and offered to a view, which it determines; furthermore, the same word also designates the one who aims, and one who surveys, looks after, has the controlling hand of a master or protector. The *telos*, however, is the accomplishment of an action or process, its development up to its terminal point (if you like: the fruit is not the target of the tree, any more than the target is the fruit of the archer). The *telos*, then, can also designate the summit, the culminating point, or again the highest power, or sovereign jurisdiction. The *end* that is the *telos* is not a targeted end, it is an end in the sense of the greatest possible development of something, beyond which there is nothing that this thing could still become. This is also why the *telos* is inseparable from existence. The *telos*, in a way, is more characterised by entelechy than it is by teleology. *Skopos* is the drawing of the bow, *telos* is life and death. The kingdom of ends is the greatest possible development of freedom, considered as the faculty to propose ends, that is, to begin by itself a series of phenomena, resulting in its greatest possible development. The *telos* belongs to the kingdom of ends regardless of whether this accomplishment is that of a whole universe, or of a single act of judgement without any possible consequences (for example, if I happen to die immediately after I pronounce it).

The imperative is the imperative of the *telos* of universal sovereignty—or of the universality of sovereignty, that is, of a free legislation whose *rule* is precisely the rule of the end, the rule of *bilden*, to form and cultivate the final faculty, the ‘will giving universal law’, which is therefore ‘supreme lawgiver.’⁷⁴ Therefore, ‘of all man’s ends in nature, we are left only with a formal, subjective condition, that, namely, of the aptitude for setting ends before himself at all, and, independent of nature in his power of determining ends, of employing nature as a means in accordance with the maxims of his free ends generally.’⁷⁵ The *telos* of man is teleological-being itself: ‘we find in the world beings of only one kind whose causality is teleological, or directed to ends, and which at the same time are beings of such character that the law according to which they have to determine ends for themselves is represented by them themselves as unconditioned and not dependent on anything in nature, but as necessary in itself.’⁷⁶ But this *telos* (and this is once again its specific difference from the *skopos*) does not, then, constitute a model given in advance, an original to be matched or taken up.

The regulatory system, once again, involves a mimesis or a mimetological ontology, but not an imitative one. One has to *bilden* the *Bild*, not *bilden* according to a *Bild*. The rule of what something must be to appear as a house cannot refer to a given house, nor to architectural precepts, but it ushers in whole fields—economic,

⁷⁴ Ibid. 40.

⁷⁵ Kant, *Critique of Judgement*, 260.

⁷⁶ Ibid. 263–4.

political, erotic, aesthetic, technical—whose rules are, in turn, without model, but *obey* the prescription to inhabit the world. The imperative and duty are categories of this mimetology, which we could call ‘anarchetypical’, or perhaps ‘anarchic’.

For this reason, the fact that the law of setting ends for oneself, that is, the law of judging, is the very law of man, and that the end itself, the *telos*, is teleological-being, being that proposes ends, does not mean that the sovereignty of will consists in being its own principle for itself, and its own end, nor that sovereign freedom consists of self-determination, self-legislation, and self-management. Certainly, we can list Kant’s texts that address the thematic of the self-sufficiency of the will. For example, ‘the will is not merely subject to the law but subject to it in such a way that it must be viewed as also giving the law to itself.’⁷⁷ Here again, however, something resists the modern subjective hypostasis of the will or of desire. The institution of the law by the will is itself designated only through submission. Undoubtedly, the mode of this submission is not that of subservience to a constraint that would be incompatible with freedom. But nor is it the simple spontaneous acquiescence of a substance with the laws of its own nature, as is the case in Spinozian freedom (which is the truth of metaphysical freedom in general). The will is not self-engendered in freedom, it is and indeed remains *subjected* to the law of a freedom that remains inconceivable to it. If you like, there is nothing outside freedom that would come to

⁷⁷ Kant, *Groundwork of the Metaphysics of Morals*, 39.

bring it under submission, but freedom itself is exterior to man, and dictates its law to him. Krüger's commentary has perfectly identified this crucial point, which we could call the point of no return of the imperative, or the insurmountable, undialectisable character of the submission of the will. Referring to the text that I have just cited, Krüger emphasises that the will must be *viewed* as giving the law to itself, and that Kant adds in a parenthesis: 'of which [the law] it can regard itself as the author.'⁷⁸ Autonomy, comments Krüger, 'is a "point of view" from which man must consider himself. For man to "be able to consider himself" in this way is demanded and not presupposed as a reality.' We can go further still by reading the whole passage of the *Groundwork of the Metaphysics of Morals* from which Krüger borrows the expression 'regard itself as':

A rational being belongs as a *member* to the kingdom of ends when he gives universal laws in it but is also himself subject to these laws. He belongs to it as *sovereign* when, as lawgiving, he is not subject to the will of any other.

A rational being must always regard himself as lawgiving in a kingdom of ends possible through freedom of the will, whether as a member or as sovereign. He cannot, however, hold the position of sovereign merely by the maxims of his will but only in case he is a completely independent being, without needs and with unlimited resources adequate to his will.⁷⁹

⁷⁸ Gerhard Krüger, *Critique et morale chez Kant*, trans. Marcel Régner (Paris: Beauchesne, 1961), 130.

⁷⁹ Kant, *Groundwork of the Metaphysics of Morals*, 41.

Man cannot, then, claim the place of the sovereign (*Oberhaupt*). Law-giving sovereignty is not self-sufficient sovereignty, and the moment of legislating judging is indissolubly also the moment of a submission to the law. Kantian *autonomy* implies, as if at its very heart, an irreducible *heteronomy*. The heterogeneous, here, is the law itself. For it is indeed the law of the will, but precisely as *law that first of all commands and brings to submission*. We can hardly put it better than Krüger when he says: ‘For Kant, the concept of autonomy expresses only the character of *submission*, which is completely without reserve. In the concept of giving the law to itself, “self” signifies, not unconditional “creative” freedom that obeys only itself, that wishes to be faithful to itself according to a law, but rather *unconditional responsibility before the law*, the very thing from which freedom itself cannot escape. The dignity of humanity is found, for Kant, not in its spontaneous independence, but in its moral subjection.’⁸⁰

Submission is insurmountable because the law is not the self-production of the will. On the contrary, the law is precisely that I do not self-produce myself as lawgiver, but that I have the task of making law that is universal. My freedom does not have value as self-sufficiency but as destination towards this universal lawgiving, or as destination towards the judgement of ends. This destination—*Bestimmung*—is, once again, a determination: I am determined in my autonomy as much as I am destined for it. Autonomy itself is the determination—or finitude—of

⁸⁰ Krüger, *Critique et morale chez Kant*, 131.

one who must judge without the universal being *presented* to him. This is why the universal is given to this autonomy as a task, and is consequently given to it in the form of a command. The gift of freedom, the gift of ends and of the *cosmopoliteia* is indeed a gift (no *captatio benevolentiae* of a nonexistent Absolute could obtain it for us), but it is the gift of 'you must'. Or in other words again, it is an announcement or a promise: that *must* take place, that must occur, but the announcement or promise has value only, and precisely, from that which must happen by the judgement of my 'good will'—and consequently the announcement is integrally converted into the order: *you must*.

I am destined for the sovereignty of the law, but this is why the law is addressed to me as an order. The imperative brings about my submission; it does not constrain me. There is no power of coercion—which would be contrary to freedom—and it actually has this particularity, which Lyotard discusses in *Just Gaming*, of placing me *ipso facto* (and this is once again the *factum rationis*) in the position of obedience or submission. It has the effectiveness of a posture, not of an execution. In this way it determines me, destines me.

I am therefore in a position of *respect* relative to the sovereignty of the law, which is a sentiment of reason, or a non-pathological sentiment. Respect is non-servile affection, and it is, symmetrically, thwarted desire. As such, it is the condition of my destination towards sovereign judgement (and this condition is not aleatory: even in the use of maxims that have been corrupted at root, which

can result from radical evil⁸¹—which is itself the index of our freedom—, even in the use of such maxims we cannot lose respect for the law, as *Religion Within the Bounds of Bare Reason* tells us . . . , and if we were to lose it, we could no longer get it back.⁸² it is therefore just as proper as it is not appropriable). However, respect, first of all, judges me, and it is a judgement of humiliation.⁸³ Respect first of all expresses the incommensurability of my pretensions (or weaknesses) and of the sovereignty of the law. It is the judgement of humiliation, whose criterion is the incommensurable. This means that respect, which creates my relation to the law, is strictly the sentiment of the sublime. (In general, we should analyse how the problematic of the sublime in the third *Critique*, far from obeying the programme of an aesthetic for which it is supposedly a rubric, proceeds from necessities inscribed in the second *Critique*—and also how the whole aesthetic critique is ordered in relation to the sublime.)

As we know, ‘delight in the sublime does not so much involve positive pleasure as admiration or respect, i.e. merits the name of a negative pleasure.’⁸⁴ This negative pleasure—which, I repeat, is not masochistic pleasure or displeasure, but ‘a pleasure that is only possible by means

⁸¹ [Translator’s note: ‘radical evil’ here relates etymologically to the maxims’ being ‘corrupted at root’ (‘radical’ derives from the Latin ‘radix’, meaning ‘root’).]

⁸² Immanuel Kant, *Religion Within the Bounds of Bare Reason*, trans. Werner Pluhar (Indianapolis IN: Hackett, 2009), 52.

⁸³ Kant, *Critique of Practical Reason*.

⁸⁴ Kant, *Critique of Judgement*, 76. Cf. also 88.

of a displeasure⁸⁵—is a judgement⁸⁶. The real sentiment of the sublime supposes that a judgement has been given within me, and recognised, regarding my own judgement. It nonetheless does not consist in servile religious fear, but in the free exposure to judgement that measures my judgement by my destination:

In religion, as a rule, prostration, adoration with bowed head, coupled with contrite, timorous posture and voice, seems to be the only becoming demeanour in presence of the Divinity, and accordingly most peoples have assumed and still observe it. Yet this cast of mind is far from being intrinsically and necessarily involved in the idea of the *sublimity* of a religion and of its object. . . . [A]dmiring divine greatness [requires] a mood of calm reflection and a quite free judgement . . . Only when he becomes conscious of having a disposition that is upright and acceptable to God, do those operations of might [nature in a storm, a tempest etc.] serve to stir within him the idea of the sublimity of this being, so far as he recognizes the existence in himself of a sublimity of disposition consonant with the divine will, and is thus raised above the dread of such operations of nature, in which he no longer sees God pouring forth his wrath. Even humility, taking the form of an uncompromising judgement upon [our] shortcomings . . . is a sublime temper of the mind . . .⁸⁷

Without a doubt, it is a beautiful soul who speaks these words. But let it speak, and let us note only the structure:

⁸⁵ Ibid. 90.

⁸⁶ [Editor's note. In French 'peine' (here translated as 'displeasure') can also mean 'sorrow', 'sadness', but also 'punishment' and even 'sentence']

⁸⁷ Ibid. 94.

it is the structure of a judgement that, in order to conform to the destination towards freedom, can only function by exposing itself to the judgement of this destination. A free judgement is measured against nothing but freedom. That is, at the limit of my ability to judge, and against inconceivable and unrepresentable absolute grandeur. It humiliates me, consequently, but this humiliation is not a fear of God's wrath, precisely because absolute grandeur does not present itself. However, sublime humiliation gives me the rule of the presentability of this grandeur, the rule of the task of having to judge according to this grandeur. That is, of having to assume in my judgement the infinite distance from its *telos*—not to relativise, nor discourage, nor condemn my judgement, but rather to make it the very judgement of an infinite destination, here and now. The negative pleasure of the sublime is the displeasure of the task at stake, as a task of freedom. Therefore we judge as we should only in the adoration of the sublime: but we do not adore 'with bowed head' as we do in church; on the contrary, *Religion Within the Bounds of Bare Reason* defines *adoration* (in the 'contemplation of the profound wisdom of divine creation in the smallest things and of its majesty on the large scale') as that which 'put[s] the mind into that sinking mood annihilating, as it were, the human being in his own eyes', but which is also, 'in consideration of his own moral vocation therein, such a soul-elevating power [*seelenerhebend*; the sublime is *das Erhabene*] that words by comparison, even if they were those of the royal *David* in prayer . . . would have to vanish like empty sound.'⁸⁸ The 'elevation' in adoration is only

⁸⁸ Kant, *Religion Within the Bounds of Bare Reason*, 218.

proportional to an annihilation and to that 'feeling of a momentary check to the vital forces' that characterises the feeling of the sublime.⁸⁹ There is finally neither elevation nor abasement, these are not measured. The sublime is more accurately characterised by an immobilisation or a suspension. It suspends finitude on its own in-finitude, on the fact (*factum*) that it is not completed—for this is what it means, to be finished, finite—, that it is not its own *telos*, because it must still pronounce the judgement and accomplish the task of this *telos*.

The judgement of the sublime is precisely the judgement that I *must* judge. This is why the sublime is not so 'sublime', by which I mean so grandiloquent, as it is presented by the pre-Romantic apparatus of the 'sublime of nature' (which is, besides, always 'inaccurately named'; and I shall leave for another day the case, which was hypothetical for Kant, of the sublime in art, which would demand the form of either a didactic poem, a tragedy, or an oratorio). The sublime has a sober manner: '*Simplicity* (artless purposiveness) is, as it were, the style adopted by nature in the sublime. It is also that of morality. The latter is a second . . . nature.' *Simplicity* is distinguished from the 'ardour of unbounded imagination' and from '*Schwärmerei*', '*fanaticism*, which is a *delusion* that would *will some VISION beyond all the bounds of sensibility*; i.e. would dream according to principles.'⁹⁰ *Simplicity* corresponds to the 'most sublime' commandment of the Bible,

⁸⁹ Kant, *Critique of Judgement*, 75–6.

⁹⁰ *Ibid.* 104–5. [Editor's note: Nancy and Lyotard always translate '*Schwärmerei*' as enthusiasm though the word carries both meanings: enthusiasm and fanaticism].

the prohibition against representing God. The sublime of simplicity consists in not representing, that is, according to a strict interpretation of the term in the ontology of subjectivity, of not *making a representation for ourselves* of the unconditional. It consists rather in judging—in judging with simplicity—, since it is free judgement, which is itself the unconditional, that obliges us. The presentation of the unconditional would be the suppression of judgement—and the suppression of the unconditional.

Because of this, judgement on the sublime is strictly 'underivable' (in Lyotard's terms). Its exposition, Kant claims, is simultaneously its deduction, since we find in it 'a purposive relation of the cognitive faculties, which has to be laid *a priori* at the basis of the faculty of ends (the will), and which is therefore itself *a priori* purposive. This, then, at once involves the deduction, i.e. the justification of the claim of such a judgement to universally-necessary validity.'⁹¹ The deduction answers the question *quid juris?*: that which is according to the law, is that our faculties relate to an end that is their own limit, the limit of their freedom in the sense that it is at this limit that freedom *begins*.

Freedom is finitude as beginning, inauguration, the initiation of a world as in-finite series of phenomena of freedom itself. The fact that the series is infinite is the only guarantee of universality, and the only guarantee that, for each finite being, such a beginning can once again occur.

⁹¹ Ibid. 110. See Jean-Francois Lyotard, *The Differend: Phrases in Dispute*, trans. Georges Van den Abbeele (Minneapolis: University of Minnesota Press, 1988).

This entails—and here I am in agreement with Lyotard—that the totality of the series cannot be represented, and that it should not be. Or, perhaps more precisely, that the model of totality, since there always is one, whether it is unity or plurality (and, perhaps, can we even be satisfied with this ‘or’? . . .), should be designated only in relation to a freedom that is always other, that is capable of re-beginning another world within this world. This alterity of freedom (its sublimity) then inscribes itself only as law. What is inscribed in this way is not the law of the Other, but the other as law. The other as law does not mean that it is the other who makes the law. The other does not make it as a lawgiving *member* of the kingdom, any more or less than I do. But the other as law means that the law is that there is an other. The law is the arrival of the other—and arrival at the other.

Certainly, this amounts to a difference in sentence structure. But I would say that it is this difference, applied to yet another phrase, and different in a different way, a sentence less pronounced than it is pronouncing, that suspends speech at the same time that it opens it up, let’s say the sentence of respect or adoration, or we could also say the sentence of submission, or abandonment, without which no phrase—be it prescriptive, narrative, or even constative—could be articulated. But also by which all sentences are judged, without giving rise to any sort of terror.

This articulating and non-articulated sentence, unique but not unitary, I shall no longer henceforth call a sentence, and certainly not a meta-sentence, but an art or a style, following Kant when he speaks of simplicity as the

'style' of the sublime. (And this would not be unrelated to the *music* that Daniel Charles was discussing the day before yesterday). Art or style (we are concerned again here with *mimesis*) would be that which articulates each sentence, first of all, in accordance with a respect for the fact that I shall never articulate the sovereignty of which I speak, on pain of abolishing it, and according to this related respect for the fact that it is also sovereignty that articulates the sentence of the other. This respect is not the 'democratic' respect of opinions, it is the more ambiguous demand, the more insistent assertion of the sovereignty of the law. The style of judgement must be this demanding submission. Style is the justice of judgement.—As for what 'style' might then be, the style of sovereignty and community, is a question for another line of research. I shall make only this one point, which I know to be in accordance with Lyotard, that we should be concerned here with an art of community, but definitely not with community as work of art, by which I mean that vision that Syberberg presented in his film *Hitler*.⁹²

Six.—In the 1764 *Observations on the Feeling of the Beautiful and Sublime*, after having distinguished the beautiful that 'charms' from the sublime that 'touches', Kant divided the latter into the '*terrifying sublime*', 'accompanied with some dread or even melancholy', the 'noble sublime',

⁹² Roger Laporte subsequently brought to my attention this sentence from Proust: 'art [is] the most real of all things, the most austere school of life, the true last judgement.' Marcel Proust, *In Search of Lost Time: VI, Time Regained*, trans. Andreas Mayor and Terence Kilmartin (London: Chatto & Windus, 1992), 233. Cf. *Hitler: A Film from Germany*, dir. Hans-Jürgen Syberberg (Film Galerie, 2004 [1977]).

accompanied by ‘quiet admiration’, and the ‘magnificent sublime’, connected to ‘a beauty spread over a sublime prospect.’⁹³ But immediately afterwards, in a note, he gives a single example, an example that does not correspond exactly to the division that had been proposed, since it is the example of a ‘noble dread’, and of ‘the noble dread which the description of a total solitude can inspire.’ The example is that of a certain ‘Carazans Traum’, published in the *Bremisches Magazin*⁹⁴. Carazan is a miser who has ‘bar[red] his heart to the compassion and the love of others’, and who relates the dream of his last judgement: ‘I saw the angel of death come upon me like a whirlwind, and he struck me, before I could plead against the terrible blow. I was petrified as I became aware that my fate had been cast for eternity, and that to all the good I had done, nothing could be added, and from all the evil that I had done, nothing could be subtracted.’ God pronounces his condemnation, and ‘in this moment I was ripped away by an invisible force and driven through the shining edifice of creation. I quickly left innumerable worlds behind me. As I approached the most extreme limit of nature, I noticed that the shadows of the boundless void sank into the abyss before me. A fearful realm of eternal silence, solitude and darkness!’⁹⁵

⁹³ Immanuel Kant, *Observations on the Feeling of the Beautiful and the Sublime and Other Writings*, ed. and trans. Patrick Frierson and Paul Guyer (Cambridge: Cambridge University Press, 2011), 16.

⁹⁴ John Hawkesworth, *Carazans Traum. Eine morgenländische Erzählung*, in ‘Bremisches Magazin zur Ausbreitung der Wissenschaften, Künste und Tugend’, vol. 4, 1761, 539–46.

⁹⁵ *Ibid.* Immanuel Kant, *Observations on the Feeling of the Beautiful and the Sublime*, *cit.*, 16–17.

The last judgement (which, in this case, a pedantic theologian would call a 'particular judgement') was therefore Kant's first example of the sublime. I could not say whether the prose is exactly *simple*, but I would remark on the one hand that the condemnation in it is essentially that of solitude (Kant's text goes on to emphasise this) and that it is executed by the infinite crossing and the negative *kosmotheoria* of an inhabited universe, and on the other hand, that this sublime, although it belongs to the noble type because at the end of the dream the miser rediscovers his love of humanity, is nonetheless mixed with the terrifying type. The last judgement is inseparable from the wrath of God, and so from religious servility and pathological constraint. Kant could not have used this same example after the composition of the third *Critique*.

Was it right, then, to speak of a last judgement in this case? The *final* judgement, the one that judges my judgement every time, or the other as judgement, are these related to the last judgement? Yes, Kant answers, thirty years later, yes, in the circumstances of a game with Ideas. This game with Ideas is the status that he confers on his work of 1794, *The End of All Things*.⁹⁶ This text plays at exploiting the resources of the representation of the last judgement, that is, in principle of a terrifying representation that belongs to the false sublime of religions. I shall, in turn, play along: I shall attempt to decipher the part of it that interests us here.

⁹⁶ Immanuel Kant, *The End of All Things*, trans. Allen Wood, in *Religion and Rational Theology*, ed. and trans. Allen Wood and George di Giovanni (Cambridge: Cambridge University Press, 1996), 217–33 (225 ff.).

The first Idea is that of the end of time as entry into eternity. It can strictly designate only the passage to an incommensurable, absolute grandeur with time, a *duratio noumenon* of which we cannot grasp even the slightest concept. It places us on the brink of an abyss that is both terrifying and fascinating. Taking up the same distinctions from the *Observations on the Feeling of the Beautiful and Sublime*, Kant names this thought the ‘terrifying sublime’. But, considered from the moral perspective, this end of all things is the *beginning* of a supra-sensible existence that is not subjected to the conditions of time.

This beginning, on the one hand, no longer presupposes the physical annihilation of time, and on the other hand, as beginning, must indeed take place in time. However, that which, with regard to the end of all things, still takes place in time, is the *last day*. The last day still belongs to time, that is, something still *occurs*. What occurs is the settling of accounts. It is the *day of judgement*.—The first lesson of the last judgement is therefore already implicit. It is in fact explicit in *Religion Within the Bounds of Bare Reason*, where it is claimed that the symbolic narrative of the end of the world (the Apocalypse) ‘presented as an event that (like the end of life, whether near or far) can not be seen beforehand, expresses very well the necessity to be always ready for it, but in fact (if one bases this symbol on its intellectual meaning) always to look upon ourselves actually as appointed citizens of a divine (ethical) state.’⁹⁷ What is *still* in time is *always* in time, and, reciprocally, time is *always* on the brink of the abyss of

⁹⁷ Kant, *Religion Within the Bounds of Bare Reason*, 150.

its end, for which there can be no fixed *time*. The *rule* of time is that we cannot *see* the end of time. But in time the imperative is that at every *instant* the task of *Cosmopoliteia* begins. Precisely because it is the Idea, it cannot be entrusted to the next day. The Idea is the Idea of the end of time at all times.

We could say that practical reason is unaware of the first analogy of experience, that of substance as permanent substrate of change. For practical reason, existence is born and dies at every moment; it is constantly on the brink of the abyss, and its only 'substance' is a task. But that perhaps also means that practical reason is only actually reason according to time, and that 'inner sense' is perhaps after all essentially practical. And so the critique of the paralogisms of reason is necessary for the emergence of the *practical* subject. And this 'subject' (not a substance), man, who is never what he must be, is also always-already what he must be. A fragment of the *Opus Postumum* says: 'The temporal conditions, which make the representation of humanity and of its end into appearances of sensible intuition, disappear if the generic destination of man as founded in his reason has the ultimate end as its principle; for man is already the being that he foresees that he will become.'⁹⁸

This is why man is already free, with a freedom which is incomprehensible and imperative. Freedom is then the only 'substance' of the practical 'subject', but the substantiality of this substance resides exclusively in the fact of

⁹⁸ Immanuel Kant, *Opus postumum*, ed. and trans. Jean Gibelin (Paris: Vrin, 1950), 75.

being *mobile*, in both senses of the word: mobile with the mobility of beginnings, at each moment, and the incomprehensible mobilising force of an acting-through-pure-duty. Kant writes in *Religion Within the Bounds of Bare Reason*: ‘I admit that I cannot well accommodate myself to the expression, used presumably by astute men as well. A certain people (engaged in working for a legal freedom) is not yet ripe for freedom; the bondmen of a landed proprietor are not yet ripe for freedom; and thus also, human beings as such are not yet ripe for freedom of faith. According to such a presupposition, freedom will never arrive; for, one cannot *ripen* to freedom if one has not previously been set free (one must be free in order to be able to use one’s powers purposively in freedom).’⁹⁹

The day of judgement then, is the emergence and bringing up to date of the last end—of the kingdom of freedom. This kingdom emerges on *this* day, on each day as day of judgement. If men are fascinated by the end of the world (and they all are; it is, says Kant, an idea woven into human reason), it is because duration has value only inasmuch as we are present in it in conformity with the last end, whether this end is or is not brought about. And if men attach terrifying representations to this idea, it is because of the corruption of man and his falling short of the law, which condemns him to the day of judgement.

But Kant precisely leaves condemnation and salvation outside his discussion. The two possible doctrines, those of the unitarians, who consider that everyone is saved, and that of the dualists (for a doctrine of universal condemna-

⁹⁹ Kant, *Religion Within the Bounds of Bare Reason*, 209.

tion would be absurd) cannot give rise to a dogma. And Kant suggests that, if 'dualism' has the advantage from a practical point of view, since it shows each person how he must judge himself, it nonetheless hits upon the difficulty of thinking that even a single reasonable being could have been created for eternal condemnation. Clearly, it is not the logic of reward and punishment that commands here, but that of duty and of end.

And yet the representation of reward and punishment attached to the image of the last judgement must be considered in relation to the 'indispensable supplement' that Christianity adds to the pure respect of the law. This supplement is love, defined as the fact of 'freely accepting among one's maxims the will of an other'. Punishments are therefore not incentives but well-meaning warnings about the consequences of the violation of the law. And nor are rewards incentives, since the creature's love is not directed towards the good that is received but towards the generosity of the giver. In other words, this 'indispensable supplement' is nothing other than the love of the law inasmuch as the law is a gift. The gift is confused with the imposition of the law (it takes away nothing from the law's imperative character as such) and adds itself to it at the same time. What is given is freedom—it does not give a good, it gives nothing. A gift is always free, and never gives anything except this freedom, which is the freedom of 'accepting among one's maxims the will of an other'.—The last judgement then signifies simultaneously that there is, on the day of judgement, no other grace possible except this gift, but that this gift is also always in itself a supplementary grace. I am always-already judged,

but I am never yet judged. That signifies neither that I am saved nor that I am innocent, but that I always still have the task of exposing myself to judgement.

The day of judgement is not *dies irae*, the day or rather night of religion and fear, it is only *dies illa*, that illustrious day, the sublime day when freedom, law, and the other give me order and the gift of judging. The day of *lyo tar*, any day at all, this very day, *dies haec, hic et nunc*, the eternity of judgement.

SEVEN.—In this genesis, there is no day of rest.

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What does it mean to judge when there is no general and universal norm to define what is right and what is wrong? Can laws be absent and is law always necessary?

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